MONDAY, JANUARY 1, 1996

The Courthouse was closed for New Year’s Day.

TUESDAY, JANUARY 2, 1996

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

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #26, Pay Date December 22, 1995, with a total Missoula County payroll of $537,561.40. The Transmittal Sheet was returned to the Auditor’s Office.

Addendum to Travel Policy -- The Board of County Commissioners signed an Addendum to Missoula County Travel Policy 88-A, effective January 1, 1996, increasing the mileage reimbursement to 30 cents per mile for the first 1,000 miles traveled per month and 27 cents per mile thereafter. The Addendum was distributed to all County Departments.

Contract -- The Board of County Commissioners signed a Contract for Airport Infrastructure Improvements, dated January 2, 1996, between Missoula County Airport Tax Increment Industrial Infrastructure District and Neptune, Inc., for certain infrastructure improvements at the Missoula County Airport. The Contract was returned to John DeVore, Chief Executive Officer, for further handling.

Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY’96 budget:

1) Control No. 96-010, a request from District Judge #1 to transfer $328.00 for the purpose of purchasing a dictaphone and transcriber in place of a file cabinet and chair;
2) Control No. 96-012, a request from Financial Admin./Sheriff to transfer $14,465 from the Term Reserve fund to the Sheriff Patrol-Salaries fund ($11,875) and the Sheriff Patrol-Fringe Benefits fund ($2,590) to cover pay-off for Duane Steinke; and
3) Control No. 96-013, a request from the Historical Museum to transfer $4,950 from the Merit Reserve fund to the Perm-Salary fund ($3,750) and the Fringe Benefits fund ($1,200) to cover the forthcoming raises for staff per memo from Bob Brown dated 12/12/95.

Amendment to Memorandum of Agreement -- The Board of County Commissioners signed an Amendment to the Memorandum of Agreement between the Missoula Board of County Commissioners and the Salvation Army, dated November 21, 1995, with regard to purchasing emergency winter food and shelter for indigent residents of Missoula County, as per the terms set forth, for the period from December 1, 1995 to February 29, 1996 and having a total cash value not to exceed $5,000.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1995, between the Missoula Board of County Commissioners and Missoula Aging Services with regard to purchasing planning, coordination, and delivery of Aging Services programs in Missoula County, as per the terms set forth, for the period from July 1, 1995 to June 30, 1996 and having a total cash value of $109,311.

Also included:

* Fern Hart moved and Michael Kennedy seconded the motion to appoint Michael Kennedy as Chair of the Missoula Board of County Commissioners for 1996. The motion carried on a vote of 3-0.

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

WEDNESDAY, JANUARY 3, 1996

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

No Administrative Meeting was held; however, the following items were signed:

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated January 3, 1996, pages 6-28, with a grand total of $80,664.04. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming U-Haul International as principal for Warrant #29693 issued June 14, 1995 on the Missoula County Public School-Elem. Fund in the amount of $74.14 now unable to be found.

Memorandum of Agreement -- Chair Kennedy signed a Memorandum of Agreement, dated October 1, 1995, between Refugee Assistance Corporation and Missoula City-County Health Department whereby Refugee Assistance Corporation has determined the need to purchase professional services related to providing medical and dental translation and medical education services to the Russian refugee community. These services will target refugees who have been in the United States for three years or less, but can also be used for any refugees who have not become citizens, as per the terms set forth, for the period from October 1, 1995 through September 30, 1996 and having a total cash value of $5,000. The Agreement was returned to the Health Department for further signatures and handling.
Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated January 3, 1996, between the Missoula County Board of Commissioners and the Missoula County Museum Board with regard to the request for assistance from the Missoula County Board of Commissioners in financing the cost of updating the computer technology at the Fort Missoula Historical Museum, as per the terms set forth, for the period from January 3, 1996 to July 1, 1998 and having a total cash value of $14,000.


Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and the Psychology Department, University of Montana, an independent contractor, to perform the following for the Partnership Health Center: secure graduate student intern at PHC to conduct intake sessions on-site, evaluate patients, ensure appropriate referrals, and provide counseling for patients who cannot be referred to the community volunteers, as per the terms set forth, for the period commencing November 1, 1995 through May 17, 1996, for compensation in an amount of $2,613.60. The Contract was returned to the Health Department for further handling.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Cara Lorenzo, an independent contractor, to perform the following for the Environmental Health Department: collect data necessary for Air Quality project; photocopy school attendance records that are the property of Missoula District #1 schools, as per the terms set forth, for the period commencing January 2, 1996 through March 1, 1996, for compensation in the amount of $450. The Contract was returned to the Health Department for further signatures and handling.

Sewer Line Easements -- The Board of County Commissioners signed Sewer Line Easements—Mullan Road, dated January 3, 1996, granting and releasing to Harriet Spurlock of Spurlock Road, Missoula, two 20-foot wide easements for the construction and maintenance of a private, multi-family sewer line to serve the Trailer Park, as per the terms set forth. Said easement is perpetual and shall run with the land.

Also included:

* The Commissioners reviewed and approved the audit of the Law Enforcement Youth Camp for the period from January 1993 through November 1995, as submitted by Susan Reed, Missoula County Auditor. The audit was forwarded to the Clerk & Recorders Office.

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

BID AWARD: NEPTUNE HANGAR PROJECT PHASE I - HANGAR SLAB GRAVEL FILL

Michael Kennedy said the Board of County Commissioners had received a request for an award of the construction bid for the Neptune Hangar Project - Phase I.

The bids were requested for the Neptune Hangar Project - Phase I - Hangar Slab Gravel Fill. Four bids were received as follows:

- Green Diamond Construction $36,595.12
- JTL Group $38,925.00
- Johnson Brothers Construction $45,683.00
- Jensen Paving Company $46,699.00

The project engineer examined and evaluated all bids and recommended Green Diamond Construction be awarded the project for their low bid of $36,595.12.

Chip Johnson, Druyvestein Johnson & Anderson, said, as long as the bid bonds were in order, his review of the proposals indicated that Green Diamond Construction’s unit costs are realistic and he recommends that they be awarded the bid.

Michael Kennedy asked Horace Brown, the County Surveyor, if the bonds had been reviewed?

Horace Brown, County Surveyor, said he didn’t know if they had or not, but John DeVore would know.

Barbara Evans moved that the Board of County Commissioners award the construction bid for the Neptune Hangar Project, Phase I, Hangar Slab Gravel Fill, to Green Diamond Construction in the amount of $36,595.12 in that it appears to be the lowest and best bid, contingent upon meeting the bond insurance requirements. Fern Hart seconded the motion. Motion carried 3-0.

HEARING: PROPOSED BOARD APPOINTMENT POLICY
Michael Kennedy said the proposed board appointment policy was the next item to be discussed. He stressed the importance of boards that are named by the County Commission. They provide an important function in county government and the Commissioners take them seriously.

Michael Sehestedt said the issue arose because concern was expressed that the County was not providing sufficient public notice or opportunity to comment on board appointments. In the mid 1970’s, the Board of County Commissioners began to advertise all vacant board positions. The Commissioners, after applications had closed, would review them and interview the top group of applicants. Then, about 8 years ago, they varied that procedure as a result of having a number of dissatisfied applicants and the Commissioners’ feeling they were spending a lot of time interviewing. They decided if the current board member’s performance was satisfactory and the member wanted to continue, no change was needed on the board and that board member would be re-appointed. The other vacancies continued with the notice procedure and solicitation of applications.

The question has been raised if there has been sufficient public notice of board appointments. After reviewing the objections, his recommendation is that the County’s current procedure is probably lawful. But the better practice would be to eliminate the question and have a formal board policy that allowed notice and an opportunity to comment prior to any board action.

He proposed minimal changes necessary to address the concerns of lack of opportunity to comment, which was alleged to be a question of significant public interest, and the lack of notice of vacancies. He recommended that the board continue the practice of soliciting applications for those boards where there is a vacancy or an incumbent who is not willing to serve. In addition, when an incumbent wishes to be re-appointed, he suggested that they publish notice that the commissioners are considering re-appointment of that individual to that board but, prior to doing that, would accept written comments from any interested party on the proposed re-appointment. He also suggests that when doing an open solicitation, they add language to the solicitation saying that they would accept comments on the applicants from anyone who wished to comment. He recommends that they allow this public participation for comment in written form, making it more efficient than the public meeting format. He also suggests that they amend the procedure for the weekly agenda to indicate if appointments are going to be considered at a particular morning administrative meeting, which is when appointments have traditionally been made.

He stressed that these are only suggestions. The purpose of the process is to give the public notice of appointments and to give the public opportunity to comment on proposed appointments.

Ross Best said this matter was being discussed because of objections he raised last month regarding the appointment process. He is concerned about the way the administrative meetings are run and the way the items are listed on the agenda. As he reads the state law and state constitution, there is a right of the public to participate in essentially every decision that the Commissioners make. The statute talks about decisions that are of significant interest to the public and he quoted “each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall ensure adequate notice and assist public participation before final agency action is taken that is of significant interest to the public.” He said Mr. Sehestedt’s memorandum of last month indicated that there is some ambiguity about the meaning “of significant interest to the public.” He believes that that phrase covers just about all the business that the Commissioners conduct. Any ambiguity in that phrase has to be resolved in favor of the right to public participation. It is a well-established legal principle that they are interpreting a law, and if that law is intended to benefit the public interest, then it is to be construed liberally to guarantee that the purpose of the law is fulfilled. In this case, he can’t see any evidence of any intention of the part of the legislature to nit-pick or try to restrict in some way the public participation. Basically, he feels that everything that comes before the Commissioners, other than incidental motions that come before the public participation law. Another feature of the public participation law is the requirement that the County provide public notice. He said, as Michael Sehestedt acknowledged, the Montana Supreme Court has indicated that the right to notice is linked not only to right to participate, it is linked also to the right to observe the deliberations of public bodies. In other words, you don’t have an open meeting if you haven’t provided notice.

He is concerned that they have been led to believe that, if the County gives general notice that there will be an administrative meeting some morning, that will cover the requirement of giving notice for all the individual items that are being considered. But, as a practical matter, if that is all that is being done and no notice is given of matters that will be dealt with, then the County is not giving the notice that it is required to give. The public is not being given reasonable opportunity to participate. It is not meaningful to say that a citizen can come in every morning just before the administrative meeting and look at the agenda. He considers himself an active citizen but he cannot reasonably follow county government if that is the approach.

He said on the appointments and on all Commissioner action business, the Commissioners need to provide reasonable notice of every item that they are going to deal with. He said that doesn’t mean that there aren’t going to be amendments offered to some of those items. Obviously, there will be some flexibility. But, as it is now, the public is basically suffering for what is essentially a convenience to members of the Commission. He respects the work and time the County Commissioners put in, but County government is very important and the Commissioners are paid what most Montanans would consider to be a full-time salary.

He wanted to emphasize that the law states that each agency shall develop procedures for permitting and encouraging the public to participate. The law does not spell out what has to be done to “encourage” but he argues that encouraging is more than merely permitting. He uses the example that in a meeting, if it is possible for members of the public to participate in discussion, then to encourage them to speak, the ruling factor of the meeting should make it clear that the public can speak. There are meetings where the members of the public are unsure of their rights, about the procedures and about the expectations of the officials conducting the meeting. So, to be effective and earn the trust of the people, the Commissioners need to make it clear to the public what the opportunities for participation are.

He said Mr. Sehestedt suggested that the County establish the procedure of written comments only regarding re-appointments. He said he still has research to do on that, but the way he reads the law on public participation is that the public participation must be allowed both orally and in written form. Section 2-3-111 of the Montana Code states
“procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views, or arguments orally or in written form prior to making a final decision that is of significant impact to the public.” He said there are situations in which legal ambiguities and the word “or” can be ambiguous. The standard way of getting out the ambiguity here would be to ask if the “or” was inclusive or exclusive. That is, are both of the possibilities to be allowed or is it just one or the other but not both. To help in interpreting that, it is helpful to look at the earlier phrase “reasonable opportunity to submit data, views or arguments.” Clearly, the law cannot be taken to mean that you can submit data or views or arguments, but you cannot submit any two or three of those together. He would think it odd if the next phrase has a different use of the word “or” and you are allowed only oral or written comments but not both. He is not aware of any Montana case law on this question. He says the county commission is going along with the same appointments and is shutting out the potential of superior appointment and for there to be a degree of deliberation by the appointing board of that application. He feels, in order to simplify this matter that comes before the Commissioners, before they take the final vote, there has to be a reasonable opportunity for public comment and that opportunity has to allow for oral comment, written comment or both. He recognizes that on some matters there may be a large number of people that want to comment. Certainly any court will allow reasonable time limits to be imposed on oral comments. Probably a court would allow a County Commission to limit the number of people to comment if there were a large number. He is not aware of any case law in this area. He said, however, there is an important point here and that is the Commissioners should be fitting their schedule to the needs of the people rather than demanding rigidly that the people fit their needs to their schedule. If a matter is highly controversial, then the Commissioners have to provide more time. If the matters have deadlines, as with subdivision review or that sort, then the Commissioners need to schedule those sufficiently in advance of the deadlines so, if there is a lot of interest in commenting, the time will be there. He said, in dealing extensively with the City Council, he sees members of the public come to distrust City government when important issues come up and the Mayor is telling them “please be brief, please don’t repeat what others have already said, and we will stay here tonight if it takes all night to get this done -- we aren’t going to extend this to another week.” He said he does not intend that as criticism, but there are assumptions in that system which are also present in the County system. And that causes trouble for government. He stated, generally speaking, that the more citizens that talk to their government officials, the happier and more effective county government will be.

He said, specifically on appointments, he is concerned that the procedure that is being proposed is, in effect, biased against applicants who would seek to replace the sitting members of boards who have expressed an interest in being re-appointed. He has not researched this area yet, but he feels strongly that it is an citizen’s right to apply for a position and for there to be a degree of deliberation by the appointing board of that application. He feels, in order to simplify things, the County commission is going along with the same appointments and is shutting out the potential of superior appointments. He has expressed an interest in applying for the Health Board position. He knows that others will be interested in applying also. He said he understands Mr. Sehestedt’s comment about applicants being disappointed that they have gone through a process and it has taken time but, frankly, if they don’t like it, they shouldn’t apply the next time. He thinks that this is one of the most cock-eyed ideas that he has heard, “Let’s minimize hurt feelings by not considering the alternatives. The alternatives are going to be, partly, the applications of other people.

He encouraged the Commissioners to do more work in this area and to take these appointments more seriously. He asked that they do it in the most cheerful and fairest spirit possible so the applicants are not needlessly disgruntled. He apologized for talking at length but feels he touched on important questions. He said is available at any time to discuss these issues because there are fundamental problems of process in County government which are not fair to the public and which also cause problems for the County officials and the public.

Michael Kennedy thanked Ross for his comments and asked if anyone else wished to speak.

Tony Tweedale asked if Michael Sehestedt could recap the proposed recommendations?

Michael Sehestedt said, assuming they have a situation in which the Commissioners are satisfied with the current board appointee and have no reason to replace that person, the suggestion was publication of a notice stating “the Commissioners are considering the re-appointment of BLANK to BLANK board for BLANK term.” Before making a decision on re-appointment, they will accept written comments from any interested party on the proposed re-appointment. In essence, this procedure is somewhat like what the U.S. Senate follows in deciding whether to confirm a nomination to a court position made by the President. The nomination is there any way the President is committed on that particular individual. In the case where they do not have an incumbent who wishes to be re-appointed, they would solicit applications and, in addition, request comments for or against any particular applicant.

Tony Tweedale asked what the legal status of the person who wanted to be considered for appointment?

Michael Sehestedt answered that someone who wanted to be considered for appointment could comment that “re-appointment is not appropriate because...” and the Commissioners should solicit applications.

Tony Tweedale asked if the Commissioners would then have to vote down the re-appointment before they appointed someone else?

Michael Sehestedt replied that they would have to make a decision of whether to proceed with the re-appointment or open it up to applications.  

Tony Tweedale said he had no familiarity with the legal history of board appointments and structures of boards in Montana state and local law. But when appointments are to be made, the by-laws of boards and whatever else governs board appointments should follow criteria in detail and he envisions this as an opportunity to rejuvenate the board and
not close the board to the people of the community. It may be more specific than that in the law. There may be case law or judicial lines of thought that are quite specific as to why board appointments have to be re-appointed. But he urges the Commissioners to consider that and to get advice from the County Attorney’s office.

He asked what the Commissioners’ open government policy was on all their actions? He said, in the agencies he is familiar with, their procedures seem to take the opportunity when decisions are scheduled and known about in advance, to publicize those. They may not even know all the laws they operate under but they probably do it as a convenience and in the spirit of openness and fostering participatory government. He agreed with Ross Best in that, the more people are allowed to participate, just like any other human relation, the more people appreciate the work the Commissioners do.

Ross Best asked the Chair if he may speak again?

Michael Kennedy replied that he may, since there were no additional people to testify.

Ross Best thanked him and said he wanted to respond to Mr. Sehestedt’s comment that this proposal is similar to the arrangement to the U.S. Senate. He said there is an essential difference here and that is that the U.S. Senate does not act as the executive in the government. The nomination comes from the President of the United States and not from the Senate. Obviously, the Senate makes certain kinds of appointments. He assumes Mr. Sehestedt was referring to only the nominations made by the President. Further, the United States Constitution does not guarantee the right to participate and the United States law does not guarantee the same level of public participation that Montana law does. Related to this is a matter Mr. Sehestedt brought up in his memo last month and that is that generally no public comment is allowed during debates of Montana legislature. That example is invalid because Montana legislature specifically exempted itself from public participation law.

He also wanted to address how these re-appointments are to be handled. He said that, in surveying all the candidates and picking the one who is best, the appointment can become a competition. It may be that the only way to make the strongest argument against a re-appointment is to attack another person. He personally would not attack another person without reasonable ground but it would be preferable to have a level playing field. Obviously the experience of a person on the board has to be considered and, many times, that experience will warrant a re-appointment. But the people will not be served well by stacking the deck in such a way that puts a burden on those who oppose a re-appointment.

Ton Tweedale said that boards are a special area. They represent the community for a certain subject area, so for every board, there will be an interested constituency in the public that will be somewhat excluded under this proposal.

Barbara Evans, addressing Ross and Tony, said she wanted to give them background information that they may not know. A long time ago, prior to coming on this board, the Commissioners were also concerned about providing adequate input to the public so they held the courthouse open in the evening. Nobody came. They moved the regular Public Meetings to the evening; again, nobody came. The cost of having the Department Heads and the staff on overtime or using comp time to come in did not seem warranted to them because nobody came. In the times that she has been here on the Commission Board, they have made every effort to provide access to the public. They hold their meetings informally. They do not want people to feel that they cannot address their local government and they want it to be light-hearted and easy and not intimidating. In the last year or two, they made, at Fern Hart’s request, extra efforts to take the budgeting process out to the public. She reminded Ross that she directed a lot of comments at him at one of those evening meetings and she reminded him that she kept asking at that evening meeting “Did anyone have anything they wanted to say?” She persisted in trying to get the public to comment. There were a few comments but quite a few people who had come but did not say anything. They cannot force people to speak but they do try hard to provide that opportunity. She said she sincerely wished that the interest level that Ross thinks it out there was real but she does not think it is. They will do as much of his suggestions as they can but it must be understood that there are things that they have to get done within timelines and, if every decision they make (i.e., signing a contract from the Sheriff’s office for a grand that has a due date) must be postponed until notice is publicized and time given for open discussion, even if nobody comes, they have spent time they may not have. If there are times they may not be able to delay decisions, it is not because they desire to keep the public out. On the contrary, they try hard to bring the public in.

Michael Kennedy said he was closing the public hearing and opening it to Board comments.

Fern Hart said she agrees wholeheartedly that local government can only benefit from public participation and she is proud of the level of public participation that they have in Missoula County. She thinks the meeting lobby and offices are an open door. She said people walk in her office comfortably, leave things on her desk or pick up what she has left for them – she does not feel that there is a formality that places a barrier to the public. She is personally committed to work to increase that participation. She said her main comment is that county government is different from city government. They are not a mirror of that government. They are not as legislative as the city government but much more administrative. They do not function in the same way at all. A lot of what the Commissioners do are the decisions the Departments make, which is not public. Many of the County departments are headed by elected officials who are independent of them, except for budgeting. Their decisions are not up for public review or comment. This is a different form of government.

She asked Michael Sehestedt how the Governor makes appointments? She is on two task forces and one committee that she does not believe had any public review.

Michael Sehestedt replied essentially each governor follows his own internal process and meetings with his staff or other members of the executive branch in making his recommendation. Sometimes, the list is circumscribed. For example, for judicial nominations, the governor gets a list of three to five names from the Judicial Nominating Commission. After that, people are free to call, write, or stop by in person, but there is no formal solicitation.

Fern Hart asked what about the Board of Health?
Michael Sehestedt said, to his knowledge, the Governor polls those he has confidence in and people who have expressed an interest to him and makes what is essentially a political appointment and he says this in a non-pejorative sense. But it is an executive prerogative not subject to any formal notice, hearing or comment or application procedure.

The Commissioners, in addition to sometimes acting in a legislative capacity, also act as a corporate executive. They take executive action as a body. By and large, they are an executive administrative branch of government with fairly limited legislative authority. However, the way the open meeting statutes are written and the way the public participation statutes are written, they wind up applying to the Commissioners, notwithstanding this difference. Constitutionally, the right to participate is prior to final decision as may be provided by law, as a constitutional provision on public participation. So it is not a stand-alone and they have to look to the law to decide what that means. They would not have used the term “prior to significant agency action” had they not wished to limit it to significant items. How you draw that particular line is one for policy and perhaps ultimately for judicial guidance. But it is limiting.

He believes that the Commissioners also have the right to limit comment to written form in some circumstances. Clearly there are many cases in which a public hearing is called for and that procedure should be to accept verbal comment. Even under the Administrative Procedures Act, which is a formal state rule making procedure, many decisions are subject only to written comment and there is no public hearing. He heartily recommends to the Board that, if they are proposing some action and have said written comment only, if they receive a significant volume of comment, it would be wise to schedule a further hearing on the issue. Most of the people who wrote could come and explicate their remarks and the Commissioners can question them and get further information.

There is no particular judicial guidance on this at this time. Public notice is an issue which, while notice is required, the Supreme Court has never been explicit on what is adequate notice or what is inadequate notice, except for those particular actions for which a statutory notice is prescribed. They are out of the public participation. They are under the right to know, the open meeting part of the Constitution, which is self-implemented. The County’s procedure of a general agenda with the daily administrative staff agenda prepared and available the preceding day is very similar to the procedure followed by the Montana legislature for its Committee hearings. It is rare to have as much as 24 hours of notice as to a particular committee hearing. That is not dispositive of the notice that is required but it is indicative. He points out in the analogy to the U.S. Senate reviewing executive nominations, under the County government structure, the Commissioners are both the executive and the legislative and that produces some problems.

This is all beyond the scope of his memo which was aimed solely at the issue of appointments. There are probably some things that they can do at very little cost that will help assure that the information is more widely available. One is to post the morning administrative meeting outline with the discussion and action items as soon as it is prepared, which would be sometime the preceding afternoon. It may be possible to insert it onto a computer bulletin board so that it is electronically accessible. When he does notices of public hearings, he indicates that, in addition to appearing personally or mailing comments, people can fax their comments to him.

The overwhelming majority of what goes on in the administrative meetings is just that -- the administrative process of reviewing and executing routine contracts, signing letters, and other actions that implement policies that have been established.

Fern Hart said there are boards that are open to the public and the public responds to them. In particular, she thinks the strongest powers are planning and zoning boards. Those boards certainly have public comment and public participation, and then makes recommendations to the Board of County Commissioners. In some counties, there is no public comment at the executive meeting related to the most important powers they have. In other words, as she understands it, it in can go from that board to the county board with a decision without any more public comment, there already having been public comment at another level.

Michael Sehestedt said that was true. There are many things that they could do that would restrict comment, but they do not want to pursue those.

Michael Kennedy said during the last year, the Board of County Commissioners have had a lot of discussion about the importance of boards and the nominations to those boards and they have taken it very seriously. They have interviewed a number of people. The idea was to ensure that whoever was appointed to those boards would do the job that would serve the mission of that board and also the public in general in the best possible way. That is this Board’s goal and they are committed to it.

Regarding the public notice, they took action this morning to improve the procedure. They will publish three notices: 1.) a two week notice that gives general notice of board conduct and that will be posted in a location that everyone will recognize; 2), a weekly meeting that holds the conduct of their business and may include revisions to the first notice given, and 3.) the administrative meeting agenda, which may also have revisions and more specifics. They have taken the decision to post all three of those and with sufficient notice that would satisfy anyone who wishes to attend and comment on those meetings. What he wants to emphasize is that there is a concerted effort on the part of the Commission to make sure that the average citizen is not only aware but welcome to participate in any and all of the decisions that are made by this body. He has listened to the testimony and he feels that when a vacancy comes open, that the vacancy should not be restricted to anyone. They should invite anyone who wants to apply for a board position and who feels he or she is qualified. His preference is, when the vacancies come due, to advertise and go through a process of short-listing those and then interviewing them.

Barbara Evans asked if he was referring to a specific paragraph?
Michael Kennedy said in the suggestion, it does provide at least a suggested barrier to anyone who may want to apply because they have to go through an additional step. They have to first object or submit comments on the person who may be re-appointed, then they have to re-apply, and then it would be required for the Board to make a decision as to whether to allow that re-application. He feels that is cumbersome and a simplification would be just to announce there are vacancies that will occur on a certain date and they ask interested citizens to be aware of them and apply if they feel they are qualified to do so, regardless of whether the person who currently sits in that position wants to be re-appointed.

Fern Hart asked Michael Sehestedt if what he suggested is that a notice would be posted or published that the incumbent of the board has requested to be re-appointed to, and the Commissioners will make that appointment with the invitation for comments?

Michael Sehestedt said yes, or are considering the re-appointment, and before making a final decision, request comment.

Fern Hart said she is thinking of some boards that it takes more than one term to even get up to speed. One is the Planning Board and another is the Board of Adjustment. So, she speculates, say that they have appointed someone who has served well, indicates that they are catching on and they want to continue on the board. Is there a way that they could publish a notice that states “the term has ended on the Board of Adjustment for a member and the incumbent has requested a re-appointment. If there are any others who would like to be considered, please submit your application.” On the other hand, she also notes there is the situation where the incumbent hasn’t done well. How do they advertise these matters?

Michael Sehestedt said a lot of this can be dealt with easily if they had better press coverage.

Fern Hart said that will cost approximately $23 each time.

Michael Sehestedt said he does not necessarily mean the newspaper. He said the suggestions he made came from the assumption that the Board’s existing policies remain and what adjustments might be made. Beyond that, he is not attempting to say what good policy is.

Barbara Evans said perhaps there could be a listing of all of the boards who have a term that is up and that incumbents will be considered for re-appointment, if they request it, as will other applicants. That way, no name is used but it makes the public aware that if an incumbent wishes to be re-considered, they will be, as will other applications.

Michael Sehestedt said that would address the concerns brought up. He said, further, that the interested person can make inquiry if they want to know more.

Michael Kennedy said, speaking from personal experience, when he was appointed to a city board position, he displaced a person who wished to be re-appointed. He did not find this out until after his appointment. Had he known the incumbent’s desire to be re-appointed beforehand, he is not sure he would have applied for the position. What he wants to do is give the public the information. If someone feels another person can participate more effectively, is more energized and better in every way than the incumbent, then they should be encouraged to apply.

Fern Hart said she proposed, then, that they not accept comments about applicants or candidates. If someone objects to a candidate, let them apply.

Michael Sehestedt said he felt no harm could come from accepting written comments. He said a lot of what they will get will be probably be complimentary toward a particular person.

Barbara Evans said she shares Fern’s concern that they don’t get a lot of negative diatribe about any applicant because that is counter-productive. However, if someone wants to say they want to serve on a board and they don’t like the person who is sitting on it now because their decisions were bad in the following instances or they simply don’t like something else about them, let them do that. But they should know that they would be more effective in putting themselves forward if they state their own qualifications and why they think they are the best candidate for the position. A lot of times they look for specific qualifications of the person who has them.

Michael Sehestedt said, for a number of boards, alternates are appointed. The practice has been, when a person goes off of a board, the first alternate moves up, the second alternate becomes first alternate, and then we solicit applications for second alternate. It is a way of getting an apprenticeship before they become actual members of the board for which they are an alternate. He asked if the Commissioners wished to continue that practice?

Michael Kennedy said he thinks that practice is a good one for the reasons that Fern mentioned earlier, which had to do with it often takes a long time to get up to speed. At the same time, there is a caution. If the terms create a problem, then they need again to seek applications from the public. An example would be, if an alternate and a term expire simultaneously, then he believes it would be appropriate to appoint that alternate to the permanent term since that term has expired as well. Another complication could occur if the terms do not coincide. If there is a year remaining, perhaps in a two year term of an alternate, and there is a two year term perhaps of the position that he or she would be replacing, then it seems inappropriate to name that person with only a single year’s term remaining go to a two year term without some influence from the public.

Fern Hart said the alternates do not have terms.

Michael Kennedy said he wasn’t sure that that was always true.

Michael Sehestedt said generally, when a board has a vacancy, the remainder of the term is filled. As an example, if there is someone on the Planning Board that is 1 year into a 3 year term and resigned, the alternate that moves into that position, moves only into it for the remaining 2 years. At the expiration of that term, they then have a position that
would need an appointment. There would be an incumbent, they would do a solicitation, and follow through the whole process.

Michael Kennedy agreed.

Michael Sehestedt said if they have one alternate and there is a vacancy on the Golf Board because the person filling the position does not wish to continue on the board, traditionally they have moved the alternate into that position, assuming the alternate wishes to do so. Then they solicit for an alternate and start the process again. He asked if, in that case, does the Board of County Commissioners still want to do an open solicitation and the alternate will be considered with the applicants?

Michael Kennedy said, if the alternates have no term, then he agreed with the policy as they had traditionally employed it.

Barbara Evans said the reason they have alternate positions, and not all boards have them, is because some of the boards are extremely complicated and, as Fern said, sometimes a person has to be there for years before they know enough to be a valuable member. The alternate position serves as a training period. On the Airport Board, which she has been on for a number of years, most of the time one or both of the alternates are seated as voting members because someone is missing. On a small board, the alternates help to fill it out. Unless there is a specific reason not to move an alternate up, the alternate provides a member with some experience to the board when he or she moves up and that was the original reason for the creation of the alternate position.

Michael Sehestedt asked, but in all cases, would the alternates be selected through the application process?

Barbara Evans and Fern Hart said yes.

Michael Sehestedt said he wanted to sum up his understanding of the procedures for applications to the various boards. He said he is to prepare a notice which will state that the Board of County Commissioners is soliciting applicants for the following board positions. There will then be a list of board names and length of term. In some cases, incumbents are reapplying for appointment; in all cases, the Board of County Commissioners will receive applications from interested persons for any of the board positions. The Board of County Commissioners will also accept comments from the public on the board appointment process and on board nominees. Persons wishing to obtain a list of names of applicants for board positions may contact the office of the Board of County Commissioners and persons wishing to comment may direct their comments to the Board personally, mail their comments or fax them. That would cover the notice part of the process.

The policy will call for basically open selection with the caveat where, in those cases where there is an alternate, the alternate will, in ordinary course, move up and solicitation will be for a new alternate. The policy aspects provide giving notice, provide for a triage by the board, and reducing the number of applications for a number to be interviewed. It will further provide that, after the close of accepting applications but prior to board consideration in the triage, there will be a period to allow comments.

After reviewing the comments, then the interviewing will commence. Notice will be given either on the weekly agenda or on the administrative meeting agenda as to when the Board of County Commissioners will make their final decision, so that people can attend if they wish.

Fern Hart said, summarizing what Michael Sehestedt just said, he will give one notification, which lists all the board positions that are open and ask for applications. Included in the notice will be whether there is an incumbent and the fact that the incumbent may re-apply. Then, she asked, after the application process is closed, is there another notification of all the applicants for each board?

Michael Sehestedt said no, he intends to include in the initial notice that a list of the names of applicants for each board is available upon request after the close of the application period. He will put in a 10 day period, if that amount of time is agreeable to the Commissioners.

Fern Hart asked if he was going to list all of the applicants for all of the boards so people can comment?

Michael Sehestedt said yes, upon request. If anyone wants to know who applied for a specific board position, they can call the Commissioner’s office to find out that information. He understands the concern about “blackballing” a particular candidate but sometimes they can uncover circumstances that need to be brought out. But he believes the comments, for the most part, will be “flower letters” or letters that are complimentary.

He will prepare the notice part of the process first and try to give a draft to the Commissioners for their morning meeting to confirm it reads what they want it to read. Hopefully, the ad can be run in Sunday’s edition of the Missoulian to get the process moving to recruit people.

He asked if the 10 day period for comments was okay?

Barbara Evans said 7 to 10 days was fine.

Michael Kennedy said this means that at the end of the year, they need to start the recruiting process much earlier.

Michael Sehestedt said that was correct.

Michael Kennedy asked if there was any other business to come before the Board? No one came forward.

There being no further business to come before the Board, the Commissioners were in recess at 2:45 p.m.
THURSDAY, JANUARY 4, 1996

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

No Administrative Meeting was held; however, the following item was signed:

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the monthly report of the Clerk of the District Court, Kathleen D. Breuer, showing fees and collections made for the month of December, 1995.

Also included:

* At the Commissioners’ meeting with Hal Luttschwager, Risk Manager, Fern Hart moved and Barbara Evans seconded the motion to send a letter of denial to Christine Snyder with regard to her auto damage claim. The motion carried on a vote of 3-0.

FRIDAY, JANUARY 5, 1996

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

No Administrative Meeting was held; however, the following items were signed:


Resolution -- Chair Kennedy signed a Resolution from Property and Supply Bureau in Helena, whereby Missoula County authorized Art Garner, Buildings & Grounds, to acquire federal surplus property from the State of Montana Property and Supply Bureau for Missoula County.

MONDAY, JANUARY 8, 1996

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

TUESDAY, JANUARY 9, 1996

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

Audit List -- The Board of County Commissioners signed the Audit List, dated January 9, 1996, pages 7-37, with a grand total of $209,788.33. The Audit List was returned to the Accounting Department.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the monthly report of Sheriff Douglas Chase, showing the items of fees and other collections on account of civil business for the month ending the 29th day of December, 1995.

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Memorandum of Understanding -- Chair Kennedy signed a Memorandum of Understanding in Support of a Non-Motorized Transportation Project Manager between Missoula County and the Missoula Redevelopment Agency whereby Missoula County has jointly developed and administered the Missoula Community’s Non-Motorized Transportation Plan along with the Lolo National Forest, the University of Montana, the City of Missoula and the Montana Department of Fish, Wildlife and Parks, as well as volunteer groups and individuals, and Missoula County has contributed funds and staff resources toward the development and implementation of the Plan and continues to participate in related activities for the benefit of the residents and visitors to Missoula County, as per the terms set forth. Missoula County agrees to pay the Missoula Redevelopment Agency the total sum of $18,386 as Missoula County’s share of support for the Project Manager position. The document was returned to the Missoula Redevelopment Agency for further handling.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and E & W Computer Services, Inc., d/b/a P.C. Software, Inc., Thomas A. Egley, President, an independent contractor, to perform the following: develop and implement a database reporting system for the Missoula County Basic Needs Assistance Program, as per the terms set forth, for the period commencing January 1, 1996 through mid-February, 1996, for compensation in an amount not to exceed $5,575.00.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Erica Brown, an independent contractor, to perform the following for the Partnership Health Center: facilitate dental screening clinics twice monthly; attend monthly planning meetings; and assist PHC staff in planning future dental program activities such as sealant placements and cleaning, as per the terms set forth, for the period commencing November 1, 1995 through October 31, 1996, for compensation in an amount not to exceed $3,600.00.
Memorandum of Understanding -- The Board of County Commissioners signed a Memorandum of Understanding between Missoula, Ravalli, Mineral, Sanders, Lake, Flathead and Lincoln Counties whereby the various Counties of Western Montana recognize the need to provide Law Enforcement Mutual Aid; understand that the jurisdiction requesting the Mutual Aid is responsible for the cost associated with the request; and feel it is in the public interest to establish a Memorandum of Understanding relative to the operational procedures as to the method of reimbursement should it become necessary to utilize the law enforcement personnel under Title 44, Chapter 11, Montana Code Annotated Section 101 to 312, Law Enforcement Mutual Aid Act. The document was returned to John DeVore, Chief Executive Officer, for further handling.

Utility Easement -- Chair Kennedy signed a Utility Easement whereby the Missoula County Commissioners (Grantors) relinquish existing 10-foot easement within Lot 19, Block 7, West View No. 3, as recorded in Book 45, Page 1083, the receipt whereof is hereby acknowledged, do hereby grant and convey unto U.S. West Communications, Inc. (Grantee) a perpetual easement to construct, reconstruct, operate, maintain and remove such telecommunications facilities as Grantee may require upon, over, under and across the property described as the North 10 feet of Lot 18, Block 7, West View No. 3, located in the NW1/4, Section 35, T12N, Range 20W. This easement replaces the easement signed on November 16, 1995. The document was returned to Horace Brown, County Surveyor, for further handling.

Certification of Acceptance for County Maintenance -- Chair Kennedy signed a Certification of Acceptance for County Maintenance, ACM. No. 96-0001 for Thornton Drive, Road No. L-0274, T14N, R20W, Section 28, to certify that Thornton Drive is accepted for County maintenance. The limits of acceptance are 0.286 miles, from the intersection with Highway 10 West thence Northerly, Easterly, Southerly to the intersection with Highway 10 West, 1500 feet in length 32 feet of pavement, 60 foot of right-of-way, with the reason for acceptance being that construction meets County building requirements. The document was returned to the Surveyor’s Office.

Other items included:

1) Barbara Evans asked Jim Weaver about installing a signal light at Blue Mountain Road. Jim said that same is scheduled and could be done by September 1997 but probably September 1998 is realistic. Michael Kennedy asked about a temporary signal. Jim said if equipment was available, then cost to County could be $15,000-$30,000. Decision must be made by March 1 if temporary signal is desired. Horace Brown, County Surveyor, will pay at least one-half of cost.

2) The Commissioners agreed to have a meeting with Target Range School District and Surveyor at Superintendent of Schools office to discuss issue.

3) John DeVore, Chief Executive Officer of Missoula County, was given approval to talk with Ravalli County regarding 9-1-1. He will report back with recommendation on what, if anything, should be done.

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

WEDNESDAY, JANUARY 10, 1996

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

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY’96 budget:

1) Control No. 96-014, a request from the Clerk of District Court to transfer $8,503 from the Court Ops Contingency fund to the Permanent Salaries fund ($6,496) and the Fringe Benefits fund ($2,007) for the purpose of covering a series of maternity leaves; and

2) Control No. 96-015, a request from Personnel & OPPD/Justice Court to transfer $20,719 from Personnel Perm. Sal. Fringe--$1,333; OPPD Per. Sal. --$3,581; and OPPD Fringe Benefits--$1,242 to Justice Court I Perm. Sal. ($9,777); Justice Court I Fringe Benefits ($2,783); Phone Basic ($159); and Capital ($8,000) for the purpose of resolving personnel shortage in Justice Court.

Agreement -- Chair Kennedy signed an Agreement (DEQ Contract No. 260094, Federal Catalog No. 66.032) between Missoula County and the Montana Department of Environmental Quality (DEQ) for the purpose of conducting statewide sampling and analysis of public ground water supplies for radon in water, as per the terms set forth, for the period commencing January 10, 1996 through June 30, 1996, except for the end-of-project report, which is due on July 10, 1996, for compensation in an amount not to exceed $3,750 for services rendered. The Agreement was forwarded to DEQ in Helena.

Also included:

* The Commissioners approved the Missoula County Investment Information as of January 2, 1996 as submitted by Michelle Denman, Treasurer’s Office Supervisor.

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

PUBLIC MEETING
The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

HEARING: RYAN’S MOBILE HOME COURT -- SUBDIVISION FOR LEASE/RENT (PRELIMINARY PLAT)

Lisa Moisey, Office of Community Development, said this a request from Tom and Becky Finkbeiner for a 10 lot mobile home court on 5 acres. The land is unzoned in the County. The property is located on Tremper Drive in west Riverside. The Missoula County Comprehensive Plan designates this area as suburban residential and recommends a maximum density of 2 dwelling units per acre if services are available. Access to the subdivision will be by Tremper Drive, which is a County maintained road. The developer plans to improve Tremper Drive from the intersection with Flagler Drive to the entrance of the mobile home court. Improvements include paving. Staff recommends that the developer pave Tremper Drive to 32 feet wide which includes an 8 foot wide pedestrian bicycle lane on the west side of Tremper Drive on the portion of Tremper which fronts the property of the subdivision.

Access within the subdivision will be provided by Becca Lane which is a proposed 24 foot wide paved road. A .6 acre community area for the residence is proposed over the drainfield/storm retention area on the plans. The developer has requested a variance from the subdivision regulation requiring curbs, gutters and sidewalks and staff recommend approval of a portion of this request. The County Surveyor has indicated that curbs and gutters are not necessary on Tremper Drive or Becca Lane, therefore staff recommends approval of the portion of the variance for curbs and gutters. However, staff recommends denial of the request for a variance from sidewalks and pedestrian walkways and recommend that the developer provide a pedestrian path on Tremper Drive and provide sidewalks on both sides of Becca Lane.

Staff recommends approval of the subdivision for lease or rent of the Ryan’s Mobile Home Court based on the findings of fact found in the staff report.

She noted that she gave each Commissioner an additional condition which staff recommends. That condition states “The following waiver statement shall be recorded within 180 days of approval: ‘The owners waive their right to protest any future RSID/SID for the installation of a community sewer system, and may be used in lieu of their signature on any RSID/SID petition. The owners waive their right to protest the installation of pedestrian walkways or sidewalks along Tremper Lane and may be used in lieu of their signature of any RSID/SID petition.’ The developer shall provide a copy of the recorded document to the Office of Community Development.”

Barbara Evans asked if the statement “the waiver statement should be recorded within 180 days of approval” isn’t normally on the plat?

Lisa Moisey said the property is going to be owned by Mr. Finkbeiner and he will be renting or leasing the mobile home lot. There isn’t any division of property. In these cases, the developer is not required to file a plat but are required to submit final plans. This condition will ensure this statement is filed as a record in addition to submitting it with the final plans which OCD keeps in their office.

Tom Finkbeiner agreed with the right to protest any future RSID/SID sewer system. However, regarding the sidewalks and pedestrian walkways, he felt Tremper Drive has been encroached on by the houses and has no place for sidewalks; thus, any sidewalks he would put in would go nowhere. It is currently costing him over $130,000 for 10 mobile home lots and he does not understand a requirement to put in sidewalks that go nowhere and add to the cost. He would understand the requirement if Tremper Drive had sidewalks but, until it does, it makes no sense for him to put them in because the sidewalks will only run into the neighbors’ fence.

Michael Kennedy said he wanted to explain this situation. He said if there is a SID that is formed out there for that purpose, he would be a participant in that SID along with the balance of people down to Highway 10.

Tom Finkbeiner said he is not sure whether he is being required to put them in on Becca Lane. That will be another $12,000-$15,000 and would be a 12 year pay-back, which is not worth it to him. He said he is trying to hold the cost down and he sees no reason why to put them in. At another time, he may be able to finance it and, if Tremper Drive was modified by removing the houses and a sidewalk and bicycle lane was put in, he would be happy to put in sidewalks.

Fern Hart said she understands that Tom does not object to a paved road which extends from Tremper to the entrance of the mobile home court.

Tom Finkbeiner agreed with that statement.

Fern Hart asked if they are also requesting that there be a bicycle lane along that road?

Lisa Moisey replied yes.

Fern Hart said she supports that. It is not acceptable to go back to an established subdivision and just say they want sidewalks in the entire subdivision so what they try to do is get a waiver so that the people cannot protest it when they go back and include everyone. Further, she believes they need sidewalks in front of the 5 mobile home places on either side. She said they will require sidewalks in any other new mobile home courts that come before the Commissioners for review and they will also be required along with any upgrades that are requested.

Tom Finkbeiner said they looked at houses and mobile homes last year. The average house in this area is anywhere from $130,000 - $200,000 built new. Mobile homes run from $45,000 - $100,000 and the construction is nearly identical to a house, especially in the double-wide and triple-wide mobile homes. But when the cost is up over $12,000 per lot, there is no reason to look into mobile homes because your money is better spent elsewhere. If the cost goes beyond this, the people who can only afford a $45,000-$100,000 mobile home will not have anywhere to put their
mobile home. He was told by a man who sells mobile homes that he could have this park filled in 2 days because the need for mobile home sites is so great. There is no place to put mobile homes because the cost to build sites for them is too expensive. He is trying to hold the cost down to a reasonable amount. He said that if the sidewalks are needed later when he can better afford it, he will be happy to put them in.

Barbara Evans asked Lisa Moisey if there was any middle ground they could consider. She understands Tom’s position but also thinks they should have sidewalks for the people living in the mobile home court.

Lisa Moisey said staff would support a gravel path that is separate from Becca Lane on which the cars would be driving. Gravel paths are less expensive than sidewalks. This may also help with drainage issues that occur in mobile home courts.

Barbara Evans said she would support a gravel path with the same waiver that requires the mobile home court to upgrade the interior roadway at the same time Tremper Drive is upgraded.

Lisa Moisey said the only concern she has with requiring sidewalks within Becca Lane at the same time Tremper Drive is improved is that she understands Becca Lane is a private road. As such, she does not know if they can require sidewalks or pedestrian walkways at a later date.

Colleen Dowdall, Deputy County Attorney, said they could require it but the enforcement would be difficult. He would not have the availability of the RSID to fund it.

Tom Finkbeiner asked if the matter would be taken care of if he was willing to file a statement saying that he is willing to build the sidewalks when Tremper Drive is upgraded?

Michael Kennedy said even if he gave that statement, it would be difficult for the County to make sure that the agreement was fulfilled.

Colleen Dowdall added that, since no plat will be filed for this, they lose their enforcement mechanism anyway. There is no plat filed on mobile home parks because they are not dividing it into separate parcels.

Michael Kennedy said, even though they all agree that it is appropriate to have sidewalks as a part of the subdivision, Tom is faced with front-end costs and the Commissioners have the problem of enforcing the stipulation at a later date. He said this is not an easy choice.

Tom Finkbeiner said he understood the Commissioners’ position and he would like to build the sidewalks now. But he is only trying to find any way to keep the costs down.

Fern Hart asked Lisa if they were discussing sidewalks, curbs and gutters on Becca Lane?

Lisa Moisey answered no, they are talking only about sidewalks on Becca Lane without curbs and gutters.

Fern Hart asked if Becca Lane was paved?

Lisa Moisey replied it will be; that is a requirement.

Fern Hart asked if there will be garages?

Tom Finkbeiner replied there would be no garages. There will be a designated parking spot for each site. He also mentioned that there was a 40 foot right-of-way. Originally, they had anticipated putting in 24 feet of pavement and the balance would be gravel. There would be gravel up to where the lawns and pavement meet, so there will be no dust control problem.

Michael Kennedy said the Planning Board recommended denial of that variance. They would like to require a 24 foot section plus concrete curbs and gutters and sidewalks. The variance that is recommended by the staff is to eliminate most of that in favor of the paved section plus the sidewalks. The staff is already done some work that achieves or gets closer to what your end result is. He said he finds it hard to support approving this subdivision without sidewalks.

He said this was a public hearing and asked if anyone else wanted to speak on this matter. No one came forward and he closed the public hearing.

Barbara Evans said the need for affordable housing in Missoula County is great. She feels it is more important for people to have a place to live and a place to walk than to have concrete sidewalks. She gives the example of her son who bought a mobile home and the only place he could find to put it was in Evaro on private land. There was no place to put mobile homes in Missoula County. And mobile homes are often the only home a family can afford. Rather than see a project like this fail because of additional costs, she is convinced that as long as there is a gravel path for the people to walk on, that is the better option.

Fern Hart moved that the Board of County Commissioners approve the variance request from the subdivision regulation for curbs and gutters on Becca Drive for Ryan’s Mobile Home Court Subdivision, located near the end of Tremper Drive in West Riverside, Lots 9 and 10 of the West Riverside Addition. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners deny the variance request from the subdivision regulation for sidewalk/pedestrian walkways on Becca Drive for Ryan’s Mobile Home Court Subdivision, located near the end of Tremper Drive in West Riverside, Lots 9 and 10 of the West Riverside Addition. Michael Kennedy seconded the motion. Motion carried 2-1. Barbara Evans opposed.
Fern Hart moved that the Board of County Commissioners approve the request for Ryan’s Mobile Home Court, located near the end of Tremper Drive in West Riverside, Lots 9 and 10 of the West Riverside Addition for lease/rent, contingent upon the conditions listed below and based on the findings of fact. Barbara Evans seconded the motion. Motion carried 3-0.

1. Plans for paving, grading, and drainage shall be approved by the County Surveyor prior to filing of the final plat.

2. The developer shall improve Tremper Drive from the intersection with Flaeder Drive to the entrance of the mobile home court. Improvements shall include paving the road to 32 feet wide. The developer shall stripe an 8 foot side pedestrian/bicycle lane along the west side of Tremper. All plans shall be approved by the County Surveyor prior to submitting final plans.

3. The developer shall install sidewalks along both sides of Becca Lane. Plans shall be approved by the County Surveyor prior to submittal of final plans.

4. The developer shall clearly designate the location of the common area on the final plans. Plans shall be approved by the Office of Community Development prior to submittal of final plans.

5. The developer shall provide a landscaping plan for all unpaved areas of the mobile home court. The plan shall be approved by the Office of Community Development prior to submittal of final plans.

6. The developer shall provide plans for a buffered off-site storage area for the use of the residents of the mobile home court. Plans shall be approved by the Office of Community Development prior to submittal of final plans.

7. The developer shall submit a copy of the park rules for the mobile home court. The rules shall address the following:
   A. That no parking is allowed on Becca Lane
   B. That domestic pets are to be kept in a contained area to avoid wild animal harassment
   C. Pets shall be fed indoors and pet food shall be stored indoors
   D. Garbage shall be stored in well sealed containers and inside storage units
   E. Permanent barbecue pits are prohibited. All portable barbecues shall be cleaned regularly and stored indoors when not in use
   F. Flowers, ornamental shrubs and fruit trees may be susceptible to damage from wildlife, therefore planting of native vegetation is encouraged
   G. garden fences shall be constructed at least eight feet in height and one foot below the soil to prohibit animal intrusion, using a solid top rail on all fencing made of something other than wire to avoid animal entanglement
   H. Compost piles shall be enclosed

8. The developer shall provide for a 20 foot access into the common area.

Fern Hart moved that the Board of County Commissioners approve the following condition, to be added to the other conditions for Ryan’s Mobile Home Court, located near the end of Tremper Drive in West Riverside, Lots 9 and 10 of the West Riverside Addition:

The following waiver statement shall be recorded within 180 days of approval: "The owners waive their right to protest any future RSID/SID for the installation of a community sewer system, and may be used in lieu of their signature on any RSID/SID petition."

"The owners waive their right to protest the installation of pedestrian walkways, or sidewalks along Tremper Lane, and may be used in lieu of their signature on any RSID/SID petition."

The developer shall provide a copy of the recorded document to the Office of Community Development.

Barbara Evans seconded the motion. Motion carried 3-0.

Michael Sehestedt, Chief Deputy County Attorney, said it should be recorded in the Clerk and Recorder’s office, with a copy to the Office of Community Development.

Barbara Evans stated for the record that she is not a relative of the Ryans that are listed as Ryan’s Mobile Home Court, since she has relatives named Ryan.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (MONTGOMERY)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a consideration of whether to approve a family transfer exemption for Parcel A-1 of COS 2400 located in the E½SE¼ of Section 4, T14N R20W for Sue Montgomery.

Sue Montgomery f/k/a Sue Outopalik has submitted a request for a family transfer exemption for a 17.09 acre parcel located northwest of Missoula off Highway 93 near Evaro Hill. Ms. Montgomery proposes to create a 5 acre parcel for transfer to her mother, Virginia Montgomery. The comprehensive plan in the area is open and resource (one dwelling per 40 acres).
The history of the parcel is as follows: In January, 1980, COS 2249 was filed by Jon Cates creating two parcels greater than 20 acres in size. In August, 1980, COS 2400 was filed by Jon Cates creating Parcel A-1 as an occasional sale parcel and Parcel A-2 as a remainder. Ms. Montgomery purchased Parcel A-1 in September, 1991, with Ernie Outopalik and in September, 1995, the parcel was quitclaimed into her sole ownership.

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

Michael Kennedy asked that Sue Montgomery come forward. He explained to her that the law requires the Board of County Commissioners to listen to her testimony about this family transfer request so that they can determine if this is an attempt to evade the subdivision review process. He said that is the reason some of the questions they ask may be personal.

Fern Hart said she understood that the parcel was purchased in 1991, quitclaimed to Sue in 1995 and she now wished to give her mother 5 acres. She asked Sue Montgomery if her mother plans to live on that parcel?

Sue Montgomery replied yes. Her father passed away Dec. 18 and her mother, who is in her 70’s, has been living in Ronan. Her mother is getting night blindness and she worries about her driving. She is currently too far away from her mother to help her as much as she would like to. She said her mother has livestock and, if this transfer were approved, she would have enough room to keep them and all the things that she and her dad enjoyed over the years.

Michael Kennedy asked why her land has such an odd shape?

Sue Montgomery replied that she didn’t know. She bought it that way.

Fern Hart moved that the Board of County Commissioners approve the request for Sue Montgomery for a Family Transfer Exemption on Parcel A-1 of COS 2400 located in the E½ SE¼ of Section 4, T14N R20W in that it does not appear to be an evasion of the subdivision act. Barbara Evans seconded the motion. Motion carried 3-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (CONGDON)

Kathleen Smith, Paralegal, County Attorney’s office, said this was a consideration of whether to approve two family transfer exemptions for parcels located in the NW½NW¼ of Section 29 and NE½NE¼ of Section 30, T16N R19W for James E. and Opal R. Congdon.

James and Opal Congdon have submitted a request for two family transfer exemptions for two separate 40 acre parcels as described above located off Mountain Home Lane off Highway 93 just South of Arlee on the Flathead Indian Reservation. They propose to create two 20 acre parcels for transfer to their adult son and daughter, Walter E. Congdon and Christine L. Congdon. They wish to keep the parcels in their current uses and this split is apparently due an agreement reached by the family some time ago. The Tribe has had time to review the request and have replied in writing that they have no specific concerns in this regard other than the continued piecemeal development which is occurring on the Reservation. A copy of the Tribe’s letter has been provided to the parties. The comprehensive plan designation on the parcel is open and resource (one dwelling per 40 acres).

The history of the parcel is as follows: The parcels were purchased in their original condition by the Congdons in 1969.

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

Michael Kennedy explained to Wally Congdon that the Commissioners were required to ask questions regarding this family transfer request to determine if this was an evasion of the subdivision review process. His first question regarded the shape of the land.

Wally Congdon said he wanted to give a history of the parcel and the situation that they are in. He said his parents, James and Opal Congdon, bought this piece of property from the Jorgenson Dairy in 1969. They are two 40 acre parcels that had been run as one dairy farm. It was run as a dairy on the north 72 acres and a strawberry and raspberry patch on the bottom 8 acres. At that time, they decided to lease the property to a rancher across the road, who has since deceased, but his wife continues to live at the ranch. At this time, the property is leased to the tenant of the widow, and that tenant lives on a 10 acre parcel.

When they bought the property, there were 3 residences on it. There was a foundation pole house that was the residence the Jorgensens had lived in. They also moved the original tribal headquarters from Moiese, Montana, and they had a building on the premises. And there was also a log cabin. The tribal headquarters burned down, the residential building was removed, and the log cabin still stands and is rented to the current tenant for $25/month.

In 1974, 1975 and 1976, his parents did two deeds to his sister and himself for various parts of the property and he gave copies of those deeds to Colleen Dowdall and Kathleen Smith of the County Attorney’s office. The deeds were not recorded because they wanted to save the ability to argue the basis of the property that had been given, but it was appropriate under the gift taxation laws in case either of this parents died. They would then be able to avoid a probate and the federal estate tax. At that time, the tax was $200,000 and has since been lifted to an exemption of $600,000 per person. They gave consideration to recording the deeds but did not. They have never subdivided a piece of property nor done an occasional sale. They would not be doing this but for the fact that what they elected to do with this ranch was by a different ranch in Dillon, Montana, and that was to do a 1031 exchange of this property into it.
He said, by giving the two center 20 acre parcels to his sister and himself, their intention is to sell the lower parcel which is not being gifted and the parcel next to it as 20 acre parcels. That money, with the historic basis from the gifts, will be 1031 exchanged without any capital gains tax and without any estate tax into the property that they have bought at Dell, Montana. Then that property will be in his and his sister’s name. They are in essence transferring the land from his parents to his sister and himself and avoiding the taxes.

They have considered staying here to ranch but the problem is that it is impossible to do it at $3,000/acre value and also there is not enough land up there. There are 13 owners around them and all of them have less than 8 acre parcels.

In summary, he stated that they are trying to avoid the tax. They will probably sell the bottom lot and the lot next to it this spring. Those funds will go to the title company in Dillon, Montana, who is doing a 1031 into the property that they bought which is in his and his sister’s name. They hope to hold on to the rest of the property if they don’t need the funds as long as they are alive. He doubts they will ever sell it. The upper parcel, which is the parcel farthest to the east, has an orchard on it and they still harvest fruit from. They want to keep the 20 acre parcel and, if they are able, they will keep the 40 acre parcel also.

He stated that what they bought they kept from being subdivided. When they were buying the property, the sellers were planning to split the 80 acres into 5 parcels but they told them, if they did, they would not buy it. Also, he wanted to note that he is leaving Missoula and moving to Dillon.

He said there are 4 approaches to this property that are already installed and have culverts.

Fern Hart said this is already subdivided and asked why his parents didn’t give him a 40 acre parcel?

Wally Congdon replied if they gave him a 40 acre parcel, they lose their unified credit on the $600,000 federal exemption. The property has increased in value so much that his parents would be charged for tax on half of what they gave to he and his sister. In other words, if his parents gave he and his sister the 40 acre parcels, half of it’s value would be taken off of their $600,000 exemption for federal inheritance tax.

Ideally, they would sell the entire 80 acres as one piece but they can’t find a buyer who would do that. So their solution is to split it into four 20 acre parcels. What they may do in the long run is keep the bottom and top 20 acre parcels and sell the middle parcels. The bottom 20 acre parcel is their horse pasture and the top parcel has the orchard on it.

Michael Kennedy said that Wally may want to consider that the horse pasture is not worth subdividing again and subdivide the bottom 40 acre parcel instead to maintain as large a parcel as possible.

Wally Congdon said they had thought about that and keeping the top portion as a 40 acre parcel made the most sense to them. He said if they sell the 2 parcels for enough money to cover themselves or, if they sell other things to get enough money, they may only sell one parcel.

Michael Kennedy said, since the deeds are not recorded, there is no subdivision. They still have two 40 acre parcels. If they subdivided the bottom parcel, then the top would remain in one 40 acre parcel which satisfies his original intent, which was to maintain the wholeness of the property. It also satisfies the consideration request by the tribe who is worried about small parcel subdivision in the area.

Wally Congdon said they did discuss that. He understands that creating two 20 acre parcels and saving the top 40 acre parcel in one piece may accomplish the same purpose, but it also may not. He said the problem was they may have to sell three of them to have enough funds to do the exchange into the other property to get it finished. That is the problem. He said, if it would help, they would commit to selling them in order from the lower on up to save the 40 acre block if they can. His concern is that they don’t have to come back in a year, requesting another review because they have not been able to accomplish their goal.

He said they just sold a big piece of land in Mineral County that they did not have to subdivide to get it into public ownership. They are also selling a piece of property in Lake County, Granite County and Missoula County and are trying to keep the doors open to avoid the tax if possible. No other land will be split.

Barbara Evans moved that the Board of County Commissioners approve the two family transfer exemptions, located in the NW¼ of Section 29 and NE¼ of Section 30, T16N R19W, for James E. and Opal R. Congdon to their children, Walter E. Congdon and Christine L. Congdon, in that there does not appear to be any intent to evade the subdivision act. Fern Hart seconded the motion. Motion carried 3-0.

There being no further business to come before the Board, the Commissioners were in recess at 2:20 p.m.
Plat and Agreement -- The Board of County Commissioners signed a Plat for the Camp Utmost Subdivision, a minor subdivision being the SE1/4, SW1/4 of Section 5, T14N, R14W, PMM, Missoula County, a total area of 40.18 acres, with the owners of record being Frank M. and Shirley J. Vannory Living Trust. The Commissioners also signed an Agreement between the Missoula Board of County Commissioners (the County) and the Rocky Mountain Bible Mission (the Developer), stating that the Camp Utmost Subdivision site design for the youth camp shall be approved by the Greenough/Potomac Fire Department, as per the terms set forth.

FRIDAY, JANUARY 12, 1996

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

Vickie M. Zeier
Clerk & Recorder

Michael Kennedy, Chair
Board of County Commissioners

MONDAY, JANUARY 15, 1996

The Courthouse was closed for the Martin Luther King, Jr. Day holiday.

TUESDAY, JANUARY 16, 1996

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.

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Certifications of Acceptance -- Chair Kennedy signed Certifications of Acceptance for County Maintenance for the following:

1) Hazelnbank Drive, Road No. L-0533, ACM. No. 96-0003, located in T11N, R20W, Section 02, with the limits of acceptance being 0.075 miles;
2) Hazelwood Court, Road No. L-0534, ACM. No. 96-0004, located in T11N, R20W, Section 02, with the limits of acceptance being 0.187 miles;
3) Grassland Drive, Road No. L-0710, ACM. No. 92-0001C, located in T13N, R20W, Section 11, with the limits of acceptance being 0.527 miles; and
4) Rodeo Road, Road No. L-0629, ACM. No. 96-0002, located in T12N, R19W, Section 19, with the limits of acceptance being 0.368 miles.

The Certifications were returned to the Surveyor’s Office.

Professional Services Contract Extension -- The Board of County Commissioners signed a Professional Services Contract Extension with Independent Contractor, dated January 31, 1995, the Local Emergency Planning Committee Right-To-Know Contract between Missoula County and Shannon Environmental Services, extending the contract for one year from January 16, 1996. The document was returned to Kim Vietz in Disaster and Emergency Services for further handling.

Resolution No. 96-001 -- The Board of County Commissioners signed Resolution No. 96-001, a Resolution stating that the property tax bills for Orlan Erickson’s residence at 1124 Howell in Missoula for 1993 and 1994 shall be abated under the disabled veteran property tax exemption and also that any amounts paid as taxes on Mr. Erickson’s residence be refunded to Mr. Erickson by warrant made payable to Orlan Erickson and FBS Mortgage Company.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #01, Pay Date January 5, 1996, with a total Missoula County payroll of $537,597.10. The Transmittal Sheet was returned to the Auditor’s Office.

Memorandum of Agreement -- Chair Kennedy signed a Memorandum of Agreement, dated January 5, 1996, between the Missoula County Park Board and the American Legion Swan Valley Post #63 whereby the Missoula County Park Board determined the need to assist various homeowners associations and organizations within Missoula County with neighborhood park development, as per the terms set forth. The Missoula County Park Board agreed to provide up to $2,500 in matching funds for capital improvements as delineated in Attachment A. These funds must be expended before June 30, 1997. The document was returned to Leslie Bailey in Office of Planning and Program Development for further handling.

Resolution No. 96-002 -- The Board of County Commissioners signed Resolution No. 96-002, a Budget Amendment for FY’96 for INTERCAP County Tax Increment, including the following expenditures and revenue, and adopting it as part of the FY’96 budget:

<table>
<thead>
<tr>
<th>Description of Expenditure</th>
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<tr>
<td>2420-000-435000-910 Capital-Land (Development Park)</td>
<td>$452,400</td>
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<table>
<thead>
<tr>
<th>Description of Revenue</th>
<th>Revenue</th>
</tr>
</thead>
</table>

JANUARY, 1996 - FISCAL YEAR:
Resolution No. 96-003 -- The Board of County Commissioners signed Resolution No. 96-003, a Budget Amendment for FY'96 for INTERCAP Capital Improvement, including the following expenditures and revenue, and adopting it as part of the FY'96 budget:

<table>
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<tr>
<th>Description of Expenditure</th>
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<tr>
<td>2410-250-414400-923 Various Capital</td>
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<table>
<thead>
<tr>
<th>Description of Revenue</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>2410-250-383033 INTERCAP</td>
<td>$340,896</td>
</tr>
</tbody>
</table>

Encroachment Permit -- The Board of County Commissioners signed an Encroachment Permit, whereby Missoula County agrees to permit Kirk L. and Lisa A. Mumma of Clinton to encroach across the alley which is not built and impassable, but remains a County right-of-way and being adjacent to Lot 7 of Block 15, East Clinton, with the encroachment being limited to the existing wire fence, effective for a period not to exceed ten years, renewable at the option to Missoula County. The permit was returned to Chuck Wright in the Surveyor’s office for further signatures and handling.

Encroachment Permit -- The Board of County Commissioners signed an Encroachment Permit, whereby Missoula County agrees to permit Kirk L. and Lisa A. Mumma of Clinton to encroach across the alley which is not built and impassable, but remains a County right-of-way and being adjacent to Lot 7 of Block 15, East Clinton, with the encroachment being limited to the existing wire fence, effective for a period not to exceed ten years, renewable at the option to Missoula County. The permit was returned to Chuck Wright in the Surveyor’s office for further signatures and handling.

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

WEDNESDAY, JANUARY 17, 1996

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Kennedy attended a BPA Meeting in Deer Lodge.

Audit List -- Commissioners Hart and Kennedy signed the Audit List, dated January 17, 1996, pages 2-37, with a grand total of $146,075.20. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Michelle Peterson as principal for Warrant #094662 issued December 20, 1995 on the Missoula County MCHS Payroll Fund in the amount of $615.00 now unable to be found.

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Budget Transfer -- The Board of County Commissioners approved and signed the following Budget Transfer and adopted it as part of the FY’96 budget:

* Control No. 96-016, a request from General-Fin. Admin. Dist Court, Court Ops to transfer $312,351 from the General-Fin. Admin. Perm. Sal. Fringe and District Court, Court Ops Perm. Sal. Fringe fund to the General-Various Dist. Court-Various fund for the purpose of transfers from raise pools in General and District Court.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and TRC Environmental Corporation, an independent contractor, to perform the following for the Environmental Health Department: perform chemical mass balance analysis for the Air Quality Division of MCCCD, as per the terms set forth, for the period commencing November 1, 1995 through May 10, 1996, for compensation according to the contract bid awarded ($4,800 for services specified in 2.a. and 2.c-f). The Contract was returned to the Health Department for further signatures and handling.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Dr. Minot Pruyn, D.V.M., an independent contractor, to perform the following for the Animal Control Department: provide emergency care and training as necessary for the Animal Control Program to properly care for animals in the most humane way possible, as per the terms set forth, for the period commencing February 1, 1996 through February 28, 1997, for compensation as specified in Contract. The Contract was returned to the Health Department for further signatures and handling.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Sirius Construction, an independent contractor, to perform the following for Animal Control Department: perform various remodeling at the Animal Control Shelter, as per the terms set forth, for the period commencing January 22, 1996 through March 31, 1996, for compensation in an amount not to exceed $3,528.20. The Contract was returned to the Health Department for further signatures and handling.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (CHRISTENSEN)

Kathleen Smith, Paralegal, County Attorney’s office, said Georgia Christensen has submitted a family transfer request for a 20 acre parcel located in the Ninemile area between Highway 90 and the Clark Fork River. Ms. Christensen proposes to split the parcel in half for transfer to her adult son, Chad F. Christensen. The comprehensive plan designation
is currently open and resource (one dwelling per 40 acres), however, the area covenants allow this parcel to be split no smaller than 10 acres in size. The Board previously approved a similar request for a family transfer in this area for Lot 8.

The history of the parcel is as follows: COS 1452 was filed in April, 1978 creating 4 parcels greater than 20 acres in size along with a 15 acre remainder and retracing two already existing parcels. COS 3611 was filed in October, 1988, creating 10 parcels greater than 20 acres in size. Ms. Christensen purchased Lot 6 in October, 1988.

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

Greg Martinsen, Martinsen Survey, stepped forward and introduced himself as representing Georgia Christensen.

Michael Kennedy, addressing Mr. Martinsen, stated the reason for this hearing was for the Commissioners to determine if this transfer request was an attempt to evade the subdivision process.

Greg Martinsen said he understood and will explain the situation. Georgia and her husband, Gerald, live in Alaska and are about to retire. Gerald is a public schools administrator in Alaska. They have also have a son who lives in Colorado and they are gifting a parcel of land in Colorado to him the same way they hope to do here, with their son Chad. They want to build two retirement homes, one in Colorado and one here in Montana. Mr. Christensen has arthritis and wants to be near his children.

Michael Kennedy asked who the occupants of the subdivided property will be?

Greg Martinsen said their son, Chad Christensen, will build on one parcel and Georgia and Gerald will build on the other parcel. As this time, there are no residences on the property. They want to divide the land so the financing will be clear and separate.

Michael Kennedy asked if anyone wished to comment on this family transfer. No one came forward. He closed the Public Hearing.

Fern Hart asked what the dotted lines on the Certificate of Survey meant?

Greg Martinsen replied those mark the former right-of-way for the Milwaukee, St. Paul, Pacific Railroad and are former boundaries.

Barbara Evans moved that the Board of County Commissioners approve the request for a family transfer for Lot 6 of COS 3611 in the E½ of Section 33, and the W½ of Section 34, T15N R22W for Georgia S. Christensen to give to her son, Chad F. Christensen, in that it does not appear to be an attempt to evade the subdivision act. Fern Hart seconded the motion. Motion carried 3-0.

HEARING: REZONING REQUEST: SOUTH 230’ OF THE EAST 130’ OF LOT 3, ROWE ACRES -- 3800 SOUTH AVENUE WEST -- COMMERCIAL PUD (BIG SKY UNDERWRITERS)

Jennie Dixon, Office of Community Development (OCD), said the address of the property under discussion is 3800 South Avenue West, which is at the intersection of South Avenue and 38th Avenue, approximately ½ miles west of Reserve Street, just past Big Sky High School. The intersection is a 3-way intersection and there is a crosswalk there. On the south side of South Avenue is vacant land and it is residential on the north and east side of the property. On the west side of the property is a residential mini-warehouse structure. The building on this property was formerly the Circle K convenience store and was later operated as the Golgotha Hill Church.

The property is currently zoned as C-RR2, a County residential zone, at two dwelling units per acre. The most recent Comprehensive Plan is the 1990 Comprehensive Plan, which designates this property as neighborhood commercial. The residential designation in the 1990 Plan does take precedence over the 1975 Comp Plan designation of neighborhood commercial. The request at this time is to rezone the property to a C-RR2 residential with a Planned Unit Development overlay to allow for professional offices. The zoning would allow the property to be used for residential uses or for professional office uses only. No other commercial uses would be allowed. Philip Maechling, Planner, OCD, has found this request to be in compliance with the Comprehensive Plan based on past use as a non-residential structure, the adjacent uses of the property as a residential mini-warehouse and the character of this site as it is situated in the residential neighborhood.

She said, to give the history of this and the adjacent parcel, this parcel was zoned C-RR2 in October, 1976. There was a Circle K store on this property which was in operation before it was zoned C-RR2 so it became a legal non-conforming use, or a “grandfathered” use. The Circle K ceased it’s operation for a period exceeding 6 months, lost it’s “grandfathered” status as a result, and had to conform with the C-RR2 zoning. Once the property lost its non-conforming status, a special exception was sought in 1982 for the Golgotha Hill Church, which was approved by the County Board of Adjustment. She understands the Church has been using the property to the current day.

The adjacent property was also zoned C-RR2 in 1976. The Board of County Commissioners approved a variance on this property in 1975, before it was zoned C-RR2, to allow for an ice cream store and a burger bar on that parcel. When this variance was granted, the adjacent property was in a citizen-initiated zoning district called Z.D.7. It was a residential district but the Commissioners approved a variance at this location for that commercial operation. At a later time, the property was converted to the mini-warehouse through a special exception process and this was after the property was zoned C-RR2.

Michael Kennedy asked if that zoning district still in existence?
Jennie Dixon replied not that she is aware of. She has not seen Z.D.7 in that area. OCD is recommending approval of this PUD request subject to a set of 7 conditions which are contained within the staff report. The conditions are an attempt to integrate the project’s design into the neighborhood to make as little impact as possible. She stated that she read the conditions at the Planning Board meeting and she asked if anyone in the audience wanted her to read them at this meeting. No one requested that she do so.

She noted to the Commissioners that the proposed site plan was shown on a drawing on the wall and she described to them where the building, landscaping and paved parking areas would be. She said one of the conditions that OCD was recommending was to remove the front parking area. This is to comply with a request from Horace Brown, County Surveyor, who asked that access not be allowed from South Avenue and to keep access on 38th Avenue, with a minimum of 100 feet from the intersection.

There is a lot of pedestrian traffic at this location. The conditions of approval include provisions for sidewalks both on 38th Avenue and South Avenue. The parking requirement for professional offices is typically one parking space for each 400 square feet of floor area of the building. The building is approximately 3,200 square feet resulting in 8 parking spaces required. The site plan shows 13 spaces, however, with the removal of the front parking area, there would only be 10 parking spaces in the rear. But it may be possible to gain additional spaces along the row in the rear or to reconfigure the parking to provide additional parking if the Commissioners request it.

Michael Kennedy commented, if the parking was to be expanded, it could be expanded without expanding it to the north.

Jennie Dixon said she felt there was some room to add possibly 2 more spaces on the existing row. However, requiring only 8 spaces for this professional office area is the County standard for all professional offices throughout the zoned parts of the County.

She said she had given the Commissioners copies of numerous letters from citizens in the area who are concerned about the request for a zoning change, all of them voicing opposition. The Planning Board took public comment on January 9th and voted 4 to 1 against this zoning change.

Fern Hart asked what the density of C-RR2 was?

Jennie Dixon replied that was 2 dwelling units per acre.

Fern Hart asked how large this property was?

Jennie Dixon answered about 30,000 square feet or 3/4th of an acre.

Bob Massey, real estate broker, Marwest Properties, said he was representing the buyers, Big Sky Underwriters. He said he wished to explain the circumstances of their interest in the property.

Big Sky Underwriters was started by John Hayden in 1955. In 1992, it was purchased by Scott Tuxberry. Ruth Havcinn owned and operated it at an office in downtown Missoula since that time. This business is not a business that will be in this location and then be gone in a year or two, unless an unanticipated factor happens. The business is a whole-sale insurance brokerage house which operates in Montana and Idaho. They are a “middle-man” in placing specialty insurance lines and difficult lines of insurance for agencies who deal with the public on a retail basis. Big Sky Underwriters operates through retail insurance agencies in Montana and Idaho and has no direct customers, thus, they have none of the typical retail functions or contacts with the general public. The function of Big Sky Underwriters is very simply that they provide reinsurance. They underwrite and issue policies as well as process the paperwork associated with insurance transactions. They employ 10 full time people at this time and, with computerization, they do not expect to expand extensively beyond that in the near future.

Both Scott and Ruth had driven by the property and lived to the west of the property farther out in the Target Range area. They were familiar with the building and, having seen it vacant, decided to attempt to purchase it and relocate their business there. They planned to remodel and improve the building and landscape the area. They came to him and he wrote a contract on the property. They were aware of the zoning difference so he went personally to the neighbors in March, 1995, and talked to about 15-20 neighbors. He showed these neighbors the design of the building, the plat layout and some other things, and 8 of them signed a petition that was in favor of this project.

The existing structure is a metal, commercial building. It had been vacant off and on. The property to the south of the building is asphalt and concrete now. It was a parking lot and had gasoline pumps for the Circle K that was there about 20 years ago. The rear of it has weeds that are kept cut down but it is not cared for as a lawn and landscaping would be. It has remained in that state all this time.

The proposal was modified by OCD with their recommendations, which were extensive, and includes the reduction of parking area. The original site plan had about 15-17 parking spaces on it.

The proposal that they had put together was an attractive building. The exterior was remodeled as well as the interior. They plan to extensively landscape the property and felt that would act as a buffer between the South Avenue traffic and the noise from it and the residential area to the north. The only residential property that adjoins it is the property to the north. On the east is a street, the mini-warehouses to the west and South Avenue on the south.

There is a school crossing with a yellow light at the corner of 38th and South Avenue that has been marked well. The kids cross there on the way to Target Range School.

This property, as the PUD suggests, will be used for a professional office building, meaning that the people that come to this property will not drive by that intersection at whatever speed they are allowed on South Avenue but will be
stopping and turning in to the parking lot on the backside of the building. So they don’t see that as a major impact on
the safety for the children that are crossing at that cross-walk.

He said they ask the Commissioners’ approval of the PUD as modified by OCD for the following reasons. The
planning staff at OCD has recommended the approval. He said, in the packet given to the Commissioners, there are
documents which show that department heads in the County reviewed the project and had no negative comments.
Only 4 of the 11 members of the Planning Board voted against approval of the project. However, he said there were
only 5 members there at the meeting.

They feel the aesthetics of this proposal and the external improvements to the building and land are desirable as
compared to the present conditions. The current occupant of the building is not the owner. The owner has not
occupied it for about 8-10 years. It has been leased out on a gratis basis, in some cases, to smaller churches, none of
which can afford to buy the property. The owners are agreeable to all the changes required by OCD if this PUD is
approved. They are not requesting a rezoning of the property from the current C-RR2 zoning but hope for a PUD
overlay with restricted uses. The use can only be for a professional office building (the recommendation is not for
medical or dental offices) and any change to that would have to come back to the Planning Board, OCD and the
Commissioners before it could be allowed for any other use.

Fern Hart asked if this particular property was part of the ice cream store and a convenience store type?

Bob Massey replied that it was initially a Circle K that began operation in the 1970’s and went out of business in the
mid to late 1970’s. Since that time, it has either been vacant or a church.

Fern Hart asked if the property with the mini-warehouses was also a part of the area?

Jennie Dixon answered that this property has only been a Circle K and a church. The adjacent property, where the
mini-warehouses are now, was vacant and approved for an ice cream store/burger bar but it was never built.

Bob Massey said the existing property is currently tax-exempt property, thus produces no tax revenue. The estimated
property taxes on the new improved building and landscaped land would be $3,000-$4,000/year. At the same time, he
said this development would not have any impact on the number of students attending the area schools.

Michael Kennedy stated that, because of the large number of people in the audience, he believed there would be a lot
of public testimony. He wanted to offer everyone who wanted to speak an opportunity to do so, therefore, he asked
that each speaker speak for no more than 5 minutes.

Steve Monlux said he resides on Central Street, about ½ block from the proposed development, and he was pleased to
see the good turnout of his neighbors who are most impacted.

He said, first of all, he was concerned about the number of people that would utilizing the proposed facility. At the
meeting with the Planning Board, he said Mr. Massey indicated that they would start out with 12 employees and
increase to about 17 employees, and then increase about 1 person per year for 10 years, which adds up to about 27
people. He said he was surprised by this but he felt it was consistent with their plan for a larger parking lot. In any
case, it appears to him that if there are more than 10 employees, there will be people parking on 38th Avenue. He is
concerned about this added street parking. His main concern are the children that walk along there regularly and they
normally walk on the street and don’t use the sidewalk. Also, he is concerned about the visual impact of cars parked
on the street in a residential area. Presently, very few of the residences use the street for parking since they have their
own driveways and garages.

He said he disagrees with Philip Macelhing’s analysis that this development meets the Comprehensive Plan. While he
admits to knowing little about zoning and planning, he said this business does not serve the surrounding neighborhood
and that is one of the conditions of the Plan. This business serves northern Idaho and Montana.

He also believes that this development will reduce residential property values in the immediate area. Further, he
believes that the well quality and ground water may be affected. This was zoned for 2 residences per acre and the
impact on the aquifer with 10, 12 or 27 people will definitely be worse than what they anticipated.

He reiterated, however, that his primary concern is about the children at the school crossing. He understands the cars
would turn off South Avenue into 38th and, while they are not turning into the path of the cross-walk, the children
come down 38th Avenue and, the more traffic on 38th, the worse it is. Also, when cars turn in on 38th, it presents a
confusion factor. He gave an example of his own experience. He said he has been in his vehicle on South Avenue,
trying to get onto 38th Avenue a number of times, when school children walk right up beside his vehicle. He said he
dared not turn on his right turn signal to make a turn because the vehicles behind him will pass him and go through the
intersection without any hesitation. He said, regardless if this zoning change goes through, this is a dangerous
situation and he plans to write a letter to initiate a review of it. However, any additional traffic at this intersection is
going to make things worse.

Michael Kennedy thanked Steve for his comments and said, since it would be a good idea to ask the people who are in
favor of this development to speak first, he asked them to come forward at this time. Then they would continue to hear
those who oppose it.

Ruth Havicin, said she was one of the owners of Big Sky Underwriters and she presented to the Board a display of
current photos taken of the site. She said, as a wholesale insurance company, they operate more as an insurance
company than as a traditional retail agency. They serve the needs of the immediate community by providing
affordable insurance for difficult classes of business, such as day care centers, adult home care, and mobile homes.
They seldom have customers visit the office. In fact, they receive an average of 2 visitors a week. The current staff
includes 10 full time positions, which includes the owners, and 2 part time positions. Over the past 4 years, they have
increased staffing by 1 position. She continued that her projections never indicated growth to 27 employees and, obviously, a 3,200 square foot building could not begin to accommodate that number of people.

Her proposal is to develop the existing deteriorated building that has been vacant much of the past several years into what she sees as an aesthetically appealing professionally landscaped site that would blend in with the surrounding area. This development will not only offer the neighborhood a pleasant, natural looking building surrounded by park-like landscape, but will also more than double the value of the site, which will create a sizable tax revenue. She believes this would increase property values rather than bring them down. The past history of the structure was commercial and she does not ask for rezoning, but only to remodel an existing commercial building. The present condition of the building is very poor, has many safety hazards, including boarded up exits, a badly cracked asphalt parking area with no buffer zone, and no landscaping whatsoever. In addition, an underground storage tank was removed from the parking lot creating a sunken area of cracked asphalt and a pile of excess gravel.

The people from her office felt this building was desirable because of the location allowing many staff members to commute a shorter drive to work. They also have the assets to enhance the appearance of the site. Since they have no need for public visibility, they can locate away from the usual business corridors and blend in with the surrounding neighborhood.

She understands the concerns of the public regarding the traffic and school children. She said perhaps the existing traffic problem should be addressed through the Target Range Homeowners Association and the neighborhood community. However, she believes their plan will not have any direct access to South Avenue as there will be no parking in front of the building. Access will be through the arterial street of 38th Avenue. There will be increased protection for the pedestrians due to the addition of sidewalks with landscaping which will institute a buffer zone between school children and traffic. Since they will be turning onto 38th Avenue and leaving from 39th Avenue, she believes the traffic will be slowed down at the intersection. Their office hours are from 7:30 a.m. - 5:00 p.m., Monday through Friday and Target Range school hours are from 8:30 a.m. to 3:15 p.m. Their staff will not be driving at all during those peak hours. Finally, their staff is composed of mature professional adults, whose driving habits are conservative.

She said parking is also a concern. She reiterated that there will be no parking in front of the building but they do have room and can expand the back of the building to easily accommodate 12 spaces. There will be no staff parking on the street and, if it is necessary in the future, they could accommodate a few more parking spaces.

She said the public also has a lot of concern with regard to other businesses moving into the area. She does not think that is true, either. She said her business is not one that attracts customers to other businesses. This is an existing structure and they only want a PUD for that site. They do not want to change the character of the neighborhood at all. She lives in that area and feels that this business will be a quiet, professional, low-impact good neighbor to the surrounding community.

Michael Kennedy asked Ruth to further discuss the parking situation and also explain the discrepancies in the employee growth number.

Ruth Havicin answered that they feel that they need a parking space for every employee. Regarding future growth, they do plan on growing. As she mentioned before, they have only added one employee in the last 4 years and, because they have recently automated their office, they don’t anticipate any growth that would result in the addition of another position in 1996. If the economy stays strong and all factors were going good, they may add 2 or 3 people in the next 5 to 10 years. They have looked at expanding their business base but, if they do that in the immediate future, it will be in other states with branch offices and not in Missoula.

Michael Kennedy asked if was correct to say that a maximum of 3 people would be added in the next 10 years?

Ruth Havicin answered yes. She said there would not be room for any more in this building anyway.

Ken Staninger said he is one of the broker owners from Properties 2000 that had this property listed since December 13, 1993. From that time until early 1995, his office received a number of calls regarding the sale of this property. Well over half the calls received were for commercial or commercial-type uses. Once he learned of this, he discouraged them from even making an offer due to the sensitivity of the neighborhood. The other portion of the inquiries they had on this property was from churches, none of which were financially capable of buying it. The owners moved out in February, 1995. It was rented in May until the present time on a month-to-month basis to another church. The building was brought up to code in approximately 1982 but he does not believe the building is currently up to code, including fire code. Also, he is sure none of the ADA requirements are met at this time. Clearly, this PUD and remodel of the building would update everything. That, in itself, is a benefit to the neighborhood.

He continued that traffic and safety for children appears to be a major concern. At this time, there is nothing keeping traffic from accessing from South Avenue to this property. The proposed development will, in fact, increase the safety potential at this intersection because there won’t be any traffic accessing the property from South Avenue; further, there won’t be any traffic accessing the property from 38th Avenue until they are at least 100 feet from the intersection. He hoped the comparison of what currently exists and what could exist at this site if this development were to be approved is very clear.

Jennie Dixon said the conditions included a requirement for sidewalks both on 38th Avenue and South Avenue.

Ken Staninger said he also wanted it noted that the church that bought this was very active in the early 1980’s. However, the gatherings started to diminish and they had financial problems. Subsequently, in the last few years, it was not used much. But there is still a church building that could be leased or sold to a church that may use it every day. The proposed insurance office would not generate that much traffic, even though it may generate more traffic than the site is seeing today. He feels in the long run, this PUD would reduce the traffic.
In his opinion as a real estate broker, he finds it difficult to believe that, after improving this property by thousands of dollars (he would guess $25,000 in landscaping alone), that this would devalue the surrounding residences over the existing facility. Addressing the concern of ground water, this office would probably have 2 handicapped bathrooms, a drinking fountain and a kitchen. The septic system would not be burdened with washing clothes, washing dishes, and showers, which are normal residence uses. It is mainly soap products that place stress on the aquifer and septic systems.

He summed up by saying that, when this property was first marketed, the owners were out of money and there was and is a tremendous amount of deferred maintenance on the property and it’s grounds. He is sensitive to the neighborhood’s concerns but he feels this PUD could solve the problems of this particular property and enhance the safety of the neighborhood.

Roy Belile, a resident of Spurgin Road, also spoke in favor of the proposed PUD, feeling it would clean up this property, update it and make it attractive.

Michael Kennedy asked if anyone else wanted to speak in favor of the proposal. No one came forward. He then asked if anyone who opposed it wanted to speak.

Those who opposed the proposed zoning change were:

Gerard Berens, Secretary of the Target Range Homeowners’ Association, said he was speaking in behalf of Mrs. Barbara Smith, who lives immediately behind the subject property.

Milt Just, 3728 W. Sussex Avenue, about 1 block from the subject property.

Douglas Lindon, 3731 W. Central, about 1 block north of subject property.

Glen Kautz, 3727 W. Central, former member of the Target Range Homeowners Association.

Roger Vander Zand, 2225 38th Avenue, 2 lots north of the subject property.

Steven Hesla, lives on Sunlight Lane, west of the adjacent property to the subject property.

Ed Walker, 3825 W. Central, immediately north of the mini-warehouses.

Each of the above gave testimony and stated the primary concerns were safety for the school children, increased traffic, property devaluation, ground water concerns and possible future commercial developments.

Barbara Evans, directing a question to Horace Brown, asked if there was any way to direct the traffic on 38th Avenue so that the danger to the children is minimized?

Horace Brown, County Surveyor, said the traffic from 38th Avenue has to stop for South Avenue. There is a light there that blinks for pedestrians but, frankly, there is an enforcement problem.

Barbara Evans asked if they could place a “Stop” sign on South Avenue?

Horace Brown answered no.

Barbara Evans said she believes that people have, within reason, the right to do what they want with their property, as long as it does not negatively impact their neighbors. She understands that the neighbors in this situation feel that this development would negatively impact them. However, she asked them didn’t the deteriorating building and asphalt bother them? She recalled a similar situation. H.O. Bell’s building was boarded up for a long time and that did not help the property values. She said she did not feel a deteriorating building will help their property values either. She would like to see some way to allow Big Sky Underwriters fix this site up for themselves and increase the neighborhood property values. She said perhaps buffers could be put between the subject property and the other residences. She feels that if Big Sky Underwriters does not get approval and the building continues to deteriorate, falls down, and the property reverts to residential, what are the chances someone wanting to buy it for a residence on a busy street? Will the property end up sitting there and, by disapproving this, will they be relegating it to no use? She also questioned whether a church with parishioners would have less impact on the water quality than 12 people working in an insurance office.

She continued that she has seen this kind of concern in the past and, if the proposal is given approval, most often the factors that were feared by the residents do not materialize. She wished she had answers for this dilemma.

Fern Hart asked why are they requesting a PUD?

Jennie Dixon said the other option would be to rezone this property to C-C1, neighborhood commercial zone. That would open the door to quite a few more commercial uses that may not be appropriate. She wanted to make note that, if this should pass, this property could also be used for a day care home serving 12 or fewer children and all the caretakers needed for that facility. It would not need to go through a Board review. It also may be used for a group home situation for 8 or fewer persons. A special exception for a day care center of 13 or more children or a community residential facility for 9 or more people is also possible but would require Board of Adjustment approval.

Barbara Evans said are those allowed in the present zoning?

Jennie Dixon replied yes, as conditional uses and special exceptions for the lower intensive day care home and community residential facility with fewer people. Someone could come to OCD and get a building permit, they would
Fern Hart asked Steve Monlux if the Big Sky students cut across that corner?

Steve Monlux said no. But there is no route for the high school students through there because it is a closed area.

Fern Hart asked if cars pull across the asphalt parking area to enter South Avenue?

Steve Monlux answered no, there is a “Stop” sign on 38th and they pull up to that and make a right hand turn. He said, at this point, there is no traffic in that parking lot. He also commented that there is a Mountain Line Bus stop about 1 block east on 37th Avenue.

Michael Kennedy asked if the zoning stayed with the property and the use?

Colleen Dowdall, Deputy County Attorney, answered the PUD would stay with the property which means, if these people vacated it, only professional offices, excluding medical and dental, could occupy the building and they would have to meet the same conditions.

Michael Kennedy said he understood the history of zoning as, first, there was a “grandfather” clause for the commercial business that was there but it terminated when that business failed, and the zone reverted to C-RR2. Then there was a conditional use granted to the church and that conditional use also disappeared when the church ceased to be used. He asked Colleen if that was correct?

Colleen Dowdall said each new church that would come in, or a new use that would come in, would require a new conditional use permit. However, she is not sure that the church was under a conditional use permit.

Jennie Dixon said the church would have been a special exception as a public clause, such as public building and use of the property.

Michael Kennedy asked what happened with that special exception - does it disappear upon non-use?

Jennie Dixon said she thought it was like zoning. If another church came in and used the property, meeting the conditions of approval of that special exception, then they could use it.

Michael Kennedy asked, if they granted a PUD for this use and the use ceased, would the PUD disappear, or could it be made to disappear? He said he asked that because of the difference in the testimony regarding the how long the building would be in use.

Colleen Dowdall replied she does not believe they can condition the PUD to automatically go away when it’s present use ceased to exist. In terms of the variance, the County zoning rules state a variance or special exception for a property goes with the property and subsequent users. So if the church obtained this as a special exception, then that would be a part of the zoning for this property and can continue to be used as a church.

Michael Kennedy said, to state it differently, if this PUD is granted, it is the same as a zone and would remain in effect until that zone were changed for another reason.

Colleen Dowdall said that was correct.

Ruth Havicin said she does not understand where anyone can get the idea that they would want to go into a building that they are going to spend $150,000-$200,000 to remodel and plan to be gone in approximately 2 years.

Michael Kennedy said he understands that she is investing in this area and intends to stay, seeing it as her permanent office.

Ruth Havicin said that was correct. She said she was a long-time Missoula resident and plans on staying here. They are devoted to living in Montana and have their business here. There is no reason to develop the property and turn around and sell it. For one thing, they will never get that kind of money out of it. She said the number of employees has also been a confusing issue. They have 10 employees, with 2 part-time positions, and that can be verified with payroll records. If they needed to add another full-time position, they would probably do away with the 2 part-time positions.

Michael Kennedy asked if the septic tank/drainfield is under the paved area and whether the Sanitary District has been contacted?

Ken Staninger approached the map and showed the Commissioners where the septic tank and drainfield was at.

Michael Kennedy said he did not see a restriction for off-street parking.

Colleen Dowdall said condition 1A addressed this and stated that parking shall be limited to the rear of the building only with a maximum of 12 spaces. She said the applicant did come in with a significantly higher number of parking spaces in the front and the rear. The Office of Community Development staff encouraged a reduction in the number of spaces to be more comparable with what is normally required for professional offices. She suggests that if the Commissioners approve this PUD with additional spaces, they should modify condition 1A, either eliminating a maximum number of spaces or setting a higher number of maximum spaces.
Michael Kennedy said he was concerned about on-street parking. Condition 1A states the “parking area” shall be limited to the rear of the building and that could be interpreted to mean on-street parking is allowable. He asked if their intent was to prevent on-street parking.

Jennie Dixon replied that zoning requires all parking provided for the building to be off-street parking.

Michael Kennedy said the building is 3200 square feet and he would like to know if there is an occupancy restriction because there is limited opportunity for expansion at this site.

Jennie Dixon said she didn’t know and that would be a question for a building official. As the conditions are written at this time, the building blueprint cannot be expanded unless they come back to a review process and request an expansion.

Colleen Dowdall stated there were no building occupancy restrictions within the zoning resolutions. She also wanted to comment on the off-street parking issue. She said, because it is a public road, that they cannot prevent members of the public from parking in areas that do not obstruct the flow of traffic. They could not go to the neighbors who may want to park their cars in front of their homes and restrict them from doing so anymore than they can make that a restriction of the zoning in this case.

Michael Kennedy said, in other words, if on-premise parking were provided in accordance with the zone, all of those people who would normally park in that parking space could park on the street if they chose and the County could not restrict that.

Colleen Dowdall said yes, that was her belief.

Michael Kennedy said, earlier in this meeting, someone stated that Philip Maechling said that this was not incompatible with the Comprehensive Plan, but there was a comment made that this business does not serve the area, which is the basis of Philip’s statement.

Jennie Dixon said the finding of compliance with the Comprehensive Plan is in part based on the past uses of the property. Neighborhood commercial can imply two things: 1) that it serves the neighborhood and/or 2) that it is integrated well and built in scale with the neighborhood. In this particular case, there is an applicant that has a professional office that may not serve the residents within that neighborhood, however, the building is at a scale and integrated into the neighborhood appropriately, and this can be considered neighborhood commercial. There is always the opportunity that another professional office could go in there that would actually be serving the residents of the area.

Michael Kennedy said, if that is so and part of that consideration has to do with past uses, certainly the past commercial uses predated the Comprehensive Plan which restricted it to residential. He asked Jennie Dixon if that were true.

Jennie Dixon said yes, that was true in the instance of the Circle K.

Michael Kennedy said, subsequent to that past use, which became a basis for Philip Maechling, there was a 1990 zone which restricted the use of that property to residential.

Jennie Dixon said in 1976 the property was zoned residential.

Michael Kennedy said it was affirmed in 1990 by the Comprehensive Plan.

Jennie Dixon replied yes. She continued and said past use and how it fits in context with the neighborhood is another reason. She and Philip Maechling spent about an hour on the site one day about 3:00 p.m. when the school children were getting out of school and it was a very busy, active time. She does not know the neighborhood like the residents but, in the limited time she was there, the property seems very well suited for this type of low intensity neighborhood commercial use. She believes that is also Philip’s reasoning with the Comprehensive Plan finding.

Michael Kennedy said he didn’t know if there was a relation between the density for that area, which is 2 units per acre, and the sanitary restriction.

Jennie Dixon said the designation of 2 units per acre was probably made at a time when that was also the sanitary requirement. That requirement is as recent as 1988 or 1989. The Health Department looks at household uses and business or commercial or office uses to determine the size of a septic tank. She believes they consider a business use, which does not have dishwashers, washing machines, showers, etc. less intensive than home use, which does use all of the those.

Barbara Evans asked the audience, if the developers put buffers in certain areas, new landscaping, sidewalks, all the parking in the rear, an updated attractive building and repaved parking lot, wouldn’t these benefits warrant a compromise?

Glen Kautz said he can understand why Barbara asks for a compromise. However, aside from all that she mentioned, the main problem is the concern for the children. He doesn’t believe the sidewalks will help. But no matter how beautiful they can promise to make that property, it does not address the safety concerns for the children. The number of children going to the school there is about 3 times as many as there was 15 years ago. They were concerned back then, also, and they objected to the ice cream store at that time.

Michael Kennedy said, if they take care of the traffic problem and the children’s safety, then the opponents seem willing to compromise. Yet, the operation of this facility is clearly is outside the school hours. The office hours are
from 7:30 a.m. to 5:00 p.m. and they average 2 customers per week, so he wonders what the traffic danger is to the
children when they go back and forth to school.

Glen Kautz said that the traffic of any business is determined by how much action they have, so he feels it is difficult
to know for certain how much traffic that business will generate.

Milt Just said, if they have 12 employees and a maximum of 12 parking spaces, they will have a problem as soon as the
business opens, as he felt that someone would be parking on the street. He also wanted to add, referring to Barbara’s
question of whether this land would be desirable for a residence, this site is zoned for housing development and, if you
look at the 38 blocks from Reserve Street to this site, there is a home on practically every corner. So he does not see
any reason why anyone would not want to put a home on this corner.

Steven Hesla said he had heard that there is a church interested in this property but that it was too expensive for them,
and the developer thought that it’s greater value lay in it’s commercial value. He felt that if the property were to be
used as a house, he could imagine a buyer saying “There are a lot of garages next door and it is unsightly.” He
wonders if there were another business, as there would be if this zoning change were granted, if that would further
impact the residential value negatively. He said they can only speculate how things will go. He asked that the
Commissioners look at the big picture and carefully consider if they aren’t taking a step down if they allow a small,
albeit attractive business, and further break-down the residential tone of the this section of South Avenue.

Michael Kennedy asked if anyone had any further comments or questions regarding this hearing. No one came
forward and he closed the Public Hearing.

He commented that zoning is an invention that separates incompatible use and the question here is what is compatible
in that area. In Target Range, most of the people who live there now were not there 3½ years ago. It is an area of
remarkable growth and there is no restriction on housing, except for sanitary restrictions. There will be increasing
numbers of people living there. He does not know what safety factors will be affected and whether the school can
support the increasing number of children. As this area continues to grow, there will be a demand for services and people
in that area will have to drive to Reserve Street or other areas for their conveniences. There needs to be some
commercial use that will be compatible with reducing pollution and congestion. He wished to tell the neighbors of this
site that it was incorrect to think that a PUD overlay is the beginning of changing the zone for the entire area,
particularly in view of the type of proposal that was before them. At the same time, he concedes any time one
approval has been granted, it makes it easier to have a similar proposal be approved at some future time.

This is a difficult situation but the one thing he disagrees with is the suggestion that the County ought to be a protector
of an investment opportunity. The Board of County Commissioners cannot be the entity that a property owner would
approach to enhance the value of the property.

He is concerned about the conflicting statements. He said the applicant stated there will not be many employees but
wanted at least one parking space for every employee. He would like to reduce the number of vehicle trips for
employees and reduce pollution, not increase it by providing available parking to anyone who wants to work there or
visit. He is also not convinced that sanitary restrictions have been discussed thoroughly enough so they could get a
permit. Further, he is concerned about the subsequent uses of the property because some other use could go into that
area with higher traffic and possibly more density.

The Comprehensive Plan was adjusted 6 years ago to rename that corner as residential without consideration to any
“grandfathering” factor or existing structures, such as the church that was there at that time and that concerns him.
Perhaps that area west of Big Sky High School, even though it is a high traffic area, is a residential area.

Barbara Evans said it is not the responsibility of the owners of this property to provide for the safety of all the children
in that area.

Fern Hart said she thinks this is a good proposal. The improvements are good ones and, in her experience which
includes 12 years in the tax office, makes her believe that it will increase the value in that neighborhood, not lower it.
It is better than what is there now. Also, it will add to the tax base. She believes that the crossing is a separate issue;
it is a problem and it has been for 15 years. However, she will uphold the 1990 Comprehensive Plan. She senses there
is a lack of public trust in the Comprehensive Plan and she cited Walmart as an example.

She said, to sum up, she believed this applicant would benefit the neighborhood and she further senses that this
neighborhood seems to want to limit it’s own opportunities. She said they are doing that, and they are limiting their
own future.

Barbara Evans moved that the Board of County Commissioners delay action on the request to rezone 3800 South
Avenue West to C-RR2 with a Planned Unit Development overlay for a month, giving the citizens of the neighborhood
and the prospective buyers time to find a compromise that would be suitable to everyone. There was no second to the
motion. Motion denied.

Michael Kennedy said, since the motion was not seconded, the motion died. He stated he agreed with Fern in that he
believes the proposal is a good one and it is with disappointment that he opposes it. He wishes there was a good way
to resolve this. He understands Barbara’s attempt to have this hearing postponed because he feels there are benefits
that they have not explored. Based on the testimony that he heard today, he cannot see where the consequences of this
development overshadows the advantages of the spot zone; however, he opposes the zone change request.

Michael Kennedy moved that the Board of County Commissioners deny the zoning request from “C-RR2” (residential)
to “C-RR2” with a Planned Unit Development (PUD) Overlay for 3800 South Avenue West, located in the SE ¼ of the
SW ¼ of Section 25, T13N, R20W, P.M.M. Fern Hart seconded the motion. Motion carried 2-1. Barbara Evans
opposed the motion.
Barbara Evans wanted to state the reason she opposed this motion because she wanted to find a compromise that benefits everyone.

There being no further business to come before the Board, the Commissioners were in recess at 3:38 p.m.

**THURSDAY, JANUARY 18, 1996**

The Board of County Commissioners met in regular session; all three members were present. Commissioner Kennedy attended a Detention Center Programming Workshop during the day January 18th and 19th.

No Administrative Meeting was held; however, the following item was signed:

**Notice of Hearing** -- Chair Kennedy signed a Notice of Hearing with regard to setting County office hours, setting the hearing for January 31, 1996 at 1:30 p.m.

**FRIDAY, JANUARY 19, 1996**

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart attended a Mental Health Board meeting held at Fort Missoula during the day.

**MONDAY, JANUARY 22, 1996**

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

**TUESDAY, JANUARY 23, 1996**

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

**Audit List** -- The Board of County Commissioners signed the Audit List, dated January 23, 1996, pages 2-30, with a grand total of $130,896.46. The Audit List was returned to the Accounting Department.

**COMMISSIONERS’ ADMINISTRATIVE MEETING**

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

**Replacement Bond** -- Chair Kennedy signed new Certificate #22 on the County of Missoula, Medical Office Building Revenue Bonds Series 1978, Missoula Community Hospital Project. This certificate replaces the old Certificates #19 & #21 which were transferred to a new owner. The Certificate was returned to Melanie Miller of First Interstate Bank in Missoula.

**Resolution No. 96-004** -- The Board of County Commissioners signed Resolution No. 96-004, a Budget Amendment for FY’96 for the Partnership Health Center, including the following expenditures and revenue, and adopting it as part of the FY’96 budget:

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<th>Description of Expenditure</th>
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<tr>
<td>2271-612-44480 (as detailed on attachment)</td>
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<th>Description of Revenue</th>
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<tr>
<td>2271-612-331003 (Ryan White contract)</td>
<td>$20,500</td>
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**Certifications of Acceptance** -- Chair Kennedy signed Certifications of Acceptance for County Maintenance for the following:

1) Gharrett Street, Road No. L-0765, ACM. No. 74-0125C, located in T12N, R20W, Section 12, with the limits of acceptance being 0.0496 miles;

2) Marias Street, Road No. L-0644, ACM. No. 81-0043A, located in T12N, R20W, Section 12, with the limits of acceptance being 0.097 miles;

3) Southpoinete Court, Road No. L-0642, ACM. No. 96-0005, located in T12N, R20W, Section 12, with the limits of acceptance being 0.053 miles;

4) Southpoinete Drive, Road No. L-0643, ACM. No. 96-0006, located in T12N, R20W, Section 12, with the limits of acceptance being 0.188 miles;

5) Brandon Way, Road No. L-0826, ACM. No. 96-0007, located in T12N, R20W, Section 12, with the limits of acceptance being 0.011 miles.

6) Double Tree Lane, Road No. L-0918, ACM. No. 93-0006A, located in T13N, R20W, Section 34, with the limits of acceptance being 0.310 miles.
7) Triple Creek Drive, Road No. L-0917, ACM. No. 93-0005A, located in T13N, R20W, Section 27 & 34, with the limits of acceptance being 0.129 miles.

8) Kristin Lane, Road No. L-0796, ACM. No. 96-0008, located in T12N, R20W, Section 12, with the limits of acceptance being 0.100 miles.

The reason for acceptance for all of the above-named roads is that construction meets County building requirements. The Certifications were returned to the Surveyor’s Office.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Rob Needham, an independent contractor, to perform the following for the Health Department: perform periodic internal cleaning of State-owned computers and keyboards for WIC Program, as per the terms set forth, for the period commencing October 25, 1995 through October 24, 1996, for compensation in an amount not to exceed $300.

Addendum to Personnel Policies -- The Board of County Commissioners signed Addendum C to the Missoula County Personnel Policies on Drug and Alcohol Testing. This policy addendum stems from Federal law mandating drug and alcohol testing for employees who must hold a Commercial Driver’s License for their position and who operate commercial motor vehicles. This law affects all of the Teamster/Operator/Mechanic positions at the Road Department. That law, the Omnibus Transportation Employee Testing Act of 1991, took effect for Missoula County on January 1, 1996. The policy was researched and is patterned after that adopted by the State of Montana, Department of Transportation. The document was returned to the Personnel Office.

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

**WEDNESDAY, JANUARY 24, 1996**

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Kennedy attended the East Missoula Fire District Hearing.

**COMMISSIONERS’ ADMINISTRATIVE MEETING**

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Policy Statement 96-A -- The Board of County Commissioners signed Policy Statement No. 96-A, an update to Drug-Free Workplace Policy 94-B. The Policy Statement was returned to Patty Baumgart in Personnel for further handling and distribution.

Also included:

* Fern Hart moved and Michael Kennedy seconded the motion to adopt the recommendation for Phase I architectural services for the Missoula County Jail in the amount of $131,000 and also to approve the budget transfer to accommodate same. The motion carried on a vote of 3-0.

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

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present was Commissioner Barbara Evans.

**HEARING: REQUEST TO VACATE A PORTION OF JADE LANE (VAN OSTRAND ADDITION -- MORMAN CREEK AREA)**

Michael Kennedy said the first item brought before the Board of County Commissioners today was a hearing on the request to vacate a portion of Jade Lane, located in Township 12 North, Range 20 West, Section 34, Van Ostrand Addition, from the west boundary of Lot 13 to the east boundary of Lot 13. He said he will open the hearing to public comment, but first he would like to know if anyone representing this petition was present.

Dan Farrow came forward and identified himself as one of the neighbors. He said the ground was made ready for a road about 25 years ago but it was never done. He said the road is not necessary anyway. It has since grown over with weeds, it looks bad, and attracts teenagers as a place to have parties.

Michael Kennedy asked if he would fence it off so no one would trespass on it?

Dan Farrow replied yes.

Horace Brown, County Surveyor, said, for the record, this portion of the road is located in Lolo, north on Morman Creek Road in the Van Ostrand subdivision which is an old subdivision. He verified that the road was never built.

Michael Kennedy asked if he would fence it off so no one would trespass on it?

Dan Farrow replied yes.

Horace Brown, County Surveyor, said, for the record, this portion of the road is located in Lolo, north on Morman Creek Road in the Van Ostrand subdivision which is an old subdivision. He verified that the road was never built.

Michael Kennedy thanked Horace for the information. He then opened the public hearing and asked if anyone would like to come forward and speak on this request.

Michael Sehestedt, Chief Deputy County Attorney, said he wanted to give some information on this matter. When the County acquires an interest in real property for a road, they acquire a right-of-way or an easement interest. When the County vacates a road, they simply relinquish their easement interest. The property then reverts to the owner of the
underlying fee. That usually means half of the road goes each way. In this case, the road easement was apparently
dedicated in its entirety out of Lot 13 of the Van Ostrand Addition. If the road is vacated, the fee ownership of Lot 13
will take back the entire roadway. This is not a situation where adjoining property owners will each get land to the center
of the roadway. He is not sure if that is understood by the petitioners so he wanted them to hear it now in case it
changed anyone’s views on the matter.

Michael Kennedy asked Dan Farrow if he understood the County Attorney’s statement?

Dan Farrow said he did. He said he talked to the landowners that signed the petition so they would know what is going
on.

Michael Kennedy asked again if anyone had any comments? No one came forward, so he closed the Public Hearing.
He said decision on this request would be deferred until there has been a site inspection by one of the County
Commissioners and the County Surveyor. This item will be discussed again at the Public Meeting on February 7,
1996.

HEARING: PROPOSED RESOLUTION TO CREATE MISSOULA DEVELOPMENT AUTHORITY

John DeVore, Chief Executive Officer of Missoula County, said Missoula County first considered the creation of a
port authority in 1991. The idea arose at a time when the county was looking at the possibility of a major distribution
warehouse for the Patagonia Corporation. The Board of County Commissioners engaged the services of Keith Colbo
and Bob Kelley to work with a citizens’ group to make a recommendation to the Board. This resulted in a study of
port authorities along with the recommendation in favor of creating one. The Board of County Commissioners felt it
was premature from the time they were planning for the development across from the airport had not yet begun and
the I-90 Interchange had not yet been funded. Basically, it sounded like a good idea but was vague and there was no
immediate or practical purposes to be served. Things have changed. The master plan for the Missoula Development
Park has been completed and they are currently in a process to design the plan unit development to implement the
master plan. Five local industries have entered into land transactions with the County to expand operations for the
development park and there are many new businesses in the adjacent Momont Subdivision.

The engineering for the Airport/I-90 interchange project has been completed and will soon be under construction.
This effort has resulted in the need to create an entity to take over the management of this project. Staff has worked
with the Development Committee who has exercised oversight on the project. The Committee assisted in crafting the
resolution and by-laws under consideration today. The discussions leading up to this point involved such issues as
purpose, authority, responsibility and powers. They were able to address most of these issues except for defining an
exact purpose. As he stated before, the immediate need is for management of the existing efforts and creating the
flexibility to craft transactions to meet specific situations. Under current statute, the Board of County Commissioners
are restricted in terms of flexibility in land transactions. The Development Committee felt this could hinder future
economic development efforts. There was a lot of discussions relative to specific purpose. The general consensus of
those working on this issue was to retain flexibility in purpose in terms of the resolution and have this issue addressed
before the appointment of the first port authority boards.

During this process, they were also requested to look at pros and cons for the port authority. They decided to take a
good look from both practical and political perspectives. In terms of practical pros, a port authority could:

- promote hard economic development projects,
- grow the property tax base,
- provide opportunities to focus on specific developments,
- have the ability to bond for facilities to attract new or expand existing businesses,
- utilize transportation for economic development,
- promote export of local products, and
- create opportunities for cooperation with regional economic development groups and jobs.

Practical cons include:

- the port authority may fragment economic development efforts,
- competition for some products and markets with other Montana communities,
- may require continuing tax support,
- may generate unrealistic expectations, and
- could compete with the private sector.

Political pros:

- aggressive and focused economic development strategy,
- a means to access additional economic development resources such as bonding and site development,
- utilization of site and available transportation, and
- a port authority opens up other funding options in service areas.

Political cons:

- has the ability to impose up to 2 mills of property tax,
- may be viewed as a way to simply fund Missoula County,
- risk or failure or not meeting expectations,
- Commissioners lack of control once established, and
- not all will agree with development as desired.

They believe they have addressed most of these concerns within the body of the resolution and the attached by-laws,
with the balance being addressed prior to the appointment of the board. In particular, he wished to address the issue of
new taxation. While the state statute allows a 2 mill levy to fund the port authority, it is not a given in this resolution.
First the port authority must ask the Board of County Commissioners to approve such a levy. In fact, the resolution
requires the authority to follow County budget policy, with a final approval by the Commissioners. In order to suggest the implementation of a new tax, substantial justification would be required. Such levies must be requested and reviewed by the County annually. This need annually. It reviews the question regarding where the money to operate the port authority will come from. It will come from the sale of lots in the development park and funding requests to the Tax Increment Finance (TIF) district. The TIF was created in 1991 and covers the vicinity of the airport and the development park. The current value of the TIF is essentially the tax difference between a large oat field in 1991 and a new development in the area today.

The role of the port authority beyond the development park will need to be defined and coordinated with the existing agencies who are involved with economic development to ensure an overall coordinated effort. This role will also involve management of the foreign trade zone which will be sought after over the next few months.

In terms of process, staff recommends the following: adoption of the resolution creating a port authority and approving the by-laws, charging the development committee with a task of developing guiding principles, and a mission statement for the port authority to be approved by the Board of County Commissioners. It is recommended that this be done before the first board is appointed. This will be used to guide the port authority in developing specific work programs and roles.

Michael Sehestedt, Chief Deputy County Attorney, said the resolution sets out the general purposes of the authority which are basically to stimulate the general welfare of commerce and economic development, endeavor to increase the volume of commerce within the County, to cooperate with other entities to that end, and to support the creation, expansion, modernization, retention and relocation of new and existing business and industry in the state. To achieve these ends, the authority has the general power to request the tax levy, to exercise corporate powers, including the acquisition of land and other property, provide financial support to other organizations which are pursuing economic development, and to assist local governments to receive assistance from them in furtherance of its general goals, and provides for a governing port authority of 7 members appointed by the Board of County Commissioners with 5 year terms, subject to all the standards generally applicable to governmental entities under the statutes.

Michael Kennedy opened the public hearing. He asked the people who are in favor of the port authority to speak first.

Allen Fetscher, who resides at 111 Ironwood in Missoula, said he has been a real estate broker in Missoula for almost 30 years and he is a member of the Development Park Advisory Committee. He sees the port authority as another step in the long process that the County began in 1991 and he is supportive of it.

Larry Gianchetta, 116 Michelle Court in Missoula, said a lot of what John DeVore said was familiar to him. He chaired the citizens’ group in 1991. He was asked by the County Commissioners at that time if he would serve in that role and he accepted and took the role seriously. The group consisted of a large committee of citizens which represented a very broad cross section. They had a limited budget so, rather than doing a large amount of travel and visiting port authorities, they talked with people who ran and operated port authorities and listened to their experiences, both of those that were successful and those that were not. After considerable time and effort, their proposal was to go forward. The Commissioners’ and John’s observation that it may have been premature was accurate.

The people who are moving into the development park area in terms of trade advantages and tariffs and taxes on trade will be at a considerable competitive disadvantage. Frankly, he is not sure how long they will stay in the area if they cannot have a competitive advantage. Although he realizes this is not popular view, he said Montanans have to look outside of Montana for our economy to survive long term. International trade is important, whether we like it or not. Montana itself does not have a market. In the world perspective, 800,000 people is not a marketplace. However, we can all live in a state that has 800,000 people very easily and well. He said we can keep it at that population and still prosper economically if we help facilitate export.

Blake Ludwig, 405 S. 5th West in Missoula, said he was representing Sun Mountain Sports, a local business that has engaged in land transactions in the development area. He said it would be safe to say that they are interested in moving forward effectively and efficiently to operate in that area. They support the creation of a port authority.

He had also submitted the following written comments to the County Commissioners after the Public Meeting:

RE: Missoula Development Authority Public Hearing
January 24, 1996

Dear Commissioners:

I am sending this written statement as I felt my comments at today’s hearing were somewhat disorganized due to an extremely busy work schedule, unfamiliarity with the fashion in which such public hearing are conducted and the related nervousness - my apologies. If possible, please replace my oral comments with the following statement that I feel succinctly expresses the opinion of Sun Mountain Sports, Inc.’s owner and management.

As a local business that has already engaged in a land transaction in the Missoula Development Park area, we feel the creation of a well planned Port authority would serve to enhance the efficient and effective development of this area. We are most immediately concerned with the issues surrounding the area’s infrastructure, but in the longer term would be concerned about planned, reasonable development with the proper zoning and other appropriate guidelines that would enhance and support area property values. Sun Mountain Sports, Inc., already engages in international trade on a routine basis and therefore also has an interest in local developments that would assist our company in facilitating such trade.

Thank you for your time and consideration, I would, of course, be available for further questions or comment if desired.
Sincerely,
Blake Ludwig, Controller

Rod Klapahake, President and Chief Executive Office of Missoula Area Economic Development Corporation, said that his corporation is probably the one private sector group that would have the most to do with whatever entity the County creates and whatever the County does to facilitate development in this area. They welcome this opportunity to participate with an organization or entity such as the trade port authority. They have spent much time discussing trade ports, foreign trade zones, etc. over the last several years. It is obvious to them that the County needs a managing entity to deal with the development that is occurring, especially one which would be responsive directly to the Missoula County Commissioners. They believe the resolution on the table at this time is a good one because it clearly defines what the responsibilities are.

He visited Billings, Montana, a couple of weeks ago and, although he knew about the trade port they had and the northern Montana express port in Shelby and also the Port of Montana in Butte, this was the first time that he had seen first hand the operations of a port. He also had the opportunity to look at their audited financial statements, which he brought along for the Commissioners’ review. The trade port in Billings was created in December, 1989. They have 11 Commissioners appointed by the County and their annual budget last year was about $1 million. Effective in 1992, the trade port entered into an agreement with the County Board of Commissioners and took over certain economic development activities that the County had previously been involved in, including much of the grant writing activities. He does not say that Missoula County Commissioners should do that but wanted to state that, as a result, the trade port became the one central focus point for that kind of activity. In the last year, they did over 100 grant applications and it was done centralized and located in one facility. The Billings trade port assists local businesses access federal and state purchasing. They have also been active in project development. They are creating a transportation hub for the North American intermodal transportation network and they assisted in putting together the women’s prison and Zoo Montana. He said, to sum up, as a resource development entity, they’ve done grants, worked on various projects and have become an important resource entity. He was impressed with them. The controversy is not there, they have cooperation and are supported by the elected officials as well as the private sector. He does not know how it should happen here but he feels that, as an organization, they are going to watch because they want to participate. One of the things they asked about when this resolution was drawn is that they did not want to see the County create another bureaucracy. They would like to see the County have this tool available but not create a bureaucracy. In the resolution, the Commissioners have the authority to contract out for services but it is still a focused entity and it has their full support.

Michael Kennedy asked if anyone else wanted to voice their support of the proposed resolution. Receiving no response, he asked if anyone had any comments, in support of or not, of the port authority?

Larry Swanson, an economist for the Center of Rocky Mountain West at the University of Montana, said in the last 3 years he had the opportunity to serve on the Development Committee for the airport development port planning project that the County Commissioners initiated several years ago under John DeVore’s guidance.

There is a lot of concern about the direction of this area’s economy. There is a lot of population growth and employment loss in traditional sectors. Irrespective of where we go in the future from a population standpoint, there will be a much different economy 10 years from now than we have today. The County Commissioners demonstrated a far-sighted decision when they purchased the 440 acres and set about a deliberate planning project. As a result of that process, they began to increasingly consider creating a port authority and how it should be managed and planned for in the future. It seemed to offer the type of flexibility that is needed to manage as well as to have responsibilities that go beyond the development park. The only concern he has is that, while they were very deliberative while planning for the development park and were led by specific objectives and how the planning was to be conducted, the language that is used to create this port authority is open-ended and broad. He feels in some ways it needs to be tightened up; there needs to be a mission statement under which this port authority would operate and it needs clear planning and guiding principles, particularly in areas that have potential public/private ventures and public financing. That can be done. There is a necessity to work through that and define this better. However, he felt this was the type of tool the County needs and encouraged the Commissioners to adopt it.

Michael Kennedy stated that he had been handed a note which contained a phone message from George Lambros, who participated in the indentation of the development park and was involved in the development authority proposal. George Lambros left a message that he was unable to attend the Public Meeting but he wanted to be on record that he is in favor of the creation of a port authority for Missoula County. He then asked if anyone else wanted to speak on this issue. No one came forward and he closed the public hearing.

He said the courage of past County Commissioners toward taking this venture is commendable. He said Larry spoke of narrowing the focus of the direction of it so the language cannot be ambiguous and that is very important to the Commissioners. He stated that they will not take action on the port authority at this time but will wait until all 3 Commissioners are present. At that time, there will be discussion on the language and financing and any other issues that come up regarding it.

Barbara Evans said she appreciated the work that so many people have already put into this thus far. She said she has a couple of concerns about it but they are not significant enough to mention at this time. She stated the development park has the potential to be an asset to Missoula County and it is doing better than many thought it would. It is exciting to see the businesses from Missoula who see the potential and are willing to relocate. She is grateful to them for being willing to take the risks to move their businesses out there.

She also noted that Fern Hart was not present at this meeting because she was on her way to Colorado on County business.
Michael Kennedy asked Michael Sehestedt if it was acceptable to keep the hearing open and continue it at the next Public Meeting that Commissioner Hart would be present at, which would be February 7th?

Michael Sehestedt said that was acceptable. He suggested that the record be left open to any written comment before that date in addition to any verbal comment that may be offered at the Public Meeting on February 7.

Michael Kennedy agreed. He said they will place the hearing on the proposed resolution to create a Missoula Development Authority on the agenda for February 7th and, at that time, with all 3 County Commissioners present, they will be open to taking additional testimony, have further discussions and make a decision at that time.

He asked if there was any other business to come before the Board?

Barbara Evans noted that it appeared there was a group of students in the audience and she invited them to ask any questions they might have.

Lisa Grove, a student at the University of Montana, said they were senior nursing students and were fulfilling requirements for their Legal/Ethical class. She said she believed the Commissioners would be seeing these students over the next few weeks. She asked what positions the County staff provided at the public meetings and what roles they played?

Michael Kennedy said that he and Barbara Evans were County Commissioners. The third County Commissioner, Fern Hart, was away on business. He asked the other County staff members to identify themselves.

Vickie Zeier identified herself as the Clerk and Recorder, and Treasurer for Missoula County. She was elected to her position. She said she attends the public meetings because, statutorily, the Clerk and Recorder is required to see that minutes for the meetings are taken. The secretary actually takes the minutes but she observes that they are taken correctly.

Gloria Baker said she is the secretary and her job is to take the minutes and make sure that whatever is said at the public meeting is recorded.

Michael Sehestedt said he is the Chief Deputy County Attorney. He attends the public meeting to answer questions that come up regarding the various issues that come before the Board of County Commissioners.

Horace Brown identified himself as the County Surveyor, an elected position, and he is in attendance to primarily answer questions regarding County roads.

Michael Kennedy said the County staff enjoyed having the students attend and invited them to come back to either observe and/or participate.

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

THURSDAY, JANUARY 25, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart left for Durango, Colorado to attend the Rocky Mountain Program through February 3rd.

No Administrative Meeting was held; however, the following items were signed:

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Larry Font as principal for Warrant #43156 issued January 19, 1996 on the Missoula County School District #40 Fund in the amount of $265.73 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Patricia Curran as principal for Warrant #53461 issued January 19, 1996 on the Missoula County MCPS-Payroll Fund in the amount of $276.31 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Shawna Brickey as principal for Warrant #71328 issued December 8, 1995 in the amount of $140.00 now unable to be found.

FRIDAY, JANUARY 26, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Kennedy attended the Annual Economic Outlook Seminar held at the Holiday Inn during the day.

Vickie M. Zeier, Clerk & Recorder  Michael Kennedy, Chair

Board of County Commissioners

MONDAY, JANUARY 29, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart was in Durango, Colorado attending the Rocky Mountain Program the week of January 29th through February 3rd.
Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Sharon Koch as principal for Warrant #20389 issued January 10, 1996 on the Missoula County Payroll Fund in the amount of $446.11 now unable to be found.

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Task Order No. 6 -- Chair Kennedy signed Task Order No. 6 (Immunization Program) for DPHHS Contract No. 360163-TO-06, Federal Catalog No. 93.268 between Missoula County and the Montana Department of Public Health and Human Services with regard to the terms of the master agreement between them concerning the provision of health-related services in order to administer an immunization program within Missoula County’s service area, as per the terms set forth, for the period commencing January 1, 1996 through December 31, 1996. The maximum total amount payable is $32,734. The document was forwarded to DPHHS in Helena.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #2, Pay Date January 19, 1996, with a total Missoula County payroll of $535,072.50. The Transmittal Sheet was returned to the Auditor’s Office.

Agreement -- The Board of County Commissioners signed a Winter Road Maintenance Permit Agreement, dated January 29, 1996, between Bruce H. Doering, of Marshall Mountain Ski Resort, Missoula, and the County of Missoula whereby Missoula County agreed that it would be in the best interest of both Bruce Doering and the County to cooperate in the exchange of sanding material for labor doing supplemental Winter road maintenance for the next three months, as per the terms set forth. The Agreement was forwarded to the Surveyor’s Office for further signatures and handling.

Modification A of Task Order No. 4 -- Chair Kennedy signed Modification A of Task Order No. 4 (STD/AIDS Program) for DPHHS Contract Modification No. 360163-TO-04-A, Federal Catalog No. 93.991 between Missoula County and the Montana Department of Public Health and Human Services for the purpose of adding funding for the task order and additional HIV/AIDS-related activities, as per the terms set forth. The document was forwarded to DPHHS in Helena.

Plat -- The Board of County Commissioners signed the Plat for Sorrel Springs, Lots 13A and 13B, an amended subdivision plat of Lot 13, Sorrel Springs located in Section 21, T15N, R21W, PMM, Missoula County, a total area of 10.012 acres, with the owners of record being Duane and Louise Lind.

Plat and Subdivision Improvements Agreement -- The Board of County Commissioners signed the Plat for Cobban & Dinsmore’s Orchard Homes, Lot 18, an amended subdivision plat located in the NW1/4 of Section 20, T13N, R19W, PMM, with the net area being 2.731 acres and the owners of record being Donna L., George L., Laura L., and Paula M. Sherwood. Also signed was a Subdivision Improvements Agreement and Guarantee for improvements which remain to be completed in Cobban & Dinsmore’s Orchard Homes, Lot 18, between Missoula County and George L. Sherwood for the installation of street improvements as shown on the plans at an estimated cost of $64,027. The improvements shall be completed no later than August 2, 1996 and is guaranteed by a Letter of Credit in favor of Missoula County, issued by Clark Fork Valley Bank of Frenchtown, dated December 28, 1995 in the amount equal to the estimated cost of the required improvements.

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

TUESDAY, JANUARY 30, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present. At noon, Commissioners Evans and Kennedy attended the Chamber’s State of Missoula Luncheon held at the Village Red Lion, with Commissioner Kennedy giving the State of the County address.

No Administrative Meeting was held; however, the following item was signed:

Audit List -- Commissioners Kennedy and Evans signed the Audit List, dated January 30, 1996, pages 2-40, with a grand total of $512,133.09. The Audit List was returned to the Accounting Department.

WEDNESDAY, JANUARY 31, 1996

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming First Security Bank of Missoula as principal for Warrant #288382 issued December 13, 1995 on the Missoula County Sheriff Fund in the amount of $50.00 now unable to be found.

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Agreement -- The Board of County Commissioners signed an Agreement to Remit Unused Portion of Tax Increment Urban Renewal Monies to Missoula County Board of Commissioners for Countywide Schools for Fiscal Year 1995-1996, dated December 12, 1995, as per the terms set forth. The tax increment monies to be released to the taxing jurisdiction in the total amount of $4,060.47 to Missoula County Treasurer for the fiscal year 1996. The Agreement was returned to John DeVore, Chief Executive Officer, for further handling.
Agreement -- The Board of County Commissioners signed an Agreement to Remit Unused Portion of Tax Increment Urban Renewal Monies to Missoula County Board of Commissioners for Fiscal Year 1995-1996, dated December 12, 1995, as per the terms set forth. The tax increment monies to be released to the taxing jurisdiction in the total amount of $33,283,090 to Missoula County Treasurer for the fiscal year 1996. The Agreement was returned to John DeVore, Chief Executive Officer, for further handling.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present was Commissioner Barbara Evans.

HEARING: SETTING OFFICE HOURS FOR COUNTY OFFICES

Michael Kennedy stated the first item on the agenda was to set office hours for the County offices. He asked attorney Michael Sehestedt to give information on the matter.

Michael Sehestedt, Chief Deputy County Attorney, said, prior to the 1995 legislature, County office hours were set by statute. All of the County officers were required to have their offices open for the conduct of business from 8:00 a.m. to 5:00 p.m., Monday through Friday. The 1995 legislature amended that law giving the County Commissioners the option to set office hours. The statute provided that they shall adopt a resolution after the hearing. Setting hours for the various County office hours also requires the consent of the affected elected officials. Pursuant to that statutory requirement, the Commissioners have given notice of this hearing and he prepared for their consideration a draft resolution which essentially maintains the status quo of 8:00 a.m. to 5:00 p.m., Monday through Friday, for office hours. Options exist under the statute for either longer or shorter office hours. In any event, the resolution would not preclude officers from keeping their offices open at other times as required to serve the public. He emphasized that basically the proposed resolution reinstates the status quo.

Michael Kennedy opened the public meeting and invited anyone who wished to speak to do so.

Susan Reed, Missoula County Auditor, said having the auditor’s office open from 8:00 a.m. to 5:00 p.m. daily would cause undue hardship on the staff in that office. Staff includes 3 people, 2 of whom are often out of the office performing audits in various other departments. Sick leave, vacation days, and meetings often leave the auditor’s office unattended. While they support the idea of public access to officials, it is logistically impossible for them to have the office staffed at all times during those hours.

Barbara Evans asked if it would help to close the auditor’s office between noon and 1:00 p.m.?

Susan Reed said that is not the problem. The problem is often during the day, periodically, there will be no one there.

Barbara Evans said, in all the years she has been working for the County, she has never seen the auditor’s door closed.

Susan Reed said there is a difference between having the door open and having someone there at all times to serve the public. She cited, as an example, their office sells bus tickets as a courtesy and they have received complaints from people who wanted to buy bus tickets that no one was in the office to sell them. She also mentioned that sometimes County employees needed petty cash and have had to wait until a staff member came in to get it.

Michael Kennedy asked if she had any suggestions as how to deal with this problem?

Susan Reed answered no. Her only concern was their office staff not be mandated to keep their office open and staffed daily from 8:00 a.m. to 5:00 p.m.

Michael Sehestedt said, for small offices, the incidental periods for when there is no one in the office does not amount to a closure, so he found no problem with her situation.

Susan Reed said okay.

Horace Brown, County Surveyor, said they keep the required regular office hours in their courthouse office but at the office at the shop, the hours are from 5:00 or 6:00 a.m. until about 3:30 p.m. Also, in the summer, the shop employees work four 10 hour days, so the shop office is not covered regularly from 8:00 a.m. until 5:00 p.m. on weekdays then either. He wanted to know if this was a problem?

Michael Sehestedt said no, there wasn’t. The County Surveyor office at the courthouse is open to the public for the conduct of business at the regular hours. The shop office hours are not under this statute because they are a subsidiary of the courthouse Surveyor’s office.

Michael Kennedy asked if there were any other comments or questions?

Michael Sehestedt said he had comments from other officials that he had received prior to this meeting that he would like to give for the record.

The first was from Doug Chase, the County Sheriff. He said Doug stated that, while the Sheriff’s office was open on a regular daily basis, they close their door during the noon hour. During that hour, visitors are admitted through the door as needed or they are addressed through the window at their front office. Doug Chase said, in the recent past, they had one of the detectives stay during the noon hour to be available to the public if needed. The detective on duty at that time experienced an uninterrupted hour so it did not seem to be providing any useful service. But overtime and other
costs were incurred on the department for that duty. He told Doug Chase that, as long as they had someone there to greet the public, assist them and take a statement if necessary, he did not believe this was a violation of the requirement. He correlated it to the County Attorney’s office where the entire criminal division is out of the office and in court when court is in session. Anyone from the public who wishes to see one of those officials will have to wait until they get back from court.

He continued and said Justice of the Peace Mike Morris also wrote and indicated that they intend to close their office during the noon hour except for the intake desk, which provides initial processing of tickets and fines. Again, as long as they have someone there to address the public and conduct business, he believes the office is considered “open” and meets the intent of this resolution.

Michael Kennedy thanked Michael Sehestedt for those comments and asked again for any other comments on this issue. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners adopt Resolution 96-005, as required by statute, which sets the County office hours. Michael Kennedy seconded the motion. Motion carried 2-0.

Resolution 96-005

Commissioners Michael Kennedy and Barbara Evans signed Resolution 96-005, resolving that the following offices be open to the public for the transaction of business from 8 a.m. until 5 p.m. Monday through Friday except for legal holidays:

(1)  County Commissioners
(2)  County Auditor’s Office
(3)  County Attorney’s Office
(4)  County Sheriff’s Office
(5)  County Clerk and Recorder’s Office including the Election’s Office
(6)  County Treasurer’s office except that the Motor Vehicles section may close to new transactions at 4:45 p.m.
(7)  County Surveyor’s Office
(8)  Clerk of Court’s Office
(9)  Justice Court Offices

and also resolving that this resolution shall not be deemed to preclude any officer from keeping their office open at such other and additional times as may be required to accommodate the public.

HEARING (CERTIFICATE OF SURVEY REVIEW): MORTGAGE EXEMPTION (BERTOLLT)

Kathleen Smith, Paralegal, County Attorney’s office, said this is a consideration of whether to approve a mortgage exemption for a parcel located in the E½W½E½SW¼ of Section 20, T15N R21W for Frank P. Bertollt and Cheryl L. Bertollt.

Frank Bertollt has submitted a request for a mortgage exemption for a 20.15 acre parcel located northwest of Frenchtown. Mr. and Mrs. Bertollt currently reside on the property in a mobile home and wish to construct a new home for themselves and rent the home in which they currently reside. In order to do this, they require financing for the new home and their lender has stated that, to mortgage only 10 acres, this parcel would have to be split off from the original parcel.

The history of the parcel is as follows: The parcel was purchased in its original condition by the Bertollts in 1980. A Notice of Purchasers Interest currently exists of which the previous owner still holds an interest. The Bertollts have stated that the previous owner is willing to release a portion of the property for this purpose. According to the records kept by the Missoula County Surveyor's office, the applicants have not used any exemptions to the Subdivision and Platting Act. Michael Kennedy asked if Mr. or Mrs. Bertollt or their representative was present?

Frank and Cheryl Bertollt came forward and identified themselves.

Michael Kennedy explained to them that the purpose of this hearing was to determine if their request was an attempt to evade subdivision review. To do that, he explained the Commissioners would need to ask questions that were often personal in nature.

He said he understands that their banker is requiring that the property be subdivided as a means to finance a house that they wish to construct on part of it. He asked them if that was correct?

Frank Bertollt answered that was correct.

Michael Kennedy asked if they had an underlying contract for deed on the entire property that is almost paid?

Frank Bertollt said that was correct. They have about 10 years left to pay on it but they have enough equity to have 10 acres free and clear. They have the owner contract that they bought the place from.

Michael Kennedy said his question regarded clearing the contract for deed and including it in the overall mortgage so as to keep the property in a single piece. He asked Frank if he had considered that?
Frank Bertollt replied he had and discussed it with his banker but the bank won’t cover the extra property. At this point, the greater portion of their payments goes toward the principal on their balance, which is approximately $38,000. He is trying to keep costs down and, if he refinances the entire parcel, he will have to pay interest on the amount for another 30 years. He has already paid over the last 15 years.

Michael Kennedy said, put another way, he understands that the bank feels that the $38,000 addition to the loan is less than what they feel is security interest in the entire property, including the house that they are planning to build. Thus, he assumes the bank does not want to finance it unless it is split.

Frank Bertollt said that was correct.

Michael Kennedy asked if the road on the east side exists as an easement?

Frank Bertollt said it is not a County road. It is a private road.

Michael Kennedy said he made a statement that the created parcel will have an easement, so would it be correct to assume that he is going to create an easement?

Frank Bertollt said that was one of the questions that was brought up. They needed a 30 or 60 foot easement because there are 4 sets of property on the east side. He is doubtful that the road there is wide enough.

Michael Kennedy asked if there was access to the mobile home to the north?

Frank Bertollt said yes.

Barbara Evans asked if he was planning to sell the remaining parcel or rent the mobile home that is on it?

Frank Bertollt answered that, at this time, he was planning to rent it.

Michael Kennedy stated that this was a public hearing. He asked if anyone would like to speak on this issue. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners grant the mortgage exemption for the parcel located in the E½W½E½SW¼ of Section 20, T15N R21W for Frank P. and Cheryl L. Bertollt in that there does not appear to be an attempt to evade the Montana Subdivision and Platting Act. Michael Kennedy seconded the motion. Motion carried 2-0.

Michael Kennedy asked Kathy Smith if the easement was included in a condition?

Kathleen Smith said the mortgage exemption process did not allow conditions.

Barbara Evans wanted the Bertollts to know that granting of this mortgage exemption does not give them automatic approval by the Health Department or approval of any of their house systems. Further, it does not commit the County to taking care of any dust problems or plowing their roads.

Frank Bertollt said they understood that.

**HEARING (CERTIFICATE OF SURVEY REVIEW): MORTGAGE EXEMPTION (NELSON)**

Kathleen Smith, Paralegal, County Attorney’s Office, said this is a consideration of a request for a mortgage exemption for Tract 12D of COS 1860 in Section 10, T14N R20W for Sheila M. Nelson.

Sheila Nelson owns a 5.05 acre parcel located in the Meadows of Baron O’Keefe area east of Highway 93 and north of the Wye. Ms. Nelson proposes to create a 2.5 acre parcel for use as a security lien for the refinancing of their existing home. In a letter provided by the lender, First Interstate Bank, Ms. Nelson intends to refinance the 2.5 acres on which the home exists by creating a separate legal description under the mortgage exemption. She then intends to sell the remainder. Ms. Nelson originally came to the Board on March 1, 1995, requesting a family transfer to her husband, James A. Nelson. Mr. Nelson was at the Public Meeting on March 1 and indicated the purpose of the family transfer request “would be for future financial planning and there is no intent to sell the property in the near future.” In addition, he indicated the parcel would be “used as a ‘nest egg’ for their two sons, ages 8 and 4.” It was suggested to Mr. and Mrs. Nelson that they change their request for a family transfer from James Nelson to a joint transfer for their sons. The Board indicated they would approve the request on documentation was provided that a trust would be set up for the minor children and the request was then tabled. Mr. and Mrs. Nelson did not provide such documentation and I did not hear from them in this regard until this most recent request.

The history of the parcel is as follows: COS 1677 was filed by Geneva Cates in 1978 creating 18 parcels greater than 20 acres in size. COS 1860 was filed by Dean Holm in 1979, creating four parcels from Tract 12 of COS 1677 using two family transfer exemptions, an occasional sale and remainder. Tract 12D is the occasional sale parcel and was purchased by Ms. Nelson February 9, 1995.

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

Michael Kennedy asked if Sheila M. Nelson or her representative was present? No one came forward. He then stated that this was a public hearing and asked if anyone would like to speak on this issue. Again, no one came forward. He closed the public hearing.
CONSIDERATION OF DOUGHERTY TRACT NO. 1 (SUMMARY PLAT)

Pat Keiley, Office of Planning and Grants, said this was a request by Chuck Dougherty, who is represented by Ron Ewart of Eli & Associate, to subdivide an approximately 900 acre parcel to create one lot, named Tract 1 and consisting of 40.1 acres. There will be a remainder of approximately 860 acres. This is an expedited subdivision review which has a 14 day turnaround period from the time the application is first presented to his office.

The land is located between Butler Creek and LaValle Creek with access off LaValle Creek Road. Although there is physical and legal access on LaValle Creek Road, the access that will be used will be an existing access that runs through the remainder portion of the property.

He said the reason the property has an odd shape was to maintain the 40 acre tract which complies with the Comprehensive Plan of allowing the maximum density of one dwelling unit per 40 acres. Also, this piece has plateau areas which provide for good building sites and good views. The house will be approximately in the center of the property. There is not an existing house on the ranch at this time.

The property is outside the 4.5 mile building permit jurisdiction. There is no zoning. This division of land was approved for a family transfer exemption by the Board of County Commissioners on May 11, 1994. However, it was later discovered that a family transfer was technically unworkable because title of the property is in the name of a corporation, Dougherty Ranch, even though it is owned by James and Mary Gordy who at that time were giving the tract to their son, Chuck Dougherty. The family transfer was never filed, thus it did not go into effect.

LaValle Creek Road is a graveled, County road and has a 60 foot right-of-way. The actual width of the road is approximately 18-20 feet. The standards require it to be 24 feet in width and there is a variance request for that. There is no proposed sidewalk or pedestrian walkway within or adjacent to the proposed subdivision. There is another variance request for no sidewalks or pedestrian walkways through the subdivision.

The 1975 Comprehensive Plan calls for open and resource lands at a maximum density of one dwelling unit per 40 acres. This subdivision complies with that. It also has private well and private septic. Missoula Rural Fire District will provide service for fires. Police services are provided by Missoula County Sheriff Department and schools for this area are De Smet Elementary School and Big Sky High School. The land is currently used for agricultural purposes, including grazing for livestock. Also, elk and mule deer winter range on the property. They feel that one home on this piece of land will have minimal effect on the agricultural and wildlife uses. There is a riparian resource area on the property and that is LaValle Creek and portions adjacent and on either side of LaValle Creek. The applicant has proposed a management plan for the riparian resource area which states the riparian resource area will not be used or affected.

LaValle Creek Road is approximately 600 feet from the LaValle Creek. This subdivision meets the local subdivision survey requirements. It follows the subdivision review process, provides easements for utilities and provides legal and physical access to the subject property, subject to the variance request dealing with the Montana Subdivision and Platting Act. Michael Kennedy seconded the motion. Motion carried 2-0.

Michael Kennedy said the intent of the mortgage exemption is to finance construction of a building on property and this effort is for refinancing. That means this property is properly financed at this time and there is no pressing need which would trigger this exemption.

Barbara Evans moved that the Board of County Commissioners deny the request for the mortgage exemption for Tract 12D of COS 1860 in Section 10, T4N R20W for Sheila M. Nelson in that it appears to be an attempt to evade the Montana Subdivision and Platting Act. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans said the Nelsons should go through the subdivision process because they say they want to split the land to sell. Also, this is a change from what they told the Commissioners last March, indicating that they did not intend to sell the land and yet they have submitted another request saying they do want to sell it. Thus, even though she dislikes denying people what they ask for, she feels she must deny this request.

CONSIDERATION OF DOUGHERTY TRACT NO. 1 (SUMMARY PLAT)

Pat Keiley, Office of Planning and Grants, said this was a request by Chuck Dougherty, who is represented by Ron Ewart of Eli & Associate, to subdivide an approximately 900 acre parcel to create one lot, named Tract 1 and consisting of 40.1 acres. There will be a remainder of approximately 860 acres. This is an expedited subdivision review which has a 14 day turnaround period from the time the application is first presented to his office.

The land is located between Butler Creek and LaValle Creek with access off LaValle Creek Road. Although there is physical and legal access on LaValle Creek Road, the access that will be used will be an existing access that runs through the remainder portion of the property.

He said the reason the property has an odd shape was to maintain the 40 acre tract which complies with the Comprehensive Plan of allowing the maximum density of one dwelling unit per 40 acres. Also, this piece has plateau areas which provide for good building sites and good views. The house will be approximately in the center of the property. There is not an existing house on the ranch at this time.

The property is outside the 4.5 mile building permit jurisdiction. There is no zoning. This division of land was approved for a family transfer exemption by the Board of County Commissioners on May 11, 1994. However, it was later discovered that a family transfer was technically unworkable because title of the property is in the name of a corporation, Dougherty Ranch, even though it is owned by James and Mary Gordy who at that time were giving the tract to their son, Chuck Dougherty. The family transfer was never filed, thus it did not go into effect.

LaValle Creek Road is a graveled, County road and has a 60 foot right-of-way. The actual width of the road is approximately 18-20 feet. The standards require it to be 24 feet in width and there is a variance request for that. There is no proposed sidewalk or pedestrian walkway within or adjacent to the proposed subdivision. There is another variance request for no sidewalks or pedestrian walkways through the subdivision.

The 1975 Comprehensive Plan calls for open and resource lands at a maximum density of one dwelling unit per 40 acres. This subdivision complies with that. It also has private well and private septic. Missoula Rural Fire District will provide service for fires. Police services are provided by Missoula County Sheriff Department and schools for this area are De Smet Elementary School and Big Sky High School. The land is currently used for agricultural purposes, including grazing for livestock. Also, elk and mule deer winter range on the property. They feel that one home on this piece of land will have minimal effect on the agricultural and wildlife uses. There is a riparian resource area on the property and that is LaValle Creek and portions adjacent and on either side of LaValle Creek. The applicant has proposed a management plan for the riparian resource area which states the riparian resource area will not be used or affected. The proposed house is approximately 600 feet from the LaValle Creek. This subdivision meets the local subdivision survey requirements. It follows the subdivision review process, provides easements for utilities and provides legal and physical access to the subject property, subject to the variance request dealing with the width of LaValle Creek Road.

Staff recommends approval of the two variance requests, based on the findings of fact in the staff report. Staff also recommends approval of Dougherty Tract No. 1 summary subdivision based on the findings of fact and subject to the 11 conditions in the staff report.

Barbara Evans asked Pat Keiley if he and Mr. Dougherty had discussed any potential future upgrading of LaValle Creek Road, which is a gravel road, the waiver of the right to protest being included, and/or dust abatement? He said they have submitted another request regarding this issue.

Pat Keiley said he talked to Ron Ewart about condition no. 6 which reads “Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to LaValle Creek Road, including but not limited to paving and sidewalks based on benefit, and may be used in lieu of their signatures on an RSID/SID petition.” He said they had not decided about a dust abatement district and a waiver of a right to protest inclusion in one. They are still trying to work through that and decide what form that should take, whether it be conditions on individual subdivision requests or another type of form.

Ron Ewart, Eli & Associate, said he and Chuck Dougherty, who was present at this meeting, would be happy to answer any questions the Commissioners had. He said they did not have any problems with the conditions in the staff report.

Michael Kennedy said Pat indicated one of the reasons for the shape of the property was to preserve the viewscape for housing sites but he understood that this was a request for a single house on a 40 acre parcel. He asked about the discrepancy here.

Chuck Dougherty said his property was divided to contain both sagebrush and timber. He plans to build his house off center, close enough to the creek so he can hear it. Pointing on the map, he showed the Commissioners the areas he was talking about and described the access and landscape.
Barbara Evans asked if he had any objection to a waiver of a right to protest inclusion in a dust abatement?

Chuck Dougherty asked for further clarification.

Barbara Evans explained that there were a number of people moving into the rural country areas. These people often complain about the dust to the Commissioners and request that the County take care of it. The County does not have the money to do that so they have a program, dust abatement districts, whereby the people who live in the area contribute to it to put dust palliatives, whether it is magnesium chloride or something else, to keep the dust down.

Chuck Dougherty asked what that would have to do with putting in sidewalks, paved roads, etc.

Barbara Evans said that was totally different.

Chuck Dougherty said there was only one other neighbor and that neighbor only uses his place for a summer cabin.

Barbara Evans said, if in the future there were a number of people to move into his area, it is likely they will want to build a paved road with curbs and gutter and that would be the first waiver of a right to protest, which means he would be included in that and have to pay his share. The dust abatement district is different. They have only been put in effect if the neighbors complain about the dust. If no one complains about the dust, he will not have any problems. But if they do, this would be the way to resolve the problem.

Michael Sehestedt wanted Chuck to understand that this is not just something he would have to take care of, but the people who would also be included in solving the problem.

Barbara Evans said his developer said just a few minutes ago that he did not have a problem with the conditions, and one of those conditions is the waiver of a right to protest an SID for upgrading LaValle Creek Road, which could include sometime in the future sidewalks, curbs and gutters. She does not anticipate that to happen during his lifetime, but at some time.

Chuck Dougherty said he was hesitant to give up his right to protest.

Barbara Evans said, on that particular issue, he would be giving up his right to protest if it ever needs to be created.

Michael Kennedy said the purpose of his request is to subdivide his property without having to go through a full subdivision process. To satisfy that request will include some acknowledgments from him. He agreed that someday there probably will be development up in that area. When that development occurs, it will be necessary to provide certain kinds of amenities, utilities and services to the people who will be moving there. This waiver refers to that time when this all happens. When waivers have not been required, they have had problems with the roads, public health, etc., so this is a way to take care of these problems. He asked Chuck not to look at it as giving up his right but rather to allow him to subdivide his property without going through a full subdivision review.

Michael Sehestedt said, to expand on what Michael Kennedy said, the waiver basically says, if the area develops and the road ends up getting paved, everyone, including those that have just one or two lots, is on the same basis as everyone else that uses the road in terms of paying for it. That is all the waiver essentially does. It allows the requirement to go unanswered now, and it may or may not be needed in the future. It has been a long time since they started using the SID waiver in subdivision review. Before then, the County had people pay for their portion, whether it be a mile or ½ mile or whatever, to do a 5 acre subdivision.

Barbara Evans said she was willing to let the dust abatement issue go because, at this point with just a few people living up there, there probably won’t be that much dust.

Chuck Dougherty said that would be okay.

Michael Kennedy said he would still like to resolve the issue about how many homesites are being considered here.

Pat Keiley said when he was referred to building sites, he was referring to the one building site on the 40 acre tract.

Michael Kennedy said that was all he needed to know.

Barbara Evans moved that the Board of County Commissioners grant the variance request for no sidewalk and pedestrian walkways and the variance request for the reduced road width from 24 to 18-20- feet for Dougherty Tract No 1 subdivision, located between Butler Creek and LaValle Creek in Sections 13 and 24 of Township 14 North, Range 19 West, based on the staff recommendation. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the summary plat for the Dougherty Tract No. 1 Subdivision, located between Butler Creek and LaValle Creek in Section 13 and 24 of Township 14 North, Range 19 West, based on the findings of fact and contingent on the conditions listed below:

1. Plans for grading, drainage, sewer, sidewalk, and streets shall be approved by the County Surveyor prior to final plat filing.
2. That approach permits be applied for and granted before homes are built, to be approved by the County Surveyor prior to building permit issuance.
3. A $50 fee per lot shall be paid to the Missoula Rural Fire District toward the purchase of a large diameter hose, prior to plat filing.

4. Access must meet UFC standard and adequate turnaround space be provided, prior to plat filing.

5. All utilities shall be placed underground and easements shown on the final plat. Utility easements shall be a minimum of 20 feet wide and their location shall be approved by the appropriate utility and the governing body. In addition to the easement location, the following statement shall be shown on the face of the plat: "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines in, over, under, and across each area designated on the plat as "Utility Easement" to have and to hold forever."

6. That the following statement shall appear on the face of the final plat and in all instruments of conveyance: "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to LaValle Creek Road, including but not limited to paving and sidewalk based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

7. That a 30 foot private deeded access and public utility easement be granted on the remainder from the access point on LaValle Creek Road to Dougherty Tract No. 1, to be approved by the County Surveyor prior to plat filing.

8. That purchaser(s) of the property be provided with a copy of the brochure, "Living with Wildlife."

9. That plans for fire protection purposes (the water supply) shall be approved by the appropriate fire jurisdiction prior to plat filing.

10. That the Tract No. 1 private driveway shall have a gravel width of 12 feet with an unobstructed width of 20 feet with a vertical clearance of 13 feet 6 inches, to be approved by the appropriate fire jurisdiction prior to plat filing.

11. Plans for any private driveways more than 150' in length on either lot shall be approved by the appropriate fire district, prior to plat filing.

Michael Kennedy seconded the motion. Motion carried 2-0.

Dick Boehmler said he represents the family that owns the property at the end of LaValle Creek and borders the subdivision that has just been approved on the north and he wanted to state on record that they know what Chuck is doing and they would be happy to have him as a neighbor.

There being no further business to come before the Board, the Commissioners were in recess at 2:25 p.m.
The Board of County Commissioners met in regular session; a quorum of the Board was present. In the forenoon, Commissioners Evans and Kennedy attended a Senior Service Corps Meeting with Jim Scheibel held at the Mayor’s Conference Room.

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the afternoon, the following items were signed:

Plat and Subdivision Improvements Agreement -- The Board of County Commissioners signed the Plat for Sorrel Springs Lots 28A and 28B, an amended subdivision plat of Tract 28, Sorrel Springs, located in the SE1/4 of Section 21, T15N, R21W, Missoula County, a total of 10.25 acres gross and net area, with the owners of record being C & C Real Estate, Inc. Also signed was a Subdivision Improvements Agreement and Guarantee for improvements which remain to be completed in Sorrel Springs Lots 28A and 28B between Missoula County and C & C Real Estate, Inc. for the asphalt paving of a 20’ x 20’ apron at the driveway approach onto Sorrel Springs Lane (Condition No. 9), as listed in Conditions of Approval (BCC-95-550) at an estimated cost of $1,200. The improvements shall be completed no later than November 17, 1997 and is guaranteed by a Cashiers Check in favor of Missoula County, in the amount of $1,200 dated January 8, 1996, to be held by Missoula County.

Agreement -- The County of Missoula signed a County MCH Assessment and Planning Project Agreement between Sanders County and the Missoula City-County Health Department for the purpose of maternal and child health community assessment and planning activities in the County, as per the terms set forth, for the period commencing January 15, 1996 through June 30, 1996, for compensation in an amount not to exceed $8,829 for services rendered. The Agreement was returned to the Health Department for further signatures and handling.

Agreement -- The Board of County Commissioners signed a County MCH Assessment and Planning Project Agreement between Ravalli County and the Missoula City-County Health Department for the purpose of maternal and child health community assessment and planning activities in the County, as per the terms set forth, for the period commencing January 15, 1996 through June 30, 1996, for compensation in an amount not to exceed $11,021 for services rendered. The Agreement was returned to the Health Department for further signatures and handling.

Resolution No. 96-006 -- Barbara Evans moved and Michael Kennedy seconded the motion that Chair Kennedy sign Resolution No. 96-006, a Resolution relating to Missoula County Airport Tax Increment Industrial Infrastructure District: preliminarily approving the sale and issuance of bonds in the amount of $300,000; and authorizing the County’s staff to proceed with final documentation for the sale of the bonds, as per the terms set forth. The motion carried on a vote of 2-0.

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

FRIDAY, FEBRUARY 2, 1996

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

No Administrative Meeting was held; however, the following items were signed:

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, John Odlin, for the month ending the 31st day of January, 1996.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the monthly report of the Clerk of the District Court, Kathleen D. Breuer, showing fees and collections made for the month of January, 1996.

Site Inspection -- In the morning, Commissioner Kennedy accompanied County Surveyor Horace Brown on a site inspection for the request to vacate a portion of Jade Lane, in the Van Ostrand Addition (Mormon Creek area).

MONDAY, FEBRUARY 5, 1996

The Board of County Commissioners met in regular session; all three members were present in the forenoon. In the afternoon, Commissioner Evans attended the Juvenile Detention Quarterly Meeting in Polson.

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the afternoon, the following items were signed:

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Ann Mary Dussault, an independent contractor, to perform the following for the Health Department: provide consultation and facilitation to staff and Board of Missoula City-County Health Department in developing a mission statement process with each unit of the Health Department, as per the terms set forth, for the period commencing February 1, 1996 through June 30, 1996, for compensation in an amount not to exceed $4,000 (10 days at $400 per day).
Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Geoff Carlson, an independent contractor, to perform the following for the Health Department: provide design, drafting, consultation and assist with coordination to plan and complete remodel of Environmental Health, Nursing, and WIC at Health Department, as per the terms set forth, for the period commencing January 16, 1996 through June 15, 1996, for compensation in an amount not to exceed $1,830 (61 hours at $30 per hour). The Contract was returned to the Health Department for further signatures and handling.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement between the County of Missoula and Public Sector Personnel Consultants (PSPC) of Scottsdale, Arizona, for the purpose of PSPC to perform analysis, classification and job descriptions for all County positions in the 163 job classes, job evaluation, salary and benefits survey and comparison, salary grade schedule and salary grade recommendation for all positions in 189 job classes, as per the terms set forth. The County agrees to pay PSPC a sum not to exceed $29,250 for the project.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1995, between the Missoula Board of County Commissioners and Hellgate Writers, Inc. whereby the Missoula Board of County Commissioners has determined the need to sponsor cultural and aesthetics projects in Missoula County and Hellgate Writers, Inc. has proposed the Phase III Expansion of the Hellgate Writers Center for the Literary Arts; the scope of the work under this agreement is set forth in the grant application submitted to the Montana Arts Council and includes the Arts Council’s Agreement to provide funding for Cultural & Aesthetic Grant #0688, as per the terms set forth, for the period from July 1, 1995 through June 30, 1997 and having a total cash value of $9,000.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1995, between the Missoula Board of County Commissioners and the Missoula Symphony Association whereby the Missoula Board of County Commissioners has determined the need to sponsor cultural and aesthetics projects in Missoula County and the Missoula Symphony Association has proposed a project to provide concert support for Missoula elementary students in minority population schools; the scope of the work under this agreement is set forth in the grant application submitted to the Montana Arts Council and includes the Arts Council’s Agreement to provide funding for Cultural & Aesthetic Grant #0643, as per the terms set forth, for the period from July 1, 1995 through June 30, 1997 and having a total cash value of $2,000.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1995, between the Missoula Board of County Commissioners and Missoula Community Access TV (MCAT)/Montana Media Arts in Education whereby the Missoula Board of County Commissioners has determined the need to sponsor cultural and aesthetics projects in Missoula County and MCAT has proposed the Montana Media Arts in Education Project; the scope of the work under this agreement is set forth in the grant application submitted to the Montana Arts Council and includes the Arts Council’s Agreement to provide funding for Cultural & Aesthetic Grant #0627, as per the terms set forth, for the period from July 1, 1995 through June 30, 1997 and having a total cash value of $3,000.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1995, between the Missoula Board of County Commissioners and the Montana Players, Inc. whereby the Missoula Board of County Commissioners has determined the need to sponsor cultural and aesthetics projects in Missoula County and the Montana Players, Inc. has proposed a project to hire a technical director for its productions as well as other company support; the scope of the work under this agreement is set forth in the grant application submitted to the Montana Arts Council and includes the Arts Council’s Agreement to provide funding for Cultural & Aesthetic Grant #0639, as per the terms set forth, for the period from July 1, 1995 through June 30, 1997 and having a total cash value of $3,000.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1995, between the Missoula Board of County Commissioners and Missoula Children’s Theatre (MCT) whereby the Missoula Board of County Commissioners has determined the need to sponsor cultural and aesthetics projects in Missoula County and MCT has proposed Phase II of its Capital Campaign Project; the scope of the work under this agreement is set forth in the grant application submitted to the Montana Arts Council and includes the Arts Council’s Agreement to provide funding for Cultural & Aesthetic Grant #0684, as per the terms set forth, for the period from July 1, 1995 through June 30, 1997 and having a total cash value of $7,500.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1995, between the Missoula Board of County Commissioners and the Garden City Ballet Company whereby the Missoula Board of County Commissioners has determined the need to sponsor cultural and aesthetics projects in Missoula County and the Garden City Ballet Company has proposed the Montana Media Arts in Education Project; the scope of the work under this agreement is set forth in the grant application submitted to the Montana Arts Council and includes the Arts Council’s Agreement to provide funding for Cultural & Aesthetic Grant #0619, as per the terms set forth, for the period from July 1, 1995 through June 30, 1997 and having a total cash value of $3,000.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1995, between the Missoula Board of County Commissioners and Montanans for Quality TV/Bella Vista whereby the Missoula Board of County Commissioners has determined the need to sponsor cultural and aesthetics projects in Missoula County and Montanans for Quality TV/Bella Vista has proposed such a project; the scope of the work under this agreement is set forth in the grant application submitted to the Montana Arts Council and includes the Arts Council’s Agreement to provide funding for Cultural & Aesthetic Grant #0668, as per the terms set forth, for the period from July 1, 1995 through June 30, 1997 and having a total cash value of $5,500.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
FEBRUARY, 1996 - 3 - FISCAL YEAR:

TUESDAY, FEBRUARY 6, 1996

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans attended a meeting of the Valley Preservation Council held at the Frenchtown High School Commons.

No Administrative Meeting was held; however, the following items were signed:

Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY'96 budget:

1) Control No. 96-017, a request from the Historical Museum to transfer $4,950 from the Merit Reserve fund to the Permanent Salaries and Fringe Benefits fund for the purpose of raises for staff members, per memo from Bob Brown, Director; and

2) Control No. 96-018, a request from the Historical Museum to transfer $1,300 from the Exhibit Costs fund to the Permanent Salaries and Fringe Benefits fund for the purpose of reclassification of the Curator’s position from Grade 13 to Grade 14 and the consequent raise in pay, per memo from Bob Brown, Director.

Audit Exit Conference -- In the afternoon, the Commissioners and representatives of the Management and Budget Teams met with Paul Sepp and staff of Elmore & Associates for the Audit Exit Conference.

Also included:

* The Commissioners approved the appointment of Mike O’Hara as Deputy County Coroner as requested by Sheriff Doug Chase, replacing Undersheriff Weatherman.

WEDNESDAY, FEBRUARY 7, 1996

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

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Resolution No. 96-007 -- The Board of County Commissioners signed Resolution No. 96-007, Emergency Proclamation, whereby the threat of flooding was established on December 22, 1995, through Executive Order No. 15-95, State of Montana, proclaiming a State of Emergency existing in ten Montana counties including Missoula due to high winds, unseasonable rain and warm temperatures followed by intermittent freezing temperatures which raised water levels in Western Montana streams and rivers. High water levels and ice jams have restricted and redirected water flow in Missoula County rivers and streams. The Board of Missoula County Commissioners decided that responses and protective measures were necessary to protect public health, life, and property, as per the terms set forth.

Request for Partial Reconveyance -- Barbara Evans moved and Fern Hart seconded the motion authorizing the Chair to sign the partial release to Ken Allen on Rossignol Orchard Tracts No. 2. The motion carried on a vote of 3-0. Chair Kennedy signed a Request for Partial Reconveyance concerning the property described as Lots 13, 14, 15, 18, 19, 23, 50, 45A, 45B, 46A, 46B, 47A, 47B and 49 of Rossignol Orchard Tracts No. 2. The trust indenture was recorded in Book 453 at Page 33 Micro Records of Missoula County. The property to be released is described as: Lots 13, 14, 23, 50, 45A, 45B, 46A, 46B, 47A, 47B and 49 of Rossignol Orchard Tracts No. 2. The remainder of the property shall remain subject to the lien of the trust indenture previously identified.

Also included:

1) Fern Hart moved and Barbara Evans seconded the motion to approve the notes from the February 7, 1996 Monthly Departmental Meeting for Risk Management and Benefits. Included were the recommendations from the Safety Team with regard to the speed limit issue and also various draft forms for medical benefits and vision benefits. The motion carried on a vote of 3-0.

2) The Commissioners appointed Mike Halligan to a three-year term as a "second alternate" on the Larchmont Golf Course Board of Directors, beginning April 1, 1996.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

DECISION ON REQUEST TO VACATE A PORTION OF JADE LANE (VAN OSTRAND ADDITION -- MORMAN CREEK AREA)

Michael Kennedy said the first item on the agenda was a continuation of the request to vacate a portion of Jade Lane in the Van Ostrand Addition. He asked Horace Brown for a report on the review of the site.
Horace Brown, County Surveyor, said this was given to the County quite a few years ago and the road was never built. However, there is development going on in that area and will go on in the future and, therefore, he recommends that the County deny the request.

Michael Kennedy said that he and Horace went to the site and examined Jade Lane and he agrees with Horace that it would not serve the community interest to vacate it at this time. He said he believes the safety and trespassing issue and concerns about traffic through the area can be resolved by the Road Department with barricades. He asked Horace if that could be accomplished?

Horace Brown said, yes, if the Board requests that the area be barricaded off for safety reasons.

Fern Hart moved that the Board of County Commissioners deny the request to vacate Jade Lane which is located in Township 12 North, Range 20 West, Section 34, Van Ostrand Addition, from the west boundary of Lot 13 to the east boundary of Lot 13, in that Commissioner Michael Kennedy and Horace Brown, County Surveyor, viewed the road and recommend denial. Barbara Evans seconded the motion. Motion carried 3-0.

HEARING: MISSOULA CHILDREN’S THEATRE CDBG APPLICATION

Cindy Wulfekuhle, Office of Planning & Grants, said MCT (Missoula Children’s Theatre) has requested Missoula County apply for funds on behalf of its Missoula Children’s Theatre Central School Redevelopment Project through the Community Development Block Grant (CDBG) Program. The CDBG Program involves federal funds administered by the Montana Department of Commerce. The goal of the program is to develop viable communities by providing decent housing, healthful and safe living environments and economic opportunities, principally for persons of low and moderate income. This is accomplished through three categories within the CDBG Program. They are: economic development, housing and neighborhood revitalization, and public facilities.

This proposal will be submitted under the economic development category as it will be creating and retaining jobs for primarily low and moderate income households. In the 1995 program year, the CDBG Program at the state level had a total of $8,352,580 available for its programs after allocations for administration at the State and technical assistance funds were set aside. Of this $8 million, 1/3 or approximately $2.8 million was set aside for economic development projects. It is anticipated that the amount available to the State will be about the same for program year 1996.

MCT is a non-profit organization that was founded in 1970, by its current executive director, James Caron. MCT is proposing to complete the renovation and expansion of its facility on Adams Street and East Broadway in Missoula. Completion of the facility expansion will enable the company to grow by providing the necessary space to increase the size of MCT’s Tour Project and theatre programs. Mr. Caron will provide more detail as to the additional space to be provided and its uses. A direct benefit will be the creation of 29 new positions within the organization, 28 of which will be filled by individuals that are considered low to moderate income by HUD guidelines. MCT will be able to retain another 9.5 current jobs, 4.5 of which are held by low to moderate income individuals. While this is a benefit to Missoula’s economy and its unemployed labor pool, it is also a benefit to communities outside of Missoula. More than 36,000 children and 500,000 audience members in 601 communities across 46 states, Canadian provinces and communities in the Pacific Rim participated in MCT’s performing arts programs in 1995. In the handout (which she had distributed to the Commissioners and audience), you can see that another 33,000+ children directly benefited from other programs offered by MCT through its Issues & Awareness Tour which covers topics such as substance abuse, persons with disabilities and AIDS awareness; its Day Camps, Residency Camps, Camp Paxson program and local Community Theatre.

The renovation or rehabilitation of the structure has been underway since 1990 when the City of Missoula, through the Missoula Redevelopment Agency purchased the building from School District #1 on behalf of MCT. As a condition of MRA offering the building to MCT, MCT had to agree to match the purchase price with $300,000 of renovations to structurally secure the building. This requirement was met along with an additional $1.1 million to prepare the building for occupancy. This was accomplished through fund raising and a loan from local banks. The renovation/expansion of the facility was proposed to be accomplished in two phases. At a minimum, to complete Phase II of the project including the new construction, $2.1 million is needed.

The $2.1 million will cover approximately $127,000 for site work, $20,000 for demolition, $1.6 million for construction, $171,000 contingency, $160,000 for architect and engineering fees, $45,000 for technical theatre consulting and $10,000 for grant administration.

Sources of funds are proposed as follows: $1 million Missoula bank consortium loan, $300,000 from the Economic Development Administration, $300,000 in pledges and gifts specifically for the project and the CDBG grant of $500,000. Ideally, the Department of Commerce would like to see the assistance provided to local businesses be in the form of a loan. MCT’s mission is the development of lifeskills in children, particularly those in rural areas, through participation in the performing arts. The Tour Project provides over 63% of the company’s revenue. It is critical to the success of the organization and the ability of smaller, typically lower income communities to participate in the Children’s Theatre’s programs that the programs remain affordable. In Montana, MCT has determined that the majority of communities they reach have populations with less than 10,000 households, household incomes less than the state median income and unemployment rates higher than the state median rate of unemployment. MCT will be committed to paying as much debt service as possible through the bank consortium loan. For these reasons, staff recommends the Board of County Commissioners approve MCT’s request that a CDBG application in the form of $500,000 grant be submitted to the Montana Department of Commerce on its behalf and also that the Chair be authorized to sign on behalf of the Board.

Michael Kennedy thanked Cindy for her information and then opened the public meeting.
Jim Caron, Founder and Director of Missoula Children’s Theatre, said they would like to enter into a partnership with the County to complete the facility. He hopes that the Commissioners have had the opportunity to tour the existing facility and see the Phase I work that has been done but, if not, he invites them to come over at any time.

He continued that Missoula is the only city of significant size in the state that does not have a community center and he feels that their facility is beginning to fill that need. He said the document he distributed lists the wide range of community entities that used the facility during the past year.

He stated they hope to enter Phase II soon. In that phase, they will be completing a 320 seat auditorium, which includes a balcony, and a state-of-the-art backstage area. There will also be a beautiful lobby, a ballroom and an elevator stair tower which will provide complete access to both the new and existing facility. All of this, along with the size of the completed Theatre, will prove an asset to the City and County of Missoula. He then showed the Commissioners the site plan, a drawing of the building and the floorplan of its interior.

Craig Langel, CPA and President of the Board of MCT, said he has been on the Board since 1984. There are also several board members present at this meeting. They endorse this project enthusiastically and it has their full support.

Ron Klaphake, President and CEO of the Missoula Area Economic Development Corporation, said his organization, which is dedicated to helping existing operations expand and provide jobs for people in Missoula, support this project. It meets all the criteria they generally look for: it has a lot of community support, has matching funds that are needed and it creates jobs for Missoula residents.

Michael Kennedy thanked the speakers for their comments and asked if anyone else wished to comment on this project. No one came forward so he closed the Public Meeting.

Barbara Evans said she was delighted to see this project come before the Board. She would like to see the Children’s Theatre expanded and improved and supports this wholeheartedly.

Fern Hart said the Missoula Children’s Theatre is nationally known, is a credit to Missoula and she supports this request.

Michael Kennedy said the Missoula Children’s Theatre is an enormous cultural benefit to the community in addition to being an economic benefit. He said they are honored to be able to participate by working with this proposal.

Barbara Evans moved that the Board of County Commissioners approve the submittal of the request for $500,000 for economic development funds to the Montana Department of Commerce under the CDBG Program for the Missoula Children’s Theatre Central School Redevelopment Project. Fern Hart seconded the motion. Motion carried 3-0.

CONTINUATION OF HEARING: PROPOSED RESOLUTION TO CREATE MISSOULA DEVELOPMENT AUTHORITY

Michael Kennedy said the hearing on this proposed resolution began two weeks ago and, at that time, the Board elected to continue the hearing on this date, after which a decision will be made. He asked Michael Sehestedt to bring the Board up to date on the essence of the resolution before the hearing is continued.

Michael Sehestedt, Chief Deputy County Attorney, said what is basically proposed is a creation of a port authority. It will be known as the Missoula Development Authority and its purpose is to act in conjunction with other organizations in the development of commerce, industry, manufacturing, research and development, public service and other economic activities, support the creation, expansion, modernization, retention, relocation of new and existing business and industry, and otherwise, stimulate, assist, and support the growth of all kinds of economic activity. Its basic purpose is to increase the volume of commerce within the County and State. To accomplish these ends, it has the power to request tax levy authority from the Board of County Commissioners, it can own and develop land, provide infrastructure, and has a number of other powers. It is an entity with a great deal of authority to do things whose purpose it so simulate economic development. The Board governing the port authority will be appointed by the Board of County Commissioners so that the County does retain a certain level of control.

Michael Kennedy asked John DeVore if he had any comments?

John DeVore, Chief Executive Officer, said he did not but he would be happy to answer any questions about the proposed development authority.

Michael Kennedy said the public hearing continued from two weeks ago was re-opened. He asked if there was anyone who wanted to come forward to speak at this time. No one came forward and he closed the public hearing.

Fern Hart moved that the Board of County Commissioners sign the resolution to create the Missoula Development Authority, granting its powers and establishing its rules of operation, and sign the by-laws for the Missoula Development Authority. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart wanted to express her appreciation to John DeVore and the Development Committee for their discussions and research over a long period of time and she is pleased to see this project come to fruition. She feels this is a move in the right direction.
Resolution 96-008

Commissioners Michael Kennedy, Barbara Evans and Fern Hart signed Resolution 96-008, creating the Missoula Development Authority, granting it powers, and establishing the rules of operation, according to the items listed therein.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (RAKOW)

Colleen Dowdall, Deputy County Attorney, said they have received a request from Donald J. Rakow for a family transfer exemption for a 20.09 acre parcel located in the Meadows of Baron O’Keefe area northwest of Missoula, Tract 76 of COS 1925 located in the SE¼ of Section 16, T14N R20W. Mr. Rakow proposed to create a 12 acre parcel for transfer to his wife, Doris Christine (Chris) Rakow. The comprehensive plan in the area is open and resource (one dwelling unit per 40 acres).

The history of the parcel is as follows: In April, 1979, COS 1925 was filed by Geneva Cates creating 64 parcels greater than 20 acres in size. Mr. & Mrs. Rakow purchased Tract 76 in October, 1988, and Mrs. Rakow then quitclaimed her interest in the parcel on January 10, 1996, for the purpose of utilizing the family transfer exemption.

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

Nick Kaufman, Land-Use Planner with WGM Group, said he was representing Don and Chris Rakow. He said the Rakows have used the property to raise Arabian horses for showing. However, they found it necessary also to hold outside jobs to meet their financial obligations.

The Rakows like their neighborhood. Chris is the president of the homeowners’ association and has been involved in reinstating covenants. They would like to stay on the home place, sell the larger house and operations, and build a smaller home adjacent to the existing one. In summary, their goals are to stay on the land and build a new home. In order to accomplish that, they must sell the existing home and a portion of the property. The property has been put in Don’s name and Don wants to give 12 acres to his wife, Chris. Their intent then is to sell that parcel. If this is granted, the Rakows will be able to accomplish their goal. By state law, they will not have 2 parcels to sell but will have to stay on that remainder parcel which is exactly what they want to do. Another choice they have is to go through a subdivision review process and create 2 parcels. The outcome there is less certain than a gift to a family member. If they go through subdivision review and divide the land, 2 parcels may have to be sold to recuperate their costs or there could be other uncertainties.

He said the Rakows were present and both he and they are available for any questions the Commissioners may have.

Michael Kennedy, addressing the Rakows, said the Commissioners need to make a determination of whether this is an attempt to evade the subdivision process and, thus, they will be asking questions that may seem personal in nature.

Don and Chris Rakow said they understood.

Fern Hart asked Colleen if it was true that a remainder cannot be sold?

Colleen Dowdall said she believes a remainder can be sold.

Nick Kaufman said he had been informed that the remainder could not be sold as a separate parcel under a division of property for a family transfer.

Colleen Dowdall said that is the rule as it applies to subdivisions, but you can transfer a remainder on a COS.

Nick Kaufman said he stood corrected.

Fern Hart told the Rakows that their goal was a worthy one, however, it is a subdivision. She asked Colleen if a mortgage exemption would be better for this situation?

Colleen Dowdall said they did talk about the availability of a mortgage exemption for the parcel upon which they want to build a new home because that exemption is available for construction mortgages.

Fern Hart said that would divide the land and restrict them from selling that parcel.

Colleen Dowdall agreed that it would divide the land but said they could sell either the mortgaged parcel or the remainder parcel.

Barbara Evans asked, then wouldn’t the result be the same?

Colleen Dowdall replied it would, just using a different exemption.

Don Rakow said they had not considered a mortgage exemption. They were just trying to find a way to down-size their operation and the simplest, most straightforward way to do that seemed to be the family transfer.

Michael Kennedy said doing a family transfer here is inappropriate.
Barbara Evans said to go this route appears to be an evasion of the Montana Subdivision and Platting Act, but if they wanted a mortgage exemption, the law would allow them to finance construction of a house and it would accomplish the same thing.

Colleen Dowdall asked them if they planned on borrowing money to build the new place?

Don Rakow replied probably. It depends on how economically they can build the kind of house they want.

Barbara Evans said the loaners would probably need the land free and clear in order to give you a loan, and that is why this process is available.

Fern Hart said the Rakows have been honest and clear in their intentions and that is to create another parcel, give it as a gift to a family member and then sell it.

Michael Kennedy said this was a public hearing and asked if anyone wanted to comment on this issue. No one came forward and he closed the public hearing.

Fern Hart moved that the Board of County Commissioners deny the request by Donald J. Rakow for a family transfer for Tract 76 of COS 1925 located in the SE¼ of Section 16, T14N R20W, in that it appears to be an evasion of the Montana Subdivision and Platting Act. Barbara Evans seconded the motion. Motion carried 3-0.

Barbara Evans suggested to Mr. & Mrs. Rakow that they look into doing a mortgage exemption or a subdivision review.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (PUHRMANN)

Colleen Dowdall, Deputy County Attorney, said this was a request for a family transfer for Lot 60 of COS 219 located in Section 28, T13N R15W for Kai Puhrmann.

Kai Puhrmann has submitted a family transfer request for a 17.53 acre parcel located southeast of Potomac off Highway 200. Mr. Puhrmann proposes to create an 8.8 acre parcel for transfer to his mother, Pam Puhrmann. The comprehensive plan in the area is rural low density (one dwelling unit per 10 acres).

The history of the parcel is as follows: COS 219 was filed in March, 1974, creating 43 parcels mostly greater than 10 acres in size. Mr. Puhrmann purchased the parcel in June, 1992.

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

Michael Kennedy asked Mr. Puhrmann or his representative to step forward. He then explained that the Commissioners need to make a determination of whether this is an attempt to evade the subdivision process and, thus, they will be asking questions that may seem personal in nature.

Kai Puhrmann said he understood.

Fern Hart asked Kai if he was the only owner of this property?

Kai Puhrmann answered that he was.

Fern Hart asked if his mother planned to live on the gifted parcel?

Kai Puhrmann replied yes. He said they are originally from Helena. She was divorced from his father, had moved out of state, and has now expressed a desire to move back. He said she had originally loaned him the money for the down payment of the land and he wants to pay her back by giving her a portion of the land.

Michael Kennedy opened the public hearing and asked if anyone had any comments on this matter. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the request for a family transfer of an 8.8 acre parcel on Lot 60 of COS 219 located in Section 28, T13N R15W for Kai Puhrmann to his mother, Pam Puhrmann, in that it does not appear to be an attempt to evade the Montana Subdivision and Platting Act. Fern Hart seconded the motion. Motion carried 3-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): REVOCATION OF AGRICULTURAL EXEMPTION (MILODRAGOVICH)

Colleen Dowdall, Deputy County Attorney, said John Milodragovich has submitted a request to revoke an agricultural exemption for COS 1678 which is located between Highway 90 and Old Highway 10 East of Rock Creek. The parcel is part of the Shriner Placer mining claim and, in 1978, the Anaconda Co. created a 5.89 acre parcel pursuant to a trade with Mr. Milodragovich for some land in the Butte area. Mr. Milodragovich now wishes to sell the parcel for residential purposes and would require the agricultural covenant be lifted.

The history of the parcel is as follows: As stated above, the parent parcel is part of a mining claim which has existed probably since the 1800s. COS 1678 was filed in 1978 as an agricultural parcel and was then purchased by Mr. Milodragovich in September, 1978. COS 2759 was filed in 1982 to retrace the remaining ownership of the claim for subsequent sale to Mr. Milodragovich and COS 4128 was filed in October, 1992, retracing the parcel to the west of
COS 1678. In addition, there are two parcels which are split by Highway 90 to the north and the Clark Fork River to the south which are also part of the Shriner Placer claim and are also owned by Mr. Milodragovich. The parcel to the south, COS 4072 which was filed by Mr. Milodragovich in May, 1992, also as an agricultural covenant currently existing on the land.

According to the records kept by the Missoula County Surveyor’s office, the applicant has used one agricultural exemption to the Subdivision and Platting Act as described above.

Michael Kennedy asked if John Milodragovich or his representative would come forward.

John Milodragovich said they had their ancestral home in Butte, Montana, where his dad came from the old country and, out of his estate, they had this land. About 1978, the Anaconda Co. wanted to acquire it to expand their mining operations. Acting as a trustee for his family, they felt they should try to make an exchange so they did. They exchanged that piece of property for property in the Rock Creek area. Now they have a buyer for the area covered by COS 1678 and he was advised that there was an agricultural covenant that rules that they cannot build on that particular piece of land. So he hopes that the agricultural covenant can be removed so they can transfer ownership of the land.

Michael Kennedy said the process is similar to the two previous requests and the Commissioners are required to determine if this is an attempt to evade the subdivision process. He asked John if the land had been in agricultural use?

John Milodragovich said initially they had hoped to improve the property and possibly move some cattle off of their pasture lands. They never did accomplish that. They did use it for their horses but it was never developed for agriculture.

Michael Kennedy said, then, he understands that John’s predecessor and owner is the one who asked for and received the agricultural exemption. Then, when he traded for the property, the exemption was already on it.

John Milodragovich stated that was correct.

Michael Kennedy said this will allow his property to be sold without any restrictions and be developed. He asked John why is he not requesting the exemption be lifted on the entire parcel?

John Milodragovich replied because he does not believe there is an exemption on the entire parcel. The document he looked at stated the covenant was on COS 1678.

Fern Hart said she was concerned because this would be a subdivision if they didn’t buy all of the property.

John Milodragovich said they buyer wants to buy the entire piece, including the remaining parcel, and the site they want to build their home is on COS 1678.

Fern Hart said if Old Highway 10 was used at all anymore?

John Milodragovich said Old Highway 10 is an access to the property adjoining theirs. Old Highway 10 ceased to be a through road when the rest area was built. (He noted that the rest area bordered the property on the east.) The former right-of-way of Highway 2 became their property because it was only an easement for use during the time there was a transportation facility. But that is the access to the property that they propose to purchase.

Fern Hart said, if they build their house there, they will need to access it by using that right-of-way.

John Milodragovich said they have use of that highway right up to the railroad right-of-way.

Michael Kennedy asked if that was a paved road?

John Milodragovich responded yes.

Michael Kennedy opened the public hearing and asked if anyone would like to speak on this issue? No one came forward and he closed the public hearing.

Fern Hart asked counsel to clarify if this would still be a subdivision.

Colleen Dowdall replied that they have had two parcels of land since 1978. If this request for an agricultural exemption is granted, COS 1678 will be available to support a septic system.

Fern Hart moved that the Board of County Commissioners grant the revocation of an agricultural exemption for COS 1678 located in Section 8, T11N R16W for John Milodragovich in that this does not appear to be an attempt to evade the Montana Subdivision and Platting Act. Barbara Evans seconded the motion. Motion carried 3-0.

CONSIDERATION OF: BIGGERS ESTATES (SUMMARY PLAT) WEST OF RESERVE STREET

Pat Keiley, Office of Planning and Grants, said Corey Biggers requested to subdivide a 4.4 acre parcel which is described as Tract 1 of COS 2036 into three lots and create a summary subdivision named “Biggers Estates.” The proposed lots would be Lot A, Lot B and Lot C, each of which has an existing use. Lot A is a 1 acre parcel that has an existing single family house, Lot B is a 1.2 acre parcel that has an existing mini-warehouse storage building and Lot C, a 2.24 acre parcel, has an existing welding shop which Mr. Biggers plans to retain ownership of. The property is located off of Flynn Lane near Reserve Street and West Broadway. Lot A is zoned C-RR3, Lots B and C are zoned C-
11. The 1975 Comprehensive Plan calls for residential at a maximum density of 6 dwelling units per acre. The 1990 update designates the area as the airport planning area. Access to the proposed subdivision is off of Flynn Lane. Flynn Lane is 24 feet wide within a 60 foot right-of-way. An unnamed private gravel road runs along the west side of the property and is about 15 feet wide within a 60 foot private access and utility easement. There are no sidewalks or pedestrian walkways along either of the two roads and there are none proposed with this subdivision. The subdivision currently has existing private water and sewer systems. The subdivision will be served by Missoula County fire and sheriff and children from this subdivision will go to Hellgate Elementary, C.S. Porter Middle School and Big Sky High School.

This land is not used agriculturally at this time. It is a piece of land that is changing as is apparent from the existing uses on the property. The property is not in the 100 year floodplain, riparian area and has no wildlife concerns or primary travel corridors.

There are two variance requests. The first variance request deals with the private road and that is to reduce the road width from 24 feet to 20 feet. The existing road is 15 feet wide. Staff suggests that the road be approved at 20 feet not the 24 feet required. It is used by the mini-warehouse storage, the existing single family house and one other house to the south. After consultation with the County Surveyor, they recommend the 20 feet width.

The second variance request for driveway variance deals with sidewalks and pedestrian walkways or bicycle ways along both Flynn Lane and the private road. They have discussed what would be most appropriate for this particular property with the applicant and Board. Staff recommends that the owner waive the right to protest future RSID for the upgrading of Flynn Lane, which includes sidewalk. The reason for this is because this subdivision has no houses that actually front on Flynn Lane. The mini-warehouse storage and the shop do. Therefore, there will be light traffic. He has viewed the site and concludes that it makes more sense to have an RSID for improvements to Flynn Lane as Flynn Lane may see more development adjacent to it in the future as opposed to putting in a sidewalk or a paved road at this time. It makes more sense to do all the improvements uniformly and at one time. Regarding the pedestrian walkways or sidewalks along the private road, which has the mini-warehouse storage and existing single family home which are within the subdivision and a third building, which is another single family home, this is the time to require the walkways. They have tried to find a time that would be appropriate to put in a sidewalk or paved pathway, keeping in mind that the land to the south may be developed. Addressing this, staff wrote in a new condition, “that at such time a walkway is required by the governing body in conjunction with development of properties to the south, that the owners of Lots A and B shall construct a similar walkway within the private road easement extending to the Flynn Lane right-of-way.” So, basically, the south portion of the subdivision to the north portion along the private road is to be approved by the Office of Planning and Grants and the County Surveyor. This statement shall also be placed on the final plat and on each instrument of conveyance so that, when there is development to the south, that would trigger this walkway from the south all the way up to Flynn Lane. At that time, there may be a requirement to have sidewalks along Flynn Lane.

He said he forgot to mention that, regarding the first variance, subdivision regulations require the road to be paved. Staff recommends that, in addition to making it 20 feet wide, it be paved from the north portion of Lot B, which abuts Flynn Lane, south to the southerly end of the driveway for Lot A.

Michael Kennedy asked if the northern boundary shouldn’t be the edge of the existing pavement on Flynn Lane?

Pat Keiley agreed, saying, that way, the pavement would be continuous.

Michael Kennedy asked Pat if he had a recommendation requiring the pavement of the driveways off the private road?

Pat Keiley said that could be included in condition no. 2 and state that the driveway of Lot A, B and C be paved back 20 feet from the County road.

Michael Kennedy said that wouldn’t work.

Horace Brown, County Surveyor, said the reason for paving a driveway that comes on the County road is to cut down the track of gravel and dirt and it is also a safety concern. But this is a private road with very little traffic and therefore he does not believe we would gain much by having the driveways paved unless they are paved the full length.

Michael Kennedy asked if he was correct in understanding that it would be a good idea for pavement of the driveway for Lot C, which is 20 feet off the edge of Flynn Lane?

Horace Brown replied yes. He said it doesn’t matter on the other ones.

Pat Keiley said it made sense to pave the driveway for Lot A as well since they are recommending paving the unnamed private gravel road. So he proposes a condition that Lot A driveway be paved back 20 feet from the private road similar to condition 2, which deals with driveways for Lot B and C, which front on Flynn Lane.

Michael Kennedy said Lot B fronts on the private road.

Pat Keiley said that was true. He said condition no. 2 read “Lot B and Lot C driveways” so it should read just “Lot C” since Lot B does not front on Flynn Lane. In other words, Lot C driveway should be paved back 20 feet from the paved County road Flynn Lane and Lots A and B driveways be paved back 20 feet from the private road. That would make continuous pavement from the driveway to Lot A all the way up to Flynn Lane. There will also be a paved driveway on Lot C to the shop.

Horace Brown added Lot B should only access unto the private road and not unto Flynn Lane.

Pat Keiley continued and said, when subdivisions are near the airport, they ask the subdivider to ask for comment from the Missoula County Airport Authority. John Seymour, with the Airport Authority, wrote and said that the land is within the airport influence area and that he would require conditions be met prior to filing of the final plat. Those are
Biggers Estates conforms to the subdivision requirements, the subdivision regulation process, the survey requirements, the provisions of easements for utilities and also legal and physical access, subject to the variance request regarding the width of the road. The staff recommends approval of Biggers Estates summary plat based on the findings of fact and subject to conditions 1 through 11 and no. 13, with no. 12 being deleted and with the previous discussion of the change in condition no. 2, and with the addition of the condition that states Lot A and Lot B driveways be paved 20 feet from the private road easement. Also, that Lot B only access off the private drive and not off Flynn Lane.

Fern Hart asked if there would be a waiver of an RSID for sidewalks or pedestrian walkways along Flynn Lane and along the interior road?

Pat Keiley said there is a RSID for Flynn Lane in condition no. 6. You cannot have an RSID for a private road so, in dealing with sidewalk or pedestrian walkways for the private road, he put in language now, before the properties to the south develop and there is more access and pedestrian use, that will assure sidewalks or paved pathways will be put in by the owners of Lot A and Lot B at that future time. He placed that language in condition no. 13.

He said he and Horace Brown have discussed the fact that the private road does not have a name. Condition no. 9 requires that it be named and approved by the him prior to filing the final plat.

Fern Hart asked if was possible that the road be paved from southerly boundary of the driveway of Lot A if a development happens further south?

Pat Keiley said the rationale behind having the road paved and not putting in the sidewalk or pedestrian walkway is that currently the road will be used by the people using the mini-warehouse storage. They most likely will drive on it but not walk on it. The people in the house will also drive on it but may be the only ones to walk on it. He said if the property to the south develops, subdivision review for that property would require that last stretch of the private road to be paved.

Michael Kennedy said the land further south is raw land and presumably it will be developed and will probably need public road in that area. If that is the case, the public road standard will be effective, which would mean that there would be a widening requirement for that private road. He asked how the County could effect the widening of that road for the probable future subdivision?

Colleen Dowdall, Deputy County Attorney, said this is a 60 foot wide easement, so if the County acquires this as a public roadway, they could require that it be widened for additional traffic. It may be a condition of a future subdivision to the south to have to improve and widen the road. She believes the greater difficulty would be to get the right-of-way from this property owner so someone could develop the land to the south.

Michael Kennedy replied, that assuming they can use the right-of-way, then he understands that the County can place a condition on a future subdivision south of this one which necessitate improvements to the road through that property, including additional width, sidewalks, gutters and curbs.

Ron Ewart, Eli & Associate, said he agrees with the staff regarding the sidewalk. If you continue to go west on Flynn Lane, there are about 3 houses on ranchlands. There would be no one to use the sidewalk. He thinks it would be a good idea to have the waiver on there so it can be done later. It is also a good idea to have the statement on the plat so, when more development occurs to the south, they would be required to put in the sidewalk at that time.

Regarding the paving, they asked for a variance from private road standards to private driveway standards. Whenever there are two lots, then you are only required to do the driveway standards. If there are more than two, then private road standards come into effect which are the same as County road standards. Since this private road accesses two lots in this subdivision and only one additional lot further down, he felt it was reasonable to do private driveway standards. Also, cost is a major issue with paving.

He said there is a buy/sell agreement on this which precipitated the subdivision. As part of the buy/sell agreement, the owner has agreed to pave 20 feet back from Flynn Lane because that is what the County Surveyor originally asked for. Obviously now, with more paving, it will be more expensive and he hopes that it will not hurt the deal. He asked that the payment go to the access to Lot B, where the mini-storage is. That way, from that point on south, they are only accessing two lots. That would be the same as driveway standards. They could even do the 20 feet to the mini-storage and then it would be gravel from that point serving Lot A and the other house to the south. He said this would save the buyer some money.

Barbara Evans said, in the past, she knows the airport requested that they do a policy regarding avigation easements. She does not see an avigation easement included in these conditions.

Colleen Dowdall said they have been sending all of the subdivisions in the airport influence area or even close to it to John Seymour and he then gives the County the requirements he wants placed on the plat. Oftentimes, he will include an avigation easement. She does not know if he wanted it included for this subdivision.

Pat Keiley said Barbara Evans was correct in saying that our conditions do not specifically call for an avigation easement.

Lisa Moisey, Office of Planning and Grants, said the last avigation easement she remembers doing was for Deschamps Lane, and that was for a commercial area.

Barbara Evans said she is not sure that we have the monitoring ability to ensure future conditions be met.
Pat Keiley, first talking about the avigation easement, speculated this subdivision may be further away from the airport than some of the previous subdivisions that were required to have an avigation easement. The language in condition no. 13 would require to go over this subdivision review when the land south is developed.

Barbara Evans asked how does the County monitor this matter?

Pat Keiley said that is the difficulty with the private road where the County cannot do an RSID. They are attempting to do something similar to that with condition 13, however.

Colleen Dowdall agreed that it was difficult to do. Because it is a private road, they cannot require a public improvements guarantee nor a waiver of the RSID, so it is difficult to enforce or monitor.

Barbara Evans said she would like to find some way to do this.

Pat Keiley said, if they do these in the future, he would like some way to keep track of future requirements and to be brought to their attention when the appropriate time arises. He said the options here are to not require the walkway or require it now.

Michael Kennedy noted that this area has little traffic. They are widening the road from 16 feet to 20 feet and are requiring it to be paved. He asked Colleen, if the County has no requirement for a walkway, can they add that to future subdivisions to the south?

Colleen Dowdall answered that is a possibility.

Michael Kennedy said the problem here is when the land to the south is developed, it puts the burden on Lots B and A to provide a walkway for them, when in fact, what is being provided for them is a wider paved street where they will probably walk anyway. Thus, he thinks they should abandon the requirement in this case.

Pat Keiley said he had a concern that the burden will be placed on the properties to the south, to not only widen the road from 20 feet to 24 feet, but to put walkways along both Lot A and Lot B, as opposed to the owners of Lot A and Lot B putting in the walkway.

Fern Hart said she believes this will be a County road in 2 years and there will be development to the south. Then after 2 years, she believes it will be a City road.

Colleen Dowdall said she is not sure how the County will get the right-of-way for this particular parcel once the subdivision is completed. To the south, they can ask for the right-of-way as a condition of approval of any future development but the County would probably have to buy the right-of-way.

Fern Hart said there is a 60 foot private roadway easement and she believes that the people there would like it to be a County road because then the County would maintain it.

Colleen Dowdall said that was true because those are the cases in which people willingly dedicate easements.

Fern Hart said she thinks we will regret not trying to get in a sidewalk.

She wondered if this matter can be settled but perhaps temporized. She said it is conceivable that within the easement they can develop a good road within the easement if these roads are not part of the grid plan. If they are, then the County will deal with them accordingly. But she does not want to approve this, however, without some sort of walkway.

Colleen Dowdall asked Ron Ewart if he was willing to meet condition 13? If he is, than the variance for sidewalks is not needed.

Ron Ewart said yes, he was.

Barbara Evans asked if she was correct din believing that they could put the requirement for the walkways on the instruments of conveyance and, if anyone wanted to sell the house in the future, they could not sell it if the walkways were not put in.

Ron Ewart said that was correct. He compared it to having a lien.

Fern Hart moved that the Board of County Commissioners approve the variance request for a reduced road width from 24 feet to 20 feet for the private road and approval of the request not to pave the portion of the private road which extends from the southerly end of the driveway of Lot A to the southern boundary of Biggers Estates Subdivision, located on Flynn Lane just west of Reserve Street and West Broadway in Section 7, Township 13 North, Range 19 West. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners approve the request for the Biggers Estates summary subdivision plat located on Flynn Lane just west of Reserve Street and West Broadway in Section 7, Township 13 North, Range 19 West, based on the findings of fact and contingent on the conditions listed below:

1. Plans for grading, drainage, sewer, sidewalk, and streets shall be approved by the County Surveyor prior to final plat filing.

2. That the Lot C driveway be paved back 20 feet from the paved County Road, Flynn Lane, to be approved by the County Surveyor prior to filing the final plat.
2A. That the Lot A and Lot B driveways be paved back 20 feet from the private road easement, to be approved by the County Surveyor prior to filing the final plat.

2B. That the Lot B access come off of the private road and not off of Flynn Lane, to be approved by the County Surveyor prior to filing the final plat.

3. A $50 fee per lot shall be paid to the Missoula Rural Fire District toward the purchase of a large diameter hose, prior to plat filing.

4. Access must meet UFC standard and adequate turnaround space be provided, prior to plat filing.

5. All utilities shall be placed underground and easements shown on the final plat. Utility easements shall be a minimum of 20 feet wide and their location shall be approved by the appropriate utility and the governing body. In addition to the easement location, the following statement shall be shown on the face of the plat:

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

6. That the following statement shall appear on the face of the final plat and in all instruments of conveyance:

   "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to Flynn Lane, including but not limited to paving and sidewalk based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

7. Plans for any private driveways more than 150' in length on either lot shall be approved by the appropriate fire district for turning around of fire apparatus, prior to plat filing. That the private driveways greater than 150 feet in length shall have a gravel width of 12 feet with an unobstructed width of 20 feet with a vertical clearance of 13 feet 6 inches, to be approved by the appropriate fire jurisdiction prior to plat filing.

8. That the owner comply with the following Missoula County Airport Authority provisions:

   a. Complete the pertinent requirements of the Airport Influence Area, some of the requirements will not apply as you are not proposing a specific development at this time.

   b. Notify future owners of the requirements of the Airport Influence Area.

   c. All future construction will have to be approved by the Missoula Office of Planning and Grants, when you submit the building plans and specifications please include a scaled map showing the distance from the proposed facilities to the airport, elevation at construction site, heights of proposed construction.

   d. Submit a "Notice of Proposed Construction or Alteration", Form 7460 to the Federal Aviation Administration if the proposed construction exceeds 200' AGL or violates a slope of 100:1 from the nearest aircraft operations area (This is a Federal requirement.).

   e. Notify the Federal Aviation Administration of any proposed waste disposal site or process that will occur on subdivision.

   Each element is to be approved by John Seymour of the Missoula County Airport Authority prior to plat filing.

9. That the road running north/south adjacent to Lots A and B be named and be approved by the County Surveyor prior to filing the final plat.

10. That the private road running north/south adjacent to Lots A and B extending from the Flynn Lane road to the southerly portion of the Lot A driveway be widened to 20 feet and that that portion be paved, to be approved by the County Attorney prior to plat filing or shall be part of the improvements guarantee.

11. That the following statement shall appear on the face of the final plat and in all instruments of conveyance:

   "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for inclusion in a dust abatement district to provide for dust control on the unnamed private road based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

12. That the following statement shall be placed on the face of the final plat and on all instruments of conveyance:

   "That at such time a walkway is required by the governing body in conjunction with development of properties to the south, that the owners of Lots A and B shall construct a similar walkway within the private road easement extending to the Flynn Lane right-of-way, to be approved by the OPG and the County Surveyor."

Barbara Evans seconded the motion. Motion carried 3-0.
CONSIDERATION OF: LAMOREUX SUMMARY PLAT 4-LOT RESIDENTIAL SUBDIVISION

Lisa Moisey, Office of Planning & Grants, said Lamoreux Subdivision is a proposed 4 lot residential subdivision of Tract #4, COS 4129, which was filed in 1992. The developers and Mildred Lamoreux and Joann Walker are proposing to create 4 single family residential lots on slightly over 3 acres. The property is located on the Linda Vista subdivision and accesses from Lamoreux Drive, which is an existing private gravel road. The property is zoned CRR-II in the County, which is a single family zoning district that allows for a maximum density of up to two dwelling units per acre and, given that this property could support up to 2 dwelling units per acre if services are available, a future subdivision of Lot 3 of this subdivision could feasibly occur at such time when sewer is available. As such, staff recommends that the developer delineate on the face of the plat two building envelopes on Lot 3 and limit the home location to one of the two building envelopes. At this point, sewer is not necessarily available for an additional lot but may be in the future and they want to keep options open. This subdivision is in-fill development now and future subdivision of Lot 3 would be further in-fill development.

The developer has noted that sewer connections are available into the Linda Vista force main. A representative of Druyvestein Johnson & Anderson has indicated that 4 additional service connections are available for use for this subdivision.

The developer has requested two variances to part of this subdivision. The first variance is from the subdivision regulation which requires sidewalks to be provided in all subdivisions. The developer has stated that, due to the rural character of the subdivision, there is little need for sidewalks to be installed and, further, there are no connecting sidewalks in the area. Staff had originally looked at this and believed they would deny the variance request and require a pedestrian walkway along Lamoreux Lane on the property abutting Lots 1 and 2. But she went out to the property yesterday and, seeing the way the road aligns within the easement, noted that it cuts sharply to the right on Lot 1. To put the gravel walkway would result in a considerable cut into the hill which would probably be a greater cost in terms of the landscape and financial cost than the benefit would be. So staff suggests we change the recommendation from denial of the variance request to granting the variance request as they believe there would be an undue hardship if the full regulations in this case were enforced.

The second variance request is from paving. Lamoreux Lane is a private road and is maintained through a road agreement with those who own tracts within the subdivision. The developer in this case would be required to pave the portion which is internal to the subdivision. Staff recommends approval of this variance request since the more reasonable option would be to pave the road when the homeowners of this whole development area decide to do so rather than pave a short portion of the road in the center that does not connect to any other paved portion.

As a mitigating effort, staff recommends a condition regarding application of dust abatement be included in the road maintenance agreement. She also noted that, if approval of variance request regarding the sidewalks is approved, condition no. 3 would need to be eliminated.

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As a mitigating effort, staff recommends a condition regarding application of dust abatement be included in the road maintenance agreement. She also noted that, if approval of variance request regarding the sidewalks is approved, condition no. 3 would need to be eliminated.
John Kellogg said the drainage issue in regard to a new development can be addressed with retaining run-off on site with adequate design of the driveways and new structures.

Michael Kennedy said then it should not be a problem to add that as a condition that all drainage needs to be retained on the lots during the development stage.

John Kellogg said that was suggested by Horace Brown and he thinks it could be done.

Colleen Dowdall noted that the entire road was not included in the boundaries of the subdivision. Only about half of it is.

John Kellogg said the initial survey created the lot boundary as the center line of the road easement, with the result that half of the road easement is on an existing lot, Tract 5 to the east, and the other half is on proposed Lot 1. All that is being included in this subdivision is the east half of the easement.

Michael Kennedy said another problem he sees is that there is no outlet. There are 4 houses that access off Lamoreux Lane and, with this proposal, the subdivision will be almost doubled in size. As the subdivision stands now, the existing road is poor, the drainage is poor, there are no walkways and there is no outlet. These are serious problems that will get worse as the size of the subdivision increases.

John Kellogg agreed that the grade coming up by Lot 1 is steep and is close to 12%. The road does dead-end just beyond the subdivision. The number of homes that are going to be on this road, with the possible exception of Lot 3 being split sometime in the future, is going to be set if this proceeds. That number is going to still leave this as a low-traffic, semi-rural (lot sizes here are ½ acre) type of development and isolated from the surrounding properties because of its limited access. It is not a high density development and it will not be expanded beyond what they are proposing right now.

Fern Hart said she sees this as a small subdivision with road and drainage problems. Neither the road nor the drainage will belong to the County, but the County will be criticized for approving it.

Michael Kennedy asked if they would like to withdraw their request today and go over the road, drainage and walkway issues, perhaps coming up with other ideas that would improve the situation?

John Kellogg said they have discussed these issues with the staff. Regarding the walkway issue, the pedestrian movement through this development essentially cannot follow any other path than the existing road. If you attempt to try any other route, you will encounter steep slopes and difficulty going around the backs of property. The current situation, which has slow traffic and is semi-rural, is the best option to handling pedestrian movement through and out of the subdivision down to lower Miller Creek Road.

Michael Kennedy said, if this subdivision were on a flat piece of property, there would probably be no question that they would require a sidewalk. But just because there are steep slopes does not mean there is less of a need. That may, in fact, mean there is more of a need because of the lack of safety to walk in the neighborhood.

John Kellogg said regarding the road issue, which includes improvement and maintenance, there is a private existing agreement that is accepted by the owners of this property and the parcels above and below the area. If there is a demand for improvement of that roadway due to a need from the adjacent property owners to have paving, dust abatement, widening, etc., that agreement is a vehicle for these matters without coming before the County.

Michael Kennedy asked what about the safety of pedestrians or the drainage?

Colleen Dowdall commented what has to be decided is the issue of how the County is going to deal with in-fill development and existing infra-structure. The infra-structure by way of roadway is here and it does not meet the current subdivision standards. So she suggests they ask themselves if the developers should be required to build the road to meet the regulations or does the value of in-fill development offset that and it is not necessary to require additional improvements to the road? With regard to the drainage plans, she asked John if they submitted drainage plans yet?

John Kellogg replied no, because there are no public improvements. Drainage plans for this kind of subdivision would be included in a site plan for individual lots.

He said there were calculations for the 5 year frequency storm but they were not included in this application. Those will made to the state.

Colleen Dowdall said these items are normally taken care of by the County Surveyor and come at the filing of the final plat.

Fern Hart asked John Kellogg if he could talk to those who are a part of the road maintenance agreement to agree to have the road blacktopped?

John Kellogg answered that he didn’t know because he had not presented that to them.

Fern Hart asked if he would try that. She is concerned about the road; it is not far from town and the private road comes out on a busy County road. She asked the County Attorney how long a driveway can be in a rural subdivision?

Colleen Dowdall said they are not considering it a driveway but a private road. We are requiring private road standards with regard to the width.
Barbara Evans asked, given the problems the County has seen with drainage where there is pavement but no curbs and gutters directing the water to a specific drainage area, should they require curbs and gutters as well?

John Kellogg said, in his opinion, curbs and gutters in this case would make the problem worse for Miller Creek Road, which is where the water would be led to.

Michael Kennedy said the road gives the impression that it was developed up a dry wash and followed the course of the stream because the stream is running down that road. He does not know what the solution to this problem is but he believes that if this area is to be developed, a solution can be found.

John Kellogg said he is concerned that to find a solution here would involve the other property owners and he is not sure he can get them all to agree.

Michael Kennedy said he appreciates that and wants to be reasonable, but they want to make sure these kinds of problems are taken care of. The way this is presented today does not show him any vehicle to ensure the problems are taken care of.

Barbara Evans said they have half the year taken care of with the dust abatement but the winter half problems need resolution also.

Lisa Moisey said she wanted to read from the subdivision regulations regarding drainage. She read “that unless an adequate storm sewer exists or is provided, all surface run-off in addition that normally present before subdivision shall be retained on site or released from the site in a manner that will not substantially increase the peak run-off normally present before subdivision. All drainage systems shall meet the minimum standards of Montana Department of Health and Environmental Sciences. Division of Environmental Sanitation is required by MCA Title 76.”

John Kellogg said, typically, if the developer was not proposing new roads or new public improvements in a subdivision, there were no specific grading or drainage plans proposed because the grading and drainage would be part of the individual lot development.

Colleen Dowdall said she has never had the issue of when grading and drainage is submitted posed to her. They have various places in the regulations that talk about grading and drainage plans and that the County Surveyor approves them along with the governing body.

John Kellogg said he remembered that they did one in Turah when the County Surveyor’s office said that the ditch along the road channeled the water down into a lot they were dealing with and they did a specific plan for that.

Colleen Dowdall said, since she has worked for the County, the Surveyor was required to approve the grading and drainage plan. She noted that was evidenced in condition no. 1, which read “All plans for grading and drainage shall be approved by the County Surveyor prior to filing of plat.”

John Kellogg said if this subdivision did not have a concern over grading and drainage, typically what it would include is a calculation by an engineer of the increased runoff as a result of a 5 year frequency storm and a statement regarding the ability of the soils to absorb the additional runoff. Without an ongoing problem, that is usually adequate for both the County Surveyor and the Health Department.

Fern Hart said it appeared this subdivision would be more difficult than Sunlight Lane.

Colleen Dowdall said the road is one issue and the drainage and grading is another issue.

Fern Hart said, however, those often go together.

Colleen Dowdall suggested the Board recess for 5 minutes to give John Kellogg time to talk with his client.

Michael Kennedy granted time to John Kellogg and his client.

He then asked if, in the interim, there was any other business or public comment to be brought before the Board?

OTHER BUSINESS/PUBLIC COMMENT

Ton Tweedale said he wanted to urge the Commissioners to carry out the provisions of the Montana code for citizen participation, which states that the provisions of this section shall be interpreted liberally. He said he is referring to the appointments to County boards by the Commissioners. He encouraged them to interview the applicants. To do that would be following the mandate of the law.

He is interested in Phil Schweber’s application to be reappointed to the Health Board. He has an outstanding complaint with Mr. Schweber over an issue that revolves around the Air Pollution Control Board, i.e., the Board of Health’s by-laws which state that a citizen may file a grievance. His grievance is that Mr. Schweber 2 years ago issued a gag order, saying that if he wanted to continue with certain aspects of his grievance, it would endanger his right to a grievance hearing.

The Privacy Act is a balancing between public participation and public officials. He stated his grievance at this time concerns solely the act of Department of Health officials. It relates to the way White Pine Sash matter was handled. There is no way that his grievance involves any Privacy Act matters of actions by public officials. He urges the Commissioners to vote to interview Mr. Schweber. This is an outstanding issue which Mr. Schweber has been stonewalling on and the reappointment is an opportunity for Commissioners to bring that question up, short of him filing a lawsuit on it. The America Civil Liberties Union Chapter was initially interested in this gag order by Mr.
Schweber. They eventually dropped it because of lack of time to pursue it. But originally their review of the argument was favorable. They agreed that it was an improper gag order.

He said, on a different subject, regarding policy decisions regarding Transportation Technical & Policy Advisory Committee (TPAC) of Missoula, there was a discussion of transportation demand management measures. These are measures that would reduce the demand for road capacity rather than increase the supply. At the end of a 3 month process, a large majority of all members of the TPAC were polled and asked what their preferences on this menu of TDM options. The consultants were very knowledgeable and estimated that, will full back-up of their models, 2% reduction of vehicle miles traveled could be achieved by option implementing TDM options that involved employer trips. The reason is it only at 2% is because only 1 in 6 trips in Missoula are generated to and from employers, including the University. 6%-7% VMT reduction could be achieved by a package of TDM options that includes land use planning and bike programs. Finally, 18% VMT reduction could be achieved with policies aimed at parking pricing. For example, a parking tax of $1/day per parking space could achieve an 18% reduction in vehicle miles traveled. He concludes that he is in the process of finding out what percentage of CMAQ funds, which are supposed to be allocated to congestion mitigation and improving air quality, are, in fact, going to measures that widen roads, build bridges, etc. He urges the Commissioners, if they are interested in reducing vehicle miles traveled and keeping in mind the rate Missoula is growing at, they should be looking at land use options and options that affect the parking situation.

Michael Kennedy said, with a 2% reduction in traveled miles on employee trips, 67% land use planning and 18% in parking tax, if there was a decision taken, that it was taken in favor of a lower one than a higher one. He asked Tony if this is what he was saying?

Tony Tweedale said the informal polling indicated a vast majority preferred to look at TDM programs that affect employer, the one that would achieve the least results.

He added that, when he questioned that, if that does not work since 2% will not improve air quality, which is the driving force for the policy decisions, if these TMD strategies don’t work, they will come back and take a second look. But that is not pro-active. He feels it will be much harder to reduce the TMD later. There will be more development and more pressure against limiting parking, among other things.

Barbara Evans said one of the reasons the majority of the Committee did not support the parking tax was partially because we don’t have the legal authority to do that.

Michael Kennedy said, the point is, though, if the County is spending a lot of money, it may be misspent by placing it in an issue that may not produce a desired result.

Tony Tweedale agreed. He stated that he heard Barbara Evans state she will not support anything that is illegal. But he suggested that the Commissioners find out if a parking tax is illegal. He is not familiar with it.

Barbara Evans said the Commissioners do not have the power to write taxation. They are an arm of the State and they can only do what the State specifically allows them to do. Taxing is not one of them.

Tony Tweedale asked if they had the power of local option tax? He reiterated that he was not familiar with tax law.

Michael Kennedy said it was on their legislative agenda for Montana Association of Counties. They will be looking at that.

He thanked Tony for his comments and noted that John Kellogg and his client were ready to continue their hearing.
CONSIDERATION OF: LAMOREUX SUMMARY PLAT 4-LOT RESIDENTIAL SUBDIVISION (RESUMED)

John Kellogg said the Walkers would agree to a two week delay to give them time to address issues that have come up in this meeting. He noted that a large part of the drainage that is occurring is a result of drainage coming from above the development.

Fern Hart said that it is what they will say below this subdivision. She realizes that this is not easy and also that this is a choice piece of land.

Michael Kennedy said he hopes John senses a willingness on part of the Commission to work this out if possible rather than reject the subdivision. He believes that postponing a decision is best at this time. It is possible that, with ongoing discussion and thought to the matters brought up, solutions can be found that will accommodate everyone.

Lisa Moisey said, in looking at a calendar, this hearing will be continued on Feb. 21, which is only 1 day after a 35 day deadline.

Colleen Dowdall said we still require a letter granting the County an extension to making a decision from the applicant.

John Kellogg said the Walkers are going to re-evaluate their situation and what they are trying to do with this proposal. At that time, they will decide on a specific date.

Michael Kennedy said that was fine but to remember the County still needs to receive a letter to that effect.

John Kellogg said the letter would be provided.

There being no further business to come before the Board, the Commissioners were in recess at 4:03 p.m.

THURSDAY, FEBRUARY 8, 1996

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, the Commissioners attended the Personnel Director Candidates Forum.

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated February 7, 1996, pages 2-40, with a grand total of $210,010.28. The Audit List was returned to the Accounting Department.

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Task Order No. 7 -- Chair Kennedy signed Task Order No. 7 (Immunization Program) for DPHHS Contract No. 360163-TO-07, Federal Catalog No. 93.268 between Missoula County and the Montana Department of Public Health and Human Services with regard to the terms of the master agreement between them concerning the provision of health-related services in order to administer a hepatitis B immunization project within the County’s service area, as per the terms set forth, for the period commencing January 1, 1996 through December 31, 1996. The maximum total amount payable is $20,000. The document was forwarded to DPHHS in Helena.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Kathleen J. Gromko, an independent contractor, to perform the following for the Partnership Health Center: provide continuing coordination and leadership for the Missoula County Breast and Cervical Cancer Planning Project and the project’s community coalition (including its steering committee), as per the terms set forth, for the period commencing January 1, 1996 through June 30, 1996, for compensation in an amount not to exceed $3,000.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Mikel Shakarjian, an independent contractor, to perform the following: in conjunction with the Missoula County Cumulative Effects/Carrying Capacity Study, conduct a project to isolate the potential impacts of lakeshore and watershed development on the long-term environmental, aesthetic and economic values associated with lakes and surrounding properties in Missoula County; and provide the Missoula City-County Office of Planning and Grants with relevant information illustrating the need and public support for regulations to ensure the lakes of Missoula County will provide the current level of goods and services for future generations, as per the terms set forth, for the period commencing February 1, 1996 through May 31, 1996, for compensation in an amount not to exceed $1,000.

Agreement -- Chair Kennedy signed a Standard Form of Agreement Between Owner and Architect between Missoula County and the Architects Design Group of Kalispell, Montana with regard to the development of a preliminary design for a new Missoula County Detention Facility, as per the terms set forth. The project scope is approximately $17,500,000 and includes “Justice” facilities to be defined by Programming review. The document was returned to John DeVore, Chief Executive Officer, for further handling.
Other items included:

1) the Commissioners appointed Kevin Kerr as a member of the Board of Trustees of the Missoula Rural Fire District. The appointment will be effective until the School Election, which will be held on April 2, 1996. At that time, the residents within the boundaries of the Fire District will elect the Board of Trustees.

2) the Commissioners appointed Kathleen A. Smith as a "regular" member on the Missoula City-County Animal Control Board to fill the unexpired term of Cass Chimske through December 31, 1996, at which time she will be eligible for reappointment to a two-year term.

3) the Commissioners re-appointed Raymond F. Gardner to a two-year term on the Missoula City-County Animal Control Board through December 31, 1997.

4) the Commissioners re-appointed Jean E. Belangie-Nye to a three-year term on the Lolo Mosquito Control Board through December 31, 1998.

5) the Commissioners re-appointed Dale M. Wisby to a three-year term on the Lolo Mosquito Control Board through December 31, 1998.

6) the Commissioners appointed John R. Gordon as a "regular" member on the Missoula County Airport Authority to fill the unexpired term of Marlys Rulon through December 31, 1998.

7) the Commissioners appointed Bruno Friia to a five-year term as a "regular" member on the Missoula County Airport Authority through December 31, 2000.

8) the Commissioners appointed Cheryl O. Thompson as a member of the Seeley Lake Community Council to fill the unexpired term of Pat Swan Smith through the first Tuesday in April of 1998.

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

FEBRUARY, 1996 - 18 - FISCAL YEAR:

FRIDAY, FEBRUARY 9, 1996

The Board of County Commissioners met in regular session; all three members were present. During the day, the Commissioners interviewed the candidates for the Personnel Director’s position.

No Administrative Meeting was held; however, the following items were signed:

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the monthly report of Sheriff Douglas Chase, showing the items of fees and other collections on account of civil business for the month ending the 31st day of January, 1996.

Resolution No. 96-010 -- The Board of County Commissioners signed Resolution No. 96-010, Disaster Declaration, whereby unusual weather conditions, including early winter rains and warm temperatures, followed by extreme cold, the high temperatures and rain, have caused severe losses to Missoula County residents’ homes and property, as well as damages to public roads and buildings, this incident occurring on February 7, 1996. The Commissioners stated that specific responses and protective measures were necessary to protect public health, life, and property, as per the terms set forth.

Resolution No. 96-009  --  The Board of County Commissioners signed Resolution No. 96-009 authorizing the submittal of a Community Development Block Grant (CDBG) application to the Montana Department of Commerce on behalf of MCT, Inc., and the Missoula Children’s Theatre Central School Redevelopment Project.

Amendments to the Missoula County Employee Benefits Plan -- The Board of County Commissioners signed four amendments (Exhibits 7a.19, 7a.20, 7a.21, and 7a.22) to the Missoula County Employee Benefits Plan (which were approved by motion of the Board on February 7, 1996), amending medical and vision benefits which become effective as of July 1, 1996. The documents were returned to Hal Luttschwager, Risk Manager, for further handling.

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, FEBRUARY 12, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Kennedy was in Great Falls to attend the MACo Elected Officials Workshop, the DES Conference, and the MACo Midwinter Meetings through Friday, February 16th.

No Administrative Meeting was held; however, the following item was signed:

Indemnity Bond -- Acting Chair Evans examined, approved, and ordered filed an Indemnity Bond naming the University of Montana as principal for Warrant #286694 issued October 23, 1995 on the Missoula County General Fund in the amount of $237.50 now unable to be found.
FEBRUARY, 1996 - 19 - FISCAL YEAR:

TUESDAY, FEBRUARY 13, 1996

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

Commissioner Hart left for Great Falls at noon to attend a MACo Board of Directors Dinner Meeting in the evening, and also to attend the DES Conference and MACo Midwinter Meetings through Friday, February 16th. Commissioner Evans was Acting Chair in the absence of the other two Commissioners.

Audit List -- Commissioners Hart and Evans signed the Audit List, dated February 12, 1996, pages 2-38, with a grand total of $294,335.53. The Audit List was returned to the Accounting Department.

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the afternoon, the following items were signed:

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated February 1, 1996, between the Missoula Board of County Commissioners and Missoula Correctional Services, Inc., whereby the Missoula Board of County Commissioners determined the need to purchase a Misdemeanor Supervision Program in Missoula County, as per the terms set forth, for the period from February 1, 1996 to July 31, 1996 and having a total cash value of $75,000.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #3, Pay Date February 2, 1996, with a total Missoula County payroll of $543,919.44. The Transmittal Sheet was returned to the Auditor’s Office.

Agreement -- The Board of County Commissioners signed a State of Montana Department of Transportation Utilities Agreement between Sprint Communications Company L.P., Missoula County and the Montana Department of Transportation for changing and/or relocating telephone facilities as required by the construction of a Federal-Aid Road Project, as per the terms set forth. The State/County plans to construct a highway project known as DPI 0195(001) F [2163] in Missoula County and designated as Federal-Aid Project, Missoula I-90 Airport Interchange with State and Federal-Aid highway funds. The total estimated cost excluding betterment is $149,074. Proportionate participation is: State/County $149,074 and Utility $0. The Agreement was returned to Kim Vietz in Projects Office for further handling.

Amendment to Professional Services Contract -- The Board of County Commissioners signed an Amendment to the Professional Services Contract between Missoula County and Ann Mary Dussault, an independent contractor, under contract to assist the Partnership Health Center in the process of finding suitable space, as PHC has outgrown the space currently available in the Missoula County Health & Human Service building. PHC is in the midst of pursuing two potential options and therefore it is necessary to amend Ms. Dussault’s contract, extending the completion date to June 30, 1996 and increasing the maximum payment for services rendered to $6,000 ($400 per day for 15 days).

Resolution No. 96-011 -- The Board of County Commissioners signed Resolution No. 96-011, Revocation of Declaration of Covenant, whereby the current owner of the tract created in Certificate of Survey 1678, John Milodragovich, wishes to revoke the agricultural covenant in order to sell the parcel which will then be used for residential purposes. The Agricultural Covenant entered into on COS 1678 was revoked by this Resolution and shall become effective upon recording by the Missoula Clerk and Recorder.

Standard Listing Contract -- Acting Chair Evans signed a Standard Listing Contract with Properties 2000 and C.B. Steinbrenner, Coldwell Banker commencing on February 13, 1996 and expiring at midnight on June 15, 1996, for a listing price as shown on Addendum “A”, as per the special conditions set forth for the property commonly known as 319, 323, and 341 W. Pine. The contract was returned to Scott Hollenbeck of Properties 2000 for further handling.

Other items included:

1) Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners accept the bid from Martel for building new shops, contingent upon financing. The motion carried on a vote of 2-0.

2) The Board of County Commissioners reviewed and approved the Incident Command Plan to remove waste water from El-Mar Estates.

3) The Board of County Commissioners approved the proposal for the County match of $11,985 for the State Justice Institute Grant.

4) The Board of County Commissioners signed a memo to John Odlin, Justice of the Peace, stating their request that, subject to the approval of Judge Morris, he act as the supervisor for all of the Justice Court support staff during Judge Morris’ absence because of illness.

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

WEDNESDAY, FEBRUARY 14, 1996

The Board of County Commissioners did not meet in regular session as two of the Commissioners were out of town.

The Weekly Public Meeting was canceled as two Commissioners were attending meetings out of town.

THURSDAY, FEBRUARY 15, 1996

The Board of County Commissioners did not meet in regular session. Commissioner Evans attended the MAEDC Annual Luncheon Meeting held at the Village Red Lion.
FRIDAY, FEBRUARY 16, 1996

The Board of County Commissioners did not meet in regular session.

Vickie M. Zeier  
Clerk & Recorder

Michael Kennedy, Chair  
Board of County Commissioners

MONDAY, FEBRUARY 19, 1996

The Courthouse was closed for the Presidents’ Day Holiday.

TUESDAY, FEBRUARY 20, 1996

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Western Fair Convention Association as principal for Warrant #288901 issued December 20, 1995 on the Missoula County Fair Fund in the amount of $175.00 now unable to be found.

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Pipeline Easement -- Chair Kennedy signed a Pipeline Easement, granting to the Montana Power Company an easement upon which to construct, operate, maintain, replace, upgrade and remove a natural gas pipeline, and necessary appurtenances over, under, along and across the property described as a parcel of land located in the NE1/4 and more particularly described in Warranty Deed, Book 51, Pages 948 and 949; shown on Certificate of Survey No. 51; T12N, R17W, PMM, Section 27. The easement shall have a permanent width of 30 feet (15 feet either side of the centerline of the pipeline). The document was returned to Herb Atkinson of Montana Power Company.

Agreement -- The Board of County Commissioners signed a State of Montana Department of Transportation Utilities Agreement between the State of Montana, acting through its Department of Transportation, Missoula County, and the City of Missoula, owner of the utility, for the relocation of some existing sanitary sewer facilities. The State/County proposes to construct a highway project known as DPI 0195(001) F in Missoula County and designated as Missoula I-90 Airport Interchange. The total estimated cost of the adjustments is $4,800. Proportionate participation is: State/County $3,600 and Owner $1,200. The Agreement was forwarded to Vaughn Anderson at DJA for further signatures and handling.

Other items included:

1) the Commissioners appointed Martha L. Goodloe as a “regular” member of the Missoula County Zoning Board of Adjustment to fill the unexpired term of Bille Gray through December 31, 1996, at which time she will be eligible for reappointment to a two-year term.

2) the Commissioners reappointed Jerry Ford to a two-year term on the Missoula County Zoning Board of Adjustment through December 31, 1997.

3) the Commissioners appointed Jeanne Tallmadge as a “regular” member of the Missoula County Zoning Board of Adjustment through December 31, 1997.

4) the Commissioners reappointed Troy Kurth to a three-year term on the Missoula Planning Board through December 31, 1998.

5) the Commissioners reappointed John T. Spangler to a three-year term on the Missoula Planning Board through December 31, 1998.

6) the Commissioners reappointed Beryl C. Stover to the Missoula Urban Transportation District Board through December 31, 1999.

7) the Commissioners appointed Monte Turner as a member on the Missoula Urban Transportation District Board through December 31, 1998.

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

WEDNESDAY, FEBRUARY 21, 1996

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

Audit List -- The Board of County Commissioners signed the Audit List, dated February 21, 1996, pages 2-43, with a grand total of $269,219.38. The Audit List was returned to the Accounting Department.
COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Resolution No. 96-012 -- The Board of County Commissioners signed Resolution No. 96-012, a Resolution allowing the employees of Larchmont, with the exception of employees of the management company, to participate in PERS. Employees will be treated in compliance with Montana law with regard to vacation, sick and holiday leave and the provision of PERS retirement benefits.

Contract -- The Board of County Commissioners signed a Contract for Services, dated February 20, 1996, between the Missoula Housing Authority (MHA) and the Missoula City/County Health Department whereby the United States Environmental Protection Agency has awarded grant funds from the EPA Environmental Justice Initiative to the MHA, for the purposes of establishing a training program for lead abatement workers and a community lead hazard awareness, education, and outreach program concerning the hazards of lead in the residential environment, as per the terms set forth, for the period from October 1, 1995 through September 30, 1997 for compensation in an amount not to exceed $97,011.

Letter of Agreement -- Chair Kennedy signed the 1996 Letter of Agreement between the Missoula County Board of Trustees for Museums and the United Peoples Foundation and the Fort Missoula First Nations Powwow and Celebration (Powwow Committee) for the purpose of conducting the 8th Annual Powwow and Celebration on the grounds of the Historical Museum at Fort Missoula July 31 through August 5, 1996 (actual event dates August 2-4), as per the terms set forth. The Powwow Committee will be responsible for raising all necessary funds to successfully conduct the event. Before entering into this agreement for 1996, the United Peoples Foundation still owes $250 to the Friends of the Historical Museum for the use of the site in 1995. This payment must be made before April 1, 1996. For 1996, in return for use to the Museum grounds as a site for the Powwow, the Powwow Committee agrees to make a monetary donation of $300 to the Friends of the Historical Museum, due no later than July 1, 1996.

Resolution No. 96-014 -- The Board of County Commissioners signed Resolution No. 96-014, a Budget Amendment for FY’96 for the Health Department, including the following expenditures and revenue, and adopting it as part of the FY’96 budget:

<table>
<thead>
<tr>
<th>Description of Expenditure</th>
<th>Adopted</th>
<th>Change Budget</th>
<th>Amended</th>
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<tbody>
<tr>
<td>2270-613-445702-111 Perm Salaries</td>
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<td>2270-613-445702-141 Fringe Benefits</td>
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<td></td>
<td>$61,174</td>
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<table>
<thead>
<tr>
<th>Description of Revenue</th>
<th>Adopted</th>
<th>Change Revenue</th>
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</thead>
<tbody>
<tr>
<td>2270-613-344077 R.A.C.</td>
<td>$1,074</td>
<td>$3,926</td>
<td>$5,000</td>
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</table>

Additional Federal pass-thru money received from Refugee Assistance Corporation.

Resolution No. 96-015 -- The Board of County Commissioners signed Resolution No. 96-015, a Budget Amendment for FY’96 for the Health Department, including the following expenditures and revenue, and adopting it as part of the FY’96 budget:

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>2270-611-442500-206 Office Supplies</td>
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<td>2270-611-442500-276 Safety Supplies</td>
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<tr>
<td>2270-611-442500-311 Printing</td>
<td>250</td>
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<tr>
<td>2270-611-442500-314 Ads, Legal Publications</td>
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<tr>
<td></td>
<td>$ 3,750</td>
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<table>
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<tr>
<th>Description of Revenue</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>2270-611-331-089 Radon II</td>
<td>$ 3,750</td>
</tr>
</tbody>
</table>

New DEQ Contract No. 260094, Federal Catalog No. 66.032.

Amendment to Professional Services Contract -- The Board of County Commissioners signed an Amendment to the Missoula County Professional Services Contract with Cathy Bartels, Pharm. D., an independent contractor. Ms. Bartels, a registered pharmacist, has provided consultation to Partnership Health Center’s medication program since July 1994. She provides guidance to PHC providers on pharmacological issues and assists in analysis of utilization of medications by PHC patients. This amends the performance schedule to reflect that the contractor shall commence performance on July 1, 1995 and conclude by June 30, 1996.

Other items included:
1) the Commissioners reappointed Geoff Sutton to a three-year term on the Historical Museum Board of Trustees through December 31, 1998.
2) the Commissioners reappointed Marie Hebnes to a three-year term on the Missoula Public Library Board of Trustees through December 31, 1998.
3) the Commissioners reappointed E. E. “Buck” Smith to a two-year term as a "ad hoc" member on the Missoula County Fair Commission through December 31, 1997.
4) the Commissioners reappointed Michael F. Harsell and Julie A. Gemar to two-year terms on the Missoula County Fair Commission through December 31, 1997.
The minutes of the Administrative Meeting are on file in the Commissioners Office.

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

BID AWARD: PARTS ONLY FOR HYDRAULIC LIFT SYSTEM (ROAD DEPARTMENT)

Michael Kennedy said the bids were opened Monday, February 12, 1996 for Hydraulic Stabilizer Lift System (parts only) for a crusher. The single and only bidder was KLS Hydraulics, Inc. for $14,954.28.

Horace Brown, County Surveyor, said this equipment will be attached to their crusher in order to be able to lift it hydraulically rather than manually as it is done now. It will much safer for the people that work on the crusher.

Michael Kennedy asked if this was for materials only and the Road Department intends to install the equipment?

Horace Brown said yes.

Michael Kennedy asked when it will be delivered?

Fern Hart answered in 30 days.

Michael Kennedy noted that the amount of the bid was less than the amount budgeted.

Fern Hart moved that the Board of County Commissioners award the bid for the hydraulic stabilizer lift system (parts only) to KLS Hydraulics, Inc. for $14,954.28, as recommended by the County Surveyor’s Department, and it is within the budget. Barbara Evans seconded the motion. Motion carried 3-0.

BID AWARD: TWO (2) GREENS UTILITY MOWERS (LARCHMONT GOLF COURSE)

Michael Kennedy said this was a bid award for two (2) greens utility mowers for Larchmont Golf Course. Bids were opened at 10:00 a.m. on February 12, 1996 with the following results: Turf-Aid Distributing, Inc. $30,000.00 and Midland Implement, Inc., $34,025.00. Staff recommends the bid be awarded to Turf-Aid Distributing, Inc., in the amount of $30,000.00 as the lowest and most responsive bidder.

Bill Galiher, Manager of Larchmont Golf Course, said these are replacement utility mowers for the worn out mowers, which they plan to sell as used mowers.

Michael Kennedy asked if that amount was in their budget?

Bill Galiher answered yes; the amount is, in fact, under their budgeted amount.

Barbara Evans moved that the Board of County Commissioners award the bid for the Triplex Type Greens Mower and Triplex Utility Mower to Turf-Aid Distributing, Inc., for $30,000.00, as the lowest and best bid, and that the money is in the budget. Fern Hart seconded the motion. Motion carried 3-0.

BID AWARD: TWENTY-THREE (23) IRRIGATION CONTROLLERS (LARCHMONT GOLF COURSE)

Michael Kennedy said this was a bid award for 23 irrigation controllers for Larchmont Golf Course. The bids were opened at 10:00 a.m. on February 12, 1996 with the following results: 2M Company, Inc. $18,900.00 and Midland Implement, Inc., $28,462.50. Staff recommends the bid be awarded to 2M Company, Inc. in the amount of $18,900.00 as the lowest and most responsive bidder.

Fern Hart said the agenda states the request is for 23 irrigation controllers and the bid sheet states the request is for 24 controllers. She asked which was correct?

Dan Smith, Superintendent of Larchmont Golf Course, replied the request is for 23 irrigation controllers.

Michael Kennedy asked if this is within the budgeted amount for these items?

Dan Smith replied it is and is actually significantly under budget.

Barbara Evans asked what a field controller was?

Dan Smith replied that it was a satellite controller that controls the irrigation system.

Barbara Evans moved that the Board of County Commissioners award the bid for the 23 Station Field Controllers to 2M Company, Inc., in the amount of $18,900.00 as the lowest and best bid, and that the money is in the budget. Fern Hart seconded the motion. Motion carried 3-0.

HEARING (CERTIFICATE OF SURVEY): FAMILY TRANSFER (ROSKE)
Colleen Dowdall, Deputy County Attorney, said this was a consideration of a request for two family transfers for Tract B of COS 4305 located in the SW¼ of Section 36, T13N R18W and the NW¼ of Section 2, T12N R18W for Malven A. and Ruby M. Roske.

Malven and Ruby Roske have submitted a family transfer request for a 5 acre parcel located in Turah off Highway 10 East. Mr. and Mrs. Roske propose to split the parcel into three parcels for transfer to their adult son and daughter, Richard M. Roske and Rita L. Swartz. They plan to retain the remainder. The Roskes are not sure what an appropriate configuration of the parcels would be and wish to gain approval of their request before consulting a surveyor. The comprehensive plan designation is currently suburban residential (two dwellings per 1 acre).

The history of the parcel is as follows: The Roskes purchased this and several other parcels in the surrounding area between 1962 and 1972. They filed the Roske Addition in October, 1980, which was then vacated in December, 1986. COS 4305 was then filed by the Roskes in December, 1993, creating Tract A as an occasional sale and Tract B as the remainder.

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

Michael Kennedy asked if Malven Roske or Ruby Roske were present?

Ruby Roske came forward and identified herself.

Michael Kennedy explained to her that the Commissioners are required to determine if her petition for a family transfer was an attempt to evade the Montana Subdivision and Platting Act. To do that, he and the other Commissioners review the information she has provided to them and ask her questions as needed.

Ruby Roske said she understood.

Fern Hart asked Ruby, when she attempted to do a subdivision, was it on this property?

Ruby Roske answered yes, but they did not attempt to subdivide. It was done by a developer.

Fern Hart asked if they owned Parcel A?

Ruby Roske said that has been sold.

Fern Hart asked, then, if she planned to divide Parcel B into 3 pieces?

Ruby Roske replied yes.

Fern Hart asked if the son and daughter were her actual children or a son-in-law or daughter-in-law?

Ruby Roske replied they were her own children.

Fern Hart asked if they planned to live this land?

Ruby Roske answered not at the present time. Their daughter lives in Judith Gap and she will come back someday. Their son lives here now. She said, regarding herself and her husband, they do not live on this parcel but on a nearby parcel that they bought in 1962.

Fern Hart said this request is to divide the land into three parcels and she is concerned about the remaining piece. She asked Ruby why they just didn’t divide in half for each of their children?

Ruby Roske said they wanted to keep one part for themselves. They are getting too old to keep what they have now and eventually they want to move to the third part.

Fern Hart moved that the Board of County Commissioners approve the request for two family transfers for Tract B of COS 4305 located in the SW¼ of Section 36, T13N R18W and the NW¼ of Section 2, T12N R18W for Malven A. and Ruby M. Roske, in that it does not appear to be an evasion of the Montana Subdivision and Platting Act. Barbara Evans seconded the motion. Motion carried 3-0.

HEARING (CERTIFICATE OF SURVEY): FAMILY TRANSFER (BURKE)

Colleen Dowdall, Deputy County Attorney, said this was a consideration of a request for a family transfer for Parcel A of COS 4545 located in the S½NW¼SW¼ of Section 24, T12N R19W for Terry J. and Ruth A. Burke.

Terry Burke has submitted a family transfer request for a 20.26 acre parcel located in the Miller Creek area off Bear Run Creek Road. Mr. Burke proposes to split the parcel in half and transfer the west half to his 20-month-old son, Nathan Andrew Burke. The comprehensive plan designation is open and resource (one dwelling per 40 acres).

The history of the parcel is as follows: The Burkes state they purchased this parcel in 1989 and financed it through the current owner. However, a Warranty Deed transferring ownership was not filed until October, 1993. The Burkes also purchased Parcel B of COS 4545, another 20 acre parcel to the immediate east of this parcel, in October, 1995.

According to the records kept by the Missoula County Surveyor, the applicants have not used any exemptions to the Subdivision and Platting Act.
Fern Hart asked if each parcel was 20 acres in size?

Colleen Dowdall replied yes. Parcel A is the one for which they are seeking the exemption and it is 20.26 acres. Parcel B is another 20 acre parcel which they purchased in October, 1995.

Michael Kennedy explained that the reason for this hearing was for the Commissioners to determine if this request for a family transfer was an attempt to evade the Montana Subdivision and Platting Act. To do that, the Commissioners must ask questions that are often of a personal nature of the applicant or his or her representative. He asked if Terry or Ruth Burke was present?

Terry and Ruth Burke came forward and identified themselves.

Michael Kennedy said the original exhibit showed a traveled way that went roughly from northeast corner of Parcel A to the southwest corner of Parcel A. He asked if that was an existing road?

Terry Burke replied yes. He said there is access to both sides.

Michael Kennedy asked if that existed as an easement or was it a private road?

Terry Burke replied that it was a private road. They have an easement going up to the northeast corner, which was passed down from prior owners.

Fern Hart asked if Bear Run Creek Road went to the north?

Terry Burke answered yes. The easement is through Bear Run Creek Road off Miller Creek Road, goes through Plum Creek land and other private land and comes to the northeast corner.

Colleen Dowdall noted that, in looking through the title policy, it shows the property subject to a road easement and it does not seem to have an exclusion for access. This means that the title company was refusing to ensure access.

Fern Hart asked if Bear Run Creek Road was a private gravel road?

Terry Burke replied yes.

Horace Brown, County Surveyor, commented that it was also narrow and steep and the County does not maintain it.

Terry Burke said Bear Run Creek Road has a good grade going up going through the northwest corner but at the first junction, it is steep and he said it was listed on the map as a Jeep trail. He said that it what they access on a daily basis for their home.

Horace Brown said it started out as a logging road and now is used as a private road for people who own property in that area.

Barbara Evans asked how many people live up there?

Ruth Burke answered there are 8 families in that area.

Michael Kennedy asked the Burkes if they reside on the property.

Terry Burke answered yes.

Michael Kennedy said the private road extends through the southwest corner of Parcel A. He asked if it extended beyond that point?

Ruth Burke replied that it does. The road heads south back to the northeast corner.

Michael Kennedy said they are requesting to transfer this parcel to their 20 month old child. He asked what if they had more children?

Terry Burke said they had another son last September 8 and they bought a piece of land in town here that they plan to put in that child’s name. It has a rental house on it and they intend to keep it as a rental.

Fern Hart said she understands that they plan to put the property under discussion in a trust but they also plan to develop it and receive revenue from it which will go into a trust. She wanted to point out to them that the Comp Plan allows one dwelling unit per 40 acres and this piece of land is 10 acres. She asked if they were planning to sell it?

Terry Burke answered they are not going to sell it.

Ruth Burke noted that there are several surrounding acres that will never be built on.

Colleen Dowdall asked if it was government land?

Ruth Burke answered that some government land and land belonging to Plum Creek surrounded them.

Fern Hart said they should be aware that Plum Creek is planning to sell some of their land. She said it may not be the land that abuts their property but no one can say which lands will be sold.
Colleen Dowdall, addressing the Burkes, said, because they are in the building permit jurisdiction, when they go to get a building or septic permit, the planning office will determine whether they are in compliance with the Comprehensive Plan. And that is the Plan that has a designation of one dwelling unit per 40 acres. The planning office does not consider the land surrounding the subject property, only the subject land itself. So, if this land is split into two 10 acre parcels, until the Comprehensive Plan changes, they will have difficulty getting the building or septic permit.

Barbara Evans said it was not unusual for people to say they wish they had been told that they could not build before they split up their land. So she wanted to be sure the Burkes understood that they probably will not be able to get permits even if they are allowed to split their land.

Terry Burke said he understood.

Michael Kennedy said there is a subdivision law that prevents subdivision of certain sizes of land without going through the subdivision process. Generally speaking, people do not want the land broken up into small pieces of land for development. That, plus the fact that the Comprehensive Plan for this land designated one dwelling unit per 40 acres gives the Commissioners serious cause for concern.

Ruth Burke said, if she were to understand correctly, that even if the Commissioners allowed them to subdivide the property, they may not be able to build on it. Because of that, the Commissioners may not allow the subdivision. But she argued that they have to start somewhere. They don’t want to apply for a building permit or anything in that direction until they know that the property can be separated and put in their child’s name.

Michael Kennedy asked if she knew that a subdivision process was available for that purpose?

Barbara Evans stated that to be fair, though, the subdivision process will give the same end result because, again, the Comprehensive Plan calls for one dwelling unit per 40 acres and this piece is too small. So they will probably recommend denial.

Ruth Burke said she did not feel this was a subdivision because their request is for the purpose of giving land to their child.

Terry Burke agreed with his wife. He said they wanted to set up a trust for their son and they have no other intentions.

Fern Hart said she felt they were being wise in doing this and she does not feel she can turn down their request. The Commissioners have examined their request and, whether or not they are allowed to build a house on the property is their risk. The issue at hand is their request to divide up the land to set up a trust for their son.

Colleen Dowdall reminded the Burkes that the deed to the property will have to be transferred into the trust simultaneously with filing the Certificate of Survey.

Barbara Evans moved that the Board of County Commissioners approve the request for a family transfer for Parcel A of COS 4545 located in the S\(^2\)\(\frac{1}{2}\)\(\frac{1}{4}\)\(\frac{1}{2}\)\(\frac{1}{4}\)\(\frac{1}{2}\) of Section 24, T12N R19W for Terry J. and Ruth A. Burke, in that it does not appear to be an attempt to evade the Montana Subdivision and Platting Act. Fern Hart seconded the motion. Motion carried 3-0.

Barbara Evans stated that she wanted the letter to the Burkes to contain the notation that this is no way notifies them that they will be granted building or septic permits.

HEARING (CERTIFICATE OF SURVEY): FAMILY TRANSFER (MUNSON)

Colleen Dowdall, Deputy County Attorney, said this was a consideration of a request for a family transfer for Tract 1, COS 4512 located in the NE\(\frac{1}{4}\) of Section 35, T12N R20W for Robert M. and Dianne M. Munson.

Bob and Dianne Munson have submitted a family transfer request for a 3.70 acre parcel located east of Lolo between Highway 93 and the Bitterroot River. Mr. and Mrs. Munson propose to create a 2.7 acre parcel for transfer to their adult son, Christopher P. Munson. They intend to retain the 1 acre remainder for the construction of their own home. The comprehensive plan designation is residential (six dwelling units per acre).

The history of the parcel is as follows: COS 330 was filed in June, 1974, creating three parcels greater than 10 acres in size. COS 3539 was filed in January, 1988, creating a 1 acre mortgage exemption parcel. COS 4512 was filed in April, 1995, creating Tract 1 as a 3.70 parcel and Tract 2 as a 6.38 acre remainder. The Munsons purchased Tract 1 in September, 1995.

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

Michael Kennedy asked if Robert or Diane Munson or their representative was present?

Dick Ainsworth, Professional Consultants, Inc., came forward and identified himself as representing the Munsons.

Michael Kennedy said he knows that Dick, having worked with the Commissioners on numerous occasions, understands the process for a family transfer. However, he explained to him that questions about the Munsons were necessary to help the Commissioners determine if they are attempting to evade the Montana Subdivision and Platting Act.

Dick Ainsworth said he understood.
Fern Hart said she noted that the property under discussion was near a river and thus it would have to be on a private septic system and have its own water.

Dick Ainsworth said that was true. At this time, the property is not in the 901 district boundary.

Barbara Evans said the map showed the site was a good distance from the river.

Fern Hart asked if the Munson’s son planned to build on the property?

Dick Ainsworth replied that he does and the parents intend to build on the remainder.

Michael Kennedy asked if the roadway was a traveled way or just an easement?

Dick Ainsworth answered that it was a traveled way and there are two of them. One runs along the west side and is a 60 foot easement. It connects on the south end into the end of Terry Lane which was platted as one of the Wornath Orchard tracts. He said he believes the County maintains Terry Lane.

Horace Brown, County Surveyor, said no, the County only has 30 feet of right-of-way on that and they do not maintain it.

Dick Ainsworth, continuing, said it connects in the north to Lewis & Clark Drive. It is a private road but connects on both ends to County platted roads.

Michael Kennedy said the small map that the Commissioners had does not show that either of those roads extend to the property. He assumes the reason is because they are not public roads.

Horace Brown said that was right.

Barbara Evans moved that the Board of County Commissioners approve the request for a family transfer for Tract 1, COS 4512 located in the NE ¼ of Section 35, T12N 20W for Robert M. and Dianne M. Munson in that it does not appear to be an attempt to evade the Montana Subdivision and Platting Act. Fern Hart seconded the motion. Motion carried 3-0.

CONSIDERATION OF LAMOREUX 4-LOT RESIDENTIAL SUBDIVISION (SUMMARY PLAT)
(Continued from February 7, 1996)

CONSIDERATION OF: SORREL SPRINGS LOT 38 (SUMMARY PLAT)

Pat Keiley, Office of Planning & Grants, said Hal Fullerton, represented by Ron Ewart of Eli & Associate, has requested to subdivide Lot 38 in Sorrel Springs. Lot 38 is a 10 acre piece of land. The proposal is to divide it into two 5 acre tracts, Lot 38A and Lot 38B. This is a summary subdivision called Sorrel Springs Lot 38. It is located in the Sorrel Springs area which is approximately 3 miles northwest of Frenchtown. The property is unzoned. The Comprehensive Plan for this area is the 1975 Urban Area Comp Plan and it calls for residential with a maximum density of one dwelling unit per 10 acres. This proposal will make the land density more than what the Comp Plan calls for.

The land is adjacent to the Frenchtown activity circle but is not within that activity circle. He said there has been a pattern that developed over the years that the 10 lots in the area have been divided into 5 acre lots. There is existing road, water, utilities and septic ability in this area. Staff feels that the 5 acre lots will meet the Comp Plan’s goal of keeping these lots rural in nature. The resubdivision of this existing parcel where there has been considerable activity through the splitting of the lots seems to make sense in this area as opposed to areas where there has not been previous activity of subdividing. The surrounding uses are single family residential. Access to the property is off of Sorrel Springs Lane, which is paved County road with a 60 foot right-of-way and the surface width is 24 feet. This road connects to Roman Creek Road which in turn connects to the Interstate in Frenchtown.

Lot 38 is not being used for agricultural production. There is an existing water system called the Sorrel Springs community water system that will provide water to the subdivision. One of the conditions in the staff report deals with approval from the Sorrel Springs Homeowners Association for the connection of the subdivision lots to the water system. Utility easements are provided for beneath Sorrel Springs land. BFI will provide trash service. There is no park or common area required for summary subdivisions. The schools are the Frenchtown schools and Missoula County will provide sheriff and fire services.

There is an approximate 7% slope to the property throughout. This property is not in the 100 year floodplain, but it is in a wildlife interface area where there is winter range for elk, mule and white-tailed deer. This area is also located in a wild and residential interface. In the conditions of approval, staff recommended that they comply with all the fire standards dealing with the wild and residential interface areas.

There is one variance request and that is for no sidewalks or pedestrian way within the subdivision. Staff recommends approval of this variance request based on the findings of fact and subject to an RSID waiver for future improvements to Sorrel Springs Lane which would include the installation of sidewalks. This is a rural area and there are no sidewalks throughout Sorrel Springs. Staff believes the best solution is to go with an RSID waiver as opposed to recommending to put in sidewalks piecemeal at this time.
The subdivision complies with the survey requirements, the subdivision regulations, the subdivision procedure, the provision for easements for utilities and legal and physical access. With that, staff recommends approval of the Sorrel Springs Lot 38 subdivision summary plat based on the findings of fact and subject to the 9 conditions listed in the staff report.

Michael Kennedy asked, under the acceptance of waiver, does it restrict formation of the RSID to petition or can that be done by resolution as well?

Colleen Dowdall, Deputy County Attorney, said that language is probably tied to what was once the statute and then became Commissioner policy that you would create an RSID on petition of 60% of the people who wanted to create it. She recalls the law being changed, taking out that requirement but former Commissions kept that as a policy. They would not create an RSID unless 60% of the people requested it.

Barbara Evans asked where the County stood regarding the waiver of the right to protest a maintenance district for roads?

Colleen Dowdall answered that she and Pat Keiley are scheduled to meet in a few days to begin the process of reviewing new amendments to the subdivision regulations.

Michael Kennedy said, regarding condition no. 9 which reads “…improvements to Sorrel Springs Lane, including but not limited to paving and sidewalk based on benefit…” He asked if that included a dust palliative or improvement?

Colleen Dowdall said it was possible to make that interpretation.

Michael Kennedy asked Ron Ewart if he had any comments?

Ron Ewart, Eli & Associate, said they do not have any problems with the conditions. They seem thorough and they agree with all of them.

Barbara Evans moved that the Board of County Commissioners approve the variance request for no sidewalk or pedestrian walkways in Sorrel Springs Lot 38 subdivision, located in the south ½ of Section 21, Township 15 North, Range 21 West, approximately 3 miles northwest of Frenchtown, per the recommendation of the staff. Fern Hart seconded the motion. Motion carried 3-0.

Barbara Evans moved that the Board of County Commissioners approve the summary plat for Sorrel Springs Lot 38 subdivision, located in the south ½ of Section 21, Township 15 North, Range 21 West, approximately 3 miles northwest of Frenchtown, contingent on the conditions listed below, and based on the findings of fact. Fern Hart seconded the motion. Motion carried 3-0.

1. Grading, drainage, erosion control, and driveway plans shall be approved by the County Surveyor. That the driveway to the two lots will be centered on the lot line between Lot 38A and Lot 38B.

2. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat: "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever."

3. Access and approach permit shall be approved by the County Surveyor prior to filing the final plat.

4. That if the driveways for Lot 38A and Lot 38B are greater than 150 feet in length, the private driveway shall have a gravel unobstructed width of 20 feet with a vertical clearance of 13 feet 6 inches, to be approved by the appropriate fire jurisdiction prior to plat filing.

5. That the water supply for fire protection purposes for the existing and proposed structures shall be approved by the appropriate fire jurisdiction prior to plat filing.

6. That the appropriate fire jurisdiction approve plans to create a defensible space for fire protection around the existing and proposed housing units, prior to filing the final plat.

7. That the owner and tenants be provided with a copy of the brochure titled, "Living With Wildlife."

8. That the Architectural Control Committee of the Sorrel Springs Homeowner Association review and give approval of the subdivision and the connection of the lots to the water system.

9. That the following statement shall appear on the face of the final plat and in all instruments of conveyance: "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to Sorrel Springs Lane, including but not limited to paving and sidewalk based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

There being no further business to come before the Board, the Commissioners were in recess at 2:19 p.m.
THURSDAY, FEBRUARY 22, 1996

The Board of County Commissioners met in regular session; all three members were present. At noon, the Commissioners attended a Luncheon Meeting at the Extension Office and met with Jerry Marks and staff and representatives from MSU in Bozeman. In the evening, Commissioner Hart attended a Weed Management Meeting held at U/M.

No Administrative Meeting was held; however, the following items were signed:

- **Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Radio Shack as principal for Warrant #046274 issued September 11, 1995 on the Missoula County General Fund in the amount of $353.83 now unable to be found.

- **Proclamation** -- The Board of County Commissioners signed a Proclamation for the County of Missoula, whereby the City and County of Missoula jointly proclaimed April 26-28, 1996 as "Hoby Days" and invited the cooperation of all citizens to join in recognizing the value of the work accomplished by the Hugh O’Brian Youth Foundation in promoting good citizenship, which foundation helps develop leadership qualities in the youth of Montana by selecting a sophomore high school student from each of Montana’s high schools to attend the State Seminar.

FRIDAY, FEBRUARY 23, 1996

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

No Administrative Meeting was held; however, the following items were signed:

- **Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming State Farm Insurance as principal for Warrant #51018 issued December 7, 1993 on the Missoula County Trust Fund in the amount of $126.55 now unable to be found.

- **Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming State Farm Insurance as principal for Warrant #51628 issued January 5, 1994 on the Missoula County Trust Fund in the amount of $50.63 now unable to be found.

- **Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming State Farm Insurance as principal for Warrant #52383 issued February 3, 1994 on the Missoula County Trust Fund in the amount of $54.84 now unable to be found.

- **Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming State Farm Insurance as principal for Warrant #68400 issued August 21, 1995 on the Missoula County Trust Fund in the amount of $621.01 now unable to be found.

- **Plat** -- The Board of County Commissioners signed the Plat for Fairfax Estates, a five-lot summary subdivision located in the NE1/4 of Section 26, T15N, R22W, PMM, Missoula County, a total area of 23.42 acres, with the owners/developers being Lyle R. & Barbara J. Bagnell. Cash in lieu of park in an amount of $5,996.73 was received by the Missoula County Treasurer.

MONDAY, FEBRUARY 26, 1996

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

No Administrative Meeting was held; however, the following items were signed:

- **Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Western Psychological Services as principal for Warrant #32008 issued October 17, 1995 on the Missoula County General Fund in the amount of $39.60 now unable to be found.

- **Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming U-Haul International as principal for Warrant #31424 issued September 27, 1995 on the Missoula County General Fund in the amount of $904.24 now unable to be found.

TUESDAY, FEBRUARY 27, 1996

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

- **Audit List** -- The Board of County Commissioners signed the Audit List, dated February 26, 1996, pages 2-29, with a grand total of $114,708.74. The Audit List was returned to the Accounting Department.

- **Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming American Drug Stores as principal for Warrant #283073 issued August 22, 1995 on the Missoula County Health Fund in the amount of $904.24 now unable to be found.
COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #04, Pay Date February 16, 1996, with a total Missoula County payroll of $546,892.93. The Transmittal Sheet was returned to the Auditor’s Office.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Jim Semmelroth/Acme Gadget, an independent contractor, to perform the following for the Library: development and maintenance of Library PC computer network, as per the terms set forth, on an “as required” basis, for compensation in the amount of $18 per hour.

Modification of Agreement -- Chair Kennedy signed Modification No. 1 of Agreement, DPHHS Contract No. 360106-01, Federal Catalog No. 10.557, between Missoula County and the Montana Department of Public Health and Human Services for the purpose of adding funding needed for supplies in the WIC Program (DPHHS No. 360106), as per the items set forth. The Agreement was forwarded to DPHHS in Helena.

Contract -- Chair Kennedy signed a Contract, dated February 17, 1996, between Missoula County/Refuse District and Rainbow Enterprises, d/b/a Mr. Kerry Drew, as the lowest and best bidder for maintenance of road and site on the Seeley Lake Refuse Site, as per the terms set forth.

Option to Purchase Real Estate -- Chair Kennedy initialed his approval on an Option to Purchase Real Estate, dated February 13, 1996, between Missoula County and Jack I. Nelson with regard to an option offer on a lot in Missoula Development Park, having a total price of $69,500 ($1.26 per square foot). The document was returned to John DeVore, Chief Executive Officer, for further handling.

Other items included:

1) the Commissioners appointed Joanna C. Haddon as an "ad hoc" member on the Missoula County Fair Commission through December 31, 1997.
2) the Commissioners reappointed Norman E. Taylor to a three-year term on the Missoula County Tax Appeal Board through December 31, 1998.

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

WEDNESDAY, FEBRUARY 28, 1996

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

COMMISSIONERS’ ADMINISTRATIVE MEETING

At the Commissioners’ Administrative Meeting held in the forenoon, the following items were signed:

Amendment to Professional Services Contract -- The Board of County Commissioners signed an Amendment to the Professional Contract with Missoula AIDS Council, an independent contractor, amending Item 2, stating that the required work (Focus E) is to provide prevention related support services to HIV seropositive individuals, including case management services and support group facilitation. Also amended was Item 4 (Focus A) $9,568; (Focus B) $5,000; (Focus C) $13,000; and (Focus E) $3,000. The document was returned to the Health Department for further signatures and handling.

Plat -- The Board of County Commissioners signed the Plat for Kahle Lots, a subdivision located in the NE1/4 of Section 31, T14N, R20W, PMM, Missoula County, a net area of 22.27 acres, with the owners of record being Kris J. and Kimberly M.Kahle.

Contract -- The Board of County Commissioners signed a Contract, dated February 28, 1996, between Missoula Valley Water Quality District (County) and Western Waterworks Inc. as the lowest and best bidder for drilling and installation of monitoring wells, as per the terms set forth, for a total amount of $48,366. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Resolution No. 96-016 -- The Board of County Commissioners signed Resolution No. 96-016, Abating and Reissuing Tax Bill, whereby the property at 822 Taylor Street, Missoula (Woody Addition, Lots 7 through 10, Block 133, SUID 529309) was the subject of an erroneous issued tax deed, which tax deed was set aside and the property deeded back to Taxpayer, Duncan Insurance in May, 1995, as a part of a settlement resolving litigation involving the issuance of the tax deed. Tax Bill 95005080 for SUID 0529309 shall be abated and new tax bill issued showing a mailing address of c/o Duncan Insurance, 802 Gerald Avenue, Missoula. The first half of the new bill shall be payable without penalty or interest for 30 days following the issuance of the new bill and second half shall be due on or before May 31, 1996.

Also included:

* the Commissioner approved Nina Duncan’s reimbursement of taxes and interest.

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

PUBLIC MEETING
RESOLUTION SUPPORTING “CAMPAIGN FOR HATE-FREE MISSOULA”

Fern Hart said this was an effort in our community to help us all to be aware that it is our own attitudes and hearts that can change the way we look at the world. She is pleased to have the Missoula community make an effort to put us on record that the County and City and other agencies have a resolution that shows our support and becomes a part of our commitment. However, she warned that the commitment is how we as people must commit ourselves to turn against hate and to turn toward love for our neighbors. She then read the resolution:

WHEREAS the Board of County Commissioners of Missoula, Montana recognize the broad diversity of our community and the need for mutual protection and public support; and

WHEREAS we desire that Missoula County be as well known for its tolerance and wealth of human diversity as it is for the beauty of its mountains, rivers, and wildlife; and

WHEREAS responsibility for halting the spread of hate in our county lies within the county itself, and silence on the part of our citizens is an invitation to hate groups to step up their activities; and

WHEREAS we support the Missoula County Sheriff’s Department’s statement on hate crimes, and the Missoula Police Department’s “Values Statement” in our combined efforts to “embrace the diversity of Missoula County and the dignity of each person, respect and protect human rights, and depend on the confidence and trust of the community;” and

WHEREAS by respecting diversity we will become a more accepting community, better able to live together peacefully and in harmony,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MISSOULA COUNTY, MONTANA, THAT

❖ All who live and work in Missoula County celebrate our human diversity and endeavor to assure the safety of all our citizens; and further,

❖ We call upon the County at large to oppose and condemn all acts of malice, intimidation, or threats as actions that are contrary to the integrity, the spirit, and the general well-being of our County; and finally, that

We establish, live by, and enforce a policy of zero tolerance for discrimination or crimes that are motivated on the basis of hate toward a particular race, religion, color, political belief, gender, disability, or sexual orientation. PASSED AND ADOPTED THIS 28TH DAY OF FEBRUARY, 1996

Fern Hart moved that the Board of County Commissioners adopt this resolution. Barbara Evans seconded the motion. Motion carried 3-0.

Michael Kennedy stated this effort was also important because, even though we may act and feel as described in the resolution, it becomes necessary on occasion to express that publicly. It does no good for us to sit quietly with our beliefs. That is the primary purpose of this effort.
Resolution 96-013

Commissioners Michael Kennedy, Barbara Evans and Fern Hart signed Resolution 96:013, resolving support for the campaign for a hate-free Missoula County, in that we establish, live by, and enforce a policy of zero tolerance for discrimination or crimes that are motivated on the basis of hate toward a particular race, religion, color, political belief, gender, disability or sexual orientation.

CONSIDERATION OF: KNUCHEL SUBDIVISION (4 LOT SUMMARY PLAT)

Lisa Moisey, Office of Planning and Grants, said this was a request by Thomas and Sandra Knuchel for a 4 lot residential subdivision located at the corner of Clements Road and North Avenue. The proposal is for a 4-lot division of a 4.58 acre parcel of land. There is presently a homesite located on Lot 1 and the developer is proposing to subdivide and create three additional approximately one acre lots.

This property is located within a CRR-2 zoning district which allows medium density residential zoning for up to 2 dwelling units per acre. The 1990 update of the Missoula urban area Comprehensive Plan designates this area as suburban residential with a maximum density of up to 2 dwelling units per acre if services are available. Given that both the zoning and the Comprehensive Plan would allow for a maximum residential density of up to 2 dwelling units per acre, it could be anticipated that future subdivisions of these lots could occur. The developer noted in the application submittal that the design of the subdivision is intended to anticipate future lot splits. To show how that could happen, staff recommended that the developer show on the face of the plat a location for two building sites for each lot.

Access to Lots 1, 2 and 3 are proposed from North Avenue. To ensure controlled access, staff recommends a no-access strip along Clements Road and North Avenue, except for the location of the existing driveway on Clements Road and the locations of the proposed driveway as noted on the plat. The developer has also shown the proposed access easement which is intended to be used if any of the lots are further subdivided. The developer has shown a 20 foot wide easement for this purpose. While access easements will function at this time as driveways, they will serve 2 lots at a maximum. If the future owners ever choose to subdivide their property, the driveways could then function more as lanes. Staff recommends the developer show a 30 foot easement for those lanes which are located in between the lots.

The developer is requesting one variance request as part of this subdivision and that is from the requirement for sidewalks and pedestrian walkways. Staff recommends approval of that request given that plans have been approved to widen Clements Road and North Avenue by 4 feet to 5 feet on each side. Plans are under way to stripe a non-motorized corridor along both Clements Road and North Avenue. The design for this project is underway, funding has been secured and construction is scheduled for spring of 1997. She understands that this will be done through the Community Transportation Enhancement Program (CTEP) funds. Staff felt that it made sense to grant the variance with the understanding that these pedestrian facilities will be undertaken in a comprehensive fashion for this area.

Staff recommends approval of the Knuchel subdivision subject to the conditions that are shown in the staff report and based on the findings of fact.

John Kellogg, Professional Consultants, Inc., said the aerial photograph of Tom Knuchel’s property shows his house on the southwest corner of North Avenue and Clements Road, which is what would become Lot 4. When they discussed the walkway concerns with Lisa, on the one hand they looked at the need for providing access for pedestrians but, on the other hand, there is concern because an irrigation ditch comes under Clements Road and follows the frontage of the property around to North Avenue, creating potential conflicts with pedestrians.

West of Clements Road, single family development is occurring. There is a mobile home park on the other side of Clements Road and Dale’s Dairy is across Clements Road. Tom had said earlier that he was concerned with how this property is going to develop over the years. In trying to anticipate this, they have provided driveway accesses along common lot lines between Lots 1 and 2 and Lots 3 and 4. In the event that sewer becomes available to this area, the potential split of the lot would likely be across the middle or it would be to increase the access to development that would occur on the south half of the lots. In order to facilitate that, they have provided access easement that would enable, for instance, owner of Lot 1 to have access across the easement that has already been granted by the owner of Lot 2.

The current use of the parcel is open and horses graze on it.

Fern Hart asked if Lot 4 was going to remain as it is?

John Kellogg replied yes.

He said, to follow up on the walkway situation, he was encouraged when Lisa looked further into this and discovered that Horace has plans on widening the roadways of Clements Road and North Avenue to provide pedestrian bicycle access. This will enable pedestrian access in a way that will not conflict with the irrigation ditch problem.

In brief, Tom has reviewed the recommendations of the staff and agreed with the conditions they recommended.

Fern Hart asked Horace if he plans to widen the road and stripe it on one side for a bike path?

Horace Brown, County Surveyor, answered that it would be striped on both sides of the road, a fog line so that pedestrians could walk there. This project is at the point of having an environmental assessment done on it. When that is approved, it will go into the design stage.
Fern Hart asked if it will be by the ditch?

Horace Brown replied he will not know that until he looks at the design, but he thought it would be close to it.

John Kellogg said the ditch is a little ways from the road at this time. It is right at the edge of the north property boundary rather than closer to the road paving. There is a slight swale on the edge of the roadway that goes over a hump then into the irrigation ditch.

Fern Hart asked if that was only on the Clements side?

Horace Brown said it goes north and then west on North Avenue.

Michael Kennedy said the staff recommended approval of the variance because construction is pending in 1997. We are speculating that it will happen but, of course, there is the possibility that it will not happen. He asked if John had any problem with the County requiring that the sidewalk be constructed by a certain date as long as they take into account that there will be some probability that the roadway will be widened and a pathway designed under another project?

John Kellogg said he had not discussed the potential concerns with his client. The location of the walkway along North Avenue is a concern to him. The most likely location that he could see would be the hump along the irrigation ditch because it is far enough off the road and it is an easy walk.

Michael Kennedy said location was not the issue but rather the need for a sidewalk. That is a high pedestrian traffic area and there is clearly a need for a sidewalk. Further, the subdivision process requires it. He would like to know if he has a problem if the County required a sidewalk to be installed as part of the approval of this subdivision at a time certain?

John Kellogg said they discussed a gravel walkway with Lisa.

Barbara Evans said perhaps Horace can settle this question by telling the Commissioners if he is planning to use CTEP money and by when.

Horace Brown stated the project has already been approved by the state. At this time, it is just a matter of going through the process, which takes about a year before the building can start.

Barbara Evans asked what if the Commissioners said they would approve the variance to this with the caveat that it will be done within 2-3 years?

Horace Brown nodded agreement and commented that the project was already funded.

Colleen Dowdall, Deputy County Attorney, said she was concerned about putting that requirement in because the County typically requires public improvements be in place prior to filing of plat. If not, we must have a public improvements guarantee from the landowner. That is appropriate in most cases, but not necessarily in a case where Horace is telling us this is a done deal. She asked Horace if he would tell them if it were not a done deal?

Horace Brown said he would.

Barbara Evans asked where this leaves them?

Colleen Dowdall said she is most comfortable with recognizing that we are going to do it and not require any extra paperwork to monitor something that is essentially not a problem. She said bad things do happen but we have to monitor all the ones that we know have to be put in by developers. This would be an exercise in “not necessary.”

Michael Kennedy said the zoning out there is two dwelling units per acre and this split suggests one acre lots, except for Lot 4, which is an existing parcel. He believes the reason for the recommended density is because of sanitary restrictions. He said across the street the density that exists there is considerably greater than the density proposed in this subdivision. He feels that they need to be considering an area that has potential for greater density than two homes per acre. He questions the urgency of this proposal and whether the potential greater density has any attractiveness at all to his client.

John Kellogg said they are not talking about a big time developer. Tom lives on the parcel and may not be able to wait. The reason he is doing this now is because it looked like the zoning, the Comprehensive Plan and everything necessary was falling into place. They tried to anticipate the potential for divisions that would increase the density. He said it would be helpful to them to know the time frame they were talking about.

Michael Kennedy said, what is under discussion now, is the issue of how we develop in urban areas, and this is in the urban area. The Commissioners carefully review subdivisions that have this kind of density which has become problematic in the Missoula valley. We are at a point that, with slow progress, resolution is being made toward that problem. It will require some modification but, more so, it will require a difference in the way we think about how developments ought to occur within this area. So, he is unable to specifically answer John’s question, but he can certainly say within the next several months they are going to be looking at ways to solve this kind of problem. He asked what his proposal was for development for this year?

John Kellogg answered that the owner is anxious to put two of the parcels on the market. He said, to go back to what Michael was looking at, they agree that they need a different way of looking at development. It is problematic, especially in the Orchard Homes area where there are 5 acre lots, and individual homeowners that are difficult to get together to the point where you have a large enough parcel to accomplish some of the good planning goals. Even if the County decides what sort of pattern would be good for this area, the next step would be to modify the zoning and
change the Comprehensive Plan. Those are lengthy processes. The last time a Comprehensive Plan change went through took about a year.

Michael Kennedy thanked John for those comments. He said the point was, about 6 blocks north from this subdivision, they will consider another proposal similar to this on Clements Road and 7th Avenue. They just approved one last year across street from that going west. As things go, 1, 2 or 3 lot subdivisions seem to be relatively meaningless unless you add them up. The lot under discussion has potential to create difficulties for all of us, not only the people who live in that vicinity. This is part of the creep that is going on and the County needs to be attentive to.

Fern Hart said to Horace that he is proposing to stripe the road which is in the right-of-way. Horace Brown agreed.

Fern Hart asked, if he was not proposing to do that, then would it be on the subdivided land? Horace Brown said it could be either, but if it was done on County land, the County Surveyor’s office would approve the design for whatever they were building. What goes on their property is different.

Fern Hart asked, when the County requires sidewalks, does it automatically put the sidewalk in the right-of-way? Horace Brown replied, generally, yes.

Fern Hart asked, in this case, would it have to cross the ditch? Horace Brown replied that if they were going to put it on their property, yes. The ditch is right at the edge of the right-of-way.

Fern Hart replied that she understood.

Fern Hart moved that the Board of County Commissioners grant the variance for Knuchel Subdivision, located at the corner of Clements Road and North Avenue in the S\%/SE\%/SE\% of Section 26, T13N, R20W from sidewalks and pedestrian walkways based on the staff recommendations and the understanding that the street will be striped for a bike/pedestrian way by the County Surveyor with use of Community Transportation Enhancement Program funds. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners approve the summary plat for the Knuchel Subdivision, located at the corner of Clements Road and North Avenue in the S\%/SE\%/SE\% of Section 26, T13N, R20W, based on the recommendations of the staff and findings of fact and contingent on the conditions listed below. Barbara Evans seconded the motion. Motion carried 3-0.

1. Grading, drainage, erosion control, and driveway plans and approach permits shall be approved by the County Surveyor prior to plat filing.
2. The developer shall show two building envelopes per acre. Building location will be restricted to a site within these envelopes. Building envelopes shall be shown on the plat and approved by the Office of Planning and Grants prior to plat filing.
3. The developer shall contribute $50.00 per lot to the Missoula Rural Fire District Large Diameter Hose Fund prior to filing of plat.
4. The easement for the future private access lanes shall be 30 feet wide. Plans shall be approved by the County Surveyor prior to plat filing.
5. A one foot no access strip shall be shown along Clements Road except for the present location of the existing driveway for Lot 4. A one foot no access strip shall be shown along North Avenue except for the location of the access drives for Lots 1, 2, and 3. Location shall be approved by the County Surveyor prior to plat filing.
6. The following statement shall appear on the face of the plat and in all instruments of conveyance:

   "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Clements Road and North Avenue, including the installation of sidewalks, based on benefit, and may be used in lieu of signatures on a RSID/SID petition."

7. The following statement shall be shown on the face of the plat:

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

HEARING: THE FLY INN (PRELIMINARY PLAT) 9-LOT SUBDIVISION (SEELEY LAKE)

Lisa Moisey, Office of Planning and Grants, said the Fly Inn is a proposed 9 lot subdivision of a 6.89 acre tract located 1.5 miles east of Seeley Lake. The property is accessed by Airport Road which is a County maintained roadway, ranging from 22 feet to 24 feet wide with a 60 foot right-of-way. The property is located directly adjacent to the Seeley Lake Airport, which lies just to the east. The developers, Richard Brighton and Bob Thorne, are proposing to subdivide this parcel into four 1 acre lots and one 2.8 acre lot. Lot 2 is the 2.8 acre lot and that will contain 5 cabin
residences that will be sold as separate townhouse lots. The developers are proposing a recreational residential type development which will be linked to the proximity of the airport. The property is unzoned in Missoula County.

Airport Road is paved to a point just east of its intersection with Frontier Drive. Lots 3, 4, and 5 will access by driveways directly from Airport Road and each driveway will be required to be paved a minimum of 20 feet from its intersection with Airport Road. Access to Lots 1 and 2, and Lot 2 will include the 5 townhouse units, will be provided by a private access road which is called Fly Inn Lane, which the developer has proposed to be 16 feet wide of pavement with 2 foot gravel shoulders on each side. To fulfill the parkland requirements for this subdivision, the developer is proposing to dedicate a common area easement of .77 acres of Lot 2. The land in this case would be owned by the owner of Lot 2, however, the developer will grant an easement to the homeowner's association which governs the entire subdivision. This will allow access to the common area by all residents from all lots within the Fly Inn subdivision. The developers have indicated that they plan to construct a winding jogging path through the common area easement and staff recommend that the developer provide a pedestrian pathway across the frontage of Lots 1, 3, 4 and 5 to connect with the jogging trail on Lot 2. This pathway will serve the dual purpose of providing a public pedestrian pathway for this subdivision and allowing the owners of the lots to access their common area without having to travel down Airport Lane. The developers were originally asking for a variance request from the sidewalk requirement. However, they have agreed to the winding jogging path makes sense and have formally withdrawn their variance request. This property is located in a wildland residential interface. It is an area where structures will be located close to combustible wildland vegetation. The developer has included in the covenants a section which acknowledges this situation and requires all lot owners to create a defensible space for fire protection purposes and that defensible space shall be approved by the appropriate fire jurisdiction. That is stated in the covenants. The Department of Natural Resources and Conservation provides wildland fire protection for the area and they have asked for a 40 foot setback from the rear property line for the creation of this defensible space, which will allow the defensible area for fire protection to be cleared without entry unto the state land, which is adjacent to this parcel to the north. The idea there is that DNRC does not want folks who live in these houses to have to use state land to get their defensible space. If you have a 40 foot setback from that line, there should be enough room there for developers to create that defensible fire space.

The developers are asking for two variances from the subdivision regulations. The first is from the variance which requires private streets to meet County standards. The standards in the case of Fly Inn Lane, which is the proposed private access road, would require a 24 foot paved street within a 60 foot easement. In this case, the developer is proposing a 16 foot wide roadway with 2 foot shoulders in a 40 foot private access easement. Staff agrees with the variance request to allow the 16 foot roadway with 2 foot shoulders and recommends that this roadway be paved. The Department of Natural Resources has stated that they support the variance request for the private road and the developer also noted that the Seeley Lake Fire District verbally stated that they have no adverse comments regarding the subdivision.

The second variance request is from the requirement that streets shall be paved to 24 feet wide within a 60 foot right-of-way and this variance request applies to Airport Road, which is an off-site access road. Airport Road has a 20 foot right-of-way and is paved to 22 feet just to the point east of its intersection with Frontier Drive. Staff agrees with the variance request from the paving requirement for Airport Road if the developer is required to pave the internal private roadway. Staff have noted that Lots 3, 4 and 5 will access from driveways unto the paved portion of Airport Road and then access to the cabins on Lot 2 and Lot 1 will be provided from the internal private road which staff has recommended be paved. As a mitigating effort, staff supports that the owners waive the right to protest a future RSID for improvement to Airport Road which will include participation in a dust abatement program. There has been indication that Airport Road could be paved within the next 2 years. Missoula Consolidated Planning Board met on February 2nd and gave their recommendation of approval of the preliminary plat with recommended changes to conditions number 3 and 4. These are noted on the Request for Commissioner Action form. The recommended changes were asked for by the staff. The Planning Board voted to recommend approval of the variance to allow a 16 foot paved roadway for the Fly Inn Lane and the Planning Board recommended approval of the variance request to allow Airport Road to remain unpaved at this time.

Michael Kennedy asked for more information on the possibility that Airport Road would be paved within 2 years.

Horace Brown, County Surveyor, answered that they are building a shop that will access unto the graveled portion. Once the shop is completed, he will have to come up with funds to do the paving of at least a portion of that road and an RSID could be created by these people to assist funding that paving.

Ron Ewart, Eli & Associate, said he appreciated the work Lisa had put into this subdivision. They have been working on it since last September. They have a good set of covenants and the Homeowners’ Association Articles of Incorporation. They are also forming an architectural control committee. The two landowners both live in Park City, Utah and have not been able to attend this meeting due to bad weather. One of them is a commercial airline pilot with Delta and the other is an architect and a pilot. Their goal is to create a low impact recreational-type subdivision that would change the natural environment as little as possible.

Fly Inn Lane is proposed to be paved to 16 feet wide with 2 foot shoulders, which make it look more rustic and it would fit in better with its surroundings. Further, it is not expected that people will be living here year around, but rather it will be most populated during the summer months. The advantage of having it paved is that people could come out on Airport Road right across from Frontier Drive and they would remain on paved roads. There are 5 cabins on Lot 2 which will be constructed. They may be leased or purchased. The other 3 lots on the east end could be purchased and the owners could then construct their own house. Those would also have to meet the guidelines and be approved by the architectural control committee.

Michael Kennedy asked who determined the roadway width at 16 feet?

Ron Ewart answered that he and the developers determined it.

Michael Kennedy asked Horace Brown if he objected to having the road even narrower?
Horace Brown replied there could be a problem with that if it is a 2-way road. But if it is only a 1-way road, you can go down to 12 feet wide.

Barbara Evans asked if the big County road trucks and road equipment require 16 feet?

Horace Brown said County vehicles will not be using this road because it is private.

Michael Kennedy said a commitment to pave the road is expensive and creates additional areas for maintenance. Also, in this setting, it would be aesthetically pleasing to have a narrower road, so he would like to see it reduced to 12 feet.

He opened the public hearing and asked if anyone wanted to speak on this issue.

Ron Ewart said they would be amicable to doing a 12 foot paved road, then they would have 4 foot shoulders on either side, which would create a 20 foot wide driveable space. That would meet the fire department regulations.

Michael Kennedy asked again if there was any public comment about this proposal? No one came forward. He closed the public hearing.

He commented that both Fly Inn Lane and the trailway are on private property. He asked what assurance the County had, since it is outside the covenants, that those would be property constructed and maintained over the life of the project?

Colleen Dowdall, Deputy County Attorney, replied that typically, the County requires the covenants and means of financing the maintenance be established. We also require a homeowners’ association be established prior to allowing them to file the plat. That is the extent that we are able to go with regard to private common area and private roads and trail systems.

Michael Kennedy said his concern was, in the normal course of doing things, that we have a requirement for roads and trails that are public and we are making an exception because these happen to be on private property. It seems, if the choice is made at a later time, if the trail or road were abandoned, that the County would be in an awkward position.

Colleen Dowdall said it depends on how the term “abandoned” was used. The law requires common facilities be provided in perpetuity and the new subdivision law made it more flexible as to how they could provide that kind of common area or meet the requirement for public park or common area dedication. This one is doing a common area easement and we have never seen it before, but it appears to comply with the new statutes which state that you can satisfy your parkland requirement by providing some permanent dedication of private land to the people within the subdivision. It does not have to be to the public.

If they wanted to take away the right of the other people in the subdivision to use the road or the common area or the trail, they would have to come back before the Board and amend the plat. Or they would have to all agree that is what they were going to do and file a document in the public record. If they choose not to continue to maintain it, it will still exist as common area and a road that they have a right to use. Because it is a private road, they will be using what they are willing to put the money into.

With private roads and other private common areas, the best the County can do is ensure that a mechanism has been established to collect fees and to maintain the road and common area. We do that by requiring a property owners’ association.

Barbara Evans asked if the name, Fly Inn Lane, would be confused by 911 with Flynn Lane?

Horace Brown answered that he didn’t foresee any problems with that. The actual address for this subdivision would be on Airport Drive.

Michael Kennedy asked if it was possible to meander the trail around the geometric shape of Fly Inn or would it involve removal of significant trees?

Ron Ewart said there are a lot of good trees in that area. He said the configurations that are shown on the map for the trail would be set in such a way that it would go around the trees. That is true of the jogging trail also.

Michael Kennedy said what about the vehicular drive?

Ron Ewart said the same was true of that.

Fern Hart asked if the RSID/SID was in the recommendations?

Lisa Moisey answered that it was. But there is language changes that she asked the Planning Board to make because she made an error when she wrote that.

Fern Hart asked if the first variance was for a street right-of-way width for a private road?

Lisa Moisey replied street right-of-way and actual roadway width.

Fern Hart asked if she should make that specific in the conditions?

Lisa Moisey said condition no. 3 in the staff report deals with that.
She continued that what she believes we want to do is approve the variance request to allow reduced roadway width and right-of-way widths for the private road, Fly Inn Lane. From that point, there should be discussion as to what specifications we want to approve that roadway in terms of the easement width and actual roadway width.

Michel Kennedy asked if they wanted a reduction of the width from 20’ paved down to 16’ or do they want to consider something less?

Fern Hart said they will approve the variance request which will include a reduction of the roadway and the specifics of that will be 12’ paved strip with a 20’ right-of-way.

Michael Kennedy said he thinks it should be a 12’ paved traveled way with within a 40’ easement right-of-way and an overall total traveled way, including graveled shoulders, of 20 feet.

Fern Hart moved that the Board of County Commissioners grant the variance for 12’ paved traveled way within a 40’ easement right-of-way in an overall total traveled way of 20’, which includes graveled shoulders, for Fly Inn subdivision, a 9 lot subdivision located on the NW¼ of Section 1 T16N R15W, two miles west of Seeley Lake on Airport Road, on the north side of the road. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners grant the variance for off-site roadway standards to reduce the pavement width from 24’ to 22’ for Fly Inn subdivision, a 9 lot subdivision located on the NW¼ of Section 1 T16N R15W, two miles west of Seeley Lake on Airport Road, on the north side of the road. Barbara Evans seconded the motion. Motion carried 3-0.

Lisa Moisey said condition no. 3 will have to be amended to include the discussion in variance no. 1 about a reduced roadway surface width.

Fern Hart moved that the Board of County Commissioners approve the Fly Inn Subdivision preliminary plat, a 9 lot subdivision located on the NW¼ of Section 1 T16N R15W, two miles west of Seeley Lake on Airport Road, on the north side of the road, based on the recommendations of the staff and based on the findings of fact and contingent on the conditions listed below:

1. Plans for paving, grading, and drainage shall be approved by the County Surveyor prior to filing of the final plat.
2. The private access easement shall be named, as it will serve six buildings. The name shall be approved by the County Surveyor prior to filing of final plat.
3. The private access roadway shall be constructed to 12 feet wide, to include 20 feet of paving and a four-foot shoulder on each side. Plans shall be approved by the County Surveyor prior to filing of final plat.
4. The following statement shall be included on the face of the plat and in each instrument of conveyance: “Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owner to waive the right to protest, any future RSID/SID for improvements to Airport Road, including participation in a dust abatement program, and may be used in lieu of their signatures on an RSID/SID petition, based on benefit.”
5. The following statement shall appear on the face of the plat and in each instrument of conveyance: “The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or property-owners’ association and that the County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the County of Missoula for maintenance.”
6. All driveways which intersect a paved road shall be paved back to a point 20 feet from the edge of the paved road. Plans shall be approved by the County surveyor prior to filing of final plat.
7. All covenants shall be reviewed by the Office of Planning and Grants and shall conform to the Missoula County Subdivision Regulations prior to filing of final plat.
8. The developer shall show, on the face of the plat, a 40 foot setback line from the northern property boundary. No dwelling unit shall be placed within this 40 foot setback area.
9. The developer shall add to the covenants a section stating that any fuel reduction/management as part of the wildland residential interface fire protection guidelines, on State Lands, will require permission from the Department of Natural Resources and Conservation.
10. A common area easement shall be granted to the Homeowners’ Association who shall be responsible for setting up rules and a maintenance plan for the common area. Property Owners’ Association Articles of Incorporation and covenants shall be reviewed and approved by the County Attorney prior to filing final plat.
11. The developer shall dedicate a 10 foot wide public pedestrian access easement across the portion of the subdivision which fronts Airport Road. The developer shall construct a 5 foot wide gravel path within this easement. Plans shall be approved by the County Surveyor prior to filing of final plat.

Michael Kennedy asked if there was any other business or public comment to come before the Board?

Carol Hovland, member of the Missoula Chapter of the Coalition of Montanans Concerned with Disabilities, said they have a number of people who were present and wanted to give information about disabilities and accessibility.
Andrea Dahl said she is President of the Missoula Chapter of the Coalition of Montanans Concerned with Disabilities (CMCD) and she wanted to read a statement from Bill Chatterton. She said:

My name is Bill Chatterton and I have written this testimony to be read by another individual as my school schedule prevents me from attending the meeting today. I am a member of the Missoula chapter of the Coalition of Montanans Concerned with Disabilities. I am also the “unnamed” individual who was referred to in the Missoulian after my access to Paxson School was blocked by a vehicle owned and operated by County CEO John DeVore.

Violations of the state law pertaining to designated parking which is accessible to people with disabilities are a critical denial of access to community participation by hundreds of individuals with disabilities in Missoula County. When the incident at Paxson School occurred, I was attempting to gain access in order to coach a practice session of 5th and 6th grade Y-Ball. The following week, I attempted to access Washington School to coach a Y-ball game, and the designated parking space was again blocked by an unauthorized vehicle.

The reason I bring these issues up today is to let County government know that accessible parking and travel on the public right-of-way are vital to the ability of people with disabilities to participate in community life on an equal basis with others. I realize that many overlapping jurisdictions occur within Missoula County concerning these issues, and that some circumstances are much more under the control of the City than the County. However, many issues of inaccessibility are under the County’s jurisdiction, such as parking enforcement, snow removal, and the configuration and installation of accessible parking spaces.

First, one of my colleagues recently spoke to a detective in the County Sheriff’s Office. This detective said that the County would enforce disability parking violations if they were notified by a citizen, and that such a violator would “probably” be ticketed. However, he stated that the County did not have the authority to ticket violators parked on private property. We know that state law allows local jurisdictions to ticket improperly parked vehicles on private property “that is available for public use.” This would include restaurants, stores, and virtually any retail or service business in the County. I am writing today to insist that County law enforcement not only be properly educated about the state parking law, but that the law itself be properly enforced within the County’s jurisdiction immediately.

Next, CMCD is aware that most snow removal within the Missoula city limits is the responsibility of City government. The City is aware of this fact, and is in the process of examining and changing their procedures to ensure that public rights-of-way are not made inaccessible by lack of snow removal. However, we have seen numerous occasions during which snow removal obligations which belong to the County are not met. As an example, we know of numerous occasions when the designated parking spaces serving this Courthouse and the striped access aisles next to these spaces are filled with snow. It does no good to designate accessible parking in front of a building with at least some degree of accessibility, and then to allow the route to the building to be made useless by inadequate snow removal. This would also apply to any other area in Missoula County for which County government has the obligation to complete appropriate snow removal. We again insist that County personnel be immediately educated concerning proper snow removal techniques, and that the system of coordinating snow removal both within County government, as well as between City and County Governments, be examined and corrected before the first snowfall next winter.

Finally, the issue of properly configured van-accessible parking spaces is key to providing equal access to many people with disabilities. We must insist that the County’s procedures for reviewing and configuring van-accessible parking be examined and altered to ensure that these parking spaces are in compliance with the ADA Accessibility Guidelines.

The Americans with Disabilities Act strongly encourages state and local government to involve members of the disability community in both their planning efforts and implementation procedures related to ADA compliance. The membership of CMCD is ready to provide assistance to the County in this endeavor, and we expect County government to involve us in the process.

Bill Chatterton
743 Cleveland
Missoula, MT 59801

Matt Levin said he would be speaking for Jason Burrell, who was also present but unable to address the Board due to his disability. He read from Jason’s statement:

My name is Jason Burrell, and I have written this testimony to be read by another individual as I have a speech disability. I am the Vice-President of the Missoula Chapter of the Coalition of Montanans Concerned with Disabilities. I have serious concerns about County government’s ability to accommodate people with hearing or speech disabilities.

I use a TDD to communicate by telephone. TDD stands for Telecommunications Device for Deaf people. TDD’s are devices with typewriter keyboards and telephone cradles which allow people with hearing or speech disabilities to communicate by telephone. However, it does me no good to call the County if there are no TDD’s at your end. It also does no good to call if all County personnel are not trained in the proper use of a TDD, or if they do not know where to get one.

In addition, I use the telephone relay service to communicate by telephone. The relay service consists of an operator who is available through a toll-free number and has both a TDD and a voice telephone. The conversation is then relayed back and forth between a TDD user and someone using a voice line. If your staff members do not know how to use the relay service, I can’t communicate with you either.

I also tried to call 911 with my TDD on one occasion, and the dispatcher hung up on me. I then had to use the relay service in order to get through to 911. The Americans with Disabilities Act requires that all 911 centers provide
direct TDD access for people with hearing or speech disabilities. Fortunately, the relay operator recognized a life-threatening situation, and called the police. The credit should go to the relay operator in West Virginia, rather than the 911 system at the County, which failed. Luckily, nothing disastrous happened on this occasion, but what about the next time, when someone might be in a crisis, has a TDD, but cannot get through to 911? They will have to rely on the relay service to do the life-saving job that should have been done by the County.

I didn’t just wake up one day and decide to have a disability. No one really chooses to have disabilities. But those of us who have them expect the County to live up to its responsibilities. We insist that you meet with our group to discuss the County’s plans to address the issue of communication with people with hearing and speech disabilities. And we’d better do it soon, before someone dies trying to call 911.

Jason Burrell
708 S. 6th W. Apt. #3
Missoula, MT 59801

Tim Jones said he was a member of the Missoula Chapter of the Coalition of Montanans Concerned with Disabilities. He said he was here today to talk about the polling places that are not accessible to people such as himself (Mr. Jones was seated in a wheelchair). They know that the County runs the elections for the City, the County and the schools and, under the law, the County is responsible for the providing accessible polling places. He votes at the Senior Citizen Center on Higgins Avenue, a place that he cannot enter himself. He cannot open the door without help. He knows of other CMCD members who would like to vote and who cannot access their polling places. People with disabilities should not have to rely on friends or volunteers to exercise their rights as citizens. Voting is everyone’s civic responsibility. He said they have come today to ask the Commissioners to convene a meeting of all those involved with the different polling places. These people should include someone from the schools such as the School Superintendent, someone from the City Clerk’s office, someone from the County elections office, at least one County Commissioner and members of the CMCD. They would like to have a meeting by the middle of the March so that the non-structural changes to polling places could be in place by the April 2 school board election. This would also serve due process that structural changes can be made so that all people with disabilities can vote at the presidential election later in the year. He thanked the Commissioners for their time.

Paul Peterson said he was also a member of the CMCD. He came in today to talk about the County’s self-evaluation and transition plan, both of which were required to have been completed by Section 504 of the Rehabilitation Act of 1973 as well as the Americans with Disabilities Act of 1990. The self-evaluation is a thorough examination of the County’s programs, services, and activities in light of their accessibility to people with disabilities. The transition plan is a schedule to remove architectural barriers which prevent access to those programs. The self-evaluations under Section 504 and the ADA were to have been completed, respectively, by June 3, 1978 and January 26, 1993. The transition plans were to have been completed, again respectively, by December 3, 1977 and July 26, 1992. Structural changes which were necessary to achieve program accessibility were to have been completed by June 3, 1980 under Section 504, and by January 26, 1995, under the ADA.

We are aware that the County completed a Section 504 self-evaluation in 1984. We also are aware of a survey of County facilities which was done more recently under the ADA. However, as far as we were able to ascertain, no transition plan for the removal of architectural barriers has ever been developed. And, as has been discussed by previous speakers, it is clear that full program accessibility has not yet been achieved.

Although the 1984 self-evaluation mentioned above has been done, it does not appear to them that it has ever been fully implemented. It is also 12 years old, and much of it probably no longer applies in light of new technology and changes in facilities and/or programs. A few examples of continuing inaccessibility include the fairgrounds, the County jail, the elections program (including School Board, City, State, and National elections) and the historical museum at Fort Missoula.

Accessibility to all facilities and programs is important to all people with disabilities, as is their inclusion in the process of bringing that accessibility about. The ADA strongly encourages the inclusion of people with disabilities and disability organizations in the planning and implementation phases of both the ADA and Section 504.

They request a meeting to discuss the current situation and plans to move forward. It is important that they set some target dates for completion of the transition plan as soon as possible, as all deadlines for the completion of these activities have already passed.

He said they also request that a date to meet and discuss these issues be set for no later than March 15, 1996, and that at least one County Commissioner be present. By so doing, they can not only begin planning for the future as soon as possible, but may also be able to ensure that the April 2nd School Board and mill levy elections are made accessible to people with disabilities.

He thanked the Commissioners for their time.

Don Stinger, 245 N. Davis Street, Missoula, said he is the first Vice President of the Senior Center Association. The Senior Center is one of four in the nation and the only one in the state that is completely self-supporting. They had acquired seed money about 30 years ago and purchased their present building. They now own it. They have inquires from centers in the rest of the state about how they are managing to do as well as they are because there has been a decrease in funding.

He said he talked to Barbara Evans last year about the inaccessibility of the doors for the handicapped because he knew their building was used for a polling place and the County agreed to pay the overtime for the janitor and that was all they were able to do. He said that Barbara said the people with disabilities would have to come to the courthouse because that was accessible. He did look into bids to change the door structure and the lowest so far is $5000. He has tried to persuade the other members of the Board of Directors to take out a loan because they also need funds for the
$15,000 sprinkler system which has been mandated. So he wants the Commissioners to know that they are doing what they can with limited resources.

Barbara Evans recalled that she had told him and Mr. Burkhardt to write a request to the Board of County Commissioners and they would review it, even though the possibility of getting the money was not good because they did not have much, but they never received the request.

Don Stinger apologized because he said that was supposed to be done. He said they have recently changed directors. The previous director left without filing form 990 and they had to pay the IRS $2,780 in interest and late charges. Those had to be taken out of the general fund and is half of the price of the new doorway they want to install.

Barbara Evans said she would reiterate what she said last year and that was that he should submit a written request and the Commissioners will review it.

Don Stinger said that would be fine.

He also wanted to comment on the subdivision in the Target Range area. He spent 2 years on the Reserve Street area that was to be annexed and, in the meantime, spent 1½ years on the area in question. He was part of the group that worked on the subdivision regulations and they were adopted. The Comprehensive Plan for the corridor area was adopted by the City and the remainder was left unchanged. He said he had asked about it a couple of months ago but was told that it would have to be re-done because it was too long ago. That was a lot of work which included 8-10 people on the review committee, and also members of the Forest Service, the Army and others that were called in as needed. He said it was a complicated issue.

Colleen Dowdall, Deputy County Attorney, stated that, in her conversations with Don, she felt the issue would have to be re-heard because the hearings were so long ago. In her opinion, new hearings should be heard before any decision was made about the Fort Missoula plan.

Fern Hart said she would propose that for the OPG work plan.

Don Stinger said, just from a layman’s perspective, the growth management efforts in the Fort Missoula area are to be applauded but he is afraid that they are insufficient and, unless something is done soon, it will be developed and the regulations will be after the fact. Change is inevitable but needs to somewhat regulated.

Michael Kennedy said he believed Don spent more time than many of the others and consequently knows more than others about this issue. He said they are resolved to work on it and come to a solution that will be a good one for the community.

He now returned the meeting to the disabilities issue and asked if there was any additional commentary.

Michael Regnier said he is the State Board Chair of CMCD. He wanted to respond to Don’s comments and indicate that they understand issues about money, particularly with the Senior Center and private non-profit organizations that do not have the money to update old buildings. They also understand the County’s position regarding making polling places accessible. The ADA allows a lot of non-structural means to be used to make elections accessible. It is not necessary to make the Senior Center physically accessible. They may wish to change the doorway for other reasons, namely their constituency, but having the funds to do it is a problem. Regarding accessibility for elections, he said Mike Cooney, Secretary of State, wrote an article which outlines the state’s position on elections and how requirements can be met, such as curbside voting, allowing people with disabilities to move to a different precinct if their precinct is inaccessible, use communications devices and written votes that are available to use in lieu of changing brick and mortar. (He passed a copy of the article by Mike Cooney to the Commissioners). He said, however, there is a problem with the announcements of alternate ways of voting for the disabled, so people who need to use them have no idea that they are available.

Michael Kennedy thanked Michael Regnier for his comments and asked if anyone else wanted to speak on this issue? No one came forward. He asked Vickie Zeier, County Clerk and Treasurer, to discuss the issue of polling place accessibility.

Vickie Zeier identified herself as County Clerk and Treasurer, an elected position, and said her duties included being an election administrator. She said she would like to meet with CMCD quarterly, as that would keep her up to date on their concerns. She needs to know what ways the County can make it easier for people with disabilities to vote because she agrees that voting is very important as a citizen.

She went on to describe what the Elections Department is doing currently to help disabled voters. She said there is a survey done for the polling places. In the 3 years she has been the Clerk and Recorder, they have not done a new survey. They expect to receive new standards from Mike Cooney in October, 1996, and then she will go out to view each polling place. Hopefully, she will receive the standards early to see, if by Mike Cooney’s standards, whether our polling places are accessible before the November election. She cannot do it now because she would be using old standards to check them.

Voting booths for disabled have not been purchased by Missoula County. They cost approximately $200 each and she would have to provide at least one per polling place. In April they will have a table with a sign “For Disabled Voters Only.” That table will direct disabled voters to a private voting area easily accessible for them. Missoula County offers alternative means to casting their ballots. If the Elections office receives a phone call requesting it, the County will deliver a ballot to a disabled voter. She concedes that the County does not have the TDD service and that is something they have to work on. But absentee voting can also be accomplished through a written communication, or someone else can come in and pick up an absentee ballot for the handicapped person. If a disabled person is assigned to a polling place which is inaccessible, that person can either come to the courthouse or go to an accessible place. She said if the disabled person notifies her 7 days prior to the election, she will make sure that person’s ballot for their
FEBRUARY, 1996 - 40 - FISCAL YEAR:

precinct is at that polling place. The County also offers curbside voting and the judges are instructed on how to go to a
car and do that.

Communication is important. She feels if she met with them quarterly or she came to a meeting before an election, she
can tell them what their options are and how they can help her better assist them. She agrees that all the different
options are not publicized in the newspaper so she feels her attendance at one of their meetings would be the best way
to address their particular needs and concerns. She asked them to please contact her when they would like her to
come and speak.

Michael Kennedy said the ADA law was passed because of a general acknowledgment of equity in this country. The
County also acknowledges that. Earlier in this meeting, they signed into effect a resolution proclaiming Missoula
County hate-free and it is often necessary to re-establish this notification. Even if we feel it in our hearts, that is not
enough. It has to be announced. In this case, the plight of disabled citizens is similar to that. It is important for
disabled people to know that we will work hard on this issue and it is important for the County to re-hear how it is
doing and be reminded that the needs of the disabled are there.

Missoula County worked hard and diligently over the years within numerous constraints, among those were funds, to
comply with the ADA Accessibility Guidelines and has done a good job. There is also much to be done yet and
hopefully that will all happen in time. The last capital building project that the County had was the Health Building
and that was over 20 years ago. The next capital project that is likely to come up is a new jail and the County is taking
into consideration all ADA requirements within the jail. It becomes much easier with new construction. At the same
time, redesigning existing structures takes not only money but effort in planning in how it will be done. But we are
doing it. He cited numerous instances, such as new completed restrooms, new sidewalks that have been constructed,
doorways widened to provide access, a Health Department remodel is currently under way, and the list grows. The
County is working toward compliance with the law but not because it is the law, but rather because it is the right thing
to do. He thanked everyone in the audience for taking the effort to come to this meeting. He invited them to come and
speak whenever they had a concern so that the County can provide fairness on this issue.

Fern Hart said it must have been difficult for those who are disabled to come to the point where they have to
personally come in and speak of the County’s inadequacies, but she appreciates them doing that. It helps the County
to be aware of their needs and they need to be reminded of what is fair. She reiterated that the County wants to do
right by them. She appreciates their willingness to work through these issues with the County.

Barbara Evans also expressed her appreciation of their taking the time to express their concerns, especially on such a
cold winter day.

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

THURSDAY, FEBRUARY 29, 1996

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

No Administrative Meeting was held; however, the following item was signed:

Plat -- The Board of County Commissioners signed the Plat for Boyd Addition, a two-lot subdivision located in the
SE1/4 of Section 18, T13N, R19W, PMM, Missoula County, a total area of 3.81 acres, with the owners of record
being Harvey F. and Mitzie M. Clouse.
FRIDAY, MARCH 1, 1996

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

No Administrative Meeting was held; however, the following item was signed:

Missoula County Employment Agreement -- The Board of County Commissioners signed an employment agreement between Missoula County and Steve R. Johnson, who will serve as Director of Personnel and Labor Relations, as per the duties and terms set forth, commencing on March 1, 1996, for agreeing upon an annual salary of $49,000.

The following item was also considered:

The Commissioners met with the Horseman’s Council and voted unanimously to allow them to lease the area on which the jumps have been erected for one year, per the favorable recommendation to the Commissioners by the Risk Manager, Parks Planner and the County Attorney’s Office.

Vickie M. Zeier
Clerk & Recorder

Michael Kennedy, Chair
Board of County Commissioners

MONDAY, MARCH 4, 1996

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

Monthly Report—Chair Kennedy examined, approved and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing items of fees and other collections made in Missoula County for month ending February 29, 1996.

ADMINISTRATIVE MEETING

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

Plat and Relocation Agreement—The Board of County Commissioners signed, as Commissioners and as the Directors of the Missoula County Airport Industrial District, the plat for Momont Industrial Park, Phase 2, Lot 3, showing a boundary relocation and a minor subdivision, located in the NW\(\frac{3}{4}\) of Section 1, T13N, R20W and the SW\(\frac{1}{4}\) of Section 36, T14N, R20W, P.M.M., subject to conditions set forth on the plat. The Board of County Commissioners also signed the Relocation Agreement for Lot 3B of Momont Industrial Park, Phase 2, between Jerry M. Foss, Personal Representative, Estate of Julian P. Foss, and Missoula County Airport Industrial District, to relocate the common boundary, as per items set forth.

Service Contract Modification—Chair Kennedy signed a First Modification to Purchase of Service Contract Number: 96-054-0024, between Montana County Board of County Commissioners and the Department of Public Health and Human Services, for the Partnership to Strengthen Families Grant, moving items in the current budget, per the terms set forth. The Modification was returned to the Peggy Seel, Grants Administrator for further handling.

Contract—The Board of County Commissioners signed a contract between the Missoula City-County Health Department and Lewis and Clark Health Department for conducting a maternal child health assessment project in Lewis and Clark County, per the terms and conditions set forth. The contract was returned to the Missoula City-County Health Department for further handling.

Contract—The Board of County Commissioners signed a contract between the Missoula City-County Health Department and Gallatin County for conducting a maternal child health assessment project in Bozeman, per the terms and conditions set forth. The contract was returned to the Missoula City-County Health Department for further handling.

Water Use Permit—Chair Kennedy signed a Beneficial Water Use Permit, RSID 901, for the town of Lolo, and subject to the stated conditions, for the protection of prior existing water rights. The permit was returned to John DeVore, CEO, for further handling.

Extension Letter—The Board of County Commissioners signed a letter to Tim Wolfe of Territorial Engineering & Surveying, Inc., approving a 3-month filing extension for Duke and Duchess Trailer Court subdivision, making the new filing deadline May 26, 1996.

Another item included:

Board Appointment -- The Board of County Commissioners appointed Louis B. Knudsen, as an alternate member of the Missoula County Airport Authority, effective immediately.

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

TUESDAY, MARCH 5, DATE, 1996

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

Audit List—The Board of County Commissioners signed the Audit List, dated March 5, 1996, pages 2-30, with a grand total of $238,650.03. The Audit List was returned to the Accounting Department.

WEDNESDAY, MARCH 6, 1996

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

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

Loan Application—The Board voted unanimously to have Chair Kennedy sign the INTERCAP Revolving Loan Application for the purchase of the warehouse and adjacent property (1247 Ernest), for the amount of $596,000.00, to be used for the County’s growing need for warehouse space and to be used by all County departments.

Other items included:

1. Board Appointment -- The Board of County Commissioners appointed Bryony Schwan as a member of Missoula County’s Weed Control Board of Supervisors to fill an unexpired term through December 31, 1997;
2. Board Appointment -- The Board of County Commissioners appointed John W. Hart as an alternate member on Missoula County’s Weed Control Board of Supervisors to fill an unexpired term through December 31, 1997; and
3. Board Appointment -- The Board of County Commissioners appointed Phil Schweber to a three-year term on the City-County Health Board through December 31, 1998.

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

PUBLIC MEETING -- MARCH 6, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

BID AWARD: PAVING MULLAN ROAD CANAL CROSSING CF-16 (ROAD DEPARTMENT)

Michael Kennedy said bids were opened Monday, March 4, 1996 at 10:00 a.m. for the construction of Mullan Road Canal Crossing CF-16 and shoulder widening and asphalt overlay along 1150 feet of Mullan Road east of Flynn Lane. The following bids were received:

- Jensen Paving Company $124,980.75
- JTL Group, Inc. $129,567.63
- Keeney Construction Company $247,177.40

The budget contains $120,000.00 in the Bridge fund and $45,000.00 in the Road fund for this project.

He asked if anyone wished to speak on this matter. No one came forward.

Barbara Evans moved that the Board of County Commissioners award the bid for Mullan Rod Canal Crossing CF-16 to the Jensen Paving Company in the amount of $124,980.75 in that it appears to be the lowest and best bid and based upon the recommendation of the staff. Fern Hart seconded the motion. Motion carried 3-0.

RESOLUTION TO SUPPORT MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS PROPOSED ACQUISITION OF CERTAIN MOUNT JUMBO LANDS

Fern Hart read the proposed resolution:

A RESOLUTION OF THE MISSOULA BOARD OF COUNTY COMMISSIONERS TO ENCOURAGE THE MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS TO FUND ACQUISITION OF 120 ACRES ON THE NORTH END OF MOUNT JUMBO.

WHEREAS, Mount Jumbo is an integral part of the Missoula community, providing abundant wildlife habitat, sustaining unique plant communities, and preserving significant native American and western culture; and

WHEREAS, Missoula County and the City of Missoula have adopted the Missoula Urban Area Open Space Plan, which calls for the preservation of conservation lands, views and vistas and identifies Mount Jumbo as a cornerstone element for achieving these goals; and

WHEREAS, Mount Jumbo provides unique educational opportunities for the Missoula community, the state of Montana, and the Northwest region, now and for future generations; and

WHEREAS, the public’s ability to appreciate wildlife is enhanced by this acquisition, enabling improved wildlife viewing and outdoor educational opportunities; and

WHEREAS, hunting opportunities on over 18,000 acres of national forest and Plum Creek lands will be improved, because of the role of Mount Jumbo plays in the survival of elk and mule deer populations which migrate to and winter on Mount Jumbo; and

WHEREAS, in an effort to perpetuate and protect fundamental components of wildlife habitat -- space, soil and vegetation -- and to remove foreseeable risks of irreversible habitat loss, the State of Montana Fish, Wildlife & Parks proposes to purchase 120 acres of Mount Jumbo lands; and

WHEREAS, Fish, Wildlife & Parks proposes to spend approximately $140,000 to acquire the 40-acre Warner property on the north end of Mount Jumbo, legally known as the NE¼SE¼ of Section 1, Township 13 North, Range 19 West, and in addition $140,000 to purchase an 80 acre portion of the Klapwyk property immediately south of the Warner property, known as the SE¼SE¼, Section 1, Township 13 North, Range 19 West, Prime Meridian Montana; and the NE¼NE¼, Section 12, Township 13 North, Range 19 West, Prime Meridian Montana.
NOW THEREFORE, BE IT RESOLVED that the Missoula Board of County Commissioners encourages the Montana Department of Fish, Wildlife & Parks to purchase the portion of the Klapwyk property and the Warner property described in this Resolution, for the protection of Mount Jumbo.

Michael Kennedy asked if anyone had any comments. No one came forward.

He said this was a significant step on the part of the City Open Space Advisory Committee and the City and County of Missoula, the Department of Fish, Wildlife and Parks, and everyone who was involved in the acquisition and setting aside the property for Open Space for a lot of reasons. The City, County and numerous other agencies and groups are interested and dedicated to this. It has been long in coming and the Commissioners applaud it.

Fern Hart moved that the Board of County Commissioners sign this resolution. Barbara Evans seconded the motion. Motion carried 3-0.

RESOLUTION NUMBER 96-017

Commissioners Michael Kennedy, Barbara Evans and Fern Hart signed Resolution 96-017, resolving to encourage the Montana Department of Fish, Wildlife & Parks to purchase the portion of the Klapwyk property, legally known as the SE¼SE¼, Section 1, T13N, R19W, P.M.M. and the NE¼NE¼, Section 12, T13N, R19W, P.M.M., and Warner property, legally known as the NE¼SE¼ of Section 1, T13N, R19W, for the protection of Mount Jumbo.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER/MORTGAGE EXEMPTION (WRIGHT)

Colleen Dowdall, Deputy County Attorney, said this was a request from Robert and Susan Wright. They have an 8.88 acre parcel located southwest of Lolo. They would like to divide the parcel in half, creating a 4.44 acre parcel for use as a security lien for the refinancing of their existing home. They want to transfer the remaining 4.44 acre parcel to their son and daughter, Robert F. Wright, Jr. and Kimberly A. Wright, as joint tenants.

COS 1169 was created in June, 1977, creating Tract A as a parcel greater than 20 acres in size. COS 1218 was filed in August, 1977, creating Tract a-10 as a parcel greater than 20 acres in size. COS 2308 was filed in March, 1980, creating Tract a-10A as a remainder parcel along with two family transfers and an occasional sale. The Wrights purchased Tract a-10A in September, 1994.

The applicants have not used any exemptions to the Subdivision and Platting Act.

Michael Kennedy said the reason for this hearing was for the Commissioners to make a judgment on how the owners intend to use the split of this land and whether that is an attempt to evade the Montana Subdivision and Platting Act. So he said he and the other Commissioners would be asking questions to make this determination.

Robert F. Wright said he understood that and stated they just moved here from the Chicago area. They found a parcel about 1½ years ago and purchased it a year ago last September. They sold their primary residence and moved out here to Missoula during the latter part of December.

They are trying to secure primary financing. They understood that, if any time in the future they wanted to transfer any or all of their property to their children, it may not occur because the way the financing was structured. So what they would like to do is avoid some future problem since the property and home will someday go to their children anyway. Presently, their son lives in Fort Collins and their daughter lives in Chicago. If either one of them or both of them would like to move here, there would be a piece of property adjacent to theirs that they could live on. There is no intention to evade or avoid. This is only to simply things up front before they go through the process of getting the mortgage so they don’t have to undo anything in the future, if they even have that option.

Michael Kennedy asked if there was a building on the site at this time?

Robert Wright replied yes. He said there is 8.88 acres and they want to divide it in half, keeping the 4.44 acres where their home is and the adjacent 4.44 acres they would like their son and daughter to have.

Barbara Evans asked if their children want to sell the land or did they plan to build on it?

Robert Wright answered that he wasn’t sure. In any event, they were not going to sell it. He said part of it is in an estate planning transfer to get a piece of property that is no use to them out of their estate for future estate tax purposes.

He said his son has a penchant for inter-mountain areas. His daughter, on the other hand, is a city person. But at this time, it is hard to tell if both kids will move out and when.

Fern Hart asked if he just had the two children or were there others?

Robert Wright said they only have two children.

Colleen Dowdall said she believes what they want is a joint tenancy with a right of survivorship so that would be an undivided one half interest.

Fern Hart asked if there were many houses up their road?

Robert Wright said their property is 2.1 miles from Highway 93 and there are probably 7 or 8 homes up there.
Fern Hart asked how the road was maintained?

Robert Wright said it was privately maintained through their homeowners’ association.

Fern Hart said he will receive a letter detailing their decision and that they are not responsible for access. It is also not a guarantee that the divided property will be available for septic or that they will be able to obtain a building permit.

Robert Wright nodded that he understood.

Michael Kennedy opened the public hearing and asked if anyone wanted to come forward to speak on this issue. No one came forward. He closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the mortgage exemption and family transfer of Tract a-10A of COS 2308 in Section 15, T11N R20W for Robert F. and Susan D. Wright in that there does not appear to be an evasion of the Montana Subdivision and Platting Act. Fern Hart seconded the motion. Motion carried 3-0.

Michael Kennedy commented that the people have both good opinions and poor opinions about the subdivision laws in the state that allow subdivision of the property for certain exemptions and methods, such as this. Whether there is an attempt to evade or not, this certainly allows a split of property which is basically a subdivision. That makes it difficult for the Commissioners to work on good land planning when these kind of rules exist. Sometimes these rules are a detriment for good planning. He stated that this is not a concern for the Wrights but he wanted to express that point of view.

There being no further business to come before the Board, the Commissioners were in recess at 1:48 p.m.

**THURSDAY, MARCH 7, 1996**

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

**FRIDAY, MARCH 8, 1996**

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

Indemnity Bond—Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Ruby E. Schmidt as principal for Warrant #096596 issued February 23, 1996 on the MCHS Fund in the amount of $587.88, now unable to be found.

Monthly Report—Chair Kennedy examined, approved and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending February 29, 1996.


No administrative meeting was held; however, the following item was signed:

Buy-Sell Agreement -- Chair Kennedy signed a Buy-Sell Agreement between Missoula County and Robert G. Seidenschwarz for 341 W. Pine Street (Lots 9 and 10, Block 18 McCorick Addition) in Missoula, as per items set forth, with $1,000 earnest money received.

**MONDAY, MARCH 11, 1996**

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.

Jail Inspection In the afternoon, Commissioners Hart and Kennedy and Mary Lou Gilman of the Health Department conducted an inspection of the Missoula County Jail facilities.

**TUESDAY, MARCH 12, 1996**

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

Audit List—Commissioners Kennedy and Evans signed the Audit List, dated March 12, 1996, pages 2-38, with a grand total of $360,649.75. The Audit List was returned to the Accounting Department.

**ADMINISTRATIVE MEETING**

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

Plat and Subdivision Improvements Agreement and Guarantee -- The Board of County Commissioners signed the Plat for Pfau Ranch, a subdivision of Missoula County located in the NE¼ of Section 26, T13N, R20W, P.M.M., a total
area of 18.63 acres, with the owner of record being Elaine Baird Pfau. Also signed was a Subdivision Improvements Agreement and Guarantee which includes a gravel pedestrian pathway along Spurgin and Clements Road, at an estimated cost of $4,000.00, and replacement of the septic system on Lot 2, to be completed by May 6, 1996. Completion of improvements and compliance with the Agreement are secured by an encumbrance on Lot 3 of Pfau Ranch.

Sanitary Sewer Grant Program Agreement—Chair Kennedy signed the Sanitary Sewer Grant Program Agreement for Landlords Who Rent to Low-Moderate Income Tenants, dated March 7, 1996, between Missoula County and Paul N. Gjording, landlord of three single-family residences located on Plat A in the SE¼, SW¼, SW¼, SE¼ in Section 1, T12N R20W, for the purpose of receiving assistance in the form of sanitary sewer HUD/CDBG grant funds, per the terms set forth. The Agreement was returned to Cindy Wulfekuhle in the Office of Planning & Grants for further handling.

Letter to Release Funds—Chair Kennedy signed a letter dated March 7, 1996, releasing to the Department of Natural Resources and Conservation all funds in excess of the Drawn Amount, $2,022,000.00, that won’t be needed for Linda Vista RSID #8543. The letter was given to John DeVore, CEO, for further handling.

Section 5303 Contract -- The Board of County Commissioners signed Section 5303 Contract between the State of Montana, Department of Transportation, Transportation Planning Division and Missoula Office of Planning and Grants, to evaluate, select and monitor technical study projects proposed by local metropolitan planning organizations or public bodies and agencies and transportation planning and technical studies projects. The Contract was returned to Linda Jordan in the Office of Planning and Grants for further handling.

Extension Letter -- The Board of County Commissioners signed a letter to Gregory S. Martinsen of Martinsen Surveys, approving a 6-month filing extension for Buttonwillow Farms No. 2, making the new filing deadline August 9, 1996.

Extension Letter -- The Board of County Commissioners signed a letter to Barbara Coombs approving a filing extension for Coombs Addition, making the new filing deadline April 30, 1996.

Extension Letter -- The Board of County Commissioners signed a letter to Gregory S. Martinsen of Martinsen Surveys, approving a 6-month filing extension for Sandi Acres, making the new filing deadline August 9, 1996.

Extension Letter -- The Board of County Commissioners signed a letter to Gregory S. Martinsen of Martinsen Surveys, approving a 6-month filing extension for Tim’s and Tom’s Commercial Lots, making the new filing deadline August 9, 1996.

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

WEDNESDAY, MARCH 13, 1996

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:

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #05, Pay Date March 01, 1996, with a total Missoula County payroll of $556,446.15. The Transmittal Sheet was returned to the Auditor’s Office.

Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and James Howard Kunstler, an independent contractor, to conduct a series of workshops, public forums, and staff consultations on the subject of community development, growth management, and how communities can retain their spirit and sense of place, as per the terms set forth, for the period commencing February 26, 1996, for compensation in an amount not to exceed $511.93.

Policy Statement -- The Board of County Commissioners signed Policy Statement 96-B, Cash Policy Statement replacing Policy Statement 85-D, for all departments with cash accounts that are handled on a daily basis.

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

PUBLIC MEETING --MARCH 13, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

The Chair noted there were no items for discussion on the agenda. He therefore opened the meeting for public comment. There was none.

The Board the Commissioners were in recess at 1:31 p.m.

THURSDAY, MARCH 14, 1996

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


No Administration Meeting was held, however, the following items were signed:

Plat -- The Board of County Commissioners signed the Plat for Buttonwillow Farms No. 2, a re subdivision of Lot 82-A of Buttonwillow Farms being Lot 82 of Orchard Home Company’s Addition No. 6, located in the SE¼ of the SW¼
of Section 26, T13N, R20W, P.M.M., Missoula County, with the owners of record being Tony R. and Mary A. Armour.

Plat -- The Board of County Commissioners signed the Plat for Tim’s and Tom’s Commercial Lots, a subdivision of Lot 7 of Momont Industrial Park, Phase 2, being a portion of the SE¼ of the SW¼ of Section 36, T14N, R20W, P.M.M., Missoula County, with the owners of record being Tim R. Marinan and G. Thomas Booth III.

Plat -- The Board of County Commissioners signed the Plat for Sandi Acres, a re-subdivision of Lot 81 of Orchard Home Company’s Addition No. 6, located in the SE¼ of the SW¼ of Section 26, T13N, R20W, P.M.M., Missoula County, with the owner of record being Tom L. Stuckey.

Other items included:
The Board of County Commissioners made the following appointments to the Missoula County Park Board:
1. Susan Brown from 1st alternate to a regular member to fill the unexpired term through May, 1998, and
2. Anne Rupkalvis from 2nd alternate to a regular member to fill the unexpired term through May, 1997.

FRIDAY, MARCH 15, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioners Hart was in Helena attending a Subdivision Task Force Meeting. At noon, Commissioner Kennedy read at the Head Start Reading Fair at the old Whittier School.

Construction and Maintenance Agreement - The Board of County Commissioners signed a Construction and Maintenance Agreement between the State of Montana, Missoula County, Burlington Northern and Montana Rail Link, Inc., for the Missoula I-90 Airport Interchange Project, Project No. 2354, which includes construction and maintenance of a highway and highway underpass, per the items and terms set forth.

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, MARCH 18, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Carol Postorino, doing business as Compensation Adjusters, for the purpose of the Missoula County Workers’ Compensation Group Insurance Authority to obtain the product and the expertise and the effort of the Contractor, per the terms set forth, for the period commencing April 1, 1996, for three years, in return for compensation of twelve monthly payments of $1,250.00.

Contract -- The Board of County Commissioners signed a contract between Missoula County and Jensen Paving Company, the lowest and best bidder for the construction of Mullan Road Canal Crossing CF-16 per the terms set forth, for the amount of $124,980.75. The Contract was returned to the bidding officer for further handling.

Rental Agreement -- The Board of County Commissioners signed an rental agreement with General Services Administration, providing for the lease of a detention cell area, office and two parking spaces, at the outlease space at the Missoula Federal Building/Post Office/Courthouse, 200 E. Broadway, in Missoula, Montana, for the period April 15, 1996 to April 14, 1997. The total annual rent cost is $8,846.53.

Plat -- The Board of County Commissioners signed the plat for Coombes Addition, a minor subdivision located in the SE¼, Section 36, T14N, R21W, in Missoula County, with the owners of record being Keith and Judith Hillard and Donald and Barbara Coombes.

Other items included:
1) The Board of County Commissioners approved a permanent light at the intersections of Blue Mountain and Highway 93 and Route 12 and Highway 93 per Horace Brown’s, County Surveyor, recommendation in his memo of March 4, 1996.

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

TUESDAY, MARCH 19, 1996

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

Audit List—The Board of County Commissioners signed the Audit List, dated March 19, 1996, pages 2–42, with a grand total of $247,740.41. The Audit List was returned to the Accounting Department.

Indemnity Bond—Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Linda Cordial as principal for Warrant #93960 issued December 1, 1996 on the Missoula County MCHS Payroll Fund in the amount of $193.57 now unable to be found.

DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the afternoon, the following items were signed:
Agreement Modification -- Chair Michael Kennedy signed Modification No. 2 and No. 3 of the Agreement between Missoula County and the Montana Department of Public Health and Human Services (DPHHS) concerning the breast and cervical cancer early detection plan (Contract No. 350193, as amended), in order to maintain and expand the plan, per the terms set forth. The modification was forwarded to DPHHS in Helena.

Professional Services Contract -- The Board of County Commissioners signed a contract for Professional Services between Missoula County and McGeeSmith Inc., an independent contractor, for the purpose of three training/consulting sessions on Team Building for the Health Promotion Division, commencing February 15, 1996, through April 18, 1996, for an estimated compensation of $500.00. The contract was returned to the Health Department for further signatures and handling.

Professional Services Contract -- The Board of County Commissioners signed a contract for Professional Services between Missoula County and the University of Montana Student Health Services, an independent contractor, for the purpose of two studies examining student perceptions of risk behaviors for HIV/AIDS infections, commencing January 1, 1996, through June 30, 1996, for a total compensation of $7,720.00. The contract was returned to the Health Department for further signatures and handling.

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

### WEDNESDAY, MARCH 20, 1996

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

**DAILY ADMINISTRATIVE MEETING**

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

**Payroll Transmittal Sheet** -- The Board of County Commissioners signed a transmittal sheet for Pay Period #6, Pay Date March 15, 1996, with a total Missoula County payroll of $535,979.10. The Transmittal Sheet was returned to the Auditor’s Office.

**Contract** -- Chair Michael Kennedy signed Montana Department of Public Health and Human Services (DPHHS) Contract No. 360163-TO-08, Task Order No. 8, between Missoula County and the DPHHS in support of a comprehensive, statewide tobacco use prevention and control program. The contract was forwarded to DPHHS in Helena, Montana.

**Loan Agreement** -- The Board of County Commissioners approved and Chair Kennedy signed the loan closing documents for Missoula County to enter into a loan in the amount of $341,696.08 on March 29, 1996 with the Montana Department of Commerce, Board of Investments for vehicles and computers for the Sheriff’s Department.

**Resolution No. 96-018** -- The Board of County Commissioners signed Resolution No. 96-018 authorizing participation in the Board of Investments of the State of Montana Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act bonds (INTERCAP Revolving Program), approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto.

**Supplemental Agreement** -- Chair Kennedy signed a Supplemental Agreement to supplement and amend the Missoula Urban Transportation Planning Process Agreement of August 26, 1982, between Missoula County, the State of Montana, the City of Missoula, the Missoula Planning Board and the Missoula Urban Transportation District, to enlarge City and County membership of the Transportation Policy Coordinating Committee. The Agreement was forwarded to Jim Nugent, City Attorney, for signatures and handling.

**Extension Letter** -- The Board of County Commissioners signed a letter to Gilbert Larson of Druyvestein Johnson & Anderson approving a one-year extension for River Road Addition, in accordance with the recommendation of the Community Development staff, making the new filing deadline March 20, 1997.

**Extension Letter** -- The Board of County Commissioners signed a letter to Gilbert Larson of Druyvestein Johnson & Anderson approving a one-year extension for Brandie Addition, in accordance with the recommendation of the Community Development staff, making the new filing deadline March 20, 1997.

**Extension Letter** -- The Board of County Commissioners signed a letter to John E. Kellogg, Professional Consultants, Inc., approving a three-month extension for C Bar C Estates, in accordance with the recommendation of the Community Development staff, making the new filing deadline April 30, 1996.

**Extension Letter** -- The Board of County Commissioners signed a letter to David Bowersox, WGM Group approving a six-month extension for Benchmark Homes Subdivision, in accordance with the recommendation of the Community Development staff, making the new filing deadline October 4, 1996.

Other items included:

1) the Board of County Commissioners received and approved the audit of the Western Montana Fair and Race Meet, July 1, 1995 to December 31, 1995, as submitted by Susan Reed, Missoula County Auditor. The audit was forwarded to Clerk & Recording for filing.

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

**Site Inspection** - At noon, Commissioner Kennedy accompanied County Surveyor Horace Brown on a site inspection for the petition to abandon claimed County right-of-way in the Bruce Addition.

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.
BID AWARD: TWELVE (12) GOLF CARTS (LARCHMONT GOLF COURSE)

Michael Kennedy said bids were opened on March 18, 1996 for 12 golf carts with the following results: Turf-Aid Distributing, Inc., $38,400.00 and Johnson Distributing, $40,973.28. The staff recommended the bid be awarded to Turf-Aid Distributing, Inc., in the amount of $38,400.00 as the lowest and most responsive bidder.

He asked if this amount was budgeted?
Bill Galicher, Manager of Larchmont Golf Course, replied the amount was in the budget. It is not a capital expenditure but a long term debt, payable in 5 years.

Michael Kennedy said he was not sure he understood because he sees this as a capital improvement. He asked what kind of contractual arrangement Larchmont had on this?
Bill Galicher replied previously they did the loan through Yamaha Corp., but, in discussion with John DeVore, the County’s Chief Executive Officer, they will look into local financing.

Michael Kennedy asked, then, if the essence was that they will borrow the money, pay Turf-Aid, and make payments to a creditor for five years?
Bill Galicher answered that was correct.
Barbara Evans asked if he was going to get a competitive interest locally that he would get through the state?
Bill Galicher responded that he was looking into that also. He said he and John DeVore will also discuss this.

Barbara Evans moved that the Board of County Commissioners award the bid for twelve 1996 golf carts to Turf-Aid Distributing, Inc., in the amount of $38,400.00 in that it appears to be the lowest and best bid. Fern Hart seconded the motion. Motion carried 3-0.

CONSIDERATION OF: JIM TOTH SUBDIVISION FOR LEASE/RENT

Lisa Moisey, Office of Planning & Grants, said this a request from Jim Toth for a subdivision for lease or rent on his property at 10260 Butler Creek Road. The property is presently unzoned in the County and is covered by the Butler Creek Area Plan. The 1994 Butler Creek Area Plan has designated this area as open and resource land. The Office of Planning & Grants has reviewed this proposal for compliance with the Comprehensive Plan and found that the proposal is consistent with surrounding land uses. Given that 3 of the adjacent 6 parcels are similar in nature in both size and use and the neighboring eastern parcel has two existing dwelling units, the proposed change in use is compatible with surrounding uses.

This property is 2 acres of land. Mr. Toth recently purchased a home on this property. It has an approved well and septic. In addition, Mr. Toth is requesting permission to convert an existing shop and garage which is on the property into a guest house for occasional use by clients and family.

Access to this subdivision is provided from Butler Creek Road, which is a County maintained roadway with a 60 foot right-of-way. The road surface is unpaved and is 20 feet wide. Butler Creek Road does not meet County standards in that it is not paved nor does the base material meet standards, thus dust problems could occur. Because of this, staff recommends that the developer file a document of record which waives the right to protest a future RSID to improvements to Butler Creek Road, which would include participation in a dust abatement district.

Butler Creek runs through the property and is approximately 2 feet to 4 feet wide at the location. Surrounding the creek is vegetation characteristic of a riparian resource area. The applicant has provided a riparian resource management plan as part of the subdivision application. In the management plan application, it is noted that no external changes will occur as a result of the remodel of the garage and shop. Staff has reviewed the management plan and found it acceptable, however, staff recommends that, to prevent sidecasting of road materials into the creek from the bridge that crosses the creek, the applicant place compacted gravel or asphalt/concrete on the approaches to the bridge.

The applicant is requesting one variance request from subdivision regulations requiring sidewalks or pedestrian walkways because this is a rural area. Staff reviewed this request and recommends approval.

The applicant has provided a legal document of record showing legal access to cross the private driveway which is not located on their parcel but on the adjacent parcel.

Staff recommends approval of the subdivision for lease or rent with the conditions recommended in the staff report.

Michael Kennedy said, he does not know who has management responsibility for the creek, but he is concerned regarding the gravel on the approach to the bridge. He asked if the County should contact the person responsible for it so that the approved management process is properly adhered to?

Lisa Moisey responded that they would do that before final plans are submitted.

Fern Hart asked if this property was purchased by two families?

Jim Toth answered that he and his wife had been friends with the Noronas for about 6 years. The Noronas visit Montana about 4 or 5 times a year and have told them that, if they ever found a place that they could use for a summer place, to let them know. Keeping their friends’ request in mind, he and his wife purchased this place and it was ideal. It has an existing house on it (which they currently live in) and it also has a shop/garage building. The shop could easily be converted into a guest house. From the outside, it looks like a house so no outside work needs to be done.

Michael Kennedy asked Jim to verify that this was not a commercial venture and he did not plan to use the converted building for rentals?

Jim Toth answered that was true. This is strictly for the Noronas and family guests.
Fern Hart asked if the ownership of the property was undivided?
Jim Toth said the property is actually owned by his wife and Marcelo and Sue Norona.
Fern Hart said she was most concerned to protect the riparian area.
Jim Toth agreed. He said he likes to fly fish and appreciates keeping the water clean and natural. When they first looked at this property, they noticed the shop is built to look like a house, complete with steps and a porch. Nothing will done to the outside of this building so it will not affect the nearby vegetation at all. Also, they will not clear out any brush as the landscape in this area is all natural growth.

Michael Kennedy said, regarding the sewer system, this has been approved for a second drainfield. He presumes this is not near the creek.

Jim Toth said, before they bought the property, they contacted the Health Department and had them do a site evaluation for a separate septic. They questioned whether another septic could be done because there is a hillside. But the Health Department personnel found a site that they can install a system called a “cut system,” a process whereby they will actually cut part of the hill and make a flat area for a drainfield. That is an improved plan and they received the site approval for it. With two separate dwellings, they have to have two separate septic systems.

Michael Kennedy asked if they have to pump to it?

Jim Toth said yes, because it is about 10 feet higher. It is an alternative to what a normal drainfield would be but an improved one.
Michael Kennedy asked if anyone in the audience had any comments about this matter? No one came forward.
Fern Hart moved that the Board of County Commissioners grant the variance for no sidewalks or pedestrian walkways for the Toth Subdivision, located at 70260 Butler Creek Road, in that this is a rural area. Barbara Evans seconded the motion. Motion carried 3-0.
Fern Hart moved that the Board of County Commissioners approve the Toth Subdivision, located at 70260 Butler Creek Road, for lease or rent, and contingent on the conditions of the staff listed below:

1. The applicant shall place compacted gravel or asphalt/concrete on the approaches to the bridge where it crosses Butler Creek. Plans shall be approved by the County Surveyor prior to submittal of final plans.
2. The applicant shall record a document waiving the right to protest a future RSID/SID for improvements to Butler Creek Road, including participation in a dust abatement district, and may be used in lieu of signatures on an RSID/SID petition. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land depicted hereon.

Barbara Evans seconded the motion. Motion carried 3-0.

HEARING: PETITION TO ABANDON CLAIMED COUNTY RIGHT-OF-WAY (BRUCE ADDITION)

Michael Sehestedt, Chief Deputy County Attorney, said the Bruce Addition is south of town in an area between the Bitterroot River and the Montana Rail Link line. Medicine Bow Motors is located on Lots 3 and 4. This request is to vacate a 25 foot wide strip of land that was deeded to the County about 1906, based on a road petition. At that time, the way to Lolo was Miller Creek Road and the original Buckhouse Bridge crossed the Bitterroot River just to the south of the subject parcel, crossed the tracks, turned and the road went on to Lolo. The petitioned road was described as a 25 foot strip extending from the road at Buckhouse Bridge back toward town, parallel and adjacent to the Northern Pacific branch line. In 1926, when the new Buckhouse Bridge was opened at the current Highway 93 bridge site over the Bitterroot River, the Commissioners removed the then existing Buckhouse Bridge. 1927 was the year of actual removal. It was also in 1927 when they deeded back to the property owners an interest in a part of this road. This was done because the language in the deed included this if it ceased to be used as a public road. There matters have remained until the present. There have been no formal proceedings to vacate this petition for road.

As the years passed since the 1920’s, this deeded roadway fell out of subsequent conveyances. The last time it appears in the deed to these parcels is about 1940. In the mid 1950’s, the Bruce Addition was platted and no road was shown. Other recorded security documents did not show this road. What happened in 1954 to provide access to the Bruce Addition was that the County acquired an easement from Montana Rail Link to cross the tracks at approximately this point and then we had 35 foot easement within the railroad right-of-way running up past the subject property providing access to the lots in Bruce Addition. At this point, there are buildings and fences constructed on this property and at other locations in the Bruce Addition that encroach on the right-of-way. However, all that is under consideration at this hearing is the strip of right-of-way on Lots 3 and 4 because that is all that is on the petition to vacate. The issue before the Commissioners is whether to vacate this 1906 dedicated roadway. He stresses that the petition for vacation in these proceedings do not affect the 1934 granted easement on the railroad right-of-way at 25 feet.

As far as they were able to ascertain, it does not appear that the road was ever actually constructed on that right-of-way. There had been earlier discussions as to the possibility of a 60 foot right-of-way through this area based on 1890 railroad survey. They have since ascertained that they were unable to tie that 1890 date to that particular representation. Also, the County has been unable to establish that the road if, in fact, existed prior to the time the property was passed out of the public domain. Insofar as that 60 foot right-of-way was once asserted by the County, they have determined that they cannot sustain the claim to it.

Fern Hart asked if the County has the right-of-way extending on either side?

Michael Sehestedt replied that, as the road was originally petitioned, it runs almost to the current Buckhouse Bridge site. The earliest map shows what was actually constructed on the ground is a 1926 Highway Department plan for the new highway. What they show existing at that time was a farm road wholly within the railroad right-of-way.
Michael Kennedy said, as part of the review process, a Commissioner and the County Surveyor must visit the site to explore the interests involved. He said he and Horace Brown visited the site earlier in the day and asked Horace for his comments.

Horace Brown, County Surveyor, said this right-of-way has a bridge that runs along the northwest side of it. There are also buildings inside the fence which are built over the top of the right-of-way. The right-of-way cannot be used unless the buildings were removed. He has no problem with the vacation except for the area where the old Buckhouse Bridge road used to be.

Michael Kennedy thanked Horace for his comments and then opened the public hearing.

Mark Simonson, Montana Rail Link, said, regarding Medicine Bow’s issue with the crossing, the Blue Mountain Road intersection was a proposal they would like to see done. To line that up with the Medicine Bow crossing, he asked how that impacted the decision on whether they want to give up this other easement. He believed that 25-35 feet would be inadequate as a proper road width but the additional easement would benefit the County in having a wider roadway that would serve all the adjacent landowners. Their goal is to have one crossing rather than four, one for each individual landowner. He understands there was a future plan to build a new bridge and connect to Blue Mountain Road again.

Barbara Evans told Mark she would like to explain how they got to where they are today.

First, the Commissioners received a request from Medicine Bow Motors who were concerned that the crossing had been put aside. The Commissioners felt the best thing to do was get a consensus on the issue and come to an agreement. At that time, they said they would try to put together a frontage road with a single access. The Montana Department of Highways said that they did not want an access for local residents to come in at Blue Mountain Road unless there is a bridge that would have more people traveling on it, making it necessary to have a full section there. So the idea of putting it in across from Blue Mountain Road is something that the Department of Transportation would rather not do.

At that point, the Jerke’s attorney told the Commissioners they had potential sales but need to have the County review the underlying easement. It is a block on the title and has to go away for them to be able to make their sale. The Commissioners determined that for future road use, the County does not need this but is not willing to give up the grant that the railroad gave the County. The other issue of where or what accesses there would be across the tracks is a separate issue.

She recalled this account as best as she was able and invited anyone to speak to correct any details.

Michael Kennedy said that the lawyers representing the petitioners dispute whether the County still retains ownership of that property. Although the County countered that, he feels the County does not have interest in the property and that clears the title for it.

Mike Zarbolias asked if Montana Power’s interest was represented here because they have a natural gas line under the right-of-way.

Michael Sehestedt answered that their easement and right to use it survives any vacation of the road.

Michael Sehestedt said that Montana Power did not have a fee interest and reiterated that they are not affected. He explained that if the County has a road easement, and that is the County’s position in this matter, Montana Power has the right to use that easement under the law. If the County does not have an easement, then they have the easement from him.

He continued that, if the County vacates a road, it is a matter of law that the vacation of the road does not affect the easements for utilities that may have been installed. They survive the vacation of the road and their rights will not be affected, whatever the answer is and however ownership is determined.

Betty Bristow asked if the gas line and pipeline is on railroad right-of-way instead of the County right-of-way?

Michael Kennedy said the power poles that exist there are the approximate right-of-way line that separates the railroad from any other private property.

He asked if anyone else wanted to speak on this issue and no one came forward. He closed the public hearing.

Barbara Evans said she wants to be sure that the people who had come for this hearing understand that this does not deal with the railroad crossing issue, which is outside this issue. If they are interested in pursuing that, they need to continue to do that another time.

Michael Sehestedt, in response to a question raised by the railroad representative regarding the Blue Mountain alignment, the Commissioners had subsequent discussions with the Montana Department of Highways and their view is that they did not want a crossing at that point connecting with the road on the other side of the tracks. Their reasoning was they believe there will probably be a stoplight at that intersection. Because of the clearance distances, they need to coordinate the light with signals on railroad crossing and a number of other issues. They felt that it would be more expense in volume of traffic. Their preference is that we use the County’s 25 feet basically as a frontage road and that connections to the highway be as far as possible from Blue Mountain intersection. What actually gets done there will involve further discussions between County and property owners because they need to be in agreement and they have differing rights. The Commissioners will continue to work with them but the full crossing and access was seen by the Highway Department as undesirable in light of anticipated volume of traffic.

Barbara Evans said they gave their assurances to the railroad that they would try to come up with a decision within a year so that they can take out their crossings and have just one. She does not know who should initiate the process but asked that those who were interested to see to it that this moves along.

Fern Hart moved that the Board of County Commissioners grant the petition to vacate that certain County right-of-way generally described as a 25 foot wide strip running contiguous with and parallel to the Montana Rail Link right-of-way.
through Lots 3 and 4, Bruce Addition, a platted subdivision in Missoula County, all in the S½ SW¼ of Section 2, Township 12 North, Range 20 West, P.M.M. Barbara Evans seconded the motion. Motion carried 3-0.

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

THURSDAY, MARCH 21, 1996

The Board of County Commissioners did not meet in regular session. Commissioner Hart was in Helena attending a MACo Taxation Committee and Budget Committee meetings; and Commissioner Kennedy was out of the office Thursday and Friday, March 21st and 22nd. In the evening, Commissioners Evans and Hart attended a Local Government Reception held at the Holiday Inn.

1996 Missoula County Operating and Financial Plan  --  Acting Chairperson Barbara Evans signed the 1996 Missoula County Operating and Financial Plan, Reimbursable Services Requested by USDA-Forest Service. This Plan, made and agreed to for the period beginning April 1, 1996, and ending September 30, 1996, by and between the Lolo National Forest and the County of Missoula, becomes a part of the Cooperative Agreement between said parties dated April 1993.

FRIDAY, MARCH 22, 1996

The Board of County Commissioners did not meet in regular session. Commissioner Hart was in Polson attending a Mental Health Board Meeting.

MONDAY, MARCH 25, 1996

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

Audit List—Commissioners Evans and Hart signed the Audit List, dated March 25, 1996, pages 2-28, with a grand total of $160,909.79. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Modification of Agreement  --  Acting Chairperson Barbara Evans signed a Modification of Agreement between the Missoula City-County Health Department and the Montana Department of Environmental Quality to provide public information and outreach regarding radon. The Modification of Agreement was forwarded to the Montana Department of Environmental Quality in Helena.

Counties Certification  --  Acting Chairperson Barbara Evans signed a Certificate of Missoula County of the Consultant’s Agreement between Missoula County and Beaudette Construction of Big Sandy for the Streetcar No. 50 Restoration Project. The Certification was returned to Horace Brown, County Surveyor, for further handling.

Professional Services Contract  --  The Board of County Commissioners signed a Professional Services Contract between Missoula County and Geralyn McFadden, an independent contractor, for assistance with transcribing the daily minutes of the Commissioners’ Office, commencing on April 1, 1996 and concluding on or about April 30, 1996, with compensation not to exceed $600.00.

Budget Amendment and Resolution No. 96-020  --  The Board of County Commissioners signed a budget amendment and Resolution No. 020 for the Health Department for EPA Federal pass through funds from the Missoula Housing Authority for a lead abatement program.

Budget Transfer  --  The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY’96 budget:

1) Control No. 96-019, a request from the CBO Department to transfer $1,100.00 from the Parent Council Stipends to Contracted Services for modification to the Partnership to Strengthen Families Program per the memo from Peggy Seel, Grants Administrator;
2) Control No. 96-020, a request from the Clerk & Recording/Treasurer Department to transfer $2,195.00 from Treasurer Department Permanent Salaries to Elections Temporary Salaries for the purpose of a temporary part-time election clerk; and
3) Control No. 96-021, a request from the Partnership Health Center to transfer $105,611.00 from Merit Reserve, Contingency, Clinic Supplies, Physician Services and Lab Supplies to various accounts.

Other items included:

1) Commissioners Evans and Hart approved a request from Peggy Seel, Grants Administrator, for $600.00 to be paid to Sunset Memorial Funeral Home for services for Richard Dietrich.

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

Vickie M. Zeier  Michael Kennedy, Chair
Clerk & Recorder  Board of County Commissioners

[Signature]
[Signature]
The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners attended a MPA (Montana People’s Action) Hearing on the Housing Crisis held at City Council Chambers.

Indemnity Bond—Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Catherine Ernst as principal for Warrant #56346 issued March 20, 1996 on the Missoula County Payroll Fund in the amount of $1,565.62 now unable to be found.

Indemnity Bond—Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Karin Flint as principal for Warrant #56209 issued March 20, 1996 on the Missoula County Payroll Fund in the amount of $1,491.40 now unable to be found.

Indemnity Bond—Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Wendy Dupuis as principal for Warrant #56208 issued March 20, 1996 on the Missoula County Payroll Fund in the amount of $1,344.51 now unable to be found.

Indemnity Bond—Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming E. Gail Weber as principal for Warrant #56210 issued March 20, 1996 on the Missoula County Payroll Fund in the amount of $2,213.93 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Camera Company as principal for Warrant #2322 issued January 13, 1995 on the Missoula County School District #7, General Fund in the amount of $24.45 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Gloves Are Us as principal for Warrant #22910 issued January 31, 1995 on the Missoula County School District #40 Fund in the amount of $49.00 now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Agreement -- Chair Kennedy signed a Memorandum of Agreement between Missoula County Park Board and Seeley Lake Elementary School in which the Missoula County Park Board agrees to provide up to $2,500.00 in matching funds for capital improvements for the Seeley Lake Community Park, per the terms set forth. The Agreement was returned to Leslie Bailey, Office of Planning & Grants, for further handling.

Resolution 96-022 -- The Board of County Commissioners signed Resolution 96-022, resolving to vacate the County right-of-way through Lots 3 and 4, Bruce Addition, located outside the railroad right-of-way, located in the S½SW¼ of Section 2, T12N R20W, P.M.M., Missoula County, Montana, be vacated.

Other items included:
1) the Board of County Commissioners voted unanimously to approve a request from the Garden City CHDO for $24,500 of Missoula County Program Income Account funds to be used to provide downpayment assistance to five first-time homebuyer households purchasing units in the 1421 Eaton Street project. Duration of the project is from February 1, 1996 through June 30, 1996.

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

PUBLIC MEETING --MARCH 27, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

RESOLUTION CONCERNING CONTAMINATION OF WATER BELOW THE MILLTOWN DAM
Michael Kennedy said he will not read the resolution because it is highly technical, but he wanted to discuss it’s importance.

The approximate 100 years of mining in the Butte area has resulted in serious contamination of the watershed, reaching all the way to the Clark Fork River. The Milltown Dam encapsulates, at least temporarily, millions of tons of sediment that are laced with heavy metals, arsenic, copper and zinc. During the recent ice jam and flooding event experienced in Missoula County, much of those sediments were dislodged and came downstream in the surface water. Some of the readings on those were in excess of 400 times of the acceptable standards. The Environmental Protection Agency, along with ARCO, have been studying the whole of the Clark Fork River basin for the last 10 years and are quickly reaching conclusion on how to deal with that particular issue. The Water Quality District disagrees somewhat with the Environmental Protection Agency and ARCO’s findings that those sediments can remain in place safely for thousands of years. The Milltown Dam has had remarkable failures and it is less than 100 years old so there is reason to believe that, as it ages, there will probably be more failures of that dam, resulting in releases of those sediments and arsenic laden materials downstream, affecting our waterways.

The County has created a resolution which, if it is a motion of the Board of County Commissioners to pass it, states it is in disagreement with the probable findings of the Environmental Protection Agency and asks the Environmental Protection Agency to take certain steps. The last of those would be that we ask for a temporary delay of the record of decision to the Milltown site to allow for a more thorough evaluation of the remedial alternatives, consistent with the objectives of the resolution and to evaluate options to remedy instream standards violations due to ice flows and flooding, including further evaluation of pilot studies and the most promising alternative clean-up technologies proposed for the site. They believe that, if the State and Federal governments and ARCO do that, it will be a more suitable alternative than the ones so far proposed. He said that was the essence of the resolution. He invited anyone who had comments to please come forward. No one came forward.

Fern Hart moved that the Board of County Commissioners support this resolution, giving the County the opportunity for further evaluation and pilot studies to find the best possible innovative solutions. Barbara Evans seconded the motion. Motion carried. 3-0.

RESOLUTION NO. 96-021

The Board of County Commissioners signed Resolution No. 96-021, a resolution to the United States Environmental Protection Agency, resolving to request a temporary delay of Record of Decision concerning the contamination of ground and surface waters below the Milltown Dam and allowing more time to evaluate options to remedy instream standards violations.

CONSIDERATION OF LAMOREUX (SUMMARY PLAT) 4-LOT RESIDENTIAL SUBDIVISION: CONTINUED FROM FEBRUARY 7, 1996

Lisa Moisey, Office of Planning & Grants, noted that she had received a letter from the applicants dated March 6, 1996, which granted the County an extension for consideration of their request until March 28, 1996.

Michael Kennedy said this was a continued meeting and asked the applicants if they had additional information for the Board.

John Kellogg, Professional Consultants, Inc., said he represented the Walkers. He stated he appreciated the Commissioners’ concerns and the step they made in creating the drainage district. The Walkers are willing to go along with that effort. These are complex issues that are related to both drainage and road improvements, a responsibility that should be borne by the subdividers, and where that responsibility ends relative to the impacts of their subdivision versus the impacts that are coming to this from off-site.

Fern Hart said the way she reads the recommendations is that the drainage shall be approved by the County Surveyor and he will be required to contain drainage, which can be determined to be from their subdivision, on their subdivision.

Michael Kennedy said that is with some limitations. They cannot contain all drainage that could occur on those lots but only up to a limit.

John Kellogg said the limit is up to the 10 year frequency storm.

Michael Kennedy said there will be an event where storm water will not be contained on this subdivision but will flow away from it. Without being critical, he explained this was a consequence of past planning efforts and approvals. This basin contains about 60 to 100 developable lots, all of which contribute drainage and thus contribute to this problem. It is unfortunate and sometimes unfair that the problem should be borne by individual lot owners downstream because most of the problem is generated upstream. They have made a preliminary decision to form an SID in that area and probably by resolution in order to start a solution for the basements in that area. In addition, the engineering community has formed a committee, the American Society of Civil Engineers and National Professional Engineers Society to give recommendation regarding the technical aspects of overall drainage control within the urban area, including the city. They were hoping that through these efforts this kind of incident won’t recur and he said the Commissioners will do what they need to do to ensure that it doesn’t.

This is a dilemma. John has mentioned a condition where they are going to contain up to a 10 year storm on the property and excess drainage of what is going to contribute to the downstream problem that exists and affects all of us and for which we are all responsible for. It is their hope that the SID process will be successful because at this time, there seems to be no legal nor a fair way to approach that.
Barbara Evans asked if the staff was recommending a concrete sidewalk or a gravel pathway?

Michael Kennedy said the roadway under discussion was very steep and a sidewalk would be difficult to construct there.

Lisa Moisey said the staff recommended that the developer dedicate a 20 foot wide pedestrian public access easement and construct a 10 foot wide gravel pathway along the frontage of Lots 1 and 2 of Lamoreux Lane.

Barbara Evans said her concern was the steepness of the road. She has seen sidewalks that are stepped so that people can go down them.

Lisa Moisey said we had discussed that it would be a difficult to install that gravel pathway there. She recalled a discussion where staff agreed that, given the amount of cut that would be required for the pathway along the slope and given the potential safety problems, they would reconsider condition no. 3.

Barbara Evans said she agreed with the other Commissioners that there is a drainage problem and the last person at the bottom of the hill is not responsible for all the water that came down from the top. At some point, she hopes that it can be fixed, by funneling or whatever.

Barbara Evans moved that the Board of County Commissioners grant the variance request from paving the on-site portion of Lamoreux Lane, in the Lamoreux Subdivision located along Lamoreux Drive south of Lower Miller Creek Road, based on the recommendation of staff. Fern Hart seconded the motion. Motion carried 3-0.

Michael Kennedy noted this was the second variance request.

Lisa Moisey said the first variance request was from sidewalks/pedestrian walkways.

Fern Hart asked John if he planned to drain along the edge of the roadway?

John Kellogg replied correct; on the upper part to the east and southeast of the roadway.

Fern Hart asked where the sidewalk would have been, even though she knew there was a variance request from sidewalks?

John Kellogg said the sidewalk staff had proposed was on the inside of the turn.

Lisa Moisey confirmed that.

Barbara Evans said their decision, when the subdivision is approved, will be that there is a waiver of a right to protest an SID for paving the road when everything is paved.

Michael Kennedy pointed out that this was a private road, however, and the County has no opportunity to require pavement of this road at a later date if they approved the variance.

Fern Hart asked about condition no. 2, which read: “Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any further RSID/SID for improvements to Lower Miller Creek Road...” She asked then, if this small portion of road is not done, they will never be able to pave it?

Barbara Evans said that is the problem.

Barbara Evans moved that the Board of County Commissioners grant the variance from sidewalks/pedestrian walkways for Lamoreux Subdivision, located along Lamoreux Drive south of Lower Miller Creek Road. Fern Hart seconded the motion. Motion carried 3-0.

Barbara Evans moved that the Board of County Commissioners approve the Lamoreux Subdivision, located along Lamoreux Drive south of Lower Miller Creek Road, summary plat based on the recommendations of the staff and contingent on the conditions listed below. Michael Kennedy seconded the motion. Motion carried 3-0.

1. The developer shall submit all plans for grading and drainage, which would include the containment of storm water generated by a 10 year storm as opposed to the 5 year storm currently required by regulation, and a proposal for a drainage district, all of which shall be approved by the County Surveyor prior to filing of plat.

2. The following statement shall appear on the face of the plat and in each instrument of conveyance: “Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID for improvements to Lower Miller Creek Road, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”

3. The developers shall add to the road maintenance agreement a measure to ensure dust abatement is applied regularly to Lamoreux Lane. Language shall be approved by the County Attorney prior to plat filing.

4. The developer shall delineate two building envelopes per acre on Lot 3. Building location shall be restricted to a site within these envelopes. Building envelopes shall be shown on the plat and approved by the Office of Planning and Grants prior to plat filing.
Fern Hart asked what was the situation on the sidewalks?

Lisa Moisey said, since the variance on the sidewalks was approved, the Commissioners can delete condition no. 3.

Michael Kennedy said he wanted to add an RSID waiver on storm drainage.

Fern Hart asked counsel if that was permitted?

Barbara Evans also asked if that was permitted if the drainage district was suggested?

Colleen Dowdall, Deputy County Attorney, replied she believed so.

Michael Kennedy said the approval should include that the storm water to be contained on the lots is limited to the storm water generated by a 10 year storm.

Barbara Evans said those two provisions are included in the motion.

Fern Hart asked Counsel if the Commissioners could require this if it were not in the regulations?

Colleen Dowdall said it exceeds the requirements of the regulations because the requirements we refer to are the ones contained within the state health regulations.

Barbara Evans said, on the other side of that coin, however, there are several things included in the regulations that were not required.

Michael Kennedy said he is asking, before they act on that motion, whether they accept that condition due to the fact that we relieve them of the responsibility to pave that portion of the road.

Colleen Dowdall asked, if in making that amendment, he could cite the special conditions that require the amendment for this particular subdivision and why we need to exceed the regulations.

Michael Kennedy said his hope was that the petitioner would include in their proposal the collection of a 10 year storm so that the County would approve their proposal rather than having to go through that.

Barbara Evans said, put in another way, what he is asking to put on the record is the fact that, during the last flooding event, the water did sheet flood over the Lamoreux subdivision. It did not originate there, but it did flood over it, down unto Miller Creek Road, and also covered the top of the 2 step system collector tanks owned by the city, causing a potential problem there and recognizing that drainage is a problem for the folks below. That is the reason that they feel that they should be participating in the drainage district with one storm.

Colleen Dowdall said to include planning drainage for a 10 year storm.

Michael Kennedy said these are the reasons we are requesting these provisions. He asked if everyone was clear on the motions?

Barbara Evans explained to the applicant what this means is, if a drainage district is ever formed for the general area, they will not have the right to say “I don’t want to participate.” They will have given up that right if they agree to this condition.

John Kellogg said that was fine.

Michael Kennedy said, in addition to the drainage district, the subdivision regulations as currently written require a containment of 5 year storm and instead the condition will read a 10 year storm in view of the problems that are caused. We acknowledge the future problems downstream from this development. This is an attempt to reduce the amount of excess drainage that would flow from their lots in the event of storms and flooding that might cause downstream damage.

John Kellogg said he understood.

Barbara Evans said her motion includes those two items.

Fern Hart said she was fully prepared to deny this subdivision request, however, she did not on the advice of the County attorneys.

Michael Kennedy said he acts with hesitation because they are in a position to deal with the consequence which is not a satisfactory solution in his view. But it is not the worst solution, so he agreed to the subdivision request.

HEARING: HILLCREST HEIGHTS RESIDENTIAL SUBDIVISION IN SEELEY LAKE – PRELIMINARY PLAT

Lisa Moisey, Office of Planning & Grants, said Hillcrest Heights is a 24-lot residential single family subdivision of 33.9 acres tract located a few miles east of Seeley Lake. The property is accessed by Airport Road, which is a County maintained roadway 24 feet wide with a 60 foot right-of-way. The developers, LeRoi Smith and Dick Hauser of Smith/Hauser Investments, are proposing to subdivide this parcel into 24 lots of approximately 1 acre in size. With this development, the developers are proposing a 3.4 acre common area. The developers are seeking approval of phased development for this project. Phase I will consist of the common area plus the 7 lots located on Hauser Drive, Phase II will consist of the 11 lots located along LeMar Drive and Phase III will consist of the 6 lots located around the cul de sac. The property is unzoned.
Outside accesses will be from Airport Road. The County Surveyor had indicated concern about the site distances at the intersections of the proposed on-site roads. The developers have stated they were working with the County Surveyor on design alternatives which will improve the site distances at those locations. At the intersection of Hauser Drive and Airport Road, the developer plans to straighten the approach and acquire an easement across Lots 1 and 7 to allow for the removal of some vegetation to open the intersection there. At the eastern intersection, the developer is proposing limited cut to open the site distance at that location.

The 3.4 acre common area will be developed with Phase I. Staff noted that there is a riparian resource area on this common area down below the second bench. Staff requested as a condition that the developer should clearly note the limits of the area of riparian resource on the plat and discuss those activities which are permitted in the riparian area. There is another riparian resource area on the property which essentially runs down the middle of the parcel and includes the designated drainage retention areas. Staff recommended that the developer delineate these also as a no-disturbance zones on the plat to ensure that these areas are maintained in their natural state as much as possible.

Michael Kennedy asked if those will be constructed drainage basins?

Lisa Moisey said she understands that this is an area which retains water during certain times naturally.

She continued this is also an area of wildland residential interface and staff recommended that the developer add language to the covenants which address the Missoula County Fire Standard regulations. These are also noted as conditions. There was one remaining issue when this was discussed and that was the type of water available for fire suppression for this subdivision. Subsequent letters received from the Seeley Lake Fire District note that the developer has been working with the Fire District to come up with the best way to ensure that there is water available for fire suppression if needed. Seeley Lake Fire District has agreed on a water storage tank for this project.

These homesites will be on individual septic and individual wells. The Planning Board met on March 5 and voted 8-0 to recommend approval of the preliminary plat for Hillcrest Heights with conditions. The Planning Board recommended deleting condition no. 4 and also recommended changes to condition no. 8 and added language and changes to condition no. 9B.

Originally, the applicant asked for a variance from length to width ratio for 2 lots in the subdivision and, at the Planning Board, the developer had formally withdrawn their request for that variance and have indicated that they would bring in a plan which shows realignment of the eastern-most roadway which would shift the road east so that the lots would meet the required 3-0 ratio. So there are no variance requests as part of this subdivision.

Staff recommends approval of the subdivision contingent on the conditions in the staff report and based on the findings of fact.

Barbara Evans asked if it was true that the staff recommendation in the executive summary that presently states there is a request for a variance is not factored in this hearing.

Lisa Moisey said that was correct. The executive summary was prepared prior to the Planning Board meeting.

Michael Kennedy asked if the applicants or their representative was present?

Dick Ainsworth, Professional Consultants, Inc., said he represented the developer. He stated that they were in agreement with all the conditions of approval as recommended by the Planning Board. They had asked them to delete the variance request and the Board agreed unanimously with that. They intend to adjust the road so that the variance is not needed.

Fern Hart asked where the no-build zone would be?

Dick Ainsworth said the property in Lots 22, 23, and 24 has a gentle rise on it about 12-14 feet then it flattens out again. That was the area that was proposed as no-build. The developer felt these lots were the best lots because they provided an opportunity for a daylight basement on those slopes. No one would have to do that but the option was there. With a no-build zone, it would take that possibility away. So the developers asked the no-build zone be taken out and the Planning Board granted that request.

Fern Hart asked if he considered that area a place where deer may cross?

Dick Ainsworth said the deer cross all over this area.

Fern Hart asked if there was a draw in that area?

Dick Ainsworth replied no. He said LeRoi Smith and his wife own and live just east of the proposed subdivision and have for a number of years.

Michael Kennedy opened the Public Hearing and invited anyone who wished to come forward and speak to do so.

Barbara Willing, 315 Eagle Drive in Seeley Lake, said her property bounds the Smith’s personal property on the east side. She only found out about this issue when it was published in the Seeley Swan Pathfinder. She is concerned about Airport Road, which will serve the proposed subdivision and quite a few other landowners currently there. Airport Road is a narrow road with no shoulders. It is winding, has many blind curves, and it a roller coaster ride all the way. It is a difficult road any time of the year but in winter, it is treacherous. She is worried because there are so many family dwellings proposed for this subdivision. She doubts if Airport Road can support that much more additional traffic.
She said she would like to see the number of dwelling units be reduced. She would prefer to see this plan taken into town. She thinks it is a good plan and makes good use of the land. But she does not think it would be good for the area it is proposed for, mainly because of Airport Road.

Jan Guelff said she owns property approximately a dozen feet south of the proposed subdivision. She, too, is concerned about the density and the traffic on Airport Road. She said each place will need a sewer and well and the town and various residences around the property are below it. She counted 24 sewers going downhill unto her property and the others.

Michael Kennedy thanked them for their comments and asked if anyone else wanted to speak on this subject. No one came forward and he closed the public hearing. He invited questions from the Board.

Barbara Evans asked the County Surveyor what his comments were on Airport road?

Horace Brown, County Surveyor, replied the only improvement that they plan for Airport Road is to widen it from the high school to Route 83 for a walkway/bike-way. They will probably widen the part of the road that is narrow and winding in the future but they have no plans for that at this time.

Barbara Evans asked what he thought of the road’s safety?

Horace Brown answered, as with any other road, it is safe if you drive it correctly. There is not much they can do about the curves without rebuilding the entire road.

Fern Hart asked what he thought the capacity of the road was?

Horace Brown replied that it was nowhere near the capacity the road can handle. He said there is a safety problem with the design of the road but capacity will not cause the problem, speed will.

Barbara Evans asked Dick Ainsworth his opinion on the sewer systems?

Dick Ainsworth replied they have not made their formal committal to the Health Department regarding this subdivision. The Health Department review of subdivisions really follows two routes. One of them is the conventional review of the property’s ability to handle septic systems and provide well water, and doing soil profiles and perk tests. He said they intended to do these one step at a time. If they get preliminary approval, they will continue. The other and newer route for the Health Department deals with non-degradation of the ground water. That is another part of the review from the legislature in 1993. What they typically do with subdivisions is do an analysis of the property with non-degradation as they are designing the subdivision and submit that to the Water Quality Bureau to see if it meets their criteria. That has been done and the Bureau has replied by letter that this subdivision as designed will not degrade the water downstream, of which the Commissioners have a copy. They still have to do the perk tests on the sites, do a profile and make a formal submittal for them to lift the sanitary restrictions which they intend to do on a phase by phase basis. They will not lift the sanitary restrictions if they do not meet the requirements.

Barbara Evans asked what the anticipated phasing length of time was?

Dick Ainsworth answered about is about 5-8 years. When the lots would be developed would depend on who buys them and how fast they want to build.

Fern Hart said she took note of the slope that would give builders the option of a daylight basement and wondered if it was important to keep those contours.

Michael Kennedy said, in that regard, they should keep in mind the staff’s recommendation. The first part of that recommendation concerned the steepness of the slope and the second had to do with erosion problems and the third was resources within that lot. It seemed to him that it made sense to commit the construction to the street side of the lot in order to maintain the resources in their whole state. The staff recommendation is not just because that slope is steep.

Dick Ainsworth said all of the lots are fairly heavily timbered, although they were logged about 15 years ago, so the trees are not real large. The house footprint will take up, in theory, if you build the same house in the front of the lot or where they could build a daylight basement, it would take up the same amount of land and destroy the same amount of trees or land resources other than perhaps along the driveway. As they move the road a little to the east (about 50 feet - to resolve the length to the width and get it up on top of the hill for site distance), that shortens up the driveway. They can build on the slope of the lot and it will not eliminate more of the resources than if they build on the front part.

Lisa Moisey said it was staff’s determination that, by requiring the no-build zone, they cluster the human activity closer to the roadway and limit the length of the driveway that would access the house. She understands that moving the roadway further to the east will eliminate the driveway to some degree but staff would still recommend that the condition stand given that, even though the driveway may be lessened by moving the road to the east, it will be lessened further by requiring the no-build zone there. It would also help to preserve the openness of the area and help preserve space for wildlife corridors and cluster the human activity closer to the road. It would help to ensure that the fire department has best access to serving those residences built in the area.

Dick Ainsworth said there is no central sewer nor central water. He said you cannot do this same density with clustering and meet non-degradation requirements. If they had community water or sewer, they could cluster and you wouldn’t have to worry about soils or pollution of the wells. It would afford more flexibility.

Michael Kennedy said the location of the house and the location of the drainfield are different matters. He believes clustering is still possible by locating the septic tanks and drainfields in their proper location throughout that property. He asked Counsel’s opinion on that.
Colleen Dowdall said she is not familiar with non-degradation standards. She remembers a complaint they had from a land-use standpoint that it makes it very difficult to cluster. Circle H is an example she knows of that had a very difficult time getting through because, if it is a cluster of 5 lots or more, you have to do a community system, you cannot do individual systems. As a result, they had to do modifications.

Barbara Evans commented that they had to put in sand filters.

Michael Kennedy said that had to do with the character of the soil. But in keeping with this, they still have to go through sanitary review. He wonders if they cannot offer some opportunity for closer construction of houses and disperse the septic tanks and drainfields for the houses over the balance of the property.

Dick Ainsworth supposed that they could in theory. You could put in septic systems in the places they would be if this plan were in place. Dedicating areas for septic systems, erasing the lot lines and clustering the houses would be possible but costly.

Michael Kennedy said roads and drainage systems are very expensive components of the development. When “one acre” lot in Missoula County has more to do with sanitary restrictions than anyone’s particular desire so, setting aside the size of the lot and divining what the needs of the community are, it seems that the “one acre” lot vanishes and, if they can deal with the sanitary restrictions in a way that would reduce the infra-structure costs, then you may find that clustering may lead to remarkable open space and may reduce the infra-structure costs at the same time achieving Commissioner Hart’s and others’ ideals. He said he agreed with Commissioner Hart that this is a typical urban subdivision that isn’t particularly attractive or unique and it does not match the quality of the area up there.

Dick Ainsworth said he discussed that with the owners when they started, and they in turn discussed it with realtors. One of the problems with clustering is marketability. He realizes times are changing and it may be that people are becoming more inclined to clustering. However, he has done at least a dozen clustered developments himself in the last 30 years and he ended up vacating and replatting every one because they absolutely could not sell the lots. People did not want a little lot with a common area and would not buy them. He said he is a proponent of clustered developments but he has never been able to sell them. He hopes that clustering will become more marketable as time goes on. A primary concern of the developers, in this case, was that in Seeley Lake, a rural area, they don’t think people will want to go out in that area and live on a small lot and close to the neighbors. The realtors believe that will be very difficult to sell. Even though he would like to see more clustered developments, he does not believe it is for every circumstance.

Michael Kennedy said, in the discussion with the Planning Board, community water systems and sewer systems were brought up. He said he understands Dick plans to rely on septic tanks and individual wells because the distance from community water system or sewer system. The whole discussion centered on the request from the Seeley Lake Fire District to install hydrants out there. He asked if the owners would mind if the County imposed a waiver condition on water and sewer connection in future time?

Dick Ainsworth replied no.

Michael Kennedy said, if that is the case, the way to ensure that that would be the least costly to all of those lots within the area would be to cluster those houses so that the infra-structure costs would be minimized.

Dick Ainsworth said that could reduce the costs; it may not, but it could.

Fern Hart asked him to comment on fire protection for the area.

Dick Ainsworth said they spoke with the Fire Chief and discussed the possibility of installing a holding tank and that is a method that has been used with Missoula Rural Fire in several different locations. The Fire Chief asked that they send a written proposal to him and send a copy to Collin Moon, the former Fire Chief, so they did that and proposed a holding tank at one of four locations. Collin called him and said he was satisfied with this proposal. He recommended they should use two 45 degree fittings instead of a 90 degree fitting and a couple of other small items, which were fine with him. He believes Jeff Lien, the current Fire Chief, will also be happy with it but he has not as yet heard from him.

Fern Hart asked him next to comment on the canopy of tree size near structures. Are they asking that they clear some area around the house?

Dick Ainsworth answered yes. The County subdivision regulations contain language that directs how that should be done on different slopes. They propose that they add that language to the covenants and they will do that.

Fern Hart said to Horace that she understands the design of Airport Road is designed in such a way that it is not safe at high speeds. She then asked if the planned walkway will be along this subdivision?

Horace Brown replied no. It will only extend form state highway to the high school. The high school is to the west of this subdivision.

Fern Hart asked if the interior streets are to be paved?

Lisa Moisey replied yes.

Michael Kennedy asked why the road was going to be made that wide?

Dick Ainsworth said it was to meet County standards.

Michael Kennedy asked if his client would be satisfied with a reduction of the road width?
Dick Ainsworth said he believed he would be.

Michael Kennedy asked the County Surveyor if he had any objections to reducing the width of the paved part of the traveled way from 24 feet to 20 feet?

Horace Brown said he preferred 22 feet. He asked if there was going to be a walkway?

Lisa Moisey said they have planned an internal gravel pathway along the inside loop of housing on LeMar Drive. It will loop all the way around from one entrance to the other.

Horace Brown said, as long as there is a walkway so that residents do not have to walk on the road, he has no problem with 20 feet wide.

Michael Kennedy said he agreed with staff recommendations regarding the slope of the property. He asked how Lots 8 through 12 would be situated for houses since there is a 30 foot drainage easement through those properties? It appeared to him that there might be a conflict, at least on Lot 12. He noted that there was a drainage easement, riparian requirement and a septic tank, a well and a house all on one lot.

Dick Ainsworth said making an adjustment on the northern end of LeMar Drive to shorten up the depth on Lots 22 and 23, if they move that road about 50 feet, he would then re-design some of those internal lots. Move the backbone between Lots 7 and 8 and Lots 6 and 9 over to the east, to closer align with the drainage easement. Because of the Health Department requirement, they have an acre minimum lot size. With the present plan, they cannot move the line between Lot 3 and 12 to the west and make Lot 12 bigger, but they will gain some acreage by moving the road. He said he had been thinking, when they talked about doing that, to slide the acreage around so they can actually move that line that is common to Lots 3 and 12 to the west by 20-30 feet, which would increase the buildable area on Lot 12 to the west of the retention area substantially. With the road moving to the west, Lots 8, 9 and 10, at least, would have more room between the drainage area and the road.

Michael Kennedy asked how he planned the access in Lots 1 and 2, where there is rather a steep slope?

Dick Ainsworth answered that they will build a driveway that will cut across the lots to get down to the lower slope.

Michael Kennedy asked Lisa Moisey if staff had discussed this at all?

Lisa Moisey replied that they had not.

Dick Ainsworth commented that they could meet the County driveway standards.

Michael Kennedy said, on condition no. 2, there is a acceptance of an RSID waiver for improvement to Airport Road. He said it seemed to him that if Hauser Drive and LeMar Drive are ultimately accepted into the County, which is in the proposal, then the RSID waiver ought to be extended to LeMar Drive and Hauser Drive as well because they need to be operated and maintained and someday replaced. If they approve this, he asks this condition, as well as the condition for waiver on water and sewers, be added.

Dick Ainsworth said they are already installing those at their cost.

Michael Kennedy said but they don’t last forever.

Dick Ainsworth said this was a new requirement to him. He asked if all new subdivisions will require the waiver of a right to protest an RSID?

Michael Kennedy replied yes, in acknowledging that someday roads have to be replaced and the limited ability of the County. He said the first instance was in Eagle Glen.

Dick Ainsworth asked if that was a private or County road?

Michael Kennedy answered it was a paved County road and it had that requirement as a condition of approval.

Barbara Evans commented that the staff is looking at finding a mechanism for the County to do a maintenance waiver for a maintenance SID for the roads but they do not have it yet.

Michael Kennedy said she was right.

Fern Hart asked Counsel if they were within their legal limits in this instance?

Colleen Dowdall said she has not determined yet if they have the ability to require a maintenance SID and that is the first question that needs to be asked, then whether the County can require someone to waive their right to protest it. They will have to rely on prior County attorney opinions that have recommended doing that. It is not currently in the regulations and, once again, if the Commissioners want to exceed the regulations, she suggests naming special circumstances related to this subdivision.

Michael Kennedy said then they should go back to the maintenance and look at the replacement section because that is a condition of Eagle Glen. They did approve that.

Colleen Dowdall said she does not recall that specifically, however, she believes replacement is maintenance, but adds she is not sure.
Michael Kennedy said if they had adopted it as a condition and it was found to be illegal, it can be stricken. Otherwise, there is no opportunity if it is not found to be illegal to add it to the approval after the fact.

Colleen Dowdall said that was correct. She said if the determination is to come from her at this time, she said it was fine to do, but it is not definitive until the Commissioners have adopted it.

Michael Kennedy said they are asking for the waiver on Airport Road which is an existing road and it does not seem dissimilar to him. He said the only difference is that this is a new road as opposed to an existing road. They are both allowed the waiver on a piece of pavement that has been previously constructed. He does not see the difference.

Colleen Dowdall questioned, with Airport Road, is it to pave it in the future?

Michael Kennedy said yes.

Dick Ainsworth said the waiver protest of RSID as he as seen with developers has historically addressed off-site roads that were built in the past, were not built up to standards, was understood that at some point that the road was going to have to be improved and you wanted to make sure that those who were going to use it pay their fair share, or maybe a sidewalk was going to be added sometime in the future when everyone along there would agree to do it -- he said he does not disagree with these things but he notes that in the past it was not a requirement for road maintenance or replacement of an existing County road. If things are changing and the County is starting a new requirement, he believes it should be addressed when the subdivision regulations are reviewed for revisions and updates. That way the developer will know up front what the requirements are.

Michael Kennedy said what they have noticed is the ability of the Road Department, or the County taxpayer, to go back and maintain and/or replace existing roads is diminishing more every year. The amount of taxes you can collect on subdivisions does not pay for this. He said, for instance, there will be discussion today regarding Mullan Road. It is falling apart and everyone is complaining about it and there is not any money to take care of it. The Commissioners can see, not just this road, but every other County road is in the same category in that, sooner or later, they will have to be maintained beyond the ability of the general taxpayer to do that and they will all have to be replaced someday. Knowing that, they want to start remedying the situation if they legally can.

Colleen Dowdall said her concern about doing it now is that they are reacting to a particular situation that has arisen and they don’t want to see arise in the future.

Michael Kennedy said that was not true because this kind of action was taken on Eagle Glen last summer.

Colleen Dowdall said she was starting to recall Eagle Glen and it was her recollection that it was that particular Glen Eagle Road that has been built but they have concerns about it because of its grade and the standard to which it was built. They knew that that road will require rebuilding in the near future. That road was originally built by the developer but the County took it back on taxes. So she is concerned that they will require that they have not had an opportunity to discuss and to consider it in light of what the law allows. She does not know if this issue was discussed at the Planning Status meeting yesterday but she knows it was not discussed at the Attorney meeting. So she does not feel prepared to make a good judgment at this time.

Barbara Evans said she agreed that this kind of thing needs to be done but she is not willing to change the rules in the middle of the game. This is something that needs to be submitted to the County attorney for research and discussion so that changes can be made following the correct routes. She believes this is important for the future but she does not support it at this time.

Michael Kennedy said, what he has heard regarding concerns about the slope and the ratio of the lots, he understands the drainage will be modified. There have been several modifications suggested already at this meeting. He has also heard testimony that the development could somehow be improved and he feels that is correct. That, added to the conversation about roads, which the Commissioners know they are building in a future problem without any mechanism to solve it, this development, as it is presented to be improved for the benefit of the developer in terms of cost and to the surrounding neighbors and also the environment and natural resources, based on all that, he cannot support this submittal. He believes it can be improved upon.

Fern Hart asked if they should have dust abatement considerations in this subdivision?

Lisa Moisey answered that all of these roads will be paved.

Fern Hart said if the drainage area was moved, will they still respect the riparian area?

Dick Ainsworth replied that they are not planning to move the drainage area as it is a natural drainage and they want to leave it in its present form, but he did say that they plan to move the backbone of the lots to more closely align with the drainage area. And, yes, they will still respect the riparian area.

Barbara Evans asked if the developer has met all the legal requirements of County regulations in this proposed subdivision?

Lisa Moisey said, in terms of the criteria they use to review subdivisions, they have.

Colleen Dowdall said she does not see anything in the staff report or in the evidence presented thus far that provides any legal reason to deny this proposal. She continued that Commissioner Kennedy’s concerns about design perhaps can be fair. For instance, if the design does not follow regulations or does not best meet the regulations. But she feels this subdivision has come through the process designed under the standards that exist in the County subdivision regulations.
Barbara Evans agreed. Thus, based on Lisa’s and Colleen’s comments, and a unanimous approval vote from the Planning Board who reviewed this subdivision, she cannot see why this subdivision should not be approved.

Fern Hart asked how the water supply for this subdivision was?

Dick Ainsworth said, again, they have not yet made a submittal with the Health Department so completed plans and analyses are not done. Water in the Seeley Lake area is a problem and that is why they have a water system that takes it out of the lake. As you move to the east, and closer to the airport and away from town, the wells seem to get better.

Don Martin, a well driller who lives across the road from the subject property, went to the Planning Board meeting and there is testimony from Don who was concerned about the westerly lots having problems getting water. In talking to LeRoi himself, LeRoi was surprised because when he asked Don if he thought they could get adequate water for all the lots, Don said yes. He said Don said you just have to be careful when they are drilled. They will have to prove this to the Health Department before they will approve this subdivision. Their first phase of the proposed subdivision will be the westerly lots and the ones that Don had most concern with. The developer may drill a well on there themselves. He reiterated that they had not completed that part of the project.

Fern Hart said this is a desirable place for people to live, however, she feels that there is not enough information regarding the sanitation and water. She asked if they get that information in this review?

Colleen Dowdall said they don’t because they don’t have any authority over that portion of the subdivision. There are different regulations and statutory authority called Sanitation in Subdivisions. As Dick said earlier, you go through a process of state regulations also. If they find that sanitation standards cannot be met or that there isn’t adequate water, it will be turned down at that level. It isn’t necessary to make the Commissioners’ approval contingent upon the other approvals because theirs is required to get the plat filed.

Fern Hart said she feels they do not always have sufficient information about the subdivision under review, but she conceded that what they do know about this one, it seems to meet the subdivision regulations.

Barbara Evans moved that the Board of County Commissioners approve the preliminary plat for Hillcrest Heights, a 24-lot residential subdivision of 33.9 acres, located on Airport Road a few miles east of Seeley Lake, Tract #2 of COS #3722 and Tract 1A of COS #3746 in the NW ¼ NE¼ of Section 2 T16N R15W, in that it meets all the legal requirements and the planning regulations, which include the finding of facts and contingent on the conditions listed below. Motion carried 2-1. Michael Kennedy opposed.

1. Plans for paving, grading, and drainage shall be approved by the County Surveyor prior to filing of the final plat. Specifically, LeMar Drive will be relocated to allow the re-design of Lots 22 and 23 so that they meet the required 3 to 1 depth width ratio.

2. The following statement shall be included on the face of the plat and in each instrument of conveyance: "Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID for improvements to Airport Road, or for extending of public water or sewer to the area, and may be used in lieu of their signatures on an RSID/SID petition."

3. Plans for fire suppression and water storage requirements shall be approved by the Chief of the Seeley Lake Fire Department prior to filing of plat.

4. The developer shall show on the face of the plat a no-build zone starting at the slope break and covering the hill which slopes down to the east on Lots 24, 23, 22 and 21. Plans shall be approved by OPG prior to filing of final plat.

5. The developer shall identify and delineate on the plat the limits of the riparian resource. This resource area shall be noted as a “no-build” area and an “area of riparian resource.” In addition, the developer shall note in the covenants the activities that are permitted or prohibited in the area of riparian resource. Structures, motorized use, and vegetation removal shall be prohibited. Plans shall be approved by the Office of Planning and Grants prior to filing of final plat.

6. The developer shall designate the retention areas as “Drainage retention/riparian areas” and shall label, on the face of the plat, the retention areas and the 30 foot wide drainage easement as “No-Disturbance” zones. In addition, the purpose and restrictions for these drainage retention/riparian areas shall be outlined in the covenants. Plans shall be approved by the Office of Planning and Grants prior to filing of final plat.

7. The developer shall dedicate a twenty (20) foot pedestrian public access easement at the end of LeMar Drive. Said dedication shall be conditional upon the subsequent acquisition of a public pedestrian access easement across the adjoining property to the south. This easement across the adjoining property shall be at least twenty (20) feet wide and shall align with the width of the public access easement at the end of LeMar Drive. Said pedestrian access easement shall not be open for public use until such time as the connecting access easement is approved and constructed on the property to the south. Plans shall be approved by the Office of Planning and Grants prior to filing final plat.

8. The following shall be added to the protective covenants:

A. Permanent barbecue pits shall not be permitted due to potential wildlife/human conflict. Portable barbecue grills shall be cleaned regularly and stored indoors when not in use to prevent wildlife attraction.

B. Flowers, ornamental shrubs, fruit trees and gardens may be susceptible to damage from wildlife unless property fenced and protected. The planting of native vegetation is recommended for landscaping and...
revegetation. All fruit trees shall be properly harvested so as not to allow an accumulation of rotting organic matter which is a prime wildlife attractant.

C. Gardens shall be enclosed with a fence one foot below ground level and at least eight (8) feet in height, with the top rail made of something other than wire to prevent wildlife entanglement. All compost piles shall be in wildlife proof containers.

D. Salt blocks and feeding platforms for deer or mineral blocks for horses shall not be allowed on any premises.

E. Domestic pets (dogs and cats, etc.) shall not be allowed to run free and potentially harass wildlife. Dogs and cats shall be kept in an enclosed structure when not under the direct supervision of the owner.

F. Apiaries may attract species such as bears and should be avoided. Before an apiary is located on a lot, the owner of the bee hive(s) should first contact the U.S. Fish and Wildlife Service Grizzly Bear Recovery Coordinator in Missoula or the Department of Fish, Wildlife, and Parks to discuss their plans and how to best avoid wildlife conflicts.

9. The developer shall include in the covenants provisions for the following sections from the Missoula County Subdivision Regulations concerning Wildland/Residential Interface areas:

A. Section 3-2(2)(6) which states that dead-end driveways in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus. A turnaround shall be within 150 feet of the building. A minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13’6” for any driveway over 150 feet. The opening through a gate shall be two feet wider than the road. Final design shall be approved by the Seeley Lake Fire Jurisdiction.

B. Section 5-1(5)(H) which states that the property owner shall create a defensible space for fire protection purposes as approved by the appropriate fire jurisdiction. Vegetation shall be removed and reduced around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guideline. Ornamental trees and shrubs should not touch any buildings. When planting the property owner shall select trees, shrubs, and vegetation that limit or retard fire spread. The developer shall outline the types of vegetation and include drawings of vegetation reduction guidelines.

C. Roof Construction shall be limited to the use of only Class A or Class B fire-rated roofing materials.

Barbara Evans asked Lisa if there were any changes?

Michael Kennedy asked if she should not move on the variance first?

Barbara Evans responded that she thought the variance had been removed. She asked Lisa if that were correct?

Lisa Moisey answered that was correct.

Fern Hart asked about condition no. 4, which the Planning Board recommended be deleted and the staff recommended the condition remain. She said she supports the staff recommendation, which means condition no. 4 be included as part of the approval.

Barbara Evans agreed that it should be included.

Colleen Dowdall confirmed that the motion included the conditions as presented in the staff report.

Fern Hart said correct, but noted that the variance had been withdrawn.

Michael Kennedy asked about the waivers for the sewer and water. He reminded the other Commissioners that he asked Dick Ainsworth if the owner would accept the waiver of right on the water and sewer should public water and sewer ever be extended that way.

Barbara Evans said she believed Dick had said yes to that so she had no problem with it.

Fern Hart agreed.

Lisa Moisey reminded the Commissioners that there were other recommendations for language changes that the Planning Board made which staff feels enhance the staff report. Those are noted on the “Request for Commission Action.”

Fern Hart asked if they weren’t minor changes, such as taking out “for horses?”

Lisa Moisey answered that staff had requested that Planning Board delete the last sentence in 9B to respond to concerns that the Fire Department had, so she said staff recommends that that sentence be deleted in the motion.

Barbara Evans said she includes in her motion the changes in the staff report as Lisa recommended and gave the secretary a copy of them, with the inclusion as Commissioner Kennedy mentioned the waivers regarding the water and sewer if they become available.

Fern Hart agreed.
Michael Kennedy said the motion should also include narrowing of the paved portion of the traveled way from 24 feet to something less than 24 feet.

Horace Brown said that was his question. He said 20 feet is okay so long as there is a walkway. He also wants it to be clear that the County will not maintain the walkway.

Barbara Evans asked if that met with the approval of the other Commissioners?

Michael Kennedy and Fern Hart nodded yes.

Barbara Evans said then that is also to be included in her motion.

Colleen Dowdall said if they are going to decrease the paving, a variance has to be granted.

Barbara Evans said that will also be included in the main motion.

Colleen Dowdall said that will be okay.

Michael Kennedy said the last item regarding the roads, as it is being staged, a temporary cul de sac would be constructed at the intersection of LeMar and Hauser Drives. In his opinion, that should not be done. The temporary cul de sac should be constructed at the corner of Hauser Drive because, in listening to the staff, they don’t know what future development interests are.

Dick Ainsworth said that is what they always thought would be the case. Maybe there was a misunderstanding because that seems to make more sense.

Barbara Evans asked how the secretary would put that in the minutes?

Gloria Baker, secretary, responded that she needed it worded.

Dick Ainsworth said the cul de sac would be located at approximately the south end of the common area in Lot 3.

Hauser Drive is an existing road. It is not a County road, but it is existing road that accesses that property to the south.

Michael Kennedy asked if there was any further discussion to that motion? He said he understands the motion to approve a variance reducing the interior streets from 24 feet to 20 feet wide on the paved portion of the traveled way and to include a waiver requirements on water and sewer; to allow the temporary cul de sac to be located at the southerly end of Hauser Drive.

He understood what Commissioner Evans said about legal requirement being met. At the same time, if that is the only requirement of this hearing, then there is no need for the Commissioners to hear that because the staff and the attorney can make a legal determination. He believes there is a responsibility of the Commission to examine these on the basis on what is in the best interests of the community. His view is that it is in the best interests of not only the developer, but also the purchasers, the surrounding neighbors, the environment as a whole and, ultimately, the County, to maintain that roadway system and to redesign this development in a way that is more benign. He believes there is a better design and this is why he cannot support it.

Fern Hart commented to Barbara Willing that they are seriously considering what it is that makes roads safe. They have initially learned that well paved wide roads encourages folks to drive faster. She said she can’t say what is in the mind of people who tailgate on Airport Road, but if the County creates a strong arterial there, it may just encourage people to do that. It will cause all of the access roads to have problems getting on and folks to drive much faster. That is one of the reasons she supports reducing arterial roads so that folks won’t run through subdivisions at high speeds.

HEARING: PUD AND REZONING REQUEST -- TAYLOR ACRES, LOT 64, COBBAN & DINSMORE’S ORCHARD HOMES NO. 5

Pat Keiley, Office of Planning & Grants, said Larry Walters represented by Eli & Associate is requesting to create a 9 lot subdivision and a Planned Unit Development (PUD) called Taylor Acres, a preliminary plat. This consists of 8 townhouse lots, a 9th lot which has no development planned for it, and three common areas. This is on 4.81 acre of land, legally described as Lot 64, Cobban and Dinsmore’s Orchard Homes #5. It is located on the northeast corner of S. 7th Street W. and Clemens Road.

The existing zoning, C-RR2, is proposed being changed to C-RR2/PUD. The Comprehensive Plan, 1992 Update, requires a suburban residential maximum of two dwelling units per acre.

The PUD is calling for 8 townhouse units in two groups of 4, for sale or lease, and are located on the southeast corner of the property. The buildings are staggered, clustered and set back, lot widths are reduced and are varying lot sizes for each of the units. There are attached garages behind the units. One group of 4 units fronts on Taylor Lane, which is a private paved road, providing internal access, and the other group of 4 units front on South 7th Street W., which is an existing County paved road, meeting County standards. There will be 3 common areas, 2 of them consist of landscaping and the third one consists of Taylor Lane, a public utility easement and also some landscaping on the eastern-most property line. The density proposed is 1.66 dwelling units per acre. C-RR2 zoning district allows a maximum of 2 dwelling units per acre and there is no density bonus being requested with this PUD, which allows density bonuses that are under the County PUD regulations. This proposal meets the intent of the Planned Unit Development and the C-RR2 zoning standards as well as Chapter 3 and Chapter 4 of the County zoning resolution.

This proposal provides clustering of units, provides common areas throughout the property and Lot 9 is not proposed for any development and will serve as an open area at this time. It also includes creativity in building design and layout and location. This development will provide in-fill development and the opportunity for future development and/or future in-fill development. The PUD considers the relationship of the site to the surrounding area.
The proposed zoning will not produce any more traffic than what would be allowed in the existing C-RR2 zoning if they were to create ½ acre lots (i.e., you can create nine ½ acre lots with nine single family dwellings). The proposed zoning will not overcrowd the land and excellent views will be provided with this proposed zoning and subdivision. Public services are available in the nearby vicinity. Water and sewer have not yet been determined. They will require state and local health approval before this project can go forward.

This proposal is compatible with the character of the district and types of land uses in the area, subject to the conditions in the staff report for the zoning and subdivision, but specifically with the zoning. Staff is recommending that these 4 unit structures be broken into 2 unit structures and be clustered along the two streets, 7th Street W. and Clements Road, to begin to form a neighborhood in this area. Much of the land will be left open and undeveloped. The only time it will become developed, and it is uncertain if it ever will be developed, is if sewer comes to the area, the zoning is changed and the Comprehensive Plan are changed. The buildings will be single story, the parking in the rear, excellent circulation internally with a proposed path throughout the subdivision and externally with the proposed path that staff is recommending along Clements Road and South 7th Street W. The Comprehensive Plan and the zoning both encourage variety and mixture of land use and advocate increased density where services are available. This proposed housing type is a mixture of what is in the surrounding areas, which is single family homes, duplexes, tri-plexes and 4-plexes.

This proposal will retain a natural landscape, its vegetation, water areas and views. The buildings will be located so as to not obstruct the vegetative area on the property. They are recommending that the Riparian Area Management Plan be required so that the land will remain in its natural state.

Another condition about the zoning concerns creating and preserving usable open space for recreational and aesthetic enjoyment. Three proposed common areas will be located throughout the development. The City Park Superintendent said these will provide recreational opportunities for the residents and are strategically located for expansion if and when expansion occurs. He reiterated that there is also an interior path throughout the development and an exterior path is recommended.

The PUD encourages creativity and variation in design and this proposal has that. The buildings are staggered, which serves to break up massing, along with the staff’s condition of taking the 4 unit structures and breaking them into 2, and keeping them clustered, with parking in the rear, and the front of the buildings fronting the streets. That all complements the neighborhood character and makes it compatible to the surrounding areas.

The zoning specifically talks about permitting flexibility of design in placement of buildings, in use of the required open spaces, and in circulation and off-street parking and better utilization of land potential without disturbing the natural features of the land. This proposal meets all those. The zoning also requires that this be a guide for developers and local government officials. It requires that local government officials work with the developer to determine how projects can meet the zoning standards, subdivision regulations and how to comply with the Comprehensive Plan. Staff has worked for several months with the developer, relaying information regarding these to give guidance to the developer how to meet all standards. This PUD conforms to all the criteria.

The Commissioners have a letter in the staff report that outlines an analysis of the Comprehensive Plan with regard to this project. At the conclusion of the letter, there is a statement that says this project is not in compliance with the Comprehensive Plan. The letter does not state that, in 3-4 months of analysis and constant communication between all those involved in this development, there was an attempt to meet all standards and is compatible with the character of the neighborhood.

With the proposed conditions, staff believes that this project is consistent with the Comprehensive Plan land use designation as well as the goals and objectives of the plan. This is not a strictly urban project, it is an urban/suburban project. It addresses clustering and creating and preserving open space in common areas. The proposed density conforms to the zoning, it is not higher than the surrounding areas, particularly since Lot 9, a large lot, will remain as open space.

Access is provided through South 7th Street W., a County paved road, 24 feet wide with a 60 foot easement, and also through Taylor Lane, an internal private paved road, 20 feet wide with a 30 foot easement. There is a variance request for both the width and the easement for Taylor Lane. There are proposed community water and septic, both of which require Health Department approval. The park requirement is satisfied by the common areas. Staff is recommending as a condition of approval that an additional 1415.7 sq. feet is provided for common area.

Michael Kennedy asked him to repeat his information on the water and sewer system.

Pat Keiley answered that the proposal, to the best of his knowledge, is community water and community septic. These are private systems, not city sewer or mountain water.

Michael Kennedy asked if he was aware of the availability of the water and sewer systems?

Pat Keiley replied that the developer or the applicant’s representative would be better able to give more information about them.

Michael Kennedy said that was fine and they would further discuss it with them.

Pat Keiley continued and said that services available included County police, fire and schools. The property is not located in the 100 year floodplain. There appears to be drainage, vegetative and riparian areas through the property.

Staff recommends that these areas be left as they are in their natural state and that management plans be approved by the Rural Planning Office and be submitted before this project can go through.
This proposed subdivision conforms to all of the subdivision regulations with the exception of the one variance that is requested.

The Planning Board recommended denial of Taylor Acres PUD and denial of Taylor Acres Preliminary Plat and both of these were unanimous. Their reasons for denial included density, noncompliance with the Comprehensive Plan, noncompliance with the neighborhood character and they questioned if there would be standing water on the property. There is considerable neighborhood opposition to the project. He stated the Commissioners have received the numerous letters from the neighbors opposing this project. In the zoning criteria no. 40 in the staff report, he summarized each of the issues that the neighbors were concerned about.

Staff recommends approval of Taylor Acres PUD rezoning, subject to the conditions and based on the findings of fact in the staff report. Staff also recommends approval of Taylor Acres preliminary plat, based on the findings of fact in the staff report and subject to conditions listed therein. Staff also recommends approval of Taylor Acres’ variance request, reducing the Taylor Lane easement width from 54 feet to 30 feet and the surface width from 24 feet to 20 feet. These are based on the findings of fact in the staff report, the PUD concept and discussions with the County Surveyor.

Michael Kennedy asked if the variance was just for the paved portion of the traveled way, reducing it from 24 feet of asphalt to 20 feet of asphalt?

Pat Keiley replied that was correct. It also reduces the actual easement.

Fern Hart asked if the requested addition to the common area was in a condition?

Pat Keiley answered yes, it is listed in condition no. 12.

Michael Kennedy asked if the applicant or his representative was present and if they would come forward to give their presentation.

Ron Ewart, Eli & Associate, said he was representing Larry Walters, who had wanted to be present for this but sent his apologies as he had to leave to take care of his 2nd grade son, who was about to come home from school. He showed the Commissioners drawings of the site plans and the architect’s portrayal of the proposed subdivision. He said they clustered the homes on the southeast corner of 4.8 acre parcel and planned to have two groups of 4 attached single story townhouses. They are small, 840 sq. feet each, and have 2 bedrooms, thus he does not expect any great density impact and not more than the C-RR2 zoning would allow. He noted that C-RR2 zoning would allow 9 single family homes spread across the property, which would probably encourage larger families and thus have greater impacts on the area.

They have planned landscaping, which would be maintained by the Homeowners’ Association. He also pointed out to the Commissioners that the homes were designed to appear as two attached single family houses, but were in fact four small attached single family houses. There is an internal walkway that would provide recreation and encourage community sociability. The C-RR2 zoning district encourages PUD’s. He said the intent of the PUD was “(The County of Missoula) is faced with increasing population and organization, with substantial changes in the technology planned development and in the need for housing. Each PUD zone shall be separate, having difference in criteria.” He said the first of the criteria are to encourage development of a variety of housing types and densities by allowing for mixture of types, ranging from single family homes to multi-family apartments.

He addressed how this proposal meets the 8 criteria of the PUD section of the zoning resolution and how it meets the 1990 Comprehensive Plan. The 1975 plan recommended the density of 6 dwelling units per acre, the 1990 plan recommended 2 dwelling units per acre. Thus, from a density perspective, it meets the density considerations, although he realizes there are other matters to consider. Some of those are goals and policies of the Comprehensive Plan, the character of the neighborhood, services and the environment.

In the 1990 Comprehensive Plan, under housing, one of the goals is to encourage residential development and promote different types of housing that provide for households with varying incomes, ages, sizes and backgrounds. In the multi-family housing policy, the issue of an appropriate location is sometimes perceived as one of neighborhood versus the community as a whole. Proposed multi-family projects generate objections from area residents as to both the nature of the use and the impacts. The community views it as a use which should be spread throughout. In other words, they don’t want large multi-family housing projects in one area but it is preferred to be dispersed throughout the community and made attractive.

Another consideration under the Comp Plan is the character of the neighborhood. This is a pleasant neighborhood, going from rural to suburban. They have open areas and high density areas. For example, across Clements Road, density is about 4 dwelling units per acre. Further down the street, the density is about the same. There are about 19 duplexes within a mile of this proposal, three of which have been approved but are not built yet. There is a tri-plex near Spurgin Road and three 4-plexes. The 4-plexes are box-shaped; two story with a family living unit in each corner. They did not want to do that here and felt their design was more desirable.

He went on to discuss environmental considerations. The land here is basically flat with a swale on the property. Their intent was to keep the development as far as possible from the swale. At one time, this land was flood irrigated, but that was probably at least 10 years ago. He believes that, in a 5 year storm, there could be standing water on the property just as there would be in many areas. He commented he had been out to the site many times since November and had never seen standing water, but admits that does not mean that standing has not occurred there. They will also be doing a riparian management plan.

As far as local services, fire, police, schools, transportation, power and natural gas are available. Sewer and water will be available in the near future according to the Health Department and City Engineering. There are no plans for the remainder of the property.
They feel that this proposal represents wise land use. In looking at the future, he realizes that a builder cannot continue to build single family homes on large lots because that contributes to urban sprawl. He would like to see holding land in reserve for the future. The unused portion of land on this proposed project may remain open for 20-30 years or maybe even forever.

Regarding architecture, they would be willing to consider other types if the neighbors did not like the proposed design. They have had no negative comments from any agencies, including several letters from folks that live out in the area. They agree with all the conditions in the staff report, with the exception of the first condition under the PUD zoning, which required that the “two groups of four unit buildings be broken down to four groups of two unit buildings…” Originally their plan showed all of the housing in one attached building. At the suggestion of staff, they changed it. Ultimately coming to the current displayed plan. He said the good thing about this design was, because it is in the southeast corner, there are more views from the intersection looking out to the northeast up to the mountains. Also, they are as far as possible east from 7th street from the intersection, which is better for traffic safety. Plus, with the 4 attached houses, there is more clustering than if there were to be 4 duplexes. That would reduce the cost and help to keep the housing affordable.

He said he hopes this can be a model. It is something that looks good and fulfills the community objectives. He said he would like to have Andy Fisher give his comments on the sewer and water because Andy works with the Health Department. Andy Fisher, Eli & Associate, said this proposal will be to have on-site water and sewer in what is called a multi-family system. This is a type of community system that is defined by state regulations. They are private systems which are reviewed under the same standards as community but they are defined as multi-family. This will have a multi-family water system with one well serving it and a multi-family on-site sewage disposal system and it will all be in accordance with regulations of the Health Department.

Pat Miessner, 905 Clements Road, kitty-corner from the proposed development site, asked, if Lot 1 is one acre in size, how can 2 units, each having a 4 homes, be consistent with the intent of 2 dwelling units per acre? She said it sounds as if there was a manipulation of word meanings. According to the dictionary, dwelling is a place of abode or residence. Would not the term structure be more appropriate in this case? There will be two structures per acre; however, each one of those will contain 4 dwellings. Due to the clustering of the homes, there would be over 3.26 acres of land in reserve for future housing development when the time is right, i.e., when public water and sewer is available and new zoning criteria are met. Therefore, although there will only be 2 structures on that one acre, there will be 8 dwellings. This does not sound consistent to her with the intent of the zoning.

Regarding roads and utilities, due to the instability of the ground in the entire area, both side streets and contour are built up. Narrow roads are without shoulders as stated in the development proposal and about 56 new vehicular trips per day will be added to 7th Street and/or Clements Road. It is doubtful that the older built-up roads can safely handle the increase in traffic. Regarding water and sewer, she said the staff report states that the nearest public water and sewer is two miles east, near Reserve Street. Therefore, combined well and septic systems are planned. Step tanks are to be installed for ready connection to future sewer if and when it is available along 7th Street or Clements Road. Since the largest portion of the parcel is swampy with flourishing cattails, where would the drainfields for the step tanks be? She said according to the proposal regarding grading and drainage, drainage will be handled on site toward the northwest, away from 7th Street, and also contained within the parcel. It is stated that the Clark Fork floodplain is located 1000 feet north.” She asked “north” of what? She also asked if the drainfield will be within the floodplain? Regarding the question of water supply for the development, she asked where will the well (or possibly wells) be? She quoted “groundwater is at low depths in this area as would be expected due to proximity to the river. Groundwater testing has taken place and will resume in the spring.” She said she has seen no results and does not know if they would be made public but she would like them to be. She asked what kind of impact all the drainage of sewage and waste water and drilling of wells have on the aquifer?

Regarding the character of the area, she read “has been developed gradually over time as it transforms from agricultural to residential.” She said she is a 18 year resident and had observed there have been some single family housing additions to the area but has seen little actual transformation from the basic agricultural nature of the area to a predominantly residential nature. She then quoted again from the proposal, “townhome-type development would be a new addition to the area. Visual amenity for the neighborhood.” The dictionary offers the following meaning for the word “amenity:” attractiveness and value of real estate for purely residential purposes or of any structure as constituting a home. Hence, a future conducive to such attractiveness and value. She feels townhomes would not be attractive in this neighborhood. The majority of the older, presently existing dwellings as well as the more recently built dwellings, are single family homes on either very large lots, one quarter, one half and/or up to one full acre or even larger. They all fit in nicely with the rural environment community, whereas townhomes do not. In the proposal, it included a copy of some of the Missoula County zoning resolutions, Chapter 5 Special Districts. In there, there are a number of requirements to which the writer of the proposal or his representative has given his response. She found one particular requirement to be of interest, no. 3, which states “...create and preserve usable open space for recreational and aesthetic enjoyment.” Their response was “an area of 18,150 sq. feet is available to the residents and Homeowners’ Association as common area.” There are spaces where an active recreational park area or playground may work well. The remaining 3.26 acres is not part of this townhome project, although if future development does occur on the remaining parcel, additional common area would be dedicated to the Homeowners’ Association.
She said this development with its possible future connections to public and city sewer and water is already laying the groundwork for future annexation to the city of Missoula. She feels this would mean the end of the open spaces still remaining in this area and to the rural atmosphere and an end to keeping, on her own land, farm animals, such as horses, cows, chickens and sheep. She does not want to give up the open spaces or the peaceful quiet, rural atmosphere or the farm animals that so many of the current residents of the area enjoy.

Lech Szumera said he resides on the eastern boundary of the proposal and he objects to the rezoning based on the density of the 8 townhomes involved. He sent letters to the Planning Board dated February 20, 1996 and March 11, 1996. He said his primary concern is the numerous families with the accompanying additional traffic. This is a quiet neighborhood and he does not think the roads in the area can absorb the increased volume of traffic. He asked the Commissioners if they knew that Clements Road has a 45 MPH speed limit? There are currently many speeders, which includes the kids coming out of the high schools. He often sees families trying to walk on these roads and they have a hard time because of all the traffic without adding more traffic.

He is also concerned about the septic system. He lives in an old house and the well for it is not deep. He believes that is true of most of the people in the neighborhood. He wonders what the septic system will do to his well and the wells of the adjacent properties. At one time, there was a person who wanted to buy this area and another area and had tests run, such as perc tests, infiltration and septic systems. He understands that the proposed buy fell through because it would not pass the perc test nor the septic system test and, if that is the case, he is curious what has changed it at this time.

He agrees with the speaker before him and believes this subdivision will detract from the character of the neighborhood. At this time, the area has homes old and new, built on acres of up to one acre to about 10 acres.

He said the open space in the area is all private open space. There is Fort Missoula about ½ miles away and Kelly Island for recreation but there are no nearby parks in this area. There is no place for a family to go to have a picnic or for a family with small children to go to a park with swings and a play area.

There is a ditch that flows on the northern part of his ownership which adjoins the subject property and he believes it flows near the swale, where there are willow trees. If this land is developed, whether it is today or in the future, how will the ditch, which he uses for water for horses and irrigation, and how it will affect the old oxbow of the river. At one time, he believes the field was irrigated by this ditch. He said there was standing water in that old oxbow, with reeds and other water plants, and he does not know why Ron Ewart did not see it.

He said that covers most of his concerns and he thanked the Commissioners for opportunity to comment.

Don Johns, 3705 South 7th Street, said he wanted to commend those who had done the planning on this project. The planning is excellent, the concept of clustering houses is a very good concept but he believes this project is in the wrong neighborhood.

He and his family lives on one acre of land and have been in the house there for 4 years. They moved there because it is rural; it is definitely not suburban/urban. They moved here from a rural area in Bozeman and they did not want to live in the suburban areas.

He said he represents quite a few professional families like his own who moved into this area for the same reasons he did. Because he chose to live here, his family has an acre of land and they own sheep, chickens, rabbits and their neighbors have cattle and horses. You could not live with these animals in suburban/urban areas.

He said he won’t talk about sewer, water and roads but mentioned that his well was 22 feet deep. These items have been discussed by previous speakers. But he, and the families he represents, want the Commissioners to know that this is not a bad proposal, but that it is in the wrong neighborhood. He thanked the Commissioners for their time.

James Regan said he lives in the Orchard Homes area and does not understand some things about the proposed subdivision. He said he has heard the applicant does not want to change the density of the area but then the plan is to use half of the land for 8 units and is holding Lot 9 for himself. So he sees that as changing the density. He thinks the applicant will be back in a couple of years and want to put another 8-10 houses on the remainder. He said it is confusing to say “...for future development.”

He read “the sanitation restriction be lifted prior to final plat approval,” which is condition no. 8. He said he called the Public Health, Sanitation Department and asked about perc and ground water tests. They told him that once the land has been checked for water level, you cannot come back in a year and check it again. This property failed the tests. On the 5 acres next to it, there were two spots on it that passed. He knew Mr. Parker for 35 years who lived in that house on that property and they had from 2 inches to a foot of water in the basement, which is about 5 feet deep, every year. So he cannot understand what they are planning to do about sewage. He said he read that they cannot test ground water for these 8 units until May 1. He said it has already been tested. And, under the County’s rules, it can’t be tested again. If you call the Health Department, they will tell you for a duplex you have to have at least 300 feet of drainfield if it passes the ground water level. There are 8 units, which is 1200 feet, so if this is approved, he will be very surprised. He said this is the Commissioners’ chance to prove if they want to protect the water by denying this subdivision. If they approve it, Lot 9 should be included unless they changed the density of the area.

Michael Kennedy asked where the Parker’s house, that had water in the basement, was located?

James Regan answered that is straight east of the subject property.

Michael Kennedy thanked him for his comments and asked if anyone else wanted to speak on this issue?
Mrs. Stewart, also an area resident, said there are so many matters that have already been covered but she asked what about taxes? Will they go up? If they do, she cannot afford to live there.

She said if they had wanted to live in the city, they would have bought a place in the city. They bought out there because they like the open space for which they voted. She prefers to see cattle, horses and have the quiet than live in higher density areas. Also, the roads have enough traffic. She feels 7th Street is almost a racetrack. Children cannot walk along that road unless accompanied by an adult. Clements Road is almost as bad.

There is a bus that comes into the area that many people use. She is living on an annuity and she feels lucky to have a single family home in this area and she appreciates it. She does not want to see all the proposed units being built.

Michael Kennedy asked if anyone else wanted to speak on this proposal? No one else came forward and he closed the public hearing.

He noted that Ron Ewart asked to speak and asked him to come forward.

Ron Ewart said he would like to respond to some of the points brought up.

Michael Kennedy said they were not ready for that yet. They will call him forward if they want that. He asked for comments from the Board.

Fern Hart said she has read and heard the testimony. She believes it is not her role but the role of the Health Department to assure that there is safe water and that the septic system will work to standards. If they do not, they will turn this down. She would have liked to have had a representative from the Health Department to explain at this meeting about the frequency of tests and other matters.

James Regan reiterated that if the Health Department re-tests, they are violating the rules that the County has. He asked if this situation was going to get special treatment?

Colleen Dowdall said, in response to his comments and as she stated at the Planning Board hearing on this issue, the rules for testing for septic systems have changed many times in the last 5 years. She is not aware of any rule that prohibits ground from being re-tested to see if it meets regulations. In fact, she understands that ground has to be tested during certain times of the year. She is aware of land that has been re-tested, perhaps at a different spot than was previously tested.

Michael Kennedy agreed that regulations for sanitary restrictions are regularly adjusted and they are usually adjusted more conservatively to protect ground water. One of the more recent adjustments happened just last Thursday. There had been a lot of discussion about what constitutes a legitimate test hole, whether it is the timing, the relative location of floodwaters, and/or the relative distance from riparian areas and running surface waters. He feels the changed regulations are stronger than they have ever been so he agreed with Counsel that there is no current restriction about the number of tests that can be done. He said, because of the stronger regulations that we have now, a test that failed years ago would most certainly fail today.

James Regan disagreed with Commissioner Kennedy because of the fact that they have not had much water. They have had below average rainfall for the last 14 years. Further, he called the Health Department last week and talked to a woman named Vicky, who said that once the ground level water has been tested, according to their rules, it cannot be re-tested. He asked if the Board of County Commissioners had a public meeting and changed that rule?

Michael Kennedy thanked him for his testimony and said they understood what he was saying and they appreciated it. He stated they will check the rules regarding testing and assured Mr. Regan that no testing will be done if it is illegal, and no well or septic tank systems will be allowed if they do not meet the strict requirements that have been made even more strict in recent times.

Fern Hart believes the Health Department rules are strong and she cannot second guess them. This subdivision has not gone through their tests yet but it will be done. They can either stop or allow this subdivision. What she is considering is how this proposal fits the regulations as they know them today. Going on that basis, she supports this subdivision. She feels this will be a way to get decent, attractive affordable housing and will support it with the staff’s suggestion that the buildings front on the street. She asked about driveways and garages.

Pat Keiley said the subdivision has to have the required common area and the garages are in the back, away from the streets. He envisions moving Taylor Lane to the west but asked if there is concern about the access if Taylor Lane is more in the middle of the lot?

Horace Brown, County Surveyor, replied no, so long as the access is unto Taylor Lane and not unto the major streets.

Michael Kennedy noted there was an RSID waiver in condition no. 3 for the roadway and includes improvements to Clements Road or South 7th Street. He asked if that should be “and/or”?

Pat Keiley said that was correct. He meant for the waiver to apply to both.

Michael Kennedy asked Ron if he understood that?

Ron Ewart said yes.

Michael Kennedy asked if it also included drainage?
Horace Brown replied it would include drainage that was on the street but not anywhere else. He added that they are using CTEP funds to build a walkway-bikeway on both sides of 7th Street, which will extend all the way from Reserve Street to Clements Road.

Michael Kennedy said on condition no. 4 there is another RSID waiver proposal for sewer and he wanted to add water to that. He asked if there was any objection to that? He noted that the proponent nodded no, that there was no objection.

Pat Keiley said staff had recommended a path along 7th Street. He asked Horace if the County was going to put one in?

Horace Brown said yes.

Michael Kennedy said, under that circumstance, if the County Surveyor is going to put in a walkway with CTEP funding, than that requirement is met through the County instead.

Horace Brown said the applicant could possibly match the cost for the walkway.

Barbara Evans said she did not have any more questions but wanted to give her comments. She said this is vacant land and the owner has the right to develop it. She believes they have sent mixed messages to the developers and the engineering firms in that they have let them know that they favored cluster development and trying to leave open space. The developers have tried to meet these conditions here. Further, the County needs affordable housing. However, she is going to vote against this subdivision because it is not in the standard format of the homes out there. What the developer wants to build makes sense. It is the way we need to do land use in the future but it is not the way it is today.

Michael Kennedy said he first wanted to say that he believed the staff report was exceptional. It went into great detail and the interpretation of the zoning and the Comprehensive Plan and, based on the new influence of the growth management process that is currently underway, is a correct interpretation. The development on balance is a strong development and it is an approach that is needed. The size of the living units at 840 sq. ft. translates into lower cost housing, which Missoula County sorely needs. Clustering and a reduction of the overall infrastructure costs again is a remarkable and different approach than what the County is used to. He stated that those who live in that area, including himself, have to understand and come to terms with important facts. One is that change is happening. He can remember as a child that Orchard Homes was more orchard than homes but now it is more homes than orchard.

Barbara Evans seconded the motion. Motion carried 2-1. Fern Hart opposed.

He stated that he believes the Health Department has a responsibility to judge if the system proposed is suitable for that particular area. He cannot second guess their judgment but he suspects there will be difficulties with their approval. He knows the one thing the Health Department will not do, however, and that is deal with the overall drainage of that area. In examining this area from aerial photographs, there are changes in the river and this area was once in the river channel, even though it is not in the 100 year floodplain. All the testimony that he has heard including the work that will be done by the Health Department only peripherally touches on the drainage to the extent that it might affect subsurface disposal of sewerage. His knowledge of that land indicates it has a serious drainage problem that he does not believe can be resolved by the proposal that is being presented. For that reason, he is going to vote against it even though he likes the subdivision design.

Barbara Evans moved that the Board of County Commissioners deny the rezoning request from C-RR2 to C-RR2/PUD for Taylor Acres, located on Lot 64, Cobb and Dinsmore’s Orchard Homes #5, located in the SW ¼ of Section 24, Township 13 North, Range 20 West, at the northeast corner of Seventh Street and Clements Road, based on her concerns that it is different than the residents in that area interpret the Comprehensive Plan.

Michael Kennedy said he sensed that Commissioner Hart will not second the motion. As it is stated, he said he cannot second the motion either because he disagrees with the reasons for denial.

Michael Kennedy moved that the Board of County Commissioners deny the rezoning request from C-RR2 to C-RR2/PUD for Taylor Acres located on Lot 64, Cobb and Dinsmore’s Orchard Homes #5, located in the SW ¾ of Section 24, Township 13 North, Range 20 West, at the northeast corner of Seventh Street and Clements Road, based on her concerns that it is different than the residents in that area interpret the Comprehensive Plan.

Colleen Dowdall said he needed to cite a reason for denial.

Michael Kennedy stated the reason for his motion is because the drainage cannot be addressed adequately by the Health Department except for subsurface sewage and in as much as it has not been addressed properly in the proposal.

Barbara Evans seconded the motion. Motion carried 2-1. Fern Hart opposed.

OTHER BUSINESS/PUBLIC COMMENT

Michael Kennedy opened the meeting to public comment. No one came forward.

He wanted to say for the record that Mullan Road is in the midst of spring break-up and there have been weight restrictions imposed on Mullan Road. As a result, the Board of County Commissioners issued a News Release concerning this. He read the News Release:

Weight restrictions have been imposed on the following roads, limiting vehicle weights to five (5) ton and under:
Because of public concerns related to these weight limits, the County Surveyor and County Commissioners have established the following exceptions to the weight limits:

1. School buses in the course of transporting children to and from school are permitted to operate on the closed road regardless of weight. Bus operators are to limit speed to minimize road damage.

2. Fuel delivery vehicles will be permitted to make emergency deliveries.

3. Fire and utility vehicles responding to an emergency are exempt from the weight limit.

While the Commissioners and Surveyor recognize that the limitations as modified still represent a considerable inconvenience to persons using these roads particularly as regards garbage pick-up, construction, and other activities involving heavy equipment, they feel that the restrictions are required to prevent unnecessary and expensive additional damage to the roads which are experiencing severe spring break up conditions.

Because the break up conditions are causing pot holing and heaving of the road surfaces, motorists are requested to moderate speeds to prevent damage to vehicles and to the roads.

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

THURSDAY, MARCH 28, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Resolution No. 96-023 -- Chair Kennedy signed Resolution No. 96-023, declaring it to be the intention to create Rural Special Improvement District No. 8460, for the purpose of undertaking certain local improvements and financing the costs thereof the incidental thereto through the issuance of Rural Special Improvement District bonds secured by the County’s Rural Special Improvement District Resolving fund. Notice was given that the Board will hear all protests against creation of the District on Wednesday, April 17, 1996.

Resolution No. 96-019 -- Acting Chairperson Barbara Evans signed Resolution No. 96-019, relating to Missoula County Airport Tax Increment Industrial Infrastructure District; authorizing the issuance and sale of $300,000.00 Tax Increment Industrial Infrastructure District bonds, Series 1996, to design and construct a 110,000 square-foot asphalt aircraft parking apron and related site improvements at the Missoula County Airport (Missoula County Airport Neptune Project).

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

FRIDAY, MARCH 29, 1996

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

Resolution No. 96-024 -- The Board of County Commissioners signed Resolution No. 96-024, resolving the agricultural covenant which currently exists on the tract created by Certificate of Survey 1678, located in Section 8, T11N, R16W, is hereby revoked.

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners
The Board of County Commissioners met in regular session; all three members were present.

DAILY ADMINISTRATIVE MEETING

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

Interlocal Agreement -- The Board of County Commissioners signed an Interlocal Agreement between the City of Missoula and the County of Missoula to cooperate in the provision of planning services and grants administration to the residents of Missoula, as per the items set forth. The Agreement was forwarded to Cindy Klette for further signatures and handling.

Employment Agreement -- The Board of County Commissioners signed an Employment Agreement, dated April 1, 1996, between the Partnership Health Center Governing Board and Jeanne Shells Twoghi for the purpose of employing her as the Director of the Partnership Health Center, as per the employment duties and functions set forth, and as per the terms and conditions set forth in the Agreement.

Professional Services Agreement -- The Board of County Commissioners signed a Professional Services Agreement between Missoula County and Tom Hudson Company to help plan and facilitate meetings, and provide on the job training to the Office of Planning & Grants staff in meeting and community facilitation techniques, for the Miller Creek Planning Process, commencing March 13, through April 27, 1996, as per the terms and conditions set forth, for compensation in the amount of $90/hr., for 72 hours.

Utilities Agreement -- The Board of County Commissioners signed a utility relocation agreement between The Montana Power Company, Missoula County and the Montana Department of Transportation for changing and/or relocating gas transmission and gas distribution facilities as required by the construction of a Federal-Aid Road Project, for the Missoula I-90 Airport Interchange Project, for a total estimated cost of $198,899, excluding betterment. The Agreement was returned to John DeVore, CEO, for further handling.

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

TUESDAY, APRIL 2, 1996

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

Audit List -- Commissioners Barbara Evans and Michael Kennedy signed the Audit List, dated April 2, 1996, pages 2-40, with a grand total of $147,816.08. The Audit List was returned to the Accounting Department.

Monthly Report -- Chair Kennedy examined, approved and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing fees and other collections made in Missoula County for the month of March, 1996.

DAILY ADMINISTRATIVE MEETING

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

Lease Agreement -- The Board of County Commissioners signed a Lease Agreement between Missoula County and the Missoula Softball Association and the Missoula Fastpitch Association, for the purpose of operating and maintaining softball fields on the real property and other related uses, located at Tract 3 of Certificate of Survey 3323, as per the terms set forth, for a total amount of rent of $1.00, commencing April 1, 1996, through March 31, 1997.

Agreement -- Chair Kennedy signed a Standard Agreement, Traffic Safety Bureau, between the Missoula County Commissioners and the Montana Department of Transportation, for the Missoula Youth Enforcement and S.T.E.P Project, for the purpose of creating a deterrent to drinking and driving by youth and adults, and to enforce other traffic laws, as per the terms set forth. This is for the period commencing March 20, 1996 through September 30, 1996, and compensation shall be paid by the State, not to exceed $10,000. The Agreement was returned to Don Morman for further handling.

Resolution No. 96-025 -- The Board of County of Commissioners signed Resolution No. 96-025, a resolution to modify the terms of RSID 8913, for the purpose of revising the initial assessment for new lots created within the District Boundaries.

Option to Purchase Real Estate -- The Board of County Commissioners unanimously approved and Chair Kennedy signed an Option to Purchase Real Estate to sell 6.24 acres within the Missoula Airport Development Park to American Eagle Properties, subject to the terms and conditions contained in the Option, for a total purchase price of $102,024.00. The Agreement was returned to John DeVore, CEO, for further handling.

Amendment to 1996 Operating and Financial Plan -- Chair Kennedy signed Amendment No. 1 to the 1996 Operating and Financial Plan, Reimbursable Services Requested By Forest Service, to reimburse the Missoula County Sheriff's Department for one deputy to be used for security during the equipment auction on May 2, 1996, per the terms set forth, for a total payment of $193.20. The Amendment was returned to Dave Ball in the Sheriff's Department for further handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
WEDNESDAY, APRIL 3, 1996

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


DAILY ADMINISTRATIVE MEETING

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

Addendum to Buy-Sell Agreement -- Chair Kennedy signed an Addendum to the Buy-Sell Agreement dated March 6, 1996, on 341 W. Pine, between Robert G. Seidenwarsz as buyer and Missoula County as seller, agreeing that the contingencies on lines 121-123 will be extended until April 10, 1996.

Resolution No. 96-026 -- The Board of County Commissioners signed Resolution No. 96-026, a resolution for group self insurance and to become a self-insured member of the Missoula County Workers' Compensation Group Insurance Authority, further resolving that Hal K. Luttschwager is designated as Administrator of the Missoula County Workers' compensation Group Insurance Authority.

Resolution No. 96-027 -- The Board of County Commissioners signed Resolution No. 96-027, a resolution setting weight limit for the general use of Missoula County Roads.

Policy Statement -- The Board of County Commissioners unanimously approved and signed Policy Statement No. 96-C, a policy and procedure for CIP Replacement Fund for County Mainframe. This will be done by charging each user (County, City, State and Private) a fixed yearly amount based on the number of work stations they have accessing the mainframe. The amount collected will be for the sole purpose of mainframe replacement.

Agreement -- The Board of County Commissioners signed an Agreement between Cascade County and the Missoula City-County Health Department for the purpose of maternal and child health community assessment and planning activities in the County, commencing on January 15, 1996, through June 30, 1996, with MCCHD agreeing to pay Missoula County up to a total of $5000.00.

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

Another item included:

The Board of County Commissioners voted unanimously to approve the settlement recommended by Hal Luttschwager, Risk Manager, for Taco John's #4. The settlement recommends payment to Missoula County in the amount of $6,250.00 and for the County to dismiss contract claim for immunization costs, Donald Olsen to dismiss negligent investigation of hepatitis counter-claim, no admissions of liability and includes confidential settlement clause.

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

HEARING: PETITION TO RELOCATE RIGHT-OF-WAY (BEAR CREEK ROAD)

Chuck Wright, Land Surveyor, said this was a petition to relocate the right-of-way for the road which the 1886 Government Land Office (GLO) survey map shows as running across Sections 5, 6 and 8 to the current location of Bear Creek Road to the present Bear Creek Road in Sections 6, 7 and 8.

Michael Kennedy said, rephrasing the situation, that there is a right-of-way and a road that are not co-incident and the intention here is to make them co-incident.

Chuck Wright agreed.

Peter Dayton, Worden, Thane & Haines PC, said he is representing Paul Harper. What they hope to do is move the right-of-way to the current location of the road. Pointing to a map, he showed the Commissioners the area he spoke of. He said the right-of-way currently runs across an area where there is no road and probably hasn't been for over 100 years. He showed a copy of the Government Land Office map made in April, 1886 for the entire township in the west end of the Potomac Valley. At that time, there was a road running along the south side of Union Creek to Ashby Creek area then heading south to the Clark Fork River.

Under the 1886 statute, when roads are shown on Government Land Office maps, if the County subsequently accepts those roads in various ways, those roads become public rights-of-way. This is the location of a road shown on a GLO map and it runs in an area where there is currently no road. Furthermore, when you look at the record relating to Bear Creek Road, there was never a petition filed to formally make Bear Creek Road a County road. So what he hopes to accomplish through this procedure is eliminate the problem in the road records by moving the 1886 GLO right-of-way over to its current location of Bear Creek Road. There is no intention to change anything about the physical location of Bear Creek Road or the way it is maintained; they only want to clean up the old road records.

Barbara Evans asked if this hearing was on the same subject he brought before the Board a few months ago?
Peter Dayton answered no. This is in an entirely different area but it does involve Paul Harper, the same landowner. This subject property is currently owned by J.B. Yonce, who has agreed to sell the northern portion to Paul Harper. When they got into the real estate sale procedures, they discovered the old GLO right-of-way from 1886. Mr. Yonce was totally unaware of it and said there is no road there now and he has never known there to be a road at the place shown on the old map. Paul Harper, having had the same problem with land he presently owns, said he would not buy the property unless the old right-of-way is legally taken off the records.

Barbara Evans asked if the Commission was required to view a right-of-way that does not exist?

Michael Sehestedt said yes.

Fern Hart suggested that the Commission view this site along with the others that Peter Dayton needed to have reviewed.

Barbara Evans agreed that was a good idea.

Michael Kennedy asked the Board if they had any questions for Peter? They had none, so he opened the public hearing.

William Bandimere said he is the first property owner on Bear Creek Road and said this GLO right-of-way goes through his property. He understands that Bear Creek Road is a County road. He has a 30 foot easement from his property for Bear Creek Road but he does not think that complies with the new standards which require a 60 foot easement. He asked, do his friends and neighbors sign a petition making this a full-fledged County road and consequently lose 30 feet of his property along the road?

Colleen Dowdall, Deputy County Attorney, replied, when there is a County road right-of-way, they don’t own the property. The County has an easement across his property. If the road is currently a County road and created by petition, it is a 60 foot right-of-way but it is not improved. The County does not improve the entire 60 feet of the easement and use it for storage of snow and that type of use.

Chuck Wright said Bear Creek Road is a prescriptive right-of-way. The County has been maintaining it for years. What they want to do is move from the location shown on the GLO map to the existing road, centering on that particular road. In other words, they want to just put the right-of-way on top of Bear Creek Road.

Michael Kennedy said he believes Mr. Bandimere is concerned about the 30 foot easement he yields to the County for this road. He asked Chuck if his Department was attempting to extend that easement width to 60 feet?

Chuck Wright asked Mr. Bandimere if he owned both sides of the road?

William Bandimere answered yes.

Chuck Wright said then, yes, the existing easement is 30 feet and it will go to 60 feet.

Peter Dayton said he has numerous surveys on either sides of the road and all the other landowners down the road show a 60 foot wide easement. Mr. Bandimere is the only one who shows a 30 foot wide easement. He said he believes that the County would argue that it has always been a 60 foot wide easement but, for whatever reason, the people that sold the property only showed a 30 foot wide easement.

Chuck Wright said he would not argue that that is the case, but he would say there is a public right-of-way by prescription, whatever the width being used.

Peter Dayton said, then, it’s not the 60 feet but only the actual width of the road?

Chuck Wright replied, to be able to maintain the road and to throw snow or whatever, it might not be a full 60 feet.

Michael Kennedy asked Counsel for assistance in clarifying this matter because Mr. Bandimere is concerned about losing some of his land through this petition process.

Colleen Dowdall said the result of the petition is to relocate an old petition. One of the requirements of the statute is to determine whether this property owner suffers damage as a result of the requested change. If the right-of-way needs to be condemned and he objects, the County would condemn it and pay him damages under that procedure.

Michael Kennedy, reiterating, said the County acts on this petition, goes through the proper process which suggests that the County has a 60 foot right-of-way through this man’s property, and then the County negotiates with Mr. Bandimere to extend that right-of-way to 60 feet. Mr. Bandimere will then, either willingly or unwillingly, negotiate with the County. That is the unresolved part of this petition.

Colleen Dowdall agreed. If the Commissioners grant the petition, they are making a determination if the right-of-way should be there. The next step is to determine whether there are damages to this particular individual and whether those damages should be awarded to him. That can be done by negotiation or by filing a condemnation action which would determine the damages.

Michael Kennedy asked Mr. Bandimere if he understood everything that was said.

William Bandimere replied yes.
Michael Kennedy asked him if he had an objection to the process and whether, at some future time, the right-of-way may be extended to 60 feet?

William Bandimere answered he would be willing to talk about it and said he made no objection to it.

Michael Kennedy thanked him for his comments.

Barbara Evans asked Mr. Bandimere how wide the road was that was currently in front of his house that splits his property?

William Bandimere said it was 30 feet.

Barbara Evans asked the Surveyor if the right-of-way is relocated, is there any reason, since the road already exists, that we need more right-of-way than what the road currently takes?

Chuck Wright answered, when they plow snow and they throw the snow unto that right-of-way, he is not sure if it stays within 15 feet of the center line. He thinks it is wider than that and that is why he talks about the width of the particular right-of-way to be used. If that road that exists on the ground is a 25 foot roadtop plus the ditches, just because there is a 30 foot easement there, that does not mean they are just using 30 feet.

Barbara Evans asked him, if nothing changes from the way it is currently being done, does he have any objection?

Chuck Wright replied no.

Michael Kennedy asked if anyone else wanted to comment on this issue? No one came forward and he closed the public hearing.

Fern Hart asked if everyone who was notified approved of this petition?

Vickie Zeier, County Clerk and Recorder, said that everyone that was notified was someone they identified as having an interest or abuts the property that is being vacated and their signatures attest that they have been notified, not that they necessarily agree with the petition.

Fern Hart said if they wanted to protest this, they have this opportunity.

Vickie Zeier said that was correct.

Michael Kennedy said, as part of this process, they need to go out and review the road and the proposed change and cannot make a decision today. Thus, they will defer action to a future time. Hopefully, in the meantime, the Road Department can discuss with Mr. Bandimere the right-of-way issue and address any concerns.

He asked, if by eliminating the GLO right-of-way, this eliminated any access to any private property?

Peter Dayton replied no.

Barbara Evans said she noted that Peter had three items that were located in the Potomac Valley and she asked him when all three of those could be viewed at one time?

Peter Dayton said a viewing was scheduled for the Washoe Creek Road vacation on Thursday, April 25. The reason that was delayed repeatedly is because there has been so much snow out there. He thought it was a good idea to view this issue the same day because it is on the way. He said there is a third petition filed only a few days ago and should be scheduled for a hearing within a couple of weeks, so they could view all three on the same day.

Michael Kennedy agreed with that and said the viewing will be scheduled for April 25.

**PETITION TO VACATE UNUSED UNNAMED ROAD (ADJACENT TO U.S. HIGHWAY 12)**

Michael Kennedy noted that this meeting had been postponed, but asked if anyone attended this meeting to testify regarding this subject?

Jim Bentley, Plum Creek Timber Company, said he was interested in the outcome of this petition, but had not come to testify either for or against it.

Michael Kennedy invited Mr. Bentley to come to the hearing for this petition when it is rescheduled and thanked him for his interest.

**CONSIDERATION OF: LOT 62, COBBAN & DINSMORE ORCHARD HOMES NO. 5 (SUBDIVISION FOR LEASE/RENT SUMMARY PLAT) PEGGY CHILCOTE**

Pat Keiley, Office of Planning & Grants, said the applicant, Peggy Chilcote, is requesting to create a subdivision for lease or rent consisting of 4 duplexes or 8 dwelling units on 4.70 acres, which is Lot 62, Cobban and Dinsmore’s Orchard Homes. The name of the subdivision is Chilcote Addition #5 and the current owners are Bill and Janet Chilcote. Peggy Chilcote is representing the owners.

The property is located about a mile west of Reserve Street, on the north end of Short Street, adjacent to the Clark Fork River. The property is zoned Zoning District (Z.D.) 13 which allows the proposed uses. The 1990 Missoula
Urban area Comprehensive Plan calls for suburban residential, maximum density of two dwelling units per acre. This proposal conforms to that as well. Access to the site externally comes from Short Street, which is a paved County road, which meets County standards and is County maintained. Internal access is from Kodiak Drive for three of the duplexes. That will be paved. The easement width is 30 feet which will require a variance from the required 54 feet and the surface width, which is paved, will be 24 feet, and is a cul de sac. One duplex will access off Short Street and the location of the access is the same location as an existing single family stick built house which uses that access. That structure will be removed and a duplex will replace it.

There is a proposed pedestrian walkway that is along the top of the dike. The dike is on the northern end of the property. Discussions with the County Surveyor divulged that the Army Corp of Engineers built the dike and owns it. Missoula County maintains it. The dike is public and there is public access available to it.

The Chilcotes are recommending to satisfy their pedestrian sidewalk requirement with the natural existing path on the top of the dike. There is access to the dike from the property and from Short Street. The Short Street right-of-way goes all the way to the river and abuts the dike. Staff recommends an RSID waiver along Short Street for potential improvements which may or may not include a sidewalk in the future to Short Street.

The Chilcotes are proposing a community multi-family water and sewer system. Utilities are available. There is no park dedication required with a summary subdivision for lease or rent. A portion of the property is in the 100 year floodplain, that portion being from the top of the dike to the north. From the top of the dike to the south is not in the 100 year floodplain. The proposed area for the duplexes is not in the floodplain.

The 1992 Missoula County Inventory of Conservation Resources designates the area as scenic/non-scenic open space and the Office of Planning & Grants suggests that the clustering of the duplexes as proposed serves to protect the open space. Drainage will be contained on site. The ground is relatively flat. There is wildlife in the area, mainly white-tailed deer and small mammals. Emergency services are available through Missoula County. Legal and physical accesses have been met with the one variance request for the Kodiak Drive driveway. Staff recommends approval of the variance to reduce the Kodiak Drive right-of-way from 54 feet to 30 feet, based on findings of fact and discussions with the County Surveyor. Staff also recommends approval of the Chilcote Addition #5 subdivision for lease or rent based on the findings of fact and subject to the 8 conditions listed in the staff report.

Michael Kennedy, referring to a note on a drawing submitted to the Commissioners, read “A portion of this lot will be used to meet the density requirement.” He asked Pat to comment on this.

Pat Keiley answered that he believes it has to do with the Health Department requirement. It is not density in terms of zoning, but density in terms of drainfield area. He said to do the type of system they are proposing they need additional land and the Health Department has indicated that they can use some of their existing land which is on a separate parcel to the south. With that additional land, they will satisfy Health Department requirements for the amount of area they need for the drainfield.

Peggy Chilcote asked if that land is restricted from further development?

Michael Kennedy asked Peggy if she would like to make a presentation on the Addition?

Peggy Chilcote responded yes. She said she is representing Bill and Janet Chilcote as landowners, herself, her husband, Daniel Chilcote, her sister-in-law, Liz Thiel and Greg Thiel as developers. This is a family project. They are extending into this parcel of land and are going to do a development consisting of duplexes. The easement that Michael Kennedy was referring to has been approved by the Health Department to meet the density requirements for sewer restrictions, at 600 gallons per day per acre. They were short a minute amount but were able to take that from a vacant lot, and that has been filed here at the Courthouse as a restriction on that property. That had been approved by the Health Department after they filed.

This will be a highly maintained subdivision. They will be doing all the lawn maintenance, paying for the garbage, sewer and water fees. Renters will only be liable for their rent, gas and electricity. They hope to keep the cost of the rentals down to $600/month so they will be affordable. They will be 2 and 3 bedroom homes within walking distance to Hawthorne School by using the dike as a pathway. The dike goes down behind other duplexes and connects to a path that leads to the crosswalk to Hawthorne School.

Michael Kennedy asked Counsel if the requirement to have a walkway that is ADA accessible has any application to this particular area? He is familiar with the area and it does not seem ADA accessible to him since he believes there are steps at the top of the dike.

Colleen Dowdall, Deputy County Attorney, replied that she does not believe that everything in the park has to be ADA accessible. The walkway is for recreational purposes as opposed to pedestrian circulation, so she does not believe the entire walkway has to be ADA accessible.

Fern Hart asked if Lot 2 or Lot 3 will be the portion that will meet the density?

Peggy Chilcote answered Lot 2.

Fern Hart asked if it only had a barn and shop on it?

Peggy Chilcote replied yes.

Fern Hart asked if that satisfied the memorandum from the Environmental Health Division which states there is not enough usable land for 8 unit proposed density?
Pat Keiley answered that it does.

Fern Hart asked if the sewage lift pump is less than 100 feet from the well?

Peggy Chilcote replied that was a measurement error and there is another letter from the Health Department stating that the requirements had been met.

Fern Hart asked if the sewage lift pump is less than 100 feet from the well?

Peggy Chilcote replied yes.

Fern Hart had a copy of that letter, dated February 22, 1996 and read “…there is 3.0 acres out of the floodplain with the 0.2 acre easement, a total flow of 1920 gallons of sewage will be permitted.” She asked Peggy if that will be enough?

Peggy Chilcote replied yes.

Fern Hart asked if it didn’t have to be at least 100 feet?

Peggy Chilcote replied yes.

Fern Hart asked her if she had the space to do it?

Peggy Chilcote answered yes. She continued, on Lot 2, that is just for a replacement area, if ever the drainfield fails.

Fern Hart asked if the Board had any more questions? There were none. He asked if there was a motion?

Fern Hart moved that the Board of County Commissioners grant the variance request for the Chilcote Addition #5, located in Orchard Homes, north end of Short Street, between Juneau Drive and the river, for a reduction in the easement width from 54 feet to 30 feet, based on staff’s findings of fact. Barbara Evans seconded the motion. Motion carried 3-0.

Michael Kennedy asked Pat Keiley, regarding conditions no. 7 and 8 which refer to a riparian resource and a management plan, if this is a riparian resource area?

Pat Keiley answered that the property to the north of the dike is.

Michael Sehestedt, Chief Deputy Attorney, said a hearing is not required for this, but traditionally the Board will ask if there is public comment. He said he knows there are people in the audience who have an interest in this subdivision.

Libby Langston said there are 4 people present with her at this meeting and they have strong feelings about this subdivision. She believed more people would be attending this meeting except that the notice regarding this was put at the end of the street. She only saw it because she walks down there everyday. She said another person in attendance found out because that person’s sister lives across the street from the where the notice was put.

Her biggest concern is that the sign said “4 duplexes on 4.7 acres” and her reaction was that property was not 4.7 acres. She and the others looked into this and got an aerial photo, which she displayed for the Board. She noted that 4.7 acres included the ground underneath the river, and the above-water land was not 4.7 acres. She felt it was misleading to call that parcel 4.7 acres.

Another point she made was that she felt sure this was in the 100 year floodplain. Further, she said she walks down there every day and there is a lot of wildlife. She has seen ducks, foxes, deer, blue heron, eagles and she even heard there was a mountain lion down there a few years ago. She finds it difficult to see how this could be approved when you have that many units with the accompanying sewage going into the septic system that close to the river. She called the Health Department at an earlier date to see about putting another house on her property, which is ½ acre, and they told her no, only one unit per ½ acre is allowed. She said her neighbor called the Health Department and talked to Tom there and he said, if you have your own well and own septic system, than you cannot have more than one house per acre. The rule for one house per ½ acre is if you have city water. So she asked the Commissioners to carefully review this subdivision and not just pass it. She noted that 8 dwelling units in this area is a lot people and sewage. Aside from the water issue, she wanted to note that there is already a lot of traffic on Short Street. Another thing she wanted to say, was about 2 years ago she was very sick and lost 12 pounds. She couldn’t figure out what was wrong with her. She decided to have the water quality of her well tested and it turned out that it was the water that was making her sick. She has since installed a $1000 ultra-violet water filtering system in her house and her neighbor also installed one because they are already having problems with their wells.
She said she and the others who attended who have an interest in this development don’t know what the 8 conditions the staff mentioned are and they would like to know. (Staff gave her copies of the staff report at this time, which included the conditions).

Jennie Karr, 311 Short Street, said she has lived there since 1976. Her sister lives at 100 Short Street, straight across from where the duplexes may go in, and she said they are all in the floodplain. She said she knows that south of the dike is in the floodplain all the way up to O.B. Campbell’s place. She also mentioned Myron Staves lives across from where the proposed duplexes are to be put in and he is also in the 100 floodplain and he was told nothing can be built on his land. Her sister was told the same thing because they are all in the floodplain. She said it was inaccurate to say that south of the dike is not in the floodplain.

She said that Libby went over most of what she is also concerned about. She said she is the one who talked to Tom at the Health Department who said ½ acre per dwelling is permitted if you are on city sewer and you had your own well; if you had well and septic, then it was 1 dwelling unit per acre. She asked Tom if there was anyway they could work around that regulation and Tom told her no. So she does not see how they can plan to have 8 families on that piece of land that is half under the river and half in the floodplain.

She also said there is a lot of wildlife down there. They have seen a mountain lion, perhaps the same one Libby heard about. She also had a moose in her yard. She has a neighbor next to her who has 10 acres and both are at work at this time. She called them and told them about the proposed subdivision. They just bought their property in the spring, do not have basements and if they did, they flooded. She also had a moose in her yard. She has a neighbor next to her who has 10 acres and both are at work at this time.

Don Singer, 245 N. Davis Street, said he has commented on developments close to this area and, like Fern Hart mentioned, he believes they have gone over this particular parcel before. He said he was curious how they would allow this density in that area because, in times past, they were adamant with their requirements, perc tests and such. Next month will be the high water tables and they were required to take the perc tests at that time of year. People nearby did not have basements and if they did, they flooded. He was not aware that they had got this area for their drainfield because he sees it as way too small an area. So he is concerned about the proposed duplexes. She said that concluded her comments but she wanted the Commissioners to know that she is against having the duplexes built.

Peggy Chilcote said that it goes by how many gallons per day so that falls into the density question that the Health Department had responded to in agency review.

Peggy Chilcote, addressing the Commissioners, said that they had copies of the floodmaps in their packet.

Michael Kennedy said it seems to him that the density issue with respect to the sanitary restrictions has to do with the capability of the groundwater to flow through to any particular area and dilute any drainage. If the dike is an effective dike for not only surface but subsurface drainage, then the effect is to reduce the overall ability of the property to accept drainage. He said, then, logically, the entire 4.8 acre area cannot be considered for density.

Michael Kennedy thanked everyone for their comments and asked if there was anyone else who wanted to speak. No one came forward. Then, directing his comments to Pat Keiley, he said in looking at the aerial photograph, what Libby Langston said seemed to be true, that only about half, if not less, is south of the dike. The dike is obviously there for flood protection. He asked, regarding the issue of the flood zone, how does the dike affect, not only the elevations, but also the drainage in that area?

Peggy Chilcote said, in the letter from the Health Department, it referred to 3.0 acres. She said that Libby went over most of what she is also concerned about. She said she is the one who talked to Tom at the Health Department who said ½ acre per dwelling is permitted if you are on city sewer and you had your own well; if you had well and septic, then it was 1 dwelling unit per acre. She asked Tom if there was anyway they could work around that regulation and Tom told her no. So she does not see how they can plan to have 8 families on that piece of land that is half under the river and half in the floodplain.

Michael Kennedy asked who made that determination?

Fern Hart asked if anyone knew for sure that it is just the land that is counted in the 4.7 acres?

Peggy Chilcote said, in the letter from the Health Department, it referred to 3.0 acres.

Fern Hart said she needs to know if the density requirements are met using the amount of property that is owned that is under water.

Fern Hart asked but what about for houses?

Peggy Chilcote answered it goes by how many gallons per day so that falls into the density question that the Health Department had responded to in agency review.
He said this issue is totally reversing that.

undevelopable land that had no development value. Therefore, the value of the conservation easement was really low.

She continued that the Health Department said the main density had to be concerned with the sewer. If they could meet that, then it would fit.

Colleen Dowdall said another option, if they are inclined to approve it from a land use standpoint, would be to approve it contingent upon the approval by the Health Department. That has to occur anyway. Even if the Board of County Commissioners approved this from a land use standpoint, the Health Department could turn it down because of sanitation regulations.

Michael Kennedy said he is troubled by more than the question on wastewater. He can think of at least two other instances where most of the property that is owned is under water. He said he is talking about acreages that are 20, 30 and 40 acres and it seems to him, that if you can meet sanitary restrictions under the conditions that are under discussion, they are able to have any density that they want since it meets the density, even though it is totally unavailable.

Colleen Dowdall said she believes Peggy has testified that the Health Department is not counting the land under the river. For purposes of zoning, the County is counting the land under the river. But there is no density requirement in zoning. So, where the density requirement exists, they are not counting the land under the river.

Pat Keiley replied, then, in Z.D. 13, there is nothing that says you cannot include land that is under water or partially under water in terms of calculating the density. It considers the overall acreage to determine the density.

Michael Kennedy, addressing Peggy, said, under these circumstances, he feels the same way. He said there is new information here and he does not believe he can make a good decision at this time. He asked her if she would allow this to be delayed for about 2 weeks for them to resolve this issue with the sanitarians.

Peggy Chilcote replied yes, that is what Lot 62 is.

Pat Keiley asked Counsel if it fit the zone?

Fern Hart asked Michael Kennedy if he worked on a conservation easement last year and this seemed to be the issue, the undevelopable land that had no development value. Therefore, the value of the conservation easement was really low. He said this issue is totally reversing that.

Fern Hart asked Peggy if some of the land, north of the dike, under water?

Peggy Chilcote answered that some of it is. She continued that the Health Department said the main density had to be concerned with the sewer. If they could meet that, then it would fit.

Fern Hart asked Counsel if it fit the zone?

Michael Sehestedt replied, typically, in determining density, you consider the entire gross area which includes streets, parks, rivers, etc. Looking at it from the Comp Plan point of view, it calls for a maximum of 2 dwelling units per acre.

Pat Keiley agreed. He said, further, in Z.D. 13, there is nothing that says you cannot include land that is under water or partially under water in terms of calculating the density. It considers the overall acreage to determine the density.

Fern Hart asked him what he thought the overall acreage is?

Pat Keiley responded 4.7 acres. He said that is what has been represented to him and, based on that, they are allowed density according to the Comp Plan because the zoning district does not specify what the density standard is. Actually, 9 dwelling units are proposed: 4 duplexes or 8 dwelling units. He conceded that a good portion of the property is on the north side of the dike and is in the 100 year floodplain. A portion of that is in the water and what they are doing is, knowing that they cannot build in that location, they are clustering the units in such a way as to occupy a significant portion of the land that is not in the floodplain.

Fern Hart said she cannot make a decision until she talked this over with the Sanitation Department.

Colleen Dowdall answered that Z.D. 13 allows single family dwellings and two family dwellings. The Comp Plan calls for two dwelling units per acre maximum. So it meets the density of the Comp Plan also for the entire gross acreage.

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Pat Keiley agreed. He said, further, in Z.D. 13, there is nothing that says you cannot include land that is under water or partially under water in terms of calculating the density. It considers the overall acreage to determine the density.

Fern Hart asked him what he thought the overall acreage is?
Michael Sehestedt stated, with a conservation easement, the question is if it is associated with other property that could be developed? He cited this example: If you get a conservation easement on a proverbial 20 acre tract that stands by itself upon which there is no building site, then the value of the conservation easement on that 20 acre tract would be limited. However, if you took that 20 acre parcel and 17 acres of it was very steep and the remaining acres are flat and its in an area that allows development at 1 dwelling unit per 5 acres, then, if you grant the conservation easement on the steep part and convey away the development rights on it, you have given up the building sites and the value goes way up. He suspects in a case like that, a person would come in with a subdivision proposal calling for three one acre lots down on the bottom, assuming they have building sites and a drainfield, and dedicate the balance subject to a conservation easement to make it attractive. This is part of the gross density of the ownership. In fact, it has value in that sense because you have a density that you are using for clustering.

Libby Langston said she does not understand what Michael Sehestedt said, but she said what Fern Hart said made a lot of sense, and that is, you need to look at all the pieces. Overall, she feels that it is obvious that this is a rational argument. She said it is ridiculous to include land that is underneath water. Further, she stated she and the others opposing this development feel sure this land is in the floodplain. It is the same elevation as the land. At the very least, the density should be lessened.

Barbara Evans, referring to the aerial photograph, asked Libby how many of the people that are opposing the development live in the duplexes that adjoin it?

Libby Langston said she does not know anyone who lives in the duplexes. She said she and the others all live on Short Street.

Barbara Evans said it appears to her, from the photograph, that if this triangular piece is in the floodplain, than it appears to her that the existing duplexes also are. They may be further back from the river, but that doesn’t necessarily mean that these are not in the floodplain as well. Based on that, the argument that the proposed subdivision may be in the floodplain is not convincing to her unless these places have all been under water when it floods.

Libby Langston said it is a 100 year floodplain. She heard from a 94 year old friend that the last time it flooded was in 1948.

Michael Kennedy said the dike has subsequently been built there but he understands her position.

Colleen Dowdall said, to move forward on this, she wanted to suggest a couple of options. One is to delay a decision so that the Commissioners have the opportunity to get information related to concerns about the groundwater or the sanitation from the sanitarian, which would be under the terms of the subdivision regulations which require that you look into the public health, safety and welfare of the people. The other option is to make the determination today, approving it contingent upon the Health Department’s approval, or not approving it because they believe the subdivision, if granted, would not protect public health, safety and welfare.

Michael Kennedy said he preferred to delay the decision, which requires a letter from Peggy agreeing to the extension. Otherwise, the Board is required to take action on this proposal today.

Peggy Chilcote asked if she could have a chance for rebuttal to explain some of the issues that came up?

Michael Kennedy answered yes.

Peggy Chilcote said they have a map showing the floodplain and how much of Lot 62 is in the 100 year floodplain and how much is in the area considered the “other area.” There have been perc tests done on this property for groundwater last spring. The Health Department came out and tested 11 holes and that is how they came up with the placement of the drainfield.

Michael Kennedy asked Peggy if she was aware that, at the end of March, the sanitary regulations changed? He said the perc tests they did a year ago may no longer be valid.

Peggy Chilcote replied no, she was not aware of any changes.

Colleen Dowdall asked Peggy if she got septic permits when the perc tests were done in March?

Peggy Chilcote replied that they were told to wait until they went through the subdivision process.

Michael Kennedy said this is a major issue, with that regulation change.

Peggy Chilcote agreed, saying she could see that it would pose a problem.

She continued and said the Commissioners also had a letter from the sanitarian about the density and that they have enough usable land to maintain a drainfield system for the proposed duplexes. They are at 240 gallons per day per unit. Their maximum is 600 gallons per acre.

Fern Hart asked if that was the standard for a multi-family situation?

Peggy Chilcote replied yes. Those were the figures given to her and the officials worked with her and her family through this. She noted the first letter from the Health Department, that was questionable regarding not having enough usable land, is the reason why she requested another letter from them stating that the problem had been rectified.

Fern Hart said she saw it but does not understand it.
Barbara Evans asked Counsel for a legal determination based on case law that has discussed whether a parcel of land, some of it under water, is considered land that is owned? She asked if her question was clear?

Colleen Dowdall said she understood the question but she wanted to know if she wants to know with respect to the density to the wastewater?

Barbara Evans replied no; she meant density for ownership of a piece of land.

Fern Hart said perhaps a consideration would be if they were taxed on it?

Michael Sehestedt said he is fairly certain they are taxed on it. It is based on straight acreage. Acreage owned is shown on the plat of the subdivision. Without looking at the specific assessment file, he can say he believes the assessment is based on the acreage shown on the plat map. With the question of title, there is navigable stream and the state typically owns the bed of the streams. He is uncertain as to title there.

Colleen Dowdall wanted to add that she does not think this is relevant. Although the Comp Plan has a density recommendation for this area, the zoning, which is more specific, does not have a requirement. So she does not believe it is an issue in this particular case.

Barbara Evans said it may be an issue for those involved. She presumed Counsel’s answer would be that there is determinable ownership of land in cases like this, whether it is sometimes covered by water or sometimes not, but it is still determinable that someone owns the land, and that was Counsel’s answer.

Colleen Dowdall said she believed what Michael Sehestedt meant was, on a navigable stream typically the bed and banks are owned by the state, but it is not certain if that is the case on this particular parcel.

Barbara Evans said she heard from those that opposed this subdivision that they believe it is unfair if the Commissioners allow land that is half covered by water to be counted as a piece of property. She is trying to determine if it considered their land. Paying taxes on it would be one way of determining this.

She wanted to comment to those who oppose the subdivision that they need to understand that these people own this land. The law gives them the right to develop it within the rules. The Board of County Commissioners have to determine if they meet the rules. From what she has heard is that, for amounts of density, the full amount counted as a parcel of land does include the water for conformance to the Comp Plan.

Colleen Dowdall reiterated that there is not a density requirement. The Health Department has a density requirement and they will not count the land under the river. The zoning is more specific than the Comp Plan and it calls for single family dwellings or two family dwellings. It does not have a density requirement and she does not believe they need to go to the issue of what the gross acreage is. If this zoning had a density requirement, they would have to decide that issue. She does not believe the County should draw an issue into an area that does not have it. Then the Commissioners may be tempted to make whatever decision based on something that is not connected legally. With all of the other questions that need clarification, it may be wise to delay a decision if Peggy agrees to give the extension.

Peggy Chilcote said she can only speak for herself and not the others.

Michael Kennedy said the Commissioners have to make a decision unless she agrees to the extension. The Commissioners cannot make the decision to extend the consideration of a subdivision.

Peggy Chilcote said she would agree to it.

Michael Kennedy said the County needed a letter stating that she has granted a two week delay for the decision for this subdivision.

Peggy Chilcote said that was fine.

Michael Kennedy said Peggy received the memo dated January 11 which stated there was not enough usable land for 8 units and design approval was contingent on approved groundwater testing in 1995. Subsequent to the date of that letter, new regulations were formulated that were not adopted until after the second letter was received by Peggy Chilcote that said she would be allowed a total of 1,920 gallons of sewage on that 3.0 acres. He wonders what those two determinations from the Health District were when they were in the midst of reviewing regulations that ultimately were approved after these letters but prior to the application.

Michael Sehestedt said if this works under the new set of regulations there is no issue. But assuming that the change in regulations is such this could no longer be approved at this density, estoppel becomes a question of fact on this issue. The general rule is that a permit application is governed by the regulations in place at the time the application is made. There may be circumstances under which there have been representations and reliance in which governmental entity would be estopped to apply its new regulations a particular application. Without more, he would say this is not a situation which an estoppel would be applicable. Because estoppel is a question of fact, review of all of the facts is necessary. Estoppel requires detrimental reliance on representations and a change in position. In this case, the condition of the development complying to the proceeding regulations and representation by the Health Department the permit would issue or possibly affirmative representation, that since you have started the process for approval, these are the rules that apply. There are a lot of facts and potential facts that could exist that give rise to an estoppel. The general rule is permit application is governed by the rules in place at the time of the applications.

Fern Hart asked Peggy if there were garages?

Peggy Chilcote replied yes.
Fern Hart asked her to comment on the elevated drainfield.

Peggy Chilcote answered it was due to the groundwater and the perc tests.

Michael Kennedy noted that the elevated drainfield is upstream from the water well.

Peggy Chilcote said that was a notation on there. Wherever they would have moved it, it would have been upgraded from someone else’s well; this left it to their well instead of someone else’s so they would take care of it if there was any problem.

Michael Kennedy mentioned again to Peggy that they would need to receive a letter granting the extension and this consideration will be postponed until April 17.

Peggy Chilcote agreed.

JENSEN ADDITION #1 (3 LOTS – SUMMARY PLAT)

Sam Islam, Office of Planning & Grants, said this was a consideration of a proposal for a 3-lot division of Jensen Addition No. 1, located in Northwest ¼ of the Southwest ¼ Section 29, Township 13 North, Range 20 West, located in the O’Brien Creek area near the end of O’Brien Creek Road with O’Brien Creek Road along the entire north boundary. The subdivision totals 15.00 acres in size. Each lot will be 5.00 acres.

Mr. Lee Jensen is the land owner and developer of the subdivision. Three houses are proposed on the three lots.

The property is bounded by open and resource lands on the north and south. County residential land is on the east and west of the property. Access to the property will be from O’Brien Creek Road along its north boundary. The road is County maintained, graveled, approximately 20 feet in width, and within a 60-foot right-of-way.

Well logs from the surrounding area demonstrate that wells can be expected to produce 15 to 25 gallons per minute at depths of 150 to 200 feet. There have been numerous tests of this aquifer and several reports written regarding water availability, nitrates, and water quality, all of which show large quantities of high quality potable water are available.

An individual water supply system is planned for this subdivision which is located 6 miles from the nearest public water supply system.

The property is zoned C-A3. The 1975 Missoula County Comprehensive Plan designation is Medium Density Residential District which recommends a density of up to 1 dwelling unit per 5 acres.

The Office of Planning & Grants’ staff recommends approval of this subdivision subject to the 10 conditions listed in the staff report. The developer has requested 2 variance requests, the first is a variance from the requirement for sidewalks and pedestrian walkways and the second is a request from the requirement to increase the surface width of O’Brien Creek Road from 20 feet to 24 feet. The applicant has identified the creek bottom as an easement where no development will take place. Field observation has confirmed the fact that there are riparian resources along O’Brien Creek and it is appropriate to condition the subdivision to preserve those resources by not allowing any construction, with the exception of two driveway easements. Staff recommends approval of the variances based on the applicant’s findings of fact and subject to an RSID waiver statement condition to waive the right to protest future improvements, including sidewalk on O’Brien Creek Road. The proposed subdivision’s connection to the water system is contingent upon criteria defined by the Jensen Addition Homeowners’ Association to be a condition of approval of the subdivision. The subdivision is located in the Missoula Rural Fire District. The District’s position is that minor subdivisions, such as this, create a need for increased water supply. It will protect a subdivision with water tenders and large diameter hose. A $50 per lot fee per dwelling unit will be assessed which will go into the large diameter hose fund. County fire standards shall be required.

He wrapped up his summary by stating the City/County Health Department and the Montana Department of Health and Environmental Services must lift the sanitary restrictions on the property before the plat may filed.

Gregory Marttens, Marttens Surveys, said generally they are happy with everything the staff has done. He is uncertain, however, about condition no. 8, which reads “The water supply for fire protection purposes for the existing and proposed structures shall be approved by the appropriate fire jurisdiction prior to plat filing.” He said the Fire Department’s review letter asked that they pay $50 for large diameter hose. He would like to have that clarified.

Barbara Evans said she believes the requirement is that he has to demonstrate there is enough water.

Greg Marttens said he understood that the water comes in trucks from the fire department.

Colleen Dowdall, Deputy County Attorney, asked if what he meant was that condition no. 8 says that the fire department will approve the water supply and the fire department said there is no water supply and they will bring their own? And it says that the fire department wants to approve the water supply?

Greg Marttens said he reads the letter from the rural fire department as saying what they want is $50 a lot toward the large diameter hose fee, which is condition no. 10. But condition no. 8 says the water supply for fire protection purposes shall be approved by the appropriate fire jurisdiction prior to plat filing. He does not know what the water supply is other than that it comes in trucks from the fire department.

Colleen Dowdall pointed out to the Commissioners in the fire department’s letter in which they say they will be using water tenders for minor subdivisions, so, she conceded, that it probably is not a condition they need.

Fern Hart said some areas that are forested have restrictions on the material used in construction. Could that be what they mean?
Greg Martinsen said this specifically says water supply, not structures to be built.

Fern Hart agreed that was true.

Colleen Dowdall said this regulation is about water and sewage disposal and solid waste and it addresses the water supply for, among other things, fire protection. So, the County asks, if there is a source, what it is. In this case, she believes the fire department is saying they understand there won't be a source so they will bring their own water but they want $50 per lot.

Greg Martinsen said everything else will be addressed in the covenants. Some of the changes have already been made and are not in the packet the Commissioners have received. He asked, regarding riparian resource management plan, if it could be worded so that it could be similar to those done in the past? He said that was referred to in condition no. 5.

Colleen Dowdall said they wrote the regulation to be flexible so that, in some cases, they could get a plan that would be detailed and lengthy if need be, or it could be brief. She is comfortable with the language “to be approved by Office of Planning & Grants” because that has worked in the past.

Michael Kennedy agreed with Counsel.

Fern Hart asked about the letter from the soil conservation staff?

Greg Martinsen said the Department of Environmental Quality and the local Health Department reviews these and, if there is a problem, they will not let him proceed.

Colleen Dowdall added also that they will not sign off on the plat until everything has been met.

Michael Kennedy said there is no access for heavy fire fighting apparatus to this lot in a short time span. The access is either over Kona Ranch or over Buckhouse Bridge. That acknowledgment needs to be in that part of Barbara’s statement. Also, addressing Counsel, he wanted to know if they can require a waiver of a right to protest an RSID for bridge improvement at some future time. It seemed to him that there has been discussion not only with the Target Range School district but other people about potential of using an RSID as a partial planning for any bridge improvement that might be constructed there. It would seem useful if they had that tool.

Colleen Dowdall said she didn’t know. She said it’s an important issue.

Michael Kennedy agreed with Counsel.

Fern Hart said, in that same vein, if she does not see anything for dust abatement and that is an unpaved road, they do not do dust abatement. She wanted to know if they can say anything about dust abatement if its a County road?

Colleen Dowdall replied she is comfortable with that.

Michael Kennedy said he hopes that the Board will honor that.

Fern Hart said, in that same vein, if she does not see anything for dust abatement and that is an unpaved road, they do not do dust abatement. She wanted to know if they can say anything about dust abatement if its a County road?

Colleen Dowdall replied that they have put that in other staff conditions but they waive their right to protest the creation of a dust abatement district.

Michael Kennedy said he is surprised that is not in the report.

Fern Hart said it normally is.

Colleen Dowdall said it was probably added to condition no. 4 which discussed O’Brien Creek Road. It talks about improvement to O’Brien Creek Road, including but not limited to paving and sidewalk based on benefit, dust abatement and may be used in lieu of their signatures.

Barbara Evans, addressing Commissioner Kennedy, said there is nothing she would like better than to put in a condition of the waiver for a new Maclay Bridge because she feels that the County desperately needs a new Maclay Bridge. But she used the same rationale she has used previously and that is, until they have some through the proper process of notification and adding that to their regulations and conditions that they can impose, she is not willing to do that. She said, if there is a motion made to include that, she cannot support it; not because she does not think it’s a good idea, but she believes they should go through the process to make it appropriate, proper and legal before they impose it.

Michael Kennedy thanked her for her comments. He responded that, after what Counsel said, he was hoping that it could be offered as a conditional condition, subject to the approval of the legal staff. If it is found to be legal and is within the regulatory process, then that should eliminate her objection, he would hope. He asked Commissioner Hart if she had any questions?
Fern Hart answered no.

Stan Gore, a landowner of 5 acres to the west of the subject property, asked if he may offer his comments?

Michael Kennedy allowed him to do so.

Stan Gore said he is not speaking for the landowners around there, but they are excited about this. These are the last 3 parcels in the O’Brien Creek area and he bought his property from Lee Jensen and Martinsen, who surveyed it, have both done a great job. He asked, regarding the approaches to the property on these 3 lots, which access do they have and which have to be built? In the beginning of this issue, it was mentioned that there are 2 driveway easements. As far as the water quality, his well is about 250 feet deep and the perc test, when he was building, was one of the best one in the valley. There was also a university student that studied their water quality and the student said it was one of the best wells in the whole valley. His concern, regarding the perc test, is if they were still valid?

Michael Kennedy responded that the new regulation has to do with building in a zone that has a possible effect of high water. So it would affect this because this is in the area.

Stan Gore said the land in question, the building site, is 60 to 100...

Michael Kennedy said it probably would not affect it.

Stan Gore said they have had a meeting regarding dust abatement with Horace Brown and the landowners are proposing at this time to pave it themselves all the way to the bus turnaround. As far as the other, it is too narrow down there. He asked if they are proposing to widen the road?

Michael Kennedy replied no.

Stan Gore said dust abatement was their big concern. Right now, there are about 3 cars that drive by which is no problem, but if there is more traffic, it will be.

Michael Kennedy answered if a SID is formed, then the condition would be that these 3 lot owners would not protest the SID for dust abatement. That’s what it means.

Stan Gore said okay.

Michael Kennedy said he will probably have it paved before then.

Stan Gore said it was unlikely. It would cost a lot to have it paved. He thanked the Commissioners for their time and said he had no further comments.

Fern Hart moved that the Board of County Commissioners grant the variance for no sidewalks or pedestrian walkways for the Jensen Addition No. 1, located in the NW¼ SW¼ of Section 29, T13N R20 W, Principal Meridian, based on the findings of fact and staff recommendation. Barbara Evans seconded. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners grant the variance to widen O’Brien Creek Road from 20 feet to 24 feet, for the Jensen Addition No. 1, located in the NW¼ SW¼ of Section 29, T13N R20 W, Principal Meridian, based on the findings of fact and staff recommendation. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners approve the Jensen Addition No. 1 summary plat, located in the NW¼ SW¼ of Section 29, T13N R20 W, Principal Meridian, based on the staff recommendations and findings of fact, and contingent on the conditions listed below. Michael Kennedy seconded. Motion carried 2-1. Barbara Evans opposed.

1. Grading, drainage, erosion control, road and driveway plans shall be approved by the County Surveyor.

2. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat:

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

3. Access and approach permit shall be approved by the County Surveyor prior to filing the final plat.

4. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

   "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to O’Brien Creek Road, including but not limited to paving, Maclay bridge improvement, sidewalk and dust abatement, based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

5. That the owner enter into a development agreement with Missoula County to submit a riparian resource management plan, to be approved by the OPG prior to final plat approval.
6. That the owner shall clearly label on the face of the plat the “No Development Zone”.
7. Covenants must be filed which shall address the following:
   a. The owner and tenants be provided with a copy of the brochure titled *Living With Wildlife*.
   b. If domestic animals are kept by property owners on property, they shall be confined within the property of their owner, shall not be permitted to become a nuisance or annoyance to neighbors, and sturdy cages or fences should be built to protect them from wildlife. These domestic animals have no defense against predators and can be an attractive food source to many wildlife species.
   c. Horse or livestock feed shall also be stored in a secured area, not accessible to wildlife. Salt blocks and feeding platforms for deer or mineral blocks for horses shall not be allowed on any premises.
   d. A minimum unobstructed width of not less than 20 feet and an unobstructed clearance of 13 feet 6 inches for any driveway over 150 feet in length shall be provided.
   e. Dead-end driveways in excess of 150 feet shall be provided with approved provisions for the turning around of fire apparatus.
   f. The property owner shall create a defensible space for fire protection purposes as outlined in Appendix 7, Vegetation Reduction Guidelines of the Missoula County Subdivision Regulations.
8. The developer shall provide a statement that includes reference within the covenants for a complete description of what is acceptable or unacceptable within the non-development zone. The language shall be approved by the OPG prior to plat filing. Section 3-13.
9. That the owner pay a $50.00 fee per lot or dwelling unit for the purpose of funding a large diameter hose fund, to be approved by OPG prior to filing of final plat.

Michael Kennedy asked about the added language on the response time to the bridge, if it had been included in the motion?

Fern Hart said she had forgot about that but will add it to condition no. 10.

Michael Kennedy said it was just in the Fire Department’s commentary and should be added there.

Barbara Evans asked how he can add it to the Fire Department’s commentary?

Michael Kennedy said they could add it because it had to do with fire.

Colleen Dowdall asked if the purpose of the comment was to notify people that, if you buy property in this subdivision, there will be a longer response time. She is concerned that putting the comment in the Fire Department’s commentary will not serve that purpose. She recommended that it be placed on the face of the plat or in the covenants. She noted that Greg said they would prefer it in the covenants as there is usually enough notation on the face of the plat. If it did go in the covenants, she added that there should be a restriction that it cannot be deleted from the covenants until the bridge can hold the weight of a fire truck.

Fern Hart moved that the Board of County Commissioners require that the covenants for the Jensen Addition No.1, located in the NW¼ SW¼ of Section 29, T13N R20 W, Principal Meridian, contain the statement that fire response time will be limited to access by the Kona Ranch Bridge and the Buckhouse Bridge until there is a resolution of a bridge crossing the Bitterroot River. Barbara Evans seconded the motion. Motion carried 3-0.

Michael Kennedy said that should be listed as condition no. 10.

Barbara Evans asked the staff to do whatever is necessary to take due process and make it a condition that they have approved the process that they can add waivers for the Maclay Bridge in future subdivisions.

**WINTERROWD ADDITION  (4-LOT SUMMARY PLAT)**

Sam Islam, Office of Planning & Grants, said this was a proposal for a 4 lot subdivision which is located about 1½ miles east of Seeley Lake, near the Seeley Lake Airport in the south-east quadrant of the intersection of Airport road and Frontier Drive. The property is unzoned. The 1975 Missoula County Comprehensive Plan recommends suburban residential development at a maximum of 2 dwelling units per acre. The proposed subdivision is located within the Seeley Lake activity circle. The proposed subdivision complies with the land use proposed by the 1989 Seeley Lake area Comprehensive Plan Amendment and the Missoula County Comprehensive Plan, however, the density proposed of 1 dwelling unit per acre is not the most efficient use of land according to the Seeley Lake Plan. That Plan specifically emphasizes use of land and density that has evolved historically need not be continued, especially within the activity circle. The staff of the Office of Planning & Grants recommends approval of Winterrowd Addition, subject to the 7 conditions stated in the staff report. He recommended deleting most of the latter of condition no. 2 and adding dust abatement to condition no. 4.

The developer has requested 3 variances. The first variance is from the requirement to construct sidewalks and pedestrian walkways in all subdivisions. The second variance is from the requirement that no lot have an average
Montana Department of Health and Environmental Services must lift the sanitary restrictions on the property before
Association to be a condition of approval of the subdivision. Finally, the City/County Health Department and the
developer provide covenants to address fire standard conditions as conditions for approval.
the plat can be filed. The property is located within a wildland-residential interface. Staff recommends that the
connection to the water system is contingent upon criteria defined by the Winterrowd Addition Homeowners'
Association to be a condition of approval of the subdivision. Finally, the City/County Health Department and the
Montana Department of Health and Environmental Services must lift the sanitary restrictions on the property before
the plat can be filed. The property is located within a wildland-residential interface. Staff recommends that the
developer provide covenants to address fire standard conditions as conditions for approval.
Michael Kennedy said he understood the comments about condition no. 5 regarding the no-build area but it seems to
suggest that there will a future time when the lots will be split. In view of that, it seems appropriate to take action like
they did last week to also include a waiver of right for water and sewer SID for this particular subdivision since the
density will probably increase.
Pat Keiley said there was no legal problem to do that.
Greg Martinsen, Martinsen Surveys, said 2 matters concern him. First of all, he wondered if they needed condition no.
7, which required the water supply for fire protection purposes be approved.
Pat Keiley said the reason that condition is included is because this property is in a wildland/residential interface. Fire
standards state water supply for fire protection purposes shall be provided and shall be approved by the appropriate
fire jurisdiction. When the fire jurisdiction writes they would like $50 per lot for a hose, they are not they are taking
care of the issue of how water supply is going to be taken care of.
Pat Keiley said the condition would force the fire department to respond to the question “has the developer satisfied
that subdivision condition which relates specifically to water and fire protection?” He said it would be like
Commissioner Kennedy said in that it would force the issue of water supply to be addressed.
Colleen Dowdall, Deputy County Attorney, asked if they had responded yet?
Greg Martinsen asked how he should comply with this condition?
Pat Keiley said the condition would force the fire department to respond to the question “has the developer satisfied
that subdivision condition which relates specifically to water and fire protection?” He said it would be like
Commissioner Kennedy said in that it would force the issue of water supply to be addressed.
Colleen Dowdall said this is a requirement of the wildland/residential interface. Fire
standards state water supply for fire protection purposes shall be provided and shall be approved by the appropriate
fire jurisdiction. When the fire jurisdiction writes they would like $50 per lot for a hose, they are not they are taking
care of the issue of how water supply is going to be taken care of.
Michael Kennedy added, when he seeks comment from the fire district, Pat should ask them specifically about the
water supply. He thought it was a good condition and stated it will remain as part of the conditions.
Greg Martinsen said his other comment was condition no. 5 regarding the 40 foot no-build zone. He said he felt it was a
“catch-22” with the state health regulations and Department of Environmental Quality. If they are going to have a
lot less than one acre in size, they have to provide either public sewer or public water. Then they go down 20,000 sq.
feet. Subdivision regulations state there has to be a 54 foot wide minimum access. So if they do that, they cannot meet
the minimum size requirement according to the state and the Department of Environmental Quality.
Greg Martinsen said that was one of the problems they were faced with. He said, even though he writes or calls, he
often cannot get a response from people he is required to hear from with regard to subdivision review, but he is still
responsible for getting the response.
Fern Hart said there was a response to this particular request from Colin Moon.
Pat Keiley agreed, though, that it was a problem to get a response from the required agencies involved in subdivision
review.
Colleen Dowdall said this is a requirement of the wildland/residential interface and they were drafted with the help of
state lands and fire protection agencies. In those cases, the County asks for what the water supply is going to be and
the County requires that it be subject to approval by the appropriate authority. She noted that for fire protection
services, the water shall be provided by municipal water systems, wells with a minimum 2,000 gallon storage tank
circumts with fire hydrants attached, ponds, rivers or residential sprinkler systems, to be approved by the appropriate
fire jurisdiction.
Greg Martinsen said his other comment was condition no. 5 regarding the 40 foot no-build zone. He said he felt it was a
“catch-22” with the state health regulations and Department of Environmental Quality. If they are going to have a
lot less than one acre in size, they have to provide either public sewer or public water. Then they go down 20,000 sq.
feet. Subdivision regulations state there has to be a 54 foot wide minimum access. So if they do that, they cannot meet
the minimum size requirement according to the state and the Department of Environmental Quality.
Michael Kennedy said he wondered if Greg felt the easement for the roadway would subtract from the landowner that
which would be available for a septic tank.
Greg Martinsen said, according to their regulations, it is not attributable area.
Colleen Dowdall said the staff is suggesting, if he has a no-build area, it will provide him with the flexibility of having a division of land, if the rules change or if it gets public sewer there because the Comp Plan recognizes a higher density in that area.

Greg Martinsen said the other complication is the planned extent and limit of the Seeley Lake water and sewer district only goes as far as Morrell Creek, which is 1½ miles from this property. He does not think it makes sense to put something in that logically doesn’t matter.

Sam Islam said Greg said that he needs a 54 foot easement for Lots 3 and 4. Actually, for fewer than 3 lots, he needs a 30 foot driveway easement and he has plenty of room for that. There can be another 30 foot of driveway easement for Lot 2 to access to Airport Road, so it is not correct that he needs a 54 foot road easement.

Greg Martinsen said, if only one of the lots splits and the one next door doesn’t, they will have to put a 30 foot wide easement on it.

Michael Kennedy explained that the land use up there allows a greater density than what he has proposed and results in this consequence.

Don Winterrowd said he does not want to put 2 lots per acre and he does not want the 40 foot no-build area on the lot.

Barbara Evans suggested that perhaps it should read “building structure should be on either side of the lot or at the end of the lot.”

Don Winterrowd responded that they would still have to have an easement between the 2 lots to get to the back lot.

Barbara Evans stated, that 10, 20 or 30 years from now, they may be short of land and it may be helpful if a building is not built in the middle of the lot. That is what they are hoping to avoid. It doesn’t matter when he builds, but whenever he does, he may find that sometime in the future he may want to split the lot and he won’t be able to use available land. The Board is trying to accomplish good planning.

Don Winterrowd said, whether in his own or even his grandchildren’s lifetime, he does not believe there will ever be sewer or water up there.

Michael Kennedy said, for the same reason that people are building in this area, that it expands past the community of Seeley Lake and there will undoubtedly be public services in that area, although he did not know when this would happen.

Don Winterrowd said he is satisfied with single housing on each lot but if he is required to divide into 2 lots, there is not much he can do about it.

Colleen Dowdall said she wanted to make it clear that they are not requiring that he splits the property, but rather to accommodate the ability for someone to do that in the future. If the house is built in the middle of the lot, it would preclude that split. But rather than put in the stipulation of a 40 foot no-build area, perhaps there is another way to reach the same end, such as creating buildable areas on the land.

Sam Islam said if the no-build zone is 40 feet wide, that will leave a 20 foot setback for either lot in the future.

Barbara Evans moved that the Board of County Commissioners grant the variance from paving Airport Road for the Winterrowd Addition, located in the NW ¼ of the NW¼ of section 1, T16N R15W, Principal Meridian. Fern Hart seconded the motion. Motion carried 3-0.

Barbara Evans moved that the Board of County Commissioners grant the variance from the requirement that no lot have an average depth greater than three times its average width for the Winterrowd Addition, located in the NW ¼ of the NW¼ of section 1, T16N R15W, Principal Meridian. Fern Hart seconded the motion. Motion carried 3-0.

Barbara Evans moved that the Board of County Commissioners approve the variance from sidewalks and pedestrian walkways for the Winterrowd Addition, located in the NW ¼ of the NW¼ of section 1, T16N R15W, Principal Meridian. Fern Hart seconded the motion. Motion carried 3-0.

Barbara Evans moved that the Board of County Commissioners approve the summary plat for the Winterrowd Addition, located in the NW ¼ of the NW¼ of section 1, T16N R15W, Principal Meridian, based on the findings of fact and contingent on the conditions listed below:

1. Grading, drainage, erosion control, road and driveway plans shall be approved by the County Surveyor.
2. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body.
3. Access and approach permit shall be approved by the County Surveyor prior to filing the final plat.
4. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to Frontier Drive and Airport Road, including but not limited to paving, sidewalk, dust abatement and future sewer and/or water districts, based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."
5. The covenants shall contain provisions for the future division and residential construction on the reserve building site, with the covenants to be approved by the Office of Planning and Grants prior to plat filing. In order to allow for future division of Lots 2, 3 and 4, the plat shall show building areas in either end of the lots, and the covenants shall contain the provisions for the future division and residential construction on the reserved building sites, with the covenants to be approved by the Office of Planning & Grants prior to the filing of the final plat.

6. Covenants must be filed with the final plat which shall address the following (The following additions to the covenants shall not be amended without prior approval of the Missoula County Board of County Commissioners):
   a. The owner and tenants be provided with a copy of the brochure titled *Living With Wildlife*.
   b. If domestic animals are kept by property owners on property, they shall be confined within the property of their owner, shall not be permitted to become a nuisance or annoyance to neighbors, and sturdy cages or fences should be built to protect them from wildlife. These domestic animals have no defense against predators and can be an attractive food source to many wildlife species.
   c. Horse or livestock feed shall also be stored in a secured area, not accessible to wildlife. Salt blocks and feeding platforms for deer or mineral blocks for horses shall not be allowed on any premises.
   d. A minimum unobstructed width of not less than 20 feet and an unobstructed clearance of 13 feet 6 inches for any driveway over 150 feet in shall be provided.
   e. Dead-end driveways in excess of 150 feet shall be provided with approved provisions for the turning around of fire apparatus.
   f. The property owner shall create a defensible space for fire protection purposes as outlined in Appendix 7, Vegetation Reduction Guidelines of the Missoula County Subdivision Regulations.

7. The water supply for fire protection purposes for the existing and proposed structures shall be approved by the appropriate fire jurisdiction prior to plat filing.

Fern Hart seconded the motion. Motion carried 3-0.

There being no further business to come before the Board, the Commissioners were in recess at 4:02 p.m.

**THURSDAY, APRIL 4, 1996**

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Commissioner Hart spoke to a government class at Hellgate High School; and in the evening, she attended a meeting of the Weed Control Board held at the Weed Department on Stockyard Road.

**DAILY ADMINISTRATIVE MEETING**

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

Statement of Work  --  The Board of County Commissioners signed a Statement of Work for FFY 1997 for the Disaster and Emergency Services Office, enabling them to be eligible for State and Local Assistance funding. The Statement was returned to Kim Vietz, DES, for further handling.

Designation  --  The Board of County Commissioners signed a Designation of Applicant’s Agent Resolution, resolving that Jane Ellis or Horace Brown are authorized to execute for and in behalf of Missoula County for the purpose of obtaining federal financial assistance under the Disaster Relief Act or otherwise available from the President’s Disaster Relief Fund.

Professional Services Contract  --  The Board of County Commissioners signed a Contract for Professional Services between Missoula County and Gregg Potter, an independent contractor, for the purpose of mowing, irrigation, lawn and grounds maintenance at the Historical Museum at Fort Missoula property, commencing on April 15, 1996 and concluding on October 15, 1996. The total compensation to be paid shall not exceed $750/month.

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

**FRIDAY, APRIL 5, 1996**

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

Election Canvass  --  In the forenoon, the Commissioners canvassed the School Election which was held on Tuesday, April 2, 1996.
MONDAY, APRIL 8, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #7, Pay Date March 29, 1996, with a total Missoula County payroll of $534,958.15. The Transmittal Sheet was returned to the Auditor’s Office.

Contract -- Chair Kennedy signed a Montana Association of Realtors Standard Listing Contract, a contract between Missoula County and Properties 2000/Coldwell Banker Steinbrenner Agency, for lots 1-5, Block 2, Missoula Development Park. The listing is to commence on April 5, 1996 and expires on midnight on December 31, 1996. The County agrees to pay a commission equal to 6% based on the sales price. The Contract was returned to Orin Olsgaard, Projects Office, for further handling.

Professional Services Contract -- The Board of County Commissioners signed a Missoula County Professional Services Contract between Missoula County and Planned Parenthood of Missoula, an independent contractor, for the purpose of producing a conference on “HIV & Women” in April as part of the HIV Prevention Strategic Plan, commencing on February 1, 1996, through May 31, 1996. The total compensation to be paid shall be no more than $2500.00. The Contract was returned to the Health Department for further signatures and handling.

Other items included:
1. Board Appointment -- The Board of County Commissioners appointed Susan Barmeyer as an alternate member of Missoula Aging Services Governing Board, commencing immediately, through December 31, 1998; and
2. Board Appointment -- The Board of County Commissioners appointed Denise E. Taylor as a member of the Board of Trustees of the East Missoula Fire District., effective until the next School Election, which will be held the first Tuesday in April, 1997;
3. Board Appointment -- The Board of County Commissioners appointed Jim Van Fossen to a 3 year term on the Larchmont Golf Course Board of Directors, effective April 1, 1996; and
4. Board Appointment -- The Board of County Commissioners appointed Lorraine Martin to fill an unexpired term on the Larchmont Golf Course Board of Directors as the second alternate, commencing on April 1, 1996, through March 31, 1997.

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

TUESDAY, APRIL 9, 1996

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

Audit List -- Commissioners Michael Kennedy and Fern Hart signed the Audit List, dated April 8, 1996, pages 2-31, with a grand total of $172,799.46. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Amendment to Professional Services Contract -- The Board of County Commissioners signed an Amendment to the Professional Services Contract between Missoula County and Rebecca H. Deschamps, an independent contractor, for the purpose of providing guidance to Partnership Health Center on Pharmacological issues and assists in the analysis of utilization of medication by Partnership Health Center patients, amending the Contract as per the terms set forth. The Amendment was forwarded to the Health Department for further signatures and handling.

Electric Powerline Easement -- The Board of County Commissioners granted and conveyed to the Montana Power Company an easement of 10 feet in width upon which to construct, operate, maintain, replace, upgrade and remove an electric powerline, communications system and necessary appurtenances, located in T13N, R20W, P.M.M., Section 36, E½, COS No. 1043, for the amount paid of $1.00. The document was returned to Chuck Wright, Surveyor’s Office, for further handling.

Other items included:

Board Appointment -- The Board of County Commissioners voted to move first alternate Les Rancourt up to a regular member status for the Larchmont Golf Course Board of Directors, making Lorraine Martin, who was appointed an alternate member on April 8, 1996, the second alternate behind Mike Halligan.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
The Board of County Commissioners met in regular session; all three members were present.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending March 29, 1996.

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

BID AWARD: TOTAL STATION SURVEYING SYSTEM (SURVEYOR)

Michael Kennedy said the bid award request for a total station surveying system was postponed from April 3. Bids were opened April 1, 1996, at 10:00 a.m. with the following results: Inland Precision Instrument, $11,736.49, with bidder’s preference $12,088.58, and Selby’s, $11,295.00. The recommendation is to award the bid to Selby’s in the amount of $11,295.00, as the lowest and best bid.

Fern Hart asked what bidder’s preference was?

Horace Brown, County Surveyor, answered that was from a bidder that did not have an office in the state. There is a 3% additional charge, which they do not pay, but that is added to make it equal.

Michael Kennedy asked Horace Brown if he had any comments?

Horace Brown replied no.

Barbara Evans noted that, even without the bidder’s preference, the amount bid was higher than Selby’s.

Barbara Evans moved that the Board of County Commissioners award the bid to Selby’s for the Total Station System for the Surveyor’s Office in the amount of $11,295.00 as the lowest and best bid. Fern Hart seconded the motion. Motion carried 3-0.

BID AWARD: TRAFFIC LINE PAINT (ROAD DEPARTMENT)

Michael Kennedy said the bids for traffic line paint were opened on April 8, 1996 at 10:00 a.m. with the following results: Columbia Paint & Coatings, $26,206.00 and no bidder’s preference, Centerline Industries, Inc., $28,332.00 and a bidder’s preference of $29,181.96 and Morton International, $23,574.00 with a bidder’s preference of $24,251.41. The recommendation was to award the bid to Morton International in the amount of $23,574.00 as the best and lowest bid. He commented that this product does not contain lead. They had made the decision some time ago that it is important for air quality not to have lead in the paint. He asked Horace Brown if he wanted to add anything?

Horace Brown, County Surveyor, replied no.

Barbara Evans asked what color the paint was?

Horace Brown answered white.

Barbara Evans moved that the Board of County Commissioners award the bid to Morton International in the amount of $23,574.00 as the best and lowest bid. Fern Hart seconded the motion. Motion carried 3-0.

HEARING: PETITION TO VACATE UNUSED UNNAMED ROAD (ADJACENT TO U.S. HIGHWAY 12)

(POSTPONED FROM APRIL 3, 1996)

Michael Kennedy said this was a hearing that was postponed from April 3. The process for this hearing is to have testimony and presentations given today and the decision on the hearing will be given at a later time, after a County Commissioner and the County Surveyor view the site. He asked if there was someone who could give a presentation on this proposal and invited them to come forward.

David Cotner, Boone Karlberg & Haddon, said he was an attorney representing Potomac Corporation and the Ozmun Family Trust and the petition that requests to have this road abandoned. He handed out notebooks to the Commissioners which contained information and maps regarding the area under discussion. He said this is a somewhat unique request, which would be clear as he gave his presentation.

Potomac Corporation and the Ozmun Family Trust own all of the land under discussion. They are requesting that two County roads be formally abandoned by the County Commissioners. Referring to a map, he showed the Commissioners the area where the roads were located and where his clients were located. One of the roads is a petition road that was established in 1895 by an individual named Muzzie and begins in the town of Lolo. That road was used for approximately for 5 years. In 1899, the General Land Office surveyed the road and in 1900, Missoula County approved the location of the GLO road. The GLO road and Muzzie Road are to the north of U.S. Highway 12.
The GLO road replaced the Mizzie Road and that became the way people traveled west to Lolo. There was also a railroad right-of-way. There was an intention for the Shortline Railroad to lay a railroad from Lolo, across the pass, to Lewiston, Idaho. After they started the railroad, it became clear that this was unfeasible for them to do. In 1929, the railroad abandoned their right-of-way and in 1930, they transferred the right-of-way to Missoula County. Missoula County became the owner of what is presently U.S. Highway 12, which is the old railroad right-of-way. Sometime between 1930 and 1960, the use of the GLO road was abandoned. Traffic heading west to Idaho used the railroad right-of-way for transportation. It was maintained by the County and used. He guessed the time this happened was in the late 1940’s but he is not sure. In 1960, the road was improved to what it presently is, which is U.S. Highway 12.

He said his clients are requesting that the two roads north of U.S. Highway 12 be abandoned only as it passes through his clients’ property. They are not requesting abandonment all the way back to Lolo, believing that each private landowner should deal with their own land.

He stated earlier that he felt this was a unique situation and the reason for this is Montana law says the County must take a specific act to abandon County roads. Typically, the process is to petition the County Commissioners, come before them and ask that the roads be abandoned. In this situation, based on his researched information, there have been representations made in the 1940’s and in 1960 by County officials that these roads were effectively abandoned at that time. So they believe that the act has already occurred. The problem is that is has never occurred formally on record.

Michael Kennedy asked what was the form of the representations?

David Cotner answered he would explain the information as he had received it. Don Campbell (who was present at this meeting) was the manager of this particular land from 1967 to approximately 1986. He lived on the ranch and ran the cattle for 19 years. During that time, he talked to Ted Williams, who lived on the ranch, and the majority of this ranch. Ted told him that when the County chose to move the road to the railroad right-of-way there was a concern expressed by the landowners that they did not want to have 2 public roads on their ranch. Because of their concern, the Commissioners at that time agreed to abandon the roads that are being requested to be abandoned today.

Michael Kennedy asked if there was any memorialization of that?

David Cotner said he only has verbal representations. He continued that Ramona Holt, who lives up Lolo Creek, had the same knowledge in 1960, which was that there was a commitment made by the County that those roads would be abandoned. (Her son, Pat Holt, was present at this meeting and would also give a presentation later.) But a petition was never filed and no one formally removed the roads. So they are attempting to finish the process today.

Montana law defines abandonment in MCA Section 7-14-2601 and there are, in essence, two requirements for the County to abandon a road. One is to cease the use of the right-of-way or any activity on the road. In this case, there would be no dispute that these roads have not been used for the public benefit since the late 1940’s, thus, there is approximately 50 years of non-use. The second requirement is that there must be no contention to reclaim or use the road again. There were representations made to Don Campbell by the Williams family and to the Holts by County officials that these roads would be abandoned. Relying on those representations, these landowners relocated their boundary lines and their fences. Once the public right-of-way was fenced off on the north and south, it was cut in half in several different locations. They had believed the County act had already occurred and they now request that the Commissioners confirm what was previously decided in the late 1940’s but not later than 1960.

Other evidence that shows there has been no intention to use this road includes a petition brought before the County Commissioners to vacate a portion of this road in 1990. He said a copy of the petition and the resulting decision by the County Commissioners at that time was included in the notebook and it is of the GLO road. It is exactly one of the two roads being discussed today. He calls it the Greydanus petition and it was filed some time ago. It was brought before the Commissioners on February 21, 1990 and he showed the Commissioners a copy of those minutes. He pointed out in that meeting there was a discussion on the decision on the request to vacate portions of Greydanus’ property in Lolo. Michael Sehestedt, Barbara Evans and Horace Brown all participated in the discussion. He read from testimony given by Michael Sehestedt, “the GLO road is an old road that exists on GLO maps and may or may not exist on any other maps. All traces of the road are gone, it is not used as a road, and other adequate roads are used in the area.” He read testimony from Barbara Evans, “that when she went to inspect the road, it was obvious the road was no longer used. It goes right through a corral area and a residence below the home. The highway is a few feet south of it. She said it is just road enough for a wagon to travel. She recommends they grant the vacation of this particular piece of the GLO road.” And testimony from Horace Brown, “the road is locally used by people who cross their property. It is of no further use to the County.” There was a motion and the County Commissioners agreed that portion of the road should be vacated.

He showed on the map the area previously abandoned by the County. The significance of that is once again there is a County act that shows the road is not needed for public use. There is U.S. Highway 12 instead. Even if someone wanted to use this road and it was not abandoned, they could not get beyond a certain point anyway.

He said there were other acts that occurred between the County and landowners which they believe shows the County’s intention to abandon this road. In the 1960’s, the Potomac Corporation agreed to transfer certain property to the Woodman School District, which was a government subdivision and he referred to a copy of a warranty deed that shows property transferred from the Potomac Corporation to the Woodman School District. He also referred to a copy of a survey of the property that was transferred. He said the significance of this deed and survey is that it shows where U.S. Highway 12 is and where the access County road is to the school. But it does not show the GLO road or the petition road. Had those road existed and not been previously abandoned, they would have been shown. His clients would have had to negotiate a transaction at that point to terminate that use in exchange for that property. At a later date, his clients transferred some additional property.
Michael Kennedy interrupted and asked, before he went any further, if the transfer was done by a sale of property? Was there any title report on it?

David Cotner replied that he did not have a title report on it but he did have a title report on a different parcel. He said this is indicative of the type of title insurance policies that were being issued at the time. He referred to a copy included in the notebook that shows a title policy that was issued by Title Guaranty Company in 1972. He notes, once again, when you look at the exceptions, it shows U.S. Highway 12. Here is another instance that does not show the GLO road nor the petition road. It is clear to him from reviewing the surveys and title commitments and the deeds and transactions that have occurred that everyone in Missoula County, in the late 1960’s and early 1970’s, was treating these roads as if they did not exist. Title companies were not showing them as if they were not an encumbrance. Surveyors’ were not showing them on surveys. Parties to structuring transactions with the County in which they were transferring land were not protecting themselves by having those roads abandoned at that time. The reason those things were not occurring, he believes, is that there were representations made by County officials that these roads could be properly abandoned.

He said they believe that they have an abandonment that exists, they meet the statutory criteria at this time and the one thing they are missing is there is no document of record. That last item is the reason they are here today.

He said, even if there was no historical act, there are good reasons to abandon it now. He invites the Commissioner and Surveyor to note, when they do their inspection of the site, to look at the number of fences that traverse north to south that go across the subject road. He said they will also find actual buildings on the road. Taking this road away from the County will not do the public any harm.

He stated the statutes are clear on what the Commissioners’ responsibilities are, although they do not give much guidance. He said the merits and demerits of the request are to be considered. He does not see any demerits to their request, particularly because of the County’s prior vacation of a portion of the road in 1990. He has heard that the Lolo Community Council was interested in potentially preserving this public right-of-way for future public benefit, such as a biking or hiking trail. He talked to Mike Grunow who is past or current president of the Lolo Community Council, and Mike knew nothing of this interest. But, even if it is being considered, there is a portion of this road that has been abandoned and they cannot go beyond that point. Further, he invited those who will inspect the site to look at the practical problems with it. There are several areas where there is evidence of the old road but the evidence comes very close to the highway. On the west end of his client’s property, the old GLO road and the petition road disappear into the present right-of-way. There is no way a trail can practically be put in even if that is an interest.

He summarized by saying they believe the roads have been abandoned and they think it is appropriate for the County to confirm that so that it can become a matter of public record. Even if the Commissioners have doubts about representations made years ago and they disregard how everyone treated their lands since that time, there is an independent basis today to choose to abandon the roads.

Michael Kennedy said they have heard in this testimony that, because of the discontinuous nature of the road and the single petition that does not include the entire road, there is a suggestion that those have to be dealt with on a separate level. He asked what would happen if the road becomes discontinuous as a result of abandonment of part of it?

Michael Sehestedt, Chief Deputy County Attorney, answered each petition stands on its own. In this case, the road actually touches public right-of-way, although its true that it could no longer be used as a continuous road, so the Commissioners must decide on the usefulness of the remaining unvacated segments.

Michael Kennedy asked if the testimony, which is if there is discontinuity in the road resulting in effective abandonment, is not accurate in terms of this discussion?

Michael Sehestedt replied he would not accept it as creating legal abandonment. There may or may not be prior legal abandonment. If the Commissioners decide there is a reason they want to keep these roads, then he will examine if the County has the ability to do so or if there has been a prior commitment. There are two things that bear on this. First, is the fact that the surveys from Woodman School show it. However, one was prepared by a private surveyor and we are not bound by their mistakes. If there is a road there and the title company did not accept it out, then they may have a claim against the title company. None of this is to argue on the fundamental merits of the petition. He recommended that the Commissioners decide on those.

Michael Kennedy said he understood the interpretation of the law in the past to be that the right-of-way remains forever unless there is a specific affirmative action on the part of the County to abandon it. He asked Michael if that was correct?

Michael Sehestedt replied that was true. The one thing we lack in Montana so far is we don’t have any Montana case law on what constitutes an abandonment in the road statutes.

Fern Hart said, having been in government quite awhile, she believes it is possible that someone could ask the Commissioners “can we abandon this?” and the Commissioners respond “yes, you just need to get a petition” and that may be as far as it goes.

Michael Kennedy opened the public meeting and invited anyone who wished to speak to come forward.

Patrick Holt, an attorney from Lolo, said here came to support the petition. He said he did not know until a week ago that this road even existed.

He gave a background on himself. He was born and raised in Missoula on a ranch that currently lies on Section 34, Township 1220. They also own another parcel of property that is in Sections 32 and 33, the same Township. That land was acquired about 1948 by his grandparents. His grandmother is still alive and she will be sending an affidavit that states that, at the time his grandfather and she sold the gravel to the state of Montana in the County of Missoula to
build Highway 12, which came off their land, it was represented at that time that the old road would be abandoned and they would own the land where the old road is. That was about 1960 to 1962 and it took approximately 4 years to go through the process of getting the road constructed. The documents he saw indicate a span of about that length of time. He spoke with his mother who was also here during that time and she was able to correlate the information he had found. But he agreed with David, that it is in the best interest of all the landowners on Lolo Creek, including the Ozmun Family Trust, Potomac Corporation and the surrounding neighbors that those portions of the road be abandoned. He believes that it is the best interest of everyone that the entire road be abandoned. If it would be desirable, he would be happy to accompany anyone on a trek up Lolo Creek to point out exactly where the road lays, which is in some very limited places. He has never seen anyone other than the landowners use the land where the old roads lie. He agrees with Dave’s representation that there has been approximately 50 years of non-use.

He stated, to be fair, there is a portion of the road abandoned and it was correct for the Commissioners’ to decide that in 1990. The reasons were good at that time and he said the reasons are not different today. There is the same basis and the same merits to vacate the entire road. It benefits the landowners and he does not see any downside to the public at large because they have not been using it anyway. Another issue is he has paid taxes on the ranch property he owned since 1978 and his family has paid taxes on it since 1948 and he does not think a County road has ever been exempted out of their taxes. He said he will check to verify whether that is true.

Unfortunately, as Mr. Sehestedt pointed out, there are no good case laws to give us direction on this issue. He believes everyone will have to use a common sense approach and a decision will have to be made on principals. Based on those, the value of the roads, if any, does not justify retention of them by the County. He supports the petition and assumes that the process is that he needs to file a petition to affect this road going across his own properties and he will be doing that, if possible, within a week. He will be asking that the road through his lands be vacated as well.

Barbara Evans asked if that would take care of the entire stretch of road?

Patrick Holt answered no, his land contains a portion, approximately ¼ mile west of Lolo and then from Sleeman Gulch up to Hollenstein Gulch, which is about the second mile of Highway 12. That is where his property actually lies. If there was a way to facilitate a petition to accommodate vacation of the entire highway, he would support it. He thinks it makes a lot of sense.

Michael Sehestedt said, in looking at the old map, there is a big state gravel pit right at the end of Sleeman Gulch Road. Is there a fishing road that goes through that area?

Patrick Holt replied yes, it goes right through it.

Michael Sehestedt said a lot of gravel excavation is done there by the State Department of Highways.

Patrick Holt said that is the one from his grandparents. Another issue that will be raised is he has a warranty deed from the state that the County has never accepted and filed.

Fern Hart asked if easements were exempted on tax bills?

Michael Sehestedt answered no. The County only has the right-of-way interest and the landowner is taxed on it and they own the fee, even when there is a County Road over it. It is only subject to a right-of-way easement for the County roads.

Fern Hart, addressing Pat Holt, said he does not need to research his tax records for the exemption then.

David Cotner said, to clarify some matters, that he was not trying to misrepresent anything. He said Michael Sehestedt properly pointed out that the title insurance and the survey were prepared by third persons. If the implication was that he was treating it as a County act, he wanted to make sure the Commissioners understood his intent.

Michael Kennedy replied that he appreciates Mr. Cotner’s concern but assured him that there was no misunderstanding and they did not believe there was any misrepresentation.

Michael Sehestedt added that he did not want to make any implication either. He was pointing out that the survey was not from the County but in no way did he mean for it to reflect on David’s statement.

Michael Kennedy asked if anyone else wanted to speak on this issue? No one came forward and he closed the public hearing.

Barbara Evans asked if that would take care of the entire stretch of road?

Patrick Holt responded, as far as he knew, yes.

Barbara Evans said she did not recall any instance, in going up to Lolo Hot Springs as she was growing up, did they ever use any other road that would have equated to this GLO road that they are referring to. She asked Pat if he recalled the same?

Patrick Holt answered that he did.

Barbara Evans said she remembers well going to see the Greydanus property with Horace Brown and she could faintly see where the road may have been but, when you are actually on it, it is very hard to tell. That was the status at that time. It did go through a corral and a building. She feels that those who want to transform this easement that the County owned or owns into a trail for bikes or hikers is not what the GLO road was designed for. It was designed for a road, it has not been needed for a road since Highway 12 replaced it, thus she is not willing to say the County should
keep it so that the public can go through these people’s lands for an entirely different reason. She realizes they will be required to inspect it again and base their decision on other factors but she wanted her view to be made known.

Michael Kennedy said he neglected to read into the public hearing a letter from Tim Hall, City/County Rural Planner, so he reopened the public hearing and read:

TO: Missoula Board of County Commissioners
FROM: Non-Motorized Steering Committee
Tim Hall, Rural Planner, OPG
DATE: April 10, 1996
RE: Petition to Abandon County Road -- Lolo Creek Corridor

The Non-Motorized Steering Committee recommends that the proposed road vacation not be granted in the Lolo Creek Corridor, adjacent to the U.S. Highway 12. Although this dedicated County Road is no longer used as a primary motor vehicle roadway since the construction of U.S. Highway 12, it does have some potential as a non-motorized travel corridor (trail).

Citizens involved in the 1996 Lolo Comprehensive Planning Project, coordinated by staff from the Office of Planning and Grants, have identified the need for safe pedestrian, bicycle and equestrian trails up the Lolo Creek corridor. The exact location and width of the present dedicated roadway may not suit the needs of the trail, but would allow for the County to potentially relocate the right-of-way in a more appropriate location. This trail corridor would be a link to the Lewis and Clark Trail up Lolo Creek, another resource identified in the Lolo Planning Project as a possible economic and recreational resource to be explored in the future. The proposal has been discussed with Missoula County Surveyor, Horace Brown, and he concurs with this opinion.

He continued that, since he re-opened the public hearing, he asked again if anyone wished to make any additional comment?

Dorothy Cooper said she lives up Lolo Creek and she wanted to know if they had an easement behind their house? They would like to have it closed off and wanted to know what their prospects are?

Michael Sehestedt replied that he could tell her what the prospects are after the Commission acted on this request. It also depends on where her property is at. He told her she would have to start with a petition and he would be happy to get her a form and show her how to complete it, but she may want to see what the outcome of this proceeding was before she started the process.

Patrick Holt said any intended or desired use of those roads that have been abandoned is going to create far more headaches and problems for the existing landowners than will ever benefit the public at large.

Barbara Evans, addressing Mr. Cotner, asked him what his clients attitude would be if the public wished to use these old roads as trails?

David Cotner replied it would be fair to say they would be vehemently opposed to it. From their standpoint, it violates all fairness that has occurred between Potomac Corporation and the government bodies historically. They have relied on representations that were made and he is certain that they would take appropriate measures to have it properly addressed on the factual record that is established. It would interrupt their farming and cattle operations substantially and it would impose risk to the public if the public was permitted to go through their land. He said Woodman’s School has a picket fence around it and the reason for that is to make sure that the public road that goes right through that picket fence is not used by the school kids to get out unto his client’s property. He continued that there are reasons for things that have occurred over the last 50 years and to ignore them is blatantly unfair to his clients.

Dale Ivy said he owns two pieces of property where this easement is. He does not know where the government is going to come up with the money to reconstruct all these trails.

Michael Kennedy thanked everyone for their comments and asked if anyone else wanted to come forward to testify? No one came forward and he again closed the public hearing.

He said they will make a decision on this issue 2 weeks from this day, which is April 24, 1996. In the interim, the County will inspect the property. If anyone wished to accompany one of the Commissioners and the County Surveyor for that site inspection, they can make that arrangement through the Surveyor’s office prior to the meeting in 2 weeks.

There being no further business to come before the Board, the Commissioners were in recess at 2:26 p.m.

THURSDAY, APRIL 11, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Kennedy was in Walla Walla, Washington, attending a meeting of the Columbia Basin Management Committee through Friday, April 12. In the forenoon, Commissioner Hart attended the Senior Companion Annual Recognition Event held at the American Legion.
Resolution No. 96-028 -- Commissioners Hart and Evans signed Emergency Proclamation, Resolution No. 96-028, pertaining to a Montana Rail Link train derailment, involving a leaking tank of chlorine gas, and listing the response and protective measures necessary to protect public health. This proclamation exists as of April 11, 1996.

**FRIDAY, APRIL 12, 1996**

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

**Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Kathryn Olson as principal for Warrant #C078535 issued February 7, 1996 on the Missoula County General Fund in the amount of $724.00 now unable to be found.

**Memorandum of Understanding** -- Acting Chair Barbara Evans and Commissioner Fern Hart signed a Memorandum of Understanding between Missoula County and Mineral County to coordinate efforts in responding to the Montana Rail Link derailment and hazardous materials release in the Alberton area.

Vickie M. Zeier      Michael Kennedy, Chair  
Clerk & Recorder      Board of County Commissioners

**MONDAY, APRIL 15, 1996**

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

**Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Debra J. Stroh as principal for Warrant #236929 issued April 12, 1996 on the Missoula County Payroll Fund in the amount of $313.67 now unable to be found.

**TUESDAY, APRIL 16, 1996**

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioner Hart left at noon for Helena to attend a meeting of the MACo Executive Committee in the afternoon. In the evening, Commissioner Kennedy and Mayor Dan Kemmis attended a meeting with the East Missoula Sewer District Board held at the Community Center in East Missoula.

**Corporate Quiet Claim Deed** -- Chair Kennedy signed a Corporate Quite Claim Deed between the Missoula County Airport Industrial District and the estate of Julian P. Foss, in which Missoula County Airport Industrial District was in receipt of the sum of $10.00 and did convey, remise, release and forever quitclaim unto the estate of Julian P. Foss a portion of Lots 3A and 3B of Momont Industrial Park, Phase 2, Lot 3. The document was returned to John DeVore for further handling.

**Agreement** -- Chair Kennedy signed an agreement between Missoula County and Palidor Radio Communications Consultants, LTD., an independent contractor, made April 4, 1996, for a radio communications system assessment with the County and City radio system users, which includes the City Fire Department, Police Department, Public Works, Frenchtown Fire Department and Missoula County 911 Center, per the terms set forth. The Agreement was returned to John DeVore, CEO, for further handling.

**WEDNESDAY, APRIL 17, 1996**

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

**Audit List** -- Commissioners Michael Kennedy and Barbara Evans signed the Audit List, dated April 16, 1996, pages 2-34, with a grand total of $169,359.07. The Audit List was returned to the Accounting Department.

**Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Keeley Gorder as principal for Warrant #54655 issued February 16, 1996 on the Missoula County Payroll Fund in the amount of $17.50 now unable to be found.

**Amendment to Contract** -- Chair Kennedy signed a Second Amendment to Contract No. 825-5.94-0040 between the State of Montana, Missoula County Department of General Services and Plum Creek Timber Company, with an effective date of April 1, 1996, amending the Contract as per the terms set forth. The Amendment was returned to John DeVore, CEO, for further signatures and handling.

**Application for Personal Property Tax Refund** -- The Board of County Commissioners approved and signed an application for Personal Property Tax Refund for Kelly P. David, citing the reason that a tax was paid on the applicant’s logging equipment in another state. The amount of the refund was $1,057.05. The Application was returned to Michelle Denman, Treasurers, for further handling.

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.
READING OF PROCLAMATION (NATIONAL LIBRARY WEEK)

Fern Hart read the Proclamation:

Whereas, April 14 through April 21 is National Library Week; and

Whereas, the theme this year is “Libraries Change Lives”; and this is a time when we reflect on and celebrate the importance of libraries in our lives and in our communities; and

Whereas, the Missoula Public Library has several events scheduled for this important week, such as:

Author David James Duncan, Author of The Brothers K, the River Why and River Teeth, Stories and Writing, and several high school writers will be reading in the Young Adult Writers Series Tuesday, April 16 at 7:30 p.m.

- A reception for David Maclay will be held Thursday, April 18 from 4:30-6:30 p.m.
- Storytime “Go Buggy Over Books” with David Pauli will be held Saturday, April 20, at 11:30 followed by activity with the Montana Natural History Center at 1:00 p.m.
- A National Library Week Poster and Bookmark Show featuring artwork of area high school students is on display all month at the Missoula Public Library
- Fact and Fiction Bookstore is sponsoring an Adopt-A-Book program for the Missoula Public Library and citizens are invited to participate by “giving a gift that keeps on giving” - a book to the Missoula Public Library.

Therefore, We, the Board of County Commissioners of Missoula County and the mayor of the City of Missoula do hereby proclaim April 14 through April 21, 1996 as LIBRARY WEEK at the Missoula Public Library and urge all citizens to visit and support the Missoula Public Library to see how “Libraries Change Lives.”

Fern Hart moved that the Board of County Commissioners sign the Proclamation. Barbara Evans seconded the motion. Motion carried 3-0.

Michael Kennedy commented that the Missoula Public Library is the most used library in the state of Montana. It also provides a service that is less than half the national average for the provision of that service in the country. That is remarkable tribute to those who staff Missoula Public Library.

WEED TASK FORCE REPORT

Michael Kennedy asked if there was anyone to present the Weed Task Force Report? No one came forward and he said this item would be delayed until later in the meeting.

BID AWARD: PROPERTY SEARCHES (CLERK & RECORDER)

Vickie Zeier, Clerk and Recorder, said the Clerk & Recorder’s office offers for bid for property searches, for which they do a chain report for the delinquent tax properties. She read the submitted bids: Western Title & Escrow, $47.25, Insured Titles, $70.00, and First Montana, $69.00. They usually order the per parcel without chain of title for the report. They all agreed to answer any tax inquiries. This is the least cost to the taxpayers and to Missoula County. They recommend the bid be awarded to Western Title & Escrow as the best and lowest bid.

Michael Kennedy said there is a difference in bids. He asked Michael Sehestedt if that represented an irregularity?

Michael Sehestedt, Chief Deputy County Attorney, replied, first of all, these were put out for bid so it would be fair and so that we can ascertain that the County can get the lowest price for the taxpayers. It is not an item that is mandatorily bid under state law, but rather it is bid as a matter of policy by the County. The County reserves the right to waive irregularities and formalities and to award the bid that, in the judgment of the Commissioners, will best serve the interests of Missoula County. 90% of expenditures will be per parcel without chain of title reports, the recommendation to award the bid to Western Title & Escrow seems appropriate. He did note, however, that all three of the bidders did excellent work.

Barbara Evans moved that the Board of County Commissioners award the bid to Western Title & Escrow as the lowest and best bid, based on staff recommendation. Fern Hart seconded the motion. Motion carried 3-0.

HEARING: INTENT TO CREATE RSID NO. 8460 (ROAD PAVING -- SAPPHIRE DRIVE, RUBY LAND, RUBY COURT, DIAMOND DRIVE AND CORAL LANE) -- LOLO AREA

John DeVore, Chief Executive Officer, said they have received a petition requesting an RSID for Sapphire Drive, Ruby Court, Ruby Lane, Diamond Drive and Coral Lane, all located in the Lolo area of Missoula County. The petition signatures represented 73% of district properties in favor of the project. There are 55 properties within the district boundaries. The estimated cost per property would be $4,636.00 with a total estimated RSID cost of $255,000.00 exclusive of interest and payable over 10 years. There were 4 letters of protest received during the protest period. He also noted that, in terms of interest, this has been an item that has been discussed as a possibility for
probably the last 6 or 7 years and it finally came together through the initiative of the residents out in the area within the last 6-8 months. Staff recommended creation of RSID #8460, based on the petition percentage and protest response but contingent on the opening of these roads as County roads. He asked Mike Schesstedt for his comments.

Michael Schesstedt, Chief Deputy County Attorney, said there is significant residential development fronting on what are currently unimproved or unpaved private roads. They can only use the RSID mechanism if the roads are County roads. There is also a petition pending, requesting the opening of these roads as County roads. They cannot accept any roads as County roads if they do not meet County standards and are unpaved. This creates a “chicken and egg” situation. In other words, they cannot use the RSID to pave them and leave them as private roads. The decision was to look at the RSID, which is the cost item for the residents of the area, to determine whether or not it would be accepted. It appears there has not been a protest to stop it. Given that, the County will create the RSID and then proceed through the notice and hearing process on the petition to open these roads as County roads. It is a separate and independent process upon its completion, which involves notice, hearing, determining whether or not it is in the public interest to open these roads and then to determine if the property-owners affected consent in determining damages, if any, to the non-consenting property-owners. He believes, since the easement they are seeking is currently already a private road easement, the conversion of it to a public road easement will have probably no physical impact or damage on the lots and, actually, will enhance value by making them finance easier. Those are issues that will have to be discussed down the road. These are not yet established and may not be, depending on the outcome of the hearing and road opening process on not-yet public roads. They need to create the RSID with the contingency in it that it will not be activated and begin the paving process until they have a public road to pave. It is confusing when development occurs without planning ahead and actually visualizing what would happen when lots of people live in an area.

Michael Kennedy, addressing Horace Brown, asked if the RSID included drainage?

Horace Brown, County Surveyor, replied it included drainage for the road.

Michael Kennedy asked if a map was available showing the area?

John DeVore responded no.

Michael Kennedy opened the public hearing and invited anyone to come forward, identify themselves and give their comments.

Tom Findlay, a local resident, said there are two multi-family dwellings on the hill. He believes there is an interest in stopping any additional multi-family dwellings and asked what they could do.

Michael Kennedy said he did not think the question bears on the RSID and its formation.

Michael Schesstedt commented that he can get Tom the information. He recalled that being an issue but the discussion was so long ago, that he can’t tell him what the answer is without going to the file. He told Tom that he will find time later that afternoon to try and get that answer for him.

William Cooper said he lives in the assessed area. He sent in a letter of protest last week. As he stated in his letter, he is not against paving the roads but he is against the way it is being formatted to pay for it. In the area that is involved, there is a flat portion of ground then the road climbs uphill. On the flat portion, all the lots are 1/2 acre or 1 acre in size. The subdivision, in essence, is complete. There cannot be anymore houses, no multi-family dwellings or anything. The people who live above on the hill have horses pastured up there and some have substantial amounts of acreage. There has been construction that he can see from his window at this time. If this road is paved to the end and paid for equally, who has the more to gain? He admitted it will appreciate his property value. He is not against paving the road but the person with more to gain has 6, 8, 10 or 15 acres. That person can now subdivide with a paved road to his property. If he sells one lot, it will probably pay his 1/55th. A person that lives on the flat lower portion, whose property is landlocked because the subdivision is complete, does not have that option. He is also concerned, if the road is paved at this time, because of the population density that is going on, will there be a constant flow of construction materials and equipment going up the road. Eventually, they will talk about public water and public sewer -- will they go down the middle of the paved road? He stated he is for progress but believes, if it going to be funded through an RSID, which are his dollars, he’d like to know what the total acreage is that is being encompassed. If the smallest lot is 1/2 acre, then it should be broken into 1/2 acre segments and everyone pays his fair share. Or perhaps there should be 2 RSID’s. The totally developed area pay for its share and the people that want the road continued up the hill, which would cross 2 irrigation ditches, and where there is a drainage problem. The primary chunk of this problem is because the road goes up the hill. The cost per paving each linear foot of the road is not the same as going up a grade and crossing 2 irrigation ditches which will cost more than paving the flat area. He reiterated that he is not against paving the road and he is willing to pay his fair share, but he would like to see it done equitably.

As it is presented, he does not believe it is equal to all the landowners in the area.

Michael Kennedy, explaining the SID’s are formed generally by petition. Even though there are numerous methods of assessment, the method is usually attached to the petition. This is not the only way to pave the road or do the assessment, but it is the chosen way in the petition. He understands his concern but he also understands that this petition came from the people in the area and this is the assessment and methodology that they used in that petition. William Cooper asked if that meant that this is not necessarily the method that is not going to be applied if it is passed?

Michael Kennedy answered, no, it is the method that is going to be applied because it is the way the petition was filed.

Fern Hart added it is very hard to determine what is fair except from a person’s own point of view. There was a question about parcels, whether it is by parcels or by total land area. If that total land area has one dwelling, it would be considered one use. But if it was a multi-family dwelling, there would be a number of uses even though it was one parcel. It is very difficult to balance. Assessment can be done in varying ways. Someone could have a long stretch of
road in front of their parcel and can have a corner at the back and they would still have to pay for paving by linear feet. It is very difficult to find a way that satisfies everyone. This petition was prepared per parcel.

Marilyn Heath said they also filed a letter of protest. She asked if it could be changed to pave just the bottom of the hill so that, first of all, it would ultimately cost less for everyone. Secondly, they live just above the last hill and can see cars come zipping down the hill and almost run into Tucker’s fence because they don’t go slow enough. This has been the problem with the gravel. If they pave it, are they going to have adequate measures to keep that hill from being so treacherous?

Christy Anderson said she lives at the top of the hill. She was on the committee that went around and talked to everyone and gathered signatures on the petition. Most of the people she talked with thought this was the common sense way to approach the paving. The road has so much more traffic than it used to. There used to be about a dozen houses along the roadway and now there are about 45 houses and a few empty lots left. They addressed the issue of paving just to the bottom of the hill but when they met with Commissioner Barbara Evans and the Chief Deputy County Attorney, Michael Sehestedt, it was determined if they do that, they would not accept the road as a County Road. It would have to be entirely paved. They considered just paving Sapphire to Mormon Creek to the bottom of the hill and not paving the courts. That is where most of the traffic is at. But that was also unacceptable. These are the reasons they decided to request paving the entire road and all of the adjacent roads off of them. Everyone was concerned about keeping the cost down. Most of them do not mind the gravel road but it is in such bad repair. In the last couple weeks, they asked for $20 donations from all of the homeowners to get the road graded again and about half have contributed. It is the same people all the time that donate to keep the road in repair and the same others that do not. That was the major reason that they came to this point.

Barbara Evans asked Horace Brown for his opinion since he is the one to have to accept them for maintenance if they are approved.

Horace Brown said this is probably not a bus route so it will be one of the roads that gets sanded later in the day and not first thing in the morning. It will help, though, if this road is not shaded as the paved roads melt out much faster than the gravel roads. Regarding steepness, he is not sure how steep it is.

Fern Hart asked Horace Brown if it was possible that its steepness would not allow the County to accept it?

Horace Brown answered if it over 9% for over 50 feet, it will not be accepted.

Gary Patrick said he lives about halfway up the hill. He said a lot of people there plow the road in the winter, himself included. If it becomes a County road, will they still be allowed to plow it? If they can plow it, 90% of the time it is done in the evening after work or early in the morning before work.

Michael Kennedy, interrupting with an intermediate question, asked Horace Brown if he has examined this property and made the decision that these roads would be acceptable County roads?

Horace Brown answered that the roads on the flat portion would be acceptable but he has not seen the rest of them. He still has to make that assessment. Regarding Gary’s questions, he replied that it would depend on the job that was done plowing. He would not want to have to rework the whole thing because a private person plowing it caused problems. It would depend on the type of rig they plowed with and the type of job they did. They would not accept any liability if they caused problems.

Christy Anderson said, regarding the corner on the hill that is steep, a lot of the property owners have been concerned that, if it is paved, it might be icier because there will not be the “grip” of gravel. At this time, that area is piled with dirt and gravel that homeowners have put there. When she talked to the engineer, Tim Wolfe, he came out to look at the road. He thought it was something that they could work with, perhaps by lengthening the curve and move it out a bit.

Michael Kennedy asked Michael Sehestedt, when the assessment is prepared, it will be based on an equal assessment for all the property owners. Can the assessment method be adjusted at this point?

Michael Sehestedt answered that they would probably have to do a re-notice if they made any fundamental change in the method of assessment. If there had been splits that created additional parcels up there subsequent to this, then they could have spread it on a per parcel basis to those lots. Then, the total cost stated in the petition, which is an absolute cap on what can be spent on this project without going back to the people, would be divided among more lots and everyone’s assessment would go down. He reviewed the file and it appears to be per parcel but it is multi-family or not. He stated, however, with the tightening of the subdivision statutes it is far less likely there will be any splits in this area creating additional lots. He feels it very unlikely that there would be any proliferation of lots but that is not to say there won’t be construction activity on existing lots. This property appears to be too high in value for much multi-family development to occur. He commented, of course, that this was an economic judgment that is always subject to change. He suspects that most of these lots have a higher value as single family residential than to be used as multi-family.

Barbara Evans said she sees three ways that an SID can be done, one is based on the parcel, another on frontage and another on the value of the parcel. Square footage is sometimes used for assessment. No matter which way is chosen, someone feels that it isn’t fair. And they are probably right. There is no perfect way that is totally fair to everyone. She does not recall exactly what was said in the meeting with Christyi Anderson but she knows that over the years they have had many people complain about the dust, insisting on relief and the County does not have the funds to take care of all of the paving that needs to be done. That is why the County uses RSID’s. The indication of 73% of the people in the area that want this RSID indicates that there is support for it, therefore, she will support it. She is sorry that it is not 100% fair to everyone but she does not know of any way to make it totally fair. She asked John DeVore if he knew of any other methods?
John DeVore replied no.

Michael Kennedy said, if the request is to give approval conditioned on acceptance of these roads ultimately as County roads and keeping in mind that Horace has not yet reviewed the upper areas and it may be that the road is too steep, he then asked if this RSID, as it is structured, includes modification to that roadway so long as the cap is not exceeded?

Michael Sehestedt replied yes, it can.

Fern Hart said, rephrasing what Michael Sehestedt said, that the folks that have large parcels, although they were not now divided and may be in the future, although unlikely, they will have to come before this Board for review under the Subdivision and Platting Act. As they do, they will reduce costs for the others because they will pick up a portion of the costs. She said that was as fair as she could see for the large parcel issue.

Michael Kennedy asked if anyone else wanted to comment? No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners create RSID 8460 based on the petition percentage that was received and the 4 protest responses, contingent upon the opening of these roads as County roads. Fern Hart seconded the motion. Motion carried 3-0.

Michael Kennedy commented that the method of assessment is always in question. An additional method is to use a combination of all of the others. The County traditionally has not done that. As the overall size of the SID’s increase, it would seem that, at least for discussion, they need to see if there is a way to more equitably assess the SID’s.

HEARING: REQUEST TO ABANDON BENCH COURT (GRANT CREEK AREA)

Horace Brown, County Surveyor, said Ron Ewart is in National Guard and, thus, is unable to attend this meeting. Bench Court is a short cul de sac that was platted with the Grant Creek Subdivision in 1962. It is a County easement that crosses Tract 13 and 14. The road was never built and probably never will be built because it lies in Grant Creek floodplain and the easement around the cul de sac almost contacts the creek itself. There is a bench about 20 feet in height that is on the opposite west side of the easement from Grant Creek. The home on Tract 13 is built on the bench and the owner of Tract 14 is planning to construct a home on the same bench. The Bench Court easement encompasses a front yard set back of the proposed home which is the reason for this request. Beside this reason and the fact that the easement is in a poor location, it is also not needed. The owners of Tract 13 and 14 have filed an easement and road maintenance agreement so they both will have access directly from Bench Court up onto this bench. This easement is separate from the Bench Court easement. The property owners are the only people affected by this requested vacation. At this point, he and a Commissioner will go out to review the site and make a recommendation.

Michael Kennedy opened the public hearing.

Adele Wolff, 11001 Bench Road, said they had made an agreement with the Gillen’s so that the pasture would not be destroyed aesthetically or in any other way because a County road or driveway would take up the whole pasture. Further, it would cost a lot more for a driveway up to their house. They are in support of this request.

Michael Kennedy thanked Adele for her comments and asked if anyone else wished to speak? No one came forward and he closed the public hearing. He said this hearing and a decision will be deferred to next week, April 24. In the meantime, a Commissioner and Surveyor Brown will review the site and make a recommendation to the Commission.

HEARING: RELOCATION OF RIGHTS-OF-WAY ALONG UNION CREEK AND WASHOE CREEK (SOUTHEAST OF POTOMAC)

Horace Brown said this was a petition to relocate the County road rights-of-way which run along Union Creek and Washoe Creek in the are to the southeast of Potomac in Sections 17, 18, 19, 20, 21, 28, and 29, T13N, R15W, P.M.M., commonly known as the Hole in the Wall Road and the Washoe Creek Road from the locations described in the original road petitions to the current locations of the roads in order to get the title clean for the landowners who live up there. Also to take care of any trespassing that may occur.

Michael Kennedy opened the public hearing.

Peter Dayton, Worden, Thane & Haines, P.C., said he was representing Larry Sampson and Cheryl Vinje who are landowners along Union Creek Road. They are trying to clean up the County records by making sure the rights-of-way on record are properly located. He demonstrated the area under discussion on the map. He said this situation can be complicated because there are 3 different sources of authority; there was a petition that was filed in 1895, a petition that was filed in 1903 and a right-of-way created by the government land office maps which were completed in this township in 1893.

Barbara Evans said it was not clear to her whether he is talking about 2 road or 3 different roads.

Peter Dayton said there are 3 different sources in the road records but there is actually only 1 road.

Michael Kennedy thanked Peter for his information and asked if there was anyone else who wanted to speak? No one came forward and he closed the public hearing.

He said the property was scheduled to viewed on April 25 and they will make a decision on this request at the May 15 public meeting.
WEED TASK FORCE REPORT

Fern Hart said they had formed a balanced Committee to participate on the Weed Task Force and that Committee has been working since the beginning of the year, meeting almost every Monday night. They finished 2 weeks ago and they have a report to present to the Commissioners. She complimented them for their long and hard work.

She said there will be a meeting April 23 which will involve all the agencies that deal with roadside weed management.

Gail Guetsche said she was a member of the Weed Task Force. She said she was not going to go through the report because that will happen at the April 23 meeting where it will be presented in depth.

The Planning Committee grew into the Task Force and it came about because last spring there was public concerns about 2,4D and Tordon which is sprayed on some County roads for weed control. The Task Force was charged with investigating the health effects of these and other chemicals and alternatives to chemicals and coming up with a proposal. She believes the report has met all this.

She wanted to make it known that the Committee consisted of private landowners, people from government agencies, representatives of conservation groups and citizens, from both rural and urban settings, and all were from all sides of the pesticide issue.

The report stayed true to its mission statement from its inception in September, which is that herbicides are a human health issue and there are alternatives and that they were to investigate these issues. They have a proposal for action and that is what will happen at the April 23 meeting. The proposal is an Integrated Roadside Vegetation Management Program (IRVM). They did a lot of research, gathered information from all over the United States and pulled together guidelines for Missoula County. She emphasized that they were only guidelines because the next step is to implement a program and it was not the intent of the Task Force to do that. She encouraged Missoula County to organize and host an IRVM Committee and also a Vegetation Management Committee, which would help implement and oversee the IRVM. The Vegetation Management Committee would be much like the Task Force Committee. It would consist of diverse people with diverse ideas and concerns about controlling weeds.

She also encouraged public education on this matter. She said it is clear that this is an issue that the public has strong opinions on and, the more they are involved and educated, the better it is.

Barbara Evans complimented all who worked on the Task Force for all the hours they put into a very arduous task that they embarked upon. She said she looks forward to hearing the report in depth on April 23.

CONSIDERATION OF: HOLLAND VIEW ESTATES (2-LOT SUBDIVISION — CONDON AREA)

Sam Islam, Office of Planning & Grants, said this was a proposal for a 2 lot subdivision located 1,500 feet off Highway 83 in Condon, just behind the log yard for the Rustics Log Home Company. The property is unzoned. The 1987 Swan Valley-Condon Comprehensive Plan Amendment outlines one of the main objectives for the valley as “retaining the present rural-wild character of the Swan Valley.” The Plan recommends rural low-density residential development at a density of 1 dwelling unit per 10 acres for most land suitable for development. In addition, owners of land in critical wildlife habitats are encouraged to declare their properties as open and resource land where maximum density is 1 dwelling unit per 40 acres. The 1987 Swan Valley-Condon Comprehensive Plan Amendment “replaces the 1975 Comprehensive Plan and map for the Swan-Condon area.” This parcel is located in an activity center as shown on the 1975 Plan and is therefore irrelevant to the review of this proposal. The staff recommends denial of the summary plat for the following reasons:

1. The 1987 Swan Valley-Condon Comprehensive Plan Amendment outlines one of the main objectives for the valley as “retaining the present rural-wild character of Swan Valley.” The Plan recommends rural low-density residential development at a density of one dwelling unit per ten acres for most land suitable for development. In addition, owners of land in critical wildlife habitats are encouraged to declare their properties as open and resource land where maximum density is one dwelling unit per forty acres. The property is located in a wildlife habitat area where residential density lower than proposed is appropriate.

2. The 1992 update of the Missoula County Inventory of Conservation Resources identifies this property as within an area that is critical habitat for the nationally threatened grizzly bear and big game range for white-tailed deer. This property is within elk winter range. The Swan area is also home to many other species including the black bear, mountain lion, wolf, and other small and large animals.

3. Given the conservation resources identified and the multiple conservation resources in the proposed project area and the “Environment Section” of the Swan-Condon Plan, the “Open and Resource” designation may be the most appropriate land use, as proposed in the 1987 Plan.

4. The parcel, COS 1875, was filed in 1979. There is a provision in the 1987 Plan that acknowledges pre-existing small lots which were created prior to the 1975 Comprehensive Plan. The information presented with this proposal indicates that the existing parcel and the adjacent parcels were created after 1975. The Plan, therefore, does not recognize these smaller existing and proposed parcels as consistent with the community vision.

5. The smaller parcels to the west were created in 1979 and 1982. The 10-acre parcel to the north was created in 1978. The provision which allows parcels small than 10 acres in the 1987 Plan is not considered to be consistent with standard subdivision plan review criteria. Therefore, it is not as relevant as the general “Community Objectives.”
6. Since the adoption of the 1987 Plan, two small lots of one acre or less and one lot of less than 10 acres were created through exemptions to the subdivision regulations. No lots have been created east of Highway 83 in the immediate vicinity through subdivision review in the County. Consequently, under present review criteria, the proposed subdivision is not well justified.

7. Legal and physical access have not been met.

The lots are to be served by a 60-foot wide private easement along the west boundary of this parcel. This easement, recorded under Deed Exhibit No. 3054, has an approach to Highway 83. Access to Lot #2 is provided by a 30-foot private driveway easement, as shown on the plat. The accesses have a 20-foot clearance for fire trucks to get through, as required by the Seeley Lake Fire District.

The road surface width of the 60-foot wide private easement is between 16 to 20 feet. The 30-foot private drive easement has not been graveled or paved. The County subdivision regulations require that surface widths of both private easements shall be 24 feet. No variance has been requested.

No sidewalks, pedestrian way and paved driveway is proposed for the subdivision. A variance has been requested. Staff recommends denial of the variance based on recommendation of denial for the subdivision.

John Kellogg, Professional Consultants, said he was representing Kevin and Wendy Wetherell. He stated he disagreed with a number of points in the staff report. The pre-existing parcels did not go through subdivision review because they were surveyed back in 1973 and 1975.

Using an aerial photo and maps, he showed the Commissioners what they had planned for Holland View Estates, where landmarks were, such as the fire hall, Wilderness Cafe and local businesses, and the topography and the land that would be affected.

He said the 10 acre parcels that underlie this subdivision were created in 1973.

Michael Kennedy asked, since he has lived out there for 9 years, had he ever seen grizzlies in that vicinity?

Rusty Kessler replied no. He said this area is not in the linkage zone, but it is still of vital importance.

Michael Kennedy asked if anyone had any other comments? No one came forward and he closed the public hearing.

Fern Hart, addressing John Kellogg, said he gave a very good presentation and it helped her a lot.

Barbara Evans said that owners are encouraged to use their land one dwelling unit per 40 acres only and she does not agree with encouraging people not to use their land. She is concerned whether the plan or the actuality of these homes and the 5 acre sites were established prior to the 1975 Plan, which in John’s report they were, and she got the impression from Sam’s report that they were not. If the 1987 Amendment is correct that says that the pattern of the parcel should follow the pattern established prior to 1975, she would like to know what the status was. Were these smaller parcels in existence prior to 1975 Plan?

John Kellogg answered Barbara by directing her attention to the map for the area that shows the parcels under 10 acres that existed in 1975. If she says prior to 1975, you could not include that. In his mind, the people were considering the 1975 Plan and saying this is where that pattern is established, so that was intended.

Pat Keiley said, when he considers whether something is achieving Comp Plan standards, they look at the surrounding parcels. What the map shows is, if it is 1975 or previous, there are parcels that range from 1 to 10 acres. The proposal is calling for two 5 acre parcels. Some of the parcels are not consistent with the proposal. Some of them are larger than 5 acres. Thus, to be compatible, 5 acres or smaller discounts several of those and, if it does that and we are just looking at that map with regard to prior to 1975, it is more difficult to establish compatibility with the adjacent lands in terms of density.

Colleen Dowdall said, in most plans, they do not consider pre-1975. The 1987 Condon Area Plan specifically said that, when you go to smaller parcels, you should consider the pattern of development prior to 1975. She is uncomfortable with that provision. Normally, in determining Comp Plan compliance, is the pattern of development since the adoption of the Plan, not prior to the adoption. Because this particular Plan talks about pre-1975 development, they can consider it and see the established pattern, but the development that the courts tell them they should look at is the pattern of development from 1987 to the present, to see whether there has been established and what uses are in use.

Fern Hart moved that the Board of County Commissioners deny the request for approval for the summary plat, Holland View Estates, located in the northeast ¼ of Section 1, T20N, R17W, Principal Meridian, Missoula County, located about 1500 feet off Highway 83 in Condon, just behind the log yard for the Rustics Log Home Company.

Fern Hart commented they need protection for this single corridor to keep the position that they are committed to the protection of wildlife in this area. Those animals must have this land to exist on. Also, the County’s most serious problems have occurred with this kind of early development with the use of exemptions. It will be a greater disservice to the process of responsible planning if this subdivision goes forward.

Fern Hart continued her motion, based on staff recommendations and reasons 1 through 6 listed in the staff report, no 7 having been met, and the findings of fact. Michael Kennedy seconded the motion. Motion carried 2-1. Barbara Evans opposed.

Barbara Evans said she opposed the motion because this is only one additional homesite. She does not consider that an onerous amount of homesites. She lives on the golf course on Whitaker and she has wildlife in her yard all the
time. She realizes that elk and grizzlies do not want to go into a heavily developed area but this is not a heavily
developed situation. She does not blame the people involved for using what at the time was a legal process, such as
Certificate of Survey.

CONSIDERATION OF: LOT 62 -- COBBAN & DINSMORE ORCHARD HOMES NO. 5, SUBDIVISION FOR
LEASE/RENT, SUMMARY PLAT (PEGGY CHILCOTE), CONTINUED FROM APRIL 3, 1996

Pat Keiley said this project was previously discussed at the Public Meeting on April 3. He gave a brief update on the
it. Peggy Chilcote is requesting to create a subdivision for lease or rent consisting of 4 duplexes or 8 dwelling units on
a 4.70 acre parcel. This is called Lot 62, Cobb and Dinsmore’s Orchard Homes. He referred the Commissioners to
an aerial photo of the site, which marked off Lot 62 and showed the dike on the site.

The property is about a mile west of Reserve Street, on the north end of Short Street and adjacent to the Clark Fork
River. The development is Z.D. 13 which allows duplex development. The 1990 Update of the Comprehensive Plan calls
for suburban residential, maximum density of 2 dwelling units per acre, thus this proposal conforms with the it.

Access is via Short Street which is a paved road which conforms to County road standards. The proposed
interior access is Kodiak Drive, which is a proposed private cul-de-sac. A variance request has been made for the
right-of-way for Kodiak Drive. The proposal calls for 30 feet, subdivision regulations require 54 feet. Staff
recommends approval of the variance. To satisfy the walkway/sidewalk requirements of the subdivision regulations,
the Chilcotes are proposing to use the top of the dike as a walkway. The dike is in place and there is a natural path
along the top of the dike. The dike is owned by the Army Corp of Engineers and Missoula County maintains it.
Neither the Chilcotes or the staff are recommending that the dike be upgraded in any way. There is access to the dike
from the subject property and from Short Street. However, there is a fence that blocks access from Short Street.

Staff recommends approval of the pedestrian walkway but also recommends that the owners waive the right to protest
future RSID’s for improvements to Short Street which may include sidewalks in the future.

The property is located both in the 100 year floodplain and in the 500 year floodplain. The portion that is in the 100
year floodplain is to the north of the dike and the portion that is located to the south of the dike is in the 500 year
floodplain. There are no floodplain permits required by Missoula County for property to be developed in the 500 year
floodplain. No park dedication is required for this proposal. Utilities are available and applicants are proposing a
community multi-family water system and community multi-family sewer system.

The 1992 Missoula County Inventory of Conservation and Resources designates the area as scenic/non-scenic open
space. There is a letter from staff that states “clustering of duplexes as proposed is encouraged to protect the open
space.” They are talking about from the dike to the north. There is wildlife on the property. The applicant is
proposing to contain the drainage on site on ground that is relatively flat. Legal and physical access have been met
subject to the one variance for Kodiak drive easement width. Staff recommends approval of the Chilcote Addition No.
5 summary plat based on the findings of fact and subject to the 8 conditions listed in the staff report.

Michael Kennedy asked Pat if he had any idea when sewer would be available?

Pat Keiley replied that sewer is available on Reserve Street.

Michael Kennedy asked what about the west side?

Pat Keiley answered he didn’t know.

Peggy Chilcote said she was representing Bill and Janet Chilcote and the developers Daniel and Peggy Chilcote and
Liz and Greg Thiel. This is a multi-family subdivision. The duplex facing Short Street will be surrounded by the
existing trees. The other three duplexes off Kodiak Drive will share a common backyard with the one off Short
Street’s access. All lawn maintenance and snow removal will be done by the property owners. These will be highly
maintained, moderately priced rental units surrounded by wildlife in a rural setting yet within walking distance to the
Mountain Line bus stop and grade school. They have met all requirements regarding this proposal as far as the
Comprehensive Plan and zoning and they have approval from the sanitarian for this proposal.

Michael Kennedy said he rides his bike in that area and it is a very nice area. He noticed that the pathway is not in
good repair. He asked if they are considering regrading the pathway?

Peggy Chilcote answered that the County Surveyor told them not to do that, that they do the maintenance on the dike.

Horace Brown, County Surveyor, said this dike is to protect people in the area from flooding and anything that is done
to the top will cause erosion. They want it left alone. It works now but if it is regraded, some of the vegetation will
come off. The County is only required to maintain the face of the dike and keep the trees off of it.

Michael Kennedy said obviously it was constructed and it isn’t eroded so it seems to suggest that something could be
done to the dike without impairing its intended use.

Horace Brown said they removed trees from the dike three years ago. The tracks on top have hardened because they
ran a truck and loader across it so he believes that if the top were now graded, it would erode.

Michael Kennedy asked Peggy if she planned to remove the fence? When he rode his bike there, he had to lift his bike
over it.
Peggy Chilcote replied that the fence is there to keep vehicles from coming in. She will work with Horace on pedestrian access and still prevent vehicles and ATV use on it.

Horace Brown said they could do that.

Michael Kennedy said there had been controversy regarding the size of the property. The initial indication was that it was 2.7 acres and someone had subsequently surveyed it and determined that the acreage, except for the small easement portion, was 3.0 acres. He would like to know what the boundary of the survey is at the dike.

Peggy Chilcote replied that it is on flat land at the base of the dike.

Fern Hart asked who owns the dike?

Horace Brown said the dike is owned by the Army Corp of Engineers but the ground underneath the dike would be owned by the Chilcotes.

Fern Hart asked, then, if the top of the dike was considered a part of the contribution from the subdivision for public use?

Pat Keiley said he understood that public use is allowed on that dike. And because public use is allowed and because there is a natural walking path along the top of the dike, that would satisfy the subdivision regulations requirement for sidewalk/pedestrian way.

Fern Hart asked, then, if he considered this a part of their contribution?

Pat Keiley answered that they do in some ways in that it serves to provide pedestrian access through the subdivision. What they are proposing along Short Street with a RSID is another option that would have an asphalt walkway linking this with the subdivision and residential activity to the south, although there are no sidewalks in the area. But that would be an option. Staff recommended to go along with the RSID on Short Street for potential sidewalks.

Fern Hart said, in a letter of protest, it was questioned who owned that dike and to say that this is contributed by the subdivision is hardly the case. That dike and path will stay there regardless of whether this subdivision goes through or not. It cannot be taken away. So it is not something that is attached.

Horace Brown said it could be taken away if we did not maintain it.

Fern Hart responded but we will maintain it.

Barbara Evans said a letter the Commissioners received makes the comment “It appears to the residents out there that, looking at the plat of Chilcote Addition No. 1, that Lot 2 has been used up in satisfying the minimum acreage requirements for that subdivision.”

Peggy Chilcote explained they have filed with the Clerk & Recorder’s office a deed acquiring that property. There were no stipulations to that parcel. The Commissioners have a copy of the waste water application easement that has been filed in the Clerk & Recorder’s office.

Michael Kennedy agreed. They heard from the sanitarian’s report that there is a restriction on the amount of capacity that remains available to that property should this approval be granted. So, the answer to that question is: no, it has not been previously used and yes, it is available for this subdivision should it be approved.

Fern Hart stated they had met with 2 sanitarians and the Department Head of the Environmental Division, working through this proposal. For the public’s information, the Chilcotes have complied with the sanitary restrictions with the 3 acres. They needed that other parcel in order to have enough land reserved. It is a part of the state health’s regulations that they can do it in the way they have planned it. They will have to do a raised drainfield because of the water level but every condition has been met. The other duplexes have also complied with the regulations. They have not used that lot and now cannot use that lot, except for a small office that never flushes. These are very complex rules and you can’t always say that an acre is required for a well and septic. They have met the separation conditions and they will do a community drainfield and community well and these have been approved.

Michael Kennedy said the testing for a septic tank drainfield was conducted apparently a year ago. He asked if she was granted septic tank permits?

Peggy Chilcote answered they were told not to get the permits until they went through subdivision review.

Michael Kennedy said, the way the rules are written, there is difference in a year as far as the flood is concerned. We are likely to experience a flood that is greater than what we experienced last year. There is a possibility, in discussions with the sanitarians, that ...(unintelligible) and it may cloud this proposal should it be approved. He asked Peggy if she understood?

Peggy Chilcote replied yes.

Fern Hart asked Counsel if notification was necessary for lease or rent subdivisions?

Colleen Dowdall, Deputy County Attorney, replied it is not a requirement for summary plats because they don’t require a public hearing. State law requires posting on the property and notification in the newspaper for a lease or
rent subdivision that was a major plat that went through the Planning Board. She said the County goes a step further and notifies folks within the subject area.

Pat Keiley said there are no notification requirements but they still post the property. In this case, they put it right in front of the property attached to a fence to clearly designate that this was where the proposed subdivision is going to happen. On the poster, they placed a picture of the plat and picture of the vicinity map, the date of the public meeting and included a phone no. for questions.

Michael Kennedy commented that, even though it was not required, the posting was put up by the County. He then addressed Counsel and asked, in times past, if there was a public hearing on this subdivision?

Colleen Dowdall asked if he meant that which created the 62 lots?

Michael Kennedy answered yes.

Colleen Dowdall said the Subdivision and Platting Act was adopted in 1973 so it depends on when that particular subdivision was originally platted. If it is one of the real old sites, it may not have had a subdivision hearing.

Michael Kennedy said he believes this area was subdivided in 1971. He asked Peggy if that was correct?

Peggy Chilcote said she had no knowledge of this.

(Someone from the audience commented the year was 1969).

Michael Kennedy said if it happened in 1969, it is possible that this subdivision has never had a public hearing.

Peggy Chilcote said the formation of Cobban & Dinsmore’s Orchard Homes may have been 1932 or 1933. It is old.

Michael Kennedy said there is enough interest here to open a public hearing even though it is not required. He invited anyone who wished to speak to please come forward.

Jenny Karr, 311 Short Street, said, even though this potential development was not required to be posted beforehand, right after the meeting on April 3, they ripped down the notice and it has not been seen since.

She said, referring to the lot Commissioner Hart said was not being used, it has a little building on it. The Chilcotes call that their residence for here in town and they do stop in there, and sometimes stay overnight, and she is sure they flush in that building. She can’t name names but she knows its true that it sometimes is used as a residence. In the phone book, it says Bill and Janet Chilcote, 2820 Juneau Drive (she wasn’t sure of the exact address number). It is a residence for purpose or convenience.

She and her husband are very concerned with water quality and safety. The proposed drainfields would be little more than 100 feet from the Clark Fork River and they would be handling waste from 8 dwellings under the proposed plan. This will be added to the similar system already in place with Chilcote Addition No. 1 and the rest of the Juneau Drive development, which abuts this property on the south and southwest that handles 28 dwellings, which are the 14 duplexes right next door, and two single family dwellings as well. Also, this is in close proximity to the Clark Fork River. She feels this is too much to be that close to the river. The groundwater is high. When she spoke to the Health Department, she told them “surely, with the groundwater being so high, we’re going to ...(unintelligible) to the Clark Fork River” and the person at the Health Department responded “undoubtedly so.”

Homeowners on Short Street have had to install expensive water purifying systems to keep their water safe. The Health Department also has records of problems with either well or septic for the duplexes at 302 and 304 Hiberta which she also believes is owned by the Chilcotes. She does not know when they had the problems. There is also a problem at 121 Short Street, Parcel B, West ½ lot 10, was also listed at the Health Department as having problems.

Michael Kennedy asked what the problem was there?

Jenny Karr answered she does not know if it was well or septic. She was talking about both of them to Doug Kikkert. The point she was trying to make is that there are already problems with water in their area without adding to the density. Another important factor in public safety that they are concerned with is locating the housing on the very edge of the river. The development will likely have children living in them. When she was talking to Doug Kikkert at the Health Department, they discussed another proposed development at the end of Stone, which is just a little down from Short Street, and Doug said it was denied because of the possibility of the dike washing out or possible flooding. They also had failed groundwater tests. She does not think that proposed development was any further away from the river than this one is. Another concern is the road break-up that Short Street has had. A few vehicles actually got stuck on the top of the heaved up asphalt and had to be pulled off. The possibility of adding 8 to 16 more vehicles will increase the problem. Their streets still have red flags on it at this time because of the problems that have not yet been corrected. Also, with this building this development will incur, there will be much more equipment on the streets, straining them further.

They also have speed problems on Short Street from the residents on Juneau Drive. She has 2 small children so she is very aware of this. When she goes out to get her mail, they go past her very fast and she has yelled out to them to slow down. They usually respond with sign language or ignore her. She feels it may be different if they had other roads adjoining Short Street, but Short Street is a dead end so all traffic is via Short Street. There is no other way to go.

Regarding the natural environment which this proposed development claims to protect in the staff report, she does not believe it protects it at all. There is going to be more foot traffic on the river bank, causing erosion and a public safety issue. Wildlife will be diverted by the street lights, traffic and people. The end of Short Street is a very scenic area; it is a place where you will always see geese, ducks, deer and other animals. Her sister who lives at 100 Short Street said...
there is deer on this lot all the time. The river there is beautiful, there is a peaceful island and it is full of wildlife. It will never be the same with a housing development right at the river’s edge.

In checking with the Health Department, as was mentioned, in the first survey the 2.7 acres did not allow enough land, so the property was re-surveyed. However it was done, it now comes out to the 3 acres which was still not quite enough room. So then they asked to cut the standard 54 foot easement down to 30 feet because they needed more ground yet for the drainfield. She asked if the 30 foot easement was also what the width of the whole Kodiak Drive would be?

Michael Kennedy replied it was the width of the easement, not necessarily the width of the traveled way.

Jenny Karr asked if that allowed for enough room for 2 cars to pass and cars to park on either side like they do on Juneau Drive at this time. Also, what about room for pedestrians and bikers? She continued that Bill and Janet Chilcote accepted $1 from themselves to grant an easement unto Lot 2 of Juneau Drive which has a small building on it. It has a kitchen and bathroom, which definitely means it will flush. When she talked to Doug Kikkert yesterday, he told her “each lot has been used on Juneau Drive. If that does have a septic on it, whether they say it is being flushed or not, they will not be able to use that for an easement.” But now, she points out, they are allowed to use it for an easement. She does not understand this.

She said at the previous hearing, there was a question of taxes being paid on land under the river. She got a copy of the tax statement which shows “less the river,” so they are not paying taxes on it. There were also a couple of other things in the staff report she wanted noted. One of them was the walkway needed for this subdivision. She found it hard to believe that they could claim this as a walkway since the walkway on top of the dike is there anyway. Another issue she wanted to bring to the Commissioners attention was the field where they used to pasture horses. They used to rent the field north of Juneau Drive for their horses and she assured the Commissioners that the ground would spray water as the horses galloped through the field, at varying times of the year. She pointed out that this was on the north side of Juneau Drive, which made it further away from the river and still the water came up that high in the ground.

After she read the executive summary, she noticed at the bottom of page 5, a “fourplex” was mentioned. She asked if that was a typo?

Pat Keiley answered yes, it was a typo and should have read “duplex.”

Jenny Karr said that concluded her remarks. She thanked the Commissioners for their time.

Michael Kennedy asked her to remain at the podium for a few minutes so that he may address her. He wondered if the lot that is being reserved had available to it a disposable amount of about 300 gallons and roughly 120 gallons of that capacity or reserve was dedicated by easement for this proposed development. That would allow the remaining 180 gallons available for that lot. The lot, according to the Health rules, allow an efficiency apartment to be 160 gallons. Michael Kennedy asked her to remain at the podium for a few minutes so that he may address her. He wondered if the lot that is being reserved had available to it a disposable amount of about 300 gallons and roughly 120 gallons of that capacity or reserve was dedicated by easement for this proposed development. That would allow the remaining 180 gallons available for that lot. The lot, according to the Health rules, allow an efficiency apartment to be 160 gallons. So they did review that and, they may not like it, but they did review it and the requirements were satisfied. He noted that on her point regarding the survey, she was right that there was a suggestion that the survey was less than adequate initially and, when a permit application is requested, the sanitarians will verify it again. So he assured her that whatever area is required by the rules, will be there in fact or they will be able to get their permit.

Jenny Karr asked Commissioner Kennedy if she may read a statement from the Comprehensive Plan?

Michael Kennedy replied yes.

Jenny Karr read “There must be performance standards to assure that all new development is a positive addition to the community and a process which allows meaningful neighborhood involvement in the decision making and neighborhoods are asked to accept change and must be partners in the shaping of it.”

Michael Kennedy, referring to remarks that there were difficulties with water wells on Short Street, asked Jenny to comment further.

Jenny Karr said Libby could probably answer the question better since it directly affected her.

Libby Langston, 309 Short Street, said when she bought her house, it was the smallest lot at ½ acre. She bought it because it was on a dead end street. There are bigger pieces of property and lots of horses, making the area feel rural. Another reason she bought it is because she can walk on that dike every day. She has seen wildlife every time she walks around there and she believes this development will disrupt the wildlife a lot. It will change the entire character of the neighborhood dramatically. There are already a lot of duplexes in the area on Juneau Drive and to add to it it will change it forever. A friend of hers jokingly told her that the name of her street should be “Duplex Street.” That upset her because she felt it really could be the future of the whole area. It seems that they want to buy up every piece of land and develop it and build duplexes. She feels that needs to be watched. This is a sensitive area and close to the river. At least the duplexes along Juneau Drive are further from the river. There is at least a buffer zone there. When she walks along there in the any season, there is always water down in there. There used to be one horse that was in that pasture and there was always water in there. They will have problems if they build there and she advised the County to look into this closely because it is very evident to her.

She told the Commissioners that she appreciates that they did their “homework” and she and the neighbors had also done theirs. She feels that the Chilcotes are just getting under the limitations with everything. It seems that rational considerate thought to the whole neighborhood is needed. Rules are not everything.

She said, regarding the water, she mentioned at the first consideration of this subdivision that she was sick for about 3 weeks and lost weight. She had medical problems and was worried that her problems could be serious so she went to several doctors. She is also an alternate on the Planning Board and it occurred to her that hers may be a water quality
problem so she had her well tested. It tested as contaminated with ...(unintelligible) bacteria so she invested in a $1000 ultra-violet water filtering system. But if she wanted to sell her house, she understands that her filtering system is not accepted by the authorities so she will end up with problems there.

Michael Kennedy asked her to point out her house on the map and she did so.

He then asked if anyone else wished to come forward and speak? No one came forward.

Barbara Evans said, explaining to the area residents in the audience, that being a Commissioner is not always easy. The rules that the Chilcotes or anyone else has to abide by in order to build on their land are very specific rules. There is the Comprehensive Plan, zoning, septic/sewer rules and, with the exception of the Health Department and their rules, all of the rules these people have to comply with had to go through public hearings in order to be accepted. She understands of the law that, if people meet all those regulations, they have a right to develop their land. If the Commissioners arbitrarily refuse them, then they can be sued and that will cost the taxpayers. She is not willing to take away the rights of people to develop their land so long as they meet the rules. All the homes that are already there are there because they were allowed to be developed and they have followed the rules in order to be able to do that. We need affordable housing this community and we cannot ask other people not to develop their land.

Fern Hart asked Peggy if there were garages?

Peggy Chilcote answered yes.

Barbara Evans moved that the Board of County Commissioners grant a variance for the Kodiak Drive easement width and approve the Chilcote Addition #5, located at Lot 62, Cobban & Dinsmore’s Orchard Homes, as it is recommended by the planning staff, based on the fact that they have met all the rules.

Barbara Evans noted that if the Health Department requirements are not met, the Commissioners’ approval will be meaningless.

Fern Hart said she understands that she cannot make a judgment about the ability of that land to carry the septic. That is out of the Commission’s area. She found it hard to take the professionals’ word but she had to. She has serious concerns about creating monolithic kinds of housing. She calls it a ghetto, even though she knows all the people involved and loves them all. This development is impacting a neighborhood and a community. It is creating a resentment. The Commissioners try hard to say to people like Lloyd Twite, who wants to bring in about 600 dwellings, to talk to the community, talk to the neighbors. Developers are creating neighbors for these neighbors. Community means a lot. It disturbs her that this development is pushing to the very edge of what is possible and, in the process, are impacting a very special piece of land. It is the kind of land that we will not see again. She said it is extremely difficult for her to approve this because there are a lot of duplexes in one area. She has seen those kinds of neighborhoods created and they stay and you cannot make an integrated neighborhood. She does not know how to deal with this because it complies with everything. It is an overload for the community, added to all the other duplexes. This pushes it to the limit.

She asked Michael if he had a second to the motion?

Michael Kennedy answered no. He said he also had difficulty with this proposal for many of the reasons that Commissioner Hart mentioned. He conceded that there is a housing demand which this proposal tends to alleviate somewhat and he appreciates that. However, the conflict lies in this and the beginning of a consciousness that acknowledges the value of open space which contributes to the quality of life that we appreciate here in Missoula County. For these reasons, he cannot second this motion.

Fern Hart said it does not look to her, and she has been to the area and walked the path, that these duplexes, as proposed, are any closer than those that are on Juneau Drive.

Michael Kennedy asked Counsel, if they are not able to get the motion seconded and there is no decision with the Board, what would be the consequence?

Colleen Dowdall said the proposal would die for lack of a second. She would then encourage one of the Commissioners to make a motion to disapprove.

Michael Kennedy said what he wanted to ask is, if there is no decision and no motion to disapprove, what happens to this proposal? Does the request die for lack of Commission action or is it automatically approved?

Colleen Dowdall said it would not be automatically approved. The Commissioners are required to make a decision within 35 days of the application. In this case, it has already been extended to this date by the applicant. If no action is taken, the Commissioners are avoiding their statutory obligation to act upon these matters because they are the governing body that is authorized by statute to make the decisions to either approve, conditionally approve, or disapprove and regulation and state law say they shall do that. If the Commission refused to act at all, they may be compelled by a court to perform their official duty.

Barbara Evans said she remembers from past years that, if the Commissioners did not act on a request, that it was automatically approved within a specific time frame.

Colleen Dowdall said that was part of the local regulations but it was not required by state law. It has been removed from regulations sometime in the past 2 years.

Michael Kennedy asked if there were waivers for sewer connection, street construction and sidewalk construction?
Pat Keiley said there is a waiver for road (unintelligible) but the conditions do not include waiver of a right to participate in future public water and sewer.

Michael Kennedy said he wanted to look at potential conditions for waiver for water and sewer. He said it would be important to Peggy as the landlord and developer and also to the Board that they consider water conservation measures. There is organic as well as hydraulic loading and both are serious issues in this particular area. As to the organic loading, he recommends, if the Board would approve it, that a sensitivity testing be done out there. There is a problem out there and to reexamine the testing of the drainfields in this year instead of relying on last year’s results. And also reexamination of the implications of the water well contamination of the adjacent areas. He said this would be outside the motion but this is what he would like if this is approved. It would not be a condition but a recommendation. But he asked Peggy if she would accept a condition for water conservation measures that would reduce the amount of hydraulic flow from this development in terms of sewage, for instance, installing water-saving toilets?

Peggy Chilcote responded yes, they do anyway.

Michael Kennedy said water saver in his context means 1.5 gallons per flush.

Peggy Chilcote said that it the way they are sold these days.

Fern Hart asked if condition no. 2 should read “Acceptance of a deed for a lot within this subdivision shall constitute the asset of the owners to any future RSID/SID for improvements, including but not limited to sidewalk, to Short Street, and to city public water, public sewer…”

Barbara Evans said she had no problem with that as an amendment to her motion.

Fern Hart seconded the motion.

Michael Kennedy said that was a motion to accept the recommendation with respect to the waiver along with the conditions and added to the conditions additional waivers for public water and public sewer systems.

Barbara Evans said she was also concerned for the wildlife that is in that area. She does not think the staff has put in any conditions for animals but there was a letter from Zoe Mohesky from Rural Planning, suggesting feeding of animals inside. She asked Peggy how she felt about not allowing any pets to run at large, particularly dogs?

Peggy Chilcote said they do not allow dogs.

Barbara Evans asked if that could be included as part of this?

Peggy Chilcote answered there are no dogs allowed all along Juneau Drive for the residents there. There are some cats with an extra deposit but there are no dogs.

Barbara Evans said that makes her feel better. She is concerned about the wildlife down there.

Michael Kennedy asked if there was any further discussion? There being none, he wanted to give his comments. He said this issue was a very difficult one for him. He sees difficulty in developing these kinds of parcels adjacent to surface and ground water that they need to somehow address in a way that they are not currently addressing. Hopefully, in the growth management process, they are going to be developing tools that will help them address these in a way that is consistent with future hopes. He is disappointed in the way the development is proposed even though it does meet the criterria.

Motion carried 2-0. Michael Kennedy abstained from the vote.

Michael Kennedy recommended that they re-examine the testing for septic tank drainfield on that property, no. 1, that they do a nitrate sensitivity study which is in the regulation, no. 2 and no. 3, that they examine the implication of the water wells in the surrounding area as it may affect their approval.

Barbara Evans addressed the residents from this area that if they are as serious and concerned about this as they seem to be that the reason there are so many duplexes in this area is obviously because the zoning allows it. Citizens can generally get their zoning changed by talking to the Planning Office and following the process for a change in the zoning regulations.

Residents from this area who were in the audience responded that this was the last piece of land to be used up in that area.

There being no further business to come before the Board, the Commissioners were in recess at 4:23 p.m.

**THURSDAY, APRIL 18, 1996**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, Commissioners Evans and Hart attended a meeting with Governor Racicot held at the Weather Service Conference Room and then traveled to Frenchtown Rural Fire for a Briefing there on the Alberton Chlorine Spill Incident.

**Contract** -- The Board of County Commissioners awarded the bid for the construction of the Neptune ramp at the Missoula County International Airport to JTL Group, Inc. for $204,454.20, as the best and lowest bid.
Bond Closings -- Chair Kennedy signed the bond closing documents as listed in the letters from Mae Non Ellingson, Dorsey & Whitney LLP, dated April 18, 1996, for the $300,000 Tax Increment Industrial Infrastructure District Bonds, Series 1996, Missoula County. The documents were returned to John DeVore, CEO, for further signatures and handling.

Waste Irrigation Water Easement -- The Board of County Commissioners signed a Waste Irrigation Water Easement document, granting Gregory L. and Christine Slattery of 21550 Jones road, Florence, Montana, a 6 foot wide ditch lying along the existing borrow ditch on the west side of Jones Road adjacent to the Slattery property for waste irrigation water and seepage water, subject to the terms set forth.

The Board of County Commissioners did not meet in regular session. Commissioner Evans was out of the office all day, and Commissioner Hart attended a Mental Health Board Meeting held at Fort Missoula during the day. In the morning, Commissioner Kennedy was a guest reader at Mount Jumbo School’s “Camp Read-A-Lot.” Commissioners Kennedy was out of the office all afternoon.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Marie Anne Hasenkrug as principal for Warrant #097758 issued March 22, 1996 on the Missoula County MCHS Fund in the amount of $362.92 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Timothy Moring as principal for Warrant #16071 issued April 17, 1996 on the Missoula County General Fund in the amount of $1,092.77 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Maika Vang as principal for Warrant #57215 issued April 12, 1996 on the Missoula County Payroll Fund in the amount of $351.82 now unable to be found.

Site Inspections -- In the afternoon, Commissioner Hart accompanied County Surveyor Horace Brown on site inspections for the requests to vacate an unused unnamed road adjacent to U.S. Highway 12 and to abandon Bench Court in the Grant Creek area.

Plat and Subdivision Improvements Agreement -- Commissioners Evans and Hart signed the Plat for King Ranch Subdivision, Phases II & III, a subdivision of Missoula County located in NW¼ and S½ of Section 34, T14N, R21W., P.M.M., a total area of 23.52 acres (28 lots), with the owners/developers of record being Bud King Construction, Inc. Also signed was a Subdivision Improvements Agreement and Guarantee for improvements which remain to be completed in King Ranch Subdivision, Phases II & III, between Missoula County and Bud King Construction, Inc., for a community water system at an estimated cost of $106,000.00, per the terms set forth. The improvement shall be completed no later than 2 years from the date of the filing of the plat of King Ranch, Phases II & III, and is secured by an Irrevocable Standby Letter of Credit issued by Bitterroot Valley Bank.

Audit List -- The Board of County Commissioners signed the Audit List, dated April 23, 1996, pages 3-35, with a grand total of $719,121.62. The Audit List was returned to the Accounting Department.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #8, Pay Date April 12, 1996, with a total Missoula County payroll of $553,178.33. The Transmittal Sheet was returned to the Auditor’s Office.

License Agreement -- The Board of County Commissioners signed an License Agreement between Resurrection Cemetery Association and Missoula County General Services Department, acting as a guarantor and representative for the Down Home Project, for the purpose of consideration of the mutual covenants and promises as set forth in the license agreement, for the period commencing April 20, 1996 through October 30, 1996. The License Agreement was returned to Resurrection Cemetery for further signatures and handling.

Extension Letter -- The Board of County Commissioners signed a letter to Grace Siloti approving a six-month filing extension for Guest Ranch Road Tracts Subdivision, making the new filing deadline October 15, 1996.

Proclamation -- The Board of County Commissioners jointly signed a Proclamation with Mayor Dan Kemmis, recognizing April 24, 1996 as "Dan Rade - Missoula Volunteer Day," inviting all citizens to join in recognizing the value of volunteer work.
The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioner Kennedy spoke to classes at Hellgate High School commemorating “Earth Week.”

**Indemnity Bond** -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Nystrom as principal for Warrant #3375 issued December 15, 1995 on the Missoula County Lolo School General Fund in the amount of $162.12 now unable to be found.

**Addendum to Purchase Agreement** -- The Board of County Commissioners signed Addendum No. 2 to the Purchase Agreement covering the real property, Lots 1 through 10 and 39 through 48 and the vacated alleys, in Block 13, McCormick Addition #2, dated April 18, 1996, between Partnership Health Center (the Buyer) and 3MJS Group (the Seller). The Addendum was returned to Ann Mary Dussault for further signatures and handling.

**Agreement** -- The Board of County Commissioners signed a Gravel Pit Agreement between Anna Marie Harrison and Missoula County, commencing on April 24, 1996 for a period of 5 years, for the purpose of removing gravel from Hayes Ranch property located in Section 19, T13N, R16W, Principal Meridian as needed by the County, at the cost of $0.32 per cubic yard of gravel. The Agreement was returned to Chuck Wright in the Surveyor’s Office for further handling.

**Agreement** -- Chair Kennedy signed an Agreement between Missoula County Park Board and Frenchtown School District, effective this day, wherein the Missoula County Park Board agrees to provide up to $2,500.00 in matching funds for capital improvements for the Frenchtown School District #40 project to install an underground irrigation system for the field located at the Frenchtown High School. These funds must be expended before Mary 14, 1998. The Agreement was returned to Leslie Bailey, Office of Planning & Grants, for further handling.

**Resolution No. 96-029** -- The Board of County Commissioners signed Resolution No. 96-029, a Resolution of Intent to rezone property located in the S½ NW¼ of Section 35, T14N, R20W, P.M.M., commonly known as the Old Desmet School at 6105 Highway 10 West from “C-P1” to “C-C3.”

**PUBLIC MEETING**

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

**DECISION ON: PETITION TO VACATE UNUSED UNNAMED ROAD (ADJACENT TO U.S. HIGHWAY 12)**

Michael Kennedy asked the County Surveyor to give a report on the site inspection.

Horace Brown, County Surveyor, said Commissioner Hart, Tim Hall, Planner, and he went out to the site and looked at the road. In most places evidently the road is still there. Tim said the Lolo Community Council would like to have a chance to look at this or an area where they could put a trail that may, in the future, be named the Lewis & Clark Trail. Other than that, he does not believe the County would have any use for the road.

Michael Kennedy thanked Horace for his review and said in the past, the Commissioners have heard lengthy testimony on the pros and cons of abandoning that road.

Barbara Evans said the County has a road called Highway 12, which shows on paper and is there. This piece of land is not needed for a road. If the people in Lolo want to create a trail, that is good, but she does not believe it is fair that they should try to find one on this person’s land. This was originally a road but the County does not need it as a road, because it has Highway 12. She is not willing to say that this would be a nice place to have trail so we will use this person’s land because it was never intended for that in the first place.

Fern Hart said she was impressed with the area and was pleased to see a lot of that land used agriculturally. That is a resource for that area, to allow breathing space between development and to see the land in a state that it may have been in for hundreds of years. That road, as she understands it, is the old Highway 12. It may have been part of the Lewis & Clark Trail. She does not see that it is currently in a state of disadvantage to the landowners. They do not know what it can mean historically in another 100 years. She does not believe, in its current state, that it is doing harm to the landowners. It is an easement. There is use of that road by those that are there and she is not in favor of abandoning it.

Michael Kennedy said that Commissioner Evans stated that there is an existing highway that is in current use, but that is separate from the fact that there exists an old right-of-way across these properties that is owned in perpetuity by Missoula County, unless it were abandoned. He said there is no existing right-of-passage across that property for lots of reasons and there are many fences across the property, but he agrees with Commissioner Hart, that there is no particular disadvantage to the property owners currently for the County to abandon that right-of-way.

Fern Hart moved that the Board of County Commissioners deny the request to vacate the unused unnamed road, adjacent to U.S. Highway 12. Michael Kennedy seconded the motion. Motion carried 2-1. Barbara Evans opposed.

**DECISION ON: REQUEST TO ABANDON BENCH COURT (GRANT CREEK AREA)**

Michael Kennedy asked Horace Brown to give a presentation on this issue.
Horace Brown, County Surveyor, said he and Commissioner Hart journeyed up Grant Creek and found Bench Court. There is no road there at this time. The adjacent owner, who would need access has access through his neighbor’s land on an easement that he acquired. This would not be a good place to build a road. It starts out at the base of the hill and goes up a steep slope to a bench. The County would never build there. He has no problem with vacating it.

Fern Hart said it appears that the road may have been on a plat map and is not used and is certainly not a historic road. She does not see any hope for this road to be meaningful in the future for the County.

Fern Hart moved that the Board of County Commissioners approve the request to abandon Bench Court, located in Section 15, T14N, R19W, Grant Creek Tracts, from Bench Road to the end of Bench Court. Barbara Evans seconded the motion. Motion carried 3-0.

THE MEETING WAS RECESSED AS THE BOARD OF COUNTY COMMISSIONERS AND RECONVENED AS THE PLANNING & ZONING COMMISSION

HEARING: (PLANNING AND ZONING COMMISSION) BUILDING PERMIT FOR SINGLE-FAMILY HOME

Bud Hettich, Office of Planning & Grants, said this was a request from Eric Tomaszewski for approval of a single family dwelling on Parcel 5B2, Certificate of Survey #2046, in Section 3, T12N, R19W. Address of the property is 5420 Arnica Road in Pattee Canyon.

Zoning District #4 was established June 17, 1957, and requires that the Planning Board and the County Planning and Zoning Commission review and approve all improvement and development within the District, and make their recommendation to the Commissioners who make the final decision.

This request was reviewed at a public hearing before the Planning Board on April 2, 1996. The Planning Board recommended that the request be approved subject to the following conditions:

1. Require that the applicant install a residential sprinkler system to the home.
2. Require that the applicant comply with all Building Codes in regard to engineering on slope stability and height of basement walls; and, Health Department requirements in regard to type of heating system and other air quality issues.

Staff recommends that the development request be approved subject to the conditions listed above.

Eric Tomaszewski said the only question he has is concerning the condition to have sprinkler systems installed. He is looking into it, has received bids and plans to go forth on it but does not understand why three other people that have built in his neighborhood in the last 1½ years were not required to put in sprinkler systems yet he is required to do so. It is not a building code nor a law.

Fern Hart said Colleen Dowdall explained the reasoning behind this very well at the Planning Board. The County does have those regulations. One of the proposals approved today was required to put in sprinkler systems. It was true that in time past this was not required, but recent conditions in Missoula County have started the County requiring more safety features.

Barbara Evans, addressing Eric, told him he is a fine looking young man and she would like to see him out and about for the rest of his life and hopes it is a long life. Therefore, she supports requiring the sprinkler system for protection. That is the reasoning for this, not because they are trying to cause him extra expense.

Eric Tomaszewski said he appreciated that and he and his wife discussed it and decided to go forward. They are able to afford it at this time.

Michael Kennedy said the 1994 fire season was the worst potential fire season since 1910. It was by a struck of luck that we avoided catastrophe. In the seven draws in Missoula, there could have been as many as 4,000 homes lost if we had experienced a fire ignition as we had in 1910. As we move into that interface, it becomes more important to deal with the potential consequences of such catastrophes. He said this is not a hammer but rather a tool to prevent serious problems. He continued that it is unfortunate that Eric is the first to have this requirement and wishes that the others had also been required to have sprinkler systems put in.

Eric Tomaszewski said he understood. However, when a person plans to build, he reviews building codes and plans his cost, trying to stay within certain budget restraints. When something like this is thrown in, it can cause real problems.

Michael Kennedy said he appreciates that.

Horace Brown, County Surveyor, said he agreed with Eric. They have added something that was not known up front. He felt that, if the Country requires it on this project, they should make everyone aware that new buildings will be required to have sprinkler systems put in. He would rather not see this be made a requirement for this project because it was added on afterwards.

Barbara Evans agreed with Horace that they should not require things of people that have not previously been part of the rules. In this particular case, her personal experience in trying to fight fire in Pattee Canyon when she was a reserve officer has shown her the problems of trying to fight fire. In some cases, they could not even get the tankers to the fire. In Eric’s case, they cannot get in. Thus, she supports this condition.
Bud Hettich said, relevant to the current discussion, the Pattee Creek Homeowners’ Association has submitted a drafted re-write of Zoning District 4. He has not had time to review it yet. Dave Loomis gave him a copy and asked for his comments. They will meet May 8 to review it and they are currently looking for comments to include. One of those may be this requirement of the sprinkler system.

At one time, he recalled on the interface between the Rural Fire District and Forest Service properties that there may be opportunity for the Forest Service to provide fire protection. He admitted he was out of his jurisdiction in mentioning this but there may be that possibility. Maybe these landowners are outside the fire district but next to Forest Service land and perhaps there might be some agreement between the owners and the Fire Service.

Colleen Dowdall commented that she plans to come to that meeting and asked Bud Hettich for a copy of the drafted Zoning District 4.

Michael Kennedy opened the public hearing.

Greg Martinsen, Martinsen Surveys, said he is the landowner immediately adjoining this property to the East and wanted it on record that he is in favor of this proposal.

Dan Poe Newman said the dissolution of the rural fire district is one of his priorities. He does not believe men of this caliber should be going to people’s homes nor should they be presented to the public as an agent of the County or any other district. Any kind of Forest Service cooperation to the dissolution of the fire district would be one of the few times when he might be in the majority of something. He commented that we need a good fire service. There are a lot of firemen from around the country who could be hired and we could have a homogenous group of firefighters instead of individuals whose agenda may not be for the protection of the public so much as for the aggrandizement of their own agenda.

Michael Kennedy asked if anyone else wanted to come forward to speak on this issue? No one came forward and he closed the public hearing.

Fern Hart moved that the Planning and Zoning Commission approve the request for a single-family dwelling on Parcel 5B2, Certificate of Survey #2046, in Section 3, T12N, R19W, address of the property is 5420 Arnica Road in Pattee Canyon, for Eric Tomaszewski contingent on the two conditions listed below. Barbara Evans seconded the motion. Motion carried 5-0.

1. Require that the applicant install a residential sprinkler system to the home.
2. Require that the applicant comply with all Building Codes in regard to engineering on slope stability and height of basement walls; and, Health Department requirements in regard to type of heating system and other air quality issues.

Michael Kennedy noted that the Planning and Zoning Commission, which consists of the three Commissioners, Vickie Zeier, Clerk and Recorder, and Horace Brown, County Surveyor, voted unanimously in favor of this proposal.

THE MEETING ADJOURNED AS THE PLANNING & ZONING COMMISSION AND RECONVENED AS THE BOARD OF COUNTY COMMISSIONERS’ PUBLIC MEETING

HEARING: BUILDING PERMIT FOR SINGLE-FAMILY HOME

Fern Hart moved that the Board of County Commissioners accept the recommendation of the Planning and Zoning Commission and approve the request for a single-family dwelling on Parcel 5B2, Certificate of Survey #2046, in Section 3, T12N, R19W, address of the property is 5420 Arnica Road in Pattee Canyon, for Eric Tomaszewski contingent on the two conditions listed below. Barbara Evans seconded the motion. Motion carried 3-0.

1. Require that the applicant install a residential sprinkler system to the home.
2. Require that the applicant comply with all Building Codes in regard to engineering on slope stability and height of basement walls; and, Health Department requirements in regard to type of heating system and other air quality issues.

HEARING (CERTIFICATE OF SURVEY): FAMILY TRANSFER (PLOYHAR)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a Consideration of whether to approve a family transfer exemption for Tract E, COS 1748 located in the W½SW½SE¼ of Section 24, T13N R16W for Martin L. and Elaine Ployhar.

Martin L. Ployhar has submitted a request for a family transfer exemption for a 20.09 acre parcel located Southeast of Potomac. Mr. Ployhar proposes to split the parcel in half for transfer to his adult son, Gregory Ployhar. The comprehensive plan designation is open and resource (one dwelling per 40 acres).

The history of the parcel is as follows: Tract E was created in December, 1978, by Mary J. Ployhar as a parcel greater than 20 acres in size. In December, 1982, Mary J. Ployhar was appointed a conservator and a trust was created which held, among other things, this property. In June, 1985, a Notice of Purchaser's Interest was filed by The Ployhar Family Trust as seller and Martin L. and Elaine Ployhar as buyers for this and other property.
According to the records kept by the Missoula County Surveyor's office, the applicant has used the following exemptions to the Subdivision and Platting Act: a mortgage exemption in April, 1978, on unrelated property.

Michael Kennedy asked if the Ployhars or their representative was present?

Martin Ployhar came forward and identified himself.

Michael Kennedy explained to him that when property is subdivided in this manner, the legislature requires the Commissioners to review the case, which includes asking questions with respect to the applicant’s intent on the property.

Fern Hart asked what road this was on?

Martin Ployhar answered Swanson Lane.

Michael Kennedy asked if the parcels will have access unto a common road?

Martin Ployhar replied yes.

Barbara Evans asked Horace Brown the status of Swanson Lane?

Horace Brown, County Surveyor, said it is a narrow, gravel road maintained by the County.

Barbara Evans asked if it was likely that the County will be doing improvements on that road?

Horace Brown answered that they tried several years ago but they need right-of-way to do them.

Barbara Evans said, the reason she asked, is because she has had complaints from those who live on Swanson Lane and she wanted it to be clear to Mr. Ployhar what he can expect from the County regarding maintenance.

Martin Ployhar said he has been told they will fix it.

Michael Kennedy asked who are “they?”

Martin Ployhar answered Horace Brown.

Horace Brown said they are moving a crusher up there at the end of May and eventually will put gravel on it.

Michael Kennedy commented that constraints on the Surveyor’s office are great. Any place outside of the urban area that has roads to be fixed, the cost is almost always more than what the tax base for the area will support. It is a difficult matter to keep on top of.

Fern Hart asked Martin Ployhar if his son planned to build a home on the parcel?

Martin Ployhar replied that his son already lives on the property and the home is there.

Fern Hart asked him then if he was just gifting the land to him?

Martin Ployhar replied that he was going to sell it to his son.

Colleen Dowdall, Deputy County Attorney, said this process allows for a transfer to a family member by gift or sale.

Michael Kennedy opened the public hearing. No one came forward, so he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the family transfer exemption for Tract E, COS 1748 located in the W½SW¼SE¼ of Section 24, T13N R16W for Martin L. and Elaine Ployhar in that it does not appear to be an attempt to evade the Subdivision and Platting Act. Fern Hart seconded the motion. Motion carried 3-0.

HEARING (CERTIFICATE OF SURVEY): FAMILY TRANSFER (HOBBS)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a consideration of whether to approve four family transfer exemptions for Tract 71 of COS 1925 located in the SE¼ of Section 9, T14N R20W for Roger C. Hobbs.

Roger C. Hobbs has submitted a request for four family transfer exemptions for a 22.71 acre parcel located Northwest of Missoula off Highway 93 near Evaro Hill. Mr. Hobbs proposes to create three 4 acre parcels for transfer to his wife, Kathy Hobbs, and minor sons, Robert Hobbs, age 10, and Brandon Hobbs, age 4. He also proposes to create a 5.835 acre parcel for transfer to his other minor son, Jonathan Hobbs, age 8. This would leave a 4 acre remainder parcel. The comprehensive plan in the area is open and resource (one dwelling per 40 acres). Mr. Hobbs originally submitted his request in December, 1995. However, upon research into the ownership of the parcel, it was discovered the property was actually owned by Roger C. Hobbs d/b/a Landmark Homes. Landmark Homes is a Montana corporation and, therefore, ineligible to use the family transfer exemption. This was relayed to Mr. Hobbs and his surveyor, Greg Martinsen. As a result, Mr. Hobbs transferred the property from Landmark Homes into his sole ownership on January 23, 1996, recording reference
Book 462 Micro, Page 2244. Further, as is requested in the Exemption Affidavit, Mr. Hobbs consulted with an attorney regarding setting up a trust for his minor children.

The history of the parcel is as follows: In April, 1979, COS 1925 was filed by Geneva Cates creating 64 parcels greater than 20 acres in size. Mr. Hobbs, d/b/a Landmark Homes, purchased Tract 71 in August, 1993. As stated above, the property was then transferred into the name of Roger C. Hobbs, as an individual, on January 23, 1996.

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

Greg Martinsen, Martinsen Surveys, said he represented Mr. Hobbs and, since Mr. Hobbs could not be present, he would be happy to answer any questions the Commissioners may have.

Michael Kennedy said the Board of County Commissioners must determine whether this was an attempt to evade the Montana Subdivision and Platting Act. In doing that, they will be asking questions about the family transfer request. He said the five acres that are subdivided appear to be a subdivision.

Greg Martinsen said he was going to put it in a trust for his minor sons. He said, if this were a subdivision, Mr. Hobbs would try to find another way to sell it since his children are so young. It will be a long time before they can dispose of the property.

Michael Kennedy asked what the status of the trust?

Greg Martinsen answered it has not been created yet because this family transfer is not done. He suggested that a condition of approval may be that the trust be filed at the same time the Certificate of Survey is filed, creating the parcels.

Michael Kennedy asked Counsel if the County could approve that the trust be filed prior?

Colleen Dowdall, Deputy County Attorney, answered that the County usually requires that it be presented with the Certificate of Survey.

Fern Hart said she feels like this is a subdivision. She asked Counsel if this would stay with the children until they are of age or can it be sold?

Colleen Dowdall answered no, the property would be held by the trustee of the trust for the children. The trustee, on behalf of the children, is free to transfer the property at any time unless the trust states otherwise.

Michael Kennedy asked if there is no intent to subdivide the property, he asked Counsel if there is any reason why the trust can be an undivided trust for all of the property?

Colleen Dowdall said the trust can hold the property in trust for all the children.

Michael Kennedy asked if there was any reason the owner did not want to do that? If the intent is to provide a trust for the children, then is there a reason why the owner of the property might not develop a trust in favor of the children so each child had an undivided interest in the property?

Greg Martinsen answered that he likened it to owning property with a brother and sister. Hypothetically, he wants to build a house but he has to encumber the whole piece to do it. He does not believe that he would want to be involved with a situation like that.

Fern Hart said she remembers looking at a proposal by Roger Hobbs before. She is concerned about development in that area. She believes this is an intent to evade the subdivision process.

Greg Martinsen responded that Mr. Hobbs lives in California presently and is trying to take care of what he has left for his children.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Fern Hart moved that the Board of County Commissioners deny the request for a four family transfer for Tract 71 of COS 1925 located in the SE¼ of Section 9, T14N R20W for Roger C. Hobbs, in that it appears to be an attempt to evade the Montana Subdivision and Platting Act. Barbara Evans seconded the motion. Motion carried 3-0.

HEARING: REZONING OF OLD DESMET SCHOOL - HIGHWAY 10 WEST (C-P1 TO C-C3)

Jennie Dixon, Office of Planning & Grants, said this was a rezoning request from Blackwell Hawthorne for the Old Desmet Schoolhouse property at 6105 Highway 10 West, from C-P1 (Public Lands and Institutions) to C-C3 (Heavy Commercial). C-P1 zoning allows airports and landing fields, public and quasi-public uses and its special exceptions are commercial recreation and public utilities. The requested C-C3 zone allows for professional offices, fraternal organizations, transient lodging, indoor recreation, retail trade with no outdoor storage and a floor area of less than 100,000 sq. feet, printing and publishing establishments and accessory uses. Conditional uses are one-family dwellings within the same building as other allowed uses and commercial mini-warehouse. She continued describing the special exceptions for the C-C3 zoning.
Mr. Hawthorne currently lives and operates a professional office out of this location. These uses were established approximately 10 years ago without a zoning compliance permit. From a zoning perspective, they are considered illegal, non-conforming uses. The rezoning to allow the professional use and a single family residence in the same building will bring these illegal non-conforming uses into compliance with zoning. It is important to note that the rezoning request of C-C3 also opens up this property for any type of development that C-C3 allows. This proposal is not consistent with the land use designation of parks and open space in the Missoula Comprehensive Plan, however, staff finds the proposal in substantial compliance with the rules and objectives of the Comprehensive Plan, which recommends adaptive reuse of structures to accommodate change and preservation. For this reason, staff recommends approval of this request, subject to the 6 conditions contained in the staff report. Allan Matthews, Missoula Historic Preservation Officer, as well as the State Historic Society, supports the adaptive reuse of this historic structure, particularly as a combined commercial-residential use of the property. Existing and contemplated adjacent land uses appear to be compatible with the proposed rezoning. This area is expected to experience a significant level of new development with the proposed Missoula Development Industrial Park across Highway 10 on the north side, the proposed I-90 interchange near the airport and the development plan for the U.S. Forest Service lands adjacent to the east.

Sensitive site planning and landscaping, application of travel corridor standards and consideration of the historic character of this site help assure compatibility of the proposed commercial zoning. The travel corridor standards help to improve the appearance when approaching Missoula. It is important to apply these standards now with the zone change request because, unless another zone change or subdivision of the property is requested, there will not be another opportunity to request them. She then described how they suggest the travel corridor standards be applied on a change request because, unless another zone change or subdivision of the property is requested, there will not be another opportunity to request them. They then described how they suggest the travel corridor standards be applied on a site plan displayed near the Commissioners. She then went through each of the conditions.

She also noted there is the aspect that it is private property and the zone for public lands and institutions, albeit the zone was there prior to this purchase.

**Michael Kennedy** asked if a rezoning was the only “cure” to correct this situation?

**Jennie Dixon** answered it was the only one she was aware of.

Blackwell Hawthorne said he has lived at the Old Desmet Schoolhouse for 10 years. He is opposed to removing the playground, which is what the asphalt is in front of the schoolhouse. It was installed sometime prior to 1964. He is concerned that bringing in any heavy equipment will be stressful on the building itself since the front corner has already fallen off twice. Approximately 74% of the site is currently landscaped. He also opposes to more parking spaces. He believes additional parking can be accommodated off the playground. When the conditions were made, he does not think OPG was aware that the asphalt was a playground.

Colleen Dowdall, Deputy County Attorney, wanted to point out that the County zones C-C2 and C-C3 are backwards in terms of the uses permitted. C-C3 would be the more medium commercial.

Fern Hart read from the letter from Allan Matthews, “The pavement directly in front of the building has very little visual impact when driving by. The grass to the east and west seems to play a more important role in establishing the rural open feel. The grass to the east and northeast of the building appears to be taking over the pavement in front of the main entrance.” She noted from her experience of visiting the site that it is in a natural grass area. It almost has a prairie-like setting. She feels that if the owner were required to place trees in front of the building, it would change what it once was as a one-room schoolhouse. She supports the travel corridor zoning, however, she does not want to change the historical setting. She also does not feel that the asphalt has to be removed.

Jennie Dixon said there are already some shrubs along the front of the fence line at this time. Without doing a formal field study, she believes that, aside from the paved area, Mr. Hawthorne meets the landscaped standards.

Fern Hart said she wanted to restrict the parking to the front. She assumes there is never more than 2 vehicles.

Jennie Dixon added that’s how many spaces that are required for his proposal. If the pavement were to stay, the pavement would be used.

Barbara Evans said, when the travel corridor standards originated, situations such as historical sites were not taken into account. She said she and Commissioner Hart viewed the Old Desmet Schoolhouse last week and saw the prairie grasses and she agreed with Commissioner Hart that that is the way the schoolhouse was and it should remain that way. She also noted that Mr. Hawthorne has been a good steward of this land and the building. She also believes he has a dedication to it from as a historical site. She would like to see it stay like it is.

Jennie Dixon suggested wording to adjust the conditions to accommodate Commissioner Evans’ recommendations. She asked the Commissioners where they would like to see the off-street parking spaces placed?

Barbara Evans replied that she did not want to see any paving.

Jennie Dixon said he has to pave the access driveway.

Barbara Evans asked if could be gravel?

Colleen Dowdall said the Commissioners do not have the authority to relieve the owner of that requirement, only the Board of Adjustments does. Zoning requires paving of the parking area and the access drive.

Michael Kennedy said the paving currently at the site was constructed between 1955 and 1964, so it is over 30 years old. Sooner or later, it will deteriorate and need to be repaved. So now is the time to consider if they want that pavement there or somewhere else.
Fern Hart supports an alternate parking area, which would mean more paving to the area.

Jennie Dixon added the alternate parking area is already an access drive which, regardless of where the parking is permitted, has to be paved anyway.

Barbara Evans asked to have it clarified how many parking spaces will be needed?

Jennie Dixon said, although she is not sure if Mr. Hawthorne plans to live there, the parking regulations for a residence are 2 spaces for a residence. She is not sure whether a third space is needed for the employee, since the employee is also the resident. She feels 2 spaces will be adequate.

Michael Kennedy said he feels this zone is incompatible with this use, to achieve a result that is existing. He is concerned that, once the zone is changed, it opens the area to other uses which allow, among other things, signs which can be bothersome.

Colleen Dowdall said the zoning they refer to is heavy commercial which actually has commercial uses permitted which are less intensive than the medium commercial C-C2. In the proposal, as a part of making this inclusive zoning, this would be CMC, County Medium Commercial. So the uses that the County is concerned about that are permitted in the Medium Commercial now would not be allowed for the inclusive zone. There is a traditional kind of zoning that lists permitted uses and does not allow use variances. Just special exceptions. Mr. Hawthorne’s only alternative is to seek a rezoning. She and the planners have conditioned the zoning to the extent that what could happen is fairly limited to this building and area.

Michael Kennedy asked about the sign allowances in the C-C3 zone? There are currently no signs and he believes a sign is not compatible with a historical site, especially the size of signs that are allowed with the C-C3 zone.

Colleen Dowdall suggested that a condition be added regulating the size of the sign allowed.

Jennie Dixon said there is no sign on the property now and Mr. Hawthorne may not put one on. However, if the property ever changed hands, there is always the possibility the new owners may put up a sign.

Colleen Dowdall said signage is allowed in this zoning.

Fern Hart agreed that the County should include a condition to restrict sign size should this request for rezoning be granted.

Pat Keiley, Office of Planning & Grants, suggested that the Commissioners consider the sign size allowance in the County Zoning District, under residential development. They essentially allow a wall sign of either 12 square feet or 8 square feet and a pole sign of 8 square feet, 6 feet high. Or the Commissioners can make up their own size limits.

Michael Kennedy asked Mr. Hawthorne what his opinion was on signage?

Blackwell Hawthorne answered, if he had a sign, it would be about 1 foot tall and 3 feet long.

Michael Kennedy responded that, if the County stipulated that his sign could be no larger than 3 square feet, would that be acceptable to him?

Blackwell Hawthorne answered yes. He said he agreed that there should be a restriction for a sign out there.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Barbara Evans said she would not like to see a sign attached to the side of the building because that would take away from the historical character.

Jennie Dixon suggested that the 7th condition read “Signage shall be limited to one ground sign, a maximum area of 8 square feet and 6 feet tall, with external lighting only.”

Michael Kennedy said that would be a good condition to accept.

Barbara Evans moved that the Board of County Commissioners approve the request for rezoning of the Old Desmet School, located at 6105 Highway 10 West, for Blackwell Hawthorne, contingent on the conditions listed below. Fern Hart seconded the motion. Motion carried 3-0.

1. Development of the site shall comply with the Design Standards for Primary Travel Corridors as established in the County Subdivision Regulations dated May 4, 1994, including all landscaping, setback and design standards, with the following modifications:

   A. Landscaping installed along the private property adjoining the Travel Corridor (Highway 10) may consist of an average 25 foot width, rather than an absolute 25 foot width, subject to the approval of OPG. At no point shall the width of the landscape be less than 15 feet. The landscaping requirement shall not apply to the existing paved area in front of the schoolhouse.

   B. The 50 foot setback standard shall not apply to the existing schoolhouse structure, but to construction of any new structures or any additions to the existing schoolhouse structure.

2. The two required off-street parking spaces shall be located in the area identified on the site plan as the alternate parking area with barriers to prevent vehicular access to the existing paved area, subject to the approval of OPG.
3. If not already completed, the owner shall install perimeter landscaping, as shown in the attached site plan, subject to the approval of OPG.

4. There shall be only one access point onto Highway 10 West, no greater than 24 feet wide, subject to the approval of the State Department of Transportation.

5. Any change in use of the Old Desmet Schoolhouse shall be given appropriate consideration for its significant historical value as a contributing resource to the National Register of Historic Places.

6. The owner shall grant an avigation easement to the Missoula County Airport Authority, if required, subject to the approval of the Missoula County Airport Authority.

7. Signage shall be limited to one ground sign, a maximum area of 8 square feet and 6 feet tall, with external lighting only.

HEARING: BRANCO COURT - SUBDIVISION FOR LEASE/RENT (LOLO AREA)

Pat Keiley, Office of Planning & Grants, said John Nelson, represented by Greg Martinsen Surveys, is requesting to create a mobile home court subdivision for lease or rent consisting of 16 mobile home lots on 8.54 acres. The subdivision will be called Branco Court located in Lolo near the end of Jade Lane. The property is unzoned. The Lolo Update Comprehensive Plan calls for residential maximum density of 2 dwelling units per acre. The proposed subdivision conforms with the Comp Plan. Access to the property is via Opal Lane, a County graveled road, which has a right-of-way of 30 feet. The applicant has requested a variance to reduce the Opal Lane right-of-way from 60 feet to 54 feet. Staff has discussed this with the County Surveyor and recommends approval of the variance based on the findings presented by the applicant. Internal access is from Branco Court cul de sac, 40 foot easement and a 40 foot surface. This will be paved and thus conform to the mobile home regulation road standards. Parking will be allowed on each individual lot as well as on both sides of the street. Internal access is also proposed throughout the subdivision along the north, south and west portions of the landscaped area. The applicant is proposing a meandering sidewalk along the edge of the subdivision. Staff is recommending a 5 foot wide path made of compacted gravel, hard-packed surface. The water is a community multi-family system; individual septic systems are proposed and utilities area available. The site is considered a historic interpretive site. It includes the area where Lewis and Clark kept their ponies when they were on their expedition. Adjacent to this site was the campsite of Lewis and Clark. The Lewis and Clark Trail Heritage Foundation was interested in this park and preserving this and other areas in the vicinity so that they could develop the park to provide education and recreation to people who come into the area. The applicant has indicated that 3.29 acre area be for common and/or storage area. This will be for storage and campers and recreational vehicles. Also, a maintenance shop and office for the park. This entire piece of land is owned by Mr. Nelson and he would leasing out the spaces he would retain ownership of the whole piece, he would required to provide, if this were common area, maintenance for the park, and also buffering the common/storage area. Access to the common-storage area is from the end of the cul de sac on Branco Court and is a driveway, with a compacted gravel surface 15 feet wide.

Missoula County fire and police service are available. The property is not in the 100 year floodplain. There is a ditch that runs along the southern boundary of the property. In the ditch area, there is riparian area and vegetative growth. Staff recommends that the applicant develop and present a riparian resource management plan and that this be approve by the Office of Planning & Grants prior to filing the final plan.

The Planning Board voted unanimously to approve this subdivision, with some recommended changes in the conditions. Staff recommends approval of Branco Court Mobile Home Park based on the findings of fact and subject to the conditions listed in the staff report.

Michael Kennedy asked how they figured the riparian area, as part of the ditch, shows to be 10 feet wide?

Pat Keiley answered that it follows the property line and it was based on a site inspection. It is confined to the ditch.

Fern Hart asked if the mobile homes will have pads to be placed on?

Pat Keiley answered yes, there will be concrete pads, paved parking spaces and a walkway between the trailer site and the parking space.

Greg Martinsen, Martinsen Surveys, said the trailer pad is not paved. They are generally compacted gravel. The sidewalk will be concrete and the parking area will be asphalt. The south property line follows the center line of the irrigation ditch, so the riparian area is about 10 feet from the center line of the irrigation ditch which exceeds any of the bushes there. He said they are uncertain what to do about park dedication. At first the park was designed as a area to be held by the landowner for the benefit of the people in this mobile home park. After much discussion about the Lewis and Clark historical implications, it was discovered that their camp was about 800 feet east of this site. Then they agreed to do an archeological assessment and cultural study of the property. He has not received a report on this yet.

Pat Keiley interrupted and said condition no. 8 addresses that concern. In addition to talking about the park area, one of the items brought up that the Travelers’ Rest Chapter Foundation was interested in doing the archeological assessment to determine if there may be any artifacts from the Lewis and Clark stay. Staff together with the Travelers’
Rest Foundation put together a condition to enable the dig and the applicant agreed to it, with the hope that it can be done in an expeditious manner.

Barbara Evans asked if this subdivision request was sent to the Salish/Kootenai Tribal office for their input, considering there may be artifacts in the area?

Pat Keiley answered he would have to look through the certification package to see who got the proposal.

Colleen Dowdall said, in the interest of the Travelers’ Rest Foundation, the County was okay in their notifications.

Fern Hart said she read the Planning Board’s comments and they talk a lot about how to do this archeological research. She asked Counsel if they should limit the time to get a report and, if they don’t within that time, to let the applicant go ahead with the subdivision?

Colleen Dowdall replied that the Planning Board’s recommendation of 30 days seemed appropriate.

Fern Hart asked if they should resolve the park dedication issue the same way?

Greg Martinsen said their problem with the park is not so much that as how to create it.

Colleen Dowdall said they envisioned it as an area can be set aside and shown on the final plan as park or recreation area different from your common area. If they want to enter into an agreement with those who manage that area by use of a lease, that would prevent them from having to do another survey. In the event the applicant wants to transfer it to them, then it would require a 2-lot subdivision. If the subdivision is approved, it is approved with the areas currently shown as common area or recreation area. At the area designated as park, it should be used as park and that you be encouraged to preserve the resources that are there, in agreement with those who are interested in it historically.

Greg Martinsen replied therein lies the difficulty. Their major concern is liability on Mr. Nelson’s part. If the Lewis and Clark foundation starts excavating, it creates a problem for him, possibly from a liability standpoint.

Michael Kennedy asked if his client have any problem with giving it to this other group if it was a legal entity that could accept it?

Greg Martinsen answered “if they can find a way to create that park.”

Michael Kennedy asked him if he would be willing to survey it so that it can be conveyed?

Greg Martinsen answered that it will cost the applicant but he can do it.

Colleen Dowdall said this is a property owner who has a piece of land that has significant historical resource that he wishes to develop. The property owner could require liability insurance by putting that in a lease. That is the only way to do it without doing a 2-lot subdivision. Or they can do a 2-lot subdivision. If the Travelers’ Rest Foundation wants it badly enough, they will agree to that.

Barbara Evans asked about the park or if they can give cash in lieu of parkland?

Colleen Dowdall answered that they have satisfied the park requirement. This was only designated as parkland because it was identified as a potentially important historical site and it was hoped that the County would take that site and maintain it. This is not something that is filed with the Clerk and Recorder so it does not create that parcel as a description that can be transferred or dedicated to anyone. It remains a part of the larger parcel that has the mobile homes on it and the common and storage area. If they wanted to lease it to someone, that is permitted. However, the Commissioners do not have to grant this request if they want to protect this resource and feel that there is no other way to do it.

Pat Keiley suggested a condition that this park area be considered recreational area that would be owned and maintained by the owner, Mr. Nelson. Mr. Nelson would work together with the Travelers’ Rest Chapter to develop this area. The County would not be requiring him to do anything in particular but to see if there is an opportunity for the two groups to work together so that both would be satisfied with the property’s development and Mr. Nelson would not have any particular liability.

Michael Kennedy said 501C3 can own and operate property. There is no restriction that he is aware of. If this is a 501C3, there is a question of whether there are by-laws and a board. So whether they give it to the County or to the historical foundation, it shouldn’t matter. That would be better than a lease because, even though a lease requirement may include requiring insurance, the owner would still be exposed to some liability simply because he owns the property. You cannot save yourself from a lawsuit if you own the property even if you have insurance.

Greg Martinsen agreed. He said the intention here is to satisfy the requirement for the park area that is required. If they file a certificate of survey that creates this little parcel and give it to the County, then the County can work out something with the historical people.

Pat Keiley said but they would have to satisfy their common area. He asked Greg if he took all of the buffered landscaped area, would that meet the requirement?

Greg Martinssen said this is intended to satisfy the common area.

Colleen Dowdall and it could be without calling it park because the statute was changed in the 1995 legislature. It is segregated from the common and storage area on the plat because of the hope that it could be given to us as parkland.
Michael Kennedy asked if the ownership mattered? As long as the requirement is satisfied?

Colleen Dowdall answered no. The only difficulty is acquiring a legal description to transfer the ownership.

Fern Hart said she was inclined to respect this as a good plan, however, she said there are 7 mobile home courts in that area and this will make 8. She does not like to place a lot of the same kind of housing in one place.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Fern Hart moved that the Board of County Commissioners approve Branco Court mobile home park subdivision for lease or rent, located in the Lolo area just north of Mormon Creek Road near the end of Jade Lane, Lot 8 of the Van Ostrand Addition, contingent on the conditions listed below:

1. Plans for paving, grading, approach, and drainage shall be approved by the County Surveyor prior to approval of the final plan. Section 3-2, 3-4.
2. The developer shall provide a 5 foot compacted gravel hardpack path along the west side of Opal Lane. All plans shall be approved by the County Surveyor prior to approval of the final plans.
3. The developer shall install 5 foot wide compacted gravel hardpack path throughout the landscaped/buffered areas. Plans shall be approved by the Office of Planning and Grants prior to approval of final plans.
4. The developer shall provide a vegetative buffer of 75% opacity (thickness, amount of visibility through) at time of planting consisting of landscape plantings adjacent to all sides of the areas designated as common and storage to buffer the common and storage area from the residential mobile home park and park, to be approved by OPG prior to approval of the final plan.
5. The developer shall provide a landscaping plan for all unpaved areas of the mobile home court. The plan shall be approved by the Office of Planning and Grants prior to submittal of final plans.
6. The developer shall submit a copy of the park rules for the mobile home court. To mitigate possibilities of predator intrusion, the rules shall address the following:
   A. That domestic pets are to be kept in a contained area to avoid wild animal harassment
   B. Pets shall be feed indoors and pet food shall be stored indoors
   C. Garbage shall be stored in well sealed containers and inside storage units
   D. Permanent barbecue pits are prohibited. All portable barbecues shall be cleaned regularly and stored indoors when not in use
   E. Flowers, ornamental shrubs and fruit trees may be susceptible to damage from wildlife, therefore planting of native vegetation is encouraged
   F. All garden fences shall be constructed at least eight feet in height and one foot below the soil to prohibit animal intrusion, using a solid top rail on all fencing made of something other than wire to avoid animal entanglement
   G. Compost piles shall be enclosed
7. The developer shall provide for and show on the final plan a 20 foot access easement between Lot 13 and Lot 14 (which will eliminate the easement between Lots 15 and 16) into the landscaped/buffer area into the park to provide pedestrian access from Lots 1-8 into the park.
8. That the developer allow an archeological assessment of the area to make conclusive determinations of this potentially significant historical resource be initiated by the OPG and be performed within 30 days of approval of the subdivision by the Board of County Commissioners and prior to approval of the final plans.
9. The following statement shall appear on the face of the plan and in each instrument of conveyance:
   “Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID for improvements, including participation in a dust abatement district, to Opal Lane and may be used in lieu of their signatures on an RSID/SID petition.”
10. Until such time as paving is complete, the developer shall be responsible for dust control on the proposed Branco Court and the portion of Opal Lane that abuts the subdivision.
11. The following statement shall be shown on the plat and in each instrument of conveyance:
   “The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or property owners' association and that the County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the County of Missoula for maintenance.”
12. The developer shall contribute $50.00 per lot to the Missoula Rural Fire District's Large Diameter Hose Fund. Fee shall be paid prior to approval of final plans.
13. The developer shall pave the automobile parking areas for each trailer space.
14. That the proposed asphalt/compacted walkway in the park area be deleted from the face of the plan.
15. That the developer properly label Opal Lane and Jade Lane on the face of the final plan.
HEARING: EVANS RIDGE (PRELIMINARY PLAT) RESIDENTIAL SUBDIVISION IN MILLER CREEK AREA

Lisa Moisey, Office of Planning & Grants, said this was a request by Dean Herbst for a 9-lot residential subdivision and plan variation of a 63.38 acre tract of land off of Trail End Road. The lot sizes in the subdivision will range from approximately 5 acres to 9 acres in size. The property is located within the Miller Creek Land Sensitive Zoning District and falls under zone C. This property also falls under the 1990 Urban Area Comprehensive Plan Update. Staff found this proposal to be in substantial compliance with the Comp Plan. The developer has requested a plan variation to allow Lot 5 to exceed the 3-1 length to width ratio which is a requirement of the Miller Creek Land Sensitive Zoning District. The developer is not requesting a density bonus as part of this request. Staff recommends approval of the request given that the buildable portion of the lot meets the 3-1 ratio and the balance of the lot is located under the no-build zone, which was designated as part of the zoning and that area will remain undeveloped.

Access to the subdivision will be from Trails End Road, which is a County maintained roadway. Evans Ridge Road, the proposed internal access road, already exists on the property as a gravel road. However, the developer will improve this road to meet County standards which will include 24 feet of paving. This property is located within a wildlife residential interface area. The potential for wildlife habitat on this property, the Department of Fish, Wildlife and Parks has noted that mule deer frequent this area, particularly in the Cahoot Canyon. The agency has expressed concern regarding protection of the habitat for the deer. While this area is zoned and the proposal is consistent with the zoning in the Miller Creek Land Sensitive District, the District specifically allows for fences in the no-build areas. However, staff recommends that fences be limited to the buildable portions of Lots 4, 5 and 6 which will help preserve a corridor along the property which is adjacent to Cahoot Canyon and will allow an opportunity for the mule deer to roam without fences. To provide for water supply, the developer stated that residential sprinklers will be required in all homes within the subdivision.

As part of the subdivision request, the developer has requested 3 variances from subdivision regulations, one from the requirement for sidewalks because of the rural character of the area, a variance from cul de sac length for the Evans Ridge Road, and a variance from the 3-1 length to width ratio for Lots 5 and 6, allowing them to exceed the ratio. Staff recommends approval of the variance requests. The Planning Board voted 9-0 to recommend approval of the plan variation, all 3 variations and the preliminary plat with the conditions as noted in the staff report.

Dick Ainsworth, Professional Consultants Inc., said he represented Dean Herbst. They are in agreement with all of the conditions proposed by staff and the Planning Board.

Barbara Evans stated, for the record, that her family, the Evans’, has nothing to do with Evans Ridge.

Michael Kennedy opened the public hearing.

Bindu Erickson said she and her husband bought Tract 10, which is southwest of the subject property, and their biggest concern is to make sure that the cul de sac did not have a high elevation so that they could get into their property. They plan to build their home there.

Barbara Evans, addressing Horace Brown, asked if it was okay to have people access through a cul de sac?

Horace Brown, County Surveyor, answered that there is not a problem now because anything that is created, except for exemptions by a subdivision. It used to be they were by certificate of survey and there was no public hearing.

Dick Ainsworth said that road is presently there and it goes up and bends where they are proposing the cul de sac and continues on up on an easement. It was constructed several years ago to serve the 20 acre parcels that were created up there. It now ends in a cul de sac easement that touches the Erickson’s property on Tracts 9 and 10.

Michael Kennedy asked if the easement correspond to the traveled cul de sac that is there?

Dick Ainsworth replied yes.

Michael Kennedy asked, if a cul de sac were developed in that area, would it provide access?

Dick Ainsworth answered their access to the homesites on Lots 5 and 6 will be up that same easement that would go to her lot, so they would not obstruct that access because it will serve their lots as well.
Michael Kennedy asked Mrs. Ericksson if she was satisfied?

Bindu Ericksson replied yes.

Michael Kennedy asked if anyone wanted to speak? No one came forward and he closed the public hearing.

He said there has been a lot of discussion recently about the area of Linda Vista and Miller Creek about potential development. He thinks it would be appropriate to consider what the County Surveyor has been talking about, which is the potential development far exceeds the limited access for that area. There is also potential for new access that may include a new bridge the Bitterroot River. He asked if it would be appropriate to add a waiver requirement for those kind of extra improvements that may be required in the future?

Horace Brown answered condition no. 6 addresses that.

Michael Kennedy asked him if that condition included a bridge if it was ever required?

Horace Brown said, since the condition stated “second access,” and, if it required a bridge, he would assume that it included it.

Lisa Moisey said that condition was placed in the list because the subdivision is located in an area of wildland/residential interface and subdivision regulations require subdivisions in those areas to have 2 access routes. In cases where it is not possible, an RSID waiver is placed on the plat to allow for possible future access routes.

Michael Kennedy said it sounded like there had to be an additional waiver to include bridges off-site.

Colleen Dowdall, Deputy County Attorney, said it would require a separate condition and this is similar to the one in O’Brien Creek. The County has not added that to its subdivision regulations yet because it is something we want to require of developers. She said the Commissioners can add it if they feel it is necessary for public health, safety and welfare, although she conceded she was not sure if it would withstand a challenge with regard to whether this area would be considered such a district.

Barbara Evans agreed with Commissioner Kennedy that the County needs to do this and get it into the regulations. She asked Lisa if it was true that this proposed subdivision was in the wildland interface regulations and does this district fit in that area?

Lisa Moisey said this area has been noted as a wildland/residential interface and that is the reason why condition no. 6 was placed.

Barbara Evans said the County needs another bridge in that area but she does not like imposing conditions that are not in the regulations. She agreed that the County needs to get it into the regulations as quickly as possible but, since this development is in the wildland/residential interface area, she supports putting that condition in since there is a regulation for it.

Michael Kennedy asked if everything in the Miller Creek/Linda Vista area is in a wildland/residential district? If that is so, there is a limitation of how much traffic can pass through it.

Lisa Moisey said staff and the appropriate fire jurisdiction evaluates subdivisions on a case by case basis. In this case, the area is virtually void of trees but it has grasses which could result in a wildland grass fire. She is not aware of any map that specifically outlines a “district.”

Colleen Dowdall said they define what a wildland/residential interface is. They also hear comments from the fire jurisdictions which tell the County whether a particular development meets that requirement. Because it is in that area, condition no. 6 is appropriate but it only has to do with a second access out of the subdivision. What the fire standards were intended to do is to provide people for a way out, especially if there was a cul de sac. In terms of providing for an RSID waiver for a bridge across the Bitterroot River for future development, she is less comfortable with that because it is not something that’s been in the regulations.

Michael Kennedy said he recalled that they added that to the condition to the subdivision on the west side of the Bitterroot regarding Maclay Bridge.

Fern Hart commented that that bridge situation is more than fine.

Colleen Dowdall said she was still uncomfortable with that because it is not a regulation. But it is an identified current need.

Fern Hart moved that the Board of County Commissioners grant the three variance requests, which includes variance from required sidewalks, from the limit for the length of rural cul-de-sacs, and from the regulation which requires no lot shall have an average depth greater than 3 times its average width, and that they approve the Evans’ Ridge subdivision which is a Planned Variation and a 9-lot residential subdivision, located on 63.38 acres along Trails End Road, south of Miller Creek Valley, based on the findings of fact and contingent on the conditions listed below. Barbara Evans seconded the motion. Motion carried 3-0.

I. Plans for paving, grading, and drainage shall be approved by the County Surveyor prior to filing of the final plat.

II. The developer shall show on the face of the plat a 100 foot front setback for Lots 1, 2, 8 and 9. Plans shall be approved by OPG prior to filing of final plat.
III. The covenants shall state the following:

A. The No Build Areas shall be kept as open space, free of structures. For the purposes of this district, structure is defined as “Anything constructed or erected with a fixed location on the ground.” Structures include all buildings, mobile homes, walls signs, billboards, carports. The following uses are expressly permitted in the No Build Areas: Fences (except for Lots 4, 5 and 6), roads, utilities, water wells, land rehabilitation, weed control recreational uses and agriculture.

B. Residential sprinklers shall be required in all homes within this subdivision.

C. Ornamental trees and shrubs should not touch any buildings. When planting the property owner shall select trees, shrubs, and vegetation that limit or retard fire spread. The developer shall outline suggested types of vegetation as per Article 5-1(5)(H) of the Missoula County Subdivision Regulation.

D. Roof Construction shall be limited to the use of only Class A or Class B fire-rated roofing materials.

E. Flowers, ornamental shrubs, fruit trees and gardens may be susceptible to damage from wildlife unless property fenced and protected. The planting of native vegetation is recommended for landscaping and revegetation. All fruit trees shall be properly harvested so as not to allow an accumulation of rotting organic matter which is a prime wildlife attractant.

F. The following shall be added to the covenants: “The exterior of all buildings shall be constructed with materials which are non-reflective and of natural colors which blend with the background landscape. Metal roofs are allowed provided they are a natural color and are non-reflective.”

IV. The developer shall enter into a development agreement with the County for the purpose of requiring residential sprinklers in the homes in this subdivision. The development agreement shall be filed along with the final plat.

V. The 30’ private access drive serving Lots 3 and 4 and the 60 foot easement serving Lot 6 shall have a 12 foot wide all-weather surface with wider sections every 150 feet to allow for the passing of the Rural Fire Department’s Tanker Trucks. An approved turnaround shall be provided at the end of the driveways. Plans for the access drives shall be approved by the Missoula Rural Fire District prior to filing of final plat. Plans for the turnarounds shall be approved by the Missoula Rural Fire District upon issuance of a building permit.

VI. 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 the assent of the owners to waive their right to protest a future RSID/SID for the construction of a second access route and may be used in lieu of their signature on an RSID/SID petition.”

VII. Evan’s Ridge Road and the private access easement serving Lot 6 shall have a 54 foot right-of-way. Plans shall be approved by the County Surveyor prior to filing of final plat.

VIII. A one-foot no access strip shall be located along the frontage of Trials End Road except for the location of the intersection with Evan’s Ridge Road. Plans shall be approved by the County Surveyor prior to filing final plat.

IX. The following statement shall be included on the face of the plat: “Acceptance of a deed for a lot within this subdivision constitutes the assent of the owners to waive their rights to protest a future RSID/SID for improvements to Trails End Road, including sidewalks and the installation of sidewalks on Evan’s Ridge Road, and may be used in lieu of their signature on an RSID/SID petition.”

X. To preserve an open corridor for passage by mule deer in the area, fences shall be limited to the buildable portion only of Lots 4, 5 and 6. No fences shall be allowed on the no-build zone of these lots. This statement shall be noted on the face of the plat and approved by the Office of Planning and Grants prior to filing of final plat.

There being no further business to come before the Board, the Commissioners were in recess at 4:07 p.m.
The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Kennedy was in Bozeman attending the 1996 Wheeler Business Roundtable held at the Holiday Inn there. In the afternoon, Commissioner Evans attended a meeting of the Judicial Standards Commission in Judge McLean’s office.

Memorandum of Understanding -- Commissioner Evans moved and Commissioner Hart seconded that Commissioner Hart sign the Memorandum of Understanding as Acting Chair. The Memorandum confirms that the parties, Missoula County, Mineral County, Montana Department of Environment Quality, and Incident Command, agree to the allocation of specific responsibilities upon termination of the derailment emergency, which resulted in the release of chlorine, potassium cresylate, and sodium chlorate, as per the terms set forth. The Memorandum was returned to Michael Sehestedt for further handling.

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

The Board of County Commissioners met in regular session; all three members were present in the afternoon. Commissioner Evans was out of the office until noon. In the evening, Commissioners Hart and Kennedy attended a presentation and discussion of the electric utility industry hosted by MEIC at the Chamber’s meeting room.

Monetary Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated April 25, 1996, between the Missoula County Park Board and Target Range School District, stating that the Missoula County Park Board agrees to provide up to $1,000.00 in matching funds for capital improvements for the Target Range School District project to develop a play structure, as per the terms set forth. These funds must be expended before April 11, 1998. The Agreement was returned to Leslie Bailey, Office of Planning & Grants, for further handling.

Memorandum -- Chair Kennedy and Commissioner Fern Hart signed a Memorandum to Shirley Faust, Supervisor, Clerk and Recording, requesting to exempt the Sapphire Drive roadway establishment petition from the usual $75.00 processing fee, citing that this project is potentially a Rural Special Improvement District.

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Evans was out of the office all day. In the evening, Commissioner Evans attended the RSVP Banquet.

DAILY ADMINISTRATIVE MEETING

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

Loan Agreement and Resolution No. 96-032 -- Chair Kennedy signed the Loan Closing Documents for Missoula County to enter into a loan in the amount of $499,987.50, with the Montana Department of Commerce, Board of Investments, on April 30, 1996, for the purchase of warehouse and adjacent property. The Commissioners then voted 2-0 for Chair Kennedy to sign Resolution No. 96-032, a Resolution authorizing participation in the Board of Investments Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (InterCap Revolving Program), approving the form and terms of the loan agreement and authorizing the execution and delivery of documents related thereto. The Loan Agreement was returned to John DeVore, CEO, for further signatures and handling.

Subordination of Mortgage -- Chair Kennedy signed a Subordination of Mortgage, entering Missoula County into a mortgage dated August 27, 1996, recorded February 24, 1987, in Book 254, Page 1072, Micro Records, and Millwood Systems, Inc. a/k/a USA McDonald Corp. d/b/a Norco Products (as mortgagor), whereby Missoula County agreed to subordinate the mortgage covering the premises described as Tract 12-A in Wornath Orchard Tracts, Tract 12, to Southern Pacific Thrift and Loan Association (lender), who has agreed to make a loan of $725,000.00 to USA McDonald Corp., d/b/a/ Norco Products, per the terms set forth. The Subordination of Mortgage was returned to Cindy Wulfekuhle, Grants Administration, for further handling.

Resolution No. 96-030 -- The Board of County Commissioners signed Resolution No. 96-030, authorizing the County Clerk and Recorder to make application to the County Treasurer of Missoula County tax deed on parcel SUID #5846500 in SW ½ SE ¼ Plat C-5 Sec. 27, T12N, R20W 4ac, which remain unredeemed in the Office of County Treasurer on November 14, 1995, the County Treasurer is hereby instructed to cancel 1990, 1991, 1992, 1993, 1994 and current year’s taxes on same.
Memorandum of Agreement — Chair Michael Kennedy signed a Memorandum of Agreement, dated April 30, 1996, between the East Missoula Lions Club and the Missoula County Park Board, wherein the Missoula County Park Board agrees to provide up to $1,800.00 in matching funds for capital improvements at the Mount Jumbo Lions Club Park, as per the terms set forth. These funds must be expended before April 11, 1998. The Agreement was returned to Leslie Bailey, Office of Planning & Grants, for further signatures and handling.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
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. At noon, Commissioner Evans attended the "Worthy Wage Day" rally on the Courthouse lawn sponsored by Child Care Resources.

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated April 30, 1996, pages 2-38, with a grand total of $156,603.71. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Resolution No. 96-031 -- The Board of County Commissioners signed Resolution No. 96-031 to vacate all of Bench Court located in the NW¼ of Section 15, T14N R19W, Principal Meridian, Montana, per the attached Exhibit A, which is on file at the Clerk & Recorder’s office.

Certificate of Survey -- The Board of County Commissioners signed a Certificate of Survey for the purpose of boundary relocation for six tracts of land located in the E½ of Section 1, T13N, R20W, and the SW¼ of Section 6, T13N R19W, P.M.M., Missoula County Airport Industrial District, Tracts 1 and 2, owner of record Scott G. Cooney, and Tract 3 and Portion A, owner of record, Missoula County Airport Industrial District.

Certificate of Survey -- The Board of County Commissioners signed a Certificate of Survey to relocate common boundary lines between adjoining properties outside of a platted subdivision, for two tracts of land located in the south half of Section 36, T14N, R20W, P.M.M., Missoula County Airport Industrial District: Portion A, owner of record Dodd Development Company, transfer to Tract 3, C.O.S. 3858, and Portion B, owner of record Missoula County Airport Industrial District, transfer to Tract B-2, C.O.S. 3687.

Certificate of Survey -- The Board of County Commissioners signed a Certificate of Survey to relocate common boundary lines between adjoining properties outside of a platted subdivision, for two tracts of land located in the south half of Section 36, T14N, R20W, P.M.M., Missoula County Airport Industrial District, Portion A, owner of record Kirby S. Christian & Scott G. Cooney, and Portion B, owner of record Missoula County Airport Industrial District.

Plat -- The Board of County Commissioners signed the plat for Momont Industrial Park, Phase 2, amended Lot 9 (relocation of common boundary - Lot 9 and Tract 3), located in the SW¼ of Section 36, T14N R20W, P.M.M., with the owners of record being Shirley E. Alsbury, Calvin P. Alsbury, and Jennifer L. Alsbury, and Missoula County Airport Industrial District.

Letter of Intent to Lease -- The Board of County Commissioners signed a Letter of Intent to Lease a portion of the property located at 2417 Earnest Avenue, commonly known as the old Pepsi Cola Building, to Ryan Distributing who agreed to pay $4.50/sq. ft. for 4,560 sq. ft. of warehouse space and 440 sq. ft. of office. The lease commences on May 1 and runs for a term of 6 mos. with two additional 6 month options. The document was returned to John DeVore, CEO, for further handling.

Lease Agreement -- The Board of County Commissioners signed a lease agreement between the County of Missoula and the Horsemen’s Council for a term of one year, commencing on May 1, 1996 and terminating April 30, 1997 for the amount of $1.00.

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (HARLAN)

Kathleen Smith, Paralegal, County Attorney’s office, said this was a consideration of whether to approve three family transfer exemptions for parcels located in the E½SE½ of Section 13, T12N R20W as described in Book 14 Micro, Page 228 less those parcels as set forth in COS 2510 and COS 1541 for Russell Lee Harlan and Hazel Harlan.

Russ and Hazel Harlan have submitted a request for a family transfer exemption for a 69 acre parcel located at the "Y" where Miller Creek Road splits into Upper Miller Creek Road and Lower Miller Creek Road. Mr. and Mrs. Harlan propose to create three family transfer parcels of one acre each for transfer to their adult children, Judith O'Brien, Sandra Johnson and Douglas Harlan. Judith proposes to locate her parcel below Miller Creek Road and Douglas proposes to locate his on a hill North of Miller Creek Road. Sandra does not know yet where she would like to locate her parcel. Judith plans to build right away. The Harlans have submitted three separate Affidavits in order that they may obtain three separate approvals so that Judith may have her parcel surveyed to begin building and Sandra and Douglas may wait to have their parcels surveyed. Zoning in the area is CA-3 (1 du/5 acres) below the road and Suburban Residential (1 du/2 acres) above the road.

The history of the parcel is as follows: The property has been in the Harlan family for many years. Russ and Hazel Harlan owned this and other property with William and Gladys Harlan. In June, 1968, this and other property was transferred into the joint ownership of Russ and Gladys Harlan. Missoula County owns right-of-way parcels for Miller Creek Road of approximately 11 acres which intersect the property pursuant to COS 2510 and COS 1541.
According to the records kept by the Missoula County Surveyor's office, the applicants have not used any exemptions to the Subdivision and Platting Act.

Michael Kennedy asked if Russell and/or Hazel Harlan were present and if they would please come forward and identify themselves.

Russell Harlan and Hazel Harlan both came forward and identified themselves.

Michael Kennedy explained to them that, in the family transfer process, it is the responsibility of the Commissioners to ask questions to determine if this is an attempt to evade the Montana Subdivision and Platting Act.

Fern Hart asked if their children were young?

Russell Harlan answered that they only have these three children.

Fern Hart said she understands that their daughter is ready to build and wants to have this surveyed. Also, it is possible to ask for all three exemptions without designating the other areas.

Michael Kennedy noted there were no further questions from the Board and opened the public hearing. No one came forward, and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the three family transfer exemptions for Russell Lee Harlan and Hazel Harlan for parcels located in the E ½ SE ¼ of Section 13, T12N R20W as described in Book 14 Micro, Page 228 less those parcels as set forth in COS 2510 and COS 1541, to their adult children in that there does not appear to be an attempt to evade the Montana Subdivision and Platting Act. Fern Hart seconded the motion. Motion carried 3-0.

CONSIDERATION OF: SUBDIVISION FOR LEASE/RENT (WILLISON) CLINTON AREA

Lisa Moisey, Office of Planning & Grants, said this was a request from Vern and Alvina Willison for a subdivision for lease or rent at their property located at 12405 Hawk Lane, which is about 1.5 miles east of the Clinton Store. The Willisons are seeking approval for a second dwelling unit on their 4.85 acre parcel. The 1975 City/County Comp Plan designates this area suburban residential which recommends a density about 2 dwelling units per acre and this property is also located in the Clinton activity circle, which is unzoned in Missoula. The outside access to this subdivision will be provided by Hawk Lane, which is a public roadway, 50 foot right-of-way. Hawk Lane is not paved, however, having a graveled driving surface of 24 feet. Subdivision regulations do not require paving of Hawk Lane but staff has recommended that the applicant file a document of record waiving the right to protest future RSID/SID for improvements to Hawk Lane or Swartz Creek Road, which intersects with Hawk Lane, which would include participation in a dust abatement district. An individual well is presently in place for the existing home and an additional well will be drilled for use by the second home. Because no community or municipal water system with 1000 gallons per minute minimum fire flow is provided, subdivision regulation 3-7(2) requires the applicant to file an RSID/SID waiver, stating that at such time a community or municipal water system is available, the property-owner shall be required to participate in the RSID, which is also condition no. 2.

The applicant has requested one variance from the subdivision regulations for pedestrian walkways. Staff has reviewed this variance and recommends approval of the variance, given the reasons of note in the applicant’s packet and that this is a rural subdivision with one additional dwelling unit and minimal pedestrian traffic. Staff recommends approval of the subdivision for lease or rent based on the findings of fact.

Michael Kennedy asked if anyone representing the Willison’s was present and wished to speak on this issue. No one came forward.

Fern Hart moved that the Board of County Commissioners grant the variance request from sidewalks for Willison’s subdivision for lease or rent, located at 12405 Hawk Lane, about 1.5 miles east of the Clinton Store, based on staff recommendation and that this subdivision is in a semi-rural area. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners approve Vern and Alvina Willison’s request for a subdivision for lease or rent, located at 12405 Hawk Lane, about 1.5 miles east of the Clinton Store, based on the findings of fact and staff recommendation and contingent on the conditions listed below. Barbara Evans seconded the motion. Motion carried 3-0.

1. The applicant shall record a document waiving the right to protest participation in an RSID/SID for improvements to Hawk Lane and Swartz Creek Road, including sidewalks or pedestrian walkways, and participation in a dust abatement district, and may be used in lieu of signatures on an RSID/SID petition. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land depicted herein.

2. The applicant shall record a document waiving the right to protest participation in an RSID/SID for the installation of a community or municipal water system. 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.
CONSIDERATION OF: THOMPSON HOMESITES (2-LOT MINOR SUBDIVISION -- SUMMARY PLAT)

Sam Islam, Office Planning & Grants, said Thompson Homesites is a proposal for a 2-lot subdivision. It is located in the Potomac Valley, about 10 miles east of Bonner. The subdivision totals 12.67 acres, with Lot 19A being 7.67 acres and Lot 19B being 5 acres. There are two existing residential structures on the property, a guest house and a main residence where the owners live and plan to remain. They would like to divide the 12.67 acre property so that each home is on a separate lot. The property is bounded on all sides by single family residential land uses. Access to the property will be from West Fork Bear Creek Road on the north end of the property. The road is County owned, graveled, 20 feet in width and within a 60 foot right-of-way. The property is unzoned. The 1975 Missoula County Comprehensive Plan designation is Rural Low Density Residential District, which recommends density of up to one dwelling unit per 10 acres. The property, furthermore, is outside the Potomac activity circle. Staff does not recommend approval of this subdivision for the reasons listed in the staff report. However, this morning, he, Colleen Dowdall and other staff members had a discussion. Colleen pointed out in the subdivision regulations there is a section which allows a developer to offer mitigating efforts which may allow them to recommend approval of this subdivision. They came to the conclusion that, if the developer offers 8-10 acres of land as a conservation easement, either by acquiring it or dedicating that piece of property within this subdivision, they may recommend approval of this subdivision. If it is approved, they recommend approval of the variance requests based on the findings of fact.

Barbara Evans asked Sam, in his discussion this morning, if any discussion was held with the owners of the property, so that they are aware of the mitigating efforts?

Ron Ewart, Eli & Associate, said he represented Bob and Terry Thompson and their son, who were all present. They feel they meet the Comprehensive Plan because density is only one factor. They meet all the services. There are two existing homes on the parcel so approval of this subdivision will not create any more impacts and the rural feeling would not be disrupted. For mortgage purposes, the Thompsons have found out from their banker that it would definitely help their financial situation if they were to get this subdivision for paying off the mortgage on the main house and it assists in estate planning purposes. This subdivision accesses County roads. So, he reiterated that density is just one factor; there are many others to be considered.

Michael Kennedy asked the Surveyor if the roads in the area are well-maintained?

Horace Brown answered yes.

Fern Hart asked why they did not ask for a family transfer?

Ron Ewart said he had explained that option to the Thompsons and they considered it. However, they decided to keep the subdivision “clean” and they did not mind going through the subdivision review because they thought it would go through okay. This way, both Bob and Terry Thompson’s name will be on both titles and they can decide what they want to do.

Barbara Evans asked about a conservation easement?

Ron Ewart said he felt they should take this through as a subdivision and see how that would fair. He is hesitant about dedicating 8-10 acres to a conservation easement when they only have 12 acres.

Allen Holbrook, owner of 140 acres to the west of the property, said he wanted it noted that this property is not surrounded by subdivision. He agreed, however, that the roads are well maintained and they are in the fire district. It is about 5 air miles to the fire station but a they are talking about putting a firetruck at Bear Creek. He said he is in support of this subdivision.

Bob Thompson, applicant, said the covenants which they bought the land under in 1973 is when this subdivision of the 20 odd lots was developed and said that each lot was subdividable once. If you bought a 12 acre lot, you would obviously not meet the current density regulations. When he first talked to Lisa Moisey, she said that this was zoned one dwelling unit per 5 acres. A month after he got the permits, he was then told it was a 1 per 10 density. He said, as Ron had stated, they want to be forthright on this subdivision request. Others in his area have more homes than is allowed in this zoning and they have not bothered to go through the legalities.

Terry Thompson added that they have complied with every requirement except the density. Nothing would change if this stayed in their names. The reason they did not do the family transfer was because the land is already in both of their names. They feel they would have been tried to avoid the law by doing a transfer to their son and then transfer it back to their names. This was the honest way to do it.

Fern Hart moved that the Board of County Commissioners approve the variance request for sidewalks or pedestrian walkways and the variance request to the surface width requirement for West Fork Bear Creek Road from 24 feet to 20 feet for Thompson Homesites subdivision, located in the SW¼ of the NE¼ of Section 18, T13N R16W, P.M.M., in Potomac Valley about 10 miles east of Bonner, based on the findings of fact. Barbara Evans seconded. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners approve Thompson Homesites subdivision, located in the SW¼ of the NE¼ of Section 18, T13N R16W, P.M.M., in Potomac Valley about 10 miles east of Bonner, based on staff recommendations and based on the conditions listed below. Barbara Evans seconded. Motion carried 3-0.

1. Grading, drainage, erosion control, road and driveway plans shall be approved by the County Surveyor.

2. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat:
"The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever."

3. Access and approach permit shall be approved by the County Surveyor prior to filing the final plat.

4. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to West Fork Bear Creek Road and Bear Creek Road to access the property, including but not limited to paving and sidewalk based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

5. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for community services, including but not limited to public water, public sewer, and dust abatement based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

6. Covenants must be filed with the final plat which shall address the following (The following additions to the covenants shall not be amended without prior approval of the Missoula County Board of County Commissioners):

a. The owner and tenants be provided with a copy of the brochure titled *Living With Wildlife*.

b. If domestic animals are kept by property owners on property, they shall be confined within the property of their owner, shall not be permitted to become a nuisance or annoyance to neighbors, and sturdy cages or fences should be built to protect them from wildlife. These domestic animals have no defense against predators and can be an attractive food source to many wildlife species.

c. Horse or livestock feed shall also be stored in a secured area, not accessible to wildlife. Salt blocks and feeding platforms for deer or mineral blocks for horses shall not be allowed on any premises.

d. A minimum unobstructed width of not less than 20 feet and an unobstructed clearance of 13 feet 6 inches for any driveway over 150 feet in shall be provided.

e. Dead-end driveways in excess of 150 feet shall be provided with approved provisions for the turning around of fire apparatus.

f. The property owner shall create a defensible space for fire protection purposes as outlined in Appendix 7, Vegetation Reduction Guidelines of *the Missoula County Subdivision Regulations*.

7. The water supply for fire protection purposes for the existing and proposed structures shall be approved by the appropriate fire jurisdiction prior to plat filing.

HEARING: PETITION TO CREATE A COUNTY ROAD (SAPPHIRE DRIVE -- OFF MORMON CREEK ROAD)

Horace Brown, County Surveyor, said this was a petition to create a County right-of-way on what is now private right-of-way on several roads in the Sapphire Drive area off Mormon Creek. The County cannot do an RSID on private rights-of-way.

Michael Kennedy asked him if was willing to accept it if it is constructed to County standards?

Horace Brown answered yes. What he will accept now is County right-of-way. He will accept County road after the SID is created.

Michael Kennedy opened the public hearing.

William Cooper said he lived on Diamond Court, which is in the area that is involved. He did not know about this meeting until his wife mentioned the day before. He feels he should have been notified by mail.

During the recent rainy season, the cul de sac he lives on almost required 4-wheel drive during the worst part of the rain and he is concerned about the base under the road and what would have to be done at what cost. He would also like to know how much the County right-of-way would infringe upon his lot?

Horace Brown answered, in most cases, it will fall in what is the private right-of-way now.

Michael Sehestedt, Chief Deputy County Attorney, said we will have this hearing and, after the Commissioners have heard public comment, a County Commissioner and the County Surveyor will go out and inspect the proposed road. The Board of County Commissioners will then make a decision.

Tim Wolfe, Territorial Engineering, said they have not done any field surveying on the ground so at this point they cannot answer Mr. Cooper’s question, where the easement boundary is. Once the RSID is in place and they do the field survey, they will do their best to fit the conditions and stay within the easement lines as they exist.
Michael Sehestedt asked if sub-base is included in the RSID cost?

Tim Wolfe said they put in a certain amount, but they have not done any testing or digging to see how much is there. That will come with the authorization to do the RSID.

Michael Kennedy said there is some expectation that the road, if this is adopted as a County road, it will be constructed to County standards. That requires a good strong base to prevent the problem that is causing the RSID to begin with. He asked what the width of the proposed paved surface?

Tim Wolfe answered over 24 feet paved surface.

Michael Sehestedt said the side courts are all proposed at 22 foot paving.

Michael Kennedy said he understood that, from Mormon Creek Road, it would be paved 24 foot surface width to the southerly boundary of an extension of Lot 5. The proposal is to reduce it to 20 foot width, depending on what the County Surveyor allows.

Fern Hart said Mr. Cooper said this was the first time he had heard about this and she had thought the County notified folks of these matters that affected them.

William Cooper said, about 2 weeks ago, he received notice on the first proposal to pave the road but he did not receive anything on this one.

Michael Sehestedt said he did not know why he did not receive notification on this proposal as his name was on the mailing list of people to be notified.

Douglas Koester, 605 Ruby Lane, said he lives on the cul de sac and does not understand if this is the plan they have for where the road is going to go.

Michael Kennedy answered they don't even have the preliminary design on this project yet. They don't know if the existing cul de sac is within the bounds of what the proposed right-of-way might be.

Michael Sehestedt said what they have petitioned before the Commissioners is essentially to open these existing private roadway easements as County roads. Some of the problem occurs because, what is actually on the ground may not conform to what is proposed.

Tom Hocevar said he resides on Coral Lane. A year ago, he applied for an RSID and there was a petition out at that time for a waiver of protest on their water and well. The Ruby and Coral cul de sacs are on a community well system. He asked if that waiver of protest still stand?

Michael Sehestedt answered that he did not believe that the water and road issues are related. All the Commissioners are dealing with here are the road issues. He said he would have to look over the paperwork Mr. Hocevar referred to before he could give him a good opinion.

Michael Kennedy asked if there was any more comments from anyone in the audience? No one came forward and he closed the public hearing. This issue will be decided on May 15, by which time a County Commissioner and the County Surveyor will have viewed the site.

HEARING: PETITION TO ABANDON PORTION OF ROAD ACROSS PROPOSED C BAR C ESTATES SUBDIVISION (DAVID CARPENTER)

Horace Brown, County Surveyor, said this was a petition to vacate a road believed to be a County road as the same exists in a portion of the NW¼ of Section 19, T12N, R19W, P.M.M. in the C Bar C Estates. The road may or may not have been created on the ground as it is not evident today.

Michael Kennedy asked him if it was used today for any road purpose?

Horace Brown answered not today.

Michael Kennedy opened the public hearing.

Zane Sullivan, Sullivan and Tabaracci, Attorneys at Law, said he was representing Mr. David Carpenter, the owner of the proposed C Bar C Estates subdivision. The petition has attached to it diagrams that purport to locate the road as it may affect C Bar C Estates. That location is not approximate. There is question of whether the road actually crosses C Bar C Estates but they assume it does or at least is close. He said, of more importance, is that after this road leaves C Bar C, it crosses an area called Trail’s End Estates, a platted subdivision. Mr. Brown commented that this road intersects very close to some homes and may even run through some homes. So, obviously the road has not been used in recent years. He is not aware of appearing on the ground at all. Because C Bar C Estates' proposed plat ran into this issue, he asked the Commissioners to vacate this road and allow them to continue the C Bar C Estates project.

Michael Kennedy asked if anyone else wanted to speak on this issue? No one came forward and he closed the public hearing.

Horace Brown wanted the Commissioners to know that they are not vacating the right-of-way for Trail’s End.
Michael Kennedy said, as part of this process, a County Commissioner and the County Surveyor will go to the site to inspect it and make a report and a decision will be made on May 15.

HEARING: PILGRIMS PARCELS (6-LOT RESIDENTIAL SUBDIVISION) PRELIMINARY PLAT

Lisa Moisey, Office of Planning & Grants, said this is a request from Tom Bastian and Steve Jackson for a 6 lot subdivision of Lot 67 and 68 of Dinsmore Orchard Homes Addition #5, a 6.69 acre parcel of land. The property is zoned CRR-1, which allows 1 dwelling unit per acre. The 1990 Missoula County Comprehensive Plan Update designates this area as suburban residential and recommends up to 2 dwelling units per acre and water services are available. Given that the staff recommended that the developer outline two building envelopes per lot to anticipate future subdivisions of the one acre lots which are being created with this subdivision. At this time, sewer and community water are not available and individual wells and septic are proposed for these lots. Access to the subdivision will be from 7th street. On site access will be from a proposed new street, Grace Court, which will be constructed to meet County standards and dedicated to the public. Given that this property is surrounded on the east and west by parcels which could potentially be further subdivided, staff has recommended that the developer provide a 5 foot wide access easement between Lots 2 and 3 and 4 and 5. It is the staff’s opinion that these easements will provide an opportunity for future street connections to the east and west. The objective of this recommendation is to preserve options for the future. During the public hearing before the Planning Board, the developers withdrew their request for a variance from sidewalks and pedestrian walkways and agree to install a 5 foot wide asphalt path along one side of Grace Court, along with a waiver to protest future walkways on Grace Court in the event walkways on the other side are needed. The Planning Board voted 8-0 to recommend approval of Pilgrim’s Parcels with the conditions as noted in the staff report, except the language in condition no. 8 is not clear and condition no. 8 should read “The developer shall install a 5 foot wide asphalt pathway along one side of Grace Court. In addition, the following statement shall appear on the face of the plat and on each instrument of conveyance: ‘Acceptance for a deed for a lot within the subdivision shall constitute the assent of the owners to any future RSID/SID for pedestrian walkways on Grace Court and may be used in lieu of signatures on an RSID/SID petition.”

Michael Kennedy asked if there was a waiver for water and sewer?

Lisa Moisey answered that was in condition no. 7.

Steve Jackson said he and Tom Bastian are the owners and developers of this property. They agreed with the staff on every issue with the exception of the 54 foot wide easement at the end of the cul de sac, which is condition no. 3.

Tom Bastian agreed. He said he planned to build a home on parcel no. 5 and, as a future homeowner there, he believes there is an intrinsic beauty and safety in a cul de sac. Because of this, at the Planning Board meeting, they proposed a pedestrian bike path to preserve the cul de sac but to link to the community. The 54 foot easement was not discussed in the pre-application meeting. There was also no recommendation in the staff report, except the language in condition no. 8 is not clear and condition no. 8 should read “The developer shall install a 5 foot wide asphalt pathway along one side of Grace Court. In addition, the following statement shall appear on the face of the plat and on each instrument of conveyance: ‘Acceptance for a deed for a lot within the subdivision shall constitute the assent of the owners to any future RSID/SID for pedestrian walkways on Grace Court and may be used in lieu of signatures on an RSID/SID petition.”

Michael Kennedy asked if it was true that, if development did not occur, the road would not be built?

Lisa Moisey answered that was in condition no. 7.

Barbara Evans asked Tom what width he thought would be appropriate?

Tom Bastian replied that the bike and pedestrian path are the best way. They understand the reasons behind the proposed road at the end of the cul de sac but they would propose a 40 foot wide easement. Whether it be a 20 foot or 24 foot road, they believe it is ⅛ acre less of property that would be taken potentially in the future. Future homeowners that would link up with this road would pay for the construction of the original cul de sac.

Colleen Dowdall, Deputy County Attorney, said the statement by David Loomis that this requirement is above the letter of law is not true. There is a provision in the subdivision regulations to acquire this kind of access to plan for future development so that we will not require another access unto the street but this one roadway can be used for development that would occur adjoining it. The County discourages the developers from building a bicycle path or a pedestrian pathway at this time because there is no development there. What the County is asking for is the right of way so that, in the event something is built in the future on either side, the availability of this County road will be there to access that parcel.

Michael Kennedy asked if it was true that, if development did not occur, the road would not be built?

Colleen Dowdall answered that was true.

Fern Hart asked Horace about the proposal for a more narrow road and if it will it be a County road?

Horace Brown answered that he believed she was talking about a narrower right-of-way and it is up to the Commissioners if they want to accept that. He does not believe it would leave room for sidewalks or landscaping that may be required in the future. It would handle the road, ditches and the necessities of today.

Colleen Dowdall said she also wanted to address the developer’s concept for having a future developer help to pay for the existing cul de sac. There is a provision in the subdivision regulations that allows for this. It states that the County can provide for the construction of the access road to meet all of the standards in our road building standards with reimbursement to be obtained when and if future subdivisions occur along such access road, then the governing body can condition preliminary approval of any future subdivisions entering unto the off-site access road upon a subsequent subdivider reimbursing the original paving costs. If someone else is going to use that cul de sac in the future and these developers have paid to put it in, then they would share in that cost.

Michael Kennedy opened the public hearing.
Steve Jackson said they are going to build the cul de sac. What is being discussed is the easement on each side of the cul de sac. Staff is recommending that they donate that ground to easements to preserve options for future use. They do not know of any regulation stating that they are required to do that. They are already providing vehicular access through the road in Grace Court. However, he appreciated the Commissioners’ willingness to discuss this issue and he said they would be willing to compromise.

Martin Gallagher said he lives east of this project and has lived in the area for 35 years. From what he has seen and heard, he said it looks good to him. He has a 3 acre place. He said it is not necessary to worry about access to his ground. It may be to his advantage but, in all fairness, it just holds someone up. If it was up to him, he would say “narrow that road down if you’re going to put it in.” He feels like they are going to do a very nice job, clean the place up and put in landscaping.

Michael Kennedy thanked Mr. Gallagher for his comments and asked if anyone else wished to speak? No one came forward and he closed the public hearing.

Barbara Evans asked the Surveyor if it was necessary to have the 54 foot width?

Horace Brown answered if sidewalks and curbs and gutters will be required someday, then it must be 54 feet wide. If you will not need those, then it does not need to be 54 feet wide.

Fern Hart said she felt you had to be responsible about the future and she guesses that someday this area will be further developed.

Michael Kennedy noted that there is higher density development in the surrounding neighborhood and there is pressure within the County to extend high density development into the Orchard Homes area, even though this is west of Tower Street, which is rural area. He said he would feel remiss in preparing for some future event when through traffic will be needed. Reserving a right-of-way for that purpose is necessary to allow options for some future time.

Colleen Dowdall said the developers have withdrawn their request for a variance and they are going to put in curb and gutters and sidewalks and, under those conditions, the County needs 54 feet.

Horace Brown disagreed.

Lisa Moisey explained there will be a pedestrian pathway on one side of Grace Court but they are going to construct the street without curb and gutter.

Michael Kennedy wanted to go over this to be sure it was correctly understood. He said, even though they are going to do that, they do waive protest rights on an RSID to construct at a future time sidewalks on that court. He asked if that was correct? If that waiver is in place, then there is an anticipated future need of a right-of-way width that is equal to 54 feet.

Colleen Dowdall ….(unintelligible) called Grace Court, if it connects to either the east or the west and we only have a 40 foot right-of-way at that time, will not be adequate to serve developments on either side. Thus, in her opinion, this is the road that would be the busiest and we do need 54 feet on Grace Court. That is what the standards say. Typically, if a road is not ending in a cul de sac, we want 60 feet.

Fern Hart moved that the Board of County Commissioners approve the preliminary plat for Pilgrim’s Parcels, Lots 67 and 68 of Dinsmore Orchard Homes Addition No. 5, located on the south side of 7th Street about ½ mile west of the intersection of South 7th Avenue West and Tower Road, residential subdivision based on the recommendation of the staff and contingent on the conditions listed below. Barbara Evans seconded the motion. Motion carried 3-0.

1. Plans for paving, grading, and drainage shall be approved by the County Surveyor prior to filing of the final plat.
2. The following statement shall be included on the face of the plat and in each instrument of conveyance: “Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID for improvements to 7th Street West, including sidewalks or pedestrian pathways, and may be used in lieu of their signatures on an RSID/SID petition.”
3. The developer shall provide a 54 foot wide access easement centered on the border between Lots 4 and 5 and between Lots 2 and 3. Dedication shall be conditional upon the construction of a roadway within this easement.
4. The developer shall show two building envelopes per lot. Building location will be restricted to a site within these envelopes. Building envelopes shall be shown on the plat and approved by the Office of Planning and Grants prior to filing of final plat.
5. The developer shall contribute $50.00 per lot to the large diameter hose fund, to be approved by Missoula Rural Fire prior to filing of final plat.
6. The crossing for the irrigation ditch must be engineered to support a minimum of 60,000 pounds. Plans shall be approved by Missoula Rural Fire prior to filing of final plat.
7. The following statement shall appear on the face of the plat and in each instrument of conveyance: “Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID for municipal sewer and water, and may be used in lieu of their signatures on an RSID/SID petition.”
8. The developer shall install a 5 foot wide asphalt pathway along one side of Grace Court. Plans shall be approved by the County Surveyor prior to filing of final plat. Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID for walkways.
Barbara Evans noted that condition no. 8 should read “…pathway along one side of Grace Court.” Also, acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID for walkways.

Fern Hart said that was the intent of her motion.

Michael Kennedy said the motion was to accept the staff recommendation with a few changes with respect to the pathway.

Barbara Evans said she does not see anything in the staff report that calls for the east-west connection.

Tom Bastian stated it is in condition no. 3.

Barbara Evans said it says “between Lots 2 and 3.” That was not clear to her.

Tom Bastian asked Colleen if the language they talked about was part of the approval?

Colleen Dowdall replied that it is the language that would require future subdividers to contribute to the construction of this cul de sac. She had language that was proposed by the developer.

Fern Hart said she has to read it before signing it.

Michael Kennedy said the motion includes language that would allow reimbursement for construction of facilities, reimbursement to this development interests from another future development interest. He asked if that was part of the motion?

Fern Hart said it is. They will only construct the cul de sac circle.

Colleen Dowdall said they will construct Grace Court to the cul de sac and if anyone develops on the east or west and they use the cul de sac, they would condition the approval of those subdivisions on them building their own access from the cul de sac to their property and reimbursing these property owners on a pro rata basis for their costs of the road.

Barbara Evans asked if clarification of pro-rata was needed?

Colleen Dowdall answered that it was explained the regulations.

Barbara Evans asked if that was considered part of the motion?

Fern Hart replied yes.

HEARING: SAWMILL MEADOWS (SUMMARY PLAT AND REZONING REQUEST) RATTLESNAKE AREA

Pat Keiley, Office of Planning & Grants, said this was a request by Allen Fetscher, represented by WGM Group, to rezone property described as the S½ NE¼ and the N½ SE¼ of Section 34, T14N R9W, P.M.M., from C-A1 to Sawmill Meadows rural zoning district and to also create a 5-lot summary subdivision called Sawmill Meadows summary plat. The reason for the rezoning and the subdivision is to allow for the creation of parcels smaller than 40 acres which the existing zoning encourages. He wished to cluster the homesites to place the remaining the acres in common areas and a conservation easement which will ultimately limit the effects of the natural and wildlife resources in the area. The property is located in the upper Rattlesnake Valley in Sawmill Gulch. The property is 160 acre piece of land. The proposal calls for 5 homesites which will which will occupy approximately 23 acres. Of that 23 acres, approximately 6.72 acres will be buildable area and those are designated on the plat inside the circles of 2 circles. Then ½ acres is the area that each of the houses will actually use. 12 acres is designated for common areas and are for Lots 1, 2 and 3. These are existing fenced pasture areas. 123+ acres are for conservation easement.

There are 22 rezoning criteria and he summarized them. There are 2 Comprehensive Plans for the area. Most recent is the 1995 update of the Rattlesnake Valley Comprehensive Plan and the other is the 1975 Comprehensive Plan. Both call for this land as open and resource, maximum density 1 dwelling unit per 40 acres. There were 2 letters from the Long-Range Planning Staff of the Office of Planning & Grants. He then went through the 10 reasons why they believe this subdivision complies with the Comp Plan.

The intent of this rezoning and subdivision is to maintain the rural character of the area by clustering the homesites and not splitting them into 40 acre tracts, by proposing the conservation easement, the single family residential building sites that are secluded from each other and to have circular lots which respect the natural topography. A criteria of zoning asks if the proposal encourages the most appropriate use and staff recommends that it does. Access to the proposed subdivision is by Sawmill Gulch Road, which is a 60 foot graveled easement, approximately 10-12 foot in surface width. This leads to a private road, which has a 50 foot graveled easement and a 14 foot surface width. There are driveways to the lots that are connected to a private road. According to the subdivision regulations, the 1400 foot of the on-site private road would be required to be paved. According the Missoula County zoning resolution, the private driveways would be required to be paved. The applicant has proposed a new zoning district called a Sawmill Meadows rural zoning district and this would not require the driveways to be paved. Staff supports this because of the nature of the rural character of the area.

There are seven variance requests which are listed in the staff report. The cul-de-sacs mentioned are better termed T-turnarounds, which would be at the end of each driveway. So there would be private road that turns into the driveway and has a T-turnaround. Staff recommends approval of the variances based on the findings of fact.
The applicant is proposing to upgrade Sawmill Gulch Road. They are proposing to raise the existing grade 2 feet, move the road approximately 4 feet away from the gully and existing drainage course. The applicants are proposing to widen the road from 10-12 feet to 14 feet, which is the width of the existing private road and the driveways. The applicants are proposing to install culverts to direct drainage and also install erosion mats to get the water off of the road, which presently runs down the road. This will reduce sedimentation run-off also. He displayed pictures of the water running on the road. The final road design will have to be approved by the Health Department.

Staff recommends approval of the zoning change, subject to the 2 conditions listed in the staff report and also recommends approval of the Sawmill Meadows summary plat, subject to the 7 conditions listed in the staff report, and based on the findings of fact.

Nick Kaufman, WGM Group, said property under discussion is 160 acres, shaped as a square. Under the current zoning, you would create 1 dwelling unit per 40 acres, creating 40 acre tracts. This would be putting large parcels into individual ownership and increase impacts to the site. They are not proposing a planned unit development but a rural zoning district. They are proposing 1 dwelling unit per 31 acres, 4 additional homes to the existing homes for 5 homesites on 160 acres. The PUD will allow for 1 dwelling unit per 10 acres or 16 homes on this site. They do not think that is appropriate, given its location and the sensitivity and topography of the site. So they are proposing the 160 acres, where, in 1987, a home and a barn were built, and add 4 additional homesites. Those will have individual lots but the 4 new homesites have building restriction lines that are taken care of in the covenants, so that the actual area of disturbance will happen within the circle shown, significantly reduced in size from what the actual lot is. The reason for the circular lots is to discourage fencing around the homes. They would like to see the homesites to blend in with the natural topography as much as possible. He went on to show the map to the Commissioners and describe where all the different features of the land were, what they were and what they had planned.

They have talked to the neighborhood groups in the Rattlesnake, the conservation groups, the fire department and the forest service. The City/County Health Board has reviewed this proposal because they needed a variance for one of the drainfields and the Board reserved in their recommendation for the variance the right to approve the design and surfacing of Sawmill Gulch Road and the roads inside the subdivision. The Planning Board unanimously approved the rezoning of Sawmill Meadows. He then showed the Commissioners photos of the road and the water and sedimentation run-off and described their plans to redirect it.

Michael Kennedy opened the public hearing.

Cass Chinske said he was representing the developer. He said this area could have been one of the most controversial proposals. What is being proposed is done is a very sensitive way. The Rattlesnake Homeowners’ Association and the Rattlesnake Valley Alliance were involved in the initial proposal and planning of this and were able to see what was being proposed before it became a formal proposal. They were also invited to tour the area and see where the homesites would be. The Montana Fish, Wildlife and Parks people were involved, especially those concerned for the wildlife and the topography. They were also invited to review the proposed subdivision. They found support for maintaining the rural character of the area and for their sensitivity of the wildlife populations. There was concern from everyone about improving Sawmill Gulch Road to conventional urban standards or even conventional rural standards. Their concerns were what would be the effects on the natural wildness of the public lands. This area contains a highly used recreational park, which includes foot, bicycle and horse traffic. No one wanted the road widened because they did not want the impacts to the naturalness or high speed traffic. This proposal addresses that, keeping the road narrow and rural, with safety turnouts, and they have support for this.

Daniel Palin, owner of property southwest of subject property, said Sawmill Gulch is in dire need of renovation. He believes this is a viable plan and he supports it. He concurs that the road should not be paved because they want to keep traffic speeds down. This development is proposed in a prudent and conscientious manner regarding both the wildlife and the topography. He encouraged the Commissioners to approve this request for zoning change and allow the subdivision to be built there.

Michael Kennedy asked if anyone else wanted to speak? No one came forward and he closed the public hearing.

Barbara Evans asked Counsel what a rural zoning district contains?

Colleen Dowdall, Deputy County Attorney, answered a rural zoning district is part of Chapter 6 of the zoning resolution. In there, there is a place whose purpose is to provide special design standards and requirements for a zone that has particular rural characteristics.

Fern Hart asked where the 22 conditions for a rural zoning come from?

Pat Keiley answered 12 come from state law and the others come from zoning resolution.

Fern Hart, addressing Horace Brown, asked who will maintain this road permanently?

Horace Brown, County Surveyor, replied the County maintains this road about twice a year. Part of the road is now in the City limits and is also maintained by the City.

Barbara Evans asked where it begins?

Horace Brown answered the City goes about halfway up the road from the recreation area then the County maintains the rest of it.

Fern Hart said the developers are proposing to reconstruct the road. She asked Horace if he will review their plans?

Horace Brown said yes. This will be a private road on a County right-of-way and it will be maintained when requested to do so.
Nick Kaufman apologized and said he had to leave because of another appointment. He said Allen Fetscher would answer any questions in his stead.

Fern Hart asked if any comment has been received yet from Five Valleys Land Trust?

Pat Keiley answered yes, they had talked with them on the phone to address their concerns. They responded that what’s worth being protected is being protected in this subdivision.

Michael Kennedy noted that there is sprinkler requirement but he did not notice any requirement for storage regarding the capacity of the well. He read that there was adequate supply for the existing house but there is no extension to that on what might be expected for the balance of the houses. He asked if there any further information on this and what kind of storage provision is there for fire protection?

Allen Fetscher said the existing well is 20 gallons a minute and they checked the well logs of most of the other properties and they expect most of the wells to come in that range. If they do, an additional welltrol (a small storage tank with an air pressure bladder) in the homes is all that will be required. This will be about 120 gallons of storage for a residential sprinkler for each house. The fire department was happy with amount. It was their suggestion.

Pat Keiley said there is a condition in the staff report that requires approval by the fire department for water supply for each of the houses in addition to the sprinklers for each house.

Michael Kennedy asked who else was served by Sawmill Gulch Road?

Horace Brown answered that it serves the recreation area.

Michael Kennedy asked, if an RSID is not formed, what will be done about dust abatement?

Pat Keiley said condition no. 12 addressed that.

Allen Fetscher said, because the nature of the water, which runs next to the road, and Rattlesnake Creek, they are not sure they want to use dust pallatives. They plan to work with the Health Board on how to handle the dust.

He noted that there is private road across Forest Service. That could be used as a route out for everyone in case of fire.

Fern Hart asked how good is this road if it is so rarely used?

Allen Fetscher said it is used probably daily by one local resident. But it can be used for emergency fire access. In the summertime, it is passable by a passenger car, but he does not think a fire truck could get up it. The road that will be built will allow fire trucks to access the subdivision. But the existing secondary road will allow residents to leave the area.

Pat Keiley said perhaps condition no. 15 should be modified, which talks about a second approved access route. The regulations say if you don’t have a second approved access route, you need an RSID waiver.

Fern Hart asked Pat if he would do that?

Pat Keiley replied yes. He asked if the Commissioners would be in favor of the condition reading that an second access route be approved as opposed to the RSID waiver?

Michael Kennedy said maybe he could do both.

Pat Keiley answered okay.

Fern Hart asked if there was any other property under the requested zoning change?

Colleen Dowdall replied that she did not know. For purposes of protest, just this parcel that is being rezoned.

Michael Kennedy said he heard that the meadows is where all of these houses will be located but it appears to him that Lot 2 and Lot 4 are outside the meadow.

Allen Fetscher said Lot 2 is adjacent to the meadow and the other is not in the meadow.

Michael Kennedy said Sawmill Gulch Road is toward the creek, which is not a way to design a road. What you would normally do is slope that upgrade and carry it across the road in the culverts so there is some opportunity to remove the silt before it gets into the ditch. What you will have with this kind of a drainage system is erosion. But it will have to be approved by the Health Department.

Jim Weatherly said, on Sawmill Gulch Road, they have purposely not put in a ditch on the cut side of the road which tends to decrease the amount of erosion. They have designed and built over 800 miles of forest service roads and they put in culverts to relieve the drainage so that water will not build up on the road in a quantity and/or velocity it cannot handle.

Michael Kennedy asked how they handle the siltation that occurs as a result of it traveling across the road?
Jim Weatherly answered by keeping the volume of the water down; not allowing it to build up. A reason they are proposing only a 14 foot wide road rather than a 2 lane road is this would be an excellent template for drainage purposes.

Michael Kennedy asked if this was an intermittent stream?

Jim Weatherly answered yes, it is flowing the remnants from the run-off. The only time it really flows is in the spring. Infrequently, it will flow when there is a heavy rainstorm.

Michael Kennedy asked, along Sawmill Gulch itself, will there be a basin?

Jim Weatherly said that is one of the things they will look at in the final design. You can see the old places where the old draw used to be where Sawmill Gulch used to run and most places, they put the road right at the bottom of the draw. By moving that out and putting the creek back in its original drainage basin, they can clean up the area.

Michael Kennedy said before there was a reduction of the overall width from 60 feet to 50 feet. He asked if the easement, for the most part, is a 50 foot wide easement?

Jim Weatherly replied yes.

Barbara Evans moved that the Board of County Commissioners grant the request to change the zoning from C-A1 to Sawmill Meadows Rural Zoning District for property legally described as the S½ NE¼ and N ½ SE¼ of Section 34, T14N R19W, P.M.M., contingent on the 2 conditions listed below. Fern Hart seconded the motion. Motion carried 3-0.

1. That development of the site shall be consistent with the rezoning site plan approved by the governing body.
2. That approval of the Sawmill Meadows Rural Zoning District rezoning allowing 5 lots be contingent on Health Department approval of 5 lots.

Barbara Evans moved that the Board of County Commissioners grant the 7 variances requested for the Sawmill Meadows subdivision summary plat, located in the upper Rattlesnake Valley in Sawmill Gulch, based on staff recommendation. Fern Hart seconded the motion. Motion carried 3-0.

Barbara Evans moved that the Board of County Commissioners approve the summary plat for Sawmill Meadows subdivision, located in the upper Rattlesnake Valley in Sawmill Gulch, based on the findings of fact and contingent on the conditions below. Fern Hart seconded the motion. Motion carried 3-0.

1. Plans for grading, drainage, sewer, sidewalk, and streets shall be approved by the County Surveyor prior to final plat filing.
2. That the following statement shall appear on the face of the final plat and in all instruments of conveyance:
   
   "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future sewer or water or dust abatement RSID/SID, and may be used in lieu of their signatures on an RSID/SID petition."
3. The Missoula Rural Fire District Chief shall review and approve plans for fire protection.
4. All new utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat:
   
   The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever."
5. Access and approach permits shall be approved by the County Surveyor prior to filing the final plat.
6. That sanitary restrictions be lifted prior to final plat approval.
7. That the developer pay a fee of $50.00 per lot for the purpose of maintaining the Missoula Rural Fire large diameter hose fund, to be paid prior to final plat approval.
8. That drainage plans of the finished subdivision, roads and driveways be supplied to the County Surveyor at the completion of construction, to be approved by the county Surveyor.
9. That the covenants comply with the Missoula County Subdivision Covenant Regulations, to be approved by the OPG prior to plat filing.
10. That all applicable Sawmill Meadows Rural Zoning District zoning conditions be met prior to plat filing.
11. The water supply for fire protection purposes for the existing and proposed structures shall be approved by the appropriate fire jurisdiction prior to plat filing.

12. That the homeowner’s association be required to on a regular basis to mitigate airborne particulate from the private road and private driveways prior to paving of the private road and driveways, to be approved by the City County Health Department prior to plat filing.

13. That the applicant improve Sawmill Gulch Road, as proposed by the applicant, from a point beginning where the road leaves the recreational area parking access road to a point at the intersection of the private road and Sawmill Gulch Road. The applicant proposes to "raise the existing grade two feet to move the roadway away from the drainage course. This will also better facilitate snow removal and keep spring run off away from the road surface. At 500 feet maximum intervals, the road would be widened with turnouts (22 foot surface). These turnouts will be intervisible and placed in areas that reduce the amount of disturbance needed for construction. Culverts and erosion control mats will be used to control sedimentation. The existing private driveway has a 16 foot subgrade and a 14 foot top. The turnouts will be 22 feet wide on the existing driveway," to be approved by the County surveyor prior to plat approval and after construction.

14. Covenants must be filed which shall address the following and shall not be changed without approval by the governing body:

   a. The owner and tenants be provided with a copy of the brochure titled Living With Wildlife.

   b. If domestic animals are kept by property owners on property, they shall be confined within the property of their owner, shall not be permitted to become a nuisance or annoyance to neighbors, and sturdy cages or fences should be built to protect them from wildlife. These domestic animals have no defense against predators and can be an attractive food source to many wildlife species.

   c. Horse or livestock feed shall also be stored in a secured area, not accessible to wildlife. Salt blocks and feeding platforms for deer or mineral blocks for horses shall not be allowed on any premises.

   d. A minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches for any driveway over 150 feet in length, to be approved by the appropriate fire jurisdiction.

   e. Dead-end driveways in excess of 150 feet shall be provided with approved provisions for the turning around of fire apparatus.

   f. The appropriate fire jurisdiction approve plans to create a defensible space for fire protection around the existing and proposed housing units. Vegetation shall be removed and reduced around each building according to slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guideline. Ornamental trees and shrubs should not touch any buildings. When planting, the property owner shall select trees, shrubs, and vegetation that limit or retard fire spread as suggested in Section 5-1. Roof construction shall be in accordance with Section 5-1. Tree spacing shall be in accordance with Appendix V of the Missoula County Subdivision Regulations, to be approved by the appropriate fire jurisdiction prior to filing the final plat.

   g. That residential sprinkler systems be required for each new lot/house within the subdivision, to be approved by the Missoula Rural Fire Department.

15. That the applicant obtain a legal access easement from the surrounding property owner(s) to provide a second (emergency) vehicular access from the Sawmill Meadows subdivision to Sawmill Gulch Road and, if there is not a second approved access route to the subdivision, that the following statement 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 the construction of a second access, and may be used in lieu of their signatures on an RSID/SID petition,” to be approved by the County Attorney prior to approval of the final plat.

16. That the developer supply and erect a stop or yield sign on either the private road or Sawmill Gulch Road, to be approved by the County Surveyor prior to approval of final plat.

17. That the following statement 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 any improvements to Sawmill Gulch Road, and may be used in lieu of their signatures on an RSID/SID petition.”

Pat Keiley read condition no. 15, which he had re-done, “That the applicant obtain approval in writing from the applicable surrounding property owners to use a second road access from the Sawmill Meadows subdivision to Sawmill Gulch Road and, if there is not a second approved access route to the subdivision, that the following statement 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 the construction of a second access, and may be used in lieu of their signatures on an RSID/SID petition.”

Michael Kennedy said he was not sure that is what we want to say.

Fern Hart said there are other RSID waivers.
Michael Kennedy said the one he was concerned about was that Pat suggested an “either/or” and he recommends “and.”

Pat Keiley nodded that he understood then verified that you would get the second access route “and” the RSID.

Michael Kennedy agreed. He said you don’t know what will happen in the future and you need that waiver anyway.

Colleen Dowdall said this waiver is to construct a secondary access. If we make a condition that they obtain an easement, that is the only change she would make to Pat’s suggested language.

Michael Kennedy said his concern is the quality of the road and the SID waiver have a quality characteristic that the easement would not.

Colleen Dowdall said one of the things that people who are trying to protect the resources up there are emphasizing is to not add additional roadways. She does not believe that we would want to improve this road to handle every-day traffic but to handle only emergency exits.

Pat Keiley said, then, should it read “that the applicant obtain an access easement from the applicable surrounding property owners.”

Allan Fetscher asked how about “legal access” instead of having to go to all the property owners to grant them that access? If someone has legal access to his property and he grants them the use of that legal access, then it is legal access.

Colleen Dowdall replied not necessarily. It may be a prescriptive easement or have restrictions or limits or it may even go away. Wording it “permission” could be a license which could be revocable, then we would not have a second access out.

Allan Fetscher said he has to close this transaction by tomorrow and is in a tight time frame. He is concerned that he may not be able to go around and get signatures from the affected property owners. He has verbal acceptance from the property owners.

Colleen Dowdall said he needs those by the time he files the plat. There is a risk involved.

Jim Weatherly asked if Pat’s motion could be implied that they have to have permission from all the property owners?

Michael Kennedy said they need to be very clear about legal access and we use the County Attorney’s definition.

Candace Fetscher said she is one of the applicants and wanted to suggest that Mr. Palin is here and so are they. All they are talking about is a guarantee for emergency exit. If they all agree here, in front of the Commission, that should be sufficient to satisfy their purposes. Then they will execute those easements for emergency purposes only.

Michael Kennedy said he believed the assumption was Mr. Palin will forever own that property.

Candace Fetscher said no, they would run the land if we were to execute those easements, which would run with the land, guaranteeing reciprocal exits for emergency purposes at a later time.

Colleen Dowdall said she questions it only across Mr. Palin’s property that you have to cross?

Candace Fetscher replied his easement is not a license or prescription.

Colleen Dowdall said it allows her access to her land. She is concerned that it is not his to give away. We cannot resolve this.

Candace Fetscher said she understands what Colleen is trying to say, but in terms of a condition, she is not sure that they not approve it until it is accessed but it is just being attached as a condition like all the other conditions.

Colleen Dowdall agreed, and that it would have to be satisfied prior to filing a plat.

Candace Fetscher said but it would not have to be with all adjacent landowners, just those that are affected to get emergency exits.

Pat Keiley responded yes, to get her back to a public way.

Barbara Evans said the intent of her motion was to provide a secondary way out should there be an emergency. She is willing to allow Counsel determine if it is satisfactory prior to plat filing.

Fern Hart seconded the motion.

Barbara Evans asked Pat Keiley if there was a change in his suggestion?

Pat Keiley said just about the legal access easement and then it will say “to be approved by the County Attorney prior to plat filing.”

Motion carried 3-0.

There being no further business to come before the Board, the Commissioners were in recess at 4:40 p.m.
The Board of County Commissioners attended the MACo District 10 and 11 Counties meeting which was held at the Larchmont Golf Course Operations Center.

**Youth Court Audit** -- The Board of County Commissioners reviewed and approved the audit for the Youth Court Restitution Account as submitted by Susan Reed, Auditor. The document was forwarded to Clerk & Recording for filing.

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**FRIDAY, MAY 3, 1996**

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

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**MONDAY, MAY 6, 1996**

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

**Audit List** -- Commissioners Kennedy and Hart signed the Audit List, dated May 6, 1996, pages 2-35, with a grand total of $224,525.50. The Audit List was returned to the Accounting Department.

**DAILY ADMINISTRATIVE MEETING**

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

**Payroll Transmittal Sheet** -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #09, Pay Date 4/26/96, with a total Missoula County payroll of $594,738.05. The Transmittal Sheet was returned to the Auditor’s Office.

**Professional Services Contract** -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and James Bigelow, D.D.S., an independent contractor, for the purpose of comprehensive dental treatment to Partnership Health Center patients, as per the terms set forth, for the period commencing April 1, 1996 through June 28, 1996, for maximum compensation in the amount of $2,000.00.

**Agreement** -- The Board of County Commissioners signed a utility relocation agreement between Mountain Water Company, the State of Montana Department of Transportation, and Missoula County, per the terms set forth, for Highway Project Missoula I-90 Airport Interchange, with a total estimated cost for the adjustments at $1,000.00, State/County to pay 75% and Owner to pay 25%. The Agreement was returned to Vaughn Anderson, Druyvestein Johnson & Anderson, for further signatures and handling.

**Resolution No. 96-033** -- The Board of County Commissioners signed Resolution No. 96-033, a resolution to adopt Sawmill Meadows Rural Zoning District, located up Sawmill Gulch in the upper Rattlesnake Valley.

**Agreement** -- The Board of County Commissioners signed a Memorandum of Agreement between Missoula County Park Board and Nine Mile Community Center, per the terms set forth, for the purpose of maintenance for the Nine Mile Community Center exterior painting project. Missoula County Park Board agreed to provide up to $760.00 in matching funds, with the stipulation that the funds be expended before April 11, 1998. The Agreement was returned to Leslie Bailey, Office of Planning & Grants, for further handling.

**Supplemental License Agreement** -- The Board of County Commissioners signed a Supplemental License Agreement No. 1 to License No. PBS-08P-96-9, between Missoula County and the United States of America, General Services Administration, which allows Missoula County the use of male and female shower facilities in the basement of the Missoula Federal Building/Post Office/Courthouse, per the terms set forth, commencing on April 29, 1996; additionally, Missoula County will have the use of two outdoor parking spaces at the Russel Smith Courthouse, 201 East Broadway in Missoula. The Agreement was returned to Judge Larson’s office for further handling.

Another item included:

The Commissioners approved a Contract extension for work on the Title V Juvenile Violence & Substance Abuse Prevention Plan for the amount of $2,500.00 as requested by Leslie McClintock, Grants Administrator.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
TUESDAY, MAY 7, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart was in Helena attending a MACo Budget Committee Meeting.

DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the Commissioners discussed the application for a tax incentive for Big Sky Brewing Company.

WEDNESDAY, MAY 8, 1996

The Board of County Commissioners did not meet in regular session. Commissioners Evans and Kennedy attended the Governor’s Conference on Infrastructure held in Billings through Friday, May 10th.

The Weekly Public Meeting scheduled for this date was canceled, as two of the Commissioners were out of town.

Site Inspections -- In the afternoon, Commissioner Hart accompanied County Surveyor, Horace Brown, on site inspections of the following: a petition to create a County Road (Sapphire Drive - off Morman Creek Road); and a petition to abandon a portion of road across the proposed C Bar C Estates Subdivision.

THURSDAY, MAY 9, 1996

The Board of County Commissioners did not meet in regular session.

FRIDAY, MAY 10, 1996

The Board of County Commissioners did not meet in regular session.

MONDAY, MAY 13, 1996

The Board of County Commissioners met in regular session; all 3 members were present. In the evening, the Commissioners and Jane Ellis, Chief Financial Officer for the County, traveled to Seeley Lake to meet with the SOS Hospital Board.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for the Justices of the Peace, for month ending the 30th of April, 1996.

Monthly Report -- Chair Kennedy examined, approved and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending April 30, 1996.

DAILY ADMINISTRATIVE MEETING

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

Subdivision for Lease/Rent -- Commissioner Hart moved and Commissioner Evans seconded the motion to approve the Roth Subdivision for lease or rent, located at 9900 Butler Creek Road, for Steve and Kim Roth, contingent on the conditions listed below. Motion carried 3-0.

1. The applicant shall contribute $50.00 per lot to the large diameter hose fund that has been established to provide a means for fire suppression in rural areas.

2. The applicant shall record a document waiving the right to protest a future RSID/SID for improvements to Butler Creek Road, including participation in a dust abatement district and pedestrian walkways, and may be used in lieu of signatures on an RSID/SID petition. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land depicted hereon.

3. The Applicant shall prepare a detailed management plan, outlining specific techniques which will be used to restore the designated riparian area with native plant species. Plans shall be approved by the Office of Planning and Grants prior to submittal of final plans.

Notice of Hearing -- Chair Kennedy signed a Notice of Hearing that the Board of County Commissioners will hold a public hearing to continue the 0.5% Local Option Motor Vehicle Fee in FY’97 in accordance with MCA 61-3-537 and as amended by House Bill 312, at the regular Public Meeting on 1:30 p.m. on June 5, 1996.
Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement between the Human Resources Council and the Missoula County Personnel Office, effective June 1, 1996, and ending September 30, 1996, as per the terms set forth, for an employment training activity known and described as “Work Experience,” to enhance the employability of persons who have never worked or have not recently worked.

Agreement -- Chair Kennedy signed a Supplemental Agreement to amend the Missoula Urban Transportation Planning Process Agreement of August 26, 1982, for the purpose of enlarge City and County membership on the Transportation Policy Coordinating Committee established by Section 1.A of that agreement, as per the terms set forth. The Agreement was returned to Mark Landkammer, Office of Planning & Grants, for further signatures and handling.

Certifications of Acceptance -- Chairman Kennedy signed Certifications of Acceptance for County Maintenance for the following:

1) Brandon Way, Road No. L-0826, ACM. No. 96-0007A, located in T12N R20W, Section 12, with the limits of acceptance being .049 miles;
2) Jamie Ann Lane, Road No. L-0825, ACM. No. 96-0010, located in T12N R20W, Section 12, with the limits of acceptance being .028 miles;
3) Linda Vista Boulevard, Road No. L-0805, ACM. No. 74-0171D, located in T12N R20W, Section 12, with the limits of acceptance being .084 miles;
4) Linda Vista Boulevard, Road No. L-0805, ACM. No. 74-0171E, located in T12N R20W, Section 12, with the limits of acceptance being .266 miles;
5) Linda Vista Boulevard, Road No. L-0805, ACM. No. 74-0171F, located in T12N R20W, Section 12, with the limits of acceptance being .174 miles.
6) Scott Allen Drive, Road No. L-0824, ACM. No. 96-0009, located in T12N R20W, Section 12, with the limits of acceptance being .231 miles;
7) Scott Allen Drive, Road No. L-0824, ACM. No. 96-0009, located in T12N R20W, Section 12, with the limits of acceptance being .231 miles;

The Certifications were returned to the Surveyor’s Office.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Ravalli County Courthouse for the purpose of increasing the awareness of HIV/AIDS related issues in the County and to decrease the number of new infections, as per the terms set forth, for the period commencing March 1, 1996 through June 30, 1996, for compensation up to $3,000.00. The Contract was returned to the Health Department for further signatures and handling.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Lori Randall, an independent contractor, to conduct HIV Needs Assessment Survey for 150 area educators, and provide one workshop for 30 educators, per the terms set forth, for the period commencing March 1, 1996 through June 30, 1996, for compensation in the amount of $1655.00. The Contract was returned to the Health Department for further signatures and handling.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and John Snively, D.D.S., an independent contractor, for the purpose of providing dental treatment to Partnership Health Center patients, per the terms set forth, for the period commencing April 15, 1996 through June 28, 1996, for a maximum compensation of $1,000.00.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and James Ouellette, D.D.S., an independent contractor, for the purpose of providing dental treatment to Partnership Health Center patients, per the terms set forth, for the period commencing April 1, 1996 through June 30, 1996, for a maximum compensation of $5,000.00.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Kent Watson & Associates, an independent contractor, for the purpose of developing site master plans for Riverside Park in Lolo, Montana, as per the terms set forth, for the period commencing May 9, 1996 through June, 1996, for maximum compensation in the amount of $3,000.00.

Agreement -- Chair Kennedy signed an Agreement between the Montana Department of Transportation and Missoula County for the purpose of purchasing six Preliminary Breath Testing devices for the County to enforce the drinking and driving laws, per the terms set forth, for the period commencing ten days from the date of execution of this Agreement and to be completed no later than September 30, 1996 and at a cost not to exceed $1,782.00. The Agreement was returned to Don Morman, Sheriff’s Department, for further signatures and handling.

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

TUESDAY, MAY 14, 1996

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

Audit List -- The Board of County Commissioners signed the Audit List, dated May 13, 1996, pages 2-36, with a grand total of $216,801.73. The Audit List was returned to the Accounting Department.
DAILY ADMINISTRATIVE MEETING

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

Resolution No. 96-034 -- The Board of County Commissioners signed Resolution No. 96-034, a resolution of intent to create Rural Special Improvement District No. 8923. A Public Hearing on June 5, 1996 will hear and pass upon all written protests against the proposed improvements, if any, which have been submitted by the deadline of June 3, 1996.

Agreement -- Chair Kennedy signed a Management Agreement employing broker Merilynn J. Foss, d/b/a Foss Management Service, to rent, lease, operate and manage the real property described as the warehouse building and adjoining grounds at 2147 Ernest, Missoula, Montana, per the terms set forth, commencing on this date and terminating May 31, 1997, paying compensation of 10% of rents collected to broker.

WEDNESDAY, MAY 15, 1996

The Board of County Commissioners met in regular session; all three members were present. In the morning, Commissioner Hart opened the Missoula Senior Games & Festival, which was being held at Big Sky High School; and, later in the forenoon, attended an award presentation at the Partnership Health Center.

DAILY ADMINISTRATIVE MEETING

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

Quitclaim Deed -- The Board of County Commissioners signed a Quitclaim Deed, conveying Lots 44, 45, 46, 47 and 48 in Block 1 of Cook’s Addition to Missoula, Montana to Louis V. Dubay to replace the deed missing from the contract dated April 19, 1938. The document was returned to Michael Sehestedt, Deputy County Attorney, for further signatures and handling.

Notice of Hearing -- Chairman Kennedy signed a Notice of Hearing with regard to the request for a tax incentive from Big Sky Brewing, setting the hearing for June 5, 1996 at 1:30 p.m.

Amendment to Agreement -- The Board of County Commissioners signed an Amendment to the Memorandum of Agreement signed August 24, 1995 between Missoula County and Women’s Opportunity and Resource Development Job Quest, increasing the total value of the Agreement to $203,908.00 to provide services to the expanding needs of the population served under the State GRA program.

Extension Letter -- The Board of County Commissioners signed a letter to John E. Kellogg, Professional Consultants, Inc., approving a 3-month filing extension for C Bar C Estates, making the new filing deadline July 30, 1996.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chairman Michael Kennedy. Also present were Commissioners Fern Hart and Barbara Evans.

DECISION ON WEED MANAGEMENT TASK FORCE REPORT

Michael Kennedy explained that there would be a decision on the Weed Management Task Force Report, and asked who would be making the presentation on the Report.

Fern Hart stated that she would like for Jerry Marks to present the considerations and that she would make a statement thereafter.

Jerry Marks, County Extension Agent, stated the Commissioners asked him to take the Task Force and although he was not an official member of that Weed Management Task Force, and pull some things together to give a report to them so they could make a decision. There was a meeting on April 23rd, at which the Task Force members met with the Weed Board, the County Commissioners, the Highway Department, and the County Road Department. This is in essence a follow up to that work. The Weed Management Task Force started meeting as a full group in December. The basic charge was to investigate the health effects of 2,4D and Tordon, research alternatives for weed management in county road right-of-ways and recommend a course of action for Missoula County. Part of his comments were in writing and he had some copies for those who were interested. The Task Force was divided on the issue of herbicides. The voted 8:4 to continue the use of herbicides as one of the weed management tools. They voted 6:5 with one abstention, to continue the use of 2,4-D and Tordon for road right-of-way weed control. The Task Force were more in unison in recommending the County Road Department implement an Integrated Roadside Vegetation Management (IRVM) program. This program concentrates more on ways that will enhance beneficial vegetation and less on noxious weed control. It also focuses on the questions, will the design and subsequent activities in the right-of-way enhance beneficial vegetation or will they promote noxious weeds. He pointed out that the Task Force, while they had put together a report, the report was never voted on by the full committee and is still in draft form. Basically he saw two choices. One choice, to continue the road right-of-way vegetation management program in its present form. The Road Department is responsible for mowing, design, seeding, acceptance of new roads, and the Weed District and landowners are more involved in the noxious weed control. The reasons for this could be the Weed Task Force were unable to reach a final agreement, and funding for developing and implementing an IRVM program are currently not available.
The second choice would be implementing an IRVM program with the County Road Department as the lead agency. The elements of this program would include: (a) Appointing an IRVM committee. The majority of its members are citizens to provide direction, development and implementation; (b) identifying existing vegetation and mapping of road right-of-ways; (c) monitoring vegetation; (d) establishing thresholds and prioritizing target species for action activities, with early control for new invaders; (e) approving vegetation treatments and this may involve one or more of the following: heat, and there was quite a bit of interest in hot water or steam, hand pulling, mulching, adding top soil, mowing, revegetation, biological control and/or herbicides; (f) which herbicides to be used, establish public notification program, and in five years evaluate the continued use of herbicides; (f) promoting vegetation, keeping snow removal and safety issues in mind (i.e. vegetation would attract more deer, thereby increasing more accidents along the road); and (g) exploring ways of funding the program specifically. These last two items were not specifically mentioned in the report. He felt they were important and, if we were going to have a program, they needed to be included. There are reasons for an IRVM program. On is technology moving noxious weed management towards a holistic concept. More emphasis is being placed on promoting beneficial vegetation which should result in less weed problems. Another is, the Road Department is placed in a very conscious role, as are other landowners and managers, both public and private, to deal with the noxious weed issue.

There may be other choices. For instance, some people are interested in a no herbicide program. The majority of the Task Force supported including herbicides as one of the available control tools. Current technology still requires the use of herbicides in some situations. He did not include that as an alternative in this proposal.

Listed in the selection of the IRVM Committee, are several criteria. It should include an uneven number of members, should have more citizen than agency representatives, should have at least two, but not more than four, members from the Weed Task Force to lend continuity to the whole process, should include representatives from each participating agency, and Missoula County residents representing various stakeholders, such as landowners, conservationists and citizens who live in both rural and urban areas. The Task Force will screen applicants and make recommendations to the County Commissioners. Future appointments would be achieved with the Weed Management Committee screening and recommending applicants to the County Commissioners.

Michael Kennedy asked, Commissioner Hart, if she would like to make her statement before they heard from the public?

Fern Hart stated she would. The Commissioners have received approximately 15 calls in favor of the minority report which is "no herbicide." They received only a couple of calls from folks very, very concerned about controlling weeds. They have a petition for a one year moratorium with about 150 signatures, and there were not specifically mentioned in the report. He felt they were important and, if we were going to have a program, they needed to be included. There are reasons for an IRVM program. One technology moving noxious weed management towards a holistic concept. More emphasis is being placed on promoting beneficial vegetation which should result in less weed problems. Another is, the Road Department is placed in a very conscious role, as are other landowners and managers, both public and private, to deal with the noxious weed issue.

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Katelynn Silvey said, she wanted to express her support for a moratorium on herbicide use on County roadways. She thought the County Commissioners have a responsibility to consider the public health effects more fully. She urged the Commissioners to support the IRVM program which would lead to eventually discontinuing the use of any of these compounds.

Mary Louise Chavers said, As a resident of Missoula County, she urged the Commissioners to support a one year moratorium regarding 2,4-D and Tordon. 2,4-D is very related to the Agent Orange that was used as a defoliant in Vietnam and there are plenty of Vietnam veterans that can attest to the effects on their health. She is also a person dealing with serious multiple chemical sensitivities that, at this time, made even the parks off limits because of the burning in her lungs, eyes and brain. She urged the Commissioners to support a one year moratorium. One other comment she wanted to make was that over 25 years ago, Matthew Fox, a former priest, wrote that if we did not make every effort to relate compassion to economics, then compassion is only a hollow and a pious sounding phrase and economics becomes a highly developed form of violence. All violence, including violence against creation in the name of economic progress, separates us from our true selves, from each other and who are mysteries of God and the Creator. We see the response that arises from the light within, response to that of the holy mystery in all beings and cares for all of creation. She believes herbicides and pesticides are at times a kind of systematic violence against us all that punishes us for living in the physical world. Being in the physical world is a blessing, it's not a curse. Sooner or later we need to realize that we are interrelated with the physical world. She urged the Commissioners to support a one year moratorium for the health of all of us.

Matt Thomas said, he urged adoption of the minority report and a one year moratorium. He pointed out that when considering the health effects of 2,4-D in particular, we should take into consideration it is a chlorinated organic compound, and is made in part with chlorine. Now since that report was issued, we've come to have a lot more clear idea in Missoula County what the health effects of chlorine are. They're not just in products. They're also in the element itself, and the way we can get rid of chlorine, which is completely unnecessary, is by not buying things that are made from it. We should take that very much into consideration because it's effects are not just on the roadside or right-of-ways sprayed with 2,4-D.

Brandy Schwank said, she resided in the Rattlesnake in Missoula. She is also on the Weed Board and did not feel she was in a position to make a statement about her stand, but wanted to bring to the Commission's attention something that she received in the mail that week that the public and the Commissioners should know about. This is a new joint study by the University of Minnesota and U.S. Environmental Protection Agency which found that particularly those who use cardenoxo herbicides like 2,4-D have a significantly higher risk of being born with central nervous system, circulatory, respiratory systems, genital and musculoskeletal defects. This study, and she was happy to provide it to the Commissioners, shares that, in particular, the highest level of birth defects were found with people that used 2,4-D and the also the highest number of birth defects that we found in children who had been conceived in the spring when their parents had been applying these pesticides. It was a new study that came out a couple of weeks ago, and she wanted to apprise the Commissioners of it.

John Rineel, 1575 Rineel Road, said, he was a member of the Task Force that met this spring, and he wanted to thank Commissioner Hart for facilitating it and allowing it to take place. He believed it was important to have had the opportunity to go through the process. He urged the Commissioners to support the IRVM proposal before them. He believes the debate over herbicide use, either on private land or certainly on roadways in Missoula County would continue and that it was not going to go away and the only hope for a solution is through the integrated vegetation roadside management plan. As a Task Force member he supported retaining the use of herbicides and that herbicides could be a very important part of the process and a very important tool in that tool box. In some instances in the past, they have been misused and applied perhaps less carefully than they should have been, but he felt they had a place in the plan.

Gail Gutsche said, she was a member of the Weed Task Force as well, and she noted that in Jerry's report, it says the Task Force didn't make a final vote on this report when in fact they did. The final vote was a majority recommendation for IRVM. She didn't want to call the report a "rough draft" anymore, and would say it was in second draft form. She wanted to clarify that there was a vote and the vote was for an IRVM. She stated she was a member of the minority who recommended to the Commissioners and were still recommending that the County go with no herbicides, and that they include a moratorium report. To give an example, Steve Harrell about 2,4-D and Tordon. She stated she was a member of the minority that is the nation's largest chemical lawn care company, suspended its use of the enormously popular 2,4-D because of its carcinogenicity. There was also other evidence that the California Transportation Department stopped using 2,4-D in the 70's. They said it was just not necessary and dangerous. She agreed with John that herbicides are obviously going to go on, but felt very strongly that 2,4-D and Tordon were not the way to go, because they are antique and dangerous. Also, at a very early Task Force meeting, County Attorney Dusty Deschamps talked to them and he actually said that it doesn't pay to control weeds with chemicals. It's a black hole. There is another way besides chemicals. Biological controls are the best longer-term solutions. That's what she advocated and recommended, and hoped the Commissioners would consider the minority report.

Steve Harrell, 629 Phillips Street, said, he also supported the moratorium on the use of herbicides on County roadways and supported the minority report. The reason for that is the long term effects of 2,4-D and Tordon simply are not known and that's seen by the fact that the Task Force couldn't agree on it. It was contentious and it was conflicting. And his opinion was if it's conflicting, if there's concern, there's doubt about the health effects, which was the charge of the Task Force. And it's implicit that it shouldn't be used and there should be more study. He agreed with a previous speaker to stop the demand for chlorine and other hazardous products by not continuing to buy 2,4-D and Tordon, and as fast as we did that, chlorine tanker cars running through this community would cease to exist.

Dan Corti, 2717 Raymond Avenue, said, he hated to take positions in public, but there were a couple of points he wanted to make. One was, he was disappointed to have been a member of the Task Force, as there wasn't more public involvement with the Task Force before they reached a determination, and then once determination or recommendation was made to IRVM, then folks who wanted to ban herbicides decided it was time to come to the public forefront again. Having spent a lot of time on that Task Force, he personally found that a bit disheartening. He believed the reason for a Task Force was to make a recommendation and at some point to follow that recommendation or not. But groups that participated in the process should do it as protocol. Another point he made was a lot of what we've heard about the effects
of herbicides are primarily based on acute use. The literature, at least in his mind, is not very sound on long term effects. What that meant to him was advocates who were taking a position of absolutely no herbicide use, in large part were not looking at the type of exposure on a fairly small amount of ground on roadides in Missoula County. In other words, it's a low level exposure that should not have the type of health effects that is seen with acute exposure.

Will Snodgrass, President of Chemical Injury Information Network Montana, said, he would like to make it clear that in no way did he want his name associated with either the majority or minority reports. He stated that both of these documents are very weak and very, very omissive and they stink more of political machination than they do of good science, plenty of which was presented contrary to what you've just heard from this gentleman. Given the vast amount of information that was presented about the short term effects of pesticide, a few exposure, the long term effects of pesticides and the effects on those communities in which the pesticides are manufactured, and he was talking most specifically about Chancerelli, Louisiana, where people spoke to the Task Force by way of video tape, stating that the cancer rate there is astronomically high where these products are made. He said, given that information, the fact that that information did not appear as part of the Task Force report, given the fact that health effects information which was presented in depth by experts such as Dr. Marion Moses, who also gave testimony contrary to that given by Mr. Corti, given that fact in the face of the fact that that information was not listed in this document, it is very clear that there is either an incredible amount of denial within our culture, including denial among those very environmental groups cult war the flag as they pretend to advocate on behalf of children. There's either a tremendous amount of denial or monkey business going on behind the scenes. Political powerplays, whatever. He felt the bottom line here is that the document which has been delivered to the Commissioners in the form of a majority report and in the form of a minority report is, in his estimation, a D-minus effort at best given the very, very obvious comparison between the information, which was presented and made readily available to the Commissioners and the Task Force members and what they had in writing before them. He said that he was truly ashamed of both documents and once again, did not want his name used in any way, shape or form as a stamp of approval of those documents. These chemicals do not belong in our environment. They do not belong around children, around water, their through the discussion of water. and the wildlife use in this day and age, at this time, in the face of a massive chemical spill in Missoula County is just completely unconscionable, in his estimation. He thanked Commissioner Kennedy for his very wise vote and the amount of effort he spent in researching this. He thanked Bonnie Druer and Glen Fairbanks, who could not be present, because truly these are the only two minority members of that Task Force who were willing to sign a document stating that they did not want the chemicals used anymore.

Mary Louis Chaver said, she wanted to add to her first testimony, approximately 32 years ago, she read in a book "Secrets of the Soil" by Peter Thompkins and another author, Byrd, Dr. Gerald Weisner, who was a science counselor to President John F. Kennedy, reported that use of pesticides is more dangerous than atomic fallout. When you think about the systemic violence on the health of migrating birds on the water. She noted when she first moved to Montana in 1982, it was in the fall, and there were public statements mentioning not to eat any of the birds, for example, the migrating ducks, because they were so full of Doline, the toxic pesticide, that they were not safe enough to eat. And when you think about migrating ducks, they don't spend a lot of time on the ground and yet they were too toxic to eat.

Barbara Evans said, echoed Fern's comments of appreciation for the Weed Task Force that put in so many long, arduous hours on this subject. She observed that Fern deserved additional, special credit for the amount of time that she put in on it and her dedication to help bridge this and make it a possible exercise for folks who gave their time. She agreed that there isn't enough information on these chemicals, and wished there were more. She stated that she did not favor a one year moratorium. This was a good group of folks who met. It was a balanced group. It was a democratic group. They put together over a long period of time a great deal of information, and as Gail said, they did vote, and their vote was a majority vote to support this IRVM program. She believed that the emphasis on a balanced program is very important. The members of this community, farmers and ranchers, they care. They care about the future and indeed they care about the future of the wildlife. We're covered with leafy spurge and as far as I know there is no control. Nothing to use for leafy spurge. She believed there are some methods of dealing with knotweed, but it's still not declining population in Missoula County. The folks whose livelihood depend on the use of a variety of methods of control for the weeds need to have options from which to pick. Our Surveyor's Office needs to have options from which to pick. She hopes that at some point we will have equipment available that can be used along the roadides that will use something like boiling water. And I know there are such machines around. She felt that Missoula County has led the way in trying to reduce the use of pesticides over the others. She repeated, we are known as the weed capital of the State. Every place we go the other Commissioners give us a very hard time because we don't use enough spray and they think what flourishes here is transported to there, and they don't like it and we understand that. We have tried to be very responsible in spending our money on biological controls and trying to find other ways. We have a weed district program in which our Extension Office works with the landowners that wish to have weed districts. She expressed that the majority Task Force report was very well done, very well thought out, and while there may be yet a ways to go, she believed the Commissioners needed to endorse and adopt the plan.

She had a question for the committee. Page 7 of the proposed draft report, the sunset clause was not quite as clear to her as the second page of this gray document that was given to the Commissioners. The gray document says "in five years evaluating the continued use of herbicides." On page 7 of the draft, she believed it was saying the same thing but was unclear about the end of the five years. “The privilege of using herbicides expires, pending an evaluation which shows continued use.” She asked for clarification as she didn't want to make a decision for something five years down the road. She was in favor of saying in five years those things will be re-evaluated, but was sure they would be re-evaluated on a continuing basis. She felt people would have more responsibility toward this continued use of herbicides. She noted that she would favor a notion to adopt this Task Force report, with the clear understanding that the evaluation of the use of these chemicals would be ongoing and with no definitive sunset clause. She noted that when there is very conclusive evidence that convinces us all that we need to stop using herbicides, and habitat for wildlife, economic situations for our farmers and ranchers are not affected by it, then at that time its use would be stopped. She felt a one year moratorium impractical as the weeds are ahead of us already, and we need to deal with these weed problems at this time.
rather than weed control. That is probably a very important because on a national level we found that public health is gaining some ground and interest in the chemical industry. We've had some losses of what we previously thought were used chemicals in recent years. The new addition to the National Geographic magazine to the Nation back to 1945. It's a truck that is clouding a beach some place on the east coast, and it says, "A cloud of the insecticide DDT billows over the beach and beach goers in 1945 as part of the overall mosquito control program." There is a very large sign on the truck that says, "Powerful insecticide, harmless to humans." The message here is that when the chemical industry began in its efforts to better life through chemistry, there was no intent by the chemical industry to design any kind of a product that would be harmful to the environment or to human beings. Clearly, though, that has happened. There are about 60,000 chemicals currently on the market, and of those 60,000 epidemiological studies have been on fewer than 2,000. He believes an accurate statement was that in every case where those studies have been conducted over a long period of time, inherently they have been found to be carcinogenic on some level. Admittedly the dosage is different and dosage is the problem, dosage is an issue. At the same time when we have found virtually 100% of all the chlorinated hydrocarbons that are constructed in this country are carcinogenic, the ones that we've studied, and it is reasonable to assume that at least one of the other 58,000 that are available products in the industry, are also carcinogenic.

The problem really is to deal with it in terms of public health. The chemical industry has tried producing literally tens of thousands of these products and the products range from products we're acquainted with like PVC pipe, the "C" being Chlorine and polyvinychlorine pipe that everyone of us have probably in our houses, and the by-product of that construction, of course, is the deadly poison called dioxin which is also a by-product of many pesticides. As a national policy, this country is bound to remove that product from the environment as it has CFC's. Remember CFC's a few years ago when they were considered damaging to the ozone layer. And by national policy and international treaty the governments of virtually every nation, industrialized nation, took the position that CFC's need to be removed from the environment for the health and safety of everyone living on this planet. It seems sometimes it takes a decision that is in the best interest of the people to change our lifestyle even so slightly, so we can improve our health. The arguments about the improved issues is the primary case in argument for how to get the world, and so it's not a seeming alternative. He noted that the alternatives, and some are not nearly as effective for any species let alone exotic and persistent species, and stating that we will use chemicals to eradicate those, is simply not a statement of fact. We have continued to increase the use of herbicides since they have become available, basically since World War II and there hasn't been a single weed anywhere that has been eradicated by their use. There are two reasons why herbicides work. They're persistent and they're cumulative. And when you have persistent weeds like spurge and knapweed, that's important. They're cumulative in body fat in human beings and it doesn't go away. An analogy of this is we've all seen the picture of a small child in a ghetto some place in a poor black coast. As that child takes in lead, one day the child ends up in the hospital. The reason they didn't develop lead poisoning at that moment, it was a cumulative effect within their body and all of a sudden it becomes the straw that broke the camel's back and the child ended up in the hospital. That's true of all these persistent chemicals and that's why we work and that's why they're cumulative. That's why they need to be removed from our environment. We've taken some grand steps by national policy to remove CFC's and find substitutes for them, and we're working very hard, and, in fact, engaged in, public discussion right now about dioxins. We've all recently been exposed to the failure of the chlorine tank cars up in Alberton, so we know how dangerous these things can be. For that reason, it is difficult for me, when we have that kind of evident and it is that kind of discussion on how we eliminate these chemicals from our environment, to continue their use. He urged the Commission to strongly endorse and adopt the minority report. He also favored IRVM as a very strong and comprehensive method to deal with what is perceived to be the enemy and meet the needs of Missoula County.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners accept the second draft proposal outline from the Weed Task Force and implement the program for creating an IRVM Committee. The motion carried on a vote of 3-0.

Barbara Evans stated, she supported this report, but understood reality and would support what conceivably could be done with the resources available, and as much as the County Surveyor is able to do in his department, to give it the very best effort possible, recognizing there may not be enough money to do everything.

Fern Hart noted, her motion was to accept the report as a recommendation and the Commissioners would attempt to implement as much of it as possible, given their resources.

Michael Kennedy stated, before proceeding further he would also like to give the credit the Task Force deserves, and particularly to Commissioner Hart, for beginning this process. He acknowledged the decisions the Task Force made were split, and it has always been difficult to know the problem and the seriousness of it. The report comes with some disappointment. We thought and continue to think of some of the finest minds in Missoula County would come back to us with a recommendation. After their very long and very difficult work, they are split on that recommendation and again, it does show how difficult this problem is. He favors an IRVM. With respect to what is contained in this and how this proceeds, he believes, we have no money. Yes, however, we have very strong leadership. As that back, both on the Commission and in the Task Force. He believes that ultimately these projects will be accomplished, first through leadership. The funding is an obstacle. It is not a reason not to begin the process and the process will begin.

Gail Gutsche asked if Commissioner Evans would clarify on the sunset clause.

Barbara Evans said, she would accept the report. She believed what was being said was that we will continue to evaluate from now until forever on the issue.

Gail Gutsche said, the key part here on page 7, the privilege of using herbicides expires. So we actually were intending to put a deadline on it at five years, unless it could be shown to be contributing to the IRVM. We definitely want to be looking at some average. We want to look at IRVM every year to monitor it and evaluate it, etc. We think the critical word here is expires. We did intend to actually have an expiration clause unless it could be shown to be contributing.

Fern Hart asked if Commissioner Evans wished to withdraw her second.

Barbara Evans said, no.
Matt Thomas said, I'm confused about where the minority report and the moratorium come in on the vote. He inquired if there would vote on that as well.

Michael Kennedy stated, the IRVM was the issue, and there was no motion coming forth on adoption of either one of those. He noted his understanding as when the IRVM got its endorsement at this meeting a few minutes ago, the IRVM committee will be appointed and those issues will be debated. He noted the difficulty of the split decision among the Task Force members on how to proceed. Clearly, there wasn't a significant majority that favored what the majority reported in the report. He believed that it is more appropriate to again look at this in committee rather than act on it now. And there are several reasons for that. Primarily, we wouldn't want to insult the committee on opinion going in. One of the purposes of this is to do some of this hard work and we're hoping that that will happen.

Barbara Evans said, she didn't want the folks who submitted the minority report to think that it was useless because it was not. She stated they made very good points and they were trying to accomplish what we all hoped would be accomplished. The statement that is on page 7 says, "over the course of five years herbicide use is to be removed with the long-term goal of eliminating herbicide use altogether." If we're able to do that, that would be absolutely wonderful, and the work you have done is not wasted. She believed we need to take the first step first, and as we proceed to continue to try and find ways to reach that goal.

Michael Kennedy said, you'll notice there is some difference of opinion even on the Commission. He noted he would not rephrase what Commissioner Evans said, but noted they would have to be the judge. It was his judgment that herbicides need to be eliminated from the environment because they are carcinogenic and we need to do what we can, as soon as we can. Saying that, that doesn't necessarily mean it is going to happen next week. He noted that not bringing the choice of the minority versus majority to the Commission was a better choice for that reason. He expressed his hope that the committee will develop a program that is going to suit everyone.

DECISION ON: RELOCATION OF RIGHTS-OF-WAY ALONG UNION CREEK AND WASHOE CREEK

Horace Brown explained the inspection of the location of what is a primitive road at this time. In some cases it is very hard to identify. He believed that the road was located and normally used in that area during the time by teams, and not used as an automobile road. He stated he did not have a recommendation on this road. It exits and accesses property that in some cases is accessed by BLM road. He stated whether or not it was necessary to relocate the right-of-way would be left up to the Commissioners.

Michael Kennedy asked, would that be your report on the other two as well? We may as well deal with them at the same time. That's the Bear Creek Road and part of Washoe Creek Road southeast of Potomac.

Horace Brown, County Surveyor, said those are a relocation of right-of-way which exists on the land, but does not follow existing road. What we are doing here is transferring the right-of-way to the road as it exists today. He suggested they transfer the right-of-way to those locations.

Michael Kennedy said, as a part of this overall process, we did hold a hearing on them in the past and we set today for a decision on it, and Horace Brown and I visited the sites, and looked at what the access was to existing properties and to other properties which may feel that they have access and only access over these particular roads. We have come to the conclusion that there is no useful purpose in Missoula County maintaining the ownership and the location of the right-of-way that is different than the traveled way in the case of Union Creek and Washoe Creek southeast of Potomac. He recommended that the Commission accept the petition as requested.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners accept the petition to relocate the rights-of-way along Union Creek and Washoe Creek southeast of Potomac. Motion carried on a vote of 3-0.

Michael Kennedy asked, we're relocating the right-of-way to the traveled way, does that require vacation or can we do this in the same motion?

Terry Sehestedt, Deputy County Attorney, advised to simply move to grant the petition of relocation, and that would effectively vacate the relocating.

DECISION ON PETITION TO RELOCATE RIGHT-OF-WAY ON BEAR CREEK ROAD

Fern Hart moved and Barbara Evans seconded the motion to grant the petition relocating the right-of-way, Bear Creek Road. Motion carried on a vote of 3-0.

DECISION ON REQUEST TO ABANDON PORTION OF COUNTY ROAD RIGHT-OF-WAY NORTH SIDE OF WASHOE CREEK

Fern Hart said, she attempted to do the two relocations in one motion.

Horace Brown said, that was fine with the relocation. But the vacation, in order for it to be clear, he believed there should be one motion for that so that the action taken would be clear in the future.

Terry Sehestedt advised a motion should state either the granting or denying the petition to vacate an unused portion of County road right-of-way which runs along the north side of Washoe Creek in the area between Potomac and Garnet, in Sections 21, 22, and 23 and 27, Township 13 North, Range 15 West, Principal Meridian Montana.

Horace Brown said, there is a part of the Washoe Creek Road and Bear Creek and one other road that the right-of-way that exists on the ground does not follow where the road is today. What we're doing then is moving the right-of-way to the road. He requested that a motion to vacate Washoe Road be separate from the prior motions to the record would be clear.
Fern Hart asked about the County Surveyor's recommendation on that vacation.

Horace Brown said, that would be left up to the Board.

Michael Kennedy said, the purpose of all three of these petitions is to notice that there are road rights-of-way through areas that are not currently being used, and in some instances never have been used. There are traveled ways that either do have or do not have rights-of-way, which some will relocate and the balance of the roads, which are not needed for any purpose, will be abandoned. That was the intent of the whole exercise.

Fern Hart moved and Barbara Evans seconded the motion to accept the petition to vacate an unused portion of County road right-of-way which runs along the north side of Washko Creek in the area between Potomac and Garnet, Sections 21, 22, 23 and 27, Township 13 North, Range 15 West. Motion carried on a vote of 3-0.

CONTINUATION OF THE HEARING AND DECISION ON PETITION TO CREATE A COUNTY ROAD, SAPPHIRE DRIVE OFF MORMON CREEK ROAD

Michael Kennedy opened the public hearing, and asked for anyone who wished to speak on the Sapphire Drive petition. There being no one, the public hearing was closed.

Horace Brown said, his recommendation to the Board was granting this Petition to create the rights-of-way for the road. He stated that he and Commissioner Hart looked at the roads and the right-of-way, once they have created the new road, would meet the requirements of the County.

Michael Kennedy said, this is a contingent creation. It is contingent in that the County Surveyor is not willing to approve a road unless it is approved to County standard.

Terry Sehestedt advised, what you need to do if you're going to open a road, is to grant the current petition to open the road, and then subsequently a new survey done of the road as opened. Whenever you make an order establishing a County road, you are going to have to appoint road reviewers and direct the Surveyor in conjunction with the Assessor to determine the damages, if any, the property owners have suffered as a result of the openings. What we do is balance the damages against the benefits to determine whether or not to establish them. Basically, what you do is grant the prayer and declare the road a County road. You can do that contingent upon creation and then completion of SID for improvements to the road.

Barbara Evans moved and Fern Hart seconded the motion that the petition to create Sapphire Drive, Ruby Court, Ruby Lane, Coral Lane and Diamond Drive, in Section 3, Township 11 North, Range 20 West, from Mormon Creek Road to Tract 6-B1 and 6-B2, Certificate of Survey Number 3896, be granted. Motion carried on a vote of 3-0.

Michael Kennedy asked if the action for declaration of a County Road was needed now.

Terry Sehestedt advised it could be followed up on at a later time.

DECISION ON PETITION TO ABANDON PORTION OF ROAD ACROSS PROPOSED C BAR C ESTATES SUBDIVISION

Horace Brown reported that he and Commissioner Hart inspected the area where this road is supposed to exist and no road was found. The right-of-way was possibly there at one time. There is now a subdivision which occupies that area. He asked that in this vacation they reserve the area that crosses Trails End Road. He explained that Trails End Road has a 60 foot easement and it should be retained.

Michael Kennedy said, the public hearing will be continued for comment on that road abandonment.

John Kellogg, Professional Consultants, Inc., said, on behalf of David Carpenter, encouraged the Commissioners to abandon the nonexistent road.

Michael Kennedy asked, if there others present to testify. There being no one, he closed the public hearing.

Barbara Evans moved and Fern Hart seconded the motion that the Board of County Commissioners approve the petition and grant the request to vacate a road believed to be a County road as the same exists in a portion of the NW1/4 of Section 19, Township 13 North, Range 15 West, P.M.M., Missoula County, excepting that portion of Trails End Road, a monument and a 60 foot easement of the nonexistent road. Motion carried on a vote of 3-0.

HEARING ON FAMILY TRANSFER - ROBERT AND NIVA RESNER

Kathleen A. Smith, Paralegal, Missoula County Attorney's Office, explained the consideration of whether to approve two family transfer exemptions for a parcel located in the NW1/4NW1/4NW1/4 and SE1/4NW1/4 of Section 25, T12N, R17W, as described in COS 528 for the Robert L. Resner and Niva T. Resner Family Trust. Robert and Niva Resner, co-tenants, have submitted a request for two family transfer exemptions for a 120.40 acre parcel located in the Swan Valley northeast of Condon. Mr. and Mrs. Resner propose to split the parcel in half for transfer to Mrs. Resner's adult sons and their spouses, Daniel L. and Linda Lockwood and David A. and Coral Lockwood. The comprehensive plan designation is open and resource (one dwelling per 40 acres). The history of the parcel is as follows: Mrs. Resner, formerly known as Niva T. Lockwood, purchased the parcel along with her husband, Floyd C. Lockwood, in 1969. Mr. Lockwood passed away in 1980, and Mrs. Resner married Robert L. Resner. The parcel was placed into Trust in May, 1992. The terms of the Trust allow property held in trust to be disposed of at the discretion of the trustees. According to the records kept by the Missoula County Surveyor's office, the applicants have not used any exemptions to the Subdivision and Platting Act.

Michael Kennedy asked, for a representative of the Resner's to come forward as he had two questions.
Dan Lockwood, 1688 North Avenue West, said he was the family's representative.

Michael Kennedy asked, how he was related to the Resners.

Dan Lockwood replied Niva Resner was his mother.

Michael Kennedy said, since this is a subdivision of land, the Commissioners needed to ask questions that would lead them to conclude whether or not the process was used to evade the subdivision regulations of the County of Missoula.

Fern Hart said, she appreciated Mr. Lockwood's mother dealing equally with the two sons, and inquired if Mr. Lockwood planned to live on the property.

Dan Lockwood replied that he thought some day.

Fern Hart asked, if there was a road going into the property.

Dan Lockwood said, a logging road.

Fern Hart asked how they accessed the road.

Dan Lockwood said through the road that has been there for years and explained there was a county road that road that goes in the front along the property.

Fern Hart asked for the name of the road.

Dan Lockwood said, Hollow Peter Road.

Michael Kennedy inquired of the Lockwoods would hold the land and ultimately subdivide the property for their children, in the same way it was subdivided for you.

Dan Lockwood replied, yes.

Michael Kennedy said, noted on the northern part of the property there was an access road, but the way it was intended to be split, but there was no access to the southern part.

Dan Lockwood replied it was on the west side of the property.

Michael Kennedy opened the public hearing. Upon no one requesting to speak, the public hearing was closed.

Barbara Evans moved and Fern Hart seconded the motion that the Board of County Commissioners approve the request for the two family transfer exemptions for the property located in the NW1/4NW1/4SE1/4NW1/4 and SE1/4NW1/4 of Section 25, T21N, R17W, as described in COS 528 for the Robert L. Resner and Niva T. Resner Family Trust, in that there does not appear to be any attempt to evade the Subdivision Act. Motion carried on a vote of 3-0.

HEARING ON FAMILY TRANSFER - ROBERT E. AND MYRNA A. RICHARDSON

Kathleen A. Smith, Paralegal with the County Attorney's Office, said, this is a consideration of whether to approve two family transfer exemptions for a parcel located in the SW1/4SW1/4 of Section 17, T15N, R22W, for Robert E. and Myrna A. Richardson. Robert and Myrna Richardson have submitted a request for two family transfer exemptions for a 3 acre parcel located in the Nine Mile area northwest of Huson. Mr. and Mrs. Richardson propose to split the parcel in half for transfer to their adult daughters, Aline Haacke and Kathleen Alger. The comprehensive plan designation is open and resource (one dwelling per 40 acres). The history of the parcel is as follows: Mr. and Mrs. Richardson purchased this 3 acre tract from Missoula County in June, 1965, and the surrounding 118 acres in 1955. According to the records kept by the Missoula County Surveyor's Office, the applicants have not used any exemptions to the Subdivision and Platting Act.

Michael Kennedy asked, for a representative of the Richardsons to come forward.

Fern Hart inquired if the history was they first bought this particular parcel and then bought the land around it.

Robert Richardson replied it was not and as they had bought the 118 acres minus the 3 acres in 1955. He believed it was in 1966 they bought the 3 acres from the County.

Fern Hart asked, if it was for his daughters.

Robert Richardson replied for my daughters.

Fern Hart asked, if they planned to build on it.

Robert Richardson said, one is figuring on building fairly soon. The other one probably, but did not know how soon.

Fern Hart said, I'm assuming they are grown girls.

Robert Richardson said, yes.

Michael Kennedy opened the public hearing on the petition. No one responded and the public hearing was closed.
Barbara Evans moved and Fern Hart seconded the motion that the Board of County Commissions approve two family transfer exemptions for a parcel located in the SW1/4SW1/4 of Section 17, T13N, R22W, for Robert E. and Myrna A. Richardson, in that there does not appear to be any attempt to evade the Subdivision Act. Motion carried on a vote of 3-0.

HEARING ON REQUEST TO ABANDON PORTION OF GLO ROAD IN SIESTA ACRES #3, RATTLESNAKE AREA

Michael Kennedy asked, the petitioner to come forward and explain the petition and why the petition ought to be granted.

Daniel Faehland, Realty West, said, he had sold a lot of the Siesta Acres and there is a GLO road that runs through it. He stated he discussed it with Charlie down at the Forester's Office, and he helped him write the petition. The petition asked to vacate or relocate the GLO road, and that it was the same type of road that the Commissioners had just dealt with in the Potomac area, where the easement on the GLO map runs contrary to the existing road. The roadway is serviced by Upper Rattlesnake Drive and so as to move the roadway off the lots onto the traveled right-of-way would be more than sufficient to take care of this. This creates a cloud on the title, not only for the lots, but also for the neighbors in the area, and that's why we're asking to have that road relocated.

Michael Kennedy asked, if we allow the relocation so that the right-of-way and travel way correspond, would that deny access to any property at all?

Daniel Faehland said, no, none at all.

Michael Kennedy said, this is a public hearing, and invited comment on the request to abandon a portion of GLO road in Siesta Acres in the Rattlesnake area.

Tom Benson said, he lived at 7000 Rattlesnake Drive, and noted he had received notification in the mail from Shirley Faust, and asked her for a map. He received a very small map that he couldn't read the details on it. He wanted to know how a property owner up there, how this would affect him. He understood that at one time there might have been a road that at one point went to his property, and now it's not there anymore. He wanted to know how that ultimately affects his property.

Michael Kennedy explained that no decision would be made today. What would happen is the Commissioners would extend the hearing to a date certain, for the decision whether or not the petition would be allowed. In the intervening period, the Surveyor and one Commissioner will go visit the site, and those are the kinds of questions that we would be asked to make sure there was no harm to any adjacent property owner.

Tom Benson said, in one of his conversations with Shirley, she said she didn't know what property this road might have gone through at that point, that she sent mail to people who lived up there, thinking it would affect some of them. He was confused by the whole thing.

Michael Kennedy said, we will continue the hearing and informed Mr. Benson he may want to return at the future hearing. He continued the hearing to June 5, 1996.

CONSIDERATION OF BLACKLER SUBDIVISION #2

Lisa Moisey, Office of Planning and Grants, explained, the request from Dorothy Blackler, represented by PCI, for a two lot residential subdivision of 2.88 acre parcel of land located at the intersection of Third Street West and Howard Street. The parcel is legally described as Lot 26 of Dinsmore's Orchard Homes No. 5 in Section 24, T13N, R20 W. The proposal is for one 1.35 acre lot (Lot 26B) and one 1.53 acre lot (Lot 26A). Presently, two existing homes occupy this lot. Ms. Blackler lives in the frame house on what will become Lot 26B and her son lives in the mobile home on Lot 26A. The objective of this subdivision is to create one lot for each residence. This property is zoned CRR-1 which allows for one dwelling unit per acre. In 1990, the Missoula Urban Area Comprehensive Plan designates these areas as Parks and Open Space because a portion of the property is located within the flood fringe of the 100 year floodplain, however, the location of the existing road outside of the floodplain. One lot is accessed by Third Street West, and the other lot is accessed by Howard Street. As I mentioned, the improvements already exist on this property. Each residence already has well and septic. The developer is asking for three variances for this subdivision. The first variance is from the requirement for sidewalks and pedestrian walkways. Because the developer has agreed to fulfill the sidewalk requirements by waiving the right to protest a future RSID for pedestrian walkways along South Third and the Office of Planning and Grants supports this waiving effort, it is OPG's Staff's opinion the intent of the regulation is being here and sidewalks may be provided at a future time and the developer would waive the right to protest future installation of sidewalks. Furthermore, a variance in this case would not be needed. The second variance request is from Subdivision Regulations 3-2(6) which states that all driveways accessing a paved road and located within a 4.5 mile radius of the City limits shall be paved a minimum of 20 feet back from the roadway. This regulation is applicable to the existing driveway from what would be Lot 26(B). And I have indicated in pink how these lots access, and the proposed Lot 26(b) is the lot on the right and that accesses directly from Third. That driveway at this time is not paved. The Subdivision Regulations would require a 20 foot paved apron. That is what the developer is asking the variance from. OPG recommends denial of the variance request. This is in an air stagnation zone, and while it is not a significantly traveled roadway one could expect approximately seven vehicle trips per day over this roadway and it could be a potential threat to the health and safety of the citizens of Missoula. Lastly, this paving will prevent gravel particles being brought onto Third Street. The third variance request is from Section 3-2(10) which requires off-site access roads which are 500 feet or less in length to meet the subdivision standards. The proposed Lot 26A presently accesses from Howard which is a dedicated right-of-way. At this location, Howard Street functions as a paved driveway for the existing dwelling unit on this property. Howard Street basically, if you were to drive down Third, you wouldn't even know there was a street there. Howard Street is not improved, and the majority of the right-of-way has been encroached upon by the adjacent lots. Subdivision Regulations would require that that be improved. The Office of Planning and Grants recommends approval of the variance with the recommendation that the developer pave a 20 foot apron, similar to what is being recommended for the other lot, that the developer pave a 20 foot apron, the width of the driveway, and that Lot 26A be required to waive the right to protest a future RSID for future improvements to Howard Street. At this time Howard Street dead-ends at the
Clark Fork River and there is no foreseeable need to improve that road. Office of Planning and Grants recommends approval of the subdivision based on the Findings of Fact in the Staff Report.

Michael Kennedy asked, if Howard Street was an effective driveway and only served the trailerhouse.

Lisa Moisey said, that's correct.

John Kellogg, Professional Consultants, Inc., said, this is an unusual subdivision in that if you drove past the sites before the finalization and recording of this subdivision, you would not notice any difference. There are two residences existing on the site. If this parcel did not exist within Orchard Homes, Family Transfers, and the Family Transfers, Dorothy Blackler is 80 years old, lives in the home on the eastern parcel. She has lived there for over 40 years. Her son, Don, and family live on the west parcel and have lived there for over 20 years. The accesses have existed for that length of time and, as I said, there would be no change as a result of this subdivision. If I could point out a couple of things, the Howard Street right-of-way is not constructed. It goes to the river, and obviously is not connected to the north. The property owners on both sides have gone up to the centerline of what would be the Howard Street road, and have fenced Clark Fork River and there is no foreseeable need to improve that road. Office of Planning and Grants recommends protest RSID's in the future.

Address conditions 2, the $50 fee to the Rural Fire District, and he's concerned as have been others of giving up the right to fire department, just to record something that has been in existence for nearly 50 years. The other aspect that bothered him, was the terminology and the allusion to the fact that they would in fact waive their rights to protest, emanated out of the parcels that are before you. Sometime ago as we were looking at the possibility of some alternatives as far as a living situation for my mother, we took steps to try and supplement her retired income which doesn't seem to grow in proportion to the cost of things. One of the alternatives that appeared to them was if in fact she was able to help his brother establish some equity in some property and essentially help them and their young family move ahead, and also be able to provide a little bit of additional income for her so she wouldn't need to look to alternative methods which are less desirable such as being on the public dole. It seemed appropriate we possibly consider granting my brother the opportunity to buy his half of that lot. On the outset that seemed like a very simple procedure. Little did I know after making numerous phone calls that it was going to take much more time and effort than I thought, or maybe the more appropriate procedure if you multiply the hours of work I've put into some of the things I'm saying by letting you know my position in terms of what is going on in Flathead County. I've been very active in the Bigfork area and working with citizens there to establish some guidelines and growth guidelines in terms of what's happening in our valley and the extent and the speed the growth is taking over. I am readily aware of the need to have some distinct guidelines for growth and for subdividing and things in general. As I criticize some of the things that I've seen go on down here, bear in mind that I'm not just coming off the wall with this, because it happened to me. It does seem in this case where we have a situation where these two residences have existed--the house is where I went to school, we were there 45 years ago, and the residence where my brother is residing, there has been a residence there nearly 25, almost going on 30 years. Those two driveways, he recognized those loads have existed at this time. He recognized the vehicle trips per day, and came up with somewhere under one for Mrs. Blackler. Don Blackler's family is probably three or four, approximately. With that exception, we are in favor of Staff's recommendation. Mrs. Blackler's son would like to address conditions 2, the $50 fee to the Rural Fire District, and he's concerned as have been others of giving up the right to protest RSID's in the future.

Ed Blackler, the eldest son, said he lived at Bigfork and had taken time to come down here and address the concerns that are before you. Something ago as we were looking at the possibility of some alternatives as far as a living situation for my mother, we took steps to try and supplement her retired income which doesn't seem to grow in proportion to the cost of things. One of the alternatives that appeared to them was if in fact she was able to help his brother establish some equity in some property and essentially help them and their young family move ahead, and also be able to provide a little bit of additional income for her so she wouldn't need to look to alternative methods which are less desirable such as being on the public dole. It seemed appropriate we possibly consider granting my brother the opportunity to buy his half of that lot. On the outset that seemed like a very simple procedure. Little did I know after making numerous phone calls that it was going to take much more time and effort than I thought, or maybe the more appropriate procedure if you multiply the hours of work I've put into some of the things I'm saying by letting you know my position in terms of what is going on in Flathead County. I've been very active in the Bigfork area and working with citizens there to establish some guidelines and growth guidelines in terms of what's happening in our valley and the extent and the speed the growth is taking over. I am readily aware of the need to have some distinct guidelines for growth and for subdividing and things in general. As I criticize some of the things that I've seen go on down here, bear in mind that I'm not just coming off the wall with this, because it happened to me. It does seem in this case where we have a situation where these two residences have existed--the house is where I went to school, we were there 45 years ago, and the residence where my brother is residing, there has been a residence there nearly 25, almost going on 30 years. Those two driveways, he recognized those loads have existed at this time. He recognized the vehicle trips per day, and came up with somewhere under one for Mrs. Blackler. Don Blackler's family is probably three or four, approximately. With that exception, we are in favor of Staff's recommendation. Mrs. Blackler's son would like to address conditions 2, the $50 fee to the Rural Fire District, and he's concerned as have been others of giving up the right to protest RSID's in the future.

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blackmailed into it somewhere back in history and waive their right to protest the actual proposal at such a time as it is presented? Maybe there could be some flaws in there or maybe it could be bettered in some way, and maybe the only avenue that would be through some sort of protest. He thought that it would behoove the County to simply say at this point in time this, and this and this do not seem necessary, and we'll let the people use their own common sense at such time in the future as it becomes necessary to require these things and do along with their neighbors and agree with their neighbors that an RSID or whatever is necessary to accomplish the logical ends to come into play. He would prefer, if possible, that the Commissioners in their deliberation accept the survey dividing this into two lots, and allow for not implementing the requests that have been placed upon the terms for the approval of this subdivision. He used the term "subdivision" in quotes.

Fern Hart stated that Missoula County had come to live with poor planning, and the cost was tremendous. She noted it cost the road department and schools, because we did not plan well, and the only way to plan for the future was by dealing with divisions or splits of land. She stated her belief in every one of the Subdivision Regulations. She also noted she live in a world of dust cases and in a world of court cases because the fire didn't get there soon enough with enough water. She noted she did not support exceptions and when the Commissioners began to get into the judgmental level, it compares to collecting on motor vehicles. If your pickup bed is eight feet or six feet, there is a difference. She noted the Commissioners have to plan and she was committed to doing her job so that folks that sit in her seat will have other issues to deal with later.

Barbara Evans said, I hear what you're saying and she in some measure agreed with Mr. Lockwood's concerns. She explained that he needed to understand that the rules, and if the Commissioners imposed them straight across the board, he would have to put in sidewalks. She also explained to him he would have to meet things that the Commissioners would likely give variance for. She stated he could look at SIDs in different ways. The way she looked at them was, if we made every divider of land, whether it's your mother or someone who has 500 houses, put in the infrastructure first, she thought the availability of housing would be even worse. She stated one of the major reasons she thought would be needed in the future, but it also provides a mechanism for providing for those things in the future. SIDs can be looked at in two ways. They can be looked at as punitive or they can be looked at as a reward for an ability to delay having to put something in because the rules say you have to put it in. She stated she considered a variance a benefit to the public, and as Commissioner Hart stated, if we waited and then put every single request that we have before the public in whatever street or lighting district, or whatever came up, they would always say no and we would never get the amenities that are necessary in our community. We can't afford on the County level to pay for everything that is needed. She explained while she heard what Mr. Lockwood was saying, she would support the variances being recommended and the approval of the division of land.

Michael Kennedy asked, Lisa, is there a condition for waiver of protest for water and sewer?

Lisa Moisey said, condition 4.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners approve the variance request for Blackler Subdivision #2, located at the corner of South Third Street and Howard Street, in the area known as Orchard Homes and legally described as Lot 26 of Dinsmore Orchard Homes #5 in Section 24, T13N R20W, for no sidewalks or pedestrian walkways in the subdivision. Motion carried on a vote of 3-0.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners deny the variance for Blackler Subdivision #2, located at the corner of South Third Street and Howard Street, in the area known as Orchard Homes and legally described as Lot 26 of Dinsmore Orchard Homes #5 in Section 24, T13N R20W, for the 20 foot paved apron, based on the recommendation of Staff. Motion carried on a vote of 3-0.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners approve the variance request for Blackler Subdivision #2, located at the corner of South Third Street and Howard Street, in the area known as Orchard Homes and legally described as Lot 26 of Dinsmore Orchard Homes #5 in Section 24, T13N R20W, from off-site access roads which are 500 feet or less to meet subdivision standards. Motion carried on a vote of 3-0.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners approve the Summary Subdivision plat for Blackler Subdivision, located at the corner of South Third Street and Howard Street, in the area known as Orchard Homes and legally described as Lot 26 of Dinsmore Orchard Homes #5 in Section 24, T13N R20W, based on Staff's recommendations and subject to the following conditions.

Michael Kennedy said, as a subject discussion, he noted condition number 2, requiring the $50 per lot for the large diameter hose fund, the homes were both already existing and not adding to the load of the Fire District. He asked whether Commissioners Evans and Hart would consider removing that as a condition.

Fern Hart asked if in every case where there are two dwellings or three already existing, but they didn't subdivide or divide, the Commissioners would consider that?

Michael Kennedy said, you're right, but that the purpose of this is to exact an impact fee to pay for a service that otherwise is not provided. Whether or not the $50 is accurate is a whole separate issue. The notion of it is to pay for a service that will be an additional service is required be provided by the Fire District. He commented that in this case, there are no additional services required. The units do exist and have existed for a long time.

Colleen Dowdall, Deputy County Attorney, said, once the property is split it will be assessed differently for rural fire, so the impact of the two houses perhaps will be mitigated by that, because of the recognition of the two parcels instead of one. She advised it is important to tie the assessment of the fee, the $50 fee, to an increase in services being required by Rural Fire. She believed Commissioner Kennedy had a point. She stated she didn't think they had to say that because they did it today, they had to always do it. We look at the individual factors each time to determine whether it is appropriate.
recommends approval of this variance request based on the Findings in the Staff Report. The developer requests a variance from the requirement to construct sidewalks and pedestrian walkways in subdivisions. Staff recommends denial of this variance request based on the Findings in the Staff Report. The two variance requests. The developer requests a variance from the requirement to provide two paved parking spaces per mobile home lot. Staff recommends denial of this variance request based on the Findings in the Staff Report.

Ron Ewart said, they were requesting two variances, one from the requirement to pave two parking spaces per lot, and the other is the sidewalks. The first one Staff is recommending denial of that variance. From the second page of the variance request for the installation of sidewalks or pedestrian walkways along South Third West, based on benefit, and may be used in lieu of signatures on a RSID/SID petition.”

The following statement shall appear on the face of the plat and in all instruments of conveyance: “Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for the installation of sidewalks or pedestrian walkways along South Third West, based on benefit, and may be used in lieu of signatures on a RSID/SID petition.”

The following statement shall appear on the face of the plat and in all instruments of conveyance: “Acceptance of a deed for Lot 26A constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Howard Street, based on benefit, and may be used in lieu of signatures on a RSID/SID petition.”

The developer shall incorporate in the Riparian Area Management Plan, the following language: “Lot owners will take specific precautions to protect the river bank. Livestock shall be fenced away from the river to protect the bank.” Language shall be approved by the OPG prior to filing of plat.

Motion carried on a vote of 3-0.

HEARING: HAWK LANE MOBILE HOME PARK, SOUTH OF CLINTON

Sam Islam, Office of Planning and Grants, said Hawk Lane is a proposal for a four mobile home park subdivision. This subdivision would be located just south of Clinton on Hawk Lane, which is off Schwartz Creek Road, and East Mullan Road. The subdivision totals 5 acres. The four new homes will be clustered in a 1.25 acre area on the east end of the parcel. The property is unzoned. The 1975 Missoula County Comprehensive Plan designates the property Open Space and Parks on the east side of Hawk Lane with a recommended density of one dwelling unit per 40 acres. The property on the west side of Hawk Lane is designated Suburban Residential with a recommended density of two dwelling units per acre. The proposed manufactured homes will be located on the east side of Hawk Lane in Open Space and Resource land. The Comprehensive Plan land use map districts are not precise enough to suggest that the proposed development is contrary to the goals and intent of the plan. The proposed development is similar in characteristics and density to surrounding developments. Therefore, it substantially complies with the Comprehensive Plan.

Staff recommends approval of the Summary Plat of Hawk Lane Mobile Park subject to the conditions stated in the Staff Report. There are two variance requests. The developer requests a variance from the requirement to provide two paved parking spaces per mobile home lot. Staff recommends denial of this variance request based on the Findings in the Staff Report.

Ron Ewart, Eli and Associates, thanked Sam Islam for his thorough review. The applicants are Lonnie and Merry Sunderland who live on this five acre parcel. They live in a mobile home on the west side of Hawk Lane. Showing the Commissioners some photographs, he pointed out to them the applicants’ five acres and where they hoped to put the four mobile homes. To get to this piece, Mullan Road is paved, Schwartz Creek Road gravel, and Hawk Lane gravel. Lonnie and Merry will continue living in that house and they will develop and maintain the mobile home park. It will be a source of income to them over the years. There are three items that I'd like to speak about in the conditions. First of all, condition #2, the owner shall apply a dust abatement material on Schwartz Creek Road, if you look at condition #5, there's an RSID waiver for improvements to Schwartz Creek Road to include dust abatement. There will only be about 200 feet of travel on Schwartz Creek Road. Schwartz Creek Road is actually about 14 miles long if you continue on it. It goes all the way into the Bitterroot Valley. The condition doesn't nail down exactly the length of Schwartz Creek we're talking about, but I believe condition #5 should cover that. Secondly, condition #10, there are four things that Staff is asking to have put into covenants. In the submittal packet, we have mobile home court rules, and the rules are basically much the same as covenants. What we would like to do is to add the other three items to the mobile home park rules and not have to file covenants, as it is somewhat an expensive process.

Barbara Evans said, I would support your recommendation.

Fern Hart said, I will take a friendly amendment.

Barbara Evans amended the motion to approve the deletion of the condition for the $50 fire department donation for the Blackler Subdivision.

Fern Hart moved and Barbara Evans seconded the amended motion that the Board of County Commissioners approve the Summary Plat for Blackler Subdivision, located at the corner of South Third Street and Howard Street, in the area known as Orchard Homes and legally described as Lot 26 of Dinsmore Orchard Homes #5 in Section 24, T13N R20W, subject to the following conditions:

1. Grading, drainage, erosion control, and driveway plans and approach permits shall be approved by the County Surveyor prior to plat filing.

2. The following statement shall appear on the face of the plat and in all instruments of conveyance: “Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for the installation of sidewalks or pedestrian walkways along South Third West, based on benefit, and may be used in lieu of signatures on a RSID/SID petition.”

3. The following statement shall appear on the face of the plat and in all instruments of conveyance: “Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Howard Street, based on benefit, and may be used in lieu of signatures on a RSID/SID petition.”

4. The following statement shall appear on the face of the plat and in all instruments of conveyance: “Acceptance of a deed for Lot 26A constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Howard Street, based on benefit, and may be used in lieu of signatures on a RSID/SID petition.”

5. The developer shall pave the existing driveways for Lots 26A and 26B a minimum of twenty (20) feet back from the roadway. Plans shall be approved by the County Surveyor prior to filing the plat.

6. The developer shall incorporate in the Riparian Area Management Plan, the following language: “Lot owners will take specific precautions to protect the river bank. Livestock shall be fenced away from the river to protect the bank.” Language shall be approved by the OPG prior to filing of plat.

Motion carried on a vote of 3-0.
Michael Kennedy asked, you said that paving is not required?

Ron Ewart said, of individual parking spaces.

Colleen Dowdall disagreed. In mobile home parks, the parking spaces are required to be paved. The place where you put the mobile home is not required to be paved. This is in the Subdivision Regulations as Article 3-10(5)(d).

Ron Ewart said, agreed with what was just said. The pad does not have to be paved, but the spaces themselves, the parking spaces for cars, have to be paved according to the Regulations.

Michael Kennedy said, I misunderstood you. I thought you said the opposite of that. He noted that the Sunderlands were present and asked Mr. Sunderland if he would like to speak.

Lonnie Sunderland said, he was doing this to supplement his income on retirement in a couple of years. He stated he was going to be living there and wanted to make it as pleasant a place as he could because he would have to look at it too. He explained he was trying to keep costs down. He stated he had a graveled driveway and I had no problem with that. When it comes to the paving part, it might stop me from doing this because of the cost.

Fern Hart asked Horace Brown, looking at the map at Schwartz Creek, she understood Ron to say that it was 200 feet along Schwartz Creek before Hawk Lane turned off, is that a County maintained road?

Horace Brown said, Schwartz Creek is. Hawk Lane is not. It is a private road.

Fern Hart asked, does it go to many homes farther?

Horace Brown said, there are a few on both sides of the bridge. There are quite a few that are on Hawk Lane. There are a few along to Schwartz Creek.

Fern Hart noted that the owner shall apply dust abatement on Schwartz Creek Road. She believed it likely that road is going to be used by a lot of people using the fishing access.

Horace Brown said, it's used for logging too. Not Hawk Lane, but Schwartz Creek.

Fern Hart asked, what would be the benefit to apply dust abatement on 200 yards?

Sam Islam said, basically to reduce dust emission. That was the intent of adding that condition. Because it is a graveled road.

Michael Kennedy said, he understood what Ron had said about RSID waiver and asked what the intent was of applying dust abatement material on Schwartz Creek Road. It doesn't say how much, or when, or where. He stated he not sure what the intent of that condition was.

Fern Hart appreciated that four mobile homes will create more traffic, and they'll all go to work and they'll all have children. I just don't quite understand, because I'm very sure there are a lot of people who fish using the roads.

Pat Keiley, Office of Planning and Grants, said in previous subdivisions the Subdivision Regulations require the roads to be paved and the alternative of a RSID is electing to not pave the roads. In the interim, the idea is to keep the dust down, and the idea is to then apply that particular condition to roads that this subdivision may have an affect on. So it has been from our standpoint essentially a standard type of a requirement for all subdivisions, similar to some of the other standard type of requirements. It's because of the impact this would have on a road where the County is not requiring the road be paved. I guess I didn't completely answer your question. The thought wasn't a one time application of the suppressant, but rather a regular application. We usually have this condition state to be approved by the County Surveyor or the Health Department, who ultimately would determine the number of times and the particular type of suppressant that would be used. It would be an ongoing type of thing.

Michael Kennedy said, he didn't think it said that but should. In Horace's letter, he says he wants it paved or that dust abatement material be required to keep the dust down. That implies to me that it is a continuing effort. It is separate from a waiver for RSID which is solely dependent on the formation of a RSID.

Horace Brown said, the only reason I made that comment was that the Regulations require paving, which would be Schwartz Creek Road from East Mullan Road to their entrance. I gave them a choice that they could use dust abatement in place of paving.
Michael Kennedy appreciated that but, at the same time, there would be eight trips a day, 32 additional trips a day added to that otherwise over-burdened road, and dust abatement seemed a very important part of this.

Fern Hart asked about the covenants and the addition to the Hawk Lane Mobile Home Park Rules. Colleen Dowdall advised that the mobile home park rules would be adequate.

Fern Hart expressed concern about the park being across the street as there are some acreages on up that road. The mobile home park will be in the first parcel. Does it seem to be a problem to have a park across the road from the four home sites?

Colleen Dowdall stated that it didn't appear ideal as she didn't know the nature of the development down the road.

Fern Hart asked Mr. Sunderland, how much traffic do you experience now on Hawk Lane?

Lonnie Sunderland explained there are two access roads. One that goes by my place, and another one on the far end and a lot of people use that road down there. There is some traffic that comes by, but I can't say there's a lot.

Fern Hart said, she was glad for a park, and felt that the trailer park would probably fill very well, because folks like living in an area like that. You living near by will mean it will be tended, and She explained she was going to suggest putting one of the mobile homes across the road and put the park on that side of the street, but there would still be people crossing the road.

Barbara Evans said, she had mixed emotions on this particular request because she would like the desperate need for mobile home sites to be recognized. There is precious little space to put mobile homes on in this County. There is a desperate need and I'm always grateful when one creates them. She explained she understood the costs, and Fern's concerns about requiring the Sunderlands to provide dust abatement to a public road or a road used by significantly more people than what their division of land would. On the other hand, we live in a world where people complain about dust all the time. I don't care to live in that world. I prefer to prepare for that. So rather than require that they apply dust abatement on Schwartz Creek, I much prefer to have the right to waiver include a dust abatement district so if the folks out there complain about the dust, everyone who is complaining would be included in helping to take care of the dust. She expressed mixed emotions on the requirement for two paved parking spaces in the mobile home lot. Generally, when people pull in and sit and park, they don't raise a tremendous amount of dust. We had the same situation in my family recently when my aunt, who is 83 and doesn't drive, still is required to put in a paved parking place for the car she doesn't drive. She understood the costs that are involved, and was willing to cut the requirement in half and require one paved parking space as a means to try and bring in affordable housing.

Michael Kennedy commented about earlier testimony in a different subdivision about the cost of paving small areas. He offered that since this is a remote area from town, the cost savings would be minimal. He stated he understood the logic on the RSID waiver for dust abatement and the presumption that some day a RSID would be passed out there, however, stated his uncertainty that that would ever happen and in the meantime there would be dust.

Fern Hart said, it is true that Schwartz Creek Road has some building along that road, but there are some large tracts that would never be taxed for dust abatement.

Barbara Evans said, on the other hand, if I were the people who wanted to put in these four mobile homes and I was told for the rest of my life I had to continue to add dust abatement to that spot in front, I wouldn't do it. We desperately need the spaces that will probably not occur.

Fern Hart asked, Horace, what was the cost for 200 yards of mag-chloride applied for three years in a row?

Horace Brown explained it would be more expensive per foot then if it were done a mile, because this is a small, short area. It's like paving. It's out of town and it costs more to do it. The same with dust abatement. He stated his recommendation was "should," and it is whichever one you desire.

Colleen Dowdall said she had a concern with the enforceability of requiring the dust abatement on Schwartz Creek for years into the future, and how that obligation would attach to the land. If these individuals sold the park, how it attach to the new owners. When we require paving, we typically require that before we will allow the plat to be filed, or, in this case, probably prior to allowing the park to be permitted. I don't know that we have ever required continual dust abatement in even a regular subdivision because of the inability to enforce that provision beyond filing of the plat. Michael Kennedy said, yet the increase in traffic will cause a severe problem.

Barbara Evans said, she would argue that four mobile homes with the cars that go with it might cause some problem, but she would characterize it as severe or enormous, but as some impact on the road. She didn't believe it serious enough to jeopardize the building of the park, because of the desperately needed mobile home sites.

Fern Hart said, condition #7 requires the developer provide a mechanism for dust abatement on Hawk Lane. This is not required because he is going to gravel it.

Michael Kennedy said, gravel is not dust abatement. The Health Department is the one that will make the decision on that one.

Colleen Dowdall said, no, they don't have jurisdiction because this is an existing road and it is a private road.

Michael Kennedy asked, on Hawk Lane?

Colleen Dowdall said, yes.
Fern Hart said, I think they're saying you have to follow the regulations of the Health Department. You can't put poison on that. You need to use the accepted dust abatement. I think that is what that means.

Pat Keiley said, those conditions could probably have been put together, but the idea again is if the roads aren't going to be paved you can have gravel roads. Are you comfortable with having the dust and not doing the suppression, or the alternative is doing the dust suppression. What we're putting in as conditions are what we are hearing from one subdivision to the next, and that is if the roads aren't to be paved and there is going to be an additional impact on the roads, that we put this in as a condition to provide some relief from dust.

Barbara Evans said, my comments weren't meant as criticism of Staff. I think it is great that you put it in, but I think we need to look at them on an individual basis, and I think this one doesn't pertain.

Colleen Dowdall asked that if they chose to put dust abatement on Hawk Lane they specify how much of Hawk Lane, from Schwartz Creek Road to the end of this ownership. The other alternative is requiring it from the other access farther down the road.

Fern Hart said, it says to provide a mechanism. Do they provide a mechanism and you look at it? Or is there a mechanism they are talking about?

Colleen Dowdall said, I'm not sure what they intended by that term.

Pat Keiley explained the intent was to provide a mechanism for a dust suppressant, and for the developer to not only provide that, but then to apply that to road, but before applying it to the road to get Health Department approval for the particular type of suppressant so it doesn't harm certain things, but essentially to find out what suppressant is acceptable by the Missoula County Health Department, and then to take the suppressant and apply it to that particular portion of the road. Not just one time, not just one time prior to when the applicant files, in this particular case the plan where it is not a plat, but on a regular basis because that seems to more meet the intent of doing dust suppressant than just to do it one time.

Ron Ewart explained that when he read number 7 he didn't have a problem with it and now felt he was mistaken on this. He felt that a mechanism for dust abatement would be gravel. He continued that maybe he was wrong there, but when we first started talking about this, he is more than 500 feet from the paving on East Mullan Road, I was reading it as paving would not be required. Lonnie and he talked about it and thought, first of all, you can't solve all the problems, everybody has to do a little bit. Lonnie's little bit would be blading and graveling Hawk Lane all the way out to Schwartz Creek Road. If you'll notice on the photograph, this was taken a couple of months ago, and there is not hardly any gravel on it. It's just a dirt road and that creates a lot of dust. When you lay down fresh, clean gravel I agree it will hold down the dust somewhat. That's what he had in mind as a mechanism for dust abatement on Hawk Lane.

Barbara Evans asked don't you think it also depends on how much gravel?

Ron Ewart said, that was true. If you go to County standards, you're looking at 4 inches, I believe, of gravel. I don't think we have any problem with waiving the right to protest inclusion in a dust abatement district. I think leaving it wide open with this mechanism, who knows what that mechanism is going to be, how much it is going to cost Lonnie every time he does it, and when he sells the property that property is going to be encumbered by that mechanism. I think a much easier way to do it is to waive the right to be included in a dust abatement district.

Sam Islam said, Hawk Lane is a private road and we cannot request a waiver of RSID.

Fern Hart stated she was going to go for some kind of dust abatement. She stated she didn't know what to do, how to enforce it, or how to be sure that when that mobile home court sold it would continue.

Michael Kennedy asked, are you talking just about number 7, which talks about Hawk Lane, or are you including Schwartz Creek which is the public road also?

Colleen Dowdall said, she was paging through the report to see if there were any comments from the Health Department or anyone regarding dust on this road, and I haven't found any. So I think it is safe to say that there was not an issue raised by agency review, so it was not a great concern in this subdivision. We all know that dust is something we all get calls about, but your agencies that have reviewed this have not recognized it as an issue of grave concern in this subdivision.

Colleen Dowdall explained Horace's letter requested that it either be paved or dust abatement provided on Schwartz Creek Road to the entrance. So it would be East Mullan to the entrance.

Barbara Evans asked, once? twice? how often? and for how long?

Colleen Dowdall: Horace didn't say.

Michael Kennedy said, just add the words "as needed."

Fern Hart said, she would because of complaints.
Fern Hart moved and Michael Kennedy seconded the motion that the Board of County Commissioners deny the variance request for Hawk Lane Mobile Home Park to provide two paved parking spaces per mobile home, based on the Findings of Fact. Motion carried 2-1.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners approve the variance request for Hawk Lane Mobile Home Park to provide two paved parking spaces per mobile home, based on the Findings of Fact. Motion carried 3-0.

Fern Hart moved and Barbara Evans seconded the motion that the Board of County Commissioners approve the Hawk Lane Mobile Home Park, located in the SE¼ of Section 34 and the SW¼ of Section 35, T12N R17W, P.M.M., based on the Staff's recommendations, and subject to the following conditions:

1. Grading, drainage, erosion control, road and driveway plans shall be approved by the County Surveyor.
2. The owner shall apply dust abatement material on Schwartz Creek Road, to be approved by the County Surveyor, from Hawk Lane to East Mullan Road, as needed.
3. All utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body.
4. Access and approach permit shall be approved by the County Surveyor prior to filing the final plan.
5. The following statement shall appear on the face of the final plan and in all instruments of conveyance: "Acceptance of a deed for a lot within this subdivision constitutes consent of the lot owner to waive the right to protest a future RSID/SID for any improvements to Schwartz Creek Road and East Mullan Road, including but not limited to paving, dust abatement, and sidewalk based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."
6. The following statement shall appear on the face of the final plan and in all instruments of conveyance: "Acceptance of a deed for a lot within this subdivision constitutes consent of the lot owner to waive the right to protest a future RSID/SID for any public water system and public sewer system improvements, and may be used in lieu of their signatures on an RSID/SID petition."
7. The mechanism for dust abatement on Hawk Lane is gravel to be approved by the County Surveyor.
8. The water supply for fire protection purposes for the existing and proposed structures shall be approved by the appropriate fire jurisdiction prior to plan filing.
9. The owner shall submit a landscaping plan showing compliance with the buffering requirements, including vegetative coverage or landscaping of all unpaved areas prior to submitting the final plan. The plan shall be approved by the Office of Planning and Grants. The landscaping shall be installed within 2 years of submitting the final plan.
10. The Hawk Lane Mobile Home Park Rules shall include the following:
   a. The driveways to the manufactured homes shall be 12 feet wide with a setback of 4 feet on each side for shrubbery. If the lots are fenced, the grass shall be 2 feet wider than the driveways.
   b. The mobile homes must be skirted within 60 days after moved onto lot. Skirting must consist of a fire resistant material.
   c. A minimum unobstructed width of not less than 20 feet and an unobstructed clearance of 13 feet 6 inches for any driveway over 150 feet shall be provided.
   d. Dead-end driveways in excess of 150 feet shall be provided with approved provisions for the turning around of fire apparatus.

Motion carried on a vote of 3-0.

HEARING: HAFFNER SUBDIVISION #2, SUMMARY PLAT (OLD U.S. HIGHWAY 10 AREA)

Sam Islam, Office of Planning and Grants, explained the proposal is for a 3-lot subdivision of Haffner Subdivision No. 2, located in Sections 21 and 28, Township 14 North, Range 20 West, Principal Meridian, Missoula County, Montana. This subdivision is located adjacent to the Missoula Industrial Park, west of Highway 10 and south of the Wye. The area is zoned C-I1 and C-C2. It is in the Airport Influence Area. The 1975 Missoula County Comprehensive Plan designation is Light Industrial, which recommends light manufacturing and bulk storage activities.

The property is bounded on all sides by light industrial land uses or vacant parcels. Access to the property will be from an 18-foot wide unnamed gravel road, to be named Haffner Drive, within a 60-foot easement. The developer has proposed to pave the surface width of it to 24 feet. This road is also accessed by the County maintained gravel roads Inspiration Drive, Summit Drive and Derby Drive adjacent to the property. These roads are approximately 2,000 feet from Highway 93. Inspiration Drive will be the main access to U.S. Highway 10.
Area well logs show an adequate water supply in the area. Adjacent soil profiles and percolation tests indicate favorable conditions for septic. Initially, this subdivision will probably use less than 300 gallons of water per day and will produce less than 300 gallons of sewage per day as the only new use, proposed at this time, will be that of Lot 2. Water and sewer will be provided by individual systems.

The Missoula Board of County Commissioners approved Haffner Subdivision in September, 1995. The Office of Planning and Grants Staff recommends approval of the Summary Plat of Haffner Subdivision No. 2, subject to compliance with the 13 conditions listed in the Staff Report.

Ron Ewart, Elii and Associates, representing the Haffners, said, this is a 106 acre subdivision, and all that is on the land now is a little fenced in compound where Mr. Haffner stores some of his things. The rest of the land, some has been used to extract gravel over the years, but for the most part it is all used for agriculture, mostly dryland crops. The reason Mr. Haffner wishes to create the subdivision is so that he can sell Lot 2. He has a buyer who needs 5 acres. He is going to keep Lot 1 and Lot 3. Lot 3 is going to function just like a remainder, except it is too small to be a remainder. He is not going to do anything with it. He doesn't know what he wants to do with it. I have been trying to get him to say, let's develop a plan here. He just wants to sell off Lot 2 and leave Lot 3 as it is. The only developed road at this time is an unnamed gravel road that we might call it Haffner Lane. There is a road that comes through the bottom of Haffner #1 Subdivision. Inspiration Drive is a County Road and runs into Highway 10. There are three things we'd like to talk about. We are well over 500 feet from paving. For example, where Inspiration Drive runs into that unnamed gravel road that goes toward the north to where Highway 10 is, it is way over 500 feet. What we proposed to do from the very beginning was to improve that gravel road going north to 24 feet within a 60 foot easement. As I said he just wants to sell off the five acres and not do much there. I think it will develop over time, but not at this time. Condition #3 states the developer shall pave the access easement, and so on. We'd like to ask is that the developer shall improve the access easement with a gravel surface to 24 feet and the driveway to Lot 2. I don't think by Regulation he is required to pave it. This is an existing road about 18 feet wide, and it would be widened to 24 feet and graveled. The variance request is for a 24 foot gravel within a 60 foot easement. The Subdivision Regulation is an 80 foot easement with a 32 foot road. We didn't ask for a variance for paving because I don't think it is really required. Condition #7, instead of filing covenants, I would like to know if we could put those two statements on the face of the final plat. Condition #13, says that a one foot no access strip shall be provided on the face of the plat, if necessary, along Old Highway 10. We are showing street trees along Highway 10 as required by the Regulations. It looks to me that having access to Highway 10 is a major selling point of this property in the future. I don't understand a no access strip would be placed along there. That would devalue the property considerably because maybe some day in the future somebody might want to purchase the end of that because of the fact they have access onto Highway 10. If you cut off access, then you have to go all the way back around Inspiration Drive. We would like if that could be taken out and put the trees in.

Michael Kennedy asked Horace to answer the question about the one foot no access strip.

Horace Brown said, we require access to a lower use road when it is available. In this case, there is one available although it's a long ways away from Highway 10. We just took over the maintenance of that section of road, I think last year.

Michael Kennedy asked, why are we requiring a no access strip?

Horace Brown said, because I usually require that they use a lesser used road. It's just a standard condition. I recommended it, but it's not necessary if you don't think it is.

Michael Kennedy said, it is for safety, we all know that. I am wondering about the number of access points in that area.

Horace Brown asked, what is the footage on it?

Ron Ewart said 714 feet. Lot of trees there.

Barbara Evans asked, could we change the requirement to say an access permit? Maybe this is already standard.

Horace Brown said, they are required now. I guess the 92.2 acres is not really being developed, yet it's called a lot, and when it's called a lot then is when I put the no access strip because it is a lot.

Michael Kennedy said, I'm concerned about the access to it and the safety of it. I'm for limited access on major traffic routes. Your demanding access from another point is really a safety issue and somehow we have to get past that. You have 700 and some odd feet of frontage, and my decision would be based on how many access points there are on adjacent properties, and I just don't know what the answer to that is.

Horace Brown said, they could come back to the Board of County Commissioners with a request for access there in the future, if they could show it was needed.

Colleen Dowdall said, because Lot 3 is called a lot, she felt it was an issue that should be dealt with now. If the restriction is going to be on the face of the plat, then it would require them to come back for an amendment to the plat just for the purposes of removing the no access strip. She believed a decision should be made to save time and trouble whether it was two months or two years down the road.

Barbara Evans said, it would seem that if someone is going to want to buy this land, partly because it has highway access, and we say no, you can't get in that way, you have to go clear down into town and have to go clear up here to get 20 feet from the highway, we've added to the air pollution, we've added to the miles driven, we've diminished the value of the property and I'm not willing to do that.

Fern Hart said, you could do something like a frontage road or a service road. That's what is wrong with Brooks.

Michael Kennedy said, we do have 92 acres here and it is not likely it will be developed into a single parcel, and there could be some road system brought in. I'm not aware of any public roads in that area. He believed they were all private.
Deschamps Lane is the closest one and it's another 800 feet or so to the west. It just seems that when that lot gets developed, there is going to be some substantial changes to the size and shape of the lot because of the development, and because of that adding a one foot no access strip is problematic.

Ron Ewart said, in my opinion it would be devalue the property considerably, because let's say he wanted to sell Lot 3 and the price would just drop because they don't have access to Highway 10. That's my major problem with doing that.

Barbara Evans said, and he is still going to have to get access permits from the Surveyor, if not the Montana Department of Transportation. And if there are access issues, I expect those professionals can deal with them.

Michael Kennedy asked, if we were to remove it would the application come to us?

Horace Brown said, it comes to us.

Michael Kennedy asked, is that road going to be reconstructed? Is it going to be reconstructed this year?

Horace Brown said, no. It has already been chip sealed.

Fern Hart said, my sense of it is that we deal with individuals, one after another, and it creates a multiple problem, simply because each individual just brings in their own needs. We need decent roads planned out there and if Mr. Haffner has a chance to sell that, he'll sell it with an access and then we've got another road with five roads coming off. And we have that all around us.

Michael Kennedy said, and that is my point too. The road system is not good, and I think anything is to devalue that land is the lack of public access. You know as well as I do the difficulty we've had of getting an easement for this property in the past, and that's likely to be an encumbrance on any sale of the property, more so than that one foot strip, in my view.

Horace Brown said, this completely remove access, all it does is give us control in the future.

Colleen Dowdall said, if you put the no access strip on the face of the plat, then you are saying there is no access. The only way to provide access is then to amend the plat, which I think is a lengthy process. If you're saying you want to revisit it some day when we know what is going to happen on Lot 3, then I think the way you do that is someone needs to get an access permit from the County Surveyor's Office, because what you are saying is that with 700 feet of frontage on Highway 10, the guy can't drive onto his property from Highway 10. And I think you want to consider that carefully and make sure that there is a health/safety issue.

Barbara Evans asked, are you saying that otherwise perhaps it could be construed as a taking?

Colleen Dowdall said, I think what I want you to do is make sure that the purpose you are trying to serve is going to be served and that there is a problem.

Michael Kennedy said, Deschamps Lane is a public road and does access on Highway 10, and it is a dangerous intersection. We all know that. When you proceed east from there, there are several parcels of property, none of which have public accesses to Highway 10, that I'm aware of, all the way to the Interchange. If we allow access there, it allows all of those ownerships to petition for access where there currently are none. And that access to any highway is a major safety issue and I'm not at all comfortable with allowing access. It creates a problem with revisiting the plat. At the same time it doesn't say that no access would ever be provided. What it does say is that there has to be some consistency in developing public access when that land is developed out there, for safety reasons. If we allow an access point, every other petitioner is going to say the same thing. They'll want an access point as well, and that is simply not a safe thing for that road.

Colleen Dowdall said, the difference would be that in this subdivision, these folks would have a no access strip on the face of the plat. All those other people can still come in and ask to have access, because they won't have that statement. They will just go to the County Surveyor's office or the State Highway Department and ask for an access permit.

Michael Kennedy asked, if we had an access plan for the road, from Deschamps Lane to the Interchange, is that sufficient enough to govern the decision when an application is made for an access permit onto the road?

Horace Brown said, yes, if we had one.

Colleen Dowdall said, either that, or standards for how frequent entrances onto the road are safe. We do have some standard for how frequently to allow accesses on any road, and that is once every so many feet, and it would that on Highway 10.

Michael Kennedy said, highway safety is a function of how many access points per mile. And this is 700 feet. So it could be fairly close, or it could be fairly spread apart. But it's the number of access points that you have, physical number per mile, that creates the problem.

Colleen Dowdall asked Horace what the standard was on this particular road.

Horace Brown said, it is further than 100 feet.

Colleen Dowdall asked, is it further than 700 feet?

Horace Brown said, no.

Michael Kennedy asked, if you had an access plan on Highway 10, what would it look like?
Horace Brown said, it would be at least 250 feet from an adjacent access.

Michael Kennedy asked, so you don't have a problem with providing an access point in 700 feet then?

Horace Brown said, no, I don't. As long as I have control.

Barbara Evans moved and Fern Hart seconded the motion that the Board of County Commissioners approve the variance from Subdivision Regulations for the width of the road in Haffner Subdivision #2.

Michael Kennedy said, I would like to bring up that this is a private road and this is the only opportunity we will have to require that the road be built to any kind of standard.

Barbara Evans said, unless they bring it in and want to turn it over to us for maintenance, in which case, we will have a lot of opportunity.

Fern Hart asked if the concern was that the road is too narrow?

Michael Kennedy said, when this first came in several months ago now, the big discussion was whether or not there existed an easement to provide access to those properties. We sorted through that, and now we know there are no public roads down there. We have an opportunity to do something that brings that is going to provide access to a development that will occur, to a certain standard. We can take advantage of that by adding requirements.

Colleen Dowdall said, they agree to pave but they only want to pave to 24 feet instead of 32 feet.

Ron Ewart said, the proposal is to increase the gravel surface width from 18 feet to 24 feet. No comments were received from the Health Department or anyone else saying that the road should be paved. We're more than 500 feet to paving. This is not a new road. Last night was the first that I had seen this in regard to paving. If we would have to, it would be from the intersection of Inspiration Drive up the road a little ways, so it would just be a stretch of pavement. It's also out there where all the roads are gravel.

Michael Kennedy said, it's also in the air stagnation zone, and could not reason why the Health Department did not respond. The truth of the matter is, the reason why this is going to be subdivided is to get developed. And it probably will get developed and there will be a lot of dust.

Colleen Dowdall said, I just went through the application in which the request for a variance was made. It does not request a variance from the paving requirement.

Michael Kennedy said, because it says to request a variance to increase the "paved surface." And he is saying it's not paved.

Colleen Dowdall read what the application said, "The applicant requests a variance to Section 3-S(2)(i) of the Missoula County Subdivision Regulations which state the requirement for road and easement widths." And then he says in this case, "The requirement will be for a 32 foot street and 80 foot access and public utility easement. The owner proposes a 24 foot street within a 60 foot private access easement."

Barbara Evans said, what Ron gave us today has "paved" stricken and "improved" put on it with gravel instead of paving. That isn't what went through the Planning Staff and what was brought to the Commissioners?

Michael Kennedy said, if you look at condition #3, "developer shall pave the private access easement serving Lots 1, 2 and 3, with a paved surface 24 feet wide." If he's not requesting a variance from it, it is going to be paved.

Ron Ewart said, we're not asking for a variance from the paving because it has been my impression all along that paving is not required. Unless there is something that I'm not aware of.

Colleen Dowdall said, is your thought it does not have to be paved by the Subdivision Regulations.

Ron Ewart said, that is my impression. That's what we talked about from beginning on.

Barbara Evans stated her understanding was if it was a private road, the Commissioners do not have the power to require paving.

Colleen Dowdall said, we do in some cases.

Michael Kennedy asked, who wrote the condition? You were responsible for writing the condition?

Pat Keiley said, there is a section that says unpaved roads inside an area designated by the Missoula City-County Air Pollution Control Board is the Air Stagnation Zone shall not serve more than three single family dwellings. If this road does not serve more than three single family dwellings, it would not be required to be paved. It's not within 300 feet of a paved road. It's not a new road. Those are reasons why it would be required to be paved. So I don't see where it is required to be paved.

Michael Kennedy asked, where did the condition come from?

Barbara Evans said, a Staff recommendation.

Pat Keiley said, the Staff put it in there, and he believed it was an error, unless Colleen could find where it was required in the Regulations.
Colleen Dowdall said, for off-site access roads which are 500 feet or less in length, need to meet the standards. Off-site access roads greater than 500 feet in length, which are specifically and uniquely attributable to the subdivision.

Barbara Evans asked, on number 3, where it says the developer shall pave, and so on, the developer shall provide a mechanism for paving the driveway, shall be approved, etc., am I to understand that this entire paragraph is not within our regulations?

Colleen Dowdall said, as she was going through the regulations, she had not found a section that would require paving. They also refer to the Missoula City-County Health Department.

Barbara Evans said, the developer has written here that the developer will improve the private access easement serving Lots 1, 2 and 3, with a gravel surface width of 24 feet to the driveway to Lot 2. It seemed to her that this entire paragraph is not within our regulations.

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Barbara Evans said, withdrew her motion to allow the variance since the variance isn't required.

Colleen Dowdall said, the variance request is for the width of the pavement and the width of the right-of-way.

Ron Ewart said, the width of the road and the right-of-way.

Colleen Dowdall said, the variance is to decrease the paved surface width. There is an assumption it is going to be paved anyway.

Colleen Dowdall said, that it was an error, and what they actually applied for Staff did not convey in the Staff Report. That is why I took the time to read to you what the actual request was.

Michael Kennedy asked, if there was any particular authority the Health Department has over this proposal with respect to development of the roads?

Colleen Dowdall said, she did not believe they did. If the Health Department comments are reflected in the report, she could not find them attached to either the Staff Report or to the packet. The comments from the Environmental Health Division, Air Pollution, says "waiver language for the paving of Summit, Inspiration and Derby Drives, needed. All new commercial roads to be paved before use."

Michael Kennedy said, those are all private roads, however.

Colleen Dowdall said, Summit, Inspiration and Derby are all private roads?

Horace Brown said, yes. They are not paved.

Colleen Dowdall said, she didn't know what the definition was for "all new commercial roads." She felt she needed to look at the length of the access road. She stated she had not looked at this issue on this subdivision before and didn't want to advise the Commissioners that it didn't need to be paved until she knew for sure.

Michael Kennedy asked, what is the time limit on this subdivision?

Pat Keiley said it is probably at the 35th day.

Ron Ewart said, they would grant an extension. There is no problem with that.

Michael Kennedy recommended that Commissioners wait until the issues were resolved and the developer came back with another presentation. Is that okay?

Ron Ewart said, that's okay.

Michael Kennedy requested the developer grant an extension of one week.

There being no further business to come before the Board, the meeting was recessed at 4:45 p.m.

THURSDAY, MAY 16, 1996

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

Extension Letter -- The Board of County Commissioners signed a letter to Gordon Sorenson approving a filing extension for the summary plat of Green Acres, making the new filing deadline June 30, 1996.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #10, Pay Date May 10, 1996, with a total Missoula County payroll of $620,124.28. The Transmittal Sheet was returned to the Auditor’s Office.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
FRIDAY, MAY 17, 1996

The Board of County Commissioners did not meet in regular session. Commissioner Hart was in Libby attending a Mental Health Board Meeting; Commissioner Evans was out of the office all day; and Commissioner Kennedy was out of the office all afternoon.

Vickie M. Zeier       Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, MAY 20, 1996

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

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated May 17, 1996, pages 2-33, with a grand total of $292,527.70. The Audit List was returned to the Accounting Department.

TUESDAY, MAY 21, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Plat -- The Board of County Commissioners signed the Plat for Linda Vista 9th Supplement, an urban residential subdivision of Tract 1, COS #3650, located in the SW 1/4 Section 12, T12N R20W, P.M.M., Missoula County, having a total area of 17.20 acres with the owners/developers of record being Lloyd A. Twite, Family Partnership.

Amendment to Professional Services Contract -- The Board of County Commissioners signed an Amendment to the Professional Services Contract between Missoula County and Ann Mary Dussault of September 28, 1995 through January 31, 1996, increasing the value of the Agreement by $2,500.00 and lengthening the duration through May 31, 1996, per the terms set forth.

Contract Specifications -- The Board of County Commissioners signed a document citing the specifications for the Missoula County Maintenance Shop at Seeley Lake as prepared by the Missoula County Engineering Department and returned the document to Doreen Culver, Bidding Officer, for further handling.

Modification of Agreement -- The Board of County Commissioners signed Modification No. 2 of Agreement between Missoula County and the Montana Department of Public Health and Human Services for the purpose of modifying the terms of the agreement between them concerning the WIC Program (Contract No. 360106), as per the items set forth. The Agreement was forwarded to DPHHS in Helena, Montana.

Agreement -- The Missoula County Park Board and Bonner School signed an Agreement to install play equipment on the Bonner School grounds, with the Park Board agreeing to provide up to $1,400.00 in matching funds to be expended before April 11, 1998, per the terms set forth. The Agreement was returned to Leslie Bailey, Office of Planning & Grants, for further signatures and handling.

Resolution No. 96-035 -- The Missoula County Board of Commissioners signed Resolution No. 96-035, a resolution repealing the emergency proclamation enacted on April 11, 1996, for the derailment of a Montana Rail Link train. The minutes of the Administrative Meeting are on file in the Commissioners Office.

Site Inspection -- In the morning, Commissioner Evans accompanied County Surveyor, Horace Brown, on a site inspection for the request to abandon a portion of the GLO Road in Siesta Acres #3 in the Rattlesnake area.

WEDNESDAY, MAY 22, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Certifications of Acceptance -- Chairman Evans signed Certifications of Acceptance for County Maintenance for the following:

1) Autumn Lane, Road No. L-0605, ACM. No. 96-0011, located in T12N R20W, section 35, with the limits of acceptance being .086 miles;

2) Lake Side Drive, Road No. L-0587, ACM. No. 94-0003A, located in T12N R20W, Section 35, with the limits of acceptance being .170 miles;
3) Nickel Drive, Road No. L-0606, ACM. No. 96-0013, located in T12N R20W, Section 35, with the limits of acceptance being .070 miles;

4) Nightingale Lane, Road No. L-0607, ACM. No. 96-0012, located in T12N R20W, Section 35, with the limits of acceptance being .084 miles.

The Certifications were returned to the Surveyor’s Office.

Extension Letter -- The Board of County Commissioners signed a letter to Mr. Andrew C. Fisher, Eli & Associate, approving a 90-day filing extension for Baungardner Lots, making the new filing deadline September 5, 1996.

Extension Letter -- The Board of County Commissioners signed a letter to Mr. David Bowersox, WGM Group, approving a six-month filing extension for D & E Homesites, making the new filing deadline December 6, 1996

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

PUBLIC MEETING -- MAY 22, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present was Commissioner Barbara Evans.

BID AWARD: MULLAN ROAD PROJECT (ROAD DEPARTMENT)

Horace Brown, County Surveyor, said bids were opened May 20, 1996, to award a bid to construct a new alignment of Mullan Road at the Old Milwaukee Railroad Crossing, with the following results: JTL, $87,195.00 and Jensen Paving, $62,275.00. He recommended that Jensen Paving be awarded the contract as the lowest and best bid.

Barbara Evans moved that the Board of County Commissioners award the contract to Jensen Paving Company in the amount of $62,275.00 as the best and lowest bid. Michael Kennedy seconded the motion. Motion carried 3-0.

DECISION ON: REQUEST TO ABANDON PORTION OF GLO ROAD IN SIESTA ACRES #3 (RATTLESNAKE AREA)

Michael Kennedy asked Horace Brown for his comments of the site inspection.

Horace Brown, County Surveyor, said he and Commissioner Barbara Evans inspected the site on Tuesday, May 21, which is in the Altura Drive to Siesta Drive area. The GLO roads shown in Book I run through these lots. They were drawn in without regard to where the road is today and they want to move it from the right-of-way to where the road currently exists.

Barbara Evans moved that the Board of County Commissioners abandon the portion of the GLO road located in Section 35, T14N, R19W, Siesta Acres #3, from Altura Drive to Siesta Drive, and converting the right-of-way to the existing traveled way. Michael Kennedy seconded the motion. Motion carried 2-0

HEARING (CERTIFICATE OF SURVEY REVIEW): AGRICULTURAL EXEMPTION (SOL)

Michael Sehestedt, Chief Deputy County Attorney, said this was a consideration of whether to approve creation of an agricultural parcel for property located in the SE¼SE¼ W½SE¼ SW¼NE¼ and the NW¼NE¼ of Section 2, T14N R21W for K. Michael Sol.

Michael Sol has submitted an agricultural exemption request for a 165 acre parcel, less railroad right-of-way, located between Mullan Road and Highway 90 near Frenchtown. Mr. Sol proposes to create a 60 acre parcel for transfer to his neighbor to the east. The comprehensive plan in the area is open and resource (one dwelling unit per 40 acres).

The history of the parcel is as follows: John and Virginia Sol purchased the parcel in 1956. A partial interest was transferred to Kim Michael Sol in 1971 and in 1973, Virginia Sol transferred her interest to John Sol, leaving John Sol and Kim Michael Sol as joint tenants with rights of survivorship. A Deed of Distribution was filed in 1981, after the death of John Sol, transferring sole ownership to Kim Michael Sol. There have been no changes to the original parcel. According to the records kept by the Missoula County Surveyor’s office, the applicant has not used any exemptions to the Subdivision and Platting Act.

Andrew Fisher, Eli & Associate, said he was representing Mr. Sol, who wants to sell about 60 acres to his neighbor. The land is entirely agricultural and there is no residence on either parcel.

Michael Kennedy asked what the current zoning of the area was?

Andrew Fisher replied that it is unzoned.

Barbara Evans asked if Mr. Sol recognized that if the County grants the agricultural exemption on the property, it can only be taken off in the future by approval of this Board?

Andrew Fisher answered yes.

Michael Kennedy opened the Public Hearing. No one came forward and he closed the Public Hearing.
CONSIDERATION OF: DARK HORSE ESTATES (5-LOT SUMMARY PLAT)

David Loomis, Office of Planning & Grants, said this was a proposal for a 4 lot summary subdivision of 21.3 acres, ranging in size from 4.8 to 5.3 acres. The location is in the upper Grant Creek area at the end of Keegan Trail, so to access it you must drive from Grant Creek, Snowbowl Road and then head south on Keegan Trail. The applicant is Washington Development Company, represented by Professional Consultants, Inc. The zoning is presently C-RR1, residential, one dwelling unit per acre. The Grant Creek Area Plan calls for low density single family residential and open and resource for the floodplain areas. It has a mix of riparian and open and forested lands.

Dark Horse Creek which is an old irrigation ditch from historic times is essentially biologically functions as a creek and significant riparian area. One of the issues that they have is the proposed road crossing the creek into the site has to the potential for significant impacts. Staff recommends a bridge crossing in condition no. 9 to mitigate the potential impact on the creek and resources. The floodplain and other riparian resources are also on site. To reach 3 of the 4 lots, the road must cross all the lots. The applicant has attempted to design the most sensitive access. They feel it goes a long way but, nevertheless, there are significant impacts on the riparian resources. Staff recommends a narrow road and driveway extension at the end of the cul de sac between Lots 2 and 3 could be combined up the embankment, shortening up the driveway, putting the driveway down to Lot 3 on the higher bench. The 3 parcels on the easterly south-easterly edge are on an elevated bench and are appropriate locations for the houses that would be in this area. In condition no. 5 and the variance request for the narrow road, staff supports the narrow road down to 20 feet. That has been conveyed to the fire district, who said that width and the cul de sac are acceptable to them. For fire standards, staff supports that variance on the basis that it would lessen the impact on the resources and still provide adequate access. The road being requested is private. There appears to be no potential in the future for extending the road beyond these lots.

Since the riparian and habitat areas take up a significant portion of the 20 acres, condition no. 12 does not allow horses and condition no. 13 for revised riparian management plan to reflect those conditions. There is further discussion in the staff report and conditions about the covenants.

Dick Ainsworth, Professional Consultants, Inc., said of the 13 conditions, he would like to address condition no. 5, the driveway easement that serves Lot 3. The bench drops down into the floodplain about an 8 foot bank. The way they have it planned, the cul de sac is placed lower. They designed a driveway to serve Lot 3 that they hand-picked to avoid trees and climbing the bank. He has a couple of concerns with the staff’s recommendation of the road. One of the reasons the developer put the driveway where they did was, the building sites for these lots are up on the bank and it is not real wide across there. They would like to have condition no. 5 deleted or at least modified to read that the driveway, as proposed by the developer would serve Lots 2 and 3.

They proposed to use a culvert where staff is recommending a bridge over the first crossing of Dark Horse Creek. They feel a culvert would work best and can be put in with a very small disturbance to the creek. It is not a wide stream; he said he can cross it with one step. The cost of the bridge is prohibitive compared to the cost of a culvert. So they would like condition no. 9 to be deleted also.

Michael Kennedy asked what about an arch culvert with a bottomless culvert?

Dick Ainsworth replied that would be acceptable to them.

He continued that the covenants as they proposed them would permit one horse on Lots 1, 2 and 4 and two horses on Lot 3. They discussed condition no. 12 with Lisa Moisy and they told her they would be willing to have one horse on Lots 2 and 3 only and none on the other two. He felt this was a compromise. They are not even sure that people will put horses on these sites. Historically, this land has been pasture land. It has been part of the Grant Creek Ranch for years and has been grazed by horses for years. They would like it to be an option to have a horse on the property.

Barbara Evans asked what is the status of horses is in the surrounding residences in the area?

Dick Ainsworth replied that there are no other 5 acre tracts close to this so he is sure horses are not permitted.

He mentioned John Crowley, President, Washington Construction, was also present and available to answer questions also.

Michael Kennedy said, since it seems the ditch is more of a creek than a ditch, they are most concerned with protecting the habitat there. When you build culverts, you don’t necessarily need to build circular culverts. A plate arch culvert does not have a bottom in it and does the same thing.

Dave Loomis agreed and said staff would support it.

Michael Kennedy said he is concerned that it would preserve the bottom and that it does not increase the velocity of the natural creek, so it may have to be a larger culvert than normal.

Dick Ainsworth said that would be no problem.

Michael Kennedy said he felt there needed to be an easement to provide access to the subdivision. He asked if one existed from Lot 64 and 63?
Dick Ainsworth answered, when Grantland 10 was platted, it was platted by the Marbuck family years ago, who used to own Grant Creek range. They also owned this property. They platted off the end of the existing cul de sac at Keegan Trail. They did not plat two gaps between the lots, one running south and one running west, to the adjoining property. They left a gap between Lots 63 and 64 and it is part of this parcel that Washington bought. When they first started working on this, they contacted the neighbors. Originally, the owner of Lot 63, Paul Strong, contracted them and said that the gap that went through there was close to his neighbor’s hot house. He asked them if he was willing to give them land to move it over, would they be willing to do that? The developer agreed, saying they had no problem with that. So those involved have agreed to do a boundary relocation with Washington and move the existing gap over. They are in the process of doing that. But there is ownership that goes out to this road, so the road is in their ownership.

Michael Kennedy asked if that little gap would remain in undivided interest?

Dick Ainsworth answered that, truthfully, they had not thought that far ahead. Its a private road and would either be part of the ownership of the two lots that have joined and would be subject to an easement for the road, or the road would be parcel by itself that would be conveyed to the Homeowners’ Association.

Michael Kennedy said there appears to be a trail on the bench, as shown on the map. He asked if that was a private trail?

Dick Ainsworth said its just an old road used to service this area.

Michael Kennedy said there has to be an access for all three of the lots so somehow we have to negotiate that bench. So, it doesn’t matter what decision is taken here, you still have to get up on the bench, which is about 8-10 feet up. He wondered if they could use that old trail.

Dick Ainsworth said it was a fairly easy climb if you go up to the north. The bench is not quite as steep. The buildable part of these lots is so narrow that they hesitate to use the existing trail that is along the access. If people buy a 5 acre tract, they are not going to want to have their neighbor’s driveway run right through the middle of their tract and by their home.

Dave Loomis said Lot 1 on the northerly edge is narrower in terms of the bench and buildable area. Lots 2 and 3, that have been focus of this discussion, plus or minus the 250 foot in width in terms of the bench area, so they felt there were some choices in locating the driveway.

Michael Kennedy said they will have to negotiate that bank anyway and there has to be access provided for Lot 2 and, whether it goes in the riparian area below or the bench above, the amount of traffic that is generated by the occupant of Lot 3 is minimal.

Dick Ainsworth said the driveway is not in the riparian area.

Michael Kennedy said, being an owner of horses himself, he knows that 2½ acres of land is barely enough to support a single horse. But if you carve up those 2½ acres with driveways and buildings and other things, you are going to have a lot less than that. In his opinion, if you then place a horse on that land, it will ruin the land. He does not support having horses allowed on this subdivision at all for that reason.

Michael Kennedy said, even though this was not a public hearing, he asked if anyone had any comments on this subdivision?

Lou Belle Whistler said she resides on the corner of Woodwind and Keegan and said this looks like this is going to be a beautiful subdivision. However, she is concerned about the water. Every house in that immediate area has a different well depth and a different amount of water. There have been several people who have had to have 3 or 4 wells drilled. They themselves have 1.89 acres and they are lucky if they have 5 gallons of water per minute. That is when it is a good year. There are several wells that are surface water wells. Hers and a few of her neighbors are somewhere between 18 and 24 feet. Some of the wells are 120 feet, several wells are over 400 feet. So how will this affect their water? Also, there is no way you can walk across the creek. They walk down there often and you can jump it if you were a pole vaulter, but its wider than the Commissioners are being told. When there is a good runoff as there is currently, the water comes close to the top of the culvert. So she is inclined to believe that a bridge would be better.

Barbara Evans said there is a letter from Ron and Janet Perrin and they suggest that they would like the extension road to be maintained at the same elevation as the Keegan Trail cul de sac. She assumes that is where the proposed driveway is on the map.

Dick Ainsworth said the existing cul de sac at the end of Keegan Trail has an island in it with trees. That is the proposed cul de sac. The existing cul de sac is further up. They intend to retain the island and design around it. Further, they do not plan to bring in any fill.

Dave Loomis said they were concerned about cut and fill. Secondly, taking off from existing cul de sac, and they are going to have to do some cutting. The intent is to keep the road as low as possible and not build the dam because there are overflow channels. Reaching the proposed cul de sac, in their opinion, there would be less impact to go straight up inside of sidehill cuts and distribute the people on the bench accordingly. There is enough widths on Lots 2 and 3 to have plenty of privacy and have one more driveway go down.

Michael Kennedy stated, however, that alternative is really a longer alternative because there is a switchback in it, thus requiring more roadway construction. You would have to switch back on the driveway back into Lot 2.

Barbara Evans asked about dust abatement?
Dick Ainsworth answered that these are paved roads and driveways.

Barbara Evans asked, regardless of what cut and fill is done, will they vegetate?

Dick Ainsworth replied yes.

Barbara Evans said she sees distress in the folks who live in this area concerning horses.

Dick Ainsworth said it is not a big problem to them if they are not allowed horses.

Barbara Evans said she would like the least cut and fill possible. She sees this as within the riparian regulations and they are within the rules in the design but, at the same time, she appreciates the staff’s concerns.

Michael Kennedy said there is an existing traversed way but it does not exist on the lower level. The reason for this is that it is most convenient and the most durable location for a road and the least prone to operational maintenance problems. Thus, he supports this using this road. Lot 2 is about 200-250 feet wide so the visual disruption of passage to provide access to Lot 3 is minimal. He does not feel it is worth the justification of lowering the road and going against staff recommendation.

John Crowley said, if you extend the cul de sac southeasterly, there are very large pine trees. The developer and he had spent much time on site planning the road and driveway to have the least possible impact on the riparian and forested areas. The bench is wide but you are still driving through someone’s front yard. Their layout is the optimum way of getting up on the bench. In his opinion, to go straight up on to the bench and run through someone’s front yard is not the best alternative when you have an alternative that has been analyzed that serves the same purpose and minimizes the effect on the environment.

Michael Kennedy asked about the removal of trees on the preferred alternative?

Dick Ainsworth said, if they do, it won’t be over 6 inches in diameter. The largest trees on this site are in the area of the cul de sac and they designed the cul de sac to avoid them.

Barbara Evans moved that the Board of County Commissioners grant the variance request for narrower roadway width for Dark Horse Estates Subdivision, located off Keegan Trail, in the Grant Creek area, north of Missoula legally described as Tract B COS #4000, Section 21, T14N, R19W. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the summary plat for Dark Horse Estates Subdivision, located off Keegan Trail, in the Grant Creek area, north of Missoula legally described as Tract B COS #4000, Section 21, T14N, R19W, contingent on the conditions listed below. Michael Kennedy seconded the motion. Motion carried 2-0.

1. The developer shall contribute $50.00 per lot to the Missoula Rural Fire District Large Diameter Hose Fund prior to filing of plat.

2. The following statement shall appear on the face of the plat and in all instruments of conveyance:

   “Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for the installation of sidewalks or pedestrian walkways along Keegan Trail, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”

3. The following statement shall appear on the face of the plat and in all instruments of conveyance:

   “Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest as future RSID/SID for the installation of a community or municipal water and sewer system, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”

4. The developer shall provide engineering plans for the connection between the public and the private portions of Keegan Trail. Plans shall be approved by 4th County Surveyor prior to filing of the plat.

5. The driveway easement shall serve Lots 2 and 3.

6. The following statement shall be included on the face of the plat:

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

7. The following statement shall be shown on the face of the plat and in each instrument of conveyance:

   “The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or property-owners’ association and that the County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the County of Missoula for maintenance.”

8. The private drive serving Lots 2 and 3 shall be labeled as “private driveway and public utility easement.”
10. The covenants shall be rewritten to reflect the proposed subdivision of Tract B into four (4) lots. Amendments to the covenants shall include the recommendations for living with wildlife in wildland residential interface areas.

11. The covenants shall be amended to include requirements of the Missoula County Subdivision Regulations 5-15(2)(E) which addresses the requirements for an approved turn-around for driveways in excess of 150 feet in length, the need for a 20 foot driveway clearance and unobstructed vertical clearance of 13’6”. Language shall be approved by the Office of Planning and Grants prior to filing of plat.

12. The covenants shall be amended to state that no horses shall be allowed within this subdivision.

13. The developer shall submit, as part of the riparian management plan, a list of native vegetative groups to be used for restoration of any disturbed native vegetation on this property. This list is subject to approval by the County Surveyor prior to filing the plat.

HEARING: COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) APPLICATION ON BEHALF OF PARTNERSHIP HEALTH CENTER

Cindy Wulfekuhle, Office of Planning & Grants, said Missoula County is considering submitting a request to the State Department of Commerce for Community Development Block Grant, CDBG, funds that, if awarded, would be used to assist Partnership Health Center build a facility to house its offices and health clinic. Before I describe the project I would like to give a brief overview of the federally funded, State administered, CDBG Program. Examples of proposals that may be funded using CDBG dollars include housing development or renovation projects, economic development efforts that provide or retain jobs and public facility sewer and water projects or public building improvements. The primary beneficiaries of the CDBG program must be low to moderate income households based on HUD income guidelines. For example 19,750 would be considered low income and $31,600 would be considered moderate income for a household of four. The income limits vary by household size and may change on an annual basis. This year, the CDBG Program has approximately $1.8 million available for public facility projects. A request for funding cannot exceed $400,000 and applications must be into the State by June 4th. The funds are awarded on a competitive basis and it is not unusual for the total dollar amount requested each year by communities to be twice as much as the funds available.

Partnership Health Center (PHC) has been in existence since 1992 and is a nationally recognized example of collaboration between public and private sectors that includes the two local hospitals, the City and County governments, local physicians and the Board of Health. PHC provides health care primarily to individuals and families in the Missoula area that do not have any medical coverage or are underinsured. Currently, PHC is located in the City-County Health Department at 301 West Alder. PHC occupies approximately 2,400 square feet within the Health Department. In addition to housing 25 staff members in this space, the clinic provides services to approximately 4,700 clients per year or an average of 7,000 clinic visits. Based on industry standards, PHC requires approximately 10,000 to 12,000 square feet of space to adequately meet the needs of its clientele and staff. Over the past 2 1/2 years, PHC has been working to resolve the critical space needs issue. After unsuccessful attempts to locate an existing structure that could be renovated to house the program, it became apparent that constructing a new facility would be necessary. Two sites have emerged as possible locations to construct a new building.

One site is a vacant piece of ground at Russell Street and Broadwater Street, approximately one block north of the intersection of West Broadway and Russell Street. The second location is the parcel of property located immediately west of the Health and Human Services offices at 301 West Alder. Both properties are served by the City bus line, are close to other services and can easily access sewer and water infrastructure in the areas. The property on Russell Street employs a larger building that could be renovated to house the program, it became apparent that constructing a new facility would be necessary. Two sites have emerged as possible locations to construct a new building.

Today’s public hearing is an opportunity for Missoulians to hear more about PHC, the need for the proposed project and the partnership that is in place that provides the healthcare services to many residents. Members of the audience will be able to ask questions about the CDBG application process and the proposal to develop a new facility. They will also be able to either offer support for or express opposition to the application. In addition to CDBG funding, other potential sources of funding for the project include a $400,000 Federal Capital Improvement Program (CIP) grant, a local fundraising effort to raise $500,000 and a possible General Obligation Bond of up to $500,000. Depending on the site selected, it may also be necessary to apply for a loan through a program such as the State’s InterCap Program.

Jeanne Twogig, Director, Partnership Health Center, said she wished to outline who Partnership Health Center (PHC) is and what they are proposing for consideration for CDBG funds. She is joined by other PHC staff and board members in the audience, patients and individuals from the health and social services community who wish to speak in favor of the proposal.

Briefly, PHC is a health care clinic designed to provide affordable care to those who, for financial reasons, are locked out of the private medical system. PHC serves Missoulians of all ages and from all walks of life – the working poor, the unemployed and the uninsured. The patients are generally complex in their both their social and medical needs. All pay something for the care they receive at PHC. Currently, there are about 4,600 patients and this year they anticipate providing over 7,000 patient visits.
They began as a Partnership among the City and County government, the hospitals, physicians, and the Health Department. The Partnership remains strong and, in fact, has grown significantly since they began. They have increased their funding partners to include the federal government, the state through private contracts and through private foundations. They have also increased the scope of the care that they provide in response to the needs that have been expressed by the patients and the community at large. They now offer dental services as well as mental health services. Regarding space availability, they are victims of their own growth. They have been housed in the Health Department in a space that was never designed to function as a full-blown family practice medical facility. The cramped quarters inhibit their ability to see the number of patients who request their services. It compromises their ability to see the number of patients who request their services. It compromises their ability to provide care in such a way that respects the medical and financial privacy of their patients. In fact, the current space does not allow them to see the number of patients that they need to see to remain financially viable. Approximately 2 years ago, they joined the Health Department in discussions on how the overcrowding could be alleviated. It was obvious there was no easy solution. Last spring, the PHC Board identified the problem as critical. They began an exhaustive search for space. They determined that they needed between 10,000 and 12,000 square feet, which included space for exam rooms, case management services and for the dental program. They developed criteria that they considered mandatory in any site that they would consider. The locations, the size and accessibility to their patients, whether they could get into the new facility, the health and safety standards, parking, and the flexibility and disposability that any new building would offer them in a changing health care environment. As importantly, the Board stressed the importance of, not only preserving, but strengthening the partnerships that they currently have so that any quest for new space would not do anything to minimize the relationships that they feel are so important to the success of PHC. They have had extensive discussions with their partners and with others in the community to help identify the most workable solution. Discussions have been held with the Mayor, the hospitals, Western Montana Clinic, the redevelopment agency, the Office of Human Services, their federal representatives, the County, they have had focus group discussions and have surveys with their partners, and communications with the public. They would not think of anyone that they have not talked to in trying to solve this problem. Their search for space initially began with a look toward what existing buildings may be available to them. They looked downtown, vacant lands in the Northgate area on the north side, and talked with hospital personnel in hopes that there might be something on their respective campuses that would be able to house them. It was determined that because of an ability to guard their front funding, as well as their limited ability to pay on-going rent, that building a facility would be their strongest option to solve the critical space problem. As Cindy mentioned, their financing package includes a request from the federal Capital Improvement Program (CIP) for $400,000 through their Capital Improvement Program (CIP) and $500,000 through the CDBG funding. As a result, they are requesting consideration from the Commission for support in using the County’s borrowing power through either general bonds, revenue bonds or through INTERCAP funding. However, she stressed that PHC would be responsible for repayment.

She presented two options to be considered by the Board of County Commissioners for a building project. The first site is on Russell Street between Cooper and Sherwood. The site is currently vacant land. It is 66,000 square feet. As the site plan (which was posted for the Commissioners’ review) indicates, there would be a proposed building to house PHC in approximately 11,000 square feet. The building would be built large enough to include approximately 8,000 square feet for a renter. At this time, they are in the midst of discussions with three main organizations that are interested in being a renter, the Mental Health Organization, Missoula Aging Services, and the Office of Human Services. With the inclusion of a human service component, the proposal is the creation of a health care service complex in such a way that it is able to be subdivided, which would allow them to either purchase the total 66,000 square feet or make the entire purchase and then sell the remaining portion that they don’t need to further that human service complex. The site is accessible by three bus lines. There is ample parking and it fits the criteria for both disposability and expandability. While this site has many advantages in its accessibility, it has potential as a human service complex and as a neighborhood health center and physically separates PHC from the Health Department. This has been a concern to them. To balance the physical separation, they are engaged in discussions with other divisions of the Health Department in discussions on how the overcrowding could be alleviated. It was obvious there was no easy solution. They developed criteria that they considered mandatory in any site that they would consider. The locations, the size and accessibility to their patients, whether they could get into the new facility, the health and safety standards, parking, and the flexibility and disposability that any new building would offer them in a changing health care environment. As importantly, the Board stressed the importance of, not only preserving, but strengthening the partnerships that they currently have so that any quest for new space would not do anything to minimize the relationships that they feel are so important to the success of PHC. They have had extensive discussions with their partners and with others in the community to help identify the most workable solution. Discussions have been held with the Mayor, the hospitals, Western Montana Clinic, the redevelopment agency, the Office of Human Services, their federal representatives, the County, they have had focus group discussions and have surveys with their partners, and communications with the public. They would not think of anyone that they have not talked to in trying to solve this problem. Their search for space initially began with a look toward what existing buildings may be available to them. They looked downtown, vacant lands in the Northgate area on the north side, and talked with hospital personnel in hopes that there might be something on their respective campuses that would be able to house them. It was determined that because of an ability to guard their front funding, as well as their limited ability to pay on-going rent, that building a facility would be their strongest option to solve the critical space problem. As Cindy mentioned, their financing package includes a request from the federal Capital Improvement Program (CIP) for $400,000 through their Capital Improvement Program (CIP) and $500,000 through the CDBG funding. As a result, they are requesting consideration from the Commission for support in using the County’s borrowing power through either general bonds, revenue bonds or through INTERCAP funding. However, she stressed that PHC would be responsible for repayment.

The second site is on West Alder. The in-fill space between the Health Department and the parking lot was initially considered by PHC but had been discounted for two reasons. First of all, it would require a two story building, which is not optimal for efficiency in a medical clinic. Secondly, and more important, the parking situation for the health and human services is currently inadequate. In fact, it is the primary complaint that they hear from their customers. Adding more patients as PHC expands would only complicate an already difficult situation. However, because of the concerns of PHC being physically removed from the Health Department, they have reconsidered the option and see it as doable. They do not yet have a site plan but they do have some drawings that were done several years ago when they were dreaming about the possibility of that space. Their recent work with Jim O’Neill, the architect, indicates that the land has the capacity to hold a 2-story building that would meet PHC’s needs. They would be able to locate all clinical services on the ground floor with dental and administrative services on the second floor. With the County donating or leasing PHC the land, preliminary cost estimates indicate that the project would be financially viable. They believed that parking should be a downfall to their clinical services on the ground floor with dental and administrative services on the second floor. With the County
gather the final pieces of data that will allow them to make a final determination on the cost and suitability on either one of these options.

The bottom line is PHC needs different space. They cannot continue to be viable in the space they are currently located. They have the potential to bring to the table, through their packaged financing, approximately $1.2 million and this is a significant catalyst in solving the problem. By PHC following either of these options, they will be able to not only build a building that would meet their needs but also help alleviate some of the overcrowding that currently exists in the Health Department building. They view this as a win situation for PHC, their patients and the County in general.

A new building will help them fulfill their vision of providing accessible, affordable health care to the thousands of Missoulians who are currently going without care. They hope the County Commissioners will help them in pursuit of that vision.

One final comment, she noted that Chris Siegler, Director of Community Services, St. Patrick’s Hospital, had to leave for another meeting and he asked that she convey his comments. She read from his note, “St. Patrick’s Hospital believes care delivery systems are an essential part of the health care’s vision.” St. Patrick’s Hospital is one of the founding partners along with Community Hospital. There is broad support from the physicians at St. Patrick’s Hospital who, through Larry White, will spearhead raising $500,000 capital campaign for the PHC clinic and to emphasize St. Patrick’s and the physicians’ support for the CDBG application.” She said he would put his comments in writing if that would help their effort.

Dr. Ralph McDonald, a retired dentist, said he had practiced dentistry in Missoula for 34 years and has noticed a dilemma as far as dental care for the underprivileged. Underprivileged children who do not receive dental care grow up to be adults who need dental work and this often leads to the attitude that they feel they are going to lose their teeth anyway so why bother taking care of them as they will probably be extracted as they get toothaches. This attitude is all too prevalent here in Missoula.

He realizes dentistry is expensive. There is a group of dentists that have been doing volunteer dental work over the past 2 years. It would greatly enhance their efforts if there was a facility where dentists could do this volunteer work instead of taking the underprivileged patients in their own office. Missoula has another problem that most people are not aware of. We do not have fluoridation in the water. Several years ago, the Dental Society approached Montana Power Company, who owned the water supply, about the possibility of getting fluoridated water in Missoula. They were told it was cost-wise prohibitive. There is no longer one water source in Missoula and they don’t know how many deep wells are being used. The cost of putting in monitors and have someone check these everyday for fluoridation would be cost-wise prohibitive. Several years ago, the American Medical Association stated that, next to the Salk vaccination, fluoridated water was probably the second most important fight against infectious disease. What is proposed for dental care is prevention and education. It will take several years before we see the results. If they can get the children fluoridated and, as they get older, get sealants put on their permanent molar teeth, it will make a vast difference. He hopes that the County Commissioners will give their support to this request.

Dan Poe Newman, a local resident, said fluoridation is needed. The doctor even said it. As far as mental health care, he said he is just glad that he has borne up under the stress of being an out-of-stater in Montana as well as he has. He has lots of hobbies. He runs for office every once in awhile but says he does not get mentioned. He said there are people who are politically active who have mental health problems. He asked if they could get help, then answered “Not a chance,” because what they see isn’t what’s actually happening. He stated we will not admit its happening. There is no way that out-of-state patients can get mental health care without being told they are crazy. He said he was told 9 years ago that he had brain damage by one of the professionals. He assured the Commissioners that if he had brain damage, it probably is in the way that 90% of the people have brain damage, theoretically. But he said he is running for office. If there were a newspaper reporting what he is saying, they could take this out of context. But he is concerned that federal government money is being given to the local health industry here when there is no representation from opponents of the current health care system. He said, as a low-income person who makes $5600/yr, it took him 3 years to find a dentist. He sees some things in terms of mental health that Stalinist-type politics that really bothers him, i.e., you are not-for-our-system therefore you are not going to get proper health care politics. On the other hand, he sees dentistry as such a tremendous need. He is torn when he has poor people coming up to him. As far as fluoridation and dentistry, there is a crying need for it. He said he is a viewpoint from another direction. 5,000 people voted for him in the last election. The Missoulian newspaper says that doesn’t matter, “your people’s opinion make no difference whatsoever.” He claimed he was treated as though he did not exist, that “you can run for office till hell freezes over and we will never mention it and you can give your viewpoint and we will never mention it.” He said, however, that he thanks god that he does not have emotional distress to the point where he cannot function and thanks god he has a dentist.

Michael Kennedy thanked Mr. Newman for his comments and asked if there was anyone else who wished to speak?
Denise Scannel said she has been on the Board for PHC since it was organized in 1992 as a consumer’s representative and has been on the Consumer Access Committee. She stated space has bedeviled them since the very beginning. They crowded into the top floor of the Health Department along with the people who filled up the top floor to begin with. She promised that, if they are awarded this money, they will put it to such good use no one will believe it. They have been planning and struggling and looking for a solution to the space and the parking problem for over a year. She said most people know that, unless you have a reserved parking space, it is a severe problem. She pays for a space and is determined that, if she gets a ticket, she will not pay it. It is a constant hassle. Someone cannot even pick up papers on a quick basis unless someone else runs in to get it while someone else drives.

Lisa Lovejoy, Medical Director and staff physician with PHC, said their goal at PHC has been to provide compassionate quality primary care services to people who otherwise lack access to those services. Their present facility interferes with their ability to provide that kind of care. As a patient comes into their clinic, they check in with the receptionist in the crowded front office area, which offers no privacy, to state their medical problem and/or their financial situation. They require information regarding the client’s financial ability so they know how much they can slide the fee to help them. The clients are then taken back by a medical assistant to one of two separated corner areas where the exam rooms are. The medical assistants have a very crowded place in which to do their job of organizing their charts, and performing labs. There is disruption because the exam rooms are not in a centralized location and this affects the ability for the provider to talk with the medical assistants and keep that communication flowing. Medical practice norms are that the providership have 2-3 rooms available to see patients during typical clinic hours. PHC has 1-2 rooms to see patients. This increases patient waiting time and decreases staff efficiency. There are concerns regarding confidentiality. If she is called out of the exam room to talk on the phone, that phone is right outside the exam room and has no privacy. She has to go to the back offices if she needs to talk in private. Dental and Mental Health departments also need space.

Patty Nichols said she worked as a counseling intern with the Mental Health program over the past year. In fact, she was able to help in some of the planning of it. They saw their first clients in November. She feels this is a much needed program and it does not duplicate any services in the community. The way they handle the program is, first, the client comes in requesting services or was referred by someone, then they do an intake assessment with the outcome of three different channels. One would be to link the person with the appropriate volunteer therapist in the community or an appropriate agency or service provider. Or, if they were above 0% poverty level, then the interns would work with the client.

She stated when she first entered the building, she was surprised at the crowded conditions. There are boxes sitting around and no where to place anything. They had a small room to use for mental health care 3 afternoons per week. That required that the client fit his or her schedule to theirs and she believes they have lost some clients because of this. The crowded conditions also made it difficult to keep track of charts, also taking up more time. She concurred with Lisa that there is no privacy with the single phone that is outside the exam rooms, which often resulted in her calling people from her own home.

When you work with a person in therapy, it is necessary to feel grounded. In the situation as it is now, she does not feel organized nor does she feel that there is any personal space for a feeling of comfortableness.

They have a roster with approximately 30 volunteer therapists and there has been a good response from them for this program. She supports the new facility and hopes the Commissioners will give it their serious consideration.

Beth Metzgar, past PHC Board President, said their number one priority is to find more room, which will probably involve a new facility. She said it is only their number one priority because it is necessary to meeting their true number one priority, which is serving their clients. They cannot either expand services for the mental health and dental care facilities nor can they serve additional clients because they lack the space. They cannot even serve their current clients in a timely fashion. Providing quality care is part of their mission but, as already stated, they have a great deal of difficulty guaranteeing confidentiality because of the limited space. She said it is part of the Board’s responsibility to be fiscally responsible to their partners, including the County, who has entrusted them with caring for Missoula County’s medically underserved but, again, limited space prevents them from doing it the way they would like.

The federal effectiveness review in the fall of 1993 made strong recommendations that they have a facility that would be better suited to their mission and better able to accommodate growth. Since that time, the Board, along with the Health Department and the community partners, has regularly looked for opportunities to meet those space needs. This became a crisis over a year ago when they started utilizing a great deal of board time, staff time and confering with consultant Ann Mary Dussault to design a process that would finally find a way for them to have a facility that would be suited to their needs and was fiscally feasible. The package they have come up with is not site specific but it is facility specific, one that is designed to meet their needs, can accommodate growth and is financially possible. Part of that package would be to get CDBG money so as a Board, they have consistently been unanimous in their support for moving this along. She also wanted to ask the Commissioners for their support for this request.

Cindi Raymond, Director of Social Services for the Salvation Army, said she is not directly involved with PHC but she feels, indirectly, she has been very involved. She sees clients every week and recommends many of them to PHC. Some of the feedback she has received is the issue of confidentiality. The first thing many of her clients ask is “will it be private?” She has always assured them that it is but now, after hearing the testimony of others, she jokingly commented that she wonders if that is true. She said she is very supportive of PHC in many ways but she knows that the confidentiality issue is important and must be respected. She asked the Commissioners to please support PHC’s request.

Carole Graham, County Director of Public Assistance, said she has been on the Board for PHC since its inception. She supports this request. She is cognizant of the space dilemma and the parking problems not only because she has been physically in their area, but she is also an occupant of that building. She also gets many complaints from the clients. Being a member of a child and family division of the Department of Health and Human Services, her division is also cognizant of what impact this will have on their clients. Thus, she supports their request. She is willing to cooperate in the sense of, if the location is off of the current site, she would consider that. She has discussed this issue
with her peers at the central office and they are trying to compose a letter for the block grant. The only thing they are concerned with is that it will be an exorbitant rent and her budget would not be able to handle that. She understands what PHC went through because, 3 years ago when she was trying to find space so she would no longer have to use a County building, she can verify that there is nothing available in Missoula unless it is constructed. That is why she has continued her lease with the County Commissioners.

She stated she would like to cooperate and put together the best package Missoula can for these participants. She realizes she is a key player since she provides a lot of the basic services for them.

Michael Kennedy asked Carole if she knew what the letter she mentioned would say?

Carole Graham answered it will basically say that they are aware that Missoula is trying to do something about space among the service organizations and that they will cooperate and even be willing to move as long as the rent is reasonable. She does not know if they will address the issue of the current lease.

Michael Kennedy asked if she thought the letter would be in commitment form?

Carole Graham replied yes.

Ellen Leahy, Director of the City-County Health Department, said she fully recognizes the critical support that this Commission has already led to create and continue PHC. The fact that they are still here is testament to how much they are needed and here they are again, with another request. She wanted to emphasize that none of these issues are issues of convenience; these are issues of acceptability. Privacy is paramount and, in fact, is required by law. The safety concerns that have been noted by the space study could be, to some degree addressed if PHC could move to another space. And, lastly, she stated how hard everyone worked to get the funding for this program and to think that funding could be jeopardized because they cannot meet the federal productivity standards is not acceptable.

She commended the Board and staff of PHC, Ann Mary Dussault and Cindy Wulfekahle for all their effort in trying to solve this need. They put in their heart, time and money into this. It took a great deal of initiative, not to just help them, but to help all of us. She said that was rare when the problems are as paralyzing as this one has been. Regarding the two sites, throughout this process criteria have been used for each step and that same criteria, with the information that they already have, will be very helpful in determining which site is going to be the most feasible. Her comments have been listened to and considered and, with regard to all the information being on the table, it is all being handled with an open mind. The most feasible site is the one they need to go with. All things being equal, it may be nice for her to say she would prefer them to be next door but they have good criteria information and they will tell us which is the most feasible site. Because this problem is so critical, the only risk she sees is to fail to go forward. She is committed to making any configuration work.

Michael Kennedy thanked everyone for their comments and asked if anyone else wanted to come forward to speak? No one came forward and he closed the public hearing.

Barbara Evans said she supports PHC. Her main concern is not whether to support the CDBG request, because she does, but she is also concerned is the potential for a General Obligation (G.O.) bond that may affect the County’s borrowing capacity for the jail. She said these are both serious needs and she hopes they can find some way to do both without endangering both of them.

Michael Kennedy said Missoula County has been out in the front with developing and addressing community needs for a long time, of which PHC is an example. He agreed with Ellen Leahy that they are still here and it is an ongoing matter. He is happy with all the work PHC has done and is distressed that they are in a space that is 1/5 of what their need is. He believes that somehow the goodness of this proposal will prevail and that the cost issue is something they can overcome together. He thanked everyone involved with PHC for their effort.

Barbara Evans moved that the Board of County Commissioners approve the submittal as sponsors for the Community Development Block Grant (CDBG) for Partnership Health Center. Michael Kennedy seconded the motion. Motion carried 2-0.

Michael Kennedy said, also with this motion, is recognition that the County continues to be an active partner and will play an active role with the Partnership Health Center.

CONSIDERATION OF HAFFNER SUBDIVISION #2 -- SUMMARY PLAT (OLD U.S. HIGHWAY 10 AREA) (CONTINUED FROM MAY 15, 1996)

Sam Islam, Office of Planning & Grants, said Haffner Subdivision #2 is a 3-lot subdivision proposal. This is a continuation from the meeting from last week. It is adjacent to the Missoula Industrial Park on Highway 10 and south of the Wye. It totals 106 acres and is zoned C-I1 and C-C2.

There is one addition variance request. The developer requests a variance to not pave a portion of the private road extending from Inspiration Drive to the northwest corner of Lot 2. They are recommending approval of it based on the findings of fact. They are recommending approval of this subdivision contingent on the conditions stated in the staff report. They have added 3 conditions.

Pat Keiley, Office of Planning & Grants, said the issue last time was whether or not a portion of the road was to be paved. Subdivision regulations do require that portion from Inspiration Drive to the northeast corner of Lot 2, which is wholly within the subdivision, to be paved. The other portion of the private road easement is half on the property and half off. It is considered an off-site road. Regulations do not require it to be paved. The applicants are requesting a variance to not pave that portion. Staff recommends approval of the variance based on findings in the variance
section but subject to a condition that, when the 3 County roads, Inspiration, Summit and Derby Drives are paved, that this portion be paved at that time.

Michael Kennedy asked if that condition would extend to that portion of the road that is outside the plat?

Pat Keiley replied no. The reason for that is that the regulations would not require an off-site access road to be paved.

Michael Kennedy said when a portion of that road is outside the subdivision, then none of the road, not even the portion that is inside, can be required to be paved at this time.

Pat Keiley agreed with that conclusion.

Michael Kennedy asked about the 1 foot strip along Highway 10.

Pat Keiley said, in discussion with Counsel, there is a section of the subdivision regulations that talks about access, "whenever a subdivision contains lots which front on existing or proposed arterial, highway or major thoroughfare, the governing body may require limited access on the frontage street."

Michael Kennedy said condition no. 13, "Future access along Old U.S. Highway 10 shall be approved by the County Surveyor," handles that.

Pat Keiley answered yes.

Michael Kennedy extrapolated that when that land is either subdivided or an access is required, the petitioner will come to the County Surveyor and he will make a judgement about if and how that access will be developed.

Pat Keiley agreed.

Barbara Evans moved that the Board of County Commissioners approve the variance request to not pave that portion of the private road extending from Inspiration Drive to the northwest corner of Lot 2, conditioned upon the paving of that road occurring at the same time that the other three roads, Inspiration Drive, Summit Drive and Derby Drive, are paved, for the Haffner Subdivision No. 2, located in Sections 21 and 28, Township 14 North, Range 20 West, Principal Meridian, Missoula County, Montana, and adjacent to the Missoula Industrial Park, south of Highway 10 and the Wye, based on staff recommendation. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the variance request from the requirement to construct sidewalks and pedestrian walkways in all subdivisions for the Haffner Subdivision No. 2, located in Sections 21 and 28, Township 14 North, Range 20 West, Principal Meridian, Missoula County, Montana, and adjacent to the Missoula Industrial Park, south of Highway 10 and the Wye, based on staff recommendation. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the variance request from the requirement to increase the surface width and easement width of the private access easement to 32 and 80 feet respectively for the Haffner Subdivision No. 2, located in Sections 21 and 28, Township 14 North, Range 20 West, Principal Meridian, Missoula County, Montana, and adjacent to the Missoula Industrial Park, south of Highway 10 and the Wye, based on staff recommendation. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the summary plat of the Haffner Subdivision No. 2, located in Sections 21 and 28, Township 14 North, Range 20 West, Principal Meridian, Missoula County, Montana, and adjacent to the Missoula Industrial Park, south of Highway 10 and the Wye, based on the findings of fact and the staff recommendation and contingent on the conditions listed below. Michael Kennedy seconded the motion. Motion carried 2-0.

1. Grading, drainage, erosion control, road and driveway plans shall be approved by the County Surveyor, prior to approval of the final plat.

2. Access and approach permit shall be approved by the County Surveyor prior to filing the final plat.

3. The developer shall pave the driveways for Lots 1,2 and 3 off of the private road easement with a paved surface width of 12 feet, to be performed at the time of building permit issuance, to be approved by the County Surveyor and Health Department.

4. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

   "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to Inspiration Drive, Summit Drive, and Derby Drive, including but not limited to paving, dust abatement, and sidewalk based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

5. The following statement shall appear on the face of the final plat and in all instruments of conveyance:

   "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for public water and sewer systems based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

6. The developer shall provide an avigation easement to the Missoula Airport Authority. Such easement shall be filed with the Clerk and Recorder prior to filing of the final plat.
That the following subdivision fire access standards be placed on the face of the plat:

a. A minimum unobstructed width of not less than 20 feet and an unobstructed clearance of 13 feet 6 inches for any driveway over 150 feet shall be provided.

b. Dead-end driveways in excess of 150 feet shall be provided with approved provisions for the turning around of fire apparatus.

The water supply for fire protection purposes for the existing and proposed structures shall be approved by the appropriate fire jurisdiction prior to plat filing.

The owner shall pay a $50.00 fee per lot or dwelling unit for the purpose of funding a large diameter hose fund, to be approved by OPG prior to plat filing.

The owner shall provide a document of record showing legal and physical access for the private access road, to be approved by the County Attorney prior to filing of final plat.

That the primary travel corridor standards shall be met prior to filing the plat or an improvements guarantee be established, to be approved by the OPG and County attorney prior to plat filing.

Future access along Old U.S. Highway 10 shall be approved by the County Surveyor.

The private road adjacent to Lots 1, 2, 3 be widened from 18 to 24 feet, to be approved by the County Surveyor prior to approval of the final plat.

The owner provide dust abatement to the private road adjacent to Lots 1, 2, 3, with the dust abatement plan to be approved by the Health Department prior to approval of the final plat.

The following statement be placed in the plat and in each instrument of conveyance:

"That the private road extending from Inspiration Drive to the northeast corner of Lot 2 be paved by the owners of Lots 1, 2, and 3 at the time that the County roads Inspiration Drive, Summit Drive, and Derby Drive are paved."

There being no further business to come before the Board, the Commissioners were in recess at 3:25 p.m.

THURSDAY, MAY 23, 1996

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

Indemnity Bond -- Chairman Evans examined, approved, and ordered filed an Indemnity Bond naming Cenex Supply & Marketing as principal for Warrant #3483 issued February 9, 1996 on the Missoula County Lolo School General Fund in the amount of $606.80 now unable to be found.

Extension Letter -- The Board of County Commissioners signed a letter to Tammy Cunningham approving a one-year filing extension for Scattered Pines subdivision, making the new filing deadline May 23, 1997.

FRIDAY, MAY 24, 1996

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

Extension Letter -- The Board of County Commissioners signed a letter to Tom Wolfe, Territorial Engineering, approving a three-month filing extension for Duke and Duchess Trailer Court, a subdivision for lease or rent, making the new filing deadline August 26, 1996. The letter also extended the paving deadline for Duke and Duchess Lane from Jade Lane to the existing house on the property to September 1, 1996.

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, MAY 27, 1996

The Courthouse was closed for the Memorial Day Observed Holiday.

TUESDAY, MAY 28, 1996

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

DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following items were signed:
**MAY, 1996 - 49 - FISCAL YEAR:**

**Agreement --** The Board of County Commissioners signed an Agreement between the Missoula County Park Board and School District 11/Potomac School to improve the School District 11 5-acre park located adjacent to the Potomac School and the Potomac-Greenough Community Center, with the Park Board providing up to $2,500.00 in matching funds, per the terms set forth. These funds must be expended before February 8, 1998. The Agreement was returned to Leslie Bailey, Office of Planning & Grants, for further signatures and handling.

**Resolution No. 96-036 --** The Board of County Commissioners signed Resolution No. 96-036, resolving to grant an agricultural exemption for the portion of land located in the SE¼SE¼ W½SE¼ SW¼NE¼ and NW¼NE¼ of Section 12, T14N R21W, approximately 165 acres, for K. Michael Sol.

**Modification of Agreement --** The Board of County Commissioners signed an Agreement between Missoula County and the Montana Department of Public Health and Human Services for the purpose of modifying the terms of the agreement between them concerning Attachment B - Budget, of Contract No. 96-054-0024, as per the items set forth. The Agreement was forwarded to Peggy Seel, Office of Planning & Grants, for further handling.

**Lease Agreement --** The Board of County Commissioners signed a Lease Agreement between Missoula County and Ryan Distributing to lease 4,560 square feet of warehouse space and 440 square feet of office space, located at 2417 Earnest Avenue, Missoula, Montana, as per the terms set forth, for a total amount of rent of $11,250, commencing on May 15, 1996, through November 15, 1996.

**Professional Services Contract --** The Board of County Commissioners signed a Professional Services Contract between Missoula County and John Hrivnak, an independent contractor, for the purpose of assessing the financial viability of Partnership Health Center relocating to a new space, as per the terms set forth, for the period commencing April 8, 1996 through May 15, 1996, for compensation not to exceed $900.00.

**License Renewal --** The Board of County Commissioners signed the renewal of the Liquor License for Larchmont Golf Course.

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

**WEDNESDAY, MAY 29, 1996**

The Board of County Commissioners met in regular session; a quorum of the members were present. Commissioner Evans was in Billings attending a meeting of the Judicial Standards Commission through Friday, May 31st.

**Audit List --** Commissioners Kennedy and Hart signed the Audit List, dated May 29, 1996, pages 2-34, with a grand total of $378,947.25. The Audit List was returned to the Accounting Department.

**DAILY ADMINISTRATIVE MEETING**

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

**Plat --** The Board of County Commissioners signed the Plat for Biggers Estates, an urban residential subdivision located in the N½ Section 7, T13N R19W. P.M.M., Missoula County, having a total area of 4.44 acres with the owners of record being Corey and Kayanette D. Biggers, with all lots subject to requirements of the Missoula County Airport Authority “Airport Influence Area.”

**Plat and Open Space Resource Management Plan --** The Board of County Commissioners signed the Plat and the Open Space Resource Management Plan for Hillsdale Estates Homeowner’s Association, an urban residential subdivision located in the NW¼ of Section 34 and the SW¼ Section 27, T13N R20W, P.M.M., Missoula County, having a total area of 27.765 acres with the owner of record being John Diddel.

**Resolution No. 96-038 --** The Board of County Commissioners signed Resolution No. 96-038, a resolution annexing a tract of land located in the NE¼ of the NE¼ of T12N R15W, P.M.M., known as plat B2, 40 acres more or less, into the Greenough-Potomac Fire Service Area.

**Resolution No. 96-037 --** The Board of County Commissioners signed Resolution No. 96-037, whereby the County of Missoula resolves that the request for down payment and closing cost assistance to the Garden City Community Housing Development Organization (CHDO) at 1421 Eaton Street be allocated to them. The Garden City CHDO agreed that such funds shall be repaid according to the terms therein.

**Acceptance of Grant --** Chair Kennedy signed a Statement of Acceptance for Grant Award Number 96 16799, dated March 29, 1996, having a grant total of $155,253.00 from the state Board of Crime Control with regard to Missoula County’s application for Drug Control and System Improvement. The project duration is from July 1, 1996 to June 30, 1997. The document was returned to Larry Weatherman, Undersheriff, for further handling.

**Acceptance of Grant --** Chair Kennedy signed a Statement of Acceptance for Grant Award Number 96 16805, dated March 29, 1996, having a grant total of $35,956.00 from the state Board of Crime Control with regard to Missoula County’s application for Drug Control and System Improvement. The project duration is from July 1, 1996 to June 30, 1997. The document was returned to Judge Larson’s office for further handling.

**Assurance Page --** Chair Kennedy signed an Assurance Page, verifying support and endorsement of the Missoula Prevention Coalition to build and strengthen the community and reduce the incidence of youth violence, delinquency and substance abuse, and agreeing to serve as a member of the Missoula Prevention Cabinet.
Other items included:

Road Vacation -- Commissioners Hart and Kennedy agreed to vacate the County road near Lolo Creek, as shown on the deed exhibit, since the condition that the deed from the state be submitted by Arthur Greydanus had been fulfilled, per prior agreement.

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

PUBLIC MEETING -- MAY 29, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present was Commissioner Fern Hart.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (WATKINS)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was consideration of whether to approve a family transfer exemption for a parcel located in the SW¼ of Section 29 and the N½NW¼ of Section 32, T14N R20W for Martha E. Watkins.

Martha E. Watkins submitted a request for a family transfer exemption for a 225 acre parcel located northwest of Missoula off Moccasin Lane. Mrs. Watkins proposes to create a 10 acre parcel for transfer to her adult daughter, Mary Ann Remington. Mrs. Watkins previously resided in a home in the southern part of the property near LaValle Creek which was flooded out in February. She currently resides with her daughter and son-in-law and wishes to continue to do so. The comprehensive plan designation is open and resource (one dwelling per 40 acres).

The history of the parcel is as follows: Mrs. Watkins has owned this property since sometime in the 1960s. Montana Rail Link runs through the property and there have been no changes since the property was originally purchased.

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

Michael Kennedy asked if Mrs. Watkins or her representative was present?

Mary Ann Remington came forward and identified herself as Mrs. Watkins’ daughter.

Michael Kennedy explained to her that the Board was required to ask questions to determine if this family transfer request was an attempt to evade the Montana Subdivision and Platting Act. He then asked if her if this land had been in the family for a long time?

Mary Ann Remington replied that her parents purchased in the 1930’s. She had pictures of the flooding that took place of their home that was flooded out in February of this year, which she passed on to the Commissioners. They had to call the fire station and be evacuated. Her mother is 81 years old and unable to safely walk through much water.

Fern Hart went over the request, saying Mrs. Watkins is going to create the 10 acre parcel and transfer it to Mary Ann, who will build a house there. Then, addressing Mary Ann, she asked if she will then live with her?

Mary Ann Remington replied yes.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Fern Hart moved that the Board of County Commissioners approve the family transfer exemption for a parcel located in the SW¼ of Section 29 and the N½NW¼ of Section 32, T14N R20W, for Martha E. Watkins in that it does not appear to be an evasion of the Montana Subdivision and Platting Act. Michael Kennedy seconded the motion. Motion carried 2-0.

Mary Ann Remington said her mother has been taxed for a farm site on this particular property for at least the last 5 years but there is no farm site. She asked if she was eligible to have the money she was charged recouped back to her?

Michael Sehestedt, Chief Deputy County Attorney, answered probably not. The farm site tax is simply difference in land value. Both of them are taxed. The bulk of the land is taxed at reductive value rather than market value. In the legislature last month, they said that they could designate one acre as a residential site. Prior to that time, if you had land used agriculturally, the site the farmhouse stood on was also taxed at agricultural land value and that was deemed unfair because everyone else was paying 20-30 times the tax on the same land that their house sat on. He said he would look at it with her if she wanted to raise the issue with the Department of Revenue but he did not believe it was an error to have the land taxed that way.

Michael Kennedy told Mrs. Remington that her mother would be receiving a letter confirming the decision made regarding the family transfer today which would include conditions attendant to that transaction.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (KAPPESES)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a consideration of whether to approve a family transfer exemption for Tract L of COS 3839 for Randall J. Kappes.
Randall J. Kappes submitted a request for a family transfer exemption for a 20 acre parcel located south of Lolo, west of Highway 93. Mr. Kappes proposes to create a 10 acre parcel for transfer to his adult son, John A. Kappes. John Kappes lives in an existing homes on the parcel and Randall and Christina Kappes will build their home on the proposed remainder. The comprehensive plan designation is open and resource (one dwelling per 40 acres).

The history of the parcel is as follows: COS 1218 was filed in August, 1977, creating 24 tracts greater than 20 acres in size. COS 2895 was filed in May, 1983, relocating the boundaries between several parcels in this area. COS 3839 was filed in September, 1990, creating Tract L as a parcel greater than 20 acres in size and Tract K as a remainder. Mr. Kappes purchased Tract L in January, 1996.

According to the records kept by the Missoula County Surveyor's office, the applicant has used the following exemptions to the Subdivision and Platting Act: a boundary relocation in September, 1982, and a mortgage exemption in February, 1985.

Michael Kennedy said the Board was required to ask questions to determine if this family transfer request was an attempt to evade the Montana Subdivision and Platting Act. He asked if Mr. Kappes or his representative was present and, if so, would they please come forward?

Randall Kappes came forward and identified himself.

Fern Hart asked him if the access roads were private or County roads?

Randall Kappes answered that Manor Boulevard was a County road, which came off Highway 93.

Michael Kennedy asked Mr. Kappes to show him on the map where his son lives?

Randall Kappes showed him.

Michael Kennedy said Mr. Kappes purchased the entire parcel which included the land that his son occupied and he asked him if he was correct in saying that he now wanted to deed that portion on which he lives to him?

Randall Kappes replied that was correct.

Fern Hart asked how long his son had lived in that house?

Randall Kappes answered that he has been remodeling it since January and just moved in last week.

Fern Hart asked if this was outside the building permit area?

Kathleen Smith answered that it was south of Lolo, thus outside the building permit area.

Fern Hart asked if they had a septic permit for that one house already?

John Kappes answered no.

Colleen Dowdall, Deputy County Attorney, said they will be reviewed when they attempt to get a septic permit for either parcel.

Greg Martinsen, Martinsen Surveys, said the residence John is living in is one of the old trailer houses. They currently have a cesspool there. As part of the division of this land, they have to go through a review with the Department of Health and Environmental Sciences. John will be required to put in a brand new sewer system and he intends to do that. They will not be able to split the land unless he does.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Fern Hart moved that the Board of County Commissioners approve the family transfer exemption for Tract L of COS 3839 for Randall J. Kappes in that it does not appear to be an evasion of the Montana Subdivision and Platting Act. Michael Kennedy seconded the motion. Motion carried 2-0.

HEARING: PETITION FOR ANNEXATION TO GREENOUGH-POТОMAC FIRE SERVICE AREA
(SATTLEY/STECK)

Jesse Sattley said he had presented a petition to the Board of County Commissioners to annex a tract of land located in the NE¼ of the NE ¼ of T12N, R15W, P.M.M. (known as plat B2, 40 acres more or less) into the Greenough-Potomac Fire Service area. He had originally believed their land and home were included in this fire district but they were not. He discovered this on his tax statement which showed that he was not paying an assessment for it.

Michael Kennedy opened the public hearing.

Bill Nelson, Greenough-Potomac Fire District, agreed with Jesse and had thought they were included in this fire district. Jesse’s land is only about 5 miles from the fire station. The road they would use used to be an old logging truck road.

Michael Kennedy asked if this would be the furthest distance up that particular road from the fire station?

Bill Nelson replied yes, that this would be the last one in that area because he is on the Missoula County boundary.
Fern Hart asked if Granite County was beyond that?

Bill Nelson answered yes.

Fern Hart asked what the approximate time would be from the fire station to Jesse’s house?

Bill Nelson responded that this was on a volunteer basis so it varies, but, on an average, they should be there in 15 minutes.

Fern Hart asked if there was a program when a new area was included in the fire district, such as thinning trees?

Bill Nelson answered yes, they have a training with the local people. They encourage anything that helps prevent forest fires. If there should be a problem and the house is on fire, they will try to at least to protect the outbuildings and the fire from getting out of hand and moving on to the forest. If it is the other way around and a forest fire is threatening the home, they will protect the home. Another thing that would be included is EMT or First Response Unit. It would be good to have this land included.

Fern Hart asked if they were building a fire station?

Bill Nelson said, since they now have the funds, they are going to start as soon as they get the permits.

Michael Kennedy asked if anyone else wanted to speak on this issue? No one came forward and he closed the public hearing.

He said he is always concerned when there is an annexation to any fire district because there could be a false sense of security. He believes that the truth is they are still a long way from the fire station and whether it offers any protection is debatable. He wants Jesse to understand that, especially if this annexation is approved, it does not mean that security is necessarily improved.

Fern Hart moved that the Board of County Commissioners approve the annexation of a tract of land located in the NE¼ of the NE¼ of T12N, R15W, P.M.M. (known as plat B2, 40 acres more or less) to the Greenough-Potomac Fire Service Area. Michael Kennedy seconded the motion. Motion carried 2-0.

CONSIDERATION OF: BIG PINE ADDITION (2-LOT SUBDIVISION) TURAH AREA

Lisa Moisey, Office of Planning & Grants, said this was a request from Tom Poindexter for Tract B of COS 3194. The proposal is for a 2 lot subdivision of a 2.56 acre parcel of land located along U.S. Highway 10 in the community of Turah. The proposal is to create Tract B-1 which will consist of 1.54 acres and Tract B-2 which will consist of 1.02 acres in size. Presently the land is vacant and Mr. Poindexter proposes to build a single family dwelling on each lot. The property is unzoned and the 1975 Comprehensive Plan calls for a suburban residential development with a recommended density of up to 2 dwelling units per acre. Access is available to each lot from Highway 10 and each lot will require an individual well and septic. In review of the subdivision proposal, the Office of Planning & Grants staff recommends approval of the summary plat of Big Pine Addition, subject to compliance with the 3 conditions as noted in the staff report.

John Kellogg, Professional Consultants, Inc., said he was representing Tom Poindexter and thanked the staff for their presentation. He said he was available for any questions the Board may have.

Michael Kennedy noted that the access is off Highway 10 and asked if that was the only intended access for both parcels?

John Kellogg responded yes.

Michael Kennedy asked if the driveways will be paved?

Lisa Moisey answered that would be required only if it was in the 4½ mile building permit jurisdiction, but this is outside of that area.

Michael Kennedy asked if this required an access permit from the County Surveyor, and if there was a condition of pavement off U.S. Highway 10, at least to the right of way?

Horace Brown, County Surveyor, answered that it does not require a permit. That is a state highway and they have jurisdiction. They will have to go to the state to get their permit.

Michael Kennedy asked if that was is a requirement?

John Kellogg responded that he did not believe it was.

Michael Kennedy said his concern was that people may drive off the edge of the highway.

John Kellogg responded that there will be improvement of the access, which include culverts. The Highway Department will require adequate sized culverts to cross the ditch and adequately handle the traffic.

Horace Brown said, in most cases, there is an apron to the highway but it is not paved.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.
Fern Hart moved that the Board of County Commissioners approve the summary plat for the Big Pine Addition, located in Turah, directly off U.S. Highway 10, which is the I-90 Access Road. The property is legally described as Tract B, of COS 3194 in the SE¼ of Section 35, T13N, R18W, based on staff recommendation and findings of fact. Michael Kennedy seconded the motion. Motion carried 2-0.

1. The developer shall contribute $50.00 per lot to the Missoula Rural Fire District Large Diameter Hose Fund prior to filing of plat.
2. The following statement shall appear on the face of the plat and in all instruments of conveyance:

   "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for the installation of sidewalks or pedestrian walkways along U.S. Highway 10, based on benefit, and may be used in lieu of signatures on a RSID/SID petition."

3. The following statement shall appear on the face of the plat and in all instruments of conveyance:

   "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for the installation of a community or municipal water and sewer system, based on benefit, and may be used in lieu of signatures on a RSID/SID petition."

HEARING: RIVER RANCH (PRELIMINARY PLAT) 10-LOT RESIDENTIAL SUBDIVISION BETWEEN FRENCHTOWN & HUDSON

Michael Kennedy said there had been a written request for postponement from Ron Ewart of Eli & Associate, who was representing Bill Lefler, the owner of the property. However, since the hearing had been advertised, he opened the public hearing.

Scott Waldron said he spoke as both a private citizen and as a representative of Frenchtown Fire Department. He said this subdivision was denied on a 4-3 vote at the Planning Board. However, from the Fire Department’s standpoint, he said it looks like a good subdivision with adequate access. The developers are willing to put in the appropriate amount of water. The issue of the activity center in Huson and Frenchtown make no sense to anyone. On the subdivision next to this one, there are houses on one acre lots which he believes are Certificates of Survey, but this is not understood by the neighbors, who only see that there is another house going up. He suggests that one of the things that the County needs to look at is the activity centers. He noted that about a mile east people seem to be able to do what they want. The resulting perception is that there is an inconsistency on the part of the County.

From a citizen’s standpoint, there is inconsistency in the way things are done. Next door to his house last year, a 2-lot mobile home park was allowed to go in. They share a common septic tank and both are renters, yet he said he cannot get the County to do anything about it. On the other hand, he feels River Ranch is a nice subdivision. He said he would be willing to work on a Board on these issues in the Frenchtown valley. They have an shortage of affordable homesites because they can’t get any subdivisions in the area between Huson and Frenchtown, although he believes there are several that are trying to get platted at this time.

Colleen Dowdall, Deputy County Attorney, said they are considering a Comprehensive Plan update for that area and they will include him in the discussions if he wishes.

Scott Waldron replied that he would be happy to work on that. He feels his input would be beneficial because he lives there and knows the area well.

Michael Kennedy said, regarding the activity circle, from a conceptual standpoint, it is understandable how it can happen as the area develops and there is a desire to concentrate development in certain areas. He noted that there is a reason the whole area is developing outside of that original philosophical concept and perhaps the activity circle needs to be expanded or abolished.

Scott Waldron agreed. He said, what the intent was, is not what is happening.

Michael Kennedy commented that what he believes happens anytime you have a development boundary, is there will always be that question, “Why can’t I...?” He believes that is part of the overall discussion that you get into when you have a development boundary or, in this case, an activity circle.

Horace Brown, County Surveyor, felt the Board of County Commissioners should be aware of what is happening in that area. There is more than just one circle where growth has happened in the past and, in trying to confine it to one area, is depriving people of some of their property rights. He has seen this happen before and has not been in favor of it. He believes that when you have an area that contains 25-30 one acre lots with houses on it, whether it is in the development circle or not, growth should be allowed to happen.

Michael Kennedy asked if there was any other discussion? No one else came forward and he said the public hearing for River Ranch would be continued on June 5, when staff will also give their presentation.

There being no further business to come before the Board, the Commissioners were in recess at 2:07 p.m.

THURSDAY, MAY 30, 1996

The Board of County Commissioners met in regular session; a quorum of the members were present.
FRIDAY, MAY 31, 1996

The Board of County Commissioners met in regular session; a quorum of the members were present. In the forenoon, Commissioner Hart attended a Planned Philanthropy meeting held in the Governor’s Room at the Florence.

Indemnity Bond -- Acting Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Richard E. Betts as principal for Warrant #15625 issued January 11, 1996 on the Missoula County Jury/Witness Fund in the amount of $13.80, now unable to be found.

Vickie M. Zeier
Clerk & Recorder

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

DAILY ADMINISTRATIVE MEETING

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

Agreement -- Chair Kennedy signed a Memorandum of Agreement for between Missoula County Park Board and American Legion Swan Valley Post 63. The Park Board agreed to provide up to $520.00 in matching funds to purchase log oil, fertilizer and electric power to operate the pump and sprinkler systems for the American Legion Swan Valley Post 63, as per the terms set forth, with the funds to be expended before April 11, 1998. The Agreement was returned to Leslie Bailey for further handling.

Audit Contract -- The Board unanimously voted and Chair Kennedy signed a contract for an audit of Missoula County by public accounting firm Elmore & Associates, P.C., covering fiscal year ending June 30, 1996, with audit work to commence on June 1, 1996 and completing audit work on November 30, 1996, for a total cost of $54,500.00. The document was returned to Jane Ellis, Fiscal Officer, for further handling.

Road Maintenance Plan -- The Board voted unanimously to sign Schedule A, a road maintenance plan per an agreement dated March 27, 1997 for roads under Missoula County jurisdiction and Forest Service jurisdiction and as provided in the agreement dated March 10, 1994 for roads under joint jurisdiction.

Resolution No. 96-040 -- The Board of County Commissioners signed Resolution No. 96-040, a resolution authorizing the submittal and support of a Community Development Block Grant (CDBG) application to the State of Montana, Department of Commerce, on behalf of Partnership Health Center for the purpose of assisting PHC in its efforts to construct a new facility.

Resolution No. 96-041 -- The Board of County Commissioners signed Resolution No. 96-041, a resolution authorizing a lease agreement by and between Missoula County and Partnership Health Center for property owned by Missoula County in the 300 block of West Alder Street, contingent upon receipt of Community Development Block Grant (CDBG) funds and agreeing to exercise its borrowing authority to borrow an amount not to exceed $500,000 on behalf of PHC, for the purpose of assisting PHC in its efforts to construct a new facility.

Request for Subdivision Change -- The Board of County Commissioners signed a letter to Ron Ewart, Eli & Associates, denying a request to change location of the duplex buildings in Brianna Court summary subdivision for lease or rent, citing that the requested change fails to meet the intent of the subdivision regulations and is contrary to what was originally approved.

Resolution No. 96-042 -- The Board of County Commissioners signed Resolution No. 96-042, a resolution to alter a portion of the GLO Road shown in the Bear Creek Road area located in Sections 5, 6 and 8, Township 13 North, Range 16 West, P.M.M.

Resolution No. 96-043 -- The Board of County Commissioners signed Resolution No. 96-043, a resolution to alter a portion of Washoe Creek Road and Hole in the Wall Road, located in Sections 17, 18, 19, 20, 21, 28 and 29, Township 13 North, Range 15 West, P.M.M.

Resolution No. 96-044 -- The Board of County Commissioners signed Resolution No. 96-044, a resolution to vacate the County Road as shown in Exhibit B located in NW¼, SW¼, SE¼ of Section 19, Township 12 North, Range 19 West, P.M.M.

Resolution No. 96-045 -- The Board of County Commissioners signed Resolution No. 96-045, a resolution to alter a portion of the GLO Road located in the NE¼ of Section 35, Township 14 North, Range 19 West, P.M.M., of Siesta Acres #3, from Altura Drive to Siesta Drive to be altered to the existing traveled way.

Board Appointment -- The Board of County Commissioners appointed Paul Torok to the Seeley Lake Solid Waste Management District Board of Directors, commencing immediately and running through December 31, 1998.

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

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

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #11, Pay Date 5/24/96, with a total Missoula County payroll of $708,388.34. The Transmittal Sheet was returned to the Auditor’s Office.

New Bond Certificate -- Replacement -- Chairman Kennedy signed a bond certificate for the County of Missoula Hospital Revenue Refunding and Improvement Bond, Series 1978. The certificate was returned to First interstate Bank, Trust Department for further handling.

Resolution No. 96-046 - The Board of County Commissioners signed Resolution No. 96-046, resolving that the goals listed therein be adopted for the Strategic Plan for Fiscal Year 1997. Copies of the Resolution were distributed to all departments.

Other items included:
1) Approval of the request from Teresa Emery, Missoula County Communications, that no information be given out verbally regarding the County’s phone services. All such requests are to be submitted in writing to either herself or Bob Schieder.
2) Appointment of the following three individuals to the Missoula Development Authority Nominating Committee: Ron Klahnke, Missoula Area Economic Development Corp., Kim Latrielle, Missoula Chamber of Commerce, and Ralph Fessenden, Chair, Missoula International Airport Board.

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

WEDNESDAY, JUNE 5, 1996

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Evans attended a Reserve Street meeting held at the City Fire Station on Latimor.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Cher Moua as principal for Warrant #36248 issued May 8, 1996, on the Missoula County School District No. 1 Elementary Fund in the amount of $150.00 now unable to be found.

Resolution No. 96-039 -- The Board of County Commissioners signed Resolution No. 96-039, resolving to rezone property located in the south ½ of the NW¼ of Section 35, Township 14 North, Range 20 West, P.M.M., commonly known as the Old Desmet School at 6105 Highway 10 West from “C-P1” to “C-C3,” with conditions.

Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY’96 budget:
1) Control No. 96-024, a request from the Treasurer to transfer $1,415.00 from the Office Supplies fund to the Capitol, Office Equipment Budgeting fund for the purpose of processing a claim; and
2) Control No. 96-025, a request from Clerk & Recording to transfer $1,019.90 from the Office Supplies fund to the Capital, Office fund for the purpose of processing a claim for a book/page stamp.

PUBLIC MEETING -- JUNE 5, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

Barbara Evans commended Vickie Zeier and her staff for the good job they did in getting the ballots counted and results out quickly for yesterday’s elections. They did a superb job and she thanked them.

HEARING: PROPOSED CONTINUATION OF 0.5% LOCAL OPTION MOTOR VEHICLE FEE IN FY’97

Michael Kennedy said Montana Code Annotated 61-3-537 allows counties to continue to impose the extra 0.5% local option motor vehicle tax in addition to the 2% tax imposed under MCA 61-3-504(2). The Missoula County Commissioners have exercised that option every year since FY ’88, and propose to continue using that option in FY ’97. Passage of the proposed resolution would maintain the motor vehicle tax at 2.5% of the average trade-in or wholesale value, effective July 1, 1996. This local option tax is no longer distributed to all taxing authorities. It is split between the City and the County.

He opened the public hearing. No one came forward and he closed the public hearing.

Barbara Evans said the majority of the money that the County receives from this is used in the District Court.

Michael Sehestedt said it brings in about $1 million to the County and, of that, $631,000 is distributed to the District Court fund.
Fern Hart moved that the Board of County Commissioners sign the resolution to continue to assess the additional 0.5% local option motor vehicle tax as provided in Montana Code Annotated 61-3-537, having had the Notice of Legal Ad and a public hearing. Barbara Evans seconded the motion. Motion carried 3-0.

Resolution No. 96-047 -- The Board of County Commissioners signed Resolution 96-047 which found it in the public interest to continue to assess the additional 0.5% local option motor vehicle tax, maintaining the motor vehicle tax at 2.5% of the average trade-in or wholesale value, effective July 1, 1996.

HEARING: APPLICATION FOR TAX INCENTIVE FOR NEW OR EXPANDING INDUSTRY -- BIG SKY BREWING

Neal Leathers, President and Head Brewer of Big Sky Brewing Co., said the Commissioners have received a 3-page packet of information from them. He said there was a correction to that document. They got their bill on property taxes just yesterday and the amounts that they were expecting to pay in taxes have been reduced when multiplied by the mils, which they did not know. So the amounts they were expecting to pay have, in fact, been reduced. If they are not to be granted this incentive, their tax bill would be approximately $16,800. If their request is granted, it will be about $9,000.

He said, as far as they can tell, the only other industry in the city of Missoula that has been applying for this is Sun Mountain Sports. But if you are a manufacturing industry, you can qualify for this grant, certainly as a start up business. One of the criteria that he wanted to discuss with the Board was the number of jobs created and the number of employees that is anticipated. They are applying for this based on 1995, which was their first year of business. In 1995, they had 4 full time and 2 part-time employees. The full time employees were earning between $15,000 and $25,000 each, which is $22,500 average salary. Their part-time employees earn about $6.50 or $7/hr. It is hard for the them to project how many jobs they might create. Any job and all jobs they create will be paid a livable wage. They do not anticipate bringing in anyone at less than $6.50-$7/hr. Management positions would be about $22,500 and up. In their first year, they have met or exceeded their projections for sales. If that trend continues, which may be a few years down the road, they guessestimate that they have between 25 and 50 full time positions. But he did not know how long it will take to get to that amount.

He said in addition to the wages they pay their own employees, they spent over $60,000 with local contractors and they expect to continue to hire them for maintenance jobs and as additions to their building present themselves. They have also spent over $100,000 in hard goods in the local area.

He understands the purpose of this program is to help new industries so they can continue to grow and flourish and that’s what it would do for their industry. They have talked to others who are interested in starting industries such as bottling plants and other businesses. If they see that this program is available to them, it will probably help more small businesses get started in Missoula County.

Fern Hart said there are two different applications, one is for new business and the other is for expanding or modernization. She asked what application they were using?

Neal Leathers answered they are applying as new business.

Fern Hart asked if that were a 10 year schedule, with payment during the first 5 years at 15%?

Neal Leathers replied yes and said, after those first 5 years, it goes up for the next 5 years, until they are at the full 100% of the normal tax bill.

Fern Hart asked if this included taxes other than local school, local County and local City?

Michael Sehestedt, Chief Deputy County Attorney, answered that was correct. The benefit the County can authorize is for the mils levied and assessed for local high and elementary schools and those areas that are assessed by the governed body (the County, in this case). He understands that Big Sky Brewing has also made an application to the City of Missoula.

Neal Leathers said that was correct. He mentioned that these only apply to the actual physical goods used in the brewing process. Things such as office supplies and equipment are not covered by this.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Fern Hart asked if this is handled as an intention with a waiting period?

Michael Sehestedt replied no. The county has already published notice and the opportunity for public comment is prior to the public hearing or at the public hearing. This meeting will see dispositive action.

Fern Hart asked if this meets our policy?

Michael Sehestedt said it appears to him that it does.

Fern Hart, addressing Mr. Leathers, asked if there was any potential disposal waste problem?

Neal Leathers replied no. He continued, saying in the beginning of this process, they talked to the staff of the City and County Health Department and the Waste Water Treatment Plant. They did not have any problems with what they will be discharging. Because the building could eventually go to different use, they were requested to put in a separator outside the building. Anything that goes into the sewers from them is liquid and has all been treated so there is no
hardship on the system. Basically, he claims breweries are clean and anything they don’t use themselves, like water or a small amount that has been drained, they sift to get all the solids out.

Michael Kennedy stated there are two tests that have to happen. One is from the state, whether it meets the state requirements and the other is whether it meets the rules established by the County Commission. There is a question about whether the existing rule is appropriate and that is currently under discussion. He asked Counsel that, if the County adopts this resolution today, can it be revised at a later date?

Michael Sehestedt answered probably not. However, he believes changes the Board deems appropriate could be incorporated directly into the resolution on disposing of this particular application. Thus, the Commissioners can put in a provision saying “XX jobs at XX salary in the event they demonstrate that they shall certify annually to the Board of County Commissioners their claim.” In the absence of certification or in the absence of leading targets set forth, the Board may withdraw. You can put those kind of conditions in the resolution approving the requested benefit at this point, if they feel those have a bearing on the public interests.

Michael Kennedy said, even though there is a state requirement, the County requirement is a test of what should be accomplished. It is important to have business in the community. It adds to the tax base. This is important of offering a tax incentive to those businesses needs definition. It seemed to him to provide an incentive to a business, then the business needs to return some value to the community. In his view, and he added that it was only his view and he was not speaking for the other Commissioners, the jobs that are created and provided need to be jobs that will return to the treasury of the County and the state. We want to hire taxpayers; people who will not be a drain on society. In other words, he does not feel that people should be hired for minimum wage by a business that is being offered a tax incentive to the extent that the balance of taxpayers would have to pick up the benefits for them, such as health benefits or food stamps or unemployment. It is important to him that the people who are hired are people who can contribute to the tax base. By studying this matter, he would make this recommendation to the County Commission. He has consulted with the University of Montana, Sociology Department, with the local MAEDC and others who have knowledge about this. He has suggested to his colleagues about what that means in terms of dollars per hour paid and benefits paid. He wanted to share his findings with those at this Public Meeting.

Based on his research, if we look at a 185% poverty line as a sustainable wage in the community, then it means that we need a certain level of salary to do that. That is about 2X the minimum wage. So he recommended to the County Commission that, in order to apply or qualify for incentives, in the fiscal year 1997, that a minimum wage of $8.50/hr. be used and a minimum 40/hr. week, and a full range of benefits be applied. Should that happen, then obviously the benefit to the community is there. These people will pay taxes, will not be a burden on society and they will provide the stimulus to the business that it needs. He then asked for commentary and discussion and action on this request.

Barbara Evans said she had no problem with looking at the policy from this view. In regards to whether the County should apply something retroactive to this particular application, she is not willing to do that because she is reticent to change the rules in the “middle of the game,” and that applies to all situations, not just this one. She said if people looked at the County policy, the state statutes and, according to what she has read, she finds that they meet the County policy and the state statutes. She said from what she heard, that the minimum wage would be $6.50/hr.

Neal Leathers said that was correct; that was a part-time employee.

Barbara Evans said it would be nice if every employee could start at $8.50/hr but she is not willing to make that commitment at this point. She would like more time to review the matter, hear others’ input before she makes a decision. She has no problem with Commissioner Kennedy wanting them to review this but she prefers to consider it for new applications, not one that is already in process.

Fern Hart asked for a response from Neal Leathers, if the implementation of the County’s policy was that employment be provided at a livable wage and, looking at it, concludes it is 185% of the poverty level and that is $8.50/hr. at 40/hrs. a week.

Neal Leathers said he believed Mr. Kennedy was saying that would be as of 1997. He said it would be very difficult. The people who are working at the brewery right now are working 50-60 hrs./wk. and if they were making $8.50/hr, he joked that they would be very happy. They are not making that themselves. A lot of the positions they would be hiring in would probably at that wage level, but at the same time, if they come to a point where they are expanding and continually adding new people, $8.50/hr. for beginners’ wages seems high to him. He added that is not saying they would not or could not do it, but they have been thinking $6.50-$7.00/hr. to start and, depending on the type of position, some would be salary and some would be paid hourly.

Bjorn Naboznow, Treasurer, Big Sky Brewing, said, in addition to the wage, they also offer full health benefits to their employees.

Fern Hart said she was glad to hear this.

Neal Leathers said they would really have to guess what the wages would be for 1997. They are an industry and traditionally wages are higher in an industry, but they are also a brand-new business and don’t know how things will be for them. He added, however, that they are willing to talk and see what can be worked out. As of right now, they believe the wages they offer are pretty good for Missoula but, if it has to get better, and he knows that Missoula is low paid compared to a lot of the rest of the country and it would be nice to get it better and industries are good places to do that, he does not know if they can do that in their second year of business. But they are trying to treat their employees as well as they can.

Fern Hart said businesses that ask for tax incentives be required to certify to the County annually the number of employees and their wages.
Michael Kennedy said what they are discussing here is public participation in the free market and the public participation comes as a tax benefit to the requester that is borne by the 90,000 people in the County. For that reason, he is bringing them up. In terms of how they conduct their business and how they pay their people, they are to be applauded. He realizes what they are paying is competitive and the range of benefits they offer is remarkable considering so many others do not. But if they are going to ask for an incentive, then the County needs to ask something in return. He said that is hard but, in his opinion, it is something they need to do. The statistics show the number of people that fall below the poverty line in this community is rising and it is rising at a rate that the County is not going to be able to keep up with. Commissioner Hart and he spent 4 hours this morning in a meeting discussing this issue and how they can deal with the overwhelming and increasing need, with the limited resources that are going to continue to be limited as time goes by, to service the needs of these people who tax incentives are not supposed to pay for themselves. With that in mind, it seems to be a contradiction to offer incentives to anyone, regardless of how well-intentioned they are, who would not provide the kinds of benefits that would keep people away from the welfare rolls.

Fern Hart agreed with Commissioner Kennedy. She said this is the direction we need to go and she is going to work toward it.

Bjorn Naboznew said if that is the way they want to set it up, he believes it makes a lot of sense. But he feels you still have to give some benefit to the industry for the first couple of years until it can get to the point where they pay those kinds of wages. If a business is applying for a benefit, and say they get a $10,000 tax break but they have to pay employees an extra $2/hr., there could be a backlash that would have the opposite of the desired effect.

Michael Kennedy appreciated his concerns and suggested they look at how they can modify the application so that it will be mutually beneficial and acceptable. Commissioner Hart mentioned certification may be a way to show actual employee count and wages. He suggested that this be a one year benefit to the Big Sky and in this one year, they develop a plan. In the future beyond fiscal 1997, tax incentives will be conditioned upon acceptance of that plan which shows what they have done and what they will do.

Bjorn Naboznew said they would like to do that but are uncertain if they can do something for less than a full 10 years in this program.

Michael Sehestedt said he believed that it would be acceptable that, if at the time of granting the incentive, it have incorporated in it essential conditions that, if those conditions are not met, then the tax incentive would not apply to future years. He is aware of only one occasion in which that has been done. It was a situation in which there were no conditions in the original agreement but nothing that was promised to the County came to pass and the County withdrew the benefit and defied them to sue over the matter. No further action came over this matter.

Barbara Evans stated she did not want these conditions to be part of the motion.

Fern Hart said she was not sure what conditions she would include.

Michael Kennedy asked to make a suggestion. He is willing to consider in the certification, which he thinks will be in Commissioner Hart’s motion if she chooses to make one, there be required a plan of accomplishment to something similar to this. Without the plan and without the certification, no further tax incentives would be granted in subsequent years.

Neal Leathers said that would be fine with them. One other quick point he wanted to add, if they do any additions like they plan to this year, if they want to come back for a tax break for anything besides what they just did, they have to do the whole process again. So anything the County wants to do in the future beyond this, it would have the opportunity to make sure what they were doing was appropriate. This is just for this application which will set it for one year.

Michael Kennedy stated his point was well taken and he appreciates his position and honors it.

Barbara Evans said the applicant has gone through the process the County has written, they followed the criteria and met it, and they met the state statutes. She is willing to review what Commissioner Kennedy proposes for future applications and ask that they certify that they have met what they promised the County.

Fern Hart moved that the Board of County Commissioners grant the request for a tax incentive status to Big Sky Brewing Company of Missoula, Montana, and the application is for new manufacturing industry property improvement. This includes a condition that a business plan be presented to the Commissioners within a year, which provides assurance that the employees will be paid at a level of assuring a livable wage so that they can be productive members of the community, which a tax incentive justifies. She added that Big Sky show the number of employees that they have, the wages and the business plan for bringing those employees up to a livable wage and that they always have that, and that the health benefits stay there.

Barbara Evans asked for comments from Big Sky before she seconded the motion.

Bjorn Naboznew said, as a tax incentive, their corporation pays taxes at every level of government. They get particularly hard hit by the state and federal governments. They are taxed $6 for every keg of beer they produce. That is the excise tax on the beer. In addition, they are asked to pay property taxes, income tax and tax on their employees. The only reason they are at this hearing is to ask for a tax break on the property tax. To start a company this year, they will pay over $100,000 in taxes and that is a large burden for a start-up company. Regarding their employees, they believe a happy employee is a good employee. They work within tight constraints with the bacteria for their product. If an employee is not happy and his mind is elsewhere, it affects their whole process and the brewery can be contaminated. So it is important to them to have content employees.

Fern Hart commented that she used to be Treasurer and she saw a lot of new businesses fail. It usually is because start-up is a heavy burden. She respects and understands that. The other side of the coin is that the County collects...
taxes which are used for the schools and the City and County. But they would be investing in them. She believes Commissioner Kennedy has a good idea and she wants to watch how this goes.

Bjorn Naboznew agreed that it was valid but for a manufacturing business for a part-time employee at $6.50-$7.00/hr. which would probably be student labor, and the full time employees would probably make at least $8.00/hr., and then they have to tie in the expense of their health package which amounts to an additional $130 per month per employee, that has to be considered part of the wage. The benefit to the employee is that it is a non-taxable wage. Their plan allows that, after the first year, they would pick up the spouse on the health package. That is an additional $80/mo. that their business has to pay. He feels they are well above the $8.50/hr. mark that Commissioner Kennedy has set.

Fern Hart said she is not troubled by this business. She looks forward to hearing from them in a year.

Barbara Evans asked Fern to repeat her motion.

Fern Hart moved that the Board of County Commissioners approve the request for a tax incentive status to Big Sky Brewing Company and include the condition that, at the end of a year the County be presented with a business plan which provides assurance that the employees will be a paid at a level which assures a livable wage, so that they can be productive members of the community which our tax incentive justifies.

Barbara Evans said she has a problem with “livable wage” from a legal standpoint. She would prefer that they certify to the Board within a year that they have met what they promised today, which is about $6.50-$7.00/hr. in wages and the number of employees that they intend to add, and for the County to determine if they are on track with what they have promised. If we say “livable wage,” it may be someone’s opinion that it should not be less than $20/hr.

Fern Hart commented that Commissioner Kennedy’s review came up with $8.50/hr.

Michael Kennedy seconded the motion.

He also wanted the community to know that he will be lobbying in the next year toward a definition of what is a “livable wage,” one that really means livable. That will be the standard of his judgment when Big Sky certifies to the County in a year.

Fern Hart stated they wanted to look at Big Sky’s concerns, too. She will learn, through this motion, how they will do this first year.

Barbara Evans asked that the motion be split into two motions. She wanted to vote for the tax incentive but she is not comfortable with the second part which contains the phrase “livable wage.”

Commissioners Kennedy and Hart agreed that the motion was as stated and had already been seconded.

Michael Kennedy asked for a vote.

Motion carried 3-0.

Barbara Evans stated she supported the motion because she wanted Big Sky to have the tax incentive but she is strongly not in favor of requiring that which is not required in their proposal. She disagrees with asking them to certify something that is so subjective. And, she stated, even though she does not drink beer, she wishes them success.

Michael Kennedy said, based on their performance the first year, they would expect that next year they will come in with smiles on their faces and he hopes they do. He gave them strong encouragement and thanked them for coming.

HEARING: INTENT TO CREATE RSID NO. 8923 (PARKS MAINTENANCE, REPAIR AND MANAGEMENT AND STREET LIGHTING UTILITIES IN EL MAR ESTATES)

John DeVore, Chief Executive Officer, said the El Mar Estates Homeowners’ Association has requested assistance from Missoula County to create a Rural Special Improvement District to finance parks, maintenance and street lighting. All the statutes were met by posting the public hearing notices. Four letters of protest were received in the protest period. This represents less than 1% of the affected area. The total estimated annual district cost, including the 5% County administration cost, is $29,400.00, the estimated annual cost per lot is $70.68 or $5.89/mo. One of the protest letters received was from the Rural Fire Department. They questioned the inclusion of their properties within the RSID and they argued that they derived no benefit from the RSID since it was for park maintenance and street lights.

So they ask to be exempted from the Rural Special Improvement District. The history on this request is that prior to the protest period, the Homeowners’ Association has been financing the parks and street lights by assessing the homeowners delinquent in paying their dues, they had a water turn-off day. There are 27 acres of parks and common areas to maintain. They maintain the street lights. They request that the Commissioners grant the RSID to collect the monies needed to maintain the proper atmosphere and integrity of El Mar Estates.

Fern Hart commented that Commissioner Kennedy’s review came up with $8.50/hr.

Michael Kennedy seconded the motion.

Barbara Evans stated she supported the motion because she wanted Big Sky to have the tax incentive but she is strongly not in favor of requiring that which is not required in their proposal. She disagrees with asking them to certify something that is so subjective. And, she stated, even though she does not drink beer, she wishes them success.

Michael Kennedy said, based on their performance the first year, they would expect that next year they will come in with smiles on their faces and he hopes they do. He gave them strong encouragement and thanked them for coming.

Michael Kennedy opened the public hearing.

Mary Ellen Stubb, a homeowner in the area, said she noted there is a $5,000 break-down for management and she believes that is to go back into the Homeowners’ Association to enforce covenants. If that is true, than that portion should not be subject to the 5% County administration tax. She would like that clarified.
Michael Kennedy replied that they found as the number of SID’s increase within the County, the burden to administer those SID’s began to rise higher than what should be expected of the taxpayers to pay. So, by policy, the County decided to assess SID’s for administration of them. He admitted that they don’t know whether the 5% will cover all of the administrative costs. He does not believe it will and thinks the County is still subsidizing the SID’s at general County taxpayers’ expense somewhat. So he feels that is justification for charging 5% on the entire value of the SID.

Mary Ellen Stubb asked what some of the administrative costs were?

Michael Kennedy said there are 420 individual members and each one of those have to have prepared for it an assessment role. The process of going through the County is quite a strenuous one. There are many processes to go through to make sure the money properly assessed, properly collected, properly managed and properly disbursed. It is a continuing administrative expense that falls on the taxpayer if they do not charge the administrative costs.

Fern Hart said this $5,000 was a part of administration. It should be reduced from the total of $28,000 and the 5% taken off the reduced total.

Michael Kennedy added that, wherever the money goes and wherever it is used, if it is included in the assessment, it requires administrative costs on the part of the County. So it does not matter if it is in management and the management is SID management.

Mary Ellen Stubb said she understood that the only SID’s that are being assessed for County administration at this point is parks and maintenance. She asked if that was correct?

John Koenes said the ones that are not being charged administrative fees at this time are fire hazard districts and street-lighting districts because, at this time, their assessment was that these do not involve a substantial cost to them. The utility bills come in, they pay them and that is the extent of their involvement. They do assess this fee against all park maintenance districts, the water and sewer systems. All other maintenance and RSID’s are currently being assessed. They are being assessed a 10% fee. This one was reduced to 5% because of the $8,00.00 that is assigned to pay for the street lights.

Michael Kennedy said, since it is a fairly new policy to assess administrative costs, they have set a tracking system to see what the actual cost would be. He asked if anyone else wanted to come forward to speak? No one came forward and he closed the public hearing.

Mary Ellen Stubb said rural fire has a significant ownership there

John Koenes said they have a partial ownership where their fire station is located.

Michael Kennedy said it is a single parcel assessment. It is $79 for theirs.

Fern Hart said, in thinking about policies, she knows they pay SID’s to the City.

John Koenes said, their argument is that, given that this is an RSID for the maintenance of parks, they do not derive benefit from the parks.

Fern Hart said the same argument would apply to those who live alone in a wheelchair. To argue in that manner would be very complex and could even continue on to those who use parks more than others.

Michael Sehestedt, Chief Deputy County Attorney, explained that it is not that a particular occupant uses an SID but whether the property benefits from the SID. He said Rural Fire probably believes this will be a fire station forever, however, that is probably not true and the property will retain the benefits from the SID.

Barbara Evans said one protest letter stated they were already paying for street lights on their tax bill.

John Koenes said he could not respond to that until he saw their tax bill. However, there are no lighting districts out there other than the small lighting district that was created in New Meadows subdivision, and that subdivision is not a part of this RSID.

Barbara Evans moved that the Board of County Commissioners create RSID #8923 for parks maintenance, repair and management and street lighting utilities in El Mar Estates subdivisions in that it has met all the legal requirements for posting and notice and that of 416 parcels, only 1% or 4 people have protested, thus, it appears that the homeowners are in favor. Fern Hart seconded the motion. Motion carried 3-0.

HEARING: SANDI ACRES NO. 2 (2ND SUMMARY PLAT) TARGET RANGE AREA

Lisa Moisey, Office of Planning & Grants, said this is a request from Tom Stuckey for a 3-lot subdivision of Lot 81-A of the Orchard Homes Company’s Addition No. 6. The property is located about 1100 feet west of intersection of South Avenue and Humble Road. Mr. Stuckey presently has a home on the proposed Lot 1. The property is zoned CRR-1, which allows for up to one dwelling unit per acre. The 1990 Update of the Missoula Comprehensive Plan designates this area as suburban residential with a recommended density of 2 dwelling units per acre if services are available. Recognizing that at some point in the future municipal water and sewer may be available to this area, the developer has shown on the plat the potential for future lot splits to approximately ½ acre. In addition, the developer has shown building envelopes that would allow for permanent structures only in ½ of a lot at this time. Access to the subdivision will be from South Avenue, which was recently paved to a point just west of this property. Lot will access
unt to South Avenue from its existing driveway. Access to Lots 2 and 3 will be from a private driveway which will be located within a 30 foot wide private access and public utility easement. The developer has shown an additional 30 foot conditional private roadway easement to be dedicated following sewer availability and upon approval by the governing body for ½ acre lots within the boundary of the subdivision. This conditional dedication will result in a total easement width of 60 feet. Subdivision regulations require a 54 foot easement width for approach to a cul de sac.

To meet that regulation, staff recommends that the developer show a 24 foot conditional easement rather than the 30 foot easement as noted on the plat. After reviewing the subdivision, OPG staff recommends approval of Sandi Acres No. 2 based on findings of fact and subject to 7 conditions.

David Bowersox, WGM Group, said in 1902, Lot 81 was platted as a 5 acre tract. In the last 90 years, most of the 5 acre tracts in this portion of Target Range have been subdivided into smaller lots. The Sandi Acre tract remained a 5 acre tract until last year, when Sandi Acres No. 1 was proposed. At that time, Tom Stuckey created a one acre tract for his parents’ home which already existed on the property and kept the remaining 3.7 acres for himself. Recently, there have been 2 subdivisions in this area. In 1995, there was Sandi Acres and adjacent to it to the east, was Buttonwillow Farms No. 2. The goal of this subdivision is to assist Tom Stuckey with financial problems. Sandi Acres No. 2 is a 3- lot subdivision with lot sizes ranging from 1.14 to 1.43 acres. Lots 2 and 3 will share a common private driveway along the western boundary of the subdivision and Lot 1 will continue to access to South Avenue from its existing driveway on the center of the lot. This is the dead-end portion of South Avenue. The speed limit is 25 MPH and there are several subdivisions already in this area. When South Avenue was recently rebuilt, gravel shoulders were placed on the side of the road. They intend to widen the shoulder in front of the subdivision to 5 feet to provide a usable pedestrian path.

Some of the neighbors have expressed some concerns about the subdivision. One had to do with the ½ acre lot split potential. While this is not conformance with zoning, it is also not what they are proposing. They are proposing one acre lots. The ½ acre lot split potential addresses a concern brought up in community planning and the Comprehensive Plan to provide a density in an area that can support eventually, if sewer becomes available. Another issue was fencing along Mr. Stuckey’s property. Mr. Stuckey does not plan to remove any of the external fences to his property. He may remove some of the internal ones but all of the boundary fencing will remain. Also, the irrigation ditch will not be affected except for the installation of a culvert to the driveway leading to Lots 2 and 3.

They have reviewed the staff conditions and believe them to be adequate and fair.

Michael Kennedy asked what the issue was regarding the fence.

David Bowersox replied that the neighbors to the west had an issue with the fence on his property. His tenants that live there have horses and he did not want the fence removed.

Michael Kennedy opened the public hearing.

Tony Armour, 4620 South Avenue West, said his wife and he own the property adjacent to the east. He believes this will compromise the quality of the way they live in Target Range. It is a rural area, they do not want to see it become city-like; the people live there because of the way it is. He is very concerned about the water supply. The area wells are shallow and added sewage to all the septic systems will put stress on the area, as will added rainfields. He wonders what added washing machines, dishwashers, sprinklers, etc. will do to the water supply. This will also be a burden to the schools, who are suffering from overcrowding. Every time there is a bond issue, it is voted down. The same people who are building the homes, do not want to help pay for the schools. He feels the overall cost of the proposed subdivision is too high for the gain, which would be to financially benefit the applicant.

Michael Kennedy thank him for his comments and asked if anyone else wanted to come forward to speak? No one came forward and he closed the public hearing.

Fern Hart asked if these were individual wells and septic systems?

Lisa Moisey responded yes.

Fern Hart stated she believed Mr. Armour had good questions and it should be clear to the public that every residence costs all of us more than the revenue impacted. The biggest cost is often borne by the school system. She agreed with Mr. Armour that the greatest benefit is to the subdivider and to the folks who want to live in this area. With respect to the ground water, she trusts the Health Department to check that. They have strict rules that they abide by.

Michael Kennedy added that a lot of what Mr. Armour said has been said before and there is strong consideration to address the situation in a holistic sense. It does take time and effort and they are engaged in that process.

Barbara Evans said this does meet the zoning and meets the Comprehensive Plan. Addressing Mr. Armour, she said they have laws that allows people to use their land based on these and the Health Department standards. The County cannot deny people to develop their land if they meet the rules.

Barbara Evans moved that the Board of County Commissioners approve the second summary subdivision request for Sandi Acre No. 2, located at Lot 81-A of the Orchard Homes Company’s Addition No. 6, about 1100 feet west of the intersection of South Avenue and Humber Road, based on staff recommendation and findings of facts, contingent on the conditions listed below. Fern Hart seconded the motion. Motion carried 3-0.

1. The developer shall contribute $50.00 per lot to the Missoula Rural Fire District for the purchase of a large diameter hose and water tenders in order to help off-set maintenance and replacement of these specialty items which will be required for fire protection to the said subdivision. Fee shall be paid prior to filing of final plat.

2. The following shall appear on the face of the plat and in each instrument of conveyance:
The thirty (30) foot conditional easement as noted on the plat shall be changed to twenty-four (24) feet.

The following statement shall appear on the face of the plat and in all instruments of conveyance:

"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owners to waive the right to protest a future RSID for any improvements to South Avenue, including the installation of sidewalks or walkways, based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

The thirty (30) foot conditional easement as noted on the plat shall be changed to twenty-four (24) feet.

The following shall appear on the face of the plat and in each instrument of conveyance:

"The owners of the lots in this subdivision shall take care not to let domestic pets run free and possibly harass wildlife and stock in the area. Gardens and compost bins shall be adequately fenced at least 8 feet high with a top rail consisting of a material other than wire, to prevent possible wildlife entanglement."

The developer shall widen the existing gravel shoulder to a total width of 5 feet for the purpose of providing a pedestrian walkway along South Avenue. Plans shall be approved by the County Surveyor prior to filing of plat. The developer shall contribute $50.00 per lot to the Missoula Rural Fire District for the purchase of a large diameter hose and water tenders in order to help off-set maintenance and replacement of these specialty items which will be required for fire protection to the said subdivision. Fee shall be paid prior to filing of final plat.

Regarding the recommendation, because of costs, you have to have some kind of density. There will be about 41,000 square feet of pavement, they are extending the irrigation system, there will be a nice park with a lot of play and many different designs to that end.

Bill and his family have owned this property about 15 years, they raise hay on the property and also keep horses there. They have been given to land which, because of physical limitations or resource values, it is generally considered not suitable for concentration of development within these established communities and discouraging the growth of rural subdivisions which do not meet the Plan’s goals. In reviewing the subdivision, staff considered the affects on agriculture. The inventory of conservation resources’ data base lists this area as prime agricultural land which is evidenced by the present agricultural use of the property. Staff realizes that irrigation is available to this property and the developer intends to encourage future lot owners to keep a portion of their property in agricultural production through protective covenants. However, this cannot be guaranteed. Approximately 40 acres of land, including roads, could potentially be removed from agricultural production resulting in significant effects on agriculture. OPG recommends denial of the request for approval of the Plat because it does not comply with the 1975 Missoula County Comprehensive Plan and the proposal will have significant effects on agriculture.

Regarding the recommendation, because of costs, you have to have some kind of density. There will be about 41,000 square feet of pavement, they are extending the irrigation system, there will be a nice park with a lot of play and...
recreational equipment, landscaping, and a 2500 gallon water tank, all of which will cost a lot of money up front. Then there will be long-term maintenance costs. These costs will be absorbed by homeowners and there have to be enough homeowners to do it. If there aren’t, the subdivision can’t happen. Thus, they are not in favor of reducing the number of residential lots.

Michael Kennedy opened the public hearing to continue it from May 29th.

Speaking in favor of River Ranch subdivision were: Dan Englund, real estate broker working with Bill Lefler on the property; B.J. Lefler, owner of the property; and George Sherwood, 19000 Arabian Lane.

Michael Kennedy thanked everyone for their comments and asked if anyone else wanted to speak on this proposal? No one came forward and he closed the public hearing.

Barbara Evans stated she read the minutes of the Planning Board and heard the testimony. Further, she commented that there is no zoning out there, the Comprehensive Plan is 20 years old, the majority of the Planning Board feels the Comprehensive Plan did not provide any guidance in this particular decision, there is a petition signed by a good number of the folks who live in the area supporting this subdivision, they have met the wildlife and riparian concerns and the variance was voted to be approved by the Planning Board, even though the subdivision was denied. She asked Lisa if they have met the rules and standards, have they met everything except the activity circle rules?

Lisa Moisey replied they are in substantial compliance with the criteria that the state requires them to consider, except for the staff’s review of the effects on agriculture and the overall compliance with the Comprehensive Plan.

Barbara Evans quoted a person from the Planning Board, “the activity circles were artificial and arbitrary.” She agreed with that remark. She said they may have some validity but they are very old.

Fern Hart said she will vote to support the denial of this proposal. She encouraged the area residents and landowners to participate in the planning process. The community needs to come together and decide how their community will develop and what services will be required to serve them. The County will work with the community rather than spend the planners time and effort to get the community to participate. From what she has read in the Planning Board’s minutes and the support the petitioners’ have from their friends and neighbors, she believes the community wants to see change. She supports changes that are planned. This area is a prime example of divisions of land which has not been planned and just happened. She encouraged everyone to consolidate their interest and take advantage of the momentum that they have built to consider an amendment to the Comp Plan or to consider a citizen’s initiated zone. If she supports this proposal, the same old pattern will continue. She is not basing her decision on this particular subdivision’s qualities nor on the people’s commitment.

Michael Kennedy said, in our system of government 263 million strong in all of our institutions and laws and constitutions, they agree on a system of order that is meant to serve the best interests of the community at large and individually as best as they can. As that filters down to this level, we have the Comprehensive Plan. The intent of this is to advance the quality of life and make it as liberal as we can in concert with the surrounding area and the people who live in it. As good as this development proposal is, in his view, we should not use a proposal to change a Comprehensive Plan. The conflict that it has with the Plan that causes him to vote against the proposal. He hopes that the proposer, agreeing with Commissioner Hart, continues the process and does not start over because the approach is a strong approach. He believes the conflicts can be resolved and he hopes that he can work with the staff in developing comprehensive planning in that area. That may result in this property to be better developed in interests that are more positive for the area and for them also.

Barbara Evans moved that the Board of County Commissioners approve the River Ranch subdivision based on the reasons she noted earlier. Also, although agricultural use is important, when it becomes financially improbable or implausible for people to do so, to have the County deny this based on the fact that it is good agricultural land is imposing on people something the County has no capability of imposing. Thus, she moves approval of River Ranch with the variance suggested and based on the findings of fact by the staff and the testimony given here at this meeting.

There was no second to the motion and the motion failed.

Fern Hart moved that the Board of County Commissioners accept the recommendation of staff and deny approval of the preliminary plat for River Ranch, located between Frenchtown and Huson, south of Mullan Road in the southeast ¾ of Section 30, and the northeast ¾ of Section 31, T15N, R21W, which includes discussion of the incompatibility of the proposal with the 1975 Comprehensive Plan and concern of the effects on agriculture. Michael Kennedy seconded the motion. Motion carried 2-1. Barbara Evans opposed.

There being no further business to come before the Board, the Commissioners were in recess at 4:35 p.m.

JUNE, 1996 - 10 - FISCAL YEAR:

The Board of County Commissioners met in regular session; all three members were present in the forenoon. Commissioners Hart and Kennedy left for Helena at noon to attend a MACo Urban/Rapid Growth Counties Meeting held in the afternoon.

Request for Reconveyance -- The Board of County Commissioners signed a Request for Reconveyance to Western Title and Escrow, requesting Western Title and Escrow to reconvey without warranty Lot 9, Pleasant Acres No. 2, to the parties designed by terms of the trust indenture.

THURSDAY, JUNE 6, 1996
Memorandum of Approval -- The Board of County Commissioners signed a Memorandum, approving a request from Rachel Vielleux, County Superintendent of Schools, for an account with Centralized Services for Missoula Area Education Cooperative for printing for FY ’97, with the printing being done at the same rate as that allowed the Superintendent of Schools’ Office.

Extension Letter -- The Board of County Commissioners signed a letter to Andrew C. Fisher of Eli & Associate approving a 120-day filing extension for Pleasant Acres No. 2, Lot 9, making the new filing deadline October 8, 1996.

FRIDAY, JUNE 7, 1996

The Board of County Commissioners did not meet in regular session. Commissioners Hart and Kennedy were in Helena attending a MACo Board of Directors meeting.

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, JUNE 10, 1996

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Terrence W. Lynch as principal for Warrant #59424 issued May 24, 1996 on the Missoula County Payroll Fund in the amount of $42.98 now unable to be found.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending May 31, 1996.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for the Justice of the Peace, Department 1, for month ending May 31, 1996.

TUESDAY, JUNE 11, 1996

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

Audit List -- The Board of County Commissioners signed the Audit List, dated June 11, 1996, pages 3 - 33, with a grand total of $208,930.00. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Memorandum of Understanding -- The Board of County Commissioners signed a Memorandum of Understanding by and between Missoula County Airport Authority and Missoula County to establish an understanding, cooperative procedures, and general agreement on issue related to the development of the County Maintenance Shop Base at the Airport, per the terms set forth.

Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfer and adopted it as part of the FY’1996 budget:

Control No. 96-027, a request from Office of Planning & Grants to transfer $1,650 from the Supplies/Telephone fund to the Capital (computer replacement) fund to replace the computer in the Crime Victim’s Advocate Office.

Encroachment Easement -- The Board of County Commissioners signed an Encroachment Easement, granting an easement to Missoula Housing Authority of 1319 East Broadway to encroach upon a portion of County right-of-way located on Lot 9, Block 18, W.J. McCormick Addition for the building which encroaches 0.9 feet on to Lot 9, for the purpose of painting, maintenance or removal of the structure.

Agreement -- The Board of County Commissioners signed an Agreement between the Missoula City-County Health Department and the Frenchtown School District for the purpose of providing a Public Health Nurse, as per the terms set forth, for the period commencing August 19, 1996 through June 6, 1997, with compensation not to exceed $31,004.00.

Agreement -- The Board of County Commissioners signed an Agreement between Missoula County and Druyvestein, Johnson & Anderson, Inc. to develop an additional source of water supply (well) on the Holt property to include items outlined in Exhibit A, Scope of Service, which is available on file in the Clerk & Recorders Office, as per the terms set forth, for compensation in the amount of $26,143.00.

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1996, between Missoula County Board of Commissioners and Doyle Riley Construction for the sewer and water
system which serves the El Mar Estates and New Meadows Subdivisions, as per the terms set forth, for the period from July 1, 1996 to June 30, 1997, with compensation to be $73,888.00.

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

WEDNESDAY, JUNE 12, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Lease Contract -- The Board of County Commissioners signed a Lease Agreement between Missoula County and Missoula Correctional Services, Inc., to lease office space located at 304 West Broadway in Missoula, Montana, for a Community Service Program, as per the terms set forth, for a total amount of rent of $6,390.00, commencing July 1, 1996, through June 30, 1997. The lease was returned to John DeVore for further signatures and handling.

Amendment to Agreement -- Chair Kennedy signed a Statement of Amendments to the Estimated Cost of Personnel Services for the Western Regional Juvenile Detention Services Board to amend the personnel services for the Regional Juvenile Detention Facility down from $349,000 to $290,000 which represents a $55,000 increase over actual expenses for 1996, and reduce transportation from $140,000 to $50,000 consistent with actual expenditures for 1996 fiscal year. The document was returned to Judge Larson’s office for further signatures and handling.

Other items included:

1. The Board of County Commissioners reviewed the Missoula County Investment Information for June 3, 1996, May 1, 1996, April 1, 1996 and March 1, 1996, as submitted by Michelle Denman, Treasurer’s Office Supervisor.

2. The County Commissioners verbally granted an extension to the filing of the Green Acres plat for a period of 6 months, making the new deadline filing date December 12, 1996.

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

PUBLIC MEETING -- JUNE 12, 1996

The Public Meeting was called to order at 1:30 p.m. by Commissioner Fern Hart. Also present was Commissioner Barbara Evans.

BID AWARD: SEELEY LAKE COUNTY MAINTENANCE SHOP (SURVEYOR’S DEPARTMENT)

Fern Hart said the Board had received an award for a bid for a new County Maintenance Shop adjacent to the Seeley Lake Airport in Seeley Lake, Montana. On June 10, 1996, at 10:00 a.m. the bids were opened for “Proposal for work on Seeley Lake Maintenance Shop” with the following results: Diamond Construction, Inc., $371,400.00, and Structural Systems, Inc., $303,600.00. The County Surveyor’s office recommended to reject all bids for the following reasons: 1) Bids exceeded the Engineer’s estimate, and 2) Bids exceeded the FY 96 Capital budget total for the project.

Horace Brown said they will probably go back out to bid in the fall or winter.

Barbara Evans moved that the Board of County Commissioners reject all bids for a new County Maintenance shop in Seeley Lake for the reasons given by the Surveyor’s office. Fern Hart seconded the motion. Motion carried 2-0.

PRESENTATION: CARRYING CAPACITY: GROUNDWATER & POPULATION GROWTH (DR. BILL WOESSNER, UNIVERSITY OF MONTANA, AND ROSS MILLER, LAND & WATER CONSULTING)

Fern Hart introduced this presentation concerning the carrying capacity of the groundwater and population growth that the County commissioned Dr. Bill Woessner of the University of Montana, and Ross Miller of Land & Water Consulting to research.

Pat O’Herren said the Missoula County carrying capacity project started about 1992. They considered a number of different issues throughout Missoula County, part of those being air quality, water quality, where species of special concern were located, where we were looking to encourage growth to incur and where we might not want to see growth occur, given the resources that were available. This project was worked through a number of different agencies, including U.S. Fish and Wildlife Service, Lolo National Forest, the Flathead Forest, Region No. 1 of Fish, Wildlife and Parks, Region No. 2 of Fish, Wildlife and Parks, Montana Riparian Association, and Zoology Department of the University of Montana. There are a number of other agencies and individuals that contributed to the project but one of the culminating aspects of it was a contract with Ross Miller and Dr. Bill Woessner to research the matter. They have what they hope are geologically representative areas in the County to look at the impacts of septic effluent in those areas and hopefully, take that information, put it in some models that currently exist and see if those models were applicable to Missoula County, and, if they were not, to modify them. The report today is final. There will be recommendations that will follow this report.
Fern Hart said the Commissioners look forward to this report. She said Commissioner Kennedy was not present because there were pressing matters he had to take care of at home, but he will be joining them at this meeting as soon as he can. (Commissioner Kennedy joined the meeting at 1:50 p.m.).

Ross Miller, Land & Water Consulting, said, because they have a short time frame, what he and Dr. Woessner will be presenting is a culmination of about 4 years’ work, skipping over a lot of in-depth reporting. He said they wanted to find out what the number of septic systems throughout the County that would be allowable and not degrade groundwater beyond the state’s non-degradation standards. The project was broken down into three phases. The first phase was to come up with a first cut of what they thought the carrying capacity was. They mapped the entire County, broke it into quarter section grid sizes (160 acres), and did a dilution equation model on each one of those quarter sections to see how many septic systems they could put in an area and not exceed the water quality standards. Phase 1 was the first cut to identify critical areas, where they had to have more data if they were going to proceed. Phase 2 was performed by Bill Woessner to further detail site investigation of those areas from Phase 1 that needed more work, areas that could be geologically representative of other areas in the County. Phase 3 proceeded which was to do a final compilation and County-wide map format of what the carrying capacity was, incorporating the results of Phase 2.

Bill Woessner said in Phase 2, after they made their first review of critical areas and talked with numerous agencies within the City and County, they chose sites around the County to collect data on groundwater quality and, in some areas, detailed data on how septic systems worked and how individual septic systems impact groundwater. Finally, they tried to look at the cumulative effects of many septic systems operating over a small area. They did not look only in Missoula valley, but in Missoula itself they had 2 sites west of Reserve Street, which were under a septic system, a site in Frenchtown, a cumulative study area in the Frenchtown area, another cumulative study impact area west of Reserve, 2 subdivisions, one which was 63 homes and one was 47 homes. They also had some work done on O’Brien Creek, looking at groundwater quality for domestic wells; they also had 3 research sites in Seeley Lake, one out by the Seeley Lake airport, one on the east side of the main street and one in the Camp Paxson area. They also did water quality sampling in the Condon area, looking at the sediments that were close to the river, and their impacts to the domestic wells from a small subdivision there. He gave Pat O’Herren a list of the reports that were produced as a result of Phase 2. There were three volumes, entitled “MISSOULA COUNTY CARRYING CAPACITY STUDY.” The first volume is the executive summary, the second volume is the actual results of the text and data analysis and the third volume is the appendices, which has all of the data they collected in a form to be used by anyone. The Commissioners also have the conclusions of the Phase 2 study, summarized in 9 points and references to the three reports.

The Phase 2 data, which was the actual study results of what kind of nitrate levels they found in groundwater and what were the depths of mixing zones underneath the drainfields they actually studied and categorized, was given to Ross Miller, who reproduced a new set of maps by quarter section on what the impacts would be for carrying capacity for groundwater in Missoula County.

Ross Miller said he will now go over the final results, with suggestions on how the information can be used. He used various maps to show all the areas they worked with in the County, broken down by color showing the private lands, the government lands and other public lands, and showed the existing septic density. They wanted to apply, for each quarter section, a dilution equation to calculate how many septic systems they could have and not exceed the current state non-degradation standard of 5 milligrams per liter of nitrate in groundwater.

The study is in a GIS format. Non-degradation standards change. When this study started, the state standard has gone from 10 milligrams per liter to 2.5 milligrams per liter to 5 milligrams per liter just during the duration of this study. So the targets that they tried to achieve vary with the legislative sessions. Thus, they thought it would be best to put all this information in GIS format. As things change in the future, they can hit the proverbial “button” to update the information.

He noted that one of the biggest problems they ran into when they use the dilution equation is that you end up encouraging even spreading and discouraging cluster development. However, cluster development is desirable for this information. They chose to use cluster development as a “tool” taken out of a toolbox, which often happens. One option is to convince the state to allow Missoula County to have primacy so that, in a given area, they would still have the same number of septic units in that area that the state would allow but put the houses wherever the County wants in that section, instead of being forced to evenly spread them out. So the impact to water as a whole would be roughly the same but the County would have flexibility.

He said the study is already being used as part of the sewer facility update plan and sewer infrastructure over the next 50 years. All the carrying capacity work is based on existing population.

Michael Sehestedt said this report was a public document available for inspection and copying.

Barbara Evans asked if any research was being done into what technology was available that can reduce septic effluent in areas where it is potentially going to be a problem so that further growth can be done without impacting the groundwaters, such as sand filters?

Ross Miller answered that there is a lot of research being done in those areas. A lot of those systems have trouble getting rid of all the nutrients. They are good at removing bacteria and solids, but nutrient removal is still a problem. There are also numerous individual sites and exotic systems that serve one house, and they often have maintenance problems. At the present time, the County does not have the ability to enforce maintenance standards on some of those systems. So, he said his summary answer is that, yes, there may be some high technology septic treatment systems out there that, if properly maintained, only half of the nutrients would come out. But, the assumption is, if those systems are not maintained, in 15 years they are probably not going to be working as originally designed. As new technology is developed, there may be more economical technology that serves a number of houses. That is one of the reasons they hope to use cluster development again as a planning tool because it opens up many possibilities in the future.
Horace Brown, County Surveyor, asked if clustering affected the overall aquifer the same way as if the houses were spread out? Is there any difference overall in the aquifer as far as the degradation?

Ross Miller replied, overall, no. There may be some differences in location, such as in a draw, where you can have groundwater exceeding 5 milligrams per meter but, once you were a few hundred feet away, the overall effect of the aquifer would be the same.

Michael Kennedy said clustering houses does not necessarily mean clustering treatment systems. You can keep the treatment systems dispersed and keep the houses clustered and have the same effects. He said, with increased density, storm drainage becomes a serious problem. It may have impact on the import of this study.

Ross Miller said this study addressed nutrient impacts from separate systems only. It didn’t look at nutrient impacts from other systems via fertilizer applied to lawn which, in this area, is more a problem with storm water run-off as opposed to groundwater. As we see more development, the storm water issues are going to be a problem. They will be another source of nutrients getting into the system. There are also other sources such as agricultural uses that introduce nutrients into the system. This study has not looked at those systems at all but only at septic effluent. As growth occurs, we may have to look at other sources of nutrients.

Michael Kennedy said, as a developer wishes to use these data and suggests that perhaps more development may be possible, the converse is also true that there may be reasons that these numbers have to be reduced in certain areas because of other influences on the aquifer.

Ross Miller agreed.

Fern Hart said she had hoped this would solve a lot of the problems they see at Public Meetings with the request for subdivisions. She feels that we need to recognize that most subdivision requests do not come in as major developments in one area. And, in an overall view, they do not know all the development that will be happening over the next 10 years. Though she sees this as a tool, she is going to need more to work with. The Commission reviews land that is requested to be divided almost every Wednesday, a lot of without even going through subdivision review, such as a family transfer exemption. She is seeking a way to use the information gathered.

Ross Miller said this report is not an end-all for all subdivision reviews. One way it can be used is that it shows in different areas what density the area can handle.

Michael Kennedy said this was a valuable tool but realizes that it is only a tool and other tools have to be applied when reviewing a subdivision. He asked if anyone from the audience had any comments or questions?

Peter Nielsen asked if Ross could explain the limitations in the study and as it applies to nitrates and the dilution model?

Ross Miller responded that this study just looks at nutrients, specifically nitrates, and their impact to groundwater. One of the reasons the study just looked at that is because that is the state’s non-degradation standards. There are other things that come out of septic systems, but in some areas where there is tremendous amounts of groundwater moving through the system that would provide dilution water to a nutrient, that same system may be groundwater which would also have the ability to move a virus, for example, very fast and a long distance. This study did not look at those kind of issues but he realizes there are other things to keep in mind.

Mark Munsinger asked the study took into account the depth to groundwater in the presence of impermeable layers between surface and the groundwater and, if it didn’t, how would that affect the degradation?

Ross Miller answered that they did not take into account the depth to groundwater because, with the systems being in place, the thickness to the groundwater surface will have a finite ability to absorb nitrates. The septic system is going to be operating every day for that 50 years or however many years it will be. Eventually, whether that thickness is 10 feet or 100 feet, the conservative assumption is it will load up to the point where it then breaks through and enters the groundwater system. That is consistent with the state’s non-degradation standards. They did the same kind of analysis the state does. Regarding whether there is an impermeable layer which would prevent the septic effluent from reaching the water table, that undoubtedly occurs in some areas. They did not take that into consideration because that level of geologic mapping does not exist at this time. They did not have the budget to drill 4,000 holes around the County to figure out where the perch layers are. They had to rely on the existing geologic information they had plus the information Dr. Woessner added. What it does do, however, is gives a good idea of the mass balance and mass loading of allowable nutrients in the area. For example, if there is an impermeable layer that nitrates are not going to go past, they will probably go horizontal. When they go horizontal in this area, they go into a river. If we have impermeable layer that prevents the nitrates to get to the water table, it is not like the problem is gone, but we only have a different problem.

Jay Sage asked if coliform bacteria is a better indicator of actual groundwater pollution from septic systems rather than just the nitrates, which can come from other sources, such as fertilizer?

Peter Nielsen disagreed and the state disagrees with that because bacteria dies and it is not stable in the groundwater system. While bacteria is very harmful and it can get in to the water table and travel, it will eventually die and not be in the water anymore. Whereas a nutrient, like nitrate, does not die out.

Jay Sage asked, if the sewage treatment plant dumps nitrates into the river, would it help to have cleaner septic systems?
Ross Miller answered, when it is in the pipe, like a sewage treatment plant, it can be treated. When it is dispersed, you have no ability to treat it. But, in 20 years that might not be the case. That pipe may go through another stage of treatment.

Bill Woessner said they did some calculations on the sewage plant upline, the discharge compared to the loading that results from septic systems in our unsewered areas in Missoula valley. It appears that the plant is not actually designed for nutrient removal but it does perform some significant reduction in nitrates. The plant has improved in that capacity in the last several years. So it is not accurate to say that it will go in the river through septic systems or you put it in the river through the plant. He conceded the plant is a significant source of nutrients but there is significant treatment that occurs.

Michael Kennedy said, to add to that, the approach is different as well. The primary nutrients that are in the surface water are nitrogen and phosphorous. The city took a large step a few years ago by eliminating phosphate detergents and reduced the overall productivity by as much as 40%. Phosphorous is a nuisance and not the kind of health threat nitrogen is. Nitrogen in the groundwater creates a problem for us that nitrogen in the surface water does not because we consume the water out of the ground. As it elevates, it becomes serious. What we notice about the aquifer here is that the natural background level of nitrogen is very low. We notice that, as the number of septic tanks increase, that background level continues to increase as well. The thing that changes is the number of injection points or septic tanks that we have so we feel that we can relate to the elevated nitrogen level within the aquifer to septic tanks on some level. It is not perfect, but we can relate it.

He said the importance of this study needs to be underscored. We have a serious problem with respect to the consequences of development, utilizing septic tanks. The County is in the process of developing as many tools to deal with those kind of problems as we can. The City is engaged in an overall waste water study. And the County is engaged in analyzing what our resources are and what the capacity of those resources are to accept cultural influence and they will continue to develop those again for the protection of the environment and the betterment of the people’s health.

Ross Miller wanted to add one of the reasons it is really important to look at these issues and come up with a plan to address allowable levels of septic development in the outlying areas of the County is that, once a new plan is developed for sewer service and treatment and we have a new sewer service boundary, it is very likely that sewer service will be a lot more expensive. Rates and hook-up fees will cost a lot more. If we do not have anything in place for how to manage the septic use outside the sewer service areas, growth will be pushed beyond the sewer service area. A lot of development will shift out beyond the sewer service area if sewer rates go up. If something like this is in place, it could help balance that so that you won’t have rampant development using septic systems just beyond the boundary.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (STOUT)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a consideration of a request for a family transfer for Tract 4-B of COS 3977 located in Sections 4 and 5, T13N, R20W for Fred J. and Gayle L. Stout.

Fred Stout has submitted a request for a family transfer exemption for Tract 4-B of COS 3977 located west of Missoula off Mullan Road near Council Grove. Tract 4-B is a 25.16 acre parcel created through use of a boundary relocation as approved on May 28, 1996. Mr. Stout requested to relocate the boundaries of his property with that of his neighbor’s property adding 5.08 acres to his current ownership. Mr. Stout then proposes to create a family transfer parcel out of the 5.08 acres for his adult son, Donald J. Stout. The zoning in the area is C-A3 (one dwelling unit per 5 acres).

The history of the parcel is as follows: COS 3025 was filed in April, 1984, creating three parcels greater than 20 acres in size by the Dussault family. The Stouts purchased this parcel and surrounding parcels in June, 1984 and filed COS 3977 in August, 1991, creating seven parcels greater than 20 acres in size.

According to the records kept by the Missoula County Surveyor, the applicants have used the following exemptions to the transfer exemptions for other adult children all on adjacent property.

Michael Kennedy asked if Fred or Gayle Stout or their representative was present?

Fred Stout said he has 7 children.

Fern Hart said he has 7 children.

Fern Hart said, even though this appears to be legal, this is a family subdivision that is happening. In 10 years, people will notice that this parcel has been subdivided without review and there will be problems. She is not comfortable with this because she does not know what roads, accesses, riparian areas, etc. they have or do not have. She asked if his daughters, who had previously received family transfers from him, lived on the land?

Fred Stout replied that they live there now.

Fern Hart said she hoped as this family subdivision is developed, that it is done in a land-sensitive way.
Fred Stout responded that in his generation, they were more fortunate that this one. When he purchased this land in 1984 from the Dussault’s, he did not have any particular desire or plan for the property, they did not even know if they were going to live there. But, as land prices have gone up and the population increased, and with zoning and taxes, it is almost impossible for this generation to buy 5 acres. So, since they are a compatible family, he will use 7 family transfers if they all want to live there. As long as it is legal, he will do it but he does not want the implication that he is doing something unjustly or to subvert the law. It is a matter of easy remedy for his family’s needs.

Fern Hart said she believed him but the fact remained that, in later years, this sort of subdivision will be difficult when the County tries to plan school bus routes or a septic system for a community.

Michael Kennedy said he feels frustration over the way the law is written because subdivision is still subdivision, even though he realizes that just because a subdivision review goes through subdivision regulations, it does not necessarily mean it would be any better quality than this one. But it does mean that there is some consistency and thought that goes in the planning.

Barbara Evans moved that the Board of County Commissioners approve the request for a family transfer for Tract 4-B of COS 3977 located in Sections 4 and 5, T13N, R20W for Fred J. and Gayle L. Stout in that there does not appear to be an attempt to evade the Montana Subdivision and Plating Act. Fern Hart seconded the motion. Motion carried 3-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (HARRIS)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a consideration of a request for a family transfer for Parcel C of COS 3238 less portions C1 and C2 of COS 3579 located in Section 11, T13N R23W for John T. and Linda D. Harris.

John Harris has submitted a request for a family transfer exemption for a 27 acre parcel as described above located off Ed's Creek Road in the Petty Creek area. Mr. Harris proposes to create a 7 acre parcel for transfer to his adult daughter, Sandra Harris. The comprehensive plan in the area is open and resource (one dwelling unit per 40 acres). The history of the parcel is as follows: COS 3238 was filed in September, 1985, creating four parcels greater than 20 acres in size and two aliquot parcels. COS 3579 was filed in June, 1986, relocating the boundaries between Parcels C, D and F. Mr. Harris purchased the property in February, 1990, and quitclaimed an undivided half interest to Linda D. Harris in November, 1994. According to the records kept by the Missoula County Surveyor, the applicants have not used any exemptions to the Subdivision and Plating Act.

Ken Jenkins, Professional Consultants, Inc., said he represented the Harrises.

Fern Hart asked if John and Linda were married or were they brother and sister or father and daughter?

Ken Jenkins replied he didn’t know.

Michael Kennedy, addressing Counsel, said the Comprehensive Plan shows this as Open and Resource, one dwelling per 40 acres, and this is a 7 acre parcel. He wanted to know the implication of this.

Colleen Dowdall, Deputy County Attorney, replied this is outside the building permit jurisdiction. So an inquiry to the Comprehensive Plan will be triggered by a septic permit but that is not guaranteed. The Comprehensive Plan makes a recommendation. It is not zoning but, if improvements are proposed that are not in compliance with the Comprehensive Plan, it may be that there septic permit would not be issued until that was resolved.

Michael Kennedy asked Mr. Jenkins to convey that to the Harrises that, even though they may be successful in getting this family transfer, they may not be able to develop it.

Ken Jenkins responded that he would relate that to them.

Fern Hart added that she would like Ken to include a plea for them to respect the riparian area wherever they develop. She said they cannot require this since this is not a subdivision review.

Ken Jenkins replied that he would tell them.

Barbara Evans moved that the Board of County Commissioners approve the request for a family transfer for Parcel C of COS 3238 less portions C1 and C2 of COS 3579 located in Section 11, T13N R23W for John T. and Linda D. Harris in that there does not appear to be an attempt to evade the Montana Subdivision and Plating Act. Fern Hart seconded the motion. Motion carried 3-0.

CONSIDERATION OF: KALLI ADDITION (2-LOT SUMMARY) FRENCHTOWN AREA

Lisa Moisey, Office of Planning & Grants, said this was a request from Ed & Kalli Deschamps for a 1-lot subdivision on their property located at 11500 Frenchtown Frontage Road. The Deschamps intend to subdivide their 250 acre parcel to create one 50 acre lot and to construct a home on this lot. The property is unzoned and the 1975 Comp Plan calls for open and resource uses of the land. Access to the lot will be from Fred Lane, which is a County maintained gravel road. OPG staff have recommended that the applicant record on the face of the plat a waiver statement for improvements to Fred Lane, including participation in the dust abatement district as this subdivision will potentially generate at least one additional vehicle along Fred Lane. OPG staff recommends approval of the Kalli Addition subject to the conditions listed in the staff report and given the findings of fact.
CONSIDERATION OF: HOWARD SUBDIVISION FOR LEASE/RENT (FRENCHTOWN)

Lisa Moisey, Office of Planning & Grants, said this is a request by Janet and Leon Howard for a subdivision for lease or rent at their property located at 18100 Houle Creek Road in Frenchtown. The property is unzoned and the 1975 Comprehensive Plan recommends Rural Low Density residential development for this area. The Howards presently own a single family home on their 30 acre parcel and they are seeking approval for a second dwelling unit which will have its own septic and well. Access to this subdivision is from Houle Creek Road, a County maintained gravel road. The Howards access their property by a private driveway easement from Houle Creek Road. The addition of a homesite to this property will result in an increase of traffic and generation of dust along Houle Creek Road. Staff recommends the applicant file a document of record with the County waiving the right to protest improvements to Houle Creek Road, including participation in dust abatement district. In review, OPG recommends approval of the Howard Subdivision for lease or rent based on the findings of fact and contingent on the conditions listed in the staff report.

Janet Howard asked if she could have a variance for all three of the recommendations. She does not want to agree to waive their right to protest participation in any RSID’s for improvements to the road or installment of a community water. She also does not want any restrictions around the creek on their property. They are not clear on what restrictions will be placed on it. All they use it for now is to relax and put their feet in the water and they have not plans to build near it. She said the reason they cannot agree to the conditions is because they have no idea what the cost will be. They do not feel they can commit to participate in something they may not be able to afford. Regarding the water, they already have a well on their property which is more than adequate for their both the new house they are building and the house they are living in currently.

Barbara Evans explained to Janet her concerns about Houle Creek Road. She understands how she feels in not wanting to give up their right to protest. She said, when she first became a Commissioner, one of the first issues she had to deal with was Houle Creek Road. The area was developed through Certificate of Survey where family members give land to family members and there was no planning. Houle Creek Road was very steep and the people who lived there, knew that. However, there was a tragic death of one or more children in a trailer house on Houle Creek Road because the fire truck could not get to it. Ultimately, the County paid to cut the road down and make it safer for those that lived there. Over the years, she has had innumerable complaints regarding the dust. Recently, Joe Boyer has been concerned about his cows and there have threats to sue the County because of the illness of his cows from the dust on that road. The health and safety of the people who live there are more important than the cows and the dust is a serious problem in that area.

Janet Howard protested, however, that she is not dividing her land but are only living in one house while they are building another, more adequate house for their family. They thought that they may possibly rent the original house for income. They are not even 100% sure that they will do this.

Barbara Evans said the problem is still the dust and the health hazards that it can cause.

Janet Howard asked if she could tell her what the cost would be?

Barbara Evans answered no.

Janet Howard asked then how can they commit to it?

Michael Kennedy said they should continue with the review process first.

Fern Hart said she supports Commissioner Evans’ concerns. She stated this is why they review subdivisions for lease or rent. She feels that as time goes on, that land will be even more divided.

Janet Howard disagreed, saying it will never be divided in her time.
Fern Hart replied that she understood that, but the land will always be there and may, in time, be divided. The Commissioners have a responsibility to plan as best as they can and they intend to protect the residents’ best interests. Houle Creek Road is one that they deal with every summer. The Commissioners have no certainties regarding the cost.

Janet Howard said she does not understand how the County can get everyone else on Houle Creek to commit to pay for improvements?

Colleen Dowdall replied that she first wanted to explain why the County has the ability to impose the condition. She said no line is being put on the map to separate her property but the state allows the County to review subdivisions created by putting in an additional parcel on property. So, to get a septic permit, for instance, you have to undergo this review. Part of the review is to determine whether the development and the addition of another home, so that there will be 2 houses on the parcel, will be done in a way that protects the health, safety and welfare of whoever is going to live on that parcel. This includes safety of roads and whether they ought to be paved or improved in some way. So, for the privilege to be able to add another house on your property, because subdivision is a privilege, the County may require conditions that meet their regulations. Regarding the riparian area, there are subdivision regulations that allow the County to impose restrictions if there is a riparian resource area on the property. If that property is requested to be subdivided, the County imposes restrictions that do not allow a landowner to develop in a riparian area.

Janet Howard said they are not planning to build in their riparian area.

Colleen Dowdall said that has to appear in their plan to be submitted. The County can create a district without a petition from anyone if they believe they need to create a road. However, people have the right to protest. If someone waives their right to protest, they, of course, could not protest. But if a sufficient number of others in the district protested, it would not be created. People who subdivide their land would waive their right. The County has been imposing that condition for a long time.

Michael Kennedy said any RSID’s cost money, but one of the tests of RSID’s is that it has to add value to the property, at least equal to the assessment. So she can be assured that if an RSID is created and she is assessed, the value of her property will rise by at least the approximate value of that assessment. It is not so much a penalty as it is an investment in the your property

Janet Howard said, but on the other hand, they are also taxed higher for that assessment.

Michael Kennedy added that the RSID may never happen.

Janet Howard maintained that she did not like having to give up her right to a choice and she does not feel that that is right. She would prefer to have a choice at the time it happens, if it happens, when she can see what the cost will actually be and what their circumstances are at the time. She remembers about a year ago there was a petition mailed to her.

Fern Hart recalled that and said they had so many complaints about dust and cows dying. Someone came from that area and worked with the Commissioners’ office and she believes the office spent well over $1500 researching the situation, doing a mailing, going to meetings and pulling information together regarding the dust. After everything was done, it was voted down.

Colleen Dowdall said their other alternative was to require the road to be paved. The paving is not imposed at this time, but at a time until when there is sufficient need and interest in the neighborhood to do that. At that time, the Howards would not be able to protest. But the other alternative is to require that the road be paved because there will be greater impact by adding another residence.

Barbara Evans also wanted Janet to understand that the cost of an RSID is usually spread out. So, if the cost is $10,000, the payments will be spread out over 10-15 years. She reiterated that there is no sign that the paving will ever come to pass. The complaints have been happening over many years but when the County tried to get a petition to get it done, the people in the area would not sign it. Regarding the water system, that may never be a problem, but if in 10, 15 or 20 years there is no water, they will initiate a water system. Again, it may never happen. The Howards choice at this time is to accept this process and the conditions of approval or not.

Janet Howard replied that she did not feel she had any choice. She said her house is already built.

Colleen Dowdall asked if she had a septic permit?

Janet Howard answered that is why she had to go through this process. They did not know, when they planned to build their home, they would have this problem. Tom Barger had been out there and they got a septic permit for their house, which was a trailer they had moved, and he never said anything to them about any problems they may have getting done, it was voted down.

Michael Kennedy added that the RSID may never happen.

Colleen Dowdall said this has been part of the law since 1973.

Fern Hart said, if the Howards want the permit to the septic system, then they need to comply with the regulations.

Barbara Evans moved that the Board of County Commissioners approve the Howard subdivision for lease or rent, located at 18100 Houle Creek Road, legally described as the S½, S½ NW¼ of Section 20, T15N, R21W, excepting that portion described in Cos 1388, deed exhibit in Book 81, Micro Page 1048, based on the findings of fact and contingent on the conditions listed below. Fern Hart seconded the motion. Motion carried 3-0.

1. The applicant shall record a document waiving the right to protest participation in an RSID/SID for improvements to Houle Creek Road, including pedestrian walkways and including participation in a dust
abatement district, and may be used in lieu of signatures on an RSID/SID petition. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land depicted hereon.

2. The applicant shall record a document waiving the right to protest participation in an RSID/SID for the installation of a community or municipal water system. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land depicted hereon.

3. The applicant shall show on the final plans the area of riparian resources, and delimit the area as a “no build” zone. The no build zone shall not preclude low-impact non-motorized uses of the area.

Colleen Dowdall said this approval can be acted on in any way the Howards choose, whether to use it to get a septic permit and follow the conditions or not file the final plan, and not get the septic permit.

There being no further business to come before the Board, the Commissioners were in recess at 3:12 p.m.

THURSDAY, JUNE 13, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Kathleen M. Magone, an independent contractor, for the purpose of training for the Planning & Grants staff in subject areas of technical writing and presentations, as per the terms set forth, for the period commencing June 11, 1996 through June 25, 1996, for compensation which shall not exceed $1,200.00.

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

FRIDAY, JUNE 14, 1996

The Board of County Commissioners met in regular session; all three members were present. In the afternoon, Commissioner Evans met with representatives of the Bonner Development Group and accompanied them on a tour of the Bonner area.

MONDAY, JUNE 17, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Encroachment Permit -- The Board of County Commissioners signed an Encroachment Permit, agreeing to permit Raymond D. and Dorothy M. Sheldon of P.O. Box 1085, Seeley Lake, Montana, to encroach upon a portion of County right-of-way adjacent to Lot 8 Block 11 of East Clinton Addition and being in the SE¼ of Section 17, T12N R17W, and shall be limited to the existing well and water lines, effective for a period not to exceed ten years, renewable at the option of the County.

Plat -- The Board of County Commissioners signed the Plat for Placid Lake South Shore tracts, Phase 4 (Lots 13A, 16, 17, and 18), a subdivision of Missoula County, located in G.L.O. Lot 4, Section 28, G.L.O. Lots 2 and 3, Section 29, T16N, R15W, P.M.M., a total area of 6.57 acres with 2.55 acres of these deeded to “common area,” with the owner/developer being Placid Lake Properties.

Payroll Authorization -- The Board of County Commissioners signed a Payroll Authorization Form for Kim Vietz for an increase in salary from $8.36/hour to $8.54/hour, effective March 24, 1996, to meet the requirement that MT DES be submitted this form any time there is a change in salary for a DES employee, as MT DES pays a portion of Missoula County’s DES payroll.

Agreement -- The Board of County Commissioners signed an Agreement between the Missoula City-County Health Department and Sheridan Memorial Hospital for the purpose of maternal and child health community assessment and
planning activities in Sheridan County, as per the terms set forth, for the period commencing January 15, 1996 through June 30, 1996, for compensation up to $8,400.00.

Professional Services Agreement -- The Board of County Commissioners signed a Professional Services Agreement between the University of Montana and Missoula County Sheriff's Department for the purpose of obtaining the expert services required to provide law enforcement, crowd control, and general security at University events or events conducted in University facilities, as per the terms and conditions set forth. The Agreement was returned to the Sheriff's Department for further signatures and handling.

Resolution No. 96-048 -- The Board of County Commissioners signed Resolution No. 96-048, a resolution of intent to create a Rural Special Improvement District No. 8923 for the purpose of parks maintenance, repair and management and street lighting utilities located in the El Mar Estates Subdivision.

Resolution No. 96-049 -- The Board of County Commissioners signed Resolution No. 96-049, a resolution from ten freeholders of the road district in Missoula County to create private roadways as county roads along the route shown on Exhibit C, which is on file with the Resolution in the Clerk & Recorder’s Office. Those roadways include Sapphire Drive, Ruby Court, Ruby Lane, Coral Lane and Diamond Drive.

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

TUESDAY, JUNE 18, 1996

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Hart attended a Missoula Planning Board Meeting held at the City Council Chambers.

DAILY ADMINISTRATIVE MEETING

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

Request for Commission Action -- The Board of County Commissioners received a request from the Sheriff’s Department to:

- Adopt a Detention Center Site Recommendation.
- Approve Site Negotiation Team to begin Negotiations with land owners.
- Provide direction to purchase a detention site (25 acres) or purchase the entire property (39 acres) with the intent to master plan the site for future city/county development for additional criminal justice agencies.
- Direct the Site Negotiation Committee to initiate negotiations.

The fiscal impact is not to exceed $14 million. Barbara Evans moved and Fern Hart seconded a motion to approve the requests. Motion carried 3-0.

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

WEDNESDAY, JUNE 19, 1996

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

Audit List -- The Board of County Commissioners signed the Audit List, dated June 19, 1996, pages 3-42, with a grand total of $455,150.16. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Amendment to Agreement -- The Board of County Commissioners signed an Amendment to the Missoula Airport I-90 Interchange Agreement between Missoula County and the Montana Department of Transportation, amending the Agreement as per the terms set forth.

Request for Reconveyance -- The Board of County Commissioners unanimously approved and signed a Request for Reconveyance to the Deschamps Family Corporation for property secured by trust indenture (15 acres in County Crest Subdivision).

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (HOSKINSON)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a consideration of a request for a family transfer for Tract 2 of COS 3003 located in Section 31, T16N R19W for Patricia Hoskinson.

Patricia Hoskinson has submitted a request for a family transfer exemption for Tract 2 of COS 3003 located off Highway 93 on the Flathead Indian Reservation south of Arlee. Tract 2 is a 4.96 acre parcel and Ms. Hoskinson proposes to create a 2 acre parcel for transfer to her adult daughter, Leah Hoskinson. Ms. Hoskinson states her daughter wishes to reside on
the parcel and the remainder will contain the existing home. The comprehensive plan in the area is rural low density (one dwelling unit per 10 acres). As per agreement, the Tribe was allowed to comment and their response dated May 29, 1996, is attached.

The history of the parcel is as follows: In October, 1977, Rex Hoskinson, Patricia Hoskinson and Dennis Nelson purchased an interest in the property from John Malatare. In May, 1980, COS 2335 was filed by John Malatare creating a 24.78 acre parcel which was then deeded to the Hoskinsons and Mr. Nelson in July, 1980. In January, 1981, the Hoskinsons filed COS 2705 creating a 9.92 acre occasional sale parcel and 14.86 acre remainder. In February, 1982, the Hoskinsons filed COS 2827 creating a 1.12 acre occasional sale parcel and 13.74 acre remainder. In December, 1983, the Hoskinsons filed COS 3003 creating Tract 1 as a 8.87 acre occasional sale parcel and Tract 2 as a 4.96 acre parcel. In March, 1984, a Warranty Deed was filed, Dennis Nelson quitclaimed his interest in Tract 2 to Rex and Patricia Hoskinson and the Hoskinsons quitclaimed their interest in Tract 1 to Dennis Nelson. Rex Hoskinson has since passed away.

According to the records kept by the Missoula County Surveyor, the applicant has used the exemptions to the Subdivision and Platting Act as described above.

Barbara Evans noted that no one was present to represent the applicant and to answer questions.

Fern Hart said, because this is in Missoula County, it is fair that they grant this request, noting that they may not be able to get a septic system permit.

Colleen Dowdall, Deputy County Attorney, agreed.

Fern Hart asked if they could refer this letter to the Sanitation Department or attach it to the Commissioners’ letter?

Colleen Dowdall said they could attach it but that letter goes to the applicant, not the Sanitation Department. In order to file a Certificate of Survey, they have to have lifting of sanitary restrictions. Those follow the state and local rules which may not address the issues the Tribe has.

Barbara Evans said perhaps the County could send them a letter, making them aware of the Tribe’s concerns and also informing them that the County has riparian regulations and give them a copy of them, suggesting that they abide by them for the land’s and their own sake.

Kathleen Smith informed the Commissioners that she had sent Patricia Hoskinson a copy of the Tribe’s letter along with her letter, requesting that she attend this meeting so she would be available to answer the Board’s questions.

Fern Hart said she felt it was important to stress these matters as there may be other family transfers in this family since there are other children. The applicant has been subdividing on this parcel as the history shows.

Kathleen Smith said that was true, but the last subdivision was 13 years ago. They did about 1 a year for 4 years.

Michael Kennedy said this is a situation where they could develop the property and no one would ever know. They wouldn’t even apply for septic tank permit.

Barbara Evans moved that the Board of County Commissioners grant the request for a family transfer exemption for Tract 2 of COS 3003 located in Section 31, T16N R19W for Patricia Hoskinson based on the fact that it does not appear to be an evasion of the Montana Subdivision and Platting Act. The letter confirming this decision shall include a copy of the Missoula County Riparian Resource Regulations. Fern Hart seconded the motion. Motion carried 3-0.

Michael Kennedy asked Counsel if they could disregard that the Comp Plan says 1 dwelling unit per 10 acres because of the way this property is subdivided?

Colleen Dowdall answered that was correct.

There being no further business to come before the Board, the Commissioners were in recess at 1:44 p.m.

THURSDAY, JUNE 20, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Agreement -- Chair Kennedy signed an Option to Purchase Real Estate Agreement between Missoula County and Spectrum Distributing, Inc., for real property located in the Missoula Development Park and described in Exhibit A, which is on file with the document in the Clerk & Recorder’s Office, as per the terms set forth, for the period commencing on the date of the agreement and terminating on December 31, 1996. The price for the Option is $5,000.00 to be paid on or before May 31, 1996.

Resolution No. 050 -- The Board of County Commissioners signed Resolution No. 96-050, a resolution to rezone property described as the S½ NE¼ and the N½, SE¼ of Section 34, T14N, R19W, P.M.M. located up Sawmill Gulch in the Upper Rattlesnake Valley from C-A1 to the Sawmill Meadows Rural Zoning District.

Extension Letter -- The Board of County Commissioners signed a letter to Ron Ewart of Eli & Associate, approving a three-month filing extension for Brianna Court Subdivision, making the new filing deadline September 17, 1996.
Extension Letter -- The Board of County Commissioners signed a letter to Elden Inabnit denying a filing extension for High Country Addition Subdivision.

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

FRIDAY, JUNE 21, 1996

The Board of County Commissioners did not meet in regular session. Commissioner Hart was in Thompson Falls attending a Mental Health Board Meeting; and Commissioner Kennedy attended a meeting with the Board of Crime Control in Helena.

MONDAY, JUNE 24, 1996

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

Proposal -- The Board of County Commissioners voted unanimously and Chair Kennedy signed documents relating to the approval for submittal of the Missoula County Rural Domestic Violence and Child Victimization Enforcement Grant Program Proposal to the Office of Justice Programs, Violence Against Women Grants Office.

TUESDAY, JUNE 25, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Agreement -- The Board of County Commissioners signed a Project Agreement between Missoula County and Lolo National Forest, outlining the items agreed to for improvements to Blue Mountain Road, as per the terms set forth, with the project designed during the winter of 1996-1997 and construction starting during fiscal year 1997-1998, with the Forest Service contributing 50% of the cost, not to exceed $270,000.00, and the County paying for the remaining 50% plus any cost in excess of $540,000.00. The original Agreement was recorded and a certified copy was sent to the Lolo National Forest office.

Agreement -- Chair Kennedy signed the following Noxious Weed Trust Fund Project Grant Agreements for the purpose of containing and reducing noxious weed infestations and which were returned to Alan Knudsen at the Weed Department for further handling.

1. Mt. Jumbo Weed Project No. MDA 96-107 for which the Montana Department of Agriculture agrees to pay the maximum amount of $7,131.00;
2. Miller Creek-Dean Stone Weed Project No. MDA 96-76 for which the Montana Department of Agriculture agrees to pay the maximum amount of $6,682.00;
3. Upper Butler Creek Weed Project No. MDA 96-78 for which the Montana Department of Agriculture agrees to pay the maximum amount of $2,074.00; and
4. McIntosh Manor Weed Project No. MDA 96-77 for which the Montana Department of Agriculture agrees to pay the maximum amount of $5,109.00.

Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY’96 budget:

Resolution No. 96-051 -- The Board of County Commissioners signed Resolution No. 96-051, resolving to amend the budget for the Health Department, Fund 2270, for Fiscal Year 1996, with the source of revenue being the HIV Grant for the amount of 16,261.00.

Resolution No. 96-052 -- The Board of County Commissioners signed Resolution No. 96-052, resolving to amend the budget for the Health Department, Fund 2270, for Fiscal Year 1996, with the source of revenue being the HIV Community Planning II.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Kennedy attended a meeting with the Rock Creek Quick Response Unit at the Elkhorn Guest Ranch.

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated June 25, 1996, pages 3-46, with a grand total of $356,468.60. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Budget Transfers -- The Board of County Commissioners approved and signed the following Budget Transfers and adopted them as part of the FY '96 budget:

1) Control No. 96-028, a request from the Health Department to transfer $23,400.00 from the Permanent Salaries, Fringe Benefits (MCHBG) fund to the Permanent Salaries, Fringe Benefits fund as the required match included in the MCHBG category was in error; and

2) Control No. 96-022, a request from Office of Planning & Program Development to transfer $2,900.00 from the Contracted Services fund to the Supplies fund to cover the supplies budget.

Resolution No. 96-053 -- The Board of County Commissioners signed Resolution No. 96-053, approving the application of Big Sky Brewing for tax incentives, subject to the conditions listed in the Resolution on file in the Clerk & Recorder’s Office which became effective beginning with the tax year 1996.

Resolution No. 96-054 -- The Board of County Commissioners signed Resolution No. 96-054, a budget amendment for the Health Department 2270, with revenue being received from MCH Assess. Local/FED in the amount of $3,716.00, for Fiscal Year 1996 and describing the expenditures of the Department that the funds will be used for.

Resolution No. 96-055 -- The Board of County Commissioners signed Resolution No. 96-055, a budget amendment for the Health Department 2270, with revenue being received from MCH Assessment - FED in the amount of $78,611.00 for Fiscal Year 1996, and describing the expenditures of the Department that the funds will be used for.

Resolution No. 96-056 -- The Board of County Commissioners signed Resolution No. 96-056, a budget amendment for the Health Department 2270, with revenue being received from Tobacco III in the amount of $3,500.00, for Fiscal Year 1996, and describing the expenditures of the Department that the funds will be used for.

Resolution No. 96-057 -- The Board of County Commissioners signed Resolution No. 96-057, a budget amendment for the Health Department 2270, with revenue being received from WIC in the amount of $13,803.00 for Fiscal Year 1996, and describing the expenditures of the Department that the funds will be used for.

Resolution No. 96-058 -- The Board of County Commissioners signed Resolution No. 96-058, a budget amendment for the Health Department 2270, with revenue being received from WIC in the amount of $3,500.00 for Fiscal Year 1996, and describing the expenditures of the Department that the funds will be used for.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Culver-Hill Construction, an independent contractor, for the purpose of a concrete slab for the Missoula County Junk Vehicle Department, as per the terms set forth, commencing within 15 days of the contract and completed within 30 days after signing of the contract, with compensation not exceeding $7,463.00.

Amendment to Professional Services Contract -- The Board of County Commissioners signed an Amendment to the Personal Services Contract between Missoula County and Kathleen Gronko, an independent contractor, to extend the time allotted to accomplish tasks until August 31, 1996, with adequate funds to finance the extension, amending the Agreement as per the terms set forth. The Amendment was returned to the Health Department for further signatures and handling.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

HEARING (CERTIFICATE OF SURVEY REVIEW): BOUNDARY RELOCATION (BARONE) POSTPONED FROM JUNE 19TH

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a consideration of a request for boundary relocations for parcels of land located in Section 27, T16N R23W and Section 34, T16N R23W for Bar-1 Ranch, Ltd.

Alfred Barone has submitted a request for boundary relocations for 13 parcels encompassing approximately 775 acres located in the Nine Mile area as described above. Map "A" attached, shows the current parcels as Nos. 1 through 13. Nos. 1 through 8 consists of five parcels of 20+ acres, a 8.65 acre parcel, a 2.82 acre parcel and a 3.52 acre parcel. No. 9 is a 152.5 acre parcel, No. 10 is a 228.28 acre parcel, No. 11 is a 19.98 acre parcel, Nos. 12 and 13 are 183 acres combined. Mr. Barone proposes to aggregate the parcels for a total of 7 proposed parcels as follows: a 500 acre parcel for the existing guest ranch; a 120 acre parcel for use as a single family residence; a 70 acre parcel for use as a single family residence; four 20 acre parcels for use as single family residences; and a 5 acre parcel for use as a single family
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residence. Except for an area surrounding the Nine Mile Community Center, the comprehensive plan designation in the area is open and resource (one dwelling unit per 40 acres).

The history of the parcel is as follows: Parcel No. 11 was filed as a Deed Exhibit as shown in Book 241 Deeds, Page 37 in July, 1963.

No. 10 was transferred as a 340 acre parcel as shown in Book 191 Micro, Page 518 in July, 1967.

No. 9 was transferred as a 160 acre parcel as shown in Book 50 Micro, Page 388 in July, 1973.

Nos. 1 through 8 were created as five parcels greater than 20 acres in size and three family transfer parcels as shown in COS 1535 filed July, 1978, which included acreage from Nos. 9 and 10 reducing those parcels in size as described above. In 1986, Nos. 5, 6 and 7, (parcels F-1, F-2 and F-3) were transferred to the Estate of Lorraine Lachman, and all parcels as shown in Nos. 1-10 were then sold to Alfred and Linda Barone pursuant to a Deed of Conveyance dated October 29, 1986.

Nos. 12 and 13 were created by Book 67 Micro, Page 1387 as filed April, 1975, creating No. 13 (Tract II) as a parcel greater than 20 acres in size. This division, however, is disputed as the boundary which currently exists may actually be different than that shown. The Assessor's Office has stated they believe the boundary to exist on the center section line up until the point where it reaches the top of the N½SE¼ section line. This may reduce the parcel to less than 20 acres in size at its creation in 1975, therefore, rendering the deed filed invalid and the division to be illegal. In March, 1990, Alfred and Linda Barone filed a Quitclaim Deed (recording reference Book 310 Micro, Page 470) transferring all their ownership to Bar-1 Ranch, Ltd. and in July, 1995, Bar-1 Ranch, Ltd. filed a Quitclaim Deed (recording reference Book 448 Micro, Page 761) which erroneously described five parcels in Section 34 using Nine Mile Road as a boundary. Missoula County is disallowed by law to take anything other than right-of-way for County road purposes, this deed is invalid and appears to be an attempt to evade subdivision review. A request for correction has been made to Mr. Barone's attorney, Gerald Steinbrenner.

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

Michael Kennedy asked if any of the area identified as open and resource overlapped the Nine Mile community circle?

Kathleen Smith answered she believed so.

Andy Fisher, Eli and Associate, said he was representing the Barone’s. Regarding the attempt to evade subdivision review, he said he had prepared the paperwork and it was his mistake that the road had been deeded over. He did not fully understand the interpretation. He thought those had been separate parcels.

Michael Kennedy explained to Andy that, any time there is a subdivision of land, the County Commissioners are required to evaluate whether that request is an attempt to evade the Montana Subdivision and Platting Act. To do so, they must ask questions. He then proceeded with his review and asked Andy why they are requesting this boundary relocation?

Andy Fisher answered to make it a more logical configuration. Mr. Barone did not create these parcels. These are the shape they had when he purchased the property in 1987. There is an operating guest ranch and agricultural operation on it at this time.

Michael Kennedy asked, though, what triggered their request to seek boundary relocation after 10 years of ownership?

Andy Fisher answered that it has to be done sometime. If you are going to change the configuration of what you own to something that makes more sense to the way you operate the ranch and the rest of the property, you must act to do so.

Michael Kennedy said this area is designated as having historical significance. He asked how this proposal may affect that?

Andy Fisher replied he did not know.

Fern Hart asked why they did not go through subdivision review?

Andy Fisher answered that no one goes through subdivision review unless they have to. Subdivision review costs a lot of money and takes a long time.

Fern Hart said it also ensures good planning and enables the County to serve the area. Boundary relocations move parcel lines at the whim of the owner without any consideration to what is on the land or how the land will be developed over time.

Michael Kennedy opened the public hearing.

Carol Guthrie, Nine Mile Community Council, said they are concerned with preserving the historic character around the Nine Mile Community Center. She does not know what the plans are for the property but it is currently for sale; there are signs on it. The community hopes to have some input into this because they are concerned with what happens in the Nine Mile area.

Tom Picciano, 26795 Ninemile Road, said he feels there are 2 aspects that the Board needs to consider. The first, is this merely a relocation of boundaries, and the second, is this exempt from subdivision review? He noted that, in the Commissioners’ package, there is a case that occurred in Gallatin County in 1993. He said it answers the first
question, reading from the case that the action totally obliterates the original division of the parcels and replaces that division with new parcels having no resemblance whatsoever with the configuration of the boundary lines of the original parcel. It is that kind of change such a complete change that cannot be accomplished by an amendment. That was the court’s decision. The case goes on to answer the second question he posed, “is this exempt from subdivision law?” He read “Resolution of the exemption issues, of necessity, must depend upon the extent of change resulting from relocating common boundary lines. As a matter of law, when the “relocating” becomes so extensive it changes all boundary lines, and results in parcel configurations bearing no resemblance to the aliquot land division, a new entity is created.” In other words, it creates a new subdivision which must comply with the Montana Subdivision and Platting Act, and County subdivision regulations. He feels this requested action is clearly an attempt to legally evade subdivision law. He also wanted the Commissioners to know that Mr. Barone is a real estate developer from New York. Further, his partner, Joan Anders, has registered herself as a realtor in Missoula County. He requested that the Commissioners reject this request for boundary location.

Beattie McGill said he manages the ranch for Mr. Barone. He said he is a native Montanan and he would like to show a different perspective to the Commissioners. Inasmuch as the County road splits the property and is not deeded to Mr. Barone, it created a split parcel instead of being in one piece. He had been told by the County Attorney’s office that, if it is not one piece, then those pieces split by that road that are not owned by him, makes it non-contiguous.

Michael Kennedy, wanting it clarified, asked Beattie if he was saying that the County Attorney acknowledged that it was split?

Beattie McGill answered no, that he had more to say. He said the County established the fact that, inasmuch as Mr. Barone had never received ownership of that road, they were still not going to recognize it as splitting the land. That was established. There were numerous letters between the County and Mr. Barone. Their lawyer, Gerald Steinbrenner, filed the deeds based on that main parcel being split but, at that point, he had been advised that an exemption did exist. There was provision for that in Montana state law that, if you had parcels that you could re-aggregate, you could essentially trade using exemption in order to bring your parcel under the entire acreage. That is the avenue they are now trying to use. He agreed that his boss, Mr. Barone, is a real estate developer in New York and, yes, Joan has gotten her real estate license. He also wanted the Commissioners to know that his wife is buried on this land. He does not believe that Mr. Barone wants to abuse this land. He has been approached by the Ninemile Community Center in referencing a long-term easement or a gift of it. There is more work to be done on that but Mr. Barone has reacted favorably to that happening. This would be the 40 acre parcel, which would be 2 twenty acre parcels at that point. His daughter has owned the ranch through a trust and he is looking to the future, what would be the best way he could leave this for his children and their future needs. He does not know what Mr. Barone’s complete plans are for the property, but he wanted the Commissioners to have some background on this situation. He believes Mr. Barone only wants to have boundaries that make more sense.

Andy Fisher said he wanted it noted that Mr. Barone is giving up 8 tracts of land that currently exist in the southeast portion of his property. They could be sold and built on tomorrow. Mr. Barone does not have any interest in doing that but, if he died tomorrow and there was a new owner, that new owner may just do that. So there is something to be gained through this boundary relocation request.

Cindy Picciano said she also resides on Ninemile Road said she was also concerned about the historical significance of this area. She had occasion to speak with Mr. Barone a few times and he was willing to consider donating some land to the community for tennis courts, basketball courts and a swimming pool. Now she wonders about it, since the 40 acre parcel may be 2 twenty acre parcels, if he is no longer interested in the donation.

Michael Kennedy thanked everyone for the comments and asked if anyone else wished to come forward and speak? No one came forward and he closed the public hearing.

Colleen Dowdall said she would like the Board to know the history of the road split. It is well settled in Montana law that the County cannot hold real estate for a fee for roadway purposes. They only hold the right-of-way. Regardless of what the deed says, it only grants a right-of-way. There are also cases that say, if you are deeded property that has a County roadway across it, even if the description uses the County right-of-way as a boundary, it is presumed that you own to the center line. If it crosses your entire ownership, then you own the entire piece.

Michael Kennedy asked if the original deed conveyed to the County was for the purposes of a road and not just an unconditional release of the land?

Colleen Dowdall agreed.

Fern Hart said she cannot support this request. She said Gallatin County expresses what she feels. This would create a subdivision. She asked Kathy Smith if there was 13 parcels in the original ownership?

Kathleen Smith replied yes.

Fern Hart said, if they passed the sanitation regulations, they could put a residence on each of those. She supports the activity center because that is a wise way to talk about how to make density meaningful and reduce the cost of services and how to create a community, a neighborhood, and encourage development there. So if the applicant comes in with a subdivision for review, she will give it her consideration.

Michael Kennedy said he believes this is a subdivision that needs to go through subdivision review. He came to this conclusion by listening to the comments given at this meeting and case law confirmed it. He realizes, because this is a large parcel of land, it most likely will get developed at some time in the future, whether by this owner or a future owner. It is important that the planning be done in a way that is satisfactory to the owners of land in the area and to the community.
Fern Hart moved that the Board of County Commissioners deny the request for boundary relocations for parcels of land located in Section 27, T16N R23W and Section 34, T16N R23W for Bar-1 Ranch, Ltd., in that it appears to be an evasion of the Montana Subdivision and Platting Act. Barbara Evans seconded the motion. Motion carried 3-0.

There being no further business to come before the Board, the Commissioners were in recess at 2:00 p.m.

**THURSDAY, JUNE 27, 1996**

The Board of County Commissioners met in regular session; a quorum of members were present. Commissioner Kennedy was in Kalispell attending a Columbia Basin Management Project Informational Meeting & Governor’s Briefing.

**FRIDAY, JUNE 28, 1996**

The Board of County Commissioners met in regular session; all three members were present. In the forenoon, the Commissioners and Mike O’Hara of the Sheriff’s Department toured the old jail cells at Fort Missoula.

**Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Erin E. Cassidy as principal for Warrant #097737 issued March 22, 1996 on the Missoula County MCHS Payroll Fund in the amount of $40.30 now unable to be found.

**Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Sierra-On-Line, Inc. as principal for Warrant #062378, dated November 23, 1994, on the Missoula County Chapter 1 Fund in the amount of $125.90 now unable to be found.

**Indemnity Bond** -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Stacy Edwards as principal for Warrant #61129, dated June 21, 1996, on the Missoula County MCPS Payroll Fund in the amount of $272.01 now unable to be found.

**Monthly Report** -- Chair Kennedy examined, approved, and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County for the month of June, 1996.

Vickie M. Zeier
Clerk & Recorder

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

**DAILY ADMINISTRATIVE MEETING**

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

**Policy Statement** -- The Board of County Commissioners signed Policy Statement No. 96-D, a policy and procedure to formalize the administration of an RSID Dust Abatement program.

**Memorandum of Agreement** -- The Board of County Commissioners signed a Memorandum of Agreement between Missoula County Park Board and Clinton Community Center, with the Park Board agreeing to provide up to $2,500.00 in matching funds to repair two ball fields at Donovan Park and the Clinton community center, as per the terms set forth. The funds must be expended before May 9, 1998. The Agreement was returned to Leslie Bailey in the Office of Planning & Grants for further signatures and handling.

**Professional Services Contract** -- The Board of County Commissioners signed a Professional Services Contract between Missoula County Weed District and the Montana Department of Agriculture for the purpose of financing the duties and responsibilities of a noxious weed seed free forage (NWSFF) field inspector, as per the terms set forth, through December 30, 1996. The Contract was returned to the Weed Department for further signatures and handling.

**Warranty Deed** -- The Board of County Commissioners signed a Warranty Deed, selling to LAXMI Investment, Inc. Lots 9 and 10 in Block 18 of W.J. McCormick Addition, a platted subdivision in the City of Missoula, subject to the terms set forth, for a sales price of $140,000.00. The document was returned to Scott Hollenbeck at Properties 2000 for further handling.

Other items included:

1) The Board of County Commissioners concurred with the recommendation that the $11,700 Larchmont Golf Course saved from bids coming in at less than the budgeted amounts be used for drainage range mats ($6,000) and a utility cart ($5,000), with the balance being placed in the Reserve Account.

2) The Board of County Commissioners appointed John A. Fuchs to the Lolo Mosquito Control Board, effective immediately and to run through December 31, 1998.

3) The Board voted unanimously to approve the request for plat adjustment for Brianna Court for a site plan change, reversing plat alignment, subject to Health Department approval.

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

**TUESDAY, JULY 2, 1996**

The Board of County Commissioners met in regular session; a quorum of the members were present. Commissioner Kennedy was out of the office July 2nd and 3rd because of illness.

**Audit List** -- Commissioners Evans and Hart signed the Audit List, dated July 2, 1996, pages 3-50, with a grand total of $275,066.70. The Audit List was returned to the Accounting Department.

**Indemnity Bond** -- Acting Chair Evans examined, approved, and ordered filed an Indemnity Bond naming Sheila Westre as principal for Warrant #76683 issued June 17, 1996 on the Missoula County Trust Fund in the amount of $250.00 now unable to be found.

**Indemnity Bond** -- Acting Chair Evans examined, approved, and ordered filed an Indemnity Bond naming A-Core of Montana as principal for Warrant #81673 issued April 18, 1996 on the Missoula County Warehouse Fund in the amount of $2,635.00 now unable to be found.

**Indemnity Bond** -- Acting Chair Evans examined, approved, and ordered filed an Indemnity Bond naming Tim Kerr as principal for Warrant #37168 issued June 12, 1996 on the Missoula County General Fund in the amount of $13.20 now unable to be found.

**Request for Partial Reconveyance** -- The Board of County Commissioners signed a Request for Partial Reconveyance to Insured Titles, Inc. or any successor trustee stating that Missoula County is legal owner and holder of the note and all other indebtedness secured by that certain trust indenture dated August 10, 1995, and recorded at Book 453, Page 33, Micro Records of Missoula County, where Kenneth W. Allen is grantor, Insured Titles, Inc. is trustee, and the County of Missoula, Missoula County Commissioners is beneficiary. The value of the trust property exceeds the value of the obligation secured. Therefore Insured Titles, Inc. is request and directed to reconvey without warranty Lots 15, 18 and 19, Rossignol Orchard Tracts No. 2 to the parties designed by terms of the trust indenture.

**Interlocal Agreement** -- The Board of County Commissioners signed an Interlocal Agreement between County of Missoula and State of Montana, Department of Corrections, for the design, construction and operation, as per the items set
forth. This Agreement shall continue through May 1, 1997. The Agreement was forwarded to Department of Corrections, with a copy on file in the Clerk & Recorder’s Office.

Resolution No. 96-059 -- The Board of County Commissioners signed Resolution No. 96-059, resolving that a levy in the amount of .4 mills for the purpose of raising $30,303.00 for expenditures incurred in meeting the flood emergency.

WEDNESDAY, JULY 3, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Award Contract -- Acting Chair Hart signed the Award Contract for Subgrant Application No. V96-16841 from the Board of Crime Control, State Department of Justice, with attached special conditions, which release federal funds in the amount of $79,760.00 for the purpose of Crime Victim Assistance. Funds must be obligated prior to June 30, 1997.

Award Contract -- Acting Chair Hart signed the Award Contract for Subgrant Application No. V96-16877 from the Board of Control, State Department of Justice, with attached special conditions, which release federal funds in the amount of $28,717.00 for the Violence Against Women Formula Grant. Funds must be obligated prior to June 30, 1997.

Plat -- The Board of County Commissioners signed the Plat for the Winterrowd Addition, a residential subdivision located in the NW¼ of Section 1, T16N, R15W, P.M.M., having a total area of 4.70 acres with the owner/developer of record being Donald G. Winterrowd.

Grant Agreement -- Acting Chair Hart signed a Grant Agreement between Missoula County Weed District and the Montana Department of Agriculture for the purpose of funding an educational program addressing herbicide issues, as per the items set forth, through June 30, 1997, with a total of $5,000.00 provided by the Montana Department of Agriculture. The Agreement was returned to the Weed Department for further signatures and handling.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Fern Hart. Also present was Commissioner Barbara Evans.

BID AWARD: MICROWAVE EQUIPMENT (COMMUNICATIONS)

Fern Hart said this was a request for an award of Solicitation #9606.2 for bidding of used microwave communications for the replacement of the failing 2 MHz system now being used by the 911 Department. The Communications Departments recommended that the Commissioners award the bid as being the only bidder, with the understanding that a contract is contingent upon budget approval for FY’97. The fiscal impact is $71,680.00.

Barbara Evans moved that the Board of County Commissioners award Solicitation #9606.2 for the microwave communications system, contingent on FY’97 budget approval.

Michael Sehestedt, Chief Deputy County Attorney, said there was one irregularity in the bid. The County is involved in litigation over the issue of a passive repeater at Coony Creek. Blackfoot Telephone Cooperative sold that to Mr. Vagtaveen, who in turn sold it to us. Blackfoot demolished the passive repeater. A lawsuit was filed seeking to require Blackfoot to restore the repeater; Blackfoot asserts Vagtaveen had not perfected his title under the sale contract. It was a convoluted argument, in which case he would have to return the purchase price to the County. The dispute over the price of the repeater does not reflect any moral shortcomings on his part. As a result, he could not get a company to get him a bond for this bid. Michael recommended that the County waive the requirement for a bond, based on the fact this was the only bidder. This is equipment that we need desperately and the County is in a situation that involves mountain-top work and a construction must be done by the first of November due to weather conditions.

Barbara Evans amended her motion to include Counsel’s recommendation that the County accept the bid, without the bond requirement, to SatComm Support for $71,680.00, contingent on FY ’97 budget approval. Fern Hart seconded.

Motion carried 2-0.

Barbara Evans invited a young man, who she knew was in the audience and a prospective Eagle Scout, to ask questions about this meeting or any County matters.

Steve Weaver, 206 Crestline Missoula, asked what happened to the County radio equipment?

Michael Sehestedt answered that the current County equipment to dispatch is connected to Point 6, Mount Sentinel, and a prospective site on Point 118 by 2 microwave links, one going out and one coming in. What they connect to on mountain tops are the radio transmitters that are used to dispatch police, law enforcement and other emergency services. Currently set up, each of the links has the on-line transmitter receiver and each of has one hot-stand-by, which means up and running, no warm-up time. If one fails, we switch to the other one. The equipment, however, is over 20 years old. Parts are not readily attainable, if you can get them at all. The County has had significant periods where one went down and we did not have a stand-by for extended periods. The purpose of this bid is to obtain newer equipment for which parts are available when replacement is necessary and it will thus be more reliable. If we lose
both radio links, then we lose a significant part of our ability to dispatch emergency services. We are buying used rather than new equipment because of the price differential. We are paying $71,000 to do three complete links with used equipment; new would cost about $100,000 for a single link.

EMERGENCY PROCLAMATION
Fern Hart read the Emergency Proclamation:

WHEREAS, damage to the earthen dam on the East Fork Reservoir in Granite County may cause major flooding and severe losses to homes, roads and property along Rock Creek in Missoula County; and

WHEREAS, this threat was established on July 1, 1996, and is more specifically described as follows: a “water boil” occurrence at the base of the East Fork dam, causing unusual sedimentation, and forcing officials to release water from the Reservoir at the rate of one foot per day.

WHEREAS, we, being the Board of Missoula County Commissioners, have decided the following response and protective measures are necessary to protect public health, life, and property:

1. Follow plans and procedures as described in the Missoula County Disaster Plan:
2. Follow recommendations as defined by the Missoula All-Risk Multi-agency Overhead Team regarding the current incident; and
3. All procedures and authorization for Incident Commanders and law enforcement agencies to use extraordinary measures of the County Emergency Operations Plan are in effect; and

WHEREAS, 10-3-402 M.C.A., requires an emergency proclamation by the governing body before such measures may be enacted;

NOW, THEREFORE, BE IT RESOLVED, that we, the BOARD OF COUNTY COMMISSIONERS, do hereby proclaim that an emergency exists as of July 3, 1996.

Barbara Evans moved that the Board of County Commissioners sign the Emergency Proclamation. Fern Hart seconded the motion. Motion carried 2-0.

Barbara Evans explained that there is a earthen dam in Granite County that may break and she understands that a 30’-50’ wall of water could come down Rock Creek. To put the Emergency process into action and perhaps qualify the County for financial aid from the state or federal government, the Commissioners need to sign the Proclamation.

Michael Sehestedt agreed with Barbara. He said the most immediate significance is, if the County experiences a catastrophe, an emergency proclamation gives law enforcement the authority to do a involuntary evacuation. It also gives the County the ability to control ingress and egress to the affected area. Given that this instance is Rock Creek and its popularity over the Fourth of July week-end, it is wise to have that authority in place if needed. It would cut out any delay. If need be, in a crisis, the law enforcement personnel would have to act first and seek the authority later. However, we have time to get the paperwork in order in this instance should it be needed.

Fern Hart asked if there was any public comment about this or any other matter? No one came forward.

There being no further business to come before the Board, the Commissioners were in recess at 1:51 p.m.

THURSDAY, JULY 4, 1996

The Courthouse was closed for the Independence Day holiday.

FRIDAY, JULY 5, 1996

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

MONDAY, JULY 8, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Contract — The Board of County Commissioners signed a Contract, dated May 1, 1996, between Child Start Inc. and Missoula City-County Health Department to provide nutrition services to the Head Start Program, as per the terms set forth, for a total amount of $675.00. The Contract was returned to the Health Department for further handling.
Grant Contract -- Chair Kennedy signed a Grant Agreement between Missoula County and the Montana Department of Commerce for the CDBG Technical Assistance grants, as per the items set forth, effective February 2, 1996, with a total amount not to exceed $8,000.00. The Agreement was returned to Cindy Wulfekuhle at the Office of Planning & Grants for further signatures and handling.

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

TUESDAY, JULY 9, 1996

The Board of County Commissioners met in regular session; all three members were present in the forenoon. In the afternoon, Commissioners Evans and Kennedy attended a Juvenile Detention Board Meeting in Polson.


WEDNESDAY, JULY 10, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Amendment to Agreement -- The Board of County Commissioners signed an Amendment to the contract with Ann Mary Dussault, extending it to produce specific information about Health Services space needs to implement a similar product for Partnership Health Center, per the terms set forth. The Amendment was returned to the Health Department for further signatures and handling.

Resolution No. 96-060 -- The Board of County Commissioners signed Resolution No. 96-060, resolving that the agricultural covenant which currently exists on the tract created by Resolution No. 96-036 is revoked.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Barbara Evans. Also present was Commissioner Fern Hart.

HEARING: REQUEST TO ABANDON 6 UNUSED ROAD RIGHTS-OF-WAY (LOLO CREEK AREA) POSTPONED UNTIL JULY 24

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (WELLS)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a consideration of a request for a family transfer for a parcel described in Book 186 Micro, Page 552 located in Section 34, T13N R18W for William and Madolin Wells.

William and Madolin Wells have submitted a request for a family transfer exemption for a 38.45 acre parcel as described above located between the Clark Fork River and Highway 90 just East of Piltzville. Mr. and Mrs. Wells propose to create a 1 acre parcel for transfer to their adult son, John Wells. The parcel is located in Zoning District #37 which allows a maximum density of one dwelling unit per acre.

The history of the parcel is as follows: The parcel has retained its original configuration which the Wells’ purchased in 1971. According to the records kept by the Missoula County Surveyor, the applicants have not used any exemptions to the Subdivision and Platting Act.

Decision on whether to approve a family transfer for a parcel described in Book 186 Micro, Page 552 located in Section 34, T13N R18W for William and Madolin Wells.

Fern Hart explained that the Commissioners must determine if this is an attempt to evade the Montana Subdivision and Platting Act and, to do that, they have to question the applicant.

Madolin Wells said she understood.

Fern Hart asked her if she and her husband wanted to transfer a one acre parcel to their son?

Madolin Wells replied yes.

Fern Hart asked how many children they had, in case they were considering doing a family transfer for any of them?

Madolin Wells said they had three children.

Fern Hart moved that the Board of County Commissioners grant the request for a family transfer for a parcel described in Book 186 Micro, Page 552, located in Section 34, T13N R18W for William and Madolin Wells to their adult son, John Wells, in that it does not appear to be an attempt to evade the Montana Subdivision and Platting Act. Barbara Evans seconded the motion. Motion carried 2-0.
CONSIDERATION OF MOOSE LODGE ADDITION (4-LOT COMMERCIAL SUBDIVISION)  HIGHWAY 93
SOUTH

Lisa Moisey, Office of Planning & Grants, said this is a request from Wilkins-Goeres Partnership on behalf of the Moose Lodge for a 4-lot commercial subdivision on the east side of U.S. Highway 93. The property is 7.42 acres and is zoned C-C2, which allows for general commercial uses in the County. Access to the subdivision will be from one access point off Highway 93 and internal access will be provided by a private lane which will serve the 4 lots. The developer has asked for a variance to allow a 24 foot wide paved roadway surface for this private access lane. The subdivision regulations would require a 32 foot wide paved surface. Staff recommends to support the variance given that this roadway will function as a connecting lane between parking lots. Further development on the property is not anticipated. Lots 1, 2 and 3 will be subject to the primary travel corridor standards as they front Highway 93 which will include landscaping in accordance with the standards. The developer has also asked for a variance from pedestrian walkways in the subdivision. Staff has recommended approval of that variance, given that this is a relatively isolated commercial subdivision with limited opportunities for pedestrian travel. In addition the 8 conditions staff has recommended, they are also asking for a 9th condition which would include asking the developer to place a waiver statement on the face of the plat for community water and sewer when it is available. OPG staff recommends approval of the variances and subdivision, subject to the 9 conditions in the staff report, with a filing deadline of July 10, 1997. Generally, filing deadlines for summary plats are 6 months after approval but, in this case, the developers are asking for one year for filing to allow for the improvements necessary for this subdivision.

Fern Hart asked Lisa if there was any objection to the added condition no. 9?
Lisa Moisey replied no. She checked with the applicant in advance.

David Bowersox, WGM Group, said in October, 1995, they came before the Commissioners requesting the area be rezoned to permit the building of the Moose Lodge and Family Center on this parcel. At that time, the expressed goal of the Moose Lodge was to create 3 one acre tracts along the highway and put a 4 acre tract in the back for their facility. This is that subdivision. They are asking to build a driveway instead of a full commercial road in this development. They do not plan on having any parking on the roadway itself but in the interconnecting parking lots instead. He showed the Board a conceptual diagram of what the site might look like when this is finalized. Building locations are set. The northern-most building is already in; it is a Honda equipment dealer. The 2 buildings that are adjacent to the highway are expected to be similar-type businesses that are mostly related to destinations. It will not have direct highway access; there is access at only one point and that has been approved by the Highway Department. The fourth lot towards the railroad tracks is the Moose Lodge lot. All parking is conceptual at this time and will be determined by the architect at the end. They have reviewed the conditions as recommended by staff, including condition no. 9, and they are in agreement with them.

Barbara Evans asked if anyone wanted to comment on this proposal, even though this item was not a public hearing?
No one came forward.

Fern Hart moved that the Board of County Commissioners grant the variance requests from roadway width to allow a 24 foot wide driving surface for the proposed private access lane and from pedestrian walkways for the Moose Lodge Addition, located on the east side of U.S. Highway 93 south, just north of the intersection of U.S. Highway 93 and Hayes Creek Road. Barbara Evans seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners approve the summary plat of the Moose Lodge Addition, located on the east side of U.S. Highway 93 south, just north of the intersection of U.S. Highway 93 and Hayes Creek Road, with a filing deadline of July 10, 1997, based on the findings of fact and contingent on the 9 conditions listed below. Barbara Evans seconded the motion. Motion carried 2-0.

1. The following statement shall appear on the face of the plat and in each instrument of conveyance:
   "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in , over, under, and across each area designated on this plat as 'Utility Easement' to have and to hold forever."

2. The developer shall reword Section 7 of the covenants to clearly state that landscaping installed along the Primary Travel Corridor for Lots 1, 2 and 3 may consist of an average 25 foot width, rather than an absolute 25 foot width.

3. The developer shall meet prior to filing of the plat.

4. Prior to issuance of a building permit, the applicant shall work with the Water Quality District of the Missoula City-County Health Department to determine the feasibility of providing grass covered infiltration areas for storm water treatment. If the Water Quality District determines that it is feasible to provide the grass covered areas, the Water Quality District shall approve the design.

5. The developer shall contribute $50.00 per lot to the Rural Fire Large Diameter Hose Fund.

SOUTH

CONSIDERATION OF MOOSE LODGE ADDITION  (4-LOT COMMERCIAL SUBDIVISION)  HIGHWAY 93
SOUTH

Lisa Moisey, Office of Planning & Grants, said this is a request from Wilkins-Goeres Partnership on behalf of the Moose Lodge for a 4-lot commercial subdivision on the east side of U.S. Highway 93. The property is 7.42 acres and is zoned C-C2, which allows for general commercial uses in the County. Access to the subdivision will be from one access point off Highway 93 and internal access will be provided by a private lane which will serve the 4 lots. The developer has asked for a variance to allow a 24 foot wide paved roadway surface for this private access lane. The subdivision regulations would require a 32 foot wide paved surface. Staff recommends to support the variance given that this roadway will function as a connecting lane between parking lots. Further development on the property is not anticipated. Lots 1, 2 and 3 will be subject to the primary travel corridor standards as they front Highway 93 which will include landscaping in accordance with the standards. The developer has also asked for a variance from pedestrian walkways in the subdivision. Staff has recommended approval of that variance, given that this is a relatively isolated commercial subdivision with limited opportunities for pedestrian travel. In addition the 8 conditions staff has recommended, they are also asking for a 9th condition which would include asking the developer to place a waiver statement on the face of the plat for community water and sewer when it is available. OPG staff recommends approval of the variances and subdivision, subject to the 9 conditions in the staff report, with a filing deadline of July 10, 1997. Generally, filing deadlines for summary plats are 6 months after approval but, in this case, the developers are asking for one year for filing to allow for the improvements necessary for this subdivision.

Fern Hart asked Lisa if there was any objection to the added condition no. 9?
Lisa Moisey replied no. She checked with the applicant in advance.

David Bowersox, WGM Group, said in October, 1995, they came before the Commissioners requesting the area be rezoned to permit the building of the Moose Lodge and Family Center on this parcel. At that time, the expressed goal of the Moose Lodge was to create 3 one acre tracts along the highway and put a 4 acre tract in the back for their facility. This is that subdivision. They are asking to build a driveway instead of a full commercial road in this development. They do not plan on having any parking on the roadway itself but in the interconnecting parking lots instead. He showed the Board a conceptual diagram of what the site might look like when this is finalized. Building locations are set. The northern-most building is already in; it is a Honda equipment dealer. The 2 buildings that are adjacent to the highway are expected to be similar-type businesses that are mostly related to destinations. It will not have direct highway access; there is access at only one point and that has been approved by the Highway Department. The fourth lot towards the railroad tracks is the Moose Lodge lot. All parking is conceptual at this time and will be determined by the architect at the end. They have reviewed the conditions as recommended by staff, including condition no. 9, and they are in agreement with them.

Barbara Evans asked if anyone wanted to comment on this proposal, even though this item was not a public hearing?
No one came forward.

Fern Hart moved that the Board of County Commissioners grant the variance requests from roadway width to allow a 24 foot wide driving surface for the proposed private access lane and from pedestrian walkways for the Moose Lodge Addition, located on the east side of U.S. Highway 93 south, just north of the intersection of U.S. Highway 93 and Hayes Creek Road. Barbara Evans seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners approve the summary plat of the Moose Lodge Addition, located on the east side of U.S. Highway 93 south, just north of the intersection of U.S. Highway 93 and Hayes Creek Road, with a filing deadline of July 10, 1997, based on the findings of fact and contingent on the 9 conditions listed below. Barbara Evans seconded the motion. Motion carried 2-0.

1. The following statement shall appear on the face of the plat and in each instrument of conveyance:
   "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in , over, under, and across each area designated on this plat as 'Utility Easement' to have and to hold forever."

2. The following statement shall be included on the face of the plat:
   "The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, removal of their lines and other facilities, in , over, under, and across each area designated on this plat as 'Utility Easement' to have and to hold forever."

3. The developer shall reword Section 7 of the covenants to clearly state that Landscaping installed along the

4. Prior to issuance of a building permit, the applicant shall work with the Water Quality District of the

5. The developer shall contribute $50.00 per lot to the Rural Fire Large Diameter Hose Fund.

6. Primary Travel Corridor Standards for Lot 1 shall be met prior to filing of the plat.
7. The cluster of pine trees, noted as “cluster of trees” on Lot 4 of the plat shall be preserved on the site. Prior to issuance of a building permit for this lot, OPG shall ensure these trees have been retained on site.

8. To comply with the standards for Primary Travel Corridors, the developer shall show on the face of the plat a minimum fifty (50) foot building setback line for Lots 2 and 3.

9. The following statement shall appear on the face of the plat and in each instrument of conveyance: “The purchase of a lot within this subdivision constitutes the ascent of the owner to waive their right to protest a future RSID/SID for community water and/or sewer, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”

CONSIDERATION OF: SORREL SPRINGS, LOTS 27A AND 27B (SUMMARY PLAT) NORTHWEST OF FRENCHTOWN

Sam Islam, Office of Planning & Grants, said this is a proposal for a 2-lot subdivision in the Frenchtown center. It is 10 acres and the lots are 5 acres each. Staff recommends approval of the subdivision subject to the conditions as stated in the staff report. It is unzoned and the Comprehensive Plan recommends rural, low-density with a maximum density of one dwelling unit per 10 acres. They feel that this proposal complies with the Comprehensive Plan for two reasons, 1) this is a resubdivision of an existing parcel where some impact has already occurred on the natural habitat and, 2) the resulting lots will be relatively large and encourage more intense development within a existing subdivision to which services are already available while retaining their rural character. There is one issue that needs to be taken care of and that is the shape of Lot 27B, which is flag-shaped. They recommend that the lots be rectangular in shape with an easement, with Lots 27B to have access to Sorrel Springs Lane. Mr. Gierke, the applicant, prefers to keep it flag-shaped because he is concerned whether the owner of Lot 27A will maintain the driveway.

Barbara Evans invited anyone to come forward and speak.

David Gierke said he is the owner of Lot 27 and the proposed occupant of Lot 27B. The reason for the flagpole shape is a subdivision requirement, suggesting frontage unto a County road. Because of existing structures on the lot, there is no opportunity to split the lot from front to rear or north/south, so the east/west split was chosen.

Fern Hart asked Sam why should be an easement rather than a flag lot?

Sam Islam said the only reason they feel it should be an easement rather than a flag-shaped lot is that, prior to this proposal, the subdivisions had rectangular lots and this is an exception. But this is not something they feel strongly about.

Fern Hart said the driveways which serve Lots 27A and 27B shall have paved 20 feet by 20 feet apron. Is that one or two aprons?

Sam Islam replied that, basically, it will be 20 feet by 20 feet paved area from Sorrel Springs.

Colleen Dowdall, Deputy County Attorney, said, if the driveway is not in right now, it may be required by the Health Department regulations to be paved. But as it exists now as part of the ownership of Lot 27B, that is something that the County discourages and what the County encourages is to create both parcels with an easement across it. Under easement law in the state of Montana, the person who benefits from the easement is required to maintain it. So the maintenance responsibility would fall upon the occupant of Lot 27B.

David Gierke said the change from an flagpole shaped lot to an easement does not bother him. He was unfamiliar with the state easement requirements. Regarding condition no. 8, he said fire codes require a 15 foot wide driveway which is what is currently on Lot 27A. To require to pave the 20 foot wide area on an existing driveway is a question. And to require pavement of a new driveway, which is a private drive, is also a question. He pointed out this is 15 miles from Missoula.

Horace Brown, County Surveyor, said he required an apron. If the other driveway does not have an apron unto the County road, he will also require an apron there, 20 feet X 20 feet, but he will accept 15 feet. He noted that this is outside the Health Department requirement and, therefore, he does not require that the driveways be paved the whole length.

Colleen Dowdall said if this is outside the air stagnation zone, then the Health Department regs would not apply. She read from the Subdivision Regulations “lots shall have a minimum width of 60 feet measured at the building setback line.” She believes that is what they enacted in an attempt to eliminate flag lots. If we do this as a flag lot, it would be contrary to the regs.

David Gierke said or the flag would need to be 60 feet wide.

Colleen Dowdall agreed.

Fern Hart asked Horace if these two accesses were close?

Horace Brown replied that he will have to apply for an approach and, at that time, they will make requirements for the location of the drives, if they are too close.

Barbara Evans explained to Mr. Gierke that he may only be granted one access and may have to use one for both lots. The County Surveyor will determine that later, based on safety reasons.

David Gierke said that was okay.
Fern Hart moved that the Board of County Commissioners grant the variance for Sorrel Springs Subdivision Lots 27A and 27B, located in the SE¼ of Section 21, T15N, R21W, Principal Meridian, from the requirement to construct sidewalks and pedestrian walkways. Barbara Evans seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners approve the request for Sorrel Springs Subdivision Lots 27A and 27B summary plat, located in the SE¼ of Section 21, T15N, R21W, Principal Meridian, based on the findings of fact and the recommendation of the staff, contingent on the conditions listed below. Barbara Evans seconded the motion. Motion carried 2-0.

1. The County Surveyor shall approve grading, drainage, erosion control, road and driveway plans.
2. The developer shall place all utilities underground, and easements shall be a minimum of 20 feet in width unless the appropriate utility and the governing body approve a narrower width.
3. The County Surveyor shall approve access and approach permit prior to filing the final plat.
4. The following statements shall appear on the face of the final plat and in all instruments of conveyance:
   “Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to Sorrel Springs Lane, including but not limited to paving, dust abatement, and sidewalk based on benefit, and may be used in lieu of their signatures on an RSID/SID petition.”
   “Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for public water and sewer systems based on benefit, and may be used in lieu of their signatures on an RSID/SID petition.”
5. The developer shall file covenants with the plat which address the following (The following additions to the covenants shall not be amended without prior approval of the Missoula County Board of County Commissioners):
   a. Provide a minimum unobstructed width of not less than 20 feet and an unobstructed clearance of 13 feet 6 inches for any driveway over 150 feet.
   b. Provide approved provisions for turning around of fire apparatus for dead-end driveways in excess of 150 feet.
   c. Provide a copy of the brochure titled Living with Wildlife to the owners and tenants.
   d. The appropriate fire jurisdiction approve plans to create a defensible space for fire protection around the structure on Lot 27B.
6. The appropriate fire jurisdiction shall approve the water supply for fire protection purposes for the existing and proposed structures prior to plat filing.
7. The appropriate fire jurisdiction shall approve plans to create a defensible space for fire protection around the existing housing unit, prior to filing the final plat.
8. The driveways which serve Lots 27A and 27B shall have to be paved back from the road 20 feet and to the width of the drive, subject to the approval of the County Surveyor.
9. Lots 27A and 27B be rectangular in shape, eliminating the narrow portion of Lot 27B. The developer will grant an access easement across Lot 27A to Lot 27B.

HEARING: MISSOULA COUNTY DEVELOPMENT PARK (SUBDIVISION/REZONING) PRELIMINARY PLAT

Pat Keiley, Office of Planning & Grants, said he and his colleague, Jennie Dixon, will present the staff report on the Missoula Development Park. There are two part to this project, 1) it is a rezoning request, and 2) it is a subdivision request. The applicants are Missoula County Airport Industrial District, Nurture, Inc., Dodd Development Co., and Johnson Brothers. The representatives are Orin Olsgaard, Missoula County, and Vaughn Anderson, Druyvestein, Johnson & Anderson.

Jennie Dixon, Office of Planning & Grants, said staff recommends approval of this rezoning request, subject a set of conditions. This rezoning and subdivision went to the Planning Board for public hearing on June 18 and for final action on June 25. The Commissioners received a packet of information explaining the Planning Board’s action, however, she distributed those same conditions with staff’s recommendations as of today. OPG staff has been working with the project’s coordinator for the design standards and the zoning district and agreed that Section 607, which is the proposed zoning district for the Missoula Development Park, which is to be incorporated into the County zoning resolution. Staff is recommending approval of the rezoning, subject to the conditions contained in the document she had just handed out. The historical overlay zone that was recommended to be applied to this Dodd property is not a County-wide historical zone, and is, in fact, only applied to the Fort Missoula area. Staff supports historical preservation of the Dodd property but there is not an overlay zone in place at this time to apply. She received the zoning district’s standards which she received from Orin as of this morning and staff is in agreement with this district. That is the reason for deleting condition no. 3, which has, at this point, been met. Staff is recommending approval of this request based on compliance with the Comprehensive Plan, consistency with the character of the area and addressing staff’s concerns on Section 607. At this point, although she recommended approval of the standards that Orin gave her that morning, the two issues which were still of a concern at this time, staff does not feel they are
significant enough to warrant not recommending approval, which would be the ambiguity of the allowance for accessory apartments and potential residential impacts by those accessory residential units. The other issue regards maximum height. The Planning Board did not review this proposal for height. The original proposal for a maximum of 50 feet. This revision allows for a building to be as tall as the shortest setback. Staff expressed concern to the project’s coordinator about the possibility of unlimited height and that a restriction on height would be appropriate. Being in the airport influence zone, the Airport Authority would review for compliance with FAA standards on height that may impact avigation in the area. At this point, staff feels that this maximum height proposal is acceptable.

The Planning Board recommended 7-0 to approve this rezoning request with their conditions. There have been changes to the zoning district several times since the Planning Board reviewed this project. She mentioned she tried to keep the Commissioners up to date on the changes the Planning Board did not review. At this point, making a recommendation from the Planning staff, having not gone to Planning Board on some of these issues, but with a recommendation for approval as submitted by Orin this morning.

Barbara Evans asked about condition no. 7, that they had discussed that morning? Jennie Dixon answered that staff does not support a deletion of any portion of 7 A, B, or C, with the exception of the red line strike out.

Pat Keiley said he was going to talk about the preliminary plat subdivision for the Missoula Development Park. This property is located northwest of Missoula between Interstate I-90 and Highway 10, across from the Missoula International Airport. It is adjacent to Momont Industrial Park. Momont is in the center but is not part of the Development park. The area of the land is 469 acres. There is a proposal for 120 lots. There is also a proposal for 12 phases where these are located throughout the development. There is a mixed use commercial and industrial park. There is a minor amount of residential allowed, mainly in the form of caretaker facilities throughout the park. The developers are expecting 13 phases over a 10 year preliminary plat approval time period. These phases will follow the development of the infrastructure of the park. The zoning is the Development Park special zoning district. It is its own zoning with own zoning standards. The Comprehensive Plan for this area calls for the Missoula Development Park. There was an amendment to the 1990 Comprehensive Plan on February 8, 1995 which designates this land as the Missoula Development Park Comprehensive Plan amendment. Staff believes that the proposed subdivision is in compliance with this Comprehensive Plan. The responsibilities of this Comprehensive Plan are agriculture, single family residences, the Momont Industrial Park, the Missoula Airport, the Forest Service, Montana Rail Link, I-90 and Highway 10. Pointing to a drawing of the plat, he noted that north was I-90, Desmet Road and Butler Creek Road, a road called Boulevard, which takes you from I-90 into the Development Park. The street widths and right-of-way vary, based on location and in the staff report there is detailed analysis of this. To the south of the Park, is Highway 10 West. East/west access is through a road called Parkway, which runs throughout the Park. These roads will be developed according to the phasing schedule and the sale of lots within the Park. There are several importance trails. Pedestrian access throughout the Park is given through a trail system which is a networking for the Park. There is also a sidewalk or pathway on every street. The pathway would likely be a rolled aggregate base, possibly asphalt. This will further network the pedestrian access throughout the development and further network throughout the parks in this Park. Staff recommends a couple of easements be placed on the plat which serve to connect lots to a couple of the parks. There is a 25 foot wide public access trail landscape easement along both sides of Parkway. There is a 50 foot wide no-build easement located along the northern portion of the property line, which abuts I-90. In addition to the trails and the easements, the developer is proposing bicycle lanes. This is noted throughout the staff report as well as in a condition. The bicycle lanes will either be 6 feet or 8½ feet wide. Staff recommends that they be along both sides of Parkway and Boulevard and that is a condition.

They address public transportation in the staff report. This development park is not in the Missoula urban transportation district. A condition of approval is that Missoula County and Mountain Line representatives get together and develop a plan for potential bus pullouts, future bus stops and future bus stop shelters. Staff recommends that this be performed prior to final plat approval and that is a condition. The water system will be public. It will be either owned by Missoula County or Mountain Water Company. The sewer will be connected to City Sewer.

Drainage will be satisfied by detention ponds to take care of on-site flows. The Development Park will handle a 5 year storm through detention ponds. There are no critical species and there will be little impact in terms of wildlife and (COMMISSIONER MICHAEL KENNEDY JOINED THE MEETING AT THIS POINT)
wildlife habitat. Utilities will be put in place and this subdivision has met the requirements for legal and physical access.

There are 5 variance requests. The Planning Board voted unanimously to recommend approval of the Missoula Development Park Preliminary Plat subject to the conditions list in the staff report. There are 26 conditions; 22 through 26 were added by the Planning Board. The developers agree with those conditions. Condition No. 16, which concerned I Drive, which is in the easterly portion of the property, and will serve approximately 10 lots if the easterly most reserve is built out. Staff supports approval of that condition because the proposal calls for I Drive to be 60 feet of right-of-way and subdivision regulations require 80 feet. Because there are approximately 10 lots and because other streets that serve approximately that number of lots have an 80 foot right-of-way, staff felt it would be appropriate to have that street be 80 feet of right-of-way. But this is not an important issue and they are comfortable with either footage.

The Planning Board recommended to approve variances 1, 2, 4 and 5. The only variance staff and Planning Board differ on is condition no. 3, which has to do with the surface width of Butler Creek Road. Butler Creek Road goes through the westerly portion of the property, running north/south, and is approximately 24-30 feet in surface width and parallel. The County Surveyor concluded that this was not a major roadway through the Park, it is a city road and not designed to facilitate traffic throughout the Park but rather for movement from the Butler Creek area in the south unto Highway 10 or into the Park. The existing roadway, which measures 24-32 feet is acceptable at that width. The Planning Board recommended that it be made 32 feet in width, which is what the subdivision regulations require. They felt there could be increased development in the Butler Creek area and this would be the time to get the road widened.

Michael Kennedy noted that the right-of-way will be 80 foot and the road surface will be 24-30 feet.

Pat Keiley recommends approval of the preliminary plat, subject to the 27 conditions. Condition no. 27 was added and as a clarification. He read the condition: “That the non-motorized trail system and sidewalks system be located within a public right-of-way or within a public access easement.” The purpose of this is to ensure that the trail system is public so that all members of the surrounding communities can use it.

Vaughn Anderson, Druyvestein Johnson & Anderson, said he was representing the Missoula district. He said, to give an overview, the formulation of the Missoula Development Park preliminary plat brought together the Park and the conclusions of the marketing and economic factors. The understanding of the physical constraints and the opportunities of site and understanding of community preferences for this area. This master plan was developed with significant input by the Missoula community over an 8 month initial planning period and it has since been incorporated into the proposed subdivision that is being presented today. This planning process included market and economic research activities to provide an analysis of Missoula’s regional business climate, the development of a business location profile and also the creation of a list of target industries. The analysis for the Development Park master plan includes the regional business climate and provided economic climate and provided a thorough analysis of the potential of interest to the potential firms that would be relocating or expanding within the Missoula region. This was supplemented by a preliminary market analysis of potential land uses for the Development Park. A business location profile was prepared and it analyzed Missoula in terms of key characteristics that affect corporate site decision.

These included labor force characteristics, access to markets, transportation, utilities, land and building costs, state and local business climate, and quality of life. An important component of the planning of the development park was the identification of target industries and business organizations with the strong likelihood of locating within a subject property. The target industry analysis provided direction for future marketing efforts and assisted in finding supporting land uses and potential services within the planning area. The physical planning activities that were involved included formulation of project goals, analysis of the site and surrounding context, the formulation of a land use program and also the development concepts for the site itself.

This was supplemented by three alternatives that were developed by concept teams. These teams included all 3 County Commissioners, one on each team and various other business and community leaders. Each team developed their own concept of a draft master plan for the area and these were then melded into a single master plan concept. The draft plan was presented to both the public and adopted by the Park and the public and adopted by the Park and the Commissioners. Some of the key factors that influenced the master plan include the existence of residential and non-residential development, availability of infrastructure, the relationship to the Missoula International Airport and the potential impacts of the planned Interstate I-90 interchange project which is scheduled for construction this fall.

The overall goal of this development is to create a high-quality community asset while achieving the economic and market goals for the project. Major features of this development include commercial development near the planned interchange and university or college affiliated business park and technical training center in the southern portion of the site, which will reinforce the economic development focus of the project. Employment uses are to comprise the majority of the development program and they include office, research and development, light industrial and warehouses uses. Support uses include office, hotel and retail. Community uses include public parks and the perimeter and internal open space and trail systems. The park systems that have been created were done so voluntarily and are not required in an industrial/commercial development of this nature. Portions of the site are recommended as development reserves with uses to be determined at a later date. It is estimated that at full build-up of this development park there could be as many as 7,000 employees. The land use program for this development directly reflects the market and economic analysis of the Missoula area that was done earlier in the process as well as community input relative to the land use and development concepts. When completed, the Development Park could represent approximately $24-$27 million in land sales and in excess of $100 million total capital investment involving the development of the land and the buildings. This does not include the direct or indirect economic benefit that comes from construction nor the on-going payroll, both direct and indirect, resulting from jobs that would be created within the Park. For a project of this magnitude to be successful, success is dependent upon a high quality consistently operated and maintained dependable environment. The recommended structure for implementation of the Missoula Development Park is a focused land development organization designed to both implement and operate the Park. Missoula County has recently developed the Missoula Development Authority for this purpose and we shall have this organization operational.
The intent of this development is not to use RSID’s for installation of improvements that will be built in the future. It is part of an innovative financing mechanism for this area and, shortly after the purchase of the land, Missoula County established a tax increment finance district for this entire area. This does not include the portion that is to the west of the Development Park, which is owned by Johnson Brothers. That portion is not included in the tax increment district. This district provides a financing mechanism by which tax revenues will be utilized for the improvements for this specific area. The base tax was established as agricultural field that existed at the time of the creation of the TIF. Any increase in that tax base will go to the Missoula Development Authority for the installation of necessary improvements, such as infrastructure landscaping, maintenance, etc. It is the intent of the Missoula Development Authority to have these assessments for the lots owners themselves. This will ultimately depend, of course, on the timing and financing amounts necessary to fund the needed improvements as they are built out. They have some requested changes from the original packet that was put in and most of those have been covered by the conditions that were included in the Planning Board recommendations. One is to eliminate the cul de sac between Lots 4 and 13 in Block 3. That was put in there because of a potential sale that had been had for Lot 4 but the sale has since fallen through. It is not needed from an access standpoint. Johnson Brothers have asked to have a couple of changes. One of which is the zoning portion of this application not apply to their development. They wanted to withdraw from that portion and have it stay with the current zoning they have. The line configurations of Lot 6 and 7 on the original drawing showed a north/south boundary. It is now an east/west boundary. Dodd Development has requested a couple of changes. Lalonde Park was initially shown as one lot. It is now shown as 4 lots. That has to do with the trade that they are doing with Missoula County. It is to be a value for value trade and, when that assessment is done, they wanted to be on equal footing and have 4 lots shown so when the appraisal is done, it will be appraised based on 4 lots rather than a single lot. One of the conditions of the zoning was that there was a boundary set at F Drive in Item 1 of the zoning application, which is just to the west of their property and they would like to have their property included in the portion of land which is to the east of F Drive. So, anything that would be allowed east of F Drive would also be allowed on their 4 lots. Another change is in Block 2, which is next to Butler Creek, they originally had 3 lots shown there. Because of a potential sale of a lot, one of the applicants only wants 10 acres on the bottom and there is a high-pressure gas pipeline that went between the original Lot 2 and 3 boundary. As such, they would like to add one more lot. So, instead of 3 lots in that area, they wanted to show an additional lot. This would be it to 121 lots. That mainly has to do with not having to split that at a later date.

In the subdivision changes, item 6 of the conditions for subdivision approval is one that the County Surveyor has added regarding drainage. They have no problem with it and doing what is stated, but the question is whether it is applicable to be included in the preliminary plat. They wonder how they will comply with that as they come to final plat because it indicates that those things have to be done when construction of the roadways are completed. Those are not typically done until after the final platting process. Thus, they would like that re-worded. In item 21 regarding bus pullouts, they are concerned, in talking with Mountain Line, they do not know at this time where they would like to have the bus stops because of the uncertainty of who is going to build where in this Development Park. They would like to reserve some areas to have the bus pullouts. They have, in all cases, on the parkway and boulevards, sufficient right-of-way and wide enough shoulders on the roads that the bus pullouts can be adequately placed. They are willing to work with the bus company on this but the condition requires plans and provisions are to be reviewed before final plat approval and that may not be possible.

They are in agreement with the variance requests. He understood the Planning Board recommends that the variance regarding the interior road rights-of-way be all 60 feet instead of 80 feet.

Fern Hart asked Pat Keiley if he still supported denial of this variance? Pat Keiley answered they preferred to have 80 feet of right-of-way but they feel that 60 feet will also suffice.

Vaughn Anderson said, based on the type of road configurations, none of which are serving large numbers of lots because of the size of the lots, 60 feet of rights-of-way would be adequate.

He introduced the applicants that were present at this meeting: Missoula County Airport Industrial District, Dodd Development Co., Johnson Brothers Constructions and Nurture Inc.

Orin Olsgaard, Missoula County Projects Coordinator, said he has been involved in this project since a development advisory group started of 20 citizens, developed the master plan and made an amendment to the Comprehensive Plan and then decided it was time to do platting and zoning.

In the conditions for rezoning approval, condition no. 1 reads “Light Industrial and Industrial Warehouse uses are prohibited east of “F” Drive, as indicated on the Preliminary Plat...” The master plan and the Comprehensive Plan, which support that position because the documents indicate that if you go east of F Drive, you are getting into commercial services, lodging and things like vocational training centers. Thus, they would like to review the Comprehensive Plan and sort this out. There is more concern for the second sentence, which states “Light Commercial, Hotel/Conference Center, Office/Community Services, Retail, Research and Development, University Business and Technology Park, Technical Training Center, and Parks and Open space uses may occur on any portion of the properties, which means may occur any place in the Development Park. That is at odds with the master plan and the intent of the master plan being adopted into the Comprehensive Plan. He said there was concern for non-industrial uses in the Park. The concern is that is makes sense to see these kinds of uses exist on the crossroads between I-90 and West Broadway, but it does not make sense to allow those uses throughout the Park, especially since they are trying to maintain the liability of industrial land use. Their point of view was you can screw up an area intended for industrial land use by bringing in non-industrial uses. He believes that those particular uses ought to be in that eastern area. Regarding height, the Development Advisory’s opinion was to keep it open. They considered a lot of open space and separation of these uses to be important.

Barbara Evans asked, regarding condition no. 7, should 7A and 7C be deleted?
Orin Olsgaard answered that he understands the need to have quantitative standards and zoning regulations and you will find them both in City and County standards. But he conceded he is reluctant in this instance to have those regulations. There is a Design Review Committee that will be reviewing these developments before they go to the zoning office, who will mandate a landscape plan prepared by a professional. Any minimum standards requiring specifics, i.e., having a tree or shrub every X amount of feet, are at odds with what the professional landscape architect will do, which will be to take the amount of money that has been allowed and the concerns that have been expressed, such as buffering and individual "spot" needs, and then be creative in coming up with the best landscape plan for the Park.

Barbara Evans responded, in this case, it would be better to have substitute language which will accomplish these goals but in a more flexible way.

Michael Kennedy said he appreciated the qualitative concern of the staff on that issue but he does not agree about the quantitative requirement. However, he referred back to the Light Industrial/Industrial warehouse uses east of F Drive. Earlier, Vaughn mentioned that the master plan was adopted into the Comp Plan. He feels that there is subsequent thinking that causes Orin to disagree with this kind of language that the overall master plan that was adopted seems to support.

Orin Olsgaard acknowledged that, if you go to the master plan as it is expressed, there is no doubt that it is not the intent of that plan to be allowing industrial warehouse uses in that area. It is the unknowns of the future that he is concerned about in terms about what at point in time do you become that cut and dried about what you are going to permit and not permit. It would be more flexible.

Michael Kennedy responded that the County hired a consultant to give the County advice on the development of that master plan. As part of that advice, much analysis had gone into the recommendation that resulted in the master plan that subsequently was adopted into the Comprehensive Plan. After all of that effort and expense and after the County analyzed their advice and we adopted the master plan, he asked what the trigger was that diverted him from all of that professional advice?

Orin Olsgaard answered he is conservative by nature. It is fine to say we are going to have a Vo-Tech Training Center there and an University of Business Park but if the numbers don’t come through to support the TIF which is the machine that cranks out the dollars to pay for everything, then there are choices that have to be made about whether the master plan is viable. However, he has no argument about what the contractor came up with.

Colleen Dowdall, Deputy County Attorney, said that the difficulty arose because the contractor didn’t understand their process of zoning. If we did the zoning as the master plan was set forth, with strict boundaries, we did not have an opportunity to change within that without a process. For instance, if we said Vo-Tech was going to be here and someone wanted to put an industrial warehouse in, we could do that without rezoning. When she first became involved in this project, she told them if they wanted that kind of flexibility, they needed a different kind of zone.

Michael Kennedy said he saw it as the consultant was hired at a great deal of expense and time to come up with recommendations that suggested that the best mix of uses in that area and the most compatible uses would that maximize the benefit to the taxpayers of Missoula County. However, he is finding that we disagree with that because they didn’t understand the way in which we have to make an adjustment to it in the future if we decide to make an adjustment.

Colleen Dowdall responded that is not what she is saying. She explained that what she believed is that consultant intended that, although he came up with a map with suggestions and recommendations for what could go where, he intended or assumed that that could be flexible. When it was determined that it could not be flexible, they had to come up with a zoning mechanism that allowed for flexibility. A master plan is not zoning but rather a recommendation. It does not set boundaries.

Barbara Evans added that the consultant did not identify what went in what place by himself. That was based on the desires and suggestions of everyone that was involved so there was a lot of public input, but it was not hard and fast as suggested by the consultant.

Orin Olsgaard addressed Commissioner Kennedy and said there was one other issue in response to his question. He pointed to the drawing of the area and said, on the east end, there is a reserve area. The master plan does not address that in terms of land use and there is a question about where development will go there in the future. Will it be industrial, residential, or what? In the southeast corner of that plat and just outside of their property, is a large heavy industrial compound. He does not know if that pertains what the reserve area will be.

Michael Kennedy asked what the Comp Plan indicated for Reserve areas B and C?

Orin Olsgaard replied he did not know how the Comp Plan handled that.

Colleen Dowdall said it was currently zoned residential.

Jennie Dixon said condition no. 1 was written based on the original submittal for the zoning where a sub-district was not identified, that area being east of F Drive. According to the latest zoning district standards submitted to her, the revision identifies uses permitted throughout the entire zoning district and then uses permitted within a subdistrict, which probably makes condition no. 1 not necessary. So she suggested deleting condition no. 1 with the understanding that the subject district needs to be clearly defined. She has been treating reserve areas B and C as that area east of F Drive which would fall in the area for commercial uses and not the industrial uses. That does not preclude a rezoning request in the future for whatever type of use might be intended there. When all is said and done, the zoning district would encompass the entire Missoula Development Park, less Block 1, which is the Johnson Brothers’.
She said she had language drafted for maximum height regarding FAA standards, “Height of all construction shall be reviewed by the Missoula County Airport Authority for compliance with FAA regulations.”

Vaughn Anderson said this was what they had recommended before to follow the guidelines of the zoning request as to where this happens. The only exception they would like to make is change the location of where that boundary is for the subdistrict. They would like to make sure that the Dodd property is included in that subdistrict. Also, they would like to take reserve areas B and C out of that subdistrict.

Michael Kennedy said that conflicts with what Jennie just said.

Vaughn Anderson said she just said everything east of F Drive and that is the only exception they would have. Again, based on what they have indicated, not knowing what buffer or what transition zone may happen there between what is to the east of this property, which is already heavy industry or light industry and some residential, they would not like to preclude the potential of having some other type of development in those reserve areas.

Michael Kennedy asked Jennie if she had a problem with the Dodd arrangement?

Jennie Dixon answered, that given the idea of inclusive zoning where commercial uses are allowed in industrial zones, it goes along with that in complying with the Comprehensive Plan. This property was actually identified on the Comprehensive Plan as public park. Keeping in mind the idea of industrial on the west, which would include commercial, and commercial on the east, it disallows some use of property to not include industrial uses. But, yes, she concluded she felt it would be appropriate.

Michael Kennedy said he understood from one of her earlier comments that you should not have an undesignated part of the zone. However, Vaughn does not want it designated.

Vaughn Anderson replied that they did want it designated but the reserve areas B and C would be included under the overall portion of the zone, which are the uses that are applied everywhere. They would like to go back and discuss this with staff to find a solution agreeable to all.

Orin Olsgaard said he believed that Jennie needed to restate her observation about the lists of permitted uses.

Jennie Dixon said the no. 1 list was permitted uses for the entire district and the no. 2 list gave the uses for whatever was identified as a subdistrict, which is designated the area east of F Drive.

Fern Hart said, put another way, everything that is on list no. 1 is also allowed in the list no. 2 area but list no. 2 is allowed only in the subdistrict.

Jennie Dixon said industrial uses may occur west of F Drive, including commercial but industrial uses are not allowed east of F Drive. She said it has been difficult to get different versions on a daily basis and she has been trying to keep up with all the changes.

Orin Olsgaard said, if you look at the master plan, you make a good case for saying we shouldn’t have manufacturing and warehouses east of that line; but in the other items in list no. 1, you find things that clearly belong anywhere on the map. He does not feel you can say carte blanche that everything on list no. 1 belongs on the west side.

Byron Dodd, Dodd Development Co., said they have 2 primary concerns, one is the fact that the property listed as Lalonde Park is owned by Dodd Development Company. In the process of trading with the County for the property to it next to and it to the crossroads on the east side. If the trade does not occur, they need to have the capacity to develop that property in the manner that they would intend to develop the commercial area adjacent to the road. That is the reason for the assignment of the lot lines and is also the reason for wanting it to be included in as part of the subdistrict east of F Drive. What they intend to put in that area would be a motel, gas station, etc. The land is higher than the area next to the crossroads and would have better exposure and attracting power than does the area against the crossroads. Therefore, they feel it would be satisfactory to develop that property in that fashion.

The second issue is the building heights. In reviewing various plans of motels and motel complex, it appears that a 75 foot height limit in that area would be satisfactory for all motel development and would still not be a problem to any of the aviation situations.

He feels these two items need serious consideration and action by the County Commissioners.

Barbara Evans asked if anyone else wanted to speak on this issue?

George Grutsch, whose property adjoins on the north side, between Desmet Road and I-90, asked what is going to happen to Desmet Road?

Vaughn Anderson said, during the construction of the interchange project, they will take the asphalt that is being removed from West Broadway and recycle it unto both Desmet Road and Padre Lane. It is not the intent to rebuild that road to a wider section than it is currently because of the extension of parkway which will go through both County and the Johnson Brothers’ property and connect with Desmet Road. That will become the primary access and travel corridor for those properties. Desmet has a poor access unto Butler Creek Road which is adjacent to the bridge that goes underneath the Interstate. Site distance there is not what it should be and probably should be realigned if its going to be used further. It would be the intent of this development not to improve that to a higher standard than it is now, but to leave it as it is and to use it only as a local access road. Everything else would go out on Parkway.

Horace Brown, County Surveyor, added that Parkway is Expressway. He asked that the other roads be named and not by letters, such as “A,” “B,” or “C.”
Michael Kennedy read from the staff report “the applicant has proposed a subdivision with a public right-of-way of for Desmet Road of 30 feet.” Section 3-2(3) of the Missoula County subdivision regulations require 80 feet. He has heard, because of the potential use of the road, a narrower width is indicated, still, 30 feet seems too narrow.

Horace Brown said they only own one side of the road and the 30 feet will be required. The future development on the other side of the road will also require 30 feet. In any even, this road is not part of the subdivision.

Pat Keilew said the actual width of Desmet Road is approximately 20 feet and it will go to approximately 24 feet and be paved.

Steven Inabnit, a resident of Butler Creek, said he met with Orin and reviewed this project and he is in admiration of it. He likes the park system and the trails that link it all together. He believes, over time, it will be an asset to Missoula and to Butler Creek. At this time, there is one manufacturer there, Spectrum. Spectrum put up their building last fall and this spring. There were no subdivision notice signs to let residents in the area know what was happening. The building is now complete and there are workers in it. Orin has reassured him that they will be paving and landscaping according to the standards. He was reassured when Orin explained this to him. All the future buildings in this subdivision will go through an architect’s review committee, but Spectrum did not go through this. As a landowner, when he pulls off Highway 200 or Highway 10 and head up Butler Creek Road, the first thing you see is Spectrum. And at this time, it is an unattractive warehouse. This adversely affects the surrounding properties. (He distributed photos of Spectrum to the Commissioners). He realizes, since the building is already erected, there isn’t much they can do about the building but he is hoping they can improve on the landscaping along Butler Creek Road, shielding that building from the passers-by. He heard there will be no landscaping on the south boundary of the property. Spectrum is located on a corner lot and its boundary is visible from Highway 200 and also from Butler Creek. He would like to see landscaping along the south boundary also.

He has heard that the surface of Butler Creek Road be 32 feet and the variance requested that it be left at 24 feet. He believes, with Spectrum, the trucks from it, and its employees using it, and another company will be relocating their shop/warehouse to Butler Creek also. Butler Creek Road is part of Phase I and it will be the road that will access this property. He would like to see this subdivision with the standards because of their contract obligation to do so.

Barbara Evans asked if anyone else wanted to speak about this issue? No one came forward.

Michael Kennedy agreed with Mr. Inabnit that there will be a lot of traffic on Butler Creek Road.

Orin Olsgaard said the reference to no landscaping on the south boundary was the deletion of that particular aspect of discussion which was to have a blanket requirement for such landscaping all across the whole development. That does not preclude individual properties along the railroad track to be required to have landscaping on the south boundary. That is the decision made by the Design Review Committee. Spectrum Products is under a contractual obligation to comply with the development guidelines and the covenants, notwithstanding the fact that they have built their building. That will take some choices out for the Design Review Committee. But they will have to comply with the standards because of their contract obligation to do so.

Vaughn Anderson said, regarding the roadway, the reason for the variance request is because of the types of roadways they are developing within the park. The Expressway is the main access for the roads that will be used for this development. Butler Creek, particularly north of this development, is primarily used for residential use. The 24 foot width is currently adequate for whatever use they will have on that road. What their concern is that they are not required, like any other developer to make improvements on a piece of roadway that they themselves are not contributing. When Butler Creek does develop, that road will need to be upgraded. There is no question about that. That one of the reasons they have added the additional 20 foot of right-of-way, is to provide allowance for that upgrade. They do not feel that it is their responsibility to upgrade that road to a standard that would not be necessary right now. He does not disagree with Mr. Inabnit, but just does not feel it is this development’s responsibility to widen it.

Barbara Evans asked, when Block 1 is developed, can she assume the other side of the road will be added to and developed by the developer of Block 1?

Vaughn Anderson answered when they build that, part of their conditions of final plat approval require that they will install the improvements of those roadways within a one year period. That connection, on Expressway, will be all the way back to Butler Creek.

Michael Kennedy said he is not concerned about whether they would improve Butler Creek for uses other than what are intended for this development. It is his sense, however, that Expressway isn’t going to be developed prior to when certain of those lots, which create the traffic, will be developed. It seems to him that we are going to be generating a lot of traffic on Butler Creek Road prior to the time the Expressway is constructed. That is his concern. From at least of the point of the Expressway to Highway 10, it seems like there is an impact there that is attributable to this development and none other.

Vaughn Anderson agreed, but said, at the same time, he believes the road that is there is sufficient to meet the needs of that type of development. The development that will go in there is a warehousing type of development with minimal amount of employees.

Michael Kennedy said what he is hearing is that the development that is going to occur in that area does not require an increase in the servicability of the existing Butler Creek Road. He asked Vaughn if that was correct?

Vaughn Anderson replied yes.

Fern Hart asked if there would be a bike path?
Vaughn Anderson said yes; there was a condition for that. It was inadvertently left off but they are in full agreement with having a bike path. The drawing did not show a trail going from the Expressway up to the Desmet School along Butler Creek but that has been added. It will be separated from the road.

Michael Kennedy said condition no. 27 required it to be within a public right-of-way.

Vaughn Anderson responded yes, it will be in the right-of-way, but it will not be adjacent to the road. There is plenty of width there to do that.

Horace Brown said they have 80 feet of right-of-way.

Orin Olsgaard said the bicycle trail is needed immediately. There is a lot of activity there, with a lot of children riding and walking as well as adults, and the road is narrow.

Michael Kennedy asked how it will be financed?

Horace Brown answered that they have CTEP funds about the year 2001 to do it.

Vaughn Anderson wanted it noted that they are in full agreement with putting in the pathway along Butler Creek Road to Desmet School.

Michael Kennedy asked if anyone else wanted to speak? No one came forward. There was much information to be reviewed and clarified, so he recessed this public hearing and said it will be reopened on July 24, continuing the hearing and a decision will be made on that date.

Pat Keiley said the 60 day subdivision deadline is July 13.

Michael Kennedy asked Vaughn Anderson if he would submit a letter, requesting this extension?

Vaughn Anderson replied that he would.

Fern Hart moved that the Board of County Commissioners recess this public hearing until July 24. Michael Kennedy seconded the motion. Motion carried 3-0.

There being no further business to come before the Board, the Commissioners were in recess at 3:35 p.m.

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THURSDAY, JULY 11, 1996

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

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending June 28, 1996.

DAILY ADMINISTRATIVE MEETING

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

Memorandum of Agreement -- The Board of County Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and the Art Museum of Missoula, resolving that the mission statement, workplan, and budget submitted by the Art Museum represent the scope of work to be accomplished in an on-going manner, as per the terms set forth, for the period from July 1, 1996 to August 31, 1996 and having a total cash value of $28,085.00.

Extension Letter -- The Board of County Commissioners signed a letter to Eric and Cheryl Hefty approving a six-month filing extension for Osprey Addition Subdivision, making the new filing deadline February 6, 1997.

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

FRIDAY, JULY 12, 1996

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

Indemnity Bond -- Acting Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Kathleen J. Nerison as principal for Warrant #23758 issued June 17, 1996 on the Missoula County School District #40 Fund in the amount of $701.72 now unable to be found.

MONDAY, JULY 15, 1996

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioner Kennedy attended the Fair Superintendents’ Annual Bar B Que held at the Fairgrounds.
DAILY ADMINISTRATIVE MEETING

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

Plat -- The Board of County Commissioners signed the Plat for Pleasant acres No. 2, Lot 9, an amended subdivision plat located in the NW¼ Sec. 9, T13N R20W, P.M.M., Missoula County, a total gross and net area of 10.5 acres, with the owners of record being Karl and Donna Tyler.

Specifications Document -- The Board of County Commissioners signed a Specifications document prepared by the Missoula County Engineering Department for tree planting landscaping in Seeley Lake, Missoula County Project No. 94-3169.

Letter for Change Request -- The Board of County Commissioners signed a letter in response for a change request by John Kellogg, Professional Consultants, Inc., for the Lamoreux Estates subdivision, denying the request to delete the condition which requires delineating two building envelopes per acre on Lot 3.

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

TUESDAY, JULY 16, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Grant Award -- Chair Kennedy signed Grant Award No. 96-16897 with attached special conditions, releasing federal funds for the Drug Free Schools program, in the amount of $50,367.00. These funds must be obligated before June 30, 1997.

Plat -- The Board of County Commissioners signed the Plat for Thompson Homesites, a minor subdivision, located in the NE¼ of Sec. 18, T13N, R16W, P.M.M., Missoula County, a total of 12.67 acres net and gross area for Lots 19A and 19B, with the owners of record being Robert B. and Terry L. Thompson.

Agreement -- Chair Kennedy signed an Agreement between Missoula County and the Montana Department of Public Health and Human Services (DPHHS) to provide the services of the U.S. Department of Agriculture’s Special Supplemental Nutrition Program for Women, Infants, and Children to residents of Missoula and Mineral Counties, as per the terms set forth, for the period commencing July 1, 1996 through June 30, 1997, for compensation not to exceed $343,277.00. The Agreement was returned to DPHHS in Helena for further signatures and handling.

Another item included:

The Board of County Commissioners received and reviewed the Compliance Audit of the Master Agreement for Provision by Missoula County of Health Services submitted by Susan Reed, County Auditor. The document was forwarded to the office of Clerk & Recorder’s for filing.

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

WEDNESDAY, JULY 17, 1996

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

Commissioner Hart was out of the office until noon.

Audit List -- The Board of County Commissioners signed the Audit List, dated July 17, 1996, pages 2-17, with a grand total of $171,756.16. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Quitclaim Deed -- The Board of County Commissioners signed a Quitclaim Deed between Missoula County and Mildred H. Johnson and Marjorie M. Peacock for the purchase of 2 parcels taken by tax deed, Lot 7 of Braaten’s Addition to East Missoula and a tract of land in the SE¼NE¼ of Sec. 24, T13N, R19W, P.M.M., as per the terms and payment schedule set forth. The document was forwarded to the Clerk & Recorder’s office for filing.

Agreement -- The Board of County Commissioners signed an Agreement between Missoula County and T & T Construction, Inc., for amended improvements for Westfield Square Subdivision, with $24,750.00 to be placed in escrow as per the terms set forth. The Agreement was returned to Colleen Dowdall, Deputy County Attorney, for further handling.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #12, Pay Date June 7, 1996, with a total Missoula County payroll of $571,970.52. The Transmittal Sheet was returned to the Auditor’s Office.
Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #13, Pay Date June 21, 1996, with a total Missoula County payroll of $599,119.69. The Transmittal Sheet was returned to the Auditor’s Office.

Payroll Transmittal Sheet -- The Board of County Commissioners signed the Transmittal Sheet for Pay Period #14, Pay Date July 5, 1996, with a total Missoula County payroll of $552,048.27. The Transmittal Sheet was returned to the Auditor’s Office.

Other items included:
1) The Commissioners approved a Quitclaim for the trolley right-of-way in East Missoula;
2) The Commissioners approved a refunding document for Community Hospital.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

BID AWARD: ASPHALTIC PLANT MIX (SURVEYOR)

Michael Kennedy said this was a bid for an award contract for asphaltic concrete. The bids were opened on July 15, 1996, at 10:11 a.m. with the following results: Jensen Paving Co., $56,133.08, and JTL Group, $60,637.50. The Surveyor’s office recommended that the bid be award to Jensen Paving Co. in the amount of $56,133.08 as the best and lowest bid.

Horace Brown, County Surveyor, said last year they paid $17/ton for asphaltic concrete and this year it is about $15/ton; quite a bit less.

Barbara Evans moved that the Board of County Commissioners award the bid for asphaltic concrete to Jensen Paving Co. for $56,133.08 as the best and lowest bid for the Surveyor’s Office. Fern Hart seconded the motion. Motion carried 3-0.

BID AWARD: FLUID REMOVAL FROM JUNK VEHICLES (ENVIRONMENTAL HEALTH - JUNK VEHICLES)

Michael Kennedy said, in the overall junk vehicle program, the fluids from the vehicles have become a problem when they are spilled out unto the ground. This is a bid to have those fluids removed. The Junk Vehicle Program was, by policy from the State, required to remove certain fluids from the junk vehicles brought into the Motor Vehicles graveyard and stored. Bids were solicited in the prescribed manner and Harry Allen Construction was the lowest bidder, at $17.50/unit, with an annual estimated cost of about $6000.00. Missoula County Junk Vehicle Program recommended they be awarded the bid. He asked if there was anyone who wished to comment on this matter?

Barbara Evans asked what was involved in the preparation of a junk vehicle?

Michael Kennedy answered when the junk vehicle is brought to a particular staging area, it still contains fluids such as gasoline, oil, transmission fluids, etc. It is removal of those fluids and their proper disposal that this bid award is concerned with.

Michael Sehestedt said the main issue here was the removal of fluids for environmental reasons.

Michael Kennedy said Richard Corrigan runs the Junk Vehicle Program and has operated it for some time. Mr. Corrigan is an efficient person and deserves to be applauded for his handling of the Program.

Fern Hart moved that the Board of County Commissioners award the bid to Harry Allen Construction for fluid removal from junk vehicles for the amount of $17.50/unit, with an estimated annual impact of $6,000.00, as recommended by the Missoula County Junk Vehicle Program. Barbara Evans seconded the motion. Motion carried 3-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (CYR)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a consideration of a request for a family transfer and boundary relocation for two parcels as described in Book 155 Deeds, Page 78 less that parcel as described in Deed Exhibit 2661 and a portion of COS 4187 and Book 156 Deeds, Page 66 less a portion of COS 4187, Highway 90 and the Clark Fork River located in the S½SW¼NW¼ NW¼SW¼ NW¼ and N½SW¼NW¼ of Section 28, T15N R22W for Irene V. Cyr.

Irene V. Cyr has submitted a request for a boundary relocation and family transfer for two parcels of approximately 83.23 acres combined near the intersection of Highway 90 and Nine Mile Road. Mrs. Cyr proposes to relocate a boundary to align with the boundaries created by Deed Exhibit 2661 and COS 4187 for transfer to her adult daughter, Lola Elmstrom. Mrs. Cyr then proposes to create a family transfer parcel on the North end of the property for transfer to her adult son, David Cyr.
The history of the parcel is as follows: John and Irene Cyr purchased the parcels as a 37 acre parcel in September 1945 and a 60 acre parcel in May 1949. Deed Exhibit 2661 was created in March 1971 as a .82 acre parcel and was transferred to Alan Elmstrom and Lola Maria Elmstrom. COS 4187 was created as a 6.95 acre occasional sale parcel. COS 4537 is a portion of an old railroad right-of-way and both Highway 90 and the Clark Fork River intersect the property creating three separate parcels in the South end of the property. John Cyr passed away in 1993 and left the property to Irene Cyr.

According to the records kept by the Missoula County Surveyor, the applicant has used the exemption to the Subdivision and Platting Act as described above.

Michael Kennedy asked if Mrs. Irene Cyr or her representative was present?

Eldon Inabnit said he was the representative of Mrs. Irene Cyr and she and all the Cyr’s and Elmstoms were present at this meeting.

Michael Kennedy explained that, when a family transfer and/or boundary relocation is requested, it is a type of subdivision. It is up to the County Commissioners to make a determination if that subdivision is an attempt to evade the Montana Subdivision and Platting Act and, thus, the Commissioners question the applicant to make that determination.

Eldon Inabnit responded that he understood. He said what they are hoping to do is relocate the south boundary of the 60 acre parcel which will then parallel closely to Certificate of Survey 4187, the north boundary of that parcel. Lola, who lives in the little triangular piece of land, will acquire some property on the south end of the parcel created and the son, David, who lives on the north end of the 60 acre parcel will accept that for his home and land.

Fern Hart asked how many parcels will be on this land?

Kathleen Smith answered there are 4 parcels at this time; if the Commissioners approve this request, there will be 5 parcels.

Eldon Inabnit commented that David has lived on that 60 acre parcel for years.

Fern Hart asked about the road there?

Eldon Inabnit answered it was a County road; it is the west side of the Nine Mile.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the request for a family transfer and boundary relocation for Irene V. Cyr for the parcel described in Deed Exhibit 2661 and a portion of COS 4187 and Book 156 Deeds, Page 66 less a portion of COS 4187, COS 4537, Highway 90 and the Clark Fork River located in the S½SW¼NW¼SW¼ of Section 28, T15N R22W, in that it does not appear to be an attempt to evade the Montana Subdivision and Platting Act. Fern Hart seconded the motion. Motion carried 3-0.

CONSIDERATION OF: PEAK A BLUE (2-LOT MINOR SUBDIVISION) LINDA VISTA AREA ADJACENT TO HELENA DRIVE (POSTPONED FROM JULY 10)

Sam Islam, Office of Planning & Grants, said this was a proposal for a 2-lot summary plat. It is zoned C-RR2 and the Comprehensive Plan recommends two dwelling units per acre. Staff recommends approval of this subdivision, subject to the conditions stated in the staff report. There are two variance requests. They recommend denial of the first variance request, which is widening the right-of-way off of Helena Drive from 50 feet to 60 feet. The County Surveyor feels that the right-of-way should be at least 54 feet and staff feels that there should be a 60 foot right-of-way, based on potential further development in that area. Staff recommends approval of the second variance request from the requirement from sidewalks and pedestrian walkways.

Ron Ewart, Eli & Associate, said there were a couple of matters that he wanted to discuss. Regarding condition no. 2, the County Surveyor usually approves the approach permits prior to building permit issuance. He asked Horace if that was true?

Horace Brown, County Surveyor, answered that they issue them when an address is requested.

Ron Ewart said they are requesting that the developer increase the right-of-way width of Helena Drive from 50 feet to 60 feet. He sees Helena Drive as a separate piece of land because Lot 2 does not go out to the center line of Helena Drive. All the land along Helena Drive is already developed. It is not a very long road and he does not see much future development on it. He stated that they would agree with the increased width on the right-of-way if it was required, but he felt it was more prudent for Lot 2 to give 5 feet and the property across the street to give 5 feet, to get the extra 10 feet.

Also, condition no. 7 states the private driveway shall be an all-weather surface with a minimum of 20 feet width. He felt driveways were usually a 12 foot width with a 20 foot clearance. They have been working with the Health Department and with Twite Water Company to get the letters of permission to hook up. He does not foresee any problem there.

Fern Hart asked the County Surveyor how he felt about the 50 feet wide right-of-way?
Horace Brown answered he could only require a 60 foot right-of-way and it was up to the Board to reduce it. Barbara Evans asked if he had a problem with it being 50 feet? Horace Brown replied no.

Fern Hart said she remembers that, at least on Eldora Lane, there have been drainage problems. She asked if this land is flat? Ron Ewart, in response, showed the Commissioners pictures he had taken of the property. He said the building site on Lot 1 would be on flat ground. Lot 2 is mostly flat except for the swale in the northeast corner. They may need to adjust the easement to keep the road on flat land.

Fern Hart asked if it was in the conditions that the County Surveyor would approve the drainage for the area? Horace Brown replied yes. He said he would approve their drainage plans when they come in the first time. At that time, he will require that they provide him with as-builts once the houses are built.

Fern Hart asked Sam if the only reason that he wanted a 60 foot width is because that is the only width the County Surveyor can approve? Sam Islam replied that Ron Ewart requested that the road be kept at 50 feet wide. Then he contacted Horace Brown who suggested that the right-of-way be increased to 54 feet. Then staff decided to go with the 60 foot right-of-way because they feel there is potential for further development in this area. The zoning allows 2 dwelling units per acre.

Fern Hart asked why the private driveway was requested to be 20 feet instead of 12 feet? Sam Islam answered he believes it is required by Missoula County subdivision regulations and that is why they suggested it.

Horace Brown stated 12 feet will work with just one lot using it, but if there are more, than you need a 2-way road. 20 feet is a minimum for a 2-way driveway.

Fern Hart asked Ron Ewart if this easement was the access for both Lots 1 and 2? Ron Ewart answered, yes, they are both to share the driveway. He said, when there are 2 or fewer lots sharing an access, than it is a driveway. Driveway standards are 12 feet wide.

Fern Hart asked Horace to clarify if he wanted 54 feet or 60 feet on the right-of-way. Horace Brown answered that he can only approve a 60 foot wide right-of-way but he can suggest that the Commissioners approve a variance for 54 feet.

Michael Kennedy said there is a requirement that this lot be connected to the City’s sewer system. In condition no. 9, it reads “the owners shall provide letters on availability of municipal water and sewer to the Missoula City-County Health Department.” He presumes that it will be connected to Lloyd Twite’s system.

Sam Islam said the water system will be connected to the Lloyd Twite system.

Michael Kennedy asked if there would be a problem with a waiver for a drainage SID in that area? Ron Ewart answered, if it is something that covers the entire area, they can add it to condition no. 4.

Fern Hart said, regarding condition no. 7, the driveway does not need to be 20 feet wide and it does not need to have an all-weather surface, but she was unsure if 12 feet was wide enough for an access serving 2 lots.

Michael Kennedy said he felt 12 feet wide was adequate.

Fern Hart moved that the Board of County Commissioners grant the variance for Peak A Blue subdivision, located in the NE ¼ of Section 12, T12N, R20W, Principal Meridian, from the subdivision regulation requiring the right-of-way width for Helena Drive to be 60 feet, instead allowing the width to remain at its current width of 50 feet. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners grant the variance for Peak A Blue subdivision, located in the NE ¼ of Section 12, T12N, R20W, Principal Meridian, from the subdivision regulation requiring sidewalks and pedestrian walkways. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners approve the summary plat for Peak A Blue subdivision, located in the NE ¼ of Section 12, T12N, R20W, Principal Meridian, based on the findings of fact and contingent upon the conditions listed below. Barbara Evans seconded the motion. Motion carried 3-0.

1. The County Surveyor shall approve grading, drainage, erosion control, road and driveway plans prior to approval of the final plat.

2. The County Surveyor shall approve access and approach permit prior to filing the final plat.

3. The following statement shall appear on the face of the final plat and in all instruments of conveyance:
“Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owners to waive the right to protest a future RSID/SID for any improvements to Helena Drive, including but not limited to paving, sidewalk and drainage based on benefit, and may be used in lieu of their signatures on an RSID/SID petition.”

4. Place the following subdivision fire access standards on the face of the plat:
   a. Provide a minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches for any driveway over 150 feet.
   b. Provide approved provisions for turning around of fire apparatus for dead-end driveways in excess of 150 feet.

5. The lot owners shall pave the first 20 feet of the driveway from Helena Drive upon receipt of building permit application process, to be approved by the County Surveyor.

6. The private driveway shall be paved for the full length at a 12 feet width with a minimum unobstructed width of 20 feet within the 30 foot right-of-way. In lieu of two access routes, provide turnarounds for turning around fire apparatus. The Fire Marshall shall approve plans before final plat filing.

7. The owner shall pay to the Missoula Rural Fire District a $50.00 fee per lot or dwelling unit for the purpose of funding a large diameter hose fund before final plat filing.

8. The owners shall provide letters on availability of municipal water and sewer to the Missoula City-County Health Department.

9. The owners shall connect the subdivision to the municipal sewer system.

10. Lots 1 and 2 shall utilize the 30-foot private access easement for access to Helena Drive. Place a 1-foot no-access strip along the remaining lot frontage.

DINSMORE’S ORCHARD HOMES ADDITION NO. 5 - LOT 36A (SUBDIVISION FOR LEASE/RENT) (POSTPONED FROM JULY 3)

Sam Islam, Office of Planning & Grants, said this is a subdivision for lease or rent. The zoning is C-RR2 and the Comprehensive Plan recommends 2 dwelling units per acre. There are 2 existing duplexes and the owner proposes 2 single family homes. Staff recommends approval of this subdivision for lease or rent, subject to the conditions stated in the staff report. There are 2 variance requests. The first one is from the requirement to increase the paved surface width of Wierson Lane from 14 feet to 24 feet. They recommend partial approval of this variance; they feel it should be paved 20 feet. They recommend approval of the second variance request from sidewalks and pedestrian walkways.

Ron Ewart, Eli & Associate, said Wierson Lane ends just past the second existing duplex. This is a mellow neighborhood lane. It is about 14 feet wide and about 6 feet of gravel along the east side. They feel the situation as it is right now is fine because if 2 cars meet each other on this lane, they will be driving slow because this is not a through street. If necessary, one can pull over on the gravel a little and they can pass each other. He said what their intent was is to keep this a nice little development without putting in a lot of paving. The owner is planning to pave all the way back from Wierson Lane to the other 2 homes. The owner has also done a lot of landscaping, planting trees, bushes and shrubs. Their objection to widening the road is not an economic matter but rather that it looks good the way it is and functions fine.

Regarding conditions no. 6 and 7, he asked if the word “new” could be added to each since they both had existing situations.

Michael Kennedy said they resolved that recently about what the added service to the area is. He does not think there will be a problem with that. However, he added, if the applicant paid the impact that they are talking about, the cost would be about $10,000 per lot.

Jim Wierson said they have been there about 3 years with the 14 foot road. There has never been any problems. Vehicles have always managed to adjust to the situation of meeting another vehicle. The new driveway will be paved again. He has already planted just over $1500 worth of shrubs and trees in the new lot. He has rock down and shrubs around that on the east side of the existing driveway. He would hate to have to dig all that up and pave it. He does not think there is 6 feet of room between the hedges that he has planted next to the old buildings. He would have to dig it up to the edge of the shrubs or take the rest of the lawn there in front of the duplexes to make it a wider road. There is no problem with the other driveway but it will be a little different where Ron has extended it past the second duplex. Between the 2 duplexes, he has a gravel parking space about 25 feet wide. The driveway will run between the two duplexes then come back on the south side of the second duplex where the road is now. He has all of his trees in and the landscaping is done out there. There is not room to run a road there, except to run it right up next to the deck. He showed the Commissioners on the map where he hoped to put the driveway in, which is different from the way shown on the map.

Barbara Evans asked if the staff had a reason for not wanting him to put the driveway in where he wanted?

Jim Wierson replied no, he just felt it was the better way.

Fern Hart asked Sam Islam if he knew about the driveway between the duplexes in his planning?

Sam Islam said this was completely new to him.
Fern Hart said she was concerned that someday there may be another house or subdivision in that area.

Jim Wierson said the Bagnells live off the south side of his property. They have race horses and their training track is along his southern boundary. He could not see them developing.

Barbara Evans, addressing Sam Islam, said putting in the road the way Mr. Wierson would like it would preclude what he suggested. If at some time the Bagnells decide to develop, she does not see any reason an easement could not be granted, should that occur. This would allow Mr. Wierson to do his driveway the way he wants and it would save his landscaping.

Sam Islam said if he gets the 27 foot easement, he would go along with what Barbara suggested. He just feels there could be a better design for this development.

Michael Kennedy said when these duplexes were designed and located at their present site, he does not believe they have ever contemplated to have a roadway between them. If a roadway is built between them, it will probably be very close to bedrooms and, at any rate, it will be close the buildings themselves. This is not the way the County likes to see subdivisions designed. He also believes it will make it more difficult to plan for future development. He stated he is opposed to making an adjustment away from the original proposal presented at this meeting.

Fern Hart asked Ron Ewart if he understood the driveway proposal?

Ron Ewart answered that he and Jim had talked about 2 single family homes, he drew up a plat and sent in a copy.

Fern Hart said, doing it Mr. Wierson’s way, they will have a very strange parcel and she guesses that parcel will eventually subdivide, or at least, someone will attempt to subdivide it.

Barbara Evans asked Jim Wierson, when he built the duplexes, if he ever intended to put in the two single family homes he wants to put in now, and, if so, where did he intend to put the road?

Jim Wierson answered that this was all the land he had. He didn’t want to change the zoning and he didn’t want the neighbors upset with him. He wanted to follow the current zoning density allowances. He has no other room to build; there is room possibly out front but there is no city sewer. He was not intending to build anything else. Last spring, his neighbor, who is about a year from retirement, asked him if he was interested in buying his back lot. It took time to get everything worked out but he just finished paying him for the land less than 2 months ago. If he has to put in the road where it is marked on the plat, he will have to tear out all of his trees. The backyard from the second duplex to the fence is big, about 200 feet. There are trees planted 50 or 60 feet from the deck. That would be the best place to run the road through. He would like a 14 foot paved road.

Michael Kennedy said this is an after-the-thought design. Further, the roadway, as he is now proposing, would go right through the backyard of one of the duplexes. He suggested that Mr. Wierson delay this review and reconsider his configuration, perhaps coming up with a better plan. In his opinion, this configuration is not a good one and he does not believe that it will serve his or his renters’ interest in the future.

Barbara Evans asked Mr. Wierson if he wanted to postpone this hearing or did he want the Commissioners to act on it today, based on his present submission?

Jim Wierson asked if there would be any additional cost if he makes the road any farther, extending it with the right angles like it is now?

Fern Hart replied that she thought the cost would be about the same. She added that she could not approve it until she was shown exactly what he planned. The plat she sees now is not what he is proposing.

Michael Kennedy explained to Mr. Wierson that he may get a negative vote on his proposal. If that happens, it will be a long time before he can come back. It may be in his best interest to request a delay and reconfigure the layout, and then make that presentation to the Board.

Michael Sehestedt, Chief Deputy County Attorney, summarized the Board’s comments and listed the options Mr. Wierson had and told Mr. Wierson is was up to him what path he would choose to take.

Jim Wierson answered that he would like to have a 2 week extension so that he could prepare a drawing of what he hopes to do with the property.

Michael Kennedy noted that they would need that a request in writing that would make the date July 31 when they would continue consideration of this subdivision.

Jim Wierson said he understood.

There being no further business to come before the Board, the Commissioners were in recess at 2:42 p.m.

THURSDAY, JULY 18, 1996

The Board of County Commissioners met in regular session; a quorum of the members were present. Commissioner Evans was out of the office all day July 18th and 19th.
FRIDAY, JULY 19, 1996

The Board of County Commissioners did not meet in regular session; Commissioner Hart attended a Mental Health Board Meeting at Fort Missoula during the day and Commissioner Kennedy was out of the office all day.

Vickie M. Zeier
Clerk & Recorder

Michael Kennedy, Chair
Board of County Commissioners

SATURDAY, JULY 20, 1996

On Saturday afternoon, Commissioner Hart attended the Alberton Chlorine Incident Recognition held in Alberton.

MONDAY, JULY 22, 1996

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

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated July 19, 1996, pages 2-29, with a grand total of $465,304.03. The Audit List was returned to the Accounting Department.

TUESDAY, JULY 23, 1996

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

Audit List -- The Board of County Commissioners signed the Audit List, dated July 23, 1996, pages 2-31, with a grand total of $634,699.98. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Amended Professional Services Contract -- The Board of County Commissioners signed an Amended Professional Services Contract between Missoula County and Kathleen J. Gromko, an independent contractor, to allow more time for completion of services, as per the terms set forth, for the period commencing July 1, 1996 through August 31, 1996, with a maximum compensation of $1,000.00.

Agreement -- Chair Kennedy signed an Agreement between Missoula County and the Montana Department of Environmental Quality to assist the County to conduct its own air pollution control program, as per the terms set forth, for the period commencing July 1, 1996 through June 30, 1997, with $64,054.00 from U.S. Environmental Protection Agency and $16,013.00 from the state. The Agreement was forwarded to the Department of Environmental Quality in Helena.

Encroachment Permit -- The Board of County Commissioners signed an Encroachment Permit, agreeing to permit Erik S. Heen to encroach upon a portion of County right-of-way being adjacent to Lot 2, 3 and 4, Block 14 of East Clinton Addition and being in the SE¼ of Section 27, T12N, R17W, and shall be limited to existing shed and house, effective for a period not to exceed 10 years, renewable at the option of the County.

Resolution No. 96-061 -- The Board of County Commissioners signed Resolution No. 96-061, resolving to create Rural Special Improvement District No. 8460 to pave Sapphire Drive in Lolo.

Agreement -- The Board of County Commissioners signed an Agreement between Missoula County and Green Thumb, which authorizes the County to use volunteers who are paid by Green Thumb Program, as per the terms set forth. The Agreement was forwarded to the Clerk & Recorder’s Office, with a copy sent to the Personnel Department.

Contract -- The Board of County Commissioners signed a Service Contract between the Superintendent of Schools and the Board of County Commissioners of Mineral County, for the former to perform some of the required Superintendent duties for Mineral County from July 1, 1996 to June 30, 1997, as per the terms set forth, for a total amount of $3,300.00. The Contract was returned to Rachel Vielleux, Superintendent of Schools for further signatures and handling.

Another item included:
Chair Kennedy agreed to represent the County Commissioners on the Steering Committee for discussions of safe environments for youth in our community, per a request from Missoula County Public Schools District #1.

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

WEDNESDAY, JULY 24, 1996

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

DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following items were signed:
Assignment -- The Board of County Commissioners signed an Assignment of Perpetual Easement, assigning to the City of Missoula a perpetual easement for use with the reopening of the California Street Bridge as a bicycle and pedestrian bridge, effective July 24, 1996, per the terms set forth. The document was forwarded to Mayor Dan Kemmis for his signature.

Contract -- The Board of County Commissioners signed a Contract for Nutrition Services between the Missoula City-County Health Department and Child Start, Inc., to provide nutrition services to the Head Start Program from September 1, 1996 until May 31, 1997, with compensation to be paid to the City-County Health Department in the amount of $675.00.

Amendment to Agreement -- Chair Kennedy signed Amendment I to the County MCH Assessment and Planning Project Agreement between Sheridan Memorial Hospital and the Missoula City-County Health Department, amending the Agreement as per the terms set forth, as submitted by Nikki Skrivseth of the Health Department.

Amendment to Agreement -- Chair Kennedy signed Amendment I to the County MCH Assessment and Planning Project Agreement between Sanders County and the Missoula City-County Health Department, amending the Agreement as per the terms set forth, as submitted by Nikki Skrivseth of the Health Department.

Amendment to Agreement -- The Board of County Commissioners signed a Satellite Agreement - Mineral WIC Program between Mineral County Health Department of Superior, Montana and the Missoula County Health Department for the WIC Office to provide services to Mineral County at a Mineral County location, as per the terms set forth, for the period commencing July 1, 1996 through June 30, 1997.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Missoula County Public Schools, Willard Adult Learning Center, an independent contractor, for the purpose of computer training, as per the terms set forth, for the period commencing July 1, 1996 through June 30, 1997, for compensation not to exceed $16,800.00.

Plat -- The Board of County Commissioners signed the Plat for Baumgardner Lots 7A and 7B, a subdivision plat located in the SE ¼ of Section 1, T16N R15W, P.M.M., Missoula County, with the owners of record being John D. Baumgardner, Michael W. Miller and Debra N. Miller.

Other items included:

1) The Commissioners appointed Todd Brandoff to the Lolo Water & Sewer Board (RSID 901) through June 30, 1999;

2) The Commissioners appointed Jim Auger to the Weed Board as an Alternate Member through December 31, 1998.

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

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

Michael Kennedy announced that the Preliminary Budget meeting would immediately follow the Public Meeting. Also, he said they would continue the hearing on the Missoula Development Park on Tuesday, August 6. He asked if there was any disagreement with that? There was none and he scheduled it for that day.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (CLINKENBEARD)

Kathleen Smith said this was a consideration of a request for a family transfer for a parcel described in Book 193 Micro, Page 1531 located in the NW ¼NE ¼ of Section 30, T16N R19W for Larry and Dorothy Clinkenbeard.

Larry and Dorothy Clinkenbeard have submitted a request for a family transfer for a 4.46 acre parcel on the Flathead Indian Reservation south of Arlee off Highway 93. The Tribe has been given thirty (30) days to comment and their response dated July 8, 1996, is attached. Mr. and Mrs. Clinkenbeard propose to create a family transfer parcel of 2.27 acres for transfer to their son and daughter-in-law, Lee and Alyssa Clinkenbeard, for their future homesite, and a 2.19 acres remainder on which two mobile homes currently exist.

The history of the parcel is as follows: Larry and Dorothy Clinkenbeard purchased the parcel in August, 1983. According to the records kept by the Missoula County Surveyor, there is a family transfer exemption on unrelated land credited to a Dorothy W. Clinkenbeard in 1981, however, the deed pertaining to the subject parcel is owned by Dorothy E. Clinkenbeard. The parcel pertaining to the unrelated property was transferred to Larry Clinkenbeard and subsequently sold. Other than the foregoing, the applicants have not used any exemptions to the Subdivision and Platting Act.

The history of the parcel is as follows: Larry and Dorothy Clinkenbeard purchased the parcel in August, 1983. According to the records kept by the Missoula County Surveyor, there is a family transfer exemption on unrelated land credited to a Dorothy W. Clinkenbeard in 1981, however, the deed pertaining to the subject parcel is owned by Dorothy E. Clinkenbeard. The parcel pertaining to the unrelated property was transferred to Larry Clinkenbeard and subsequently sold. Other than the foregoing, the applicants have not used any exemptions to the Subdivision and Platting Act.

Michael Kennedy said when the family transfer method is used to subdivide property, the Commissioners must determine if it is an attempt to evade the subdivision and platting act. To do that, they must ask the applicants or their representative questions that may often seem personal in nature.

Lee Clinkenbeard said he understood.

Michael Kennedy asked who are Dorothy W. Clinkenbeard and Dorothy E. Clinkenbeard?
Lee Clinkenbeard answered that he didn’t know. But he believes it to be the same person.

Kathleen Smith agreed. She had compared signatures and believes that the difference in the middle initial may be a typo.

Michael Kennedy said he understands that, as the property currently exists, there are 2 mobile home sites and the proposal is to divide the property where they will remain and the other parcel will be the location of a house that is going to be constructed. He asked who will live in that house?

Lee Clinkenbeard answered he and his wife.

Fern Hart asked if they had access?

Lee Clinkenbeard answered yes. There is a right-of-way through the center of the property.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the family transfer for a parcel described in Book 193 Micro, Page 1531 located in the NW¼NE¼ of Section 30, T16N R19W for Larry and Dorothy Clinkenbeard, to their son and daughter-in-law, Lee and Alyssa Clinkenbeard, in that there does not appear to be an attempt to evade the Montana Subdivision and Platting Act. Fern Hart seconded the motion. Motion carrier 3-0.

HEARING: REQUEST TO ABANDON 6 UNUSED ROAD RIGHTS-OF-WAY (LOLO CREEK AREA) POSTPONED FROM JULY 10

David Cotner, attorney, Boone, Karlberg & Haddon, said he represents the owners, Potomac Corp. in a family trust known as the Ozmun Family Trust. He stated he and his staff had numerous conversations with Charles Wright, who works as a surveyor for the County. He feels that Charles is an excellent resource as the person who can give the best historical perspective of these roads. He also noted that the ranch manager, who has managed the ranch since 1967, Ron Campbell, was present at this meeting.

He said this particular petition involves 6 roads that lie on property owned by Potomac Corp. For purposes of convenience, he has numbered them 1 through 6, although they don’t have any names. This property is up Lolo Creek about 10 miles. The ranch encompasses about 3,000 acres. Referring to road no. 6 on the map, he said its called the Old Muzzie Petition Road. Their first request is to abandon road no. 1, which was created by a petition in the late 1890’s. It runs from the old petition road due north. If you drive to this road, it has no evidence that it exists. It goes straight up a hill and straight through timber. The same is true for road no. 2. Road no. 2 was created by a deed, which granted it to the County for $25 to be used only as a public highway. As far as they can tell, it was either an attempt by the people that live there to try to get a road to the railroad easement or potentially, the road had already been moved to another location by then. If you go to this location and look in a southerly direction, you will not see any evidence of road no. 2. It is possible that road nos. 1 and 2 are misplaced and may be farther to the west. There is a private road that could be the County road that has one house at the end of it. Historically, back in the 1890’s, there was silver mining that occurred on this particular parcel, which happens to be owned by Potomac Corp. as well, there is a reservoir and probably some milling activity as well. Realistically, these roads are probably misplaced, there is a road from the present U.S. Highway 12 to a house and that is all it has been used for. It has not been used for any public benefit. You can find some existence of what might have been a road heading north of there, ultimately combining with this road, which is owned by Plum Creek, which services their needs.

Road no. 3 is another road they could not find any evidence of. It was created by petition in the 1890’s or early 1900’s. That road supposedly lies to the east of the south fork of Lolo Creek. When they looked for the road, they could not find it. They have no explanation of what it may have been for except a homestead site for an individual. Road no. 4 is a GLO that was created by survey. It does not show to be a complete road, probably because the survey just stopped, but it probably continued and connected with the old Lolo Highway. Road no. 4 exits the property. The property it either owned by the Forest Service or Plum Creek. The access to this property is probably on Elk Meadows Road, which is an exit off U.S.Highway 12, an improved road. Road no. 5 is a petition road also and, even though the County maps show that it exits the property, it, in fact, ended on the property. They could find no evidence of the road, except at one location where there was a bridge at one time, where some road crossed Lolo Creek in approximately this location. The bridge has been washed out several years ago and there is no access across Lolo Creek for any of the roads that head in a southerly direction. Road no. 6, which he believes should be in a separate group, is an old petition road that went from Lolo to the Woodman area. There is no specific description in the petition. Unfortunately, yesterday, they received a phone call from the Surveyor’s Office and they have discovered yet another road. These road are being discovered in the Commissioners’ Minutes from the late 1890’s. That road begins where this road terminates and continues on. That particular road is not the subject of this petition. Going back to road no. 6, it was their position at the time they filed the original petition on the GLO road that they feel these roads have already been abandoned by actions of the Commissioners. They have not changed their petition on that. They recognize what the Commissioners have done and they have decreed that there is not a formal abandonment. Given that and accepting it to be true, their concern is that if you start looking at where the GLO road is and you look at the Muzzie Road, and there are the 2 new petitions that have been discovered, which is a road from Lolo to Woodman and a road from Woodman to the Hot Springs, there are now 4 roads that travel in an east/west direction across this ranch. They do not believe that is what the Commissioners intended. What they hope to do is have road no. 6 abandoned, merely to get this down to 3 roads and he is certain that his client will be addressing this other recently discovered road at some future date. The best way to describe road nos. 1 through 5 is that you can’t find them. If the map is accurate, you can find very little, if any, evidence of these roads. To the best of their knowledge, they have not been used for any public benefit for at least 30 years, but more likely, 50 or more years. This particular ranch is fenced in on the boundaries. A fence has traversed, for example, every road on this map that exits the ranch. Road no. 1 has a fence; not a gate, but a fence and no one has used that road for any benefit. There is nowhere to get to. The property that is there has access, a private easement owned by Plum Creek.
Michael Kennedy said he heard that the location of road no. 1 may be further west and, at that place, there is a traveled road and he presumes there is either a cattle guard or a gate. He asked David if that were true?

Don Campbell answered there is a cattle guard on the road to the white house. It ends on the ranch yard and there is no exit.

Michael Kennedy said on the north boundary of the Potomac Ranch there is a fence with no gate.

Don Campbell said that was correct.

David Cotner said road no. 2, as he mentioned, was created by a deed. That deed, which the Commissioners may view if they wish, states it is exclusively for a public highway. The petition roads can arguably created for other purposes, the only use that the County has given permission to do with this particular road is to use it for a public highway. It starts and ends on the Potomac Corp. property and, unless it is located to the west, you won’t find any evidence of this road. If it is located to the west, there is a road that goes to a house, both the house and road still exist. Road no. 3 starts on a corner and stops on the ranch. They do not believe there is any evidence of it; they think it might have served a homestead historically. They cannot find any evidence or reason why it may have existed. Road no. 4 goes over the top and serves other property. It has not been used and it can’t be located. Once again, there seems to be no public use or public need for that road. Road no. 5 starts and stops on the property. It goes to nowhere, there is no evidence of it and, if you consider roads 3, 4 and 5 collectively, if those did exist, you would have to find a way to cross U.S. Highway 12 and cross Lolo Creek to get any meaningful use from those. For all practical purposes, these are roads that you won’t find or, if you do, the evidence would be to the west of road nos. 1 and 2. Secondly, they have not been used or any requests have been made since his client’s ownership and most likely before. They are simply trying to “clean house.” They have concerns if the roads are not abandoned, such as trespass issues.

He wanted the Commissioners to also consider that his client has no desire to change this ranch. The more that there are roads to carve up the ranch, or the right to create a road, the more problems there will be. The owner is interested in maintaining the integrity of 3,000 acres and has no desire to develop his property. However, at some point, there could be what may be considered an “encouragement” for some individual to take those steps at some point in the future if those roads arguably exist. He feels it is in the best interest of the landowner and the County to abandon these 6 roads.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

He explained that no decision on this proposal will be made today. In the near future, the County Surveyor and a County Commissioner will go out and view the site.

Barbara Evans asked Charles Wright if there was anything he wanted say regarding the roads and to clarify actions in the past till the present?

Charles Wright, County Surveyor’s Office, said he has reviewed the applicant’s layout and has also obtained aerial photos. In those photos from 1937, they did not show those road nos. 3, 4 and 5. Road nos. 1 and 2 show little lines on the photos but they do not appear to be roads. So he agreed with David Cotner’s assessment of the roads. The petitions that come from Lolo to Woodman’s ranch, the first one was in 1883 and the second was in 1888, which went from his ranch to the hot springs. In 1884, they created a road district from Lolo to Woodman’s ranch. He was also appointed road supervisor. So it appears to be obvious that he was getting roads to and from his place.

Michael Kennedy said, at the request of David Cotner, they will view the site before August 5, 1996, but will not set a date at this time for the decision. That date will be provided later.

Colleen Dowdall reminded the Commissioners’ that they are required to make a decision within 30 days of this meeting, unless they have a letter of permission granting them an extension.

David Cotner said that was fine. He said he had no urgency.

HEARING: VALLEY HOMES MOBILE HOME PARK (FRENCHTOWN) 9-LOT SUBDIVISION FOR LEASE/RENT (INCLUDES A 1-LOT SUBDIVISION)

Lisa Moisey, Office of Planning & Grants, said this was request from Ed Alexander for a 9-lot mobile home park located along the Frenchtown Frontage Road next to the Frenchtown High School. Mr. Alexander is proposing to subdivide his 550 acre parcel to create one 5 acre lot on which he is seeking approval for a subdivision for lease or rent. Mr. Alexander intends to preserve the balance of the property for the continued operation of his farming business. Mr. Alexander is seeking approval to phase the development of the mobile home park. Phase I is scheduled for 1996 and will consist of the west side of the development of the 9-unit subdivision and will include the recreation area. Phase II will include the balance of the lot and is anticipated to occur in 1997. The property is presently unzoned in the County. The 1975 Missoula County Comprehensive Plan has designated this property as open and resource land and recommends a maximum residential density of up to one dwelling unit per 40 acres. This property is also located within the Frenchtown Activity Circle. The development of 9 mobile home spaces on this property is consistent with the density recommendation of the Plan, given that Mr. Alexander has 500 acres. In addition, Mr. Alexander has designed a subdivision which clusters development unto one 5 acre corner of his property. This cluster location is an area which contains mature pine trees and sander soils that have been less suited for agricultural uses. It is OPG staff’s opinion that this proposal meets not only the intent of the density recommendations, but also the goals and objectives of the Comprehensive Plan. Access to the subdivision will be from the Frenchtown Frontage Road. Internal access will be provided by a proposed private cul de sac road which will be paved to meet County standards 24 feet wide. The applicant has proposed shared septic systems for the 9 units on the subdivision and a community well. The applicant is seeking a variance request from pedestrian walkways for the subdivision. OPG staff
recommends denial of the variance request and suggests that the applicant install pedestrian pathways along each side of the street and improve a gravel path along the Frenchtown Frontage Road where it joins the portion of the property which will be set aside for the mobile home park. The Planning Board held a public hearing and voted 9-0 to recommend approval for the 9-lot subdivision for lease or rent. The Planning Board voted 9-0 to recommend denial of the variance request. It did not take into consideration the one-lot subdivision because there is not part of their review.

Tim Wolfe, Territorial Engineering and Surveying, said most of the conditions they have already taken care of. They feel this is a good subdivision as there is a strong need for affordable housing in the Frenchtown area. There is a band of trees that makes it unfarmable, but attractive, so they are taking the non-productive ground and using for the mobile homes. They already have the sanitary approval from the State. There has been problems in the Frenchtown area with ground water pollution and so forth and they have addressed that. They enlisted Prof. Bill Woessner’s help and he has helped them get a clean bill of health. They are going to provide a fence and storage area for RV’s and boats and that type of thing.

They have 2 concerns. One is the request by the Frenchtown Fire District for a 2,000 gallon storage tank. They talked to Scott Waldron of that Fire District and he will consider an impact fee instead of the storage tank. The other issue is the walkway system. They understand the benefits of the pedestrian walkway but there are also negative aspects. There are no established walkways within a mile of this area. The nearest commercial area is downtown Frenchtown which is about a mile away. The high school immediately to the west is the only developed area that would benefit from a walkway system. This development is not close to families but it is geared to retirement people, so they are not expecting children. In relation to the 2 paved walkways that OPG has suggested, they want a gravel path along the frontage that would eventually tie into the Frenchtown High School so students can walk along the frontage road. If the gravel path is not used, it will probably grow knapweed and be a maintenance problem. He also wanted to comment that Frenchtown High School is currently installing a wood post fence along their approach road and they did not leave enough room for a walkway next to it. If the Commissioners do feel that a walkway is necessary, he asked for a compromise. Perhaps they can put an asphalt path on one side of the proposed road.

Michael Kennedy opened the public hearing.

Anna McDonald said her property abuts the proposed development. She said, in a trailer park, adults are not there all day. There are kids during track time that run up and down the road, kids with bicycles, and people walk on the road. Regarding the trees, she said in one part, there are only 12 trees and they are right by her property. Her bedrooms are on the east side of her house, which is next to the trailer court. Her septic tank is also east of her house. She asks if she will be required to have extra insurance in case someone from the court is hurt on her property? She is on a fixed income and cannot afford the extra insurance to protect herself. She feels that no matter how many rules or regulations they have, from experience, she feels people ignore them. She has heard numerous complaints from the people who live close to the trailer court on old Highway 10 and she feels she will have many of the same problems. She has also been told having the trailer court go in so close to her own home will lower her property value. She is the only one that will have to put up with the noise from the trailer court because the next closest neighbor, the Alexanders, live quite a distance away. She, however, will have the trailer court just on the other side of the fence.

Michael Kennedy thanked Mrs. McDonald for her comments and asked if anyone else wanted to testify at this hearing. No one came forward and he closed the public hearing. He then asked the developer what prompted this specific location of the court?

Tim Wolfe answered they wanted it near trees and these are the only trees in the area.

Michael Kennedy asked if there was comparable unusable agricultural property adjacent to the Alexanders’ home?

Tim Wolfe answered no.

Barbara Evans asked if the applicant or developer had any suggestions to help ameliorate Mrs. McDonald’s concerns?

Ed Alexander replied that he is building a 6 foot tall privacy fence that will go the full length of her property. It will be a chain link fence with privacy slats. He will also plant fast-growing Lombardi Poplar trees. Then he asked if the County Commissioners would consider lowering the speed limit on the frontage road. It is currently 50 MPH and he feels that is unsafe, especially with the high school right there, and also the Frenchtown interchange. Further, going east on the frontage road, there are 2 churches that add more traffic. Going back to Mrs. McDonald’s concerns, he does not anticipate the problems she does, however, there will be additional people, and when you have people, unforeseen problems will arise.

Barbara Evans asked if these mobile home spaces will be rented or owned?

Ed Alexander said they will own their mobile homes on half acre lots but will pay a monthly rent for the space. They will be expected to landscape their lots. There will be no outside pets. He said he will try to make it as nice as possible. In the leases the tenants sign, there will be stipulations that will be followed and measures will be taken if they are not.

Barbara Evans recommended that, for Mrs. McDonald’s benefit, that the stipulations for pet restrictions, noise, etc., be placed in the lease. If they are placed in the covenants, the covenants are enforceable only by the people who have the covenants. If they are placed in the lease, the stipulations will be easier to enforce.

Ed Alexander said he understood.

Fern Hart asked Lisa Moisey about the concern for pedestrian walkways?

Lisa Moisey answered that staff recommended that a 5 foot wide asphalt pathway should be constructed on each side of the private cul de sac road, which will serve the lots within the subdivision. Also, that the developer improve a
gravel pathway adjacent to the Frenchtown frontage road, along the portion the property which will consist of the one lot.

Barbara Evans asked Lisa what was her opinion of a waiver of a right to protest doing it at some future time when there would be something to which it could connect?

Lisa Moisey answered, after reviewing the situation, OPG staff felt this should be the time to start the pedestrian pathways. They felt that, with the high school nearby and now the added population from the subdivision, and the road being narrow with virtually no shoulder, this would be a good time to start a sidewalk. It would be needed and used since there is no place safe to walk.

Fern Hart asked if this property was platted next to the Frenchtown High School?

Lisa Moisey replied, along the frontage road, is Mrs. McDonald’s property. Mr. Alexander’s property is adjacent to the Frenchtown High School property in the back and is separated by the Frenchtown irrigation ditch. OPG staff had originally considered making a connection in the back but there was concern about liability. The ditch company does not allow pedestrian walkways there. It would have to involve a bridge, since the ditch is about 15-20 feet wide and elevated about 8-10 feet high. It was not practical to make the connection between the high school property and Mr. Alexander’s property.

Colleen Dowdall said the regulations do not require a walkway in any particular place. The regulation is written generally so that staff can consider individual situations and make their recommendation.

Michael Kennedy commented that staff has recommended the denial of the variance for thoughtful reasons and, interestingly, the Planning Board voted against the denial. Even though this is a small area, a sidewalk would provide some refuge for the 9 proposed homes there and there will be a significant impact. He agreed with the staff and supported their denial.

Fern Hart asked Scott Waldron to address the fire district concerns.

Scott Waldron, Frenchtown Fire District, said, when this plat was originally reviewed, the only options in the Frenchtown Fire District were to require water. Since then, the Fire District has approved an impact fee process. In this case where it is within a mile of the fire station, it would be most cost effective to accept an impact fee instead of water. The impact fee will go into a holding fund so that eventually, they can put in a 10,000 gallon tank at the school. They have forwarded the impact fee to the County Attorney’s office for review.

Colleen Dowdall said they have not reviewed it yet. Also, it has not been adopted as part of the subdivision regulations.

Michael Kennedy asked if this was separate from the $50 hose fee?

Scott Waldron answered that their district has never had such a fee.

Fern Hart asked Counsel how they should deal with this?

Colleen Dowdall answered they could require that they mitigate the satisfaction of the fire district, the impacts of this subdivision on the fire district. The impact fee legislation is in the Subdivision and Platting Act and, as a result, the Commissioners are authorized to charge an impact fee but they have to do it based upon information that is provided to by the agency that is being impacted. However, the legislation is limiting. She is not certain this is the route that they County can go eventually. But if they do it with the mitigation language, that would get us through this.

Barbara Evans moved that the Board of County Commissioners grant the variance from sidewalks and pedestrian walkways for the Valley Homes Mobile Home Court.

The motion died for lack of a second.

Fern Hart stated she appreciates this subdivision and she is concerned how neighbors feel about it. This is a beautiful area and this can be a quality site next to the school. She believes there will be children there and there will be a need for a walkway. Further, she believes the better the subdivision is constructed, the more respect people will have for it. She was glad to hear that it will have a privacy screen and park. She also noted that this subdivision is in the activity center.

Barbara Evans moved that the Board of County Commissioners deny the variance request for the frontage road and for one side of the cul de sac of Valley Homes Mobile Home Court.

The motion died for lack of a second.

Fern Hart moved that the Board of County Commissioners approve the summary plat for the Valley Homes Mobile Home Park, based on the findings of fact in the staff report, which will divide the acreage into a 5.14 acre parcel.

Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners deny the variance request from pedestrian walkways.

Michael Kennedy seconded the motion. Motion carried 2-1. Barbara Evans opposed.

Fern Hart moved that the Board of County Commissioners approve the nine-lot subdivision for lease or rent for the Valley Homes Mobile Home Park, based on the findings of fact in the staff report, and subject to the conditions listed below. Barbara Evans seconded the motion. Motion carried 3-0.
1. The developer shall install a five (5) foot wide asphalt pedestrian pathway along both sides of Jodilyn Lane. The developer shall install an improved gravel pathway, located in the right-of-way of the Frenchtown Frontage road, along the frontage of the mobile home park. Plans shall be approved by the County Surveyor prior to submittal of final plans.

2. The developer shall provide a 54 foot wide private roadway easement, located between mobile home space 6 and the park area.

3. The developer shall amend the park rules for the mobile home court to include the following:
   A. Domestic pets are to be kept in a contained area on each mobile home site to avoid wild animal harassment.
   B. Pets shall be fed indoors, and pet food shall be stored indoors.
   C. All garbage shall be placed into the dumpsters provided by the court owner.
   D. Permanent barbecue pits are prohibited. All portable barbecues shall be cleaned regularly and stored indoors when not in use.
   E. Flowers, ornamental shrubs and fruit trees may be susceptible to damage from wildlife, therefore planting of native vegetation is encouraged.
   F. All garden fences shall be constructed at least eight feet in height and one foot below the soil to prohibit animal intrusion, using a solid top rail on all fencing made of something other than wire to avoid animal entanglement.
   G. Compost piles shall be enclosed.
   H. No parking shall be allowed on Jodilyn Lane.

4. The location of the trailer stand on Lot 1 shall be relocated to provide a 25 foot set-back from the western property line.

5. Provisions for utility easements shall be shown on the final plans.

6. The developer shall mitigate to the satisfaction of the fire district the impact to that district of the development. Plans shall be approved by the Frenchtown Rural Fire District prior to submittal of final plans.

7. The developer shall preserve, to the maximum extent possible, all mature trees with a 6” DBH (diameter breast height) or larger trunk.

8. The developer shall install a 6 foot high privacy fence along the entire length of Mrs. McDonald’s east property line which is located to the west of the proposed subdivision for lease or rent.

There being no further business to come before the Board, the Commissioners were in recess at 2:35 p.m.

PRELIMINARY HEARING ON FY’96 BUDGET

The meeting was called to order at 2:40 p.m., immediately following the public meeting, by Chair Kennedy. Also in attendance were Commissioners Fern Hart and Barbara Evans; Doug Chase, Sheriff; and Jane Ellis, Chief Financial Officer.

Jane Ellis, Missoula County Chief Financial Officer, had given out handouts showing the different accounts of the County, the various budget amounts allotted to them, and other information about the accounts. She briefly described how to read the charts. She then described where the tax dollars came from. She noted that the portion of the budget that many were interested in today was only a small “slice of the pie,” however, she emphasized this was a preliminary budget and the County was interested in the comments from the public.

Chair Kennedy said they are scheduled to adopt the budget on August 5. He then opened the meeting to public comment.

The following people spoke in support of their organizations and/or causes:

Debbie Wienstein, Executive Director of the YWCA
Carol Graham, Board Member of the YWCA
Shannon Parker, Director, Community Resource Connection and W.O.R.D
Rita Tucker, President, Board of Directors, Extended Family Services
Joyce Anderson, Extended Family Services
Raymond Gardner, Animal Control
Cindy Raymond, Director of Social Service Department, Salvation Army
Kate Jerrim, Case Manager on the Social Security Income Transition Program
Sally Brown, Missoula Parent Co-Op
Jeannie Twohig, Director of Partnership Health Center
Jennifer Pohl, Family Basics, W.O.R.D.
Margaret Watson, Director, Emergency Services
Annette Sontag, W.O.R.D., Project Director, Options I Program
Janet Bush, Director, Child Care Resources
Judy Smith, W.O.R.D.
Bill Carey, Director of Missoula Food Bank

Jeff Comfort, participant, Basic Needs and Social Security Transition Income Program
Bruce Spray, participant, Social Security Transition Income Program
Eileen Mauer, participant, Community Resource Connections
Barbara Bush, patient, Partnership Health Center
Shelby Akane, patient, Partnership Health Center

Michael Kennedy thanked everyone for their comments and asked if anyone else wanted to come forward to speak? No one came forward. He commented that Missoula is blessed with people that are interested in a community effort and today’s testimonies served to confirm that. He said the Commissioners are making every effort to respond to the tremendous needs within the community in the best way they can. With that, he closed the meeting.

Meeting adjourned at 4:38 p.m.

THURSDAY, JULY 25, 1996

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

Plat -- The Board of County Commissioners signed the Plat for Dougherty Tract No. 1, a minor subdivision located in the NE¼ Sec. 13 T14N R20W and the NW¼ of Sec. 18, T14N R19W, P.M.M., Missoula County, with the owner of record being the Dougherty Ranch Limited Partnership.

Amendment to Agreement -- The Board of County Commissioners signed Amendment I to the County MCH Assessment and Planning Project Agreement between Ravalli County and the Missoula City-County Health Department, with an effective date of July 1, 1996, amending the Agreement as per the terms set forth. The Amendment was returned to the Health Department for further handling.

Notice of Hearing -- Chair Kennedy signed a Notice of Hearing with regard to the Proposed Jail Bond Issue, setting the hearing for July 31, 1996 at 1:30 p.m.

Extension Letter -- The Board of County Commissioners signed a letter to John Kellogg, Professional Consultants, Inc., approving a 90-day filing extension for C Bar C Estates Subdivision, making the new filing deadline October 30, 1996.

Other items included:
1) The Board of County Commissioners approved a request by Vickie Zeier, Clerk & Recorder, to write off NSF checks that remained uncollected for Fiscal Year 1996; and
2) The Board of County Commissioners approved a request by Vickie Zeier, Clerk & Recorder, to write off personal property taxes that are more than 5 years delinquent.

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

FRIDAY, JULY 26, 1996

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

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, JULY 29, 1996

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.

DAILY ADMINISTRATIVE MEETING

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

Request for Full Reconveyance -- Chair Kennedy signed a Reconveyance to First American Title Company of Montana, requesting First American Title to reconvey Lots 10 and 13 of Westfield Square, a platted subdivision in the City of Missoula to the parties designated by the terms of a Montana Trust Indenture dated December 5, 1994, and recorded with the Missoula County Clerk and Recorder’s Office at Book 432, of Micro Records, Page 1199. The document was returned to Kathy Smith in the County Attorney’s Office for further handling.

Contract -- Chair Kennedy signed Task Order No. 9 between Missoula County and the Montana Department of Public Health and Human Services (DPHHS), DPHHS Contract No. 360163, to continue the Special Health Services “Follow Me” project within Missoula County SFY 1997, per the terms set forth, to commence on July 1, 1996 through June 30, 1997, and for a maximum compensation amount of $31,200.00. The document was forwarded to DPHHS in Helena, Montana.

Contract -- Chair Kennedy signed Task Order No. 1 between Missoula County and the Montana Department of Public Health and Human Services (DPHHS), DPHHS Contract No. 360163, to provide SFY 1997 funding for services under the Maternal and Child Health Services Block Grant and to incorporate the current federal poverty guidelines, per the terms set forth. The document was forwarded to DPHHS in Helena, Montana.
Other items included:

1) The Board of County Commissioners appointed Greg Martinsen to serve as the Conservation District supervisor representative on the Water Quality Board; and

2) The Board of County Commissioners appointed John Hulett and Gary Ropp to the Lolo Water & Sewer Board.

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

TUESDAY, JULY 30, 1996

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

Audit List -- The Board of County Commissioners signed the Audit List, dated July 30, 1996, pages 2-34, with a grand total of $107,050.47. The Audit List was returned to the Accounting Department.

Site Inspection -- In the afternoon, Commissioner Kennedy accompanied County Surveyor Horace Brown for site inspections of 6 unused road rights-of-way in the Lolo Creek area.

FINAL HEARING ON FY’97 BUDGET -- PUBLIC LIBRARY

The Final FY’97 Budget Hearing was called to order at 7:00 p.m. by Chair Kennedy. Also present were Commissioner Fern Hart and Jane Ellis, Chief Financial Officer.

Michael Kennedy opened the meeting by explaining this was the final hearing on the FY’97 budget prior to adoption on August 5, 1996. The purpose of this hearing is to receive information from the public. That information is important in their decision-making process.

There are a couple of matters that make this year’s budget process different from other years. One is the last legislative session, the legislature took action on reducing the overall personal property tax. This had an effect on the source of revenue to provide services for Missoula County, one that resulted in lower than expected increase in the overall mill value. So the available resources that the County has are less than what they had anticipated. The other reason is that there has been a lawsuit filed out of Cascade County called the “Albright Case.” This challenges the way property has been appraised. They are not clear what the consequence of this lawsuit will be. In the meantime, the plaintiffs in the case have asked the court to place a demand on all Montana Counties to reserve a percentage of their budget should they succeed in their case. For Missoula County, that reserve is 7.8%. These, added to the additional expense that we are going to incur this year because of employee salary and benefits package, add up to significant amounts that heretofore have not been considered in the budget review.

He then asked Jane Ellis to give a presentation.

Jane Ellis, Chief Financial Officer, gave out handouts showing the different accounts of the County, the various budget amounts allotted to them, and other information about the accounts. She briefly described how to read these and the charts included. She also commented that this was the most difficult budget year that she has experienced other than FY’88, when there were cut-backs related to implementation of I105’s and the elimination of general revenue sharing.

Michael Kennedy thanked Jane for her explanations and then opened the public hearing.

The following people spoke in support of the various organizations and/or causes:

Kathleen Smith, Animal Control
George Bailey, D.A.R.E.
Beth Metzgar, Partnership Health Center
Ruby Dunn-Owens, Board member and patient, Partnership Health Center
Robert Wood, recipient, Basic Needs and Partnership Health Center
Barbara Dahlgren, Animal Control
Georgia Honey, patient, Partnership Health Center
Ralph MacDonald, Board Member, Partnership Health Center
Dr. Tim Hannon, Lolo Veterinary Clinic, Animal Control
Mary Kelley, Member of the Animal Control Board
Anita Richards, Seeley Lake Community Council
Russ Lodge, Principal at Target Range School, D.A.R.E. Program
Melodee Smith, 5th Grade Teacher, Target Range School; D.A.R.E. Program
Jim Borfeind, Professor, University of Montana; D.A.R.E. Program
Sharon Dale, Superintendent of Bonner Schools; D.A.R.E. Program
Craig Brewington, Superintendent of Hellgate Schools; D.A.R.E. Program
Rita Tucker, President, Extended Family Services
Sally Brown, Missoula Child Care Co-op

At this point, the Commissioners and Jane Ellis answered questions the audience had with regard to the budget. Then the Commissioners gave their closing remarks.
Michael Kennedy re-emphasized some of the difficulties that they are facing in making their budget decisions, but he wanted it noted that they do not judge any particular department or cause over another. They are all important and the Commission sees that. Missoula County demands certain services and they are needed. It is difficult to be at this point to determine how the available money can be spread so that the services are preserved and the quality of life stays high.

Fern Hart stated, in looking at budgets overall through the last three years, they are seeing a reduction in the money raised by taxes. She understands that people feel their taxes are going up but the County is taking less and less percentage in the total budget from taxes. That decrease is also happening in state funds coming to the County. A lot of the human services funds are capped or cut. The pressure is coming down to the County level as to what we can continue to fund. The federal money is capped, the state pass-through money is being reduced; an example of this is this year, the County Surveyor’s office lost $700,000. That is a difficult cut to take and still do dust abatement and snow-plowing. Thus, she stresses that organizations and agencies need to find ways to increase their revenue from other sources, such as fees, fines, contributions, whatever can work in the public area, because the local government cannot fund at the level it did, even from last year’s level. They did not see the increase in the mill that they anticipated for the increase in the commercial agencies on Reserve Street. The State Taxation Committee is moving toward legislation which will limit reappraisal. All these things affect the tax base. The revenue that is being reviewed is static and, at the same time, the community’s needs are growing and the County’s needs are growing.

The meeting was adjourned at 8:10 p.m.

WEDNESDAY, JULY 31, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Plat -- The Board of County Commissioners signed the Plat for Kalli Addition, a minor subdivision located in the NW¼ of Sec. 17 and in the NE¼ of Sec. 18, T14N R20W, P.M.M., Missoula County, a total area of 51.80 acres gross and net, with the owners of record being George E and Kathleen L. Deschamps.

Professional Services Contract -- The Board of County Commissioners signed a Professional Services Contract between Missoula County and Healthy Mothers, Healthy Babies Montana Coalition, an independent contractor, for the purpose of creating and distributing a Healthy Profile and Resource Binder for each of Montana’s 56 counties as per the workplan, as per the terms set forth, for the period commencing July 24, 1996 through September 30, 1996, for compensation in the amount of $12,516.00.

Agreement -- Chair Kennedy signed an Agreement Regarding Encumbrance of Leasehold Interest for the borrower, Friends to Youth, Inc., agreeing that Missoula County will subordinate its interest to a 1st mortgage lender for the construction of the Friends of Youth’ new building, as per the terms set forth.

Another item:

The Board of County Commissioners reviewed and denied a request from Janet Stevens for retroactive PERS Coverage for the period she was a Justice of the Peace and a County Commissioner.

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

FINAL HEARING ON FY’97 BUDGET, CONTINUED

The Continuation of the Final FY’97 Budget Hearing was called to order at 10:00 a.m. by Chair Kennedy. Also present were Commissioner Fern Hart, Jane Ellis, Chief Financial Officer, Susan Reed, County Auditor, and Hal Luttschwager, Risk Manager.

Michael Kennedy opened the continued FY’97 budget hearing and, after a brief presentation from Jane Ellis, opened the public hearing.

The following people spoke in support of the various organizations and/or causes:

Susan Kohler, Executive Director, Missoula Aging Services
Linda Torma, Clinical Specialist in Gerontological Nursing, Missoula Aging Services
John Odlin, Justice of the Peace, Justice Court

Michael Kennedy thanked the speakers for their comments and closed the public hearing.

Meeting was adjourned at 11:00 a.m.

PUBLIC MEETING

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

READING OF PROCLAMATION -- “COMPATIBLE DAY”

Fern Hart read the Proclamation for “Compatible Day:”
WHEREAS, The Missoula community has a long history of providing social and healthcare services through agencies working together, including Partnership Health Center, Missoula Aging Services, Partners in Home Care, Missoula Food Bank, Extended Family Services, Salvation Army, Poverello Center, the Mental Health Center, Friends to Youth, WORD, and the YWCA, and;

WHEREAS, The Missoula community has two excellent medical facilities, Community Medical Center and St. Patrick Hospital, which are integral parts of our local service delivery system and which provide state-of-the-art medical care to those of us fortunate to live in the Missoula valley, and;

WHEREAS, Missoula’s two hospitals provide many non-duplicated services, and have received national attention for their cooperative efforts, and;

WHEREAS, The high cost of medical care is of local and national concern, and;

WHEREAS, Our two hospitals are cooperating in a joint effort to benefit LifeFlight and the Chalice of Repose Project at St. Patrick Hospital along with the Women’s Health Program at Community Medical Center.

Therefore, We, the Board of County Commissioners of Missoula County and the Mayor of the City of Missoula do hereby proclaim the day of September 21, 1996 as COMPATIBLE DAY

and urge our City and County residents to join in the fun by participating in, or otherwise supporting this special day.

Dated July 31, 1996

Michael Kennedy said it is easy to take things for granted and, thus, it is always a pleasure to reaffirm working for the common good and the good benefits that come from these service agencies.

Fern Hart moved that the Board of County Commissioners affirm and sign the COMPATIBLE DAY Proclamation. Barbara Evans seconded the motion. Motion carried 3-0.

DECISION ON: REQUEST TO ABANDON 6 UNUSED ROAD RIGHTS-OF-WAY (LOLO CREEK AREA)

Postponed; attorney David Cotner, representing the property owner, was not present and the Deputy County Attorney suggested this decision be postponed until he was present.

HEARING: PROPOSED JAIL BOND ISSUE

Michael Sehestedt, Chief Deputy County Attorney, said the time has come where the Commissioners need to make the decision about whether they will submit to the electors at the November election the question of whether to authorize the issuance of general obligation bonds for the purpose of funding the construction of the County detention facility. Also, is the question is how much should the County ask for and what will the amount purchase?

Doug Chase, County Sheriff, stated, beginning about 1988, they had an issue of the jail being filled on many evenings and week-ends. Now, the jail is full on a continuous basis with the rarest of exception. The only cells that might be available are several women’s cells. The male population side is full over 99% of the time. It is a serious concern for members of the public, detention officers, and the officers out on the street. In just the past 3 months, 111 people have been refused entry into the jail or released to make room for the people who had more serious crimes. He said it is difficult to see people who have been charged with domestic abuse, sometimes for the 3rd time, which is a felony under Montana law, or 4th, 5th or 6th time DUI offenders, who are also felons, walking the same as people who receive a traffic ticket. It is obvious we do not have the room to keep the people that is necessary for the protection of the public. He gave some examples of the crimes committed by people who are simply ticketed and walk away, having been told to appear at court on their given date. He said it is not uncommon that they do not appear for court and then they issue a warrant for that person’s arrest. There are over 7,000 warrants at this time to be served by the Missoula City Police, Highway Patrol, and County Sheriff’s Department.

The criminal justice system is a position of “the wheels coming off the wagon,” from the County Attorney’s office to the Public Defenders Office to the Justice of the Peace to the District Court, judges, prosecutors, etc., are unable to get sentences that they wish people to get for committing serious crimes. He wanted to also point out that, of the people in jail, the vast majority are felons. They have no business being out on the street or in the community. He asked the Commissioners that this be placed on the ballot for the November election.

Jane Ellis, Chief Financial Officer, distributed hand-outs entitled “Sizing of Jail Bond Issue.” Referring to the hand-out, she pointed out that the total estimated project cost for this facility is $26,697,371. That includes the adult detention facility, which has the state wing attached to it. The $26 million also includes a juvenile detention facility. The non-bond issue revenue sources that are available for the project include the state’s contribution of $5.5 million, a contribution from the U.S. Marshall of $750,000.00 and interest on bond proceeds of $700,000. Regarding the first 2 items, the state contribution hinges on approval of that dollar amount in the 1997 legislature. The U.S. Marshall contract is contingent upon the County’s passing of the bond issue. In other words, they want the County to “blink first.” Outside funding agency sources that can be applied to the construction costs are $6,950,000. That leaves $19.7 million, almost $19.8 million, for the County to have to fund. The County’s debt capacity specific to jail bonds is only $18.8 million and the figure the County gave the public is $14 million. Clearly, the numbers don’t work. Reductions include eliminating the new juvenile facility, which costs about $1.9 million. In lieu of that, they can remodel the west end of the fourth floor of the County Courthouse Annex, which is presently the women’s jail facility. The remodel can include eliminating the new juvenile facility, which costs about $1.9 million. In lieu of that, they can remodel the west end of the fourth floor of the County Courthouse Annex, which is presently the women’s jail facility. The remodel can include eliminating the new juvenile facility, which costs about $1.9 million. In lieu of that, they can remodel the west end of the fourth floor of the County Courthouse Annex, which is presently the women’s jail facility. The remodel can be done for about $100,000 and would provide about 12 juvenile beds. They are also looking at square footage of the new facility.
reductions in the jail of about 10,000 square feet that would amount to a $1.3 million savings. There is also equipment cost reductions that would garner about $270,000. Thus, they can find about $3.4 million in reductions. That still leaves $16.2 million as a potential bond issue dollar amount. They find that unacceptably high. However, she believes it would be unwise to eliminate beds to bring the cost down. This facility needs to remain adequate for the 20 years it will take to pay the bonds off.

For the record, she stated the last time the County did construction related to detention facilities was when the Courthouse Annex was built in 1965. So it has been over 30 years since the County put money into construction of a detention facility.

Michael O’Hara, Jail Captain, said a lot of the inmates are being held in Mineral and Ravalli Counties, who have been of great assistance to Missoula County, but we have also filled those jails to capacity. After learning of the cost of the proposed facility, he is trying to see where we can make reductions.

Michael Kennedy opened the public hearing.

Ron Ewart, 5603 Ebway, Missoula, said he is in full support of the proposed County jail. He felt it has been long needed.

Michael Kennedy said the analysis on the proposed jail has been conducted for many months and last year, 6 County officials and employees took training on how they might approach design and implementation of new detention facilities, which has been useful to them. They are attentive to the cost of the jail; not just the capital cost but the overall operation and maintenance cost over the life of the project, which is significant. One of the components of the study was “what will ultimately be the cost to the taxpayer?” The solution they will offer to the voters will be that lowest cost alternative that will provide a level of safety to the public and security for the staff.

He said they will continue the public hearing and will receive comment through 10:00 a.m. Monday, August 5, 1996, when they make a decision whether to place it on November’s ballot and for what amount.

COMMISSIONER BARBARA EVANS LEFT THE MEETING AT THIS POINT.

CONSIDERATION OF: DINSMORE’S ORCHARD HOMES ADDITION NO. 5 -- LOT 36A (SUBDIVISION FOR LEASE/RENT) (CONTINUED FROM 7/17/96)

Sam Islam, Office of Planning & Grants, said this was a consideration continued from July 17, and there are two choices of design.

Ron Ewart, Eli & Associate, said they had decided to go with the original plan, which placed the drive to the two proposed single family homes to the west of the duplexes, instead of between the duplexes, which was an alternative plan. They came to this decision after reviewing many factors and the applicant, Jim Wierson, also agreed this was the best design. One of the main reasons that helped them decide not to want the plan with the drive between the duplexes was a drainfield replacement area that they would have had to cross over and they would have had to move the drainfield replacement area. So they felt the plan to have the driveway come straight off of Wierson Lane, (which, by the way, has been changed to Shrub Rose Lane) was the best plan.

He asked if the word “new” could be added to condition nos. 6 and 7, making it “new lot or dwelling unit” and “new portion of the subdivision.” In condition no. 3, he would like to change the wording to “the Developer shall pave the driveway to the two new homes to a width of 12 feet, “ which is the standard width for driveways. He does not believe according to the regulation that they are required to pave the driveway but the applicant wants to pave it. However, Mr. Wierson is not in favor of widening Shrub Rose Lane. The existing duplexes, the existing lane and the landscaping makes this property look nice, almost quaint. There is a 14 foot wide paved road and most of the length of the lane has about 6 foot of white-washed gravel and on the other side is a row of landscaping. Mr. Wierson hopes to leave it at 14 feet because they believe it is a sufficient width, especially with the extra 6 feet of gravel, so there is adequate room for one vehicle to pass another and there are also 3 pull-outs. Also, cars travel at slow speeds because it is only about 400 feet from the end of the lane to the street. Further, it looks good for this area the way it is.

In condition no. 4, he read the “Developer shall dedicate a 27 foot public road easement along the eastern property line, from the north property line to the south property line, to serve potential future developments to the south and east of Lot 36A.” If, in the future, there is more development to the south and the County wants to make it a public road, then at that time, the lane would be widened to accommodate additional traffic. But, for now, this property is attractive and quaint and the road situation works.

Michael Kennedy asked about the width of the roadway easement on Wierson Lane?

Ron Ewart answered there is no easement there now because it is all one lot and there is no need for an easement. But there would be one with the proposed development.

Colleen Dowdall, Deputy County Attorney, added there would not be a legal way to grant an easement because he would be granting an easement to himself. The new development will still be rentals.

Ron Ewart agreed, saying there is no subdivision of land here.

Colleen Dowdall said the land will remain in one ownership, on one lot, and the single family homes will be rentals in addition to the 2 duplexes. So the roadways exist, not as easements, but as driveways on the owner’s property.

Michael Kennedy stated, following Colleen’s comments, was the only thing the County can do is to stipulate a width at this time or not at all.
Colleen Dowdall agreed.

Michael Kennedy asked if there was something in the packet that showed the Fire District agreed with the proposal?

Ron Ewart answered yes. He sent Bill Lindstrom a copy of the plat and Bill responded with a letter stating that would be acceptable.

Fern Hart asked if the driveway regulation for this type of subdivision was 12 feet wide?

Colleen Dowdall replied yes. She said she is not sure it would meet the definition of a driveway for purposes of access under the subdivision regulations because it serves more than 2 dwelling units.

Lisa Moisey, Office of Planning & Grants, said the subdivision regulations read “a private access lane that serves three or more lots shall be considered a private road.” She pointed out that “lots” was the defining unit as opposed to dwelling places.

Ron Ewart said, explaining his earlier remark regarding paving the driveway to 12 feet, what he meant was from Shrub Rose Lane up to the two single family homes, that would be paved to 12 feet. Then he went to the drawing to show where the existing pavement and gravel were at this time and what was proposed.

Michael Kennedy asked about the easement Ron referred to on the drawing?

Ron Ewart answered that it would be an easement for public access.

Michael Kennedy stated he was hearing conflicting statements about easements and driveways on a single lot.

Ron Ewart said it would be all the way down Shrub Rose Lane so that there would be access if there should be development to the south or east.

Colleen Dowdall stated she was uncomfortable with that because they County would have to grant a public easement and she feels that someday the Supreme Court is going determine that a public easement is a County road. The County may end up with a public easement that does not meet County road standards.

Sam Islam said Ron explained that the intent of that condition so, in the future, if there is development, they will have a road to serve that.

Horace Brown, County Surveyor, said he was not comfortable accepting 27 feet as an easement without the adjacent property also giving 27 feet. They could end up with a sub-standard easement for future use and there is no way to build a 30 foot road on a 27 foot easement.

Fern Hart suggested that they say “the developers shall dedicate a 27 foot no-build zone along the eastern property boundary to serve potential future developments to the south and east in the event there is a road.”

Colleen Dowdall said if that were designated that, it would not become a part of the public record because no plat is going to be filed. She suggested that perhaps it could become a part of a development agreement that designates that portion as no-build, however, that would not give the County an easement. She felt that there will have to be some concessions as it does not seem likely that they will not be able to accomplish everything they want to.

Michael Kennedy said condition no. 3 talks about widening Shrub Rose Lane to 20 feet and the developer requests that it be reduced to 12 feet in the verbal presentation and the variance requests that it be reduced from 24 feet to 14 feet. He asked to have these clarified.

Ron Ewart said there is currently 14 feet width of pavement along Shrub Rose Lane and a 6 foot wide gravel strip. That would be continued out to where the park is shown and there will be room for a fire truck turn-around. They are asking for a variance from the standard of 24 feet of pavement down to 14 feet of pavement with the existing 6 foot strip. The driveway, up to the single family homes, will be 12 feet of paved surface, but which does not need a variance.

Michael Kennedy asked if there was a planning problem with that in view of the fact that the fire district has already signed off on this subdivision?

Sam Islam answered there is no planning problem as long the width of Wierson Lane is 20 feet for fire trucks to get through.

Fern Hart said she planned to put in condition no. 3 that the new driveway will be 12 feet in width and that the developer will provide pavement for all of Shrub Rose Lane to 14 feet and include 6 feet of white-rock gravel, which will add up to 20 feet of clearance for fire department service. Also, she will add the word “new” to conditions 6 and 7. Then she will not need to do a variance.

Colleen Dowdall said, even with the 20 available feet on Shrub Rose Lane, the standards require 24 feet, thus we still need a variance.

Fern Hart moved that the Board of County Commissioners grant the variance for Dinsmore’s Orchard Homes No. 5 Lot 36A subdivision, located on South 3rd Street West between Howard Street and Clements Road, legally known as the southwest ¼ of Section 24, T13N, R20W, Principal Meridian, from Subdivision Regulation 3-2(1), requiring 24 feet width of pavement, to 14 feet width of pavement for Shrub Rose Lane, with 6 feet width of gravel, giving the fire service 20 feet width of roadway clearance. Michael Kennedy seconded the motion. Motion carried 2-0.
Fern Hart moved that the Board of County Commissioners grant the variance for Dinsmore’s Orchard Homes No. 5 Lot 36A subdivision, located on South 3rd Street West between Howard Street and Clements Road, legally known as the southwest ¼ of Section 24, T13N, R20W, Principal Meridian, from Subdivision Regulation 3-2(1)(B) for sidewalks and pedestrian walkways. Michael Kennedy seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners approve the Dinsmore’s Orchard Homes No. 5 Lot 36A subdivision, located on South 3rd Street West between Howard Street and Clements Road, legally known as the southwest ¼ of Section 24, T13N, R20W, Principal Meridian, summary plat, based on the findings of fact and contingent on the 7 conditions listed below. Michael Kennedy seconded the motion. Motion carried 2-0.

Fern Hart said condition no. 3 should read “Developer shall pave the new driveway 12 feet wide, to be approved by the County Surveyor.” And condition no.6 should be amended to read “...per new lot or dwelling unit...” and condition no. 7 amended to read “...before any new portion of the subdivision...”

Michael Kennedy said there should also be a change in condition no. 4 about the easement.

Colleen Dowdall said Ron Ewart had asked if they could include “That the developer enter into a development agreement to provide a 30 foot no-build area” and then the rest of the condition can stay the same, along the eastern property line, from the north property line to the south property line, to serve potential future developments to the south and east of Lot 36A.”

Fern Hart added an amendment for condition no. 4, which should read “The developer shall enter into an agreement to provide a foot no-build area along the eastern property line from the north property line to the south property line, to serve potential future developments to the south and east of Lot 36A.”

Michael Kennedy added the motion should include “30 feet in width.”

Fern Hart disagreed, saying it should be 14 feet and 6 feet.

Ron Ewart said it should be a 30 foot wide no-build zone.

Fern Hart said okay, a 30 foot wide no-build zone would be in condition no. 4.

Michael Kennedy summarized the changes. One is in condition no. 3, changing the new driveway to 12 feet, condition no. 4, a 30 foot no-build zone on the eastern end of the property, and condition nos. 6 and 7, adding the word “new” before dwelling unit and portion.

Fern Hart asked if they needed “new” added before “per lot” in condition no. 6?

Colleen Dowdall answered that they could eliminate “per lot” as it was not applicable in this case.

Fern Hart said “per lot” would be deleted.

1. County Surveyor shall approve grading, drainage, erosion control, Wierson Lane as a street name, and road and driveway plans prior to approval of the final plat.

2. County Surveyor shall approve access and approach prior to filing the final plat.

3. Developer shall pave the new driveway 12 feet wide, to be approved by the County Surveyor.

4. That the developer enter into a development agreement to provide a 30 foot no-build area” and then the rest of the condition can stay the same, along the eastern property line, from the north property line to the south property line, to serve potential future developments to the south and east of Lot 36A.

5. The following statements shall appear on the face of the final plat and in all instruments of conveyance:

   “Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owners to waive the right to protest a future RSID/SID for any improvements to South 3rd Street West, including but not limited to paving, dust abatement, and sidewalk based on benefit, and may be used in lieu of their signatures on an RSID/SID petition.”

   “Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owners to waive the right to protest a future RSID/SID for public water and sewer systems based on benefit, and may be used in lieu of their signatures on an RSID/SID petition.”

6. The owner shall pay, and OPG shall approve, a $50.00 fee per new dwelling unit for the purpose of funding a large diameter hose fund prior to plat filing.

7. The owner shall install all improvements before any new portion of the subdivision may be rented or leased.

KRISKOVICH ACRES (2 LOTS) TURAH AREA

Lisa Moisey, Office of Planning & Grants, said this is a request from Joyce Kriskovich for a 2-lot subdivision of her property located in the Turah area in the Hellgate Pines Addition. Ms. Kriskovich owns 2.25 acres and she plans to subdivide to create a 1.25 lot, on which she already has a home, and a one acre lot for her son. The property is presently unzoned, the Comprehensive Plan recommends residential development for this area at a density of up to two dwelling units per acre. This property is also located within the Turah Activity Circle. Access to the lots will be from
Hellgate Drive, which is a dedicated County Road with a 54 right-of-way. County standards require a 60 foot right-of-way. The applicant has requested a variance from this requirement and staff recommends approval of the variance given that the road is existing and functions adequately with the 54 foot right-of-way. The gravel road surface presently meets County standards. There are numerous riparian resource areas on this property. Basically, these are depressions in the land where water has collected and plant-life characteristic of riparian areas have had the opportunity to flourish in those areas. The developer has noted that those areas will be no-build zones and has prepared a management plan which describes how those areas will be managed. Staff supports that management plan. OPG recommends approval of Kriskovich Acres subdivision, based on the findings of fact and subject to the 9 conditions found in the staff report.

Tim Wolfe, Territorial Engineering & Surveying, said he is representing the Kriskovich’s but they are also in attendance if the Commissioners would like to ask them any questions. He wanted condition no. 4 clarified. It requests that they get approval from the Missoula Rural Fire District and condition no. 9 requests that a long paragraph be shown on the face of the plat that essentially says the same thing. He would like to have the conditions merged into one or at least condense them. He would prefer not to have that long of a statement on the face of the plat.

Michael Kennedy addressed Lisa Moisey and said Hellgate Drive is the access for the mobile home that is currently there.

Lisa Moisey agreed.

Michael Kennedy asked why they needed a turn-around when this is a driveway?

Lisa Moisey answered, in areas considered wildland/residential interface areas, which are susceptible to wild fires, the subdivision regulations ask that we ensure that there is adequate access to the homes within lots in these areas and that the fire department approve the access to ensure that they can get their trucks up the driveway if need be. Further, that once the fire truck is on the property, that there is room to make the turn to leave.

Michael Kennedy said to have a turnaround on the property for the fire truck once the fire is out seems a little excessive.

Colleen Dowdall, Deputy County Attorney, said, typically, what they want to be able to do is get out in case it is a wildland fire and they are in trouble, i.e., if the fire is coming toward them.

Tim Wolfe’s opinion was that they turn around before they start to fight the fire because they operate out of the back of their trucks.

Colleen Dowdall asked if they were going to have covenants?

Tim Wolfe answered that there are existing convenants.

Lisa Moisey suggested that they can put it in the development agreement that they are going to file for the riparian management plan.

Fern Hart moved that the Board of County Commissioners approve the variance for Kriskovich Acres, legally described as Lot 12 of the Hellgate Pines Addition No. 1 in the SE¼ of Section 12, T12N, R18W, two miles southeast of Turah, from Subdivision Regulation 3-2(3) for public right-of-way width to allow a 54 wide foot right-of-way on Hellgate Drive based on the findings of fact. Michael Kennedy seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners approve the summary plat for Kriskovich Acres, legally described as Lot 12 of the Hellgate Pines Addition No. 1 in the SE¼ of Section 12, T12N, R18W, two miles southeast of Turah, based on the findings of fact as set forth in the staff report and subject to the conditions listed below.

Michael Kennedy seconded the motion. Motion carried 2-0.

1. The developer shall place, on the face of the plat, the following statement: “Acceptance of a deed for a lot within this subdivision constitutes the ascent of the lot owner to agree to waive their right to protest a future RSID/SID for improvements to Hellgate Drive, based on benefit, including paving, participation in a dust abatement district and pedestrian walkways.”

2. During issuance of the approach permit, the developer shall work with the County Surveyor to correct site distance concerns to the east.

3. The developer shall place, on the face of the plat, the following statement: “Acceptance of a deed for a lot within this subdivision constitutes the ascent of the lot owner to agree to waive their right to protest a future RSID/SID for community sewer and or water, based on benefit.”

4. The developer shall secure approval from the Missoula Rural Fire District showing adequate access and turnaround area.

5. The developer shall contribute $50.00 per lot to the Missoula Rural Fire District’s large diameter hose fund.

6. The developer shall enter into a development agreement with Missoula County to ensure the Riparian Resource Management Plan is implemented.

7. The developer shall include, as part of the development agreement, a statement noting that only Class A or B fire rated roofing materials will be allowed on all buildings constructed on the lots.
8. The developer shall label all areas of riparian resource as “no-build” zone on the plat prior to filing of the plat.

9. The following statement concerning driveways and fire service conditions shall be placed in the same agreement as the Riparian Management Plan: “Driveways in excess of 150 feet in length shall have approved turn-around for fire apparatus. A turn around 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 13’6” 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 by the appropriate fire jurisdiction.”

HEARING: HIGHWOOD ADDITION (PRELIMINARY PLAT) 7-LOT RESIDENTIAL Subdivision -- INTERSECTION OF GHARRETT STREET & HIGHWOOD DRIVE

Lisa Moisey, Office of Planning & Grants, said this was a request from Anne Maclay for a 7-lot residential subdivision on 2.35 acres. The property is located on Gharrett Street, north of the recently approved River Pines subdivision. The property is zoned CRR-3, which allows up to 4 dwelling units per acre. This proposal complies with the zoning for the area. The developer plans to extend the Karen Court cul de sac from the River Pines Addition to serve Lots 4, 5, 6 and 7. Karen Court is dedicated city right-of-way and the extension of Karen Court will be constructed to meet subdivision standards which will include sidewalks around the cul de sac bulb. Access to Lots 1, 2 and 3 will be from Highwood Drive, which is a dedicated right-of-way. Highwood Drive has a 50 foot right-of-way presently and does not meet subdivision standards which would require 60 feet. The developer has asked for a variance for this requirement and OPG staff and the Planning Board recommend approval of the request, given the street exists and adequately handles the traffic along that road. The developer is not proposing sidewalks along Highwood Drive. The parkland requirements for this subdivision, through a combination of dedicated park area and cash in lieu, will be met through Highwood Drive. The developer has asked for a variance from this requirement and OPG staff agree the language adequately meets the intent of the condition. The second amendment was on condition no. 4. Staff recommended a 5 foot wide sidewalk along Gharrett, Highwood and the Karen Court cul de sac. The developer agreed to install sidewalk along the Karen Court cul de sac, along the portion of the property which fronts Gharrett but is not intending to install sidewalk along Highwood Drive. The Planning Board agreed to those changes. The 5th condition was also amended and OPG agreed that the new language meets the intent of the condition. Condition no. 6 regarding street utility cuts was amended. OPG staff originally recommended the developer provide utility cuts for all utilities, that they be stubbed into all of the lots. The developer requested to stub all utilities into the lots on Karen Court and stub only the sewer connections for the lots on Highwood Drive. It was OPG staff’s opinion that, by providing utility cuts for all utilities for all lots at one time, you have the oversight of a project engineer and utility cuts would be made at one time instead of separately by each individual lot owner. The final change was on condition no. 11. The Planning Board recommended that the developer an SID statement on the face of the plat, waiving the right to protest participation for sidewalks along Highwood Drive. The Planning Board added that in lieu of asking the developer to put the sidewalks in on Highwood at this time.

Fern Hart asked if the staff agreed with the Planning Board on condition no. 6?

Lisa Moisey replied no.

Fern Hart asked about the variance?

Lisa Moisey answered they require a 60 foot right-of-way for Highwood Drive, but it is already built to 50 feet, which probably met County standards at the time it was built.

Eric Swanson, Associated Agency, said he represented Anne Maclay and worked with Gilbert Larson, Druyvestein, Johnson & Anderson. He encouraged the Board to approve this subdivision and said he was available for any questions they may have.

Fern Hart said, even though the Planning Board changed condition no. 6, she was inclined to support the staff’s recommendation.

Eric Swanson said their understanding is that the provision is set up for new streets as they go in and to stub into all utilities before the streets are paved. Highwood Drive is already paved. It will require a cut to go in and stub in to the utility and then, when the lot is sold, to find the end of the stub. If they can reduce the amount of labor needed to get in there, all the better.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing. He then said, since the sewer service will be provided by the City and the City’s policy is annexation and this will be in the City limits, it seems that it is appropriate that, whatever decision the Board makes, is approvable by the City engineering staff. He asked what they feel about the recommendations, variances and conditions of approval?

Lisa Moisey answered that she spoke with Steve King, City Engineer, he concurred that a 50 foot right-of-way was adequate at that location. Regarding the conditions, the condition for pedestrian walkways, City engineering supported OPG’s recommendation for walkways along all rights-of-way. The request for all utility cuts to be completed by the developer in condition no. 6 was a request from City Engineering and OPG staff agreed with it and made it a condition from the staff. All of the other changes they are in concurrence with.
Fern Hart moved that the Board of County Commissioners grant the variance for Highwood Addition, located approximately adjacent and west of the intersection of Gharrett Street and Kinnikinnick Court, north of the approved River Pines Subdivision, located in the SW ¼ of Section 6, T12N, R19W, from Subdivision Regulation 3-2(3) for public right-of-way width, accepting the 54 foot wide right-of-way for Highwood Drive. Michael Kennedy seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners approve the preliminary plat for Highwood Addition, located approximately adjacent and west of the intersection of Gharrett Street and Kinnikinnick Court, north of the approved River Pines Subdivision, located in the SW ¼ of Section 6, T12N, R19W, based on the findings of fact and contingent on the conditions listed below. Condition no. 6 should be amended to read OPG’s original recommendation. Michael Kennedy seconded the motion. Motion carried 2-0.

1. The City Engineer shall review final street and drainage plans to determine the need for an additional sump for disposal of surface water on Highwood Drive.
2. A “no access” strip shall be shown on the final plat along Lots 6 and 7 adjacent to Gharrett Street.
3. The developer shall install curbs and gutters along Karen Court and Gharrett Street. Plans shall be approved by the County Surveyor prior to filing the final plat.
4. The developer shall install a five (5) foot sidewalk along Karen Court and the portion of Gharrett Street which is adjacent to the Highwood Addition.
5. The developer shall provide cluster mailbox space for lots 4, 5, 6, and 7 on Karen Court. The cluster mailbox shall be provided with a concrete landing and located behind the sidewalk. Location of the cluster mailbox shall be approved by the United States Postal Service and the County Surveyor prior to filing the final plat.
6. All street utility cuts shall be completed by the developer and all utilities shall be stubbed into the lots. Plans shall be approved by the County Surveyor prior to filing of final plat.
7. The developer shall install a wheelchair accessible curb cut at the intersection of the twenty foot park corridor and Highwood Drive.
8. The developer shall note on the face of the plat that no driveway grade shall exceed ten (10) percent.
9. The developer shall provide an erosion control plan to the County Surveyor prior to filing of final plat. The plan shall show how erosion will be controlled during construction.
10. The developer shall work with the Department of Parks and Recreation on the design of a traffic bearing S.T.E.P tank lid that will not pose a hazard to users of the park trail. Plans shall be approved by the Department of Parks and Recreation prior to filing of the final plat.
11. It shall appear on the face of the plat that owners waive the right to protest participation in a SID for construction of sidewalks along Highwood.

There being no further business to come before the Board, the Commissioners were in recess at 2:42 p.m.
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 due to illness.

**Monthly Report**

Chair Kennedy examined, approved, and ordered filed the monthly report of Kathleen Breuer, Clerk of the District Court, showing fees and collections made in Missoula County for the month of July, 1996.

**ADMINISTRATIVE MEETING**

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

**Plat**

The Board of County Commissioners signed the plat for Jensen Addition No. 1, a subdivision located in the NW 1/4 of the SW 1/4 of Section 29, T. 13 N., R. 20 W., PMM, Missoula County, a total area of 15 acres, with the owner of record being Lee L. Jensen.

Resolution No. 96-062

The Board of County Commissioners signed Resolution No. 96-062, the Abandonment of a Portion of a County Road Right-of-Way along Washoe Creek, resolving to abandon the portions of the 1895 Right-of-Way which run across Sections 22, 23, 24, and 27, T. 13 N., R. 15 W., PMM, beginning at the point 90 feet east of the west boundary of Sections 22 and 27, and ending at the point in Section 24 where the 1895 Right-of-Way meets the right-of-way for the prescriptive County road which runs between the Greenough Post Office on Highway 200 and Garnet.

Resolution No. 96-063

The Board of County Commissioners signed Resolution No. 96-063 (replaces Resolution No. 95-060), a Resolution Fixing Salaries of Certain Elected Officials, resolving that the annual salaries of certain elected County officials, effective July 1, 1996, are fixed as follows:

- Clerk of the District Court: $39,269.61
- County Auditor: $39,269.61
- County Surveyor: $39,269.61
- County Commissioner: $41,269.61
- Clerk & Recorder/Treasurer: $47,123.53
- County Superintendent of Schools: $41,269.61
- County Attorney: $61,194.78
- County Sheriff/Coroner: $52,220.57

Resolution No. 96-064

The Board of County Commissioners signed Resolution No. 96-064 (replaces Resolution No. 95-034), a Resolution Fixing Salaries of the County Justices of the Peace, resolving that the annual salaries of the Missoula County Justices of the Peace, effective July 1, 1996, are fixed at $39,719.61.

**SR-1 - Secondary Road Priority Form**

The Board of County Commissioners signed a Secondary Road Priority Form approving the use of Secondary Road funds for an "Improved Railroad Crossing Surface" on the following projects: Secondary 263, located at Frenchtown - Milepost 14.4, at an estimated cost of $9,000; and Secondary 263, located at Stone Container Plant - Milepost 9.6, at an estimated cost of $9,000. The form was forwarded to the Department of Transportation in Helena.

**CONTINUATION OF FINAL HEARING ON FY’97 BUDGET**

The Continuation of the Final FY’97 Budget Hearing was called to order at 10:00 a.m. by Chair Kennedy. Also present were Commissioner Fern Hart, Jane Ellis, Chief Financial Officer, Susan Reed, County Auditor, and Rachel Vielleux, Superintendent of Schools.

After a brief presentation from Jane Ellis, Michael Kennedy opened the public hearing.

The following people spoke in support of the various organizations and/or causes:

- John Lind, Deputy Director of Missoula Health Center
- Dorothy Salmonson, Mental Health Crisis Services
- Daphne Jones, patient, Stephens House
- Miriam Kaminsky, Mental Health Crisis Services
- Dr. Jim Brooks, Director, Western Montana Health Center
- Linda Salmonson, patient, Stephens House
- Mary Swarner, YWCA, Pathways Program
- Charlie Wellenstein, Director, Missoula Youth Home
- Nancy Knight, On-Site Child Care Program
- Cindy Raymond, Director of Social Services, Salvation Army
FRIDAY, AUGUST 2, 1996

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

Monthly Report

Chairman Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Michael D. Morris, for month ending July 31, 1996.

No Administrative Meeting was held; however, the following item was signed:

Operating and Financial Plan - Amendment No. 2

Chairman Kennedy signed Amendment No. 2 to the Operating and Financial Plan signed in April of 1993 between Missoula County and Lolo National Forest, amending the Agreement to include reimbursement for fire suppression related services, as per the rate schedule set forth. The Amendment was returned to Don Morman in the Sheriff's Department for further handling.

CONTINUATION OF FINAL HEARING ON FY'97 BUDGET

The Continuation of the Final FY’97 Budget Hearing was called to order at 10:00 a.m. by Chair Kennedy. Also present were Commissioner Fern Hart, Jane Ellis, Chief Financial Officer, and Rachel Vielleux, Superintendent of Schools.

Seeing no one came to attend the continued budget hearing, Michael Kennedy adjourned the meeting at 10:20 a.m.

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, AUGUST 5, 1996

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

Monthly Report

Chairman Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, John Odlin, for month ending July 31, 1996.

ADMINISTRATIVE MEETING

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

Amended Professional Services Contract

The Board of County Commissioners signed an Amended Professional Services Contract between the City-County Health Department and James Ouellette, DDS, an independent contractor, extending the termination date of the current Agreement for dental services to PHC patients through June 30, 1997, as per the terms set forth, up to a maximum of $10,000 per year supported by Federal and County funds.

Special Lease of State Lands
Chairman Kennedy signed a Special Lease of State Lands (Agreement No. 3061308) between the State of Montana Department of Natural Resources and Conservation, and Missoula County Communications for part of the mountain top in the SW 1/4 of Section 30, T. 13 N., R. 18 W., a total of 1.0 more or less acres, for the purpose of a communication site to include microwave and radio capabilities, for a period of ten years through February 28, 2006, as per the terms set forth, with an annual money rental at the rate of $1,500.00.

CONTINUATION OF FINAL HEARING ON FY’97 BUDGET

The Continuation of the Final FY’97 Budget Hearing was called to order at 10:00 a.m. by Chair Kennedy. Also present were Commissioners Fern Hart and Barbara Evans, Jane Ellis, Chief Financial Officer, and Michael Sehestedt, Chief Deputy County Attorney.

Michael Kennedy opened the continued FY’97 budget hearing and, after a brief presentation from Jane Ellis, opened the public hearing. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the Fiscal Year 1997 Missoula County budget as has been submitted by Jane Ellis, having been worked on diligently by the budget and management team. Fern Hart seconded the motion. Motion carried 3-0.

Resolution No. 96-065  --  The Board of County Commissioners signed Fiscal Year 1997 Missoula County Budget into effect by signing:

RESOLUTION NO. 96-065
ADOPTING A BUDGET FOR MISSOULA COUNTY
FOR FISCAL YEAR 1996-1997

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 1996-1997, as required by law; and

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

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

IT IS HEREBY MOVED, SECONDED, AND CARRIED by this Board of County Commissioners that the resolution be adopted for Fiscal Year 1996-1997, as displayed in Attachments A, and B; and

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

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

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

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

NOW, THEREFORE, BE IT HEREBY RESOLVED by this Board of County Commissioners that the levies as detailed below be fixed and adopted for Fiscal Year 1996-1997, based on the value of a mill of $144,754 County-wide, and a value of $71,711 outside the city limits of Missoula.

IT IS HEREBY MOVED, SECONDED, AND CARRIED by the Board of County Commissioners "that the resolution be adopted, subject to the foregoing condition," for Fiscal Year 1996-1997 as detailed below:

<table>
<thead>
<tr>
<th>MISSOULA COUNTY-WIDE FUNDS</th>
<th>MILLS</th>
<th>ATTACHMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund</td>
<td>45.05</td>
<td>A and B</td>
</tr>
<tr>
<td>Bridge Fund</td>
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<tr>
<td>Poor Fund</td>
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<tr>
<td>Fair Fund</td>
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<td>Museum Fund</td>
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<tr>
<td>Extension Fund</td>
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<td>Weed Fund</td>
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<tr>
<td>Planning Fund</td>
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<tr>
<td>District Court Fund</td>
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<td>Mental Health Fund</td>
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<td>Child Daycare</td>
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<tr>
<td>Library</td>
<td>5.00</td>
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</tr>
<tr>
<td><strong>SUB-TOTAL</strong></td>
<td><strong>73.42</strong></td>
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</table>
MISSOULA COUNTY-WIDE DEBT SERVICE

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>G O Issue (Computer)</td>
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<tr>
<td><strong>SUB-TOTAL</strong></td>
<td>1.00</td>
</tr>
</tbody>
</table>

**TOTAL COUNTY-WIDE & DEBT SERVICE LEVIES**: 74.42

- Road Fund: 13.83
- Health Fund: 6.47
- Disaster Levy: .40
- Animal Control: .83
- **TOTAL COUNTY-ONLY LEVY**: 21.53

DATED THIS 5th DAY OF AUGUST, 1996
BOARD OF COUNTY COMMISSIONERS

The attachments for Resolution No. 96-065 are on file with the original Resolution in the Clerk and Recorder’s Office.

CONTINUATION OF HEARING on Proposed Jail Bond Issue

Michael Sehestedt, Chief Deputy County Attorney, said this meeting was called to decide how much money was needed so they would know what to ask the taxpayers and then a resolution was needed by the Board of County Commissioners to put the question on the ballot.

Michael Kennedy stated the detention facilities, adult and juvenile, has been an issue with Missoula County for a long time. The current facilities were constructed in the mid-60’s. The jail portion of that is even older. There have been no significant improvements for about 30 years. At the same time, the population of Missoula County has doubled. He commended the diligence of everyone involved in reviewing this situation, both citizen committees and County staff. Their combined efforts have brought us to this point, knowing what this facility will cost approximately and ready to make a statement to place it on November’s ballot for the taxpayers to decide on. The total estimated capital cost for the project is about $27 million. There is an expected contribution from the state of Montana because they are participating with them to reduce overall operation and maintenance costs over the life of the project at $5.5 million. They expect to enter into an agreement, should this pass with the voters with the U.S. Marshall’s office for detention facilities at about three-quarters of a million dollars and, again, should the taxpayers vote in, they will invest the bond proceeds with expected gain and interest of about $700,000. The overall cost is reduced to about $19.75 million. They feel strongly, that even though the overall juvenile facility is about $2 million, is a project that someday must be constructed. The overriding interest of the adult facility plus the optional availability of space in the current facility, that once was used for juveniles allows them to reduce that from the overall project. Further, they believe they can refine and reduce the overall construction costs in the existing plan when they get into final design by about another $2 million. The remaining overall project cost that they expect would be about $15.8 million and that will be the subject of voter approval in the fall.

Captain Mike O’Hara, Missoula County Sheriff’s Department, said the architect from A.D.G., John Peterson, and Paul DeWolfe, Gordon Prill Drapes were also present and available for questions.

When they began this process over a year ago, they set goals. The scope of the project was one of the goals. They had hoped to build a new sheriff’s office, a courtroom, a new 911 center, a juvenile detention center, acquire land and also build a regional adult detention center. Another item they looked at was the capacity of the County for this project to be at about $14 million. As they worked on the project, they soon discovered that they could not afford everything that they had hoped for. They concluded they had to eliminate the Sheriff’s office, 911 center, the courtroom and, finally, the juvenile detention center. As they looked deeper into the costing analysis, they looked hard at the 1984 bond issue. That bond issue was set at $12 million to remodel this annex into a jail. There was no land cost, no 911, no juvenile detention center. During that time, there have been 12 years of inflation. Based on that at 3%, that bond issue of $12 million was raised to $17,109,000.00 today. Their primary goal is to design a facility that provides public safety, inmate safety, staff safety and provides the criminal justice system with an appropriate alternative and that is a secure jail. They will site the facility on the property in such a manner that they will be able to bring out those other components of the criminal justice system when they can afford to. They may salvage the juvenile detention center to meet their short-term needs by remodeling the 4th floor of the County Courthouse Annex. During the interim period, they can look to alternate funding sources and partnerships with the state and other entities that may want to help in building the center. They have tried to meet the goal of $14 million. At this time, he does not believe it is realistic. The management team recommended a bond of $15.8 million. While that amount does not match the current program plan, they will continue to work at eliminating square footage as long as it does not jeopardize public, inmate or staff safety.

He closed by encouraging the Commissioners to set the bond at the amount recommended by the Management Team, which is $15.8 million.

John Peterson, architect, Architects Design Group, said his partner, Mike, has been working daily on this project but was not able to attend this meeting. But he wanted to summarize where they were at.

He said the Commissioners have foresight in going forward with the plan they have to date because they could have just said they’ll just make this a $12 million bonding. He felt that would have assured them the bond issue would pass in November. Then there would have been problems when what was really needed was determined. So by going forward with the programming and schematics, they have more realistic numbers of what this project would cost and what is needed. In the cost estimate that they put together, they apologize for not having the land included in the
bottom line. They have a design contingency of 10%, which is about $1.3 million. They do now know at this time what extra little things will be in there. An example would be how many janitors’ closets do they have? In a janitor’s closet, do they have a slop sink, shelving, etc.? All these things will add to the cost of the construction. As plans are further developed, they will know better what the variables may be. They also have inflation included at 9½% to get them to 1998. The bidding climate at this time is good and it looks like it will be that way in the future, so they may be able to save percentages there. There is also a 5% construction contingency. That will work from $700,000-$900,000. Once bids are in and contracts are awarded, this allowed amount of money will go for that cost. Looking back at the percentages, typically with schematics, they like to hold to 10% because they do not want to paint a “rosy” picture of something that is not achievable. He then listed a few examples of how construction costs can vary. At 65%-85% of the construction drawing phase, they reduce the contingency from 10% to 5%, which translates into about $750,000. If everything moves forward as they anticipate, that is about half of the savings that they need to balance the budget. As soon as the bids are in, and if they come in exactly as they anticipate without changes in the design, then they give up that other 5%. In theory, there is a 10% savings there. These are factors meant to protect the County. He mentioned further that another area that may be cut back on is square footage, which is a possibility for each department.

Ultimately, what his company will do, is look at the final budget and they will work to get everything to balance, using that $1.5-$2 million overage. They recommend using the $15.8 million bond issue to put on the ballot.

Fern Hart asked if his firm did the architectural work for Cascade County?

John Peterson answered no.

Fern Hart asked what other work they did in Montana?

John Peterson answered they did the justice facility in Kalispell, the Montana state prison, which included the laundry, the boot camp and honors dorm. They did the master planning for their high security building.

Fern Hart asked what the bond issues were for the other counties?

Mike O’Hara answered total project in Great Falls is at $16.2 million in today’s dollars. He noted they did not have land acquisition costs. They owned the land and did site work prior to the bond. He said they could not do an “apples to apples” comparison.

Fern Hart asked about Glendive County?

Mike O’Hara answered they just passed a bond without doing pre-work. They fired the first architectural team, which he believed was out of Alabama. He did not know what the actual bond issue in Glendive was.

Fern Hart said that is how the public will perceive this, not with the intelligent input that has gone into, but rather where is Missoula County in this movement to build a detention center.

Mike O’Hara agreed. He said the other matter to keep in mind, in Glendive, is they are building a facility for 32 beds as compared to our 192 bed planned facility.

Michael Kennedy asked, regarding construction contingency, if 5% what they usually used?

John Peterson answered yes.

Michael Kennedy asked, in the construction/architectural estimate of fees, is the overall concept of construction management included?

John Peterson answered he believed there was a $70,000-$80,000 line item included for that.

Michael Kennedy said they expect there will be some structural engineering, jail engineering and also architectural involvement during the construction process. Construction management is managing those activities.

John Peterson responded affirmatively, saying those were included.

Fern Hart asked what the reductions and contingencies were?

John Peterson said, as it stands today, is at 10%. They expect that halfway through the construction documents to reduce that to 5%. At the end of bidding, they reduce it to zero. The construction contingency is 5% and the amount they want to go into construction with. Change orders amount to about 2%, maybe even 3%.

Fern Hart asked if those are “could be” savings?

John Peterson answered yes.

Fern Hart said, if the request is for $15.8 million, they have already taken out the “could be” savings.

John Peterson replied, no. The $25.8 million would still leave $1.5-$2 million over non-funded.

Barbara Evans wanted to be sure she understood this. $15.8 million covers everything that was mentioned and any savings will be deducted from that $15.8 million.

Michael Kennedy said that was incorrect. The $15.8 million is an established budget that the County expects this project to be constructed for. It is separate from what Mr. Peterson is saying in that, in a normal project, there is a
certain dollar value of construction represented by percentages of construction, the total of which will be significantly more than the budget that they are going to establish. It is hoped that, through the contingencies, the budget they established can be met for this project.

Michael Sehestedt said the plans they have and all the contingencies in it are about $16.9 or $17.1.

Barbara Evans said, suppose they tell people that they are going to build a jail for $15.8 million. It will not exceed that amount. In the timeframe they have to come in with a design, can she be assured that they can give the County a project for $15.8 million?

John Peterson responded, other than having a set bond issue number, this is standard on just about every project they do. They go out, program, put an estimate together conservatively because they do not want to come in short and then say they have to make some cutbacks. That is where this is at except they need to set a bond issue amount. The County will get a justice facility for the its dollars. It may change a little in configuration. He gave the example. Beds are high on the list of what they want to save. But perhaps they can save 3 square feet per bed, which translates into 1,000 square feet or $150,000. In a way, they will be working backwards once the budget is set. But this is not unusual for projects.

Barbara Evans wanted the public to hear that there will be enough money, with $15.8 million, to build a detention facility.

Michael Sehestedt commented they believe, realistically, if they continue to squeeze, they will come out with very close, if not the exact, number of beds they have currently projected as required. That is important because he hopes the County will not be in a position of having to come back to the people before this is paid for and say, “oops, we’re full, we need more beds now.” It is their intent to get 20-30 years worth of this facility. It is realized that is subject to population and legislative action on mandatory sentencing and many other factors that cannot be predicted. The simply need to make the best effort they can to get the bones of what they need to serve the people.

John Peterson responded that Parametrics does not estimate to the low bidder, but rather to the medium bid. About 2 weeks ago, they did the new boot camp for Montana State Prison. It was estimated at $2.6 million by Parametrics. It came in at $2.4 million. That is about 7% under the budget. If a project like this was 7% under, it would be a substantial savings. However, he conceded you cannot count on the low bidder.

Michael Kennedy tempered the statement about being able to construct a facility for $15.8 million because the question “why can’t it be done for $14 million” or whatever amount someone may come up with. He feels the Commission needs to be firm about what the $15.8 million represents. It represents respecting the sensibilities of the general population of Missoula County in terms of what can be afforded for a facility that will provide the safety and security needed for everyone. It also represents the best judgment on the part of all that have worked on this project on what is that is basic minimum structure in terms of size that they need to provide those services. It may be true that a facility can be built for less but it may not be true that it would respond to the necessary needs of the County.

Doug Chase, Sheriff for Missoula County, thanked the Commissioners for allowing them to present their position on this issue, especially since they have heard it many times over the last 15-16 months. With a growth of 4% in crimes being committed in Missoula County of a more violent nature and with youth gang problems, they have serious challenges ahead of them. The Jail Planning Committee has struggled with this issue. It has been his biggest struggle in 30 years of law enforcement to try to select the correct number of beds, going by the growth pattern, to know that the crime pattern is expected to continue well into the next century according to the experts. It is indeed a best-faith effort by all involved in this to arrive at a true and accurate number of cells and the size of the facility they need.

Missoula County has been discovered in western Montana, resulting in almost doubling the population in the last 30 years, and it looks like it is going to grow even faster. In a 3 month period of time, 111 people were refused admittance to the jail or released because they were full. He asked what message that sent to the street? No other cells are available on a day-to-day in any of the surrounding western Montana counties, including Butte, Powell County, and Deer Lodge. The frustration of the street officer, the detention officer, the County Prosecutor and the judges and the citizens is great. When they are forced to release without incarceration people accused of domestic abuse and a number of 3rd, 4th, 5th and even 6th time DUI’s, DUI’s that are felony offenses, with a reservation list of over 230 people and dates being accepted into the month of February, 1997, the need to have a facility capable of handling these problems now. City Police, Sheriff, and Highway Patrol warrants now number in excess of 7,500. They are unable to serve them except in rare occasions. This is a message to the community that is not very positive. When burglars are apprehended and issued a notice to appear ticket, it is the same kind you would get for a speeding infraction. When a person allegedly held a knife to a person’s throat and threatened to kill him as recently happened in a south-side cafe, he was also issued a ticket with a notice to appear because there is no room in the County facility or any in western Montana. Judges can’t place in jail people found pleading guilty to serious crimes or who completely ignore the judge’s instructions. This is, without a doubt, an issue the public needs to be well educated about so they can make a reasoned decision in November. He has personally talked and worked with Captain O’Hara and many other Committee members and feel they just cannot lessen the cell space. He asked that the $15.8 million figure be kept. It is a community safety problem, a safety problem for detention officers who work in already over-crowded facility with far more violent offenders than they ever used to have and a safety issue for the street officers who can’t place in jail violators who need to be in the facility.

The following people spoke in favor of the proposed jail facility:
Charles Ray Doty, retired police captain, Missoula Police Department
John Odlin, Justice of the Peace
Michael Sehestedt, Chief Deputy County Attorney

Judges John Larson, John Henson, and Ed McLean all spoke strongly in favor of keeping the juvenile facility as part of the proposal.
Michael Kennedy asked if anyone else wanted to speak on this issue? No one came forward. He stated the meeting would be continued tomorrow, August 6, at 9:00 a.m. Meeting adjourned at 12:00 noon.

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

TUESDAY, AUGUST 6, 1996

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

CONTINUATION OF HEARING AND DECISION ON PROPOSED JAIL BOND ISSUE

Chair Michael Kennedy called the meeting to order at 9:00 a.m. Commissioners Hart and Evans were present.

Jane Ellis, Chief Financial Officer, gave the Board three options for the size of the bond issue, $15.8 million, $16.1 million and $17.8 million, and included the tax consequences. The information was detailed on a sheet of paper which was distributed at the meeting. She recommended that the County opt for the $15.8 million and come back another time for the juvenile facility, stated they would have no money to operate the latter even if it is built.

Discussion followed, weighing the various options and their effects. In addition to the Commissioners, speaking at this meeting were:

Murray Pierce, Home Arrest Program Director
Glen Welch, Youth Court, Chief Probation Officer
Mike O’Hara, Captain O’Hara
John Larson, Judge
Doug Chase, County Sheriff
Bob Scheider, Facilities Manager

Fern Hart moved that the Board of County Commissioners place the question of authorizing general obligation bonds in the amount not to exceed $17.1 million on the November ballot for the purpose of acquiring a site for constructing and equipping permanent adult and juvenile detention facilities for Missoula County. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the construction of these detention facilities be contingent upon State approval for part of the construction and operational costs for the adult detention facility and that the construction of the juvenile detention facility be contingent upon Board of Crime Control certification provided, however, that Missoula County will not seek regional certification at the expense of Flathead County’s regional certification. Barbara Evans seconded the motion. Motion carried 3-0.

A notice was released this same day, notifying the public of the above motions. Resolution 96-066 was also signed, submitting to qualified electors of Missoula County the question of issuing general obligation bonds in the amount of $17,100,000.00 for adult and juvenile detention facilities.

Audit List

Commissioners Hart and Kennedy signed the Audit List, dated August 6, 1996, with a grand total of $87,375.71. The Audit List was returned to the Accounting Department.

No Administrative Meeting was held; however, the following item was signed:

Operating and Financial Plan for 1996

Chairman Kennedy signed the Operating & Financial Plan for 1996, an Amendment to the Memorandum of Understanding dated August 11, 1994, between the MT Department of State Lands and Missoula County to facilitate the control of wildfires in the Missoula area and reimbursement for fire suppression related services, amending the Agreement regarding reimbursement for regular employees, reserve deputies, and Search & Rescue members, as per the rates set forth. The Amendment was returned to Dave Ball in the Sheriff's Department for further signatures and handling.

Consideration of Walker Homesite (done at an OPG Departmental Mtg.)

The Commissioners signed a letter of approval for Walker Homesite, a subdivision for lease or rent, located in the Lolo area, three-quarters of a mile west on Highway 12 from the intersection with Highway 93, on the south side of the road, legally described as Lot 1 of the Kuney Addition #1, located in the SE1/4 of Section 34, T12N R20W, subject to the following conditions:

1. The developer shall contribute $50.00 per lot to the Rural Fire Large Diameter Hose Fund.
2. The developer shall file a document of record with Missoula County waiving the right to protest the future installation of sidewalks or pedestrian walkways along US Highway 12. Such document shall be filed prior to issuance of a Zoning Compliance Permit for the second dwelling unit.
3. The developer shall prepare a riparian area management plan which shall include designation of the area of riparian resource as a “no improvement” zone. No development or alterations will be allowed within the “no improvement” zone, except for removal of trees which pose a hazard to property. Such development plan shall be filed with the County prior to issuance of a Zoning Compliance Permit.
4. The developer shall file a document of record with the Missoula County Clerk and Recorder waiving the right to protest a future RSID/SID for community water and/or sewer. Such document shall be filed prior to issuance of a Zoning Compliance Permit for the second dwelling.

PUBLIC MEETING
The meeting was called to order at 3:00 p.m. by Chair Michael Kennedy. Commissioner Fern Hart was also present.

MISSOULA COUNTY DEVELOPMENT PARK (SUBDIVISION/REZONING) PRELIMINARY PLAT
(CONTINUED FROM JULY 24, 1996)

Michael Kennedy opened the meeting by saying this was a continued hearing on the Missoula County Development Park. He invited Pat Keiley to give an overview of where the situation stood.

Pat Keiley, Office of Planning & Grants, said he would provide an overview of the subdivision and his colleague, Jennie Dixon, would give an overview of the zoning.

He said this request is by the County to subdivide 469 acres and create the Missoula Development Park preliminary plat. That is proposed for 121 lots. There is a phasing plan of 13 phases over a 10 year preliminary plat approval time period and this is to follow the development of the infra-structure of the business park. This proposal complies with the comprehensive plan, the 1995 Amendment to the 1990 Comprehensive Plan Update specifically for the Missoula Development Park Comprehensive Plan amendments. Existing land uses are agriculture, surrounder land uses are agricultural, single family residential, Momont Industrial Park, Montana Rail Link property, Interstate-90, Highway 10 and the Missoula International Airport. Access to the subdivision is from Highway 10 as well as through several other streets. In the primary collector through this subdivision would be Parkway. There is a proposed trail system throughout the park which connects to the various “pocket” parks throughout this subdivision. There is no requirement for park area for commercial and industrial subdivisions, however, they are proposing 60.3 acres for parks. It is also recommended in a condition several easements to further connect parks. There are bicycle lanes proposed for this subdivision. There is a condition that deals with public transportation, bus pull-outs and shelters. The Planning Board met and discussed this item on June 18 and June 25, at which time they voted 7-0 to recommend approval of the Missoula Development Park preliminary plat, subject to the 28 conditions in the staff report. They also recommended variance requests 1, 2, 4 and 5 and to deny variance request no. 3, which was Butler Creek Road, an existing road, measure between 24 and 30 feet paved surface width. The regulations require that it be 32 feet wide. The Planning Board recommended that it be 32 feet wide. The developer and staff, based on the amount of traffic that will be on this road, recommend that the road is satisfactory at its current width. Staff also recommends approval of the preliminary plat, subject to the 28 conditions and recommends approval of the variances, with one exception. That is in the first variance, regarding the street called I Drive. Staff recommends that it be 80 feet in right-of-way, the developer has proposed 60 feet. Planning Board recommended 60 feet.

Michael Kennedy asked why they recommended 80 feet for the right-of-way when everyone else felt that 60 feet was adequate?

Pat Keiley answered that, based on the number of lots on I Drive in the eastern portion of the property that would connect to the future development, it would more appropriate to recommend the required 80 feet.

Jennie Dixon, Office of Planning & Grants, said staff recommended approval of the rezoning requests based on the findings of fact. Staff has determined, using the master plan that was adopted in February, 1995, that appropriate uses of the west side of the park are all uses that are proposed because the Comp Plan has identified that side for industrial uses. On the east side of F Drive, the types of uses that were identified in the 1995 Comp Plan Update were hotel/conference center, university business and technology park, technical training center, office retail center, and office and research and development. Staff felt that Comprehensive Plan compliance more closely matched commercial-type uses. They determined that industrial uses did not appear to be appropriate on the east side of the park.

Vaughn Anderson, Druyvestein, Johnson & Anderson, said they are in agreement with the conditions and plat approval as recommended in regards to the subdivision portion. He then noted on the drawings the changes and adjustments that have happened since the last meeting.

Michael Kennedy noted that he was not sure of one of the changes proposed, involving the Dodd property, that if did not go through a trade, it would be then be 4 lots as opposed to one. He asked about the one-for-one value that may affect the trade.

Michael Sehestedt, Chief Deputy County Attorney, explained that the Dodds are concerned about getting full value trading with the County the property they have for the property they are going to get. For example, if the property is worth $80,000 (a made-up amount) as one piece, in 4 pieces, each of them would probably be worth $25,000. Their value would then be $100,000 for trade purposes. There have been discussions with the Dodds over appropriate value in terms of what they will be getting in trade. To bring the agreement to fruition, the appraiser said if their land was 4 pieces, then the value for trade would be there.

Michael Kennedy asked, then, if he was correct to understand the sole reason for splitting the property into 4ths, is to increase the value of the property for trade and, in the event the trade doesn’t happen, to avoid subdivision in the future?

Michael Sehestedt replied yes.

Orin Olsgaard, Missoula County Project Coordinator, said he wanted to address OPG’s recommendations regarding rezoning. The first issue of concern is having a subdistrict on the east end and not permitting industrial and warehousing. He said the whole objective from the development point of view is for the Commissioners’ to maintain maximum flexibility and not “paint” the development into restrictions that take away from that flexibility. The Comprehensive Plan specifies two primary uses in that area, one being technical training center and the other a university business park. It also specifies a hotel conference area and there is a large reserve area. The hotel/conference area, the technical training center and university business park, to a large extent, are not market uses. They will be a window of opportunity. But it is a finite window; he considers, if they cannot make specific uses
OPG recommends that a host of general category uses be permitted anywhere in the Development Park. Some of those uses were not contemplated by the Comprehensive Plan at all. The terms “light commercial” and “retail” specify to selling of goods or services. It was never contemplated in this Development Park that the retailing of goods would be allowed anywhere except as an incidental use, i.e., a gas service station selling pop, loaves of bread, magazines, etc. But the term “retail/light commercial” as they are left to stand there opens it to many other uses, such as wholesale outlet stores, clothing stores, etc. That was never contemplated in the Comprehensive Plan and is, in fact, contract to the County’s policy that this development not compete with the commercial retail market.

Another issue they are concerned with is the specification that 75% of the paved parking must occur in the rear and side yards for commercial activities. He reminded the Commissioners that this is a Special Zoning District. Some of the comments he has heard regard notions, since Light Industry is typically inclusive of everything above it, it is okay to have commercial any place in the Development Park. That is not the case. There are a number of very strict standards about what you can do in the lots, which include parking requirements, landscaping requirements, etc. He feels it is arbitrary and without basis to place a condition which requires 75% of the parking must be in the rear and side yards; it is introducing another problem and obstacle that a site planner must deal with. All the development within this Park must be reviewed by a professional site planner, architects and professional landscapers.

They have no objection to the trees being spaced at certain intervals. However, they would like it agreed that trees placed in the public right-of-way did not need a second tier of trees along on the frontage. The idea is to have trees within this Park must be reviewed by a professional site planner, architects and professional landscapers.

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He said there is a three way land trade between Nurture, Dodd and the County. Dodd’s property, as it exists today is a big triangle. This is in addition to the trade of Dodd lots for County lots as mentioned earlier.

Michael Kennedy opened the public hearing.

Byron Dodd, Dodd Development Company, said in the MOU that the County has signed with Dodd Development Company, the trade requirements that they be on equal footing. If F Drive is the dividing line, that puts the Dodd Development Company in the area beyond the commercial zone. They would prefer that the special zone include the Dodd Development Park, which is Lalonde Park. After the trade is consummated, it would not make any difference, but at this time, they would prefer the special zone status.

In the restrictions of the plan, there is a 50 foot height restriction for buildings. The hotels that may be a part of the Development Park are higher than that. One is 64 feet and the other is 71 feet high. These are the heights of the top of the tower, not the actual building height. They would like to see the height limitation be extended. He then referred the Commissioners to the drawing Vaughn Anderson had provided, showing the heights of the hotels and what view you would have of them from the Interstate if they were full height and thus visible.

Richard Potter, Nurture, Inc., said they are co-applicants on this project. He is concerned with an existing facility in the middle of the Park. Even though this facility has won an architectural award for design excellence, it was done before the architectural standards were established. In an informal discussion with Jennie Dixon, they believe that building will automatically be grandfathered. He wanted to get this into the record. By not meeting the standards, the specifics that he is aware of include the height restriction, which involves a grain unloading facility. Also, the 75% parking rule which he thinks has been modified to exempt light industrial would not be a concern except he is unsure how it will be categorized.

Orin Olsgaard said he wanted to make one more point regarding the Dodd trade. It is important that if there is to be a subdistrict created, that the Dodd property be included in the same subdistrict as the land they would trade for.

Michael Kennedy noted that there is still disagreement between OPG and the developers regarding some of the conditions. He felt a postponement of a decision would be best until everyone had a chance to come to an agreement or compromise. He asked that the developer agree to give the Board written permission to continue this hearing until September 25, when all three Commissioners would be in attendance.

Vaughn Anderson agreed.

Meeting adjourned at 4:00 p.m.
The Weekly Public Meeting scheduled for August 7th was canceled as two of the Commissioners were out of town.

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, AUGUST 12, 1996

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

ADMINISTRATIVE MEETING

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

Plat

The Board of County Commissioners signed the Plat for Sorrel Springs, Lot 38, a subdivision plat located in the S 1/2, Section 21, T. 15 N., R. 21 W., PMM, Missoula County, a gross and net area of 10 acres, with the owner of record being Hal Fullerton.

Professional Services Contract

The Board of County Commissioners signed a Professional Services Contract between Missoula County and JP Construction and Remodeling, an independent contractor for the installation of countertops (labor only) in the Health & Human Services environmental laboratory on the second floor, as per the terms set forth, commencing August 15, 1996, and concluding by August 30, 1996, for a total amount of $3,254.00.

Other items included the following:

Bid Award

The Board of County Commissioners awarded the bid for Gas & Diesel fuel, as per the recommendation of the County Surveyor, to Cenex Supply & Marketing in the amount of $82,869.50, as the best and lowest bid.

Bid Award

The Board of County Commissioners awarded the bid for CRS-2 & MC-800 Oil, as per the recommendation of the County Surveyor, to Idaho Asphalt Supply, Inc. in the amount of $22,650.00, as the best and lowest bid.

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

TUESDAY, AUGUST 13, 1996

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, Commissioner Evans attended the TPCC (Transportation Policy Coordinating Committee) Hearing on the Transportation Plan, which was held in the City Council Chambers.

ADMINISTRATIVE MEETING

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

Plat

The Board of County Commissioners signed the Plat for Big Pine Addition, a two-lot subdivision of Tract B, COS 3194, located in the SE 1/4 of Section 35, T. 13 N., R. 18 W., PMM, Missoula County, with the owner of record being Thomas J. Poindexter.

Proclamation

The Board of County Commissioners signed a Proclamation in recognition of a job well done, proclaiming the week of August 18, 1996, through August 24, 1996, as "Correctional Detention Officers Week" in Missoula County and urged all citizens to support these invaluable employees as true heroes in our community.

Other items included:

Bid Award

The Board of County Commissioners awarded the bid for Household Hazardous Waste Collection Contractor, as per the recommendation of Peter Nielsen of Environmental Health, to Advanced Environmental Technical Services (AETS), the lowest and best bidder, for a total of $13,416.00.
The Board of County Commissioners did not meet in regular session. Commissioner Hart was in Helena attending a MACo Taxation & Finance Committee Meeting; and Commissioner Kennedy was attending a Columbia Basin Management Team Meeting in Walla Walla, WA through Thursday, August 15, 1996. Commissioner Evans was out of the office all day August 14th through Friday, August 16th.

**WEEKLY PUBLIC MEETING CANCELED**

The Weekly Public Meeting scheduled for this date was canceled as two of the Commissioners were out of town.

**THURSDAY, AUGUST 15, 1996**

The Board of County Commissioners did not meet in regular session. Commissioner Evans was available for signatures as needed.

**Monthly Report**

Acting Chair Hart signed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending July 31, 1996.

**Audit List**

Commissioners Evans and Hart signed the Audit List, dated August 14, 1996, pages 2-33, with a grand total of $121,716.25. The Audit List was returned to the Accounting Department.

**Plat**

The Board of County Commissioners signed the Plat for Southpointe -Phase II, a subdivision of Missoula County, located in portions of the SE 1/4, SE 1/4 of Section 12, T. 12 N., R. 20 W., PMM, a total area of 13.09 acres, with the owners of record being Ronald M. and Cathy M. Corr.

**HEARINGS: Linda Vista 10th Supplement (Preliminary Plat) and Maloney Ranch (Preliminary Plat) - held in the evening at the Linda Vista Golf Course Club House.**

**PUBLIC MEETING -- LINDA VISTA GOLF COURSE**

The Public Meeting was called to order at 7:00 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

**LINDA VISTA 10TH SUPPLEMENT - PRELIMINARY PLAT FOR 88 LOTS -- SUBDIVISION REQUEST**

Michael Kennedy asked the OPG staff to present the staff report.

David Loomis opened the OPG staff report of all of the subdivision reviews before the Board of County Commissioners this evening. He included the Maloney Ranch subdivisions along with the Linda Vista 10th supplement. He discussed details such as combined traffic flows along with the normal conditions of subdivision review. He provided an overview of the displayed exhibits presented on the board and explained each in detail and indicated which exhibit referenced which subdivision for discussion. He then offered the presentation to Pat Keiley of OPG to proceed with the first review item, Linda Vista 10th Supplement.

Pat Keiley, Office of Planning & Grants, said that Linda Vista Tenth Supplement is a request from the Lloyd A. Twite Family Partnership for an 88 lot residential subdivision of a 42.7 acre parcel of land located in the Miller Creek Area of Missoula County. The property is located west of Linda Vista Boulevard, adjacent to the Linda Vista Seventh and Ninth Supplements. The property is legally described as the S 1/2 of Section 12, N 1/2 of Section 13, T12N, R20W. He then described the map exhibits displayed on the board wall and detailed their indications and layout references. He referenced Dave Loomis’s observation that the traffic impact in the Miller Creek area will be greatly changed due to the combined increase density of all the subdivisions in review this evening. He said the subdivision will require hookup to City Sewer and Water and Park designations. He referenced more details on the map. The proposed variances include: request from prohibition of dead-end streets; request from maximum length of cul-de-sac streets, and request approval of an 88 lot subdivision. Staff recommendations includes: approval of variance request and prohibition of dead-end streets; approval of variance request from maximum length of cul-de-sac streets, and approval of Preliminary Plat. He said the Planning Board recommended: approval of the requested prohibition of dead-end streets (8 to 0), approval of the request from maximum length of cul-de-sac streets (6 to 2) and approval of the preliminary plat (8 to 0).

Michael Kennedy asked the developer, Lloyd Twite (Family Partnership), to make his presentation.

Gilbert Larson, of Druveystein, Johnson and Anderson, PE, made the presentation on behalf of the developer. He described the map exhibits on the wall board and stated that he would reference them throughout his presentation. He describes the Planning Board meeting and discussion around staff’s proposed condition #10 regarding the mechanism to assess impose fees. The developer prepared alternative language for condition #10 and asked the Planning Board to consider amending the condition to include this alternative language. The Planning Board voted to uphold staff’s recommended condition.

He said they will try to mitigate the issue of impact fees by proposing to rebuild that portion of Miller Creek Road from Briggs St. to the “Y” intersection and include curbs and gutters, 5 foot sidewalk and 36 feet wide of asphalt. He would like assistance from the County to determine right-of-way. He goes on to describe the previous Linda Vista
Subdivisions and the development of a neighborhood plan and refers to the map exhibit that describes and identifies several of the Linda Vista Subdivisions.

He also describes the parks location such as Marilyn Park and some of the new planned parks. He shows on the map exhibit more of the detail and location of the proposed parks.

He said the cul-de-sacs are another item of discussion. They have attempted to avoid the cul-de-sacs by roadway connections but found that steepness made it impractical and therefore they are requesting the variance based on that.

Michael Kennedy then opened the hearing and asked for comments.

Geoff Bayliss resident, said he favors the subdivision request because of the housing needs in the community.

Chris Swartley, Attorney representing the Twites, said he appreciated the long time and work involved with this subdivision request and spoke of the Twite family involvement with solving the housing demand. He would ultimately support the Board going forward to approve the subdivision.

Lloyd Twite, Developer, said of the past approved Linda Vista Subdivision, that the substantial sales of those recently approved lots indicate the need for the new development.

Pat Gray, resident, asked about the curb and gutter design. She also asked about the lot designations.

Pat Keiley answered that in the subdivision, there is not enough land to accommodate the proposed density.

Susan Campbell Reneau, resident, said she has been on the Miller Cr. Steering Committee. She said this request is only more of the same development as is there today. She is concerned about stormwater, traffic, infrastructure, and any future RSID’s. She also requested the Board to evaluate the impact fees carefully.

Susan Brewer resident, said she is concerned about the road improvement and the stormwater runoff.

Ed Mosier resident, said he is involved with the transportation infrastructure committee. He said the intersection of Lower Miller Cr. Rd. and Upper Miller Cr. Rd. be enforced and referenced in condition #10.

John Zimorino resident, said that the intersection reconstruction offered by the developer is greatly appreciated as is the parks development that now would link parks as a parkway. He said the traffic problem will continue to be a problem, but he ultimately supports the Linda Vista 10th Supplement approval.

Gene Polette resident, said that he is concerned about the “Y” intersection traffic and the Miller Creek Rd. hill in the severe winter conditions. He described many icy accidents.

Tom McCarthy WGM Group, representing the Maloney properties, stated that the willingness of the developer to reconstruct the “Y” area is innovative and a good way to accommodate the solution to the obvious problem. He also agreed with the request for County assistance in determining right-of-way at that area. He then referred to an estimate provided to the Board that breaks down some of the associated costs. He feels that the combined effort of all involved would provide a comprehensive plan of action to address and evaluate the project.

Dan Cederberg resident, asked County staff about the negotiation surrounding the condition #10 resolution or discussion. He said his main concern is the “Y” intersection problem and how it will be solved. He also mentioned the road problem with pedestrians and bicycles not being able to use the roadway safely because of limited design.

Michael Kennedy answered that the Board would address that this evening or at least prior to any decision.

Colleen Dowdall County Attorney, said that they requested the developer to mitigate the transportation implications before the final plat would be approved and that the Board of County Commissioners would have to decide after that had been addressed.

Michael Kennedy added to clarify that the Board of County Commissioners will have the final review and make the final decision.

Steve Overholt resident, said he feels the proposal is a good and sound one. He said the “Y” intersection can be solved with the cooperation of all involved.

Charlie Brown, resident and steering committee member, said that the people of the area have worked together very well on this proposed project. He is concerned about the grade degree from the “Y,” but did say that it is being discussed by the developer and the County. He also said he is in favor of the bridge concept.

Tom McCarthy stated that WGM Group conducted a $10,000.00 transportation study of the area which did provide several configuration designs for the intersection. Bike lanes, walkways and pedestrian accesses were all included.

Michael Kennedy asked if anyone else wanted to speak. No one came forward and he then stated that the hearing would remain in open forum as recognized throughout the Board discussion.

Fern Hart said she appreciated the many comments from the public. She said that the Board discussion this evening is the 1990 Comprehensive Plan for this area.

Barbara Evans said she is concerned about the “Y” and that it has been a problem for many years. She asked Horace Brown if anything can be done this year to help with the steep and/or ice grade.
Horace Brown answered that the only way would be to extend the storage area for cars at the “Y”.

Barbara Evans asked Horace Brown to seriously consider working with the developers and future developers on a permanent fix for the intersection.

Horace Brown said that since a new intersection would be designed, he would help.

Barbara Evans said that she understands the residents’ concerns, especially about more RSID’s, and that she would not support any other RSID assessments on the Linda Vista Residents since they have had expensive RSID’s in the last few years and they do not want any more.

Michael Kennedy also said that these subdivision utilize a common access and that we should have some idea of the significant traffic impact on the area. He asked Gilbert Larson some questions concerning the traffic count and the impact of the school traffic.

Gilbert Larson said that they did take the school traffic into consideration with the count.

Michael Kennedy asked about the parkland and the pocket parks in the layout.

Gilbert Larson said that the parkland was situated on the flatter portion of the subdivision and the smaller pocket parks had pathways that would link them together. He said the majority of the land is on slope.

Michael Kennedy asked about the parks and the RSID to maintain them. He asked about what the estimate would be for the maintenance and first year up-front assessment.

Gilbert Larson said they estimated about $80. per house per year.

Steve Overholt said that the Linda Vista Park RSID now in place is running in the red at $50 and feels that, at that amount, there would never be any future improvements.

Barbara Evans said that the Park Board does have matching funds available from Parks fund that could be requested for improvements, but noted these funds are getting shorter.

Michael Kennedy asked about schools’ impact with new families with children from the proposed subdivision. He also asked Gilbert to address the added air pollution impact from the proposed subdivision.

Gilbert Larson said that they did address air quality issues with wood stove heat, but couldn’t provide an answer for the traffic air pollution factor.

Michael Kennedy asked about the total units and people in this proposal.

Gilbert Larson answered that he estimated there were about 311 people in the division.

Michael Kennedy stated that the number of people in the division was similar to many small towns. He said that there were enough people to support commercial locations within the area. But it truly will mean that those people in the subdivision would be driving to commercial locations miles below the subdivision, therefore adding to air quality issues, traffic, etc.

Gilbert Larson responded that there is a location available within the proposal for a neighborhood commercial application and he identified it on the map exhibit on the board.

Michael Kennedy asked about the drainage and if any of the lots exist in a drainage?

Gilbert Larson said no.

Michael Kennedy asked about an RSID drainage waiver of protest?

Gilbert Larson said that they would not oppose the waiver.

Michael Kennedy, referring to the “Y” intersection, asked if he agreed that the major concern includes the amount of traffic that impacts it?

Gilbert Larson said he would rather say that the increased traffic would compound the problem but not necessarily cause the problem.

Michael Kennedy asked what he meant about the “Y” intersection needing County assistance with right-of-way etc.

Gilbert Larson said that he wants to have County approval and advice on the intersection design and that they can all agree on the result with County standards. He also said that the right-of-way might need to be increased and that they would request the County to assist in obtaining the extra land.

Michael Kennedy asked him if he is referring to condemnation of lands for right-of-way?

Gilbert Larson answered that would be the County’s decision since that mechanism is available only to them.

Pat Keiley said that the question earlier about the drainage RSID clause was not mentioned in the original conditions but could be included.
Michael Kennedy said that the cul-de-sac issue is still bothersome since they are still being included in designs of subdivision layout even though the cul-de-sacs were requested to be phased out in Missoula County Comp. Plan. He asked if they could link some of the cul-de-sacs in this proposal.

Gilbert Larson answered that because of the slope, the cul-de-sacs could not be linked.

Barbara Evans stated that the road and intersection is a County roadway and that the intersection needs serious improvement and redesign. She said it is appropriate that the County help in the design and improvement.

Gilbert Larson shows on the map some of the design options to accommodate the major improvement.

Michael Kennedy said that road maintenance should be addressed by an RSID.

Gilbert Larson said he feels it is inappropriate.

Fern Hart asked if the water well sites are located by the Golf Course?

Gilbert Larson replied yes.

Fern Hart asked about the liability of the wells regarding contamination.

Gilbert Larson answered that the wells are cased deep, tested monthly and are less likely to be contaminated by surface water, i.e., last year's stormwater flood.

Fern Hart said she is concerned also about the right-of-way issue. There is no money available from the County and the future looks no different. She also asked about the cost of moving the utilities in the easements and who would have to pay for that.

Gilbert Larson said that the utility companies comply with requests from the County whereas they are not as willing to do so with individual requests.

Susan Reneau said that she has experienced this kind of subdivision proposal but with impact fees before in another State.

Fern Hart stated that Montana and Missoula County is in no legal position to impose impact fees, but they are looking at the fees in the future as a way to address these kinds of problems with large subdivisions and impacts on the community in general.

Michael Kennedy asked Colleen if it were possible to charge impact fees at a later time when it was determined that improvements needed to be constructed due to the increase in subdivisions in the area.

Colleen Dowdall answered that they could require an impact fee without specifying what the ultimate improvement (i.e. bridge) would be. She said it would be building a fund for a project.

Barbara Evans said that they have seen this before at O'Brien Cr. Road in which Fern and Michael voted to impose a waiver of an RSID for a bridge district, Maclay Bridge. If it was legal then, it should be legal now.

Michael Kennedy said that legal ramifications concern him. A developer could then in that case request the inclusion of bridges in RSID’s. He said that it would be a different circumstance than the Maclay Bridge.

Colleen Dowdall said that the difference in the Maclay Bridge decision and this is the determination by the County that the transportation system required it.

Dan Cederberg said that the neighborhood probably would not support the bridge idea or RSID.

Michael Kennedy said reconstruction of existing road may be part of an impact fee.

Colleen Dowdall stated she believed it was written so broadly so the money could be collected to spend on Miller Creek transportation issues. That decision was the Commissioners’ to make. If the construction did impact the existing roads, she believes that the County could spend the fees on reconstructing them.

Fern Hart wanted it noted that she is not considering a bridge. When she knows what the total Missoula urban area transportation plan is, what the amendment to Miller Creek Plan is, then she will deal with it. Today, she is only reviewing this presentation, on their own merits, based on the Comp Plan that is in place at this time. She is willing to include condition No. 10.

Michael Kennedy concurred with Commissioner Hart.

Gilbert Larson said items came up earlier that he would like to address. One difficulty that they have with the Phase 1 development is one small piece of the puzzle. That is why there is another drawing that showed the 11th as well. If you look at the 10th and the 11th, the density drops 2 units per acre. They are not increasing the density above 2 per acre. Regarding the agreement for no developments, that means no new developments outside of the master plan area. It did not mean that there would be no continuation of new Linda Vista Supplements. And, lastly, regarding if there will be additional hearings about the mitigation. If condition no. 10 were to stand as recommended by the Planning Board and OPG, there would not be an opportunity for the neighbors to hear what they plan to do to mitigate it. That’s why they felt they had to come forward prior to this public hearing and let people see what they are proposing to do and what they feel is fair to mitigate the effects of the 88 lots in the 10th Supplement.
Michael Kennedy stated, however, that mitigation may or may not be acceptable to the Board of County Commissioners as a mitigation effort that responds to this problem.

Gilbert Larson understood that.

Andy Sponseller said he was interested in how this development proposal is being asked to mitigate the additional tonnage of CO₂ and PM₁₀ that it will generate. We are on the edge of air quality conformity in Missoula County.

Colleen Dowdall had searched through the subdivision regulations and the environmental and community impact statement to determine where the developer would have addressed that. Neither state law nor the subdivision regulations require that air quality be addressed as a part of subdivision review, even in the Environmental Assessment section.

Michael Kennedy asked Counsel, then, if that cannot be a consideration in this proceeding?

Colleen Dowdall said that was correct.

Andy Sponseller said the Health officer, Jim Carlson, made it clear that hillside subdivisions, such as this type, are extreme generators of degradation to the airshed resulting from the vehicles traveling up and down, as many as 10 times a day from their homes. He feels we should be responsive to that. Given the current federal air regs and the fact that we are just making conformity, he cannot understand how the net increase in pollution is not something that would be considered unnecessary degradation.

Colleen Dowdall replied that the state does not give the County the authority to require that a subdivider mitigate the impacts on air quality.

Andy Sponseller said, the way he reads the state statute on impact fees, the statute says the County may levy fees in regards to public safety and health.

Colleen Dowdall said she does not believe it gives the County the authority to do that. It is for the extension of capital improvements to subdivisions that the County can impose impact fees.

Andy Sponseller reminded the Commissioners that they spent 2½ years in Growth Management and they have a themes document. There is a number of people in this valley who feel that public safety and health does need to be addressed in regard to air degradation. He does not see how they can turn their heads away from the impacts that are being treated by additional vehicles miles traveled and additional vehicle trips from these subdivisions. Unless they have spent 2½ years in Growth Management for naught and the themes documents mean nothing, then they do need to mitigate these impacts.

Michael Kennedy said, at the Growth Management meeting this past week, the City Attorney mentioned the provision that Mr. Sponseller spoke about regarding public health and safety mitigation. His interpretation of what the City Attorney said is the opposite of what County Counsel is saying.

Colleen Dowdall said, when you review subdivisions, there is a general statement of protecting the public health, safety and welfare and then there are more specific statements. Then the state gives the County a list of questions to ask with regard to public health, safety and welfare. The specific questions address water quality, parks, roads, schools, etc. but do not address air quality. In her opinion, any court would tell the County “why would the state mention all the various specific matters and not mention air quality?” if they wanted the County to address it.

Michael Kennedy asked, therefore, then County is not allowed any liberal interpretation of the law beyond the specific questions subsequent to legislation?

Colleen Dowdall answered that the City government and County government are very different and we are not granted general powers.

Pat Keiley said they asked for comment from the Health Department. Typically, they divide their comment into 3 sections: sanitation, air pollution and water quality district. Air pollution for Linda Vista 10th needs to “abide by Health Department regulations which prohibit the installation of woodstoves. Only pellet stoves may be installed in this area.” That is the extent of the comments.

Andy Sponseller said he felt compelled to speak as a resident of the valley floor. Trips that are generated into town each day confound the air situation in the valley and we pay the price every day. The traffic problem in town is decreasing our quality of life to a point where, people in a typical urban fashion are fleeing to the suburbs and periphery, and it is a vicious cycle. He does not believe we are beyond decay in the town core and people losing interest in it because of the impact of people traveling in each day then returning to the suburbs or rural areas. Those who live near the core love their town and the quality of life there, but slowly, but surely, its being degraded. The proliferation of suburban subdivisions in Missoula County certainly multiply the situation, making it worse. He reminded the Commissioners that he and all the other people that live in the city are County residents, too, and they represent them, too. Developments on the periphery need to be mitigated. Transportation and air pollution are 2 of the biggest impacts system-wide that these kind of subdivisions create.

Fern Hart moved that the Board of County Commissioners approve the variance request for Linda Vista 10th Supplement, located south and adjacent to Linda Vista 9th Supplement, Linda Vista 7th Supplement Phases 4 and 5, generally located west of Linda Vista Boulevard, from Subdivision Regulation 3-2(2)(7)(A), which prohibits dead-end streets, per staff recommendation for Street “C.” Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners approve the variance request for Linda Vista 10th Supplement, located south and adjacent to Linda Vista 9th Supplement, Linda Vista 7th Supplement Phases 4 and 5.
generally located west of Linda Vista Boulevard, from Subdivision Regulation 3-2(3)(A) which requires that all cul de sac streets be limited to 1000 feet in length, per staff recommendation for Nicole Court. Barbara Evans seconded the motion. Motion carried 2-1. Michael Kennedy opposed.

Fern Hart moved that the Board of County Commissioners approve the Linda Vista 10th Supplement preliminary plat, located south and adjacent to Linda Vista 9th Supplement, Linda Vista 7th Supplement Phases 4 and 5, generally located west of Linda Vista Boulevard, contingent on the 10 conditions recommended by the staff and adding an 11th condition for a waiver for RSID for drainage. Barbara Evans seconded the motion. Motion carried 2-1. Michael Kennedy opposed.

1. All street names shall be approved by the County Surveyor prior to filing of final plat.
2. A twenty foot wide walkway easement shall be located on the east side of Lot 16 of Block 5. Plans shall be approved by the Office of Planning and Grants prior to filing of final plat.
3. Park corridors, located at the end of the cul-de-sac streets, shall be 20 feet wide at their intersections with the streets and widen to at least 30 feet wide where the corridor joins the park areas.
4. All fire hydrant locations shall be approved by the appropriate fire jurisdiction prior to filing of the final plat.
5. An erosion control plan which will show how erosion will be controlled during construction shall be submitted to and approved by the County Surveyor prior to issuance of the first building permit.
6. Final road and drainage plans shall be submitted to and approved by the County Surveyor prior to construction. The drainage plan shall address a 10 year frequency storm.
7. The developer shall be responsible for dust abatement on the site upon start of road construction. Plans for dust abatement shall be approved by the Health Department and the County Surveyor.
8. The developer shall file a document of record with the Missoula County Clerk and Recorder which outlines the density transfer and shows how overall density is met for this subdivision with regard to transfers from adjacent property held by the Twite Family Partnership. Language shall be approved by the County Attorney and the document shall be filed prior to filing the final plat.
9. The developer shall include the following statement on the face of the plat and in each instrument of conveyance: “Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest an RSID/SID and can be used in lieu of signatures on an RSID/SID petition for improvements to Linda Vista Boulevard, and Upper and Lower Miller Creek Roads.”
10. The developer shall mitigate the impacts on the Miller Creek transportation system resulting from this subdivision. The amount of fee assessed and the specific improvements to be made shall be approved by the governing body.
11. The developer shall include the following statement on the face of the plat and in each instrument of conveyance: “Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest an RSID/SID and can be used in lieu of signature on an RSID/SID petition for improvements to the Miller Creek drainage system.”

Fern Hart commented that they are breaking new ground. During the 5 or 6 staff meetings held to prepare everyone for this hearing, staff told them they believe they can bring adequate average daily trips based on research so they can see what kind of mitigation the County can ask for. They also want to have some direction about level of services. With those bits of information, she would like all involved to come to a meeting with the County Surveyor and with the City Engineer. She believes this will be annexed and these streets need to be good and acceptable streets. They will help guide the County in the mitigation proposals. They will try to be as fair as they can to all the taxpayers in Missoula. She feels it will take 3 weeks to get this done. There is an urgency to get the road repaired; they want to include in the repair the quality of the road and the kind of construction they hope to have, the grades, etc.

Barbara Evans asked Horace Brown, if they put a waiver in on drainage, what does that mean in reference to condition no. 6?

Fern Hart answered that, if they have to develop a greater drainage district for this area, there is a waiver for this subdivision that they will participate in it.

Barbara Evans asked the developers if they had any comments on the drainage waiver?

Gilbert Larson replied that they would concur with that waiver. They understand that times do change. Given what they have to work with and what is below this development, there is not an area-wide comprehensive drainage plan. The concern would be, with reliance on sumps, that, if that were to change in the future and a need for a different type of drainage plan, this area would contribute.

Michael Kennedy asked whether it is legal to have an RSID waiver for maintenance and reconstruction? He also asked Commissioner Hart, if, in her motion, she would be willing to add a condition for street maintenance, operation maintenance, and reconstruction?

Fern Hart replied no. She believes this will be in the City.
Michael Kennedy said there is acknowledged impact to schools. He felt language was needed to require mitigation of the acknowledged addition of 66 students, which will all be on the bus. He asked if that would be considered for a condition?

Barbara Evans pointed out that the statute on impact fees specifically excluded schools.

Fern Hart responded that it does say that the developer must mitigate with the schools.

Colleen Dowdall explained that the staff report does not recommend this because they met with the school district regarding the impacts of this subdivision on the schools and there were none to be mitigated. The school district, at that moment, had experienced a loss of enrollment and they can accommodate additional students by changing boundaries. They just constructed a new school which eased the burdens on the schools in this area.

Fern Hart said she is committed to meeting with the School Board and discussing this because she feels they are being short-sighted.

MALONEY RANCH PHASES I,II,III,IV -- PRELIMINARY PLAT SUBDIVISION (LOWER MILLER CREEK AREA)

Pat Keiley, Office of Planning & Grants, said this was a request from Maloney Properties, L.L.C., to create Maloney Ranch Phases I, II, III, and IV, preliminary plat and planned variation. The planned variation is for Phases III and IV. An overall development plan for the development of the remaining property is included in the Commissioners’ packet. This is a requirement of the subdivision and it provides information about how the rest of the property might be developed and how that interacts with the proposed subdivisions. Staff notes that the intent of this subdivision regulation is to request that the developer provide general planning information for anticipated future development of remainder lands. It is not staff’s role to make recommendation on the development plan or master plan, nor is it the Planning Board’s role to make a recommendation on those plans, nor is it the governing body’s role to make a decision on them. This plan is not a subdivision request nor is it a Comprehensive Plan amendment request. It is just a proposed development plan for the remaining properties of Maloney Ranch, L.L.C.

Phases I and II contains 112 residential single family lots and the developer is asking for a 4 year preliminary plat approval time. It has 78.52 acres and the density is 1.426 and the zoning is C-RR1, which allows one dwelling unit per acre. The average lot size is about 17,300 square feet. The 1990 Comprehensive Plan calls for suburban residential, maximum density of two dwelling units per acre. This is located west of Linda Vista, adjacent to the original Linda Vista subdivisions and Linda Vista 5th Supplement. Staff recommended a condition of approval, condition no. 33, which talks about a density transfer agreement, wherein the owner of the property, the parent parcel, will take the density right away from the land and give it to Phase I and II, in this case.

Michael Kennedy asked if that was a permanent loss of the development right?

Pat Keiley answered that it depends on the zoning of the property. It is a loss at the present time but if the land were to be rezoned, there could be additional density right. He understands that the property that is zoned C-RR1 presently will be increased by other property with the same zoning.

Continuing with his presentation, he said the proposal conforms with the 1990 Comprehensive Plan. This land is currently used for a cattle ranch and associate agricultural operations. Access to Phases I and II is by Lower Miller Creek Road, which has 60 feet of right-of-way, 32 feet surface width, and Jack Drive. The proposal calls for 60 feet of right-of-way and 36 feet (back of curb to back of curb) for Jack Drive. These will be paved to County standards. That is off-site access to Phases I and II. On-site access is several streets, both cul de sacs and non-cul de sac streets, all of which will be 60 feet of right-of-way and 36 feet in street surface width, back of curb to back of curb. The subdivision will generate 1,506 trips per day. This will have an impact on the transportation system in the Miller Creek valley. The developer has attempted to address the impacts that this subdivision will have and has proposed a mitigation plan that is included in the submittal packet. This is addressed in condition no. 34.

Staff has spent considerable time reviewing pedestrian access in the proposed subdivision. They are recommending that the north side of Miller Creek Road have a 20 foot wide public access easement, 12 foot wide boulevard, with trees spaced approximately every 30 feet, and a 10 foot wide boulevard trail, either asphalt or recycled asphalt, which is not adjacent to the street but between the boulevard and the private property. This trail should be 8-10 feet wide. On the south side, staff recommends an 8-10 feet wide asphalt trail adjacent to the street, with a 12 foot wide boulevard and trees spaced the same. The second element has to do with the on-site roads within the subdivision. Staff has proposed 5 foot wide concrete curbside sidewalks on both sides and a 9 foot wide boulevard with like-spaced trees. There are also 3 trails. The first trail will be a major 10 foot wide asphalt or recycled asphalt. It extends from the northeast corner of Phase I to the southeast corner of Phase II. It is along the easterly property line. The second trail is a minor 8 foot wide trail, to be made of either wood chip, gravel or compacted surface and would meander within a 25 foot wide public access easement, extending from Logan Court cul de sac to the northwest corner of Lot 112 of Phase II. The third trail is 5 feet wide asphalt pathway connecting proposed pocket parks which staff recommends approval of as part of the overall park or common area. The developer will install the trails along the north and south side of Lower Miller Creek Road and the sidewalks along the interior roads and the 3 trails.

Phases I and II will be part of Maloney Property’s L.L.C. community water system and will connect to City Sewer. Utilities are available and there are 2 above-ground power lines, one is a 100 KV line and the other is a 161 KV line. Tom McCarthy, the developer, has provided information on the types of lines and about the potential impact of these lines of the residents. Staff does not know what the impact would be of the power lines. No street lights are proposed for Phases I and II per the request of the neighborhood.
Staff recommends “Staff Alternative” for the park plan. Staff feels that it addresses multiple elements which include pocket parks, trails that connect with streets and adjacent subdivisions to the east, a larger park area which could be used for additional facilities, a small utility lot and a draw area, which is a trail going through it. This trail serves to get off the streets but also connects to the streets and sidewalks system, in an attempt to form an overall pedestrian passage-way throughout the subdivision. As a whole, the staff feels this is the best park plan for this subdivision. The subdivision requirement for park or common area is 4.9 acres. This proposal calls for significantly more than 4.9 acres. However, each of the alternatives also call for significantly more than 4.9 acres.

Phases I through IV will contribute approximately 158 elementary children and 119 secondary children to local schools. Staff had a meeting with Gary Bothek, representative for School District No. 1, and they concluded that the school facilities are available to serve the future residents of Maloney Ranch Phases I through IV. No mitigation is being requested by the school district at this time.

This is dry grassland area, there is no floodplain and no wildland residential interface. There is a draw area that slopes on both sides with existing mature pine trees. The original proposal calls for this to be common area and to remain in its natural state. This is designated as agricultural land of local importance and listed as scenic open space as seen from major roads, rivers and streams. There is no critical wildlife or wildlife habitat.

The subdivision is located within minutes of Missoula hospitals and other emergency services. Legal and physical access have been met.

While this is being proposed as one subdivision, which includes Phases I, II, III and IV, it has split them down to make it easier to review the abundance of information presented. Phases III and IV consists of 47 lots, residential single family detached. They are also requesting a 4 year preliminary plat approval time. It has 79.82 acres with a density of one dwelling unit per 1.69 acres. The average lot size is about 40,200 square ft. It is zoned C-A3, one dwelling unit per 5 acres. The 1990 Comprehensive Plan also calls for this area for suburban residential, with a maximum density of 2 dwelling units per acre. This is located off of Trails End Road and Miller Creek Road. It is adjacent to a subdivision called Trails End Estates. Since the density will be more than the zoning allows, the developer, as part of the parent parcel, is proposing to take land out of another area with the same zoning and “give” it to Phases III and IV to allow for the density requirement to be satisfied. This is listed in condition no. 33. A variance is not required since this allows it to conform with the zoning but the County Attorney is required to approve the variance. The land in question had been used as dry pasture for cattle ranching and associated agricultural operations. Miller Creek is, for the most part, dry at this time and there hasn’t been much water running through it because the water has been diverted for irrigation purposes. The proposal is to reduce the amount of water that is diverted and again let it flow down the what-used-to-be natural flowing creek to re-establish the creek and vegetation.

Barbara Evans asked how they had the legal right to request that?

Pat Keiley answered the land is in the same ownership and the developer has proposed this.

Off-site access is from Trails End Road, which is paved, 60 feet of right-of-way. The proposal calls for 32 feet, from edge of asphalt to edge of asphalt. In this subdivision, the regulations do not require curb and gutter. On-site access to Phases III and IV is via Hungry Horse Road and Wise River Road. There are 2 cul de sac streets that run through the subdivision. The proposal calls for Wise River Road to connect to Hungry Horse Road and the connection will be a bridge over Miller Creek. Staff notes that a floodplain permit will be required for this bridge to be built within the floodplain and a condition of approval. There are three potential access points for emergency access and potentially for permanent access in the future; however, that is not guaranteed at this time. The developer has proposed a riparian resource management plan for how this land is to be managed. This is a

Impact for schools is the same as for the first two phases. Regarding the natural environment, this land is grassland and part of it is in the 100 year floodplain, the portion that is along Miller Creek. This subdivision is located within a wildland residential interface. Those particular standards which essentially deal with fire standards apply to this subdivision. Another requires that there be a second access. The developer has proposed three alternative access points for emergency access and potentially for permanent access in the future; however, that is not guaranteed at this time. The developer has proposed a riparian resource management plan for how this land is to be managed. This is a
requirement of the subdivision regulations and staff has made it a condition that they approve the plan as a conditional of approval. According to the Missoula County Inventory of Conservation and Resources data base, this is listed as agricultural lands of state-wide of importance if irrigated. This subdivision is located within minutes of Missoula hospitals and other emergency services. Legal and physical access have been met. There is a variance request to increase the cul de sac length of Wise River Road from the maximum of 1000 feet to 2000 feet. Also, to increase Hungry Horse Road from the maximum allowed by subdivision regulation which is 1000 feet to approximately 3000 feet. In discussions with the County Surveyor and the Rural Fire Department, who is the expert agency in regard to this particular issue because of access for fire vehicles in and out of the subdivisions, the comments received from them is that what is being proposed is satisfactory despite the fact that they exceed regulation. Staff recommends approval of the variances.

Staff recommends approval of Maloney Ranch Phases I, II, III and IV preliminary plat based on the findings of fact and subject to the conditions in the staff report. He suggested added language to condition no. 30, “extending from the NE corner of Lot 933 to SE corner of the subdivision.” Regarding a planned variation for Phases III and IV only, the developer has proposed to reduce the front yard set-backs from 50 feet to 25 feet and to reduce the side yard set-backs from 30 feet to 15 feet. This particular request is provided for in Section 8.13 in the Missoula County Zoning Resolution. The Resolution does allow for these elements to be requested and approved by the governing body. The developer has presented several arguments as to why he thinks it is appropriate for these setbacks to be reduced. First, to provide greater flexibility in building site locations on the property. Second, to match existing setbacks with what the setbacks are on the adjacent trails. The third reason is to place the houses farther away from the Miller Creek area and the riparian area. Fourth, to place the houses farther away from the southerly steep sloped hillside. Staff recommends approval of the planned variation for Maloney Ranch Phases III and IV based on the findings of fact. There are no conditions of approval with the Planned Variation. Also, the Planning Board voted unanimously to recommend approval of the subdivision, subject to the conditions, the variances and the Planned Variation.

Michael Kennedy asked about the slope of the trail near the southern boundary?

Dave Loomis answered it is on flat property, the slope is further away.

Tom McCarthy, WGM Group, said the Maloney Ranch is a 3000 acre ranch and has recently been sold by Dr. Pat McCarthy, who wanted someone to do a Comprehensive Plan with it. Their process has been to work with the neighborhoods with an open sheet of paper. The design of this product is based on his expertise and inputs of people throughout the community and the staff. The neighborhood told them very clearly “don’t do what happened in the 8th supplement. Put in like-kind of development and make the transitions on the ranch.” They also told them not to make long-term commitments on the rest of the ranch until the planning process is completed. These 2 projects are on the boundary of the ranch. Also, the neighborhood said they need a solution for the present and future transportation problems. A third item was that water rights are an issue. They cannot have much input if they have individual wells. Please have a maximum of 100 gallons per minute per community well. Anything in excess of that is required to have a public review process. Right of protest to anybody in the drainage; hydrology reports and test wells have to be drilled before there are improvements so they don’t end up with lots that don’t have water. Another item the neighbors were concerned about were the impacts that took place with drainfields in the early phases next to the Golf Course; please try to work toward centralizing community water systems even though portions of the ranch are not in the area where that is required by County regulations. They are interested in public facilities. They would like to see nature parks, open areas and school sites and major non-motorized trail systems. Those will be next to the phases we are starting and neighborhood commercial centers. Another item was to reduce densities from north to south and preserve large amounts of open space. Their plan is 73% open space and 26% developed.

One of the things they have done with Phases I and II is put together a comprehensive storm drainage plan. It addresses 10 year storms and 100 year storms. It also addresses the issue of off-site drainage. They have obtained drainage easements from the Ginter family to build grass swales across their holdings. They are connecting the project to City sewer. They have told the neighborhood that they would create some large parks on flat lands. They have also talked to the School Board to establish a 10 acre school site and, next to that, a 10 acre plus park. The neighborhood asked that they make their transitions in the ranch. He pointed out that, in the master plan, with Phase I and II, there is a large area that is hundreds of feet wide where the transition is made and they begin to establish that immediately with Phase I. In regard to non-motorized trail systems, although they are not required, they have planned a 60 foot pathway and they intend to extend that all the way to Lower Miller Creek Road. They will build a meandering trail in that area, trails that will interconnect for bikes and pedestrians and put sidewalks on both sides of all streets in the urban areas. Regarding the Commissioners’ previous actions of requiring that street rights-of-way be extended all the way to the property line they have tried to interconnect and utilize those. They have entered into an agreement with Lloyd Twite related to temporary cul de sac on their property and for mutual work on the storm drainage of cost sharing based on proportional flow basis for his drainage that will come out of the 9th and 11 Supplement which would come down this area.

Michael Kennedy asked if that meant they will dispose some of Twite’s drainage? Is this conditioned upon approval of this subdivision or is this contract separate from whether this subdivision is approved?

Tom McCarthy answered it is separate. The contract recognizes that Lloyd Twite has land that physically drains unto the Maloney Ranch property and has traditionally done so. How do they mutually address his flow unto their land in absence of any conditions on there? How do they mutually address that as public facilities are placed on those properties so that they are both contributors to that drainage area and to the solution?

Michael Kennedy said he understood that Lloyd’s subdivision is not going to increase flow unto the Maloney Ranch property. The drainage that comes on isn’t going to change the result of his subdivision. If that is true, why would he participate with WGM on dealing with that drainage that has always been there?
Tom McCarthy said his system will impact theirs above the designed storm. Otherwise, his excess flow during peak flows will come unto their property.

Michael Kennedy asked if this was in excess of the 10 year storm?

Tom McCarthy replied yes. To continue, he said, in summary, they are working toward comprehensive solutions of neighborhood issues to avoid any crises. The plots are acceptable for individual wells and individual drainfields.

Michael Kennedy stated he needed further clarification on the drainage. He asked where the water goes to be disposed?

Tom McCarthy answered that, at this time, the natural drainage goes past some of the houses and into the golf course. The Ginters have a large field and they have negotiated a grass swale easement that will take the water and will discontinue the problem of impacting the ownerships. Regarding Lots 3 and 4, they are basically 1 acre tracts and they could do individual wells and individual drainfields. They have made a commitment to the neighborhood that they would stay with community water systems and to the Rural Fire Department to mitigate issues with additional turn-arounds and adequate fire protections in these areas. So, although these lots could drill individual wells, they are putting in a centralized water system that will provide total fire connection and it is interconnected between the Phases along the boundary so that it does not move out into the ranch. They have also provided full turn-around cul de sacs on about 700 foot spacings for emergency vehicles. At Trail’s End and upper Miller Creek, there are long roads where, unless you pull into someone’s driveway, there is no way to turn around an emergency vehicle. They have tried to provide good turn-around areas and access routes to future landowners so they can build off of those just like they built off Jack Drive and complete the transportation networks. In the interim, to make sure they have adequate fire systems through there so when the fire trucks come down, they can not only protect their area, but they have an access to fill their tanker trucks to fight fires at Trail’s End across the street and Evan’s Ridge up the hill. They would like to extend the water system to serve Evan’s Ridge. So the fire department is supportive of their project because they are providing a regional resource.

Michael Kennedy stated this proposal is considered as if it will be the only proposal. Because of that, if they would start at the entrance to that subdivision, which is on the west end and follow it all the way down to the next access point and go west again up to the cul de sac, he asked what that distance was?

Tom McCarthy replied that’s roughly a little more than half mile.

Michael Kennedy said the cul de sac is about 3,200 feet long.

Tom McCarthy said they have cul de sacs on 700 foot spaces.

Fern Hart asked, if they were to be a regional water support, where is the tank?

Tom McCarthy said they have 400,000 gallons proposed for storage, pointing to the area on the map where it was to be stored, and there will be fire hydrants placed along this road and at those turn-outs.

Fern Hart asked where the well was?

Tom McCarthy said the majority of the overall master plan water will come from the Bitterroot aquifer. He pointed out on the map where they plan to put their first wells. Because the Comprehensive Plan is in the process of being updated, it is difficult to determine at this time how they would connect it and what would it serve.

Fern Hart asked if they were on Phases III and IV?

Tom McCarthy answered no. He pointed out on the map of the master plan where the water main would be. They are the last land-user on the watershed. They only have access to the water that has gone by them. If they do not test out adequately, then they would not be able to be stored, and then the wells would be moved. One of the things they have tried to do in this project is, in the Trail’s End, enter into a common management area for the riparian area. They modeled the Maloney Ranch riparian area management plan after that, assuming that there was considerable discussion and basis for the Trail’s End plan. The other thing they have done is there has been a desire by the neighborhood and expressed by the regional park people to have a Miller Creek park area that would come to the river. One of the things they have left open is the right for this land, which will initially be common area, to become public park. If the community so desires to have it converted from common area management to public management, that is provided for. They realize at this time it would be premature for the governing body to make that decision but it is not premature to keep the option open.

He believes the transportation issues have been adequately discussed related to mitigation for funding with the proposals that are on there and similar conditions expressed by Lloyd Twite. The issue was raised how does this project help mitigate the VHT, VMT and air quality issues that might be created by this subdivision. They had a transportation study done by the consultant who is doing the urban area transportation plan and his conclusion on the overall plan is the results are almost identical for the 2015 TPU, which is the model for densities that they are using spread out in the community in the transportation plan right now, and the 2015 developments scenario as proposed on this drawing. They specifically asked him not to include the benefits that would be derived from 2 facilities. They wanted this to be reviewed based on its own merit. They intend to have this annexed into the Mountain Line Transportation District, so there will be community transportation out there. They have also built extensive non-motorized transportation systems in trying to provide regional park areas for, not only their own neighborhood, but the other neighborhoods to have a place to play soccer, baseball, and train their local teams without leaving the valley. They also are planning, not in this Phase, but to set aside a site, which was selected by School District 1 as their preferred school site so that there will not have to have school transportation in the long run. Another way they have mitigated those particular issues are in this first mitigation related to transportation that has to do with volume. They determined in 1994 that the problem exists and is a problem that must be fixed without new development. That is the
reason it is in the CIP and the neighbors have been saying that that is a problem. They have not created that problem but they intend to fix it. They will not only mitigate the traffic from Maloney Ranch, but mitigate all the cars that are stacked up on Linda Vista Boulevard with their engines running in the winter and, at the same time, hopefully eliminate a considerable amount of the sand and dust that is produced along the shoulders. There is a positive benefit of off-site transportation that will be derived. The other items that they are doing to preserve air quality is, initially, when they first came to the Commissioners and identified the resources area, they set aside a plan for 1,000 acres of resource lands to go in the conservation easement in fee ownership, i.e., all the river frontage and steep hillsides. It appears the majority of the river frontage will end up in the ownership of Fish and Game. They would start to enhance the vegetation and other resources that are in this area, which have positive impacts on air quality and also provide regional recreation opportunities for the neighborhood so that they do not have to travel out of the area. He stated they have done a respectable job with the resources they have available before the first subdivision is done to help mitigate air quality issues for the overall Missoula area. The other benefit associated with this planning was in their analysis they considered what it would have to do with capture market against the TTU scenario. One of the things they realized is, if these projects of the Linda Vista and the Maloney Ranch are taking place, that they are capturing houses that would be built elsewhere in the community. The results of their calculations are that the houses that are captured, 20% of those houses are from outlying commuter areas -- past Bonner, Frenchtown, Evaro valley and south from Lolo. This type of scenario, along with the neighborhood commercial center, has a regional impact on commuter transportation issue that was previously expressed. That said that for every 5 houses that will be built here that they may have been built somewhere else. Which is not to say they are additional houses because these are the densities that were planned here, but one out of every 5 houses would be a commuter house from outside the Missoula County area.

Michael Kennedy, to clarify what he heard, said he was going to recite back his understanding of it. Relating to air quality, 20% of the houses built are captured from other places that would create greater air pollution.

Tom McCarthy replied that was incorrect. He was misunderstood and he was glad for the opportunity to clarify himself. What they said is, this ranch and whole valley area under the TPU scenario has an ultimate density of about 3,000 homes in the whole Miller Creek drainage, some 30-35 years out. The demographics of this kind of community, with a neighborhood center and with the schools in this area, will reduce the need for schools in other areas and, over that 35 years, there will be somewhere around 500 homes that won't be built in that 35 year period that would come to this location; 500 out of 3,000. That is a very small percentage, only about 7% or 8%. But, of those 500, 100 of those homes, which surprised them, would have been residences that might have been built out of Clinton, Evaro valley, Frenchtown or south of Lolo.

Michael Kennedy said Tom is talking in terms of the full development of the Maloney Ranch master plan and he asked Tom to please confine his comments to these two subdivision proposals.

Tom McCarthy answered that he was trying to address the issues raised by Mr. Sponseller.

Michael Kennedy said he understood, but if he was going to bring that issue up, then he needs to talk about this particular proposal, not some that may or may not happen in the future.

Tom McCarthy said the issues that he brought up prior to this last one were applicable to this phase of development. He noted, in the interest of time, he should conclude his presentation and let the public give their input and give time for the Commissioners to ask questions so they may close at a reasonable hour. He thanked the Commissioners for their attention.

Michael Kennedy opened the public meeting.

Susan Campbell Reneau said she has been on the Steering Committee for about 1½ years with a group of extremely dedicated volunteer citizens. She asked Tom to point to where he would be drilling the well if he got the water rights? (Tom did so at the map.) She then asked him where that was in relation to Rodeo Road?

Tom McCarthy answered southwest of the substation.

Susan Campbell Reneau, unsure if it was appropriate for her say this, said, what they discovered in their committee of hydrology and geology, and once again she brought up to the Board that they are elected by voters, is that a subdivision was approved on Rodeo Road, Rodeo Road Estates. Lots 16 through 27 have no water. It is a water system that is individual wells and is connected... She asked if that well was in the Miller Creek drainage or in the Bitterroot?

Tom McCarthy answered in the Miller Creek drainage.

Susan Campbell Reneau said the reason she brings this up again is that, in the area Tom pointed to, it would be very porous and have good water. But there are a lot of people in this valley that have repeatedly said that they have problems with water. They do not have the money or resources or the time to analyze the well logs. She believes that is the responsibility of the County or the developer or maybe both, to analyze the well logs and analyze how many houses have had to re-drill. It is substantial. She personally felt bad for the people who are buying houses, who may be first-time homeowners, and don’t understand that on Rodeo Road there is a little collection of wells that have all been punched into the... she said you can go out there and see what they look like. They have wells that are 6” apart and all punched into the ground. The water is supposedly going to be pumped underneath the road to the houses that have no water. She feels that is a crime. She is very concerned about the Miller Creek drainage. It has not gone, historically, to the Bitterroot. It is a very small stream. There have been comments made by the developers that have hired Land and Water and Howard (she couldn’t remember his last name) to indicate that there are gallons and gallons of water. They do not have the resources as individual volunteer citizens to pay for the water studies that they have said all along need to be done before Phases I, II, III, IV, etc. go in. They have repeatedly said that there needs to be an analysis of the well logs at the bare minimum. Regarding the map, she would like to know where the floodplain is and where the high hills are. (Tom McCarthy pointed those out to her.) The floodplain is a 100 year floodplain. She
also wanted to point out to the Commissioners that her committee has worked diligently morning, noon and night for 1½ years. They have collected testimony. She is the child of an attorney and knows that testimony does not mean very much from people who have run out of water, but these are heart-felt, sincere ranchers and individuals that live in Miller Creek. There is a serious problem with water quantity, not quality. If she had a lot of money, she would hire WGM Group. She thinks they are great, but this area has had numerous reports of people with water problems. She personally did not buy a house in that area in Trail’s End because of the problems with water. This area and the Rodeo Road area has houses without water. She does not have the money nor does her committee -- they have 14 families but she really thinks the County is doing a disservice by not considering it. It would be premature for the Board to approve any phase of the Maloney Ranch until the citizens' amendments to the master plan are approved. It is not because she does not like what Tom has done. She thinks he is wonderful in terms of his planning and a lot of his ideas are good. But it is premature. She said this to the Planning Board and they promptly approved it unanimously. So she guessed citizen output does not count for anything. She said a lot of people feel that way and that is why there are so few people left to give input. They are getting frustrated. It is not that they do not like those 2 guys. She wants them to make money and have their developments. But there are serious concerns here and transportation is just one of them. But water is really important in Miller Creek.

Michael Kennedy said she said a couple of things that he is concerned about, one is about Comprehensive Planning, which is a separate issue than what she started with, that had to do with water, but he wanted to address the water issue. He appreciates what she said about Trail’s End and Rodeo Road Estates. What they need to discuss, though, is with those, there was an attempt to provide water to those lots on an individual lot basis. There was an error in judgment when that was made.

Susan Campbell Reneau said that was only last year.

Michael Kennedy said, what happens here, is there is a proposal to provide a community water system with a common well. That is a different kind of thing.

Susan Campbell Reneau replied she did not think so. They are dealing with the possibility of it draining the water supply and some of the people here probably live in the area she is talking about, but she is not sure. She has no scientific evidence. She cannot afford to hire Land and Water. Nor can anyone else in this room except for a few people. She still contends that there is a reason to be alarmed, that if a community water supply goes into Trail’s End, it could harm the people who have water rights. Hopefully they have registered their water rights. This might have an impact in the Trail’s End area. That is something they do not know.

David Loomis said staff reviewed the issue so they could make the findings for this subdivision, Phases III and IV, only on that point. They had discussions with staff long range planners who are looking at all the published data in-depth for the Comprehensive Plan purpose. They could find no evidence that the area where the wells are proposed, that area of the aquifer, did not have adequate water, (unintelligible)...but they wanted to know if there is any evidence that the water supply to Phase III and IV was insufficient and they could not find any. That is why they stated there is adequate water.

Pat Gray has gone through the plan as quickly as she could but was confused as to where the Phases are. She asked what determines the boundaries of a subdivision? She can’t figure it out.

Michael Kennedy replied that there are basically two phases here, Phases I and II and Phases III and IV. They are identified on the map. In the master plan, they can show her the location of those and he asked her if she would like that?

Pat Gray answered no, she understood where exactly it is but what determines where the boundary is?

Michael Kennedy replied that is the proposal of the developer.

Pat Gray asked why have transfer development rights if the land is owned by the same person -- why not just extend the thing out?

Barbara Evans said they would ask them to respond to that before they leave.

Pat Gray said she hoped that was not just a crazy question. Since the County had proposed that there be a park, it seems to her that would increase the area and that a transfer of development rights would not be necessary. She asked if the Commissioners understood what she was talking about? They had said there would be a larger park in a specific area.

Pat Keiley answered that was correct. The best person to address why this was designed in such a way, in answer to her first question regarding the boundaries, and why the density was proposed in this particular configuration with the idea that additional density would be allowed with lands elsewhere to be brought into this. Tom McCarthy can best address that. In response to her second question about the park is that, even with the addition of that park, that would still not, in his opinion, be enough acreage. If you added that park in with what you see in front of you in Phases I and II, it still would not get enough area to be able to meet the zoning density.

Pat Gray asked why can’t you bring it further out? Its all owned by the same person.

Pat Keiley, reiterating, said, right, why can’t the boundaries be brought further out and he wanted Tom to address that.

Michael Kennedy said the subdivision regulation allows that kind of transfer. It is not a requirement that they make or extend to a subdivision. The developers come in with a proposal that has the territorial limit of it and, since they control that other land, the subdivision regulations allows them to do that.
Pat Gray said another thing she did not understand is, in Phases III and IV, it is stated within the Plan that there is not to be a sewer.

(Tom McCarthy answered from the audience and could not be understood.)

Pat Gray asked clarification also from page 33 if it was a misprint on no. 4 as to how far away the residences are allowed from the power lines? It says from 700 to 100 feet.

Pat Keiley said that should be 700 to 1,000.

Pat Gray said she called County Health, who referred her to County Extension who referred her to Montana Power, asking if there were any State, Federal or County laws regarding setbacks from power lines and she could not get an answer from anyone.

Colleen Dowdall, Deputy County Attorney, said, to the best of her knowledge, there are no ...(unintelligible).

Pat Gray said, on page 33 where it talks about the power lines, she asked if the power lines there, where it says they are to remain above ground, are those the large (unintelligible) lines? They had understood that any power lines that were going to individual residences would be under ground.

Tom McCarthy replied anything new would be underground.

Nancy Froh said she was born in that area and knows Mr. McCarthy. Nothing against him but she just doesn’t trust him. She has heard too many people say “well, we’ll do it this way” or “no, we’ll do it this way” and “we’ll put a bridge here” and she wonders if the developers ever consider adjoining property owners? The Harlans live on upper Miller Creek and it affects them. It affects adjoining property owners especially when weaseling a way to split your land in half to put a bridge across. Then someone else will say “we’ll get the County to condemn it.” There are a lot of concerns here. Yes, she likes to see them make money, too, but ...

Fern Hart asked if there was property proposed for a bridge in this subdivision?

Nancy Froh replied there has been a lot of talk for at least a year, going across to the Blue Mountain Clinic.

Michael Kennedy said this hearing has only to do with these subdivisions.

Nancy Froh replied yes, she knew, but what she was getting at is if the Board approves this, and he’s always had very nice subdivisions. They don’t know about him. They hear a lot about HUD houses and, personally, she knows about HUD houses. But, if the Board approves this, approves III and IV and I and II and pretty soon, there are so many houses there Miller Creek Road cannot handle the increased traffic. So then the County can condemn property because it is in the best interest of the people in the surrounding areas. But actually it is their responsibility to protect everybody.

Michael Kennedy said he believed she was present earlier when they discussed Mr. Twite’s subdivision. They had discussion about condition no. 10 which had to do with the mitigation of the traffic impact. That same condition applies to this proposal as well, should it be approved. It only has to do with that subdivision which has been previously approved and these two proposed subdivisions, all of which would access the City of Missoula from Lower Miller Creek Road. They would all come through that point. These two subdivisions, if this one is approved, would have the responsibility of mitigating that impact on that transportation system to take care of those subdivisions entirely. That would be their responsibility.

Nancy Froh asked what would keep them from coming to the City or County and say “you condemned the land so they can get the bridge?”

Michael Kennedy said, to condemn property on behalf of a development interest, isn’t going to happen as far as he is concerned.

Nancy Froh said that is what she is hearing here. We are going to get this thing in here and, if it causes a problem, then we’ll hand it over to you guys and you will have to fix it.

Colleen Dowdall said their discussion of condemnation of land was with regard to the right-of-way for Briggs to the Wye. They were not talking about a bridge.

Nancy Froh said she understood but she is saying you can look into the future and say “This is the same thing.” They have been trying to get her Mom to sign a paper for $1,000 or whatever. She wants to protect them. Developers want to put roads in between Harlans’... they all have to live with their neighbors but she thinks people that own adjoining land should not have to have their land split up or the value of their land lowered or the taxpayers have to pay more taxes because of the people coming in, making their millions and they’re gone.

Steve Sherick said he is not an adjacent land-owner, however, he wanted to discuss some impacts. He believes his lifestyle will be impacted by this subdivision. He said a young man described Phases I and II and it sounded beautiful. He lives below the subdivision and there are no sidewalks or paved streets. He happens to live on that 90° corner down there and presently, there are about 15 residences that live between him and the other end of Upper Miller Creek that use that road. His fence has been an annual target with those 15 residences and now he hears that they are planning to increase the population about 5 times that number so he joked that he wasn’t sure if he should make the target smaller or increase the size of it. Maybe Horace can help him with some barricades down there for mitigation. He noted he speaks in jest but is serious about the problem. There is an opportunity to do something to that 90° corner. Lower Miller Creek Road, when he moved there, was a main thoroughfare. Then Lloyd put his subdivision in and it is no longer the main thoroughfare, Linda
Gary Hensley said that was another issue. That long strip of land there. He believes that, if you are going to use a homesite on a third of an acre, even though he could see that it is prime building land. He referred to the map showing the current neighborhood and said the common areas do not benefit it. He knows there is a lot of acreage and does not understand how they can fit a structure in 14 feet and that is the utility easement. In addition, if that answered his question?

Gary Hensley replied okay. He just doesn’t understand how you can destroy 3,000 acre ranch down to this level. It is degradation. This is a large majestic ranch and it is basically being destroyed. The higher density and the accompanying large wells being drilled into the Linda Vista aquifer has got to be a degradation to the water, both supply and quality. Another issue for him is the long strip of power lines that is being labeled as a common area or park area. They are talking about a 60 foot strip through there and how much of that is existing utility access? Tom McCarthy answered they put the power lines up 7 feet off the property line. There is no easement east of that fence. They were satisfied with that setback so the effective easement is about 14 feet.

Michael Kennedy, repeating for clarity, said the effective easement is 14 feet and the right of way or the dedication of that trail system there is 60 feet. The 14 feet power line easement falls within that 60 foot dedication. He asked Gary if that answered his question?

Gary Hensley replied yes. He understands that what is there is 14 feet and that is the utility easement. In addition, they are offering another 60 feet or is that included?

Michael Kennedy said that was included but admitted he did not know if that was accurate.

Gary Hensley said that was another issue. That long strip of land there. He believes that, if you are going to use common land...[TAPE ENDED].
Discussion followed between Gary and others who were standing at the map.

He continued, as a property owner, he has already paid $15,000 for infra-structure. He sewerized his house for about $12,500 and he pays on an SID for a road but he has no idea where it is. He assumes it is Linda Vista Boulevard. If those houses are to be connected to that road, they should share in the cost of the SID. If degradation of water happens, does he have a recourse? He is on a individual well. Mr. Twite brought in water at the same time sewer came in and there is a connection fee of $3,500 to his water. With additional trenching to the house, in his case, it would another $2,000. Currently, his well is okay. He has submitted his water for tests and it showed no nitrate problems.

On the upper part of the map, the common pathways to the 60 foot swath, on Phases I and II, that would be an ideal place for pocket parks, if they gave up a lot or two. That would be at least a partial benefit to the existing neighbors. This is largely view property and those houses are being backed up to existing houses. Anything with a cul de sac is going to destroy everything to the south and southwest as far as view goes. The number of homes going in there and the number of students going to school... in his mind, he sees 25 students per teacher and he has not heard the school’s response to that impact. Or even which schools they will attend. To address the traffic flow, lower Linda Vista goes into Miller Creek and Lower Miller Creek Road goes into Upper Miller Creek Road and then out to Highway 93, that is a problem even right now. He suggested even installing a traffic light there. Vehicles come down from the ridge about 35-40 MPH off of Upper Miller Creek, even with a blind spot when coming over the ridge. He asked if 1994 was the most recent volume of traffic count?

Michael Kennedy replied yes, he thought so.

Gary Hensley said he would like to see impact studies done on the water and traffic and doesn’t see how they cannot do that. The density issue is a primary concern to him, especially as an adjacent property owner. He’d also like to see pocket parks that will benefit the existing neighborhood.

Barbara Evans explained to Mr. Hensley that the law does not allow them to ask a subdivider to benefit anything other than the subdivision that they are creating.

Michael Kennedy said he believed, what Mr. Hensley was getting at, was that Tom offered all of the parks and recreation areas and the trail systems for the benefit for all the public, not just the subdivision. So, from his understanding of the testimony, all of that is meant for the entire area.

Gary Hensley asked if it wasn’t true that a lot of the common area was being given up in order to build the high density housing? Basically, it is cluster housing up against existing homes that are at least twice, sometimes three times, the size of lots.

Michael Kennedy asked for clarification from Mr. Hensley and what point he was trying to make. He knows that the subdivision that Mr. Twite has is all basically ½ acre lots. These will be roughly 15,000 feet.

Gary Hensley replied that he does not understand how C-RR1, one dwelling per acre, the letter of the law, is applied here.

Michael Kennedy said, if his understanding of that particular zone is accurate, it doesn’t matter what the size of the lot was as long as the density obtained met that zone. He believed that is what happened here because of the transfer of the rights and the density requirement has been met according to the zone.

Barbara Evans also explained to him that you divide the number of units into the amount of property and come up with the number of units per acre.

Gary Hensley admitted he still was at a loss to understand. He asked if it was because they are giving up a lot of land?

Michael Kennedy replied with an example. If they had a 40 acre parcel, they would be entitled to put on 40 houses. But this is not to say that each one of those houses had to be placed on a one acre parcel. Perhaps there could be 4 houses per acre on 10 acres and leave the balance open. It would still achieve the density. That is what is happening here. The size of the lot isn’t what matters. What matters is the density overall. This apparently comply with the zoning.

Gary Hensley said okay. But as far as the letter of the law, as he understands it, its one dwelling per acre. C-RR1.

Michael Kennedy said they will check on that.

David Loomis said, yes, the zoning is one dwelling unit per acre. He pointed out that they are “borrowing” land from other lands in the same ownership at the same zoning. If there was a literal interpretation of how many units these 78 acres would produce, it would be 78 units, not the volume that they have.

Michael Kennedy said the next question is, is the transfer of those rights legal under the interpretation of the zoning regulations?

Colleen Dowdall answered yes.

Michael Kennedy said the County lawyers and planners see that what they are proposing does meet the spirit of that zoning requirement. He understands Mr. Hensley’s concern and appreciates it, but it does meet the requirement.

Gary Hensley said then all he can say is this is a transition standpoint from one neighborhood to the other. This is not a very well conceived transition.
Michael Kennedy asked Mr. Hensley if he had any other points that he wanted to make?

Gary Hensley replied no, that was all.

Roger Bergmeier said he testified the previous evening at the Miller Creek Comprehensive Plan amendment meeting. He had a draft and his testimony had to do with a lack of information about water. There is enough information in the draft that says volumes about water and the subdivisions that are being discussed at this meeting. On page 36 [from the draft], he read “There are serious concern among residents about groundwater in the Miller Creek valley aquifer. However, there is not enough information regarding the quantity, location and quality of water to make recommendations for location or quantity of additional development in the valley. Additional development is not thought to be justified as a contributor to development to the Linda Vista water company well, Trail’s End subdivision and past geologic reports begin to describe the underlying hydrologic systems of the basin. The stated is not developed to a standard allowing for basin wide assumption regarding water. Land forms mass the underground diversity of materials, even in the valley fill areas, providing little predictability. There will be water-bearing formations beneath all land areas.” Although he strongly agreed with what is being done here in the subdivisions and he liked the ideas of clustered development, impact fees for the schools and the mixed zoning possibilities and maybe get some commercial in there, but the water issue must be looked before more houses are put on the land. The question is not only is there enough water for this development but are they going to be taking water from the houses that are there already.

Michael Kennedy asked Roger to read that portion of the draft again and Roger complied.

Dan Cederberg said he would like for the record to have the same comments he made with regard to transportation on the Twite project. He thinks there was good reason for the exception that was added by the Planning Board regarding the water. Tom gave him a 5 page letter the previous day that dealt with water, but he is still not convinced that they know enough about the water to put those wells in the Miller Creek aquifer and not impact the people that already live there. He does not believe the subdivision should be approved without the safeguard that was put in by the Planning Board.

Charlie Brown said, when Lloyd proposed the 8th Supplement, the Upper Linda Vista homeowners retained one hydrology firm and a gentleman he has known for years and is working on his Ph.D. in hydrology and has 20 years experience as a geologist/hydrologist. One of the amazing things that both of them said was, and he believed the staff at the Office of Planning & Grants know this because Phil Maechling was talking about it the other day, they had always assumed that it was run-off from Linda Vista that gave all the flooding down there in the lower plain. All of the people discounted that. The groundwater is a direct result of the natural aquifer and the amount of water that is holding. There have been impacts according to both hydrology reports. What they basically said was because of the development of the highway system into Missoula along the river and because of the dikes (he believes there are two of them), it has necked down the river which has caused water to be pushed back and recede up, spouting from the ground. They have been told there is more than enough water to generate these wells for hundreds of years, based on their production. There is a concern about run-off versus that causing all the flooding of lower Linda Vista. Both the firm and the geologist/hydrologist said that was not the case, that it was just water seeping up through the ground because of the tremendous amount of water in the aquifer.

Michael Kennedy said that Tom testified that they are going to be withdrawing out of the Miller Creek aquifer, not the Bitterroot. He asked if he was talking about the same Miller Creek aquifer?

Charlie Brown answered, no, what he was addressing were comments he has heard about run-off in relation to Linda Vista.

Michael Kennedy said the reason he questioned him was because of Charlie’s comments about well capacities and he was wondering which ones he was talking about.

Charlie Brown responded that they were talking about those right on the Bitterroot River. He was talking about the people who were concerned about the run-off that would be developed from these two and where it would and it really is not that run-off that is causing the flooding down there.

He worked with Tom for over 1½ years and the Committee has worked with him for nearly 2 years. Although they have disagreed at times, he found Tom to be very honest. The Steering Committee’s only concern, and there are other Steering Committee members present to comment, is the water and has always been the water. They think the development is good but they want more reassurance on the wells.

Lloyd Twite reminded everyone that the proposals are just two subdivisions and not the master plan. It seemed a lot of the discussion that has taken place is something that will ultimately in reference to the Comprehensive Miller Creek Plan that everyone has been so involved in over the last 2 years. To compare lot sizes that Gary had a question on, the physical lots sizes that are proposed in Phases I and II are very comparable to the lot sizes that they have in Linda Vista Addition. He wanted to clarify that the lot sizes that are on Phases I and II are not that much different than those on Linda Vista. Some of the problems and conditions that he is hearing makes it evident to him that there has been thousands of hours involved in the processes of the Miller Creek developments. He commended WGM’s efforts. Tom has worked relentlessly, meeting with neighbors, Steering Committees, OPG, as well as being a cooperative competitor. Even though competition is good to a degree, he believes the mitigations needed are covered in the conditions of this subdivision through OPG.

Tom McCarthy said he wanted to address some of the items that were brought up and then address two items within the staff report. First, regarding zoning and density transfers, the term density transfer is not appropriate in this situation because there are normally transfers between different land owners. This is a density assignment. Related to the zoning district, C-RR1, within the body of that document says it strongly encourage PUD’s and planned variations, which are clustered developments. The Maloney Ranch has close to 700 acres in C-RR1 which allows them 700
density rights. By the recommendations of the Comprehensive Plan and the zoning, they encourage you to do the thing that Mr. Kennedy just described of clustering those. What they are doing is a covenant related to the zoning that they are assigning their total density rights to the boundaries of that particular subdivision, thereby reducing the remaining densities on the balance of the land. With their plan, they could clearly have added acreage that said "well, we’re not going to plat the draw or the next draw" and accomplish that. But the Comp Plan process is out and it is not appropriate to be doing that. So that is what they propose related to that item. There has been a lot of discussion about water and hydrology and the lack of reports. Dan indicated that he gave him a 5 page letter, which was based on hundreds and hundreds of pages of existing technical reports on the aquifer situations on these two drainages. He wanted to point out, related to the Bitterroot River, is, at the crest of the hill just across from the Nordic Pines Lodge, the old rock quarry that was on the sidehill. On the opposite side is the Haynes well that was a bedrock formation. What they have is two pre-Cambrian underlying bedrock formations that come together. This section of river, at the time of the GLO surveys, was in a different place. These areas of river have changed constantly in the last 200 years. But in the thousands of years previously, this piece of river (he pointed to the map) has not changed. The reason is that is the funnel the Bitterroot River has to pass through. There is a reason that this area (again pointing to the map) appeared to be wetlands. Charlie described it very well. It is an uplifting of the underlying groundwater as it goes over the rock formation. Looking at the Bitterroot River (in one particular location shown on the map), the technical data reveals that 1.6 billion, not million, but billion gallons of water pass through that point every day.

Michael Kennedy interrupted, saying that the whole issue has to do with the Miller Creek drainage. He does not know of any question from anyone about the adequacy of the aquifers on the Bitterroot. So he felt it was important to talk about the Miller Creek drainage and nothing else. There is simply no time for anything else. They are not interested in it because they do not believe it is in question. The question for this development is about Miller Creek drainage.

Tom McCarthy replied that some of the residents questioned it and that is why he brought it up.

There were comments from the audience at this point and Barbara Evans remanded them, telling them to be polite and allow the speaker to speak.

Tom continued, in relation to Miller Creek, there have been studies that go back to 1972 that state “2.5 billion gallons of water a year pass through this drainage.”

Michael Kennedy asked through what drainage?

Tom McCarthy answered through the Miller Creek drainage.

Michael Kennedy reiterated 2.5 billion gallons a year? He hoped it would be more than that in a year.

Tom McCarthy continued that if you look at this drainage on the map, there is a reason that the low-lying area is marshy. Recent studies that went through 3 years of evaluations on a well (he showed where the well was) that was a bedrock formation. A thousand gallon a minute well, went through the Water Rights Bureau and concluded that, on an average day, there, is 10.3 million gallons of water that pass through that aquifer. Once it reaches the lower reaches of the valley, it has to come to the surface because the underlying soils there are fully saturated. The water has to run out on top of the Bitterroot aquifer. That is why there is all those springs and waters there. That hydrology report, done on that well that at that location which is up-gradient from them, was approved by the Montana State Water Rights Bureau and it says during minimum groundwater flows in the summer, 23 acre (unintelligible) a day or 7.5 million gallons of water pass through that aquifer. Test wells were run there and on the adjacent wells nearby, there was no noticeable draw-down. The water issues that have been presented here are real. Once you get above Trail’s End, the valley turns into a different geological type of formation. Shallow aquifer there and lots of water. But when you are on the edges of it, it is very thin and there may not be water there. They are on the down-side of an 8 year low water drought period for precipitation. These wells and tests are 1991 reports. They were run basically in that time period of the drought. So they do have 7.5 million gallons of water running through there every day. They can physically see it. The real issue is, related to the community wells, is, there is a section of State law on water rights. When they touch on a community well, they automatically have to file water rights that require hydrology reports, test wells, public hearings and rights of predecessors on every owner in the area. There was a reason that the Twite well took several years to get approved and Lloyd could probably say what the litany involved. But it’s a serious consequence and they are not trying to skirt that.

Michael Kennedy stated, the other day at the Planning hearing, Tom referred to a well that was 15 hundred gallon a minute well. He asked Tom to locate that well.

Tom McCarthy answered that was the Twite well. The Newman report indicates that 1,000 gal/minute and more are possible out of there.

Michael Kennedy said he heard him specifically refer to a well producing 1,500 gal/minute.

Tom McCarthy said that was the same well.

Michael McCarthy reiterated that he had said 1,500 gal/minute the other day and now states it was 1,000 gal/minute for the same well. There was anecdotal evidence the other day given that that capacity only occurs during certain times of the year. He asked Tom if he would like to reflect on that? He believes it was a Mr. Graham who brought that evidence to the County.

Tom McCarthy said Mr. Graham brought up the issue that that well is being fed by the irrigation ditch that is next to it. Howard Newmann’s report addresses that well on an annual basis. That is why, in his report, he talks about minimum low groundwater periods and that is why he states those wells are capable of more capacity, up to 1,500 during certain time periods when groundwaters are elevated. Those groundwater elevation periods are in May and June.
Michael Kennedy said he understood from Mr. Graham’s testimony that Mr. Graham found fault with the testing of it because it occurred during the wrong time of year. He believes Mr. Graham testified that, had that testing been done prior to the irrigation season, then a remarkably lower yield would have been found in that well. He asked Tom to respond to that.

Tom McCarthy answered, since he was not involved in that, maybe Mr. Twite could respond to that. He knows, however, that Howard Newman made submittals to the Water Quality Bureau on a regular basis for over a 2 year period, addressing those concerns. Those are experts in the area with sound technical background so he assumed they did not give him his water right without being firmly satisfied. Going on, he said he had already talked about the planned variation issues. His last items have to do with items 45 and 46. The conversations they just concluded addressed item 45. He believes the issues they are dealing with are under the provisions of the Department of Natural Resources, Water Rights Bureau, and under the Department of Water Quality Bureau of the State Department of Health, and that process firmly protects this community on those issues. Item 46 has to do with the staff report and with the Planning Board’s recommendation. Their requirement in Phases I and II is 4.9 acres of park. That is the regulatory requirement under State Law. They have made long-term commitments to this community, this neighborhood, to exceed those capacities. They have asked them to dedicate large park areas that they can use for recreation on an area basis, which means parks do not do that. They are dedicating park that will be planned ahead and benefiting future phases also, so that needs to be clear. In this process, they dealt first with Feet First and the Missoula Park and Recreation Board. They also dealt with the neighborhood steering committees on parks and trails. That is why they have all the parks and trails. Never in that whole process was pocket parks in this area discussed. Everything that was discussed is shown on the master plan. It was not until 10-15 days after the comment period that somebody brought up the issue of pocket parks in this area. He pointed to the map to show the Commissioners the common area they had proposed in a flat area of about ½ acre, which can be graded and used as a recreational park. This site, one acre in size, is for buryed seepage facilities that are in the other Linda Vista parks. So it is actually a common area amenity for a City use on it. The surface uses are a common area amenity for recreation and this will be constructed.

He pointed to a corridor on the map and said that was an item that the neighborhood had talked about, that they wanted a trail system along there. That also was to extend all the way to Lower Miller Creek Road. That is in the master plan. He suggested to the staff, since Lloyd was submitting No. 10 and the 11th would be following, that it might be appropriate to put that all the way down or maybe even all the way to Miller Creek Road because their water main is going to be through the area. They will have equipment in the area so maybe they can make it in the area so as not to do what the neighborhood would like. They did not do this park in this first submittal; it is an addition to their park dedications because they were trying to stay in a fixed boundary and they had the school there. But the neighborhood said they wanted that and so they are willing to do it. The pocket parks are an issue that they take exception to. Their concepts of recreation in this area are large central parks and schools proximate to these Phases with one block walking distance to get down to them with a common park flat area that is interconnected with a trail system that in turn runs back into the neighborhood for bicycles and recreational traffic. By injecting pocket parks into this with an interconnected trail system, several things take place. One, it goes against the types of parks they are proposing because these are lot-only type parks. The concept of pocket parks are parks for those lots only and the concepts that the neighborhoods have told them they want are parks for everybody here. Parks that they can use for community recreation. They have offered 22 acres of park and, with a common area 23 acres of park, generally for this plat, that is 400-500 times the dedications they are required to make. With the proposal that the Planning Board made, they had suggested at the Planning Board meeting to pick their Proposal Alternate 1 or pick Proposal Alternate 3. No pocket parks in that area. They said that was a tough call as they both have good merits and maybe they should pick both and go from there. His proposal, at this time, is to dedicate this park, grade it, seed it and prepare it for recreation for the neighborhood. Related to this subdivision, they still want to create a physical, common area buffer between these subdivisions and any future uses. They support the extension of the 60 foot dedication all the way to Miller Creek Road or to Linda Vista or whatever is appropriate. If they go back and talk about parks inside of this project, then they need to say the approaches they have been taking are not on base and let’s start getting back to the issues of what other required park dedications are and what are the issues they should be dedicating to serve just this project. He has discussed that with the Chairman of the Parks Committee and he said that he can support their proposal at this time. That addresses items 45 and 46. They would like the Board to accept the park dedication that included an improved, 7½ acre park, an improved common acre park on the utility lot, park improvements on the flat area where you leave the draw, in the strip access areas that they have provided and the common area, that includes the bottom of the draw and east to the top of the subdivision and to the trail to the extension that is decided is appropriate. He will ask the Parks Committee Chairman, John Zimorino to respond if he feels that that should just go to the Linda Vista interconnect, or if they should take it all the way to Miller Creek Road.

Michael Kennedy said, whether or not the utility lot is designated a park, it is going to be a dedicated utility easement. Tom McCarthy agreed.

Michael Kennedy said the strip along the east side of the subdivision is where a power line exists with at least a 14 foot wide easement and where a water line will exist that also requires an easement so that strip will be required whether it is a park or not, to be dedicated for a utility easement. He asked Tom if that was correct.

Tom McCarthy said no. They can accomplish the same thing with the water mains that are within the streets.

Michael Kennedy said he thought he had heard Tom say earlier that that would be a water line easement.

Tom McCarthy said that was right as that was their proposal now, but they can accomplish the same thing by just bringing the water mains down through the streets.

Michael Kennedy asked about the developability of the draw that Tom said would be used for conveying water out to a drainage swale on someone else’s property.

Tom McCarthy replied that was what the staff refers to as a conservation park area. It is not developed.
Michael Kennedy asked if it could be developer?

Tom McCarthy answered no. They wouldn’t want it to be developed.

Michael Kennedy repeated that they would not want it to be developed whether it was designated as a park or not.

Tom McCarthy said that was correct. Except for the lower area where it is not the draw, a nice flat area.

Michael Kennedy said his sense is, in looking at the map, that the only part up there that looks like a park and could be developed and used as a park, would be what Tom said was park. The rest was undevelopable land and easements that are going to be dedicated for utilities.

Discussion followed between Michael Kennedy and Tom McCarthy, as Tom showed on the map the areas they were talking about and what was proposed for them.

Susan Campbell Reneau said the reason they started talking was because of the Maloney plan that they knew was coming up. That was the motivation for people to organize. Parks are punny. She asked why anyone would care about parks when you are dealing with water. Pocket parks are nice, she likes birds and is married to a wildlife biologist. But when it comes to the basics of the essentials of life, the disposal of sewer, the disposal of water, that is what counts. She wanted it on the record that the people who are on the Committee she is on and analyzed the developers’ and Howard Newman’s report include a hydro-geologist, one of the gentlemen had recently retired from the Department of Natural Resources and Conservation and specialized in water rights -- the people who reviewed the reports that were done did not make their summaries idly. She has no experience as a hydro-geologist and she deferred to the people on the Committee that had the ability to analyze these reports. She has heard many times from Tom that there is plenty of water. Most of the reports were confined and, from his standpoint rightly so, and the same with Lloyd Twite’s, as it affected their developments. It did not take into consideration the impact for the whole area. That is what their Committee has always looked at. They are obviously focused on their development as they should be. But for the people, the Board, as elected officials, are responsible for the people. That is a much broader picture. She also wanted to quickly say that there are at least 10 water right conflicts in Miller Creek, most of them regarding Maloney Ranch. The Maloney Ranch has water rights that are surface water rights which are for agriculture and irrigation that date to 1877. They do not have groundwater rights for the amount of water that they are proposing. Of course, it is going through the system and Tom probably knows immediately what the decisions, if there have been any, are in the water courts because she has not called down to Bozeman lately. There are water conflicts, there are people in Miller Creek who are deeply concerned about having surface water rights become groundwater rights. It requires a lot of permitting. Their Committee has looked at this repeatedly. She asked the Board to please not discount them because they are citizens. She reiterated that the people on the Committee are trained scientists. She happens to be the spokesperson for them because she was elected as the Chair. She wants the Commissioners to be aware of the comments. She had hand-carried reports from their water committee to the Commissioners’ office.

Michael Kennedy, directing his comments to Tom, said Susan has made an assertion that, for this subdivision, they do not have groundwater rights. He asked Tom to address that.

Tom McCarthy answered that was correct. The Maloney Ranch owns 5/6ths of the surface water rights and that stream is scheduled for adjudication. That is why the conflicts are there. They do no intend to transfer surface water rights to groundwater rights. They intend to develop new groundwater rights. Their long term plan is to take the majority of their water out of the Bitterroot valley.

Michael Kennedy noted, then, that they do not currently have groundwater rights for the well that they plan on using to support this subdivision, Phases I, II, III and IV.

[Some discussion was missed here when the tape came to the end and a new tape was put in the recording machine.]

Tom McCarthy ... said when he had filed for the application for new water rights, based on the hydrology report, test wells and those issues, then a notice goes out to all the neighborhoods and public hearings are scheduled so that protests can be brought in and that process normally goes on for some time until a determination is made. For example, the water system they developed on Reserve Street, they used the old sugar beet well, which was an industrial use, so those had to be converted to domestic use. The Dougherty family that is 3 miles away who had a hand-dug well 25 foot deep filed a protest and they had to go through an extensive hydrology report to demonstrate that their wells would not disturb their well.

Michael Kennedy said, in the event they go through this process and they find the alternative of using the lower Miller Creek aquifer is inadequate, then they are going to the Bitterroot aquifer which they all acknowledge probably has adequate supply and apply for a water right there.

Michael Kennedy said, in the event they go through this process and they find the alternative of using the lower Miller Creek aquifer is inadequate, then they are going to the Bitterroot aquifer which they all acknowledge probably has adequate supply and apply for a water right there.

Tom McCarthy said that was correct.

Susan Campbell Reneau said she had talked to the DNRC about this issue and she had copies of all the well logs for all registered water rights and copies of all groundwater rights from the computer. No one has analyzed the data because it is very time-consuming and expensive. When she talked with DNRC, Curt Martin, Regional Manager, said that anything over 35 gallons per minute would require the (unintelligible) process, especially for something like this.

Tom McCarthy said Susan was correct. At 35 gallons per minute, you have to file for a permit, you can’t just file to get well rights. But when you get 100 gal/min, the process then significantly changes again. That is the highest level of review and that is what they forced themselves into because of the County’s concerns.

Gary Hensley said he wanted to see a study on the Miller Creek aquifer prior to new wells being put in. But he wanted to address the park issue again. He understands this is not developable, this is a draw, about 30-40% grade and maybe
steeper in the contour lines. In the winter, it all drifts in with snow and is the last to melt in the spring. Earlier, he believes Tom said there was a proposed school site. And there were 2 pocket parks they proposed inside the division. The utility line with a 14 foot access and a water line which takes at least half the parkway that he pointed to. He proposed that pocket parks, legitimate ones, be put there since there is already walkways to this parkway. There is already a proposal for 2 lots for pocket parks that do not benefit anyone except the immediate area. At least everyone has access at the end of the cul de sacs, pathways and into the parkway.

Barbara Evans said, if they require that they go back to requiring pocket parks, then they will in all likelihood drop back to 4.9 acres of park, which is all they are required. She asked him if that is what he wanted?

Gary Hensley answered no, he just wants legitimate parks. He hates to see something disguised. Basically, he said he is looking at something that is misrepresented as a park (unintelligible) ...utility access, basically.

Colleen Dowdall said the proposed County park plan recognizes the value of conservation parks because of the need to protect areas for wildlife habitat or areas that should not be developed into people-kinds of parks. That, in all likelihood, is the reason that this area is designated as parkland. Further, they are not being fooled by the developer but the County recognizes this as valuable and the kind of parkland that compliments the people parks. Not every part of parkland is intended for people.

John Zimorino said the Parks and Open Space Committee looked at the original proposal that was submitted to them. He pointed to the map and gave discussion as to the areas they talked about, planning playgrounds, transition areas, etc. They recommended Lots 23 and 76 as possible pocket parks. Before they knew that they would immediately develop another park, a large area which could contain playgrounds and a ballfield.

Barbara Evans asked if that was satisfactory?

John Zimorino answered that was correct. He never felt these were the best solutions for parks but it would have provided some sort of area for those live there. But if the developers are willing to go ahead and develop the park up front, he would prefer that because it is larger and more suitable for a park. He also supports extending the trail to Lower Miller Creek Road.

Gary Hensley said he had one more comment. As an adjacent property owner, is he legally allowed to build a fence into that parkway? ... on the utility access?

Tom McCarthy said close friends of his lived in the same area and the same question came up for them. They encouraged people along there to put gates in their fences and use that common area.

Gary Hensley asked if he could build a fence legally into that parkway?

Tom McCarthy answered no.

Gary Hensley said, as he understood it, you can build into the parkway and take it down if a utility vehicle wanted to do some work.

Colleen Dowdall said that was only if the utility easement was on his property. This is not his property but property that will belong to the homeowners’ association.

Fern Hart said she would like this hearing to be postponed. She would like to see the area and further review all the reports.

Fern Hart moved that the Board of County Commissioners postpone this hearing until September 10, 7:00 p.m. Michael Kennedy seconded the motion. Motion carried 3-0.

Horace Brown said page 15, items 16 and 18, page 16, no. 21, page 17, no. 27, 28 and 29 all have an 8’ to 10’ foot wide walkway contiguous on one side to be used as a walkway and bikeway. It is illegal for bicycles to ride the wrong way on the road. It can be a walkway but it cannot be a bikeway unless it is separated from the highway. So the items have to be corrected, making it either 4 feet on both sides, or come up with another design.

Barbara Evans asked Horace to review the 90° corner by Mr. Sherick’s to see if something can be done about that. Also, the road signs that he indicated there was confusion about.

Fern Hart noted that Tom wanted to speak.

Tom McCarthy realized the late hour and asked if the public hearing was closed or would it open the continued hearing?

Michael Kennedy said the public hearing had not been closed and it would be continued.

Fern Hart said, however, that repeat testimony would not be heard.

Barbara Evans asked for more information on water and that it be easy for the layman to understand.

Tom McCarthy said what he was concerned about is a lot of input taking place in a non-public process between now and the night of the next meeting. He assumed the Commissioners would close the hearing tonight and reopen when the Board reconvenes.

Michael Kennedy explained that they would continue the hearing and there won’t be any discussion of it or decision made prior to that time.
Colleen Dowdall added that any public comment in the interim would have to be in writing. To continue the hearing means that it stops now and continues on the date set.

There being no further business to come before the Board, the Commissioners were in recess at 1:10 a.m.

FRIDAY, AUGUST 16, 1996

The Board of County Commissioners did not meet in regular session. Commissioner Hart was in Kalispell attending a meeting of the Mental Health Board.

MONDAY, AUGUST 19, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart was on vacation all week, August 19th through the 23rd.

ADMINISTRATIVE MEETING

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

Payroll Transmittal Sheets

The Board of County Commissioners signed the Transmittal Sheets for the following three pay periods:

1) pay period 15, pay date of 7-19-96, with a total Missoula County payroll of $549,189.13;

2) pay period 15-2, pay date of 7-26-96, with a total Missoula County payroll of $34,875.00; and

3) pay period 16, pay date of 8-02-96, with a total Missoula County payroll of $554,354.86.

The Transmittal Sheets were returned to the Auditor's Office.

Contract

The Board of County Commissioners signed a Contract between Missoula County and Harry Allen for furnishing labor, equipment, and materials as required for the "preparation" of junk vehicles in Missoula County, excluding vehicles in the Seeley-Swan area, as per the terms and definitions set forth, at the rate established by the Contractor's proposal. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

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

TUESDAY, AUGUST 20, 1996

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

Audit List

Commissioners Evans and Kennedy signed the Audit List, dated August 20, 1996, pages 2-39, with a grand total of $330,424.21. The Audit List was returned to the Accounting Department.

Indemnity Bond

Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Karen E. Hunter as principal for warrant #77524, dated July 24, 1996, on the Clerk of Court's Trust Fund in the amount of $200.00 now unable to be found.

ADMINISTRATIVE MEETING

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

Contract

The Board of County Commissioners signed a Contract between Missoula County and Idaho Asphalt Supply, Inc., the lowest and best bidder for supplying CRS-2 & MC-800 Oil, as per the terms set forth, for a total amount of $22,650.00. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.
Agreement

The Board of County Commissioners signed an Agreement, dated July 1, 1996, between Missoula County and Vocational Resources, Inc. (VRI), the renewal contract for the Employee Assistance Program, as per the items and terms set forth, through June 30, 1997, with the annual Missoula County employee count totaling 507.

Other items included:

The Commissioners approved a request from Bob Schieder, Facilities Manager, to purchase speakers for $300 to complete the portable sound system to take to public hearings/meetings, etc.

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

WEDNESDAY, AUGUST 21, 1996

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

ADMINISTRATIVE MEETING

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

Contract

The Board of County Commissioners signed a Contract between Missoula County and Cenex Supply & Marketing, the lowest and best bidder for Gas & Diesel Fuel, as per the terms set forth, for a total amount of $82,869.50. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Memorandums of Agreement

The Board of County Commissioners signed Memorandums of Agreement, dated July 1, 1996, between Missoula County and the following organizations:

1) the Lolo Community Council - for the purpose of advancing and promoting the interests and welfare of the residents of the Lolo community in Missoula County, as per the items and terms set forth, for the period through June 30, 1997, for a total amount of $500.00;

2) the YWCA of Missoula - for the purpose of providing comprehensive services for victims of domestic violence in Missoula County, as per the items and terms set forth, for the period through June 30, 1997, for a total amount of $39,400.00, contingent upon receipt of DPHHS Domestic Violence Grant Funds by the County;

3) Missoula Indian Center - for the purpose of providing alcohol and other substance abuse prevention, intervention and treatment services for prioritized populations in accordance with the Missoula County Alcohol and Other Drug Treatment and Prevention Services Plan for 1996-1999, as per the items and terms set forth, for the period through June 30, 1997, for a total amount of $9,504.00, contingent upon receipt of Montana Board of Crime Control Grant Funds;

4) Partnership Health Center - for the purpose of providing basic needs assistance for indigent residents of Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $198,068.00;

5) Child Care Resources, Inc. - for the purpose of providing 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 Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $51,000.00;

6) the Missoula Parent Co-op, Inc. (WORD) - for the purpose of providing affordable day care for the citizens of Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $26,550.00;

7) Missoula Youth Homes, Inc. - for the purpose of providing shelter care services through the Attention Home for damaged and troubled children with legal, emotional, social, behavioral, and family problems in Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $27,500.00;

8) the YWCA - for the purpose of providing alcohol and other substance abuse prevention services for youth in Missoula County through the Circle of Peace Program and in keeping with the goals and objectives of the Montana Board of Crime Control Safe and Drug Free Schools and Communities Act Program, as per the items and terms set forth, through June 30, 1997, for a total amount of $6,160.00;

9) Child and Family Resource Council - for the purpose of providing services to prevent child abuse and neglect in Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $10,000.00;
10) Friends to Youth - for the purpose of providing counseling and education services for non-SED youth and their families, as per the items and terms set forth, through June 30, 1997, for a total amount of $8,250.00;

11) Extended Family Services - for the purpose of providing shelter services for children who are victims of domestic violence, abuse and neglect in Missoula County, as per the items and terms set forth, through September 30, 1996, for a total amount of $6,250.00;

12) Montana Casa - for the purpose of providing alcohol and other substance abuse prevention services for youth in Missoula County and in keeping with the goals and objectives of the Montana Board of Crime Control Safe and Drug Free Schools and Communities Act Program, as per the items and terms set forth, through June 30, 1997, for a total amount of $5,341.00, contingent upon receipt of Montana Board of Crime Control Grant Funds;

13) the Missoula Y.W.C.A. - for the purpose of providing basic needs assistance for indigent residents of Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $11,697.00;

14) Women's Opportunity and Resource Development, Inc. (WORD) Family Basics - for the purpose of providing basic needs assistance for indigent residents of Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $10,000.00;

15) Community Care Inc. - for the purpose of providing alcohol and other substance abuse prevention services for youth in Missoula County, and in keeping with the goals and objectives of the Montana Board of Crime Control Safe and Drug Free Schools and Communities Act Program, as per the items and terms set forth, through June 30, 1997, for a total amount of $9,808.00, contingent upon receipt of Montana Board of Crime Control Grant Funds;

16) Friends to Youth - for the purpose of providing counseling services for victims of sexual or physical abuse and their families, as per the items and terms set forth, through June 30, 1997, for a total amount of $5,000.00, contingent upon receipt of Montana Board of Crime Control Grant Funds by Missoula County; and

17) the Missoula YWCA - for the purpose of providing crisis intervention, shelter, and related services for victims of domestic violence in Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $29,731.00, contingent upon receipt of Montana Board of Crime Control Grant Funds.

Acceptance of Grant Award

Chair Kennedy signed the Statement of Acceptance for a grant award in the amount of $30,000.00 from the Board of Crime Control for the Title V Delinquency Prevention Project for the period from 8-01-96 to 6-30-97, as per the special conditions set forth. The form was returned to Peggy Seel, Grants Coordinator, for further handling.

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

PUBLIC MEETING -- AUGUST 21, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present was Commissioner Barbara Evans.

HEARING (CERTIFICATE OF SURVEY REVIEW): AGRICULTURAL EXEMPTION (HALE)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a request for revocation of an agricultural covenant existing on Tract 1 of COS 2842 located in Section 26, T12N R22W for George J. and Joan Hale. George and Joan Hale have submitted a request for revocation of an agricultural covenant placed on Tract 1 of COS 2842 by a previous owner. The parcel is 13.36 acres and is located adjacent to Lolo Creek off Highway 12. Mr. and Mrs. Hale currently reside on Tract 2 of COS 2842 and propose to build a home on one acre of Tract 1 for Mrs. Hale’s mother.

The history of the parcel is as follows: Tract 1 of COS 2842 was created by Norman A. Close in January, 1983, using the agricultural exemption and pursuant to a Declaration of Covenant as shown in Book 183 Micro, Page 2351. Mr. and Mrs. Hale purchased the parcel in September, 1988.

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

George Hale said he wants to build a house for his mother-in-law and they did not know that they had an agricultural exemption until the Sanitation Department told him, which meant that he could not use the land for anything other than agricultural uses.

Michael Kennedy asked George how long he has owned this property?

George Hale replied they bought it in September, 1988.

Michael Kennedy asked him if he knew then there was an agricultural exemption on it?

George Hale answered no.
Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners revoke the agricultural covenant existing on Tract 1 of COS 2842 located in Section 26, T12N R22W for George J. and Joan Hale. Michael Kennedy seconded the motion. Motion carried 2-0.

HEARING: PETITION FOR ANNEXATION INTO EAST MISSOULA RURAL FIRE DISTRICT (ROBERT STARR - DEER CREEK ROAD)

Michael Sehestedt, Chief Deputy County Attorney, said this is a single tract annexation into the East Missoula Rural Fire District. The petitioner, Robert Starr, has been a member of the East Missoula Board for some time and has currently acquired property for residence that is outside of the District and outside of any other established rural fire districts. To continue his involvement in the East Missoula Board and to secure fire protection for his property, he has petitioned for its inclusion in the East Missoula Rural Fire District.

Michael Kennedy asked if it was currently adjacent to the Fire District and what its bounds were?

Michael Sehestedt answered that he does not believe it is contiguous to the District but the Attorney General said “it just has to be close.” This parcel meets that requirement.

Michael Kennedy said he is concerned because the applicant is also a member of the Fire District and they have not received anything from the Fire District that states this is okay with them.

Michael Sehestedt replied that he was under the understanding that the petition had an approval by the Board on it.

Vickie Zeier said at the bottom of the petition for Annexation, the Board has signed their approval.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the annexation into the East Missoula Fire District for Robert S. Starr based on the signed petition and that he receive the fire protection by the Fire District. Michael Kennedy seconded the motion. Motion carried 2-0.

THE MEETING WAS RECESSED AS THE BOARD OF COUNTY COMMISSIONERS AND RECONVENED AS THE PLANNING & ZONING COMMISSION

HEARING (PLANNING & ZONING COMMISSION): USE VARIANCE -- BED & BREAKFAST (RON MOSER, 10420 LAKewood, LOLO)

Bud Hettich, Office of Planning & Grants, said this was a request from Ron and Chantal Moser for a use variance to establish a two-unit Bed & Breakfast business within their home, which is on Lot 16 of Lakewood Estates Phase #1. This property is zoned 41-A, which exclusively permits single family residential, grazing, horticulture, agriculture, and timber. The Lolo Comprehensive Plan designates this area as residential, 6 dwellings per acre. This particular area is single family residential and the only commercial uses within a half mile is a new golf course. The staff feels a Bed & Breakfast, which would be a small affair, can be considered a residential use. It could be considered commercial if it there were a number of units, but in this case, the applicants are limiting the number to 2 units. Further, it is possible that they would only use one of the bedrooms for a Bed & Breakfast and use the second one if there were two couples. They don’t propose any alteration to the house so that is a limiting factor in itself. They plan to use the Bed & Breakfast for select tourists, French and Spanish speaking people, since they are able to translate for these people, and that is a service that is not provided for by other Bed & Breakfasts.

They don’t propose any alteration to the house so that is a limiting factor in itself. They plan to use the Bed & Breakfast for select tourists, French and Spanish speaking people, since they are able to translate for these people, and that is a service that is not provided for by other Bed & Breakfasts.

He said he as received three phone calls and 15 letters of residents who are opposed to this request for a use variance.

It is the staff’s recommendation that the variance request be approved with 4 conditions listed in the staff report.

Ron Moser said that Bed & Breakfasts are normally built in residential areas because they are strictly residential in nature, offering a “home away from home.” The only difference from regular guests is that you choose when and who comes, how long they stay, and they pay you for the privilege. They will only have one sign planned and it would say “Chantal’s,” “his wife’s name, and she is an artist and would probably design it and would not be very big; it would not be anything they would not be anything other than putting your family names up, such as “the Joneses.” There will be no local ads except in the phone listing. National ads would be in the Bed & Breakfast “bible,” requiring advance reservations. They would probably not allow pets, certainly not unattended. If the guests used their pedal boat, they would require life jackets. They have ample parking without making any changes and there is no reason there would be any more traffic than there is. Further, they would not have to use Red Fox Road to get there. The only physical change they have planned is landscaping and improve the patio. They may add a hot tub and they would like it enclosed. Regarding liability, there should be no more liability than normal guests, probably less than if their grandchildren were visiting. Regarding business in a residential neighborhood, he disagrees with Bud on that because they are not the first. There are other businesses that exist and no one seems to object. They are listed in the telephone book under business names.

Regarding compelling need, he has 12 years of medical records, treatment and medication to substantiate that. Only three neighbors spoke to him directly and they expressed no opposition.

He and his wife hope their venture does not fall victim to gossip, emotion, misinformation and ignorance.

Michael Kennedy said that the second condition states that no additions or exterior changes to the home be permitted, including one additional parking pad.
Ron Moser said originally he thought they might be required to put in an extra parking pad if approved. However, they have since learned it is not needed so no extra parking pad will be put in.

Bud Hettich added they have a double driveway and it is enough space on the driveway to park one extra car, so no alterations are needed.

Ron Moser said they are able to park a third vehicle on their driveway without obstructing entering or exiting the garage.

Michael Kennedy asked Counsel whether residential use for that zoning district would include this kind of use?

Colleen Dowdall, Deputy County Attorney, answered that it does not set forth what residential uses are permitted.

Michael Kennedy opened the public hearing.

Suzanne Bonner, a resident of Red Fox Road, said she circulated a petition against the opening of the Bed & Breakfast which 47 residents signed, 17 out of the 20 on the street where it would be. They are worried about the liability on the lake. The Homeowners’ Association have the rights to the lake and they own it. If a guest of theirs drowns in it or is injured, they could be held responsible and be involved in a lawsuit. In their covenants, Article 5, Section 9, states residential uses. “Upon the described premises, there shall be no manufacturing, commercial enterprises of any kind, whether for profit or not, nor shall said premises be used for any purpose other than strictly residential purposes.” She stated she and her neighbors are all opposed to this.

The following people came forward to speak in opposition to Mr. Moser’s requested use variance:

Jim Adair
Lou Ann Hansen, 223 Red Fox Road
Richard Kershaw, 10965 Peninsula Place
Jim Boege, 246 Red Fox Road
Jack Kirkland, 10470 Lakewood Place
Cheryl Hall, 10545 Lakewood Place
Barbara Donofrio, 10450 Lakewood Place
Peggy Dallman, 11055 Peninsula Place

Tom Cook, 10415 Lakewood Place, spoke in favor of the applicant’s request. He said Mr. Moser said the sign would be small, just like a family name sign. He is familiar with the Mosers and has talked with both of the neighbors that are on either side of him. He lives directly across the street from the Mosers and would be the people to have the Bed & Breakfast as their view. And he has no problem with it. Bed & Breakfasts by their very nature and legal description are designed to be in upscale and/or historic neighborhoods. He is a real estate broker and he felt if you did not have a Bed & Breakfast in a residential neighborhood, where would it be? But as a neighbor, he has no problem with it. He felt it would be very low impact.

Michael Kennedy thanked everyone for their comments and asked if there was anyone else who wanted to speak? No one came forward and he closed the public hearing.

Ron Moser said the lake is deeded to Phase II of the subdivision (he lives in Phase I). But on the plat that was approved by the County prior to that being done, it referred to Lake Lolo as a common area and it states that thereon that “common areas will be deeded to the Homeowners’ Association.” There was a Homeowners’ Association at that time. He felt that if two lawyers were asked, it would be questionable who the lake belonged to. He mentioned that all of the people got a notice that they were requesting this. Mr. Adair’s son is building a house that appears to be in the direct line of the Bitterroot River if the dike is not there to hold it back. He also believes Denny Washington had trouble diverting water. If this is their lake, this situation creates a lot of liability. That is a lot more threatening the guests who may or may not use the lake. They have had people from 8 or 9 different countries come to their home and no one has stopped them from using the lake and they have not created any problems. They are capable of translating since his wife came from France and he taught Spanish in school. Further, he said they do not have to use the lake.

Barbara Evans said that was what she wanted to ask him, if he would object to not using the lake?

Ron Moser said no. He pointed out, however, that it is okay for the neighbor’s babysitter to use the lake.

Barbara Evans said she understood but was trying to find middle ground.

Ron Moser if they cannot have a business, or they going to move the other businesses?

Michael Kennedy said he understood that the difference between the way Mr. Moser wanted to conduct business and the way they are currently conducting business is that currently the guests are not charged. He asked if that was correct?

Ron Moser answered yes.

Jim Adair approached the podium to speak, however, Commissioner Kennedy asked him to be seated.

Michael Kennedy asked Mr. Adair to be seated 4 times, ruling him out of order. However, Mr. Adair continued to interrupt the Chair.

Jim Adair asked if that part could be stricken.
Mandy Muller, 10845 Peninsula Place, said, regardless of the lake issue, they want the area residential only. They do not want the Bed & Breakfast.

Barbara Evans noted to Counsel that in ...(unintelligible) 76, Chapter 2, Part 1, it states that “the Board of County Commissioners shall have the power to authorize such variance from the recommendations of the Planning Commission as will not be contrary to the public interests, where owing to special conditions, the literal enforcement of the decision of the Planning and Zoning Commission will result in unnecessary hardship.” She asked Counsel to explain “where owing to special conditions” and what those special conditions might be.

Michael Sehestedt answered the general rule on special conditions and zoning is that it means special conditions unique to the property. A typical situation would be where zoning regulations have been adopted and a pre-existing parcel of ground is made unbuildable because of set-back or other conditions unique to the property. The hardship must not only be unique to the property but it cannot be of the making of the property owner or the property owner’s predecessors. This is a “use variance.” This would typically be used in special circumstances, such as hardship related to a property that would justify use variance is where changing conditions or the pre-existing nature of the improvement make it essentially unusable for permitted purpose. An example of that would be strict residential application on a street that now has a daily traffic count of 15,000 as a result of changing conditions. Under those circumstances, you may find that it is an undue hardship to strictly enforce residential use on that particular piece of property. So, you have to first look at the property and a literal application of the zoning regulation to this piece of property creates a unique hardship to this specific piece of property.

Even if the Commission decided a request was okay as far as the zoning regulations are concerned, that would not authorize an activity that is prohibited by the covenants. The particular zoning regulations applicable here restrict the property in the zoning district to single family residential use. In his judgment, to permit the Bed & Breakfast would require a variance. It is not permissible under those zoning regulations. If you consider it a residential use, then there is no longer single family residential, but multi-family residential. The proposed use is prohibited by the zoning regulations. The Commission has to decide whether there is something special or unique about this piece of property that would justify not applying those zoning regulations to the property.

Barbara Evans asked Bud Hettich what factors made him to decide to recommend approval of this request?

Bud Hettich answered it was primarily the limited use of the property and the type of business. Staff did not feel it would be any different than having relatives stay over. Further, the Bed & Breakfast would have not advertising locally and the sign would not be hardly more than a family name sign. They felt it would fit in a residential zone.

Michael Kennedy commented, in the overall Growth Management debate, one of the discussions had to do with performance zoning and one of the issues was mixed use. He feels mixed use is a good thing and it may be in our future but it is not in the present. It is not in this zoning district 41-A. Also, any variance would run with the land. Ownership changes with time and there is no control over a variance that would extend beyond the current owner. He said, for this reason, he opposes the variance.

Horace Brown, County Surveyor, said his biggest problem was with the lake and the ability to use the lake as part of this property. If it is owned by the people who live there, then, he asked, what would be the liability to the people if there was an accident?

Michael Sehestedt said, typically, people who are guests would be business invitees and there is a higher duty of care generally for business invitees than for casual family guests or friends. How that would translate from liability for the operators of the Bed and Breakfast to the Homeowners Association he could not say. Generally, in the absence of negligence creating a hazardous condition, there is no liability.

Horace Brown asked if that would be considered an attraction?

Michael Sehestedt answered typically, a natural body of water is not considered an attractive nuisance. There is a fairly recent Montana Supreme Court case involving an irrigation ditch in Billings that was held to be essentially equivalent to a natural stream. Hence, there was no higher standard of care for the ditch owners than there would be for a person bordering on a natural stream.

Barbara Evans said she understands the needs of the Mosers to supplement their income and she does not think that having 2 house guests is any different than having family or friends visit. Also, the rules saying that owing to special conditions of the land can’t be met here. She felt that they could add conditions that say no use of the lake, no signs but still, she does not think they can come to meeting the statutory language owing to special conditions. Someday any one of us may be in a position where it will be necessary to supplement their income in a way that is not likely to harm our neighbors. She asked the people who testified to keep that in mind.

Barbara Evans moved that the Planning & Zoning Commission deny their request based that it does not meet the statutory language. Vickie Zeier seconded the motion. Motion carried 4-0.

THE MEETING ADJOURNED AS THE PLANNING & ZONING COMMISSION AND RECONVENE AS THE BOARD OF COUNTY COMMISSIONERS’ PUBLIC MEETING

HEARING (PLANNING & ZONING COMMISSION): USE VARIANCE -- BED & BREAKFAST (RON MOSER, 10420 LAKEWOOD, LOLO)

Barbara Evans moved that the Board of County Commissioners adopt the recommendation of the Planning & Zoning Commission and deny the request for a use variance to the zoning for Chantal and Ronald Moser for a two-unit Bed & Breakfast. Michael Kennedy seconded the motion. Motion carried 2-0.
CONSIDERATION OF: RAKOW RANCH (SUMMARY PLAT) MINOR SUBDIVISION — 2 LOTS NORTH OF THE WYE

Sam Islam, Office of Planning & Grants, said Rakow Ranch is a proposal for a 2-lot subdivision. It is located on the west side of Highway 200, approximately 1 mile north of the Wye in the Meadows of Baron O’Keefe area. The property has an existing house and barn on proposed Lot 1. Mr. Rakow plans to build a house on proposed Lot 2. The property is unzoned. The 1975 Comprehensive Plan designates the property open and resource land with a maximum recommended residential density of one dwelling unit per 40 acres. The 1979 Wye/O’Keefe area plan designates the property agricultural land and reinforces the 1975 plan. By stating that residential development of not more than one dwelling per 40 acres will be in keeping with the intent of the open and resource land classification. The Wye/O’Keefe area plan suggests that for future or alternative growth patterns be considered, depending on demand for development when reviewing development in the Wye area. Under the most intense development scenario, called trend development, this plan recommends a maximum of one dwelling per 5 acres along Highway 200. The development pattern that has evolved in this area, however, is much higher than originally envisioned. Rakow Ranch proposes residential development at an average density of approximately 1 dwelling unit per 10 acres. This property was originally designated as agricultural land according to the Wye/O’Keefe Plan. This land and the surrounding tracts have been converted to residential use. The proposal will continue a trend that has already been established. Rakow Ranch does not comply with the strict letter of the Comprehensive Plan. However, the applicable plans were adopted in the 1970’s and are outdated. Under the circumstances, this proposed subdivision will be in substantial compliance with the Plan if it maintains the rural character of the Wye/O’Keefe are by clustering houses as the Plan recommends. Rakow Ranch, nevertheless, is consistent with the surrounding land use and density pattern. The developer requests two variances. The first one is from the requirement to increase the surface width of George Cates Boulevard from 20 feet to 24 feet and the second request is from the requirement to construct sidewalks and pedestrian walkways. Staff recommends approval of the variances and approval of the subdivision subject to the conditions stated in the staff report.

Nick Kaufman, WGM Group, said he was representing Don and Chris Rakow. He asked the Commissioners to recall when they first came to the Commission with a family transfer request. The Commissioners recommended at that time that they come back through the summary plat subdivision process. The Rakows’ home is on Lot 1, which is known as Odyssey Arabians. They wish to sell Lot 1 and construct a new home on Lot 2. Lot 1 has an existing driveway, home, drainfield and well. Lot 2 would access off of George Cates Boulevard. Sanitary restrictions have been submitted to state and local health departments and have been approved. Staff recommends in favor of the proposal with certain conditions and he asks the Board for their approval of the proposal.

He said there was one item of discussion. There are approximately 5 conditions attached to the subdivision which deal with private driveways. In his professional opinion, he believes driveways are part of zoning compliance at the time a person applies for a building permit than they are something that you look at for design prior to filing a subdivision. As an example, he noted that not many people in this room would look to the face of the plat for a statement that said “provide a minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches for any driveway over 150 feet.” Certainly everyone in this room would expect to have that reviewed at the time they bring their plans in for a zoning compliance permit. He suggested that, perhaps in the future, they try to get conditions regarding how you construct and build a driveway into the zoning compliance preview instead of the subdivision preview, which looks at lot splits, not what happens after the lot splits in terms of particular driveway design that may be influenced by different owners. However, he noted that they agree with the conditions that staff has suggested for this subdivision.

Michael Kennedy said there is no access to the highway for these parcels.

Nick Kaufman answered that was not true. Tract 1 has access to Highway 200. Tract 2 would access off of George Cates Boulevard.

Michael Kennedy asked if limiting the access for Tract 2 would be a problem?

Nick Kaufman answered no.

Barbara Evans asked if anyone wanted to comment on this subdivision proposal? No one came forward.

Barbara Evans moved that the Board of County Commissioners approve the variances from Section 3-2(3) which required to increase the surface width of George Cates Boulevard from 20 feet to 24 feet and Section 3-2(5)(A) which requires construction of sidewalks and pedestrian walkways for Rakow Ranch subdivision, located in the south ½ of Section 16, T14N, R20W, Principal Meridian. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the Rakow Ranch subdivision, summary plat, located in the south ½ of Section 16, T14N, R20W, Principal Meridian, based on the findings of fact and contingent on the conditions listed below. Michael Kennedy seconded the motion. Motion carrier 2-0.

Barbara Evans moved that the Board of County Commissioners change condition no. 4 for the Rakow Ranch Subdivision to state that the fire access standards be placed in the covenants or in a development agreement. Michael Kennedy seconded the motion. Motion carried 2-0.

1. The County Surveyor shall approve grading, drainage, erosion control, road and driveway plans before approval of the final plat.
2. The County Surveyor shall approve access and approach permit before filing the final plat.
3. The developer shall provide a mechanism for dust abatement on George Cates Boulevard. The Missoula City-County Health Department shall approve this mechanism for content, before approval of the final plat.
4. Place the following subdivision fire access standards in the covenants or in a development agreement:
   a. Provide a minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches for any driveway over 150 feet.
   b. Provide approved provisions for turning around of fire apparatus for dead-end driveways more than 150 feet.
5. The private driveways shall be all weather surface with a minimum of 20 feet width. In lieu of two access routes, provide turnarounds for turning around fire apparatus. The Fire Marshall shall approve plans before final plat filing.
6. The owner shall pay to the Missoula Rural Fire District a $50 fee per lot or dwelling unit to fund a large diameter hose fund before final plat filing.
7. Place a 1-foot no-access strip along U.S. 93/Highway 200 on Lot 2.
8. The following statements shall appear on the face of the final plan and in all instruments of conveyance:
   "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owners to waive the right to protest a future RSID or SID for any public water system and public sewer system improvements. Such a waiver may be used in lieu of their signatures on an RSID or SID petition."
   "The purchaser and/or owner of the lot or parcel understands and agrees that construction, maintenance, and snow removal of George Cates Boulevard shall be the obligation of the owner or property-owners' association. The County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the County of Missoula for maintenance."
   "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under, and across each area designated on this plat as "Utility Easement" to hold forever."

CATHERINE ADDITION (SUMMARY PLAT) 5-LOT SUBDIVISION OF LOT 133- ORCHARD HOMES
ADDITION NO. 6

Sam Islam, Office of Planning & Grants, said Catherine Addition is a proposal for a 5 lot subdivision. It is located adjacent to Humble Road immediately north of McCauley Butte. It totals 4.89 acres. Lot 1 is .89 acre and Lots 2 through 5 are 1 acre each. This property is zoned C-RR1. It is a County residential district which allows a maximum density of 1 dwelling unit per acre. This subdivision proposal does not comply with the County zoning regulations because Lot 1 is .89 acre. C-RR1 district requires each lot to be at least one acre in size. The developer needs to obtain a zoning variance from the Missoula County Board of Adjustments to allow Lot 1 be less than an acre. The 1990 Missoula Urban Comprehensive Plan designates the property suburban residential district with a maximum recommended density of 2 dwelling units per acre. Catherine Addition is in substantial compliance with the Comprehensive Plan. The developer requests a variance from the requirement to construct sidewalks and pedestrian walkways. Staff recommends denial of this request. It is staff’s opinion that the developer install a pedestrian walkway along the western side of Catherine Court. This is the only opportunity for Missoula County to ensure pedestrian walkways along Catherine Court, which is a private road. The developer may waive the right to protest a future RSID to install sidewalks and pedestrian walkways on Humble Road instead. Finally, staff recommends approval of Catherine Addition subject to the 12 conditions stated in the staff report.

Michael Kennedy asked about waiving a right to protest water and sewer SID’s in that area. He does not see that in a condition.

Sam Islam said he was right. He suggested that they add, in condition no. 12, “acceptance of a deed for a lot within this subdivision shall constitute: 1) assent of the lot owner to waive the right to protest an RSID or SID affecting said property for the purpose of financing the design and construction of public water and sewer benefiting said property; and 2) to an agreement whereby the owner shall connect to public water and sewer within 180 days after they are installed.”

Tim Wolfe, Territorial Engineering & Surveying, said George and Catherine Smith are present at this meeting so he and George and Catherine are available for any questions the Commission may have. He said he understood what Sam said about the sewer and water. He wanted to point out that part of the conditions of approval are approvals by the Health Department.

Sam Islam said in the staff report it states that “each home will be required to install a City STEP septic tank to facilitate connection to the city sewer system when it becomes available.”

Barbara Evans said she looks at the differently than dry laying sewer lines which she has an opposition to unless there are specifications that have been approved and she does not believe that is what this says.

Tim Wolfe said the Health Department condition is that the City inspect and accept the line prior to accepting the subdivision.
Barbara Evans said when this was done before (she thought it may have been 44 Ranch Estates about 2-3 years ago) the County required the dry laying of sewer but there were no specifications of the kinds of pipes or anything else for the developer to use.

Tim Wolfe responded that this was not that type of condition. He knows through talks with different agencies that their sewers will not be accepted unless it is built to City specifications for STEP sewer mains which are on file with the State Water Quality Bureau. It has to be inspected and certified by himself and City Engineering before it will be accepted and the condition is met.

He continued that he would like to discuss some of the conditions. Regarding condition no. 4, Humble Drive was paved with CMAQ funds up to 300-500 feet from this project. The condition says that “if the County does not pave it within two years of subdivision approval” that the subdivider will pave it. In condition no. 12, they give up their right to protest a paving RSID. That is a contradiction. He read from a letter by Horace Brown “An approach permit will be required in order to access Humble Road with the private road. It is planned to pave Humble Road with CMAQ funds in 1997 but, if for some reason the funds are not available, the subdivider shall be required to create an RSID to accomplish the paving.” That is the condition they would like to see as opposed to what is written in the conditions.

Michael Kennedy asked Counsel if they can require a condition for pavement of that road?

Colleen Dowdall answered that she has not looked at that part of it but the County has regulations that require that off-site roads be paved if they meet certain criteria. Those criteria include how long the road is that would need to be paved that accesses the subdivision.

Sam Islam said his understanding is, if there isn’t a public paved road within 500 feet of the subdivision, then the subdivider is required to pave up to that access to the subdivision. Humble Road is paved within that 500 foot range.

Barbara Evans asked if it was planned to be paved in 1997?

Michael Sehestedt said it was paved to within 500 feet. The balance is in the CMAQ program for paving in 1997.

Colleen Dowdall said the regulation talks about a requirement for paving for off-site access roads which are 500 feet or less in length. If they are longer than 500 feet in length, which are specifically and uniquely attributable to the subdivision. So if Humble Road is longer than 500 feet in length and is unpaved, then they have to make a finding that the road is uniquely attributable to this subdivision in order to require paving.

Michael Kennedy said Humble Road exists as a public right-of-way and it existed before this proposal. So he would find it hard to make the decision that it is “uniquely attributable” to this subdivision. So, he surmised, the County cannot make the requirement although they can require an RSID waiver.

Tim Wolfe said he had another issue. Condition no. 5 relates directly to the variance request for the walkway. This is a 5 lot subdivision with one acre lots. There are no walkways on Humble Road. At first, they thought they were providing mitigating efforts by extending a public walkway through this subdivision to the north so that an interconnection could be made in the future. They also provided a 27 foot wide future public roadway easement along the north lot line of Lot 5 to facilitate any potential road that would come through there. At this time, there is just a 27 foot road easement out in the middle of nowhere that is not connected on either side. They felt they made an effort to mitigate the walkway issue and they would like to have that considered when the Commissioners rule on the variance. This relates directly to conditions 6 and 7 where they are asking for those 2 items.

He agreed with Nick Kaufman about putting the fire department standards on the face of the plat. In this instance, they are filing covenants and he feels they should go in the covenants. He does not believe subdivision plats are the place for that kind of thing.

Colleen Dowdall said, since Nick made that same comment in the previous subdivision review, she looked into what the regulations said. They do require that any driveways over 150 feet in length meet the requirements but they may be in either covenants or development agreements. Subdivision regulations do not require that they appear on the face of the plat.

Tim Wolfe stated, regarding condition no. 10 that requires the Fire Marshall shall approve plans before final plat filing, Horace Brown has to approve the road plans according to condition no. 4. If Horace is doing it, he should work with the Fire Marshall.

Michael Kennedy explained that Horace will approve the road plans and the Fire Marshall will decide whether the turnarounds are adequate for their equipment.

Tim Wolfe said his point was that they are providing a 35 foot diameter cul de sac for that reason and he believes that will be acceptable to the Fire Marshall. The conditions seem redundant.

Colleen Dowdall said the subdivision regulations gives the appropriate fire jurisdiction approval of final design.

Michael Kennedy said it was okay with him if condition no. 10 was dropped.

Barbara Evans moved that the Board of County Commissioners deny the request for the variance for sidewalks and pedestrian walkways for Catherine Addition Subdivision, legally described as the NW¼ of Section 35, T13N, R20W, Principal Meridian, located adjacent to Humble Road immediately north of McCauley Butte. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the summary plat for Catherine Addition, legally described as the NW¼ of Section 35, T13N, R20W, Principal Meridian, located adjacent to Humble Road immediately north of McCauley Butte. Motion carried 2-0.
immediately north of McCauley Butte, based on the findings of fact and contingent on the conditions listed below. Michael Kennedy seconded the motion. Motion carried 2-0.

1. The developer shall receive a variance from the Missoula County Board of Adjustment allowing Lot 1 to be 0.89 acre in size before approval of the final plat.

2. The County Surveyor shall approve grading, drainage, erosion control, road and driveway plans before approval of the final plat.

3. The County Surveyor shall approve access and approach permit before filing the final plat.

4. The developer shall install a 5-foot asphalt pathway along the western side of Catherine Court.

5. The developer shall grant a 20-foot public access and utility easement from the end of Catherine Court turnaround to the northern property line of Lot 5.

6. The developer shall grant a 27-foot utility and future road easement along the northern property line of Lot 5.

7. The developer shall show two building envelopes per lot. Building location will be restricted to a site within these envelopes. Building envelopes shall be shown on the plat and approved by the Office of Planning and Grants before filing of final plat.

8. Place the following subdivision fire access standards in the covenants:
   a. Provide a minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches for any driveway over 150 feet.
   b. Provide approved provisions for turning around of fire apparatus for dead-end driveways more than 150 feet.

9. Catherine Court shall be paved with a minimum of 20 feet width. In lieu of two access routes, provide turnarounds for turning around fire apparatus. The County Surveyor shall approve the roads and access routes and the Fire Marshall shall approve plans before final plat filing.

10. The owner shall pay to the Missoula Rural Fire District a $50 fee per lot or dwelling unit to fund a large diameter hose fund before final plat filing.

11. The following statements shall appear on the face of the final plat and in all instruments of conveyance:
    “Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a future RSID or SID for any improvements to Humble Road, including but not limited to paving, dust abatement, and sidewalk based on benefit. Such a waiver may be used in lieu of his or her signature on an RSID petition.” The RSID for paving Humble Road shall be subject to initiation in the event that the County does not pave the road with CMAQ funds.

    “Acceptance of a deed for a lot within this subdivision shall constitute: 1. Assent by the lot owner to waive the right to protest an RSID or SID affecting said property for the purpose of financing the design and construction of public water and sewer benefiting said property; and 2. An agreement whereby the owner shall connect to public water and sewer within 180 days after they are installed and available in the public right-of-way adjacent to the property. This waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owner of the land described herein. All documents of conveyance shall refer to and incorporate this waiver.”

    “The purchaser and/or owner of the lot or parcel understands and agrees that construction, maintenance, and snow removal of Catherine Court shall be the obligation of the owner or property-owners’ association. The County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the County of Missoula for maintenance.”

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

12. Dust abatement will be provided by the developer until such time that Humble Road is paved.

KEANE SUBDIVISION (SUMMARY PLAT) 2 LOTS - WYE AREA

Sam Islam, Office of Planning & Grants, said the Keane Subdivision is located within the Baron O’Keefe Meadows development, lying approximately 1 mile northwest of the Wye at the intersection of I-90 and U.S. Highway 200. It totals 10.45 acres with Lot 1 being 5.25 acres and Lot 2 being 5.2 acres. The property is unzoned. The 1975 Comprehensive Plan designates the property open and resource land, with a maximum recommended residential density of 1 dwelling unit per 40 acres. This proposal proposes one dwelling unit per 10 acres on average and Keane subdivision does not comply with the strict letter of the Comprehensive Plan, however, the applicable plans were adopted in the 1970’s and are outdated. Under the circumstances, this proposal will be in substantial compliance with the Plan if it maintains the rural character of the O’Keefe area by clustering houses as the Plan recommends. Keane Subdivision, nevertheless, is consistent with surrounding land use and density pattern. The developer requested 3 variances. The first one is from the requirement to pave George Cates Boulevard. The second request is from the
requirement to increase the surface width of George Cates Boulevard from 20 feet to 24 feet and the last request is from the regulation requiring construction of sidewalks and pedestrian walkways in all subdivisions. Staff recommends approval of all 3 variance requests, based on the findings of fact. Finally, staff recommends approval of Keane Subdivision based on the 8 conditions stated in the staff report.

Glenn Howard, Land Surveyor, Druyvestein Johnson & Anderson, said he represented the Keanes. They have reviewed the recommended conditions and are in agreement to them.

Michael Kennedy asked if this were an area where dust abatement was an issue?

Sam Islam said this piece of property was outside the air stagnation zone.

Glenn Howard said the Homeowners’ Association follow up with dust abatement and it is in their requirements to do so.

Michael Kennedy said, even though this was not a public hearing, he invited anyone to come up and speak. No one came forward.

Barbara Evans moved that the Board of County Commissioners grant the 3 variance requests for Keane Subdivision, legally described as the SW ¼ of Section 16, T14N, R20W, Principal Meridian, located in the Baron O’Keefe Meadows development, lying approximately one mile northwest of the Wye at the intersection of I-90 and U.S. 93. Those variances are from: 1) Section 3-2(1)(G) which requires that George Cates Boulevard be paved, 2) Section 3-2(3) which requires increasing the surface width of George Cates Boulevard from 20 feet to 24 feet, and Section 3-2(5)(A) which requires that sidewalks and pedestrian walkways be constructed in all subdivisions. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the Keane Subdivision summary plat, legally described as the SW ¼ of Section 16, T14N, R20W, Principal Meridian, located in the Baron O’Keefe Meadows development, lying approximately one mile northwest of the Wye at the intersection of I-90 and U.S. 93, based on the findings of fact and contingent on the conditions listed below. Michael Kennedy seconded the motion. Motion carried 2-0.

GRANT CREEK VIEW ADDITION NO. 2 (2ND SUMMARY PLAT) 2 LOTS - GRANT CREEK AREA.

Lisa Moisey, Office of Planning & Grants, said Grant Creek View Addition II is a request from Gilbert and Judith Johnston for a 2-lot residential subdivision of a 12.06 acre parcel located approximately one mile from the I-90 Interstate in the Grant Creek area, legally described as Lot 6B of the Grant Creek View Addition. This property lies within the CRR-1 and CA-3 zoning districts. A portion of the property lies unzoned. The development proposal as submitted is consistent with the zoning for this area. When the Grant Creek View Addition was approved in 1994, which created Lot 6B, one of the conditions of approval was that the covenants be amended to include language stating that one dwelling unit may be constructed on Lot 6A and one dwelling unit on Lot 6B, with the remainder to be left as open space and wildlife habitat. The Commissioners have in their packet a copy of those conditions that were imposed at the time that the original Grant Creek View Addition was approved. The developer’s representative has comments in regard to that issue and he will discuss them later. Outside access to the subdivision will be from Glen Eagle Way. Lots will access from a private driveway easement that was platted with the original Grant Creek View Addition. The developer plans to pave this driveway lane to 20 feet wide and has asked for a variance from the subdivision regulation which requires all access lanes serving three or more lots to meet County roadway standards. In this case, the private access lane will serve Lot 6A, 6B and the lot just northwest of that. At this time, the private drive will function as a driveway but, according to subdivision regulations, it would be classified as a roadway. It would be required to meet roadway standards which include a 54 foot wide easement and a 24 foot wide paved surface. The easement in place is 54 feet. The difference is the developer is intending to pave the driveway to 20 feet in length rather than 24 feet. OPG staff recommends approval of the variance given that the driving lane will essentially function as a driveway and 24 feet of paving may be considered excessive in an area where there is concern with slopes. An issue with this subdivision relates to a subdivision that was previously platted in the area called the Meadows at Grant Creek. In 1993, condition no. 15 required the developer to construct a mailbox and newspaper and vehicle pull-out at the intersection of Grant Creek Road and Glen Eagle Way. The last sentence of the condition stated that the pull-out shall be part of the improvements guaranteed for this project and is contemplated to be part of the improvements guaranteed for those other parcels of land in the Glen Eagle development using this pull-out. While this proposed subdivision is not within the Glen Eagle development per se, it would benefit from that pull-out at the intersection. It is staff’s opinion that this developer be required to participate in some fashion for the installation of that vehicle pull-out because it has not been constructed yet.

Barbara Evans asked whose responsibility was it to have it done?

Lisa Moisey answered that the requirement was for the developer of the Meadows of Grant Creek who was Vern Young. However, in condition no. 15, there was discussion that the pull-out should be part of the improvements guaranteed for that subdivision but it was also contemplated to be part of improvements guaranteed for other parcels of land in the Glen Eagle development area.

Barbara Evans asked if it was contemplated that future subdivisions would participate in this?

Lisa Moisey said that was correct, but it specifically tied it to the Glen Eagle development. The Glen Eagle development obviously is not happening. It is staff’s opinion that this subdivision would benefit from that vehicle pull-out. Staff recommends that condition no. 6 in this proposal, which provides an option to the Commissioners that either the developer of this subdivision waive the right to participate in an RSD/SD for the school bus and mailbox turn-out or that the developer contribute to the cost based on benefit of constructing a vehicle pull-out at that intersection. The amount of contribution shall be determined by the County Surveyor and City Engineer and that any...
agreement be approved by the County Attorney. OPG staff recommends approval of the subdivision based on the findings of fact and subject to the conditions. She noted that if the Board does decide to approve this subdivision, staff would recommend an additional condition which would require the developer to delete from the covenants that requirement which limited development on this lot to one lot on Lot A and one lot on Lot B.

Michael Kennedy asked how many lots are there in Grant Creek View Addition?

Lisa Moisjev said the original Grant Creek View Addition had 2 lots. The way the condition in the original Grant Creek View Addition approval read is that there would be one dwelling unit allowed on one lot and one dwelling unit allowed on another lot. This developer is proposing to do is subdivide Lot 2 to create an additional lot, which would mean three dwelling units and the covenants restricted it to two dwelling units.

Michael Kennedy, addressing Counsel, said, regarding the condition for a waiver for an RSID for participation in the turn-out, it seems that one subdivision had an obligation to provide the turn-out and he is unsure if the RSID waiver will do anything.

Colleen Dowdall replied that part of the issue is the understanding or allegation of the previous developer that it was never intended that he would do the pull-out by himself. And, if he did, he expected contributions from others who would benefit from it. They had provisions in the subdivision regulations that allow them to have a pay-back by future developments in return for the first person being responsible for capital improvements. So she is also unsure that an RSID waiver is the option she would choose at this time. She believes $5000 was given to the County for the pull-out.

Barbara Evans asked where the money was?

Colleen Dowdall said she would have to find out where the County places such funds.

Michael Kennedy said the original subdivision that held the requirement for the turn-around was named the Meadows of Grant Creek. He asked how many lots were included in it?

Colleen Dowdall answered 4 lots.

Michael Kennedy asked if those lots bordered Grant Creek Road and are currently occupied lots?

Colleen Dowdall answered that she is not sure they all border Grant Creek Road. She thinks there was an access road built to some of the lots in back.

Michael Kennedy asked, regarding the lots in that subdivision that are currently improved, how can the County impose an enforceable requirement on those people to participate in the financing of the turn-around?

Colleen Dowdall answered that she is not sure that they have to do that because the subdivision may have participated by contributing $5000 for the turn-around. They could attempt to create an RSID to build the turn-around, however, she does not think a turn-around would cost enough to warrant the cost of an RSID.

Barbara Evans asked Horace Brown what he thought the cost of the turn-around and a place for the mailboxes would be?

Horace Brown answered he did not know because the City is also involved in this. It would depend on what their requirements were for the turn-around.

Michael Kennedy agreed that it was a City street.

Barbara Evans asked then how could the County require something that they don’t know about?

Colleen Dowdall said they need more information.

Chip Johnson, Consulting Engineer, Druyvestein Johnson & Anderson, said he represented Russ and Judy Johnston. He understands at this time remarks are confined to Addition II.

Michael Kennedy said yes.

Chip Johnson said he had a few things in response to the conditions. They are in concurrence with all the conditions. The only exception is what the County staff had been discussing. Their view of that is that is best handled through an RSID assessment. While it is true that one subdivision post a bond or put up money in some manner for a potential future bus pull-out, there are other lands up there that will benefit from the bus stop. One of them is a subdivision that had already been approved. In addition, there are potentially other subdivisions that will come before the Commission. They have no problem with contributing to a bus stop. They feel that if these lots benefit, they should share in the cost and share it equitably. If there is a bus stop that has been planned for and there is a basis for a 4-lot subdivision to have contributed $5000, or what would equate to $1250/lot, they are going to need to discuss if the cost per lot will be that amount or will it be more? In his opinion, you cannot build a turn-out in that area for $5,000-$10,000. They have been involved with a land-owner who has set aside the easement for this bus-stop. He knows the terrain out there and there is a significant amount of cutting and working on the existing land in order to construct a proper bus stop. As Horace has pointed out, until the City makes a decision on what improvements will be made to Grant Creek, it is difficult to determine what the cost might be. On another matter which regards changing the covenants, it is true that the covenants indicate that there should be only one home built on each of Tract 6A and 6B. The reason is, when they presented Grant Creek View Addition in 1994, there was also agreement before the Commissioners with the other land-owners in the area for the exchange. There is documentation in the County records today to indicate that the intent was the Mr. Johnston was willing to give
up development on what used to be parcel 6 in exchange for him limiting his development on parcel 6 to two lots. That exchange has not come about and it does not appear that it will come about. Thus, he now asks for the density allotment that was provided with the covenants when he purchased the land. The zoning in the area would allow for this. They asked for the variance request because, since they are only serving three lots with this roadway, to provide any more width of pavement is not necessary. They can safely move the traffic that they can expect to 20 feet of asphalt width. He discussed this with the Fire Department, both Bill Reed and Bill Lindstrom, and they said a road of that width would be satisfactory for their needs. So he asked that the Commissioners grant this request so that they will not have to cut any more of the hillside.

Michael Kennedy said Chip has mentioned he was involved with the procurement of the easement for the turn-around. Chip Johnson said that easement exists on a parcel of land that Mr. Denton owned and sold to them. They developed the easement document from Mr. Denton at the time he sold the property. It was Mr. Denton’s intention to file that easement.

Michael Kennedy asked if the people who bought the property know that there is an easement on it? Chip Johnson said he called Mr. Denton and he confirmed that it was a filed easement.

Michael Kennedy opened the public hearing.

Kim Birk, Secretary and Treasurer, Friends of Grant Creek, said they are addressing two separate pieces of the area that was all considered part of the conservation development swap. All of these mini-subdivisions that have been approved, Meadows of Grant Creek, Vern Young’s 4-lot subdivision and Meadow Heights, which has a condition that requires participation in a bus pull-out, equal 8 lots, which, if $5,000 is the amount, that would be $625/lot. She does not know if he paid for the upper 4 lots. The initial intent of the Commissioners with the conservation development swap was to do a quality subdivision at the top and in exchange a low-impact perhaps a 5 acre lot subdivision below that was not originally expected to be there. Unfortunately, these lots took place before the swap went through so they are stuck with at least 13 approved building sites on that hillside that was originally was scheduled for none. In the Comprehensive Plan, it is shown as open and resource land, one house per 40 acres in spite of the zoning. The piece that is unzoned would be governed by the Comprehensive Plan, so part of the land in that area is one house per 40 acres. None of these questions were resolved when Vern Young brought the first subdivision to the forefront, even though Phil Maechling, Office of Planning & Grants, did an extensive zoning report that said, in the first place, the PUD zoning may still be in effect because, when it was sunsetted, the Commissioners did not hold a public hearing or give any notice. They found out about it by accident two years after the fact. The letter was dated in 1991 when it was sunsetted. In 1993, when Vern Young proposed his subdivision, they were upset because the Comprehensive Plan and everything they thought pertained to that land said the hillsides were open space. There is a conflict there. If the legal notification jeopardizes their interpretation of the zoning, then there is a conflict situation that should be resolved before any subdivisions are approved. But no one has taken that issue on. Instead, there are piece-meal subdivisions, a two-lot subdivision here and another later and so forth. It appears that the Glen Eagle subdivision is not going to happen so there probably won’t be a bus turn-out at the top. So all of the mini-subdivision lots, Vern Young’s 8 lots, Russ and Judy’s 3, Brevalarri’s COS subdivision, Ken Knie’s property, Mark Denton’s lots -- all of these were potentially going to use the bus pull-out and should be included in an RSID. But because it was a condition of Vern Young’s subdivision, he has not met his obligations except by putting the money in. They can safely move the traffic that they can expect to 20 feet of asphalt width. He discussed this with the Fire Department, both Bill Reed and Bill Lindstrom, and they said a road of that width would be satisfactory for their needs. So he asked that the Commissioners grant this request so that they will not have to cut any more of the hillside.

She said Colleen Dowdall wrote a letter on April 24, 1995 to Wally Congdon with regard to Vern Young’s non-participation or non-completion of his requirements. A quote from the letter “when or if Russ Johnston ever brings in a Grant Creek subdivision, then the governing body will consider the necessity of his participation in the school bus and mail turn-around.” At that time, they were contemplating that future subdivisions would participate. Vern Young argued that other people should have been bound by that but they did not go through subdivision review so they weren’t.

Barbara Evans said they had been working on this area a long time. It seemed to her that in the beginning there was some zoning or a PUD that would have allowed 94 houses or lots on the hillside.

Michael Sehestedt, Chief Deputy County Attorney, said Glen Eagle is a platted subdivision with 94 lots. It is still platted, has final approval and is subject to development. Eagle Glen was platted over it as part of a general conservation concept which they would trade lots in Eagle Glen for development rights on some of the other pieces of property. For a variety of reasons, which included that they sewer up there and water issues, it became apparent that Eagle Glen was a deficit proposition. That the County would be putting more money into it than they would get out of it. The County cannot go forward with that. It is not a good stewardship or disposition of County land. The Eagle Glen subdivision approval has lapsed and that reduced the number of lots to 68. In any event, it would have allowed the County to trade for development rights on some of the other parcels that they wanted to protect. The essential failure of that on economic grounds, they no longer had any trade-in stock, and people are back to pursuing their own subdivision plans and approvals.

He wanted to note on record that the Commissioners did not sunset the PUD zoning; it expired by its own terms. The Commissioners acknowledged that expiration in a letter but it was not their decision.

Barbara Evans said the intention of the Commissioners has always been to be good stewards of that land and to provide for the wildlife habitat and reduce as much as they could the number of units in the area but still not take away
the development rights of the folks who are kind enough to give up their development rights to protect the wildlife. She wants to say to the people who have waited three years that they recognize there are development rights that the County needs to honor.

Michael Sehestedt said what they are doing today is reviewing a proposed subdivision under the standards generally applicable to subdivisions. They are coming in at this time because the Eagle Glen project is not going to happen. The Commissioners’ job is to review the proposal against the subdivision standards and make a decision. Had Eagle Glen been developed, they would probably have acquired an agreement or development rights or easement interests in the property that would have precluded this. Because that is gone, the Commissioners are reviewing this under the terms generally applicable to subdivision review and they must make a decision based on those standards.

Kim Birk said may be a potential future preservation effort but, in the meantime, the 94 lot subdivision on 74 acres still exists on the books and could be built up by the current or future owner. That was done under PUD with density transfers from the adjacent lands that we are now allowing additional density on. The Commissioners say there is no PUD zoning but Glen Eagle is PUD zoning. But they don’t have it because they want to go back to the 1977 zoning because the PUD sunsetted itself. She asked why it did not go back to the 1989 PUD instead of going back to the 1977 zoning? The PUD was in effect when Denny Washington asked for the grant land PUD that was sunsetted by the failure of the developers to do the conditions.

Michael Kennedy said he understood, then, that she felt that it should have reverted back to the open and resource designation.

Michael Sehestedt said, had they reverted platted subdivisions to the underlying zoning status, they would have basically rendered non-conforming a number of the grant lands additions. With the PUD that expired half-way through the process, they ended up with a number of subdivisions that were platted under zoning and they continue to exist and, basically, as approved subdivisions. They can be treated as “grandfathered.”

Colleen Dowdall said, on Mr. Johnston’s property, it is CRR-1 for a portion of it; portions are also zoned CA-3 and unzoned. She said he would meet the density on both of these subdivisions, Grant Creek View Addition II and III, if you take a proportional amount. It is also important to understand is the difference between a PUD subdivision and a PUD zoning. Once a subdivision is on record, the lots are created and they cannot be “un-created” without action being taken. PUD zoning, however, can expire, which is what happened in this case, and that zoning goes away.

Kim Birk noted on the May 8, 1995 letter from Bob Henderson, of Fish, Wildlife and Parks, saying that this is referring to the whole Glen Eagle area, which supports 130+ elk and other critters. About 2 years ago, following discussions with Missoula County and others, this Department, with qualifications, agreed in concept to the development of this property, the Grant Creek View Addition, and Meadows of Grant Creek. Since that time, many of the homesites in Grant Creek View and Meadows have been established. During the same period, they have observed a change in elk distribution, which now favors use of the lands west of Grant Creek. This suggests that they are engaged in a risky situation, planning for future elk use of the north hills.

John Hendrickson, 1365 Starwood Drive, said the bus pull-out, the mailbox area and garbage pick-up areas were to have been done by now. It has been 3 years and still nothing is being done. He asked if the County was planning to litigate against the developer?

He further asked about the contract for City sewer services. The PUD discussed was from 1979-1980; the owners or developers entered into a contract with the City to bring sewer to Glen Eagle and all surrounding areas. It is in perpetuity. He read that “the PUD cannot be changed without City Council approval.” In a letter dated November 28, 1994, from the County Attorney’s office, stated “the agreement is not binding where the subdivision was platted on the two occasions with sub-service disposal, approved without objection by the City of Missoula during agency review. All encumbrances on this property were extinguished when tax deed was perfected and the County was not a signatory to the agreement.” He agreed that the County was not a signatory, but in reading through the contract, the County became a participant of it when they took ownership of the land for tax deed. If the County says when you take land back by tax deed, they are not bound by a PUD, he would like to hear case law to confirm that.

Michael Sehestedt answered such case law would be Northwest Development, a City Paradise case, it has been the law in the state of Montana for years. If you take property by tax deed, you take free of all liens and encumbrances except easements in favor of adjoining properties that are separately taxed.

Michael Kennedy asked if the zoning disappears with that?

Michael Sehestedt said this was not a zoning but a contract agreement between the PUD developers and the City of Missoula, whereby the PUD developers swore by oath that they would all hook up to sewer. That is a type of lien/encumbrance.

Michael Kennedy asked if tax deed extinguished the PUD?

Michael Sehestedt answered no. It extinguishes all encumbrances that stem from title.

John Hendrickson said but the other owners up there plus the subdivisions that are being considered are still bound by this agreement, that they should be hooking up to City sewer.

Michael Sehestedt said the agreement is between the City and the property owners and they will have to resolve it.

John Hendrickson said his argument was that subdivisions are coming in piece-meal, with 2 or 4 lots approved for subdivision at a time, and matters, such as being required to hook up to City sewer, are falling through the cracks. He knows the County is trying to protect the aquifer and so is he. Their drinking wells are right down the hill from the other subdivisions.
Barbara Evans stated that the incoming subdivisions have to have a waiver of right to protest connecting to the City sewer and water. She instructed Mr. Hendrickson that, if that is appropriate here, they will likely do that for this subdivision.

Lisa Moisey said she believed the developer has included that on the plat.

Michael Sehestedt said, if the City wants to pick up the agreement, and they are obviously more familiar with it than the County was, since they are parties, and that is an issue for City Council.

Michael Kennedy asked Counsel the status of the turn-around.

Colleen Dowdall answered that the developer has 2 years within which to put in the improvements in after filing the plat. They have either the cash or the bond. She is not certain how that was all resolved because John DeVore was working with Wally Congdon on it. However, as stated earlier, they County does not know what the City is going to do with the right-of-way. They can require that a bus pull-out be put in there, however, we need to hear from the City what they want. The County has a right to the funds or bond that was provided by the subdivider to participate in the construction of that turn-out.

Michael Kennedy asked how they address a requirement that this subdivision, if they decide to approve it, will participate in the turn-around if Mr. Johnson suggests they use an RSID?

Colleen Dowdall said, first of all, when they take an improvement guarantee, they do it based upon engineer’s estimates of what it will cost. She stated she could not answer the question but the County’s procedure is they get an estimate, Horace Brown will check the estimate, then the County takes the bond or cash. There are more folks than are normally involved in a subdivision improvements guarantee. She does not know how the amount of $5,000 was arrived at. Further, in terms of getting to the easement where the pull-out is, she understands that it would be adjoining the City roadway or else they cannot get to it. She does not know if the City right-of-way was expanded. She did not know there was an easement in existence. They discussed this a few days ago in Planning status. It is not shown on any of the maps that have been provided by the developers. Even is the easement is adjoining the City roadway, the Commissioners should talk to Chip about what discussions he has had with the City about what they would approve for something that adjoins their right-of-way.

Michael Kennedy said it is frustrating that there is an existing condition that is inadequate and probably unsafe. Approving this subdivision without resolution of that would make it more inadequate and more unsafe. He is trying to find a way to resolve this. Requiring an RSID waiver on the part of this proposed subdivision is not going to solve the safety issues.

Colleen Dowdall agreed.

Barbara Evans asked what the standard procedure was for the County when they had a bond on an issue that did not happen, as in this case?

Colleen Dowdall answered that it is the other party’s responsibility to see that the job gets done. When it is done, they let the County Attorney’s office know so that the bond can be released. In all her years of experience at the County, it has never happened that work that has been bonded has not been done. It may be that some agreement was struck with this developer that he was not going to do it but that the County accepted $5,000 as satisfaction of his contribution toward it.

Barbara Evans asked if Mr. Young was 10 months over the 2 years or does he still have time to do this project?

Chip Johnson answered that it was 10 months over 2 years.

Michael Kennedy noted, however, that Mr. Young was in satisfaction of his obligation.

Colleen Dowdall said she did not know for sure if that was the case. She would have to investigate the matter to know what exactly happened.

Commissioners Kennedy and Evans agreed that they did not know the best course of action to take at this time because of the unknown factors of the case.

Barbara Evans asked if the developer if they had any land that could be used for a safe turn-around?

Chip Johnson answered not in Grant Creek View Addition II.

Barbara Evans said she did not want to deny this subdivision based on safety because of someone else’s failure to act. She is looking for a way to solve this dilemma.

Chip Johnson said he has not reviewed Grant Creek View Addition III with a bus turn-around in mind. However, he understands the Commissioners’ problem and is sympathetic to it. Furthermore, he does not want anyone to think that they do not feel they need a bus stop. But the issue is what mechanisms can be set up to get it done. He agreed that Counsel needs to research the situation to see exactly what they are dealing with.

The Commissioners, Colleen Dowdall, Chip Johnson and Russ Johnston, the applicant, continued to discuss the problems of the bus pull-out and various possible solutions. General consensus was that more information was needed. However, because of the difficulty of scheduling everyone together again at a time in the near future, Commissioner Evans decided to make a motion so the developer would not have to wait on a matter that was not of his doing.
Barbara Evans moved that the Board of County Commissioners grant the variance to the subdivision Grant Creek View Addition II from Regulation 3-2(I)(1) which requires all access lanes serving three or more lots to meet County roadway standards, based on the recommendations of the staff and findings of fact. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the summary plat of the Grant Creek View Addition II, contingent on the conditions listed below, based on recommendations of the staff and findings of fact. Motion died for lack of a second.

Michael Kennedy said there are conditions that need to met before the subdivision is approved and he will not endorse the subdivision unless he knows exactly what is going to be done.

Chip Johnson said they would be willing to wait a week if they can get something productive done in a week.

Barbara Evans moved that they postpone the decision on the proposal from Gilbert and Judith Johnston for Grant Creek View Addition II for one week and, during that time, that County staff work with the developer to come up with the necessary information regarding the bus pull-out, mailboxes, trash pick-up and also on the trail that was to have been provided by Mr. Young.

Michael Kennedy said he was not sure this required a motion but if it did, he seconded the motion. Motion carried 2-0.

GRANT CREEK VIEW ADDITION NO. 3  (SUMMARY PLAT)  2 LOTS  -  GRANT CREEK AREA POSTPONED UNTIL AUGUST 28, 1996

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

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THURSDAY, AUGUST 22, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present. In the evening, Commissioner Kennedy participated in the "Women's Voices for the Earth" Pesticide Roundtable held at the City Council Chambers.

No Administrative Meeting was held; however, the following items were signed:

Plat

The Board of County Commissioners signed the Plat for Haffner Subdivision No. 2, a subdivision plat located in Sections 21 & 28, T. 14 N., R. 20 W., PMM, Missoula County, a total gross area of 106.4 acres, with the owner of record being Pat Haffner.

Plat

The Board of County Commissioners signed the Plat for C Bar C Estates, a four-lot summary subdivision of Tract 3, COS 4208, located in the NW 1/4, Section 19, T. 12 N., R. 19 W., PMM, Missoula County, a total area of 20.03 acres (with 2.25 acres as "park"), and the owner/developer being David G. Carpenter.

Contract

The Board of County Commissioners signed a Contract between Missoula County and Jensen Paving Company, the lowest and best bidder for plant mix - asphaltic concrete, as per the terms set forth, for a total amount of $56,133.00. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Resolution No. 96-069

The Board of County Commissioners signed Resolution No. 96-069, a Resolution annexing the following parcels of land (Robert Starr - Deer Creek Road) to the East Missoula Rural Fire District and are to be assessed for said annexation a fire district levy along with other property already a part of said East Missoula Rural Fire District:

That portion of the southwest one-quarter of the southwest one-quarter, lying south of the Chicago, Milwaukee, St. Paul and Pacific Railway Co. railroad right-of-way in Section 21, T. 13 N., R. 18 W.

FRIDAY, AUGUST 23, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present.
The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Hart was on vacation the week of August 26th through the 30th.

**ADMINISTRATIVE MEETING**

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

**Plat**

The Board of County Commissioners signed the Plat for Knuchel Subdivision, a four-lot summary subdivision located in the SE 1/4 of Section 26, T. 13 N., R. 20 W., PMM, Missoula County, with the owners/developers being Thomas C. and Sandra R. Knuchel.

**Memorandums of Agreement**

The Board of County Commissioners signed Memorandums of Agreement, dated July 1, 1996, between Missoula County and the following organizations:

1) Western Montana Regional Community Mental Health Center - for the purpose of providing alcohol and other substance abuse prevention, intervention and treatment services for prioritized populations in accordance with the Missoula County Alcohol and Other Drug Treatment and Prevention Services Plan for 1996-1999 in Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $76,900.00;

2) Missoula Food Bank - for the purpose of providing basic needs assistance for indigent residents of Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $20,500.00;

3) Poverello Center - for the purpose of providing basic needs assistance for indigent residents of Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $35,000.00; and

4) Community Care, Inc. - for the purpose of providing alcohol and other substance abuse prevention services for youth and parent education for parents in Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $22,422.00.

**Resolution No. 96-067**

The Board of County Commissioners signed Resolution No. 96-067, a Resolution repealing Resolution No. 96-007 concerning the flood threat of February 7th, 1996, deciding that flood response and protective measures are no longer necessary for this specific incident.

**Agreement**

The Board of County Commissioners signed an Agreement between Missoula County and the Montana Department of Transportation for road improvements on Secondary Route S-507, locally known as Alberton - W, with the Agreement documenting the intent of the parties, sets forth the responsibilities of each in the development, funding, and administration of a Pavement Preservation Project. The Agreement was forwarded to Gary Larson at MDOT in Helena for further signatures and handling.

**Resolution No. 96-068**

The Board of County Commissioners signed Resolution No. 96-068, an Emergency Proclamation, proclaiming that an emergency exists as of August 26, 1996, due to the wildland fires currently burning and the imminent threat of a disaster which timely action can avert or minimize, and that response and protective measures are necessary to protect public health, life, and property.

Other items included:

The Commissioners voted to fix the school levies for the school districts as submitted by Jane Ellis, County Fiscal Officer.

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

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**TUESDAY, AUGUST 27, 1996**

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

**Audit List**

Commissioners Evans and Kennedy signed the Audit List, dated August 27, 1996, pages 2-26, with a grand total of $137,210.43. The Audit List was returned to the Accounting Department.
ADMINISTRATIVE MEETING

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

Memorandum of Agreement

The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1996, between Missoula County and the Western Montana Regional Community Mental Health Center for the purpose of providing chemical dependency intervention and early treatment services for youth referred for such services by the Missoula Municipal and Justice Courts in keeping with the goals and objectives of the Montana Board of Crime Control Edward Byrne (Anti-Drug) Project, as per the items and terms set forth, through June 30, 1997, for a total amount of $5,460.00.

Certifications of Acceptance for County Maintenance

Chair Kennedy signed Certifications of Acceptance for County Maintenance for the following roads, as the construction meets the County building requirements:

1) Sunlite Lane, Road No. L-0895, located in Section 25, T. 13 N., R. 20 W., a total of .092 miles;
2) Mullan Trail, Road No. L-0640, located in Section 14, T. 13 N., R. 20 W., a total of .728 miles; and
3) Prairie Schooner Lane, Road No. L-0641, located in Section 14, T. 13 N., R. 20 W., a total of .333 miles.

The Certifications were returned to the Surveyor's Office.

Other items included:

1) the Commissioners approved a request from Horace Brown, County Surveyor, to transfer $2,059.20 from the Aid to Construction Fund to the O'Brien Creek Homeowners, as the money had been put in the Miscellaneous Fund in error in 1994, and the only way the homeowners can be paid is out of the Aid to Construction funds; and
2) the Commissioners approved a request from Horace Brown, County Surveyor, to transfer $36,600.00 from the Graves Creek Bridge fund to the Seeley Lake Shop Project fund, as the Bridge will not be built until the fall of 1997 and will give a total of $235,600.00 for the Seeley Lake Shop.

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

WEDNESDAY, AUGUST 28, 1996

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

Indemnity Bond

Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Jeanne M. Brabeck as principal for warrant #11052, dated August 20, 1996, on the Missoula County Public Schools Payroll Fund in the amount of $329.26 now unable to be found.

ADMINISTRATIVE MEETING

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

Memorandum of Agreement

The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1996, between Missoula County and the Women's Opportunity and Resource Development (WORD, Inc.) Supplemental Security Income Transition Program (SSIT) Community Resource Connection for the purpose of providing basic needs assistance for indigent residents of Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $183,356.00.

Resolution No. 96-070

The Board of County Commissioners signed Resolution No. 96-070, a Resolution revoking the agricultural covenant on Tract 1, COS 2842 located in the S 1/2 of Section 26, T. 12 N., R. 22 W., as the current owners of the property, George J. and Joan Hale, wish to revoke the agricultural covenant in order to build on the parcel.

Memorandum of Agreement

The Board of County Commissioners signed a Memorandum of Agreement, dated July 1, 1996, between Missoula County and the University of Montana Student Health Services for the purpose of providing crisis intervention, counseling and advocacy services for victims of sexual assault, rape and other types of personal violence in Missoula County, as per the items and terms set forth, through June 30, 1997, for a total amount of $8,200.00, contingent upon receipt of Montana Board of Crime Control Grant Funds by Missoula County.

The minutes of the administrative meeting are on file in the Commissioners Office.
PUBLIC MEETING --AUGUST 28, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present was Commissioner Barbara Evans.

PROCLAMATION: “CHLORINE ALTERNATIVE DAYS”

Michael Kennedy said everyone can remember the days when DDT was the answer to pests. Everyone believed that, not just the chemical companies, but the people and the government. It was not until much later that people found that DDT created enormous problems. One of the symptoms was the decline of the raptor population world-wide. The decay of human health also resulted from the common use of DDT. Since then, it has been banned which resulted in a good return of raptors and the halting of the break-down of human health caused by DDT. This is an important lesson for us. Chlorine is now one of the chemicals that is being targeted as creating many problems. When disease was rampant in the rivers, a disinfectant called chlorine, was developed and used. Those diseases virtually disappeared. Since then, many of those compounds have disseminated into the environment and have begun to combine with chlorine. Chlorinated hydro-carbon is a carcinogen, a cancer-causing agent. Again, back when it was first used, everyone loved it and only now are we experiencing the consequences of that. So we are beginning to see that chlorine needs to be seriously looked at if we want a bright and healthful future. He then read PROCLAMATION “CHLORINE ALTERNATIVE DAYS:”

WHEREAS the use of chlorine in manufacturing and industrial processes may lead to the formation of chlorinated compounds such as the dioxins (many of which are unintentional byproducts), and which do not readily biodegrade in the environment but rather preferentially accumulate in fatty tissues and concentrate in the food chain; and

WHEREAS the County of Missoula has experienced negative effects from the use of chlorinated compounds, including but not limited to the spill of 120,000 pounds of chlorine near Alberton, the widespread perchloroethylene contamination of the sole-source drinking water aquifer, the pentachlorophenol and dioxin soil and water contamination of the north side from the treatment of wood, the discharged into the Clark Fork River and to the airshed of dioxins and other chlorinated organics from sources that bleach pulp, burn chlorinated plastics and other chlorinated matter, and;

WHEREAS U.S. Environmental Protection Agency has, on the advice of leading experts and review of the complete body of peer-reviewed scientific research, arrived at the conclusion that dioxins and related chlorinated compounds seem o have a common mechanism of toxicity that leads to a wide variety of serious health effects, and;

WHEREAS U.S. EPA has concluded that many of the effects of dioxins and related compounds have been observed in humans and lab animals at or near levels to which an average person in the general population is exposed to or carries in their body, and;

WHEREAS U.S. EPA has concluded that gestating infants, newborns and certain indigenous peoples are exposed to significantly greater amounts of dioxins and related compounds than the general populations, and;

WHEREAS according to the National Cancer Institute the lifetime risk of developing cancer in the United States has continued to rise, and whereas U.S. EPA has concluded that exposure to dioxins and at certain concentrations related compounds may lead to a cancer risk, and whereas dioxins include the most potent carcinogen ever tested and;

WHEREAS U.S. EPA has concluded that dioxins and related compounds may, at levels approximately 100 times lower than those associated with cancer, be interfering with human reproductive, developmental and immune systems, and;

WHEREAS there are numerous commercially available alternatives to the use of chlorine in society, and;

WHEREAS many corporations and governments at all levels, including the County and departments of the City of Missoula, have formally or deliberately instituted alternatives to the use of products produced with chlorine, and;

WHEREAS nearly a dozen regional, national and international official bodies, including the American Public Health Association and the U.S./Canada International Joint Commissioner, have called for a phase-out of almost all uses of chlorine and other such toxic, persistent and bioaccumulative pollutants;

THEREFORE, We, the Board of County Commissioners of Missoula, Montana, do hereby proclaim the week of August 26-August 30, 1996, as CHLORINE ALTERNATIVE DAYS

and urge our County residents to join in the activities and educational events scheduled for this week and to find and use chlorine-free alternative products and services.

Barbara Evans stated she planned to vote that the Commissioners sign this Proclamation but she wanted it clearly stated for the record that she is not in any way intending County participation that would put Stone Container or any other businesses in Missoula County out of business. She realizes the importance of finding ways to provide alternatives to substances that may be hazardous and she supports that. However, she admitted to having no expertise in understanding everything about this subject and she wanted it noted that she is not in favor of anything that would jeopardize local businesses. She felt if there are problems regarding certain substances, there are ways to working them out.

Michael Kennedy moved that the Board of County Commissioners sign the Proclamation for Chlorine Alternative Days, August 26 through August 30, 1996. Barbara Evans seconded the motion. Motion carried 2-0.
BID AWARD: NEW COUNTY MAINTENANCE SHOP (ROAD DEPARTMENT -- SEELEY LAKE)
POSTPONED FROM AUGUST 21, 1996

Horace Brown, County Surveyor, said this was a bid to award a Seeley Maintenance Shop. The bids were opened August 20, 1996, with the following results: Iroquois Industrial, Inc., $276,115.65; Structural Systems, Inc., $267,900.00; AAA Contractors L.L.C., $266,530.00; and Treweek Construction Company, Inc., $250,000.00. He recommended that the Board award the contract for the construction of Seeley Maintenance Shop to Treweek Construction Company, Inc., in the amount of $250,000.00, with the understanding that minor adjustments will be made by change order to bring the contract costs within their budgeted amount.

Barbara Evans asked where Treweek Construction Company was located?

Horace Brown answered in Kalispell.

Michael Kennedy noted that it was odd that Treweek Construction bid exactly $250,000.00. Usually, when you receive a bid from a construction company, they bid it down to the cents. He also asked if $235,600 included the transfer.

Horace Brown replied that it included the transfer. So he plans to shave about $15,000 out of the bid and it is on something that they can do without for a year or two until they can afford to build it themselves.

Michael Kennedy asked if Treweek meets all the qualifications in terms of insurance and bonding, wage requirements?

Horace Brown replied yes, because of the size of the contract.

Barbara Evans moved that the Board of County Commissioners award the contract to Treweek Construction Company, Inc., in the amount of $250,000.00, as being the best and lowest bid. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans asked when this will begin and when is it scheduled for completion?

Horace Brown answered, hopefully, right away and it should be completed before next spring.

BID AWARD: SAND FOR 9-MILE STORAGE (ROAD DEPARTMENT)

Horace Brown, County Surveyor, said this was a bid for a contract for 3,000 cubic yards for prepared aggregate material, which they will use for sand. The bids were opened August 26, 1996, with the following results: Mickelson Rock Products, $24,150.00; L.S. Jensen & Son, $42,810.00; and Phillips Construction, no bid. He noted that the difference between Jensen and Mickelson is probably because Mickelson has products in the area and Jensen would have to haul them from Missoula. He recommended that the bid be awarded to Mickelson Rock Products for $24,150.00 as the best and lowest bid.

Barbara Evans moved that the Board of County Commissioners award the bid to Mickelson Rock Products for $24,150.00 as the best and lowest bid. Michael Kennedy seconded the motion. Motion carried 2-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (OLSON)

Kathleen Smith, Paralegal, County Attorney’s office, said this was a consideration of a request for three family transfers for a parcel described in Book 24 Micro, Page 393 located in Section 8, T13N R16W for Roger J. and Shirley A. Olson. Shirley Olson has submitted a request for three family transfer exemption for a 10.71 acre parcel as described above located near Potomac off Bear Creek Road. Mrs. Olson proposes to create three parcels for transfer to her adult sons, Bret Olson, Brad Olson and Brian Olson. The comprehensive plan designation for the area is rural low density (one dwelling per 10 acres).

The history of the parcel is as follows: The parcel was purchased by the Olsons in July, 1970 as a 10.71 acre parcel. According to the records kept by the Missoula County Surveyor, the applicants have not used any exemptions to the Subdivision and Platting Act.

Michael Kennedy invited Shirley Olson to come forward and explained to her, that when the County uses this method to subdivide land, they have to go through a process to determine if the subdivision regulations have been evaded. To do that, they question the applicant.

Shirley Olson responded that she understood.

Michael Kennedy said he did not have any questions because he had read over the application and understood it.

Barbara Evans replied that the same was true for herself.

Michael Kennedy then opened the public hearing. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the three family request transfers for a parcel described in Book 24 Micro, Page 393, located in Section 8, T13N R16W for Roger J. and Shirley A. Olson, to their three adult sons, Bret Olson, Brad Olson and Brian Olson, in that there does not appear to be any attempt to evade the Montana Subdivision and Platting Act. Michael Kennedy seconded the motion. Motion carried 2-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (GULLETT)
Kathleen Smith, Paralegal, County Attorney’s office, said this was a consideration of a request for a family transfer for Tract D of COS 2484 located in Section 8, T12N R17W for Warren and Beverly J. Gullett.

Warren and Beverly Gullett have submitted a request for a family transfer exemption for a 22.14 acre parcel located at the end of Donovan Creek Road off Highway 10 between Turah and Clinton. Mr. and Mrs. Gullett propose to create a 1 acre parcel for transfer to their adult daughter, Rita Marie Jarvis. The comprehensive plan designation for the area is open and resource (one dwelling per 40 acres).

The history of the parcel is as follows: The parcel was originally created as a 20.13 acre parcel as shown on COS 866 filed May, 1976. The boundaries of this and adjacent parcels were relocated in November, 1980 as shown on COS 2484. The Gulletts purchased Tract D in November, 1980.

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

Rita Jarvis came forward and identified herself as the recipient of the proposed family transfer.

Michael Kennedy explained to her, that when the County uses this method to subdivide land, they have to go through a process to determine if the subdivision regulations have been evaded. To do that, they question the applicant. He noted that the lot had an odd shape but he did not have any questions for her.

Barbara Evans stated she did not have any questions about the family transfer either.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the request for a family transfer for Tract D of COS 2484 located in Section 8, T12N R17W for Warren and Beverly J. Gullett, to their adult daughter, Rita Marie Jarvis, in that it does not appear to be an attempt to evade the Montana Subdivision & Platting Act. Michael Kennedy seconded the motion. Motion carried 2-0.

HEARING: ANNEXATION TO MISSOULA RURAL FIRE DISTRICT OF PROPOSED DARK HORSE ESTATES SUBDIVISION (GRANT CREEK AREA)

Vickie Zeier, Clerk & Recorder, said a petition has been received by the Clerk & Recorder’s Office to annex a parcel of land, located in Missoula County, into the Missoula Rural Fire District.

The petition has been checked and verified. It contains signatures of more than 50% of owners of the privately owned land in the area to be annexed and a majority of tax-paying freeholders within the area described, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows: Proposed Dark Horse Estates Subdivision, more particularly described as Tract B of Certificate of Survey No. 4000, located in the W½ of Section 21, T14N, R19 W.

Michael Kennedy opened the public hearing.

Dan Poe Newman, a former volunteer of Rural Fire District, said he understood that the petition was circulated, as per the law. He asked that, in addition, notice be sent out for a hearing like this one, to all the prospective people who would be joining Rural Fire and then have an open discussion, with publicity in the newspaper and then have the people give an informed consent to this annexation for a price. He would like to speak to those people. He does not have the opportunity at this time because the people are not there. He believes he would have signed the circulated petition when he first moved here; he’d like fire protection. But he believes the people ought to hear him speak and the proponents speak and then make an informed decision.

Michael Kennedy asked Bill Lindstrom about the southerly access out of Dark Horse Estates.

Bill Lindstrom, Missoula Rural Fire District, answered that it is an extension of an existing cul de sac, Keegan Trail.

Michael Kennedy asked if there was only one way in and out of that area?

Bill Lindstrom answered that was correct.

Michael Kennedy stated, about a year ago, the County began to review these in a different way. He noticed that, obviously, the Fire District is interested in getting as broad a tax base as possible so there is a financial interest and also a safety interest. The Board’s interest is primarily a safety interest. His concern is that the people who petition for service understand that the annexation does not mean that their level of protection may increase. He asked for Bill’s comments on this.

Bill Lindstrom answered that there is only one way in and one way out of Grant Creek proper at this time. There has been discussion trying to work on a Rattlesnake access so there would be more than that one way in and out of the canyon. The Grant Creek Canyon, as a whole, is a problem for emergency services.

Michael Kennedy asked if the District has considered a “tipping” point beyond which protection and safety is jeopardized and they should not allow any more development or annexation into the District?

Bill Lindstrom answered that they have done that. The Grant Creek corridor is probably past its “tipping” point, as far as looking at a second access.
Michael Kennedy said there is a proposal coming up at this meeting where there will be a land split in that area. One of the comments is from Rural Fire that there is no particular problem. That confused him in light of Bill’s response.

Bill Lindstrom responded that the area Michael was referring to was in the lower end of Grant Creek, which is a little better off than the upper end. But he conceded that they should be getting second accesses to all of those places. Grant Creek is not unique. There are a number of canyons with this problem, Pattee Canyon and O’Brien Creek are examples that come to mind.

Kim Birck, a resident of Keegan Trail, clarified that when the original family sold off the Grant Creek ranch, they retained an easement from Dark Horse Road to access the southern boundary of this property. However, when they sold it Ken Staninger, who then sold this parcel to Denny Washington, that easement may have been extinguished because the holder of the easement and the beneficiary of the easement were one and the same. He owns the ranch and the subdivision so the easement may no longer exist. However, it is recorded on the books as a Certificate of Survey. She thought the COS number might be 3208 and it was an easement about 50 feet wide and runs along the side of the tennis court and goes to the bottom property line. He obviously has no intention to use it because he chose to have these 4 homes to access off the end of their street instead of from the south. But it might be explorable as a potential emergency access or second emergency escape route for the upper valley.

Michael Kennedy asked if it was currently a primary access to any subdivision?

Kim Birck answered no. Her husband thinks a house is being built that would use this as a driveway to the north of the home with a tennis court. The easement was to benefit this property, Tract B, which is being divided into the Dark Horse Estates. Initially, it was to benefit this property when the ranch was sold.

Colleen Dowdall, Deputy County Attorney, clarified that when it is transferred to a new buyer, they will just transfer it with benefit of the easement.

Michael Kennedy said, if Kim was correct, and the easement disappeared because the owner of the easement is the same as the grantor of it, then the easement does not exist.

Colleen Dowdall stated then he would be creating it when he sells the property.

Kim Birck explained the other half of the easement is on the line between Tract A and Tract B. It comes into the south boundary of what used to be COS 1733. Ken Staninger may have retained an interest in that easement or maybe their agreement was to extinguish the whole thing. She does not know the details of their agreement.

Michael Kennedy thanked Kim for the information she provided and asked if anyone else wanted to speak on this issue. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the annexation for Dark Horse Estates into the Missoula Rural Fire District in that the Fire District Board has agreed to that annexation and the County has the signature that is required. Michael Kennedy seconded the motion. Motion carried 2-0.

Michael Kennedy commented that fire protection throughout the County is an important issue. They have had significant discussion with the last week with the City of Missoula with respect to the work that the City has been doing with respect to getting a coordinated response for fire protection. Also, a letter that the Commissioners signed just this week to the State requesting them to fill in the blanks of protection for Missoula County. For example, outside the boundaries of the City and outside the boundaries of the Fire Districts, there are a number of blind spots that are taken care by the Sheriff. The letter requests that they can, at least partially, plug some of those blind spots so that the Sheriff’s responsibility are taken care by an entity that has the ability to fight fires. So the County is reviewing their fire protection abilities and they will work on it until a satisfactory solution is found.

Barbara Evans, addressing Bill Lindstrom, said that the need to do something about transferring the Decay Ordinance to the Health Department. Bill needs to submit a bill for the amount of work that he has done between budget time and the time that he transferred that over.

CONTINUATION OF HEARING: GRANT CREEK VIEW ADDITION NO. 2 (2ND SUMMARY PLAT), 2 LOTS -- GRANT CREEK AREA (CONTINUED FROM AUGUST 21, 1996)

Lisa Moisey, Office of Planning & Grants, said this was a continuation of a hearing to discuss a subdivision on about 12 acres in the Grant Creek area. The property is accessed off of Glen Eagle Way. The property is located about a mile up Grant Creek Road and then up unto Glen Eagle Way. This is a second summary of a parcel of land which was subdivided in 1994 to create two lots. The developer is now proposing to subdivide one of those lots to create one additional lot. One issue of the area concerned the vehicle pull-out located at the intersection of Grant Creek Road and Glen Eagle Way.

Colleen Dowdall, Deputy County Attorney, said, from there, they had a meeting that morning, discussing a way in which to assess a fee to contribute toward the completion of the bus pull-out. She reminded the Commissioners that she gave them a list of 10 lots that did not include the two that are proposed from Russ Johnston’s other subdivision, Grant Creek No. 3, nor did she include any Missoula County property. It only included one lot from Mark Denton and it is contemplated that he will have 3. It only included 4 lots from Vern Young and he created 8 in this area. Originally, it is was not contemplated that all of these parcels would use this pull-out because of the development of Eagle Glen. Since that will not occur, these lots now will probably use this pull-out. When she gave these numbers to the developer and his representative, they were unhappy with the prospect that they would have to pay a greater share than Vern Young or others may be assessed simply because they are coming in after Eagle Glen has gone away. The numbers that Chip arrives at, in terms of numbers of lots, is 25. To divide the cost of this improvement by 23 instead of by 10 which would make each contribution of approximately $608.00. What she did to arrive at a $4500.00
contribution was to include a lot in the Russ Johnston’s subdivision that was approved previously with these two lots, bringing it to three. He had sold the lots and was not able to build that cost into the sale price and now cannot go back to the homeowners. So, in discussion on how to solve this, they speculated on how many lots there might be and when they might come in.

Barbara Evans how she determined the 23 lots and how they are likely to be developed lots?

Charles (Chip) Johnson, Druyvestein Johnson & Anderson, representing Russ Johnston, answered they had counted the lots in the area and felt that was the most realistic approach.

Barbara Evans said 8 were approved for Vern Young and he paid $5,000.

Michael Kennedy said it was for 4 lots.

Colleen Dowdall agreed. The conflict is in the letter that was addressed to Horace Brown from Andy Fisher and references both subdivisions.

Barbara Evans said she had a few of problems. The first is that she cannot agree to hold his client responsible for something another developer did or did not do. The other problem is the figure that they have, which is only an estimate, is $15,000 for the pull-out. And another problem is that when the County approved Mr. Young’s subdivision made it contingent upon certain things happening that have not happened. That gives the residents a message that government is not responsible and she does not want that. Further, where will the money come from to build this turning-out? And who does it and designs it? The only thing she feels the County has any right to ask from Grant Creek View II is a reasonable amount of money based on benefit for the subdivision and how much would it be? She stated she did not have any answers for these questions.

Michael Kennedy said he is not as strong on the government culpability matter as Commissioner Evans but he agrees with the other issues. Regarding the 23 lots, they may be able to sort that out. The County may be able to ask Chip and Russ to speculate on the probability of subdivision III being approved and, if they think it will be, there would be a source of funds and they could reasonably ask them to front that cost. It may not be reasonable to ask them to front the cost on some of the others. At the same time, he believes it is unreasonable to ask the general population of Missoula County to front the cost and speculate that those lots would develop and ultimately pay back the fund. That creates a serious problem for him. Until there is a number that they can all agree on, they are at a standstill.

Colleen Dowdall said another alternative is to create an RSID to pay for the balance after the $5000. This was originally proposed in the staff report. They would have the waivers for this subdivision. She asked if they had it on the Denton 3-lot preliminary plat that was approved?

Chip Johnson replied that he did not think so.

Michael Kennedy said the problem with that is that there is an urgency to get it constructed. An RSID would have to be approved and they don’t know when or even if an RSID would even be successful.

Colleen Dowdall noted that the County has not yet discussed with the School District and the City regarding the urgency of the situation.

Chip Johnson felt that the only question here was not whether there should be a bus stop but being equitable to everyone in building it. They feel they should be required to pay their fair share and are willing and happy to do so. But it hard to accept the $4500 that the letter that was fixed to his office just a few hours ago stated. It caught them off-guard and it is different that what they had anticipated or from any discussions they’d had on it. He recalled, when Grant Creek View Addition was approved, there was no condition on there for a bus stop. However, they are being asked now to include it. Russ has already sold one of the lots. They are willing to go back and include a $600 increase. It is hard for Russ to accept the $4500 because, from his perspective, he is here to ask the Commissioners to create one more lot for him and he is being asked to spend $4500 toward a bus stop for that lot where, heretofore, there has been subdivisions approved with much less amount than that and in some cases zero amount. They understand the County’s dilemma but the problem has to be worked through without an unfair amount being placed on Russ Johnston. He did not create the problem and has not been a party to it. They are rather surprised that the bus stop is even an issue. It was not brought up with Grant Creek View Addition or with the Denton subdivision review. At that time, what was contemplated, was that a bus stop would be built on top of Eagle Glen and the one below had been taken care of through the construction of the Young subdivision. Even in the discussions they had with staff when they first started the review process for Grant Creek View Addition II and III, the bus stop did not come up.

Barbara Evans asked Horace what his understanding was when they approved the original Vern Young subdivision of where the bus pull-out would be and how much it was going to cost?

Horace Brown, County Surveyor, said the pull-out was at the intersection of Glen Eagle Drive and Grant Creek Road. It was to be about 10 or 12 feet wide and 80-100 feet long. What is being discussed today is something with curb, gutter and sidewalk and it is more like a parking lot than it is a pull-out. That is one reason the cost has increased, along with the time that has passed.

Barbara Evans asked if the rules have changed regarding the inclusion of curbs, gutters, and sidewalks based on City annexation?

Horace Brown answered that he did not know.

Colleen Dowdall said the subdivision conditions said that the design had to be approved by County Surveyor’s office and the City Engineer.
Michael Kennedy said the condition for the Vern Young subdivision didn’t have those requirements and it also had a condition that the $5000 contribution for this pull-out was only to partially fund it. The balance of the subdivisions in that area that would use the pull-out would also contribute to it. That suggests that this subdivision would also be required to participate in funding the pull-out. He noted that it was not a condition of Grant Creek View Addition so it seems there was a lapse there. He agreed that it was not fair to ask Mr. Johnston to spend more money than his equitable amount, however, they need to protect the general taxpayer of the County having to pay for it. They will have to find a way to undo some of the problems created in the past. There was always a belief that there would be a bus pull-out at the top of Glen Eagle so he does not believe there was ever any consideration in the overall formulation that those 5 would be included in the overall cost of building the pull-out. He would reduce it to 18 because he does not know if it was ever included in that consideration. Further, Mr. Johnston is planning to come back before the Board in six months on another subdivision that may or may not be approved and he may or may not even come in. If anyone is to take the risk, he believes it should be Mr. Johnston and not the taxpayers of Missoula County. Earlier, they had discussed $1,250 was the amount per lot. He asked what is the obstacle to using that number that was agreed to by everyone? Colleen Dowdall said the allegation was that it was actually $625 per lot because this developer had approved 8 lots in 2 small subdivisions.

Michael Kennedy said he understood that but they have received other testimony. It is not anecdotal testimony that $500 only applied to 4 lots.

Colleen Dowdall said she has not been able to verify that. In any event, the reasons for not including Vern Young’s subdivision is because it no longer exists. Vern Young’s subdivision off of Grant Creek Road will now be using that turn-out since Eagle Glen is not going to occur. The County asked Vern Young for a bond for the total cost; the estimate they received from the engineers said it would cost $5000 to create the pull-out. That would be $1250/lot for those 4 lots that would presumably use that turn-out. Thus, the inequity of the cost per lot. Vern Young got 8 lots for $5000 and we are asking this developer to pay $4500 for three lots.

Barbara Evans said, when Eagle Glen was approved, there would have been a bus turn-around at the top and they believed the people who lived at the top would use it. Michael Kennedy said that was a potential answer but he conceded that it had problems. Those would be that there is no motivation or any way that the County can get the 4 lots that Vern Young has platted to participate in the RSID because of the $5000 Vern has already deposited. There are two lots in the Grant Creek View II and there is a single lot platted on the NE corner of Glen Eagle Way and Grant Creek Road. And there are no other platted lots up there so he wondered about the territorial extent and the timing of an RSID. He suspects that the County would not get a successful RSID up there in a timely fashion to construct this. He is concerned that they will end up with more lots up there and no turn-around.

Colleen Dowdall noted that the County would be creating an RSID for less than $10,000. She suggested that, at this time, they should focus on this developer’s proportionate share. They do not need to determine how to build it.

Michael Kennedy said they also have to consider that this is a safety issue and therefore has urgency. Colleen Dowdall agreed with that but added not in the context of this man’s subdivision review. Russ Johnston said he could probably have the pull-out done in a week. It is not that big a deal. Doug Harvey told him that he has a drainage problem so he had workers come in and they put in a culvert and it was done yesterday. If the Commissioners require a parking lot, they will not get it done in a few days, but if they only talking about the safety issue and getting a bus pull-out, it can be done in a few days. He can’t imagine it costing a lot of money. To get it done, just do it. It is becoming a big problem and seems insurmountable. He is not even sure it will cost the whole $5000.

Barbara Evans said she liked his approach but does not think the Commissioners can do it. The City has to agree and she does not believe they are flexible on this type of thing.

Russ Johnston said he is seeing more development happening in that neighborhood. He had to pay for his driveway and another person is going to use it. He sent him a bill three years ago and he still has not received the money from him. He does not mind paying his share but he can’t understand how he could be asked to pay $4500 for basically one lot when Vern Young paid $5000 for his 8 lots.

Barbara Evans asked who owned the land that the easement is on?
Russ Johnston answered Mark Denton owned it. Mark sold the property to a gentleman in the Forest Service, who is building a new house there.

Barbara Evans said, it seemed to her, that if someone owned this piece of land on which the City has an easement and the easement is for a pull-out, then whoever owns the land decides they want to build a pull-out and they can have it done by next week, that would suit her just fine.

Russ Johnston said he’d be happy to solve this problem for them. He would even put some money down to go do it. He has a concrete crew who are at this time doing retaining walls in Glacier Park, but if they have to, they even put in the curbs and gutters. But, the point was, to just go out and do it.

Michael Kennedy said he wanted to talk about the conditions they will need for this subdivision. There are air stagnation rules that we all have to live by for our own health. There is an easement that does not belong to the County so they do not have any control over it. The City owns the easement and Grant Creek Road is a City road and they have the authority of them. This pull-out is not going to be a temporary matter, but will be there permanently. With that in mind, they have to consider how it will function for that area over a long period of time so no future investment will be required. There is also a liability problem. There will have to be a reasonable process to design the pull-out and have the City approve the design before they can proceed.

Russ Johnston said that it was not his intent to do a quick job, and disregard any regulations. He is only saying that, if the County determines that his share is such an amount, he will pay it. But he does not want to get into a situation that the others pay far less or nothing at all. What he sees that can happen is like the subdivision that was going to get done on top of the hill. They went to meetings for three years but the thing was never accomplished. So if a turn-around is needed, and specs are needed, they can get an engineering firm to do that, and they can just build the pull-out. He thinks, if you do not have to have the curbs, gutters and sidewalks, and just build the basic pull-out, it can probably be done for the $5000.

Michael Kennedy said he wanted them to speculate on the number of lots to contribute to this. For an example, say there are 10 lots. The cost is $15000 so each lot would pay $1500. Thus, for 3 lots, it would cost $4500. But there would also be a reimbursement contract, which states that if the conditions change within a specified amount of time, maybe 5 years, if there are additional people that add to the lots, then he will be reimbursed for it plus interest. He said that would give him some protection. The problem for him would be that he has to invest his money up front. The advantage would be that, if more people come in, he will be paid back plus interest.

Russ Johnston replied that he understood the Commissioners’ position and he would be willing to go along with that, however, if he put his money into it, he would like to have some say about when and how it will be done (of course, this would include following the engineer’s directions). He agreed with the people in the area that it has been taking too long to get anything done and he does not want to see anything, including this pull-out, delayed any further.

At this time, the Commissioners, Colleen Dowdall and Russ Johnston discussed various ways and details to find a way to accomplish the pull-out as quickly and fairly as possible. After some discussion, they reached agreement.

Colleen Dowdall suggested a number of 17 lot owners to contribute to the bus turn-around. $15,000 divided by 17 comes to a cost of $880 per lot. The 17 lots includes some that have been approved and some that haven’t, but that would be the County’s problem to deal with because some of these lots do not have that condition of approval on them.

Russ Johnston agreed with that.

Colleen Dowdall said this developer pay only his proportional impact. He would pay an amount per lot. He makes his contribution, be allowed to file his plat, and let the County deal with the issue of the turn-out.

John Hendrickson, 1365 Starwood Drive, asked if the $15,000 estimate take into consideration the garbage pick-up and the mailbox construction, items which have been promised to this area and still have not materialized?

Michael Kennedy said the original condition that was attached to Vern Young’s subdivision approval noted that the pull-out would be for the purpose of buses and other auxiliary utilities, including but not limited to paper mail and refuse collection.

Chip Johnson said he believed that can be put in there. He wanted, however, to put the record straight on a few matters that he believed were stated incorrectly at this meeting. First of all, there is no curb and gutter involved in this subdivision process; also, there is not a parking lot. It is only a pull-out for a bus stop that provides room for the parents to park so they do not have to sit on Grant Creek Road. This design has been worked out with Steve King, who works for the City. The design is preliminary but it is set to go. It provides an area where people can wait for the bus and the bus will have a defined area to drive into and there will be a sidewalk for the kids to go back and forth to the bus. There has been some safety thought given to this. He said the $15,000 estimate was sound.

Colleen Dowdall asked if the $15,000 included improving site distances for Glen Eagle Way?

Chip Johnson answered no. But he can say that the easement provides for that.

Michael Kennedy asked if construction of the turn-out included consideration for site distances for entering and exiting the easement?

Chip Johnson answered he thought it did but he was not 100% certain. If it did not, it mean that there would be a small amount of earth work on the corner.

Michael Kennedy asked if the easement continued south to Glen Eagle Way?
Chip Johnson answered that it does. It is not a permanent easement in that regard but there is a temporary construction easement that goes along there to the intersection of Glen Eagle Way and Grant Creek Road that would allow that corner knob to be cut back.

Kim Birk said, at the time that Wally Congdon first told her about the $5000, she believed that was Vern’s share of 12 homes that were anticipated to use the pull-out. Also, she has never seen the easement. Their initial understanding was the school bus picks up children on the way down Grant Creek Road, not on the way up because they would be riding the bus an extra half hour. So they understood they were going to put the easement as a pull-out on Glen Eagle Way just to the east of that intersection so that on their way down, they could pull into Glen Eagle Way, do a bus pull-out and go back out unto Grant Creek Road. As it is now, they are going to be coming down Grant Creek Road, have to cross the road or have the children cross the road with the bus pull-out on the wrong side of the road. Regarding condition no. 15 for Vern Young’s subdivision approval, is also on Meadow Heights of Grant Creek so both of those are bound to be part of this. She asked if the County could do an RSID that has different amounts of money paid by different lots? Those 8 lots would all vote yes if they were given the option to have the $5000 cover their obligation. That plus the others’ votes could probably have the RSID.

Colleen Dowdall replied that the RSID would still be for under $10,000, which is administratively expensive. $5000 is already accounted for.

Kim Birk said she wanted it noted that they appreciated Russ Johnston’s conciliatory attitude through this. They do not believe he is the bad guy here but he has been good about working with the neighborhood and hearing their concerns. She also does not want the trash pick-up or mailbox issues lost in the discussions as they are important to the neighborhood and they have been waiting a long time for them.

John Hendrickson asked if the 1979 or 1980 PUD was changed by the 1987 PUD? Not counting the County land?

Colleen Dowdall said she began working for the County in 1988 and does not know what that PUD did. What she knows now are the lots that exist and what that they can count on in the future to assess.

John Hendrickson said the PUD that was spelled out in the contract, it says that the PUD cannot be changed without City Council’s approval.

Colleen Dowdall replied that this was way beyond what was under discussion here.

Michael Kennedy asked if there was any more comment? Seeing none, he closed the public hearing.

He asked Colleen about the contract?

Colleen Dowdall asked about the number is not totaled. The document attempted to delineate who would develop their property and at what density and what they would get in return from Missoula County in Eagle Glen. It gave Vern Young his 8 lots, 4 to Russ Johnston, and 5 to Mark Denton, for a total of 17 lots. She suggested, for a motion, that the developer will pay a proportional share of the construction of the bus pull-out on the City easement and his share is determined to be $880 per lot, for a total of $2640. That will considered in satisfaction of this obligation for Grant Creek View Addition I and II.”

Michael Kennedy asked for discussion on the path for this subdivision.

Lisa Moisey answered this subdivision accesses off Glen Eagle Way. Grant Creek View Addition III is located along Grant Creek Road. So the path is not an issue for this subdivision.

Barbara Evans moved that the Board of County Commissioners grant the variance for Grant Creek View Addition II, described as Lot 6B of the Grant Creek View Addition in the southeast ¼ of Section 32, T14N, R19W, from Section 5-2(11) which requires a 24 foot driving surface, instead allowing it to be 20 feet, based on the findings of fact and the recommendation of the staff. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the second summary plat for Grant Creek View Addition II, described as Lot 6B of the Grant Creek View Addition in the southeast ¼ of Section 32, T14N, R19W, contingent on the conditions listed below and based on the findings of fact and the recommendations of the staff. Michael Kennedy seconded the motion. Motion carried 2-0.

1. A one-foot no access strip shall be placed along the portion of this subdivision which fronts Glen Eagle Way, except for the location of the private access lane.

2. The developer shall place, on the face of the plat, the following statement: “Acceptance of a deed for a lot within this subdivision constitutes the assent of the lot owner to agree to waive their right to protest a future RSID/SID for sewer, based on benefit.”

3. The developer shall show on the face of the plat or on a recorded exhibit, the building site for Lot 2. The building area shall be restricted to this location as shown on the plat.

4. The developer shall contribute $50.00 per lot to the Missoula Rural Fire District’s large diameter hose fund.

5. The following hillside construction standards shall be integrated into the building permit plans and approved by the Zoning Officer at the time of building permit issuance:

A. Grading shall produce slopes that are continuous in grade with the existing landform. Manufactured slopes shall substantially conform to the natural slope of each lot.
B. Cut and fill for driveways and parking areas are not to exceed 3:1 side slopes.

C. Building walls, not to include gabled ends, shall not exceed 18 feet above the adjacent finished grade on all sides.

D. The building shall be oriented parallel to the contours along the hillside presenting not more than a two-level profile when viewed from above or below, as per the attached engineering diagram entitled “Proposed Typical Development of Home on Lots 6A and 6B of Grant Creek View Addition.”

E. Only non-reflective glass shall be used in building construction.

6. The developer shall pay a proportional share of the construction of the bus pull-out on the City easement and his share is determined to be $880 per lot, for a total of $2640. That will be considered in satisfaction of his obligation for Grant Creek View Addition I and II.

7. The following statement shall appear on the face of the plat and in each instrument of conveyance:

   “Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owners to any future RSID/SID for the upgrading of Grant Creek Road and Glen Eagle Way, based on benefit, to include the installation of curb, gutter, pedestrian walkways, bicycle paths and may be used in lieu of signatures on an RSID/SID petition.”

8. The developer shall obtain approval from the appropriate fire jurisdiction for driveway access and turn-around prior to issuance of a building permit.

9. The developer shall remove from the covenants the restriction against creating an additional parcel.

Michael Kennedy said the only response he noticed from the fire district on this subdivision was the assessment of the $50 toward the purchase of water tenders and a large diameter hose. He asked that someone reiterate the level of fire protection safety in the Grant Creek area as it applies to this particular subdivision.

Bill Lindstrom, Missoula Rural Fire District, answered both Chuck Gibson and he fought the issue of access in this area and, so far, they have not gained much. There is poor access to these areas, only one way in and one way out, so fire protection is governed by whether they can get there or not.

Michael Kennedy said most of the problems revolve around safety. Most of the discussion here was the safety of school children; this safety issue involves everyone who lives in that area with respect to fire protection. They need to continue to make the statement that living in those areas are less safe than living in areas that have good access to emergency vehicles and, in particular, fire trucks.

Barbara Evans asked what the next step was to start construction for the bus pull-out?

Michael Kennedy said, with the $5000+ and the $2600 coming in, they have about $8000. That is $7000 short. They need to work out where to get the $7000 fronted for this project and the contract details done. They will have to work with the City with respect to the easement and the design of the pull-out.

Barbara Evans moved that the Board of County Commissioners ask the County Surveyor to take from Aid to Construction RSID’s the money needed to proceed to do this pull-out.

Colleen Dowdall suggested that they have more discussion in the Commissioners’ administrative meeting before deciding that, to make sure they have exhausted all the resources that might be available.

Barbara Evans withdrew her motion.

Barbara Evans said that was okay, but she wanted to be sure that this will move on, perhaps even before the snow flies this year.

Russ Johnston asked if this will go out for bid?

Michael Kennedy said they first will have discussion on how they are going to fund the balance and discuss the design with the City. After that, they will discuss that step.

CONSIDERATION OF: GRANT CREEK VIEW ADDITION NO. 3 (SUMMARY PLAT) 2 LOTS GRANT CREEK AREA (POSTPONED FOR 6 MONTHS)

PUBLIC COMMENT

Dan Poe Newman came forward and said he would like to have an audience; after the last item for this meeting was finished, everyone in the audience left. He is running for office and said everyone who runs for office likes to have an audience. He has had very few opportunities to do that in the last 10 years. He suggested that the public opinion portion be the first item on the public meeting agenda. He felt it would be helpful for the public to be able to come in and speak before an audience and have a forum; there are those who are not able to able to go to the newspapers or TV stations or radio and speak to large numbers of people.

He said he grew up in Dallas and Los Angeles where the water is chlorinated so he said he may be carrying a lot of pollutants in his body. He said he would rather err to the side of safety. Water won’t hurt you as long as there is no bacteria in the water to make you sick; it is okay then to leave the chlorine out of the water. Fluoridation is another
matter. Fluoridation is not a communist plot. There is a problem with the use of copper in pipes. There was lead solder used in the conjunction with the extensive use of copper pipes in some of the older buildings when it was the cheapest way to go. Quietly, so as not to create a public scare, maybe a contingency fund could be considered where hardship exists. That might be looked into. He does not feel the burden should be on the victim, who may be poor.

He is disturbed, alarmed and bothered that an elected office such as a Justice of the Peace, Division 2, is not clearly delineated. Do we have a judge? Is he being replaced?

Barbara Evans answered he is not being replaced. There is likely to be an interim appointment.

Dan Poe Newman asked if it would exceed 6 months?

Barbara Evans answered she did not know.

Michael Kennedy said, for this budget period, the County has budgeted a position for a half-time person until June 30, 1997. Whether that plays out, depends on the health of Judge Morris and if he is able to return to the bench and the case load. They cannot know these things at this time.

Barbara Evans added that the replacement will probably named in the next few days.

Michael Kennedy said they are not going to name a permanent appointment; the County cannot have 2 judges for the same court. In the interim, while Judge Morris is unavailable, there will be a substitute. They have a pool that has been approved by the Supreme Court of 15 people around the city to fill that position. The Commission is in the process of naming a single person to perform this duty. This person will not be permanent but a temporary while Judge Morris is still the current judge.

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

THURSDAY, AUGUST 29, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present. In the morning, the Commissioners attended a breakfast meeting held at the Shack regarding the Superfund Reauthorization Bill.

ADMINISTRATIVE MEETING

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

Memorandums of Agreement
The Board of County Commissioners signed Memorandums of Agreement, dated July 1, 1996, between Missoula County and the following organizations:
1) Montana Legal Services: The Family Law Advice Clinic - for the purpose of providing legal assistance for clients who cannot access the legal system because of economic barriers, as per the items and terms set forth, through June 30, 1997, for a total amount of $7,850.00; and
2) Western Montana Regional Community Mental Health Center -for the purpose of providing mental health crisis response and stabilization services for the residents of Missoula County through the Crisis Response Team and Stephens House, as per the items and terms set forth, through June 30, 1997, for a total amount of $250,000.00.

Contract
Chair Kennedy signed a Contract, #9723DMVL0016, between Missoula County and the Montana State Department of Public Health and Human Services for the purpose of providing funding for a Domestic Violence Program which provides services to victims of domestic violence, as per the services and terms set forth, through June 30, 1997, for a total amount of $26,000.00. The Contract was returned to Leslie McClintock, Grants Administrator in OPG, for further handling.

Resolution No. 96-071
The Board of County Commissioners signed Resolution No. 96-071, a Resolution annexing the proposed Dark Horse Estates Subdivision, described as Tract B of COS No. 4000 located in the W 1/2 of Section 21, T. 14 N., R. 19 W. to the Missoula Rural Fire District, and are to be assessed for said annexation a fire district levy along with other property already a part of the District.

Amendment to Investment Management Agency Agreement
The Board of County Commissioners signed an Amendment to the Investment Management Agency Agreement effective Mach 1, 1994, for the Missoula County Workers’ Compensation Fund, amending Section 2.4.D. - Investment of the
Investment Fund, stating that all investments shall not exceed one year's maturity, unless otherwise authorized by the County, which currently is designated as 25% for investments with a term of up to three years, effective October 1, 1996.

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

FRIDAY, AUGUST 30, 1996

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

Vickie M. Zeier                     Michael Kennedy, Chair
Clerk & Recorder                   Board of County Commissioners
MONDAY, SEPTEMBER 2, 1996

The Courthouse was closed for the Labor Day holiday.

TUESDAY, SEPTEMBER 3, 1996

The Board of County Commissioners met in regular session; a quorum of the Board was present. Commissioner Evans was on vacation from September 3rd through September 5, 1996.


ADMINISTRATIVE MEETING

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

Professional Services Contract - The Board of County Commissioners signed a Professional Services Contract with the Missoula AIDS Council for FY97 HIV funds and strategies, and a continuation of the Missoula City-County Health Department’s role of receiving and coordinating the strategic investment of these funds. The Contract was sent to the Health Department for further signatures and handling.

Memorandum of Agreement - The Board of County Commissioners signed a Memorandum of Agreement with the Western Montana Comprehensive Development Center (CDC) for respite services for families in Missoula County who have a family member with a developmental disability, at a total cost of $12,350.00 for a 12-month period commencing on July 1, 1996 and terminating on June 30, 1997.

Contract - Chair Kennedy signed Contract Number 9723MISC0002 between the Montana State Department of Public Health and Human Services and the Missoula City-County Health Department, effective July 1, 1996 through June 30, 1997. This is a continuation of the Child Mortality Reviews. Fiscal Impact is $22,420 to the Missoula City-County Health Department. The contract was returned to the Health Department for further handling.

Resolution Number 96-072 - The Board of County Commissioners signed Resolution Number 96-072, a resolution authorizing submittal and in support of a HOME Program application to provide housing rehabilitation for lower income households in the Counties of Missoula, Mineral, and Ravalli. Commissioners voted 2-0 in favor of signing this resolution.

Resolution Number 96-073 - The Board of County Commissioners signed Resolution Number 96-073, a resolution authorizing the commitment of $10,000 to the Garden City Community Housing Development Organization’s (CHDO) River House Project. Commissioners voted 2-0 in favor of signing this resolution.

Other items included the following:

1) Approved the revisions in the Bylaws of the Missoula Consolidated Planning Board with a vote of 2-0.

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

WEDNESDAY, SEPTEMBER 4, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Memorandum of Agreement - The Board of County Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and the YMCA for alcohol and other substance abuse prevention services for adolescents who are experiencing domestic and family violence and/or are using drugs and alcohol for a total cost of $8,911.00. Duration of this Agreement will be approximately one year commencing on the first day of July, 1996, and terminating on June 30, 1997, contingent upon receipt of Montana Board of Crime Control Grant Funds.

Sympathy Note - The Board of County Commissioners signed a sympathy note to Chris and Richard Volinkaty.

Professional Services Contract - The Board of County Commissioners signed a Professional Services Contract with Allan Mathews to continue work as historic preservation officer until he becomes an employee.

Agreement - The Board of County Commissioners signed an Agreement between the Missoula City-County Health Department and the DeSmet School District to work together to provide school health services. The Agreement was sent to the Health Department for further signatures and handling.

Other items included:

1) Partnership Health Care requested to expand accountant position to full-time. The vote was 2-0 to approve this request.
2.) The Library requested to expand a custodial position to full-time, using cash balance. This request was lost in the budget process. Commissioners voted 2-0 to approve this request.

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

PUBLIC MEETING – SEPTEMBER 4, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present was Commissioner Fern Hart.

BID AWARD: MAINFRAME DISK DRIVE AND MEMORY BID (INFORMATION SERVICES)

Jim Dolezal, Information Services, said, with the continued growth of the criminal justice system, they need more disk space and memory to hold all the data. This was the reason for this request. The only bid they have received was from Unisys for $73,209. The budget had originally allocated $70,000 for this upgrade and the additional $3,209 will be taken from another mainframe capital item.

Michael Kennedy asked what that other capital item would be?

Jim Dolezal answered it would a high-speed interconnect item. It won’t create any problem because the prices for this item have gone down.

Fern Hart moved that the Board of County Commissioners award the bid for the mainframe disk drive and memory to Unisys for $73,209, which is $3,209 over budget, however, it will be covered because of savings in another budgeted capital area. Michael Kennedy seconded the motion. Motion carried 2-0.

BID AWARD: PURCHASE ONE 1997 3/4 TON 4 X 4 PICK-UP TRUCK (BUILDING/MAINTENANCE)

Michael Kennedy said this was a bid award for the purchase of a 1997 3/4 ton 4 X 4 pick-up truck. The following bids were received: DeMarios Oldsmobile, $25,242.00; Grizzly Auto Center, $27,274.00; Ronan Auto Body, $28,930.00; Karl Tyler Chevrolet, $24,256.00; and Dave Smith Motors, $29,272.85. The Building Maintenance Department recommends that the bid be awarded to Karl Tyler Chevrolet which was the lowest and best bid and was within the budget.

Fern Hart moved that the Board of County Commissioners award the bid for the 1997 3/4 ton 4 X 4 pick-up truck to Karl Tyler Chevrolet for $24,256.00, which is within the budget. Michael Kennedy seconded the motion. Motion carried 2-0.

BID AWARD: TREE PLANTING IN SEELEY LAKE (ROAD DEPARTMENT) (POSTPONED FROM AUGUST 28)

Horace Brown, County Surveyor, said this was to award a contract for landscaping in Seeley Lake on Double Arrow property. The bids were opened on August 26, 1996 and one bid was received from Earth & Wood for $48,607.90. He recommended that they do not award the bid to Earth & Wood because it does not meet all the requirements of the bid, specifically the 5% requirement for Disadvantaged Business Enterprise firms.

Fern Hart asked what the Disadvantaged Business Enterprise status meant?

Horace Brown replied that the contract has to negotiate with either a woman-owned or minority-owned business to do 5% of the work, in this case. Earth & Wood did not do that. CTEP money is doing this landscaping.

Fern Hart moved that the Board of County Commissioners do not award the bid at this time, based on the recommendation of the County Surveyor. Michael Kennedy seconded the motion. Motion carried 2-0.

HEARING: PROPOSED RESOLUTION REGARDING AN EASEMENT AND MAINTENANCE AGREEMENT WITH MONTANA POWER FOR THE KIM WILLIAMS TRAIL

Mary Jean Gilman, Project Manager, Feet First Non-Motorized Transportation Program, said a donation of $50,000 is being proposed, which has been offered from ARCO for a couple of years. The original proposal was for improvements in the area of the Milltown Dam, based on public comment and concern about doing any recreational development there prior to a Superfund decision. The offer was not rescinded but the interested parties declined at the time. Subsequent to that, the non-motorized steering committee has formed a sub-committee and met with ARCO, Montana Power Company (who owns the land there), community groups such as the Milltown Technical Advisory Group and the Bonner Development Group, and staff from the Missoula City/County Health Department. They would be comfortable with the revised proposal and that is that ARCO would still contribute $50,000 for the Kim Williams Trail but, instead of focusing on that one area, they could use it anywhere from the current end of the Kim Williams Trail at the City limits out to the area of the old bridge, Duck Bridge. It is a project of the Bonner Development Group to restore that to a bicycle/pedestrian/equestrian bridge status and to allow recreational and commuter travel to flow unto the Kim Williams Trail between Milltown, Bonner and Missoula. That is a major element of their community plan and economic growth plan.
When she originally proposed this, she talked to the County Park Board. They also had discussion with the Missoula Parks Department and Horace Brown, the County Surveyor. The result was a decision that the City Park Department would coordinate the adopt-the-trail volunteers to do litter collection and other minor and frequent maintenance. Because this is almost entirely on the old Milwaukee Railroad bed, it would require virtually no up-keep and maintenance other than dragging it annually, to even up the top surface. The Montana Power Company said they would mow either side of the easement. There would be no winter plowing. She has researched different grants that might be available for trails for future maintenance costs and there are two. The first is a National Recreational Trails Act which is a part of the ISTEA program which allows for trail maintenance and the other is Travel Montana Program, which also allows maintenance costs. The location of the Kim Williams Trail is shown as open space and might be available for trails for future maintenance costs and there are two. The first is a National Recreational Trails Act which is a part of the ISTEA program which allows for trail maintenance and the other is Travel Montana Program, which also allows maintenance costs. The location of the Kim Williams Trail is shown as open space and recreation on the Comprehensive Plan. It is shown on the non-motorized plan as being an important connection to the Blackfoot River corridor and between the two communities. In the County Park Plan, it is mentioned with reference to two groups, the Bonner/Milltown Group and the East Missoula Group, who are interested in a trail system that would connect them to Missoula. She met with City Council in the last couple of weeks. The majority were interested in pursuing this. They are anticipating a greater future need for this trail by trying to do it now, while the corridor is still open and we have interested parties who are willing to participate. It is a responsible use of funds because there are multiple fund sources to apply to the actual engineering contract and development through CMAQ through the Open Space Fund, which has allocated $235,000 toward this project and two others that are referred to as the Bicycle Commuter Network. Mary Jean Gilman answered yes. Michael Kennedy said, to make this process proceed, they must agree to a letter that would ask ARCO to remit the funds directly to the City rather than the County, who is the beneficiary of those funds. He asked if the City was willing to accept the funds? Mary Jean Gilman answered yes. Colleen Dowdall mentioned that she was at the Park Board meeting when this was first presented and these same issues were raised at that time. She had additional concerns that law enforcement might have to patrol the trail and that is how risk management came into the discussion. She is hesitant about the Commissioners signing the resolution. Mary Jean Gilman answered it has not happened yet. ARCO has specified the end of the year as the limit on their offer. A resolution showing intent of doing this easement would trigger the money to be transferred from ARCO to the City, along with a letter of request from the County. Michael Sehestedt, Chief Deputy County Attorney, questioned why they are asking the County to accept the easement. He asked if the City lacked the capacity to accept the easement or if the Power Company was unwilling to grant it? Mary Jean Gilman answered she believed it was because the land was in the County. Michael Sehestedt said that raises the question of the $50,000, under the terms of the resolution, which is to go to the City. However, the resolution specifically provides that it is all to be expended on those portions of the Kim Williams Trail outside the City limits. If the City cannot accept an easement outside the City limits, then he does not see how they can be expected to expend the $50,000. Also, he resented the direction “Respond in a timely manner.” He noted that they may have provided Feet First with an easement maintenance agreement but they have not provided the County Attorney’s office with it. That would be the first step in getting a response from the County. He seriously questioned whether acquiring this was a good idea and, further, to have the County acquire the easement and maintenance responsibility and give the money that will connect this with other non-city groups to the City to be expended for their purposes, does not seem right. He would like to know why the acceptance of the easement and the responsibility of the money to provide for maintenance, improvements and the like, have been disconnected. Fern Hart responded that Feet First is under the City “umbrella.” This is to allow Feet First to have money to do the job of this trail. It seems to her that Jim Nugent would be the logical person to do the easement and maintenance agreement in connection with Mary Jean Gilman. Michael Sehestedt asked why they County was in the loop at all? He quoted from the resolution: “Funds from ARCO are to be used for the design, right-of-way acquisition and/or construction of portions of the Kim Williams Trail located beyond the current City limits, between the Kim Williams Trails and connection to the Bonner Development Group Project “Bicyc/Pedestrian Bridge,” and connection to Deer Creek Road in the vicinity of Milltown Dam.” If that is what the money is to be spent for, then either the City is in a position where they could accept the easement or, if they can’t, they do not have the authority to spend the money outside the City limits or in this area on the project. He believes they have the legal capacity to acquire it and the legal capacity to spend the money on it. So, unless Montana Power is unwilling to deal with the City on this issue, it is unnecessary for the County to be on it. He also questioned whether this segment included the tunnel by the Milltown Dam. If it is included, he refused to accept the maintenance over the long term. There will be inspection costs, at least. He said the fundamental question is why would the County get the easement and the maintenance responsibility while the money, which is to be spent outside the City limits, is going to the City? Fern Hart mentioned that she was at the Park Board meeting when this was first presented and these same issues were raised at that time. She had additional concerns that law enforcement might have to patrol the trail and that is how risk management came into the discussion. She is hesitant about the Commissioners signing the resolution that directs the County to only review a risk management program. Michael Kennedy said perhaps they could operate on a contingent resolution. Those contingencies could be that 1) the City would be the grantee of the easement, 2) that the City would be the receptor of the funds and have full responsibility and liability of it, 3) the operation and maintenance agreement which involves the County have certain limitations that does not include the tunnel and does not include liability. He asked if those contingencies were sufficient?
Michael Sehestedt answered he felt they were. He is still concerned about the decoupling of the funds and the responsibility. The County can always enter into maintenance agreements with the City for roads or other matters, that allocate responsibilities and provide for compensation.

Fern Hart asked for an explanation of the contingencies.

Michael Sehestedt said that the grantee of the easement gets the interest in real property that Montana Power is willing to grant. Which he understands from the documents, is a right-of-way easement for pedestrian and bicycle purposes of undetermined dimensions. That is an interest in real property that will be conveyed by the Power Company to the City in return for a maintenance agreement.

Fern Hart asked if that included the tunnel?

Mary Jean Gilman responded that it is not an easement to the City. It is an easement that the County would have with the City. Colleen Dowdall agreed the land was under the jurisdiction of the County, however, in reading the resolution, she cannot determine who would hold the easement. In reading the front page, it seemed to her that the City would hold the easement and the City would get the money. The only responsibility would be the County Surveyor’s office to do minimal upkeep. However, the rest of the resolution talks generally about a partnership and that the County’s responsibility is to work out a maintenance agreement and an easement.

Mary Jean Gilman admitted a lack of expertise in dealing with County procedures. However, she has always felt that the details of any agreement could be worked out subsequent to a resolution of intent that shows interest on the part of the County. She stated she was not in a position to say if the City would be taking the easement and be responsible for it but she was inclined to think that would not happen because it is outside the City limits.

Fern Hart said Counsel’s advice is important about the details.

Mary Jean Gilman asked if the proposal included the tunnel?

Mary Jean Gilman answered that 1/3 of the tunnel is owned by Montana Power Company so the easement that goes through the tunnel would be part of the trail. However, she could not say whether the responsibility of the maintenance of the tunnel would be the County’s. She understood from the Montana Power Company that their 10 feet of trail is what the easement would be and what they would be responsible for.

She believes the issues brought up are appropriate and, if staff were instructed to work on them, they could be resolved. She also noted that the City is interested in this because it is part of the major project, the bicycle commuter network. The City worked a long time to assemble the preliminary engineering. There has been a lot of pressure from the community to take a global perspective on that rather than concentrating all of the effort in the urban area. They want to extend into the County. This engineering project will be looking at the Kim Williams Trail and also areas west of Reserve Street. The mechanism has been set up for this and it was felt that this was one way the County could participate, not monetarily, but by making this agreement because it was County land.

Colleen Dowdall agreed the land was under the jurisdiction of the County, however, in reading the resolution, she cannot determine who would hold the easement. In reading the front page, it seemed to her that the City would hold the easement and the City would get the money. The only responsibility would be the County Surveyor’s office to do minimal upkeep. However, the rest of the resolution talks generally about a partnership and that the County’s responsibility is to work out a maintenance agreement and an easement.

Mary Jean Gilman responded that it is not an easement to the City. It is an easement that the County would have with an agreement between the County and Montana Power Company.

Michael Kennedy stated, if the money is transferred to the City, then the City will have full responsibility. The easement would go from Montana Power to the City and the County would have a maintenance agreement with the City to provide service. This will throw the matter back to the City, saying that they have to accept the responsibility of operation and maintenance of the Trail and all the liability that goes with it, along with the money. Then the County will agree for a certain cost, basically a zero price, to drag the Trail with no liability attachment to it over time. He is willing to proceed on that basis.

Michael Sehestedt said if, for some reason, the Power Company prefers to deal with the County, then they need to look at the possibility of getting the money to help cover these costs. He is most concerned about the decoupling within this matter.

Fern Hart said, at this time, the County has claims against it for injuries [for various County matters]; she believes that there will be a claim to the government for whatever happens on that Trail.

Michael Kennedy opened the public hearing.

Tim Hall, Office of Planning & Grants, said he is the County staff person on the Non-Motorized Steering Committee since the Committee was created. Regarding Mr. Sehestedt’s comments about institutional controls, he said the development of the Trail will be in no way done in such a way or at a time that would be problematic to the solution for cleaning the Milltown site. They have done considerable groundwork with the Health Department, the communities, the neighboring residents, the Planning Staff, the Commissioners and the Council regarding timing of development of the Trail. This is the first step towards development of a good resource for the County and City and the outlying communities. No development will in any way impede or potentially affect the clean-up processes that EPA and ARCO are negotiating.

Michael Kennedy noted that the Environmental Protection Agency would be in town the next day to discuss, partially, that issue.
Bruce Hall, Bonner Development Group, said the Trail was basically resurrected about a year ago. Mary Jean has spent countless hours to get to this point. The recreation in the area of the Milltown reservoir was a vital component of the recent community action plan that they completed in June of this year. There is an opportunity at this time because of the money that would be available for working on this project; unfortunately, there are not a lot of resources out there. He also wanted to comment on Tim’s language, using the term “clean-up.” He said that means different things to different people and he would prefer not to use it, so as not to negatively influence the decision.

He said, in regard to the Duck Bridge, they have received a Farm Grant to do a feasibility study on the respanning of the Clark Fork at the eastern end of the Milltown Reservoir. They see this recreational enhancement as a benefit to the community. The letters are in support of the feasibility study but they are only important if linked with the Kim Williams Trail. (He offered a copy of them to the County secretary, who accepted them and they will be included with the file.)

Gwen Thibodeau belongs to the Bonner Development Group and to the Country Horsemen group. She would like to add “equestrian” to the “bicycle/pedestrian bridge.” At this time, the Kim Williams Trail permits equestrian use and she hopes that the trail will be continued as will equestrian use on it.

Michael Kennedy thanked the speakers for their comments. He asked Mary Jean if equestrian use was restricted on the Trail?

Mary Jean Gilman replied not necessarily.

Fern Hart asked Counsel for direction on how they should handle a motion.

Michael Sehestedt said they could do the contingencies, or they can ask staff to report back to the Board in a week or two.

Fern Hart offered the following contingencies be added to the motion:
1. That the City of Missoula be the grantee of the right-of-way easement for a bicycle/pedestrian/equestrian trail from Montana Power Company;
2. That with the ownership of the Trail the City will also accept the liability; and
3. That the County will enter into an agreement with the City on maintenance for this portion of the Kim Williams Trail.

Fern Hart asked if she should include that the City has the responsibility of drawing up the easement?

Colleen Dowdall answered that she believed Montana Power will do the easement.

Michael Kennedy said the liability provision affects the County only inasmuch as they would enter into an operation and maintenance agreement with the City. The City does not need to separately specify liability if the easement is going to be between Montana Power and the City.

Fern Hart said then she would leave out contingency no. 2.

Michael Kennedy, addressing Mary Jean, said there was a problem with the timing because in 2 weeks, the Commissioners would be at the MACo Convention. He asked her if September 25 would be acceptable?

Mary Jean Gilman answered that would be okay.

Fern Hart moved that the Board of County Commissioners approve an intent to adopt a resolution in three weeks requesting the remittance of $50,000 to the City of Missoula for the Kim Williams Trail from ARCO including the following contingencies. Further, that staff provide a new resolution to be brought before the Board at that time.

1. That the City of Missoula be the grantee of the right-of-way easement for a bicycle/pedestrian/equestrian trail from Montana Power Company; and
2. That the County will enter into an agreement with the City on maintenance for this portion of the Kim Williams Trail.

Michael Kennedy seconded the motion. Motion carried 2-0.

Michael Sehestedt stated that, should it become apparent that the City is unwilling to accept the easement, staff will prepare an appreciation for the Commissioners of their acquiring the easement and making a direct application for the money as well. He wanted it understood that he was not opposed to this becoming an easement and part of the transportation system. However, the situation seems disconnected. If the City is unwilling to do it, staff will prepare an appreciation for the feasibility of the County doing it and also request the money directly from ARCO.

Michael Kennedy said they see this as an important component of the overall trail system. There is detail work that happens but it is there to protect all the citizens of Missoula County from contingent liability. But this matter is in Missoula’s best interests and sooner or later they will get this accomplished.
Lisa Moisey, Office of Planning & Grants, said this was a request from Don Fough for a 2 lot subdivision on 3.88 acres, located along Highway 10 West, about a ¼ mile west of the Airport. The property is situated in the C-I1 zoning district, which allows for light industrial uses. Mr. Fough has a residence on the proposed Lot 2. He intends to sell Lot 1 for use as a dry storage building by another individual. Access to the property is on Highway 10 through an existing 20 foot wide private driveway. The subdivision is located on a primary travel corridor as defined in the Missoula County subdivision regulations, which require landscaping along the frontage of Highway 10. Mr. Fough has asked for a variance from this requirement given that the frontage of his property on Highway 10 is only about 25 feet wide. Trees planted along this driveway could inhibit access in and out of the subdivision and pose a safety hazard. Staff agrees and recommends approval of the variance request. LaValle Creek flows through the property and potentially could support riparian habitat. OPG staff recommends a condition requiring the developer to submit a riparian resource management plan stating how the riparian vegetation will be protected. The developers also requested a variance from pedestrian walkways along Highway 10. OPG staff recommends approval of this variance.

OPG staff recommends approval of the subdivision subject to the conditions in the staff report and based on the findings of fact.

Donald Fough said has has trouble walking and he talked to a County Commissioner that he tried to put in the cement on the road, that 25 foot, and that is the only thing he disagrees with. He is not able to do it at the present time because of his leg. He has done everything else that is required.

Horace Brown noted that Don had spoken to him and not a County Commissioner.

Fern Hart asked if there were waivers in the event that there should be a trail out there?

Lisa Moisey answered yes, in condition no. 13, which included pedestrian walkways. Because OPG staff recognizes that the developer is intending to provide for pedestrian walkways in the future, the variance is not necessary.

Colleen Dowdall said, also, that the variance for the travel corridor is not needed.

Michael Kennedy asked, then, if is true that the Board need only act on the subdivision and not the variances?

Colleen Dowdall answered that was correct.

Fern Hart wanted to clarify that the only requirement with respect to the driveway is to pave the apron for 20 feet.

Horace Brown said that was true but also that is a State highway, not a County highway. The Commissioners can require it but it is not under County jurisdiction. The State requires it.

Fern Hart asked if County staff is certain that a gravelled road is okay.

Michael Kennedy responded by saying the Health Department has jurisdiction over that.

Horace Brown said this is not a new road so it does not come under the Health Department.

Colleen Dowdall added that neither zoning nor subdivision would trigger paving for 2 lots.

Michael Kennedy asked if that had some implication for the future subdivision of that land?

Colleen Dowdall answered if there was a subsequent subdivision so that the road was serving 3 or more parcels, then paving would have to occur.

Michael Kennedy asked if the 2 existing parcels would count?

Colleen Dowdall answered that it would. It would be the obligation of the new developer to provide the paving.

Michael Kennedy asked how the easement would be conveyed?

Lisa Moisey replied that the easement would be conveyed with the subdivision for Lot 1.

Michael Kennedy understood that the easement could not be conveyed until the property is sold.

Colleen Dowdall stated that, on a plat, they can create an easement.

Fern Hart said, suppose this became a more developed commercial area and the parcels were subdivided. Why would only one developer would pay for the paving? Why would there not be an RSID?

Colleen Dowdall answered that it is a private road.

Horace Brown said, further, it is only 20 feet wide and he does not believe it could serve 4 lots. 3 lots would be pushing it.
Fern Hart moved that the Board of County Commissioners approve the Fough Addition summary plat, based on the findings of fact and subject to the 13 conditions listed below. Michael Kennedy seconded the motion. Motion carried 2-0.

1. The County Surveyor shall approve grading, drainage, erosion control, driveway plans before approval of the final plat.
2. The County Surveyor shall approve access and approach permit before filing the final plat.
3. The County Surveyor shall approve future access along Old U.S. Highway 10.
4. The driveways which serve Lots 1 and 2 shall have a paved 20 feet by 20 feet apron, subject to the approval of the County Surveyor.
5. The driveways shall be all weather surface with a minimum of 20 feet width. In lieu of two access routes, provide turnarounds for turning around fire apparatus. The Fire Marshall shall approve plans before plat filing.
6. The following subdivision fire access standards be in the covenants:
   a. Provide a minimum unobstructed width of not less than 20 feet and an unobstructed clearance of 13 feet 6 inches for any driveway over 150 feet.
   b. Provide approved provisions for turning around of fire apparatus for dead-end driveways in excess of 150 feet.
7. The owner shall provide dust abatement to the private driveway, with the dust abatement plan to be approved by the Missoula City-County Health Department before approval of the final plat.
8. The Missoula Rural Fire District shall approve the water supply for fire protection purposes for the existing and proposed structures before final plat filing.
9. The developer shall provide an avigation easement to the Missoula Airport Authority. Such an easement shall be filed with the Clerk and Recorder before filing of the final plat.
10. The owner shall enter into a development agreement with Missoula County to submit a riparian resource management plan, to be approved by the Office of Planning and Grants before final plat approval.
11. The owner shall clearly label on the face of the plat the floodplain along La Valle Creek as "No Development Zone."
12. The following statements shall appear on the face of the final plat and in all instruments of conveyance:
   "Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a future RSID or SID for any improvements to Highway 10 West, including but not limited to paving, dust abatement, and sidewalk based on benefit. Such a waiver may be used in lieu of his or her signature on an RSID or SID petition."
   "Acceptance of a deed for a lot within this subdivision shall constitute: 1. Assent by the lot owner to waive the right to protest an RSID or SID affecting said property for the purpose of financing the design and construction of public water and sewer benefiting said property; and 2. An agreement whereby the owner shall connect to public water and sewer within 180 days after they are installed and available in the public right-of-way adjacent to the property. This waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owner of the land described herein. All documents of conveyance shall refer to and incorporate this waiver."
   "The purchaser and/or owner of the lot or parcel understands and agrees that construction, maintenance, and snow removal of the private gravel driveway shall be the obligation of the owner or property-owners association. The County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the County of Missoula for maintenance."
   "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under, and across each area designated on the plat as "Utility Easement" to hold forever."

CONSIDERATION OF RIVER RANCH (5 LOTS) -- FRENCHTOWN AREA
Lisa Moisey, Office of Planning & Grants, said this is a request by Bill and Patti Lefler for a 5-lot subdivision on 106 acres, located between Huson and Frenchtown. The property presently consists of 4 contiguous parcels that area all owned by the Leflers. Lots in the subdivision will range in size from 4.2 to 6.5 acres and there will be an 80 acre remainder. In May of this year, the Leflers had submitted a 10-lot subdivision proposal on this same property but the 10 lots were spread out over approximately 40 acres of land. That proposal was denied by the Board of County Commissioners.
Commissioners. The proposal now has a lot reconfiguration and design. This proposal will cover approximately 25 acres of the 106 acres of land. The property in this area is unzoned and the Missoula County Comprehensive Plan recommends open and resource designation for this property. This is not primarily a residential designation, however, if residential development occurs in the area, the recommended density in the plan is one dwelling unit on 40 acres. The property is also not located within an activity circle but is within the Hanson and Frenchtown activity circles. In theory, the developer could construct a home on each lot. A home and buildings associated with the farm operation already exist on proposed Lot 2. This proposal will result in a development in approximately 25% of the property, leaving approximately 75% as open and resource lands to be used for continued agricultural uses. The overall density of the proposal will result in approximately one dwelling unit per 17 acres. OPG recommends approval of the subdivision with the recommendation that the remainder parcel be limited to one single family development. The overall density of the parcel should be tied to the entire parcel and no development beyond the 5 lots and the one single family dwelling on the remainder should be allowed on the parcel until such time as the Comprehensive Plan in that area is revised and the developer comes back to the Commissioners for approval of additional density.

OPG recommends that the boundary line between Lots 2 and 4 and Lots 1 and 3 be moved north so that the old railroad line will essentially become a part of Tract 3 and Tract 4. The reason for that recommendation was the way that the lots are configured now. Tract 1 has a narrow piece which could create a maintenance problem and may become a “leftover” piece. It made more sense to include that with Tract 3; also, Tract 3 would benefit more from that property than would Tract 2. That recommendation is expressed as a condition in the staff report. OPG also recommends that the cul de sac be pulled back to where the boundary line would be moved for the property line. A private driveway would then serve Lots 3, 4 and 5. Potentially, those Lots could access off the cul de sac but, depending on where the house is constructed, the private driveway may have to be the access. OPG recognizes that density in this area is limited by recommendations in the Comprehensive Plan but, looking into the future, that may change. At some point, the Comprehensive Plan may change and be appropriate for greater density. In that event, these 4 to 5 acre lots could be further subdivided. OPG further recommends, then, that the developer dedicate a 54 foot wide easement along the lot line between Lots 2 and 4 so that, in the future, a loop road could be made if needed. As a result of OPG’s recommendation to move the cul de sac back and potentially allow 3 lots to access from a private drive, it necessitates a variance request which OPG is requesting that the Commissioners review to allow 3 residential lots to access from one private drive. Standards in the County Subdivision Regulations require that when there are 3 lots accessing a driving lane, that lane is required to meet County roadway standards.

The developer is further requesting a variance from roadway width for Lefler Lane which would be the private access lane into the subdivision. The developer plans to dedicate a 54 foot private easement but the intent is to pave the roadway to 22 feet wide rather than the required 24 feet wide. OPG staff is recommending approval of that variance request given that the amount of paving will meet the requirements for fire and emergency vehicles with clearance of at least 20 feet wide and given that there will be 54 feet of easement that, if needed in the future, that road needed to be widened, there would be opportunity to do that.

OPG recommends approval of the subdivision contingent on the conditions in the staff report, except for condition no. 8, which would not be relevant if the Commissioners approve the 3 lots to access off of the private driveway. Then OPG would recommend that condition no. 8 be deleted.

Just prior to this meeting, she talked with Scott Waldron from the Frenchtown Fire District, and he would like to make comments regarding condition no. 5, which came from the Frenchtown Fire Department requiring a 2,500 gallon storage water tank. Scott told her verbally that will not be a requirement of the Frenchtown Fire Department and they will work with the developer for adequate water storage on that property.

**Fern Hart asked if Tract 1 include the Lefler home?**

Lisa Moisey answered yes.

**Fern Hart asked if development on the remainder would have to come in for subdivision review?**

Colleen Dowdall, Deputy County Attorney, answered, for a property description, the remainder would have to be created as a lot. So it cannot be transferred, referring to it as the remainder parcel.

**Fern Hart asked what would happen if Bill decided to build on it?**

Colleen Dowdall answered that he could build on it but it has not been reviewed as a Lot so it does not have a legal description.

**Fern Hart asked if he could get a loan and mortgage it without a legal description?**

Colleen Dowdall answered presumably not. They do not have the same review over mortgages.

**Fern Hart asked if it could be done administratively?**

Colleen Dowdall answered no.

Michael Kennedy said, this subdivision notwithstanding, the property can, under current regulations, still accept 4 houses. He asked if that were correct?

Lisa Moisey answered yes.

Ron Ewert, Eli & Associate, said they came back with a smaller version of the first River Ranch, presented in May. They are proposing 5 lots plus a remainder. They have had to take out a couple of the amenities, like the park and the gazebo and circular drive and the like because of economic reasons. But they still have the covenants, the irrigation system along the west edge that could be tapped into, and the protection of the riparian area with a buffer zone. The
Regarding the 80 acre remainder, it has a legal description at this time in the sense that you could say it is the east half of the northeast 1/4 of Section 31.

Colleen Dowdall responded that it is less than 160 acres so it is a division of land requiring review. It may have that description but it is not one that can be recorded unless there is a recording reference. If you have a 5 lot subdivision, you do not have to undergo some of the review, including Planning Board and Environmental Community Assessment. So, they are recognizing in not allowing the remainder parcel to be transferred that it has not been reviewed as a parcel; they are recognizing the remainder for anything in this context so it should not be a creative lot. Otherwise, what they have is a 6 foot subdivision, which should undergo major review.

Ron Ewart said that, at this time, Bill has no plans for that 80 acre parcel except to continue his agricultural operations. There is a driving trail along the east edge and a bridge that goes over the creek and the only motorized access would continue to be by that dirt road over the creek. There is a good amount of tillable ground south of the creek. The only thing that would be happening in the riparian area or in the floodplain would be agricultural operations.

When this was a 10 lot proposal, Bill Lindstrom required a 2,500 gallon water storage tank. He was not involved in any change in this requirement. Condition no. 7.2 reads “That building on the remainder parcel will be limited to one single family home, until such time as the Comprehensive Plan is amended allowing additional density and the Board of County Commissioners approve additional dwelling units on this parcel.” He and Bill have discussed this condition and feel that this property is covered with a set of regulations. If any development beyond one single family home is to take place on that parcel, then it will have to come through the regular channels.

Fern Hart responded that she planned to omit that in her motion.

Ron Ewart said, one other thing, they are showing on the cross section drawings a 5 foot asphalt sidewalk. Bill is pressed financially and asked if he could do a gravel walkway instead. The walkway would only serve the 3 lots to the south because the others are closer to the road. Section 3-2(5) states that sidewalks or walkways may consist of alternate materials so they do not need to ask for a variance. He noted that Playfair Park has a gravel walkway on the far south end and it works great. It is hard-packed with small pebbles and he noticed that people had no trouble pushing a baby carriage over it. He feels that this type of walk would be good in a rural subdivision such as this.

Michael Kennedy asked Lisa Moisey about her conversation with Scott Waldron.

Lisa Moisey answered that she did not speak with him in person but that he had left a voice mail for her. Scott had intended to be at this meeting but could not make it. So he left her a message saying that she should relay to the Commissioners that he would not require the 2,500 gallon water storage tank and he would work with the developer on other means for water supply for fire protection purposes. Scott has had opportunity to review this proposal.

Fern Hart said they could say that “the developer shall install an adequate water storage system, consistent with the National Fire Protection Standards, to be approved by the Frenchtown Fire District.”

Colleen Dowdall said a storage tank is not what is always required. Frenchtown is the fire district that has worked with impact fees and trying to develop something along that line. Scott was very active in finding all kinds of alternatives to meeting the fire requirements.

Michael Kennedy said, then, it would suffice to have them meet the requirements of the Frenchtown Fire District. Colleen Dowdall agreed.

Lisa Moisey added that she believed that fire district was assessing lots a $100 fee.

Michael Kennedy said he is concerned about the size of the lots. He remembered the Lefler’s first presentation and he liked their proposal at that time, but it was in the wrong place at the wrong time. This is remarkably different and it comes much closer to clustering. But he is curious about the lot size and asked why were 5½ acre lots decided on? That is a lot of acreage.

Bill Lefler answered he had buy/sell agreements on those lots. Two of the people he worked with on that process have no intention of building for 2-3 years. He has negotiated to be able to farm that in the meantime. When they do build, he believes agriculture will be of high interest and he will work with them to build in an area that will maintain the maximum amount of agricultural area. There is approximately 3½-4 acres on two of the lots where the railroad right-of-way goes through. Tract 3 is on a gravelly-type of agriculture ground and does not produce as well as the others. This will not have a great affect on agriculture. He expects to turn 50 acres of ground that has not been productive and, when this is finished, will put it back into productive ground.

Michael Kennedy said, if he has already entered into at least an interim agreement prior to the time these people will occupy this property to use it for agricultural use, then why are the lots so large?

Bill Lefler answered there are two reasons. When he originally started out to do this, he researched the area. His personal opinion is, it does not matter how much land you have, it is more the person that owns that land as to what is going to happen to it. There are some good agricultural properties out there in 5 acre parcels. Three of these people that bought these parcels are now living in cul de sacs. They wanted 5 acres where they could raise a horse or whatever. From a saleability standpoint, he took that into consideration. The position of the people that were interested in those lots was very important. He personally had 10 acres himself and lived on it for 10 years prior to moving to this ranch and he thought that would be the right amount of land, but he decided on 5 acre parcels.
Michael Kennedy asked what Bill thought of moving the boundary of Tract 1 to the north, on the north side of the old railroad grade.

Bill Lefler responded that he had no problem with that. There are 11 recommendations that he has no problem with.

Michael Kennedy continued and said the effect of that would reduce the overall size of Tract 1 and 2 by roughly an acre and increases the sizes of Tracts 3 and 4 by about an acre. If that is okay with him, then it would also be okay to maintain the size of Tracts 3 and 4 by moving the southerly boundary line to the north by 90 feet.

Bill Lefler answered that was actually Lisa’s recommendation. He does not understand all the reasonings for that but he has no problem with moving it. He has set the cost for the buyers that he has for these properties based on so much per acre. Other than that, it has no relevance to either them or himself. From a survey standpoint, it made more sense to put it there.

Michael Kennedy asked, then, he would have no problem if the whole subdivision got moved north?

Bill Lefler answered that the only objection he would have is to have to go through another process. He was “processed out.”

Colleen Dowdall asked Ron Ewart if there would be much cost to move it up a section?

Ron Ewart answered that survey costs would not be that much more. They will still be working in Section 30. When Lisa had the idea of moving the boundary to the other side of the road right-of-way, it didn’t really matter. That is not useable ground anyway.

Fern Hart asked how much does this increase Bill’s costs?

Ron Ewart it would probably increase about $50. They would have used that section corner as a boundary and, if the other one is in the west line, they could have used that monument as Tract 5’s southwest corner. But it would just be a matter of setting two additional monuments. So, from a survey’s standpoint, it is not a significant extra cost.

Michael Kennedy said that would allow more agricultural use and the lots stay about the same size. He recommended that they do it.

Bill Lefler said, from an economic standpoint, they are talking about taking 3 acres which roughly will cost him about $30,000. His road construction costs came in at over $60,000. He said, the way it is now, is just about as close as he can get to still accomplish this subdivision. He would prefer not to take away $30,000.

Michael Kennedy said he understood.

Fern Hart asked if the walkway had to be paved or if it could be a gravel walkway?

Lisa Moisey answered, that if that the Commissioners wanted it to be a gravel walkway, they should make it a condition. Gravel walkways are a common way to provide pedestrian access in rural areas.

Fern Hart said she would make that a condition, to provide a gravel walkway on Lefler Lane, and that will replace the staff’s recommended condition no. 8.

Fern Hart moved that the Board of County Commissioners grant the variance for River Ranch, located south of Mullan Road between Huson and Frenchtown, legally described as the SE¼ of Section 30, the NE ¼ of Section 31, T15N, R21W, from Section 3-2(I) requiring a 24 foot wide street section to allow a 22 foot wide street section with an easement of 54 feet. Michael Kennedy seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners grant the variance for River Ranch, located south of Mullan Road between Huson and Frenchtown, legally described as the SE¼ of Section 30, the NE ¼ of Section 31, T15N, R21W, from Section 3-2(I) requiring access lanes serving three or more lots to meet the County roadway standards. Michael Kennedy seconded the motion.

Fern Hart moved that the Board of County Commissioners approve the summary plat for River Ranch, located south of Mullan Road between Huson and Frenchtown, legally described as the SE¼ of Section 30, the NE ¼ of Section 31, T15N, R21W, based on the findings of fact and staff recommendations, contingent on the conditions listed below. Michael Kennedy seconded the motion. Motion carried 2-0.

1. The following statement shall be included on the face of the plat: “Acceptance of a deed for a lot within this subdivision constitutes the assent of the owners to waive their rights to protest a future RSID/SID for improvements to Mullan Road, including installation of sidewalks, and may be used in lieu of their signature on an RSID/SID petition.”

2. A one-foot “no-access” strip shall be shown on the plat along the Frontage of Mullan Road, except for the location of Lefler Lane, the existing driveway access and the proposed private access easement on the east side of the property. Plans shall be approved by the County Surveyor prior to filing the plat.

3. The following statement shall appear on the face of the plat and in each instrument of conveyance: “The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or property-owners’ association and that the County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the County of Missoula for maintenance.”
The following statement shall be included on the face of the plat: “Acceptance of a deed for a lot within this subdivision constitutes the consent of the owners to waive their rights to protest a future RSID/SID for community water and or sewer, and may be used in lieu of their signature on an RSID/SID petition.”

5. The developer shall comply with the uniform fire code, the Missoula County subdivision regulations and the Frenchtown Fire District. Plans shall be approved by the Frenchtown Fire District prior to filing of final plat.

6. The covenants shall include the following statement: “Dead-end driveways in excess of 150 feet in length shall have approved turn-around 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 13’6” 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 by the appropriate fire jurisdiction.”

7. The developer shall enter into a development agreement with the County to address issues restricting changes to the riparian resource plan with the prior consent of the Board of County Commissioners.

8. The developer will install a 5 foot gravel walkway on the west side of Lefler Lane.

9. The lot lines for the proposed lots 4 and 5 shall be relocated to the north side of the railroad grade. The cul-de-sac bulb shall be moved back to the north side of the railroad grade.

10. A 54 foot wide private access easement shall be dedicated between Lots 2 and 4. This easement is not expected to be approved until such time as the Comprehensive Plan is amended to allow for greater density, and the County Commissioners approved additional subdivisions of Lots 2 and/or 4. Plans for the easement shall be approved by the County Surveyor and the Office of Planning and Grants prior to filing the plat.

11. A 54 foot easement shall be located from the end of Lefler Lane to the southern subdivision boundary with the remainder parcel. A driveway to serve lots 3, 4 and 5 shall be constructed within this easement. Plans shall be approved by the County Surveyor prior to filing the plat.

There being no further business to come before the Board, the Commissioners were in recess at 3:10 p.m.

THURSDAY, SEPTEMBER 5, 1996

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

Although no Administrative meeting was held, the Board of County Commissioners signed the following items:

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated September 4, 1996, pages 2-41, with a grand total of $212,144.02. The Audit List was returned to the Accounting Department.


FRIDAY, SEPTEMBER 6, 1996

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

Although no Administrative Meeting was held, the following items were signed:

Agreement - Chair Kennedy signed an Agreement between the Missoula City-County Health Department and the Butte/Silver Bow Unified Government for the Childhood Lead Poisoning Prevention Program for the purpose of conducting childhood lead poisoning prevention activities. The Program is entering its 4th year, and is funded by CDC via Butte Health Department as the State coordinating agency. The agreement shall begin July 1, 1996, and shall end by June 30, 1997, unless the Agreement is terminated earlier pursuant to Sections IV or IX. The Agreement was returned to the Health Department for further signatures and handling.

Contract - The Board of County Commissioners signed a Contract between the Missoula County Road Department and Mickelson Rock Products for prepared aggregate material. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Monthly Report – Chairman Kennedy examined, approved, and ordered filed the Monthly Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County for the month of August, 1996.

MONDAY, SEPTEMBER 9, 1996

The Board of County Commissioners met in regular session; Commissioner Evans was on vacation from September 9th through September 12th.
DAILY ADMINISTRATIVE MEETING

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

Resolution Number 96-074 - The Board of County Commissioners signed Resolution Number 96-074, a budget amendment for the Library (LSCA Grant).

Resolution No. 96-076 - The Board of County Commissioners signed Resolution Number 96-076 authorizing the establishment of a jail work program.

Memorandum of Agreement - The Board of County Commissioners signed a Memorandum of Agreement between the Missoula Board of County Commissioners and the Missoula Aging Services for the planning, coordination, and delivery of Aging Services programs in Missoula County. Total cost is $94,900.00; duration of the Agreement will be 12 months, commencing on July 1, 1996 and terminating on June 30, 1997. Vote was 2-0 in favor of this Memorandum of Agreement.

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

TUESDAY, SEPTEMBER 10, 1996

Audit List -- Commissioners Hart and Kennedy signed the Audit List, dated September 9, 1996, pages 2-31, with a grand total of $233,465.18. The Audit List was returned to the Accounting Department.

Monthly Report -- Chairman Kennedy examined, approved, and ordered filed the Monthly Report of Sheriff Doug Chase showing the items of fees and other collections on account of civil business in Missoula County for month ending August 30, 1996.

DAILY ADMINISTRATIVE MEETING

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

Contract for Services - Commissioner Kennedy signed a Contract for Services with the Department of Public Health and Human Services to reduce juvenile alcohol and drug abuse and the violence that often accompanies such behavior. This will serve as the flagship project for the newly formed Missoula Prevention Coalition. Missoula County will receive $59,869.74; there will be no cost to the County. Match will be provided by Turning Point. Duration of the project is August 1, 1996 through June 30, 1997. The Contract was returned to Peggy Seel at OPG for further handling.

Note to Reserve Deputy - the Commissioners signed a note to reserve deputy George Chisholm.

PUBLIC MEETING -- SEPTEMBER 10, 1996
ROOM #201, 7:00 P.M.

The Public Meeting was called to order at 7:00 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

HEARING AND DECISION ON MALONEY RANCH

Michael Kennedy welcomed everyone to this continued hearing of the Maloney Ranch Phases I, II, III and IV preliminary plat subdivision request. Since this is a continued hearing, he asked the staff to only give a synopsis because they gave a strong presentation of the proposal at the prior meeting, then the developer would have the opportunity to give a short presentation and then they will go into public testimony.

David Loomis, Principal Planner, Office of Planning & Grants, said the Board has before them two proposed subdivisions in four phases. Two are located adjacent and west of the Linda Vista development in the Miller Creek area and the other two are in the Miller Creek valley, geographically distinct and separate from the others. They have been previously located and can be found on the location map, which is the proposed master plan.

Phases I and II propose 112 lots on 78.5 acres. The Comprehensive Plan designates it as suburban residential and the zoning is C-RR1, which allows 78 units on a straight-up application. The average lot size is about .7 acres, although the actual lot sizes are less than that because of the open space area. It is proposed to have the water be provided by a new Maloney Ranch system. The source of that water will be somewhere in Miller Creek valley or the Bitterroot aquifer and will be discussed later. There is an agreement with the City to accept sewer from this subdivision. Road access is primarily through Lower Miller Creek Road.

Phases III and IV, located in the Miller Creek Valley, basically south and east of Phases I and II and up over Upper Miller Creek Road into the Miller Creek Valley, consists of 47 lots on 79.8 acres. The Comprehensive Plan also designates that as suburban residential. It also has parks and open space alongside the creek. There are two Comprehensive Plan designations covering the total acreage. The zoning is C-A3, which is agricultural, one unit per 5 acres, basically allowing 15 lots, borrowing 32 from...
other properties. The average lot size, including open space, is 1.7 acres. The water is from the same community system, as will be discussed later. The sewer will be on-site community septic. There will be step tanks on the individual sites and there will be off-site land treatments on other properties of Maloney Ranch. Road access is basically from Upper Miller Creek to Lost Trails.

He wanted to name some of the issues already identified:

1) The mitigation of off-site traffic impacts and air pollution issues;
2) A provision of parks, specifically small pocket parks, and connecting walkways in Phases I and II;
3) The drainage off-site to a retention basin park and out into the Bitterroot in Phases I and II;
4) The cul de sacs in all 4 phases;
5) The cul de sacs are extremely lengthy and require a variance in Phases III and IV;
6) The “borrowing of density” from other properties of the same ownership for all 4 phases. Each phase is a little more dense than the zoning would allow; that is not necessarily bad. Staff encouraged the developer to make small lots and more intensive development in Phases I and II. It does require, however, if you are borrowing through a legal instrument from the other lands of the same zoning district and the same ownership, they are able to do that. The area on III and IV has to borrow about 2-3 times its allotted density per zoning; and
7) Water supply, especially in the Miller Creek valley, has also been an issue in the past.

Staff has not changed their recommendation, although there have been several discussions, and recommends that the Board approve the variances on Phases III and IV, approve the Plan variation on Phase III and IV, which has to do with setbacks of the houses on the lots, and then approve the preliminary plat for all four phases of the subdivision, subject to the conditions. He said the Commission may recall they had additional recommendations from the Planning Board and he passed out copies of those. For the sake of those in the audience in addition to the Commissioners, he went over to the map and pointed out the areas of discussion, where the development was proposed to be, and significant details of the subdivision.

Fern Hart said she understood from the Executive Summary that the Park Board’s recommendations were included. She said she was on page 19 and noted the Planning Board recommendation on park systems in item “E.”

David Loomis directed her to the green sheets at the end of the conditions.

Fern Hart asked if the Planning Board’s recommendations were in the Executive Summary?

David Loomis said, for this Board, they did not do another Executive Summary. What they did do, however, is a verbal summary at the other hearing regarding the Planning Board’s recommendations, and they added a few conditions and subtracted a few. Those conditions are in the green pages that the Commissioners had. The Planning Board changes are in the bold typeface.

Bill Wagner, Garlington, Lohn & Robinson, said he was the attorney for Maloney Properties L.L.C., the applicant in this subdivision review. He had submitted a letter that evening dated the same day. He gave copies of it to the Commissioners and staff. He reviewed the letter, saying they are relying upon the original subdivision submittals as previously given to the County. They are supplementing that with this letter as well as the 5 items that are noted on page 1 of the letter, which were submitted at this public hearing, which was continued from the last meeting in August. He stated he was not going to read the letter but summarize it because it contains their salient points with respect to these particular subdivisions, Phases I & II and Phases III & IV. The standard of review they are concerned with are basically threefold. One is the determination as to whether this is in compliance with the Comprehensive Plan and whether they are dealing with the Comprehensive Plan as it now exists, the 1990 Urban Area Comprehensive Plan, and not the Miller Creek Comprehensive Plan that has been in progress for some time and which they understand is still in progress. Once that document is finalized, it will have legal effect. Until it is, however, they submit that they are operating under the 1990 Comp Plan. Secondly, the zoning they are operating under is current zoning. Not proposed or anything of that nature, but the current zoning that applies to the Maloney Ranch properties. Thirdly, the standard review that they are concerned about with respect to transportation and air quality issues, they feel have been addressed in a letter to Mr. Carlson of the Health Department as well as Mr. Carlson’s fax back to the Commissioners today. He will comment on this later. With regard to Mr. Loomis’ comment on various attributes of the Comprehensive Plan and zoning, he is correct. They have submitted a document indicating the Maloney Ranch Master Plan. They acknowledge that is not under review this evening, however, they were required to submit that as was the Linda Vista development and they submit that, as Linda Vista 9th Supplement was approved because it was, among other things, in conformance with that master plan, they have submitted theirs and they submit that both Phases I & II and Phases III & IV are in conformance with that particular master plan. With
regard to the Comprehensive Plan, they agree with Mr. Loomis’ figures. They are in compliance with the density requirements with regard to zoning. They are talking about an assignment of density rights within the same ownership within the same zoning classifications. Those will be accomplished by means of documents prepared and approved by the County Attorney’s office to be recorded and, they presume, binding upon the land. Therefore, when they talk about an assignment of density rights from one zoning classification to the other but within the ranch, that those assignment documents will be binding and permanent and recorded. They are something that they cannot deviate from. They are asking for two plan variations. Those were dealt with extensively at the lengthy previous hearing which was adjourned about 1:15 a.m. They are requesting a setback variation because not to allow that setback both in the front and side yards would really be a waste of land. In order for a lot to have an 80 foot wide building site, it must be 180 feet wide and homes must be 100 feet apart under the current zoning. They are requesting variations to allow for a 25 foot front yard setback and a sideyard setback of 15 feet, which they believe would be more consistent with what is up there. In the planning process that has gone on for nearly two years, they have taken to heart what the neighbors have said, which were basically the following items:

- When the Maloney Ranch is developed, it needs to be developed near where existing subdivisions are;
- Don’t go to the Bitterroot River, do not go into the interior of the ranch and plan as you may;
- Start your planning and your development adjacent to existing subdivisions; and
- Make those subdivisions and developments similar to what is there.

That is what they are proposing and those are the commitments they have made to the neighbors through the planning process. The other variation has to do with cul de sacs, which he will address in a few moments. However the subdivision master plan basically lays out streets in a grid street pattern. The only cul de sacs they will see are in Phases III & IV, and they are lengthy. However, they have provided for turn-arounds for emergency vehicles. Also, importantly, they have provided for future connections. Those were shown on a map on display which he referred to the Commissioners. He stated the cul de sacs will not remain permanently; they have provisions for future extensions and the cul de sacs are not land-locked. They do not know what will be done with the land immediately to the north for topography reasons; they are submitting these. The Fire Department had no adverse comments in that regard. He reiterated that they have provided for turn-arounds and they are shorter in distance than those serving other area subdivisions that have been recently approved.

Another primary issue that was dealt with at the lengthy public hearing concerned water. They do not have time or the jurisdiction or authority to really delve into all water issues at this time. Their letter addresses some of those primary points but it is important to remember that the Department of Natural Resources and Conservation (DNRC) and the Montana court system, through the water rights adjudication process, are really the entities and the authorities that can exercise what must and can be done with regard to water rights. Their client owns 5/6ths of the surface rights in Miller Creek and those are the first priority rights. It has been implied in prior testimony that Maloney Ranch will be converting its surface rights to ground water rights. That is erroneous and inaccurate. Maloney Ranch intends to fully preserve all its water rights, including surface rights. It is not going to give the implication to anyone that it intends to give up those rights. How it will develop them at this time, however, is unknown. They are talking at this time with the Twite/Linda Vista group about connecting to their water system. They are also considering the drilling of wells in the Miller Creek and in the Bitterroot aquifer. These are all items, because of their magnitude of a community water system, that the DNRC will have to regulate and hold public hearings and anyone having any concerns about the water wells or water rights will have to address them at that time. In that regard, if they get the subdivision approved and they cannot get water to it, he submits there will be no construction. There will be an approved subdivision without water. That is not the indication they have. They are confident about their ability to either connect to the Twite system or to drill alternate wells. Certainly, given the preliminary studies in the Bitterroot aquifer, they do not anticipate any problems with regard to the water or to the proposed distribution system.

Regarding transportation and air quality, they have addressed a number of those issues in the submittal to Mr. Carlson, dated September 6, 1996, and that is incorporated by reference. A number of the items that they have incorporated into the entire Maloney Ranch master plan have taken into account and addressed the air quality issues. Their client is proposing to preserve 74% of its 3,000 acres in open space, including 5½ miles of Bitterroot River frontage, hillside, habitat areas, the Miller Creek riparian area, the majority of the Miller Creek valley floor, and to place those lands in a series of ownerships and conservation easements that will enhance their environmental and habitat values. Their client proposes to place the entire project on a community water system. Their client proposes to develop a comprehensive approach to surface water management without the use of sumps, using storm sewer pipes, curb and gutter streets, detention basins and grass swales. Their client proposes to utilize cluster community designs, placing developments into three distinct areas to reduce the amount of infrastructure, especially roads, to serve this particular area. 60% of the density that is being proposed in the overall master plan is in the north portion of the project and that, again, is designed to minimize impacts of transportation and the impact on air quality. They are operating under the state implementation plan for air quality, or SIP, and have been since 1987. They submit that the documentation that they have already put into the record will establish that they will be in compliance with those emission standards. With regard to transportation, they have retained the same consultant that the City/County has to implement its transportation plan. That
considerations of development are by far the most important in terms of PM10 emissions reductions. His client intends to introduce mass transit to this area and intends to annex these four phases into the Missoula Urban Transportation District. They realize what occurred the previous day at the Missoula City Council meeting, as he had read the newspaper account. They want to point out that 7 councilmen supported the resolution but none of them participated in the extensive planning meetings that have gone on during the last 18-20 months regarding this subdivision and the Miller Creek Comprehensive Plan Update. It also appears that City Council did not carefully examine all of the submittals. Their Phases in Section 11 constitute 60% of their client’s master plan area is already in the 1984 Waster Water Facilities Plan Service Boundary. That is a City-County document. After that was adopted in 1984, the City, the County and the Twite family entered into those agreements concern the east half of Section 11 which includes their Phases I and II. The service boundary extends into the Miller Creek Valley floor to within 100 feet of the north boundary of Phases III and IV. Clearly, these Phases are contiguous with the adopted service boundaries and are matters of concern to the Council and have already been addressed by the Council.

Regarding traffic mitigation, he realizes the Commissioners are dealing for the first time with mitigation of development impact. The Board is now finally able to assess a fee or charges for the impacts that growth has in a particular area. His client is willing to pay the development’s share and, in this situation, more than its fair share. Mr. Twite did the same thing regarding Linda Vista 9th Supplement. He believed the Commissioners were aware that a substantial amount of improvements will be effectuated to Miller Creek Road and to the Wye intersection. Those are areas that are already a problem. They have not contributed to them but they are existing problems that have to be addressed. They submit that their proposal and the Linda Vista 9th Supplement will aggravate those situations only slightly. Nonetheless, they are willing to pay more than their fair share in the mitigation efforts in that regard. They are willing to do that in other areas that they have already discussed and as the master plan completes itself through the next two or three decades.

Mr. Carlson provided to them and the Commissioners his response to their letter of September 6, 1996. Mr. Carlson indicates the following: Using de-icers will have 85% lower emissions per vehicle mile traveled than areas using clean hard sanding materials. He also states that the County is not required to use sanding materials that are as hard or clean or that provide for as low emissions as similar areas in the City. Use of those materials will result in a emission factor of 36% lower than unwashed non-spec sand. He indicates that the County no longer has specialized bag house type street sweepers that the City and the Highway Department have. As a result, the County road crew cannot go out and sweep roads in the early spring when getting these materials off the road is most critical to reduce air quality impacts. He stated it goes on to say that the County Road Department does not have the funds to sweep as often as the City program does. This results in higher emissions to materials. He concludes, under this area of the letter by indicating it would be appropriate to require maintenance districts or other finance mechanisms to ensure that higher levels of street maintenance can be implemented in the County. The maintenance considerations of development are by far the most important in terms of PM10 emissions reductions. His client joins with that concern and is willing to cooperate in the formation of such districts, street cleaning and the application of appropriate standards and the use of appropriate equipment and additional funding through the implementation of formation of such districts. His client will support them and will support those as a condition to subdivision approval. The second point of Mr. Carlson’s letter indicates that a portion of the development is in Miller Creek proper and is not contiguous with the urban area. He understands that the model performed by the transportation plan consultant indicates that the development in this area will result in a somewhat more vehicle mile trips than development in the Mullan Road area. This is a general planning consideration with some air quality impact. He believes they have addressed those in their letter and recent submittals. The third and final point of Mr. Carlson’s letter is that hillside developments are a real concern. He strongly recommends that hillside development should be avoided and in steep areas that will result in cut areas and higher engine emissions as vehicles struggle to get up and down hills. In that regard, they concur with the recommendations and ask that the Commissioners verify with the Office of Planning & Grants that the primary portions of the subdivision are not on hillsides and are not on the steep area that are of concern to Mr. Carlson. He added that Mr. Carlson was right to be concerned.

His client intends to introduce mass transit to this area and intends to annex these four phases into the Missoula Urban Transportation District. They realize they will do this many years before they anticipate that buses will be up in this area, particularly in Phases III and IV. Nonetheless, those funds can be used now by the district for whatever purposes are deemed appropriate by its Board, obviously for the betterment of the Missoula valley, not their particular four phases that are under consideration. These are items that they feel will have a beneficial impact. Their plans also provide for very extensive non-motorized systems for bikes and pedestrians with a high ratio of open space to developed areas. These are all addressed in prior submittals. It appears that approximately $7 million in transportation improvements will be envisioned in the current Maloney Ranch. As those development occur and the entire master plan is developed, they anticipate that the $7 million will be funded through private sources, primarily their client and the buyers of the subdivision development, not the existing neighborhood and not the County government.

They realize what occurred the previous day at the Missoula City Council meeting, as he had read the newspaper account. They want to point out that 7 councilmen supported the resolution but none of them participated in the extensive planning meetings that have gone on during the last 18-20 months regarding this subdivision and the Miller Creek Comprehensive Plan Update. It also appears that City Council did not carefully examine all of the submittals. Their Phases in Section 11 constitute 60% of their client’s master plan area is already in the 1984 Waster Water Facilities Plan Service Boundary. That is a City-County document. After that was adopted in 1984, the City, the County and the Twite family entered into several inter-local agreements to the extension of the municipal sewer services into the Linda Vista area. Those agreements concern the east half of Section 11 which includes their Phases I and II. The service boundary extends into the Miller Creek Valley floor to within 100 feet of the north boundary of Phases III and IV. Clearly, these Phases are contiguous with the adopted service boundaries and are matters of concern to the Council and have already been addressed by the Council.
He summarized by saying there are three primary criteria to be applied and they are existing Comp Plan designation, existing zoning and existing Air Quality standards. They support and request that the Commissioners approve the requested plan variations and they believe they are appropriate in this situation. Even though he himself has not developed any real estate, he has done extensive subdivision work and worked with a lot of clients in this and other counties. He has never been involved with a subdivision personally of this great magnitude and with this many beneficial aspects to it. He believes it has been extremely well-planned, an expensive subdivision and yet it is a large piece of ground that will make Missoula proud of the planning process. It is time that we take control of our destiny. This is one situation where we can do that.

He thanked the Commissioners for their time. He did have one request and that was they be allowed to make closing comments after the close of the public hearing portion of the meeting.

Michael Kennedy granted his request. He understood that the Maloney Ranch controls 5/6ths of the surface water rights and he noted that Bill’s stated that they would not be converting any of those rights to ground water, or any other right, and he believes there is no other right.

Bill Wagner responded that, at the moment, none have been applied for.

Michael Kennedy stated then, that the current limit of the rights reside in the 5/6ths of the Miller Creek surface right.

Bill Wagner said for irrigation purposes and agreed.

Michael Kennedy asked if there was another water right beyond the surface irrigation right for other purposes?

Bill Wagner answered no, there is not.

Barbara Evans said, for park dedication, generally the County requires 1/9th. She asked what percentage this subdivision proposed for park dedication?

Bill Wagner replied that Mr. McCarthy could answer that question better than he could.

Tom McCarthy, WGM Group, replied that Phases I and II would have about 32 acres of park out of about 85 acres. That would make it about 40% park. Phases III and IV have 49 lots that run just under an acre and the balance of the area is in park, so that would make it about 28-30 acres of park area.

Regarding another matter, he wanted to clarify that Phases I and II are clearly on a hillside but the project has been carefully designed to minimize street grades. The majority of the streets in that area have 2%-5% grades. One area has a short section of 10% grade that inter-connects the upper Linda Vista area and provides a secondary access out of there. They tried to loop and inter-connect the two existing cul de sacs that were provided for them to come to their property. There is no way to connect them without generating those kind of grades. The street grades are gentle in nature except in locations where they were forced to provide the interconnects and those are not excessively long.

Barbara Evans asked Mr. McCarthy to state for the record what the regulations allow at 12% grade?

Tom McCarthy answered they try to use design standards that stay below 8% in most cases and, for flat grades, they consider anything below 6% as a general grade. However, 12% is allowed by County regulations.

Michael Kennedy stated, regarding Jim Carlson’s note on the special requirements, that there would be a special service district to handle that. He asked Tom to elaborate.

Tom McCarthy replied that, when Jim brought up that issue, they discussed, when properties are in the City, the City normally provides street sweeping services. Although 159 lots or 80 lots cannot create a street sweeping district, they waive their right to protest to the creation of a sweeping district out in that area until it comes inside the City. If their master plans progresses along to where they have 1,500 units, and if Mr. Twite’s master plans are approved in the future, at that point there will clearly be enough densities in that area to warrant a street sweeping district based on its own merits. Just as they are going to annex into the transportation district, they want to be able to address those air quality issues in an effective manner.

Michael Kennedy, to be sure he understood, said, until this is annexed, and he is sure at least Phases I and II will be, the developer proposes an SID/RSID for a sweeping district in that area. They expect that would terminate at the time of annexation.

Tom McCarthy said, what they would propose is, if they are going to create a sweeping district, that it be fairly comprehensive an area, not just their 159 lots. They support and encourage that and would waive their right to protest for the creation of a street sweeping district. Regarding the two master plan areas, if
Sue Spanke said she has come forward because she has a strong interest in the quality of life that she values in Missoula County, which to her means discreet and separate towns with vital city centers in a strong sense of community surrounded by rural style County areas, with clean and healthy air and water for everyone. She hoped to represent many constituents who have a long-vested interest in this County and hope, through the Board, to exercise some control over the community’s future. She wanted to make two points; the first is that the County is currently making two important planning efforts, the Transportation Plan and the Miller Creek Comprehensive Plan. Both relate directly to these subdivisions and are very near to completion. She believes it is inappropriate for a developer who has the ultimate goal of building what he calls an “entire community” to ask the Board to evaluate even Phases I through IV of his subdivision outside the framework of these Plans, particularly since it is quite likely that the Comprehensive Plan will not recommend the type of development that he proposes. Secondly, although the Commissioners are only reviewing two small portions of the Maloney Ranch 30-year development, the developer has always presented them as part of the whole. For example, when he talks about developing more densely in exchange for future non-development, leaving parkland outside rather than inside Phases I and II and putting in temporary water treatment facilities pending future developments. If the developer is using future development to justify his proposed zoning variances, then the Commissioners should look at the long-term development as a whole. If they look only at Phases I through IV, then the Board should hold the developer to the strict zoning standards that are in place with adequate parks in Phases I and II and actual low density, rural-style housing in Phases III and IV, rather than the land trades and the grouping. Development of Maloney Ranch will cause huge impacts on current rural and urban residents in the Missoula and Miller Creek valleys. Even the small current proposals will increase traffic to town according to the estimates in their plan by 1,500 trips a day, over sanded hillside roads and sanded Highway 93, which she guesses are outside of their proposed maintenance. The County already experiences at least one air alert a year due mostly to road sanding dust. The County already experiences carbon monoxide problems and, according to Gharrett Smith on the Air Board, auto exhaust is already a measurable component of the air even in residential areas like the University district. All Missourians and Miller Creek people pay a cost that cannot be offset by development fees from increasing auto pollution, such as doctor bills, lost wages, medical costs, lost school time and lost productivity. The developer proposes to mitigate pollution by asking the City to provide bus service. She asked the Board what proportion of current Missoula residents actually ride the bus? ... and why does anyone think the Maloney residents would be more willing to ride the bus? Their proposal says that this development may bring increased business along Highway 93, which would provide jobs and, in that way, cut down on the commuting. She asked if this is something that they are looking for? They are also proposing a street maintenance district, depending on other residents or further development. Would this district actually commute? She asked if this is something that they are looking for? They are also proposing a street maintenance district, depending on other residents or further development. Would this district actually commute? She asked if this is something that they are looking for? The developer clearly sees these are part of the whole. For example, when he talks about developing more densely in exchange for future non-development, leaving parkland outside rather than inside Phases I and II and putting in temporary water treatment facilities pending future developments. If the developer is using future development to justify his proposed zoning variances, then the Commissioners should look at the long-term development as a whole. If they look only at Phases I through IV, then the Board should hold the developer to the strict zoning standards that are in place with adequate parks in Phases I and II and actual low density, rural-style housing in Phases III and IV, rather than the land trades and the grouping. Development of Maloney Ranch will cause huge impacts on current rural and urban residents in the Missoula and Miller Creek valleys. Even the small current proposals will increase traffic to town according to the estimates in their plan by 1,500 trips a day, over sanded hillside roads and sanded Highway 93, which she guesses are outside of their proposed maintenance. The County already experiences at least one air alert a year due mostly to road sanding dust. The County already experiences carbon monoxide problems and, according to Gharrett Smith on the Air Board, auto exhaust is already a measurable component of the air even in residential areas like the University district. All Missourians and Miller Creek people pay a cost that cannot be offset by development fees from increasing auto pollution, such as doctor bills, lost wages, medical costs, lost school time and lost productivity. The developer proposes to mitigate pollution by asking the City to provide bus service. She asked the Board what proportion of current Missoula residents actually ride the bus? ... and why does anyone think the Maloney residents would be more willing to ride the bus? Their proposal says that this development may bring increased business along Highway 93, which would provide jobs and, in that way, cut down on the commuting. She asked if this is something that they are looking for? They are also proposing a street maintenance district, depending on other residents or further development. Would this district actually sweep Highway 93, which is maintained by the State and which is a major source of sanding air pollution? Without better solutions than these, she believes the only solution is very low densities in out-lying areas like Miller Creek. These proposed developments are the thin edge of the wedge that set the style for the
Ron Erickson, 3250 Pattee Canyon, said he is one of a number of people present at this meeting who were selected to be stakeholders by members of the Growth Management Task Force. They went through a major process all last spring and summer and learned a lot. It resulted in giving them a sense of Missoula’s future. They were concerned with where growth was going to go. They ended up with a map that Growth Management has basically mimicked. Unfortunately, this subdivision, particularly Phases III and IV, is outside that region. The first problem he had with this was where the subdivision is, which is outside the area where they (he specified “they” meaning Growth Management and a large group of stakeholders) thought it ought to be. He feels the proposed plan has a lot of great stuff in it and he wishes it had come out of Target Range or Mullan Road or those areas where they thought growth ought to be. The proposal is particularly great on open space. But there are two specific problems that have already been mentioned, one is air quality and the other is water. Regarding air quality, just the distance traveled is going to increase air pollution in Missoula with all those trips into town. One of the reasons the County has a Growth Management boundary is simply because more trips give more air pollution. Another problem is water quality. They already have a nutrient loading problem in the Clark Fork and Bitterroot Rivers and particularly Phases III and IV and the rest of the plan are going to increase nutrient run-off into the Bitterroot River.

Phases I and II will be on sewer and Phases III and IV will not. He hopes that the Commissioners reject the entire plan but, if they don’t, then Phases III and IV shouldn’t be approved.

Maiya Benson, resident of Miller Creek area and has been involved in the Miller Creek planning process since August of last year. She is also on the Committee for Parks and Open Space. What the Committee has planned for parks and open space reflects the desires of people that participated in the community workshops that were held. The Committee was impressed with the fact that 73.5% of Maloney Ranch master plan area will be in open and undeveloped lands. She gave the examples of State Department lands, Fish, Wildlife and Parks, conservation easements, parks, utility lots and trails. A trail system has been designed to connect the community to schools, parks, open space, river access and other neighborhoods and commercial areas. This will lessen vehicle trips and pollution problems that Missoula is facing now. The trail systems will allow people to rid themselves of feelings of isolation that are prevalent in some current neighborhoods. By encasing ourselves in cars, we are losing that friendly hometown atmosphere that we cherish here in Missoula. The Committee was also approached by the Southside Little League who was concerned about ballfields. This need can be met by the approval of the Maloney Ranch subdivision because land has been set aside in the Maloney Ranch master plan for ballfields. The representative for the Southside Little League told them that the league would be able to have funds available to help develop these facilities.

Another issue she wanted to address is affordable housing in Missoula. The community says there is not enough of it. She feels that here is a chance to do something about that. Maloney Ranch subdivision, in her opinion, is not a subdivision for the rich. WGM and the (...unintelligible) family have designed a community for all levels of income. With zoning, they will have even more opportunities to have affordable housing, such as Granny Flats and having apartments over businesses. She urges the Board to embrace this pre-planned community, pointing out that “pre-planned” is the key word. Pre-planned growth can benefit Missoula, anti-growth attitudes won’t.

Michael Kennedy asked her about her comment for Little League fund availability.

Maiya Benson answered that a gentleman by the name of Doug Schoop, who sits on the Board of Directors for Southside Little League, came to one of the Committee meetings for Park and Open Space. They are in dire need of more ballfields and the Committee he sits on will have funds available to develop land into the ballparks, meaning the diamonds, the back-stops, etc.

Evan Jordan, a resident of Nine-Mile Valley after many years as a resident of Missoula, joked that he made the mistake of wandering through Farmer’s Market just prior to this meeting and got all mellowed out. He said he will be as reasonable as he can be.

He found himself surrounded by a collection of ironies. As resident of Nine Mile valley, he feels insulated from what is galloping their way, but, at the same time, he is a regular traveler of Reserve Street and he is immensely impressed with what can happen to the roadways when they add a collection of additional families and automobiles. This drives people to mayhem apart from consideration of air quality. He had engaged in a “t’ain’t so” conversation with his friend, Doug Harrison, and stated that City Council’s and the community’s will was expressed in the Council’s resolution. Another irony that he is involved with is the fact that this Commission makes the decision concerning this development but the immediate and immense impact falls on the City. He thus feels he has no choice but to urge the Commission to attend closely to the will of the City Council.

Fern Hart asked if he was a stakeholder?
Evan Jordan replied that he was and is immensely grateful to the County for that excellent education. It is standing him in good stead in his efforts in the valley to do something about development.

Peter Templeton, Vice Chairman of the Lolo Community Council and a stakeholder, joked that it was unfortunate that he did not go to Farmer’s Market to get mellowed out. But, on a more serious note, he had calls in to a lot of people regarding this hearing. First, he would like to invoke a “ghost” and read from K. Ross Toole, who he believed exemplified Montana and what Montana has always struggled with: “If we choose short-range profits, we can indeed pollute and sell our water. We can develop our valleys, strip our gold. We can cut our trees and say, as we have always said before, you come, you come on our terms.” This meeting started out with the representatives of this town have put in a lot of time trying to develop land plans. This includes the Commissioners, Management Task Force, Planning Boards, stakeholders and the Lolo Comp Plan. He feels shamed that something like this would occur. To him, this is nothing more than a bum’s rush. “Get this thing through before these Plans go into effect, before what they have been invited to do, and that is to express the will of the citizenry in these matters, takes fruition.” It is worthless to ask citizens to participate in government, to ask their input and then to turn around and have something run by them, before the County is willing to accept their document after their hours of work. He noted Fern was there with them in those hot summer days, and before they can finish and read it, they have something run by them.

This is no ordinary development; this is a massive development that will change the entire valley, which brings him to his second point. The people of Lolo have expressed very clearly their concern with the south hill. From one perspective, it is a hill of houses. From their position, it is a magnificent undeveloped piece of Montana. They are worried about things spilling over. They are worried about a connection between Missoula and Lolo which will cost Lolo its identity. Whether these things are based in fact or not, it is a very strong feeling that this may happen. One of the things that the stakeholders did was to make some kind of area so they could define not only their communities, but define Missoula too. Because this cart is a little ahead of the horse, he is afraid the efforts of the stakeholders won’t be represented here.

He stated, in Lolo, they live on a lot of promises. They had a couple of big developments come in. The developments, more or less, do what they say. But any kind of structure they want to build outside of that, the County and the community do not have the capacity to have a say. Consequently, they have a nice subdivision with nice streets that drop off into a gravel pot-holed road. They have sidewalks in subdivision that go nowhere. They have a school that built an addition two years ago and is now overflowing because no one saw the subdivision coming. No matter what the developer says, no matter what kind of fees he is willing to put on the buyers of his property, which is what he is doing – he is not taking this out his pocket. Burdens will be carried by the people of the community. It can’t be helped. And people in community don’t mind that, but they do mind that it be addressed prior to the burden… prior to its showing up, prior to classes overflowing with kids, prior to the roads falling apart, prior to the sewers backing up, prior to water running out. He asked the Commissioners to consider this.

Nothing so characterized Montana’s development as promises never realized. Vast bulk of which only a tiny portion remains at home. We have been battered and beaten and lied to and lied about. Call it colonialism, the exploitation, explain it anyway you want, but those who lived here, those who stayed here, those who put their roots down kept very little. Those who governed here, with very few exceptions, indeed did very little to help anyone keep anything. Addressing the Board, he said they will not be remembered as County Commissioners. He doubts anyone on the street can remember who the County Commissioner was 20 years ago. But they will be remembered by their deeds, such as Fort Missoula, and by the type of development that they allow to take place in this County. So he hoped they consider the future with this development and slow down the process.

Suzanne Juleen, 1871 E. Broadway, said she had written comments which she submitted to the Commissioners because, much of what she had to say, had already been said. She summarized her comments. She is also a stakeholder and got involved in the spring, 1995, when someone called her and asked if she would consider it. She subsequently received a letter signed by members of the Growth Management Task Force, stating that her full participation was needed in all parts of the process, including attendance at all the meetings and being responsible for all that this involved. She did do that at significant personal cost, which she was happy to bear, but it took a lot of her time and she gave up wages to do that. She estimates she spent about 90 hours over the course of those few months in meetings and in outside activities and in preparation time. Since there 39 others who did basically the same, that totals 3,600 hours of people time, doing what they were asked to do and that was to give the community’s vision for its future. She states she is not a “vision” type person but more of a “nuts and bolts” type of person, but she has been hearing for about 2 years that the planning process could not move ahead if they did not know what the community’s vision was. So they did that and now she hopes that the Board will respect that vision.

She kept that vision in mind when she read the Miller Creek draft Comprehensive Plan. She said, if you enroll in the University of Montana, you go by the catalog you enrol in, not the one that catalog that is published when you are a senior. She feels it is the same with using the current Comprehensive Plan.
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However, she conceded that there is information in the draft that is illuminating and somewhat disturbing. One of the things in the draft Plan that struck her was a statement (on page 36), “There is serious concern among residents about ground water quantity in the Miller Creek aquifer. However, there is not enough information regarding the quantity location and quality of water to make recommendations for location or quantity of additional development in the valley.” That has been addressed to some extent but it seems to her that it is very important that those questions get answered before development is planned, not after development is approved or has already started. She is also concerned about the hillside and ridgetop roads and development. She knows Phase I and II was addressed but she is unsure that the grades in Phases III and IV were addressed or the grade that provides access to III and IV. That has been a great concern with people. Part of the vision was a natural, clean and healthy environment. These points come to bear on that and, if you sincerely want a clean and healthy environment, they have to be addressed.

Other aspects of the vision they developed were living with the valley’s (unintelligible) capacity, containing sprawl, encouraging in-fill development, helping people understand the cost and choices regarding development, and self-imposed limits to growth. All of these are being addressed by the concept of the urban service area, a concept which will contain the cost of development so the community can afford it. The draft Comp Plan states that the 1990 Urban Comprehensive Plan was adopted with that concept in place and Growth Management Task Force has also adopted that tool. Even the Maloney Ranch/Miller Creek area transportation study (she referred to page 47), says “encouraging growth to occur within the Missoula urbanized boundary is a major objective of current efforts.” As she understands it, Phases III and IV, at least, are outside that delineated boundary. Again, she does not see how that fits in with the vision.

She asked the Commissioners to respect the hours they have put in and respect their commitment and hard work and realize this is the vision the County asked for.

Cathy Curnerby, a resident of East Missoula, said she is 22 years old and nervous about speaking publicly. She stated her generation is going to live here in the future, thus, she wants to contribute to helping people in the future when this gets annexed. Their taxes will be affected. She appreciates that these people are improving the area where this subdivision is proposed, but asked what about malfunction Junction and the downtown area? She asked what about emergency services, which everyone’s taxes contribute to? She is not against development, she understands its coming and there is nothing they can do to stop it and maybe they don’t want to, but she is not sure that adding this subdivision in that location is the best choice for the future of Missoula. She hopes the Commissioners look to the future, not tomorrow or the next day, but the future in 30-50 years. She hopes at that time she will still be able to afford to live in Missoula and so will her children.

Annette Davis, 6080 Lower Miller Creek Road, said she and her husband are in favor of this project. They feel it has been well-planned out and it should be given a chance. It can benefit the kids on that side of town and benefit everyone that is over there. They support this proposal and ask the Commissioners to come to this meeting and plan to attend these kind of discussions in the future. She agreed with a previous testimony that they were to create a vision, but added it was also to understand that you have to implement a vision. Missoula has come together many times to plan visions but, unfortunately, has a rocky history of implementation. She said she was here for that reason, to discuss that in more detail. Also to say that, as part of the Stakeholders’ process, what she thought was particularly important were the kinds of recommendations they made about how to manage and direct growth. She stated, from the very beginning, it was not a matter of saying Missoula is not having growth, but rather that they can have a plan. She noted that it was interesting to hear who used what kind of language, such as “control over our future,” “directing” and “managing.” But to her, what everyone is talking about here, are tools to consider and how they actually implement the vision. What she feels is particularly important in what they did was to look at themselves as a community; they are a sum of neighborhoods. They add up all the impacts and realities of different neighborhoods into the sum and call themselves a community. She was one who advocated for neighborhood planning and appreciates that neighborhood planning is a part of the discussion tonight because she think it is important for neighbors to have a say about what happens where they live. She has also come to understand that that neighborhood is a part of the sum total. Part of their vision, particularly the implementation, is to talk to each other about how neighborhoods are connected and then how all that connection creates one community. As a member of the neighborhood association, there is an impact on her from the proposed development. She wants to understand that impact and have an awareness of how it will be mitigated before she is willing to see her tax dollars move in the direction of helping to pay for that development. So, one of the most important points the stakeholders can offer and will continue to offer is they continue support neighborhoods who are in the context of the whole. If they are going to do planning, which is important, it cannot exist in a separate area off to the side. She respectfully disagreed with Doug Harrison and others who would say because she did not attend all of the hours of planning for Miller Creek, that she should not have something to say about what happens there. She respects the work that was done, it is important, but the other part of the work is, this is something the developers have crafted and how does that impact the rest of those who live in the community? She believes this is what the stakeholders scenario is. How do they respect neighborhoods while building a
concept of a community as a whole? She believes that until they know the impacts of a neighborhood of a proposed development on everyone in all of the neighborhoods, there is no way to discuss how that can be mitigated or the impact fees. She wonders if that information is available and that is a reason to say “wait.” That is the point she wanted to make to the Commissioners; to wait until they can understand how the impacts will affect everyone as a whole, to take a larger look at what is going to happen with this particular development.

The placement of this development gives her particular pause. It is outside of the area that many have talked about as the urban service area or as the area that they should direct growth. That is what they were about in the growth management process, “directing growth.” Even though there may be very good aspects to this plan, the question is where is this occurring, what kind of impact will result from that placement, a peripheral type of development rather than an in-fill type of development, would really have on the rest of us and how they want to see growth go forward. If the urban service area concept is going to be a key growth management tool, then let’s begin to talk about it now and use it. There are places where we are ready to direct growth and that place is within an urban service area; it is not where this development is being placed.

Her primary request to the Board is that they pause. Questions need to be asked and answered and they need discussion on what tools are available. There is reason to wait. Another consideration for her is that she does not want her taxes raised until she can understand the benefit of it. Folks may argue that there will be no impact on her taxes but she wants to know that. She spoke of an article on taxes from developing agricultural/open space land. It was done in Bozeman and by staff at MSU and she said all the Commissioners had received copies of that article. The article states that this kind of development never pays for itself. When you take open space and agricultural land and turn it into residential, it costs dollar-for-dollar quite a bit more than what you are getting back in revenue to the County. There is a cost impact here that needs to be reviewed. As someone who cares a lot about the downtown and the lower income folks who live there, she would not like to see them impacted by creating a development south of town unless it is a benefit to all. Some of the discussion in the Miller Creek Plan that troubles her is they plan to move the school resources out there, move a lot of the infra-structure out there, but what about those already living in town, having a hard time currently trying to keep the schools open and dealing with the pot-holes in the streets? She again asked the Board to pause, look at this carefully and review it in the context of the community, not as a separate entity.

Rick Stevens, Vice Chairman of the Southside Neighborhood Alliance, a member of the East Missoula Sewer Board and resident of downtown Missoula, said, when you look at the Comprehensive Plan from past years, it was done with a series of out-moded ideas. So, if the County applies that Plan to this proposal, it would be poor quality planning. He noted that cul de sacs are now outlawed in Japan, in Australia and Florida for fire protection and community reasons. If you live at one end of a cul de sac, you can talk to your neighbor across the fence but you are not a community. He feels this should be considered for this proposal. He sees a lot of good planning and design in the Maloney Ranch subdivision but still feels it is a bad plan. WGM and the Twite and the Maloney people promised that they would wait until the new Plan, whether it is good or bad, has been brought in and they have a chance to look at it and they would match whatever standards were there. However, they are “jumping the gun.” The Plan is not done.

East Missoula sits on sand gravel. If you look at the soil types that have been passed around in these plans, Miller Creek also sits on sand and gravel. What you put in the surface in your sewer systems is going to leak into the drainage system. People will find out that Miller Creek, not now but in 30-40 years, is going to have a serious effect on the water quality. Half acre, two acre plots sound like ranches to him. What they have discovered regarding sewers is that people are not some of the biggest problems on water quality. Stock, cattle, horses, ponies, rabbits, lamas and other animals people like to have on their one and two acre parcels are going to really have an affect and those do not use the drainfield.

He asked if the people who designed the Maloney Ranch subdivision are the same who designed Linda Vista and were they not the ones who put in the drainfields and said that the engineering for it would work? It didn’t. Regarding de-icers, he owns a bicycle shop and he invited anyone to come in and look at what de-icers do to bicycles. If de-icing affects chrome-plated steel, he wonders what affects it has on people or the environment. What will the swales be full of when the de-icers drain into it and what kind of toxins will come from it? He said maybe sanding isn’t better but he doesn’t believe anyone has even driven up a hill after it’s been de-iced and made it to the top without studs and chains.

He noted that the Maloney Ranch will eventually be 3,200 units and he heard someone say this would contain affordable housing. He asked affordable to whom? $100,000 homes mean somewhere between $25,000-$75,000/year salaries. He asked where in Missoula there were 3,200 $50,000/year jobs? He said he would like one of them. He gets by on $14,000/year income for himself and employs 8 people. He asked again where are all these $50,000/year jobs? And this is just one development. They add up. He realizes the County Commissioners are being asked to take a lot of heat. If they vote WGM, the Twite and the Maloney people down and say they have to wait for the Plan, others have to come in and help with the Plan. They have to make it better because these
people will come in and develop it anyway. They have the rights to do that, they own the property, but maybe the density will change. All this has to be considered. But if they are voted down, they should be supported in their decision and everyone should stand behind them and help them continue their decision.

Ross Best said 3½-4 years ago, he hardly paid attention to local government. He got involved for various reasons and he quickly learned how extraordinarily complex local government is and what a large number of people are involved. Not just the visible elected officials and staff, but volunteer citizens who are essential to the process. He is concerned that the citizens that they have trusted and who obviously put in a great deal of effort are not being listened to. The developers are structuring events so that they will be able to get around the advice of the stakeholders. On the Internet, there is a mailing list that allows people that are interested in pedestrian safety issues to pass messages and in the last few days there was a discussion involving Missoula citizen John Williams, who knows a lot about bicycles. John has suggested that if you have a big and controversial project, there are rules for trying to slip it through. One of those rules was to divide it up into phases and try to put the less controversial ones first. John mentioned the highway proposal which is of great concern to north of Missoula. He believes that is what is happening here. He stated the Board knows what the recommendations of the stakeholders are and what are their proposed plans. In the near future, they will be asked to decide on them. So he asked the Board why they are considering set-back variations?... cul de sac variations? He felt Judy Smith was very eloquent on the need not to make decisions on the small part before you know the costs of the whole. John Williams is right when he said to divide your controversial proposals into phases and try to slip some of them through. That will have the effect of potentially creating momentum or some sense of entitlement when the subsequent phases come up.

Most of the time, he gets around Missoula by walking. He states that traffic is out of control in Missoula. There is no movement afoot to deal with it. You can hear talk about non-motorized transportation and encouragement to people to walk or ride a bicycle, but he does not feel it is safe to walk. Drivers show contempt and one reason for that is because there are too many other drivers. With this proposal, there will be many more drivers. These will not be drivers who are making the short trip, but from Miller Creek. They will come down the hill into the city proper and they will not be more successful than other drivers are in making the change from highway driving to city driving, basically unfettered speed to a situation where you have to show concern for other human beings. He was at the City Council meeting the previous night and read the resolution they passed. The Council has spoken clearly, as have the people at this meeting. There is a great deal of concern and strong opposition. Frankly, this is a situation where the Board should defer to the City Council because this land will end up in the City. He asked the Commissioners what moral and political stake do they have in cramming this down the throat of the City of Missoula?

Linda Smith, a stakeholder and a member of a neighborhood association near Roosevelt School, said many of them have come tonight to defend their neighborhood and themselves from having to bear the costs of impacts to their health and wallets, from impacts not anticipated and therefore not mitigated by the developers of these proposed subdivisions. They see no basis for making a decision until all the impacts are brought forward and fully mitigated. She quoted from the Maloney Ranch transportation system study “An assumption is made that these projects will not affect Missoula’s aggregate population or economic growth during 1994 to 2045.” She looked in the dictionary to see what aggregate means and found it meant “combined or total,” or, in this case, the people who lived in the valley floor and surrounding area. In the Plan, she noted that it speaks of the existing property owners as being inside the planning area and she is talking about the property owners outside the planning area. What she sees impacting them are, first of all, the deteriorating air quality due to the enormous increase in vehicle miles traveled by cars. The Maloney Ranch Transportation Plan is based on the proposed 20 year Missoula Transportation Plan Update, which was implemented, and will make the air dirtier each year, according to testimony from the City/County Environmental Health Office at the August 13 public hearing on the Transportation Plan. She is aware that the EPA plans to tighten federal air quality standards in early 1997. Missoula already has difficulty complying with the existing federal standards at times. If Missoula is not able to comply with the new federal standards and is fined, the community will pay those fines. Although the Maloney Ranch Transportation Plan includes planning language that would reduce vehicle miles traveled by cars, at a recent Growth Management Task Force meeting, a representative for the developers told the Task Force that the developers were unable to accept mixed income or neighborhood commercial so that car trips could be reduced. Those who live in town will be experiencing enormous impacts from the increased air pollution from car exhaust. Much of the proposed build-out at the Maloney Ranch development is located on hillsides, which generate much more air pollution because the roads have to be sanded, adding more particulate to the air.

Constructing a new bridge over the Bitterroot River does not begin to address all the costs of maintenance and repair over the lifetime of the bridge. Adjacent property owners must be asked if they can bear the full cost of having a new bridge built and maintained for their use. They do not accept a bridge being built and turned over to the County so that they in turn must help pay for a bridge that they have no use for.

Another item is the cost to the school system. The full cost of building and retaining schools over the lifetime of the schools are considerably more than the cost of donating the land. Those who live in town do not want to pick up those additional costs.
If the water treatment plant has to be enlarged to accommodate a larger volume of sewage from the build-out of these projects, that, too, will be an additional cost for everyone. Much of the proposed Maloney Ranch development lies outside of the urban service area as drawn by the Growth Management Task Force. The Growth Management effort has been going on for about 2½ years. The urban service area designates the area where they would really like to direct the growth, where it will cost the least to extend services. Infrastructure development outside the urban service area will increase the taxpayers’ cost.

A significant decline in air quality could threaten the property value of those who live in town by decreasing the value of their homes. That is certainly a cost to the existing property owners. They believe they are at risk of experiencing reverse taking of their money and their health; their money in the form of increased taxation for growth brings them only cost, not benefits, and to their health through developing possible respiratory illnesses. We all live in a particular geography, which is a mountain valley, and have notorious problems that developers do not recognize. The County has been doing carrying capacity studies and are trying to make sure the air and water contribute to health, which is an ongoing effort, and many people have been involved over the years have worked hard to clean up the air and water and they don’t want to lose the progress they have made. They want to carefully plan growth and have made progress in analyzing the land use tools and policies they need to have in place to keep this place livable, to protect everyone’s quality of life and provide an affordable lifestyle. They want the elected leaders, with the assistance of their staff and interested citizens, to do growth management planning, not private developers. Private developers do not have the interest of the whole community in mind. It is the job of the elected City and County officials who have taken oath of office to protect the welfare of everyone. They call upon the County Commissioners to require developers to get all the impacts on the entire community on the table before decisions are made about whether subdivisions should be approved or not. Further, they challenge the developers to bring the impacts on the whole community and their mitigation plans through the Miller Creek Comp Plan Update. If their plans are really in the interest of growth management for all of Missoula County who live here presently, they will be approved.

Mike Luedtke said he sees upward of 3,000 new homes going in and, if 3/4’s of them have an average of 2.5 children, that is about 6,000 kids. He asked where are they going to go to school? Sentinel High School needs to be rebuilt, but they don’t have the money for it. Further, all these people coming in will need police protection. That leads to where will they put the people that are arrested? There is no room in the County jail. He said tapping into the Miller Creek aquifer also needs to be addressed. Anyone who has lived for a long time or known someone like that knows in the dry years Miller Creek dries up. People have a hard time getting water out of their wells. If that gets tapped, what will happen to those who live in upper Miller Creek? He said he shares Mr. Templeton’s views. He is also from Lolo. Lolo has a maxed out school and great views, both of which will be affected by this development. Phases I and II appears to be a good plan, but Phases III and IV do not appear that way. He would like to see serious planning before the proposal goes forward.

Nancy Froh said she and several other had submitted a letter to Commissioner Evans. She would like to know more about the conservation easements, as there are several different types. For instance, one allows cattle grazing, another type would not allow people on them and she would like to know what kind this one was. She talked to the Superintendent of Schools that day and stated there would be a big problem. They cannot handle the increase in students from this subdivision. She does not live in Missoula County anymore but her family still does. She suggested to implement an assessment of at least $2500/lot and the money could be used only to build new schools or for new additions to existing schools. Regarding the fire district, some friends of hers had a fire at Christmas. The fire department that responded came from Lolo because that is the district they are in. Another issue are the cul de sacs. She lives on a dead-end street that could be called a cul de sac. When she worked for the School Board in Hamilton, it happened that the Hamilton School District wanted to come through her street. She lives in one subdivision and the school is in another subdivision and, basically, since they were the property owners in their subdivision and did not want the buses on that road, so the buses were not allowed to use it. She suspects that it would be the same for the Twite subdivision and the Maloney Ranch subdivision, where the property lines join.

Fern Hart noted that Missoula County was a uniform school district.

Nancy Froh replied that she meant as far as opening up the cul de sac streets. She also suspects that property owners who do not want their road opened up could also fight to keep those roads closed because there is no set rule saying those will be opened. When she was younger, she saw a fire come over those hills. Even though people tried to fight it, the fire was fast. If it were to happen today, she’d like to know how all the cars are going to get out of there.

Michael Kennedy asked who she talked to at the School District?

Nancy Froh answered someone in Mrs. Vagner’s office.

Suzanne Campbell Reneau was gratified to see the people who have come forward this evening to ask the Commissioners to pause. They have an opportunity to be visionary in planning the future. She stated it would be premature for the Board, who are elected by the people to represent the people, to go forward with two massive projects, without allowing the citizens who have spent two years (Steering Committee for Miller Creek) as volunteers, assessing the area. They are disheartened that these proposals have come...
forward at this time. She stated that they are not against the proposals, but feel that they should be considered after the Comprehensive Plan is amended so that they will be folded in under the restrictions and recommendations that are being made by qualified volunteers, noting one Committee member is the Chair of Hydrology and Geology. She assured the Board that the reports that currently exist by the developers and were done by Montana Geology and Mining Departments in the 1960’s were thoroughly examined by people who are geologists, hydrogeologists, and recently retired people from the DNRC. It is the recommendation of this Committee that there is a serious concern about water and it would be “unvisionary” of the elected officials to do anything but pause at this juncture. It is important for everyone, as people who love Missoula valley, to not rush. There is an entire future to be considered here. She hopes her own children will grow up in this beautiful valley without pollution. She wants them to have water. One aspect that she has never mentioned before but she will now because she is a member of the Chamber of Commerce and that is tourism, which is one of the first industries of our beautiful state. If we destroy the vistas in Missoula that bring the tourists into Missoula, then they have to factor in the economic impacts from that. The last item she wanted to bring up was to ask the Board not to set a dollar amount for how much should be assessed to the developers. Impact fees are foolish at this point because the overall community is not being factored in. She agrees with those who did not live in Miller Creek, that they will be impacted by this proposal. Coming from a community where there were cookie-cutter houses up the hillsides, they are not attractive on these hillsides and she does not believe that the people want Missoula to look like. This is not southern California and she does not believe Missoulians want it to look like that. People are proud of Missoula with its rolling hills, in their natural state. She comes from a family with a military background and has lived all around the country. She considers Missoula “home.” When her time comes, her husband will have to carry her out in a casket because she will not leave this area. She loves it here and thus implores the Board to be visionary and pause before making a decision on a vast development that will cause a vast impact on the Missoula valley.

Losanne Corynleg read a statement from the Westside Neighborhood Association, who oppose the Maloney Ranch development for the following reasons:

- Growth should take place within the urban service boundary;
- Any subdivision approval for the Miller Creek should await passage of the Miller Creek Area Comprehensive Plan that is currently under revisions;
- The proposed household in these subdivisions will generate an estimated 7 motor vehicle trips per day and will result in unacceptable traffic and air quality impacts on the community. At this point, Missoula does not have an adequate mass transit system to absorb these subdivisions and provide convenient service;
- The impact on school facilities for the children of these subdivisions has not been adequately or comprehensively addressed; and
- They would prefer development in the Missoula area first take place within in-fill areas.

They request that the Board of County Commissioners confer with the Missoula City Council regarding impacts and mitigation before the Commissioners take any action regarding the approval of these subdivisions.

Speaking for herself, she stated the developers have a master plan and they are here to develop. They are not going away. There is no reason the County cannot wait until the Miller Creek Comprehensive Plan is final. We have the ability to take our power and say we have the right to draw the line on development.

Roger Bergmeier said he testified last month before the Board pertaining the Maloney Ranch subdivision and the lack of information about availability of water for any new subdivision in Lower Miller Creek. He did not say much about any other concerns because they had already been addressed by others at the hearing. He believes the Maloney Ranch Subdivision should not be approved because there are too many unknowns about its impacts on Missoula County and the Missoula community. Water availability and water quality impacts are only 2 issues that need to be resolved before any additional subdivisions are approved. The impact on area schools, air quality and transportation systems must be determined before new subdivisions are started. Missoula and Missoula County are involved in a growth management process that can help guide the growth that is occurring now and in the future. He is not against growth. Growth in the County can help the economy, help solve some housing and employment problems and, with impact fees, can pay for the cost of governmental services required by development. However, they need to complete the Growth Management Plan, Transportation Plan, Miller Creek Comprehensive Plan and necessary water studies to help make any new development better and protect the environment and quality of life of people who are here in Missoula now as well as for those who move here. Development at any cost is not acceptable just as employment at any cost is not acceptable. Well-planned development can enhance the quality of life but that plan must fit into the overall community goals for growth and development. He urged the Board not to approve this subdivision and wait until the above-mentioned planning work is completed before considering this or any other large development with significant impacts to Missoula and Missoula County.

Mary Anne Spitzform, a Target Range resident and a member of the Scenarios Planning Process, said it is a mistake to approve a major development when the neighborhood in which it is sited is in the midst of amending their Comprehensive Plan. Further, it is a mistake to approve Phases of a major development,
specifically III and IV, which lie outside of the area designated for in-fill development. Personally, she got involved by accident in the Scenarios Planning Process over a year ago. She spent many hours volunteering to complete the task as it was given to them. She found it to be an exhilarating experience. She had not been involved in political action for over 25 years and part of the reason for that was burn-out. She had not been involved in political action for over 25 years and part of the reason for that was burn-out. So, when members of this Process were urged to talk to friends, neighbors and colleagues at various junctures over the course of the summer, she did that. She found, almost in all cases, friends and colleagues looked at her and said “Why are you wasting your time? Do you really think this will matter one whit?” She answered them by saying yes. She felt this was a good process and County officials may in fact listen. This is where her Process has taken her at this point, and that is to the Commissioners. She asked if they can truly listen and be visionaries even when it may be painful and difficult? She would like them to prove her friends and colleagues wrong and not give them more reason for their cynicism about the County’s ability to manage growth.

Dan Cederberg, a member of the group that has been looking at amending the Miller Creek Plan and one of six chairpersons of committees that have been working the area and have been involved with the review processes, said it was not true that the developers breached their agreement to not submit their proposal until the Plan was finalized. Maloney Ranch group never committed to not submit during the review process. They requested that they hold off on this particular project because they were close, they only needed about 30 more days. As a practical matter, they got about 30 days based on the continuance of the hearing. Speaking for himself, he has no problem with the timing of going forward on the proposal. They have a final draft of the Plan, they have had a lot of public comment on it, and have a good idea of what it is going to say. The Maloney folks have worked with them throughout the process and this submittal falls basically within the tenants that will come out of the Plan. One clear message they have received from the neighbors that currently live there is no more SID’s. He said everyone has heard about the $13,000/lot in the Linda Vista area for the sewer and road improvements. They are now talking about an SID for sewer and road improvements, using the old process of getting enough new lots coming in to waive new projects so that it becomes 51% or more than 50% of the lots in the area. That is something they have strongly heard – a “no” from the neighborhood. He heard that the Steering Committee is disheartened by the status of the process. The other members of the Committee can speak for themselves but he feels they have done a lot of work and they are not done. When they started, they looked to work together with the government entities, developers and the neighborhoods to plan their neighborhood in a way that would provide them with amenities and avoid development in the past that were not bicycle friendly but only automobile friendly. The two conditions that were put on the development by the Planning Board are appropriate. He feels the conditions regarding transportation and water quality are the most important. He asked the best technical person on the Committee if he thought the state process was adequate to protect the neighborhood from problems with quantity and quality of water and he said yes. They will have to monitor it, but he felt it would be okay. Condition no. 34 is the transportation issue and condition no. 45 regarding the water supply. Regarding the schools, Mr. Johnson said they just built Chief Charlo School and the population of Cold Springs was cut in half, so they saw no impact on school population out there. Regarding the talk of “vision,” he said this may be a mistake in the sense that they don’t know that they are protecting themselves enough. But they do know that there are a lot of parks in this subdivision. There is a good faith effort to address the transportation issue. The things that the neighborhood has asked about have been addressed or attempted to be addressed. The water is an issue that cannot be predicted. Water is under the ground and who can say for sure. He asked people who he believes would know and he is satisfied that, if they watch the state process, they will be all right. It has been a long process and he believes it is time.

Andy Sponseller, member of City Council, said he moved here 17 years ago from Ohio. Like many other people that moved here from other places, they know a lot about poor development and ill-planned urban areas. People moving here from out-of-state have often seen abandonment of urban areas for suburban sprawl and the devastation that happened when poorer urban areas were abandoned. He fears for Missoula, that it may experience the same thing. He realizes the downtown area is a big success after the devastation of the 1980’s but he cautions not to get caught up in that success but instead be careful of what could still happen if planning is not well thought out. Suburban sprawl is an answer to healthy core urban areas. He has been observing how much traffic is running on Stephens Street and around the neighborhoods in the south edition. It is a wonderful neighborhood and probably the embodiment of what good urban neighborhood should be about. It is a grid neighborhood, 6 houses per acre, gardens, fir trees, sunlight, kids playing in the streets – a great place. It makes him sad that the traffic is overwhelming the community. People are driving foolishly and there is white noise, which is something that he has never noticed in Missoula before. Traffic will increase as peripheral “leap-frog” development shoots more and more traffic into the core areas. He asked the Board to take a long hard look at whether the impacts of transportation are really being mitigated and he takes exception to a comment made at this hearing. Miller Creek Comprehensive Plan Amendment does not deal with transportation. He believes it to be inadequate for that area and for the whole urban area. Everyone needs to look at things in a whole way instead of a segmented way. When he moved here, he had ideas about a really livable place. The community had a little bit of growing up to do as citizens and everyone is doing that. We are finding out how to live in an urban area and have growth and still have livable neighborhoods and have economy and hopefully not make the mistakes that were made in virtually every urban area in the country. We should be learning from others’ mistakes, not repeat them. He has had numerous individuals preach to him about urban development should occur. They said they should accept in-fill development because it is good for urban area. He has learned that is true. He is on City Council and supports that kind of thing. Another thing that
was told to him was mixed housing in neighborhoods was good because it created density in the core and eliminated urban sprawl. And they are doing that. Another issue is mixed-use commercial. People tend to resist that with great passion. He heard that mixed-use commercial is a good thing and they have learned that was also true because it was part of old successful neighborhoods from 50 years ago. So they are doing it here in the City of Missoula. People have admonished them to be a part of the process and they are doing that. They are involved in the Growth Management Process and community politics and they respect the process and they participate. Coming to this meeting, he found that the Comprehensive Plan Amendment isn’t being given the time it needs to finish, a process that is very important to the community, and the process is being subverted. If you are going to talk the talk, you need to walk it, too. A major concern of his is that development often drives planning. He believes that is wrong. Planning should drive development. If we care about how our community looks and the future that our children will have, then they have to make a commitment to planning. Developments should perform for our community instead of the other way around. The community should not be performing for developers as that is like the tail wagging the dog. It is time to straighten things out in the community. He holds the position he has on City Council very dear. It is an institution that is improving every day and he salutes the members. They are doing terrific work, developing policy for the community. He asked the County Board of Commissioners to respect that policy and the majority opinion of the group. To those who discredit the majority opinion of his esteemed body members, shame on them.

Charlie Brown, sat on Steering Committee for the Miller Creek Homeowners and Planning Committee for Miller Creek drainage for the past 2½ years, and the immediate past president of the Upper Linda Vista Homeowners’ Association, said he is a native Montanan. He moved to Missoula from Helena 17 years ago and there is nothing more that he would like to do than put a fence around Montana and prohibit everyone else from coming. He is not a growth advocate but at the same time he realizes growth is inevitable. He joined the Committee 2½ years ago because he is concerned about growth. During that time, representatives from every Homeowners’ group in the Miller Creek area have met with developers, their agents and several County staff to develop a plan for the Upper Miller Creek drainage that would accommodate and meet the concerns of all the interested parties. Particularly those who are most impacted which are the people in the immediate area. Several people have put in hundreds, if not thousands, of hours into this process. They believe they have accomplished it at this point. They agree with OPG and believe this project should go forward. That morning he was distressed to see that Missoula City Council had passed a Resolution to direct the County Commission on how they were to vote, especially with the lack of rapport they have demonstrated with their own constituency within the City. They remind him of the old saying “do as I say, not as I do.” The obvious politics that occurred at that Council meeting, suspending rules of order and voting on a Resolution not on the agenda so no public comment or testimony could be heard or taken, is typical of the operating procedure of some council members. He hopes last night meeting will only strengthen the Commission’s resolve to listen to the people in the immediate community that are most being affected by this and support the project. Unless there are major exceptions when the final Plan comes out, they are seeing a portion of this plan that will be approved by the Comp Plan. Most of them were motivated to serve on this committee for one simple reason and that is to ensure that their neighborhood and community will not be adversely impacted. Specific areas would be addressed, such as the aquifer, riparian areas, wildlife corridors, schools, protective services and affordable housing. Meetings with as many as 200 Miller Creek people have met on these issues on he does not know how many various committees and subcommittees have met on these issues. The important thing here was they wanted to control the planning process, not have it control them. Regarding increased traffic from this subdivision, he asked what are they getting now and he referred to the checkerboard in the Bitterroot valley. He can remember owning a ranch in the Bitterroot valley when there was virtually no housing and, in going down there recently, he conservatively guessed about 300 homes are now down there, with no apparent planning. He believes they will be coming to Missoula and increasing the traffic. Unlike the City, the County has tried to mitigate issues through public consensus rather than threats, lawsuits, etc. He feels, if the Board negates what the committees have accomplished in the past 2½ years, they will send a dangerous message to forget public participation input to the community because those with political power and a personal agenda win. This would create more public apathy and skepticism about the political process which would lead to a lack of public participation. Regarding the request from others not to rush this decision, he said they have been planning this for 2½ years. It is in compliance with the Comp Plan, it is something that a lot of people have given a lot to. Just the mitigation of the traffic problems, which now exist in Linda Vista, were hammered out over several meetings. He assured the Commission there was a lot of public input into the proposed subdivision.

Michael Kennedy, noting that no one else was coming forward to speak, said the meeting would have a 10 minute break, after which he would allow rebuttal by the proponents of the proposal, as well as from those who opposed it. He cautioned that this was not to be a debate.

Following the break, the hearing resumed. He stated there would be a time limit on the speakers and equal time to be given to both sides of the issue.

Tom McCarthy, WGM Group, spoke first in the second part of the hearing and stated that he appreciated the Chair directing that this part of the meeting was not to be a debate. With that, he spoke on the proposal, saying he noted a division between the development side and the engineering side and the landowners’ side. He guessed that no two people at this meeting have as much of a difference of opinion as he and Andy Sponseller. He related that once, years ago, when there was a fire in Grant Creek, Andy’s
truck was the first one to show up at his house to help him move furniture. Conversely, when Andy’s wife was in the hospital for a kidney transplant, he was there with them. They have mutually have been of service to the people in the community. He has been in the Missoula area for 25 years. He heard disparaging remarks made about his firm and he wanted to comment on them. During his first 10 years, he put more effort into improving streets in this community than any other individual in town by creating districts. He was the street project engineer for 18 months. Related to waste water and water quality issues, he personally worked on major items as getting the sewer extended up into Grant Creek, up to the airport, and to the Rattlesnake. His firm has promoted and developed over 35 miles of major sewer extensions. Regarding Linda Vista waste water sewage system, he spent almost one year in that neighborhood trying to convince the people to accept the $1 million federal grant they had so that they could have sewer for $3,000/lot, not $10,000/lot. He was unsuccessful. Related to Target Range and Mullan Road, he worked very hard to have sewer capacities for the Target Range area and he further personally put together a group of major landowners in the Mullan Road area to meet with the City about sewer extensions. They were willing to spend millions of dollars to accomplish that. So he feels his track record related to air quality and water quality of this community is very clear. Referring to items presented at this hearing, he heard the discussion regarding air quality. In the 1990’s, the Missoula area was producing a staggering number, 189,000 pounds, of carbon monoxide every day. Even with that, they were only having violations in critical hot spot areas. The projections are, if they do nothing, carbon monoxide will drop to 80,000 pounds per day, 40% of that level by the year 2015. He does not believe carbon monoxide will be an item in this community. There will be hot spots associated with intersections and they need to be aware of that. Related to the PM10, they have a 1995 budget which amounts to about 1 truckload full of PM10 over the whole Missoula valley, which is about 16,000 pounds. The transportation planning process says that they will stay inside of that 1995 budget. Related to the Maloney Ranch master plan and the subdivisions that are before the Commission regarding air quality issues, in 1994, they did the first traffic studies out there to identify there were significant problems in those intersection. Theirs was the first in-depth report done on those intersection issues. The consultants that have analyzed the City and County’s transportation plan have concluded that, without taking into consideration the mass transit systems that they will be putting in and the non-motorized vehicle systems, there is no significant difference - less than 1% related to their scenario and the gross scenario on total vehicle miles traveled and total vehicle hours run. They worked hard to accomplish that target goal. Another thing about their plan and their analysis is that their project is 1,800 units, not 3,000. Both the TPU and their plan shows that eventually Miller Creek will probably have 3,000 homes in it and there about 800-900 in there right now. When they design the project the way they have, 517 of the units that will be in the Miller Creek valley in their project are units that will not be available past Bonner, south of Lolo or past Frenchtown or up Evro valley, which are the large commuter traffic volumes into this. A significant percentage of their project addresses this because it has such a diversified cross-section of housing and provides a desirable place to live. Also, they are going to create 378 jobs in this area that are home-based employment. That is significant, primarily because they have their commercial areas and because ways of life are changing. Their project and the Twite project have repeatedly brought proposals to the planning process to fund $7 million worth of transportation improvements that are not inside of their project but outside of their project areas. The first of those is the improvement of Miller Creek Road from Briggs Street to the Wye and the Wye. Mr. Wagner pointed out that that is an existing problem, which everyone knows. There are steep grades there resulting in many accidents. The area is heavily sanded in winter. Cars back up at that intersection from the Wye to the golf course and sit there with their engines idling. They are proposing a $715,000 improvement to that area, even though they are not a significant component of that traffic problem. 5,000-6,000 vehicles a day that use those intersections will generate significantly less PM10 and carbon monoxide in the valley. There has been discussion about the mass transit proposal. Their project has 40% in clustered housing development, non-single family type homes. Those could be of the quality of Brookside or the quality of the housing that’s in the Cottonwoods in the mouth of Grant Creek, a very large cross section of the community. One of the things that mass transit provides is alternate access to low and moderate income people instead of using expensive car transportation in and out of the subdivision. He lives in Prospect, just inside the City limits. The bus service does not come to them. If it did, his children would use it. The bus service does go out to East Missoula and his son’s friends ride the Mountain Line bus from there into St. Joseph’s School every day. It is significant. There was discussion about open space in this area being a benchmark area. Within the Missoula open space plan, that area which is a major conservation easement in front of the Miller Creek valley, was a corner stone for the open space. They have not only tried to preserve that corner stone and address it, but they tried to make sure that it is managed and properly taken care of.

A question was raised about the conservation easements and the type and forms they would be in. The conservation easements at this time will be in the hands of the 5 Valley Land Trust, a group that everyone knows and respects. But they have made provisions within the easements, that they can be dedicated to the County or local governing body. If they go forward in the process and the City or County say that they would like that to be a park area under public stewardship, that can be accomplished. Or if it should be a preserve under public stewardship, that can also be accomplished. They have left provisions for public access in and through the properties but, until the master plan is approved, this is a working cattle ranch. They will have land management on the number of cattle units that can be down in those areas and its not developed in an area for public access. But they have made provisions so they can be accomplished.
A question was raised about urban service bounds. He wondered if that included police and rural fire, City sewer, centralized sewer, community water, zoning, a building permit before construction can start... what were all the items included in urban service bounds? The Maloney Ranch, in its entirety, falls inside all of those services. There is a process that is not formalized into land use regulations, related to 20-20 vision. Primarily, the vision 20-20 boundary addressed the 1984 Missoula waste water sewer boundary with extensions out into Mullan Road and Target Range. Section 11 is entirely in the sewer service boundary. 60% of the density is in the urban service boundary. The City sewer since then has been extended down into the central valley. Their area in the central valley is not an area that is required to put in City step sewer nor is it an area that is required to put in central community sewer systems or to put in central water systems. They have voluntarily brought these things forward because they believe that is the right way that those should be handled. Related to nutrient loading on the Bitterroot River, they will have a temporary drainfield for Phases III and IV and that could remain a permanent drainfield. The Water Quality Bureau will not let them design a temporary solution. Their proposal is to connect that area to a central sewer system and to use land application at agronomic rates of uptake of the nutrient loadings in order to protect the water qualities in those areas.

There was discussion about these being “ranchettes.” Their covenants preclude the 1 acre lots from being “ranchettes.” There are a handful of those around the community and they are quite undesirable. Another comment was made that theirs was a hillside development. 86% of the development is on relatively flat ground. There is a large plateau which is where the majority of the density will be and is clustered in 130 acres in the Lower Miller Creek valley on relatively flat ground, same slope as the valley. There was discussion about Phases III and IV being out of the service boundary and, if that urban service boundary is a 20-20 process, it is not inside the present document but they are not leap-frog development. The County Commissioners have recently approved Evans Ridge Subdivision, which is above and beyond their proposed development area, and their trails are contiguous to them. They are in the same zoning classifications and in the same land-use boundaries. They have patterned their projects in III and IV directly after those. Except those areas rely on individual wells and on-site drainfields and they are proposing a major community water system and a major community sewer system and the preservation of the Miller Creek valley riparian area. Are these visibility-impact vistas? He answered that a person cannot see Phases III and IV, unless a person drives up on the hill above the development. It is difficult to see it. He admits that is flat ground and, when they build houses, it will be as visible as Trail’s End.

Regarding schools, they have worked closely with the school district on this. A letter was sent from a staff person from the school district that said they would have impacts on the schools. Mary Vagner wrote a rebuttal to that and the staff person withdrew the letter. Gary Botchik attended the Thursday meetings to explain that this project does not have an impact on the schools, they have the capacity to serve it, and that there is room available. Next, he clarified the street sweeping district. The City has ability to create street sweeping districts and if the project does not have an impact on the schools, they are in support of that. His intentions were not to burden Linda Vista or any other area with costs that they independently decide that they do not want to take on. Regarding a sweeping district for the entire master plan area, they are in support of that. There has been questions raised about the water supply in the area. A letter, a copy of which has been given to the Commissioners, states that Linda Vista Water Company has offered to them to enter into an investigation to connect the Maloney Ranch subdivision to his water system. That will be one of the first things they pursue. They have an agreement in principal between the Linda Vista Water Company, the Maloney Ranch and the Mountain Water Company that they should all take a look at this area and not do something that is silly, but design a master plan water system. This will be some of the first steps toward that. This is not to say that there will necessarily be one water company out there but that the three companies will be able to support each other. A good example is Mountain Water already has a water main that has been in existence for about 15-20 years. That is connected up to the Linda Vista water system with a closed valve. In case of an emergency, that source could be available. Related to that same issue, they have received considerable testimony from the neighborhood about drilling in the Miller Creek valley proper. With an existing 1,000 gal/minute well and another 200 gal/minute well above it and the hydrology report on water rights issues, they felt confident that water would be available and would not influence any other area. Based on testimony, they will be pursuing water in the Bitterroot aquifer as a viable economic alternative to drilling in the Miller Creek aquifer. Because this is a large landholding, they are not going to carte blanche waive their rights to drill wells in the Miller Creek aquifer. If the master plan is not approved, there may be other kinds of developments. The Harlans just drilled a well within the last 2 weeks in that area and they need to preserve those same rights.

There was a remark that the planning process is driven by the developers. Mr. Twite brought in a project about three years ago and it was withdrawn. Out of that, the Miller Creek planning process started. That was the same time that they began working in this area. They came to their first meetings with a blank map and index cards, handed them out with pencils and asked people for their comments and desires. They put themselves on the steering committee, they helped formulate the questionnaires that were sent out in the Comp Plan which was the first data collected. If this plan is driven by anything other than the planning process, he is not aware of it. They responded to the neighborhood’s desires, goals and objectives. This plan is very much an idea of their vision. One of the things the people told them was they are not looking to take away landowners’ rights, but to direct the development and understand it’s responsibilities towards infra-structures and funding in this area. Under the existing 1990 Comp Plan, they
are allowed to put in 1,900 units out there. Under the current zoning under a PUD, 1,311 and under the current zoning baseline or flat zoning, 586. They have tried to develop a plan that addresses all the desires of the neighborhood in the area and sustain those density rights. They have done that and feel they are in conformance with the goals and objectives. They have mitigated the monetary impact issues and they did not do that in a vacuum. They are aware that the 1990 Urban Area Comprehensive Plan was in place at the time they started and it had goals and objectives within that. They made sure that their plan not only conformed to the existing urban area Comp Plan, and this area was designated 2 units per acre, but the urban service boundary was in consideration at the time the decision was made to designate those densities on this land. They were also aware of the open space planning process and the themes and ideas of growth management. They were starting their process when they were starting theirs. As things developed, they considered how they were including the various ideas that came from these processes. Related to growth management, they have a target growth area for Target Range and Mullan Road. The travel distance from Mullan Road into the Missoula area is equivalent to the distance from Miller Creek into Missoula. They have experienced strong opposition from the Target Range area to be a major growth area for Missoula. They are not interested in extending sewer and changes in their area. Putting those issues aside, the demographics done in this community for the transportation plan indicate that there will be about 11,000 new homes built in Missoula over the next 20 years. Since he has spent such a great deal of time through the extension of streets and infra-structure and improvements for a better place to live, he is aware of the processes that take place. If growth management was adopted and put into the Urban Area Comprehensive Plan, including the goals of Vision 20-20, the first thing they would have to do is change the Comprehensive Plans. They would have to annex them into the service areas, have to create established funding mechanisms to extend water and sewer into those areas. He knows how high those costs will be, which are about $30-$50 million. If they had that kind of money available and were just starting through that process, but those goals cannot be accomplished in any less than 10 years. You cannot begin to derive benefit from those infra-structures until they are in place. He asked how the Maloney Ranch fits into that scenario. He recognized that this community needs, in order to be able to do growth management, time to formulate and gain consensus on having Target Range and Mullan Road as service areas, to develop the Comprehensive Plans and funding mechanisms to extend service into those areas. Maloney Ranch addresses the next 10 years growth in a positive way. First of all, they fund all of their improvements with private sector funds. They provide an unprecedented quality of a project to the Missoula valley. They provide a place for a cross-section, not $150,000 or $70,000 annual income family, but a whole cross-section of the community for a place to live. References were made to Kay Ross Tool who was really making reference to Anaconda Company resource extraction that took place and left Montanans with the mess they have. His client is not a home-builder. He is not intending to build homes here. He intends to market building sites to existing builders and labor forces within this community to serve people within this community. He is not bringing in an Indiana construction company to build the houses. The project here will primarily be done by local Missoula people, such as Edgells and Mostads and the others that we see here in Missoula. So the Miller Creek area gives them an opportunity for what this town has said for years and that is, “why doesn’t someone take one large piece of ground and do a good plan?... and address the water, sewer and transportation systems?... and work with the neighborhood when they do that?” They have spent 2 years doing that. They made no commitments to the neighborhood that they would not bring their project forward. In fact, at many of the meetings, people were asking why they were waiting for the Plan to get done? They don’t own the ground and they can’t make that happen. People need to work with them before the Plan can become a reality. He is aware of land-use regulations and process to realize that was a “pie in the sky.” They needed to work through the Comp Plan process and they have done that.

Although their project is not in the targeted areas of growth management in the lower half (60% of it is), they feel they provide a great opportunity for this community not to use its resources out in other areas, responding to small development projects. He cited an example. Briggs Street and the Wye is an existing section of the community for a place to live. References were made to Kay Ross Tool who was really making reference to Anaconda Company resource extraction that took place and left Montanans with the mess they have. His client is not a home-builder. He is not intending to build homes here. He intends to market building sites to existing builders and labor forces within this community to serve people within this community. He is not bringing in an Indiana construction company to build the houses. The project here will primarily be done by local Missoula people, such as Edgells and Mostads and the others that we see here in Missoula. So the Miller Creek area gives them an opportunity for what this town has said for years and that is, “why doesn’t someone take one large piece of ground and do a good plan?... and address the water, sewer and transportation systems?... and work with the neighborhood when they do that?” They have spent 2 years doing that. They made no commitments to the neighborhood that they would not bring their project forward. In fact, at many of the meetings, people were asking why they were waiting for the Plan to get done? They don’t own the ground and they can’t make that happen. People need to work with them before the Plan can become a reality. He is aware of land-use regulations and process to realize that was a “pie in the sky.” They needed to work through the Comp Plan process and they have done that.

Bill Wagner joked that it is difficult for an attorney to be brief but promised that he would be. He was pleased to see so many people at this meeting and for the Commissioners to hear their comments. One of those comments was that he may have made a disparaging remark regarding City Council. If he did, he apologized. He respects that institution. He has lived in Missoula many years and, in this case, he believed several members of the Council voted for a resolution that did not have all the information. He said Phases I and II mirror Linda Vista 9th Supplement, which is next door, because that is what the neighbors wanted. They have been involved in a planning process for 2 years and he finds it unfortunate to hear people testify about various aspects of it when they were not involved in that process. He realizes a lot of them are not from the Miller Creek area because those people were involved for quite some time. It is also important to know that, at the beginning of this hearing in August, the adjacent subdivision was approved. Furthermore, Phases III and IV mirror their neighbor, Trail’s End and Evans Ridge, two recently approved subdivisions. In his submittal this evening, he was requesting the Commissioners apply the same standards to their Phases as were applied to those adjacent, similar subdivisions. Finally, he stated it was important to note what was said tonight and by whom it was said. He wanted to comment on the testimony of three people, who were from the Miller Creek area and were involved in the planning process. Mrs. Henson has been involved in the parks and opens space portion of the planning process for 13 months, Charlie Brown has been involved in the planning process as far as the Miller Creek Comp Plan

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neighborhoods are connected to make the community. His concern is that the developers do not recognize that what those people involved in the Comp Plan planning process are saying, and that is that Phases I, II, III and IV are all in conformance with what will be published. So, even though they are ahead of the Plan, they have taken it upon themselves to comply with the input from the neighborhood and he feels this is crucial. They have taken into account all of their concerns, they are included in the submittals they have made, and he respectfully requested that the Board approve the subdivisions.

Peter Templeton said he has a couple of questions that people from Lolo would like put forward and be considered. One of the concerns of a development this size for people from Lolo is that they have already seen where the among of energy this plan is taking detracts from things they are trying to do. The planners are short of people and their land plans are slowed down. He and others from Lolo also wanted to know, if Phases I and II are going to be annexed into the City, which seems to be a given, then why isn’t that addressed and done right now? Why go through this intermin period where County time, money and effort are spent on this if it will be part of the City? A philosophical concern of his is when people buy into the County, saying if they are granted “this,” they’ll do “that.” The political system, which represents the people, tends to lose control there. Another thing that is used in Lolo that he and others are concerned with is when you say 85% of the development is on flat land, are they counting unbuildable slopes as hillsides or parks or open space? That has happened in Lolo. All the hillsides are considered parks and you cannot even stand up on them. Another question, what assurance do they have that the south ridge of Miller Creek will remain the natural beautiful ridge it is from Lolo? Don Mormon of the County Sheriff’s Department lives in Lolo and comes to all of their meetings. He said they have one sheriff’s patrol car per day that patrols Lolo and the Miller Creek area. If something goes wrong in one of those two places, that patrol car has to drive to Walmart, get on Highway 93 and go around to the opposite place. He is concerned about this kind of coverage. Another item that has been discussed is the water district for Lolo crosses the Bitterroot River at the lower part of the property. They should consider that, at some time, if there is a search for water, would it be possible for them to say this part is the Lolo water district and they want to tie into that?

He thinks Montana goes through periods of different kinds of development. He named lumber, railroads, copper and now its real estate development. He is also concerned because everyone says they know what’s in the Miller Creek Plan so its not an issue. He believes it is an issue and that is why they are here tonight. If they know what’s in it, there is something they don’t like in it. He wonders if it doesn’t have something to do with the grades. The grades are 10%. A number of those cul de sacs that they connected through are at 10%, which would mean that the building lots are pretty steep also. A draft copy of the Miller Creek Comp Plan makes specific recommendations as to the slope requirements. What he hears here is the maximum on the roads and he believes they are close or at the maximum on the building lots. This would be detrimental to their development plans. So he asked the Commissioners to consider these things and he would like to hear answers to his questions, even at a later date. He would like to take the information back to the people in Lolo.

Sue Spence said she means this in the most polite way but it is a truism that, when something is too good to be true, it is. In the same line of thought, when you are told that something will not cost you anything, you will often find that it does. Regarding air quality, some of the reasons the developer does not think there will be problems are suppositions. The Commissioners should look at these ideas and decide if they believe them. For instance, will people in these subdivisions actually have home-based businesses and not commute to town? And how can that be guaranteed? Will building in this area preclude building in other areas and how can the developer guarantee that? The CO is supposed to drop as cars get better but is that based on the current number of cars or a huge increase in cars? When the developers quote previous projects and says his project is compatible with them and urges the Commissioners to okay his projects based on that, she feels that encapsulates the whole issue. If the Board okay a portion of the master plan, they are setting a precedent to okay the entire master plan in time. She asked the Commissioners to consider that very strongly.

Ron Erickson said the point he wanted to make comes back to what Judy Smith said about how neighborhoods are connected to make the community. His concern is that the developers do not recognize that. A number of stakeholders came in good will for the process that Miller Creek has been going through for the last 2½ years. Some stakeholders from the north side and west side are having a meeting tonight and could not attend this one. That was why Louanne Crowley read a statement from the west side. But, if neighborhoods are not connected with one another, there is no community. The stakeholders have come forth this night with ideas and concerns about the fact that connections have not been made yet. A number of stakeholders also attended a Miller Creek Planning meeting about a week ago and they hope that those in Miller Creek recognize their concerns. The hardest hit for him was the distinction between Phases III and IV and Phases I and II. 1 and II do connect, will be part of the City, but Phases III and IV will be much different. He is also concerned about the Maloney Ranch master plan and what it means. He heard from WGM about how important it is, but does it have any standing? There are homes in the master plan that are not before the Board today and some of those homes will have something to do with the Lolo community.
Gardner Knudsen, a resident of the Linda Vista area, who has been involved in the growth management process as a stakeholder and in the Miller Creek update since its inception. He cannot personally say whether this proposed subdivision would be in conformance, the way many people in the community feel about the vision of the community based on what is in the Plan. The draft will not be out until tomorrow morning. So, even though he has been involved in the Plan since the beginning, he does not feel comfortable making comment. If he were to consider what people said, the last draft, Phases III and IV would not abide. He can see where Phases I and II will flow into the Linda Vista subdivision. Phases III and IV do not characterize what they want to see happen in the Missoula area. Part of the problem, he feels, deals with the fact of individual septic and individual water systems. Just look at Linda Vista to see a case study of what can happen with this. Would it not, in time, bring about the same problems that happened in Linda Vista? The developer at the time made a good faith effort to develop a good system but it did not work out as expected. In time, the aquifer simply could not handle that loading. He does not know where the well might be located, nor does he know about the drainfield, but he suspects that it could be down gradient. Also, they talked about the system being upgraded in the future. But that presupposes that the Board will approve all the rest of the subdivision, so how long will the well sit there? He is also concerned not knowing which way the nutrients are going to move which may jeopardize the Linda Vista well which is a fall-back well. The Linda Vista developer has a well in that area to fall back on if there is some need to have a higher quality water if some of the current wells (which are fine) develop a problem. This raises questions about water quality. He feels this is a good case study for Phases III and IV. He asked the Commissioners to give serious consideration whether that should be approved.

Rick Stevens said he is a developer. He developed a piece of property in Missoula. To do that, about two years prior to moving, he joined the neighborhood association. He became Vice Chairman. If you want to become well known in the community, you join the committees and work and, when it comes time to be approved, they will look well upon you. Some of these developers are on the steering committee. He stated that when he was on the Steering Committee and wanted a proposal approved, he could do a good job on the Committee and has probably, in fact, done this in his own neighborhood. So, he asked, is this developer driven? He feels it is. If this is important and the Plan is good and due out tomorrow, they can vote on this Thursday.

Judy Smith said she wished to clarify the voices from around the neighborhood and voices from the community. She urged the Commission to listen to all of the voices. She agrees the neighborhood voices are important and said you will hear mixed voices from them, but she feels it is equally important to hear the community voices. There will be an impact on the community from a subdivision of this size and she did not hear any discussion of that from the developers. That remains an open question. If they are serious about growth management as a community process, they do not have the information they need to go forward. She asked that both the neighborhood and community voices be heard. Another clarification she wanted to make is, in the draft plan that is supposed to be out tomorrow, the urban service area is discussed and Phases III and IV are not in the urban service area. The urban service area in the discussion is addressed within the Miller Creek Comp Amendment. She again asked the Commission to pause until the amendment is available and look at the section on the urban service area. She believes they will find that Phases III and IV are outside of the delineated urban service area. Summarizing, the developers did not say anything at this meeting that answered the questions or responded to the voice from the growth management stakeholders. She urged that they be heard and receive the information they need.

Andy Sponzeller said, to address the question of air quality again, transportation impacts quality greatly. This was addressed in the Transportation Plan at some level. He was reminded by the consultant that they use the same transportation consultant that the City of Missoula did. He thinks that is interesting because that consultant informed them in front of the Missoulian editorial staff as well as 3-4 other occasions that, in fact, base-line air quality in Missoula will be degraded from this point on by our transportation system. He believes, knowing that, they would expect that it would be a policy of our governing bodies in protecting the health, safety and welfare of the citizens that would make policy that would make developments responsive to base-line air quality. He implored the Commissioners to do this. He thinks the health of the community’s children, the health of fellow citizens’ is both an economic, at least, and, at most, a moral concern. He thinks that should be the basis of their request to development -- that it mitigate its impacts fully.

Another thing that he wanted to comment on was the concept of concentric development. For any number of years, urban planners have stated the value of developing from the center out. In fact, people at this meeting have talked to him about that concept for years. He is taken aback by the peripheral leap-frog nature of development being proposed that night, which seems contrary to that. There was some emphasis made that vehicle miles traveled were not significant in terms of the distance, i.e., the distance from developments on Mullan Road and the distance from this area. There are two areas that were included in the urban service area in growth management and the stakeholders, those being Target Range and areas east of the airport, namely the Dougherty Ranch, which conveniently wasn’t mentioned at this meeting. But he feels we have a duty to stay the course on growth management. They have a duty to stick with the concept of urban in-fill and concept to development which is from the center out that affords the community all kinds of benefits, it reduces air pollution, it has economical use of infrastructure, and land keeps the taxes down, which are a concern to all of us. We have areas to develop in and he thinks it is more a question of political willingness than anything else. He implored the Commissioners to stay the
Ross Best wanted to expand on the comments made by previous speakers about the Comp Plan and the terms that most of the citizens have no way of knowing. No one knows what the Comp Plan will look like and it does not belong exclusively to the people of Miller Creek. The Comp Plan will belong to everyone and will be the result of a public process in which all will have an opportunity to participate. Thus, not only do they now know what the proposal will look like, they don’t know what will become of that and they do know that people who live outside Miller Creek will have a legitimate interest in addressing what the Plan should ultimately look like. He finds is remarkable that, when this kind of proposal comes forward, the Commissioners are essentially being told that there will be no impact. He feels that, on a common sense level, things this big do not happen when people live so closely together. We are all past the time when people are oblivious to impacts because the nearest people are so far away. The general concept that this is no impact is related to the concept related earlier of something being too good to be true, for instance, when the Board is told that, he could not recall if it was pollution or the number of trips generated, was less than 1%. He felt that the Board needed to take into account that there are movements afoot in Missoula to institute traffic demand management. There is interest in reducing the mileage and reducing the pollution, at least in the core of the City. This kind of development will be the most resistant to traffic demand management because it has built in travel that cannot be escaped. Mr. McCarthy referred to 20-20 vision and he admits that he has never mastered all the details of 20-20 vision, but his impression is, when 20-20 vision is convenient and helpful, people cite it. When it is contrary to what they want, they say that 20-20 vision was discredited. So he believes they should be careful how they evaluate 20-20 vision because it has not been embraced by the development community. They also need to recognize that there have been efforts since then. For instance, the Comp Plan, Growth Management and the Transportation Plan, that have not yet come to fruition but which do represent more recent thinking. When they are told that there is a projected decline of 40% in the tonnage per day of carbon monoxide, they need to remember that some are not happy with the current level and some are not going to be happy with 40%. The fact that the federal government does not step in every day to clean things up does not mean that things are clean enough; it means that that is the threshold that the federal government has been willing to deal with. Rick Steven’s remarks took a different angle from what he would take. He wanted to comment on the general way that major developments take place in Missoula County currently. A person cannot come in and just say, “This is my land -- I have the right to develop it, let me do what I want.” You cannot get away with that in Missoula now. You must come in and offer open space and address transportation problems and talk about air pollution problems. Obviously, they evaluate the project and weigh the pros and cons, but they cannot naively be so impressed by $7 million worth of work that is allegedly to be done on outside transportation costs. It is not out of the goodness of the developer’s heart but because they have calculated it as a necessary cost of the project.

He wanted to conclude with some remarks about the general format of this rebuttal period. The Chair stated that this was not to be a time for debating but he stated that, frankly, he did not know what that meant. He feels rebuttal is debating and, when you deal with professional people like Mr. McCarthy and Mr. Wagner, their business is to be soft-spoken, in a sense, and they are very good at it and he does not criticize them for that. But citizens come in with more emotion. Part of the purpose of public participation is for citizens to show that emotion. So he reiterated that he does not know what the Chair means when he says this is not a period for debating. Some things that came from Mr. McCarthy and Mr. Wagner was contradicting something that had been said earlier, in addition to conciliatory comments. However, a damper has been put on the public who are not sure what it is they are trying to keep out and he frankly believes that the distinction between rebuttal and debate does not really make sense. He closed with that and thanked the Commissioners for their time.

Barbara Evans reminded the Chair that 2 minutes were left.

Michael Kennedy was aware of that. He said 35 minutes were given to Mr. McCarthy and the proponents of the subdivision and there was a few minutes left. Mike Ledkte said he felt sure this was not going to be a retirement community. Yes, there will be children there. Even if his previous statement of 3/4 of the people having the average of 2.5 children is too much, even if he cuts that in half, that is still 3,000 kids and yes, they will be bused. It also sounds like a new high school to him. They said they are going to drill their well, they don’t want to waive their right and he does not blame them, in the Miller Creek proper. But it will affect upper Miller Creek people in drought seasons and needs to be considered.

Michael Kennedy thanked everyone for their comments and asked if anyone else wanted to speak briefly. No one came forward and he closed the public hearing. He asked the Board if they had any further questions? They did not. He asked how they wanted to proceed then, with regard to the proposals; he said there were really 4 proposals here. His sense was that Phases I and II ought to be taken together and Phases III and IV should be taken together.

Fern Hart wanted to comment on the City Council resolution and comments by the Stakeholders. She thinks the communication from the City Council is very important. They know that residential development costs more in services than it pays in taxes. They have reiterated that as did the Stakeholders.
However, these proposals have been reviewed by the City/County Planning Board, which is appointed by both the City and the County. Before they came to the Commissioners (and some of the Board attended those meetings to be better informed), she suggest that City Council make arrangements to have a subdivision within 3 miles of the City presented to them in whatever way they seem to need. They may need to go through OPG or maybe an interlocal agreement needs to be made, but at this time, she responds to the recommendation to “just say no” as being unacceptable. With respect to the Stakeholders plea to “pause,” while she appreciates the choice of words, she believes she is doing that. She has stated as she did at the golf course the other night that she will make a decision about these proposals. This is not a decision about the Maloney master plan. By law, they have to present to the Board a master plan. They have followed the law. She does not consider that this is opening a door. She has said to them, at whatever that last meeting was, that she will look at this proposal based on the Comp Plan in place now, based on the zoning in place now. She believes this is what responsible government should do and she feels she is doing that. She will not think about a bridge; she wants to see the Miller Creek Plan, she has attended meetings and is not totally ignorant of it. She believes that it needs to go through the public process before its adopted. She understands the concern about the urban service area. They have not adopted one. It is a concept — they have “shook hands.” It is not in the regulations or formal and neither are the tools. They are scheduled to be attended to but they are not now law. She sees ahead for those. She will look when they are in place at all the subdivisions coming in the future. She thinks that is fair. City Council was well-intentioned in trying to influence this at the last minute. She feels they are desperate and concerned and they see the City they are dedicated to serve as somehow being attacked. She feels the proposers have good intentions. She feels fortunate that the folks the County deals with every day live in this valley and breathe the same air everyone else does. She does not feel that there is a “we — they” here, but that there is an “us.” It disappoints her when everyone cannot be “us.” They cannot use impact fees yet. They plan to but they are not developed yet but they can deal with mitigation. That is where they are now. That is what they did with the Linda Vista 9th Supplement. Her proposal to the Board is that she make a motion to approve Phases I and II. She believes that those can be supported because of their nearness to sewer and for their water. She has concerns about III and IV with the cul de sacs and power lines; she did some research that afternoon and brought back many thoughts about the BPA power lines. She will put something together for that although she conceded she may not have any support.

Michael Kennedy stated he felt it was premature to present a motion because the question at this time was whether they want to take these 4 proposals together or separately. He is hearing from Commissioner Hart that is she would like to divide Phases I and II and Phases III and IV. He asked Commissioner Evans for her statement.

Barbara Evans supported the fact that Commissioner Hart wishes to make a motion on the first two phases and commented that she also had a statement she wanted to make.

Michael Kennedy, having heard Commissioners Hart and Evans, said the Board will act on the Phases separately, that is Phases I & II and Phases III & IV. He asked Commissioner Evans for her statement.

Barbara Evans said she has listened carefully to what everyone had to say, not just this night but for the last 2 years; she has attended many of the meetings at Cold Springs School, Meadow Hills Schools, the Linda Vista Golf Course, and the landowners have legal rights to do things with their property and to develop it according to the laws that in force at the time they submit their proposals. They have a right to proceed under the current regulations. If and when new regulations are in place, they will have to meet those new regulations with any subsequent proposals they bring in. The current regulations allow them 330 units - they are asking 159. To ask the Commissioners to vote “no,” so that they can wait until all the unknown impacts are identified and dealt with before the development is approved, is not realistic from a legal standpoint. They have asked the developers to address those impacts that have been identified by the state and local agencies. They have explored the impacts and are addressing those impacts they are allowed to address by law. The U.S. Constitution does not allow them to apply laws that are not yet in effect. They may have an urban area service boundary at some time but they don’t have one now. They may someday be able to impose impact fees to mitigate air pollution or other impacts but they do not have them now. They may someday have a Miller Creek neighborhood plan but they do not now. This may not be the way Growth Management Task Force envisions growth but that group has met for 2 years and has yet to implement any regulations to implement their vision. The folks in Target Range have been identified for growth and in-fill and, if you asked them, they would say “who asked us?” No one did and we are not inclined. Thank you very much.” The Plan did not recognize at the time that the growth that was occurring in Miller Creek was likely to continue so it is not in the Plan. Reality is reality and it is happening. The water issues will be addressed by other agencies such as DNRC. That is not something that the Commissioners have the power to do anything about. They give an approval and the next step is they have to get approval from the agencies who have the expertise to deal with that. The Miller Creek area needs the improvements to the roads now. At all the meetings she has attended, she has heard people talk about the safety at the Wye. She has heard the question “is the density in the area the reason there is a problem at the junction of upper and lower Miller Creek?” and she said the answer is “no.” One car at that intersection, sitting, is in danger from another car coming down. That doesn’t mean there is 7,500 cars coming down; that means there are 2. It is dangerous. Her uncle had the land at the corner of that intersection for years and it has always been dangerous and will continue to be until that road is improved. She appreciates the need for road sweeping and the need to be able to clean the air from the road sweeping but she will not support even one more RSID/SID on the people in Linda Vista.
Michael Kennedy thanked her for her statement. He said he wanted to preface his remarks by making a statement about why they are here. They are elected officials and, as such, are acting as more than just the administrative role. They have to make decisions and, in some sense, have to act in judgment on proposals that come before them. It is simplification to say that, if they “dot the i’s and cross the t’s” that they can then approve or disapprove any particular development. Human analysis and judgment on the Commissioners’ part comes into play and they are obligated to the citizenry to use that best judgment in passing judgment over these kinds of proposals. He feels that is his job and, for that reason, he proposes to examine not just this proposal but all the work that is currently going on in the City of Missoula and the County of Missoula. That is Growth Management work, the scenario work, the transportation work and the waste water work, and all of that aims toward a single goal. That goal is a quality of life in Missoula County that all have enjoyed and is eroding at the current time. There are reasons that that erosion is taking place and one of those reasons is the very poor planning processes that have been used in the past. So they are resolved to change those planning processes. Some of the changes are currently under way. They are developing tools that have resulted from the Growth Management Task Force and also the scenarios process. They are under way and have direction. It is his sense that, if they were at that place where those tools are currently employed, then he believes this development would not pass the scrutiny of those new tools. So, he asked, what do they do? They should examine this development based on what is in place legally and what they can do morally and ethically. In his sense, there are some things that they can do. The issue of air quality impact has not been satisfactorily addressed and they cannot pretend that it is. One thing that is sure is that the driver of transportation plan in the Metropolitan Area (MPO) is an air quality problem at “malfunction junction.” It gave rise to the current plan that is being debated in the County seriously. The funding for that plan, roughly $115 million, stems from this law which is the Intermodal Surface Transportation Efficiency Act of 1991. The preamble of that 293 page document states that we have had a problem in this country with transportation, a very serious one, and it started with our post-war love affair with the automobile. It continues with the 1954 National Defense Highway Act, which we call Interstate Highway System, and in the first page of this document it says it is a goal of the United States of America not to repeat the problems of the past and the mistakes that we made with the Interstate Highway System that promoted single vehicle traffic and excess vehicle miles traveled. In 1983, the AAA in Montana published information about vehicle miles traveled and it indicated that the average family vehicle, in this state, traveled 11,738 miles. He reiterated that was in 1983. That same family vehicle in 1990, only 7 years later, traveled 15,100 miles. The meaning of that is the same people are driving more miles and those miles, not only do they create problems in terms of traffic and noise, but they create more serious problems with respect to air pollution. He stated we cannot disregard that. One consequence of this development, or any development that has this high impact with respect to motor vehicle traveled that can’t be mitigated, is the air pollution that will result from it. What we have here is a proposed ruling from the Environmental Protection Agency that states that the current rules in place in Missoula and in this particular air quality region as well as certain other areas in the United States are inadequate to protect public health. This is no surprise and yet, the transportation planning consultant had to use the existing ruling as it currently resides in the law of a PM2.5 standard that we now repudiate and know that it does not protect public health. So what are they to do? Do they comply with the standard and agree that our air quality is going to become degraded so that our children will pay the price, not only in the high dollar cost but high physical cost? Are they ready to do that? Is that the expectation of our constituents? Is it to pay attention to these things. To pay attention to the fact that we recognize our air quality is not being protected. If it is that, how do they do it -- by reducing the miles that we travel in our cars or other intermodal methods of transportation in any development, even in the City? This is our responsibility, not just the responsibility of the developers. After all, we all drive cars. He was reminded of the Exxon situation in Valdez, Alaska. The ship up there crashed into a rock and we all blamed Exxon. We drove to the protests of it with the gasoline that came from them, so we have a personal responsibility as well. But the point is, what do they do about this particular subdivision? It has not satisfactorily answered the question of air quality. He went through some of his concerns. Regarding cul de sacs, they are not school bus friendly, not transit friendly, not pedestrian/bicycle friendly and many people believe that they are not friendly to the people who live in the end of them or the mouth of them because of the traffic volumes that increase. Yet, the County sees many cul de sacs proposed in both of these subdivisions. There are roughly 53 subdivisions on the south hill of Linda Vista at this time and systematically they hear the emergency vehicle operators complain about those because there is no access, putting people at risk. Cul de sacs increase traffic, which increases pollution, they reduce accessibility to transit systems, and they reduce safety. In terms of air quality, he mentioned the PM10 standard. He mentioned the new standard, which is a PM2.5 standard (as an aside, he explained that “10” and “2.5” are microns; to give an example, one hair on a person’s head is about 70 microns wide. These are very fine particles that are produced from emissions from cars that get into our lungs and cause serious problems). When those standards are adopted at the first of next year, he asked what will the County do? If they adopt a transportation plan first that does barely squeeze by and meets the current standard but won’t by the time they get around to implementing it and adopt a subdivision which can’t come close to meeting air quality requirements of the new standard let alone the old, even though there is a claim that it does, what should the County do? Another issue is water quality. They can say it is not an issue but it is. They have a serious problem here. They talked about the nutrient loading with respect to septic tanks. They have an unsewered study, a carrying capacity study. Both of them say the same thing. There is a
limitation to how much they can continue to inject into our ground before we suffer a serious consequence. All anyone needs to do after this great flood the County had this past spring is to look at the Bitterroot River to see the remarkable productivity. If you ask the professionals who prepare the reports and they all say that it is attributable to septic tanks and some sort of human drainage that goes into it. He asked are they to approve yet more of the same to exacerbate that problem?

In terms of transportation plan, the hillside development issue is a big one. Phases I and II, regardless of what the testimony is here, is a steep development as can be seen by the contour lines on the map and there will be more energy costs on driving to the top of that development as opposed to a flatter, closer-in development to the City. In terms of transit, if there is an unfriendly development, one that does not promote the use of transit, of course the transit system won’t work, can’t work and is a self-fulfilling prophecy that it will not. This is not a transit-friendly proposal.

Regardless of who they talk to, this will have an impact of schools. If nothing else, it means rides for the kids on buses for 2 hours a day while they are going to school. They have to be bused because there is no school out there. He has heard the common discussion about services. This proposal is only 112 lots, or 100 lots or 50 lots or whatever it is, and economically, it is not feasible to provide service. He noted that more than half of the towns in the state of Montana are smaller than this subdivision. Those towns have a post office, a grocery store, a couple of bars and usually a cafe. So to make a statement, which is more anecdotal than anything because it has not been substantiated, that you cannot provide economical service in subdivisions is ludicrous. He does not believe it. He believes is it a serious problem when a developer makes that kind of statement without support. As he went through this proposal, there are items that make him pause and which disturb him. Some of those were found in the resolution by City Council that decided to pass it last night. He does not know what control the City feels it has or does not have over the planning process, but he does know that they have professional planners that jointly work for the City and County to work with developers and provide recommendations to the Board. He said the result of that process goes like this. The people who are most familiar with developments are the developers themselves. The people who are next in line who become familiar with the development are professional staff. At the end of the line, at meetings like this, is the public. There is an expectation that when this stack of information is presented to the general population, who must first have the wherewithall to attend the meeting, they must absorb all the information and come to conscious judgment about how good or how bad the proposal is. He felt this was an almost impossible task and a reasonable request for anyone to be subjected to. On that basis, there is not enough time to review the subdivision. This is not a fault of the developers. It is the legislature who has set the rules. But the problem remains and it does not take away from the seriousness of not being able to review these subdivisions with the time and effort that really are needed before they are finally adopted. He said you can look at the subdivisions in the community that people do not like and they will see the results of, not only the growth, but the traffic din and other different effects. If you ask how that happened, part of the answer is the County allows satellite development. He wants to know if they are going to continue to do that? The impact is not acceptable to the people and certainly not to their children.

The Air Quality Advisory Board recommended to the Health Board, about a year ago, to undertake an analysis that would study absenteeism and tardism in schools from K through 12 to see whether there was a relationship between those factors and air pollution. The study is taking place at this time and may even analysis that would study absenteeism and tardism in schools from K through 12 to see whether there was a relationship between those factors and air pollution. The study is taking place at this time and may even promote the use of transit, of course the transit system won’t work, can’t work and is a self-fulfilling prophecy that it will not. This is not a transit-friendly proposal.

The Comprehensive Plan does not exist by itself. A statement heard earlier, that just because there is a draft Comprehensive Plan for Miller Creek does not necessarily mean that is the final view of that Plan or that it will be adopted into the overall Comprehensive Planning effort for Missoula County. All it means is that this is a stage in the development of comprehensive planning. They need to understand that this does not necessarily mean that there will be a plan in place when that draft is presented tomorrow. In the overall growth management process for the last 2½ years, it reminded him of the Paris Peace talks during the Vietnam war when they spent so much time deciding the shape of the table so they could sit next to each other and decide that they could, in fact, talk. The growth management process is much the same. When Mayor Dan Kemmis initiated that process, one of the initial goals was to see whether the City and County government elected officials could talk to each other and solve common problems, acknowledging that when you fly over Missoula and look down, you don’t see the City-County line. The people of the area don’t see it from ground level either and they don’t care. To a certain degree, they have succeeded in that. They are able to speak frankly about what those common issues are. Some of those issues are played out in what their vision is for the future that they ask the stakeholders to deal with and they ask the general population to deal with. It is interesting to him that, no matter who you ask and how much time you take, the vision for Missoula is the same. And that is, they want a safe and secure place for ourselves and our children to live and one that is healthy, with clean air and clean water. Yet they are...
considering a proposal that would erode that. This is not against the developer. They have a patch of ground and they want to develop it. At the same time, what everyone needs to understand is that they have developed some tenants of development and, even though they may not yet be codified, they are there. That is the direction Missoula is heading and they are called the themes, themes that were adopted by City Council and were adopted by the Board of County Commissioners as County policy.

This project, in addition to not being friendly with respect to school children who have to be bused, is not friendly with respect to pedestrians. It isolates people and maintains them in their automobiles. They cannot get anywhere without driving. He gave the example to ask anyone who lives in Miller Creek how far they have to drive when they need a bottle of milk. He stated you simply cannot continue to develop in a way that creates and continues to create these kinds of problems, not just in a particular community where those people reside but in the balance of the community because, again, we all live together. We do not all live in a single neighborhood, wherever it might be.

He said there was talk that mixed use is a good thing but there is no mixed use here. There was also talk about affordable housing. They can speak about affordable housing but what does really mean? He agreed with Mr. Stevens about the number of $50,000 jobs that Missoula has to support the number and kinds of houses that are going to be constructed here. It is a problem for him to think that they can develop an isolated community of a single economic class and consider that it somehow responds to an urgent housing need where 37% of the people of this County are on some form of public assistance. That does not make sense to him.

There was commentary about the carbon monoxide drop. He referred to a chart he had in front of him which displayed, from 1982 to 1994, reductions in carbon monoxide. But those who remember what Missoula looked like back in the 60’s or back in the days when trees would not grow around here, when there were 13 teepee burners downtown, and you could not see across the valley on a bright summer day because of the smoke, then this statistic would mean something. However, just because you can’t see the air does not mean that it is healthful. We have a serious problem and, even though we have made major scores in Missoula, does not mean that we want to erode on those credits that we have gained and to continue to deteriorate that air quality. What this proposal does not do is discuss with any satisfactory clarity how air quality is going to be addressed. It says, relatively speaking, if we steal development from Bonner, then this development will produce less pollution than if the houses were developed out there. Highly speculative and he does not believe that. What he does believe is that the distance traveled and is required by living in this environment is going to add a significant amount of pollution to the air that we all breathe. On that basis, it is not an acceptable development to him. Further, he does not see a way this impact can be mitigated by this proposal.

The stakeholders were chosen of about 400 people and nearly 60 of those were selected to sit in a process for a very long time to describe the vision for Missoula. Many of those, some of whom spoke tonight held out with the hope that their work would be rewarded. They reflect the vision of the community, the Growth Management Task Force and the people that they presented it to. So it is not a surprise that the vision they articulated tonight is a something they ask that the Board pay close attention to.

He is concerned about the law and there is no question there. He is equally concerned about the sensibilities of this community and how they address them and why they are here and why it is important to pass judgment on a development in a way that does reflect those sensibilities and honor the future generations who have to live here. He does not believe this proposal does that.

Michael Kennedy moved that these two subdivisions, Maloney Ranch Phases I and II, and Maloney Ranch Phases III and IV be rejected in that the air quality issues have not been properly addressed and cannot be mitigated by the proposals set before the Board.

Barbara Evans reminded the Chair that there was already a motion and a second on the floor.

The other two Commissioners and the County staff disagreed.

Fern Hart explained that she did not make a motion, but only stated her position.

Barbara Evans asked Counsel if it was appropriate for the Chair to make a motion?

Colleen Dowdall replied that, typically, the Chair asks for a motion, but will make a motion if none are forthcoming.

Michael Kennedy stated the motion was on the floor and asked for action.

The motion died for lack of a second.

Fern Hart moved that the Board of County Commissioners approve Phases I and II of the Maloney Ranch subdivision, based on the findings of fact and the recommendations of the staff, and contingent on the conditions listed below. Barbara Evans seconded the motion.
Fern Hart went through the 46 conditions:

Condition no. 1 as is;
Condition no. 2, remove Phases “III and IV;”
Conditions 3, 4 and 5 as is;
Condition no. 6, delete;
Condition no. 7 as is;
Condition no. 8, removed Phases III and IV, should read “The covenants and Riparian Management Plan for Phases I and II be approved by the Missoula County Commissioners and OPG prior to final plat.”
Condition no. 9, 10 and 11 as is;
Condition no. 12, remove Phases III and IV;

Colleen Dowdall added that the phrase “Specifically, that the park located to the south of Hungry Horse Road and to the west of the Hungry Horse Road cul-de-sac in Phase III be renamed from “Park” to “Common Area Park” to be clearly shown on the plat, showing the entire length of the common area park should be deleted.
Condition no. 13, 14, 15, 16 and 17 as is;
Condition no. 18, deleted;
Condition no. 19, delete last sentence, which begins “That the developer place on the face of the plat a one-foot no access strip...”;
Condition no. 20, as is;
Condition no. 21, delete;
Condition no. 22, 23, 24, 25, 26 and 27 as is;
Condition nos. 28, 29 and 30, delete;
Condition no. 31 and 32 as is;
Condition no. 33, remove Phases “III and IV;”
Condition no. 34, as is;
Condition no. 35, remove Phases “III and IV;”
Condition no. 36, as is;
Condition nos. 37, 38 and 39, delete;
Condition no. 40, change “Phases I-IV” to “Phases I and II;”
Condition no. 41, remove Phases “III and IV;”
Condition no. 42 as is;
Condition no. 43, remove Phases “III and IV;”
Condition no. 44, as is;
Condition no. 45, skip for now, may change it later; and
Condition no. 46, needs clarification.

David Loomis said the Planning Board, in its deliberations, were given alternatives by the applicant. They chose Park Amendment 3. The total acreage at that time... -- Tom McCarthy may have altered his parks requirement or his “offering” and submittal. But staff does not have anything new on their table. The original recommendation from the staff -- they would go back to having to deal with strictly Phases I and II, would go back to a combination of the so-called alternatives 2 and 3. They can talk about it in detail if they wish. Condition no. 46 was a specific proposal that the Planning Board had.
Michael Kennedy asked where the 15 acres were in the draw?

Barbara Evans said it was an additional 15 acres to what they already offered.

David Loomis said that was correct. Pointing to the map as he spoke, he said the discussion was for how much of the draw should be included because the options included the utility lot, the detention basin park area and a portion of the draw. Staff recommendation for part of Alternative 2 also included a couple of internal lots and easements and walkways connecting two small lots, nos. 18 and 104. There was a system of an internal trails and walkways. At the end of Logan Court, down the draw, that was the staff recommendation in the staff report and that is what staff is recommending at this time. The Planning Board recommended less acreage, he believed. That explains the staff recommendation that was on the table at that time and they should try to find the alternatives. Maybe Tom McCarthy can help with the exhibits in terms of the alternatives. Staff recommendation at that time was not exactly agreed to by the Planning Board. Condition no. 46 was the Planning Board recommendation that had to do with less acreage in the draw and excluding the small lots and pathways with Phase I and II subdivisions.

Tom McCarthy said their original proposal was Alternative 1.

Michael Kennedy told Tom that it was not necessary to go through the whole process. He only wanted to know what Alternative 3 was.

Tom McCarthy said, pointing to the map, said Alternative 3 involved park dedication. Alternative 3 says take part of the draw, put in 2 tot lot parks. There was discussion whether this versus the tot lot parks so the Planning Board suggested to include them.

David Loomis said there were copies provided that Alternate 3 did not include in this particular version -- the draw or the tot lots. The Planning Board went for the park, drainage basin and utility lot and the extension of the corridor along the power lines.

He said the staff recommendation included a portion of the draw, 15 acres, plus the tot lots and easements that connected them. That was the difference. And the park. That was the debate at the Planning Board. They felt staff was being too aggressive and requiring too much. They settled on less than what the staff recommended. He said their recommendation to the Commissioners at this time was the same as it was to the Planning Board in terms of, not all of the draw, but the 15 acres in the lower part plus the park, plus the tot lots plus the trail along the power lines.

Tom McCarthy said the park is 18 acres (again pointing to the map) so 15 acres is most of it. So they said they would give all the draw, including the 7 acre flat part where they want to play baseball, and the whole side all the way down to Lloyd’s next phase. So the walkway could connect into his master plan.

Fern Hart said that is what she remembers and that is what she supports. She talked to some homeowners and this is what the park and open space committee supports.

Colleen Dowdall said, as reflected on this map, which shows the flat area for the baseball fields, the 18 acres in the draw and the walkway that connects up with Linda Vista subdivision.

David Loomis said, if you put Alternate 3 and 2 together, you get the sum of the Planning staff’s recommendations which are a little different than what the applicant is recommending. The sum of those recommendations has to do with the flat area called the Park, the utility lot, the lower half of the draw (approximately plus or minus 15 acres), the trail along the power line easement, and the tot lots and the easements connecting them within Phases I and II. In total, that sum is what the Planning staff recommends which, he reiterated, is different from the applicant’s recommendation.

Colleen Dowdall asked if he wanted the utility lot as park land?

David Loomis said that was offered by the applicant and it is been on the table that way.

Fern Hart said she understood it and has made up her mind.

Barbara Evans asked if she would explain it to her?

Fern Hart went back to condition no. 45. She suggested that it read:

That the approval of this development is conditioned on the developer’s mitigation to the satisfaction of the governing body of adverse effects of water quality, air quality, transportation and schools.

Barbara Evans said she wanted to read how she had it:
Fiscally Year:

That the approval of this development is conditioned on the developer illustrating to the satisfaction of the governing body that there will be no adverse effects on water availability to current residents.

Fern Hart asked if they still needed condition no. 34?

Colleen Dowdall said if you add roadways and transportation in no. 45, you do not need condition no. 34. So condition no. 45 will deal with air, transportation and water. She asked if schools should be included?

Fern Hart answered yes. They have to decide what they will accept for the schools and they are the last arbiters.

Barbara Evans said one of the things that was beneficial to the folks in the Miller Creek area was that the two developers of the Twite proposal and the Maloney proposal had agreed to mitigate the road conditions at the Wye and from Briggs to Meadow Lark, she believes, and down the lower area to the tune of about $715,000, basing their contribution on the number of lots in these subdivisions, if they cut out Phases III and IV. She is concerned that it will not leave them enough money to repair the roads.

Fern Hart said what she is planning for the Board to do is exactly the commitment that she made for Linda Vista Supplement No. 9. That is, within 3 weeks staff would assist the Commissioners to come to some numbers. She intends to operate the same for this. They have different proposals on the table and they have been made in good faith and she understands them, but she will work to do as much mitigation as they can. She promised that they will not hold them up on this project indefinitely.

Barbara Evans asked if that was the end of her motion?

Fern Hart answered yes.

Barbara Evans asked Commissioner Hart for her reasons for deleting Phases III and IV?

Colleen Dowdall stated that the Commissioners had decided to deal with them separately. Thus, she suggested that they deal with Phases I and II now and, when they make their motion to deny III and IV, they can state their findings at that time.

Barbara Evans seconded the motion.

Michael Kennedy gave a synopsis of the motion and said the motion was to approve Phases I and II, subject to the conditions as modified which had the effect of excluding Phases III and IV and expand condition no. 45 to include mitigation requirements for air, transportation, water and schools. He asked if there was any further discussion?

Fern Hart clarified condition no. 46. The proposal is that, for the park dedication, they have the area in the draw, which is about 18 acres, the flat part which is for active play and is about 7-8 acres, the long trail park that connects Phase I and II to the Linda Vista development, and the utility lot.

Colleen Dowdall commented that she did not know why they would want the utility lot.

Tom McCarthy stated everything on the utility lot is under ground. It is a flat area with no surface use, but it can be a utility easement.

Colleen Dowdall said then it would be all right.

Fern Hart asked if she should include it in the motion?

Colleen Dowdall replied yes. In her notes, she referred to the areas by the northwest corner and the western edge and the eastern, so she can give them to Commissioner Hart so she can refer to the park areas.

Fern Hart said the Chair asked her who was going to maintain it.

Colleen Dowdall answered that part of it was park dedication and part of it is common area. There were requirements within the conditions for homeowners' association and assessments and maintenance.

Michael Kennedy said, before they act on the motion, he wanted to make some comments. He said he wanted to stress the importance of the decision that is being made. Even the proposal compared to some proposals in that it is remarkable in its detail. In his judgment, it falls short with respect to air quality. Even with the strong language that was offered by Commissioner Hart for condition no. 45 regarding mitigation requirements, he is worried that it still will not be possible to mitigate the damage to the community's airshed satisfactorily. They will be faced with accepting a mitigation plan that, in fact, compromises our health. Having said that, he asked for a vote on the motion.
Motion carried 2-1. Michael Kennedy opposed. The revised conditions are listed below.

1. The County Surveyor shall approve final plans for grading, drainage, erosion control, road design, intersection location and design, storm drainage design, sidewalk, trails, walkways and bike lanes within the dedicated rights-of-way prior to final plat approval. Final as-buils shall be supplied for the constructed public improvements, including drainage after the final construction takes place.

2. That fire protection systems within the subdivision shall be approved by the Missoula Rural Fire District, including hydrant location, the water supply for fire protection purposes for the existing and proposed structures, prior to final plat approval. That Phases I and II be annexed into the Missoula Rural Fire District, to be approved by the Missoula Rural Fire District, prior to final plat approval.

3. That storm drainage, water supply systems, detention basin (to be constructed prior to site grading and street construction so it can function as a sediment control structure while site grading and construction is taking place, to be approved by the County Surveyor prior to final plat approval), and sanitary sewer system, water system, and storm drainage system designs be approved by the Montana State Water Quality Division. The County Surveyor shall also approve the storm drainage system prior to final plat approval. That the lifting of sanitary restrictions be obtained prior to final plat approval. An erosion control plan for the projects under the Montana Pollutant Discharge Elimination System (MADES) be filed with the Montana Water Quality Division by the owner or contractor prior to commencement of construction and prior to final plat approval.

4. That the developer shall identify maintenance responsibility for drainage improvement outside of the public right-of-ways and shall dedicate or obtain the necessary drainage easements outside of the platted subdivision, in particular the “Ginter Swale” (to be graded, seeded and vegetation planted in conjunction with the site grading and street construction), to be approved by the Health Department prior to final plat approval.

5. That fire protection systems within the subdivision shall be approved by the Missoula Rural Fire District, including hydrant location, the water supply for fire protection purposes for the existing and proposed structures, prior to final plat approval. That Phases I and II be annexed into the Missoula Rural Fire District, to be approved by the Missoula Rural Fire District, prior to final plat approval.

6. That plans and easements for public trails, walkways and common area park improvements be approved by the Missoula County Park Board, the County Commissioners and the OPG, to be approved prior to final plat approval.

7. That the covenants and Riparian Management Plan for Phases I and II be approved by the Missoula County Commissioners and OPG prior to final plat approval.

8. The developer shall place all new utilities underground, and easements shall be a minimum of 20 feet in width unless the appropriate utility and the governing body approve a narrower width. In addition to showing the location of the utility easement, the final plat shall include the following statement:

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

9. That the developer place on the face of the plat a no build/no improvements/no grading/no infringement zone along the south 25 feet of Lots 89-101, Phase II and add this restriction to the covenants, to be approved by the OPG prior to final plat approval.

10. That all walkways and trails constructed within the dedicated common area parks shall have a 20 foot wide public access walkway easement centered upon the constructed walkway or trail.”

11. All park areas shown on Phase I and II shall be labeled and dedicated as “Common Area Park” on the face of the plat (That the park located along the easterly boundary of Phase I and II be renamed from “Park” to “Common Area Park”, to be clearly shown on the face of the plat.). The following statement shall be placed on the face of the plat, “All common area parks are subject to dedication in part or whole as public parks at the joint request of the Missoula County Park Board and the Board of County Commissioners.”

12. If requested by the County Attorney, a statement about Transportation Mitigation Impact Fees and/or RSID/SID’s for transportation improvements be placed on the face of the plat, to be approved by the County Attorney prior to final plat approval.
13. If requested by the City of Missoula Engineering Department, that a statement for the waiver of right to protest annexation for Phases I and II be placed on the face of the plat, to be approved by the City Engineer prior to final plat approval.

C. Transportation and Roadway Improvements Conditions:

14. That the interior streets within Phase I and II shall be 36 feet wide, back of curb to back of curb with no designated asphalt bike lanes on both sides (but room enough for bicycle transportation on both sides), a street contiguous 5 foot wide concrete sidewalk on both sides on the streets as shown on the Street Section of the preliminary plat. The developer shall install the sidewalks. Boulevard trees shall be placed within the 9 foot wide boulevard located behind the sidewalks on both sides of the streets. The boulevard trees and grass and landscaping for each lot shall be installed by the home owner at the time of construction of the home. Boulevard trees shall be placed at a normal spacing of approximately every 30 feet average spacing and so as to avoid conflict with private driveways and utilities.

15. That the re-aligned portion of Lower Miller Creek Road shall be constructed by the developer in conformance with the recommended typical street section (See Attached Phase I, II Street Section). This includes a dedicated 60 foot road right-of-way, a 32 foot wide paved street surface, edge of asphalt to edge of asphalt, including a 4 foot wide asphalt bike lane on both sides of the street, and a 20 foot dedicated public walkway easement on the north side on property adjacent to the subdivision, extending from the northwest corner of Lot 1, Phase I to the westerly intersection of Lower Miller Creek Road and Jadine Drive. This also includes 12 foot wide boulevards adjacent to the property line on both sides of the streets. Boulevard trees shall be placed at an average spacing of 30 feet and so as to avoid conflict with driveways and utilities. The developer shall install the trees on the north side of the street and the lot owners shall install the trees on the south side of the street.

16. That the following streets shall be renamed: Laurel Court, and the realigned portion of Lower Miller Creek road until the existing Lower Miller Creek Road is vacated to the west as shown on the Maloney Ranch Master Plan (development plan), to be approved by the County Surveyor prior to final plat approval.

17. That the developer place on the final plat a one-foot no access strip along the south side of Lower Miller Creek Road along Maloney Ranch Phases I/II, extending from the northeast corner of Lot 2, Phase I to the northwest corner of Lot 112, Phase II (with the exception of Lot 1, Phase I), including Lots 2, 14, 15, 31, 32, 52 of Phase I and 53 and 112 of Phase II.

FOR CONDITIONS 15-19, SEE ATTACHED RECOMMENDED STREET SECTION EXHIBITS

D. Non-Motorized Transportation System Conditions:

18. That the street contiguous 5 foot wide concrete sidewalks (with curb and gutter) on both sides of the interior streets of Phase I and II shall be constructed by the developer along with the construction of the streets, to be approved by the County Surveyor.

19. That the major and minor collector trails and walkways not within the dedicated public right-of-ways shall be constructed by the developer as part of required plat public improvements, to be approved by OPG.

20. For Phases I and II that a major collector trail, walkway and bikeway, 10 feet wide made of asphalt or recycled asphalt be constructed by the developer as part of the required plat public improvements, extend from the northeast corner of Phase I to the southeast corner of Phase II and extending from the Jordon Court, Geraldine Court, Victor Court and Laurel Court (to be renamed) cul-de-sacs to the east, with the plan to be consistent with the attached Trails and Walkways and be approved by the OPG prior to final plat approval.

21. For Phases I and II that a major collector trail, walkway and bikeway, 10 feet wide made of asphalt or recycled asphalt within a 20 foot wide public access easement be constructed by the developer as part of the required plat public improvements, extending from the northeast corner of the 1.0 acre utility lot to the southeast corner of the proposed school site along the north side of Lower Miller Creek Road, with the plan to be consistent with the attached Trails and Walkways Plan and be approved by the OPG prior to final plat approval.

22. For Phases I and II that a minor collector trail and walkway, 8 feet wide made of gravel, woodchip or compacted surface meandering alignment within a 20 foot wide public access easement centered upon the as built trail, be constructed by the developer as part of the required plat public improvements, extending from the Logan Court cul-de-sac to the northwest corner of Lot 112, Phase II, with the plan to be consistent with the attached Trails and Walkways Plan and be approved by the OPG prior to final plat approval.
23. For Phases I and II that a 60 foot wide public access easement be placed on the face of the plat, extending from where Lower Miller Creek Road ends adjacent to the northeast corner of Lot 112, Phase II to the northwest corner of Lot 112, Phase II, to be approved the OPG prior to final plat approval.

24. For Phases I and II that a contiguous walkway and bikeway, 4-5 feet wide, made of asphalt along both sides of Lower Miller Creek Road be constructed by the developer, as part of the plat public improvements, extending from the northwest corner of Lot 1, Phase I to the northwest corner of Lot 112, Phase II, with the plan to be consistent with the attached Trails and Walkways Plan and be approved by the OPG prior to final plat approval.

E. Miscellaneous Conditions:

25. The developer shall file covenants with the plat which address the following (The following additions to the covenants shall not be amended without prior approval of the Missoula County Board of County Commissioners):

A. Domestic pets are to be kept in a contained area on each lot to avoid wild animal harassment
B. Pets shall be fed indoors, and pet food shall be stored indoors
C. Garbage shall be stored in well sealed containers inside storage units
D. Permanent barbecue pits are prohibited. All portable barbecues shall be cleaned regularly and stored indoors when not in use
E. Flowers, ornamental shrubs and fruit trees may be susceptible to damage from wildlife, therefore planting of native vegetation is encouraged
F. All garden fences shall be constructed at least eight feet in height and one foot below the soil to prohibit animal intrusion, using a solid top rail on all fencing made of something other than wire to avoid animal entanglement
G. Compost piles shall be enclosed
H. Provide a copy of the brochure titled *Living with Wildlife* to the owners and tenants.
I. Woodstoves and *woodburning* fireplaces are prohibited from being installed.

26. The developer shall be responsible for dust abatement for all grading upon start of and during grading and road construction. Plans for dust abatement shall be approved by the Health Department and the County Surveyor.

27. The developer shall file a document of record with the Missoula County Clerk and Recorder which outlines the density transfer and shows how overall density is met for this Maloney Ranch Phases I, II, III and IV subdivision with regard to transfers from adjacent property held by the Maloney Ranch Properties, L.L.C. Language shall be approved by the County Attorney and the document shall be filed prior to filing the final plat.

28. That the developer contact Mountain line and develop a plan for the incorporation of transit amenities such as pull-outs, benches and shelters into Phases I and II (where applicable), to be approved by OPG prior to final plat approval.

29. That the developer agree to increase the Lower Miller Creek right-of-way from 60 to 80 feet, extending from northern boundary of Phase I to easterly-most boundary of Phase II, if and when the County Surveyor determines it is needed, the agreement to be approved by the County Surveyor prior to final plat approval.

F. Other Conditions:

30. That the Maloney Ranch Phases I and II preliminary plat have a preliminary plat approval time period until December 31, 2000.

31. That the Maloney Ranch Phases I and II subdivision covenants shall provide for the establishment of an Architectural Control Committee to be responsible for approving each building and site plan for complementary building design, and conformance to covenants.

32. That the developer of Maloney Ranch subdivision will petition into the Missoula Urban Transportation District (MUTD) so that public transit can be provided to the subdivision in the future.

33. That any common areas be dedicated with the Maloney Ranch Phases I and II subdivision shall be dedicated within the boundaries of the final plat.
34. That all common area parks shall be maintained by the homeowner’s association with specific maintenance language to be placed in the covenants, to be approved by the OPG prior to filing the final plat.

35. That the approval of this development is conditioned on the developer’s illustrating mitigation, to the satisfaction of the governing body, of adverse effects of water quality and availability, air quality, transportation and schools to current residents.

36. That Park Alternative 3 be approved to include approximately 18.0 acres of park in the “draw” area, the utility lot, the long trail that connects Phase I and II with the Linda Vista Development and 7-8 acres of play area.

Fern Hart moved that the Board of County Commissioners deny the subdivision for Maloney Ranch Phases III and IV.

Fern Hart visited the site earlier in the day and learned a lot. She does not want to continue cul de sacs the way they have in the past and she sees this as a problem. Further, she researched problems with power lines at the library and some of the things she read was that they decided not to put the line through the Rattlesnake because there was too much development, so they ran it up Miller Creek. This was an area that was chosen because it was rural. She is concerned about this. They do not know anything definite about them. Some of the concerns she found were in the Missoulian, which stated “exposure to power lines and non-ionizing plant may or may not be harmful. Direct exposure to ionizing energy has been proven to damage health. That is why it is advisable to keep some distance while watching TV and using microwave ovens, because the issue of magnetic and electric fields are emotional and the effects are as yet unknown. Many utilities in some states advise people prudently avoid unnecessary exposures.” She noted these were comments made by an expert that was called in. She said there could be mitigation and they will deal with it when they are presented with it. But, for today, she proposes a denial for this request.

Another concern she has for this subdivision has to do with water. She thinks the proposal to use the Twite water system is a good one. They are getting strung out in those canyons and fire danger is not prepared for. These are her reasons for her motion.

Michael Kennedy seconded the motion. Motion carried 2-1. Barbara Evans opposed.

He added that the distance issue and the water quality impact are issues for him. The air quality issue is even more serious because of the sheer distance. Regarding the BPA line, people would be surprised at the number of lines that criss-cross that property. It is serious. This is one of those pieces of property that is best undeveloped.

The meeting adjourned at 11:40 p.m.

The Board of County Commissioners voted to deny approval of Maloney Ranch Phases III and IV. The Commission found the following:

1. That the existence of high voltage power lines resulted in an impact on the health, safety and welfare of the potential residents;
2. That the plan included the use of cul de sacs, which impacts the transportation system and the safety of residents of the subdivision for emergency services;
3. That the adequacy of the supply of water was not sufficient to serve the needs of this subdivision, especially for fire protection;
4. That the subdivision would result in impacts on existing water users in the area both in quantity and quality; and
5. That the distance of the subdivision from the community results in impacts on the air quality of the Missoula valley.

From these findings, the Commission concluded that these unmitigated impacts are unacceptable and thus, preclude approval of the plats for Phases III and IV.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
federal funds for the Health Department. Duration of the project is July 1, 1996 through June 30, 1997. The contract was returned to Peggy Seel in OPG for further handling.

**Contract** - The Board of County Commissioners signed a Contract with Treweek Construction for construction of a prefabricated steel building. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

**Contract** - The Board of County Commissioners signed a Contract with Advanced Environmental Technical Services for household hazardous waste disposal. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Other items included:

1) Mike Sehestedt, Deputy County Attorney, and Hal Luttschwager, Risk Manager, authorized settling the Bruce Edwin Bair case (94-149-XN-CCL) for $8000.00.

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

**PUBLIC MEETING -- SEPTEMBER 11, 1996**

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present was Commissioner Fern Hart.

**HEARING: REQUEST TO ALTER COUNTY ROADS - HUSON AREA (CYR)**

Alan Elmstrom, a resident within the Cyr property, said they found out a couple of months ago that there are some old surveyed roads that are no longer in use that go through the Cyr property. One GLO road was surveyed in 1877 and, as far as they can tell, no one has used that road at all. In Book 1, the road is probably the old wagon trail that went up the 9 Mile Creek and is no longer used. The County road passes through the property as does the State Highway. The County road and State Highway give access to all the surrounding properties. They would just like to have those roads altered to the County road and State road so they are no longer showing on their property. He has resided on the property for approximately 34 years.

Michael Kennedy opened the public hearing.

Irene Cyr, a resident of the property for 50 years, said the roads have never been used and you can’t hardly find where they were.

James Cyr said the unused road crosses the County road twice. It runs at the creek bottom and ends at the river.

Michael Kennedy thanked everyone for the comments and asked if anyone else wanted to speak. No one came forward and he closed the public hearing. At this time, a County Commissioner and the County Surveyor will go out to the site and review it. The decision will be made for this request on October 2, 1996.

**CONSIDERATION OF: RAINBOW BEND ESTATES NO. 3 (SUMMARY PLAT), 8 MILES EAST OF BONNER**

Lisa Moisey, Office of Planning & Grants, said this is a request from Jeanette and Thomas Ailport for a 3-lot subdivision on 7 acres located 8 miles east of Bonner on Highway 200. Access to the subdivision will be from Highway 200 and there is a private access driveway which accesses unto Lot 10 from Highway 200. The developer is intending to use the driveway, extend it to the left along an existing 60 foot emergency vehicle access easement and then create an additional 30 foot easement along Lot 9 to extend the driveway to serve Lots 9 and 11. Because the driveway will serve 3 lots for about 100 feet on the bottom portion of Lot 10, the developer has asked for a variance request from the subdivision requirement for access lanes serving 3 or more lots meet County roadway standards. In this case, the developer is proposing to meet County driveway standards. So the variance request is for essentially 100 feet along the south end of Lot 10. The property is unzoned in the County. The Comprehensive Plan designation for this rural low density which recommends a maximum residential density of one dwelling unit per 10 acres. The proposed density of Rainbow Bend is one dwelling unit per 2 acres. While the proposal does not comply with the Comprehensive Plan in this aspect, it is consistent with adjacent and surrounding land uses, including Rainbow Bend Estates 1 and 2, which were approved subdivisions in 1988 and 1990. The illustration in the Commissioners’ packet shows the lot sizes of the surrounding parcels. Individual well and septic are proposed to serve these lots. The developer is asking for an additional variance request from pedestrian walkways, which would apply to Highway 200. OPG staff recommends approval of the variance requests, based on the findings of fact. This subdivision is also located on a primary travel corridor as defined in the County subdivision regulations. It is OPG staff’s opinion that the intent of these regulations have been met given that the vegetation along Highway 200 is thick. This development would be essentially invisible from Highway 200. OPG recommends approval of this subdivision request, contingent on the conditions listed in the staff report.

Ron Ewart, Eli & Associate, said there are existing covenants on the property. They will be amended to include all the items having to do with the wildlife. As Lisa said, the area is quite wooded. The river is on the other side of the Highway and to the north there is a steep rocky slope. Thus, this is the only land left that could be subdivided. These lots are the larger of the other lots on that side of the road in that area. They don’t have any problems with any of the conditions.

Fern Hart said she did not have any questions. Commissioner Kennedy went out to the site and viewed it that morning and his remarks satisfied any concerns she had about the property.
Fern Hart moved that the Board of County Commissioners grant the variance for Rainbow Bend Estates No. 3, located in the NE¼ of Section 10, T13N, R17W, Principal Meridian, on Highway 200 East, 7 miles east of Bonner, from Section 3-2(3) which requires to widen the surface width of the private road, based on the findings of fact. Michael Kennedy seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners grant the variance for Rainbow Bend Estates No. 3, located in the NE¼ of Section 10, T13N, R17W, Principal Meridian, on Highway 200 East, 7 miles east of Bonner, from Section 3-2(5)(A) from the requirement to construct sidewalks and pedestrian walkways, based on the findings of fact. Michael Kennedy seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners approve the summary plat for Rainbow Bend Estates No. 3, located in the NE¼ of Section 10, T13N, R17W, Principal Meridian, on Highway 200 East, 7 miles east of Bonner, contingent on the conditions listed below, and based on the findings of fact and on staff recommendation. Michael Kennedy seconded the motion. Motion carried 2-0.

1. The County Surveyor shall approve grading, drainage, erosion control, road and driveway plans before approval of the final plat.
2. The Montana Department of Transportation shall approve access and approach permit before filing the final plat.
3. The private driveways shall be all weather surface, with a minimum of 12 feet width and a minimum unobstructed clearance of 20 feet. In lieu of two access routes, provide turnarounds for turning around fire apparatus. The Fire Marshall shall approve plans before final plat filing.
4. The private gravel road, within the emergency vehicle access and private access easement, shall have a paved 20 feet by 20 feet apron, subject to the approval of the County Surveyor.
5. The developers shall file covenants with the plat which address the following (The following additions to the covenants shall not be amended without prior approval of the Missoula County Board of County Commissioners):
   a. Provide a minimum unobstructed width of not less than 20 feet and an unobstructed clearance of 13 feet 6 inches for any driveway over 150 feet.
   b. Provide approved provisions for turning around of fire apparatus for dead-end driveways in excess of 150 feet.
   c. Provide a copy of the brochure titled Living with Wildlife to the owners and tenants.
   d. The Missoula Rural Fire District shall approve plans to create a defensible space for fire protection around the structures on Lots 9 and 11.
   e. Permanent barbecue pits are not permitted due to potential wildlife-human conflict. Clean portable barbecue grills regularly and store indoors when not in use to prevent wildlife attraction.
   f. Fence and protect flowers, ornamental shrubs, fruit trees, and gardens which may be susceptible to damage from wildlife. Plant native vegetation for landscaping and revegetation. Harvest all fruit trees properly so as to not allow an accumulation of rotting organic matter which is a prime wildlife attractant.
   g. Enclose gardens with a fence 1 foot below ground level and at least 8 feet in height, with the top rail made of something other than wire to prevent wildlife entanglement. Keep all compost piles in wildlife proof containers.
   h. Do not use or maintain any lots as a dumping ground. Do not allow any rubbish, trash, or other waste to accumulate, except in sanitary containers. Empty and remove waste in such containers from the premises at least on a weekly basis. Store all garbage in containers of metal, plastic, or other suitable material which has sufficiently tight fitting covers to prevent the escape of noxious odors and to prevent entrance or destruction by wild animals. Store all garbage cans indoors or in a wildlife-proof container in a clean, orderly condition.
   i. Do not allow salt blocks and feeding platforms for deer or mineral blocks for horses on any premises. Store horse or livestock feed in a secured area, not accessible to wildlife.
   j. Store pet and livestock food, such as hay, alfalfa, pellets, and grain, indoors or in wildlife proof containers. Feed domestic pets indoors or in an enclosed area to prevent the attraction of wildlife.
   k. Do not allow domestic pets, such as dogs, cats, etc. to run free and potentially harass wildlife. Keep dogs and cats in an enclosed structure when not under direct supervision of owner.
   l. The keeping of rabbits, chickens, turkeys, pigs, sheep, and goats is discouraged. If such animals are kept, build sturdy cages or fences to protect domestic animals from wildlife. These animals have no defense against predators and can be an attractive food source to many wildlife species.
   m. Provide a minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches for any driveway over 150 feet.
CONSIDERATION OF SWAN RIVER VIEW ESTATES (SUMMARY PLAT), 5 LOTS - NORTH OF CONDON

Lisa Moisey, Office of Planning & Grants, said this is a request from Arthur Gary Anderson for a 5 lot subdivision of 110 acres, north of Condon, near the County line. Access to this subdivision is from Highway 83. Individual well and septic are proposed for these lots. A homeste currently exists on the proposed Lot 5 and a gift shop and shed are located on proposed Lot 2. The property is unzoned and the 1987 Swan Valley/Condon Comprehensive Plan designates this area as rural low density, with a recommended density of 1 dwelling unit per 10 acres. This proposal has an overall density of one dwelling unit per 22 acres. The Swan River runs through the western end of the property. The developer has identified the riparian area on the floodplain along the river on that property. Staff recommends, in one of the conditions, that area be labeled as a no-development zone to ensure maximum protection possible for this river and its associated riparian areas. Staff also recommends to amend the conditions to include a condition that the developer comply with the Primary Travel Corridor Standards to buffer and screen any development which would be located on proposed Lot 2 and 4. The Standards require 1 tree for every 30 feet of linear footage along the corridor, however, along Lots 2 and a portion of Lot 4, there is an open area that appears to have been cleared for agricultural uses. Staff also recommends a 50 foot setback for all buildings on Lot 3 to provide for protection against potential erosion of the river bank. That portion of the Swan River has a relatively steep bank that shows a considerable amount of erosion. The applicant has requested a variance from the sidewalk requirement. Staff recommends approval of that variance based on the findings of fact. This subdivision is also located on a primary travel corridor as defined in the subdivision regulations. A good portion of the frontage has a considerable amount of trees and forested area. However, along Lots 2 and a portion of Lot 4, there is an open area that appears to have been cleared for agricultural uses. Staff recommends to amend the conditions to include a condition that the developer comply with the Primary Travel Corridor Standards to buffer and screen any development which would be proposed on Lot 2 and 4. The Standards require 1 tree for every 30 feet of linear footage along the corridor, recognizing that this is a rural area and that there is opportunities for design options. Staff recommends working with the developer on proposing clustering trees around the proposed developments that would occupy those lots. Regarding condition no. 4, she recommends adding the word “clearance” so that it reads “…all weather surface with a minimum clearance of 20 feet width.” OPG staff recommends approval of the subdivision based on the findings of fact and subject to the amended conditions.

Michael Kennedy asked if there was a setback requirement on Highway 83?

Lisa Moisey answered there would be for commercial property along the travel corridor.

Ron Ewalt, Efl & Associate, said he was representing the Andersons. Gary Anderson grew up on this property and will retain ownership of Lot 5, the largest of the lots. He would like to create a subdivision that looks nice. They have drawn up covenants, which will be extended to include the recommendations of condition no. 8, which mainly have to do with wildlife concerns. In the Swan Valley, you will always be dealing with wildlife and they are doing everything they can to mitigate any conflicts and preserve their habitat as much as possible. Regarding natural resources, the Swan River runs to the west of the property. They have submitted a Riparian Management Plan, which Zoe Mohesky, Rural Planning, discussed with them. Zoe gave him a list of changes to make and they plan to work on that. They will have her approval before they file the final plat. The riparian area will, of course, be in a no-build zone. They also agree with the condition for the 50 foot setback on Lot 3 from the river bank. That is a steep bank, however, he does not feel there has been any erosion there in the last 15 years or so. The air photo, that the Commissioners have was taken about 1983 and, from their surveying, it does not appear to have eroded. They have consulted with soil conservation service and others to figure out how to best protect the bank and the riparian area. They don’t have any problems with any of the conditions. Regarding the Primary Travel Corridor Standards, he spoke to Gary about that and, in this area, there are a lot of trees. Most of this property is wooded. There is a lot of Ponderosa Pine and, toward the river, there is also Cottonwoods and Aspens. There is an open area in the middle of the property on either side of the road, which can be a good thing. For instance, it provides for views. From that location, you can look out across the Swan River or the see the Swan Range. The State Highway Department built a pull-out on Lot 1 where people often pull-over to look at the view. The people who might build on Lots 1, 2 or 3 may wish to select a species of their choice and plant trees, rather than having trees already in place before they move in. These will be nice-looking houses. He does not see requiring them to be screened from view as necessary. The Swan Valley Highway is packed...
with trees. So when there is an opening, it is nice to see the mountains. So they would prefer to leave the property as it is and let the property-owners decide what kind of trees they would like.

Michael Kennedy asked, then, if Ron would like the suggested condition for the Primary Travel Corridor Standards to be withdrawn?

Ron Ewart answered that was correct.

Fern Hart asked if Mr. Anderson owned all this property and would retain the largest acreage for himself? And did he own the gift shop?

Ron Ewart answered yes to all of her questions.

Fern Hart asked if there would be an access issue off of the Highway?

Ron Ewart answered that the accesses shown on the map in the Commissioners’ packets are existing, approved accesses.

Michael Kennedy asked if those accesses would serve all of the lots?

Ron Ewart replied yes. He said there was another access on Lot 4 toward the south but they will not be using that.

Lisa Moisey commented that landscaping is required to be 25 feet back from the right-of-way line and they generally take that as an average. If there is anything other than a residential structure, the setback is 50 feet.

Michael Kennedy noted that would substantially reduce the size of Lot 3.

Fern Hart asked Counsel if there was a residential setback?

Colleen Dowdall, Deputy County Attorney, answered that the Regs state: “All buildings on parcels adjacent to a designated primary travel corridor shall be setback a minimum of 50 feet from the property line adjacent to the roadway of the travel corridor and public or private streets or roads. The minimum setback line shall be placed on the face of the recorded plat.” It also says “For purposes other than single-family development, an overall design plan is required” and also covenants and height restrictions.

Gary Anderson commented that he thought it would be better not to plant the trees at this time and leave the area open. The view is beautiful, so even the people driving on the Highway can see the mountains.

Michael Kennedy said his concern was, that as the land up there is developed, unless there is a restriction on the travel corridor, those trees will continue to come down. He asked for suggestions on how to best handle this.

Colleen Dowdall replied that, in a meeting the day before, they were thinking of landscaping that was similar to a farmhouse near St. Ignatius, that is surrounded by tall, different kinds of trees, and looks attractive.

Gary Anderson asked if that kind of set-up would meet the requirements?

Colleen Dowdall answered yes.

Gary Anderson asked if it was his responsibility to put the trees in, if they go this route, or leave it to the future property-owners?

Michael Kennedy answered that, if it will be a condition, he will have to comply with it.

Colleen Dowdall suggested that they could put this as a requirement in the covenants.

Lisa Moisey said, the difficulty of this is, no one at this time knows where the building sites will be. That will be up to the individual purchasers. Thus, it seems more appropriate for those future owners to put in the buffering and screening trees and shrubs.

Fern Hart suggested “framing” instead of “screening.” She agreed that this was a beautiful view. She suspects that the homeowner there will want to place his own trees and does not think that running a strip of trees along the road is the best scenario. She trusts the applicant’s artistic judgement not to ruin that property.

Gary Anderson appreciated that.

Fern Hart moved that the Board of County Commissioners grant the variance for Swan River View Estates, located in the SW ¼ of Section 14, T21N R17W, Principal Meridian, north of Condon on both sides of Montana State Highway 83, from Section 3-2(5)(A) which requires sidewalks and pedestrian walkways for all subdivisions, based on findings of fact and the recommendations of the staff. Michael Kennedy seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners approve the summary plat for Swan River View Estates, located in the SW ¼ of Section 14, T21N R17W, Principal Meridian, north of Condon on both sides of Montana State Highway 83, contingent on the conditions listed below, and based on the findings of fact and recommendations of the staff. Michael Kennedy seconded the motion. Motion carried 2-0.

1. The County Surveyor shall approve grading, drainage, erosion control, road and driveway plans before approval of the final plat.
2. The Montana Department of Transportation shall approve access and approach permit before filing the final plat.

3. The private gravel driveways shall have a paved 20 feet by 20 feet apron, subject to the approval of the County Surveyor.

4. The private driveways shall be all weather surface with a minimum clearance of 20 feet width. In lieu of two access routes, provide turnarounds for turning around fire apparatus. The Fire Marshall shall approve plans before final plat filing.

5. The developer shall enter into a development agreement with Missoula County to submit a Riparian Resource Management Plan, to be approved by the Office of Planning and Grants before final plat approval.

6. The developer shall clearly label the shaded area on the face of the plat "No Development Zone".

7. The developer shall place all structures on Lot 3 at least 50 feet from the top of the bank of the Swan River. State the 50-foot minimum setback for Lot 3 on the face of the plat.

8. The developer shall file covenants with the plat which address the following (The following additions to the covenants shall not be amended without prior approval of the Missoula County Board of County Commissioners):
   a. Provide a minimum unobstructed width of not less than 20 feet and an unobstructed clearance of 13 feet 6 inches for any driveway over 150 feet.
   b. Provide approved provisions for turning around of fire apparatus for dead-end driveways in excess of 150 feet.
   c. Provide a copy of the brochure titled Living with Wildlife to the owners and tenants.
   d. The Condon Volunteer Fire Department approve plans to create a defensible space for fire protection around the structures on Lots 1, 2, 3, 4, and 5.
   e. Permanent barbecue pits are not permitted due to potential wildlife-human conflict. Clean portable barbecue grills regularly and store indoors when not in use to prevent wildlife attraction.
   f. Fence and protect flowers, ornamental shrubs, fruit trees, and gardens which may be susceptible to damage from wildlife. Plant native vegetation for landscaping and revegetation. Harvest all fruit trees properly so as not to allow an accumulation of rotting organic matter which is a prime wildlife attractant.
   g. Enclose gardens with a fence 1 foot below ground level and at least 8 feet in height, with the top rail made of something other than wire to prevent wildlife entanglement. Keep all compost piles in wildlife proof containers.
   h. Do not use or maintain any lots as a dumping ground. Do not allow any rubbish, trash, or other waste to accumulate, except in sanitary containers. Empty and remove waste in such containers from the premises at least once a week basis. Store all garbage in containers of metal, plastic, or other suitable material which has sufficiently tight fitting covers to prevent the escape of noxious odors and to prevent entrance or destruction by wild animals. Store all garbage cans indoors or in a wildlife proof container in a clean, orderly condition.
   i. Do not allow salt blocks and feeding platforms for deer or mineral blocks for horses on any premises. Store horse or livestock feed in a secured area, not accessible to wildlife.
   j. Store pet and livestock food, such as hay, alfalfa, pellets, and grain, indoors or in wildlife proof containers. Feed domestic pets indoors or in an enclosed area to prevent the attraction of wildlife.
   k. Do not allow domestic pets, such as dogs, cats, etc. to run free and potentially harass wildlife. Keep dogs and cats in an enclosed structure when not under direct supervision of owner.
   l. The keeping of rabbits, chickens, turkeys, pigs, sheep, and goats is discouraged. If such animals are kept, build sturdy cages or fences to protect domestic animals from wildlife. These animals have no defense against predators and can be an attractive food source to many wildlife species.
   m. Lot owners shall meet the intent of the Primary Travel Corridor Standards by planting trees and shrubs to frame building sites from Highway 83.

9. The Condon Volunteer Fire Department shall approve water supply for fire protection purposes for the existing and proposed structures before final plat filing.

10. The owner shall pay to the Condon Volunteer Fire Department a $50 fee per lot or dwelling unit for the purpose of funding a large diameter hose fund before final plat filing.

11. The following statements shall appear on the face of the final plat and on all instruments of conveyance:

   "Acceptance of a deed for a lot within this subdivision shall constitute: 1. Assent by the lot owner to waive the right to protest an RSID or SID affecting said property for the purpose of financing the design and construction of public water and sewer benefits to said property; and 2. An agreement whereby the owner shall connect to
CONSIDERATION OF: WHITE’S ACRES (SUMMARY PLAT) 2 LOTS - NEAR TURAH

Lisa Moisey, Office of Planning & Grants, said this was a request from Tom White for a two lot subdivision on 20 acres in the Turah area. This property is accessed by the Turah frontage road, which is paved and maintained by the County. The developer intends to create an approximate 3½ acre lot and one 17 acre lot. Each lot will have an individual well and septic. The property is unzoned and the Missoula County Comprehensive Plan designates this area as suburban residential, which allows for up to two dwelling units per acres if services are available. A unique characteristic about this property is that there is identified riparian area on proposed Lot 2. The developer has presented a management plan, which has been reviewed by OPG and they are satisfied that it meets the intent of the regulations. She recommended a change for condition no. 2.C, omitting the word “graveled,” thus reading “…the driveway shall have an unobstructed width 20 feet and a vertical clearance of 13 feet 6 inches…” OPG recommends approval of the subdivision based on the findings of fact and subject to the amended conditions.

John Kellogg, Professional Consultants, Inc., said he is representing Tom White, the owner of the property. He said they are in agreement with the entire report.

Michael Kennedy said, in looking at the aerial photo, he noticed where the top part of the lot was indented, there appears to be a junkyard.

John Kellogg said it was a used car lot. Tom White restores old Studebaker models and he has a number of them there. However, you cannot see them from the road or any adjoining properties.

Fern Hart moved that the Board of County Commissioners approve the summary plat for White’s Acres Subdivision, located along Turah Road, 1.25 miles southeast of Turah, Section 12, T12N R18W, P.M.M., contingent on the conditions listed below and based on the findings of fact and on the recommendations of staff. Michael Kennedy seconded the motion. Motion carried 2-0.

1. Access locations shall be approved by the State Highway Department, prior to plat filing.
2. The developer shall enter into a development agreement or covenant that runs with the land, with Missoula County, to address the following subdivision requirements:
   A. Appropriate portions of Fire Standards for Wildland/Residential Interface;
   B. That the owner and tenants be provided with a copy of the brochure titled, "Living With Wildlife;"
   C. If the driveway for Tract 2 is greater than 150 feet in length, the driveway shall have an unobstructed width of 20 feet and a vertical clearance of 13 feet 6 inches, turn-arounds shall be provided, and plans shall be approved by the appropriate fire jurisdictions.

The development agreement or covenant shall be approved by the County Attorney prior to plat filing.

3. The developer shall pay a $50.00 fee to the Missoula Rural Fire District for the large diameter hose fund, prior to plat filing.
4. The developer shall place the following statement on the face of the plat and in each instrument of conveyance:
   "Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID for the construction of sidewalks or pedestrian walkways along Turah Road and may be used in lieu of their signatures on an RSID petition;"

5. All utilities shall be placed underground and easement locations shall be shown on the face of the plat.

HEARING: PFAU ACRES (PRELIMINARY PLAT) 7 LOT SUBDIVISION – SPURGIN & CLEMENTS ROADS

Lisa Moisey, Office of Planning & Grants, said was a request from Chris Pfau, who is represented by WGM Group, for a 7-lot residential subdivision located on Spurgin Road, just west of Clements. The property is legally described as the remainder tract of Pfau Ranch Subdivision, approved in November, 1995, which is approximately 12½ acres, on which this subdivision is proposed. The property is zoned CRR-1, which allows up to one dwelling unit per acre. This
subdivision proposal with 5 proposed one acre lots and two larger lots is consistent with that zoning which is in place. The Comprehensive Plan in this area recommends suburban residential development which recommends up to two dwelling units per acre, if services are available. In anticipation of city sewer being extended to this area and the possibility that the area may be rezoned, the developer has provided information which shows how these lots could be further subdivided to meet the suburban residential recommended density. Access to the this subdivision will be from Spurin Road, a County-maintained road. There are reserved shared driveways for Lots 1 and 2 and a shared driveway for Lots 3 and 4. Lots 5, 6 and 7 will access by way of a private access lane which will be paved to 12 feet wide. A variance required in this case from County Subdivision Regulations which state that, once you have three lots accessing unto a lane, it must meet County Roadway Standards. In this case, the variance request applies only to about the first 30 feet of the private access lane. After 50 feet, Lot 5 will have turned off into their lot and then only 2 lots will be served from the balance. So the variance request is only for the first approximate 50 feet. OPG staff recommends approval of the variance request. In the northwest property, they have identified as a riparian resource area. It is essentially a depression which collects water. There has been discussion that this may be a jurisdictional wetland. At any rate, the developer has prepared a Management Plan for the resource area which OPG has reviewed and is confident that the Plan will preserve and protect that area. OPG recommends approval of the variance and the subdivision. This project went before the Missoula Consolidated Planning Board on August 20 and they voted 6-0 to recommend approval of both the variance and the subdivision.

Nick Kaufman, WGM Group, said he represented Chris Pfau and Elaine Baird Pfau. This was originally an 18 ½ acre parcel. Mrs. Pfau had two homes on it. She and her husband lived there and a year ago Mr. Pfau passed away. Mrs. Pfau was left with very little money but had the acreage and the two homes. Austin Worder, a long-time family friend, had the original parcel listed for a long time at 18 ½ acres but it did not sell. Mrs. Pfau did not want to live in the house anymore. At the time they did the subdivision, Pfau Ranch, she was considering living on the western portion of the property and keeping the horses there and subdividing the front portion. Thus, they did Pfau Ranch, a 5-lot subdivision, in November of last year. All the lots have sold. Jay Kettering, who bought the 2 acre tract with the two homes is present at this meeting. Mrs. Pfau made enough money off the summary subdivision that she moved to Oregon where she had relatives and Chris Pfau is the developer with the remainder portion of the property. This explains why there are two phases to this property.

At the Planning Board meeting, there were concerns about adjoining properties. Jay Kettering has a concern about walkways and the covenants. When Jay bought his property, it was represented to him that Pfau Ranch would have a HOA. But they are proposing to the County is that the covenants apply to both subdivisions. After speaking with Mr. Kettering, Colleen Dowdall, and the attorney for the Pfau’s, they are requesting separate covenants for Pfau Ranch and Pfau Acres. (At this point, Nick distributed copies of the letter he sent to Jay Kettering) He did not know the letter required any changes in the staff report. But he wanted to go on record as modifying their proposal so that Pfau Ranch and Pfau Acres are separate covenants and separate homeowners’ associations. At the public hearing, adjoining property owners to the west of this and adjacent to the wetland, identified wetland riparian area, sent a representative to the meeting. Their concerns included the wetland and the attractive rose-screening hedge along the west portion of Lot 6. The wetland is not visible from any street or road but the staff has requested that they prepare a riparian management plan and they suggested amendments to the conditions to the riparian area and that they record the Riparian Management Plan with the Clerk & Recorder. They have also shown on the plat a no-build area for the approximately 16,000 square feet of riparian area. The concerns from the adjoining property owners is who will enforce this Plan? So, distributing another letter, this one addressed to Lisa Mossey, noted that this one suggests that they add another statement to condition no. 7 which gives the owner of Lot 7, Double R Acres, the person closest to the wetland, legal standing relative to enforcement of the riparian area management plan. Michael Kennedy asked if that would run with the land?

Nick Kaufman answered yes.

Michael Kennedy asked if that would attach responsibility, even liability, to Lot ??

Colleen Dowdall replied that she believed the rationale for it was there would be a Homeowners’ Association and that property owner would be a part of that Association and would have had the standing, as a member, to enforce the regulations. Because he is a neighbor and concerned for the riparian area, the covenants would grant him additional standing as someone who would be impacted. That is part of a private agreement that she does not see as a problem for the County.

Nick Kaufman expanded on Counsel’s comments and said they would like to see, in a free enterprise system, that the adjoining property owners actually acquire this 16,000 square feet of riparian area. They seem to have an interest in it. Lacking that, however, he has seen the Commission become a party to private covenants and this type of. This would allow private party and, their intent in the writing of this, was that the owner of Lot 7 have standing. So, if the Thompsons move, the next owner of the Lot 7 would have that same standing for enforcement.

Fern Hart asked if the owner of Lot 7 was a part of the covenants?

Nick Kaufman answered no. Lot 7 of Double R Acres is a separate subdivision. They are plating up against it. They have platted Lot 6, which is a large lot. The concern is that the subdivision regulations have standards for riparian management plans, which get recorded. They are trying to meet the intent of the regulations as well as the concerns of the adjoining property owners and either give the owner of Lot 7 standing for enforcement or the Double R Acres Homeowners’ Association. The second part deals with amending the covenants for two other concerns. There is a wild-rose hedge along the west side of Lot 6 that provides wildlife cover and buffering. They would like to add to the conditions a statement saying that the existing shrubs form a wind break along the west lot line of Lot 6 and that they be preserved.

Fern Hart asked if that could be enforced?
Nick Kaufman replied that the hedge has stayed there in spite of the land being used for horse pasture, which tells him that its longevity is likely. By putting it in the covenants, they are putting the owners of Lot 6 on notice that it has importance and wildlife value, and value for their lot and that they would like it to stay there.

Fern Hart noted, however, that he is putting it in the conditions and not the covenants.

Nick Kaufman said he is putting it in the covenants. He is adding a condition, which proposes two changes to the covenants. The rose hedge provides a good buffer between the agricultural operation of Double R Acres, which has horses and stalls, and what may be residential on the other side.

Colleen Dowdall added that it is a means of identifying something that they are trying to protect and, doing it this way, gives it strength.

Nick Kaufman said there was a second recommended change to the covenants that they suggested. This area is in transition. While the Comprehensive Plan says two dwelling units per acre and the zoning says one dwelling unit per acre, there are group homes out there as well as horse and agricultural uses. Agricultural operations create noise, odors and other things that may affect the neighbors. So this recommended addition would put the purchasers on notice that the lots they are buying in Pfau Acres are in an agricultural area and, as such, they can expect the attendant farming characteristics.

Regarding walkways, David Bowersox from WGM presented the original Pfau Ranch subdivision to the Commissioners in November. At that time, the Commissioners placed a condition on the plat that said 5 foot wide gravel walkways be placed in the right-of-way along Spurgin and Clements Roads. When the plat was about to be filed, he called the County Surveyor, Horace Brown, and asked him where they should put the walkways? Should they be adjacent to the road or away from it? Horace did not have a preference at that time. They discussed the future of Clements Road and the widening for future biking and pedestrian lanes. They put the gravel area adjacent to the roadway. Mr. Kettering, at the Planning Board, was concerned that the cars go fast on Clements and wondered if it would be better if they could move the walkway away from the edge of the road on both Spurgin and Clements? They considered bark chips, gravel and considered the topography of the area and an irrigation ditch that is not being used and questioned if it was in use, etc. For this subdivision, there still is a requirement for pedestrian walkways. So he asked the Commissioners what their preference would be for this subdivision? He suggested that a condition be modified from the original staff report, which requires the 5 foot gravel, or the Commissioners can say they should present a pedestrian walkway plan that would beacceptable to the County Surveyor and County Commissioners prior to filing.

He felt Horace Brown should be the one to ask for the variance on the roadway because they had a driveway that served 2 lots. He added a third lot to the driveway when he said not to have one lot access on Spurgin Road but to put it on the driveway.

Michael Kennedy said his main concern with the walkway had to do with safety. This is an area of transition and it is becoming an area of development. He is surprised that there has not been a serious accident with the children who walk to school along Clements Road. He opted for a walkway that could be maintained even during the winter months and that would be a concrete sidewalk.

Horace Brown said, if it is a sidewalk, they do not maintain those.

Michael Kennedy said he expected that, as the City does not maintain sidewalks either.

Lisa Moisy said sidewalks were not a recommended condition because it was stated in the staff report what the intent was and OPG staff supported that intent. Generally, conditions are recommended by OPG to change something. They are proposing to extend the gravel pathway that was constructed with the original Pfau Ranch subdivision down to Spurgin Road to serve this subdivision.

Michael Kennedy said his decision regarding walkways for Pfau Ranch was based on the existing irrigation ditch presenting an obstacle for creating a pathway on Clements. He has since discovered that is not accurate; there is no irrigation ditch there but a remnant of one. He would have decided differently had he known that at the time. So, if they agree on a concrete sidewalk, they should discuss that it be extended all the way to Clements Road.

Nick Kaufman said, in reading the minutes from the November meeting, the condition for Pfau Ranch is specific. It reads "that a 5 foot gravel path be constructed in the right-of-way along Spurgin and Clements." It allowed them to work within the edge of the asphalt and fence. The only discussion on location was with Mr. Brown regarding where it should go. They put it adjacent because there was no preference at that time. He did not know if it was possible to modify the conditions for the first subdivision but he would like this solved. There is no question in his mind that the Commission can require concrete sidewalks. The issue here is what can they do at this time to make this work and what would work best.

Michael Kennedy opened the public meeting.

Jay Kettering, owner of Lot 2 on Pfau Ranch, said they addressed their concerns about safety to the Planning Board and have been working with Nick and feel they are making progress. Their original concern is they did not feel the gravel walkway was that, but rather a shoulder to the road. In fact, he presented a photo of a car parked on the pathway which demonstrates this. There is no additional room for pedestrians. They respect WGM’s attempt to hear their concerns. As a homeowner, he would like to see something be implemented before more families arrive. There are three families there presently and they agree on this. Horace Brown came out to the site and said there had been public requests for a walkway along Clements prior to that meeting. Horace further said that, by the time there is actual construction from the time of the requests, it may be the year 2000 or 2001. He feels there will be a number of families living out there before then, especially with the addition of the park, which is in the far southwest corner. That will be a natural draw for the children in the area. Rather than going through people’s backyards and over fences,
the only way they can get there is to walk down Clements Road and Spurgin Road. They were not asking for concrete sidewalks, in fact, to keep the rural character of the neighborhood and to blend in, they felt an asphalt walkway, about 3 feet wide, could wind around trees and telephone poles and be landscaped to be more aesthetic than a sidewalk. It could be maintained by the landowners, even though it was on County property. He would like to see this on both roads. He does not feel the door should be closed on Pfau Ranch because the two subdivisions are integrated, even though Pfau Ranch is a done deal. They are affected by Pfau Acres because of the park and of a road easement that will be coming through their property in the southwest corner to access both Pfau Acres and Pfau Ranch. So they feel there should be walkways for both Spurgin and Clements Roads, with a buffer zone between the road and walkway.

Austin Worden, broker and owner of Worden & Co., and has been working with the Pfau’s for several years, said they have tried to do everything they can to uphold the rules and regulations and make sure the Commissioners and the people are satisfied. This includes the gravel path. He talked to Chris Pfau and Chris was unhappy about the concrete sidewalks when he had only allowed in his budget for a gravel pathway, similar to the one already built. If it had been brought up in the first subdivision, the Pfau’s would have been more in agreement. But, with the concrete sidewalks that is going to cost additional money for the developer or the landowner, his concern is it will look peculiar. There are no adjoining neighbor has sidewalks. He feel a woodchip or gravel pathway would be good. When people think of Spurgin Road, they think of the entire road running from Reserve Street to Clements. The Spurgin Road from Clements on is not as busy as the other portion. That is why he believes a gravel pathway is adequate. Further, a concrete sidewalk was not budgeted in and the financial burden to the Pfau’s would hurt them. He also realizes, being in real estate, he knows what it will do to the property value.

Michael Kennedy asked what it would do to the property values?

Gregory Kettering said he represents the Thompsons who live in Lot 7 of the Double R subdivision. The Thompsons were not able to attend because they were on their 25th wedding anniversary trip. However, they have had concerns about the original subdivision since it first came about. Their major concern has been the protection of the jurisdictional wetland. He called it that because he has performed a number of delineations for the Army Corps, and the Thompsons want to protect that area in the most stringent way possible, whether it was an Arm Corps or a riparian area, which ever was more stringent. That appears to be done now. There are other issues about which he testified at the Planning Board meeting and they have been taken care of by WGM. They were also concerned about the rose hedge and, to those that live there, that is important, and also they were hoping to avoid complaints about the agricultural operations in the area and both of these items have been addressed by Nick Kaufman.

Don Singar, 245 North Davis, said as a member of the neighborhood network, he is on the mailing list for all plats and proposals in the area covered by the Orchard Homes Country Life Club, which includes this area. He agreed this is an area in transition. If and when city sewer is extended there, there are some that will fight it as he believes they are trying to do their own thing out there. They know once the sewer is there, the area will be developed. He commented that people who have lived in the area for years are reluctant to break down their properties into subdivisions but if often becomes economic necessity.

Jay Kettering wanted to comment on what Austin had said, if a sidewalk is required and there are no other sidewalks, it will look peculiar. His opinion was that it will look like a subdivision that is responsible and it will be a precedent. Maybe in time there will be a safe pathway all the way to Target Range and all the way to Big Sky High School.

Michael Kennedy thanked everyone for their comments and asked if anyone else wanted to come forward and speak. No one came forward and he closed the public hearing. He asked Lisa if there was an RSID waiver for sidewalks on Pfau Ranch?

Lisa Moisy answered it was a condition, on Spurgin and Clements Roads.

Michael Kennedy asked Counsel, if the RSID waiver speaks to improvements to Spurgin and Clements Roads, did it include sidewalk and drainage improvements as well? In a standard urban section, you have curbs, gutters, sidewalks, streets and which are built together.

Colleen Dowdall said the letter we sent regarding approval for Pfau Ranch included a condition that the RSID waiver is for curbs, gutters and pedestrian walkways. That includes sidewalks. She does not know if it incudes drainage.

Michael Kennedy said, if there is a waiver for this subdivision, then there are a couple of options. They can initiate an RSID and have sidewalks constructed on both roads with the assurance that it would be done immediately, or you can require immediate construction on Pfau Acres for concrete sidewalks but that would leave the need to form an RSID on Clements Road.

Horace Brown said there was a difference between constructing a sidewalk and constructing curb and gutter. If you construct curb and gutter, that means the width of the road needs to be established for the future so that you are not tearing the sidewalk up to install them.

Michael Kennedy agreed. He is concerned, however, about having too long to wait for sidewalks and 4 or 5 years is too long. He is concerned about safety at this time. He agreed with Mr. Austin that Spurgin east is different from Spurgin west. Spurgin west is a dead-end road and it does take a lower volume of traffic but it is high-speed traffic. So there is every need to separate the walking from the street. Clements is a high-speed street and it will be more dangerous as traffic increases. Again, there is a need for separation between pedestrians and vehicles. If they allow parking on both streets, that may provide separation but, if they don’t, then maybe a boulevard or a parking strip for the separation.

Fern Hart said it seemed to her the fundamental issue here is do they want to buffer and, if so, how?
Michael Kennedy said it is a 60 foot section and that is enough for curb, gutter and sidewalks on both sides plus 2 lanes of traffic and parking. This is easier to maintain with a plow during the winter but it is not as safe as concrete sidewalks, which are above the curb and thus a step up, which gives it more separation from the road.

(After this point, the Commissioners adjourned for a 10 minute break).

Nick Kaufman reiterated that by having the condition read “they are to use an appropriate plan for walkways shall be developed and approved by the County Surveyor and County Commissioners prior to filing of plat” allows everyone to remain non-controversial and able to try to solve this issue. If they get specific and name Spurgin and Clements Roads, you can’t be sure what that will do. They need to go back and review the design. He believes there is a solution to this and it may not be concrete sidewalks but will nonetheless work toward public safety while not harming existing or prospective property owners. But they need time to do that.

Colleen Dowdall wanted to stress that, since Pfau Ranch was already platted and filed, no new or amended conditions could be imposed on it.

Michael Kennedy said there will be improvements to Spurgin and Clements Roads and they will include walkways, drainage and roadway. They need to add Clements Road to condition no. 4 for the RSID waiver for this subdivision.

Fern Hart moved that the Board of County Commissioners grant the variance for Pfau Acres, located west of Clements Street on Spurgin Road in the Target Range area of Missoula, legally described as the Remainder Tract of Pfau Ranch subdivision, from Regulation 3-2(1)(I)(1) which requires access lanes serving three or more lots to meet County roadway standards. The regulation would apply to approximately the first 50 feet of the proposed private access lane serving lots 5, 6 and 7, the developer is proposing to construct this lane to meet driveway standards. This is based on the recommendations of the staff and the findings of fact. Michael Kennedy seconded the motion. Motion carries 2-0.

Fern Hart moved that the Board of County Commissioners approve the summary plat of Pfau Acres, located west of Clements Street on Spurgin Road in the Target Range area of Missoula, legally described as the Remainder Tract of Pfau Ranch subdivision, contingent on the conditions listed below and based on the recommendations of the staff and the findings of fact. Michael Kennedy seconded the motion. Motion carries 2-0.

1. The developer shall show on the face of the plat the location of the one-half acre building envelopes. The design shall be consistent with “Potential Lot Split of Pfau Acres” map as submitted by the developer in the application packet.

2. A one-foot “no access” strip shall be shown on the final plat along those lots fronting Spurgin, expect for a 30 foot shared driveway opening for Lots 1 and 2; and a 30 foot shared driveway opening for Lots 3 and 4; and the entrance for the private access lane. Lot 5 shall access from the private access lane. Plans shall be approved by the County Surveyor prior to filing of the final plat.

3. The private access lane serving Lots 5, 6 and 7 shall be engineered and designed with a drainage plan. Plans shall be approved by the County Surveyor prior to filing of the final plat.

4. The following statement shall appear on the face of the plat and in all instruments of conveyance:

   “Acceptance of a deed for a lot within this subdivision constitutes the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Spurgin and Clements Roads, including installation of sidewalks, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”

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 the assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Spurgin and Clements Roads, including installation of sidewalks, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”

6. The developer shall contribute $50.00 per lot to the Missoula Rural Fire District’s Large Diameter Hose Fund. Fees shall be paid prior to filing of the final plat.

7. The following changes shall be made to the Riparian Area Management Plan:
   A. Under Section II in the Management Plan, item B(2) the sentence shall read: “Motorized access may be allowed in designated areas of riparian resource for maintenance of such areas for the purposes of weed control.”
   B. Under Section II in the Management Plan, item C(1) the sentence shall read: “Designated areas of riparian resource shall not be developed or maintained, except for the purposes of weed control.”
   C. Under Section II, item B it shall be noted that livestock will be fenced outside of the area of riparian resource. All changes shall be made prior to filing the final plat.
   D. The Riparian Area Management Plan.

8. The developer shall file the Riparian Area Management Plan with the Missoula County Clerk and Recorder as a deed restriction on Lot 6.

9. 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 the assent of the lot owner to waive the right to protest a future RSID/SID for construction of a roadway within the 60’ wide conditional roadway easement, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”
10. The developer shall submit an appropriate plan for walkways for this subdivision, to be approved by the County Surveyor and the Board of County Commissioners before final plat approval.

Michael Kennedy noted that they had not added the developer recommendations to the conditions, so the Board needed to amend them.

Fern Hart moved that the Board of County Commissioners include in the conditions for Pfau Acres the following two conditions:

7.D. The Riparian Area Management Plan shall contain language which allows the owner of Lot 7, Double R Acres, to have legal standing relative to enforcement of the Riparian Area Management Plan. Said language is to be reviewed by the County Attorney.

11. The covenants for Pfau Acres shall be amended as follows:

   Add a new Section: existing shrubs that form a wind break along the west lot line of Lot 6 shall be preserved.

   Add a Section: Purchasers of lots in Pfau Acres are buying lots in an agricultural area. Agriculture, by its nature, may generate noise, dust, odors and other impacts that may affect the lots in Pfau Acres. By purchasing a lot in Pfau Acres, the purchase accepts and understand the agricultural nature of the area.

Michael Kennedy seconded the motion. Motion carried 2-0.

OTHER BUSINESS & PUBLIC COMMENT

Don Stinger, 245 N. Davis St., Missoula, said he wanted to speak about ongoing projects he has with the Missoula Aging Services. He has been appointed District Coordinator for American Association Retired Persons and he covers 12 counties in western Montana and has tried to work with 8 chapters and create more. They have been encouraged to work at the “grass roots” level so they came up with a local initiative project called “Connections to Independent Living.” They are also putting together a talent bank and interviewing the applicants and getting volunteers to help the elderly that are homebound, lonely or whatever. That includes Meals on Wheels and whatever else will help the elderly with their daily needs. He found out this morning that their budget was cut $15,000 so they are short a staff person and a volunteer. He is also on the Board at the local Senior Center Association and they have been approached by the local office on Aging regarding the meal vouchers. This is another program. The main focus on this program is to keep these people in their own homes, in a clean, healthy environment, for as long as possible. That is also his focus. He is also a reverse annuity mortgage counselor with the State Housing Authority and this is to help the people finance these new SID’s on East Reserve. This is where a great deal of the people are in need of some help live. They have very modest homes, some are older trailer homes with sub-standard sewer systems and they are having problems, so the City has targeted that area as no. 1 for sewage. They have the highest number of unsewered households in that area. It is also a low-income area. This is a nation-wide effort and there are 2 pilot projects, one here and one in Helena. They are also considering one in Billings. He has been delegated to work with this pilot program. So they are supplying all the volunteers and helping them get everything together so that they can get these people to help. They are happy to have the support and resources. They are changing the nutrition program. They have a bad history at the local Senior Center because they are an independent entity. They don’t get any funds. That is another question he had and that is he would like to know the status of his request for an automatic door. They have been mandated that they install a handicapped-accessible door but they do not have the funds for it.

Michael Kennedy said, before answered his question, he wanted Don to know that he appreciated all the work Don has been involved in and continues to do. He feels Don is a prize in the community and does a lot of worthwhile work and the County benefits from his work. Yesterday, there was a meeting with some members of the Aging Services Board. In the discussion items, there was included the involvement of the Senior Center with the new nutrition program and that is under discussion. The specific answer to the question regarding the door, they did not act on that favorably at the last budget period because of the constraints the County was experiencing. If the matter comes up this following year, they will again review it. They will be starting the budget process much earlier this time so they will have an advance idea of how the future looks in terms of the budget for the County community.

Don Stinger said that was adequate. He knows that change is coming, it is already here and they are told they have to do more with less. There are about 4,000 households that may come in need of help from the Agency, with the nutrition program.

Michael Kennedy stated that he can see the frustrations that Don has and appreciates his ongoing work because it is so important to the aging community.

Don Stinger thanked the Commissioners for their time.

Michael Kennedy stated that the Board had another matter deal with this afternoon. The Commissioners received a letter from Tim Lovely, the Chairman of the Democratic Central Committee, which included a list of nominees to fill the unexpired portion of the term for the vacant House seat in District 66 that Mike Kadas left when he resigned. The position expires December 31, 1996. The Board of County Commissioners is statutorily entitled to select from that list the person who will fill that term. The three nominees are Diane Sands, Ann Mary Dussault, and Stella Jean Hansen. He asked the Board for discussion.

Fern Hart stated she respected that the Central Committee has sent the list and, since Diane Sands is listed first, she assumes the Committee is recommending her and she honors that.

Fern Hart moved that the Board of County Commissioners appoint Diane Sands as the replacement for Mike Kadas for District 66. Michael Kennedy seconded the nomination. Motion carried 2-0.
SEPTEMBER, 1996 - 55 - FISCAL YEAR:

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

THURSDAY, SEPTEMBER 12, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution No. 96-075, establishing daily rates for incarceration in the Missoula County Jail.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the Art Museum of Missoula, providing an art museum in Missoula County. Cost is $138,571 for FY 97.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Turning Point (Western MT Regional Community Mental Health Center) for the ICC Project in Missoula County. Cost is $15,998, and duration of the project is August 1, 1996 - June 30, 1997.

Other items included:

1) Discussion of Potomac Rough Cut (delinquent tax issue).

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

FRIDAY, SEPTEMBER 13, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement between the Missoula County Park Board and the Ninemile Community Center. The Park Board agreed to provide up to $1,779 in matching funds for the Center. The Memorandum was returned to Leslie Bailey in OPG for further handling.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Women’s Opportunity and Resource Development, Inc. (WORD) Family Basics. Family Basics will provide a family advocate who will make families aware of and assist them in accessing community services. Cost of the agreement is $12,239.00. Duration of the project is August 1, 1996 - June 30, 1997. Population served is middle school youth at risk for drug and alcohol abuse, as well as their parents.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with The Child and Family Resource Council. The Council will use funds to provide parent education classes that target parents of adolescents and teens. Cost of the agreement is $6,000.00. Duration of the project is August 1, 1996 - June 30, 1997. Population served is middle school youth at risk for drug and alcohol abuse, as well as their parents.

Agreement for Professional Engineering Services - Commissioners Hart and Evans signed an Agreement for Professional Engineering Services with Druyvestein, Johnson and Anderson to develop the Mount Jumbo Little League Ballfields. Cost of the Agreement is $16,572.80, and completion date is 150 days from execution date of the contract, or at conclusion of the construction of the Phase 1 facilities, whichever is later.

Plat - The Commissioners signed the plat for Dark Horse Estates, a four-lot subdivision of Tract B-1, Grantland Ten, Lots 63A and 64A, located in Sec. 21, T14N, R19W, PMM, Missoula County, a total area of 21.28 acres, with the owner/developer being Washington Development Company, Inc.

Supplemental Agreement Request - Commissioners Hart and Evans signed Supplement No. 4, a Supplemental Agreement Request for the Missoula I-90 Airport Interchange Project (DPI 0195 (001)). The Supplement provides for an additional contract amount of $84,026, which increases the total not to exceed project payment to $790,135 maximum.

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

MONDAY, SEPTEMBER 16, 1996

The Board of County Commissioners attended the MACo Annual Conference from September 16-19, at the Holiday Inn in Missoula, with Missoula County serving as the host for the conference.
**TUESDAY, SEPTEMBER 17, 1996**

The Board of County Commissioners attended the MACo Annual Conference from September 16-19, at the Holiday Inn in Missoula, with Missoula County serving as the host for the conference.

**WEDNESDAY, SEPTEMBER 18, 1996**

The Board of County Commissioners attended the MACo Annual Conference from September 16-19, at the Holiday Inn in Missoula, with Missoula County serving as the host for the conference.

**PUBLIC MEETING**

The Weekly Public Meeting scheduled for September 18 was canceled due to the MACo Conference.

**THURSDAY, SEPTEMBER 19, 1996**

The Board of County Commissioners attended the MACo Annual Conference from September 16-19, at the Holiday Inn in Missoula, with Missoula County serving as the host for the conference.

The Board did not hold a Daily Administrative Meeting; however, the following items were signed:

- **Audit List** - Commissioners Kennedy and Evans signed the Audit List, dated September 17, 1996, pages 2-38, with a grand total of $311,976.54. The Audit List was returned to the Accounting Department.

- **Memorandum of Agreement** - The Commissioners signed a Memorandum of Agreement with Women’s Opportunity and Resource Development, Inc. (WORD) Futures/Family Basics. The Agreement provides home visiting services to teen parents involved in the Partnership to Strengthen Families Project. Cost is $8,336.00, and duration of the project is July 1, 1996 - June 30, 1997. Population served is teen parents at risk of abuse and/or neglect of their children.

- **Extension Request** - The Commissioners signed a Three-Month Extension Request for the Lamoreux Estates Subdivision. This makes the new filing deadline December 19, 1996.

- **Professional Services Contract** - The Commissioners signed a Professional Services Contract with Sally Thompson Greiser to facilitate Community Conversation forums with middle school students, their parents, and other community members. She will also train other community members to facilitate such groups. Cost is $2,000.00 from the ICC contract. Duration of the project is September 25, 1996 - June 30, 1997. Population served is middle school youth, their parents, and other community members.

**FRIDAY, SEPTEMBER 20, 1996**

The Board of County Commissioners did not meet in regular session; Commissioner Hart attended a Mental Health Board meeting in Hamilton, and Commissioner Kennedy was out of the office all day.

**MONDAY, SEPTEMBER 23, 1996**

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

- **Indemnity Bond** - Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Wyckman’s Corporate Express as principal for Warrant #2995278 issued 5/15/96 on the Missoula County General Fund in the amount of $698.47 now unable to be found.

- **Indemnity Bond** - Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Wyckman’s Corporate Express as principal for Warrant #2995278 issued 5/07/96 on the Missoula County General Fund in the amount of $43.00 now unable to be found.

**DAILY ADMINISTRATIVE MEETING**

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

- **Certification of Acceptance** - Chair Kennedy signed two Certification of Acceptance for County Maintenance documents: ACM No. 74-8035C for Sundown Road, with limits of acceptance of .123 miles; and ACM No. 96-0017 for Ringo Drive, with limits of acceptance of .30 miles. The Certificates were returned to the Surveyor’s Office.

- **Contract Modification** - Chair Kennedy signed Modification A of Task Order No. 2, adding related tasks and funding for the Montana Perinatal Program - MIAMI Project. The Contract was forwarded to DPHHS in Helena.

- **Agreement** - The Commissioners signed an Agreement Between the County of Missoula and Missoula City-County Health Department, giving the Health Department the authority to perform community decay duties. The County will pay the Health Department $9,506.00 for FY 97 contract. The contract was returned to the Health Department for further signatures and handling.
The Commissioners signed the following Memorandums of Agreement:

1. With the Missoula Public Library, to provide parent education materials through the Strengthening Families Project;
2. With the Missoula Child and Family Resource Council, to provide parenting classes for those with children ages 0-3 at risk of abuse or neglect;
3. With the YWCA, to provide group facilitation services for students at C.S. Porter Middle School;
4. With Big Brothers and Sisters, to develop a mentoring program for students at C.S. Porter Middle School;
5. With the Missoula City-County Health Department, to provide family and student health assessments for students and families at C.S. Porter Middle School;
6. Between Child Care Resources and the Missoula City-County Health Department, to provide a child care health program for young children.

Other items included:

1) Request from Paul Conn in Seeley Lake to meet with residents and Montana Department of Transportation regarding the results of the speed zone study on October 7 at 7:00 pm.
2) Request from Tim Love, Forest Service District Ranger in Seeley Lake, to meet regarding Timber Sale Demonstration Project.

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

TUESDAY, SEPTEMBER 24, 1996

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated September 24, 1996, pages 2-43, with a grand total of $297,875.18. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Extension Requests - The Commissioners signed two extension requests: a 180-day extension request for Sawmill Meadows Subdivision Summary Plat, with a new filing deadline of April 26, 1997; and a 180-day extension request for Benchmark Homes Subdivision Summary Plat, with a new filing deadline of April 2, 1997.

Option to Purchase Real Estate - Chair Kennedy signed an Option to Purchase Real Estate between Missoula County and American Eagle Properties, LLC. The price for the Option is $25,000.00. The Option Period shall terminate on July 31, 1998, unless exercised at an earlier date as provided in the Option Agreement.

Other items included:

1) Discussion of granting permission for Seeley Lake Community Council to use County property on the north side of town for placement of a welcome sign. Commissioners voted to approve, contingent on State and Surveyor approval;
2) Development Park information from Orin Olsgaard;
3) Forest Service Museum pre-opening reception for year-long exhibit (Saturday, Sept. 28 at 7:30 pm).
4) In late afternoon, the Commissioners attended an EPA award ceremony in recognition of Dave Haverfield, manager of RSID 901 - Lolo Water and Sewer Plant. The ceremony was at Pete's Pitch and Putt in Lolo.

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

WEDNESDAY, SEPTEMBER 25, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Professional Services Amended Contract - The Commissioners signed a Professional Services Amended Contract with Independent Contractor Kathleen J. Gronko, for the Breast and Cervical Cancer Planning Project, extending the contract through December 31, 1996. Total compensation for services shall be a maximum of $2,000.00.

Other items included:

1) Discussion of Youth Issues with Sheriff Doug Chase, et al.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

BID AWARD: JOHNSRUD PARK ROAD PAVING (ROAD DEPARTMENT)

Horace Brown, County Surveyor, said this was a request to award a contract for the paving of约翰逊公园 Road. Bids were opened September 16, 1996 with the following results: Jensen Paving Co., $66,757.52 and JTL Group, $66,876.75. He recommended that the contract be awarded to Jensen Paving Co. The County and the Montana Department of Fish, Wildlife & Parks have an agreement to do this project and the latter has agreed to pay for the costs.

Michael Kennedy verified that the Montana Department of Fish, Wildlife & Parks will pay the entire cost of the project which will be $66,000 initially and a balance of $1,757.52 to be paid when the project is completed.

Horace Brown agreed.

Barbara Evans moved that the Board of County Commissioners award the contract for paving of约翰逊公园 Road to Jensen Paving Co. for $66,757.52 as the lowest and best bid, recognizing that the funding for this will come entirely from the Montana Department of Fish, Wildlife & Parks. Fern Hart seconded the motion. Motion carried 3-0.

BID AWARD: TREE PLANTING IN SEELEY LAKE POSTPONED UNTIL OCTOBER 2, 1996

CONTINUATION OF HEARING & DECISION ON - PROPOSED RESOLUTION REGARDING AN EASEMENT AND MAINTENANCE AGREEMENT WITH MONTANA POWER FOR THE KIM WILLIAMS TRAIL POSTPONED UNTIL OCTOBER 9, 1996

CONTINUATION OF HEARING & DECISION ON: MISSOULA COUNTY DEVELOPMENT PARK (PRELIMINARY PLAT & ZONING) CONTINUED FROM AUGUST 6, 1996

Pat Kelley, Office of Planning & Grants, said he and Jennie Dixon are working on this project; he is working on the subdivision part and Jennie is doing the zoning. He stated that he would give a quick synopsis of the subdivision section of this proposal.

This project is on a 469 acre piece of land. The proposal calls for 121 lots. It is a combination of commercial and industrial business park, named the Missoula Development Park. It is located on Highway 10, across from the airport and abuts Interstate 90. The proposal has 13 phases over a 10 year preliminary plat approval time period. There are 12 proposed parks throughout the development. The staff report supplies information on the roads, proposed sidewalks, trails, the uses of the parks, future reserve areas, elevations of the parks and all of the lots, which include their size and how they will be accessed. Staff recommends approval of the Missoula Development Park preliminary plat, based on the findings of fact and subject to the conditions listed in the staff report. There is a request for 5 variances and the staff report gives the staff’s recommendation for each one.

Jennie Dixon, Office of Planning & Grants, said the rezoning request for this property was from a combination of industrial Tand residential A3 to a special zoning district called the Missoula Development Park and creating a section in the County zoning resolution. The applicant has submitted proposed section 607 of the County zoning resolution. The staff is in agreement because there has been a change from the proposal that was presented on July 10th and August 6th. OPG has found Comprehensive Planning compliance for light industrial uses in the southeast portion of the park. In addition, the applicant is no longer proposing light industrial uses in the northeast portion of the park. That would be a general commercial mode, there would also be light industrial and a small portion of neighborhood commercial on the west side of the park. Staff has amended the conditions of approval, based on the change in Comp Plan compliance determination and agreement on Section 607. There have not been significant changes to proposed Section 607 aside from location of proposed uses. One other change that staff supports is locating accessory residential apartments in the northeast portion of the Park. Accessory residential apartments are defined as one or more dwelling units within a business building or 4 or more dwellings in a detached building located with a business on the same property. Further, apartments cannot exceed a floor area of the commercial operation on the site. There is a maximum building coverage of 50% of the lot with the commercial and residential and a maximum building height. In addition, there are site design standards which staff feels will assure compatibility in that portion of the Park for residential uses. Furthermore, it is residitionally zoned adjacent to the east.

Michael Kennedy asked if the accessory residential designation overlapped the reserve zone?

Jennie Dixon answered that it does.

Michael Kennedy opened the continued public hearing from July 10, continued to August 6 and then to this date.

Vaughn Anderson, Drovesvoist Johnson & Anderson, said he wanted to enumerate the few changes that were made to date. The first was one to eliminate the cul de sac between Lots 4 and 13 of Block 3. That was originally put in because of intended use for Lot 2 but it is no longer needed. Another change is that they have extended the lot lines on Lot 1 and 2 of Block 10 to the west edge of the boulevard, at the intersection of boulevard and the parkway. There was a narrow park that went up the edge; because of the intersection and the value of those lots, it was felt that the narrow park would be better served to be included in the lot. There will be considerable landscaping required by
anyone who builds on those lots and, from an economic standpoint, that would be the wisest use of that land. A third change was there was an additional lot added in Block 2, which is west of Butler Creek. It is called 2A. Again, there was large Lot 3 and there is a potential buyer on that who indicated they did not want the entire parcel, so approximately 3.5 acres has been taken off to create another lot.

Michael Kennedy asked if that was where the high pressure gas line was?

Vaughn Anderson replied yes: the lot line between Lot 2 and Lot 2A is the gas line. Another change was regarding Johnson Brothers property, which is Block 1, basically the Development Park. One of their requests was that the zoning for that piece was to remain as it currently exists, C1-1. They are not included in the special zoning district that has been proposed. The lot line configuration of Lot 6 and 7 in the westerly corner of their property, they changed it to an east/west direction, mainly because of building configurations. Another change on the Johnson Brothers property was the removal of Block 1 from the zoning descriptions.

Regarding the Dodd Development property, also referred to as Lalonde Historical Park, there has been negotiations with them to trade that piece of property with the County but, in such event that that would not go through, they requested that the property be divided into 4 lots, so that it can be an actual trade for value-for-value.

The end result is 121 lots instead of 116 lots.

Orin Olsgaard, Projects Coordinator, Missoula County, said they have resolved all of the outstanding zoning issues. There is one issue that remains at odds and he requested that it not be included in the conditions for rezoning and that is OPG’s first condition for rezoning, “a minimum of 75% of the paved parking area shall be located to the rear or side of the buildings fronting unto public rights-of-way, except for industrial uses located in the light industrial portion of the Missoula Development Park.” If that becomes a condition, they are still faced with a prospect of putting site planners in the position of having to deal with this issue on commercial properties. It is not reasonable, given the other requirements within this zoning district. The setback standards and the landscaping standards in this commercial/industrial zone are by far tougher than any zone, City or County, of any type, including residential. Given those restrictions and limitations and costs for development, to arbitrarily decide that 75% of paved parking shall be located in the rear or side of buildings puts an unreasonable limitation on development.

Fern Hart, regarding accessory housing in the reserve areas, asked Orin if he had any problems with that?

Orin Olsgaard replied no.

Michael Kennedy asked Jennie her for a response to Orin’s comments on parking.

Jennie Dixon answered staff recommended that a minimum of 75% of parking be placed to the rear or side of buildings. It would not occur in that which is delineated light industrial and staff does not recommend that parking be placed behind light industrial structures. For a Development Park which emphasizes enhanced image and friendly pedestrian access, staff felt the best place for parking would be in the rear or side of structures. The setbacks play somewhat of a role in that there will be large areas of open space between the roads on the front and sides. They go from 60 foot to 40 foot setbacks in the front. Parking or driving surfaces could be within 20 feet of the property line. While you may have a setback, the only area that could be landscaped could be the first 20 feet. The remaining area could be parking lot or driving area. Staff is trying to avoid a massive amount of paving in that front area while still allowing up to 25% to occur there.

Barbara Evans said she could understand that opinion if there was only one view possible, but these pieces of land sit down from the Interstate. If we have 75% of the parking in the back of the buildings, all the people driving on the Interstate will see is cars. If their objective is to avoid this, that is not achievable with this development.

Jennie Dixon responded that is only true from the Interstate. Staff was mainly considering the experience of the person who was living, working, and/or walking within the Development Park or in the front of the structures.

Barbara Evans disagreed. She felt the Development Park would be equally visible to the public from both sides.

Michael Kennedy asked what the consulting team that the County hired to help plan the Park had to say about the parking issue?

Jennie Dixon answered that she was not aware of an opinion from them.

She stated there was an important point she wanted to make. In condition no. 6, staff was able to find Comprehensive Planning compliance to allow the light industrial in the southeast portion of the Park and accessory residential in the northeast portion of the Park, by requiring that the covenants, including the development guidelines, not be able to be modified unless the governing body gives permission to do so. That would ensure that the development guidelines, as proposed and adopted, would stay in place and assure compatibility of uses.

Fern Hart asked Counsel if they had any problem with that?

Colleen Dowdall, Deputy County Attorney, answered it is a provision that has been commonly used in subdivisions with covenants.

Barbara Evans commented that the fact that the County is the applicant and the owner of the covenants is different from the norm.

Jennie Dixon added that, after 75% of the lots have been sold, the covenants are in the hands of the other parties.
Byron Dodd, Dodd Development Company, said, regarding maximum height of buildings, they would like to reiterate their request that the Commissioners consider the building maximum height to be 75 feet. They have someone who is interested in utilizing the land they are trading for that would need that 75 feet height ability. If that is not possible, they hope to be able to petition for a change at a later date.

Jacquie Helt, representing the workers and service, tourism and hospitality industry across the state, said they are concerned about the growth of these industries and the impact of that growth on the economy. They saw travel and tourism slow down significantly this past year. There were fewer “No Vacancy” signs. With occupancy rates between 60% and 80% during the summer months, they are concerned how this growth will affect their industries. With the slowing of tourism and travel, coupled with the fact that hotels, restaurants, and retail stores pay less than a living wage, they are concerned about encouraging expansion of these industries. It creates a higher level of competition among the existing industries. They feel this community needs to be focusing on creating living wage jobs and not poverty-level jobs. Poverty-level jobs are not an acceptable form of economic development. She encouraged the Commissioners to closely consider if this development will be a good form of economic development for the citizens of Missoula. Will it include subsidies to employees who are drastically underpaid and, more often than not, qualify for public assistance.

Barbara Evans asked Jacquie if she opposed the entire Development Park?

Jacquie Helt answered that they do not oppose it. They would like to see good strong employers join the economy but, unfortunately, even with the recent increase in the minimum wage, which a lot of those jobs represent, it does not seem to be happening. Their organization has been involved in a variety of neutrality agreements. Those folks are willing to come in and discuss about Unions and contracting for good jobs. That is what they would like to see in the Development Park.

Michael Kennedy said they were reminded this morning by a person who was applying for directorship that one of the initial reasons for the County being involved in this enterprise was to have a sustainable living wage for the people of Missoula. That is an important aspect of this development.

Michael Sehestedt said, speaking as a citizen and going back to the parking issue, he wanted it noted that that particular condition will mean more asphalt and less green in the Development Park, if it is approved. In addition to the parking spaces, they will then need a long access road to the rear or side lots. Further, having looked at the rezoning, he suggested, instead of F Drive following precisely at the community commercial/light industrial line, have it come down between Lots 7 and 1 and Lots 2 and 8, or basically, divide Block 7 from Block 9. They will be right-turn lots off the right-turn loop and may have a higher suitability for commercial than for industrial.

Jennie Dixon said the land-use map that adopted about 1½ years ago identifies that property as research and development, more of a light industrial type of use, but staff would feel that light commercial or commercial uses would be appropriate there with that designation.

Vaugn Anderson agreed with Michael Sehestedt’s comments. They have talked about this at a much earlier date and felt that would be the highest and best use for those properties because of the direct access on that road.

Michael Kennedy said he noticed just from traveling downtown Missoula or any other city that there are those pockets of the downtown area that, for some reason, don’t get attention. He noticed on this one that it is bounded on the south by the existing Momont Industries and they are carving out a little niche that is recessed into the light industrial zone, if they agree with that recommendation. He questioned whether that would be viable commercial property, even though it is accessible on the right-hand lane. He does not necessarily oppose it.

Michael Sehestedt said, as the Commissioners are aware, the property in the Development Park is in a variety of different ownership’s. The bulk of it is in County ownership and they have been working closely with Nutare, Inc., Dodd Development, etc. At this point, the boundary lines don’t match the platted lots. What he recommends is that the Board give preliminary approval to this plat, subject to a special condition that provides, in any area where portions of lots are in different ownership’s, the parties shall adjust their respective interests prior to the filing of the final plat of that phase so that no platted lot is in separately described legal ownership’s. This is a practical matter. Using Nuture as an example, if they were to plat Lots 1 and 2, they have separate legal ownership’s. They have created a situation wherein there is an invitation to further divide the lots by operation of law. He does not believe that would be in anyone’s interests. He is not necessarily saying that there would have to be trade-offs; it may be that the ultimate deal that is struck is 60-40 on Lot 1 and 80-20 tenants-in-common on Lot 2. That will be worked out in the future. Prior to final plat filing, however, they need to have an agreement that sets up a situation where the lots are not provided in two separate legal ownership’s.

Barbara Evans asked Jennie for a recommendation for a motion.

Jennie Dixon suggested to adopt Section 607 as presented, including conditions recommended by staff for rezoning approval.

She commented on condition no. 1 about the parking, in the commercial area which this would apply to, there are two situations. There will either be a corner lot which has two front yards and 2 side yards or there will be interior lots with a front, 2 sides and a rear. Staff recommends that 75% of the parking be beside or behind. She does not think that, by placing the parking beside, paving would be increased as opposed to putting it in the front yard. If you have a corner lot, there are 2 front yards and staff recommends that only 25% of that parking be located in those 2 front yards. The smallest street frontage in the commercial area is 200 feet, which allows room for a building and access drive to the side of the building. If the Commissioners do not feel comfortable with 75%, staff recommends a lower percentage to be located behind or on the side of the structure, or perhaps there could be a separate condition for corner lots, leaving the 75% requirement to interior lots.
Scott Dumler, Nature, Inc., said they are actively working with Mike on the realignment issues. They support his comments today regarding realignment. The contract for deed that they have on the property is subordinated in part to the interests of the Salish and Kootenai Tribe as a mortgagor. It is a 3-party resolution and they look forward to making sure that it works for everyone.

Michael Kennedy said Mr. Dodd testified in July regarding the inclusion of the Dodd property in the community/commercial zone and it is obvious that has happened. He wanted to know how the request was satisfied?

Jennie Dixon replied that the Dodd property is designated in the Comprehensive Plan as public park. The staff supported the designation of the property as light industrial. Their recommendation has always included commercial in that designation. This new realignment of the commercial only on the Dodd property would fit with that recommendation. It excludes a use that staff previously supported, even in light of a park designation on the land use map because this is privately owned land and cannot be recommended for zoning of park land until such time as the County is prepared to pay for it. The commercial designation is consistent with the past recommendation for industrial. It simply excludes a more intensive use from a zoning perspective.

Michael Kennedy said his understanding of this is, should this change be approved, it really doesn’t affect OPG’s recommendation that much. OPG is not having a problem with this change.

Jennie Dixon agreed. She said the only problem would be inconsistency between the designation on the land-use map as park and the zoning and the special district as either industrial or commercial. That is more of a legal issue, however, since it is privately owned property.

Michael Kennedy asked if anyone else wanted to speak on the Development Park? No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the rezoning of Missoula Development Park with the conditions listed by staff with the deletion of condition no. 1.

Fern Hart stated she was having trouble visualizing the differences in the Park. She did not want to end up with a situation like K-Mart, which has a solid asphalt parking area in front of the store. On the other hand, she trusts the development guidelines and respects that they could have individual property owners creatively develop within those guidelines. Part of her concern is that they are both the developer and acceptor of this zone.

Colleen Dowdall said none of the permitted uses would make it look like K-Mart. The development guidelines and the zoning require the minimum number of parking spaces allowed under the zoning instead of the maximum so they can minimize parking areas. The remainder of the parcel has to be landscaped. That is all within the zoning.

Jennie Dixon said, without this condition, you could end up with something like Wal-Mart, with a commercial building with all of the parking in front, but instead of 5 feet of landscaping, there would be 20 feet of landscaping.

Fern Hart said she is also thinking that government can get very hung up on “exacting” requirements. Fern Hart declined to second the motion and the motion died.

Jennie Dixon said the maximum number of spaces is based on use.

Colleen Dowdall referred the Commissioners to page 5 of the zoning resolution.

Michael Kennedy said if there is no guidance in terms of a regulatory requirement that limits the amount of parking according to the use, then it seems that will introduce a potential problem that is the center of the disagreement between the proposer and the staff.

Jennie Dixon said the portion of the park that is commercial allows for different standards for each.

Michael Kennedy asks for a maximum parking.

Jennie Dixon said staff’s recommend condition #2 of approval does set a maximum in that the developer cannot exceed the minimum by more than two percent.

Barbara Evans stated that if folks drive by on the Interstate they will only see cars in the parking area, and would prefer that the parking area’s be in a mix rather than in one area.

Michael Kennedy commented that the staff and the owner representative have discussed this particular issue for several months and it’s been before them for three months and it is still unresolved. Since we are the developer in this case and we are serving our own special interest, judging that the staff represents closer to a community interest than the development does in this sense, then he would urge reconsideration of the motion to include the staff recommendation.

Jennie Dixon said that this is one of those areas where policy changes are perceived by staff because of growth management and other policies.

Michael Kennedy asked if there was any further comments from the audience. No one came forward and he closed the public hearing.
Michael Kennedy asks Bud Hettich, Office of Planning and Grants, to make the presentation.

Fern Hart stated that the Public Hearing may be interrupted later for a special Certificate of Appreciation for the Alberton Train Derailment Incident, presentation.

Bud Hettich of the County Office of Planning and Grants, said that he will come up to the Board and show on the map the area involved in the appeal and some photos as well as answer the question Mike had on the Parks and Open Space boundary line.

Michael Kennedy asked Bud to reference that what he is showing on the photo’s by how it is referred in the plan document for the record.

Bud Hettich said that in your packet you have an Exhibit F as described: this is a 1.84 acre tract in Sec. 36, T12N R20W. This tract is located east of Rossignol Orchard Subdivision, bordered east by the river and to the north is two residences and to the south and west are open hayfields. On this particular property there are three designations, two come from the Comp. plan and one is the floodplain limit or floodway for the Bitterroot River. On Exhibit F, the area stripped vertically is the area designated parks and open space. The solid line is the area designated residential on the Comp. plan. The area designated residential is 8/10 of an acre and the area to the east of that parks and open space would be the remainder of 1 plus acres on the east side of that line. The floodway line is important depending on your decision. It is designated floodway and as such cannot be built upon.

Michael Kennedy asked Bud if he means floodway and the floodplain limit are synonymous in that location.

Bud Hettich answers in this location, yes.

Bud Hettich asked if there are any questions on the Exhibit F, designating where the two different areas are located.

Michael Kennedy asked Bud if he can locate on Exhibit F where the fenceline is at on the property to the North?

Bud Hettich points to the map and indicates the point of the fenceline as he measured it at the site and by the Comp. plan map and the floodplain map. He said he measured it from the West property line along the North fence line 250 feet which came to a location 30 feet east of the property structures to the North of this lot. He said that on the photo is a line separating the residential area and the parks and open space area starts on the North property line, 30 feet east of that shed on the property to the North and then on the South it is approximately 200 feet west of the fence line to the east.

He states when the County was approached by Mr. Barrett on what he could do with his property, comp. plan etc., we gave him the information as shown on Exhibit F. On his plan, he shows that he wants to build a residence at approximately at the floodway line between parks and open space designated area on the west side and the floodway line on the east portion of his property. He has indicated to me that he would stay 70 to 80 feet west of the fenceline which would put him out of the floodway.

Michael Kennedy asked if he meant the fenceline that is on the bank.

Bud Hettich answered yes. At that time they suggested to him we could not approve a building permit at that location.

Barbara Evans noticing the arrival of the personnel that responded to the Alberton Train Derailment Incident interrupted the hearing, as was suggested by Commissioner Hart at the beginning of the Public Hearing, to move onto the presentation awards to people involved in the Alberton Train Derailment Incident. The honorees and sheriff personnel by nature of their job could only be available at this time, therefore requiring the Board to adjust the schedule to accommodate them.

Michael Kennedy added one more comment that notes that this happened outside the boundary of Missoula County and thinks that the remarkable cooperation that exists between your department and other County’s is appreciated very much.
develop his parcel with a residence one of the first things we do is inventory the site to determine what’s happening in the area. In this case, all of the land within 300 feet of this particular property at this designated parks and open space area we found no other structures which then gave us the authority to deny his request. We then advised Mr. Barrett when we post the property and advertise that he could appeal to this board within five days. Mr. Barrett did that. It is the staff’s recommendation that the Board uphold their denial of Mr. Barrett’s building plans. He said that he has listed three good reasons of how they came to their decision. First Mr. Barrett does have an alternate site for building at the front of this parcel that is designated residential by the Lolo Comp. Plan. Secondly they feel the area designated Parks & Open Space. He said there were many of the people there in the hearing today that could speak.

Michael Kennedy then thanked Bud for his presentation and asked Bruce Barrett, the developer, to make his presentation.

Bruce Barrett said that he has some material to provide the Board. He and his wife have put a lot of time and energy into this project. He also wanted to make his presentation as quick as he can. Bruce said that he was here to day to ask that part of the restriction be lifted and would also like you to look at a legal requirement of your decision to look at this appeal. He felt it important for them to understand the layout of this lot. He said the Board does not have three shoboxes laid side by side, and with that examples how the properties look on the map. Exhibit B from OPG will show the properties in question. If they would note at the right is an A, B, and C. Then below that is another property labeled A which is his property. He notes that his property goes to the river and that the other properties above him do not. He states on properties B and C above his are homes build towards the front of these lots. Mr. Barrett stated that he and his wife had been looking for property by the river, near the City of Lolo, Montana and that they looked at this property by contacting the Realtor - who was also at the hearing today. He also at the hearing today. He stated that he and his wife liked the property. He stated that he and his wife already live in a rural area, but that they considered the riverfront property a beautiful place to retire or at least a good investment. When they investigated the property they found that it was a zoning, river front with a designated floodplain at the rear of the property. He said that they had no intention of building within the floodplain. This lot was developed in 1974, and was a small piece of a farm. He stated that in 1978, the Lolo Comprehensive Plan was adopted and that it established a sweeping area designated as parks and open space. He said that they researched this parks and open space but that it was very difficult. He said that he was able, with the help of Mr. Hettich to find most of the information about it and looked at some of the newer maps. He stated his surprise when he found that the line for parks and open space ran through the middle of his lot. He also stated that he thought the County Commissioners were trying to take floodplain area and exclude it totally from development. He didn’t think it was the intention of the Commissioners to take any buildable areas of the lot for open space. He said the OPG office their reasons for not allowing him to build in that area. There were three reasons that they listed. First was that his two neighbors had built towards the front of their lots. Bruce then asked the Board to look at page two of the document and note the diagonal line. He also said that it appears that the people who did the plan did not go there and walk the area, but rather took maps and drew a basic sweeping area with an arbitrary line. He then stated that he and Mr. Hettich had worked together in regards to the line being arbitrary and concluded that it is not an exact science. Bruce thinks that the County Commissioners were trying to follow the floodplain area. He said that his idea was only to move a portion of his building site into that area some. He said that he wanted this lot as a single family residence even though it was listed in the Comp. plan as available for a six unit or multi-family area. He said that he has learned that they have left him enough area to build a house. He also has learned that property is a diagonal line with one half being 180 feet from the property but the other is 250 feet. He feels that the 180 foot side of the area is very limiting. The front of the property has easements which include 60 feet, therefore it is actually 120 feet.

Bruce Barrett said the second of the three arguments that Mr. Hettich brought up was that his next door neighbors built towards the front of there lot. Those two neighbors are part of a COSO or Subdivision called Allomont Orchards - a developer carved it up, came and got permission and put covenances on the land and restrictions and the people bought owing that respectability of those limitations, but that did not include his piece of property. Another interesting thing about this is that the neighbors built before 1978 when the Lolo Comprehensive plan was established. The area was developed about 1974. The people then built on the front of their lot because they wanted to. Even if they built after the Lolo Comp. plan they have a problem looking at the same open space, open park land line is at a diagonal if you look at the properties as shoe box lids. It enters my property at 180 feet back from the west side, by the time it gets to the neighbors property it is 250 feet and by the time it gets to the other property, it is hardly restricting it at all. He feels the lines are arbitrary. They choose to build on the front of the lots, he chooset not to because it does not make the best use of the property.

The third argument that he would like to address is wildlife, environmental arguments are important to he and his wife also. They manage the property now with that in mind. They didn’t put in a traditional lawn. They have a self-serving interest but you have to realize that everyone has a self interest when they think of what they are doing is important like their ideals in environmentalism. They have thought about this building site quite a lot. The main wildlife in the area is whitetail deer, and most of the wildlife is across the river. Another thing about this lot is that it sets on a cliff, so the property is elevated really high, so it’s maybe 15 feet to 20 feet down. The shore is not being touched. Then there is a corridor toward the back of the property that is designated the floodway and is a 70 foot corridor. He stated that they have to balance this thing with the fact that they paid top dollar for a piece of property to develop in a beautiful way.

He wanted to move onto a couple of other things. There has been a little talk by Mr. Hettich about the floodline that you see on the Exhibit. He believes the floodplain line is wrong. There is a letter in the papers you have from Mr. James Murphy, the original owner of this property in the 1800. He owns the adjacent property directly south and...
The reason he mentioned the abandoned hay field was not for sarcasm, but to let you know what that property consists and help the environment too. Other than perhaps there being no building there at all, we would see manicured lawns, heavy fences and gardens, swingsets, a garage on the back of the property at about the using the lot. If the line were to straighten out - basically he would be 50 feet closer which would make all the problem because the line that's drawn across is a diagonal and he thinks that line ought to be straight for purposes of were all there, look at the other two pieces of property, the people that are opposing his petition today. He stated that thinks it is important to define what you think these people are invading by 50 feet. One last thing about this is if we basically an abandoned hay field more or less taken over by knapweed. He doesn't think of it as riparian habitat. He on the property is the closest point to the river. If you look at Mr. Murphy's letter you will note that this property is basically level, if anything the river side is higher and it goes gradually down to the west. The highest point to no bank. He could have, but did not go into the floodplain office to ask for a floodplain designation change. This perhaps ludicrous with the fact that the property is up on a cliff and the land across the river is low lying and has little supports my petition so I don't want you to think all the neighbors are against it. He thinks the flood line is wrong and would like to stress that the rear of his properties are an extension of that open space that Mr. Barrett wants to build in. 

Bruce Barrett said to sum it up, firstly if he could invade the area by 50 feet, there should be no multi-family use of that property because the property is too beautiful for that. He is willing to wave that multi-family use to a single-family use and if you look at sample motion he proposed it says that it would let you move back a little into the open spaces only if it is a single family residence. Secondly, if he put that house toward the back, it would allow him to put the septic system farther away from the river. If he put the house farther to the front like the neighbors do, the septic would have to be in the back. It is going to leave the top of the 70 foot corridor at the top (the cliff), it's going to leave the bottom corridor untouched. The 70 foot setback will make sure the house isn't totally visible from the river. There are other houses near here, i.e., Lolo Creek area, where the houses are totally visible from the river. He would like to state also a "grandfather" idea in that there is a lot carved up in good faith in 1974 who attains all the improvements, and four years later the County comes and takes two/thirds of it, and He also thinks that has a moral impact that you can consider. Secondly, he would like to talk to you about the legal effect of this Comp. plan. This is a property with a Comp plan with no zoning. Zoning is the way you usually put on restrictions. The Lolo Comp. plan designates this property as an open space. He feels there intent was to make this property an open space that is untouchable. In the document you have before you, look on page three. They have looked at the maps, so lets also look at the definitions. Definition No. 2 states “The park and open space designation of this plan recognize the hazards and the resource of the floodplain area. The area designated may not be park and open spaces may not be public land and this recommendation is not suggesting that private land should be used for parks and open space.” If the line is showing most of this lot excluded it’s because it’s an accidental arbitrary line that was moved too far over. It was meant to follow the floodplain. So all the testimony about not wanting this house back there and the wildlife issue is irrelevant. He also thinks these guidelines are meant to be put into effect with common sense. 

In sum, what he proposes is in the sample motion you have - that you allow a partial lifting of the parks and open space designation on this couple acres of land. The line has to be level, but if he were to build instead of 120 feet away to 70 feet away, then we are talking of a difference of 50 feet. He doesn’t think this 50 feet will have a negative impact. He said it will make a huge difference in aesthetic use of this property so they would like to use this property that they paid top dollar for the way they inteneded. He would hope you would grant that motion and request and overturn the decision that was made by the OPG office.

Michael Kennedy stated that Board of County Commissioners will now open the public hearing and that anyone wishing to speak come forward.

Don Beduhn stated that he has the property adjacent and is against this request. He has been living on his property for approximately seven years. He teaches a class on restoration ecology and some of the area that Mr. Barrett said adjacent to the river is not lawn, he has planted trees, ponderosa pine trees, mountain mahogany trees or bushes and have tried to improve the wildlife habitat in the back area of the lot. His home and his neighbors home are over 100 yards from the river. Now that Mr. Barrett wants to build near the river will distract greatly from the wildlife. He would like to stress that the rear of his properties are an extension of that open space that Mr. Barrett wants to build in. He would like to enjoy that open space that runs in the back of their properties for the wildlife. Mr. Barrett seems to only think there is deer and that is far from being correct. There are deer, pheasant, geese, eagles that roost in the trees across the river that may not be there if Mr. Barrett is allowed to build on the river. He does have pictures of the area and shows them to the Board. Note the trails that go along the river, and that is exactly where Mr. Barrett plans to build. If he is allowed to build on top of those trails along the river bank it will interfere with the fishing access along the river bank. Other people will talk today about the same subject and also see the petition before you and signed by people in that same area. He has seen many eagles that roost across the area and utilize the area extensively. During the spring and summer the ospreys use the area as well.

Mr. Barretts letter of appeal brings up several points. Regarding the idea of building his house in the back of the lot instead of the front would interrupt the movement through the rear of the lot which is now considered to be open space. The topic of the small front yard would be certainly as large as any of the adjacent yards around it and it sees no problem with that at all. The back of our homes have the best view of the river and the open space. If his request is granted, they will have a house behind us that Mr. Barrett is not planning to live in. About the septic system in the back of Mr. Barrett’s lot at being a problem, he would like you to know that his well is in the front of his lot, so if he puts his septic in the front also it will be adjacent to his well. When Mr. Barrett bought this lot, certainly he would notice the two other homes build on the river. There is a lot of soil off the area and in summary the request that Mr. Barrett is proposing to build a house will have a negative effect on that wildlife. He wants the Commissioners
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to know that he considers the wildlife a part of the value of his lot and home. Therefore, he urges you not to grant this variance from the Lolo Comp. plan. "I feel Mr. Barrett has adequate room to build an attractive home in a very attractive setting."

He does take offense at some of the comments from Mr. Barrett. He has a degree in wildlife biology and also one of his specialties is wildlife habitat management. He thinks that Mr. Barrett would gain financially by building and selling that home close to the river.

Michael Kennedy asks for a show of hands of those people in the hearing that would like to testify and would like to have the speakers be as short and concise as possible because of time.

Mike Johnston answers that he lives in Lolo, MT and about 400 yard from the subject property. As a neighborhood resident, he knows that building a house close to the river will disrupt an important wildlife corridor that has already been discussed. Their house is located approx. 350' from the river, the back section being adjacent to the river and along with the lots on either side is protected by a conservation easement which recognizes the importance of maintaining open space along the section of the Bitterroot river. They do realize the advantages of building away from the river far outweigh the advantages of building a place with a view of the river. Osprey, heron, woodpeckers, kingfishers, water ouzels, and sapsuckers are all found here. They also see the deer move through the corridor. He agrees that building a house near the river will disrupt that wildlife corridor and secondly, he owns a small business, a river guide service that use the river. There is very few developments along this stretch. Many people live along the side of the river, including him, but most of the people have built far enough away from the river so as not to be easily seen. As a river guide and small business owner who utilizes the river regularly, he would not want to see the natural integrity of this section of the river front maligned by unnecessarily and short sighted development. Finally, as a resident in the neighborhood, he would need to question the status of the home as that one the builder intends to live in it and has the community best interest in mind or as just someone who looks at the prospects of additional profit from a river front view. He is not opposed to constructing a home on this lot as it is currently designated. Mr. Barrett seems to imply that if the variance is not passed he would consider multiple developed dwellings, and that he loves the wildlife and to fish, but is going to build the house in the wildlife corridor anyway. Also that he did not know about the comprehensive landuse plan, (the Lolo Comp. Plan). To him the lot is currently designated as is should be not only for its future occupants but also for river recreationists, the wildlife and the neighbors. So he hopes you will deny the request.

Frank Williams states that he is a real estate broker who sold the lot to Bruce Barrett. He listed the lot in January 1994 with owner being Bud Gennousky who lived out of state and didn't plan on returning to Montana. Bruce became interested in the property because of the river frontage and a place to build for a river view. He had a Title company research the property for building restrictions and found none along the river frontage. He also checked on septic approval and floodplain map which showed the floodplain about 40 to 50 feet from the river edge. The zoning also showed the area to be unzoned. He personally went into the Planning Office to check on any restrictions on the land. This was also the time he discontinued p honing the Zoning Office because they were underfunded and understaffed and unable to answer questions over the phone. He asked Bud Hettich about restrictions on the Lolo land and Mr. Hettich said it was unzoned, and did not mention the Lolo Comp. Plan. Bruce then purchased the property and a month later was informed that the County was not going to let him build along the river front because the Lolo Comp. plan designated open space. Mr. Williams was unaware of the Lolo Comp. plan, but was aware of the Missoula County Comp. plan, but that the map did not show any designations in the Lolo area. The seller, buyer, myself and some neighbors were not aware of the Lolo Comp. plan. He was not a Realtor at the time the original Missoula County Comp. plan was done but remember there being a controversy over the project. The public was concerned that the plan was going to obligatory, but the County reassured everyone the plan was meant only as a guideline for the future and not obligatory or binding. It was a guideline and zoning, if approved, that would have been the tool of implementation. Zoning would have to be legally approved. Much of the public and many persons involved with the plan still see it this way. Somehow along the way the County started to use the plan in some cases to restrict land usage as if the land were already zoned. This was not the original purpose as he understood it. Bruce bought the land with the view in mind and found nothing to prevent him from doing so. Bruce is not proposing to build in the designated flood plain, but rather to build where he can get a nice view without spoiling any neighbors view. His proposed site is doing no harm and is in harmony with the original intentions of the County people who drew up the plan.

Also he noted that the petition stated that Bruce wanted to build in the 70 feet area of the river. That is not true at all. His proposal is to build outside that 70 foot line.

Rich McDougle states that he lives next to Don Bedunah. The wildlife thing is the emotional end to this request, but there is also common sense to consider. The whole area up and down both sides of the river is open to duck hunting of other types. Shotgun pellets have landed in his backyard from the river and the area across the river is also hantable. Therefore if Mr. Barrett wants to build approximately 25 feet from the bank it is not smart. Also he has lived there 12 years and his property has been under water in the back.

Michael Kennedy spoke to clarify that the water in the back was runoff and not the river.

Rich McDougal also stated that he has seen Eagles and Osprey in the tree along that side. My well is also in the front of the property and his proposed septic would be too close. So he asks that you deny the proposal.

Kathy McDougal said that she is Rich McDougal’s wife. She has also seen the water runoff and is this side of 93 Hwy and running back. The runoff goes right to the back of that property and cuts into the very back of Mr. Bedunah property. There is a dam at the mouth of our driveway and there may be water at the back of that area. Mr. Barrett talks about the water bank, but there is no walkable bank there since it is so steep. At the top of the cliff he requests 70 feet setback which means his home is set back 70 feet. There is a questions regarding back yard space being adequate. Is that back yard going to be in the wildlife corridor. The eagles also use the corridor quite often. Will the eagles stop using that area if Mr. Barrett builds that close and uses the corridor as his back yard? The deer use that corridor too and sometimes get caught in some of the fences which requires us to call the Fish & Game to help take them out of...
there, many of the deer get caught and die because of these fences. Mr. Barrett's property will probably require a fence in the back yard too. Please don’t take that wildlife corridor and ruin that habitat for all of them.

Hank Crane said he has known Bruce since 1991. He is an attorney and currently working on my thesis on Res. Barrett’s Studies Dept. at the U. of Montana, and he also develops property. Bruce was only interested in developing this property for himself and never anything else for investment purposes. Bruce currently lives on 20 acres that was once knapweed, but is now full of bunch weed and timothy, etc, into a beautiful field of forage for wildlife. Bruce and he have talked about the view shed and they talked about the 15 to 20 foot cliff as no. 1 and no. 2 that he would have to place his house 70 feet behind the setback. They both felt that in this case it would not cause a view shed problem. After walking the corridor there was no signs of wildlife at that time although we did know that there has been wildlife in the area. Bruce is very interested in maintaining the wildlife in the area. Bruce paid top dollar for this property for the view towards the river. He did not know of the existence of the Lolo Comp. plan. Bruce mentioned the possibility of developing a sixplex. The only reason he would do such a thing is that Bruce is not a wealthy man. If he cannot build on this land, the only way he could recoup his investment would be to increase the density, although he does not have investment purposes in mind. He was upset to hear these other people impose their belief as to what Bruce is to do with the property. He knows as his friend and adviser that is not the case.

Michael Kennedy asks if anyone else wants to speak.

Cate Cru said on the one map that is marked F, if you look at the left corner, she is shown as 26. Her patio and back door views all of these people viewing their esthetic view. She said that she lived in this area before any of these homes were built. Back then there were herds of deer, geese, pheasants and bald eagles all of that was there then and is there now. So in 1978, the development took into consideration the impact it would have on the wildlife and the riparian areas. The decided to protect it and that is why the wildlife is there today along with the homes that do nor encroach on the corridor, so they decided to protect that open space. She stated that the amount of homes in Lolo has probably doubled. So she stated that she would like to see the open space protected. If Mr. Barrett is allowed to build his house in that corridor, it would interfere with the natural deer routes through the area. She said that having lived there before any of the lots were built, that she has personally witnessed the deer travel through the natural corridor. Regardless where he puts his house, there are wonderful views there and there are wonderful neighbors in that area that simply care. She stated that she thought that all the people that live there are very concerned about the possibility of loosing a connective piece of open space and corridor. She said that development would occur in the area in the future, and if Mr. Barrett is allowed to attain this variance, any new developers would ask for the same. Mr. Barrett is asking for you to break the rules. If you do that for him, you will be providing a precedence. She asks the Board to go by the original plan and that it is a wonderful plan of integrity and good intentions and it will protect the wildlife and the people from the floods.

Fern Hart asks Cate to tell her where she live in relation to the neighbors? Cate responds by showing the Board the place on the map locating her property?

Michael Kennedy said to Bruce Barrett that he would be allowed to respond to any comments but that he could not add any new additional information or testimony.

Bruce Barrett answered that he wanted to comment on only one thing about looking at his adjacent neighbors property. He said that what he meant by the maintained lawn was not to object to it. He described the area as lawns and homes and lawns again, then a garage and then another home, etc to the end. He stated that a garage on one side of his property would obstruct his view. He also mentioned both property’s on each side of him have placed fences running along property lines towards the river with a corridor behind all the property’s and then the river. He said that the length of that area is about 70 feet which is what he is proposing.

Don Bedinha said that he just wanted to comment about the fences and that they do not go all the way back and not even within 70 feet of the river.

Michael Kennedy asks if anyone else wants to speak and received no response, therefore he closed the public comment portion of the hearing and asks for the Board's comments.

Barbara Evans asks the staff to show her exactly where on the map Mr. Barrett wants to place his house in relation to what we call parks and open space. She also wants to know when the Lolo Comprehensive Plan drew the line, if it was arbitrary or was it a guideline. What is the legal ramifications of drawing something on a map.

Colleen Dowdall responds if the Comp. plan was done in 1978 regardless what the County said at that time in using it as a guideline, subsequent to that in 1984 the Supreme Court told us that while comprehensive plans were guidelines that development within the area that is planned must substantially comply with the comprehensive plan. Our interpretation of that in the Lolo area, and we have had 3 or 4 appeals in Lolo area, is by the resolution that guides how to determine if the development complies with that plan. She said the line is drawn, she thinks outside the floodplain, but could not be certain of that. It appears the parks and open space encompasses more than the flood plain. When we draw lines on a Comp. plan may we typically don’t do it in an arbitrary way, but we do it for the reason of attempting to protect a resource or to guide a particular type of development. The riparian regulations that Mr. Barrett referred to were adopted in this county for subdivision because of a great deal of study conducted that led the Commissioners to realize the very importance of riparian areas. She also wanted to address the list that Bruce read in say that those were the resources we were attempting to protect. She wanted to remind the Board that those are the resources we look at to identify as an area of resource and that vegetation does identify it as an area of resource, it isn’t necessarily an area we are trying to protect, rather we use it as a tool of identity.

Barbara Evans stated that she assumes that this would not equate to a taking by putting this parks and open space line across this property.
Colleen Dowdall answered that the way the Comp. plan addresses that states “the area designated for parks and open space may not be public land”. She went on to say that it means “might not be public land” and this recommendation does not mean that private land be used as parks and open space. However, she stated that the County is saying is that we recognize that these areas are more difficult to develop and that we want to protect them as a resource either as an open space or wildlife resource.

Fern Hart stated that she had questions about the easement Exhibit A. She asked if Mr. Barrett is losing 60 feet of the lot front for a road easement?

Colleen Dowdall said that it appears that 30 feet of the road easement goes onto his property and 30 feet goes over onto Lot 2 of Allomont Orchards.

Fern Hart said there is a private road and utility easement seems to go 60 feet.

Horace Brown said it is a private easement that allows utility easement and private roadway and extends out 60 feet from the Section line which means that it would overlap this lot by 60 feet. The road comes east then becomes a private road which goes further east and goes North. He said that road is in a 60 foot easement and is a private road and it would to only 30 feet onto this property.

Fern Hart said then that this is a private easement access to those COS lots.

Horace Brown said yes and the road is on the East side.

Fern Hart asked how wide are the roads in the area?

Horace Brown answered they are approximately 22 feet wide.

Fern Hart said that she was on the Planning Board when the Lolo Comprehensive Plan was adopted. She had worked with the County Planner, Pat O’Herren, and believes that this is a designated line for open and resource land.

Michael Kennedy asks Colleen Dowdall whether the same restriction applies to the properties to the north if they preexisted the Lolo Comprehensive Plan.

Colleen Dowdall answered if the properties preexisted the Plan, but were undeveloped and the designation indicated that we did not want people to build in that area, they still would be going through the process that Mr. Barrett is going through. But, she said, if the houses were already built, they would be grandfather as of the date of the adoption of the Plan.

She added that it is important that what the Board is looking at is not a variance but whether the zoning officer has made an error in determining whether he is in substantial compliance or not. She also said that the pictures need to be kept if they will be used to determine their decision.

Michael Kennedy stated that the inexactness of that line is a concern. He wants someone to show precisely the location of the North/South fence located on the property to the North. He feels that that fence is the designation of the limitation of development on the adjacent lots.

Colleen Dowdall said that the County Surveyor look at this with her. There is a fence that runs along the river and along the boundary of the lot. She said that the boundary line that runs to the west is the fenceline that divides the property that Mr. Barrett wants to divide with the neighbors.

Michael Kennedy said he is concerned with the North/South fenceline that crosses Mr. Bedunha’s property. He would like to know where that is located on Exhibit F. He also stated that there are a lot of dimensions that do not make much sense here and said that he does not have enough answered questions to make a good decision. He also said that he wants to have a better map showing the houses, fences, garages, etc.

Bud Hettich said that the neighbors garage, the closest structure to the river, is 30 feet back and west of the open and park space line.

Michael Kennedy asks Bud how far would that be from the river bank?

Bud Hettich answers 120 to 150 feet approximately.

Michael Kennedy said that the edge of the neighbors garage is 150 feet from the river bank.

Bud Hettich answers yes.

Barbara Evans asks Commissioner Kennedy if he is equating the edge of the garage as the limit of Mr. Barrett development, the 150 feet from the river?

Michael Kennedy answers that we shouldn’t require Mr. Barrett to do anything more than what we require other people in that area if we want to provide a contiguous corridor there.

Horace Brown said that he will offer the surveyors help in mapping the area better.

Colleen Dowdall said that she would caution that this is not a zoning map and that the hard and fact lines are not the issue. That the important issue is that we made this designation for a reason to protect the riparian corridor resource.
Michael Kennedy said that is why he needs the precise dimensions.

Colleen Dowdall said that we have a designation but not a zoning designation. It is a recommendation from the Comprehensive Plan. She said that what we needed to do is define the designation. She said she read the plan and by the definition, we are attempting to protect the riparian area. She also said the line subject is not as important as the testimonies of Mr. Barrett and his supporters about the riparian area and the testimonies of the neighbors that believe that there is riparian resources, and how is the best to protect that. In other words, how can Mr. Barrett build and be in compliance with the Comp. Plan.

Barbara Evans said if we were to impose the riparian regulations, how far from the river would he be required to build?

Colleen Dowdall answered that we would require that he not build in an area of resource. She said that we do not have a jurisdictional boundary, but rather a resource boundary. She also said that the most difficult areas are the ones that used to support riparian areas, but don’t anymore primarily because of agricultural uses.

Fern Hart said that her motion would be that we support the staff and support their findings of fact. She said that the Comp. Plan’s intention at the time to protect the riparian area. She asks Colleen if what she is saying is that the Board needs to determine whether they support the staff recommendation or not? And that the staff can then help Mr. Barrett find a location.

Colleen Dowdall answers that Mr. Barrett requested a building permit in a particular area and the staff said to him that he would not be in compliance with the Comp. Plan. She said that he is therefore appealing to the Board to tell him that he is in compliance with the Plan.

Barbara Evans seconded Commissioner Hart’s motion at least for discussion.

Barbara Evans said that she has mixed emotions on this issue because of her own living situation with deer, etc. She said she doesn’t know how wide this corridor is or needs to be. She asks Colleen what legal latitude do we have in determining the actual width of the corridor and impose restrictions there. She said that if we have no legal latitude to do that then she would have to agree that Mr. Barrett is not in compliance.

Colleen Dowdall said that the action requested is to determine if Mr. Barrett is in compliance or not. In other words yes or no.

Barbara Evans said that he motion with Commissioner Hart stands but would ask if it were possible after finding that they are not in compliance with the Plan, for the staff to go there and determine the actual width of the area we are trying to protect. In other words if it is 10 feet less that what we have listed then we should adjust it.

Michael Kennedy stated that the compliance issue is not so much to do with where the line appears as to what it represents. He also said that if they had better definitions on these properties that they would be better equipped to make a decision.

Colleen Dowdall said that there is more to substantial compliance than the line. She said if they were to approve this site location if he can do it in a way as to meet the goal of the Comp. Plan. She also said that the Board could tell Mr. Barrett that the building is not as important as the area behind it, therefore no backyard. She said that he could also enhance the corridor area to the extent of the neighbors, and may then be in compliance.

Michael Kennedy said that he is concerned with that in that we cannot give any petitioner proponent to locate and then justify that location.

Colleen Dowdall said that it would have to be pursuant to a plan approved by the OPG office.

Michael Kennedy asks if there is any further discussion on the motion of Commissioner Hart and Evans?

Barbara Evans withdraws her seconded motion.

Michael Kennedy asks if there is a new motion.

Barbara Evans moves that we postpone the action for one week during which time we ask Pat O’Herren, OPG office to go out in the property with Mr. Barrett and the neighbors to try and find where all the wildlife corridor actually is located.

Fern Hart stated that they are trying to protect river corridors. She also said that this plan is very old, but it has done that.

Michael Kennedy stated that Commissioner Evans motion has no second. He also asks counsel if there is a time constraint on this issue.

Colleen Dowdall answers no.

Michael Kennedy stated that the Board should take up Surveyor Browns offer to locate from Mr. Barrett property north, those improvements so that they can delineate the line of development that is furthest east of the westerly boundary of the property.

Michael Kennedy asks Mr. Barrett if continuing the hearing for three weeks would be a problem to him.

Bruce Barrett answered no, that it would not be a problem.
HEARING: MAGNOLIA ESTATES - SUBDIVISION FOR LEASE/RENT (57 UNIT MOBILE HOME PARK) 
FAIRBANKS LANE OFF MULLAN ROAD

Lisa Moisey, Office of Planning & Grants, said this was a request from Barbara Howell for a subdivision for lease or rent for 57 mobile homes on approximately 28 acres bordering Fairbanks Lane. Ms. Howell intends to develop the mobile home park in three phases, with completion by 1998. The development proposal also calls for a mini-storage facility and a convenience store on the property. The property is unzoned and lies outside of the building permit jurisdiction. The Missoula Comprehensive Plan identifies this area as open and resource which recognizes the importance of this property as agricultural land. Residential development is not the primary recommended use for this designation. Open and resource generally calls for one dwelling unit per 40 acres if residential development is proposed. The property is located about 8½ miles from Missoula and over 5 miles from Frenchtown. The property is not located within the activity circles as noted in the Missoula County Comprehensive Plan. The general land use pattern in the area consist primarily of rural uses. The parcels in the area are generally irregular in shape and range in size from one to 160 acres. Most of the divisions in the area were created through Certificate of Survey, which are exemptions from subdivision review. It is OPG’s staff opinion that the proposed development of 57 units is not consistent with the goals and objectives of the Comprehensive Plan. OPG staff has recommended that development be limited to Phase I of 15 units on the property. 15 units cluster on this parcel will result in an overall density of 1 dwelling unit per 10 acres, which is not strictly compatible with the one per 40 designation, it is, however, generally compatible with the surrounding land uses that have developed in the area. A development of 15 units will also result in less land consumed for residential uses and more land will be available for open and resource and continued agricultural uses. OPG does not recommend approval of the mini-storage or the convenience store at this time. Access to the subdivision would be from Fairbanks Lane, which is a County maintained roadway. Subdivision regulations would require the developer to improve Fairbanks Lane to meet County standards. These improvements would be required to the furthest access point. Community water and new multi-family sewage system is proposed for the development. The developer has asked for one applicable variance to the subdivision regulations. The variance request is from the regulation requiring the developer to pave streets prior to leasing the lots within the subdivision. OPG staff recommends that the developer install all required improvements for Phase I, including the paving of the streets, which would result in a recommendation for denial of that variance. During the public hearing before the Planning Board, the applicant withdrew the request for the variance from pedestrian walkways, leaving only one variance. The Planning Board held a public hearing on this request on September 3 and, after much discussion whether development is appropriate in this area and at what level of density, the Planning Board finally voted 5-3 to recommend denial of the proposal. She wanted to clarify one issue that may have been a misunderstanding at the Planning Board. It was OPG staff’s understanding that Phase I development would be on the portion of the property closest to Mullan Road. In the Minutes, that was unclear and the developer’s intention is to develop Phase I on the portion of the property furthest away from Mullan Road along Fairbanks Lane.

Michael Kennedy said, at this time, seeing the lateness of the hour, he asked if those who had come to testify for Taylor Acres, which was to be heard after this proposal, wanted to postpone their meeting to another date?

Those in the audience who had come for the hearing on Taylor Acres agreed that would be better. 

Barbara Evans said, then, the hearing on Taylor Acres would be delayed one week.

Bill Wagner, attorney, Garlington Lohn and Robinson, said they do not have a problem with postponing the hearing since it does not look like the Commissioners will be able to get to it today. They request that they not be postponed or continued for an entire week. He asked if it would be possible to hear this at one of the Commissioners’ daily administrative meetings.

Michael Kennedy asked Pat Keiley if there was a time limit for Taylor Acres?

Pat Keiley answered that since it was a reconsideration, there is no time limit. However, it does require a public hearing, so he recommended postponing it until next week.

Bill Wagner said that was acceptable.

Michael Kennedy apologized for interrupting this hearing and asked for the developer of Magnolia Estates to give a presentation.

Barbara Howell said she was here to ask the Commission to approve the affordable housing development of Magnolia Estates. She was born and raised in Frenchtown valley and attended Frenchtown schools. Her family bought that ranchland in 1948. It is 160 acres, on the corner of Mullan Road and Fairbanks Lane. Their intention when the bought that land was to try to make it a workable ranch and support their family, which at that time was possible. Her father recently passed away. But, for the last 25 years, 160 acres was no longer enough land to withstand a family, so he was had to work outside to create needed income. At this time, they are hoping to develop a small portion of the ranch and Magnolia Estates. By doing so, they will be able to continue to ranch the remaining 128 acres as a hobby, which her brother wants to do. They have been working on this project for over 2 years. In those 2 years, the requirements in the Missoula Subdivision Regulations have changed three times. When they called for clarification, they were told that the book was outdated and it would be a month or two before they could get a new one since it wasn’t printed yet. So the process has been long and drawn out. Since they started this project, OPG discouraged their efforts into planning for the viable use of this land. They were continually told conflicting statements as to the requirements of the Comprehensive Plan but, according to the 1975 Comprehensive Plan, “one of the land use goals is to provide for safe, healthy development of mobile home living in forms which allow for maintenance of quality living and minimal adverse impact and to “minimize the effect on agriculture and timberland and critical natural resources.” She stressed the Comprehensive Plan is merely a plan. It is not a rule, as been stated today. It is a zoning tool.
Referring to the Planning Board minutes, she said Troy Kurth spoke and quoted him saying “we are locking up this whole end of the valley. Here we are again, second subdivision, no place for anybody to live. Now the unzoned land, -- now we are trying to use the Comp Plan as a zoning tool as opposed to a land use guidance tool.” She quoted further from Troy Kurth “It would seem that we can’t bring this valley to a halt for people to live. They can’t live in Missoula, it costs too high to live. That’s why you moved out on your 5 acres and that is why I’m on mine. Somehow we have got to bring this around.”

The Office of Planning & Grants initially told them they had to have a convenience store and storage units within their plan to reduce vehicular traffic. They researched the feasibility of a convenience store and the storage units for hours and, two days before they met with the Planning Board, they were told that it needed to be deleted. It has all been confusing.

She quoted again from Troy Kurth, Chairman of the Planning Board, about open space and the resource thereof, “I personally like open space but I always figured that if I wanted open space, I had to buy it so I bought all that I could afford.” If this piece of property, 150 acres was subdivided at one per 5 acres, that would be 31 units, plus access road, 60 foot wide easement roads, 31 individual wells, 31 septic systems, etc., a very great impact on the area. She believes her proposal is more in line with good development practices and that the proponent, in essence is, going to cluster 57 units on 28 acres and leave the balance of 129 acres in agriculture and open space land. In her opinion, if the County uses the 1975 Plan as the sole source, it is doing a large disservice to the community.

Another matter brought up at the Planning Board is that they should have hired an expensive engineer, but they are not rich developers. They are trying to create affordable housing for Missoula and, at the same time, create a place for them to live so they can move back to the Missoula valley. It is where she was born and raised and she and her family love it here. They originally got bids from expensive engineers, who wanted $14,000 per unit for development. They could not afford it. So they recommended an engineer, who was described to them as the best engineer as the best one for the sewer and water systems in this area. He was willing to work with them and let them do their own package for him to design the water and sewer system in that area. The packet that the Commissioners have is the 4th plan that they have put together because of the change in requirements. The whole plan was developed with an intentional buffer area around the development land from the surrounding land owners. Stone Container owns the land north and west, the ranch is on the south side, Cheryl Neilson and the ranch border the east. Actually, for the development area, there are no surrounding land owners. The closest ones are across Mullan Road and across part of the ranch. Her husband and she are selling their home and business in Raleigh, North Carolina, and moving back to Missoula so she can be near her family. Before they started this plan, they had been studying this and researching it for approximately 2 years. At this time, there are no spaces in Missoula for double or triple-wide manufactured homes. Almost all the “trailer parks” are single wide. They are trying to develop a nice area, 57 units, with streets, sidewalks, they have no objection to paving Fairbanks Lane; their request for a variance is for, if they are going to pave Fairbanks Lane, let them come in and pave it and the development all at one time. Until such time, they are aware of dust abatement and will do that. In the past 3 years, extensive subdivision and commercial development from Reserve Street to Frenchtown has happened in this area.

They are trying to provide Missoula affordable modular homes and rental spaces. It will be exclusive, they will have a minimum move-out rate and they already have a waiting list of tenants.

At this time, Barbara showed slides of the area and described the area that was shown, showing the Commissioners the location of the proposed Magnolia Estates and the surrounding open space on the property. Stone Container, and slides of the numerous existing homes in the area.

She noted that currently, in Missoula, 7,200 vehicles a day that go over Mullan Road. With or without Magnolia Estates, the prediction is that in the next 10 years, there will be 15,000 vehicles a day on Mullan Road.

A few matters raised by Barbara Howell quoted from the Comprehensive Plan, “To provide for safe, healthy development of mobile home living in forms which allow for maintenance of quality living and minimal adverse impact.” They could put 31 units out there, which would be one dwelling for 5 acres, and there will be 31 septic tanks or 31 sewers, or they can sell 5 acres of land and it would be the same result. There will not be wildlife and open and resource land if they do that.

And, of course, those 31 people can subdivision their land after they acquire it.

There is a tall stand of trees which will shield the people who live near Harper’s Bridge Road from viewing the development. Darcy Sperry and the Arnolds are probably the closest landowners. There is a 3 acre recreational area
in the center of the development for the kids, and it will include barbecues and picnic tables. Regarding the ditch, she will fence off the Frenchtown irrigation ditch which has water in it part of the time. As far as kids playing on Mullan Road, she was born and raised on Mullan Road and her parents simply would not let her play on Mullan Road. She supports this subdivision and would like to see these two items added to the conditions.

Fern Hart said this is very complex. She read all of the Planning Board minutes for their review of this proposal. She wanted everyone to start from the same place and started with the statement that this is unzoned land. The Comp Plan designation is open and resource, one dwelling unit per 40 acres. The Planning Board worked hard and tried to look at this in different ways. One of the comments that was made at that Planning Board meeting was that it was not their job to zone this area. She said Troy Kurth made a valiant effort by it, the Planning Board rejected it, saying it was not their job to claim "...it looks like it ought to be." She respects their difficult discussions. She said their concern is that this is 160 acres, which has a housing development planned for it, in a range which could or could not be affordable. There will be expensive mobile homes out there. She said, for those that are concerned to keep the rural character, it costs the County more in services for one dwelling unit per 5 acres than it does when clusters are built. It costs more in schooling, public services, roads and in areas for public safety, such as services that need the Sheriff’s Department and the Fire Department and emergency vehicles. Further, 5 acre lots with a single family home on them do not have parks. Magnolia Estates has those benefits. She stated what they have to ask themselves are what is the benefit to the County and taxpayers, which is her bottom line, for this request. The proposal came in with 57 lots; she believes they started with over hundred. The Planning staff suggested 15 lots. She recalled an important comment from the Planning Board meeting and said this is heavy development with a statement that they want to do this and keep the agricultural land. She does not remember any commitment to that. Counsel said they cannot require that. What are the benefits to the taxpayers for the travel on Mullan Road, which the County does not have the money to repair, what are the benefits to the schools and who need a bus for this subdivision, what are the benefits for housing? She feels they must support housing that is clustered. When it gets close to City services, the cost goes up incrementally and the neighbors zone it out. Thus, there are not a lot of options of where to put housing. She read that the neighbors were not consulted about how this would be developed. It is always good, when development is being planned, to include the neighbors. She does not see where this development includes bike paths or mitigation for Mullan Road, annexation into the Mountain Line district. These are her concerns.

Barbara Evans noted, on page 23 of the Planning Board Minutes, Barbara Howell said she has no objection to a 15 or 20 year open and resource designation on the land. She stated she felt the Commissioners should consider a $45,000-$80,000 dwelling as affordable housing. She heard recently that the average price here for a home was $121,000. She conceded that $80,000 is a terrible price for a house, but a $50,000 home is considered a shack. So she estimated that a home that cost between $50,000-$80,000 would have to be considered affordable comparatively. There is not a place in this community to put mobile homes and that seems to be the only type of affordable housing that is available today. Clustering is much more beneficial to the taxpayers than one dwelling unit per 5 acres, which is permissible on this land but she is glad they are not opting for that. She would like to see this subdivision approved and give something more than lip service to affordable housing. Further, since this is next to Stone Container, that land would be difficult to sell. She stated it is lucky that anyone wants to build next to it, let alone a nicely planned cluster of mobile homes, which she feels is beneficial to the people and the taxpayer. They have planned to put in what the County has desired in development. There should be a convenient store so people don’t have to drive to town and a storage parking. She supports this subdivision and would like to see these two items added to the conditions.

Michael Kennedy said, in times past, a trailer park may have been a bunch of trailer house jam-packed together with numerous garbage cans sitting out front. However, this is a remarkable development for mobile homes. It shows the consciousness of change is seeping into all corners of the County. But there are some deficiencies as we get to the ideal. In this proposal, they did not properly address the traffic increase. It is estimated that this subdivision will produce 399 additional vehicle trips per day to an already overburdened road that is falling apart now and does not have any resources to pay its repair. There is also the school problem and trails and sidewalks are needed. This is a destination subdivision and will require service and burden on natural resources which we can no longer afford. So, although this subdivision whose design is remarkable in a lot of ways, it is not in the right place so, for that reason plus the overloading of the resources, it is with regret that he cannot support it. He added that also this proposal does not meet the Comprehensive Plan, even though it is old and needs to be revised.

Barbara Evans moved that the Board of County Commissioners approve Magnolia Estates subdivision for lease or rent with the requirement that the land outside the proposed subdivision be designated open and resource until such time a unanimous vote by a County Commission changes it.

Michael Kennedy said he believed it already was open and resource.

Colleen Dowdall said she believed Commissioner Evans was saying that there could be no zoning of that area without a unanimous decision from the Board, which is a higher burden for zoning than normal. That is one tool for allowing this subdivision and preventing further development which was a concern that was addressed by the Planning Board at length.

Fern Hart asked if Barbara’s motion was for 57 units?

Barbara Evans answered yes. She also included a convenience store and storage space, and that the remaining land be kept in open and resource until a unanimous vote of the Commission changes it. She noted this would be difficult but she did not want to tie up the land so totally that they can never be reversed if the conditions warrant change. She

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pointed out that Target Range ought to be able to in-fill because one dwelling unit per 5 acres is not a good use of the land as an example.

Fern Hart asked if this land was in the Mountain Line taxing district?

Barbara Evans offered to amend her motion to include that the owners must include themselves in the Mountain Line taxing district or at least petition themselves for inclusion.

Fern Hart added that she should add pull-outs for buses.

Barbara Howell said they own property which abuts Mullan Road and that would be okay with them.

Barbara Evans said she would include in her motion whatever Mountain Line determined they would need would be what was required.

Fern Hart asked if there was enough park area put aside for all the children of the subdivision?

Lisa Moisey answered that they met the parkland requirements.

Fern Hart asked if there was enough park area put aside for all the children of the subdivision?

Lisa Moisey replied they have to bear in mind that there will be an additional 399 vehicle trips per day on Mullan Road. Staff is concerned that is a significant burden on Mullan Road which is in bad shape.

Colleen Dowdall said she could require mitigation. However, she was told that the Mullan Road project that was improved amounted to $1 million per mile.

Horace Brown said that was the State’s requirements for the roads they build. If the State does not overlay that next year, they will overlay it as much as they can afford then chip-seal it.

Fern Hart said she was going to require mitigation and it will have to be determined with planning staff and transportation committee members and the applicant. She warned that it would not be cheap.

Michael Kennedy suggested a mitigation for the schools also.

Fern Hart said she will bring Frenchtown School to the table with the developers to see if there is a mitigation request from the School.

Colleen Dowdall said the Department of Commerce has suggested that they at least provide evidence that they have talked to the schools and the impacts of the schools have been addressed.

Fern Hart asked Barbara Howell what lease/rent amount they were going to ask for?

Barbara Howell answered $250-$275/month.

Fern Hart asked if that included maintenance?

Barbara Howell answered yes. They plan do dust control by spraying and it will be a graveled a road which will meet County standards.

Barbara Evans said she withdrew her motion so that a new one can be made.

Fern Hart replied that would be good. If they approve this, she wanted to be sure they covered everything.

Barbara Howell said that would be okay. They had always assumed that this would not be an easy process and it hasn’t. They are willing to work with the schools, Mountain Line and whatever would be best for everyone.

Fern Hart said there would also need to be a convenience store.

Barbara Howell replied they had planned to have a convenience store, then they were told to delete it but they have no problem with putting one in.

Fern Hart moved that the Board of County Commissioners deny the request for a variance for Magnolia Estates, located approximately 8.5 miles from Reserve Street off Mullan Road on Fairbanks Lane, a subdivision for lease or rent, from being required to postpone paving of internal streets until the lots are pre-leased, based on staff’s recommendation that the developer will be required to pave internal streets as the phases are done, prior to leasing or renting spaces within the mobile home park. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners approve Magnolia Estates, a subdivision for lease or rent, located approximately 8.5 miles from Reserve Street off Mullan Road on Fairbanks Lane, contingent on the conditions listed below, based on the recommendation of staff and the findings of fact. Michael Kennedy seconded the motion. Motion carried 3-0.

1. The proposed convenience store, which must be constructed at the beginning of Phase II, and mini-storage facility shall be included in the final plan, and shall be built in scale and character with a rural neighborhood, subject to approval by the Office of Planning & Grants.
2. A landscaping plan, showing compliance with the buffering requirements of the regulations, including the vegetative coverage or landscaping of all unpaved areas shall be submitted to and approved by the Office of Planning and Grants prior to submittal of final plans.

3. The developer shall file a document of record with the Missoula County Clerk and Recorder granting an easement to Stone Container for access to their irrigation ditch headgate.

4. The developer shall improve Fairbanks Lane, to meet County Standards, including a 24 foot wide paved surface. Improvements shall be made from Mullan Road to the furthest access point into the subdivision.

5. The developer shall be responsible for dust abatement on the site upon start of road construction. Practice of dust abatement shall continue until all roads have been paved. Plans for dust abatement shall be approved by the Health Department and the County Surveyor.

6. The developer shall install a 5 foot wide pedestrian pathway along both sides of all internal streets. The surface shall be constructed of either asphalt or concrete. Plans shall be approved by the County Surveyor prior to submitting final plans.

7. The developer shall acquire approval from MEC for all easements prior to submitting final plans for the development.

8. All fire hydrant locations shall be approved by the appropriate fire jurisdiction prior to filing of the final plan.

9. Final plans shall show a “no-access” strip located along the frontage of Fairbanks Lane, except for the access points of the private roads into the subdivision.

10. The subdivision shall be annexed into Mountain Line District and provide bus pull-outs and shelters, subject to the approval of the County Surveyor and Mountain Line.

11. The area outside the development, which is 129.5 acres, shall be designated open and resource land and cannot be changed without an agreement of the Board of County Commissioners.

12. The developer be required to meet with Frenchtown School District to offer the School the opportunity to request mitigation.

13. The developer be required to mitigate transportation impacts of this development.

Michael Kennedy reiterated that he still feels this is a very good plan, however, it still have deficiencies. It shows the struggle the County Commissioners go through to achieve a better future. Hopefully, with each subsequent development that comes in they will be even better.

HEARING: RECONSIDERATION OF TAYLOR ACRES PUD REZONING AND SUBDIVISION FOR LEASE/RENT (LOT 64, COBBLAN AND DINSMORE’S ORCHARD HOMES #5) CLEMENTS & SOUTH 7TH WEST POSTPONED UNTIL OCTOBER 2, 1996

There being no further business to come before the Board, the Commissioners were in recess at 6:33 p.m.

THURSDAY, SEPTEMBER 26, 1996

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Hart was in Helena attending an Elections Advisory Committee Meeting.

DAILY ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution number 96-077, a resolution of intent to create Section 6.07 (the Missoula Development Park Special Zoning District) and to rezone property located in Section 1, T13N R20W, and sections 35 and 36, T14N R20W, PMM, Missoula County, Montana, from C-I1 (Light Industrial) and C-A3 (Residential) to Missoula Development Park Special Zoning District, with conditions.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Kathleen M. Magone to provide training for Planning and Grants staff in subject areas of technical writing and presentations. Duration of contract is September 26, 1996 - October 10, 1996. Cost shall not exceed $1,200.00.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
The Board of County Commissioners met in regular session; all three members were present.

DAILY ADMINISTRATIVE MEETING

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

Plat and Subdivision Improvements Agreement - The Commissioners signed a Plat and Subdivision Improvements Agreement for The Fly Inn, a subdivision located in the NW1/4 of Section 1, T16N R15W, PMM, Missoula County, a total net area of 7.0 acres, with the owners of record being The Fly Inn, LLC.

Other items included:

1) In the morning, Commissioner Hart gave the Welcome at the Montana State fire Chiefs’ and Firewardens’ Annual Conference at the Holiday Inn;

2) In the afternoon, Commissioner Evans accompanied County Surveyor Horace Brown on a site inspection for the request from Cyrs to alter County Roads in the Huson area.

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

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, SEPTEMBER 30, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Budget Agreement - The Commissioners signed a Budget Agreement with Montana State University and the Montana Extension Service stating that Missoula County will contribute specific amounts toward County Extension personnel salaries. The contract was returned to Sharon Gaffney in the Extension Office for further handling.

Task Order - Chair Kennedy signed Task Order No. 10 with the Montana Department of Health and Human Services for provision of Medicaid outreach services. The Task Order was forwarded to DPHHS in Helena.

Memorandum of Agreement - Chair Kennedy signed a Memorandum of Agreement between the Missoula County Park Board and Alfred and Sandra Finch for improvements up to $1000.00 for Pre Pro Park in Lolo, MT. The Memorandum was returned to Leslie Bailey in the Office of Planning and Grants for further handling.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Steve Holloway of the University of Montana, to facilitate a service learning project for middle school students on Missoula’s West Side. Duration of the contract is October 7, 1996 through June 30, 1997. Cost of the contract shall not exceed $1,000.00.

Employment Agreement - The Commissioners signed an employment agreement with Margaret Borg, Public Defender.

Labor Agreement - The Commissioners signed an Agreement with the Federation of Missoula County Employees. Duration of this agreement is from July 1, 1996 through June 30, 1998. The agreement was returned to Steve Johnson, Personnel Director, for further handling.

Labor Agreement - The Commissioners signed an Agreement with Local Unit No. Two (Nurses) of the Montana Public Employees Association. Duration of this agreement is from July 1, 1996 through June 30, 1998. The agreement was returned to Steve Johnson, Personnel Director, for further handling.

Amended Contract - The Commissioners signed an Amended Professional Services Contract with the Psychology Department at the University of Montana, to extend the contract date to May 30, 1997. Total compensation shall not exceed $2,800.00. The contract was returned to Pam Schlegel at Partnership Health Center for further handling.

Other items included:

1) Discussion of groups using the Courthouse Lawn and use of loudspeakers;
2) Discussion of evening meetings in the Courthouse and leaving door unlocked;
3) Commissioner Hart discussed “Aware of Drugs” ads;
4) Commissioner Hart discuss the IRVM Committee;
5) A Drainage Committee update was given;
6) Commissioner Evans moved and Commissioner Hart seconded a motion that Colleen Dowdall administratively approve the acceptance of subdivision improvements and release of security on all subdivisions which comply with the requirements. Motion carried with a vote of 3-0.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
TUESDAY, OCTOBER 1, 1996

The Board of County Commissioners met in regular session; a quorum of members were present. Commissioner Kennedy was in Helena for the day.

DAILY ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution number 96-081, a resolution continuing the following administrative boards: cemetery district; county fair commission; mosquito control board; museum board; board of park commissioners; rodent control board; solid waste district; and weed control district.

Employment Agreement - The Commissioners signed an employment agreement with Margaret Borg, Public Defenders Office, naming her as the Chief Public Defender. Duration of contract is from June 30, 1996 through June 30, 1997. Salary is $55,075.30.

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

WEDNESDAY, OCTOBER 2, 1996

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

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace Michael Morris, showing total receipts and distributions for the month ending September 30, 1996.

DAILY ADMINISTRATIVE MEETING

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

Agreement - The Commissioners approved and Chair Kennedy signed an agreement for use of the Willard Adult Learning Center to do a NACo broadcast on the Welfare Reform Law for October 9, 1996 from 11:00 am to 1:00 pm.

Other items included:

1) Discussion of privatization and managed care with Carole Graham, Paul Meyer, Leslie McClintock and Cindy Klette;

2) Discussion of Indian Speak-Out.

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

PUBLIC MEETING -- OCTOBER 2, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

BID AWARD: TREE PLANTING IN SEELEY LAKE (POSTPONED FROM SEPT. 25)

Horace Brown, County Surveyor, said the action requested was to award a contract for landscaping in Seeley Lake, a State and County project, State Project #STPE 83-1(21)14, with the County doing the management of it plus paying for 20% of it. The bids were opened on September 23 with the following results: IBEP Sprinkler & Landscape, $46,599.48 and Earth & Wood, $49,607.60. He recommended the contract be awarded to IBEP Sprinkler & Landscape in the amount of $46,599.48 as the best and lowest bid.

Michael Kennedy noted that the Surveyor’s office has $10,000 in the budget earmarked for matching funds for this project.

Horace Brown agreed with that.

Barbara Evans asked Horace if they were just planting trees?

Horace Brown answered that this was part of the Double Arrow project and this is the landscape portion of it. They still have fence and a visitor’s center to do.

Fern Hart asked if this was for the entrance for the Seeley Lake community?

Horace Brown replied yes; it would be from just where north of Double Arrow Road enters, going the full length of their property.

Barbara Evans moved that the Board of County Commissioners award the contract for the landscaping in Seeley Lake, State Project #STPE 83-1(21)14, to IBEP Sprinkler & Landscape in the amount of $46,599.48 as the best and lowest bid, in that there is adequate funds for the project. Fern Hart seconded the motion. Motion carried 3-0.

SEELEY LAKE AIRPORT ROAD PAVING (SURVEYOR) POSTPONED
DECISION TO ALTER COUNTY ROADS - HUSON AREA (CYR)

Horace Brown, County Surveyor, said this request was to alter the roads, by putting the right-of-way over the existing road that the County uses.

Chuck Wright, County Surveyor’s Office, said the GLO Road and the road in Plat Book 1 will be altered within the Cyr property. The north line of Section 28 to Old Mullan Road/Yellowstone Trail will also be altered.

Michael Sehestedt said the old Yellowstone Trail is now commonly known as U.S. Highway 10.

Michael Kennedy asked if there was any action on the areas that extend south of old U.S. Highway 10? Will they remain as they are for now?

Chuck Wright answered yes.

Michael Kennedy noted that the County held a hearing on this matter on September 1.

Barbara Evans moved that the Board of County Commissioners grant the petition to alter the road from Road Book 1 and GLO Road located in Section 28, T15N, R22W, situated within the Cyr property boundaries (2 parcels), to the existing right-of-way that is co-incident with the existing traveled way. Fern Hart seconded the motion. Motion carried 3-0.

HEARING: RECONSIDERATION OF TAYLOR ACRES PUD REZONING AND SUBDIVISION FOR LEASE/RENT (LOT 64, COBBAN AND DINSMORE’S ORCHARD HOMES #5) CLEMENTS & SOUTH 7TH WEST (POSTPONED FROM SEPT. 25TH)

Pat Keiley, Office of Planning & Grants, pointed out to the Commissioners that he had displayed on the wall two maps of Taylor Acres; one map showed the proposal as it was presented in March and the other map shows the current proposal. He said Larry Walters was the applicant and was requesting reconsideration for Taylor Acres PUD rezoning and Taylor Acres subdivision for lease or rent. The location is at the NE corner of Seventh Street West and Clements Road, legally described as Lot 64, Cobban and Dinsmore’s Orchard Homes No. 5. The zoning is C-RR2, residential. They accepted the reconsideration request and gave notice through posters and letters to the Homeowners’ Association and to adjacent property owners within 300 feet of the location of the proposed subdivision. They also ran legal ads in the Missoulian newspaper prior to this public hearing. He stated he would make his presentation by giving a synopsis of the first proposal then comparing it to today’s proposal.

The first proposal was 4.81 acres, 9 lots, with 8 lots being clustered and the 9th lot is a large lot where no development was proposed. These were going to be townhomes, consisting of 2 groups of 4. They were not necessarily for lease or rent but they were on their own lot so they could be sold. There was common area between the two groups of 4 and also in the yards on both sides of the buildings. Landscaping was proposed within the 8 townhouse unit areas. Lot 9 was to remain open and in its natural setting. There was a private road, Taylor Lane, to provide access to the townhouses. The development was to be clustered along the southern portion of the property. Some of the buildings would front on 7th Street and the others would be behind them. There was pedestrian access both internally and externally. He then went on to describe and compare the reconsideration.

Today’s proposal requests the same zoning, C-RR2/PUD, and this subdivision is specifically for lease or rent. The same piece of land, 4.81 acres, with 8 units which are planned to be on one lot. The structures are duplexes, 4 groups of 2, and are off-set from each other. There is a proposed park to the north of Taylor Lane that is outlined in trees. This land and structures will be owned by the applicant. There is landscaping throughout the developed portion of the property. Access is the same, which is from the private road, Taylor Lane. The proposal calls for paving the road 20 feet in width. This proposal is clustering, the development on the southern portion. Buildings will front on South 7th Street West and on Clements Road and will form a “street-scape” and will begin to form a neighborhood by placing the buildings close to the road and having them front to the road. There will be farm-style buildings with pitched roofs. The garages are in the rear of the structures, away from the street. There will be pedestrian access both internally and externally. Staff recommends that internal access be a 4 foot wide concrete walkway and external access will still be on the site but it is along South 7th Street West and Clements Road and only along the portion of the property that is being developed at this time. That is essentially about the south 1/3 of the property. Staff recommends a 5 foot wide asphalt pathway along both of those streets. The updated conditions show that staff recommends that there be a boulevard area between the street and the pathway so that the pathway is not adjacent to the street. No development is proposed for about 2/3’s of the property, which is proposed to be left in its natural state, although the owner will make sure that vegetation does not grow too high.

The original proposal on March 29, 1996, was denied for two reasons, one was for surface drainage and the other was for a Health Department approval for a septic drainfield. The Commissioners have in their packet a copy of a letter that takes care of the concern from the Health Department. There is a low area on the property and there appears to be riparian elements in that low area. There is a condition in the Subdivision Regulations that staff would like to make a determination if this is a riparian area, exactly where it comes from, what is in the low area and why it continues to exist and will it continue to exist. They would also like the applicant to prepare a management plan to take care of that area for the future. No development is proposed for that area. It is south of where all the structures are going to be built. Staff recognizes that the two reasons for denial in March have now been addressed. Staff also believes the applicant has adequately addressed each of the PUD rezoning and subdivision for lease/rent criteria.

There is one variance request for the subdivision and that is to reduce the Taylor Lane private road width from 24 to 20 feet. Staff recommends approval of the variance based on the findings of fact in the staff report and discussion with
the County Surveyor. Staff considered potential future development to the north and feel that, with the conditions contained in the staff report, it is adequate to have this road at 20 feet at this time but there will be potential to widen it if the area to the south is developed in the future. There is room to widen it if need be.

Staff recommends approval of the PUD rezoning based on findings of fact in the staff report and contingent on the conditions listed therein. Staff recommends approval of the Taylor Acres subdivision for lease/rent based on the findings of fact in the staff and subject to those conditions in the staff report.

Bill Wagner, Garlington, Lohn & Robinson, said he was representing Larry Walters, the applicant. Mr. Walters is a long-time Missoula resident and this is the first development proposal he has brought before the Commission. He commended Missoula County staff, especially Pat Keiley and Colleen Dowdall, for their work and cooperation and working through this reconsideration. The first request in March was denied because the drainage cannot be adequately addressed by the Health Department, except for subsurface sewage and because it has not been addressed properly in the proposal. They submit that issue has been adequately addressed as indicated by Mr. Keiley and Andy Fisher of Eli & Associate will speak on it later in this meeting. Mr. Ewart will address the various amenities of particular proposal and explain in more detail how exactly this proposal has been altered from what was initially presented.

The changes made have been substantial. His primary focus will be to address various conditions that are being imposed. He referred the Board to their letter dated October 1, 1996, and also to the revised conditions, distributed prior to this meeting. They have objected to two of the four PUD rezoning conditions, condition nos. 1 and 2. They simply feel that they are extraneous and they are covered by condition no. 4, which states that the “development of the site shall be consistent with the site plan approved by the governing body.” Condition no. 1 indicates that the duplex shall have facades that front South 7th West and Clements Road, to be approved by the zoning officer. He questioned whether that move the facade officer or the siting of the structures. Condition no. 2 says that “the duplex unit garages behind the duplex structures, away from the street, shall be approved by the zoning officer.” Again, he does not know if the zoning officer is to approve the structure or the location of the structure. In any event, he feels that both of them are covered adequately in condition no. 4.

Regarding the 20 conditions with respect to the subdivision for lease or rental proposal, a number of the changes suggested in the October 1 letter have been made by staff, leaving only one. Condition no. 12 reads “Since it is unclear at this time whether the area(s) located generally in the lower elevations is... in the center portion of the lot is a riparian area and whether a management plan will be required, that such determination and accompanying plan, if necessary, be provided to approved by OPG prior to approval of the final plan.” They suggested that condition no. 19 will cover this. They feel there is not a riparian area there. It is a man-made situation, it is not an extension of the Clark Fork River and aerial photographs will confirm that. Additionally, an examination of the lot today will indicate that it is not a riparian area, but an area that is wet because of trespass from a man-made irrigation ditch. Condition no. 19 reads “That the ditch located on the applicant’s property be repaired, to be approved by OPG prior to approval of the final plan.” If the ditch is repaired, the area that is left and is the questionable riparian area will no longer be a wet area, capable of carrying vegetation that it has in the past. Nonetheless, they do not feel these need to be addressed at this time. These areas are far from the development area, in any event, and, further, since the ditch was closed off a week ago, the area has changed dramatically. It is not wet today.

He stated he did not live far from this proposed development and feels it is what is needed for that area. He then asked Andy Fisher to speak on drainage.

Andy Fisher, engineer, Eli & Associate, said the reason the original proposal was denied was “that evidence was not presented to establish that surface drainage can be adequately addressed by the Health Department and the applicant has not addressed the drainage problem.” He wanted to introduce evidence that surface drainage can be adequately addressed by the Health Department. The Missoula City/County Health code requires that, prior to the issuance of a septic permit, in determining a suitable location for the system, consideration shall be given to [...] unidentifiable]... slope of natural and finished grade, depth to groundwater, proximity to water, floodplains, and [unidentifiable]. Section 5 of the Health Code prohibits locations such as flood-prone areas, subsurface waste water treatment and a [unidentifiable] shall not be permitted within 100 feet of a 100 year floodplain or flood-prone areas. Conventional systems area also prohibited in areas where the depth to seasonal high ground water is less than 6 feet. This area has been monitored for depth to groundwater twice, in 1979 and 1981. Based on results of this monitoring, the proposed septic system for this particular project is in an elevated sand mound. Elevated mounds require a separation distance from the natural surface to seasonal high groundwater of at least 4 feet. Based on the results of the groundwater monitoring in conjunction with the Health Department, they have identified an area of this property which meets that requirement and large enough for an elevated sand mound to serve this development. The mound systems are designed and reviewed in accordance with the Missoula County Department of Environmental Quality and, which states “shall meet minimum requirements described in Section 1A of the Health code.” And that all rules that pertain to conventional drainfields and septic tanks shall apply to alternative systems, such as mounds.

The Health Department requires elevated monitors to be designed by a professional engineer in accordance with EATS WQDS and EPA Design Manual, Wastewater Treatment and Disposal Systems. Circular WQDS is minimum design standards for on-site alternative sewage treatment and disposal systems as prepared by the Montana State Department of Environmental Quality. Section 81.1 of that circular, under Elevated Sand Mounds, states “construction of a mound shall be initiated only after a site evaluation has been made and [...] dwelling placement, effect of surface drainage and general topography have been considered.” From the EPA Design Manual, under Landscape Position for Mound Systems, “criteria include well-drained area, level or sloping, stress of slope [unidentifiable]... are most desirable, avoid depressions, [unidentifiable]... unless suitable drainage is provided.” There are current regulations and design criteria which require surface drainage be considered in a review of all septic systems, including elevated sand mounds. One way surface drainage could not be adequately addressed by the Health Department is if the Health Department employee failed to do an adequate review. Over the last 12 years, he has found Health Department employees to be professionally competent and conscientious.
He now wanted to address the statement that the applicant had not addressed the drainage problem. Prior to this project, their normal procedure was to do an in-house evaluation of the site for development potential, including septic and drainage conditions prior to submittal of the project to OPG. However, they usually do not prepare final plans for public improvements, such as sewer and water, street drainage, or the complete Health Department’s packet, until after the governing body has reached a decision. This is to minimize the risk of needless expense for the client. This is particularly true with controversial projects that involve zoning changes and neighborhood opposition. In his experience, the completion of technical plans was not a criteria in use by the governing body in reaching their decision and this procedure has worked well over the years. Subdivision by the Board of County Commissioners has contained standard conditions that 1.) the County Surveyor approve plans for grading, drainage, streets and sidewalks before approval of the final plat and 2.) that sanitary restrictions shall be lifted prior to approval of final plat. These conditions assure that drainage and septic considerations of all projects will be adequately reviewed and approved by the appropriate authorities before actual development occurs. In this particular project, the governing body chose not to use this practice. They have therefore prepared, for review for the Health Department, the final septic plan of the project with the elevated mounds. This plan also addresses surface drainage for the proposed developed area of this project. Awaiting the outcome of this hearing, they have not applied for the actual septic permit but they have received a response from Mr. Doug Kikkert which was addressed to Ron Ewart, Eli & Associates. Mr. Kikkert stated "I have reviewed your July, 1996, sewer system plans and can give approval conditioned on the installation of S.T.F.P. tanks to meet City of Missoula standards and a deed release filed by the owner which will waive his rights to protest RSID for municipal sewer."

The source of the standing water that has been noticed in the swale are from breeches in the irrigation ditch from the boundaries of the north and east properties. Groundwater monitoring on two occasions have shown that the seasonal depth of high groundwater in this area is below the elevation of the existing bottom of the swale. The water is standing in the swale because the existing 24 inch culvert under Clements Avenue is totally plugged and non-functional and has been for quite some time. However, according to the County Surveyor’s office, this blockage of the culvert has not caused any problems with the water on Clements Road. There is no drainage channel from the outlet of this culvert on the west side of Clements Avenue. He concluded that the natural drainage area of this swale is not large enough to generate surface drainage flow which requires a reaction from the County Road Department. He also concluded that the culvert was put in there to serve as a collection point for past flood irrigation practices in the area. Due to development of the area, these irrigation practices have changed and the culvert is no longer needed. This works out well for this project in that the swale can serve as a natural retention basin for the storm runoff from the developed area. The volume available for storage of storm runoff is adequate by a factor of at least 10. The standing water in the swale and its potential impact on the on-site septic system has been a major area of concern on this project. The on-site septic system, that has been proposed, reviewed and approved by the Health Department, meets all the existing regulations and design criteria for both horizontal and vertical separation of surface and groundwater. It does not matter if there is standing water in the swale. The septic system will operate the same whether it is wet or dry.

Michael Kennedy, recalling the first time this proposal was brought before the Board, it was prior to irrigation season. The land in the swale was covered with water and not related to irrigation. It was inadequate drainage from runoff from snow and ice. Andy Fisher responded by saying there is no drainage out of there. It is a collection point.

Michael Kennedy said part of the concern still remains about the adequacy of surface drainage that results from the condition that led to the rejection last March. He understands Andy’s testimony on the irrigation system but it does not address the problem they had last winter about the surface drainage. Andy Fisher replied that surface water in the swale does not affect the proposed developed area.

Colleen Dowdall said, from the discussions they have had with the developer and his representative, they will probably gain in understanding to listen to the rest of the testimony.

Ron Ewart, Eli & Associate, said he went out to the site about 30 times in the past year and the only time he found water in the swale, it is not usually above 4 inches.

Colleen Dowdall asked Ron if that was the case last March? She recalled, after the hearing last March, he went out to the site and took pictures.

Ron Ewart replied that he had and took pictures from March until recently. The last time they went out there was a couple of weeks ago. He went with Mr. Walters because Mr. Walters had noticed some water standing in the swale and it had not been raining that much. When they walked up to the swale, the water was pouring down from the breeches and it was also dammed up. He was there when it had been raining for a week, not much water was standing in of the swale.

Michael Kennedy said he was satisfied that they had adequately answered the irrigation season draining problem. The main issue he is interested in was, last winter, when the surface drainage did not run from the property and the property had standing water on it.

Ron Ewart said there would obviously be more runoff in March when there is snowmelt and rain, with the ground still at least partially frozen. He does not know how much water there was on the property in March but he believes there was capacity in the swale to hold a lot more water.

Andy Fisher said the culvert is not plugged and hasn’t been for years. On the west side of the road, the drainage is gone. However, there has been no problem, at least to Clements Road over the years. So he concludes that the storage that is there is adequate.
Michael Kennedy explained his concern. Currently, the lot is undeveloped. No one had reason to question that the problem caused by standing water on undeveloped lot in the winter. Now that the lot will become developed, at least on the southern part of it, there is legitimate reason to ask what happens to the drainage off of the developer area and is there adequate response to that drainage problem in this proposal?

Andy Fisher replied yes, there is. They are going to use the swale. They have a storage area up to 93.

Michael Kennedy asked what the elevation was of the land to be developed?

Andy Fisher answered the finished surfaces are around 94 to 95.

Michael Kennedy said that means there is 1 to 1½ foot difference in elevation so the water will be channeled to the north into that swale.

Andy Fisher said the final sewer plan has the elevation.

Fern Hart said the Commissioners had a letter from the person who has the irrigation ditch. She wondered if he could repair the ditch and use it as he always has.

Bill Wagner replied that their position is that the water is being allowed to flow from the ditch on to this lot. Further, during runoff season, the areas to the east as well as to the north of this particular area, drain into this area through the ditch and, again, because of the leakage in the ditch, they intend to repair it. That should enhance the neighbors’ water rights, however, the neighbors to the east (and the water flows from the east), should not affect his irrigation flow whatsoever. What they will be doing is enhance the flow of irrigation water from the area at which they can repair it. They intend to obtain the neighbor’s permission to repair to the north and east of their property so that the entire integrity of the ditch area as it affects this lot will be preserved and enhanced.

Fern Hart said a problem remains before the ditch is opened. The area does collect water. Do they have plans to change the swale at all?

Bill Wagner answered no. It will serve as a swale area for their development and, because of the repairs to the ditch area and the topography to the north and east of this lot, it will discontinue use of this swale area for drainage. The ditch will be used as it should be. The irrigation water will not flow into the swale.

Fern Hart asked if it will continue to be a collection point during the end of winter when the snow melts and the ground is still frozen.

Bill Wagner replied yes.

Fern Hart asked if they would drain that through the swale?

Bill Wagner answered yes.

Michael Kennedy asked what the elevation of the mound was?

Andy Fisher said the mound itself should drain unto Taylor Lane.

Ron Ewart said the re-designed the project. It started out as an 8-plex and the last design is for duplexes. That was done according to staff’s suggestions and to minimize objections from others in the area. He then listed features that were redesigned to conform to the character of the neighborhood.

Michael Kennedy opened the public hearing.

Lech Szumera said he was the adjacent landowner directly east of the north/south line. He objected to this proposal primarily because of the density. His reasons were similar to his objections to the first proposal. More units mean more families and more traffic on Clements Road. There is no public open space in that area for approximately 1-1½ miles. Most of the open space is private open space. The character of the neighborhood at this time is 1, 2, 3 acre lots up to 10 acre lots with single family homes and this proposal will change that. Another primary concern of his is the water. The wells in that area, since it is an old neighborhood, are shallow. He asked how will the proposed development affect his water? He believes there is high groundwater in that area. He is the person that has the ditch that is north of the property. There are some breeches in the ditch line and he plans to fix them on his property this fall. There is always standing water in that swale, including this past spring. He believes that is a natural and not an excavation or man-made situation and that is the reason the culvert was placed under the road. He does not believe the fixing the ditch line will substantially affect that. He believes there is standing groundwater in that area.

Fern Hart asked if there was standing water there today?

Lech Szumera answered yes.

Pat Miessner, 905 Clements Road, also objected to this proposal for the same reasons she had last March. Those reasons include the traffic and water problems.

Bill Nerison, 3112 South 3rd West, said, although he had sympathy for the people who objected to this proposal, he feels they have to look to the future of this community. He realizes that growth is inevitable and, thus, the County should make sure that growth happens properly and put safeguards in place now. He does not want to see isolated pieces of development but hopes that a continuity of planning can happen for the area, which includes protection for the riparian area, water and traffic issues.
Leitta Peterson said she opposed this proposal. She is very concerned about the increase in traffic it will bring, increasing the danger to school children, pedestrians and other drivers.

Larry Walters wanted to commented that he was out on the site that morning and did not see any water in the swale or in the irrigation ditch, which runs east to west.

Michael Kennedy thanked everyone for their comments and asked if there was anyone else who wanted to speak on this issue? No one came forward and he closed the public hearing.

Andy Fisher noted that people are concerned about septic systems and wanted to explain the sand mounds. Elevated sand mounds are not a new item but have been around quite awhile and are used commonly. They were designed specifically for cases where there is high groundwater or if there is bedrock 4 or 5 feet down.

Doug Kikkeri, Environmental Health Specialist, Environmental Health Department, said elevated sand mounds have been approved by the County for about 4 years. The health implications regarding the sand mounds relate to the reduction of the number of bacteria and viral escapes from the sewer system and a slight reduction of some nutrients. It is a much better treatment system than standard and conventional drainfields and than cesspools. There was one failure in a neighboring County but none in Missoula County, but there are only about 50 sand mounds in this County.

Michael Kennedy noted that sand mounds do not take care of hydraulic problems. The liquid is still there and will still go to the same place, even though it still provides treatment.

Horace Brown, County Surveyor, said, regarding condition no. 2, the owner shall rename the street and delete parking area. Condition no. 14, through the CTAP program, on 7th Street, they are building a walkway/bikeway, 5 foot wide, leaving both sides of 7th Street through west of Clements Road. That requires a minimum of 10 foot wide boulevard separation. They will end up with 2 side by side, 5 feet apart, so he suggests a boulevard. He said they would start with a design, which then goes to the State hopefully by next fall.

Fern Hart asked where the walkway would go after it leaves this area?

Horace Brown answered it would go west to Humble Road and eventually meet a sidewalk coming up Clements Road.

Barbara Evans said she understood that Horace desires to have the walkway adjoining the road or the Planning staff’s recommendation that it be the other side of a 5 foot boulevard.

Horace Brown said they will build out regardless.

Fern Hart asked if he would build it even if there were a walkway?

Horace Brown replied yes, because people would have to come down and walk out and walk back. They will probably extend theirs all the way out through regardless of what is done with this short area.

Michael Kennedy said there was disagreement with respect to whether the sidewalk ought to go. An easier maintained walkway that is an extension of an existing roadway so that it can be plowed in the winter and swept in the summer but also provides a less safe area for pedestrians. He feels safety should dominate and they should have a separation of traffic from children and pedestrians. So he opted for the boulevard and sidewalks as close to the property line as possible.

Barbara Evans asked Horace if the reason he plans to do the walkway adjoining the roadway is not only because of ease of maintenance but also because of lack of right-of-way?

Horace Brown answered they have problems on the south side of the road with the irrigation ditch. If they separate it, they have to move it for a further distance than what they have to otherwise. They now have to move it 600 feet in order to do this project. The other way would be further in distance and cost a lot more.

Barbara Evans asked if would be a good idea to hold the condition until such time as other sidewalks would be put in?

Horace Brown said that was a Board decision.

Michael Kennedy said that was in condition no. 3. He reiterated that he was concerned for pedestrian safety. The longer they delay this, the longer the unsafe condition exists.

Michael Sehestedt said it seemed to him that they need both -- the widening because on the sidewalks, bicyclists and horses are off of it because of conflicts with pedestrians. Pedestrians riding a bike and who are over 12 years of age belong on a street by definition, not a sidewalk. On the other hand, kids not on bikes belong on the sidewalk. The boulevard should probably continue to exist and it should probably be separated from the sidewalk either now or eventually. Horace’s project should be included because it would certainly make it easier for bicyclists, horses and motorists to co-exist on the road. For small children, however, the more separation between them and the road, the better. There is a need for sidewalks on Clements and 7th Street to address the children getting to Target Range. It can’t be solved with this subdivision but, if its approved, they can make sure they don’t exacerbate the problem.

Fern Hart moved that the Board of County Commissioners grant the variance request to Section 3-2(3), to reduce the surface width of Taylor Lane from 24 feet to 20 feet, based on the recommendation of the staff and the findings of fact and note that this request does not result in a threat to public safety, health and welfare. Barbara Evans seconded the motion. Motion carried 3-0.

Pat Keiley suggested that, regarding the applicant’s request to delete conditions 1 and 2 in the PUD rezoning, he proposes to delete conditions 1 and 2 and renumber conditions 3 and 4. The last condition, which now would now be...
Ron Ewart said Larry planned to hire a professional architect to draw different facades so they will vary.

Michael Kennedy asked if he had a problem with Pat’s suggestion?

Ron Ewart answered the designs will not be consistent with the submitted elevations because he is hiring someone else to do the drawings.

Barbara Evans said that was the building elevation submitted today and, if its passed, they all have to look like that. She asked Ron if he did not want that?

Ron Ewart answered correct. He explained this is a conception, an idea they would like to incorporate.

Michael Sehestedt said they can probably follow through on what Pat suggested. Development of the site should be consistent and building elevations shall be consistent with the building elevation principals approved by the governing body. These are to look as much like single family as possible.

Pat Keiley said, revising it a bit, the condition should read “Development of the site shall be consistent with the site plan and building elevations plan principals as approved by the governing body.”

Fern Hart moved that the Board of County Commissioners approve the recommended conditions for PUD zoning, based on the conditions listed below. Barbara Evans seconded the motion. Motion carried 3-0.

1. The owner shall make copies of the Mountain Line Bus Schedule available to its tenants.

2. Development of the site shall be consistent with the site plan and building elevations plan principals as approved by the governing body.

Michael Kennedy asked if this was in the Mountain Line District?

Pat Keiley said he understood that the bus runs along South 7th Street West.

Fern Hart stated condition nos. 12 and 19 may be saying the same thing. She wanted to leave in condition no. 12 as it may be a riparian area.

Bill Wagner, attorney, Garlington Lohn and Robinson, said they preferred condition no. 12 be deleted because no. 19 solves it. However, the way it’s worded gives flexibility for further investigation and determination, so if no. 12 remains, they will accept it. It will allow them some time to determine whether there is a riparian area.

Fern Hart stated that they have already committed that the ditch will be repaired. She asked Pat for his opinion.

Pat Keiley answered he thought it was important to have the conditions because it is part of the mitigation of the surface water. He also brought up that the culvert be unplugged so the water goes through and that could potentially also be a mitigation.

Bill Wagner said they did not object to that.

Michael Kennedy and Barbara Evans had some conversation regarding the ditch at this point but it was unintelligible.

Michael Sehestedt said what the ditch-owner has is just the right to have the water conveyed from one side of the property to the other. The property owner has the right to repair the ditch and maintain it.

Michael Kennedy asked Horace if Clements was 80 feet?

Horace Brown answered no, it was 60 feet.

Michael Kennedy said, then, with the 10 foot boulevard there is a problem. There is the 10 foot boulevard and two 5 foot sidewalks that are 20 feet into the 60.

Horace Brown said 30 feet from the center would be about 18 feet from the edge of the shoulder out. So, if you have a 10 foot boulevard, when they get done, there will 3 feet left for a boulevard and two sidewalks. The other sidewalk will be on private property.

Colleen Dowdall said their walkway is in the right-of-way.

Michael Kennedy said his preference would be, if it is stated that the 5 foot asphalt path were on the edge of the right-of-way, then let the boulevard happen.

Colleen Dowdall said, if it appears that they are making it a part of the public walkway system and they put it on private property, they are now looking at dedication.

Michael Kennedy said they are not doing that. The other suggestion is that the walkway was terminated in the development and he would like to see that walkway extended for the full length of the property. He asked if Commissioner Evans would include that in her motion?

Barbara Evans replied no.
Horace Brown suggested that to waive the right to protest.

Michael Kennedy said that was taken care of.

Barbara Evans moved that the Board of County Commissioners approve Taylor Acres Subdivision for lease or rent on Lot 64, Cobban and Dinsmore’s Orchard Homes #5, located in the SW ¼ of Section 24, T13N, R20W, at the northeast corner of Seventh Street and Clements Road, based on the findings of fact and subject to the conditions listed below. Fern Hart seconded the motion. Motion carried 3-0.

1. The County Surveyor shall approve plans for grading, drainage, sewer, sidewalk, and streets before approval of the final plan.
2. The owner shall re-name the street (Do not use the name Taylor.), to be approved by the County Surveyor prior to approval of the final plan.
3. The following statements shall appear on the face of the final plan and in all instruments of conveyance:
   "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for any improvements to Clements Road or South 7th Street West, including but not limited to paving and sidewalk based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."
   "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future water or sewer RSID/SID, and may be used in lieu of their signatures on an RSID/SID petition."
4. The Missoula Rural Fire District Chief shall review and approve plans for fire protection.
5. All new utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the final plan:
   "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under, and across each area designated on this plat as "Utility Easement" to have and to hold forever."
6. Access and approach permits shall be approved by the County Surveyor prior to approval of the final plan.
7. Sanitary restrictions shall be lifted prior to final plan approval.
8. The developer pay a fee of $50.00 per lot for the purpose of maintaining the Missoula Rural Fire large diameter hose fund.
9. Drainage plans of the finished subdivision be supplied to the County Surveyor at the completion of construction.
10. The following statement be placed on the face of the plan: "The common area shall be accessible for future residents within any future development of the northern portion of Lot 1", to be approved by the OPG prior to approval of the final plan.
11. All Taylor Acres PUD zoning conditions be met prior to approval of the final plan.
12. Since it is unclear at this time whether the area(s) located generally in the lower elevations and swale area in the center portion of the lot is a riparian area and whether a management plan will be required, that such determination and accompanying plan, if necessary, be provided to and approved by OPG prior to approval of the final plan.
13. The interior 3 foot concrete path shall be a 4 foot wide concrete path, to be approved by the OPG prior to approval of the final plat.
14. That a 5 foot wide asphalt path be placed adjacent to the private property and shall be developed by the owner along the South 7th Street West and Clements Road rights of way, extending the length of the approved developed areas, to be approved by the OPG prior to approval of the final plan.
15. That the common area park be designated on the face of the final plan, to be approved by OPG prior to approval of the final plan.
16. That Taylor Lane dead-end be extended by 20 feet, to be approved by OPG and the County Surveyor prior to approval of the final plan.
17. That the three duplex units fronting on South Seventh Street be relocated 5 feet to the west (and that a distance of 30 feet be retained between these buildings.), to be approved by OPG prior to approval of the final plan.
18. That the applicant provide two picnic tables and two park benches for the common area, to be approved by OPG prior to approval of the final plan.
19. That the ditch located on the applicant’s property be repaired, to be approved by the OPG prior to approval of the final plan.
20. That the applicant provide two picnic tables and two park benches for the common area, to be approved by OPG.

RESOLUTION NO. 96-078 The Chair and Commissioner Evans signed the resolution of intent to rezone property legally described as Lot 64 of Cobban and Dinsmore’s Orchard Homes #5, located in the SW¼ of Section 24, T13N, R20W, P.M.M., Missoula County, Montana, from “C-RR2” (residential) to C-RR2 (residential), Taylor Acres PUD (Planned Unit Development), with conditions. Commissioner Hart had left the meeting before it was adjourned and was thus unavailable to sign the resolution.

HEARING: FEDERAL GOVERNMENT BLOCK GRANT (LAW ENFORCEMENT)

Doug Chase, Missoula County Sheriff, said this is a public hearing concerning the community oriented policing Block Grant of $51,477.00 that Missoula County received. He said we have two years to spend the funds and anything that is left will be returned but he expects most of the funds to be spent this year. He said it can be used to improve new offices, most equipment needs, and new programs, but he said they chose to not implement new programs because it would require new employees. One of the two prerequisites of the grant is the formation of a citizens committee comprised of: a local Law Enforcement Agency (Sheriff), a local prosecutors office (County Attorney Dusty Deschamps), a local court system (Justice Court, John Odlin), a local public school system (Hellgate High School, Principal John Fimmel), a local non-profit group (United Way, Judy Wing). The advisory board has reviewed and approved the committee. He said they also added one other member (County Fiscal Officer, Jane Ellis). He said the second prerequisite was to hold a public hearing to explain the use of the funds. The budget was approved by the Committee. He then exhibits and details the budget to the Board.

Michael Kennedy opens the public hearing for comments.

There being no comments from anyone, the Board closes the public hearing and asks for a motion.

Barbara Evans moved that the Board of County Commissioners approve acceptance of the Federal Block Grant through the local Law Enforcement Block Grant Program and grant it to the Sheriff and Undersheriff. Commissioner Hart seconded the motion. The motion carried 3-0.

HEARING: BUTLER CREEK COMPREHENSIVE PLAN AMENDMENTS

David Cotner, attorney, Boone Karlberg & Haddon, said he represents the developer of a partnership named Butler Creek Ranch Partnership. They consist of two general partners, Ernie Johnson and Allen Whiteoff. He knows that the minutes from the Planning Board did not arrive so he will try to summarize of what occurred at that meeting. He also wanted to explain why this is before the Commissioners and did so by providing a brief history.

About 18 months ago, Ted and Susan Hall approached the City offices and asked for a building permit. They wanted to build on a particular tract in this subdivision. After reviewing the Comprehensive Plan that was adopted for Butler Creek, that building permit was denied because the Halls wanted to build on their 20 acre tract and the Plan states that the density level only allows 1 dwelling unit per 40 acres. Obviously, the legal profession and Realtors that were involved had substantial concerns. At that point, he was asked to meet with County officials to determine the gravity of the problem and what may be done to satisfy the County’s concern. As a lawyer, he looked at several alternatives. He saw that this Certificate of Survey, as prepared with the restrictive covenants that were in place, provided more protection than the Comprehensive Plan. If you are in substantial compliance, the City/County is to provide a building permit. After consultations with his client, they decided that the better course of action was to work with the County and address their concerns. The Planning staff approves what they are asking the Board to do. When it went to the Planning Board, they unanimously agreed with what they are asking to do with certain exceptions. He said Brian Maiorano would address those momentarily. Since the problem was announced, they tried to find a solution that would permit the density to be changed on the Dodd Ranch. He distributed notebooks to the Commissioners with information that he would be referring to.

At the time Certificate of Survey 4198 was prepared and approved by County officials, 20 acre tracts were permitted to be developed without subdivision review. That was the beginning point for the Halls and several others who bought tracts on this COS. At this point, he referred to a map from the present Comprehensive Plan and talked about the Butler Creek Planning Area, the study area. This would help to orient the Commissioners to the location of the Dodd Ranch. He also referred to an elevation map, which showed the same area. They are here to ask the Board for their approval of an amended plan for the Butler Creek area. He feels that the Commissioners will conclude, after the presentation, that the developer, the planning staff, the Planning Board, County Attorneys, and all people who have been involved with this have accomplished a much better result than what is presently drafted. It is not a situation where they started with something and were trying to carve out exceptions and ask for variances. He said Brian would tell the Board that the result is better protection for what needs to be protected in Butler Creek and, further, that the impact on any down drainage users is non-existent.

When the problem was identified, he and his clients chose to hire appropriate experts to address the issues which needed to be addressed. One of the experts was here today is Barry Dutton of Land & Water. They asked him to identify the riparian area and to develop a riparian management plan. That is what Barry did. In conversations with
Colleen, it is his understanding that this management plan was one of the first that was developed in Missoula County and has been a model that has been used since that day. Also, they are in compliance with what they would be if this riparian area was reviewed under the subdivision regulations. In fact, a 25 foot buffer zone has been created that provides additional protection.

They hired Dick Ainsworth of Professional Consultants, Inc. to do a retroactive subdivision review process; meet with County people, talk with them about their concerns and tell him what he needs to do to bring this in compliance with subdivision regulations. Dick has prepared a map, he will go through how he did that and what he did and offer recommendations.

He showed the Commissioners a map of Dodd Ranch. It has been divided into 31 tracts and a remainder tract which is in the southeast corner and is not included in the Certificate of Survey. It is other property owned by the developers. Dick started with COS 4198 and worked on trying to implement and design a map which took into consideration slopes that were 25% or greater, and the riparian area, which was designated by Land & Water. That is what the map will show without deviation. This particular amendment to the Comprehensive Plan proposes is that those areas be no-build zones.

They also wanted to address concerns about availability of water in the Butler Creek area. When they heard that concern, even though it was not raised by a County official, they asked Howard Dillon to prepare an analysis of that issue. Howard was not able to attend this meeting but he will go over Howard’s review later.

He hopes the County will recognize that, in addition to dealing with County people, given the fact that this Certificate of Survey was approved in 1993 and given the fact that the problem was identified in 1995, obviously there had been sales of land to various owners. What the developers also had him do through a series of meetings, was continue to meet with the owners of the tracts of Dodd Ranch, to get their input, and see how they were feeling that they are recommending in this amendment. He knows of no objections to what is being proposed. The only objections that he feels the Commissioners will hear relate to the exception that Brian wants to discuss located on parcel 9.

He concluded that through the work of the experts, the County staff, and the landowners, the amendments they have proposed actually make this a better place for the County and the people. It protects scenic views, creates and maintains open space, and better protects what was there before, the open and resource designation. He asked that the Board recognize that, under the present Comprehensive Plan, without an amendment, any person who owns 40 acres can choose to build at any location. Kim Birk, who owns Tracts 10 and 11, had to leave this meeting because she has a Brownie troop that was meeting this afternoon, but she wanted him to point out 2 things: 1) that they own 40 acres, and 2) that they, because of that, could technically be building on a slope of greater than 25% at this time. There is nothing in the Comprehensive Plan that stops that. Colleen Dowdall could confirm that the Comprehensive Plan as it is does not adequately protect riparian areas or the scenic views. So, by doing what they are doing, and also showing people with similar problems how they can solve theirs, they are better addressing what needs to be addressed. If the amendment is to be approved, the effect of it is not to double the number of homesites. This is approximately an 800 acre ranch. With one dwelling unit per 40 acres, you could get 20 building sites through in an appropriate survey.

There are 31 tracts and a remainder tract, so it is not doubling; in fact, the density would be one dwelling per 25 acres. So, with the help of experts, they have prepared a Comprehensive Plan amendment. He noted the amendments were listed in the notebook he gave the Commissioners and they have been reviewed meticulously by the planning staff and the Planning Board with their approval. Their office started with the Comprehensive Plan that is presently in place.

Most that was highlighted in the notebook under the section for the amendments is the new language and new proposed changes to the amended Comprehensive Plan. There are not significant changes made but what has been added better protects the riparian area and better protects the goals that are set forth on page 5 and 6 of the Comprehensive Plan.

He wanted to talk about the groundwater at this point. They hired Howard Newman because he was designated in the original Comprehensive Plan as a person with knowledge of water in this particular area. Howard generated a report for them and that report is also found in the notebook. Some of the down drainage users are concerned about what the development of 32 sites will do to their wells and water. Mr. Newman, a hydro-geologist, concluded that, if all of these lots developed wells (that would be 32 wells), the consumption would be 71% of the groundwater which is available. He thus concluded that there is adequate groundwater for these 32 homesites and there would be insignificant impact on any down drainage user. The report is provided for the County and so the Commissioners would be aware of the effect of developing 32 homesites. On a different issue, they asked Howard to assume that they had an alternative which would be the development of the central water system. What he concluded is that the development of 32 wells has less impact on the available groundwater than the central water system. He stated Barry and Dick have worked hard to try to solve the problem. He feels the Commissioners will conclude that they have done is much better than what exists now. Instead of having the opportunity for 20 houses in the riparian area, that won’t happen. Instead of having the opportunity to have 20 houses on the top of ridges, that won’t happen. The reason for that would be the no-build zones. Colleen and he have had several discussions on how these were going to be implemented and, as he understands it, a map will be provided to the office that provides building permits. So when people come in for a building permit, they will have to establish to the County and City’s satisfaction that they are in an approved site. So they feel by adopting this plan with the recommendations of Barry Dutton and Dick Ainsworth, that they are in a good position to solve the problems.

There is an issue that Brian objects to that he would like to address. There are two proposed building sites that he maintains an objection to. One area is on a plateau on the remainder tract and what he would call a preferred building
site on parcel 9, which is owned by Mr. and Mrs. LaFlesch. First, regarding the remainder tract, he talked to Bob Henderson of the Fish and Game Department. One of Brian’s concerns was that particular location would impact wildlife and said he did not think that place for a site and it may impact on the elk migration patterns. When they went before the Planning Board, that particular tract was owned by a different individual. Just recently, that tract had been re-acquired by the developer and, because of that, they have authorized him to say that building site is not necessary and need not be approved. In other words, they will consent to the no-build zone, including that particular island. So that is not an issue any longer. The one issue that remains is a particular building site. It is described before the Planning Board as an exception. Looking at the map, he said it appears they are trying to carve out a special location and that may be misleading. He said Dick will say that particular location is on a slope that is less than 25%. You can drive to that site although he conceded the winding road that presently exists would need improvement. However, that is the site the LaFlesch’s hope to build on. He believes Brian’s objection concerns the wildlife. He discussed this also with Bob Henderson. He asked Bob if they put a house on the preferred building site as compared to placing it in another area, which he pointed to on the map, would there be any significant impact? Bob Henderson answered he would be splitting hairs to find any difference. He concluded that, generally speaking, what’s been accomplished here is far better than what they started with. He points this out because he does not think there is a legitimate reason to deny that particular building site. It is on a slope less than 25%, it is served by an existing road, and the concerns about wildlife don’t really have any merit to them.

There is another report on the wildlife issue that he provided to Brian some time ago, which was also included in the notebook. There is a letter written by Tom Martin, who is from the University of Montana, and who (unintelligible) on Tract 18. He wanted to point out certain things from that letter. First, he agrees with Bob Henderson on the effect on Tract 9. He is a research wildlife biologist, his research specialty is population dynamics of wildlife and determination of habitat requirements for sustaining populations of co-existing wildlife species. Referring to Tom’s letter, he said that he has reviewed the Dodd Ranch as it is being submitted and was quite happy to find the Dodd Ranch embodies the very ideals that he was seeking and represents perhaps that he sees some wildlife-friendly plans that he has ever witnessed for a development. In the last paragraph of his letter, he refers to Tract 9 and said it is Mr. Martin’s personal opinion that the preferred building site on Tract 9 would have relatively little impact on wildlife. He knows of no use by elk on Tract 9 and some use by deer. He further stated that the impact of establishing a house on the preferred site would have negligible impact.

With the exception of that particular issue, he summarized that what the Commissioners had before them was a Comprehensive Plan that embodies amendments that have been approved by everyone who has looked at this. He named the County attorneys, Janet Stevens (who also approved of it), Phil Maechling, Tim Hall, who he thinks authored the original Butler Creek Plan, and Brian’s input have all been invaluable to them. They have literally have taken everyone’s input and responded to it. It seems to be down to one issue, which is the building site on Tract 9. He hopes that the Commissioners see that this is a better result than what is in presently in place. If they approve this, they are sending a signal to other people that have 20 acre tracts and fall within the jurisdictional limits of getting a building permit. These are the steps that you have to take to meet the County approval; they will have to show that they are not impacting wildlife or riparian areas, and they are preserving open resource designation.

At this point, he read a letter from Kim Birk:  

I would like my comments inserted into the public record for the hearing on the Butler Creek Comprehensive Plan Amendments regarding the 20 acre tracts of the former Walter Dodd Ranch.

1. I don’t believe that it’s appropriate for the County to have approved this land division into 20-acre tracts (COS 4198 was signed off on by the County Attorney’s office in 1993), then to deny buyers of those tracts the right to build on them. Furthermore, the County did both the developers and the buyers a great disservice when they decided to wait several years - until the first building permit was applied for - to “lower the boom.”

2. I don’t agree with the process that allows a new comprehensive plan to be enacted that totally disregards existing land uses and legal subdivisions of land. The Dodd Ranch was subdivided in 1993, but the new comprehensive plan did not go into effect until 1994. Also, MOST of the existing land uses in the Butler Creek Valley are out of compliance with the new Comp Plan, including the 4-acre lots of Goodan-Kiel and the 10-acre tracts along the middle section of Butler Creek Road, as well as the former Dodd Ranch.

3. The developers of the Butler Creek Ranch tracts established protective covenants from the beginning, and have been working diligently for almost 20 years to satisfy the County’s demands. It is not appropriate for the County to nit-pick this thing to death. Although they may disagree with the way this division of land was done, it was done legally, under the laws of the time, and a court would probably find for the developers and property owners and against the County in this case.

4. That said, let’s get this plan amendment approved, but without onerous intrusions into private property rights. The developer and property owners have gone way beyond most of their neighbors in providing protections for the land.

Don’t insist on denying tract owners the right to build on their chosen sites! Approve the amendment WITH the LaFlesches chosen building site. This site meets the slope standards and is NOT an exemption or variance from those standards. It is an island within a steeper area, perhaps, but it is served by an existing road, the logging road that was built for the tree-thinning project done prior to the tract sales. It serves no purpose to deny the La Flesch’s building site on Tract 9.

As their closest neighbors, my husband and I (owners of Tracts 10 and 11) prefer the site chosen by the LaFlesches to the more exposed location apparently preferred by the County. Their chosen site is tucked away around the corner, where it has less visual impact. It uses an existing road for access, instead of having to create a new road. The LaFlesch’s preferred location also makes it more likely that weed control and slash clean-up are likely to occur on Tract 9. With the substantial no-build zones that are being granted...
by the tract owners collectively, there is no reason for the County to insist that the LaFlesches build where
they don’t want to (and their neighbors don’t want them to). They have told me that they would not have
bought Tract 9 if they could not build on the part of it that they have chosen.

Thank you for hearing my comments.

Sincerely,
Kim E. Birck

Commissioner Evans asked if David, Barry or Dick would address, regarding Lot 9, the emergency and fire access and
also the road?

Barry Dutton, Land & Water Consulting, said they were commissioned by the Butler Ranch group to conduct a
riparian inventory under the County’s new riparian regulations. They delineated the riparian area. The riparian area is
dominated by the spruce and dogwood type and has small areas of canary reedgrass, willow and a heavily disturbed
area around the old ranch house. To go along with the riparian inventory, they compiled management
recommendations for this area. Those included the riparian area being a no-build zone, protection and enhancement of
the riparian vegetation. The area around the old ranch house has been severely grazed by 100 years of agricultural use
and much of the woody original vegetation in the riparian area has been removed. They recommended re-
establishment of portions of that riparian vegetation along the stream bank. They also recommended restricting future
vegetation removal in the riparian area, removal of vegetation limited only to dead materials and less than 10% of the
live group. They do not want to restrict people’s activities completely. If someone wants a trail down to their
property for a picnic table to have a nice spot near the creek, that is fine. They only want to maintain the goals of the
riparian regulations to protect the resources that are there. They also recommended limited grazing and putting in off-
stream water developments for animals that might use the area. They have also recommended riparian fencing,
especially those types such severely limit wildlife use. They also recommended weed controls methods for the riparian
methods, including biological, chemical and mechanical methods. After completing their inventory and putting
together recommendations, they presented these to the bulk of the local land owners and also spoke to them
individually. The owners were concerned with preserving and protecting these riparian resources at the Butler Creek
Ranch. The reasons they moved to the area was for the wildlife and water quality. The owners with the most heavily
used portions around the old ranch site seemed genuinely interested in re-establishing that vegetation. The riparian
inventory and recommendations were then incorporated into the amended Butler Creek Comprehensive Plan. He has
observed the management of the riparian area along Butler Creek Road for over 20 years and feels like the proposal
here in the Butler Creek amended plan and the attitude of the current land owners should represent a dramatic
improvement in the riparian resource along this stretch of Butler Creek and will fulfill the goals of the County riparian
regulations. He also feels the Butler Creek Plan represents a dramatic improvement over the current situation which
does not offer the protections for the riparian resource.

he thanked the Commissioners for enacting the riparian regulations in the County. He was one of the supporters and
instigators of that effort. He hoped that they would consider the potential benefits to this riparian resource under
consideration today.

Dick Ainsworth, Professional Consultants, Inc., said he represented the owners and developers of this property. When
they hired PCI, they met with the County Attorney’s office and several members of the Planning staff, they discussed
the problems and he viewed the property with them. They have met with the owners in the area. He said, in a sense, it
was like doing a reverse subdivision. They had the property that was not owned by one person and one developer.
There are 16 different owners here that had purchased parcels not knowing that they did not comply with the
Comprehensive Plan. They purchased them, intending to build their homes on them in various, assorted locations.
They are trying to work with all these existing owners and meet their needs and, at the same time, try to improve the
Plan. The covenants that were in place on this were basically good and were the types of things that would typically
be included in a rural development. It is limited to single family development, no tracts could be smaller than 20
acres, there are building height restrictions, no mobile homes, minimum structure size, set-backs, lot of controls
dealing with maintenance, animal use of the tracts, maintenance agreements for the private roads, there is a lot of
language protecting the wildlife, no commercial logging, etc. The property was annexed into the Missoula Rural Fire
District prior to their involvement. In reviewing the minutes of the Commissioners’ meeting, the Rural Fire
Department reviewed the roads that are there now and that are shown on the map. They indicated at that time, if the
developer would provide turn-arounds or cul de sacs at the ends of the roads, that the roads would meet their standards
for the fire regulations.

Barbara Evans asked if that included Lot 9?

Dick Ainsworth answered yes. The building site by LaFlesch’s is served by an old logging road, which would have to
have an additional road constructed for a portion. The Fire Department has not reviewed this. When the property
owners get a building permit, the Fire Department will have to review it. If they are not satisfied with the access, they
will not sign off of it and the building permit will not be effective. The Fire Department has not reviewed the short
segment of road, but he mentioned that the logging road sidehills around and the grade is less than 5%. It is not a
steep road at all.

They looked at what they could do to make the development better and more acceptable to the County. Typically,
subdivisions don’t propose building sites on slopes in excess of 25% so that was an item they considered. The riparian
area was obviously an area that should not be developed so he suggested to the developer to employ Land & Water
and they did. Barry Dutton identified and designated that area. He contacted Bob Henderson originally and asked him
if the wildlife moved through there and Bob said he couldn’t say an occasional elk did not come through the area but,
for the most part, the Grant Creek elk herd did not come down this property. Most of them come down the other side
of Grant Creek, on the ridge between Grant Creek and Rattlesnake then they cross below, at the Grant Creek ranch and
come out on the south face.
They met a few times with the land owners in the area and discussed what they were trying to accomplish and asked them where they wanted to build, given a choice. The building sites are all within areas that don’t fall within the riparian area or on slopes over 25%. The covenants contain a setback from the property line of 25 feet and, in areas where the property line abuts the creek, there is a 25 foot setback from the riparian area so it actually goes a little further than the riparian area. The people they met with, the land owners, thought the Plan was basically good and they supported it. What they saw was what they bought the land for anyway so there was no conflict. He believes their Plan provides much better protection for that area than if it were in 40 acre parcels.

Michael Kennedy asked how they will access Tract 1?

Dick Ainsworth replied that there is an existing easement.

Michael Kennedy, looking at the map, said they would access it from the Point 6 turn-around where the closed gate is. They would actually access it from another road.

Dick Ainsworth said that was correct.

Michael Kennedy asked if that was the only one past the gate?

Dick Ainsworth answered yes.

Brian Maiorano, Office of Planning & Grants, said OPG did not write the proposed amendment, which is out of the norm. They usually write it and invite other participants. In this case, the landowners invited them to participate. In his review, he looked for how this proposed amendment would protect the goals of the original Plan. In particular, he looked at: the current property owners going to get fair usage of their lots under the proposed amendment? and will natural resources be protected adequately? A couple of areas that he focused on was protection of the riparian areas, the wildlife habitat, surface and groundwater qualities and quantities and scenic views -- all goals listed in the original Plan. The largest change in the proposed amendment is changing the densities from one dwelling unit per 40 acres to one dwelling unit per 20 with the addition of no-build zones. He feels that the one per 40 is that is a very broad tool that they use to protect natural resources. The hope is that, if there is only one house per 40 acres, then the cumulative effects of those houses will not be that great. However, it is possible to put more houses in a given area if the sites are carefully selected. He believes this proposed amendment does that - by protecting the riparian areas and by protecting the ridge tops which protect, not only the wildlife habitat but also the scenic views, at the same time eliminating the need for steep road cuts going to the top and more pollution to drive up there. A couple of building pockets that were proposed in the amendment are in the middle of what would otherwise be no-build zones. He conceded that their slopes are less than 25% and that was the general tool that was used to delineate no-build areas. The reason is for the 25% slope designation is to keep the development off the large ridge tops. But, even while they may be less than 25%, he still felt it defeated the spirit of what they were trying to do. As was pointed out, this is not a real critical issue from a wildlife perspective.

Pointing to the map, he showed the Commissioners Butler Creek drainage, the area of Grant Creek drainage and a mountain between the two, which is where the deer and elk come through. He submits that putting houses on there is equivalent of having houses on the top of Mount Jumbo; it is that steep and rugged of terrain. If he were asked to find the 5 most steep and rugged places, this would be in that top 5. They have a number of 50% slopes. As Dave pointed out, this was a recent development. The remainder tract has come back into the ownership of the developers. He was glad to hear that they are willing to comply with a no-build zone on that one spot. He was hoping that they would be willing to trade building sites on some of the other lots that the developer still owned in exchange for making that also a no-build zone. He did not know if they can address this at this meeting.

David Cotner said he does not think that is on the table for discussion at this point. He understands, from talking to Bob Henderson is that, when he looked at the remainder tract down in the gully, not so much on the hillside, they don’t believe that is a problematic area for elk. Where Bob was concerned is where they had already conceded. Secondly, the remainder tract already exceeds 40 acres and, thus, can be built on anywhere. In all fairness, they feel they have made several concessions with regard to that tract. It is unfortunate that he first heard about it at this meeting, but he does not feel it is something they can give away at this point.

Brian Maiorano replied that he did not want to put them on the spot. He himself did not know this was going to be in there until 3:30 p.m. If this were truly a subdivision in reverse, what they would recommend would be concentrating the building down in there. Another issue was building adjacent to creek beds. The riparian area has been designated as no-build areas. However, by the nature of the riparian areas, it is possible to have a slope that comes right to the edge of the creek bank, but if that slope is a high enough elevation off the creek bank, there is not the slope to produce riparian vegetation and therefore they cannot call it a riparian area. In fact, that happened on Lots 2, 3 and 4. You can see the creek comes to the edge of the floodplain, the valley bottom, and abuts to the slope. In Lot 4 of the old Dodd Ranch, buildings are literally on the creek bank. That is a situation that everyone, including the current owners, agree is not desirable, even though technically they are not in the riparian area. In Lots 2, 3, and 4, they would like to have a 25 foot buffer from the creek bank to extend to a no-disturbance zone to protect the creek bank. If, again, this were a subdivision in reverse, OPG would ask for an even larger setback in this situation.

Barbara Evans said she understood, when they created the riparian regulations, that the purpose of delineating the width of it was to provide just what Brian said. She asked if he wanted to add more?

Brian Maiorano answered yes, but the reason for that is to protect the creek bed. At certain times, the creek bank is not considered a riparian area. In this case, he feels anyone would agree that having a house on the creek bank is not a desirable situation.

Michael Kennedy asked if Brian was talking about the full reach or just where the old ranch buildings are?
Brian Maiorano said it would only include Tracts 2, 3 and 4, where the creek comes up against the edge of the floodplain.

Michael Kennedy asked what about Lots 5 and 6?

Brian Maiorano answered that on those lots the creek is through the middle of the riparian area.

David Cotner said the covenants that are in place provide a 25 foot setback for construction on property lines and the property line for 2, 3 and 4 is the creek, so there would be no problem.

Brian Maiorano continued and said in the proposed amendment are other guidelines that affect the riparian resource management plan which Mr. Dutton prepared and is an excellent plan. It is a model that they can use in future subdivisions. Hopefully, those guidelines will be followed, not only by property owners on the Dodd Ranch, but also by future subdivisions in the valley.

Regarding the ground and surface water concerns, in Mr. Newman’s report, there are a number of wells that have been drilled that are marginal. They have drilled wells on 7 tracts and they have only found around 3 gallons a minute. He is not concerned that someone wants to build a house where that is the case. That is their business, but he thinks that they should point out in the Comprehensive Plan in the amendment that it really is unknown how much water exists. Mr. Newman states “there appears to be more than adequate ground water available for the prospective homes in the middle and upper portions of Butler Creek” and then in the next sentence, he states “getting it out of the ground is another matter.” Brian feels that is often the story for western Montana and that is, yes, the water is there, but how deep do you have to go to get it? He does not have an answer for that. They really do not know how much water is there or what the impacts are going to be on downstream users. In the past decade, landowners downstream have had to deepen their wells. That could have been due to drought or other reasons. He is not saying that they should prohibit well drilling but they should note that there is concern about groundwater.

He recommends that they approve the proposed Plan, except to make the pockets in Tract 9 and in the remainder tract no-build zones. They also recommend that new roads be prohibited in no-build zones, to have areas that are undisturbed 25 feet from the creek in Lots 2, 3 and 4, and to “grandfather” the buildings that are currently in that zone on Lot 4, and to change language regarding the wells to reflect the uncertainty of adequate water for most lots.

Michael Kennedy opened the public hearing.

Donna Syverston, 975 Butler Creek Road, thanked the developers and the owners for the changes they have made in their plans for that area. The people who live in that area were upset at first because it is a beautiful area and they did not want to see it carved up into pieces with no respect for what was there. She feels the biggest concern left is the water issue. As mentioned by Brian, some of the people who live there now already have water problems. There have only been a few wells that have been drilled on the 32 parcels and they have no idea of how much water is there. They want to welcome these people to the neighborhood. They also want to make sure that, when they buy this property, that they have what they need to build and live there. However, she felt that those who live in the area now have first claim to the water and that is an issue that they need to be aware of. She asked if the Board were going to make a decision on this proposal today?

Michael Kennedy answered that was unlikely. Commissioner Hart had an appointment and had to leave this meeting, but she requested that she have the opportunity to make comments on this proposal before a decision was made.

Donna Syverston replied that was good. She and her husband just learned about this yesterday and he called several of the neighbors about it and they also did not know about the proposed amendment. She requested that any decision to adopt the proposed amendments to the Butler Creek Plan of 1994 be postponed for a month. The Dodd Ranch is not isolated from those who live in Butler Creek. They worked hard on the 1994 Plan and would appreciate the opportunity to know what the proposed amendments were and comment on them before they are adopted into the Plan.

Stephanie LaFlesch said she and her husband own Tract 9. When they bought the property, it had a very limited set of covenants about 6 pages long. They picked out their building site before they bought it. They decided on it because it had a lot of sun throughout the year, good access, they liked what was written into the covenants regarding environmental issues and protection of the property, making sure it would not be over-crowded, etc. Shortly after they bought it, they attended a meeting and found out that they were not in compliance with the overall zoning. Those that had bought property got together and tried to find solutions for everyone as best as possible. She explained that building site is something they really wanted, it was their dream to build a log home up there. They are basically environmentalists. They do not want to cause any damage; they just want their own little niche in the world. They are willing to do what they can to comply with what the majority want so they can have their home up there. They have an existing road, although there will be some work to connect to it. They have not hired an architect yet to develop a plan for fire access but they have already thought about having a turn-around for emergency vehicles. They have given a lot of thought to doing whatever they can to make little impact on the land and be in harmony with the wildlife and the land. She asked the Commissioners to give her request serious consideration so that it can work for everyone.

Barbara Evans said, if they postpone action on this decision, it would help if Stephanie could contact the Fire Department in her area and find out what they require for her homestead.

Stephanie La Flesch said she would do that. She noted that area has been logged before it was sold to them so there are not a lot of large trees around the building site. Also, it is on the slope below the ridge line so there will be no interference with the wildlife and they were also planning on having a metal roof so it would not be fire conducive.

Barbara Evans asked if she could also bring pictures?

Stephanie LaFlesch replied that she could.
Patrick Wood, 9520 Butler Creek, 3½ miles off Highway 10, said he had just heard about this proposal last night and took off work to get to this meeting. His main concern is water. He did not have the money to participate in the study that was done on draw rates on the wells, but his neighbors participated in it on available water, how much flows in the area, etc. He appreciates that this decision will be delayed about a month.

Michael Kennedy said at this point, the postponement is only a suggestion, but he thanked him for his comments.

Ken Degitez said he purchased Lot 1 about 2½ years ago. That lot comes out of the drainage from Snowbowl about 2 miles south of Snowbowl. He wanted to comment about the condition they found the ranch in as they started working on it. They had done a lot of destruction to the stream bed and the sides of the banks. There is a lot of water flowing off to the sides and they have put 2 years worth of work into this, cleaning the woods and such. There was a lot of barbed wire that has been in the ground. He does not believe management was that good over the last 20 years in this area. They’ve done work on the stream. They brought in people from the fisheries. They think their area on Lot 1 is the most valuable of the riparian area and they have done extra work to enhance it. They have a couple of bear, ducks that have moved in and white-tailed deer. The wildlife habitat seems to be working well and its in a lot better shape than it used to be; it is definitely more environmental and wildlife friendly. They have drilled a well, just off of the property, and they found out there is a rock ledge 80 feet below a collection of soils that is mostly clay and sand, which is good. They and Grant Creek live mostly off of groundwater, which is a flow on top of the rock and not an aquifer per se. It comes down the creek, snowmelt, and spreads out into the ground, basically on top of the rock layer. The people south of them are concerned about water. How much did water did 200 cattle use up? And where does the water go when septic is processed in the ground? It goes back into the groundwater, hits the rock layer and flows down. Households using water is put back into the groundwater one way or another and goes south where it is used by the farming communities. They are concerned about their wells and they have good right to be because it is groundwater mostly. But how much are they really using compared to what the cattle ranch was? Basically, he wants to impress that they take managing the land very seriously. He feels its mainly ignorance that causes problems with land, including abuse and misuse, but he states that we are all getting much better educated. He states that they have increased the ability for the stream to do what it does best. It has a lot of foliage over it, a lot of shade and they have brook trout in it. It is not directed off to the side as much as it was when the cattle were there. They have built up the stream sides with logs to be better prepared for big flows. That proved to be a good idea when they found out their culverts were not plugged except for the older ones downhill on the ranch. So its all been cleaned up and doing well.

Jim Heath owns Tracts 24 and 25 and said he wanted to go on record that he supports the amendments to the Grant Creek Plan as proposed, including granting LaFlesch’s requested building site.

Michael Kennedy asked him if he intended to build on both of his lots?

Jim Heath answered he has built on just one and plans to keep the other open.

David Cotner said he wanted to note a couple of additional items. First, he reviewed the well logs and, to the best of his knowledge, there are 7 wells that have been drilled on the Dodd Ranch. The average of those for production is 21.5 gallons per minute. Generally speaking, those have not gone deeper than 100 feet. One went 200 feet with 3 gallons a minute. Second, he appreciates the concerns of the down drainage users on groundwater. He hopes the Commissioners can carefully review Howard’s report. He misstated before that report shows 72 homesites were reviewed, not 32, and those 72 homesites use less than 1% of the groundwater. Secondly, there were problems in the Butler Creek area down drainage. Primarily, it has to do with the depth and quality of the wells, not the quantity of water. They will see, when they review his report, that was not a legitimate concern.

Dick talked about the fact that they met with homeowners, County officials, etc. When Dick prepared the outline of the riparian area and the 25% slope, it was not altered by what any particular landowner wanted. They do not move or adjust any lines to satisfy anyone’s request. 75% of the total ranch will be in a no-build zone. That is over 600 acres.

Regarding Tract 9, if there is a legitimate concern, he would say there is reason to deny it, like he did for the remainder tract. He heard from Bob Henderson that there is a legitimate concern. He feels Commissioner Evans has identified the correct procedure. Let these people become educated about what is involved and make proper decisions about the building sites. It will not affect wildlife, it is not higher than the other building sites that are available, and he encourages approval by the Commissioners.

Michael Kennedy appreciates what he said about the water but, at the same time, with his substantial background in that area and looking at Mr. Newman’s report and at what turned out to be anecdotal data when he says some of this stuff is “not all that bad and some is not all that good,” he wonders how he should interpret that. So he has a problem with that. Other than that, he feels they can work through this. He said October 30 was suggested to him by the Secretary as a good date to continue the hearing and make a decision at that time.

Barbara Evans asked David Cotner if there was any need for expediency?

David Cotner replied, speaking for the developers, when this problem developed, they effectively stopped all marketing of the property and all future plans. This process has taken much longer than they anticipated. His clients are anxious to get this resolved so he would appreciate an earlier date.

Barbara Evans asked the staff about what time frame they had to visit with the neighbors, did they need 2 weeks or a month?

Brian Maiorano asked what information she would like from the neighbors?

Barbara Evans said she wanted them to have the chance to review this and the opportunity to comment. She is not suggesting a lengthy process.
Brian Maiorano replied he could do that next week.

Michael Kennedy said there were some problems with the way the subdivision law changed and the way they conveyed the property. Under the existing condition, he feels this is as close to the former zoning as they are going to get and it is looking pretty good. But there are still some remaining issues, one is the water level. And he believes that the overall public involvement still has to take place. They need some time to resolve these issues. He suggested a new date, October 16th.

David Cotner thanked the Chair for the earlier date and accepted it. He added that he was available for any questions or concerns of the down drainage users.

CONSIDERATION OF: IBBEY ACRES (SUMMARY PLAT - 3 LOTS) MOUNT AVENUE

Lisa Moisey, Office of Planning and Grants said this is a request from Gordon Johnson for a three lot subdivision of his 3.9 acre parcel which is located on Mount Ave. between Clements St. and Spurgin Rd. The property is zoned CRR-2, which allows for up to 2 dwelling units per acre. The comprehensive plan designation is suburban/residential. She said the developer has shown on the proposed plat some building envelopes and that building would accommodate future lot splits if and when sewer is available to the area. She said each lot will have individual well and septic. Access will be from Mount Ave. and access within the subdivision would be from private driveways of sixteen feet wide. She said the staff noted while reviewing the subdivision that surrounding land is residential. Staff has made a recommendation that the developer do an easement located at the end of the driveway heading South to provide for future roadway connection to the southern parcel, if one is ever needed. She points to the map and shows the location. She also said that the developer also requested a variance along with the subdivision, regarding pedestrian walkways. OPG has reviewed the variance request, but has recommended denial and that they recommended a paved walkway along Mount Ave. She also said that OPG has recommended approval of the subdivision.

Michael Kennedy asked Lisa if she also reviewed Pokey Lane to see if there was an east/west easement on the southerly part of Pokey Lane Subdivision.

Lisa Moisey answered no there was not an easement.

Barbara Evans asked if the sidewalk that was recommended was connected to anything else or was it an isolated one.

Lisa Moisey answered the sidewalk would be one piece.

Ron Ewart of Eli and Associates, said that when they first looked at the subdivision that there would be a potential of eight homesites, but that the developer only wanted the three, which would allow the sixty foot easement for the roadway and have a twenty five foot setback for the building sites. He said he would like to talk about conditions #2, #3 and #9. In condition #2, he doesn’t think Clements Road should be put into this waiver statement because its so far, almost 1/2 mile. In condition #3 the building envelopes are designed to allow for building in the future. He feels that the sixty foot easement requirement is too early to require. He also said that the subdivision would not be very far from the County owned Equestrian Park. He said the best connection for North and Mount Ave. would be 37th St. which the County already has half the right-of-way. He also mentioned condition #9, the pedestrian walkway, he feels that Condition #2 would take care of #9 because they would be waiving their right to protest a RSID, for sidewalk.

Tim Ibej said that he is not against paving the driveway and walkway. He said that he would prefer to have those done after sewer and water lines were available to the area, since so many times in the past have occurred when the paving and sidewalks have had to be torn up when those services were available. He also said he is concerned about the sixty foot easement access, in that it is not their intention to subdividing down to less than one acre.

Michael Kennedy asked Lisa what the sidewalk requirement was on the adjacent area?

Lisa Moisey answered that a RSID waiver is required there on Mount Ave.

Horace Brown asked if the driveway is new or existing?

Ron Ewart answers that it is new.

Horace Brown said that because of the Env. Health Regulations that it should be paved.

Lisa Moisey stated that she talked with Ken Anderson of Env. Health and he said the requirement is based on any roadway that serves at least 3 lots which matches the subdivision regulations.

Barbara Evans asked Lisa to show her the sixty foot right-of-way to attach to what?

Lisa Moisey showed Barbara the sixty foot right-of-way on the map and explains it is to allow for a future road connection if one is ever needed.

Michael Kennedy asked Lisa to confirm that there is a RSID waiver on sewer, water, sidewalk and street modifications?

Lisa Moisey answers yes that condition #4 and #2 does that.

Barbara Evans asked Colleen Dowdall, County Attorney, how they can show to the court that there would be benefit off of Clements Rd. to be included in a waiver in a right to protest, if they don’t use it.

Michael Kennedy commented to Barbara that the only access to Mount is either off Spurgin Rd. or off Clements Rd.
Barbara Evans said to Michael that they need to be able to prove benefit to be included in the RSID waiver.

Colleen Dowdall explained that the subdivision regulations require off-site street and road standards for roads that are not in the subdivision, but access onto roads that are public maintained. She asked Lisa if Clements Rd. was paved?

Lisa Moisey answered that Clements Rd. is paved, but the nearest maintained paved road is Mount Ave. The staff feels that Clements Rd. will be the most used.

Barbara Evans said that there may be a challenge in court in the future as to the benefit.

Michael Kennedy agreed that if they use the current method of assessment which usually is on a lot basis if that would be true. He believes that, in a case like this, if you modify the assessment as to the benefit then you will use what is called a modified zone (...unintelligible) which means that depending on the access and depending on the distance from the particular area, then there is a proportional assessment and it looks much different than the standard lump-sum equalized assessment that they customarily use. This will be an issue when the SID comes up on Clements Road and it will get resolved then but it can’t get resolved before then because there will have to be a different method of assessment to make it work.

Barbara Evans moved that the Board of County Commissioners grant the variance from Section 3-2(5)(A) to construct sidewalks and pedestrian walkways because it is included as a waiver of right to protest in one of the conditions. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve Ibey Acres, Summary Plat, based on the findings of fact in the staff report and subject to the conditions listed below. Michael Kennedy seconded the motion. Motion carried 2-0.

HIGH COUNTRY ADDITION (2 LOTS - COMMERCIAL SUBDIVISION) SEELEY LAKE POSTPONED UNTIL 10/23/96

SUBDIVISION FOR LEASE/RENT -- SHIRLEY COURSER

Lisa Moisey said she had a conversation with Shirley Courser earlier. Shirley had been at this meeting but had to leave because she had to take care of her child. However, before she left, she reviewed the staff report and gave Lisa a note that said she does not object to any of the conditions that OPG required.

Barbara Evans noted that the Commissioners had reviewed this proposal at their morning staff report. Since there is no objection from the applicant, she wanted to proceed with the motion.

Barbara Evans moved that the Board of County Commissioners grant the variance request from Subdivision Regulation 3-2(10) which requires the applicant to meet off-site County roadway standards on Mill Creek Road. Michael Kennedy seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the Shirley Courser Subdivision for Lease or Rent based on the finding of facts in the staff report and subject to the conditions listed below. Michael Kennedy seconded the motion. Motion carried 2-0.

There being no further business to come before the Board, the Commissioners were in recess at 5:00 p.m.

THURSDAY, OCTOBER 3, 1996

The Board of County Commissioners did not meet in regular session; however, the following items were signed:

Audit List -- Commissioners Kennedy and Evans signed the Audit List, dated 10/1/96, pages 2-30, with a grand total of $213,093.43. The Audit List was returned to the Accounting Department.

Monthly Report -- Chair Kennedy examined, approved and ordered filed the Monthly Reconciliation Report for Justice of the Peace John Odlin, showing total receipts and distributions for the month ending September 30, 1996.

Subdivision Approval - The Commissioners signed a letter to Alan and Kathy Meyers approving their request for a subdivision for lease or rent, legally described as Lot 46 of Cobban and Dinsmore Orchard Homes, located on Grove Street.

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

FRIDAY, OCTOBER 4, 1996

The Board of County Commissioners did not meet in regular session; however, the following items were signed:

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming the University of Montana as principal for Warrant #35464 issued March 26, 1996 on the Missoula County General Fund in the amount of $400 now unable to be found.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
The Board of County Commissioners met in regular session; all three members were present. In the evening, the Commissioners attended a meeting with the Department of Transportation and area residents regarding a Speed Zone Study for Highway 83.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections for the month of September, 1996.

DAILY ADMINISTRATIVE MEETING

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

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Child Care Resources, Inc. for services to benefit families of children ages 0-3 seeking respite care, and families referred to DFS but not currently on DFS caseloads. Cost of the agreement is $18,500.00. Duration of the project is July 1, 1996 through June 30, 1997.

Resolution - The Commissioners signed Resolution number 96-079, a resolution to alter a portion of the GLO road and road from Plat Book 1 located in Section 28, T15N, R22W, PMM, situated within the Cyr property boundaries, to the existing right of way that is co-incident with the existing traveled way (West Ninemile Road).

Resolution - The Commissioners signed Resolution number 96-080, a resolution to renew Missoula County’s designation as a Montana Certified Community. The resolution must be renewed every three years.

Budget Transfers - The Commissioners approved and signed three budget transfers (control number 97-003) for Clean Up Missoula, authorizing transfer of monies from the Contracted Services account, in the amount of $9506.00, for community decay.

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

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming MCHS Computer Center as principal for Warrant #046937 issued 6/30/96 on the Missoula County General Fund in the amount of $442.44 now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Contract - Chair Kennedy signed a contract with Ibey Sprinkler and Landscape for tree planting and installing a drip irrigation system in Seeley Lake. Cost of the contract is $46,599.48. Contract was returned to Doreen Culver, Bidding Officer, for further handling.

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

The Board of County Commissioners did not meet in regular session; however, the following items were signed:

Audit List -- The Commissioners signed the Audit List, dated October 8, 1996, pages 2-25, with a grand total of $97,051.84. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Verna Denton as principal for Warrant #13034 issued 9/27/96 on the Missoula County MCPS Payroll Fund in the amount of $97.52 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Cathy Baker as principal for Warrant #78237 issued 8/20/96 on the Missoula County Trust Fund in the amount of $50.00 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Christopher Baldwin as principal for Warrant #13245 issued 9/27/96 on the Missoula County MCPS Payroll Fund in the amount of $192.75 now unable to be found.
Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with Extended Family Services to provide shelter services for children who are victims of abuse and neglect in Missoula County. Cost of the Agreement is $6,250.00.

Other items included:

1) The Commissioners reviewed Missoula County Investment Information as of October 1, 1996 as presented by Vickie Zeier, Clerk and Recorder/Treasurer.

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

PUBLIC MEETING -- OCTOBER 9, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

PROCLAMATION: DOMESTIC VIOLENCE AWARENESS MONTH

Fern Hart read the Proclamation as follows:

WHEREAS, disabled veterans and employees with disabilities have made important contributions to the economic health of this nation and this County of Missoula Montana.

WHEREAS, enlightened employers recognize that workers with disabilities have fewer disabling on-the-job injuries than the able-bodied, and have job performance and attendance records as good as or better than unimpaired workers, according to studies conducted by the U.S. Department of Labor; and

WHEREAS, Congress and the Executive Branch have, by the passage of significant legislation, including Americans with Disabilities Act, for Veterans and individuals with disabilities in the area of employment, expressed that qualified disabled veterans and employees with disabilities should be accorded affirmative action in employment or advancement therein, by U.S. Government agencies or departments and federal contractors;

THEREFORE, we the Board of County Commissioners of Missoula County Montana do hereby proclaim the day of October 18, 1996 as EMPLOYMENT OF WORKERS WITH DISABILITIES DAY in Missoula County Montana. The theme this year being “Reasonable Accommodation vs. Undue Hardship.” All citizens are urged to support programs to advance the cause of individuals with disability particularly employers who are requested to give special consideration to the employment and training of qualified veterans and workers with disabilities.

Fern Hart moved that we adopt the proclamation and Michael Kennedy 2nd the motion. The motion carried 2-0.

Michael Kennedy explained that Proclamation’s like this one come before the Board many times and works as an acknowledgement to the general population of the seriousness of this issue. The Proclamation announces generally to the public about the feeling of elected officials and so even though it is a sad note to have to have a proclamation, I am pleased as is Commissioner Hart is to act on this proclamation.

BID AWARD: SEELEY LAKE AIRPORT ROAD WALKWAY (SURVEYOR) POSTPONED

DECISION ON: REQUEST TO ABANDON SIX (6) UNUSED ROAD RIGHTS-OF-WAY (LOLO CREEK AREA)

Michael Kennedy said it has been several weeks since they had the first hearing on this subject. He asked the County Surveyor’s office to give a re-cap of this request.

Chuck Wright, County Surveyor’s Office, said there is a very old road on the property, at one time used by the Indians and Lewis and Clark. Another road, Road No. 1, is proposed to be vacated; No. 2 is right below it and that is another road that is just going across, with nothing there; another road, by the creek, leads to nowhere. The other GLO roads are there, including roads 4 and 5 and, upon viewing them, they did not see anything. Road no. 6 shows something on the ground and it overlays the old, old road. Mr. Woodman in 1883 decided that he wanted that to be a public road and he petitioned that from Lolo to his ranch.

Michael Kennedy said he was the Commissioner that viewed the property with the Surveyor and looked at the locations of where the roads were supposed to be. He said his recommendation will be in two parts. The first recommendation is to accept the petition on roads 1, 2, 3, 4 and 5. First of all, there is no trace of those roads. Secondly, those roads do not deny access, and thirdly, there are existing roads that would otherwise provide access to land should it ever be divided in those areas. His second recommendation regarded road no. 6, which is problematic. There appears to be two roadways overlaying each other. There is some confusion of what the intent of the petitioner is and what action the Commissioners should take. He felt it would be premature to make that decision today and he recommends to delay the decision on road no. 6.

Barbara Evans said, in the report, it states “it makes abandonment of road no. 6 appropriate.” She asked why Commissioner Kennedy felt it was not appropriate.

Michael Kennedy answered the petition covered only one of the layers of road. Referring to the map, in Section 29 particularly, there are two colors representing road no. 6. Only one of those colors is represented by petition. It may mean that, if the petition were granted, that there may still be an underlying right-of-way in that same location. There
is sufficient confusion on it that he feels it should be clarified but at the same time said he was not recommending acceptance of denial of the request. Only that the decision for road no. 6 be delayed until such time the confusion is cleared up.

Barbara Evans asked who is supposed to have both layers of right-of-way? ... the County?

Michael Kennedy answered yes.

Barbara Evans asked, then, if both rights-of-way are owned by the County, why is it not appropriate to vacate it?

Michael Kennedy replied because there has only been a petition to vacate one.

Horace Brown, County Surveyor, said the petition, and there are two, overlay the existing road which may in the future be used as a walkway, bikeway or some other type of access. At this time, he requested that they do not vacate it. It is possible that they could use it for public use. That road has existed since at least 1805.

Barbara Evans asked when it was used last?

Horace Brown replied that he didn’t know but added that it did not have anything to do with it because there may be a use for it in the future. They need to plan these things. He asked that road no. 6 not be vacated.

Barbara Evans asked when they would be looking at this road, if there was a time certain?

Horace Brown answered that he did not believe that they had to set a time.

Colleen Dowdall, Deputy County Attorney, said, if the Board turns this request down, they have to answer why they are not granting the petition. She agreed that they needed more information before they did that. She recalled that they kept the GLO road for the purpose of a future walkway or trail from Lolo to Lolo Hot Springs. She said the County needed to analyze whether they needed both rights-of-way for that purpose and, if they do, why they do. Those of are the kind of findings that the statute requires. To delay it, they need permission from the applicant to be able to have additional time.

Michael Kennedy stated, at this time, he would like to act on the first five roads.

Barbara Evans moved that the Board of County Commissioners vacate road nos.:

Road 1 - This right-of-way was created by a petition filed by Petitioner, W.H. Anderson, and declared a public highway on November 4, 1904;

Road 2 - This right-of-way was created by a document recorded in Book 36, Deeds, pp. 380-81;

Road 3 - This right-of-way was created by a petition filed by Petitioner, J.H. Wilkinson, and declared a public highway on March 9, 1893;

Road 4 - This right-of-way is designated in the Missoula County Surveyor’s office as a General Land Office (GLO) road that ran to what appears to have once been the “Williams” homestead; and

Road 5 - This right-of-way is shown in County Plat Book as “Old Road and Present Road” in 1889.

Fern Hart seconded the motion. Motion carried 3-0.

Michael Kennedy asked David Cotner why the petition was only for one layer of the apparent two layer road system?

David Cotner, attorney, Boone Karlberg & Haddon, said, on a prior date, he had filed a petition to abandon the GLO road and a road that was established by a person whose name he believes is Muzzie. That petition dealt specifically with that road only and that petition was denied by the Commission several months ago. Subsequent to the time they filed it, the Surveyor’s Office made them aware of the road that is the subject of this petition. The reason they asked for this is, if the County is intending to preserve a right-of-way, the most they want it limited to is one. Presently, there are three that go through the ranch. If road no. 6 is not abandoned, it will still remain on the property. The map, which he felt was imprecise, could ultimately lead to three different locations and that was the concern. There is no intent to have one abandoned and then carry the argument forward to that the other two should go as well. He wanted that clear. What they are trying to do is make sure that, what they are left with, is the minimum number of County roads possible. At that point, they may be re-addressing those issues through other solutions.

Michael Kennedy asked if the petition is granted and the layer of the right-of-way vanishes, that another legitimate County right-of-way still exists for that entire County line?

David Cotner answered no.

Michael Kennedy said that it causes confusion for them too because he wouldn’t have expected them to do that.

David Cotner said he believed Colleen knew what their position is. They believe that the County, through verbal representations on prior dates led the land-owners along Lolo Creek to believe that that road was abandoned. He realizes that is not a formal proclamation and that they are not finding any minutes to document that understanding. Nonetheless, there are legal arguments that do exist for him to present that legally those roads don’t exist anyway. He cannot abandon that and he asked the Commissioners’ understanding.

Fern Hart stated she did not understand from that morning’s staff presentation that the old Muzzie road was one that they had refused to abandon.
Colleen Dowdall said that was her recollection, however, she admitted that she was not involved in the original petition.

Chuck Wright went to the map and pointed out the road.

Fern Hart asked if it was the old Muzzie road?

Michael Kennedy said, so far as he knew, no. 6 was the Muzzie road.

Colleen Dowdall said the Muzzie road abandonment was denied by the Commissioners but it has another layer of right-of-way that still exists. At this time, it is arguably a County road in three different ways. Missoula County is not the only County that has done this. It happens by virtue of not having really good records in times when we had procedurally less sophisticated governments.

Chuck Wright said the reason they have this problem is because the County Commissioners never started keeping an index of these roads until 1887. In 1870, the Commissioners decreed all roads used in the County in August, 1870, are County roads. Additionally, he found out just that morning, he found a map of the old Lewis & Clark Trail and they show information on that particular road. Also, in 1883, prior to the indexing, they did the road from Lolo to Woodman’s house. In 1888, they did it from Woodman’s house to the hot springs.

Michael Kennedy commented that he may have discovered a missing archeological fact that would be of importance. He asked if he had proof that road no. 6 was identified with the Lewis & Clark Trail?

Chuck Wright answered yes, although he did not know if it was necessarily the Muzzie road. He discussed the map he found with Colleen and she said she did not want to “drop a bomb” on David Cotner and would request a delayed decision.

David Cotner said, based on what he is hearing and he provided Colleen a copy of the two petitions, which included the one that was originally filed and denied. That petition dealt with the Muzzie Road and the GLO road. This one he calls the Woodman Road because that was the petitioner. He agreed that the decision should be delayed. There seems to be an abundance of confusion and he does not know the best way to handle it would not be for them to delay the decision. He said they would have the landowner’s consent to delay the decision indefinitely. He would meet with Colleen, Horace, or whoever was appropriate to discuss a process to put these matters properly before the Board of County Commissioners.

Michael Kennedy said the Board accepted his request for a delay.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (PATINELLA)

Kathleen Smith, Paralegal, County Attorney’s office, said this was a consideration of a request for a family transfer for Parcel 9 of COS 1354 located in Section 27, T14N R23W for Donna A. Patinella. Donna A. Patinella has submitted a request for a family transfers for a 23.70 acre parcel located South of Alberton off West Petty Creek Road. Ms. Patinella proposes to create a 5 acre parcel between the private road easement across the property and the West Fork of Petty Creek which forms the North boundary of the parcel. She wishes to transfer this parcel to her mother, Lucy Patinella. The comprehensive plan in the area is open and resource (one dwelling unit per 40 acres).

The history of the parcel is as follows: COS 1354 was filed in December 1977 by the Laurel Leaf Ranch Co. creating 22 parcels greater than 20 acres in size. Ms. Patinella purchased Parcel 9 along with Parcels 10 and 12 of COS 1354 in June, 1996.

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

Michael Kennedy asks if Donna Patinella and would come forward for questions. Because of that we go through a different process which required us to ask you questions which allows us to make a judgment to determine if you are attempting to avoid subdivision regulation.

One question that I have regards the use of the property that you are wanting to subdivide, and with reading this it is to provide a space for a house for your mother?

Donna Patinella answers yes.

Michael Kennedy asked if her mother was elderly?

Donna Patinella answers 63 or 64.

Michael Kennedy states that there is a tendency for the elderly to move closer to services such as medical and emergency services and that it seems strange to me that the opposite is true here and I was wondering if you have addressed that.

Donna Patinella answers that her mother is not sick or anything and that she wants to move out there to be closer to the family.

Fern Hart asks to talk a little about the easement. Do you come to the property from the Alberton side or the Lolo side.

Donna Patinella states she access from the Alberton side.

Fern Hart asks then that you then go past the property you want to give your mother and there is an easement there that you come in and the private easement that you access to get to her place and your place. And you own No. #9, #10, and #12.
Donna Patinella states yes, and that there are 2 other houses at the end of that easement.

Fern Hart asks have you built there?

Donna Patinella states there is a house there when she moved there and her mother plans to also build there.

Fern Hart states by looking at the may it appears that the mothers land is next to the creek?

Donna Patinella states that all of the parcels are next to the creek.

Fern Hart said that one of the things that the Board has done and have other divisions in this area is to at least to encourage you to respect the creek bed, banks. I have been there and it is a special area and is what we call riparian and if you subdivide it we will put all kinds of limitations on it like not building next to the creek.

Donna Patinella said she understood that you could not build next to the creek anyway.

Fern Hart said that she would encourage you to respect that area.

Barbara Evans said she had no questions.

Michael Kennedy is there a motion.

Barbara Evans moved the Board of County Commissioners approve the request for the family transfer for Donna Patinella for Parcel 9 of COS 1354 located in Section 27, T14N R23W a 23.70 acre parcel located South of Alberton off West Petty Creek Road, and in that there doesn’t appear to be any attempt to evade the Subdivision Act. Fern Hart seconded the motion, the motion carried 3-0.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (STILWELL)

Kathleen Smith, Paralegal, County Attorney’s office, said this was a Consideration of a request for five family transfer for a parcel described in Book 1 Micro, Page 1669 located in the NE¼ of Section 6, T19N R16W for Clarence and Mabel Stilwell.

Clarence and Mabel Stilwell have submitted a request for five family transfers for a 156.8 acre parcel located South of Condon. The ownership consists of Government Lots 1 and 2 and the S½ of the NE¼ of Section 6 less a 2 acre parcel as shown in Book 152 Deeds, Page 291. They wish to create five family transfer parcels out of the total acreage for their adult children: Karla Sheffler, Jenise Eskridge, Olive Harris, Susan Puckett and Joe Stilwell. The comprehensive plan in the area is open and resource (one dwelling per 40 acres).

The history of the parcel is as follows: Mabel Stilwell purchased the 2 acre parcel in 1948. The 156.8 acre parcel was purchased in 1966 by Clarence and Mabel Stilwell. In that same year, Mabel Stilwell transferred half interest in the 2 acre parcel to Clarence Stilwell.

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

Michael Kennedy asks if there are representatives for the Stillwell’s?

Glenn Howard, the surveyor representing the Stilwell’s said that he is the land surveyor representing the Stillwell’s they would have planned to be here but we were not sure when this would be scheduled they had prior commitments and airline tickets to visit their son in Maine so I am here to represent them.

Michael Kennedy stated that you know why you are here and have heard the previous testimony regarding the Donna Patinella request so we won’t go through that process, so I will ask the Board if they have any questions for you.

Fern Hart asked do you know if the children are planning to build on these parcels and live here?

Glenn Howard I do not know for all children although the Stillwells have mentioned to me that they are current residents there is to go to one of the daughters so I believe from that reference, yes one of the children plan to live there. They also mentioned that there son also plans to come back to live in the area. I’m not sure of the other children.

Fern Hart asked do they have other children?

Glenn Howard responded, no they do not.

Fern Hart stated I can’t tell from my map, are they gifting this property in equal amounts to children, some appear to be smaller than others.

Glenn Howard responded, I think it is their intent that this be equitable.

Fern Hart stated that she noticed an access road.

Glenn Howard said he believed it is a County Road - Pineridge Road that’s accessing through there right now is the main arterial that they would access off of.

Fern Hart said I also notice on the map what appears as a grassy low lying land. So some of this is more buildable than others.
Glen Howard: That is correct. To build on it would be site specific locations, but there are buildable locations on each location.

Fern Hart: That is all the questions I have, I would like to try to encourage these kinds of subdivisions in which we have no real review to be land sensitive, encourage these people to use the area, love the area and not sell it off. Those are the kinds of questions I’ve asked to try to determine. I know that these are adult children and it’s likely that one or more may be sold, but to the family I would encourage them to be a steward to the land.

Michael Kennedy: stated the acreage does say plus or minus but the acreage they want to deed to each of their children amounts to One hundred and sixty two acres and they requested one hundred and fifty six point eight acres there is a little difference there, but I also notice a two acre parcel and I don’t know anything about it. What is going to be done with it?

Glen Howard: said he believed that was part of the original one hundred and sixty acres originally that was bought at a separate time that is why there are two deeds to the property.

Michael Kennedy: stated the ownership says it consists of Lot #1 and Lot #2 less a 2 acre parcel and I am wondering how the 2 acre parcel fits into this division.

Glen Howard: responded, I am not sure there is an exhibit on that, do you know Kathy?

Kathleen Smith: said yes, it was created years ago, Mabel Stilwell bought it separately in 1948 so it was probably created at that time or prior, they used to be able to create parcels just through deeding it to someone.

Fern Hart: Are we assuming some of this is attained by the mother.

Kathleen Smith: Yes, it’s still in their ownership but I don’t think they took this small 2 acre parcel into account when they were doing this.

Fern Hart: So this doesn’t show all of there ownership it simply shows the division of the parcel of each.

Kathleen Smith: stated when they set forth the parcels they don’t take into account that small 2 acre piece. So where it says here Joe on the side there will be a little finger into that parcel and they could relocate the boundaries create that parcel and do four family transfers, thereby reserving there rite to one of the children. But it is going to cut into that parcel.

Barbara Evans: I assume they actually intend to transfer the deed of this property to the children.

Glen Howard: Yes they do indeed, they are both elderly and that’s their concern. I believe they are in their 80’s and they both would like to do this at this time.

Barbara Evans: moved that the Board of County Commissioners approve the five family transfer for a 156.8 acre parcel located South of Condon, consisting of Government Lots 1 and 2 and the S½ of the NE¼ of Section 6 less a 2 acre parcel as shown in Book 152 Deeds, Page 291, for Clarence and Mabel Stilwell to their adult children, Karla Sheffler, Jenise Eskridge, Olive Harris, Susan Puckett and Jose Stilwell, in that there does not appear to be an attempt to evade subdivision review and with the notice that they must actually transfer the titles. Fern Hart seconded the motion.

Michael Kennedy: Any discussion, Kathy?

Kathy Smith: Just for information, the Clerk and Recorder requires that any surveys filed pursuant to this exemption also have the deeds filed at the same time.

Michael Kennedy: I have a problem that I can’t get answers to questions that I feel responsible to ask because you are unable to answer them. The disposition of these properties - whether they are going to live there or not and speculation on your part doesn’t do it for me so as much as I would like to, I can’t speak in favor of the motion.

Michael Kennedy: asked all those in favor of the motion signify by saying aye. Motion carried 2-1. Commissioner Kennedy opposed.

Fern Hart: asked Colleen Dowdall a question regarding that if these are family transfers and none of the five plan to live there, they would still qualify as family transfers?

Kathy Smith: answered yes.
OCTOBER, 1996
FISCAL YEAR:

THURSDAY, OCTOBER 10, 1996

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

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Report of the Sheriff, Douglas Chase, showing the items of fees and other collections on account of civil business in Missoula County for the month ending September 30, 1996.

DAILY ADMINISTRATIVE MEETING

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

Letter - The Commissioners signed a letter approving three amended family transfer exemptions for R. Wesley and Carol Sue Mapston for property located in the SE1/4 NW1/4 and NE1/4 SW1/4 and NW1/4 SE 1/4 of Section 30, T16N R19W.

Professional Services Contract - The Commissioners signed a Professional Services Contract with David Berkoff to do research related to the Growth Management Task Force. Duration of the Contract is from October 9, 1996 through April 30, 1997. Compensation for services shall not exceed $3000.00.

Professional Services Contract - The Commissioners signed a Professional Services Contract with the Missoula Indian Center to provide HIV and drug prevention work with Native American youth. Duration of the Contract is from November 1, 1996 through June 30, 1997. Compensation for services shall be $1300.

Other items included:

1) Discussion of Peak A Blue Subdivision access issue - develop proposal to pave 12 feet, leaving remainder of roadway to be paved by future subdivision.

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

FRIDAY, OCTOBER 11, 1996

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

On Saturday forenoon, October 12, Commissioner Hart participated in the University of Montana’s Homecoming Parade.

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

Vickie M. Zeier
Clerk & Recorder

Michael Kennedy, Chair
Board of County Commissioners

MONDAY, OCTOBER 14, 1996

The Courthouse was closed for the Columbus Day Observed holiday.

TUESDAY, OCTOBER 15, 1996

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

DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the Commissioners reviewed and approved the Special and NSF Restitution Trust accounts from the County Attorney’s Office. The information was forwarded to the Clerk and Recorder’s Office for filing.

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

WEDNESDAY, OCTOBER 16, 1996

The Board of County Commissioners met in regular session; all three members were present. In the evening, Commissioners Kennedy and Evans attended a TPCC (Transportation Policy Coordinating Committee) meeting held at the City Council Chambers for the purpose of adopting the Transportation Plan.

Audit List -- Commissioners Kennedy and Evans signed the Audit List, dated October 16, 1996, pages 2-36, with a grand total of $308,587.60. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

At the daily administrative meeting held in the forenoon, the following items were signed:
Resolution - The Commissioners signed Resolution Number 96-082, a Resolution of Intention to Create Rural Special Improvement District No. 8922, for operation and maintenance of a sewage disposal system for Circle H Ranch Subdivision, Phases I and II.

Resolution - The Commissioners signed Resolution Number 96-083, a Resolution fixing tax levies for Missoula County for Fiscal Year 1996-1997.

RESOLUTION NO. 96-083
FIXING TAX LEVIES FOR MISSOULA COUNTY
FOR FISCAL YEAR 1996-1997

WHEREAS, the Board of County Commissioners of Missoula County, Montana, has approved and adopted the budget for Fiscal Year 1996-1997, as required by law; and

WHEREAS, budgets have been received from various taxing entities; and

WHEREAS, hearings have been held in compliance with State law and in reference to the number of mills levied; and

WHEREAS, the value of a mill has been determined as $144,754 County-wide, and a value of $71,711 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 1996-1997 as moved, seconded and passed by the Board and as detailed below:

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<td><strong>TOTAL COUNTY-ONLY LEVY</strong></td>
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CITY OF MISSOULA 138.20

MISSOULA COUNTY SCHOOLS VARIOUS (SEE ATTACHMENT)

STATE OF MONTANA
UNIVERSITY MILLAGE FUND 6.00
STATE ASSUMPTION/CNTY WELFARE 9.00
STATE SCHOOL FOUNDATION 40.00

SPECIAL FIRE DISTRICTS
CLINTON RURAL 29.03
MISSOULA RURAL 55.69
ARLEE/JOCKO VALLEY RURAL 10.66
FLORENCE-CARLTON RURAL 16.63
EAST MISSOUA RURAL 12.79
FRENCHTOWN RURAL  22.00
SEELEY LAKE  29.23

OTHER SPECIAL DISTRICT LEVIES
SOIL CONSERVATION  1.45
S.O.S. HEALTH CENTER  10.00
CARLTON CEMETERY  1.34
MISSOULA URBAN TRANSIT  9.82
SEELEY LAKE CEMETERY  4.00

SPECIAL ASSESSMENT DISTRICTS
LOLO MOSQUITO  VARIOUS (SEE ATTACHMENT)
JOCKO IRRIGATION  VARIOUS (SEE ATTACHMENT)
FRENCHTOWN IRRIGATION  VARIOUS (SEE ATTACHMENT)
MISSOULA IRRIGATION  VARIOUS (SEE ATTACHMENT)
FOREST FIRE PROTECTION ASSTN  VARIOUS (SEE ATTACHMENT)
ELK MEADOWS WATER DISTRICT  VARIOUS (SEE ATTACHMENT)
SEELEY LAKE REFUSE DISTRICT  VARIOUS (SEE ATTACHMENT)
BIG FLAT IRRIGATION  VARIOUS (SEE ATTACHMENT)
LORRAINE SO. WATER DISTRICT  VARIOUS (SEE ATTACHMENT)
CLINTON IRRIGATION  VARIOUS (SEE ATTACHMENT)
GREENOUGH/POTOMAC VOLUNTEER FIRE  VARIOUS (SEE ATTACHMENT)
EAST MISSOULA SEWER DISTRICT  VARIOUS (SEE ATTACHMENT)

SPECIAL IMPROVEMENT DISTRICTS  VARIOUS (SEE ATTACHMENT)
WATER QUALITY DISTRICT  VARIOUS (SEE ATTACHMENT)

All of the above attached, approved and ordered entered into the official minutes of the Board of County Commissioners this 16th day of October, 1996.

APPROVED AS TO FORM AND CONTENT:  BOARD OF COUNTY COMMISSIONERS

Deputy County Attorney     Michael Kennedy, Chair
ATTEST:  Fern Hart, Commissioner
Vickie M. Zeier, Clerk and Recorder  Barbara Evans, Commissioner

Payroll Transmittal Sheets - The Commissioners signed Missoula County Payroll Transmittal Sheets for pay periods 17, 18, 19, 19-2, and 20. The sheets were returned to the Auditor’s Office.

Contract - The Commissioners signed a Contract with Jensen Paving Co. to pave the Johnsrud Park Road. Cost of the Contract is $66,757.52. The Contract was returned to Doreen Culver, Bidding Officer, for further handling.

Agreement - The Commissioners signed an Agreement with the Montana Department of Transportation for salvaged material under Federal Aid Project No. NH-CN 0002 (216) - North Reserve Street - Structures. The Agreement was returned to Horace Brown, County Surveyor, for further signatures and handling.

Resolution - The Commissioners signed Resolution Number 96-084, a resolution vacating 5 road rights-of-way located in Sections 28, 29, 31, 32, and 33, T12N R21W, PMM, and Section 5, T11N R21W, PMM, in Missoula County, Montana (Woodman School Area).


Waiver of Compensation - The Commissioners signed a Waiver of Compensation between Missoula County and the State of Montana, Department of Transportation, Right of Way Bureau, for Project No. DPI 0195 (001) F (Missoula I-90 Airport Interchange), donating the necessary right of way for the project.

Modification - Chair Kennedy signed a Modification to the CTEP General Project Development and Construction Agreement for the Seventh Street bicycle and pedestrian path. This was returned to Horace Brown, County Surveyor, for further signatures and handling.

Agreement - The Commissioners signed an Illustration and Artwork Agreement with Mountain Press to use a Paxson reproduction for a book cover. Mountain Press paid the Art Museum of Missoula $100.00 upon receipt of a publishable form of the Artwork.

Other items included:
1) The Commissioners authorized Colleen Dowdall, Deputy County Attorney, to respond to Maloney Ranch lawsuit issues.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

HEARING (CERTIFICATE OF SURVEY REVIEW): AGRICULTURAL EXEMPTION/BOUNDARY RELOCATION (COX)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a consideration of a request to create three agricultural parcels and boundary relocation between parcels as shown as Parcel 1B of COS 3772 and Parcels 1, 2 and 3 of COS 4181 located in Section 7 T13N R20W for James W. and Cecelia F. Cox.

James and Cecelia Cox have submitted a request to create an agricultural parcel for Parcel 1B of COS 3772 and two agricultural parcels and relocating boundaries for Parcels 1, 2 and 3 of COS 4181. This would leave one remainder for Parcel 1B and three remainders for Parcels 1, 2 and 3. The Coxes also propose to relocate the boundaries between the remainders of Parcels 1, 2 and 3 into two proposed parcels. All property is located between Big Flat Road and the Clark Fork River West of Missoula. They wish to place conservation easements on the three agricultural parcels which would be for the benefit of Five Valleys Trust. The three residential parcels which they are also proposing to create would be sold along with the agricultural parcels. This zoning is CA3 (one dwelling unit per 5 acres with a 3:1 width/depth ratio).

The history of the parcel is as follows: COS 127 was filed in October 1973 creating 13 parcels greater than 10 acres in size. COS 896 was filed in June 1976 creating three parcels greater than 20 acres in size from Tracts 2 through 11 of COS 127. COS 873 was filed in June 1976 creating a 28 acre lot from portions of Tracts 10, 11 and all of Tract 12 of COS 127. COS 3772 was filed by the Coxes in April 1990 creating Tract 1B as an occasional sale parcel and relocating boundaries to create Tracts 1A, B1A and B1B. COS 4181 was filed in February 1993 creating three family transfer parcels which were to be transferred to Mary Thea Kaplan, Damon E. Cox and James Cox, Jr. The survey was filed but the parcels never transferred as per requirement. Subsequently, the Coxes discovered the parcels did not meet the 3:1 width/depth ratio therefore rendering them unbuildable. This request is an attempt to remedy that situation.

According to the records kept by the Missoula County Surveyor, the applicants have used exemptions to the Subdivision width/depth ratio therefore rendering them unbuildable. This request is an attempt to remedy that situation.

Michael Kennedy thanked Kathy for her presentation and stated they had a good understanding of this issue. It has been around for a long time. He asked if the Coxes or their representative were present?

Dick Ainsworth, Professional Consultants, Inc., said he was there representing the Coxes. He said Kathy presented the proposal very well and he was available if the Commissioners had any questions.

Michael Kennedy asked if the Coxes were also present?

James Cox came forward and identified himself. Michael Kennedy explained that anytime there is a change in the boundary or a subdivision of land without going through the subdivision review process, the Commissioners must review the proposal by law. He told Mr. Cox that they would be asking questions that may seem odd but he wanted him to know that the questions were necessary for the Commissioners to determine if it was an attempt to evade the subdivision review process.

He said, since this has been before the Commissioners before, at least on a couple of occasions, they have a strong familiarity of the land and their conservation efforts down there. He asked Mr. Cox why he did not transfer the property when the division was asked for in 1993 to his children?

James Cox answered, in 1993 when he first realized that those parcels were not in compliance, he got together with Dick Ainsworth and decided to bring these parcels into compliance by making smaller parcels of the two large ones and bring all three into compliance. They realized that the requirements were such that the back parcels that were being created in Dick’s survey in 1993 still did not comply. They were still too deep in comparison to their width. So there was to be a hearing at which the Office of Planning & Grants was going to propose that they be accepted because they seemed reasonable. Bud Hettich, Office of Planning & Grants, called him a week before the hearing and asked if he was prepared to sign them over to his children immediately? He had not thought about that because he was planning to leave those three parcels to their three children as part of their estate. He then realized the tax implications involved in doing the transfer immediately. So he asked that the hearing not be held and they wanted them to go back to the drawing board and think about a way of bringing the property into compliance without a hearing.

Michael Kennedy told him the exemptions do not go on forever. He is only entitled under the law to a one-time exemption and his transfer has expired.

Colleen Dowdall, Deputy County Attorney, said she believes the interpretation they talked about this morning was, because the COS was filed at the Clerk & Recorder’s office, it reflected the use of the family transfer exemption. The determination would then be made that he has used his family transfer exemptions. She did not discuss that with Dick or James because she assumed that was understood.

Fern Hart excused herself from discussion because of a conflict of interest.

Barbara Evans moved that the Board of County Commissioners approve the request to create three agricultural parcels and boundary relocation between parcels as shown as Parcel 1B of COS 3772 and Parcels 1, 2 and 3 of COS 4181 located in Section 7, T13N R20W for James and Cecelia F. Cox, in that this does not appear to be an attempt to evade...
the Missoula County Subdivision review. Michael Kennedy seconded the motion. Motion carried 2-1. Fern Hart abstained.

Michael Kennedy told Mr. Cox that he appreciated his persistence on resolving this.

PROCLAMATION: EMPLOYMENT OF WORKERS WITH DISABILITIES DAY

Barbara Evans read the proclamation:

WHEREAS, disabled veterans and employees with disabilities have made important contributions to the economic health of this nation and this County of Missoula, Montana.

WHEREAS, enlightened employers recognize that workers with disabilities have fewer disabling on-the-job injuries than the able-bodied, and have job performance and attendance records as good as or better than unimpaired workers, according to studies conducted by the U.S. Department of Labor; and

WHEREAS, Congress and the Executive Branch have, by the passage of significant legislation, including Americans with Disabilities Act, for Veterans and individuals with disabilities in the area of employment, expressed that qualified disabled veterans and employees with disabilities should be accorded affirmative action in employment or advancement therein, by U.S. Government agencies or departments and federal contractors;

THEREFORE, we the Board of County Commissioners of Missoula County Montana do hereby proclaim the day of October 18, 1996 as EMPLOYMENT OF WORKERS WITH DISABILITIES DAY in Missoula County Montana. The theme this year being “Reasonable Accommodation vs. Undue Hardship.” All citizens are urged to support programs to advance the cause of individuals with disability particularly employers who are requested to give special consideration to the employment and training of qualified veterans and workers with disabilities.

Dated October 16, 1996

Barbara Evans moved that the Board of County Commissioners sign the Proclamation, “Employment of Workers with Disabilities.” Fern Hart seconded the motion. Motion carried 3-0.

Michael Kennedy commented that this proclamation is important and has the effect that it shows that the County Commission is understanding of these kind of issues. Affirmative action is not a welfare program but an acknowledgment that, to make the playing field level, they need to take certain actions.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (FISHER)

Kathleen Smith, Paralegal, County Attorney’s office, said this was a consideration of a request for a family transfer for Tract B of COS 3583 located in Section 31, T14N R20W for Michelle J. Fisher.

Michelle Fisher has submitted a request for a family transfers for a 6.76 acre parcel located at the intersection of LaVoie Lane and Harper’s Bridge Road between Missoula and Frenchtown. Ms. Fisher proposes to create a 1.76 acre parcel on the West portion of the property for transfer to her adult daughter, Shawna Gibson Kofelda. The proposed parcel has an existing access off LaVoie Lane and the 5 acre remainder would have a proposed access of Harper’s Bridge Road. The zoning in the area is designated as CA-3 (one dwelling unit per 5 acres).

The history of the parcel is as follows: COS 3583 was filed in 1988 creating Tract A as a 5 acre family transfer parcel and Tract B as a 6.76 acre remainder parcel. The O’Bill Family Trust, Michelle J. Fisher, Trustee, purchased Tract B in April 1993 and in November 1994, the Trust, via Michelle Fisher, quitclaimed its interest to Ms. Fisher.

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

Michael Kennedy asked if Michelle Fisher or her representative was present?

Michelle Fisher came forward and identified herself.

Michael Kennedy said whenever there is a division of land without a subdivision review, the Commissioners are charged with the responsibility of determining if it were an attempt to avoid the review. To do so, they must ask the applicant various questions. He asked if she was creating this so Shawna Gibson Kofelda could live on the property?

Michelle Fisher answered yes.

Fern Hart asked if her daughter plans to build a house or put a mobile home on it?

Michelle Fisher replied that she planned to give her daughter the existing house. She told her daughter that when she married, which she did in August, that she would give her the house. She is in school in Bozeman at this time and will move here in the spring.

Fern Hart asked Michelle if she planned to live on the other parcel?

Michelle Fisher answered yes.

Michael Kennedy asked if there was a structure on the other parcel?
Michelle Fisher answered no.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the family transfer request for Tract B of COS 3583 located in Section 31, T14N R20W, for Michelle J. Fisher, in that it does not appear to be an attempt to evade the Subdivision Act. Fern Hart seconded the motion. Motion carried 3-0.

Michael Kennedy stated, since there was no residence on the other parcel, he told the applicant that she still had to apply for a septic tank permit and he did not know if it would be granted, depending upon their requirements. The Commission’s decision today has nothing to do with obtaining the septic tank permit.

Michelle Fisher said she understood.

CONTINUATION OF HEARING & DECISION ON: BUTLER CREEK COMPREHENSIVE PLAN AMENDMENTS (FROM OCT. 2ND)
POSTPONED UNTIL OCTOBER 30, 1996

There being no further business to come before the Board, the Commissioners were in recess at 1:48 p.m.

THURSDAY, OCTOBER 17, 1996

The Board of County Commissioners met briefly in the forenoon; a quorum of members were present. Chair Kennedy was out of the office all afternoon, and Commissioner Hart was out of the office October 17 and 18. In the evening, Commissioner Evans attended a Jail Project Public Information Meeting held at the City Council Chambers.

Indemnity Bond -- Acting Chair Evans examined, approved, and ordered filed an Indemnity Bond naming Bryan Hutcheson as principal for Warrant #13584 issued 10/4/96 on the Missoula County MCHS Payroll Fund in the amount of $66.97 now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Contract - The Commissioners signed a Contract with Jensen Paving Co. for paving of Mullan Road at Frenchtown Substation. Cost of the Contract is $62,275.00.

Plat - The Commissioners signed a plat for Benchmark Homes, a subdivision of Missoula County located in the NE1/4 SW1/4 of Section 25, T13N R20W, PMM, a total area of 3.897 acres, with the owner of record being Benchmark Homes, LLC.

Agreement - The Commissioners signed a Master Agreement with IUOE Local 400, Butte Teamsters Union Local #2, IAM and AW Local #88 District 85, to cover all employees of the Missoula County Road and Bridge Departments in establishing rates of pay, hours of work, benefits, employee safety and other conditions of employment.

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

FRIDAY, OCTOBER 18, 1996

The Board of County Commissioners did not meet in regular session; Chair Kennedy was out of the office all day, and Commissioner Evans was out of the office until noon. However, the following items were signed:

Indemnity Bond -- Acting Chair Evans examined, approved, and ordered filed an Indemnity Bond naming Ludmil a Chinikaylo as principal for Warrant #13941 issued 10/11/96 on the Missoula County MCPS Payroll Fund in the amount of $334.61 now unable to be found.

Indemnity Bond -- Acting Chair Evans examined, approved, and ordered filed an Indemnity Bond naming Ludmila Chinikaylo as principal for Warrant #13258 issued 9/27/96 on the Missoula County MCPS Payroll Fund in the amount of $383.05 now unable to be found.

Release of Restrictive Covenants - Chair Kennedy signed a Release of Restrictive Covenants; Approval of Missoula County and Terms Effecting Future Subdivision of Property owned by June and Kiel O. Peckenpaugh (Tract 1 of Certificate of Survey No. 4627).

The minutes of the Administrative Meeting are on file in the Commissioners Office.
The Board of County Commissioners met in regular session briefly in the afternoon; a quorum of members were present. Commissioner Hart was delayed by the weather and arrived back in town late in the afternoon, and Commissioner Kennedy was on vacation the week of October 21 through October 25.

**MONDAY, OCTOBER 21, 1996**

**DAILY ADMINISTRATIVE MEETING**

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

- **Memorandum of Agreement** - The Commissioners signed a Memorandum of Agreement with the Missoula City-County Health Department to provide neighborhood nurse home visiting services to benefit parents of 0-3 year olds (and their children) who are at risk of abuse and neglect, and families referred to DFS but not yet on the caseload. Value of the Agreement is $52,000.00, and duration is July 1, 1996 through June 30, 1997.

- **Amended Contract** - The Commissioners signed an amended Professional Services Contract with the School of Education, Counselor Education, at the University of Montana to secure graduate student interns for Partnership Health Center. Duration of the Contract is September 9, 1996 through May 30, 1997, and total compensation is a maximum of $2800.00.

Other items included:

1) Discussion of Approval of 180-day extension for Guest Ranch Road Tracts subdivision, with a letter to Grace Siloti.

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

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**TUESDAY, OCTOBER 22, 1996**

The Board of County Commissioners met in regular session; a quorum of members were present.

**Audit List** -- Commissioners Evans and Hart signed the Audit List, dated October 22, 1996, pages 2-30, with a grand total of $150,722.14. The Audit List was returned to the Accounting Department.

**DAILY ADMINISTRATIVE MEETING**

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

- **Sympathy Card** - The Commissioners signed a sympathy card to the family of Gordon Reynolds.

Other items included:

1) Appointment of alternate David Sullivan to fill the unexpired term of Ron Moser on the Lolo Water and Sewer Board;

2) The Commissioners decided to interview John Carlson for a vacancy on the East Missoula Rural Fire District Board.

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

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**WEDNESDAY, OCTOBER 23, 1996**

The Board of County Commissioners met in regular session; a quorum of members were present.

**DAILY ADMINISTRATIVE MEETING**

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

- **Plat** - The Commissioners signed the Plat for Valley Homes Mobile Home Park, a 1-lot minor subdivision located in the NE1/4 of Sec. 34, T15N R21W, Missoula County, a total area of 5.14 acres gross and net, with the owner of record being Edmond G. Alexander.

- **Plat and Subdivision Improvements Agreement and Guarantee** - The Commissioners signed a Plat and Subdivision Improvements Agreement and Guarantee for D & E Homesites, a subdivision of Missoula County, located in the NE1/4 NW1/4 of Section 30, T13N R19W, PMM, a total area of 4.858 acres, with the owners of record being Ernest W. Johnson and Daniel L. Egeland.

- **Payroll Authorization Form** - The Commissioners signed a Payroll Authorization Form for Bill Silverman, DES Coordinator, effective July 1, 1996, changing his salary from $12.16/hour to $12.89/hour. The Form was returned to Kim Vietz in DES for further handling.

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

**PUBLIC MEETING -- OCTOBER 23, 1996**

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Fern Hart. Also present was Commissioner Barbara Evans.
HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (GOVI)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a consideration of a request for a family transfer for a parcel as shown on COS 3282 located in Section 7 T11N R16W for Jeffrey L. Govi.

Jeffrey Govi has submitted a request for a family transfer for a 4.140 acre parcel located South of Highway 90 off Rock Creek Road. Mr. Govi proposes to split the parcel in half for transfer to his future wife, Yvette Soltis. They are to be married in the near future and prior to the filing of any survey and deed. There is a home existing on one portion of the parcel and a log cabin on the other. Mr. Govi states he wishes to retain half the parcel for the family and plans to move into the log cabin and sell the other half. The comprehensive plan designation in the area is open and resource (one dwelling unit per 40 acres).

The history of the parcel is as follows: COS 3096 was filed in August 1984 creating Parcel A as a 2.140 acre occasional sale parcel. This parcel was then purchased by Joseph and Julia Govi in September 1984. On January 22, 1986 the parcel was quitclaimed back to the original owners by Joseph and Julia Govi at which time COS 3282 was filed relocating the boundaries between Tract 1 of COS 3228 and Parcel A of COS 3096 adding 2 acres to the latter parcel. Also on January 22, 1986 that parcel as shown on COS 3282, a 4.140 acre parcel, was sold to Jeffrey L. Govi.

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

Fern Hart opened the hearing and asked if Jeffrey Govi would identify himself and come forward. She also asked him who Joseph and Julia Govi were.

Jeffrey Govi came forward and answered that they were his parents.

Fern Hart asked him who he had bought the parcel from?

Jeffrey Govi answered that he bought both parcels from Harold Brown.

Fern Hart asked when he bought the first piece?

Jeffrey Govi answered that he bought it in 1984.

Fern Hart asked Kathy if there was a record of that?

Kathy Smith answered that she found no records of the sale.

Jeffrey Govi stated that he did have the sale record, which he handed to Kathy Smith to review.

Kathy Smith said that this is a contract to purchase land between Mr. Brown and Mr. Govi’s parents (Joseph and Julia Govi), it does not show Jeffrey Govi. She also stated that the record never shows the parcel as two separate two acre parcels.

Fern Hart asked Mr. Govi if there was a business located at the property?

Jeffrey Govi said that he intended to do taxidermy in the log cabin when he retired, but he does that from his house now.

Fern Hart reading from the staff report said that there is a home existing on one portion of the parcel and a log cabin located on the other. Mr. Govi states that he intends to retain half the split parcel for the family and plans to move into the log cabin and sell the other half.

Jeffrey Govi stated that the report is correct.

Fern Hart asked to Mr. Govi that she would interpret that as an evasion of the subdivision act.

Jeffrey Govi said that the original intent was to move into the cabin and sell the other half to help them financially. He also said that he thought the parcel was already split because of the markers and corners were already there at the property.

Fern Hart said that the County goes by the records and that the parcel is not split, but one piece.

Barbara Evans commented that the Board has to determine on these kinds of splits, if the requester is attempting to evade subdivision laws. The occasional sale laws have changed and the only way property splits can be performed is through the subdivision review process.

Jeffrey Govi asked, regarding giving the other parcel to a family member, his fiancee, is there any problem with that?

Barbara Evans said that if he gave it to her by title, it would be different that selling it.

Colleen Dowdall said that his intention was to transfer the log cabin parcel to his fiancee, later to be his wife, and then to sell the other remainder parcel. The family exemption is intended for dispersing assets to family members while retaining some interest in the assets. She said that his expressed intention was to sell the other parcel. This request is exactly like an occasional sale which is no longer legal.

Fern Hart asked if there were any other comments from Mr. Govi?
Jeffrey Govi said that he has been to OPG and has the forms for a subdivision split. He found that it would take months to do, but he wanted to pursue this route if possible.

Fern Hart asked if anyone else wanted to comment on the transfer? No one came forward and she closed the public comment portion of the hearing.

Barbara Evans moved that the Board of County Commissioners deny the request for a family transfer for a parcel shown on COS 3282 located in Section 7 T11N R16W for Jeffrey L. Govi in that it appears to be an evasion of the Montana Subdivision Act. Fern Hart seconded the motion. Motion carried 2-0

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (RUPLE)

Kathleen Smith, Paralegal, County Attorney’s Office, said this was a consideration of a request for a family transfer for Tract 2 of COS 1595 located in Section 19 T14N R20W for Fred J. and Sharon N. Ruple.

Fred and Sharon Ruple have submitted a request for a family transfer for a 20.62 acre parcel located off Moccasin Lane near Stone Container. Mr. and Mrs. Ruple propose to split the parcel in half for transfer to their son and daughter-in-law, Zane F. and Jackie C. Ruple. Both parties have existing residences on the parcel and Zane and Jackie Ruple purchased the proposed parcel from Fred and Sharon Ruple a number of years ago. The parcels will remain in their current usage.

The history of the parcel is as follows: COS 1595 was filed in September, 1978 creating 18 parcels greater than 20 acres in size. Fred and Sharon Ruple purchased Tract 2 in July, 1985. They then assigned half interest in the parcel to Zane and Jackie Ruple in March, 1986 and a Quitclaim Deed returning ownership to Fred and Sharon Ruple was also executed but never filed.

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

Fern Hart asked if there was a representative for Fred and Sharon Ruple?

Walter Congdon, an attorney representing the Ruple’s, said this is a proposal to complete a sale/gift. The OPG office has reviewed the history of the parcel and this request is to finalize the transfer. Mr. & Mrs. Ruple Sr. is transferring the parcel to Mr. & Mrs. Ruple Jr. There are two homes with individual water and septic, already approved. He said that no one ever completed the process to actually divide the parcel. Tim Hall of OPG reviewed the request and has no problem with it. The request is from the father and mother to give the second parcel to their son and daughter in law. The quit claim was never filed from years ago.

Fern Hart said from her understanding of the staff report is that the ownership is now in four names.

Walter Congdon said that they quit claimed the deed from Ruple’s Sr. to Ruple’s Jr. and then back to each. He said that they have the original deed. He also stated that the Ruple’s did not really understand what they were doing and therefore caused this confusion.

Fern Hart asked if anyone else would like to comment? No one came forward and she closed the public hearing.

Fern Hart also asked Colleen if the deed was in the parents name?

Colleen Dowdall answered yes.

Barbara Evans asked if this needs to be transferred to the son or the son and daughter in law?

Colleen Dowdall answered that either would be okay.

Barbara Evans moved that the Board of County Commissioners approve the family transfer for Tract 2 of COS 1595 located in Section 19 T14N R20W for Fred J. a and Sharon N. Ruple, in that there does not appear to be an attempt to evade the Montana Subdivision Act. Fern Hart seconded the motion. Motion carried 2-0

HEARING: REQUEST TO ALTER COUNTY ROAD (CRYSTAL CREEK RANCH) CRYSTAL CREEK ROAD AND OLD MISSOULA-TURAH ROAD

Doug Skjelset said he was here to speak for the Crystal Creek Ranch. He said this land is completely encompassed by Crystal Creek Ranch land. The roadway has been coordinated through the Surveyor.

Fern Hart opened the public hearing and asked for comments. No one came forward and she closed the public hearing.

Fern Hart asked Horace Brown, County Surveyor, for his comments.

Horace Brown said that he and Commissioner Kennedy toured the road. He said that this would take the road out of the front yard of Crystal Creek Ranch and run it to their back yard. He also said that it would be better for the public.

Fern Hart said that there was also a precipitous road that was closed and barricaded.

Horace Brown answered no, that it was not closed yet, but that a sign of Private Road was put up.
Fern Hart stated the Commissioner that toured the road was not present at the hearing and asked Colleen Dowdall for a suggestion.

Colleen Dowdall answered that the examination of the road has occurred in the context of the petition. She said that they still need to do that.

Fern Hart said in order to make a decision, that a Commissioner needs to still view the road.

Doug Skjelset asked if this would be scheduled for another hearing?

Fern Hart answered that this request will be scheduled for a decision after one of the County Commissioners and the County Surveyor view the site.

Doug Skjelset asked if additional testimony will be taken?

Fern Hart answered no, it will only be decision which will take place after the inspection.

THE MEETING WAS RECESSED AS THE BOARD OF COUNTY COMMISSIONERS AND RECONVENED AS THE PLANNING & ZONING COMMISSION. THREE MEMBERS OF THE PLANNING & ZONING COMMISSION WERE PRESENT: FERN HART, BARBARA EVANS AND HORACE BROWN.

HEARING (PLANNING & ZONING COMMISSION): APPROVAL OF SINGLE-FAMILY DWELLING - ZONING DISTRICT #4 (DAN & CAROL RUNYON)

Dave Loomis OPG office said this proposal was for a single family dwelling, garage, well and septic and a driveway and is located off of Burning Tree Rd. (a private road on the south side of Pattee Canyon). The comprehensive plan says that this should be a single family use. Also the developments need to be compatible with the natural physiography. He then went on to describe the setting of the proposed dwelling. He said access was reviewed by the OPG office and was by way of a private road. Issues including fire response and others are of concern.

Fern Hart asked if anyone was to speak for the Runyan’s.

Dan Runyan said that he had a question about the driveway. That it needed to be paved.

Horace Brown said that it is in the dust abatement area and that it does need to be paved.

Dan Runyan said that the Health Dept. said, since it is private, it does not need to be paved.

Horace Brown asked if the Health Dept. approved it?

Colleen Dowdall said, that if paving is required, it is up to the Health Dept., but it is her understanding that all new roads and driveways need to be paved, private or not.

Fern Hart then asked Mr. Runyan if he has any other comments?

Dan Runyan answered no.

Fern Hart then opened the hearing and asked if anyone else had a comment.

There being no other comment, she closed the hearing and asked for a motion.

Horace Brown moved that the Planning & Zoning Commission approve the request for a single-family dwelling for Dan and Carol Runyon on Tract D-4, Certificate of Survey #4335, located in the SW¼ of Section 3, T12N R19W, in Zoning District #4, contingent on the conditions listed below. Barbara Evans seconded the motion. Motion carried 2-0.

1. Require that the applicant comply with all Building Codes in regard to engineering on slope stability;
2. Require that the applicant install a residential sprinkler system to the home, unless the property is annexed into the Missoula Rural Fire Department, and the District states for the record that sprinklers will not be required, prior to issuance of a building permit; and,
3. Require that the applicant comply with all Health Department requirements in regard to type of heating system and other air quality issues in the staff report.

THE MEETING ADJOURNED AS THE PLANNING & ZONING COMMISSION AND RECONVENED AS THE BOARD OF COUNTY COMMISSIONERS’ PUBLIC MEETING

Barbara Evans moved that the County Commissioners accept the recommendation of the Planning & Zoning Commission and approve the request for single-family dwelling for Dan and Carol Runyon on Tract D-4, Certificate of Survey #4335, located in the SW¼ of Section 3, T12N R19W, in Zoning District #4, contingent on the conditions recommended by the staff. Fern Hart seconded the motion. Motion carried 2-0.

CONSIDERATION OF: OWEN SHORE LOTS (3-LOT SUBDIVISION ON LAKE INEZ)

Lisa Moisey of the OPG office said that this was a request from Jess and Alice Owen for a three lot subdivision on Lake Inez. She said the property is 1.96 acres in size and the proposal is to create three separate lots for the three existing homesteads located there. She said the property is in zoning district 26 which allows for residential use. Access to the subdivision is from Highway 83. The OPG office requires that the access to and from Hwy 83 be reviewed by the Montana Department of Transportation. She said the vegetation is mostly mature pine trees. OPG staff considers this area riparian resource along the lake shoreline. She then showed photos of the area to the Board. She said the applicant has asked for a variance from the requirement that no lot shall have an average depth greater than three times its average width and that each lot have a minimum of sixty feet measured from the setback line. She said that the setback line in this case fronts on the Hwy 83. She stated that staff recommends that the variance be denied. She then approaches the Board to show them more detail of the request and recommendation. She said they are requesting that the lot line between Lot 1 and Lot 2 be extended to make a minimum of sixty foot frontage in compliance with the Missoula County Subdivision regulations.

Fern Hart asked Lisa if squaring the lots to sixty feet would interfere with any existing structures.

Lisa Moisey answered that the portion of the lot affected is on the Hwy 83 side, not the lake side. She also stated that staff recommended approval of the subdivision subject to the conditions in the staff report.

Ron Ewart of Eli and Associates and representing the Owen’s, said that they request that conditions No. 5 and 6 be deleted. He said that these are existing situations which require some consideration. He said that Condition No. 6, the three-to-one is being met with the forty foot width since there is no setback line in this zone.

Fern Hart asked Ron if the turnaround was a problem with the setback, and what would happen when a fire truck was needed in there?

Ron Ewart said that the only way to insure a turnaround space would be to not allow a fence.

Fern Hart asked Lisa if the Seeley Lake Fire Dept. has commented?

Lisa Moisey said that the Seeley Lake Fire Dept. responded with a letter stating that they had no problem with the request.

Fern Hart asked Lisa, if they were to reduce the access by one, what would it change?

Lisa Moisey said that in their review, they had some concerns about the locations of the access in proximity to each other.

Fern Hart asked if anyone else wanted to make a comment.

Alice Owen said, as far as the forty feet setback, that if they have to give more, then they would not be able to get out of their garage. She also said, if they moved the TV dish, the reception would be lost. She said, as far as the plantings along the lot line, the beavers continue to chew on them and that is the reason there are no small trees there now.

Barbara Evans asked staff, for future reference, to find out if the TV dish can be painted to make it less noticeable.

Fern Hart asked if anyone else wanted to speak. No one came forward.

Barbara Evans moved that the Board of County Commissioners grant the variance request for Owen’s Lots, located 7 miles north of Seeley Lake on Highway 83, legally described as the NW¼ of Section 31, T18N R15W, from Subdivision Regulation 3-3(E) to reduce the frontage from 60 feet to 40 feet on Lot 1. Fern Hart seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the summary plat for Owen’s Lots, located 7 miles north of Seeley Lake on Highway 83, legally described as the NW¼ of Section 31, T18N R15W, subject to the conditions listed below, based on the findings of fact and the recommendation of the staff. Fern Hart seconded the motion. Motion carried 2-0.

1. The Montana Department of Transportation shall review and approve all existing approaches for this property. In addition, the State Department of Transportation shall review and approve the existing driveway used to access Lot 3, which is located within the State right-of-way.

2. The applicant shall include the following statements on the face of the plat:

   “Acceptance for a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID to US Highway 83, including pedestrian walkways, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”

   “Acceptance for a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID for community water and/or sewer, based on benefit, and may be sued in lieu of signatures on an RSID/SID petition.”

3. The applicant shall provide evidence of water supply for fire suppression purposes. Water supply shall be reviewed and approved by the Seeley Lake Fire District prior to filing the plat.
4. The Seeley Lake Rural Fire District shall review and approve all existing driveways prior to filing the plat.

5. The applicant shall reconfigure Lot 1 so that the lot meets the 3:1 average length to width ratio and that the lot shall have a minimum frontage width of 60 feet. Redesign shall be approved by the Office of Planning and
Grants prior to filing the plat.

6. The area within 20 feet of the high water line of Lake Inez shall be labeled a “no-improvement” zone. No further development shall be placed within this zone unless the improvements are specifically permitted by existing regulations.

HEARING: HUSON HEIGHTS (13 LOTS - PRELIMINARY PLAT) NEAR HUSON

Lisa Moisey said this is a request from Tom and Salina Scheffer for a 13 lot subdivision located 1 mile west of the I-90 interchange near Huson, Montana. There are presently 7 dwelling units and the parcel size is 28 acres. She said in 1995 the Board heard a request to revoke an agricultural exemption on an adjacent parcel. One of the conditions was for them to go through subdivision review for the parcel along with the mobile home court which is on the Huson Heights Subdivision. She then showed the Board the area on the map. She said the comprehensive plan shows the area as rural medium density. She also said the applicant has meet the intent of the comprehensive plan for the area. She said that OPG staff has noted a riparian area on the property and they recommend the area be a no-build zone. She also said the applicant has requested a variance from the pedestrian walkway condition, and a variance from the requirement to provide paved streets. Paving requirements would include the Stenerson Dr. intersection with Huson Heights Rd. and Mullan Rd. as it crosses through the property. OPG recommends denial of both variance requests and requirement to provide paved streets. The Survey makes this determination at the time of his examination of the road. She said that if this roadway is in the air stagnation area then they require the developer to pave.

Barbara Evans asked if anyone else wanted to comment on Huson Heights?

Carol Hodge asked if the number of lots were the same on both maps?

Ron Ewart of Eli and Associates representing the developer said that Lisa was correct. He said that the land on the west side of the road was not in the floodplain but that the developer decided not to build in that area anyway. He said therefore the lots on the east side did lose one lot. He then passed out some exhibits to the Board.

He said there is a sixty foot right-of-way on Stenerson Rd. to connect Mullan Rd. with the Huson Frontage Rd. They propose to improve Stenerson Rd. and the portion of Mullan Rd. that fronts the property to 24 foot gravel standards. They waive their right to protest an RSID for roadway improvements to Stenerson Rd., Mullan Rd., and Huson Frontage Rd. and also wish to apply dust abatement. He also said there is a historic portion of the Old Mullan Trail which will be designated as a no building zone. He said there is a dedication of a fifty foot public pedestrian access along the entire Clark Fork river frontage. He asked for some changes to conditions No. 2, 3, 5 and 9. He also described the information he has received on the use of calcium chloride for dust control.

Fern Hart opened the public hearing and asked if anyone wanted to comment.

Carol Hodge neighbor of the proposed development, asked if this road would be a County road now.

Colleen Dowdall explained that there was some paperwork detail that needs to be completed for the Board to accept the road as a County road. She said most of the roads within subdivisions are dedicated County roadways, but that they require the developer to build the roads and pave them.

Carol Hodge also asked what would happen on lot No. 7 since water runs through there in the spring?

Barbara Evans said to Carol Hodge that people have a misconception that developers get a free ride. She said that this is not true. She said the County usually requires that developers build the improvements with the development. She also said that after the improvements have been made that the County Surveyor examines and usually approves the paved road, in this case, for a County maintained road if enough money is available to maintain it. The Survey makes that determination at the time of his examination of the road. She said that if this roadway is in the air stagnation area then they require the developer to pave.

Carol Hodge said that they are having a lot of trouble on Huson Rd. with maintenance, traffic, and speed limits.

Fern Hart asked if anyone else wanted to comment on Huson Heights?

Ron Ewart said that it was his understanding that when they got the agricultural exemption lifted that the 60 foot easement would get dedicated. That is why they have not done it before. He also said the Health Department commented that Stenerson Road was outside the air stagnation zone so they were not requiring paving. He said that the Surveyor’s Office did not require paving either. He also commented on the water runoff on Lot 7 and said that the building site is located on the high spot and that drainage would go around the site.
Fern Hart asked if anyone else wanted to comment. No one came forward and she closed the public hearing.

Horace Brown, County Surveyor, said this is not in the air stagnation zone, so the Health Department air stagnation regulations do not apply.

Fern Hart asked Lisa about the recommendations to pave all the roads. Was it because it is a new subdivision or because it has 11 lots?

Lisa Moisey said that the regulations require that all new subdivisions shall have paved streets and that this would be considered the core of the Huson (village).

Fern Hart asked Lisa if this was close to a public school.

Lisa Moisey answered that she thought not.

Fern Hart asked Horace how far the nearest paved road was.

Horace Brown answered that Mullan Rd. was paved 1/2 mile away and that the road on the north side (frontage road) that intersects with Stenerson Rd. is paved. He then shows her the road on the map.

Barbara Evans asked Lisa if to the east of this subdivision there were a possibility of further development that would face onto Mullan Rd?

Lisa Moisey answered that she could not predict it but anticipated it would.

Fern Hart said that the plan that is not yet finalized does have one house per acre.

Lisa Moisey said the zoning that is currently being proposed calls for one dwelling unit per acre.

Fern Hart stated that she supports the paving requirements and the walkway requirements in this subdivision.

Barbara Evans asked Horace Brown about the calcium chloride. Is it better than magnesium chloride or does it last longer?

Horace Brown answered that it is a salt, but was not sure what rust inhibitor was included. He also said that calcium chloride was the same salt as what they use on the highway for de-ice.

Barbara Evans also asked him if magnesium chloride also caused rusted cars?

Horace Brown answered that it had an inhibitor in it and that it did not cause rust.

Barbara Evans went on to say that she thought finding a cheaper way of dust abatement than using magnesium chloride would certainly be worth looking at. She also said that maybe they should give a trial on the calcium chloride on Mullan Rd. and still require paving on Stenerson Rd. She said that they could try it on Mullan Rd. with a waiver of the right to protest a RSID for regular paved surface.

Fern Hart asked if Mullan Road was required to be paved?

Lisa Moisey answered that it was a staff recommendation.

Barbara Evans said that she supports the paving requirement on Stenerson Road.

Ron Ewart stated that to do dust abatement on the road that it should be a long enough portion to provide an economy of scale. He also said that Tom Stenerson wondered why he should have to pave Mullan Rd. since most of the access to the subdivision is from Stenerson Road. He also said that they would request the County to look at the possibility of using any recycled asphalt.

Barbara Evans said that all of the recycled asphalt has been asked for.

Horace Brown said that they eventually want to close the railroad crossing on east Mullan Road and close that portion of Mullan Rd. He does not have a problem with leaving it gravel.

Fern Hart said that she also wants to keep the walkways in place.

Lisa Moisey said that the 50 foot easement along the Clark Fort was actually an old roadway.

Barbara Evans asked if we are requiring walkways even with this 50 foot easement along the river.

Lisa Moisey answered that the walkway would be in front of the homesites.

Barbara Evans asked Lisa if the 50 foot river easement was required or volunteered.

Lisa Moisey answered that it was volunteered.

Barbara Evans moved that the Board of County Commissioners deny the variance request for Huson Heights, legally described as COS 2121 located in Section 26, T15N, R22W, from Subdivision Regulation 3-2(1)(G) which requires paving on Stenerson Road and approve the variance from paving for Mullan Road. Fern Hart seconded the motion. Motion carried 2-0.
Barbara Evans moved that the Board of County Commissioners deny the variance request from Subdivision Regulation 3-2(5)(A) requiring pedestrian walkways for Huson Heights, legally described as COS 2121 located in Section 26, T15N, R22W. Fern Hart seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners grant the variance to allow Stenerson Road to run through Lot 1 for Huson Heights, legally described as COS 2121 located in Section 26, T15N, R22W, contingent on the conditions listed below and based on the findings of fact. Fern Hart seconded the motion. Motion carried 2-0.

Barbara Evans moved that the Board of County Commissioners approve the preliminary plat for Huson Heights, legally described as COS 2121 located in Section 26, T15N, R22W, to allow for a more thorough review of the site. Stenerson Road was changed from public to private, and a PUD was requested to allow for a more thorough review of the site. OPG at that time recommended rezoning the entire twenty acres for commercial uses as well as applying for a PUD to allow for a more thorough review of the site. OPG supports the rezoning of this 11½ acres with the 10 conditions. However, the staff is very concerned about existing conditions.

Jennie Dixon said this is a request from Bonner Holdings (Town Pump) to rezone the northwest portion of Tract A, legally described as COS #4436 (the 2.05 acre parcel located to the north of the Huson Heights subdivision) within the boundaries of the Huson Heights Subdivision.

OCP #3454. She then referred to exhibits on the board that reference location in relation to the general area. She said the problem items identified are: parking, loading and unloading area, preservation of the historical value of the W.A. Clark building (addressed in Condition #4) and that landscaping around the building would enhance its historical value. The lease does not permit gaming machines without the permission of the landlord and zoning does not regulate the gaming machines. She then presented slides to detail the property and buildings. She also provided to the Board a copy of the site plan. She said staff reviewed and identified several design issues related to the proposed restaurant which can be addressed at the time of building permit applications. They have not been reviewed and addressed as conditions of rezoning because other conditions, if approved, would affect how this site is developed. She then referred to exhibits on the board that reference location in relation to the general area. She said the staff reviewed the request and recommended a variance to allow Stenerson Road to run through Lot 1 for Huson Heights, legally described as COS 2121 located in Section 26, T15N, R22W, contingent on the conditions listed below and based on the findings of fact. Fern Hart seconded the motion. Motion carried 2-0.

1. The developer shall include Parcel B of COS 4436 (the 2.05 acre parcel located to the north of the Huson Heights subdivision) within the boundaries of the Huson Heights Subdivision.

2. The developer shall improve Stenerson Road to meet County standards, including, but not be limited to, widening the road to 24 feet wide and paving. The developer shall improve Mullan Road to meet County standards, including, but not be limited to, widening the road to 24 feet in gravel. Plans shall be approved by the County Surveyor prior to filing the final plat.

3. The developer shall include on the face of the plat a statement waiving the right to protest a future RSID/SID for improvements to the Huson Frontage Road and Mullan Road, including pedestrian walkways, based on benefit. Language shall be approved by the Office of Planning and Grants prior to filing the final plat.

4. The developer shall show on the face of the plat a pedestrian easement to connect the easement along the Clark Fork River and Stenerson Road. A 50 foot easement shall be located at the intersection of Stenerson Road and Mullan Road, and extend in a westerly direction, through Lot 10 to connect with the easement along the river. The exact location shall be approved by the Office of Planning and Grants prior to filing the final plat.

5. A five foot wide paved pathway shall be constructed along the east side of Stenerson Road and along the north side of Mullan Road. Plans shall be approved by the County Surveyor prior to filing the final plat.

6. The developer shall place a statement on the face of the plat waiving the right to protest a future RSID/SID for public water and/or sewer, based on benefit.

7. The developer shall provide evidence of an acceptable means of water supply for fire suppression purposes. Plans for the water supply shall be approved by the Frenchtown Fire District prior to filing the plat.

8. All development shall be located east of Stenerson Road and the portion of the property west of Stenerson Road shall be indicated on the plat as a “no-build” zone. Lot 12 shall also be labeled as a “no-build” zone on the plat. The riparian management plan shall be expanded to include all of the property west of Stenerson Road. The plan shall be approved by the Office of Planning and Grants prior to filing the final plat.

9. The developer shall buffer and screen with landscaping, the existing cable TV dishes as seen from the Clark Fork River. Plans shall be approved by the Office of Planning and Grants prior to filing the final plat.

10. The covenants shall include the recommendations as contained in the “Living with Wildlife” brochure. Covenants shall be reviewed by the Office of Planning and Grants prior to filing the final plat.

HEARING: REZONING REQUEST (7915 HIGHWAY 200 - MILLTOWN) TOWN PUMP PROPERTY (C-11 TO C-C2 - LIGHT INDUSTRIAL TO COMMERCIAL)

Jennis Dixon said this is a request from Bonner Holdings (Town Pump) to rezone the northwest portion of Tract A, COS #3441. She then referred to exhibits on the board that reference location in relation to the general area. She said the request is to rezone the property from C-11 (light industrial) to C-C2 (commercial). The 25 acre area is not divided and is owned entirely by Town Pump. They plan to lease a portion of the property including the W.A. Clark building to a local business man, to operate a restaurant called the River City Grill in the existing brick building. Interior and exterior remodeling is planned. She said this rezoning would permit on-premise alcohol and gaming machines. The lease does not permit gaming machines without the permission of the landlord and zoning does not regulate the gaming machines. She then presented slides to detail the property and buildings. She also provided to the Board a copy of the site plan. She said staff reviewed and identified several design issues related to the proposed restaurant which can be addressed at the time of building permit applications. They have not been reviewed and addressed as conditions of rezoning because other conditions, if approved, would affect how this site is developed. She said the problem items identified are: parking, loading and unloading area, preservation of the historical value of the W.A. Clark building (addressed in Condition #4) and that landscaping around the building would enhance its historical value. Along with the W.A. Clark building on the property, there is also a Town Pump travel plaza and a State Dept. sand and gravel stock pile area. The travel plaza was rezoned in July 1995 from C-11 to C-C2, subject to five conditions. She said that is the same as is requested today. OPG at that time recommended rezoning the entire twenty five acres for commercial uses as well as applying for a PUD to allow for a more thorough review of the site. OPG supports the rezoning of this 11½ acres with the 10 conditions. However, the staff is very concerned about existing zoning violations and site design problems at the Town Pump travel plaza. She then described the background of the Town Pump travel plaza rezoning request of August 22, 1996 and stated that the OPG office had attempted several times to meet with Town Pump to discuss the violations and site problems. OPG had hoped to meet with Town Pump to solve the zoning violations, landscaping problems, traffic hazards, drainage, and lighting problems before hearings were held. She said that Town Pump was informed that, without a discussion and the submittal of a site plan for their...
review, they would have to recommend site design conditions that may not be ideal for their situation. She stated that OPG had recommended conditions that they felt were flexible enough to allow for adaptation to the site. She was able to meet with Town Pump on October 10, 1996 and they agreed on several of the conditions and resolved several of the zoning violations. OPG looked at several things on the twenty five acre request: compliance with the conditions of the 1995 rezoning; compliance with County rezoning; and the meaning and intentions made during the public hearing of May 10, and June 7, 1995. She said we now have a request to rezone the other half of their property.

She said some of the recommendations that OPG have required apply to the entire parcel and then described to the Board each of the OPG required conditions, their agreed solutions and/or violations. She said the only letter that OPG has received is from the Bonner Development Group in support of the restaurant use. Donna Plecoura, resident from West Riverside, commented in support of the restaurant at the Planning Board public hearing in October 1, 1996. The Planning Board voted 8-0 to recommend approval of the request subject to the conditions as stated.

Fern Hart asked Jennie if the Board needs to take action on the lack of compliance to the zoning conditions of the first zone change.

Jennie Dixon answered that they are addressing that with this request. She said a building permit would not be issued until the remaining zoning violations are resolved.

Barbara Evans said that she does not want to see the restaurant have to wait. She suggested that Town Pump provide a bond or line of credit to guarantee that whatever they need to do gets done by July 1, 1997 or whatever date works. She said if the violations were not corrected or unanswered by Town Pump, then the bond would be used to insure that they do.

Fern Hart opened the public comment portion of the hearing and asked if the requester (Town Pump) representative would come forward.

Brian Davies, engineer for Professional Consultants Inc., and representing Town Pump, said first he would like to discuss the perceived violations. The landscaping requirement calls for an average of twenty five feet width and the Town Pump site averages over thirty feet, so he feels that requirement is met. He said the only other rezoning condition that is written up is the 30,000 sq. ft. of contiguous space for recreation and storm water retention on the portion of property next to the Blackfoot River. He said that the applicant has provided over 44,000 sq. ft. adjacent to the river. He also said that the parking requirement has already been addressed by Town Pump.

Fern Hart said to Brian that she still couldn’t be certain whether or not the requirements were met. She also said that these details still should be worked out with the OPG staff.

Brian Davies said that they have tried to work with the OPG staff with these issues.

Barbara Evans asked Jennie or Lisa of OPG staff if they have the information from Town Pump that they needed to make a determination as to whether they meet what was previously required?

Jennie Dixon answered no they do not have the information showing square footage of all the drainage swale areas.

Brian Davies said they supplied that information to them in January, but they could resubmit it now.

Barbara Evans interrupted the hearing for a recess at staff request.

RESIGNATION OF JUSTICE OF THE PEACE (MICHAEL MORRIS).

Fern Hart asked Barbara Evans to make the motion.

Barbara Evans moved that the Board of County Commissioners accept with great regret the resignation of Justice of the Peace Michael Morris due to his illness, effective today. She also expressed the Board’s gratitude to him for his service to the public. Fern Hart seconded the motion. The motion carried 2-0.

HEARING: REZONING REQUEST (7915 HIGHWAY 200 - MILLTOWN) TOWN PUMP PROPERTY (C-I1 TO C-C2 - LIGHT INDUSTRIAL TO COMMERCIAL) - RESUMED -

Fern Hart reopened the hearing on the Town Pump property rezoning request. She asked Brian Davies to continue his testimony.

Brian Davies said that they feel that they have complied and actually exceeded the requirements that were written for this project. He also pointed out that these plans were developed by an architect. He said these landscape plans were submitted earlier to the OCD office before it became OPG. He feels some of the landscaping issues have escalated due to the season and that they were not able to implement some because of weather.

Fern Hart asked Brian if they plan to do landscape work on the 30,000 sq. ft. area.

Brain Davies answered that they have installed everything that was noted on their plan with the exception of a few trees that have died and need replacement.

Barbara Evans said she is concerned about there being no irrigation plans with there being so much asphalt.

Brian Davies said there are two different irrigation plans on site, a drip system for the trees, and a sprinkler system for the grass and plantings. He also said that the landscaping plan calls for draught resistant plants.
Fern Hart asked about the irrigation system for the (islands) or swales?

Brian Davies answered that they do not have a system for those areas.

Fern Hart asked where the well is located?

Brian Davies answered that it is the same well that was there before. He said that it shows no arsenic contamination. He said that the irrigation system uses the same well.

Jennie Dixon answered an earlier question by Barbara that the rezoning is subject to the county subdivision regulations and that an underground, automatic irrigation system with backflow prevention, should be installed and maintained by the developer.

Brian Davies continued to say that the lighting issue was still in question.

Fern Hart stated there is much miscommunication and it would be very difficult for her to make a decision today.

Barbara Evans suggested to Fern that they allow two weeks for Town Pump and the OPG staff to work out more of the details or that they could pursue the idea for a bond.

Brian Davies said that he felt the issues had been resolved.

Bob Massey an agent for Town Pump, said that he initially submitted the application. They did not think this would be so complicated. The neighborhood supported the idea of the new business. He said that what was considered to be substantial compliance a year and a half ago seems to now be a problem with this request and extends back to the original parcel, Town Pump Travel Plaza. He said most of the miscommunication seems to be internal with the government agencies involved. He said that they submitted a plan for the old brick building, which is not a designated historical site. He then goes on to review the original requirements as detailed by Jennie Dixon earlier and how he/Town Pump has understood and answered them. He stated that Town Pump’s intentions were to put together a restaurant for that site that would provide 30 or 40 jobs and has the community need in mind and their backing.

Pete Barthelmes of Town Pump said that he tried to iron out most of this. He said that the landscaping islands are an unpopular idea for truck stops.

Bruce Hall, Bonner Development Group, said that group supported the restaurant and he provided a copy of a support letter that was submitted to Jennie Dixon earlier.

Jim Dayton, an area resident, said he opposed the idea because of the ugliness of the exit. He doesn’t oppose the restaurant but he thinks that there should be more involvement in resolving some of the other problems like traffic, safety, lighting, roadway, etc.

Ron Klaphake Missoula Area Economic Corp., said he would urge the Board to move forward with this request.

Fern Hart asked if anyone else wanted to speak. No one came forward. She went on to say that she was disappointed with Town Pump because of how they have handled this. She supports the request for the restaurant, but thinks that the request can be handled much better.

Barbara Evans asked Fern to make a motion.

Fern Hart moved that the Board of County Commissioners approve the zoning request for the northwest portion of Tract A, COS #3441 from C-I1 to C-C2 based on the findings of fact and contained in the staff report and subject to the recommended conditions with No. 2 Condition reading; development of the northwest portion of the site shall comply with the design standards for primary travel corridors as established in the County Subdivision regulations including all landscaping, setback and design standards except the landscaping installed along the private property adjoining the travel corridor may consist of an average of twenty five foot width rather than absolute twenty five foot width subject to the approval of the Office of Planning and Grants at no point shall the landscaping be less than fifteen feet. Barbara Evans seconded the motion.

Bob Massey, speaking for Town Pump, withdrew their request to rezone the Town Pump property, 7915 Highway 200, Milltown, from C-I1 to C-C2, light industrial to commercial.

Barbara Evans moved that the meeting be adjourned.

Fern Hart asked Colleen Dowdall of County Attorneys Office to read into the record what is acceptable in light industrial designation.

Colleen Dowdall said that light industrial includes industrial uses which do not require an operational permit from the Missoula County Health Dept. Such as retail and service facilities, public utility offices and installations, veterinary services, animal hospitals and kennels, research laboratories, accessory buildings and uses, industrial mini warehouses, and natural resource management office, which are considered permitted uses.

There being no further business to come before the Board, the Commissioners were in recess at 5:00 p.m.
THURSDAY, OCTOBER 24, 1996

The Board of County Commissioners met in regular session; a quorum of members were present.

DAILY ADMINISTRATIVE MEETING

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

Agreement - The Commissioners signed an agreement with Options Unlimited to provide an alternate work experience program.

Notification and Certification of Election or Appointment of a Justice of the Peace - The Commissioners signed a Notification of Election or Appointment of a Justice of the Peace, appointing for 30 days Acting Justice of the Peace Patrick Holt to the position resigned by Michael Morris. The full-time replacement is to be recruited. Date of appointment is October 24, 1996, and term ends November 23, 1996.

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

FRIDAY, OCTOBER 25, 1996

The Board of County Commissioners did not meet in regular session; Commissioner Hart was in Superior attending a meeting of the Mental Health Board. However, the following items were signed:

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Judy Harvey as principal for Warrant #17018 issued 10/17/96 on the Missoula County General/Payroll Fund in the amount of $1,579.92 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Sally Wright as principal for Warrant #17040 issued 10/17/96 on the Missoula County General/Payroll Fund in the amount of $714.82 now unable to be found.

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

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, OCTOBER 28, 1996

The Board of County Commissioners did not meet in regular session; during the day, the Commissioners attended the MACo District 11 Counties Meeting held in the Missoula County Courthouse. However, the following items were signed:

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Pamela Geurin as principal for Warrant #15156 issued 10/16/96 on the Missoula County MCHS Payroll Fund in the amount of $1038.38 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Orville E. Getz as principal for Warrant #15315 issued 10/16/97 on the Missoula County Lolo School General Fund in the amount of $2089.19 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Kimberly Lanktree as principal for Warrant #78814 issued 9/11/96 on the Missoula County Trust Fund in the amount of $700.00 now unable to be found.

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Bryan Monaghan as principal for Warrant #240902 issued 9/27/96 on the Missoula County Payroll Fund in the amount of $192.03 now unable to be found.

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

TUESDAY, OCTOBER 29, 1996

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

Audit List -- Commissioners Kennedy and signed the Audit List, dated October 29, 1996, pages 2-42, with a grand total of $134,271.17. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Re-sign Resolution Adopting Budget - The Commissioners signed Resolution No. 96-085, Adopting a Budget for Missoula County for Fiscal Year 1996-1997.
RESOLUTION NO. 96-085
ADOPTING A BUDGET FOR MISSOULA COUNTY
FOR FISCAL YEAR 1996-1997

(CORRECTING ADDITION ERROR IN RESOLUTION NO. 96-065, dated August 5, 1996)

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 1996-1997, as required by law; and

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

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

IT IS HEREBY MOVED, SECONDED, AND CARRIED by this Board of County Commissioners that the resolution be adopted for Fiscal Year 1996-1997, as displayed in Attachments A, and B; and

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

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

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

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

NOW, THEREFORE, BE IT HEREBY RESOLVED by this Board of County Commissioners that the levies as detailed below be fixed and adopted for Fiscal Year 1996-1997, based on the value of a mill of $144,754 County-wide, and a value of $71,711 outside the city limits of Missoula.

IT IS HEREBY MOVED, SECONDED, AND CARRIED by the Board of County Commissioners "that the resolution be adopted, subject to the foregoing condition," for Fiscal Year 1996-1997 as detailed below:

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SUB-TOTAL: 73.42
MISSOULA COUNTY-WIDE DEBT SERVICE

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DATED THIS DAY OF OCTOBER, 1996

BOARD OF COUNTY COMMISSIONERS

Michael Kennedy, Chair
Fern Hart, Commissioner
Barbara Evans, Commissioner

APPROVED AS TO FORM AND CONTENT: ATTEST:

Michael W. Sehestedt     Vickie M. Zeier
Deputy County Attorney     Clerk and Recorder

Acknowledgement of Lease/Option Renewal - The Commissioners signed an Acknowledgement of Lease/Option Renewal for Ryan Distributing in the Old Pepsi Warehouse, as per lease agreement. Document was returned to Merilynn Foss at Coldwell Banker Real Estate.

Task Order - Commissioner Kennedy signed Task Order No. 11 between Missoula County and the Montana Department of Public Health and Human Services for a tuberculosis program. Duration of program is from July 1, 1996 through June 30, 1997, with the exception of a final report due August 15, 1997. Maximum compensation is $10,000.00.

Modification of Task Order - Commissioner Kennedy signed Modification B of Task Order No. 4 between Missoula County and the Montana Department of Public Health and Human Services to amend funding and program duration for the STD/AIDS program. Program duration is from July 1, 1995 through December 31, 1996. Maximum compensation is $84,775.00 during SFY 1996 and $33,329.00 during the July 1 through December 31, 1996 period. Modification No. 1 of Agreement - Commissioner Kennedy signed Modification No. 1 of Agreement between Missoula County and the Montana Department of Public Health and Human Services to modify terms of the WIC program agreement.


Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the Seeley Lake Community Council regarding local government liaison services.

Professional Services Contract - The Commissioners signed a Professional Services Contract with GMT Consultants, Inc. to provide enforcement of oxygenated fuel program regulations. Performance of contract shall begin November 1, 1996, and shall conclude by February 28, 1997. Compensation shall be $20 for each record review conducted, and $34 for combination record review and sampling.

Other items included:

1) Approval of purchase of a transcriber and cassette tape dubbing machine for the Commissioners’ Office.

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

WEDNESDAY, OCTOBER 30, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution No. 96-088 granting an agricultural exemption for James and Cecelia Cox, for portions of land located in Section 7, T13N R20W, and more particularly described as Parcel 1B of Certificate of Survey 3772 and Parcels 1, 2, and 3 of Certificate of Survey 4181.

Other items included:

1) Approval of request from Seeley Lake Community Council regarding recommended speed limits through Seeley Lake.

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

PUBLIC MEETING -- OCTOBER 30, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

BID AWARD: SEELEY LAKE AIRPORT ROAD WALKWAY  (POSTPONED FROM OCT. 9, 1996)

Michael Kennedy said this was a bid award for the Airport Road walkway in Seeley Lake. Bids were opened on October 7, 1996, with the following results: JTL Group, $95,240.00 and Pulici Propane Inc., $64,494.21. The Surveyor recommends to award the bid to Pulici Propane, Inc., as the best and lowest bid. He asked Horace Brown why there was a significant difference in the amounts of the submitted bids?

Horace Brown responded that JTL Group operates out of Missoula and Pulici Propane operates out of Seeley Lake, with the latter making their own asphalt. JTL would have to haul it from Missoula.

Barbara Evans moved that the Board of County Commissioners award the contract for the Airport Road walkway in Seeley Lake to Pulici Propane, Inc., in the amount of $64,494.21 as the best and lowest bid, based on the recommendation of the County Surveyor and that the amount is budgeted for. Fern Hart seconded the motion. Motion carried 3-0.

HEARING: PETITION FOR ANNEXATION INTO MISSOULA RURAL FIRE DISTRICT  (CAMBRIDGE PROPERTIES -- OFF HIGHWAY 200 EAST AT WISHERD BRIDGE)

Michael Sehestedt, Chief Deputy County Attorney, said this was the procedure for adding to existing rural fire districts. Basically, the requirement is that, for an area to be annexed the County receives a petition from 50% or more of the property owners, which has been done and the petition was verified by the Clerk & Recording office. The purpose of the hearing was to determine if any members of the existing fire district or people within the area to be annexed object. To defeat an annexation into the rural fire district would require the protest to be 50% or more of all of the residents of the fire district.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Fern Hart asked how large the district was?

Michael Sehestedt answered the property to be annexed is about 40 acres.

Barbara Evans stated she received a call from Bill Lindstrom, Assistant Fire Chief, Missoula Rural Fire District, saying that the Board of Trustees approved the Cambridge properties for annexation into the fire district. Bill said they have no problem with this request. There are some problems at the station and are unable to attend this meeting, for which they apologize.

Fern Hart asked if there was a condition that the fire district has where these folks would have to have pay $50 for a large diameter hose?

Michael Sehestedt answered that they do not have to impose that condition new areas to be annexed, but only as a condition to partially mitigate the impact of a subdivision within the existing district.

Michael Kennedy said it seems they are adding additional exposure and for the same logic used to arrive at the impact fee. As nominal as it is, it should apply here and he is surprised that it doesn’t.
Barbara Evans said the reason they are not asking for more hose may be that there is no fire hydrants but they instead bring in a tanker truck for the water.

Michael Sehestedt said he was not sure there was a statutory mechanism to provide for that in annexation. Although the Board of Trustees, because they have to approve to accept the annexation, could probably establish such a policy.

Barbara Evans moved that the Board of County Commissioners approve the annexation of the Cambridge properties located off Highway 200 East at Wisherd Bridge into the Missoula Rural Fire District based on the reply of acceptance from the Missoula Rural Fire District and that the petition has the required signatures. Fern Hart seconded the motion. Motion carried 3-0.

DECISION ON: COMPREHENSIVE PLAN COMPLIANCE APPEAL. (BRUCE BARRETT) DWELLING IN PARKS AND OPEN SPACE AREA. (FROM SEPT. 25, 1996) POSTPONED INDEFINITELY

CONSIDERATION OF: HIGH COUNTRY ADDITION (2-LOT COMMERCIAL SUBDIVISION) SEELEY LAKE (POSTPONED FROM OCT. 23, 1996)

Barbara Evans stated she had a conflict of interests in this proposal and would abstain from reviewing and deciding on it.

Lisa Moisey, Office of Planning & Grants, said this is a proposed 2-lot commercial subdivision of a parcel located in the central business district of the town of Seeley Lake in Section 3, Township 16 North, Range 15 West. High Country Bar exist on the proposed Lot 1 (1.45 acres). The Seeley Lake Veterinary Service and a gift shop exists on the proposed Lot 2 (0.45 acres). Both lots have frontage onto State Highway 83 and “A” Street, an existing 20-foot gravel road within a 25 foot right-of-way. High Country Addition was approved by the Board of County Commissioners on November 27, 1995. The final plat filing deadline was set for May 20, 1996, however the applicant missed the deadline and the plat was considered void. This re-submittal of High Country is the same project reviewed in 1995, with no change.

She said that they are requesting two variances. 1) variance to Section 3-25 of the Missoula County Subdivision Regulations which states that sidewalks and pedestrian walkways shall be provided and bikeway should be considered. Their reasons for the request are that there are no sidewalks in Seeley Lake at this time to which a walkway would connect. Staff recommends that the variance for sidewalk installation along Highway 83 be denied. A five foot wide asphalt pathway is recommended along the Highway 83 frontage. It is recommended this pathway be separated from the highway, and located within the 25 foot setback as required by the Primary Travel Corridor Standards for landscaping. 2) variance to Section 3-2(3) of the Missoula County Subdivision Regulations which states that commercial subdivisions have a 32-foot wide paved street within an 80 foot easement. This requirement would apply to both “A” Street and the proposed public easement for the fire department access. OPG recommends approval of this variance request based on the findings of fact as presented in the staff report.

Michael Kennedy asked for the developer or any representative to present their proposal.

Ron Ewart of Eli and Associates, said they do not have any problems with any of the conditions. He said that the easement requirement presents a problem to them for the 30 feet requested and that the developer would like to reduce that to 17.5 feet. Also the 60 foot easement that was requested, the developer would like reduced to 40 feet. He said the reason they are requesting these easement reductions are because of the size at 1.95 acres represents almost 1/4 of the development.

Michael Kennedy asked Ron about the Seeley Lake Fire District requirement of the 60 foot easement. He said that they agreed to the reasoning of the easement last year when it was preliminary approved. He said the area around the Fire Station area was used as parking for various meetings etc. so much of the easement area is utilized in that way. He therefore feels that the 60 foot easement is necessary.

Horace Brown added that the subdivision gave the 25 feet when it was created. He recommended that the Board deny the variance request of the 60 foot right-of-way.

Fern Hart moved that the Board of County Commissioners deny the variance request for High Country subdivision, located in Seeley Lake; Section 3, T16N, R15W, P.M.M., along Highway 83, adjacent to the Seeley Lake Fire Station, from Subdivision Regulation 3-2(5) for pedestrian walkways along U.S. Highway 83 based on the findings of fact from the primary criteria conformance. Michael Kennedy seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners approve the variance request for High Country subdivision, located in Seeley Lake; Section 3, T16N, R15W, P.M.M., along Highway 83, adjacent to the Seeley Lake Fire Station, from Subdivision Regulation 3-2(3) from commercial roadway standards for “A” Street and for the public easement for the fire department access, based on the findings of staff. Michael Kennedy seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners approve the summary plat for High Country subdivision, located in Seeley Lake; Section 3, T16N, R15W, P.M.M., along Highway 83, adjacent to the Seeley Lake Fire Station, contingent on the conditions listed below and based on the findings of fact. Michael Kennedy seconded the motion. Motion carried 2-0.

HEARING: MISSOULA COUNTY PARKS AND CONSERVATION LANDS PLAN (AMENDMENT TO COMPREHENSIVE PLAN) POSTPONED UNTIL DEC. 11, 1996
CONTINUATION OF HEARING & DECISION ON: BUTLER CREEK COMPREHENSIVE PLAN AMENDMENTS (FROM OCT. 2 AND OCT. 16, 1996)

David Cotner, Boone, Karlberg & Haddon, said he represented the developers of the old Dodd Ranch. He summarized their proposal to amend the Butler Creek Comprehensive Plan. They are attempting to protect the open and resource designation for the Dodd Ranch by imposing certain building restrictions on the property. Those building restrictions are related to riparian areas, floodplains and slopes greater than 25%. They have hired the experts that they feel are appropriate to provide input. Dick Ainsworth, Professional Consultants, Inc., has done their input relating to standards that are typically looked at by County Commissioners if they were reviewing this as a subdivision.

Howard Newman summarized his findings regarding the water issues, both availability and the impact on the down drainage users. He faxed Howard’s most recent report to the Commissioners yesterday. That report summarizes his opinions and findings with regard to the review of the John Shannon report, which is not inconsistent with Howard’s report of two weeks ago. The assignments for Howard Newman versus the assignments for John Shannon are different and nothing in that report has led him to alter his conclusions, which are the development of 31 homesites, with wells for those homesites, will have marginal, if any, impact on the down-drainage users and that there is adequate water in the upper Butler Creek area to service those wells. Howard further stated that drilling 31 wells is the preferred approach over developing a community system for the Dodd Ranch. To the best of his knowledge, his findings are not contested. Barry Button, the person who identified the riparian area, walked the developers through an appropriate management plan that has been incorporated into the Butler Creek Comprehensive Plan amendment. That riparian management plan is a novel approach on managing riparian areas and they believe it will be acceptable to the County.

Procedurally, this matter, after 18 months of development with County staff, they came up with a plan that incorporated not only what the developer wanted to suggest, but also it has also incorporated concerns that Brian Maiorano of the Office of Planning and Grants. The final draft went to the Planning Board, who unanimously voted that this should be a recommended amendment to the Plan.

With everyone’s report, they believe they have a full package that supports the amendment. He asked the Commissioners to consider what could happen to the Dodd Ranch under the present plan versus what could happen to it under the proposed amendment and he believes the Commissioners will decide the latter presents a much better result. Under the old plan, this ranch at 840 acres could have had 20 residences located on it. With the amendment, there is 31 potential building sites for residences, with a density of about 1 dwelling unit per 26-27 acres. The trade off includes the prohibiting the possibility of houses being built on ridge-tops, riparian areas, in the floodplain area and/or adjacent to Butler Creek. Through the implementation of a map in the office that issues building permits, if their proposal is approved, it will adequately protect the goals and purposes of the Butler Creek area. He stated that their proposed amendment better serves what Missoula County wants to do with its land and asked that the Board to give their approval to it.

Brian Maiorano, Office of Planning & Grants, said they support the proposed amendment. They only have a few recommendations for changes. He had opportunity since the Planning Board meeting to do more field research and to hear recommendations from members of the public who live off the Dodd Ranch property. He then described some recommendations in detail, which included two proposed building sites, one in the northern portion of Tract 9 and the other in the central portion of the remainder tract, prohibit new roads in the no-build zones, show on the map exactly where the no-build zones are and language regarding wells should be changed to reflect the uncertainty of adequate water for most lots and the uncertainty of impact on new wells on existing users. He also showed the Commissioners the areas under discussion on the map. Current residents of Lower Butler Creek had 3 big concerns: dust that would give their approval to it.

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Discussion by the Commissioners, County staff, David Cotner and the public ensued of all of the recommendations.

Michael Kennedy opened the public hearing.

The following people came forward to speak about their main concerns:

Donna Syverson, 9750 Butler Creek Road, agreed with proposed amendments. She hoped the road from Butler Creek Road to Snowbowl Road remains a fair-weather road only. She would like to see a bond put up in case the water problems happen. Overall, she is appreciative of improvements that would be made by the amendments.

Ken Degitz, buyer of Lot 1, is mainly concerned about wildlife. His property used to be a cattle ranch for about 50 years and he is working to clean it up and make it environmentally safe for wildlife and conducive to native vegetation. He is conscientious about weed treatments and does not want to use serious, harmful chemicals to stop encroachment of weeds. He is also concerned about the roads and added traffic.

Stephanie LaFlesch, she and her husband own Lot 9, whose building site was in question and would be determined by this hearing. She presented a letter from the fire department to the Commissioners, stating that the Missoula Rural Fire District did not oppose the proposed building site.

Tom Martin, owner of Tract 18 and employed the U.S. Biological Resources Division as a Senior Research Biologist, Assistant Director of the Montana Cooperative Wildlife Research Unit, and also works at the University as a Professor, teaching wildlife biology, said it is his opinion that this is by far the most environmentally and wildlife friendly comprehensive plan that he has ever encountered.

Phil Smith, 9750 Butler Creek Road, has been involved in taking care of the quality of the neighborhood for years. He is concerned about degradation and erosion of stream banks by stock animals. He would like to see wildlife and birds
come back into the creek corridor. He is starting to see a comeback in that regard. He is also concerned about the road, especially the road from Butler Creek to Snowbowl Road. It is not viable for an emergency road but only as a fair-weather road. He also explained a little of the history of the density of the area so that the Board could see why new owners of property in the area knew so little of what density was allowed. He would like to see a fund established by the developers, if there are impacts on surrounding areas downstream regarding water quality and/or quantity or a problem with roads, that fund would mitigate the impacts.

Susan Hall, 2745 Dodd Ranch Road, said her husband is part of the road maintenance committee. She has seen some good-sized trucks use Butler Creek Road to 6. It is not clearly established who should be responsible for the maintenance of that road and she is concerned about safety. Another concern is the trespassers. She has seen campfires started illegally. Lastly, she stated she supports the building site the LaFlesch family has chosen.

Kim Altmaier, owner of Lot 7, said she is concerned about vandalism in the area. She found on two different occasions cars that were being dismantled and vandalized by teenagers. This happened on the remainder land. She is also concerned about the Dodd Ranch Road that runs up to Snowbowl. She feels it could only be used for an emergency road during the summer, but she feels it should be closed off for other people. She is also uncertain about the availability of water.

Jay Raser, representing Circle H Development, said does not support the proposed plan amendments because he feels it rewards land development outside the planning process. Increasing the density increases the profitability and increased density impacts the water and roads.

Virginia DeLand, 9400 Butler Creek, said her concern is about the roads. She feels strongly that it is unsafe to have only one road out and her reason is not only concerns over forest fires, but any emergency that could happen. She mentioned their is a pipeline in the area that has the potential for causing problems. Overall, she supports the Plan and the proposed amendments.

Ruth Anderson said she is concerned about the water, as she knows some existing wells have already been affected by the water usage from the higher land uses. She wanted to call the Commissioners’ attention to the inclusive and questionable assumptions of Howard Newman and his brief report regarding groundwater availability in Upper Butler Creek. There are conflicting conclusions reached by Shannon Environmental Services and Howard Newman concerning the impact of an increase in the number of homes.

Virginia DeLand confirmed that the well on Ford’s property was affected and they had to dig a deeper well for water. Also, previous neighbors of theirs had a well go dry. As houses went in above those places, the wells were affected.

Phil Smith added that the Burton’s had a well that was in the valley bottom. About 50 to 100 feet upstream from their well, Eldon Inabnit built another well. He stated it appeared there was a direct cause and effect concerning the wells; when the Inabnit well went on, the Burton’s went dry and vice versa. This suggests the uncertainty of water quantity in the lower reaches of Butler Creek and that is why so many are apprehensive about water availability.

David Cotner gave a rebuttal regarding the main concerns brought up in testimony. He stated that he believed an RSID, when the appropriate time came, would be a possible solution to the road problem. Regarding a “fund” to be available if there were water problems, he stated that a legal course of action was available for people who experienced those and a fund was not necessary. He still felt it was very unlikely that they were encounter any water problems.

Fern Hart asked if the proposal affected the entire Plan area?

Colleen Dowdall answered the proposed amendment was for the entire Plan area.

Michael Kennedy wanted it noted on record that there is written testimony submitted by Butler Creek neighbors, Michael Kreisberg and Kim Birck. Michael recommended the Board keep the land density at one dwelling unit per 40 acres and Kim supported the proposed amendment. He thanked everyone for their comments and closed the public hearing.

Barbara Evans expressed concern about having the building site in the gully.

Bryce Bondurant, real estate broker who worked for the developers, said the remainder parcel is a rectangular parcel of ground containing approximately 105 acres. They have agreed to put one building site on it. The gully is the only place for the building site as most of that land is hilly.

Michael Kennedy said it appeared that this subdivision was developed in a way to avoid subdivision regulation changes. It is a subdivision and the development interest is seeking to gain an additional 11 building lots which would have been allowed had this process not been initiated. He asked if they would be willing to give up the building site on the remainder tract?

David Cotter said he would have to talk to both of this clients before he could answer that. He pointed out that what they want to do with the remainder tract is better than any of the other tracts. The gully is a preferred site over putting it on a hill.

Discussion followed regarding, working out the details, resulting in the following.

Fern Hart moved that the Board of County Commissioners accept the amendments to the Butler Creek Comprehensive Plan contingent on the following recommendations. Michael Kennedy seconded the motion. Motion carried 3-0.

1. The “pockets” in the northern portion of tract 9 and in the central portion of the remainder tract should be designated as no-build zones.
2. Construction of new roads should be explicitly prohibited in no-build zones.

3. A no-disturbance buffer extending 25 feet from the creek should be established in tracts 2, 3, and 4. This buffer would prohibit construction of any kind. The existing structures in this zone on tract 4 would be “grandfathered.”

4. Language regarding wells should be changed to reflect the uncertainty of adequate water for most lots and the uncertainty of the impacts of new wells on existing well users. In addition to the changes recommended by the Planning Board, the following changes are also to be recognized:

- It should be recognized that there is no guarantee that each tract will have sufficient water available.
- It is also unknown if new wells drilled on the Dodd Ranch will impact existing wells in the valley.
- There is no guarantee that any present or future tracts in the planning area will have adequate water available. It is also unknown if new wells will cause impacts to existing wells in the area. One way of limiting excessive water use is for residential home owners to not have irrigated lawns larger than one-quarter to one-half acre.

That the following language be added to the transportation section E at the end of the third paragraph on page 18:

In order to achieve substantial compliance with the comprehensive plan, a mechanism should be in place to finance improvements to Butler Creek Road. The most effective mechanism would be to require that anyone within the planning area who requests a building permit be required to waive their right to protest creation of an RSID to finance improvements to Butler Creek Road as a condition of finding substantial compliance with the comprehensive plan.

Michael Kennedy stated Susan Hall said there was a responsibility on the part of government to give notice to those who are affected by these kind of changes. He is not really sure the responsibility rests with the government. The people who deal in land development know the situation better than most and have an ethical responsibility and obligation to disclose that kind of potential problem. It created victims of the people who purchased property, not knowing there was a potential problem on their property.

There being no further business to come before the Board, the Commissioners were in recess at 3:55 p.m.

THURSDAY, OCTOBER 31, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution No. 96-086 creating the Missoula Development Park Special Zoning District, and incorporating the District into County Zoning Resolution 76-113, and to rezone property located in Section 1, T13N R20W, PMM, Missoula County, Montana, from C-I1 (Light Industrial District) and C-A3 (Residential), to Missoula Development Park Special Zoning District.

Plat - The Commissioners signed the plat for Rakow Ranch, a subdivision of Missoula County, located in the S1/2 of Section 16, T14N R20W, PMM, a total area of 19.119 acres, with the owners of record being Donald J. and Doris C. Rakow.

Professional Services Contract - The Commissioners signed a Professional Services Contract with H.C. Allen Fencing Co. to provide services as listed under #2 for Junk Vehicles. Performance of contract shall commence on November 5, 1996, and shall conclude by November 15, 1996. Compensation shall not exceed $568.00. Contract was returned to the Health Department for further handling.


Professional Services Contract - The Commissioners signed a Professional Services Contract with Beth Thompson, MD to develop and approve public health clinical policies and standards. Performance of contract shall commence on November 1, 1996 and shall conclude by June 30, 1997. Compensation shall not exceed $6,000.00. Contract was returned to the Health Department for further signatures and handling.

Other items included:

1) The Commissioners appointed John Carlson to fill the East Missoula Fire District Board vacancy;

2) The Commissioners decided to move Susan Barmeyer to a regular member of the Missoula Aging Services Board;

3) The Commissioners directed Mike Sehestedt, Deputy County Attorney to investigate a one-time in-kind grant of heavy equipment use to support the Food Bank’s relocation of gravel.

4) The Commissioners approved an agreement for exchange of property with Roscoe Steel.
5) The Commissioners re-signed the Madsen exchange agreement with the Airport.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
The Board of County Commissioners met in regular session; all three members were present.

DAILY ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution No. 96-087, an Emergency Proclamation stating that a natural gas leak near Inspiration Drive may cause losses to area businesses and residents, and that the Incident Command System would be enacted for management of the gas leak incident.

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

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, NOVEMBER 4, 1996

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

Monthly Report -- Chair Kennedy examined, approved and ordered signed the Monthly Reconciliation Report for Justices of the Peace John Odlin and Michael Morris showing monthly receipts and distributions for the month ending October 31, 1996.

DAILY ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution No. 96-089, rescinding Resolution No. 96-068 proclaiming a fire emergency in Missoula County.

Memorandum of Agreement - Chair Kennedy signed a Memorandum of Agreement between the Missoula County Park Board and Lolo Lions/Lolo Peak Little League to provide assistance for capital improvements up to $10,000.00.

Resolution - The Commissioners signed Resolution No. 96-090, Annexation to the Missoula Rural Fire District of a Parcel of Land Located in Missoula County, specifically described as follows: Cambridge properties located off Highway 200 East at Wisherd Bridge, and more particularly described as Tracts 1, 3 and 4 of Certificate of Survey No. 4244, located in the SW1/4 of Section 7 and the NW1/4 of Section 18, T13N R17W; Tract 2 of Certificate of Survey No. 4244, located in the NW1/4 of Section 18, T13N R17W; and Tracts A, B and C of Certificate of Survey No. 4064, located in the S1/2 of the SW1/4 of Section 7, T13N R17W.

Other items included:

1) The Commissioners approved the Henderson subdivision.

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

TUESDAY, NOVEMBER 5, 1996

The Courthouse was closed for General Election Day.

WEDNESDAY, NOVEMBER 6, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution No. 96-091, a resolution of intent to rezone property legally described as Lot 64 of Cobban and Dinsmore’s Orchard Homes #5, located in the SW1/4 of Section 24, T13N R20W, PMM, Missoula County, Montana, from C-RR2 (Residential) to C-RR2 (Residential), Taylor Acres PUD (Planned Urban Development), with conditions as shown in Attachment A.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Kembel, Kosena and Company, Inc. to provide appraisal services. Performance schedule is from July 1, 1996 through June 30, 1997, and compensation shall not exceed $10,000.00.

Professional Services Contract - The Commissioners signed a Professional Services Contract with David Bassler to provide temperature soundings at the Department of State Lands site for the Health Department. Performance schedule is from December 1, 1996 through March 15, 1997, and compensation shall be $23.00 for each sounding performed.
Other items included:

1) The Commissioners signed a letter appointing Susan Barmeyer as a “regular member” of the Missoula Aging Services Governing Board, to fill an unexpired term through December 31, 1998.

2) The Commissioners approved a request from Rod Qvamme, Seeley Lake Cemetery District, for the County Surveyor to survey the property.

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

**PUBLIC MEETING -- NOVEMBER 6, 1996**

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

**BID AWARD: PICK-UP TRUCK (4 X 2), ANIMAL CONTROL DEPARTMENT**

Michael Kennedy said this was a bid award to purchase a Chevy S-10 pick-up truck for the Animal Control Department. Bids submitted were from Ronan Auto Body, $16,981.00, with trade, $15,181.00, Karl Tyler Chevrolet, $15,988.00, with trade, $13,188.00, and DeMarois Olds, $16,425.28, with trade, $15,925.28. The recommendation is to award the bid to Karl Tyler Chevrolet. He asked if the Animal Control Department has sufficient funds to make this purchase?

Paula Nelson, Supervisor, Animal Control, answered that they had $15,000 in their budget for a new vehicle.

Fern Hart moved that the Board of County Commissioners approve the purchase of a Chevy S-10 pick-up truck for the Animal Control Department in that it is the lowest and best bid and there are sufficient funds in the budget to pay for it. Barbara Evans seconded the motion. Motion carried 3-0.

**DECISION ON: REQUEST TO ALTER COUNTY ROAD (CRYSTAL CREEK RANCH), CRYSTAL CREEK ROAD AND OLD MISSOULA - TURAH ROAD POSTPONED UNTIL NOVEMBER 13, 1996**

**CONSIDERATION OF: JOINT RESOLUTION FOR CITY SID 517 (PRINCE STREET ROAD CONSTRUCTION)**

Michael Kennedy said this is a consideration of a joint City/County SID #517 - Prince Street road construction. He said the county property included in the SID is owned by Ferris and Anna Klaus and is adjacent to Prince St. which is currently a gravel street and is to be paved.

Horace Brown said that the Klaus property is in the County and therefore the County should review and approve the SID also.

Woody Germany of WGM Group Engineers, said that this was part of the CMAQ paving program of the City. He said the first phase was completed and it included Wyoming Street. The Klaus property adjacent to Prince St. would benefit from the improvement and therefore should be included.

Barbara Evans moved that the Board of County Commissioners approve the Joint Resolution of the City of Missoula and by the City of Missoula to create City SID #517 in that the property included approve of project. Fern Hart seconded the motion. The motion carried 3-0.

**HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (2) (SMITH)**

Kathleen Smith, paralegal, County Attorney’s Office, said this was a consideration of a request to create two family transfer parcels for Tract 2A and Portion D of COS 4548 located in Section 10, T12N R20W for Joseph D. and Karen Smith.

Joe and Karen Smith have submitted a request to create two five acre parcels for transfer to their minor daughters, Corina Joann Smith, age 13, and Josie Elizabeth Smith, age 11. This would leave a five acre remainder for which they plan to use as a security parcel for refinancing of their construction loan. Karen Smith indicated she had spoken to Wally Congdon regarding setting up a trust on behalf of their two daughters and a letter was requested from Mr. Congdon in this regard but not received. The zoning in the area is CA-3 (one dwelling unit per 5 acres).

The history of the parcel is as follows: In 1993, a 5 acre occasional sale parcel was requested by the original owners, Craig Rayle, Dorothy Garceau and Minott and Janice Pruyn, and approved by the Board of County Commissioners on March 15, 1993. In August, 1994 COS 4386 was filed by the Pruyns utilizing the boundary relocation exemption adding 10 acres to their existing ownership. Around the same time and due to a change in circumstances, an amended occasional sale was requested by Rayle/Garceau/Pruyn to change the original 5 acre occasional sale to a 10 acre occasional sale pursuant to a Buy/Sell Agreement pending with the Smiths. This was approved by the Board on June 15, 1994 and COS 4484 was filed May, 1995 reflecting an 8.11 acre amended occasional sale parcel. In December, 1995 COS 4548 was filed by the Smiths utilizing the boundary relocation to center an existing house within a 5 acre parcel. This left the current 15.01 acre parcel as a remainder. The minutes of the Public Meeting held March 15, 1993 reflect that Craig Rayle
represented the Smiths did not wish to subdivide the land further and that only one more split was allowed pursuant to the Buy/Sell Agreement.

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

Michael Kennedy asked Joe and Karen Smith to come forward for questions.

Fern Hart asked how many land divisions are in this or could be in the future.

Wally Conedon represented the owners and said that they are gifting the property to the minor children as a trust. He said there is a health situation involved with the parents.

Colleen Dowdall said that the property could be sold by the children.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Barbara Evans moved that the Board of County Commissioners approve the request to create two family transfer exemptions for Tract 2A and Portion D of COS 4548 located in Section 10, T12N R20W for Joseph D. and Karen Smith for their two daughters, Corina Joann Smith and Josie Elizabeth Smith, based on the finding that there does not appear to be any attempt to evade the Subdivision Act. Fern Hart seconded the motion. Motion carried 3-0.

HEARING: INTENT TO CREATE RSID NO. 8922 (OPERATION AND MAINTENANCE OF A SEWAGE DISPOSAL SYSTEM FOR THE CIRCLE H RANCH SUBDIVISION)

Michael Kennedy asked Michael Sehestedt, County Attorney, to make the staff presentation.

Michael Sehestedt, Chief Deputy County Attorney, said this is a petition request from the Circle H. Ranch subdivision, Phase I and Phase II, for the creation of an RSID to finance the operation and maintenance of individual intermittent sand filter sewage disposal systems to 29 lots. He said no protests were received. The estimated annual cost for the first three years would be $519.00 per lot and the estimated annual cost thereafter would be $286.00 per lot. He said that Missoula County would adjust the assessment from time to time to reflect actual maintenance and operational costs.

Michael Kennedy opened the public hearing and asked for any public comment.

Woody Germany of WGM Group, engineers representing the developer, stated that he was available to the Board for any questions they have.

Michael Kennedy asked if there were any comments. There were none and he then closed the hearing.

Barbara Evans moved that the Board of County Commissioners approve the request to create RSID 8922 - Operation and Maintenance of a sewage disposal system for the Circle H Ranch Subdivision Phase I and II. Fern Hart seconded the motion. The motion carried 3-0.

HEARING: LINDA VISTA 8TH SUPPLEMENT (PRELIMINARY PLAT & REZONING)

Michael Kennedy asked Pat Keiley of OPG to make the staff presentation.

Pat Keiley, Office of Planning & Grants, said this is a request from Scott Twite for a 49 lot residential preliminary plat subdivision and a rezoning from C-RR1 to C-RR2 of a 24.60 acre parcel of land located in the Miller Creek Area of Missoula County. The property is located northeast of Linda Vista Seventh supplement, west of South Pointe Subdivision and south of Meriwether Subdivision. The property is legally described as the SE 1/4 of Section 12, T12N, R20W. He said OPG staff recommends approval of the 49 lot subdivision and approval of the rezoning from C-RR1 to C-RR2 subject to the recommended conditions described. He stated they received only one comment from the neighborhood, Randy Booth called to oppose. He then goes on to describe the conditions. He said the Planning Board recommended approval of the rezoning 6-0 and approval of the subdivision, 4-2. He said the Planning Board had concerns about cul-de-sac streets.

Gilbert Larson, Druyvestein Johnson & Anderson, representing the developer, said this was approved 1½ years ago but was defeated by protest concerning the zoning action. He said they waited the required one year period and are here now to take up the request again. He then describes the map exhibits and explains their detail.

He said that drainage basins would be designed as part of the subdivision and it would accommodate for more storm water runoff than would probably ever occur. The Board then asked Gilbert several questions about the drainage system and Meriwether Park’s involvement. He also commented about the cul-de-sac’s in the subdivision and the slope grades (approx. 25%) along with the amount of land involved. He said the cul-de-sac’s meet the subdivision requirements and are approved by OPG. He commented on the pathway/walkway being constructed of a gravel congregate rather than paved. He also said the covenant requirements was not an issue with the developer and thought that any of the possible reasonable requests would be complied with. He said that the covenant review by the OPG and the Board of Commissioners is unusual and has never been required as a condition before.

Barbara Evans asked about the covenant review and the fact that she remembers never having any jurisdiction over their implications and wonders if that is still the case. Otherwise how does the Board approve them if they have no jurisdiction with them.
Colleen Dowdall, Deputy County Attorney, said she has not seen this condition before except in the Salmon Lake review regarding pathway access to the lake front. She said in that case the Board only reviewed them whereas she was required to review and comment on them.

Pat Keiley said that the covenants are reviewed by OPG to see that it contains the elements within the subdivision regulations. He said that maybe the Board did not have to be involved in the covenant review or approval.

Colleen Dowdall said that there are some elements in the subdivision regulations that the only way they can compel compliance is through a covenant provision. She also said that the developers attorney needs to review covenant provisions to certify that the intent is meet.

Fern Hart said that the covenant provisions can be changed afterwards by the homeowners association and any changes in them do not need to be reviewed by the County.

Colleen Dowdall stated that certain conditions of covenants cannot be changed without County review, even after the fact.

Barbara Evans said she is still concerned about the walkway material and how can they prevent people from slipping on ice.

Gilbert Larson said that they have provided a linkage from South Pointe along the sidewalks and roadways. Alternate meandering pathways or shortcuts can be used in good weather, but the sidewalks utilize a more gradual grade and is less likely to have problems with ice.

Michael Kennedy asked who would be responsible for the maintenance of the pathway.

Gilbert Larson said it would be the adjacent landowners.

Michael Kennedy opened the public hearing and asked for comments. Receiving none he then closed the hearing.

Fern Hart said that she is concerned about the steepness of the pathway but that she supports it. She said people would probably respect the pathway easement and utilize it within its boundaries.

Michael Kennedy expressed concern about erosion on the walkway because it is on a steep grade and also how people will know the walkway is available to them so they won’t create their own path.

Gilbert Larson responded that they would be willing to put in sod to protect the path from erosion. Regarding the walkway, he agreed that people, particularly kids, will find a way to go through so they will find a way to identify the walkway so that everyone will use it.

Fern Hart moved that the Board of County Commissioners approve the rezoning request for Linda Vista Eighth Supplement, located northeast of Linda Vista 7th Supplement, west of South Point Subdivision and south of Meriwether subdivision, legally described as the SE ¼ of Section 12, T12N R20W, from C-RR1 to C-RR2, contingent on the conditions listed below. Barbara Evans seconded the motion. Motion carried 3-0.

1. Development of the site shall be consistent with the site plan approved by the governing body;
2. All lots shall meet all C-RR2 zoning standards.

Fern Hart moved that the Board of County Commissioners approve the preliminary plat for Linda Vista 8th Supplement, located northeast of Linda Vista 7th Supplement, west of South Pointe Subdivision and south of Meriwether subdivision, legally described as the SE ¼ of Section 12, T12N R20W, contingent on the conditions listed below, based on the findings of fact. Barbara Evans seconded the motion. Motion carried 3-0.

1. Final road and drainage plans (including “as-built” plans upon completion of the drainage plans) shall be submitted to and approved by the County Surveyor prior to filing of the final plat. The drainage plan shall address a 10 year frequency storm.
2. Sidewalks shall be placed on both sides of all streets and be 5 feet in width for the cul-de-sac streets, Jamie Ann Lane, Kaleigh Court and Justin Court. Sidewalks shall be placed on both sides of the non-cul-de-sac street, Brandon Way and be 4 feet in width.
3. That the covenants be amended to state that, “boulevard trees” shall be placed on all lots within the subdivision, to be placed close to the curbside sidewalk, spaced approximately every 30 feet, to be approved by OPG prior to final plat approval.
4. That a twenty foot wide public walkway easement shall be placed between Lots 4 & 5; 7 & 8; and 10 & 11 of Block 2; between Lots 5 & 7; 6 & 7; and 18 & 19 of Block 3, resulting in a 20 foot wide strip of sod, maintained by the adjacent home owners.
5. To assure functional and visual access to the park, staff recommends that the applicant retain the 60 foot wide strip of parkland that is located between Lot 6 of Block 1 and Lot 1 of Block 2. Plans shall be approved by the Office of Planning and Grants in consultation with the Parks and Recreation Department prior to filing of final plat.
6. All fire hydrant locations shall be approved by the appropriate fire jurisdiction prior to filing of the final plat.
An erosion control plan which will show how erosion will be controlled (especially for graded areas) during construction shall be submitted to and approved by the County Surveyor prior to approval of the final plat.

The developer shall be responsible for dust abatement on the site upon start of road construction. Plans for dust abatement shall be approved by the Health Department and the County Surveyor.

The developer shall mitigate the impacts on the Miller Creek transportation system resulting from this subdivision. The amount of fee assessed and the specific improvements to be made shall be approved by the governing body.

The developer shall include the following statement on the face of the plat and in each instrument of conveyance:

“Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest an RSID/SID and can be used in lieu of signatures on an RSID/SID petition for improvements to Linda Vista Boulevard, and Upper and Lower Miller Creek Roads.”

The applicant shall, for the portion of the property that is not within the Missoula Rural Fire District jurisdictional area, petition for annexation into the District.

The City Engineer approve the sewer system plans. The developer shall enter into a contract for sewer service with the City of Missoula prior to final plat approval.

The developer shall place all new utilities underground, and easements shall be a minimum of 20 feet in width unless the appropriate utility and the governing body approve a narrower width. In addition to showing the location of the utility easement, the final plat shall include the following statement,

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

The applicant shall provide an engineered grading plan sufficient to alleviate any potential hazards of building on Lot 2 and Lot 3 of Block 2 and Lots 8,9,10,11 of Block 3, to be approved by OPG and the County Surveyor prior to final plat approval.

The applicant shall provide a revegetation and management plan for the affected steep slope hillside areas, to be approved by OPG prior to final plat approval.

That the subdivision shall comply with the 1995 Linda Vista drainage plan, to be approved by the County Surveyor prior to final plat approval.

That the applicant provide a engineered drainage plan for the existing drainage basin beneath the proposed park area to ensure that there will be no adverse effects on the park, to be approved by the OPG and Parks and Recreation Department prior to final plat approval.

That the developer provide a drainage area in the County-owned Meriwether Park according to the Linda Vista area drainage master plan, which was approved by the County Surveyor and has agreed to level it and seed it.

The developer of Linda Vista 8th Supplement subdivision will petition into the Missoula Urban Transportation District so that public transportation can be provided to the subdivision in the future.

The applicant shall create a RSID for park development and maintenance, to be approved by the County Commissioner’s Office prior to final plat approval.

There being no further business to come before the Board, the Commissioners were in recess at 3:20 p.m.

THURSDAY, NOVEMBER 7, 1996

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

Monthly Report -- Commissioner Kennedy examined, approved and ordered filed the Report of the Clerk of the District Court, Kathleen Breuer, showing fees and collections made in Missoula County, Missoula, Montana, for the month of October, 1996.

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

FRIDAY, NOVEMBER 8, 1996

The Board of County Commissioners did not meet in regular session; Commissioner Evans was out of the office all day, and Commissioner Kennedy was in Polson attending a Juvenile Detention meeting.

In the forenoon, Commissioner Hart, Rachel Vielleux, County Superintendent of Schools, and Horace Brown, County Surveyor, canvassed the General Election, which was held on Tuesday, November 5, 1996.
MONDAY, NOVEMBER 11, 1996

The Courthouse was closed for the Veterans Day holiday.

TUESDAY, NOVEMBER 12, 1996

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was on vacation from November 12 through November 15.

Monthly Report -- Chair Kennedy examined, approved and ordered filed the Report of the Sheriff, Douglas Chase, showing fees and collections on account of civil business in Missoula County, Montana, for the month ending October 31, 1996.

DAILY ADMINISTRATIVE MEETING

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

Resolution - The Commissioners signed Resolution No. 96-093, a resolution of intent to rezone property legally described as the SE1/4 of Section 12, T12N R20W, PMM, Missoula County, Montana, from C-RR1 (Residential) to C-RR2 (Residential) subject to conditions. (Linda Vista 8th Supplement)

Site Inspection - In the afternoon, Commissioner Hart accompanied County Surveyor Horace Brown for a site inspection on the request to alter Crystal Creek Road and the Old Missoula-Turah Road.

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

WEDNESDAY, NOVEMBER 13, 1996

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

Audit List -- Commissioners Kennedy and Hart signed the Audit List, dated November 12, 1996, pages 3-35, with a grand total of $112,375.65. The Audit List was returned to the Accounting Department.

DAILY ADMINISTRATIVE MEETING

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

Payroll Transmittal Sheets - The Commissioners signed Payroll Transmittal Sheets for periods 21 and 22, for a total Missoula County payroll of $582,639.31 in pay period 21, and $576,994.86 in pay period 22.

Interlocal Agreement - The Commissioners signed an Interlocal Agreement between the Department of Justice, the Department of Corrections, and Missoula County, providing for payment of services incurred by State inmates confined in Missoula County. State agencies will pay the County $47.00 per day per inmate, for the period July 1, 1996 through June 30, 1997. The Agreement was returned to Mike O’Hara in the Sheriff’s Department for further signatures and handling.

Professional Services Contract - The Commissioners signed a Professional Services Contract with First American Title Company of Montana, Inc. to provide title insurance services as requested. Duration of the Contract is July 1, 1996 through June 30, 1997. Compensation for services shall not exceed $10,000.00.

Policy Statement - The Commissioners signed Policy Statement 96-F, increasing the accessibility of the Commissioners’ Public Meeting Minutes, and improving the written record of decisions. Tapes of the public meetings will be kept for six months, and copies will be available for $5.00 per tape.

Grant Award - Chair Kennedy signed a federal grant award for funding to provide technical support in the Crime Victim’s Advocate’s Office, funding for the Rural Outreach Crime Victim’s Advocate Program (SSTEP Program in Seeley Lake), funding to provide training on domestic violence response for law enforcement, and funding for expanded night staffing and media outreach for the YWCA Shelter. Grant award was $84,282, and duration of the project is 18 months.

Quitclaim Deed - The Commissioners signed a quitclaim deed for James D. Olson, granting all right, title, and interest in and to the following described real property in Missoula County, Montana: Lots 11 and 12 in Block 59 of South Missoula, in the City of Missoula, Montana, Missoula County, Montana, according to the official recorded plat thereof.

Other items included:

1) The Commissioners approved the Pruyn maintenance contract at the Missoula Development Park.
2) The Commissioners agreed to abate two months taxes on the Pepsi Building because of the County’s delay in closing.

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

PUBLIC MEETING -- NOVEMBER 13, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present was Commissioner Fern Hart.

DECISION ON: REQUEST TO ALTER COUNTY ROAD (CRYSTAL CREEK RANCH) -- CRYSTAL CREEK ROAD AND OLD MISSOULA-TURAH ROAD (POSTPONED FROM NOVEMBER 6, 1996)

Fern Hart said she and Horace Brown, the County Surveyor, went out to the site and inspected the area under discussion. They observed that the road could be vacated and moved to another location.

Horace Brown said this was a petition to alter the road, which means they are moving the old right-of-way to a new location. It will continue to be 60 feet wide, centered on the road.

Michael Kennedy said he had been out there several times and his concern was the apparent indication by the Crystal Creek Ranch that it was a private road by the overhead passage way, which he does not know if it was taken down.

Horace Brown replied that it was to be removed this week.

Michael Kennedy asked if the right-of-way they are going to exchange is equal in quality?

Horace Brown replied that it was better quality and equal in width.

Michael Kennedy felt something was missing. He noted that there was abandonment but nothing was said about restoration.

Horace Brown responded that the right-of-way will be moved to the new section of road that was built by Crystal Creek Ranch just southwest of the same location.

Michael Kennedy asked if there was any expectation by this action that there will be a simultaneous grant of right-of-way from Crystal Creek Ranch to the County?

Horace Brown answered that once it is altered, the right-of-way is automatically there on the new location.

Michael Sehestedt said what the Commission Action should be is to alter the existing Crystal Creek Road from the existing location shown on the exhibit; said alteration to be conditional on consent of the property owner. They have a consent from the Crystal Creek Ranch. They will close off the old road that goes through their tennis court and at that point, they will open the new road which goes around their tennis court.

Horace Brown suggested that the Commissioners use the petition to alter the road and not to vacate it.

Fern Hart moved that the Board of County Commissioners approve the request to alter “Old Missoula-Turah Road and Deer Creek-Oxford Ranch Road, located in T12N R18W, NE½ Section 3, from 50 feet southeasterly of the existing ranch gate to the north section line of Section 3, T12N R18W, and further described in the Road Book of Missoula County Surveyor as: Map reference 13, Name Crystal Creek Road, 650 feet wide.” This shall be conditioned on the consent of the Crystal Creek Ranch owners to do the alteration as called for in the petition, according to the map attached to the petition. Michael Kennedy seconded the motion. Motion carried 2-0.

HEARING: STARVIEW ADDITION (8-LOTS - INTERSECTION OF 3RD STREET WEST AND HOWARD STREET) PRELIMINARY PLAT

Lisa Moisey, Office of Planning & Grants, said this was a request from Gene Mostad for an 8-lot residential subdivision on about 9 acres, located at the corner of 3rd and Howard. This property is zoned C-RR2, which allows for up to two dwelling units per acre. This proposal would have an overall density of about 1 dwelling unit per acre with lot sizes ranging from about 1/2 - 2/3 of an acre. The subdivision is designed to include a band of common area around the development. This common area will preserve mature vegetation which borders both 3rd and Howard Streets. All lots within the subdivision will have direct access to this common area. This subdivision will be served by individual septic and wells. The developer intends to install a dry-laid pressure main which will be installed to allow for future connection to sewer, if and when sewer is available in this area. Access to the subdivision will be from Howard Street. The developer is proposing a new cul de sac street, which will be constructed to serve all the lots within the development. No lot will have direct access onto 3rd or Howard. The new street will be paved to 24 feet wide and will meet County standards for roadways. To preserve transportation options for the future, the developer has shown, on the plat, a conditional easement at the end of the cul de sac street which would be dedicated at such time as a connection is available to the west. Staff recommends that the developer install an improved pathway along South 3rd Street. South 3rd is a narrow street with a minimal shoulder and it is the opinion of the OPG staff that a pathway there will allow for a safer means for pedestrians. Staff is also recommending the developer provide a pedestrian pathway along both sides of Co-Pilot Court. OPG staff recommends approval of the Starview Addition, based on the findings of fact and subject to conditions in the staff report. The Missoula Consolidated Planning Board held a public hearing on this request on October 29. On the Request for Commission Action, it can be noted that the Planning Board voted 7-0 to recommend approval of this subdivision with modified conditions. In lieu of requesting that the developer provide pedestrian walkways on both sides of the cul de sac, the Planning Board opted to require a
pedestrian pathway only on the north side and recommended that the developer waive the right to protest a future RSID or SID for improvements to the south side of Co-Pilot Court, should it be extended beyond the immediate subdivision, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.

Dick Ainsworth, Professional Consultants, said he represents Gene Mostad. He explained the road that comes in at the southeast corner and snakes its way up into the property is rather unusual because, in discussion with Horace Brown and the Planning staff, they discovered that no one wanted any more access off of 3rd Street, which is too busy. "Howard Street has an elevated irrigation ditch along the west side, which increases in elevation further north. At the southeast corner, the ditch and road are close to the same elevation and it appeared to be the only logical place to access the main streets."

Michael Kennedy opened the public hearing.

The following people, who are all property-owners adjoining the proposed subdivision site, spoke:

Clyde Bakker
Larry Taylor
Eric Ashcraft

None of the above expressed opposition to the proposal. However, a primary concern was the irrigation ditch, which overflows during irrigation season. Even though the ditch is not on the subject property but on the neighbor’s property, there is the potential of the water overflowing from it runs on the subject property. The adjoining property owners were concerned that they could be held liable for the water that flows and stands on the proposed development site. The ditch needs repairs and has needed to be repaired for some time but repeated calls to the Irrigation District have produced no results. Lengthy discussion was held to consider various options to solving the problem by the Commissioners, County staff, which included Horace Brown, County Surveyor and Colleen Dowdall, Deputy County Attorney, the developer, applicant and neighbors. A primary setback to a solution was the difficulty of working with the Irrigation District. Testimony given noted that past and current experiences with them have revealed little or no cooperation to maintain irrigation ditches and no consideration of moving a ditch.

Other concerns voiced were a question about placing the septic system in a common area instead of on the individual lot it serves, and the traffic that will impact Howard Street. It was found that no regulations determine that a septic system must be on the lot on which the residence it serves is on. The access for traffic was addressed by Dick Ainsworth earlier in the meeting, who stated that County staff had encouraged him to place access on the less busy street.

The Commissioners and Counsel discussed adding a condition that would address the water from the ditch, which resulted in the 11th condition.

Colleen Dowdall reassured the current surrounding home-owners that condition no. 11 ensured that they would not be held responsible for any water draining on the adjoining properties. She does not believe that would happen in any event, anyway, but this condition will give added protection which gives the responsibility to the developer.

Fern Hart moved that the Board of County Commissioners approve the preliminary plat for Starview Addition, located at the corner of Third Street West and Howard Street, contingent on the conditions listed below, and based on the findings of fact and recommendation of the staff. Michael Kennedy seconded the motion. Motion carried 2-0.

1. The following statements shall appear on the face of the plat and in each instrument of conveyance:

   A.) “Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID for improvements to South Third Street West, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”

   B.) “Acceptance for a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID for improvements to Howard Street, including pedestrian walkways, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”

   C.) “Acceptance for a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID for community or municipal water system, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”

   D.) “Acceptance for a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID for improvements to the south side of Co-pilot court should it be extended beyond the immediate subdivision, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”

2. Prior to filing of the final plat, the developer shall submit engineering plans and plans for Co-Pilot Court cul-de-sac and plans for drainage improvements. Plans shall be approved by the County Surveyor.

3. The developer shall apply dust abatement, as approved by the City-County Health Department, upon construction of the new road. Dust abatement shall be applied regularly to control dust pollution during construction.

4. The developer shall construct a five (5) foot wide paved pedestrian pathway along the north side of Co-Pilot Court. Plans shall be approved by the County Surveyor prior to filing the final plat.
5. The developer shall construct a pedestrian pathway along the frontage of South Third Street West. The pathway shall either be paved or constructed of recycled asphalt. Pathway plans shall be approved by the County Surveyor prior to filing the plat.

6. The developer shall include language on the face of the plat waiving the right to protest a future RSID/SID for installation of community sewer system. Waiver language shall be approved by the City-County Health Department prior to filing the final plat.

7. The developer shall contribute $50.00 per lot to the Rural Fire District's Large Diameter Hose Fund. Evidence of contribution shall be provided prior to filing the final plat.

8. All bridges shall be engineered to an 80,000 pound capacity. Plans for all bridges shall be approved by the County Surveyor and the Missoula Rural Fire District. The right-of-way of Co-Pilot Court will not encroach on the irrigation ditch easement.

9. The covenants shall address the irrigation ditch as regards ownership, maintenance, and potential safety hazards. The covenants shall also include language stating that this subdivision is located within the Air Stagnation zone and that residential solid fuel burning devices shall be installed according to Rule 1428 of the Missoula City-County Air Pollution Control Program regulations. Only pellet stoves tested at one gram per hour or less in emissions may be installed. A permit to install is required from the Health Department prior to installation.

10. No storage of vehicles or other private materials in the common areas and that this statement be made a condition of the covenants.

11. Approval of the final plat will be conditioned on the developer’s solution to the drainage issue, which will mitigate the impacts to homeowners in this subdivision and not increase the drainage problems for the homeowners to the south of this subdivision.

There being no further business to come before the Board, the Commissioners were in recess at 3:07 p.m.

THURSDAY, NOVEMBER 14, 1996

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

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the Salvation Army to provide basic needs/emergency transportation assistance for stranded individuals who have employment opportunities or medical needs that can be better served outside Missoula County, but who do not have the financial means to travel.

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

FRIDAY, NOVEMBER 15, 1996

The Board of County Commissioners did not meet in regular session; Commissioner Kennedy was in Spokane, WA attending a meeting of the Upper Columbia River Basin EIS Team.

MONDAY, NOVEMBER 18, 1996

The Board of County Commissioners met in regular session; a quorum of members was present. The Commissioners left for Condon in the forenoon for a luncheon and meeting held at the Condon Forest Service Work Center with Chuck Harris, the District Ranger from Bigfork, and area residents.

Plat and Subdivision Improvements Agreement - The Commissioners signed a Plat and Subdivision Improvements Agreement for Circle H Ranch - Phase I Homesteads and Equestrian Park, a subdivision of Missoula County located in the E1/2 of Section 26 and all of Section 25, T14N R20W, and the W1/2 of Section 30, T14N R19W, PMM, a total area of 972.193 acres, with the owner of record being the Circle H Ranch Limited Liability Company.

Audit - The Commissioners reviewed and approved a performance audit of Partnership Health Center performed by the County Auditor. The Audit was forwarded to the Clerk and Recorder for filing.

Plat and Subdivision Improvements Agreement - The Commissioners signed a Plat and Subdivision Improvements Agreement for Sandi Acres No. 2, a second summary plat of Sandi Acres, a subdivision of Missoula County located in the SE1/4 of the SW1/4 of Section 26, T13N R20W, PMM, a total area of 3.776 acres, with the owner of record being Tom L. Stuckey.

Co-Applicant Agreement - The Commissioners signed a Co-Applicant Agreement with the Partnership Health Center Governing Board and the Missoula City-County Board of Health, for the purposes of establishing a co-applicant relationship for governance of a community health center, and to clarify the roles and responsibilities of this relationship. The Agreement was returned to the Health Department for further signatures and handling.
Other items included:

1) The Commissioners approved a request by Bill Silverman to change his department’s name from Disaster and Emergency Services to the Office of Emergency Management.

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

**TUESDAY, NOVEMBER 19, 1996**

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

**DAILY ADMINISTRATIVE MEETING**

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

**Modification of Agreement** - Chair Kennedy signed a Modification of Agreement with the Montana Department of Environmental Quality regarding local sanitary review of minor subdivisions. The Agreement was forwarded to DEQ in Helena.

**Resolution** - The Commissioners signed Resolution No. 96-094, a resolution rescinding Resolution No. 96-087, regarding the natural gas leak incident which occurred on November 1, 1996.

**Sympathy Card** - The Commissioners signed a sympathy card to Mike Morris’ family.

Other items included:

1) The Commissioners agreed to the final 10% of payment to jail project architects, and wanted a cost estimate for the exterior pipe chase.

2) The Commissioners moved to adopt an increase in civil costs as per the recommendation of the Sheriff’s Department.

3) The Commissioners moved to issue a proclamation to lower the flag outside the Courthouse to half-mast starting immediately, to recognize the service of Justice of the Peace Mike Morris and to mourn his passing. The flag will remain at half-mast until 5 pm on Friday, November 22.

4) The commissioners moved to include Block 6, Lots 1 and 2 and Parks 3 and 6 of the Development Park in the Phase 1 Final Plat. Signing the engineering agreement was postponed until the agreement is rewritten.

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

**WEDNESDAY, NOVEMBER 20, 1996**

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

**Audit List** -- Commissioners Evans and Hart signed the Audit List, dated November 20, 1996, pages 4-37, with a grand total of $298,246.60. The Audit List was returned to the Accounting Department.

**DAILY ADMINISTRATIVE MEETING**

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

**Assistance Agreement** - Chair Kennedy signed an Assistance Agreement with the Missoula Children’s Theatre, Inc. (MCT) to provide $490,000 in CDGB funds to MCT for the construction of an addition and renovation of their current North Adams Street location, thereby creating and retaining jobs for primarily lower income individuals. The loan will be for 20 years at 0% interest, and will commence on December 1, 1996.

**Certification of Territory Transfer Petition** - The Commissioners signed a Certification of Territory Transfer Petition, allowing Mineral County elementary and high school districts to petition to align their boundaries so they may budget as K-12 districts. This was necessary since Alberton is a joint district, in both Mineral and Missoula Counties.

Other items included:

1) The Commissioners moved to extend the temporary Justice of the Peace position to December 13, 1996;

2) The Commissioners moved to support a request from Murray Pierce, Youth Court, to invite Patrick Sullivan and Mike McMillen to Missoula to discuss juvenile detention issues, for an estimated cost of $2000.00.

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

**PUBLIC MEETING -- NOVEMBER 20, 1996**

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.
NOVEMBER, 1996 - 11 - FISCAL YEAR:

HEARING: REQUEST TO ABANDON COUNTY ROAD (GLO ROAD TO THE JOCK VALLEY) AND REQUEST TO RELOCATE COUNTY ROAD (SE¼ OF SECTION 7, T13N R19W)

Horace Brown, County Surveyor, said this was a petition to abandon a road, known as the GLO road to the Jocko Valley, believed to be a County road as it exists in a portion of the SE quarter of Section 7, T13N, R19W, P.M.M., Missoula, Montana, being more particularly described as Parcel I, Parcel II and Parcel III of Certificate of Survey No. 4393 of the records of Missoula County.

There is also a petition to relocate a road believed to be a County road as it exists in a portion of the SE quarter of Section 7, T13N R19W, P.M.M., Missoula County, Montana, being more particularly described as Parcel I, Parcel II and Parcel III of Certificate of Survey No. 4393 of the records of Missoula County.

John Tabaracci, Sullivan and Tabaracci, Attorneys-at-Law, said he had originally presented the petitions to the Board. He noted that both petitions are based on the same property, which runs along Reserve Street, and gave a brief description of the area and roads, using maps as he did so. He said the roads are not being used.

Horace Brown expressed concern that only small portions of the total old roads are requested to be abandoned, leaving ends of a County road easement broken by the abandonment.

John Tabaracci agreed it would make sense to abandon the whole road, however, he was only concerned with his client’s interests at this hearing.

Michael Kennedy opened the public hearing. No one came forward the hearing was closed.

Barbara Evans explained that this portion of the process to abandon and relocate roads would be to hear testimony about the roads and property they are on. A site inspection is required by law and will be conducted by a County Commissioner and the County Surveyor at a later date, after which a decision will be made.

Discussion of the problem of abandoning and relocating only sections of the old roads, the legalities and possible solutions followed. Those included in the discussions were:
- Colleen Dowdall, Deputy County Attorney
- John Tabaracci
- The Board of County Commissioners
- Horace Brown, County Surveyor

Michael Kennedy said, having heard the discussion, they were ready to proceed with the site inspection. He asked if a specific date for a decision was needed?

Peter Dayton, Worden, Thane & Haines, P.C., representing the Kinneys, stated that the normal time frame for County review of the property would be acceptable.

Michael Kennedy set December 11 as the date of the decision.

HEARING: LAVOIE ESTATES (6 LOTS - PRELIMINARY PLAT) FRENCHTOWN AREA

Lisa Moisey, Office of Planning & Grants, gave the following presentation:

Lavoie Estates is a proposal for a residential subdivision of a 58.75 acre tract of land located between Frenchtown and Huson, North of I-90 and Mullan Road in the Southwest ¼ of Section 29, T15N, R21W. The developers, Ernest Johnson, Robert Johnson and Joe Boyer, Jr. are proposing to create six residential lots of approximately 9.5 acres each. Building envelopes of 1.5 acres in size are proposed on the lots for homesites. Surrounding land uses include a gravel pit to the west and the I-90 transportation corridor to the south. To the north is a large agricultural tract and to the east are residential tracts which range in size from five to 20 acres.

Individual well and septic are proposed to serve these lots.

Access to the subdivision will be from the Frenchtown Frontage Road and Houle Creek Road. Both roads are existing and maintained by the County.

Wally Congdon spoke in behalf of the developers and described how they came up with the current proposal and the details of the subdivision, using the displayed map to show the subdivision and area. Discussion included open space, sprinkler irrigation, grazing, fences and protecting the large pine trees that are on the property.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.

Fern Hart moved that the Board of County Commissioners approve the request for Lavoie Estates preliminary plat, located 2.5 miles west of Frenchtown, north of I-90 at the intersection of the Frontage Road and Houle Creek Road, contingent on the conditions listed below, and based on the findings of fact. Barbara Evans seconded the motion.

Motion carried 3-0.
1. No build zones within each of the six lots outside the building envelopes indicated on the map shall appear on the face of the plat. These zones may be revoked by the County Commissioners at the time of future subdivision review.

2. The applicant shall improve and pave, to County Standards, Houle Creek Road from its intersection with the Frenchtown Frontage Road north to the farthest extent of the subject property. Plans shall be approved by the County Surveyor prior to filing the final plat and shall include a drainage plan which addresses the drainage problems along Houle Creek Road.

3. The following statement shall be included on the face of the plat: “Acceptance of a deed for a lot within this subdivision constitutes the assent of the owners to waive their rights to protest a future RSID/SID for improvements to the Frenchtown Frontage Road, including installation of walkways and for the installation of pedestrian walkways along Houle Creek Road, based on benefit, and may be used in lieu of their signature on an RSID/SID petition.”

4. A one-foot “no-access” strip shall be shown on the plat along the frontage of the Frenchtown Frontage Road and along Houle Creek Road, except for the locations of the proposed shared driveways. Plans shall be approved by the County Surveyor prior to filing the plat.

5. The applicant shall acquire an easement across the property adjacent to the southeast corner of this subdivision (the property is described in Book 56, Micro page 56). This will ensure legal access is met for Lots 1 and 2.

6. The applicant shall include a statement on the face of the plat noting that acceptance for a deed for a lot within this subdivision shall constitute the assent of the owner to waive the right to protest a future RSID/SID for community water and/or septic.

7. Prior to filing the plat, the applicant shall obtain approval from the Frenchtown Fire District for an approved means for water supply.

8. The covenants shall be amended to include the following statements:
   A. “Dead-end driveways in excess of 150 feet in length shall have approved turn-around 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 13’6” 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 by the appropriate fire jurisdiction.”
   B. “There is a potential for vegetation damage by deer to lawns, gardens, flowers and ornamental shrubs located on or near the homesites. Homeowners should be aware of the potential problems that can occur, and take the responsibility to protect their vegetation or plant only non-palatable vegetation. Homeowners should also be aware that white-tailed deer may occasionally attract mountain lions to the area.”
   C. “Garbage, pet food, horse food, etc. should be properly stored in secure animal-proof containers or inside buildings to avoid attracting species such as bears, lions, raccoons or skunks. Bird feeders and compost piles also attract bears, and should be discouraged from being used in this area.”
   D. “Pets should be confined to the house or yard and not allowed to roam, as they can chase and kill big game and small birds and mammals. This harassment also causes unnecessary energy expenditures, and can displace animals to less suitable habitats. Walking pets with a leash prevents these problems.”
   E. “Irrigation ditches can pose a safety hazard to children and pets. Lot owners shall take responsibility for the safety of children and pets around the irrigation ditch which is located in the southeast corner of the subdivision.”

HEARING/CONSIDERATION OF: REZONING REQUEST AND SUMMARY SUBDIVISION (LOT 1, BANK ADDITION - BITTERROOT VALLEY BANK) MILLTOWN/BONNER AREA - COMMERCIAL BANKING FACILITY

Gordon Sorenson, Gordon Sorenson Engineering, and Jennie Dixon, Office of Planning & Grants, gave a presentation, which is summarized below.

Bitterroot Valley Bank has requested to rezone a tract of land containing approximately 2 acres (proposed Lot 1, Bank Addition) located in the NE¼ NE¼ Section 20 and the NW¼NW¼ Section 21, T13N R18W, P.M.M. in the Milltown/Bonner area, from C-11” (light industrial) to “C-C3” (commercial). The intended use is a commercial banking facility. There is a concurrent summary subdivision request (1 lot with a remainder) for this property which will come before the Board of County Commissioners on Wednesday, December 11, 1996, for action.

The Bonner Development Group and the Planning Board support this request.

Discussion followed regarding the ownership of the remainder lot of the bank subdivision, which was found to remain under Stimson ownership, and the zoning and plans for the property.

Alan Bradley, President, Bitterroot Valley Bank, said they had a plan for the remaining 12 acres between 1st Street and the Bank. There’s a buy/sell with Bonner Development Group and they are working with them.

Michael Kennedy opened the public hearing. No one came forward and he closed the public hearing.
Barbara Evans moved that the Board of County Commissioners approve the request from the Bitterroot Valley Bank for an intent to rezone a tract of land located in the NE¼ NE¼ Section 20 and the NW¼ NW¼ of Section 21, T13N R18W, P.M.M., in the Milltown/Bonner area, from C-11 to C-3, contingent on the conditions listed below and based on the findings of fact. Fern Hart seconded the motion. Motion carried 3-0.

1. Development of the site shall comply with the Design Standards for Primary Travel Corridors as established in the County Subdivision Regulations, including all landscaping, setback and design standards, except that landscaping installed along the private property adjoining the Travel Corridor may consist of an average 25 foot width, rather than an absolute 25 foot width, subject to approval by OPG. At no point shall the width of the landscaping be less than fifteen (15) feet.

2. The number of off-street parking spaces shall not exceed the number of automobile parking spaces as indicated on the site plan in Staff Report Attachment D. Additional parking spaces may be approved by OPG at a later date if a need can be demonstrated by the owner for more than the sixteen (16) on-site spaces. Placement of vehicular use areas and landscaped areas shall be redesigned to meet the Primary Travel Corridor standards and all requirements of the Missoula County Zoning Resolution #76-113.

3. Class II bicycle parking facilities shall be provided to accommodate employees and patrons at a ratio of 25% of the maximum permitted car parking spaces for the intended use, with a minimum requirement to provide parking for at least one bicycle. Class II Facilities are defined as stationary racks to which the user can lock the bicycle frame and both wheels with a U-shaped or cable lock.

Bicycle parking facilities shall be in clearly designated, safe, and convenient locations and shall not impede pedestrian access. The bicycle parking facilities shall be no more than fifty feet (50') from an entrance to the building for which the bicycle parking spaces are intended.

4. The following landscaping design standards shall apply:

a. For every one thousand (1,000) square feet of paving, there shall be a minimum of one hundred fifty (150) square feet of on-site landscaping, and there shall be no more than ten (10) contiguous automobile spaces without placement of a landscaped island. Landscaped islands shall be a minimum of one hundred fifty (150) square feet and shall contain no fewer than one (1) tree or three (3) shrubs such that no parking space shall be any further than fifty (50) feet from the trunk of a tree.

b. There shall be a minimum of one tree planted for each one thousand (1,000) square feet of on-site landscaped area. The minimum height for a tree at planting in the required on-site landscaped area is eight (8) feet. Minimum shrub size in the required on-site landscaped area is five (5) gallons. A landscape maintenance plan for all landscape areas shall be submitted to OPG for review and approval prior to issuance of any building permits.

5. Lighting plans shall be submitted to OPG for review at time of building permit application. Exterior lighting shall be limited to external lighting of signs and safety and security lighting only. Lighting shall be shielded or recessed so that direct glare and reflections are contained within the boundaries of the property. Lighting fixtures shall not exceed twenty feet (20') in height and shall be directed downward and away from adjoining properties and public rights-of-way. No lighting shall blink, flash, or be of unusually high intensity in order to avoid excessive lighting.

All conditions of rezoning and applicable County zoning standards contained within Zoning Resolution #76-113 must be met within 120 days of approval of the rezoning request or by the time of implementation of the approved use, if implementation of the approved use is delayed more than 120 days. Failure to meet any zoning condition shall result in the scheduling of a public hearing for review and possible revocation of the rezoning approval.

Michael Kennedy noted that when this development comes through the subdivision review, a major issue that they will have to address is the traffic on Highway 200 and he hoped the proponents of the development would be prepared for that discussion.

Jennie Dixon wanted it on record that they did not recommend conditions on sidewalk, curb and gutter at this time in the rezoning because they were anticipating the subdivision of the property. The pedestrian walkways will be addressed at that time.

There being no further business to come before the Board, the Commissioners were in recess at 2:23 p.m.

THURSDAY, NOVEMBER 21, 1996

The Board of County Commissioners did not meet in regular session; however, the following items were signed:

Resolution - The Commissioners signed Resolution No. 96-095, a resolution of intent to rezone property located at the intersection of Highway 200 and West Riverside in the Milltown area, in the NE1/4 NE1/4 of Section 20 and the NW1/4 NW1/4 of Section 21, T13N R18W, P.M.M., from C-11 (light industrial) to C-3 (heavy commercial) with conditions.

Resolution - The Commissioners signed Resolution No. 96-096, a resolution to alter a portion of the Old Missoula-Turah Road and Deer Creek-Oxford Ranch Road located in the NE1/4 of Section 3, T12N R18W, P.M.M.

Plat and Development Agreement - The Commissioners signed a Plat and Development Agreement for Kriskovich Acres, an amended minor subdivision plat of Lot 12, Hellgate Pines Addition No. 1, located in the SE1/4 of Section 21, T12N R18W, P.M.M.
12, T12N R18W, PMM, Missoula County, a total area of 2.25 acres gross and net, with the owner of record being Joyce M. Kriskovich.

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

FRIDAY, NOVEMBER 22, 1996

The Board of County Commissioners did not meet in regular session; Commissioner Hart was in Polson attending a Mental Health Board Meeting.

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, NOVEMBER 25, 1996

The Board of County Commissioners did not meet in regular session; Commissioner Kennedy was out of the office from November 25 through November 27 because of illness in the family. However, the following item was signed:

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Marilyn Griffin as principal for Warrant #16107 issued 11/6/96 on the Missoula County MCPS Payroll Fund in the amount of $108.21 now unable to be found.

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

TUESDAY, NOVEMBER 26, 1996

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

Audit List -- Commissioners Evans and Hart signed the Audit List, dated November 26, 1996, pages 3-43, with a grand total of $223,012.72. The Audit List was returned to the Accounting Department.

Indemnity Bond -- Acting Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Eric Anderson as principal for Warrant #15228 issued 10/25/96 on the Missoula County MCPS Payroll Fund in the amount of $214.60 now unable to be found.

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

WEDNESDAY, NOVEMBER 27, 1996

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

Indemnity Bond -- Acting Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Sara Robinson as principal for Warrant #8112 issued 10/31/96 on the Missoula County 7260 Fund in the amount of $548.99 now unable to be found.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
Staff recommended approval of Equine Acres summary plat based on the findings of fact in the staff report and subject to the recommended conditions in the staff report.

Pat said he would like to add an item to condition no. 5, which would be enumerated as “5.e.”, and would include a wildland residential interface standard which deals with creating defensible space around the structures and what is appropriate for the types of vegetation that should go in this area. It was inadvertently left out of the list of conditions.

Single family residential uses bound on all sides of the property. The existing home on Lot 40A is served by the existing Sorrel Springs Homeowner’s Association water system. A letter from the Sorrel Springs Homeowners’ Association outlines the process for hooking up the proposed Lot 40B to the Sorrel Springs water system. An individual sewage system is planned for this subdivision, including a septic tank and drainfield for each lot. The nearest public sewage system is in Missoula, located about 18 miles to the east.

The developer has proposed a 30 foot wide public access easement extending from the Sorrel Springs Lane to Lot 40B to provide access for the lot. The property is unzoned. The 1975 Missoula County Comprehensive Plan designates the property, “Rural Low Density Residential District with a maximum recommended density of one dwelling unit per ten acres.” The proposed subdivision is outside the Frenchtown Activity Center.

CONSIDERATION OF: EQUINE ACRES - 2-LOT SUMMARY SUBDIVISION (SORREL SPRINGS AREA)

Pat Keiley, Office of Planning & Grants, gave the following presentation.

The proposal is for a 2-lot subdivision of Sorrel Springs Lot 40, to be called Equine Acres and consists of two lots, Lot 40A and Lot 40B. The property is located in the southeast ¼ of Section 21, Township 15 North, Range 21 West, Principal Meridian, Missoula County, Montana. This subdivision is located approximately 2 miles northwest of Frenchtown. Ms. Sharon Rae Boyce is the land owner and developer of the subdivision. There is an existing home on the property, located on proposed Lot 40A. Proposed Lot 40B is vacant. Access to the subdivision will be from Sorrel Springs Lane, an existing paved, county maintained road with a right-of-way of 60 feet and a paved surface width of approximately 24 feet. Lot 40A fronts on Sorrel Springs Lane Lot 40B is located to the south of or, behind Lot 40A. The developer has proposed a 30 foot wide public access easement extending from the Sorrel Springs Lane to Lot 40B to provide access for the lot. The property is unzoned. The 1975 Missoula County Comprehensive Plan designates the property, “Rural Low Density Residential District with a maximum recommended density of one dwelling unit per ten acres.” The proposed subdivision is outside the Frenchtown Activity Center.

Staff recommended approval of Equine Acres summary plat based on the findings of fact in the staff report and subject to the recommended conditions in the staff report.

Pat said he would like to add an item to condition no. 5, which would be enumerated as “5.e.”, and would include a wildland residential interface standard which deals with creating defensible space around the structures and what is appropriate for the types of vegetation that should go in this area. It was inadvertently left out of the list of conditions.

Erica Brown, Professional Consultants, Inc., represented Sharon Rae Boyce and said they accept the conditions. She noted that they were in conformance with the existing covenants and have a letter of approval from the Homeowners’ Association, which included directions on how to hook up to the community water system. She also had approval from Scott Waldron, the Fire Chief.

Barbara Evans opened the public hearing. No one came forward and she closed the public hearing.

Fern Hart moved that the Board of County Commissioners grant the variance request for Equine Acres summary plat subdivision, located approximately 2 miles NW of Frenchtown, located in the SE ¼ of Section 21, T15N, R21W, Principal Meridian, from Section 3-2(1)(B) requiring sidewalks and pedestrian walkways. Barbara Evans seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners approve Equine Acres summary plat subdivision, located approximately 2 miles NW of Frenchtown, located in the SE ¼ of Section 21, T15N, R21W, Principal Meridian, along Sorrel Springs Lane, contingent on the conditions listed below and based on the findings of fact and recommendations of the staff. Barbara Evans seconded the motion. Motion carried 2-0.

1. The County Surveyor shall approve grading, drainage, erosion control, road and driveway plans.

2. The developer shall place all utilities underground, and easements shall be a minimum of 20 ft in width unless the appropriate utility and the governing body approve a narrower width.

3. The County Surveyor shall approve access and approach permits prior to filing the final plat.

4. The following statements shall appear on the face of the final plat and in all instruments of conveyance:

   “Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID petition.”

   “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 petition.”

5. The developer shall enter into a development agreement with Missoula County and file the agreement with the County Surveyor concerning the following items for Equine Acres summary plat subdivision, Lot 40A and Lot 40B.
a. Provide a minimum unobstructed width of not less than 20 feet and an unobstructed clearance of 13 feet 6 inches for any driveway over 150 feet.

b. Provide approved provisions for turning around of fire apparatus for dead-end driveways in excess of 150 feet.

c. Provide a copy of the brochure titled Living with Wildlife to the owners and tenants.

d. The appropriate fire jurisdiction approve plans to create a defensible space for fire protection around the structure.

e. The property-owner shall create a defensible space for fire protection purposes as approved by the appropriate fire jurisdiction. Vegetation shall be removed and reduced around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guideline. Ornamental trees and shrubs should not touch any buildings. When planting the property owner shall select trees, shrubs and vegetation that limit or retard fire spread as suggested below:

1) Perennial: Choose hardy perennial flowers that are adapted to our climate. These green, leafy, succulent plants are difficult to burn. Watering and regular weeding improves fire resistance.

2) Shrubs: Evergreen shrubs such as dwarf conifers or junipers tend to ignite easily: avoid them unless well spaced.

3) Trees: Deciduous trees can be clumped, scattered, or planted in greenbelts or windbreak patterns. Evergreen trees tend to ignite easily and should be spaced in accordance with the landscaping guidelines.

Roof construction: In areas of wildland/residential interface the following standards shall be used in roof construction:

Class A: Slate 0-25
   Fiber glass based: asphalt shingle
   Rock shingle: rolled roofing
   Concrete tile

Class B: Aluminum shingle 26-75
   Aluminum or steel panels

6. The appropriate fire jurisdiction shall approve the water supply for fire protection purposes for the existing and proposed structures prior to plat filing.

7. That a no-build area be designated on the face of the plat for the area(s) greater than 25% slope.

HEARING (CERTIFICATE OF SURVEY REVIEW): FAMILY TRANSFER (DESCHAMPS)

Kathleen Smith said this was a consideration of a request for a family transfer for that parcel as described in Book 175 Micro, Page 370 located in the W½ of Section 17 and the E½E½ of Section 18 lying north and east of Interstate Highway 90 and U.S. Highway 10 less 51.80 acres described as the Kalli Addition all in T14N R20W for George E. and Kathleen L. Deschamps.

George and Kathleen Deschamps have submitted a request for a family transfers for an approximately 171 acre parcel located off the Frenchtown Frontage Road at the intersection of Fred’s Lane. Mr. and Mrs. Deschamps propose to create a 4.6 acre parcel on the east portion of the property at the intersection of Fred’s Lane and the frontage road for transfer to their adult daughter, Collette M. Deschamps. The comprehensive plan in the area is open and resource (one dwelling per 40 acres).

The history of the parcel is as follows: The Deschamps purchased the land in June, 1972 as the entire west half of Section 17 and approximately 31.5 acres in the east half of Section 18, T14N R20W. The property is directly adjacent to the Meadows of Baron O’Keefe of which 64 parcels greater than 20 acres in size were created in April, 1979 by Geneva Cates. The Deschamps filed the Kalli Addition plat in August, 1996 creating a 51.8 acre parcel. They further state they used the family transfer exemption in December, 1977 to create a family transfer parcel in the NW¼NE¼NE¼ of Section 18 for another daughter, but I can find no record of this.

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

Fern Hart explained the Board would need to ask questions to determine if this request for a family transfer was an attempt to evade subdivision review.

(George) Ed Deschamps said he understood. He and his wife had recently undergone subdivision review less than a year ago for land that they plan to use for retirement. That subdivision was called the Kalli Division.

Discussion followed between Colleen Dowdall, Deputy County Attorney, Ed Deschamps, Tim Wolfe and the Commissioners, and included lay of the land and the affected roads, building and septic permits and meeting the Comprehensive Plan requirements.

Fern Hart moved that the Board of County Commissioners approve the request for a family transfer for a parcel described in Book 175 Micro, Page 370, located in the W½ of Section 17 and the E½E½ of Section 18, lying north...
and east of Interstate Highway 90 and U.S. Highway 10 less 51.80 acres described as the Kalli Addition all in T14N R20W for George and Kathleen Deschamps to their daughter, Collette M. Deschamps, in that it does not appear to be an attempt to evade the Montana Subdivision Act. Barbara Evans seconded the motion. Motion carried 2-0.

CONSIDERATION OF LAZY PINE ADDITION -- 5-LOT SUBDIVISION (SEELEY LAKE)

Lisa Moisey, Office of Planning & Grants, gave the following presentation.

The Lazy Pine Addition is a summary plat request from Ms. Evelyn Kearns for 5 lots in the Seeley Lake area of the County. Ms. Kearns intends to subdivide her 77.77 acre parcel to create four commercial lots along the MT State Highway 83 frontage, and one large lot of 63.9 acres for residential uses. The commercial lots will range in size from 1.7 to 5.2 acres. The Lazy Pine Mall presently occupies the proposed Lot 5. This property encompasses all of one 20 acre pond and a portion of a smaller pond. The 20 acre pond will be wholly contained within Lot 1, the proposed residential lot. Ms. Kearns’ son has a home on the east side of the pond. In conjunction with this summary plat request, Ms. Kearns is seeking approval from the Board of County Commissioners for a subdivision for lease or rent to allow two additional homesites on this residential tract. Ms. Kearns intends to build a home for herself on the west side of the pond, and her daughter would like to build a home on the south side.

Given that this proposed subdivision is located along MT State Highway 83 the Primary Travel Corridor Standards as found in the Missoula County Subdivision Regulations will apply. A riparian management plan has also been prepared by the applicant to address management of the two ponds. This proposed subdivision will use individual septic systems. It will connect to the Seeley Lake Water District for community water service. Access to the lots and homesites within this subdivision will be from Riverview Drive, MT State Highway 83 and Daisy Lane. Highway 83 is within the jurisdiction of the Montana Department of Transportation, Riverview Drive is a County roadway and Daisy Lane is a private drive which serves additional homesites to the south of this subdivision. Surrounding land uses include residential tracts to the south and north. The State of Montana owns the property to the west. Across Highway 83, to the east is the Deer Park Commercial Subdivision which was approved by the Board of County Commissioners in August of 1994. When considering the types of commercial businesses that may be appropriate for this area, the developer is encouraged to review the Economic Diversification Action Plan and consider the communities’ desires to improve the local economy.

Dick Ainsworth, Professional Consultants, Inc., represented the applicant, Evelyn Kearns. He discussed paving and pedestrian walkways, considering the overall existing nature of the area as it currently stands. He asked that the existing barbecue pits on Lot 1 be “grandfathered,” although he had no objections to have wildland residential interface standards be a condition of approval.

Discussion followed between the County Commissioners, the Deputy County Attorney, Lisa Moisey and Dick Ainsworth, focusing on the roads and paving, using maps to show where the roads were at and the available easements and accesses, and responsibility for maintenance. Pedestrian walkways, wildland residential interface requirements, Fire Department requirements and Health Department air stagnation standards were also discussed.

Fern Hart moved that the Board of County Commissioners approve the summary plat for Lazy Pine Addition, subdivision for lease/rent, located west of Montana State Highway 83 and south of Riverview Drive, approximately ½ mile south of Seeley Lake, legally described as Sections 3 and 10 of T16N R15W, with one additional dwelling unit in the southwest corner of Lot 1, contingent on the conditions listed below and based on the findings of fact. Barbara Evans seconded the motion. Motion carried 2-0.

1. The following amendments shall be made to the covenants:
   A. Wood burning stoves in this subdivision are restricted to efficient stoves with low emissions to assist with the reduction of wood stove particulates in the air.
   B. All parking areas and drives on Lots 2, 3 and 4 shall be paved. Paving shall be required at the time of building construction on each lot.
   C. Covenants can only be changed if they do not conflict with the Missoula County Subdivision Regulations.
   D. The “Living with Wildlife” brochure shall be included as an appendix to the covenants.
   E. The riparian management plans shall be included as a supplement to the covenants.
   F. The language as regards residential development in wildland residential interface areas as noted in Attachment A shall be included in the covenants with the exception to grandfather in two barbecue pits located on Lot 1.

   OPG staff shall review and approve covenants prior to filing the plat.

2. The applicant shall pave Daisy Lane from its intersection with MT Highway 83 to the driveway access points to Lots 3 and 4 at the time of the building construction on each lot. Plans for paving shall be approved by the County Surveyor prior to filing the plat.

3. The applicant shall include language on the face of the plat waiving the right to protest a future RSID/SID for the installation of a pedestrian walkway, based on benefit, along the MT Highway 83 frontage.

4. The applicant shall include language on the face of the plat waiving the right to protest a future RSID/SID for the installation of a community sewer system, based on benefit.

5. The applicant shall widen the first 500 feet of the driveway on the east side of the pond on Lot 1 and the first 200 feet of the driveway on the east side of the pond. Plans for driveway widening shall be approved by the Seeley Lake Rural Fire District.
6. To ensure a water supply for fire protection purposes is available for this subdivision, the applicant shall install a fire hydrant at the southwest corner of Riverview Drive and Highway 83. Plans shall be approved by the Seeley Lake Fire District prior to filing the plat.

7. To improve the sections on livestock and weed management in the riparian resource plan, the applicant shall include the following changes:
   A. Under the management practice section of the plans, item B, sentence 2 shall be re-worded to say, "Livestock shall be fenced outside of the area of riparian resource.
   B. Under the management practice section of the plans, item F, staff recommends that the statement any future weed control measures shall be accomplished.

CONSIDERATION OF HULT ADDITION -- 2-LOT SUBDIVISION (POTOMAC AREA)

Lisa Moisey, Office of Planning & Grants, gave the following presentation.

The Hult Addition summary plat is a request from Eric Owen and Ernie G. Hult for a two lot subdivision in the Potomac area of the County. This 14.77 acre parcel is located at the corner of Camas Road and Copper Cliff Drive in the Jordan Tracts in the NW¼ of Section 29, T13N, R15W. Jordan Ranch Tracts was a survey done in 1974 creating 43 parcels and access roads. Eric and Ernie each have a home on the property and they wish to subdivide to create two separate ownerships. No additional structures or improvements are proposed for the land. Access to the subdivision is from existing private roads within the Jordan Tracts Development. The nearest publicly maintained County roadway is at least two miles from this subdivision. Individual well and septic are in place to serve the existing homes in this subdivision. Surrounding land uses include residential tracts on all sides.

Staff recently found information that, according to the Health Department, Junk Vehicle Division, this property currently has an illegal junk yard on the property that consists of 3 or more abandoned vehicles. This issue has been turned over to the State.

The Office of Planning & Grants recommended that the Commissioners grant the variance and approve the subdivision, subject to the conditions in the staff report.

Tim Wolfe, Territorial Engineering, represented the applicants.

Colleen Dowdall, Deputy County Attorney, provided legal counsel, noted that, to have a subdivision approved, the applicant/owner must be in compliance with all other rules and regulations, which include zoning regulations and the Comprehensive Plan.

Eric Hult explained he was not in business to have a wrecking yard or to sell spare parts, but rather he is a collector of vehicles. He said the vehicles he has are not junk but are broken and he repairs them.

Colleen Dowdall stated the Board cannot base a decision on this request on the allegation made by the Health Department because, at this point, it is only an allegation.

Fern Hart moved that the Board of County Commissioners grant the variance request for the Hult Addition, located in south Potomac, corner of Camas Road and Copper Cliff, legally described as Tract 33, Certificate of Survey #219, Jordan Ranch Tracts, from Section 3-2(5) which requires sidewalks and pedestrian walkways, based on the findings of fact. Barbara Evans seconded the motion. Motion carried 2-0.

Fern Hart moved that the Board of County Commissioners approve the summary plat of the Hult Addition, located in south Potomac, corner of Camas Road and Copper Cliff, legally described as Tract 33, Certificate of Survey #219, Jordan Ranch Tracts, from Section 3-2(5), contingent on the conditions listed below and based on the findings of fact. Barbara Evans seconded the motion. Motion carried 2-0.

1. The applicant shall enter into a development agreement with Missoula County stating the following:
   A. "All dead-end driveways in excess of 150 feet in length shall have approved turn-around 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 13’6” 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 by the appropriate fire jurisdiction."
   B. "The property owner shall create a defensible space for fire protection purposes as approved by the appropriate fire jurisdiction. Vegetation shall be removed and reduced around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guidelines established by the fire jurisdiction. Ornamental trees and shrubs should not touch any buildings. When planting the property owner shall select trees, shrubs, and vegetation that limit or retard fire spread as suggested below:"
      i. Perennial: Choose hardy perennial flowers that are adapted to the climate of the Potomac Valley. These green, leafy, succulent plants are difficult to burn. Watering and regular weeding improves fire resistance.
      ii. Shrubs: Evergreen shrubs such as dwarf conifers or junipers tend to ignite easily; avoid them unless well spaced.
      iii. Trees: Deciduous trees can be clumped, scattered, or planted in greenbelts or windbreak patterns. Evergreen trees tend to ignite easily and should be spaced accordingly."
C. The development agreement shall also state that only Class A or B fire-rated roofing materials shall be used for any new construction. The development agreement shall be filed prior to filing the plat.

2. The applicant shall include language on the face of the plat stating that acceptance of a deed for a lot within this subdivision constitutes the assent of the lot owners to waive the right to protest a future RSID/SID for a community sewer and/or community water system, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.

3. Prior to filing the plat, the applicant shall obtain approval from the appropriate fire jurisdiction for an acceptable water supply for fire protection purposes.

There being no further business to come before the Board, the Commissioners were in recess at 2:49 p.m.

THURSDAY, NOVEMBER 28, 1996

The Courthouse was closed for Thanksgiving Day.

FRIDAY, NOVEMBER 29, 1996

The Board of County Commissioners did not meet in regular session; Commissioner Evans was out of the office all day. In the morning, Commissioners Hart and Kennedy attended the dedication of the Mountain Line Trolley.

Vickie M. Zeier          Michael Kennedy, Chair  
Clerk & Recorder          Board of County Commissioners
The Board of County Commissioners met in regular session; all three members were present.

**Monthly Report** -- Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace Patrick Ho lt, showing monthly receipts and distributions for the month ending November 30, 1996.

**DAILY ADMINISTRATIVE MEETING**

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

Note - The Commissioners signed a note congratulating Michelle Schoening on her new baby girl.

Other items included:

1) The Commissioners moved to accept a $50,000.00 donation from ARCO to fund an endowment, maintenance, and liability insurance for the Kim Williams Trail extension.

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

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

**Audit List** -- Commissioners Kennedy and Hart signed the Audit List, dated December 3, 1996, pages 2-27, with a grand total of $275,561.92. The Audit List was returned to the Accounting Department.

**Monthly Report** -- Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, John Odlin, showing receipts and distributions for the month ending November 30, 1996.

**DAILY ADMINISTRATIVE MEETING**

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

Plat - The Commissioners signed the plat for Fough Addition, a minor subdivision located in the NE1/4, Section 34, T14N R20W, PMM, Missoula County, a total area of 3.87 acres gross and net, with the owner of record being Donald Fough.

Memorandum of Agreement - The Commissioners signed a Memorandum of Agreement with the City of Missoula to purchase advocacy services for crime victims. The agreement terminates on June 30, 1997. Cost of the agreement to the City of Missoula is $7923.50.

Memorandum of Agreement - Chair Kennedy signed a Memorandum of Agreement between the Missoula County Park Board and Target Range School to provide up to $1500.00 in matching funds for installation of play equipment. The agreement was returned to Brian Maiorano in OPG for further handling.

Agreement - The Commissioners signed an Agreement for Professional Engineering Services with Druyvestein, Johnson, and Anderson, Inc. to develop the Phase 1 final plat for the Missoula Development Park. Cost of the Agreement shall be $38,284.00

Other items included:

1) The Commissioners concurred with Projects Coordinator Orin Olsgaard’s recommendation to offer Lot 1, Block 2 of Farviews Addition #6A to John Urwiler at a price of $38,489.00.

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

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

**Monthly Report** -- Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Patrick Holt, showing receipts and distributions for the month ending October 31, 1996.

**Monthly Report** -- Chair Kennedy examined, approved, and ordered filed the Monthly Reconciliation Report for Justice of the Peace, Patrick Holt, showing receipts and distributions for the month ending October 31, 1996.

**PUBLIC MEETING -- DECEMBER 4, 1996**

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

**CONSIDERATION OF PORCH ADDITION (2-LOT SUBDIVISION NEAR CARLTON COMMUNITY)**
The Catherine Addition plat amendment is a request from Tim Wolfe, Territorial Engineering and Surveying, Inc., to amend the previously approved Catherine Addition summary plat. Mr. Wolfe has requested to amend the plat by deleting or modifying condition no. 7, which reads: “The developer shall show two building envelopes per lot.” The developer shall show two building envelopes per lot. The property owner shall create a defensible space for fire protection purposes as approved by the appropriate fire jurisdiction. Vegetation shall be removed and reduced around each building according to the guidelines as established by the fire jurisdiction. Ornamental trees and shrubs should not touch any buildings.

CONSIDERATION OF REQUEST FOR PLAT AMENDMENT (CATHERINE ADDITION - HOWARD STREET)

Pat Keiley, Office of Planning & Grants, gave the following presentation.

The Catherine Addition plat amendment is a request from Tim Wolfe, Territorial Engineering and Surveying, Inc., to amend the previously approved Catherine Addition summary plat. Mr. Wolfe has requested to amend the plat by deleting or modifying condition no. 7, which reads: “The developer shall show two building envelopes per lot. Building location will be restricted to a site within these envelopes. Building envelopes shall be shown on the plat and approved by the Office of Planning & Grants before filing of final plat.” Excerpts from Tim’s letter list his reasons for his request:

1. Past and present zoning restricts lots to 1 dwelling unit per acre.
2. Adjacent and nearby subdivisions have adhered to this zoning and they feel that limiting Catherine Addition to the conditioned building envelopes would be out of character with this neighborhood.
3. A financial hardship has been inadvertently imposed on this elderly couple who have been relying upon this subdivision to finance their retirement and to provide financial security for their children.
4. The Schmitz’ have restricted their lots excessively in the name of future planning by providing a physical walkway, a future roadway easement, a walkway easement to the north for future extensions of the walkway, and they have installed a dry laid City of Missoula standards step sewer main and a 20 foot wide utility easement for this main.

Tim Wolfe, Territorial Engineering and Surveying, reiterated the problems he had run into with condition no. 7.

George and Catherine Schmitz described the problems they had trying to sell the lot with the reduction from the building envelope.

Michael Kennedy said it seemed to him that the envelope policy should consider increasing the density in these areas. Part of the consideration needs to be a re-evaluation of the setback requirements. In this case, the setback requirements are the standard ones. If you double the density and decrease the size of the lot, then there should be a reconsideration of the setbacks. If you had zero setbacks on sideyards or at least a reduction from it, then it has the reverse impact and expands the size the buildable area.

Pat Keiley agreed with the Chair.

Barbara Evans moved that the Board of County Commissioners approve the request to amend the summary plat of the Catherine Addition, located adjacent to Humble Road immediately north of McCauley Butte, legally described as Lot 133, Orchard Home Company’s Addition No. 6, by deleting Condition No. 7. Condition No. 7 reads: The developer shall show two building envelopes per lot. Building location will be restricted to a site within these envelopes. Building envelopes shall be shown on the plat and approved by the Office of Planning & Grants before filing of final plat.” Fern Hart seconded the motion. Motion carried 3-0.

Michael Kennedy said the intent is to acknowledge the limitation of available developable space in the overall valley with respect to protecting the environment or enhancing the environment, including air quality and utilities that have to be provided for these areas. Every time a development is approved where the density is small or sparse, it reduces the opportunity to provide infrastructure that would cure the Bitterroot River problem. This is one of those cases. It precludes the possibility in this area that density would be enough to support sewer and therefore remove the potential protection for the Bitterroot River. From his viewpoint, it is a quandary to vote for this kind of thing because the intent of building envelopes is for environmental protection. However, he understands the dilemma here.

Barbara Evans commented that she appreciates the staff’s work and consideration, however, she wanted it noted that the building envelopes have never gone through public review and are not a requirement in the County regulations. She suggested that they do not impose them until they have been “run through the system,” and then be made available to folks and that they have the knowledge that staff can give them.

OTHER BUSINESS

Horace Brown, County Surveyor, requested that the County return the petition for the relocation of a road on Broadway and a vacation of a GLO road near Tina Drive. A hearing was heard for these two items on November 20. The reason for the withdrawal is that both portions of these roads are within the City limits and the County does not have jurisdiction over them. These roads were in the County at one time but they have since been annexed into the City.

Vickie Zeier, County Clerk and Recorder, said she would check with the County Attorney to find out the correct procedure to handle this, which would include possible reimbursement of the fees that were paid.

There being no further business to come before the Board, the Commissioners were in recess at 2:50 p.m.

THURSDAY, DECEMBER 5, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Mileage Certification - The Commissioners signed a statement from the Montana Department of Transportation certifying that the rural road mileage in Missoula County, exclusive of the National Highway System and Primary System, amounts to 1541.617 miles.


Other items included:

1) The Commissioners voted to appoint Michael Jaworsky as Justice of the Peace through December 31, 1998.
The minutes of the Administrative Meeting are on file in the Commissioners Office.

FRIDAY, DECEMBER 6, 1996

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming as principal for Warrant #17730 issued 11/22/96 on the Missoula County MCPS Payroll Fund in the amount of $107.00 now unable to be found.

No administrative meeting was held this date.

Vickie M. Zeier      Michael Kennedy, Chair
Clerk & Recorder      Board of County Commissioners

MONDAY, DECEMBER 9, 1996

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

No administrative meeting was held this date.

TUESDAY, DECEMBER 10, 1996

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

Audit List -- The Commissioners signed the Audit List, dated December 10, 1996, pages 2-35, with a grand total of $197,361.18. The Audit List was returned to the Accounting Department.

Monthly Report -- Chair Kennedy examined, approved, and ordered filed the Report of the Sheriff, Douglas Chase, showing fees and collections on account of civil business for the month ending November 29, 1996.

DAILY ADMINISTRATIVE MEETING

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

Letter - The Commissioners signed a letter to attorney Robert Knight, representing Brent and Jeanette Mickelson, regarding construction of the proposed airport interchange and the access from the interchange to the Goodan-Keil area.

Plat - The Commissioners signed the plat for Green Acres Addition, a subdivision of Missoula County, located in the NW1/4 and SW1/4 of Section 6, T13N R19W, and the NE1/4 and SE1/4 of Section 1, T13N R20W, PMM, a gross area of 37.86 acres, with the owners of record being C & C Land, LLC.

Resolution - The Commissioners signed a County Resolution for County maintenance of Secondary Route 474, a highway approximately 3.9 miles in length in Missoula County. The Resolution was returned to Horace Brown, County Surveyor, for further handling.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Fister Electric Co., to install electrical service and wire container building for the Junk Vehicle Program. Duration of contract shall be from December 1, 1996 through December 6, 1996, as weather permits. Compensation for services shall not exceed $1,900.00.

Gravel Agreement - The Commissioners signed a Gravel Agreement with Robert and Margaret Kreis, agreeing that the County will purchase gravel from the Kreises to construct the realigned Nine Mile Road. Duration of the agreement shall be ten years from this date. Compensation shall be $0.75 per cubic yard for gravel crushed by the County, and $1.00 per cubic yard for pit run material.

Contract - The Commissioners signed a contract with Pulici Propane, Inc. to construct the Airport Road Walkway in Seeley Lake. Compensation for services shall be $66,494.21, and work shall commence within 10 calendar days following mailing of “notice to proceed” and the contractor shall complete all work within 30 calendar days from the 5th day following the mailing of “notice to proceed.” The contract was returned to Doreen Culver, Bidding Officer, for further handling.

Employment Agreement - The Commissioners signed an employment agreement with Paul Webber, agreeing to his employment as Chief Administrative Officer. Contract will commence on January 1, 1997, subject to review on July 1, 1997, and every three years thereafter. Annual salary shall be $63,500.00, and employer agrees to pay employee $4,500.00 on or before January 1, 1997 for moving expenses.

Professional Services Contract - The Commissioners signed a professional services contract with James Bigelow, DDS, to provide comprehensive dental treatment to Partnership Health Center patients at a rate of $100.00 per hour, to a maximum of $6,400.00. Performance schedule shall be from November 1, 1996 through June 30, 1997.
DECEMBER, 1996 - 5 - FISCAL YEAR:

Professional Services Contract - The Commissioners signed a professional services contract with Ann Mary Dussault, to assist Partnership Health Center with its building project. Performance schedule is from October 1, 1996 through June 30, 1997. Compensation for services shall not exceed $6,000.00.

Professional Services Contracts - The Commissioners signed two professional services contracts: one with the City of Missoula for participation of Missoula City Police officers in the DUI Enforcement Team. Performance schedule shall be from November 1, 1996 through June 30, 1997. Compensation for services shall be up to $2,000.00; and one with the Missoula County Sheriff's Department for participation in the DUI Enforcement Team. Performance schedule shall be from November 1, 1996 through June 30, 1997. Compensation for services shall be up to $4,000.00.

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

WEDNESDAY, DECEMBER 11, 1996

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Mike Rosbarsky as principal for Warrant #18936 issued 11/21/96 on the Missoula County General (claims) Fund in the amount of $87.00 now unable to be found.

DAILY ADMINISTRATIVE MEETING

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

Letters - The Commissioners signed two letters: one to Joe Ward of Pinnacle Realty, confirming the agreement for sale of the Missoula County Shops property, with a total purchase price of $2,600,000.00; and one to James Weaver at the Montana Department of Transportation, confirming the County’s assent in principle to the draft agreement on construction of the Airport Interchange and associated work, with a change in Section IV to include right of way acquisition and utility location in both sentences.

Other items included:

1) The Commissioners examined and approved the Missoula County Investment Information as of November 1, 1996 and December 2, 1996, as submitted by the Treasurer’s Office.

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

PUBLIC MEETING -- DECEMBER 11, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

COALITION OF MONTANANS CONCERNED WITH DISABILITIES

Peter Leech, President of the Coalition of Montanans Concerned with Disabilities, spoke.

CONSIDERATION OF: BANK ADDITION (1-LOT SPLIT WITH REMAINDER) BITTERROOT VALLEY BANK -- BONNER/MILLTOWN AREA

David Loomis, Office of Planning & Grants, said Bank Addition is a proposal for a 1-lot commercial subdivision of a larger parcel (approximately 100 acres) owned by Stimson Lumber Company. The proposed Lot 1 contains 1.955 acres located at the intersection of Old Highway 10 and West Riverside Drive in the Milltown Area. The application packet does not contain a development plan for the remaining 98+ acres east of proposed Lot 1.

The property is currently vacant and classified for taxation purposes as grazing. A commercial banking facility is planned for Lot 1, and rezoning of this lot from "C-I1" to "C-C3" received preliminary approval from the Board of County Commissioners on November 20, 1996, subject to six conditions.

Surrounding land uses include residential, auto salvage, vacant land and travel routes (Highway 10/200 and Interstate 90). The lot in this subdivision will be served by an individual on-site septic system and well. The slope of the site is generally uniform at about 0-4%. The site in not within any floodplain areas, and the applicant has not identified any riparian areas on Lot 1. Given that the proposed subdivision is located along Old Highway 10, the Primary Travel Corridor Standards contained within the Missoula County Subdivision Regulations will apply.

Access to Lot 1 will be from one driveway onto Old Highway 10 and two driveways onto West Riverside Drive. Approach permits must be obtained from the appropriate agency for these access points. Old Highway 10 is within the jurisdiction of the Montana Department of Transportation, and West Riverside Drive a roadway that currently only has 15' of roadway. This fifteen feet (15') is not part of the deeded parcel in the West Riverside development; however, it is not dedicated right-of-way. Along with this subdivision proposal, the applicant proposes to provide an additional 30' public roadway easement for West Riverside Drive bordering Lot 1.

Barbara Evans moved that the Board of County Commissioners grant the variance request for the Bank Addition, located at the intersection of Old Highway 10 and West Riverside in the Milltown area, for reduced width and right-of-way width for West Riverside Drive, based on the findings of fact as set forth in the staff report. Fern Hart seconded the motion. Motion carried 3-0.
Barbara Evans moved that the Board of County Commissioners approve the summary plat for the Bank Addition subdivision, located at the intersection of Old Highway 10 and West Riverside in the Milltown area, based on the findings of fact as set forth in the staff report and contingent on the conditions listed below. Fern Hart seconded the motion. Motion carried 3-0.

1. Development of Lot 1 shall comply with the Design Standards for Primary Travel Corridors as established in the County Subdivision Regulations, including all landscaping, setback and design standards, except that landscaping installed along the property adjoining the Travel Corridor may consist of an average 25 foot width, rather than an absolute 25 foot width, subject to approval by OPG. At no point shall the width of the landscaping be less than fifteen (15) feet. If the Highway Department ever withdraws approval for the use of their right-of-way for landscaping, said landscaping will be replaced elsewhere on the property, meeting as closely as possible the Travel Corridor Regulations. The decision for this variation is based on the shape of this particular parcel.

2. The owner shall pay a fee of $50.00 per lot to the Missoula Rural Fire District to fund watertenders and large diameter hoses.

3. A 10' public utility easement shall be shown on the plat along the eastern boundary of Lot 1, subject to approval by Montana Power Company prior to plat filing.

4. All new utilities shall be placed underground.

5. Grading and drainage plans shall be approved by the County Surveyor prior to plat filing.

6. The following statement shall be included on the face of the plat and in each instrument of conveyance: "Acceptance of a deed for a lot within this subdivision constitutes the assent of the owners to waive their rights to protest a future RSID for construction of public sewer, public water or any road improvements to West Riverside Drive or Old Highway 10, and sidewalks along Old Highway 10 and West Riverside Drive, and may be used in lieu of their signature on an RSID petition."

HEARING: NEW CASTLE COURT (REZONING & MOBILE HOME SUBDIVISION FOR LEASE/RENT), BONNER/MILLTOWN AREA

Pat Keiley, Office of Planning & Grants, said

Barbara Evans moved that the Board of County Commissioners approve the rezoning request for Tract 1, COS 4473, NE¼ of Section 20, T13N R18W, P.M.M., from C-I1 to C-RR2, PUD Overlay, Mobile Home Overlay, subject to the conditions listed below and based on the findings of fact. Fern Hart seconded the motion. Motion carried 3-0.

1. Development of the site shall be consistent with the site plan approved by the governing body. The Zoning Officer may modify individual setbacks for the manufactured home units for the purpose of saving ponderosa pine trees, but only to the extent that the setback intent is maintained.

2. That the applicant submit a tree revegetation plan for the purpose of creating a buffer in the northwest corner of the property to buffer the manufactured homes in this area from the Juniper Street and the I-90 Interchange, and to create a buffer along the northerly property line between the manufactured homes and Juniper Street, and to create a buffer along the east property line to buffer from potential industrial uses to the east, with both areas to include the planting of ponderosa pine trees removed from other areas of the site, to be approved by OPG.

Barbara Evans moved that the Board of County Commissioners approve the preliminary plan for the New Castle Court, a subdivision for lease or rent, located approximately 1 mile west of Bonner, between the Clark Fork River and Interstate 90, subject to the conditions listed below and based on the findings of fact. Fern Hart seconded the motion. Motion carried 3-0.

1. The applicant shall submit a post development landscaping plan, showing compliance with the buffering requirements of the regulations, including the vegetative coverage or landscaping of all unpaved areas, and showing a detailed tree removal plan, with the tree removal limited to the minimum necessary for mobile home installation, road and driveway installation, and septic and drainfield installation, to be approved by the Office of Planning and Grants prior to submittal of final plans.

2. The developer shall be responsible for dust abatement on the site upon start of road construction. Practice of dust abatement shall continue until all roads have been paved. Plans for dust abatement shall be approved by the Health Department and the County Surveyor.

3. The developer shall install a 5 foot wide pedestrian pathway along both sides of all internal streets. The surface shall be constructed of either asphalt or concrete. Plans shall be approved by the County Surveyor prior to submitting final plans.

4. A firefighting water supply system will be required for the subdivision, to be approved by the Missoula Rural Fire District prior to final plan approval. All fire hydrant locations, if applicable, shall be approved by the appropriate fire jurisdiction prior to filing of the final plat. The Missoula Rural Fire District shall approve all driveway turnarounds for firefighting apparatus.

5. The applicant shall petition for inclusion into the Missoula Urban Transportation District.
6. To ensure all utility easements are acceptable to Montana Power Company, the developer acquire approval from MPC for all easements prior to submitting final plans for the development.

7. That the proposed 5 foot wide gravel trail be a minimum of 10 feet from the top of the bank, to be approved by the OPG prior to approval of the final plan. The applicant shall widen the trail to 10 feet at such time when there is an inter-connecting trail past the property.

8. The developer shall submit a copy of the park rules for the mobile home court. To mitigate possibilities of predator intrusion, the rules shall address the following:
   A. That domestic pets are to be kept in a contained area to avoid wild animal harassment.
   B. Pets shall be fed indoors and pet food shall be stored indoors.
   C. Garbage shall be stored in well sealed containers and inside storage units.
   D. Permanent barbecue pits are prohibited. All portable barbecues shall be cleaned regularly and stored indoors when not in use.
   E. Flowers, ornamental shrubs and fruit trees may be susceptible to damage from wildlife, therefore planting of native vegetation is encouraged.
   F. All garden fences shall be constructed at least eight feet in height and one foot below the soil to prohibit animal intrusion, using a solid top rail on all fencing made of something other than wire to avoid animal entanglement.
   G. Compost piles shall be enclosed.
   H. The brochure, “Living with Wildlife” shall be distributed to all tenants.
   I. The Missoula County Health Department air stagnation wood-burning rules concerning wood stoves, fireplaces, etc., will apply.

9. The following statement shall be shown on the plat and in each instrument of conveyance:

"The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or property owners’ association and that the County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the County of Missoula for maintenance."

10. All utilities shall be placed underground and shown on the final plat. Utility easements shall be a minimum of 20 feet wide and their location shall be approved by the appropriate utility and the governing body. In addition to the easement location, the following statement shall be shown on the face of the plan:

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

11. That sanitary restrictions be lifted and all sanitary conditions be approved by the Health Department prior to filing the final plan.

12. That the applicant enter into a development agreement with Missoula County for the following items:

A. “The property owner shall create a defensible space for fire protection purposes as approved by the appropriate fire jurisdiction. Vegetation shall be removed and reduced around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guidelines as established by the fire jurisdiction. Ornamental trees and shrubs should not touch any buildings. When planting the property owner shall select trees, shrubs, and vegetation that limit or retard fire spread as suggested below:

   i. Perennial: Choose hardy perennial flowers that are adapted to the climate of the area. These green, leafy, succulent plants are difficult to burn. Watering and regular weeding improves fire resistance.

   ii. Shrubs: Evergreen shrubs such as dwarf conifers or junipers tend to ignite easily; avoid them unless well spaced.

   iii. Trees: Deciduous trees can be clumped, scattered, or planted in greenbelts or windbreak patterns. Evergreen trees tend to ignite easily and should be spaced accordingly.”

B. Only Class A or B fire-rated roofing materials shall be used for any new construction.

C. That the following statement shall appear on the face of the final plan and in all instruments of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for extension and connection to public water and public sewer, based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."

D. That the following statement shall appear on the face of the final plan and in all instruments of conveyance:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for sidewalk or pedestrian ways along Juniper Street, based on benefit, and may be used in lieu of their signatures on an RSID/SID petition."
Fern Hart moved that the Board of County Commissioners grant the variance for New Castle Court, located approximately 1 mile west of Bonner, between the Clark Fork River and Interstate 90, from Subdivision Regulation 3-10(12) to allow for the public dedication of a ten foot strip of park land located over and across the proposed trail running along and parallel to the upper bank of the Clark Fork River. Barbara Evans seconded the motion. Motion carried 3-0.

MONTANA VISTA (9-LOT 23 RESIDENCE SUBDIVISION IN SEELEY LAKE) PRELIMINARY PLAT

Pat Keiley, Office of Planning & Grants, said Montana Vista is a request from the Seeley Lake Real Estate, Inc. for a 9-lot, 23 residence subdivision of 28.5 acres. The property is bordered by Tamarack Drive to the west, and by Morrell Creek to the east. The parcel is situated both north and south of Airport Road.

The design concept is for a Subdivision/Planned Unit Development (PUD) which includes a mixture of lots for single family homes, apartments, and attached housing. Lots 1, 2 and 3 will be created for single family stick-built homes and will range in size from 2.7 to 4.1 acres. Lot 4 will be 2.25 acres, and according to the covenants proposed by the developer, a multi-family structure may be allowed on this lot. The site plan submitted by the developer shows a four-unit apartment building. It is OPG staff understanding that the developer does not intend to construct the multi-family dwelling as part of this development proposal. Lots 5-8 will be approximately 1/2 acre building sites for single family homes. The covenants will allow for either stick-built homes or mobile homes on permanent foundations. The developers intend to construct twelve condominium units in groups of three and a common area on Lot 9.

Subdivision PUDs provide flexibility in certain subdivision standards, allowing the subdivider creativity in subdivision design using a concept which clusters development, so that the cost of installing and maintaining roads, water and sewer lines, and utility services is minimized while open space, the natural terrain, including natural drainages and vegetation, and unique natural features are preserved to the maximum extent possible. Condominium subdivisions are required to meet the subdivision PUD criteria.

Access to the subdivision will be from Tamarack Drive for all of the lots except 9, which will access directly from Airport Road. Tamarack Drive will be paved for the length of this subdivision.

Water will be provided by the Seeley Lake Water District. Individual septic systems will be used for Lots 1-3 and 5-8. A community septic system will be constructed to serve Lots 4 and 9.

Surrounding land uses include the residential development of the Seeley Lake Homesites to the west, and the Double Arrow Ranch Phase II, residential tracts to the south. To the north is a recently approved minor subdivision called Morrell Creek Subdivision which includes larger lots similar in design to the proposed Lots 1 and 2 of the Montana Vista proposal. To the east, across Morrell Creek, lies a larger residential parcel and the Seeley Lake High School.

Fern Hart moved that the Board of County Commissioners approve the preliminary plat of Montana Vista Subdivision, a 9 lot, 23 unit residential subdivision. (Lots 1-3 are single family traditional lots, Lot 4 is multi-family lot, Lots 6-8 are single family traditional lots and Lot 9 is condominiums) located east of Tamarack Drive and on the north and south sides of Airport Road in Seeley Lake, legally described as Tract 2A of COS 4450 in the NW¼ of Section 2, T16N R15W. Lot 9 is approved for subdivision purposes under the Unit Ownership Act. This is based on the recommendations of staff and findings of fact and contingent on the conditions listed below. Barbara Evans seconded the motion. Motion carried 3-0.

1. The covenants shall be amended to include the following:

A. To assist with the reduction of wood stove particulates in the air, wood burning stoves in this subdivision are restricted to efficient stoves with low emissions.

B. The “Living with Wildlife” brochure shall be included as an appendix to the covenants.

C. “The property owner shall create a defensible space for fire protection purposes as approved by the appropriate fire jurisdiction. Vegetation shall be removed and reduced around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guideline. Ornamental trees and shrubs should not touch any buildings. When planting the property owner shall select trees, shrubs, and vegetation that limit or retard fire spread as suggested below:

i. Perennial: Choose hardy perennial flowers that are adapted to our climate. These green, leafy succulent plants are difficult to burn. Watering and regular weeding improves fire resistance.

ii. Shrubs: Evergreen shrubs such as dwarf conifers or junipers tend to ignite easily; avoid them unless well spaced.

iii. Trees: Deciduous trees can be clumped, scattered, or planted in greenbelts or windbreak patterns. Evergreen trees tend to ignite easily and should be spaced accordingly.”

D. The development agreement shall also state that only Class A or B fire-rated roofing materials shall be used for any new construction.

E. The riparian Management plan shall be included as a supplement to the covenants.

F. The covenants shall be amended to prohibit livestock on the area east of the ridge line, including the steep slope and the Morrell Creek common area.
OPG staff shall review and approve covenants prior to filing the plat.

2. Development of Lot 9 shall be generally consistent with the site plan as submitted by the applicants. However, to allow for more usable back yard space for the condominiums, the proposed condominiums on Lot 9 shall be relocated to within a minimum of 25 feet from the no-build zone. There shall be a 5 foot wide paved pathway along the east side of Montana Vista Drive. Parking areas as shown on the site plan shall be relocated to the sides of the buildings. Moving the parking areas to the sides of the buildings may result in shortening of Montana Vista Drive. Plans shall be approved by the Office of Planning and Grants prior to filing the plat.

3. A one-foot no access strip shall be shown on the plat along Airport Road, except for the location of the entrance to Lot 9. Plans shall be approved by the County Surveyor prior to filing the plat.

4. The final plat shall show the location of shared driveways for Lots 2-8. Specifically, Lots 2 and 3 shall share the existing water tank and private access easement; Lot 5 and 6 shall share a driveway, and Lots 7 and 8 shall share a common driveway. Plans shall be approved by the County Surveyor and by the Office of Planning and Grants prior to filing the plat.

5. The applicants shall install a five foot wide paved pedestrian pathway along the frontage of Lots 4 through 8 on Tamarack Drive and along the south side of Airport Road from Tamarack Drive to Montana Vista Drive. Plans shall be approved by the County Surveyor prior to filing the final plat.

6. The applicant shall include the following statement on the face of the plat:

   “Acceptance of a deed for a lot within this subdivision constitutes the ascent of the lots owners to waive their rights to protest a future RSID/SID for paving Tamarack Drive and installation of a community sewer system, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.”

7. All utility easements shall be clearly shown on the face of the plat and labeled as such.

8. The park area (including the trail) within the common area on Lot 9, as shown on the site plan, shall be developed prior to filing the plat or shall be included with the public improvements guarantee.

9. The winding trail on Lot 9, as shown on the site plan, shall be redesigned to provide a continuous trail connection that is not interrupted by the visitor parking area. The applicant shall show and provide access to the trail system for each condominium group by designating 3 individual short trail segments from the trail to Montana Vista Drive, to intersect with the trail in a location in “front” of each condominium group.

10. Prior to filing the final plat, the applicant shall install fire hydrants in congruence with the specifications of the Seeley Lake Rural Fire District. Plans shall be approved by the Seeley Lake Fire District.

11. A “no-build/no improvement” zone shall be labeled on the plat. The no-build/no improvement zone shall generally follow the site plan submitted by the applicant. On the north side of Airport Road the no-build zone shall begin at the location of the slope break, which is also defined by the 4125 foot topographic line, and shall extend easterly down to and include Morrell Creek. On the south side of Airport Road, the no-build zone shall be designated from the bench on Lot 9 approximately 120 feet east of the proposed Montana Vista Drive, as measured from the middle of Lot 9. The no-build zone shall extend to the east property line. This No-build/no-excavation zone shall prohibit all structures and motorized transportation routes.

12. The applicant shall provide engineering plans for drainage and the roadway to the Office of the Surveyor prior to filing the final plat. Plans shall be approved by the County Surveyor.

HEARING: MISSOULA COUNTY PARKS & CONSERVATION PLAN (AMENDMENT TO COMPREHENSIVE PLAN) POSTPONED UNTIL JANUARY 8, 1997

There being no further business to come before the Board, the Commissioners were in recess at 6:00 p.m.

THURSDAY, DECEMBER 12, 1996

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

Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Stacy Bache’ as principal for Warrant #089798 issued 11/21/96 on the Missoula County General (01) Fund in the amount of $25.00 now unable to be found.

DAILY ADMINISTRATIVE MEETING

No administrative meeting was held; however, the following items were signed;

Resolution - The Commissioners signed Resolution No. 96-097, a resolution of intent to rezone property legally described as Tract 1, COS 4473, the NE1/4 of Section 20, T13N R18W, PMM, Missoula County, Montana (New Castle Court), from C-I1 (Light Industrial) to C-RR2 (Residential), Planned Urban Development (PUD) overlay, Mobile Home (MH) overlay, subject to conditions.
Bargain and Sale Deed - The Commissioners signed a Bargain and Sale Deed with the Montana Department of Transportation for sale (for $1.00) of a portion of Parcel No. 1 on Montana Department of Transportation Project DPI 0195 (001) F, also described as Portion A of COS 4586, located in the SW1/4, SE1/4 and the SE1/4, SW1/4 of Section 36, T14N R20W, and also being a portion of Tract 3 of COS 3858 location in the SW1/4, SE1/4, and the SE1/4, SE1/4 of Section 36, T14N R20W, and also a portion of US Government Lot 1, Section 1, T13N R20W, PMM, Missoula County, Montana, as shown by the shaded area on the plat, consisting of two sheets, containing an area of 5.26 acres, more or less. The deed was returned to Mike Sehestedt, Deputy County Attorney, for further handling.

Service Agreement - Acting Chair Barbara Evans signed a US West ISDN Primary Rate Service Agreement for local exchange telecommunications service for additional T-1 phone lines coming into the Courthouse. Term of the Agreement will expire 60 months from the first installation date of PRS. Agreement was returned to Bob Schieder in Communications for further signatures and handling.

Letter - The Commissioners concurred with and signed a letter to James Weaver, Montana Department of Transportation, accepting in principle the payment procedure for the Airport Interchange Project.

Agreements - The Commissioners signed two Agreements with the City of Missoula to Remit Unused Portion of Tax Increment Urban Renewal Monies to Missoula County Board of Commissioners for FY 1996-97, in the amount of $250,000.00 for each Agreement. The Agreements were returned to Lisa Powell at the Missoula Redevelopment Agency for further handling.

Agreement - The Commissioners signed an Agreement with radio station Z100 to drop paper turkeys from an aircraft onto County-owned property at Fort Missoula as part of a promotion on Friday, December 20, 1996. In return for this permission, Z100 agrees to assume all liability for the “turkey drop” and to defend and indemnify Missoula County for any claim which may arise out of or be attributable to the “turkey drop” which is not solely attributable to the negligence of the County or its agents.

The minutes of the Administrative Meeting are on file in the Commissioners Office.
DECEMBER, 1996 - FISCAL YEAR:

[Insert text]

TUESDAY, DECEMBER 17, 1996

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

**Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Timothy J. Abbenhaus as principal for Warrant #238128 issued 5/24/96 on the Missoula County Payroll Fund in the amount of $222.97 now unable to be found.**

**Indemnity Bond -- Chair Kennedy examined, approved, and ordered filed an Indemnity Bond naming Sharon L. Dale as principal for Warrant #10200 issued 12/10/96 on the Missoula County Payroll Fund in the amount of $2,438.02 now unable to be found.**

**DAILY ADMINISTRATIVE MEETING**

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

**Memorandum of Agreement** - The Commissioners signed a Memorandum of Agreement with the Missoula YMCA to participate in the Rural Domestic Violence Enforcement Grant Program. Value of the Agreement is $36,354.00 in federal funding. Duration of the agreement is from October 1, 1996 through March 31, 1998, and is contingent upon receipt of Rural Domestic Violence Enforcement Grant Program funds from the Violence Against Women Grants Office by Missoula County.

**Electronic Communications Policy** - The Commissioners signed Policy Statement No. 96-G, the Missoula County Electronic Communications Policy.

Other items included:

1) The Commissioners approved a title change to Facilities Manager for Art Garner (formerly Building and Grounds Supervisor).

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

JOINT CITY/COUNTY PUBLIC MEETING - IRRIGATION DISTRICT

LARGE COURTROOM, COUNTY COURTHOUSE

The Public Meeting was called to order at 7:00 p.m. by County Commissioner Chair Michael Kennedy. Also present were Commissioners Hart and Evans, Missoula City Mayor Mike Kadas, Jim Carlson, Environmental Health Director, and Marnie McClain, Deputy County Attorney.

Jim Carlson gave a presentation, using an overhead projector, of the history of the Irrigation District, its uses and problems. The outline of his presentation was:

**HISTORY OF CITY-GOVERNMENT INVOLVEMENT**

- June, 1993, Killingsworth child drowns
- August, 1993, City Council creates Safe Ditches Task Force
- 1994, Task Force Findings and Recommendations Issued
  1. Documented that 18 1-3 yr. olds, one 5 yr. old, one 13 yr. old and 3 adults have drowned in Missoula urban ditches, 16, in Missoula Irrigation ditches.
  2. Determined that the aquifer could supply all irrigation needs without fear of “mining”
  3. Determined that government has large expense in urban setting for ditch roadway crossings.
- Recommended that a GIS study be conducted to gather information concerning the location of ditches, use and access;
- Recommended that legal guidelines and opinions be developed about who needs to be legally satisfied to close or partially close ditches;
- Recommended ongoing public education; and
- Recommended continued dialogue on resolution of issues.
- July, 1994 - Commissioners approve funding of ditch mapping project.
- May, 1996, mapping project completed.

**PROPERTY PARCELS AND USE**

Parcels in District plus parcels out of District paying fees:

- 1,621, or 59%, no access
327, or 12%, out of District pay and no use
42, or 2%, out of District pay and use
406, or 15%, lawn/garden use
64, or 2%, Ag/Farm use
296, or 11%, access, no use
82% of the parcel population does not irrigate with ditch water
Total parcel population = 2,756

DISTRICT FEES COLLECTED IN AND OUT OF DISTRICT (1994)
43,885, or 49%, no access
9,372, or 10%, out of District pay and no use
1,276, or 1%, out of District pay and use
14,107, or 16%, lawn/garden use
7,924, or 9%, Ag/Farm use
13,404, or 15%, access, no use
Total revenue for 1995 = $89,993

ACREAGE IN DISTRICT BY USE
1,350 property owners, or 49%, have no access
491 property owners, or 18%, have access/no use
403 property owners, or 15%, Ag/Farm use
504 property owners, or 18%, lawn/garden use
Total parcel acreage inside District is 2,748

FEE STATUS OF PARCELS IN DISTRICT AS OF 1995
2,063 property owners, or 72%, paying fees
791 property owners, or 28%, not paying fees
369 property owners outside of District also pay fees

GIS STUDY CONCLUSIONS
The District is failing to maintain an accurate property list.
The majority of property owners in the District (69%) no longer have access to ditch water.
Irrigators were assessed only 25.9% of the fees in 1994.
The majority of users are west of Reserve Street
The channel that runs from 11th to 39th Streets serve only one agricultural use and few other users. This channel had 7 drownings.
Recommends further study determine options to eliminate land, exclude land, or dissolved the district.
If only users paid for the district, the cost would be $100 per acre instead of the current $22 per acre.

RECENT IRRIGATION DISTRICT ACTION
In August, 1996, added 797 parcels who were apparently in the court decree creating the district but were not paying fees. The resulting increase in requested District revenue was $24,819 (the list came from the Health Dept. via County Attorney)
There was no attempt to remove parcels that are out of the district and paying fees (327 paying and not using = $9,372 and 42 paying and using = $1,276

RECENT COUNTY COMMISSIONER ACTION
Request that staff attempt to set up a joint public hearing with the City to:
Hear comments from the public on this issue
Discuss potential actions that the City and County and citizens can take to remedy fee for service issues and other issues surrounding the Missoula Irrigation Ditch
Discuss potential roles and responsibilities that the County and City may pursue in cooperation

At the conclusion of his presentation, Jim stressed that the County Commissioners are not the Irrigation District Commissioners. There has often been confusion on this point.

Marnie McClain gave a presentation which included the history of the District and the legal aspects of the situation.

MISSOULA IRRIGATION DISTRICT HISTORY
A. Miller-Kelly-Cave-Gannon ditch
B. Welrick water rights adjudication - 1905
C. 1922 petition for creation of Irrigation District
D. Public corporation
  1. Promotion of public welfare
  2. Operated by an elected Board of Commissioners

HOW DOES AN IRRIGATION DISTRICT GET ITS MONEY?
A. Special assessments collected through tax rolls
  1. Commissioners of District determine needs of District
  2. Determine irrigable lands
  3. Proportionate assessment, unless the Board determines otherwise
B. Administrative fee
  1. 1989 amendment raised permissible fee from $5.00 to $75.00 per parcel
SOME LEGAL OPTIONS FOR LANDOWNERS IN DISTRICT
A. Dissolution of District - petition District court
B. Elimination of lands - petition District court
C. Individual petition to fix taxable area - petition District court
D. Constitutional challenges - assessment and levying procedures - petition District court

Michael Kennedy opened the public meeting.

The following members of the public stepped forward to speak:
Gene Diemer, 2624 Road
Art Garner, 4001 S. Russell
Aubry Grisdahl, 2405 39th Street
Bonnie Haines, 2415 39th Street
Merv Erickson, 2401 S. Hill Drive
Carryl Meyer, 2532 Highwood Drive
David Maclay, a long time resident of the Irrigation District
Brad Dantic, 4019 Bellecrest Drive (gave a list of tax assessed people in the District and a file of the books and records of the Missoula Irrigation District from 1991 through 1993 to the City/County officials for their review; Marnie McClain kept them for file.)
Wes Appelt, 1700 Cypress Way
Howard Hughes, 2621 Garland
James Regan, 303 Tower Street
Gary Botchek, 2530 Gunsight Court
Dwayne Lantel, President Homeowners’ Association, 7th Street
Bob Cole, resident of Miller Creek Road
Allan Grimsley, 1135 Tower Street
Tracy Turek, 2321 Mary Avenue
Clay Grovers, 3850 Spurgin Road
Elmer Frame, 185 Council Way
Kathy Schindler, 513 N. Davis
Andy Matheson, 2515 Garland
Carl Rabich, 1812 35th Street
Dave Ryan, 3605 Paxson
Sue Matthews, 1012 Tower Street
Dave Hastings, 3625 S. 3rd West
Judy Dahl, 2620 Highwood Drive
Art Stelling, 3040 S. 3rd Street
Bill Rolshoven, 2829 S. 3rd West
Ben Lowman, 3917 Spurgin Road
Bob Tremper, 4311 Lake Place

Those listed above gave various testimony of the Irrigation District. Most had complaints regarding the District, the primary complaint being charged a fee for the ditches when they had no opportunity to ever use them, or because they were not even in the District and were not able to remove the charge from their tax bill despite many attempts, sometimes over long periods of time. Other problems included getting a response from the District for problems they had with availability, maintenance or repair of the ditches. Some stated they use the ditches for irrigation and were concerned that they would be closed. One person testified that the Irrigation District had been responsive to his call to them requesting repair of a ditch on his property.

Michael Kennedy thanked everyone for the comments and information. He asked if anyone else wanted to speak? No one came forward.

Fern Hart also thanked everyone for taking the time to attend the meeting and express their opinion. She said she did not have an agenda but, after many calls to her office, she wanted to raise the issue and see if they could solve it. She wants to see local government help the people solve a problem that they cannot solve themselves.

Mayor Kadas asked if anyone was in the audience from the Irrigation District? No one spoke. He said this was part of the problem. There is clearly an inability for a lot of people to get any kind of response from the Irrigation District. The biggest concern is no access but to have to pay for the resource. He is convinced something needs to be done about that and hopes the City/County joint effort can help.

Barbara Evans said in the years she has been in office she has numerous calls to complain about the inability to get out of paying for something they don’t have and can’t get and she agreed with the callers that wasn’t fair. She realized it is almost impossible for people to get out of the District. She believes government is to represent the people and, in this case, there are about 2,500-3,000 people. She has not seen a lot of response from the Irrigation District. They are not receiving the required legal documentation from the Irrigation District. This Board is not saying they are closing the ditches, but are gathering information and are open to ideas on the problems. Wells are a consideration. They have been looking at paving Blue Mountain Road and the cost to put in a culvert would cost about three-quarters of a million dollars, significantly increasing the cost of paving the road. There may be another way to deal with this and still provide irrigation water for those who need it. She stated they have no answers but that is the purpose of this meeting, to go to the people and hear them and ask for their help in solving this problem. She invited anyone to also write to them if they had any further thoughts on this.

Michael Kennedy agreed with Commissioner Hart that they had no agenda for this meeting. They had this meeting because the City and County have received so many calls, which have given them great concern. The overall cost that accrues to the ordinary taxpayer of the County is an enormous cost, a cost which increases every year. The accountability of the District is also a major issue. The Commissioners received telephone calls about that problem...
weekly. Other issues include safety and the drownings that have occurred, the deterioration of the ditches themselves, and the basic unfairness. These are major issues that need to be addressed. In response to the people’s request, they intend to seek a solution. He assured the people that there was no attempt whatsoever to remove or deny water rights for anyone who is currently served. They will work to preserve those water rights. The water right issue is not the reason for this meeting, but the other items he just mentioned are. He thanked everyone for coming and adjourned the meeting.

The meeting was adjourned at 9:15 p.m.

WEDNESDAY, DECEMBER 18, 1996

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

DAILY ADMINISTRATIVE MEETING

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

Note - The Commissioners signed a note to Charlie Rock regarding his retirement.

Professional Services Contract - The Commissioners signed a Professional Services Contract with Lara Soward to complete a portion of the Missoula County Benchmarking Project for growth management. Performance schedule is from December 1, 1996 through March 31, 1997. Compensation shall not exceed $4,800.00.

Other items included:

1) The Commissioners moved to pursue condemnation of airport and Mickelson lands for the I-90 Interchange project. Motion carried 3-0.

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

PUBLIC MEETING --DECEMBER 18, 1996

The Public Meeting was called to order at 1:30 p.m. by Chair Michael Kennedy. Also present were Commissioners Barbara Evans and Fern Hart.

BID AWARD: 3 MOTOR POOL VEHICLES (CENTRAL SERVICES) - POSTPONED FROM DECEMBER 4TH

Michael Kennedy said this a request to purchase three cars for motorpool replacement for Central Services. The County advertised for bids on November 17 and 24, 1996, in and around Missoula. The County received four responses: lease returns, Ronan Auto Body, $12,200 each, lease returns, Grizzly Auto, $13,960 to $15,253 each, demos, DeMarois Oldsmobile, $16,741 and $15,457.93 each, and lease returns, Karl Tyler Chevrolet, $10,900 each. All vehicles are under 25,000 miles. $54,000 was budgeted. The recommendation is to purchase all three vehicles from Karl Tyler Chevrolet for $10,900 each, for a total of $32,700.

Fern Hart moved that the Board of County Commissioners approve the purchase of 3 vehicles for motorpool replacement from Karl Tyler Chevrolet for $10,900 each, for a total of $32,700 in that it is the lowest and best bid. Barbara Evans seconded the motion. Motion carried 3-0.

SWAN VALLEY-CONDON COMPREHENSIVE PLAN AMENDMENT

Zoe Mohesky, a Rural Planner, in the Long Range Division of the Office of Planning and Grants, presented the staff report for the 1996 updated version of the Swan Valley-Condon Comprehensive Plan Amendment. She spoke not only as a staff member but as a representative of the Swan Valley Comprehensive Planning committee of the Swan Valley Community Club. She served as a planning resource person on this committee over the course of this Plan’s development.

The Swan Valley Community Club is an organization that was organized to manage the Swan Valley Community Center. The Community Club is composed of all Missoula County citizens of the Swan Valley. A Comprehensive Plan committee of this group was organized to update the 1987 plan. Members were chosen to participate on the committee to represent the various interests in the valley.

The planning process began when several members of the Community Club decided to review the 1987 plan - back in the winter of 1995. The Swan Valley portion of the county was one of the first regions of Missoula County to develop their own neighborhood-type of plan back in 1987. It is therefore reasonable that this area is one of the first to come in with an update to their Plan.

Since the Winter of 1995, the Comprehensive Planning Committee of the Community Club has met over 20 times to reach this final draft of the Comprehensive Plan amendment. On August 8 the first draft for citizen review was completed. These were distributed throughout the valley with coverage of the Plan’s availability in the local Seeley/Swan newspaper - the Pathfinder. An open house was held on August 22 to gather citizen comments on the draft.

Following the Open House, the Comprehensive Planning Committee reviewed all citizen comments and suggestions. Several changes were made to the draft based on the citizen comments to produce a final draft for the Planning Board hearing.
The Planning Board held a public hearing to consider the Final Draft on November 26. This hearing was held in the Swan Valley. Six members of the public spoke at the public hearing. Four were in favor and a couple of those proposed some minor changes. One spoke in opposition to the plan and one person was neutral.

Swan Valley residents respect and treasure the rural and wild character of the place they live. The Committee believes the primary objective of the valley’s residents is to retain this character. This Plan is designed to accomplish several general goals which consist of:

1) protecting the environment, while also
2) allowing for economic development consistent with the needs of the valley
3) providing a variety of housing and land uses that do not diminish the rural character of the area
4) enhancing human services, educational and recreational opportunities; and
5) protecting the health, safety and welfare for the people of the region and the broader Missoula County.

The Land Use Section guides types of development in the valley. However, when a subdivision is proposed, all aspects of the plan are considered. A division of land must substantially meet a majority of the goals and action strategies, where feasible, to receive a positive recommendation

The land use designations were developed based on some specific resource concerns in the valley. Two other Residential categories: Rural Residential Cluster Development and Alternative Residential, as well as, General Commercial and Light Industrial are not specifically mapped. If these types of land use are reviewed as subdivisions, the action strategies (on pages 25 - 28 of the Plan), along with the goals and action strategies of the entire Plan will be applied to guide their design and their compatibility with the character of the area.

The Missoula City/County Consolidated Planning Board unanimously recommended approval of the Swan Valley-Condon Comprehensive Plan Amendment subject to amendments proposed by the board at the public hearing. The amendments were in response to public comment at the public hearing and upon the Planning Board’s expertise on certain topics. Amendments are shown in the document before the Commissioners in bold, in a different font and with a reference to a Planning Board change.

The staff of the Office of Planning and Grants recommends approval of the Plan Amendment subject to the Planning Board’s recommended changes, with one minor exception. On page 25, the Planning recommended the addition of one action strategy which reads, “Begin compiling a record of residential, general commercial and light industrial land uses within the study area.”

Staff would suggest that this strategy be more general so all uses would be recorded and not limited to general or light. The staff’s suggestion would be that this reads, “Begin compiling a record of residential, commercial and industrial land uses within the study area.”

She said she would be glad to address any questions the Board may have, and thanked them for their consideration.

Michael Kennedy opened the public hearing.

Cass Chinske, 717 Cherry St., supported the amendment as proposed by Zoe.

Ron Ewart supported the amendment as presented and suggested that the process to arrive at the proposed amendment be used as a standard for others to follow in amending their Comp Plans.

Mike Lake, resident of Swan Valley, commended the professionalism and quality of work of Zoe Mohesky.

Michael Kennedy thanked everyone for their comments and closed the public hearing.

Fern Hart said they are in agreement with the Planning Board and Plum Creek and recommend to add:

Plum Creek has committed to the U.S.Fish and Wildlife Service, the Montana Department of Natural Resources and the U.S. Forest Service that it will share and discuss plans prior to sale or exchange of any lands within the area of the Swan Valley Grizzly Bear Conservation Agreement; and

If cultural resources and human remains that are uncovered during any earth moving, the Tribal Preservation Office and the State Historic Preservation Office request to be contacted before further disturbance of the site occurs. If the cultural resources that are uncovered are human remains, then the procedures outlined in State Statute would be followed.

Fire Protection Goals on page 13, item no. 2, delete “by the County” in the first sentence and delete the entire second sentence.

Michael Kennedy asked if these were to included in a motion?

Fern Hart moved that the Board of County Commissioners make the changes to the Swan Valley-Condon Comprehensive Plan that she just noted. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart moved that the Board of County Commissioners make the following changes:

Alternative Residential, 2nd paragraph, change “activity areas” to “areas of activity.” This occurs twice in the middle of the paragraph. Barbara Evans seconded the motion. Motion carried 3-0.

Fern Hart said there is a suggestion that conditions for zones be developed and that those conditions will apply when needed, as in commercial areas; we need to keep track on how development is there and how it is changing.
Land Use Action Strategies, item no. 7, delete “general” and “light” from the second sentence to make the condition more general to include all land uses, thus reading “Begin compiling a record of residential, commercial and industrial land uses within the study area.” Barbara Evans seconded the motion. Motion carried 3-0.

Barbara Evans moved that the Board of County Commissioners adopt the Swan Valley-Condon Comprehensive Plan Amendment as submitted, with the changes as noted above. Fern Hart seconded the motion. Motion carried 3-0.

CONSIDERATION OF: WALDO WILLIAMS ADDITION (1-LOT SUBDIVISION - SUMMARY PLAT) NEAR THE WYE

Pat Keiley, Office of Planning & Grants, gave the following presentation.

The Waldo Williams Addition summary plat is a request from Druyvestein Johnson and Anderson to create a one lot subdivision from an original 500+ acre tract of record. The lot is referred to as Tract A-1 and measures 19.43 acres in size. There will be a proposed remainder of approximately 500+- acres. The current and proposed use of the remainder is agriculture (hay). The proposed subdivision is located north of the “Wye” area, and adjacent to Spring Meadows Subdivision and Jim and Mary’s RV Park. This 19.43 acre parcel is legally described as the NE 1/4 of Section 21, T14N, R20W.

The purpose of the subdivision is to transfer and create a parcel (19.43 acres) from a parent parcel 500+ acres) that can be subdivided. The applicant is in the initial stages of preparing a subdivision for this 19.43 acre parcel. The land is currently vacant. The proposal calls for a single single-family residential home site, private well and private septic/drainfield. No additional structures or improvements are proposed for the land.

Access to the subdivision is from Lady Slipper Lane, an existing county maintained road that abuts the north side of the property, and has a paved surface width of 24 feet, within a 60 foot right-of-way. Paintbrush Lane, an existing county maintained road, also abuts the proposed subdivision to the north and connects to Lady Slipper Lane, and measures 60 feet in right-of-way and 24 feet in surface width.

Surrounding land uses include non-irrigated pasture land to the south and west and single-family residential to the north and east.

Gilbert Larson, Druyvestein Johnson & Anderson, representing the interests of Waldo Williams Estates, said they concur with the recommendations as stated.

Barbara Evans moved that the Board of County Commissioners approve the summary plat of Waldo Williams Estates, located adjacent to Spring Meadows Subdivision and Jim & Mary’s RV Park, approximately 1 mile north of the Wye intersection of I-90 and Highway 93, legally described as the NE¼ of Section 21, T14N R20W, P.M.M., based on the findings of fact and contingent on the conditions listed below. Fern Hart seconded the motion. Motion carried 3-0.

1. All dead-end driveways in excess of 150 feet in length shall have approved turn-around 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 13’6” 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 by the Missoula Rural Fire District.

2. The applicant shall include language on the face of the plat stating that acceptance of a deed for a lot within this subdivision constitutes the assent of the lot owners to waive the right to protest a future RSID/SID for a community sewer and/or community water system, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.

3. The applicant shall include language on the face of the plat stating that acceptance of a deed for a lot within this subdivision constitutes the assent of the lot owners to waive the right to protest a future RSID/SID for sidewalk or pedestrian pathways or bikeways for Paintbrush Lane and Lady Slipper Lane, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.

4. The applicant shall be required to obtain an approach permit from the County Surveyor prior to final plat approval.

5. That the developer contribute $50.00 per lot for the purchase of a large diameter hose.

CONSIDERATION OF: MOUNT JUMBO OVERLOOK SUMMARY PLAT (EAST MISSOULA AREA)

Pat Keiley, Office of Planning & Grants, gave the following presentation.

The Mount Jumbo Overlook Addition is a request from Mr. Tom Hanou for a 3-lot residential subdivision of a 10.0 acre tract of land located approximately 1/2 mile northeast of East Missoula, on the southeast side of Mount Jumbo. The property is legally described as the S 1/2 of Section 13, T13N, R19W. Lot 1 measures 2.47 acres in area, Lot 2 measures 4.0 acres in area and Lot 3 measures 3.53 acres in area. There is an existing house with an private well and septic system on Lot 2. Access to the subdivision is from Edgewood Drive, a county maintained road that measures 60 feet in right-of-way width and 24 feet in surface width. The road is paved. The county road connects to a private road that measures 60 feet in easement width and 12-18 feet in surface width. The private road has no name is graveled. Individual private well and septic are in place to serve the existing home in this subdivision on Lot 2. Individual private well and septic are proposed for the other two lots. These will require review by the Missoula City/County Health Department. Surrounding land uses...
include rural residential tracts on the south and east and vacant grassland on the north and west. A treed area of Mount Jumbo is located to the west.

Erica Brown, Professional Consultants, Inc., represented the applicant, Mr. Tom Hanou.

The following members of the public spoke:

Cass Chinske, 717 Cherry Street
Mike Nelson, first person to live in that area, lived up there for 26 years
Larry Connell, neighbor
Nancy Jean Beck, neighbor, resident for 4 years

Much discussion ensued between the Commissioners, Colleen Dowdall, Deputy County Attorney, Erica Brown, and the local residents regarding the road going to the subdivision and its ability and safety in handling more traffic. Testimony was given that the road is narrow and steep and, in some places, not even wide enough for 2 cars to pass. Dust is also a problem in the summer. This was the primary concern of area residents, who were not necessarily in opposition to the subdivision. They also expressed concern about erosion if large animals were allowed because the area is very fragile and because there is very little native grass left and a horse, for instance, could eat it all in 2-3 weeks; concern was also raised about the quantity of water available.

Barbara Evans moved that the Board of County Commissioners grant the variance from Section 3-2(1) requiring sidewalks and pedestrian walkways for Mount Jumbo Overlook Addition, located approximately ½ mile NE of East Missoula, on the SE side of Mount Jumbo, legally described as the S½ of Section 13 T13N R19W. Fern Hart seconded the motion. Motion carried 3-0.

Barbara Evans moved that the Board of County Commissioners grant the variance from Section 3-3(1) for Mount Jumbo Overlook Addition, located approximately ½ mile NE of East Missoula, on the SE side of Mount Jumbo, legally described as the S½ of Section 13 T13N R19W, from the width requirement to the extent that the roadway is established by an engineering design that is acceptable to the County Surveyor and to the Board of County Commissioners that 2-way traffic will be possible on the roadway. Fern Hart seconded the motion. Motion carried 3-0.

Barbara Evans moved that the Board of County Commissioners approve the summary plat of the Mount Jumbo Overlook Addition subdivision, located approximately ½ mile NE of East Missoula, legally described as the S½ of Section 13 T13N R19W, based on the findings of fact in the staff report and contingent on the conditions listed below. Fern Hart seconded the motion. Motion carried 2-1. Michael Kennedy opposed.

1. The Mount Jumbo Overlook Summary Plat Subdivision covenants shall be amended to include the following:

   A. That any driveway over 150 feet in length shall have an approved turn-around 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 13’6” 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 by the East Missoula rural Volunteer Fire Department.

   B. That there be a 30 foot radius turnaround in the vicinity of proposed house #3 (Lot 3), and there be a 30’ X 50’ level wide section on the proposed driveway to Lot 3, to be approved by the East Missoula Rural Volunteer Fire Department.

   C. That an acceptable means of water supply for fire suppression purposes is available for the property. This shall be approved by the East Missoula Rural Volunteer Fire Department.

   D. The property owner shall create a defensible space for fire protection purposes as approved by the appropriate fire jurisdiction. Vegetation shall be removed and reduced around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guidelines as established by the fire jurisdiction. Ornamental trees and shrubs should not touch any buildings. When planting, the property owner shall select trees, shrubs and vegetation that limit or retard fire spread as suggested below:

1) Perennial: Choose hardy perennial flowers that are adapted to our climate. These green, leafy, succulent plants are difficult to burn. Watering and regular weeding improves fire resistance.

2) Shrubs: Evergreen shrubs such as dwarf conifers or junipers tend to ignite easily; avoid them unless well spaced.

3) Trees: Deciduous trees can be clumped, scattered, or planted in greenbelts or windbreak patterns. Evergreen trees tend to ignite easily and should be spaced in accordance with the landscaping guidelines in Appendix V of the Missoula County Subdivision Regulations.

4) Roof Construction: In areas of Wildland Residential Interface (WRI), the following standards shall be used in roof construction:

   a. Use only Class A or B fire-rated roofing materials.

<table>
<thead>
<tr>
<th>Fire Rating</th>
<th>Type of Material</th>
<th>Spread Index</th>
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</thead>
<tbody>
<tr>
<td>Class A</td>
<td>Slate</td>
<td>0-25</td>
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<tr>
<td></td>
<td>Rock Shingle</td>
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<td>Concrete Tile</td>
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<td>Fiberglass Based;</td>
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DECEMBER, 1996 - 18 - FISCAL YEAR:

- rolled roofing

Class B Aluminum Shingle 26-75
Aluminum or steel panels

This shall be approved by the appropriate local fire jurisdiction.

D. The “Living with Wildlife” brochure shall be included as an appendix to the covenants and given to all residents.

E. Covenants can only be changed if they do not conflict with the Missoula County Subdivision Regulations and with approval of the County Commissioners.

2. The applicant shall include language on the face of the plat stating that acceptance of a deed for a lot within this subdivision constitutes the assent of the lot owners to waive the right to protest a future RID/SID for a community sewer and/or community water system, based on benefit, and may be used in lieu of signatures on an RSID/SID petition.

3. To clearly indicate the extent of the steep slope areas (greater than 25% slope) and the wildlife corridor and wildlife adjacent areas, the applicant shall place a “no-improvement” zone on the face of the plat. One “no improvement” zone shall be located 20 feet to the west of the existing driveway to Lot 3, extending to the west property boundary. A second “no improvement” zone shall be placed along the eastern portion of the property, with both zones to be approved by OPG prior to final plat approval. A perimeter fence shall be allowed in the “no improvement” zone.

4. The covenants shall be amended to note that no improvements shall be permitted within this “no-improvement” zones. A perimeter fence shall be allowed in the “no improvement” zones.

5. That the developer obtain approval from the East Missoula Rural Volunteer Fire Department for all driveway widths and turnarounds on the subject property and for access from Edgewood Lane to the subject property.

6. The following statement shall be included on the face of the plat and in each instrument of conveyance: “The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or property-owners' association and that the County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are brought up to standards and accepted by the County of Missoula for maintenance.”

7. To clearly indicate the extent of the “non-native vegetation” zone, the applicant shall place a “non-native vegetation” zone on the face of the plat, to be approved by OPG prior to final plat approval.

8. The covenants shall be amended to note that non-native vegetation is only allowed with in the “Non-native vegetation” zones.

9. The covenants shall be amended to prohibit lot owners to maintain horses or cattle on the property.

10. That prior to final plat approval that the applicant conform to the zoning by either paving the driveway to Lots 1 and 2 in accordance with Missoula County Zoning Resolution Chapter 3.02(A)(3) or by obtaining a variance from the regulation through the Missoula County Board of Adjustment.

11. The access road to the property line should be named and approved by the County Surveyor.

12. All new utilities shall be placed underground, and easements shall be a minimum of 20 feet in width unless a narrower width is approved by the appropriate utility and the governing body. In addition to showing the locations of all easements, the following statement shall also be shown on the face of the plat: “The undersigned hereby grants unto each and every person, firm or corporation, whether public or private, providing or offering to provide telephone, telegraph, electric power, gas, cable television, water, or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair, and removal of their lines and other facilities, in, over, under, and across each area designated on this plat as ‘Utility Easement’ to have and to hold forever.”

13. The developer be required to mitigate the access road to improve the safety of the public such that the traveled way allows for 2 cars to pass, or meet the requirements of the County Surveyor for turn-outs that are placed within site distance. Further, the developer be required to effect a road maintenance agreement with the property owners adjoining the road, or that the developer be responsible for maintaining the road, including grading, snow removal, and dust abatement, subject to the approval by the Board of County Commissioners and County Surveyor.

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

THURSDAY, DECEMBER 19, 1996

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Kennedy was in Helena attending a Hard Rock Mining meeting.
DAILY ADMINISTRATIVE MEETING

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

**Letter** - The Commissioners signed a letter to Tom Stuckey approving his request to amend the plat for Sandi Acres No. 2 by removing the requirement to place building envelopes on the face of the plat.

Other items included:

1) The Commissioners moved to formally approve the PHC site adjacent and west of the Health Building on Alder Street. Motion carried. The Board requests the CDBG process to meet state requirements be continued for this property.

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

FRIDAY, DECEMBER 20, 1996

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

No administrative meeting was held; however, the following items were signed:

**Master Agreement** - The Commissioners signed a Master Agreement with IUOE Local 400, Butte Teamsters Union Local #2 IAM and AW, District 86, Local Lodge 88, for the period July 1, 1996 through June 30, 1997, upon recommendation of the Personnel Director.

**Plat** - The Commissioners signed the plat for Catherine Addition, a minor subdivision located in the NW1/4 of Section 35, T13N R20W, Missoula County, a total of 4.67 net acres, with the owner of record being Catherine W. Schmitz.

**Modification No. 2** - The Commissioners signed Modification No. 2 of an agreement with the Montana Department of Public Health and Human Services concerning the WIC Program, in order to extend the agreement through September 30, 1997, and to add security and database access requirements. Total payments by DPHHS may not exceed $446,968.00.

**Review** - The Commissioners reviewed and approved a Review of the Clerk and Recorder’s Office as of October 31, 1996, performed by the Missoula County Auditor’s Office - Susan Reed, Auditor. It was forwarded to the Clerk and Recorder for filing.

**Memorandums of Agreement** - The Commissioners signed two memorandums of agreement: one with Extended Family Services for purchase of services for children who are victims of domestic violence, abuse and neglect in Missoula County. Cost of the agreement is $12,500.00. Duration of the agreement is the third and fourth quarters of FY97, commencing January 1, 1997 and terminating on June 30, 1997; and one with the Western Montana Regional Community Mental Health Center for purchase of chemical dependency intervention services for youth (provided by Turning Point). Cost of the agreement is $1,740.00. Duration of the agreement is from July 1, 1996 through June 30, 1997.

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

MONDAY, DECEMBER 23, 1996

The Board of County Commissioners met in regular session; a quorum of members was present. Commissioner Evans was out of the office December 23 and 24.

**Audit List** -- Commissioners Kennedy and Hart signed the Audit List, dated December 23, 1996, pages 2-36, with a grand total of $123,449.70. The Audit List was returned to the Accounting Department.

**Indemnity Bond** -- Acting Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Nick Meyer (Nick Meyer Welding) as principal for Warrant #89288 issued 11/14/96 on the Missoula County General (MCHS) Fund in the amount of $4,769.06 now unable to be found.

**Indemnity Bond** -- Acting Chair Hart examined, approved, and ordered filed an Indemnity Bond naming Office City as principal for Warrant #38531 issued 9/17/96 on the Missoula County Building Fund in the amount of $398.00 now unable to be found.

No administrative meeting was held; however, the following items were signed:

**Memorandum of Agreement** - Chair Kennedy signed a Memorandum of Agreement between the Missoula County Park Board and Missoula Westside Little League, Inc., wherein the Park Board agrees to provide up to $2,500.00 in matching funds to install underground irrigation at a Little League field at the County’s Tower/Spurgin Road property. The Agreement was returned to Tammy in OPG for further handling.
Contract - Chair Kennedy signed Contract No. 9723SPTG7011 between the Montana Department of Public Health and Human Services/Child and Family Services Division, and the Missoula City County Health Department for Day Care Block Grant for specialized training. Duration of the contract is from December 1, 1996 through September 30, 1997. Cost of the contract is not to exceed $7,904.00. The contract was forwarded to DPHHS in Helena.

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

TUESDAY, DECEMBER 24, 1996

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

No administrative meeting was held; however, the following items were signed:

Resolution - The Commissioners signed Resolution No. 96-098, a resolution to rezone Lot 1, Bank Addition, located at the intersection of Old Highway 10 and West Riverside Drive in the Milltown area, in the NE1/4, NE1/4 of Section 20 and the NW1/4, NW1/4 of Section 21, T13N R18W, PMM, from C-I1 (Light Industrial) to C-C3 (Heavy Commercial) with conditions.

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

WEDNESDAY, DECEMBER 25, 1996

The Courthouse was closed for Christmas Day. No weekly public meeting was scheduled due to the holiday.

THURSDAY, DECEMBER 26, 1996

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

FRIDAY, DECEMBER 27, 1996

The Courthouse was closed due to inclement weather.

MONDAY, DECEMBER 30, 1996

The Courthouse was closed due to inclement weather; however, all three Commissioners were in the office briefly to sign the required emergency proclamation.

No administrative meeting was held; however, the following item was signed:

Resolution - The Commissioners signed Resolution No. 96-099, an emergency proclamation because of heavy snowfall and freezing rain causing hazardous conditions in Missoula County.

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

TUESDAY, DECEMBER 31, 1996

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

No administrative meeting was held; however, the following items were signed:

Memorandum of Agreement - Chair Kennedy signed a Memorandum of Agreement between the Missoula County Park Board and Bonner Elementary School/Friends of Bonner, wherein the Park Board agrees to provide up to $1,100.00 in matching funds for installation of play equipment at Bonner Elementary School.

Professional Services Contracts - The Commissioners signed two professional services contracts: one with Kent Watson and Associates, Landscape Architects, for landscape services as requested by Missoula County. Performance Schedule is from July 1, 1996 through June 30, 1997. Compensation shall not exceed $10,000.00; and one with B. Anne Renaud for appraisal services as requested by Missoula County. Performance schedule is from July 1, 1996 through June 30, 1997. Compensation shall not exceed $10,000.00.

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