

PUBLIC MEETING – June 9, 2004

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

Pledge of Allegiance

Public Comment

None

Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$283,019.30. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Stratton Family Transfer (Postponed from June 2, 2004)

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 55-B of COS 4865, located in the southeast one-quarter of Section 17, Township 14 North, Range 20 West.

Richard D. Stratton has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10.80 acres in size located near Missoula, Montana. Richard proposes to create one approximately five acre parcel for transfer to his wife, Shelly Carol Stratton, for residential purposes and keep the remaining approximately 5.80 acre parcel for residential purposes as well.

The history of the parcel is as follows: In 1996, Edward W. Bouma entered into a written agreement for the sale of Tracts 55 and 57 of COS 1925, to Adam V. and Helen A. Holzer. Adam and Helen filed COS 4865 in October, 1998, with the intent to qualify for the family transfer exemption. Tract 55-B was transferred to Darla J. Bartholomew, their daughter. Darla filed a quitclaim deed in November, 1998, deeding Tract 55-B to Daryl M. Holzer. In August, 2003, an agreement was entered into by Daryl Holzer to sell the tract of land to Richard D. Stratton.

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

The public hearing on this request was held on June 2, 2004, however, only two Commissioners were present. The applicant and Commissioners agreed to delay the decision one week to avoid a tie vote, which would have effectively denied the petition. Mr. Stratton testified that the property would be sold and the money used to build a house for he and his wife on the remainder parcel.

Gilbert Larson stated that this is a request from Rick Stratton to do a family transfer to his wife. He has thought a lot about this, the reasons to do a family transfer rather than go through subdivision review. The cost to do a Certificate of Survey is between \$2,500 and \$3,000 and takes about 4 months to complete. The review process with the Department of Environmental Quality is the same for both Certificates of Survey and subdivisions. There are also similar survey requirements. A minor 2-lot subdivision would cost between \$7,000 and \$12,000. Instead of an affidavit, a preliminary plat and supplemental data sheet are prepared and later a separate final plat is required. A 40 to 50 page submittal is required instead of a short affidavit. A topographical survey of the entire lot is required which costs about \$1,500. After the packet is prepared, it is certified as complete with OPG. That process usually takes a couple of weeks. To go through the subdivision process takes an additional 4 months on top of what a COS would have been. After the certification, agency review is required. Approximately 50 copies of the packet need to be printed at \$15 to \$20 each, for an additional cost of \$750. It takes significant effort to complete the agency review process. After agency review, the packet is submitted for review by OPG. There are several required meetings, including a pre-application meeting, neighborhood meetings and hearing before the governing bodies. Conditions of Approval are recommended, then the final plat can be filed. On one subdivision, he has spent over 20 hours just obtaining the necessary signatures on a final plat, which is not atypical of a subdivision proposal. Twenty hours spent just collecting signatures on a final plat is about half the time required to do a Certificate of Survey. One of the

biggest differences between a Certificate of Survey and a final plat is that Conditions of Approval can be set. This particular area has about 300 feet of frontage on a gravel road that does not meet subdivision standards. It would cost about \$75 per foot to improve the road to meet standards, with a potential cost of \$22,500 to pave the road. A variance can be requested but it may or may not be granted. The applicants may end up with a subdivision they cannot afford to file. There is an expense of \$7,000 to \$12,000 before they even know if it can be filed; it could be denied. It is only a couple hundred dollars with a Certificate of Survey to get to the point of whether they know it can be filed or not. Those are some of the key reasons they advise clients to consider a Certificate of Survey rather than a subdivision; the time, the expense, the risk factor of the conditions that might be imposed. In each case, whether or not this meets the conditions of law are looked at. As he reads the law, it appears there are three tasks it must pass. The first is that it must be outside a platted area. The entire area of Fire Bucket Loop has been created through Certificate of Survey, it is not a platted area. It has not gone through subdivision review, there are no paved roads or curbs or street lights, etc. This is the norm for the area. No good would be done for the entire area by having this tiny corner of Fire Bucket Loop reviewed as a subdivision. The second test is whether it meets the criteria, a legitimate transfer to a family member. A transfer to a spouse may not be common but it is allowed by law. If a husband gives a tract of land to a spouse, the husband benefits also. It is their intent to use this exemption to be able to build their own home. It will increase the value of the land and allows them to build a home and live in the area, which is why they are requesting the transfer. The third and perhaps the most difficult criteria is that "the disposition of land should not evade the subdivision law." That is the one most struggled with. In his opinion, Rick Stratton is not evading the law at all. He has been very forthright and honest. The transfer is bona fide, from him to his wife. She might hold the land for a year or two, but it is their intent to sell that tract and use the money to build her a home. There has been no evasion. They are trying to avoid the expense of doing a subdivision. As an example, if someone is evading a policeman, it creates a mental picture of someone who has done something wrong and is trying to keep away from a policeman. If they are avoiding the policeman, it does not create the same mental picture; for whatever reason they don't want to talk with a policeman, but not because they have done something wrong. That is the case today. Rick Stratton has not done anything wrong. He has been forthright and honest. He wants to transfer a piece of property to his wife and has not done anything that is not allowed under the law. If this were to go through subdivision, the expenses could be between \$30,000 and \$40,000 if all standards were implemented and no variances were granted. That is a huge risk for Mr. Stratton. About \$10,000 would be expended before he would even have an answer to what additional expenses would be required. Mr. Stratton is not a developer. It is respectfully requested the Commissioners approve this family transfer.

Chairman Evans opened the public hearing.

Rick Stratton stated he wanted to make a couple of clarifications. It is not for sure that he will sell the property and build a home; that is not an absolute. He and his wife also had discussed selling the property and paying off their student loans, or getting her master's degree. Also, if a lot is eventually sold, it would be the one in his name, not the one in Shelly's name. The division of land to the right of his property was done through a family transfer and he now has a lot for sale. The division of land to the left is doing the same thing and he knows of two others down the road that have done the same thing. He doesn't know why he is being singled out as evading subdivision review, it offends him. The problem is not him or the folks around him, the problem is the law, it is ambiguous and subject to interpretation. The law needs to be changed. What legitimizes a family transfer, holding the land for a year or two, but not six months. Perhaps such a clause needs to be included in the law so it can be enforced and the Board doesn't have to rule on these requests. He suspects the Board doesn't enjoy making these determinations, nor does he enjoy going through the process.

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

Commissioner Carey stated that it might be good if Mr. Stratton talks with Dick Haines, who has served in the State legislature and is running for the senate. Those are the people that write the laws, the Commissioners don't determine policy, they follow State statutes. For the past several years, legal counsel has instructed the Board to ask an applicant, on the record, whether or not this is an attempt to evade subdivision review, what their intention is for the property. Everyone is asked the same questions he was asked and now it would appear that others have not been as honest as he has. When he said he was going to subdivide his property and sell a parcel, as explained by the County attorneys, that is against the law. Gilbert makes some very persuasive arguments to the contrary.

Chairman Evans stated she does not like this process, she cannot read someone's mind. The law clearly gives Mr. Stratton the right to give a piece of land to his wife, once in the County, once in his lifetime. From her perspective, that is what he wants to do. Another factor to look at is whether he is a developer who is doing this routinely. That does not appear to be the case. He appears to be an honest man who wants to have a house for himself and his wife and who has the land to split to do so. She does not see evasion, she sees avoidance. She is willing to approve his request for a family transfer.

Commissioner Curtiss stated that Gilbert's testimony did both good and bad. The map shows a subdivision that was created illegally a long time ago which is why there are all these COS's in the area.

Mike Sehestedt stated an action was brought against the original developer in the mid-1980's and some relief was granted to the County. The land was split into 20 acre tracts and marketed as being available for additional division through family transfers. Many of those splits were done and there was no limitation to the number of divisions.

Commissioner Curtiss stated that many divisions were done without review and now Fire Bucket Loop is a very poor road, because it was not reviewed for proper access. A subdivision is expensive but there are many reasons the process should be done, proper access, connecting roads, sidewalks, etc. She sees this request as something the law does not allow.

Commissioner Carey asked what legal basis the Board could rely on to approve the family transfer. What should the Board tell the next person that wants to do the same thing.

Mike Sehestedt stated the purpose of the review is to determine whether or not the exemption is being used to evade, as opposed to avoid, subdivision review. The analogy of taxes can be used. Tax avoidance is a large industry and considered a noble effort; tax evasion is a criminal offense and considered to be despicable. The line between the two is difficult to draw and particularly hard in this case. The principal basis used is if there is some substantial reason for division of the property, other than creating two parcels, one to sell and one to use, for the benefit of the community. The Board must decide if an applicant is planning to use the exemption to create a "straw" transaction; creating a parcel, transferring it to a minor child's trust, then the trust sells the property with little real benefit to the child. There is no way to check the benefits from the proceeds of such a sale. A gift to a spouse is even more problematic in a traditional, intact marriage. Reasons for a transfer to a spouse could be they don't want to encumber the entire tract with a construction mortgage or the wife wants to own part of the property free and clear for her own sense of security. The net effect is the value of the community's property has been enhanced. This is a straight exposition that they are engaged in this activity jointly, whereby he is going to convey half of the property to her so she can sell it so the proceeds can be used mutually to build a house.

Rick Stratton stated there will be two 5 acre lots. If he was creating three or four lots, he could understand that he was evading subdivision. This is just 2 lots, one will go to his wife and one he will retain. Potentially, they will build a home. Everyone is saying they are going to build a home and sell it. He shared some ideas of what could happen, but it doesn't mean that is exactly what will happen. He is trying to be frank about the situation. If they do sell a piece of property, it would be the one in his name, not the one in Shelly's name. It will not be done this year, that is for sure. It might not be done in another year or two. He said they would potentially sell one of those lots and if they do, it will be the one in his name. Maybe he should have never said that. Right now, they live on Mullan Road which is going through a lot of changes. So is the Tookie Trek area. They are going to have a huge bill to pay for the Mullan sewer. There is a lot going on in his family life right now which he has not shared with the Commissioners.

Commissioner Carey asked what legal basis the Board has to approve this family transfer.

Colleen Dowdall stated that it is not legally significant which lot is sold, that wasn't an issue. The things the Board relies upon in determining whether there is an attempt to evade subdivision review are all the questions that are asked – what does the person do for a living, whether they have a history of using exemptions, what the history of the area is for exemptions and what the plans are for the property. It is the Board's judgment whether it is an attempt to evade subdivision review. Additional facts from Mr. Stratton have been presented this week that clarify he and his wife's plans. The Board must take those into consideration and determine whether this is an evasion or an avoidance.

Commissioner Carey stated that there is something in the law the Board could rely on to determine it is not an evasion, but rather avoiding an expensive and time consuming subdivision process.

Mike Sehestedt stated that the question of whether it is an evasion or an avoidance is ultimately a question of fact, which the Board would have to find on the particular circumstances and representations of each case.

Commissioner Curtiss stated that if Mrs. Stratton needed open heart surgery and he was going to divide the land and sell a lot to pay for the surgery, that would be legal, because that would easily be seen as a direct benefit to her.

Mike Sehestedt stated that if it is simply a way to divide property to increase the community's net worth, then it is probably an evasion. If other reasons are found, it could be characterized as avoidance.

Chairman Evans stated that the law clearly allows a family member to give a piece of land to another family member, once in their lifetime per county. The Board must decide if it is an evasion or avoidance of subdivision review. She could not see punishing Mr. Stratton for telling the truth.

Mike Sehestedt stated that no one is doing that, it would suggest that the Board is lied to on these requests fairly frequently.

Commissioner Carey stated he understands this process is new to Mr. Stratton but the Board hears subdivision proposals almost every week. It is in the public interest for land that is being subdivided to have some review, a reasonable look to determine potential danger. These regulations usually come into being because of some horror story when there were no regulations. In his case, he did not see this as evasion of subdivision review. Mr. Stratton is not a professional developer. He would be willing to find that in this particular case, he is not evading subdivision review, but reasonably trying to avoid unnecessary costs. He does not want this seen as sending a message to others however. This area is going to take a lot of work to get it where it will be livable in the long term. Fire Bucket Loop itself is a major problem.

Rick Stratton stated that is why he doesn't want to say for sure he will build a home on the property. He wants to see what happens with Tookie Trek and the other roads in the area. He wants to see what other kinds of homes are built around him and what kind of people live in those homes. It is too strong to say he will build a home, he and his wife are still discussing it. He would like to move his wife to the country. There is no greater gift to a stay-at-home spouse than a home. He does not know if they will ultimately build a home on this property, but would like to keep that as an option.

Commissioner Carey moved that the Board of County Commissioners approve the request by Richard D. Stratton to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded the motion.

Commissioner Curtiss stated that Gilbert built a case today that these folks need to go through subdivision review but it is an expensive process. In an area like this when subdivision review is not used, it ends up with a bad road like Fire Bucket Loop. She hoped this isn't the way Gilbert gives advice to his clients. She is sorry Mr. Stratton took the brunt of trying to work through this ambiguous law. The Board is responsible for making the decision and they do find out that people aren't as truthful as they should be. She did appreciate Mr. Stratton's honesty.

The motion carried on a vote of 3-0.

Chairman Evans stated that Mr. Stratton would receive a letter confirming today's action. However, this has not been reviewed for access or other criteria. This is just permission to divide the property, it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

Hearing (Certificate of Survey): Sardot Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer for that parcel described as Lot 1 of Section 6, Township 14 North, Range 22 West.

Aldo Sardot has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 26 acres in size located near Huson, Montana. Mr. Sardot proposes to create one approximately 10 acre parcel for transfer to his daughter, Tova Sardot, age 24, for residential purposes and keep the remaining approximately 16 acre parcel for residential purposes as well.

The history of the parcel is as follows: Ralph Ridenhour and Fred H. Mello filed a warranty deed in April, 1979, deeding this parcel to James A. Shaw. James Shaw filed a warranty deed in May, 1995, deeding the parcel to Stephen J. and Christine S. Edgar. The Edgars deeded the property to Ralph S. and Jeanne M. Greendale in August, 1995. The Greendales filed a warranty deed in November, 2003, deeding the property to Aldo Sardot.

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

Aldo Sardot stated that this is the family estate and he would like to give a piece of land to his daughter which she can use as she likes, perhaps to build a house for herself in the future.

Commissioner Curtiss asked if Mr. Sardot lived on this property.

Aldo Sardot stated he did not live on the property, he has a house in Missoula.

Commissioner Curtiss asked if there were any houses on the property.

Aldo Sardot stated there were no houses on the property.

Commissioner Curtiss asked if Mr. Sardot was in the developing business, buying and selling land.

Aldo Sardot stated he owns and manages a storage unit business.

Commissioner Curtiss asked if Mr. Sardot really intends to give this land to his daughter.

Aldo Sardot stated that was correct.

Colleen Dowdall asked if Mr. Sardot had presented a rezoning request to the Board before.

Aldo Sardot stated he did a rezoning off Expressway.

Colleen Dowdall asked if Mr. Sardot intended to keep the remainder parcel.

Aldo Sardot stated he did intend to keep the property.

Colleen Dowdall asked if his daughter intended to keep the other parcel.

Aldo Sardot stated that she better keep it.

Colleen Dowdall asked if Mr. Sardot had made any requests or had any pre-application meetings with the Planning Office regarding subdivision of this or neighboring property.

Aldo Sardot stated he spoke with Dale McCormick about giving this land to his daughter. Dale suggested using the family transfer process.

Chairman Evans opened the public hearing. There being no comments, the public hearing was closed.

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

Chairman Evans stated that Mr. Sardot would receive a letter confirming today's action. However, this has not been reviewed for access or other criteria. This is just permission to divide the property, it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

Hearing (Certificate of Survey): Christiansen Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract A of COS 2995 located in the east one-half of the northwest one-quarter of Section 18, Township 13 North, Range 16 West.

Ovie Daniel Christiansen has submitted a request to create three parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near Potomac, Montana. Mr. Christiansen proposes to create three parcels: one approximately 3.97 acre parcel for transfer to his nine-year-old son, Ovie Luke Christiansen; one approximately 3.97 acre parcel for transfer to his twelve-year-old daughter, Lea Nichole Christiansen; and one approximately 3.97 acre parcel for transfer to his father, Howard William Christiansen, all for residential purposes, and keep the remaining approximately 8.15 acre parcel for residential purposes as well. The remainder parcel was previously created by the use of a mortgage exemption in August of 2000. This would give it a new property description but would not change the fact that is a legally created parcel. Drafts of the trusts to hold this property on behalf of his children are included in the request.

The history of the parcel is as follows: In April, 1969, a notice of contract to purchase land was filed by Christina R. Long, George O. and Christina M. Toxel along with Howard E. and Joanne G. Long as Sellers entering into a written contract for the sale of the parcel to Evan P. and Barbara Ann Jordan. The warranty deed was filed April 12, 1969. Evan P. and Barbara Ann Jordan sold the property to Michael H. and Nancy C. Chandler in October, 1976. The Chandlers deeded the property to Allen R. and Evelyn L. Holbrook in October, 1977. The Holbrooks filed COS 2995 in 1984, creating Tract A to create a greater than 20 acre tract of land. In June, 1990, the Holbrooks filed a warranty deed deeding the property to Ovie Daniel and Sonya Marie Neal Christiansen. In November, 2002, Sonya Marie Neal Christiansen deeded the parcel to Ovie Daniel Christiansen.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except as listed below:

COS 5453 08/07/2000 Mortgage Exemption

Chairman Evans opened the public hearing.

Ovie Daniel Christiansen was present and came forward to answer any questions the Board may have.

Colleen Dowdall asked how long Mr. Christiansen had owned the property.

Ovie Christiansen stated he had owned the property since 1990.

Colleen Dowdall stated that recently his wife transferred her interest to him.

Ovie Christiansen stated that was correct, she has no interest in the property at this time.

Colleen Dowdall stated that he has held the property for over 10 years.

Ovie Christiansen stated that was correct.

Colleen Dowdall asked if he intended to sell any parcels on behalf of his children.

Ovie Christiansen stated that he had no intention to sell any property unless it was absolutely necessary.

Colleen Dowdall stated that the trusts need to be established before the transfers can take place.

Ovie Christiansen stated he understood that.

Colleen Dowdall asked if the property was going to be developed in any way.

Ovie Christiansen stated he might build houses someday. The children couldn't reside on the property for a number of years and the property is for their college years.

Colleen Dowdall asked if he had talked to anyone at the Planning Office about going through subdivision review.

Ovie Christiansen stated his understanding was there was an exemption for transferring property to family members.

Colleen Dowdall asked if Mr. Christiansen was attempting to evade subdivision review.

Ovie Christiansen stated he was not.

Commissioner Curtiss asked what Mr. Christiansen's occupation was.

Ovie Christiansen stated he was a cabinet maker.

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

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

Chairman Evans stated that Mr. Christiansen would receive a letter confirming today's action. However, this has not been reviewed for access or other criteria. This is just permission to divide the property, it does not give Health Department approval, zoning compliance and no guarantee of access or anything else.

Hearing: Amend Missoula County Floodplain Regulations (To correct scrivener's error)

Todd Klietz, Floodplain Administrator, Office of Planning and Grants, presented the staff report.

Previous County floodplain regulations in 1983 and 1989 (and the approved 1991 draft) specifically allowed for the reconstruction of homes in the FLOODWAY: "substantial improvements to any legal, non-conforming structures which existed prior to March 4, 1975 ..." A "substantial improvement" includes reconstruction but does not include an "alteration" which would increase the footprint of a structure. There were additional requirements, but replacement was permitted.

In January, 1991, the County floodplain regulations were revised. All of the documentation in the files suggests that the Commissioners purposefully adopted regulations which continued to allow for floodway replacement. The planning staff report notes only "one significant change" regarding the procedure to replace mobile homes in the floodway (item #5.02.B.10 in the 1991 draft regulations), but makes no mention that other previously existing structures could no longer be replaced. In fact, the very next item in the draft regulations (#5.02.B.11) specifically continued to allow replacement using the same language quoted above. Changing the regulations to prohibit floodway replacement is also not discussed anywhere in the consolidated Planning Board minutes of January 5, 1991. The minutes from the hearing with the County Commissioners on January 30, 1991 also do not address this exclusion. Most importantly, the draft regulations which the Commissioners approved on January 30, 1991 continued to allow for floodway replacement.

The floodplain regulations that were approved on January 30, 1991 were not printed until August, 1991. It is important to note that the August, 1991 edition was printed in a completely different format than previous editions. According to the County Clerk's records, there were no new floodplain resolutions after January 30, 1991 prior to the August 1991 reprint. Additionally, this issue is not addressed in any of the Commissioners minutes from 1991. However, the August 1991 and subsequent editions do not contain the grandfathering clause #5.02.B.11.

As the Commissioners adopted regulations which continued to allow floodway replacement on January 30, 1991 and as there were no new floodplain resolutions between January, 1991 and August, 1991, and as the Commissioners minutes do not include any discussion on this issue, it must be concluded that it was an apparent oversight that the August 1991 edition no longer contained Item #5.02.B.11. It is assumed that in retyping the regulations in the new format, that clause was inadvertently excluded.

Revisions to the City and County floodplain regulations were typically adopted concurrently. The floodway "grandfather" clause existed in the 1983 and 1988 City floodplain regulations but is absent from the 1991 and 1995 City floodplain regulations.

Two things have been modified in the current proposal. First is to allow grandfathering homes that were built prior to 1975, when the County first adopted floodplain regulations. The regulatory floodway can change and can be delineated on new streams. If grandfathering was left at 1975, all the homes that are currently being constructed in an area that may eventually become the regulatory floodway would not be allowed to be rebuilt. The second change to the proposed language would be to require that rather than rebuilding the structure on fill and increasing the footprint of the floodway obstruction, it would require the structures be built on a permanent foundation or piers, which is the same language in the current regulations regarding mobile homes in the floodway.

The Federal government responded that allowing existing floodway homes to be rebuilt was within Federal guidelines. The State DNRC also said the clause was acceptable.

The Office of Planning and Grants recommends approval of the following amendment to be inserted in Section 5.02:

11. Substantial improvements to any legal non-conforming structures which existed prior to the delineation of the regulatory floodway provided all the provisions of Section 5.03.B.3 and 5.03.B.4 of these Regulations are met. In the floodway, the structure must be elevated on a permanent foundation rather than on fill. Flood-proofing shall be accomplished in accordance with Chapter VII of these Regulations.

Chairman Evans opened the public hearing.

Colby Reynolds stated he currently lives north of Florence on 10 acres on the Bitterroot River, all considered to be in the floodway. He has lived there since 1970. The house was originally built in the early 1950's. The way the regulations are currently stated, there is no way he could do anything with his home, he can't remodel it or replace it and the home is in poor condition. He is in favor of this amendment.

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

Commissioner Curtiss moved that the Board of County Commissioners correct the scrivener's error as recommended by the Office of Planning and Grants to include the new language that changes the date to a delineation of the regulatory floodway and add language that, in the floodway, the structure must be elevated on a permanent foundation rather than on fill. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Petition to Abandon Right-of-Way (No name roads within DNRC property) – North Avenue at Spurgin Road

Mike Sehestedt presented the staff report.

This is a petition to abandon road right-of-ways of No-Name Roads within DNRC property, from North Avenue to Spurgin Road, more particularly described as those road right-of-way easements within the lands of the DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION situated in Section 30, Township 13 North, Range 19 West, Principal Meridian, County of Missoula, State of Montana, as described in Commissioners Journal Book P, on page 558, bound by the southerly right-of-way line of Spurgin Road on the north, the northerly right-of-way line of North Avenue to the south, and the easterly line of the NE 1/4 of the SW 1/4 of said Section 30 to the east, and more particularly shown on attached Exhibit A, and described as follows:

The east 60 feet of Government Lot 2 of said Section 30

TOGETHER WITH:

The east 60 feet of Government Lot 3 of said Section 30

TOGETHER WITH:

A 60 foot strip within the NE 1/4 of the SW 1/4 of said Section 30 as described in that certain "Map to Accompany Application for Right-of-Way across Fort Missoula Military Reservation. Application made by Missoula County" dated November 1932 and filed as "File G, Can 5," records of Missoula County Clerk and Records Office and further described as "and a strip of land 60 feet in width, 30 feet on each side of the following described centerline run across and through the NE 1/4 SW 1/4 of which the point of beginning is North 667.5 feet from the (southwest corner of the NW 1/4 SW 1/4) of said Section 30 same Township and Range thence west 1052.0 feet, thence S.63° 50'W. a distance of 304.0 feet."

The reasons for the request are as follows:

1. Veterans Cemetery to be established.
2. Further development of nursery for seedling conservation.
3. Efficient utilization of public land.

The following landowners have been notified: MT DNRC Forestry Division and MT Dept. of Military Affairs.

Chuck Wright stated that the Public Works Department would like those right-of-ways to remain and do not want them vacated.

Mike Sehestedt stated that the Board should accept public testimony today, then recess the hearing and conduct a site inspection. The Board will then reconvene for a decision.

Commissioner Curtiss asked if the abandonment was only within Tract 1.

Mike Sehestedt stated that the petition calls for all of the right-of-ways within the DNRC property, not just Tract 1.

Chairman Evans opened the public hearing.

Charlie Crookshanks: Good afternoon, I'm Charlie Crookshanks. I'm the chairman of the Western Montana State Veterans Cemetery Committee and I, if you wouldn't mind, would just like to take a couple of minutes to review what we've been doing for the last three years. We started three years ago this July to find a site for this cemetery to accommodate what we view as a real need. We have 36,000 veterans that live in the 10 counties west of Lewis and Clark County. There will be more coming in as we move down the road. We looked at several sites over the years and finally decided on the DNRC site. They graciously offered it to us because it was excess land for their use. We have everything in place. The Federal government has a \$3 million grant in place to build the cemetery. The State is ready to accept ownership of the cemetery as soon as the governor signs the Executive Order. There are no general funds from the State of Montana used in the maintenance of any of these cemeteries, it all comes from the surcharge that is levied on Veterans license plates. A lot of people aren't aware of that, but it does not come out of the treasurer at all. I just wanted to brief you on that and give you a little view of where we are. If we're able to get this process completed, the governor is ready to sign the Executive Order then we can move ahead with construction. And I'd be happy to answer any questions you might have.

Commissioner Curtiss: So, Charlie, the governor is waiting for the land, the right-of-way to be vacated before she'll sign?

Charlie Crookshanks: Yes Ma'am.

Chairman Evans: Charlie, I'd like to know why Public Works doesn't want us to do this.

Chuck Wright: Greg explained that because 31st Avenue in the future may be pushed on and we already have a right-of-way there, we didn't want to get rid of the right-of-way because whenever you get rid of right-of-ways you end up having problems buying those right-of-ways and all that sort of stuff. The other, Strand Avenue, coming across, right now Strand Avenue only goes to 26th and then down, I think is where it goes, but North Avenue portion, if you get rid of the north 30 feet then you're going to have just the south 30 feet of the North Avenue right-of-way. So, I was surprised that this wasn't discussed a long time ago.

Chairman Evans: Well, it kind of was, because the County's worked very hard with the Veterans to try and find them a cemetery site.

Chuck Wright: Oh, I know that's a fact because I've been working too.

Chairman Evans: And so it kind of comes as a surprise to me that we'd want to do anything to get in the way of that.

Commissioner Curtiss: So, Mike can you clarify, if we receive a petition to do a certain number of roads, do we have to after, as we know, by law, one of us has to go out and look at this, do we have to accept all or could we abandon some and leave some, could we leave the North Avenue edge there which wouldn't affect the cemetery in reality.

Mike Sehestedt: You can grant a petition in part. The petition and the hearing is what gives you jurisdiction and you can act on anything up to the limits of that. If you choose to go less, then that's fine too.

Commissioner Curtiss: Sometimes people don't understand that in the County, right-of-way is different than in the City, where we don't really own the land, we have easements and therefore the cemetery wouldn't, they would still own the land to the center of the road.

Mike Sehestedt: They'd have the acreage, obviously, because it's subject to an easement in our favor, their uses of it would be limited to those not inconsistent with maintenance of a traveled way.

Gary Sorenson: I'm Gary Sorenson. I just had one question. If the County wanted to build a road there, would they have to go through the State then to get permission to come on their land to do that. How does that work?

Mike Sehestedt: Actually, no, it's not the State's land. Well, it's the State's land, it is State land subject to an easement in our favor, granted by the Secretary of War in 1935. Subsequently, the underlying fee was transferred to the State, but the State took subject to our easement, so as of now, assuming we did not have this issue pending, if the County chose to open that road through there, the State would be unable to stop us in the ordinary course. We have all of the property rights we need to build a road through there right now.

Jean Crow: Good afternoon. My name is Jean Crow, I'm the Right-of-Way Specialist for the DNRC and I'm here this afternoon to not so much talk about the right-of-way but to let you know that I'm a native Montana person. Part of my time growing up was spent here in Missoula. I rode on the bridle trails of the DNRC growing up through grade school and in high school. I'm just sharing the past history of how I grew up on the bridle trails and walked my dogs

there in grade school and in high school. Also in high school I was part of a forestry program. We utilized the DNRC to study trees. Also moved on into a forestry program at the U of M, which we also visited the DNRC. Currently, there are hundreds of people who use the DNRC property as public use and the DNRC has always been very open to, I had no idea that I would grow up out there and then riding those trails, utilizing that whole property and then eventually end up working for the DNRC. When we discovered the two 60 foot rights-of-way through there, in working with Charlie, it just came as a terrible blow to all of us because the DNRC has no intention of, we plan on expanding the nursery out there and in talking about utilizing it in the way that I did when I was growing up and people still are, to put a 60 foot right-of-way through there is going to put the, a monkey wrench in that whole utilization of the whole property out there as it is used today currently. Schools are still utilizing it, people are still utilizing it and the way that the access is set up right now, you come in through a main access that's pretty much monitored which keeps hooligans out of the area, from starting trouble out in there and it's always been maintained as a really nice spot to be. By opening up the 60 foot right-of-way through there, especially north of Big Sky High School, is a potential problem for having parties, smoking pits, destruction to the DNRC property which we frankly cannot afford. So, as a past growing up person, growing up out there, it was such a fun place to use and I know that people are still utilizing it and just to, I want the Commissioners to know that the DNRC's intentions are is to keep that property open for the public and let everyone enjoy it like I did and also to allow the broadening of the nursery program out there and then also to give the State Military Affairs their piece of property for the cemetery. I want to be followed up by our legal counsel with DNRC, Mark Pharis, and he has more just on the actual legalities of the rights-of-way.

Mark Pharis: Good afternoon. My name is Mark Pharis, for the record. I don't have much to add to what Jean just stated. I think one point is that I think there is, maybe not necessarily a dispute, but an issue with respect to how the Department of, I think at the time it was the Department of War in 1935, granted the usage rights, the easement across, I guess what would be the continuation of 31st Avenue and of North Avenue. I think the Department views it as I think as Jean said, a continuation of public use of the area and I think we view the use of this segment for the cemetery as kind of part and parcel of that intention. Legally speaking, I don't see any impediment to at some point if you do agree to abandon at least a portion of this to, for a future easement to be granted for perhaps a spur of the road that would accommodate a future public need for that road. So I don't see any impediment to doing that. But, otherwise, I can't think of any specific legal impediments, one way or the other, to either abandoning or not abandoning the road.

Chairman Evans: So let me make sure I understand for the record that DNRC is very willing to allow the piece of property that the veterans would like for their cemetery to be used for that use.

Mark Pharis: Absolutely. Yeah, our intention is, we've got all the documents are drafted and if we're not exactly sure what the process would be from here, you know, depending on whether the roads are abandoned, but the documents are drafted and ready for the governor's signature, essentially to transfer administrative oversight of this specific tract of property from DNRC to the Department of Military Affairs. So, yes, our intention is do that.

Commissioner Carey: Are you suggesting that DNRC might sit down with our Public Works folks and work out some future easements.

Mark Pharis: I don't see any problem with that happening. I think we'd be more than happy to sit down and discuss the possibility of doing that.

Mike Sehestedt: One option you would have would be the vacation contingent on relocation. Clearly, the Veterans Cemetery's been a project of long standing interest. On the other hand, given the way State lands treats us when we need an easement across their property, I'd just hate like hell to give anything away when I could use it to trade for something.

Mark Pharis: And maybe I'll point out that Mike, I think probably on trust lands that is an issue because I think we do, trust lands and administrative, these are administrative lands we're looking at, not trust land.

Chairman Evans: And what Michael says may be true but in my working with the DNRC, you've been very accommodating and I thank you for the land for the cemetery.

Mike Sehestedt: We have ongoing dispute over long standing County roads in other areas.

Chuck Wright: May I ask a question. You're going to have to get into your cemetery anyway, why wouldn't you want to leave a County right-of-way in there.

Charlie Crookshanks: In our preliminary planning, the entrance that we anticipate will come in on the west side off Tower Street and we'll have a second entrance that would be just to the northeast of the Big Sky parking lot. So, that takes care of the entrance problem.

Commissioner Curtiss: So could we relocate rather than move, I mean rather than vacate, is that what you were thinking Charlie?

Chuck Wright: Well I was thinking that you know and when ...

Mike Sehestedt: I think, Charlie, to be honest, if you're going to have a cemetery, you need to be able to secure it.

Chuck Wright: Yeah, I understand. But the thing I'm thinking, they could transfer the land without the easements because you own the land, you could transfer those things and we could get the Public Works Department to decide what they want to do about the situation that we're in. This was kind of a surprise for me because I was just told yesterday morning, but if you want my opinion, my personal opinion is that every time we vacate right-of-ways we end up with problems and we've done it with 80 foot right-of-ways studies in the area out there and give ten foot back on each side and then the City is back buying the same right-of-ways back and the other thing is, what Mike mentioned, is I've had problems with State lands, trust lands, big time and they want to charge us all sorts of money for a right-of-way that we already are driving, you know, have a road on it, and like you said, it's trust lands and that's what they're doing, but I mean if we do have ...

Mike Sehestedt: One thing I want to be real clear on is I don't think we ought to bog the cemetery down in any kind of dispute like this. I would suspect that after the Commissioners go out and take a look at this, certain things will be clearer as to the utility of that right-of-way and we may just discuss some sort of relocation. Mostly, at this point, we're just getting some of those issues out on the table the Commissioners will consider and make their own decisions.

Chairman Evans: By law, we have to go out and look and it generally takes us a week to get that done. I don't know that this will go that fast if you guys want to work out some different proposal.

Mike Sehestedt: Barbara, I would say, I know that time is of the essence, but this has drug on and I think you guys need to go out and look and make the decision on the part that's in the cemetery. The other part, well you can even do it contingent on agreement, it's vacated contingent on establishment of the cemetery and agreement on an alternative. I really don't want to convey to the Board at least on my part, any thoughts that would hold this up. We can do something without holding it up, it might be divided, but ...

Chuck Wright: The other thing to mention, I was told that a representative from the DNRC would like to go with whichever Commissioner is going to go.

Commissioner Curtiss: I think we decided it was mine.

Mark Pharis: Yeah, my understanding, I know, I think I would attend that meeting, I think Sue Clark who is the Bureau Chief out on the site there for the, I think now the Business Management Bureau.

Chuck Wright: So, we'll try to make those arrangements so you can meet us out there or whatever.

Mark Pharis: Absolutely.

Commissioner Curtiss: And Mark, are you here in town?

Mark Pharis: I am. My phone number is 542-4341, that's my direct number. The general switchboard is 4300. I guess I'd like to echo what Mike said, which is that, I think, because this was kind of a surprise relatively late in the game, we're also willing, Jean could correct on this by law, but I think DNRC is willing to sit down and try to figure out what works best for everyone and I think since we are so far along in the game it makes sense to do that.

Commissioner Carey: I agree.

Chairman Evans: Just for the record, Patty, I'd like it stated that the process has taken a very long time, we've had to get Congressional support, the governor's support, the Veterans' varying groups support, it has been a long process to come to this one location and so I think it's important that we do everything we can to make it happen. Thank you.

Charlie Crookshanks: I'm sorry, I just had a couple things I want to pass on. Mr. Hausauer will speak in a moment, he represents Missoula Trails, Franklin to the Fort Neighborhood Council. We've met on several occasions, last year out at the site. He's going to be included with our design subcommittee when we get to that point so that we can accommodate the trail system and the people that want to use that park going through the north part of the cemetery. Ty Robinson and I met with Jim Clarke, Superintendent of Schools, last year. Subsequently went to meet with Paul Johnson, the Principal at Big Sky, and we're going to have the students at Big Sky involved. Paul Johnson suggested the Forestry Club. We thought for two reasons that it would be good to have the High School student body involved. One, because it's something that they need to do in their social work. Secondly, it might defray some possible problems with the site. So, we've already taken those steps and they're underway. Mr. Clarke has been busy, so we won't get back to him until the start of the school year. But I just wanted to pass that on to tell you what we've done to make it more user friendly.

Jim Hausauer: Jim Hausauer, I come as a participant in three different groups here today. Missoula Trails, which we've been to you talking about the Spurgin walkways or in the Transportation Plan, also with the Kelly Island walkway. The Franklin to the Fort Neighbor Council and I've also been a member of the Citizens Advisory Committee to develop the Master Plan for Parks. While I'm a member of those, I'm not speaking representing those groups. We haven't had time to talk about this particular issue. I also would like to emphasize that I come here as a friend of the Veterans Cemetery and a supporter of the folks who are putting that together, they've been great to work with. I also have brought an aerial photograph if that would be helpful, it's pretty big, if you wanted to look at. I had a discussion with Joe Jedrykowski this morning and he wanted me to emphasize that the inclusion of the Spurgin walkway as consideration is something that he wanted to emphasize. That's the main thing that I want to speak to here today. In terms of the Exhibit A, I would recommend that at this point that vacations to accomplish the tract for the Veterans Cemetery be where the focus is. I would qualify a couple of those areas. One the North Avenue section. Chuck and I were looking at some right-of-ways. There's nothing specific right now to utilize that corridor but one of the things that was included late in the transportation plan is a corridor study of Reserve Street and that I'm very thankful for. That is something that I think, once that corridor study is done, it will give us more information on some of these routes that we might target and also the value of that North Avenue property. Some things that could come into consideration, a lot of what if and maybe, is that we may have reason to approve access to C.S. Porter, that could be a not-at-grade crossing, depending on the best location of that, whether it's to the north of the school on North Avenue could put us in alignment with this right-of-way on North Avenue, it could go south of the school on Central, we just don't know. So I would urge caution in that area. Another area is on the right-of-way for 31st, immediately south of the diagonal ditch. The Spurgin walkway includes a corridor that extends from where Mount at 27th dead end, west to that irrigation ditch and then the expectation is to stay south of the irrigation ditch all the way along to approximately the corner of Tower and North Avenue. So the area south of that diagonal ditch, preserving some of that right-of-way, I've had good relations with the Missoula Ditch Company, I couldn't get a hold of them before this meeting. Most of the times in the past they've been very cooperative on working on trails. They usually want at least a 20 foot right-of-way in there. That may be something that we want to clear up through this corridor as far as right-of-ways because this trail is a CMAQ trail and I think you need to secure, probably, easements or right-of-way to insure that. Joe hasn't had time to meet, I'd be happy to meet whenever time would allow. In general, when you look at where 31st goes up to Spurgin on the south side of Spurgin again, I would recommend maintaining at least 50 to 90 feet of right-of-way there. What we've got is the irrigation ditch south of the road and then the general idea is for the trail to be south of that irrigation ditch, that variation of 50 to 90 feet assumes that there's a 60 foot right-of-way on that road, I was just out there double checking those dimensions this morning, but that's another reason to go up, back out on the ground. Overall, I would encourage you to support vacating the areas within the proposed Veterans Cemetery, but maybe to qualify it, to say that if the project does not move forward, that you still preserve those right-of-ways. I did see that recently in examining some right-of-ways with the Forest Service compound south off of Tower, those right-of-ways have been vacated with that kind of qualification. And then I would say not to vacate the rest of the right-of-ways until this corridor study takes into consideration where we might want a corridor through here. The east side of the proposed Veterans Cemetery is in alignment with Hiberta. That has been an area where a corridor has been recommended. Of course, they don't like that but we haven't made a decision. So, I would hold off vacating anything outside the Veterans Cemetery and maybe there we're pretty close to needing to get these right-of-ways determined for Spurgin walkways, maybe there, that's a place where we could trade some right-of-ways. Also, with regard to the Master Parks Plan, conceptually, there are a couple of parks listed that would be on this page and while the specifics are not to be determined, one of those neighborhood parks is close to the corner of 27th and Mount and another one is basically south of Spurgin where Fish, Wildlife and Parks and Big Sky come together. So, I would urge caution and again, I solidly support the Veterans Cemetery, these folks have been great to work with. So, thank you for that.

Commissioner Carey: Would you like to be notified when the site visit is going to occur.

Jim Hausauer: Yes I would. I've been walking around out there quite a bit and I'd be very happy to do whatever I could.

Commissioner Carey: Could you give Patty your phone number.

Jim Hausauer: 721-4928, P.O. Box 3196, 59806.

Joe Foster: For the record, my name is Joe Foster, the Administrator for Montana Veterans Affairs. I do want you to know that we have already obtained pre-application approval for this cemetery program and it has escalated from initially a \$2 million project to potentially \$3 million, based upon the addition of columbarium, outdoor restroom, etc. We're going to do everything we can to get this as ultimately approved to do it right and do it, of course, in partnership with the Missoula community and all those interested. There is one issue though that I do think needs to be clarified and it is with the right-of-way. In visiting with Sue Clark, it is my understanding that unless these rights-of-way were approved in total, and perhaps that's changed since Sue and I last talked, that the transfer couldn't take place. We have to have the transfer before the Executive Order will be signed and if DNRC needs to have the complete package of the right-of-ways abandoned, unless that happens, you know, whatever they're satisfied with is important to us, and so nothing will happen unless they're satisfied with the right-of-way issue and it sounds like it's already gotten a bit more complicated than any of us every envisioned, so I just hope that all this can be cleared up satisfactorily certainly for DNRC, as long as we have that land, we will build it right and maintain right.

Jean Crow: I'm going to take off my living in Missoula area hat and go back to a right-of-way specialist for the DNRC. In doing the research on that State land, which, with the 23 acres excluded, leaving us 162 acres in 73, I'd like to draw your attention to 29th Avenue, you're seeing only a 30 foot right-of-way on the private sector part of that. You currently have 30 foot of right-of-way on DNRC land that has not been legally cited. I would like to reiterate that the DNRC would like to remove all of the two 60 foot rights-of-way through the DNRC, not to say that we would not in the future work with Missoula County in any kind of development effort that would ever come within the future. That is not in the picture though, they are currently, they're focusing on expanding, once again I want to reiterate the expansion of their nursery program. To have that cloud hanging over their head and the possibilities of opening up a 60 foot right-of-way through there could only cost the State substantial amount of money to try to maintain security in that area, fencing and I went into that. I think that when we do go the discussion table with Public Works, we can discuss, like 29th Avenue, that you currently are encroaching on State land. The State is willing to work with you. I think there's a whole group of new people that are willing to work with you. I think that perhaps that if you've had bad history, why don't we forget about that and go forward and see what we can do to facilitate everybody's needs. I think that's what really everybody wants. Regarding the ditch easement, that's under a whole specific set of laws from my understanding and where that's going with, no one has ever come to the table as far as I know as being from the DNRC and discussed any types of rights-of-way through there and I think that Ray Tipp might have indicated that to me in my talking with him. So, you know, the DNRC currently owns the land. We do currently have the Corps of Engineers searching their records because there seems to be some vague gaps in property ownership, especially, I have a patent signed in 1948 from the Bureau of Land Management to the University of Montana and then in 1976 or somewhere, I'm not going to quote the time, when they quitclaim deeded the property to the DNRC. So, currently, Missoula County has some missing gaps, we have some missing gaps. We currently have the Montana Military Department searching their records. In 1995, they had a breakup of records. They're currently searching their records to find out where is the document that actually granted that right-of-way to Missoula County. Missoula County has not been able to provide that to us so we don't have a written instrument actually showing the legal transfer, or actually the ability to assign that to us without showing us where is the document that said the Military Department owned that at the time. I see what you're referring to there, we all looked at it as being somewhat vague and like I said, they're searching their records to try to find the, as in one record indicated in there a letter that questioning whether or not it had been revoked because they had not used it for a long period of time. Corps of Engineers, State of Montana Military Defense Department is currently searching their records for us to maybe, you know, confirm or possibly bring up something that we just haven't been able to see other than what's in the Commissioners Journal in the page. Interesting enough that the title report run on that piece of property, that Commissioners log was never stated on that title search. So, I just wanted to point out that the DNRC is willing to work with Missoula County, we really do want those 60 foot rights-of-way vacated for the purposes that we have all stated, not only for the Military Affairs, but also just for the sake of keeping that intact for our nursery and also public use and I know that the DNRC is willing to work with Missoula County about that.

Mike Sehestedt: I have a quick question. So, you're willing to grant trails across this property?

Jean Crow: This is the first that I have heard of a trail issue across there. Were you asking him or me?

Mike Sehestedt: I was asking you, if you're willing to work with us, what are the limits?

Jean Crow: Absolutely. In fact, as I had said about the growing up here and having the trail systems through there, the DNRC is very public friendly, we encourage the public to use the facility out there for that very reason. The

reasons why we don't want to have open access is for the very reason to keep vandalism out of there, people are less likely to go in and vandalize an area like that when you have to come through a maintained access. Currently I'm working with the Owen Sauerwine Natural Area in the Flathead Valley where we have had to also kind of close down State lands a little bit with fences and made just specific access points so that it discourages vandalism, discourages the hoodlums from getting in there. When you have certain areas and then neighborhood watches kind of watch those particular area, you don't have people going in there and causing problems. So this is, you know, some of the really the strongest reasons that I think that we should not be split like that and our own maintenance of having to cross a busy road of kids flying out of school and going over there, I got to tell you, that, you know, think about that one, how difficult that would even be. In the future, if they come to the table, talk with Sue Clark, the Bureau Chief, and also have Ray Tipp, Missoula Ditch, he's the ditch rider or the district manager. I'm certain that that is workable.

Mike Sehestedt: The punch line is you don't object to public right-of-ways for non-motorized transportation to bisect DNRC property. I'm hearing, and the reason I ask this question, is I'm hearing a contradiction. You're open and public friendly, you just don't want the public to have free access across it. And I'm trying to get square how we could have a path, one of which I heard possibly along the line of the ditch. Is that something DNRC is willing to contemplate or is there a danger that we'll have hooligans on foot or by bicycle accessing DNRC property.

Chairman Evans: I'm going to ask that you folks discuss this outside of this meeting and hope we can all come to something that's satisfactory for everybody. And so, we will discuss this again next Wednesday after a Commissioner has had the time to go out and meet the legal requirement to view it. And Patty will let the folks know when we're going to be out there so that you can come and watch if you like.

Commissioner Curtiss: And just to clarify, Missoula County very seldom builds roads. So, just because we have an easement doesn't mean we're going to come in a build a road, but if in the future, there is no need for trees anymore, I'm making this up of course, and it might be 50 years from now that DNRC decides that there's not a need to have a State nursery there, there may be a reason for a road somewhere, we of course don't want to bisect through the cemetery, but, so having a right-of-way doesn't mean we're going to come a build a road anytime soon, because we don't build roads. We maintain.

Chairman Evans: Thank you. Is there anybody who'd like to speak on any other matter. There being none, we're in recess. Oh, I didn't see you hiding back there, I do apologize.

Dick Haines: For the record, Dick Haines, State Representative. First, Commissioner Evans I really appreciate your remarks a minute ago getting this matter resolved. These people here are starting to have a salmon complex, every time they get around one more obstacle and think there's a clear shot ahead of us, something else rears its head. It's been a very emotional rollercoaster for a lot of these people, up and down, stop and go. I think that if this thing can be resolved without getting into whether or not this right-of-way is valid or not valid. I started asking questions yesterday that I'm hearing now about where the military came into this and this sort of thing. That's all well and good but I would hope we don't have to go there. Anything you can do to accommodate this request to vacate would be greatly appreciated by an awful lot of people. One last comment, I'd like to congratulate Commissioner Carey on his tough legislative win, it's been really an uphill struggle to win that, I realize. Congratulations.

Commissioner Carey: Thank you Dick.

Chairman Evans: Congratulations to you as well. Okay, we are in recess.

There being no further business to come before the Board, the Commissioners were in recess at 3:05 p.m.