

PUBLIC MEETING – January 5, 2005

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

Pledge of Allegiance

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$680,305.24. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing (Rezoning, Subdivision and PUD): Grizzly Dens (21 lots on 46 acres) – Corner of Mullan Road and Deschamps Lane

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

This is a proposal from Grizzly Partners, LLC, to create the Grizzly Dens Subdivision and Planned Unit Development (PUD) Zoning District. The subdivision has 21 residential lots on a 46.6 acre parcel. The property is located north of Mullan Road, west of Deschamps Lane. The Missoula Consolidated Planning Board conducted a public hearing on this request on Tuesday, December 21, 2004, and voted 0 'aye,' 9 'nay' on a motion to recommend approval of the PUD zoning district. The motion failed so the proposed rezoning comes to the Board of County Commissioners without a recommendation.

Findings made by the Planning Board to support their vote included:

- Considering the land use designation for this property is 1 dwelling unit per 5-10 acres, the proposed zoning change is not in accordance with the Growth Policy as required by Section 76-2-203, MCA.
- The proposed zoning change represents "leapfrog" development of land at a density that is premature for the level of services available and will not encourage the most appropriate use of land throughout the community.
- The proposed zoning change does not give reasonable consideration to the character of the district, which is predominately 5 acre parcels that include agricultural and equestrian uses in conjunction with single family residences.

Prior to the vote on the rezoning, the Planning Board discussed some of staff's recommended conditions of subdivision approval, including Condition 10, requiring a conditional public access easement across Lots 1 through 9 of the subdivision. It was pointed out that the common area was excluded from the condition though the intention seemed to be for the easement to cross the common area as well as Lots 1 through 9. The Chair of the Planning Board elected not to vote on the subdivision or variance requests due to the fact that the subdivision was contingent on the rezoning.

The applicable plan is the 1998 Missoula Urban Area Comprehensive Plan, an amendment to the 2002 Missoula Growth Policy. The property is designated "Residential – one dwelling unit per 5 to 10 acres" and is located outside of the Urban Growth Area. The property is currently zoned C-A3, allowing a density of one dwelling unit per five acres, which would permit 9 dwelling units on the 46.4 acres. 21 lots intended for single family homes results in a proposed density of one dwelling unit per 2.2 acres. Lot 10 is 5.05 acres. Lots 1 through 9 and Lot 11 are between 1 acre and 2 acres in size.

The Comprehensive Plan calls for cluster development, provision of a diversity of housing and land conservation where identified resources are conserved and development takes place outside critical resource areas. The proposal calls for the development of two common areas, one of approximately 13.22 acres along Mullan Road and another at the back of the property of approximately 1.80 acres which would be used to store and accommodate boat trailers and recreational vehicles.

The parkland dedication required for this 46.4 acre subdivision, with 31.4 acres of lotted area, is 1.32 acres. The amount of land being set aside for common area, 15 acres, is almost one-half of the 31 acre area proposed as lots. The applicant is proposing 15.02 acres of common area, more than 11 times the amount required by the Subdivision Regulations. Development at the density proposed in the zoning district is balanced by the preservation of 13.22 acres of open space fronting on Mullan Road.

An important objection of the Comprehensive Plan is to encourage a land use pattern which facilitates all modes of transportation. One of the features present on this property is the abandoned railroad bed of the Old Milwaukee Railroad. The Non-Motorized Transportation Plan designates this railroad right-of-way as part of a potential non-motorized trail. Staff recommended that in the location of the abandoned railroad right-of-way, a 20 foot wide conditional non-motorized public access easement be indicated on the final plat conditioned upon the trail being developed at the time it is needed to serve a trail easement or linear park as part of a public trail system to the west of the Grizzly Dens Subdivision.

There is an existing irrigation ditch that runs along the north boundary of the property. Staff is recommending a condition that a 20 foot wide irrigation ditch easement be indicated on the final plat.

The subdivision is accessed from Mullan Road (State Highway 263), a two lane paved, public road, 22 feet wide within a 60 foot right-of-way. Primary Travel Corridor Standards apply to this section of Mullan Road. Deschamps Lane is an unpaved County road that is approximately 22 feet wide within a 60 foot right-of-way.

Mullan Road is classified as a collector street (serving over 200 dwelling units) outside the Urban Growth Area, requiring a minimum road surface width of 32 feet within an 80 foot right-of-way. The applicant is not proposing to pave to the required road surface width. A variance is being requested from the standard of Subdivision Regulations Section 3-2(3)(B). Staff recommended approval of the variance request.

Glen Cameron, Montana Department of Transportation, commented that the location of the approach on Mullan Road is located in an area where the roadway is 22 feet wide with no shoulders and that a right hand tapered slip lane should be designed for this approach. Staff is recommending this as a condition of approval.

The applicant is proposing Cavern Place, which intersects with Mullan Road; and Bruin Lane, which intersects with Deschamps Lane. Both roads are 24 feet wide, private roads with a 2 foot wide shoulder on one side and a 6 foot wide boulevard and 5 foot wide asphalt walkway on the other side. Bruin Lane terminates in a cul-de-sac providing access to Lots 9 and 10 at the west end of the subdivision.

David Prescott, Transportation Planner, commented that a conditional access easement could help reduce additional access onto Mullan Road as future subdivision occurs to the west. However, due to the proposal for private roads, a conditional access easement is not feasible.

This subdivision will contribute to off-site impacts to the Mullan Road/Flynn Lane and Mullan Road/Reserve Street intersections. County Public Works commented that the applicant should contribute \$230 per dwelling unit to assist in signaling the Flynn Lane/Mullan Road intersection and \$815 per dwelling unit should be contributed toward the improvement of the Reserve Street/Mullan Road intersection. Staff is recommending this as a condition of approval.

There are currently no walkways on Mullan Road or Deschamps Lane. The applicant is proposing an 8 foot wide paved pathway in a 10 foot wide non-motorized access easement along Mullan Road that connects to the walkway on Cavern Place. This is in the area that is affected by the Primary Travel Corridor standards and is set back 50 feet from the roadway with the exception of the portion across Lot 11. The applicant is also proposing a 5 foot wide asphalt walkway separated by a 6 foot wide boulevard on the west side of Cavern Place and the south side of Bruin Lane. The covenants require each homeowner to maintain the walkways and to plant and maintain trees in the boulevard area.

The neighborhood meeting was held on October 2, 2003 and the minutes from that meeting are in the submittal packet. There have been several public comment letters received, which are attached to the staff report.

Dick Ainsworth: For the record, my name is Dick Ainsworth. I'm with Professional Consultants, I'm here representing the owners and developers of this property. I'd like to thank Dale for his assistance on this project. We've been working on it for a year, a year and a half, or something. I think he covered our proposal fairly well. I guess I'd like to touch on a few things. As Dale indicated, the property includes 46 and a half acres which is presently zoned C-A3, or one to five, lies just outside of the Wye-Mullan Plan which is bounded by Deschamps Lane. As I'm sure you've heard numerous times in recent years that the Mullan Road area is changing substantially. That's one of the few areas that Missoula has that it can grow because of our physical constraints on the other side

and we've seen a lot of growth out there and I think we'll continue to in the future. We're proposing a PUD for this property which is something that's specifically encouraged in the C-A3 zoning. We basically clustered 21 homesites that range from a little over an acre to a little over 5 acres on about two-thirds of the property. We're setting aside another third of it as a large, most of the common area that we've set aside is a large 13 acre common area along Mullan Road which will provide a buffer between Mullan Road and the traffic on Mullan Road and this development. The other common area is a small area over close to Deschamps Lane and as Dale indicated is proposed to be a common storage area for RV's and boats and motor homes and things such as that that the people in the development might have that will keep them out of their driveways and hopefully out of their garages so they can keep their cars in the garages and out of the streets. That will be fenced and screened. These common areas will belong to the Homeowners Association and it will be their responsibility to maintain them. Although these lots sizes range from a little over an acre on up, in our proposed PUD zoning district we've proposed to retain the 50 foot rear yard setbacks that are in the C-A3 zone, which would maintain the same setback from adjacent properties that exists presently or would exist if this property were developed in 5 acre tracts, so we tried to maintain that sort of separation from neighbors that would exist under the present zoning. As Dale indicated, the roads are proposed to be private, but would be built to County standards. They would be paved 24 feet wide, drainage ditches, an asphalt boulevard style sidewalk on one side of both of the streets and an 8 foot wide asphalt walkway along the north side of Mullan Road the length of the property. Staff has requested and proposed as a condition of approval, a conditional easement for a walkway along the northerly boundary, or adjacent to the northerly boundary, that would follow the route of the Old Milwaukee Railroad that would actually get triggered if that walkway and trail system were to continue onto the west, which I know there's a lot of desire to have happen, but the easement is set aside in this development so that, were that to happen, that easement is there and we're in agreement with that recommended condition. The plan as you see it now has a road that comes in off of Mullan Road and then "T's" goes to west and has a cul-de-sac, goes to the east and hits into Deschamps Lane. Our original proposal for that on the east side was to also cul-de-sac with the actual improved road and to make an emergency only connection out to Deschamps Lane so that the traffic wouldn't be inclined to go to Deschamps Lane through this subdivision, although Deschamps Lane is not presently paved and so I can't imagine too many people would go that way as opposed to the paved route through the development. However, staff and some of the reviewing agencies, primarily Rural Fire, felt that that road should be built all the way through at this point in time and be a permanently constructed connection which we changed our design and proposed that to be that way now. We're proposing a buried cistern or underground fire water storage tank that would be plumbed to a well down at the intersection of Cavern Place and Mullan Road, the main entrance to the subdivision. That would be installed, designed and installed in coordination with the Rural Fire Department and Public Works to make sure that everybody was happy with where it is and how it gets installed and it's being installed in that location so that it can serve not only this development, but adjacent developments in the area out there in general because it would be right on Mullan Road and would be close for access. We feel that this is a well thought out plan. I think it's sort of a transitional proposal, if you will, between the more densely developed areas that are east of Deschamps Lane where City sewer is out already and coming further and those areas are being developed more densely and as you go further west, the parcels are larger and the uses are more agricultural in nature. This is a place where we've made some smaller lots but set aside a large open space to buffer it from Mullan Road. We think that these tracts are a more appropriate use for the land in this area. Five acre tracts tend to be kind of a "tweener" parcel, if you will, they are a little large to mow and a little small to plow and farm. Staff recommended 20 conditions of approval. We are in agreement with all 20 of those conditions. As Dale indicated, the Planning Board recommended denial of the zoning request. They didn't act on the subdivision, although they did discuss it at some length and I think you've got copies of their minutes and I presume have read them. We would hope that you would act on the zoning request today as the Planning Board did. I'd like to touch briefly on some of the findings the Planning Board made to support their vote of denial which I really disagree with. Dale listed three of them on his front sheet there of the Request for Commission Action, one of them being that it doesn't comply with the Growth Policy. I guess the Planning Board maybe made that finding, but staff did not make that finding. They found that it did. Both Long-Range Planning, that wrote a report and included it in the submittal, and the staff as a whole and Dale found that it did, in fact, comply with the Comprehensive Plan. Some of the Planning Board members talked about, and they do in their second finding here, talked about how they thought this density was premature for the level of services that are available. I don't think that's really true. If we needed community sewer or community water, we certainly don't have those available, those services are not out here. We do not. We're proposing on-site septic systems, on-site wells, we've done significant soils testing out here and feel that the property will support the kind of density that we have. Well water is readily available so we don't need sewer and water services. The road improvements out there, although they don't currently meet the subdivision standards, are adequate to serve this development and I think that's evidenced by comments, or maybe lack of comments, by both County Public Works and by the Department of Transportation who reviewed this submittal and commented. Neither one of them felt that Mullan Road needed additional improvements, they didn't indicate that the level of road services available were inadequate. So I don't think there's any indication in any of the information that's been provided that the level of services available here are not sufficient to promote this development and support this development. I guess the third one they talk about is that the area is predominately 5 acre tracts and it is. Again, I think that in general, 5 acre tracts are perhaps not a real appropriate use of the land and tend to be a kind of an in-

between size. There's a lot of them you see around where people may want the 5 acres for elbow room, but once they get 5 acres, most of them, and certainly this isn't always the case, find that it's too much property to take care of. They probably take care of a half an acre or an acre around their house and they may hay the rest of it or they may lease it out for pasture or they may just let it grow up knapweed. So we think this proposal really does comply with the Comprehensive Plan and we think it would be a good development and we think if we buffered it, provided for buffering from the neighbors will, and we would ask that you support our request. I'm here to answer any questions if you have any. Thank you.

Tom Alsaker (as he gave a Power Point presentation): For the record, my name is Tom Alsaker. I and my family own the property that you're looking at right here that is the property that Grizzly Dens would sit on. I'm not here to talk about the issues that are in the book in front of you, I think those are well addressed and documented in one way or the other. I feel the need to tell you why I think this subdivision should occur. I bought this land several years ago in pieces, put it together into one, spent a tremendous amount of money and time making it somewhat productive. Very labor intensive, very expensive to water it and irrigate it and get the crop up and hope it don't rain, but that's. And in talking about the future of this land, Doug, which was one of the partners of Grizzly Dwellings LLC, and I were talking, and I said, you know, I have to do something with this land, but there are some things I don't want to do with it. Some time went by and we got together again and we talked about maybe doing a subdivision of some kind. And I said, you know, I don't want any part of any subdivision that isn't nice, and knowing full well there's different degrees of nice. People have gotten tired of hearing me say, would you go look at 44 Ranch Estates, down half way toward Missoula. I think it is a great, mid level subdivision in a density that's very close to this one. Now, as Dick mentioned, I think that, and again, you're getting my opinion on this thing, I think that small parcels of ground lead themselves in many cases to becoming something less than desirable for the area. Five acres or two acres lends itself to, you got to have more equipment to take care of it, you got to park it some place, you got to do something with it. When it breaks down, you know, you might keep it around because you might need a part off it someday to do something else with it, you know, so stuff tends to accumulate and stacked on a small parcel of ground, as opposed to a 100 acre piece of ground, it becomes very obvious. I'm going to show some pictures here today and I hope that nobody in this audience takes offense. They are only meant to prove a point of mine. I could go anyplace else today and get a dozen more pictures just like anyone I may have here. This, in my mind, is a nice parcel of ground, it's at or a bit over 5 acres, it's well taken care of and it's got some very nice buildings on it, it's a very nice piece of property. I'm showing this as a "what it can be." There's another one. This fellow here has a little different lifestyle, objective, when he first bought the place. He farmed it for awhile. Now he no longer can afford to farm it and pays somebody else to do it. Again, it's just another example, but a little bit different. This is another one. This happens to be adjoining my property. I don't see anything wrong with this place, you know, it's there, everything's there someplace, it isn't like the others, but it's there. There's the other end. I have no idea how these things get created, but I think they're like a cancer, I think once they get going, there's no stopping them. I have not any idea who this guy is or what happened to that place or he got overwhelmed or ran out of money or whatever, but for whatever reason, it's happened. This is adjacent to I-90, everybody that drives through Montana sees that. This is off of Pulp Mill Road, just a picture of what can happen without good planning. This is a piece of property, I don't know how many acres there are to it, it's on the end of a larger piece, been there forever, I'm not saying it was built overnight or anything like that, but it's just what's out there along a major traveled road in our area. This is a piece of property that happens to be by my back fence. That pile of stuff you're looking at there, between there and that trailer up there, is about 60 feet long, 8 to 10 feet tall, 20 feet wide, of horse manure that's been there for 4 to 5 years in some degree or another. This property's housed 21 horses at times on less than 5 acres, I would say two to two and a half acres. It's not, in my opinion, a good use of the land. This is another parcel of property that is only shown to show you clutter than can accumulate, knapweed, five to six feet tall in the far ground there, and a pallet fence on the back side. This does not show up very well, but in my opinion, it's a much over used piece of ground that's turned into a corral of nothing but dirt and pieces of hay, wish you could see it better. This is an area out west of town that this picture does not do justice to. If you could see this whole place, that is somebody else's neighbor, in my opinion, it is obscene and certainly not a good use of the land. These pictures are just not showing up here like I would like them to. This house has just recently been built, I'd say within three or four years, on a five acre parcel and it's only meant to show how things grow on these places. You see the truck parked there, there's a baler and a swather and a bunch of other farm equipment that's necessary to farm the few acres that are left to this property. There's numerous vehicles parked around it and a building around it. It was kind of unplanned, but down here in the rear view mirror of my pickup when I took this picture, there's another place showing up in the rear view mirror that mirrors it. This picture's only intended to show what I believe is, this is 2 five acre tracts that adjoin each other, and I look at the density of the buildings on those 5 acre tracts, I don't see densities in our proposed subdivision that would even come close to this. In addition to the house, shop, cars, the veterinary clinic, barn, house and couple of outbuildings behind it that you don't see, this 10 acres is pretty well covered up with buildings, at a density that, like I say, far exceed what I think anything on our subdivision would. This is a very nice property, a fairly new one out there, taken care of well, very good, but I will say that the less than five acres of usable property on this five acre tract are covered up with some very nice buildings, very nice buildings. What you see through the slot in the back there of that picture is the ground that we propose for our subdivision, it's on the other side of this fence and I got

nothing to say about it, it's nice, but, hey, it's getting covered up with buildings and again, it's dense. That's another picture that was intended to show the coverage of the area. This is 44 Ranch Estates taken from the corner. 44 Ranch Estates has a big loop through it, horseshoe loop. Ours does not and ours would mirror pretty much this street in that the number of dwellings on it are fairly close. Again, these are one acre lots. That's just showing the street area looking down the street from one of them. This is a few feet to the north from where I took that other picture, this is looking through those folks backyard, looking to the west, just straight down the street again, but in the back yard. This is what Mike Flynn would see from his place, this is looking into the backyards from the adjacent property owner. That's merely a house in the subdivision. The other side of that street, which would be the south side of that street, this is a picture through the backyards of those houses showing the openness and lack of clutter. This actually goes around this common area to two streets that have a common area coming to the back and you're looking at about half of it through that slot there and the other half is to the right. I truly believe that this subdivision is good for the area. I think it would develop some pride, I think it would be the best thing that could happen to it, I truly believe that. Thank you very much and if there are any questions from anybody, I'd be glad to answer them.

Chair Curtiss opened the public hearing.

Kim Lucostic: My name is Kim Lucostic and Tom is my father and I'm one of the property owners and I've lived out there practically all my life. As a minor property owner of the proposed Grizzly Subdivision, my husband and I feel compelled to address the complaints, concerns and arguments of our adjacent property owners. As of writing, not one of these people has discussed his or her complaints with us personally, therefore, they've written falsities in the letters that they have sent and I feel that's irresponsible. The others stem from simple fear of change and let's face it, the Missoula Valley is in a state of change. If you drive from Missoula to Kona Road, change is the norm. I grew up on the current property on which we reside and during the last 20 years, developments have responsibly changed the demographics of Mullan Road. In fact, the change is remarkable and economically responsible. The land from Reserve Street to ours was once farmland, however, the economics of farming have forced long time property owners to sell. Those who have subdivided have honored the land by requiring the new owners to preserve the beauty of this once pristine farmland. Instead of a mish-mash of homes, outbuildings, abandoned vehicles and garbage, one can drive down Mullan Road at least as far as Kona, because that's pretty much where the subdivisions have stopped and you can see a series of well planned neighborhoods with modest homes on parcels of land that are maintainable by the property owners but do not degrade the value of another's property and that incorporate open space that is well maintained and managed. In contrast, yet certainly not all, of the parcels which are sold in 5 acre lots degrade the history of this land. Much of the land that was once meticulously maintained by hard working farmers is now a deposit for a variety of items including seldom used farm equipment, run down vehicles, junk and animals penned in small areas filled with manure. This hardly honors the history of this land and I don't say this from an elitist point of view, I am merely a teacher who works week to week, month to month, to pay my bills. So I'm not expecting big dream places, we just want something that's modest, respectable and as hard working people, we don't need to look at eyesores, because we don't deserve that either. Many people say that 5 acres, they can't simply afford because you have to add in electricity, a well, a septic, road into that. People can't afford it and then build a home that's modest and then afford to continue to maintain five acres. We have five acres and had we known in our family land transfer that we didn't have to take five acres, we probably would have said yes, because we don't want five acres, we don't have the time or energy or the money to maintain it. Instead we're going to pay somebody to do that. The proposed development strives to do what I think the County Commissioners also strive for, it allows for growth that is planned, takes care of the land and provides affordable opportunities for individuals to own their own property and build a home while maintaining open space for native animals and vegetation. It comes with restraints that protect the property owners of the adjacent property. Selling your land outside a planned subdivision does not guarantee the adjacent property owners that they will be able to look out their windows at open space that is managed. Instead, they may open their curtains one day to find a field of abandoned vehicles and a parking lot for condemned modular homes. Grizzly Dens Subdivision guarantees them that this land will be sold and maintained, so that their property values do not diminish should they some day wish to sell. The current zoning calls for one dwelling per five acres and the current market price of five acres right now is \$125,000 to \$130,000, which is well above the cost, like I said, that most families in Missoula can afford and then maintain. We also understand that the current zoning encourages PUD's. As you have witnessed in the Power Point presentation, the current five acre zoning does not guarantee the density limits. You have seen five acres with homes, several outbuildings, manure piles which infringe on property lines, buildings which house livestock less than 50 feet away from the property line and abandoned vehicles. In a well planned subdivision, the covenants and the regulations, this is not allowed, so property owners do not have to look at this. Many of the adjacent property owners have complained that this proposed subdivision does not support sustainable farming yet I can only think of two property owners near us that are adjacent, the Saul's and the Stout's across the street, who actually farm the land. However, it is not sustainable farming, they also have full time jobs, and they have considerably more land than five acres. Just because people keep some horses on a piece of land does not meet the definition of farming. They do not irrigate it, harvest it, plow it, plant it. They are, in fact, the ones that do farm, I consider would be a hobby farmer, which is what I think my dad was as well when he did it, it was something to do after work and on the

weekends and all summer long and it did not sustain our family. Their full time jobs sustained our family. One of the letters stated that this subdivision is only out of greed. This is dead wrong. There is a need to sell this land. My father proudly maintained this land, it was beautifully kept and taken care of, but now that he is in his 60's, he no longer has the desire or energy to farm, but he does not want to sell it with not doing so responsibly. Not only because he will be an adjacent property owner but also because he respects the property of his neighbors. Though he disagrees with their arguments, he still desires that they have continued natural beauty adjacent to their property. If you examine the plans of this proposed subdivision, you will see that minimal open views are blocked since most of the houses are set to the back with a berm behind it. If he sells this property, and he will, he'll have to do it in five acre lots, he can't guarantee these things for these people. And finally, the fact that this land, as I said, is going to be sold and whether it's part of a development or not, the current property owners have no desire or the money to continue to irrigate this farmland, it's not affordable. The amount of work required to properly maintain this amount of land versus the yield of hay it provides in return is a wash and the property owners are attempting to sell it responsibly. We will make the same amount of money whether it's sold within the planned constraints of the development or in five acre parcels so money and greed are not an issue. Instead what is an issue is responsible land management. We live out here because we desire the space, we love the land and we enjoy nature. This subdivision will not diminish these qualities of life. Instead, the well planned neighborhood, with enforced requirements, will enforce that these qualities are maintained. If one needs proof, look at those pictures of 44 Ranch Estates and it shows that that neighborhood is well maintained, yet is unobstructed, it is quiet and it is a neighborhood that honors the land on which it's occupied. I thank you for listening and if you have any questions.

Kathy Oakey: My name is Kathy Oakey and I live out in the Golden West Subdivision off of Mullan Road. I've lived there for 20 years. We have 10 acres, three and a half which happen to be up on top of the hill and then we have 7 acres down in the floodplain area. I've lived out there, I watched to see what can happen to an area. We had a nice subdivision when we moved out there. Some of the parcels are five acres, some of them are two and a half and I think there may be a couple even that are a little smaller than that. But for those of us that have the 10 acres, in each case, most of us have two to three acres up on top and then, like I said, the area down below. And in the last several years we've noticed that some of the homeowners in our area have let their property become storage areas for their own recreational vehicles, motor homes, boats, campers, trailers. In addition, because they have property that provides off street parking, they also have their friends and their families and their neighbors, or their relatives that bring their vehicles in to store for the summer, the winter, whichever the case may be. When I pass the 10 homes to get to mine after I come off of Cote Lane I see a few that are neat and tidy with no excess vehicles and I say a few, and that really is a few, there's just three. I see another land owner that one could think was in the automobile repair business. I was gone for four years, working out of town, I've moved back, those vehicles have not moved since before I left. There's a place there that have five acres, it's a piece of property that we almost bought and on that property now, there was a couple that lived there, they tried to make a little tree farm out of it, they didn't fence it properly, consequently, the deer have eaten all the bottoms of the trees and now there's one individual that lives there now, it's the son of the property owner, and as I drove by as I came in here, I counted one boat, two trailers, a pickup camper, three cars, two trucks, two pickups and one larger truck that I know has not been moved, and there's one individual living in that house, and there's also a garage plus two additional outbuildings, that's on about five acres up on top. There's another, my next door neighbor, they have 11 acres. Every year they bring their four to five horses up from the bottom field which is about 7 acres because they want to be able to at least get one crop of whatever hay they get off of it. They put those four horses in a small area that adjoins my fence, the area is a space of about 15 by 20, they leave those horses in there day and night. Occasionally they'll let them out when their lawn get high and they'll let them graze their lawn. They've eaten our fence, they've broken our fence, they've been into our property. We've discussed that with the neighbors, but, you get those small areas, like those four or five acres and people think they have a lot of area to do a lot of stuff in and as was said earlier, it becomes a storage unit. We have another neighbor that brought in a load of logs to feed his wood fireplace. His load of logs sat out in front of his house for over two years till they dried and he used up enough of it to where it was gone. We're in the process of redoing and reworking our covenants to address some of these issues but as we all know, once we get a place like some of those that Tom showed, it's pretty hard to get people to spend the energy and the time and the effort and whatever it takes to get those places cleaned up. I know when we moved out there, we had the opinion, oh, wow, 10 acres, that's really exciting, we're landowners! Well, over the years we did have cows down there in our field and raised them and butchered them and sold them and what not and the last several years, we've not done that, so what do we have now, we have knapweed, to the tune of whatever it costs us every couple times a year now to get our fields sprayed so that we could hopefully get that back into an area where we can put a few animals back into that field. I've seen what happens with five acres, it is just too much for the normal person that works all day to go home and maintain. We've got a perfect example for people if they want to come out there and take a look and just see what's happened. They thought they could be farmers, found out that it doesn't work. It takes us, we have about an acre of lawn, it takes us over two hours to mow our lawn with a riding lawnmower. So it's becoming more of an effort than what we're really wanting to do. Anyway, I think I've made my point and to understand that some of these areas, we can turn off of Cote Lane just before you turn onto Toby, there's a nice subdivision down there that has I believe, I don't know if they're one acre, half acre, whatever, I drove through there

today coming down to this meeting, I saw no excess vehicles, I saw no excess outbuildings. There was a garage and maybe a small storage unit that was set way off out of the way so that it wasn't seen from the road, or if it was, it wasn't obtrusive, where I looked at our neighbors who have outbuildings up the kazoo. And it's just not pleasant to drive by out there anymore. And I firmly believe that, just watching what Tom and Laura have done with their property, that they would have nothing less than what they have now.

Commissioner Evans: May I ask a question. Do I assume you are supporting this subdivision.

Kathy Oakey: Absolutely.

Commissioner Evans: I just wanted you to say it on the record. Thank you.

Kathy Oakey: Because I've just seen what's happened with my own neighborhood and it's not pretty anymore.

Shirley Walker: My name is Shirley Walker, for the record, and I'm one of these people that I guess that they're talking about and I apologize, because I didn't realize that I was contributing to the negative parts of Missoula. I do have five acres, I live on Deschamps Lane. I have horses, this is why I live there. I irrigate my property, I fertilize my land, I kill the weeds every year, I maintain my property and most of my neighbors do too, and I'm really shocked that this is a negative thing. I grew up in Montana, this is how I choose to live. I choose to live here because I can have my property and I can work hard and enjoy it, so with that being said, I go from where I was coming from. I do oppose this zoning change. I oppose the zoning change for several reasons. In doing my research, if you will, for this, I am an accountant, I am not a land use, I'm not an attorney, I'm just a citizen. But I wanted to know what was fair and what was right and I wanted to know what was good for the community as a whole. So I went and I pulled up on the Internet, you've got a wonderful homepage, pulled up on the Internet the Growth Plan and everything in that Growth Plan, everywhere I went, talked about the Growth Plan and the planned development and it talked about planning around infrastructure, infrastructure. I mean, that came through so clear on the 2002, where it says, it says, it referenced to the planning and development of infrastructure are among the most important tools for well managed growth. It says in this policy, it says under General Goals, it states the goal is to manage growth in a proactive rather than reactive way. As the Planning Board said, we've got too much of this leap frog development. In the policy, under Development Patterns and Land Use, the objectives referred to encourage and support new land development within or immediately adjacent to the areas where public services are currently available, to both maximize local government efficiency and to promote a logical growth pattern and to promote low density development in areas distant from sewer or other public facilities and services, in part to maintain rural character and environmental quality. Apparently rural character is not something that is desirable from what I've been hearing. The policy again, under Guiding Principles, talks about the goal of social infrastructure, provides for public welfare and it includes health and safety. Currently, the 2001 Sewer Service Plan is extended to the Grass Valley area. This area is approximately a mile and a half east of this proposed subdivision. I know that recently a request was made to this Board to extend that sewer service and it was denied. So, sewer service out to this area is not in the foreseeable future. And east of that, in the sewer district, I know this Board recently approved around 1,400 homes in different areas, I know the Phantom Hills and then there's the area across from the Hellgate Meadows and those. So we have a place for Missoula to grow and develop and we have a place for the density to go at this point where we have that infrastructure, where we have the services. These homesites are within that planned infrastructure. Also the Comprehensive Plan that was updated in '98, that says because development cannot occur at urban densities without sanitary sewer facilities, any wastewater treatment facilities service areas adopted by the City and County will coincide with urban growth. Outside of the urban growth development pattern should be encouraged which can be supported by rural levels for public infrastructure. The 2002 Growth Policy provides in discussing development plans, low density development should be encouraged in areas distance from sewer or other public facilities. To allow an increase of density in this area could compromise the public welfare and safety of the new and the current residents. The section of Mullan Road that this property would access is the older section of Mullan Road which narrows at Deschamps Lane going west. This road is not only narrow, but coming off of onto Mullan Road where the proposed access would be is a very sharp corner approaching Deschamps. The speed limit in here is 55 miles per hour, when it is enforced. The other road that the development would access is Deschamps Lane. Deschamps Lane is a gravel, dirt, unpaved road, as I said, I live on it, I know. The Missoula Air Quality Advisory Council addressed unpaved roads in their report to the Air Pollution Control Board dated July 13, 2004. This report states the Public Works Director believes the leading complaint he gets during the summer months is dusty roads. The complaints he says come from both the Health Department and the general public. During the dry months of the summer, the dust on Deschamps Lane hangs in the air for several yards around Deschamps Lane, it encroaches on the fields around it, it obscures visibility, this is definitely a health and safety hazard for the people that live in that area and have to commute on that area. When I moved into this area about 7 years, I could go running at 5:00 in the morning on Deschamps Lane and I didn't have to worry about a car. Now I have to get off the road for probably five or six vehicles at that time of the morning. So Deschamps is becoming quite a busy road without additional development. The developers are anticipating an increase of vehicles on either Deschamps or

Mullan Road of 152 trips a day, that was in the proposal we received. Based upon the proposed development, half of the sites would be east of the new road connecting Mullan and so the others would probably go on Deschamps. Now, somebody said well nobody's going to go on Deschamps 'cuz it's a gravel road. I can attest that that's not the case. Deschamps is a lot closer for these people than going clear back and go onto the side road to Mullan. This projected 152 trips a day would result in 55,480 new vehicle trips along that stretch of Mullan per year. The majority of Missoula County is unzoned. I was reading, I think it was about 18% of all Missoula County is unzoned. We are fortunate to live in an area of Missoula County that has been part of a plan for managed growth. This area has been zoned in an effort to protect the future growth of Missoula. This zoning protection is one of the reasons that we felt comfortable buying a home in this area, that was one of the reasons that I purchased my property. Many of the residents around this proposed development have horses and other livestock, the character of the neighborhood is rural and I'm sorry that having horses and maintaining our fields and having buildings is a negative, I just, you know, like I said, I thought that's what we lived in Montana for. We are not against growth. I mean it we're not against it, we would, growth has been good, growth stimulates economy, growth improves our lifestyle, it increases our property values, so that's not what we're here to, or at least I'm not here, to oppose. I would welcome and support a development of homes within the current zoning restrictions. However, this proposed development and request for zoning change is premature density. The infrastructure is not in place to support this density, I feel, prematurely increasing this density would be costly to the County and endanger the health and welfare of the residents of this community. As was stated in the introduction to the 1998 Update to the Missoula Urban Comprehensive Plan, other significant social and financial costs are incurred when low density, poorly planned areas become urbanized and require expensive, disruptive retrofitting of capital facilities such as sidewalks, improved streets and sanitary sewer systems. While the Missoula Comprehensive Plan is not law, I recognize that, it is a document that has consumed a great deal of taxpayer's money and time because of the input and the time of having and developing and updating this plan. When reading through the many pages of the plan and the updates, the common theme that's addressed over and over, is planned growth within the infrastructure. The plan recommends growth around infrastructure, not only for health, safety and general welfare of the Missoula residents, but also to reduce the cost of providing these services to the public. We have spent a lot of time and money on a well written growth policy. If we as a community do not follow it, why did we do it. I would ask that you follow the recommendation of the Planning Board and deny the request for rezoning of the Grizzly Dens. This type of premature density defeats the goals and objectives of the Missoula Comprehensive Plan. Approval of this rezoning would only benefit one or two or a few individuals, while potentially endangering the public welfare of many Missoula residents in the immediate area and in the surrounding area. We need to look into the future and make decisions that will shape Missoula's future. And thank you very much.

Steve Hall: My name's Steve Hall, I'm an adjacent property owner. Couple of things that I wanted to address. First one was mentioning the 50 foot setback that Dick Ainsworth and the owners wanted to carry over from the five acre development or zoning that's in there. I think 50 foot is a good number for setback on five acres, but on ones, you know, that may not fly. Might be a little bit better to put a little bit more space in there if it was going to be considered. It's kind of a strange way that this thing was put together and I don't mean the development, I mean the way that this is in here reviewing right now, it seems to me that there are two different topics here. One is changing the zoning out here and I think that's completely separate from actually talking about this development, so it's kind of a strange mish-mash to be, you know, just assuming that this zoning change is going to go and then to start talking about picking apart anything we want to pick apart on the one acre plan. So I apologize for the shotgun approach here. 44 Estates that Tom has referred to several times as a targeted development that he'd like to replicate, I think there are a few things about 44 Estates that are a lot different than Grizzly Dens down here. First of all, 44 Estates is ready to tie into sewer if they haven't done it already and that development, I believe, took place in the last four years, somewhere in that range, and my assumption is that that was probably approved given those densities just as the trailer park adjacent to there was because everybody knew the sewer was coming out there. Everybody knows right now that the sewer is not coming out to Grizzly Dens, so there's a difference there. The other issue is we've got 9 foot groundwater out where we're at, I live right next to this ground and I know what it was when I tested mine and I'd be willing to bet that 44 Estates probably is looking at 70 to 100 feet for their groundwater, so you know, that's a pretty basic difference there. The sewer appears to me, having not been involved with the planning for that sewer, but they stopped it at the bottom of the clay hills there and didn't run it on out even when they were approached on it. The reasoning seems to me to be that you've got in the next mile at this point, maybe 70 houses and it's cut into fives, been developed, you know, there's only a couple of spots in there that are not cut yet and so I don't see that the revenue is there to ever pay to run that sewer out there so we get out here and put a bunch of high density housing in here and end up messing up the groundwater, it's going to be a pretty big pill to swallow trying to cover that mile of sewer line out there, you know, spread over 70 or 100 or 150 houses, it's not like the rest of Mullan Road where you've got, you know, a major contribution there from the golf course, 300 houses, however many are in the clay hills there, you know, it's a lot easier to pay for a mile of pipe if you've got 400 or 500 houses contributing to it. They also recommend, or they also refer to the 44 Estates as a nice looking development. I guess I'd offer that I think Snowdrift Lane looks pretty good. That's a lot of 5 acre places there, I'd have a tough time finding anything wrong with that development, you know. A lot of references made to covenants. Far as I know, covenants are not

acreage driven. You can put controls in covenants on five acres the same as you can put them on one acre, really not anything to do with the size of the ground, just depends on whether you put the covenants in place and you enforce it. Now, back to the shotgun approach on talking about the development. There's a railroad bed that is, near as I can scale, is about 1,600 lineal feet long. I quantified what I figured was about 13,000 cubic yards of very, very fine, silty clay in there and I found out at the review board meeting that they were planning to spread that over the site. Not ...

Chair Curtiss: Let's keep our comments to the Commission and on the microphone, please.

Steve Hall: Okay. Well, the last I heard in the meeting, they were going to spread it over the site. You know, if Tom is saying that that's not going to happen, would be a little sweat off my brow, 'cuz I sure wouldn't want to spend the next couple of years with silty clay spread over that thing. Tom knows it's not going to take seed without an awful lot of work and if they're going to haul it off-site, I guess you got to look at 1,300 times .125 expansion, 1,500 truck loads of material going off-site, you know, that's going to cause some wear and tear somewhere, I'd like to see that addressed. I really do agree that planning is needed. Now, as far as whether the average person can afford a lot out there or not, I guess the closest lots that I would liken to these would be the ones that were just approved there by the cemetery and most have built on this last year and it's my understanding that they went for \$90,000 on the 1 acres. 90 times 20, I guess we can do the math on that, that's about \$1.8 million. Cut in fives, you know, you're looking at 9 times, Karl Tyler sold one at a \$150,000, the first day it went on the market. So, you're probably looking at \$1.4 million, cut into fives. That's a pretty good jump in-between there, but I think the point is that \$90,000 to \$100,000 is not what the average person can afford anyway. \$150,000 is pretty much going to keep the threat of abandoned trailers and what have you out there, people just can't afford that if they're looking to put a trailer on there, the upfront money's just too much. So those are just a couple of the items that I'm seeing. Another comment was that none of the adjacent homeowners had contacted the owners about how they felt about this. I guess I would say that the onus or the burden would be to be on the folks proposing it to contact us and we did have one visit, could have been a year and a half ago, might have been you, came to my house and asked what we thought of cutting it into 5's? And I said, well I think he's got the right to cut it into 5's. And then they said, well, what do you think about 2-1/2's? And I said, starting to get a little nervous on 2-1/2's. And they said, what do you think about 1-1/2's? And I said, absolutely not. That's the last contact I've had on it. I guess I would say that one fella on the planning committee that didn't say anything the whole two hours, one thing he did say was that, you people need to get together and come to some kind of a compromise on this thing. I don't really want to not have a relationship with my neighbors out there and I don't think they feel the same way either. So, I'm hoping that sometime here that we start looking at a compromise instead of taking swings at each other.

Chair Curtiss: Just to clarify, 44 Ranch Estates is not on sewer. It does have the opportunity to connect, but it isn't one that is connected. And one other point I wanted to make is that the Health Department and the Department of Environmental Quality are the ones who make decisions on whether or not the groundwater can handle wells and sewers and things.

Tom Alsaker: Tom Alsaker again. I'd just like to reply to two things that were just said and that is that I believe 44 Ranch Estates has been in existence for in excess of 10 years, I just really think that, and the railroad berm that's present out there in whatever fashion it remains is not going to be "spread on the area." That's not to say that it might not, some of it, be used to create some hills and such along the roadway for the travel corridor over there, covered with dirt so it will promote growth. The rest of it, be assured, is going to be removed, in over whatever period of time it takes. Most of it will be used to fill areas along the railroad grade that were excavated on its building with a scraper that will be very fast and it will take care of the issue rather rapidly. I don't think it causes any concerns or threats to any of the neighbors in that happening.

Sarah Glidden: My name is Sarah Glidden, and we are also an adjacent owner to the property. When my husband retired after working 30 long years for one company, one of the stipulations we wanted was elbow room and space. We moved there, it had five acres, it's still zoned 5 acres and we'd like to see it remain zoned 5 acres. It is a rural setting, there is agriculture, most everyone there does have horses. Like Shirley Walker said, we irrigate our land, we maintain our land, we've had construction this past summer, so things can get not completely organized, but we do maintain our land and irrigate it and care for it. I'm not quite sure how a Homeowners Association can completely control clutter or whatever you want to say, so I'm not quite sure why a close-knit area of homes would stay immaculate and eye-appealing. I think it is premature to have a cluster of homes on such a small area and as you can see by the map here, the common area, to my understanding, isn't buildable anyways. So, therefore, all of these homes have to be clustered together on an average of, not counting the two acres here and then his daughter's land there for five acres, the average of the other 19 homes is 1.27 acres. Growth is inevitable, however, it must be planned for and there is no objection to new homes coming in and however, 5 acres would be what I would vote for and a person has a right to do with their property what they want, however, if it's zoned 5 acres, let it be, remain that. The Wye-Mullan Plan is in effect to the other side of Deschamps, that's just starting to be talked

about, or actually, it's been for awhile. Again, the road situation onto Mullan Road, it does narrow, as I was going to bring up that point also, before you get to Deschamps. I do live on Deschamps, I know how dusty it gets, thank goodness they put our house back off of Deschamps so we don't live right on Deschamps Road. The traffic is atrocious already on Deschamps and even though the speed limit's 30, whether you go 30 or whether you see the cars zooming by at a higher speed, the dust is in the air. So I vote, please keep it 1 home per 5 acres. Thank you.

Kim Lucostic: Kim Lucostic again. As far as I know, Deschamps is a County road, which means anybody can use it. I think the issues is not that people use it, it needs to be paved, it's needed to be paved for years. You sit down there at the corner of Deschamps and Mullan Road, and I have because I pick my daughter up there when her friend's parents drop her off because they live up off of Deschamps, I watch cars come off Mullan Road, most of them coming from Missoula and they're cutting across Deschamps Lane, whether they live there or they're going up towards the Wye or they're going to work or they're going home from work in Lolo or Missoula. And Mullan Road is also a public road, anybody can drive it. And, yes, the traffic has increased immensely out there since I was a kid. I used to ride my bike to town and not see a car, but that's part of change and a lot of people are using that road as a bypass around Missoula 'cuz they're taking the Blue Mountain Road, Kona Road, Mullan Road, to Deschamps Lane to the Wye. And if you just watch the traffic patterns out there, that's what you're going to see. I'm not an expert, but I have sat there many, half-hour at a time, watching cars coming off Mullan Road heading northwest on Deschamps. Thank you.

Sam Anderson: Well, I wasn't going to say. Sam Anderson, I am a landowner out in the area, I'm not right next to Tom Alsaker, but I guess some of the pictures he showed, if you go through the pictures, I can probably guarantee you none of those are in covenants, don't have covenants. You put covenants on properties, you can eliminate all the junk, you just have to have an active Homeowners Association which can enforce those covenants and keep the junk off of larger parcels. 44 Ranch Estates is a great development. One of the complaints is too big a yard, 1 acre. Tom's proposal is 1 to 2 acres, there's not too many of us in this room willing to mow 2 acres of ground. One of the supporters said that she takes her over two hours to mow one acre, now how would you like to mow two acres every, once a week or twice a week. I think you put covenants on 5 acre properties, you could have a nice subdivision, just like Snowdrift Lane. A lot of the pictures he showed of the nice homes were on Snowdrift Lane. You go take a look at that subdivision, it is very nice, people do keep those properties up. And another thing was stated that money wasn't an object and by one of the owners, said that they were going to make the same amount of money on 5 acres as they were on 21 lots, so 9 fives or 21 one to two acre lots, so if they're going to make the same amount of money and it's selling one per five, I think it should stay one per five.

Dick Ainsworth: Dick Ainsworth again. Just want to clarify a couple of things. There were several comments about the density in reference to urban densities and high density and, one unit per two acres is not high density, is not urban densities. The Missoula County Subdivision Regulations define those densities as rural densities, not as urban densities. This is not a high density development, it's not an urban density development. It is higher density than one to five, there's no question about that, but to characterize this as urban densities and high densities, and again, comments that the infrastructure isn't there to support this. Sewer is not there, obviously, there's no water out there yet and may not be for many, many years. The sewer does not need to be there to support one unit per two acres, it doesn't need to be there to support one unit per one acre. So, those sorts of infrastructure improvements aren't necessary to support this kind of development. Mullan Road is narrower in this area, but again, both the Department of Transportation and the County Public Works Department reviewed the submittal, neither of them felt that the road was incapable of handling this development, neither of them said that adequate infrastructure wasn't here to serve the development. So, I think, again, that that infrastructure sufficient to handle this development is available. 44 Ranch Estates, as you pointed out Jean, is on individual septic systems, it was put in that way. I think maybe both Tom and the other gentleman might be right. Part of 44 Ranch Estates probably has been there 10 years, it's been done in at least two phases, if not three, so probably some of the newer phases may only be 4 or 5 years old, being done over several years, but it was designed for individual septic systems and wells and was approved, reviewed and approved by the Health Department, that's what this proposal is, and the soils will handle that, the aquifer will handle that, so I feel that those sorts of improvements and infrastructure are here to serve this development. The one lady made a comment that the common area was not buildable. That's not true. Some of the common area has high groundwater that's gets within closer than 4 feet to the surface, which means you couldn't put a septic system in it. We could certainly put homes in the common area and we could put septic systems up on the higher land, but you could build on it. You can't put a septic system in it, true, but it could be built on. We could have proposed homes in the common area and closer to Mullan Road but we would have had to treat their sewage up on the higher land, but we decided not to do that, we wanted to retain that as an open space and a buffer, but to characterize that as not buildable is not accurate, because it is buildable. I think that's my comments, thank you.

Chair Curtiss: I'm going to ask our Deputy County Attorney Colleen to address a couple issues, because what we are considering today is several things, one is to change the zoning, do a subdivision and have a PUD. Although,

because the Planning Board didn't vote on the subdivision, that won't be decided today even if we do vote for the zoning, because it needs to go back to them. So, Colleen, if you could address the legal issues of the use of the Comp Plan in zoned area and then the criteria for a PUD and the ability for people in the contiguous zoned area to protest, those issues.

Colleen Dowdall: Okay. During the Planning Board meeting, I think it was Ron Erickson, addressed the issue of whether this zoning would comply with the Comprehensive Plan, because it did not match the density recommended by the Growth Policy, as we call it now. The staff found that the zoning did comply with the Comprehensive Plan or Growth Policy because the Growth Policy is more than the density map, it includes recommendations for open space, clustering and a variety of other issues. There is no requirement that the density map match the rezoning. In addition, recent Legislative sessions have modified how we use the Growth Policy and one of those changes has been that we cannot base any land use decision solely on its failure to comply with the Growth Policy. So, if someone asks us to rezone their property based on the Growth Policy, even though in another place, it says that the County shall zone in compliance with the Growth Policy, our interpretation in my office of that is if the County initiates zoning, then it must be done in compliance with the Growth Policy. However, if an individual applicant requests a rezoning, we have to consider whether it complies with Growth Policy, but we cannot deny it based solely on its compliance with the Growth Policy. Does that cover the Growth Policy issues? Okay. This property is zoned C-A3, which allows a density of one house per five acres. It does not require five acres per lot. We don't have minimum lot sizes in nearly every zone in Missoula County. It does require that the total density equal one per five. The zoning resolution also has a provision for Planned Unit Developments and in the purpose section for C-A3, it says that Planned Unit Developments are encouraged in this zone. I'll read the purpose for which it says they are encouraged: "Planned Unit Developments and Planned Variations are encouraged to preserve agricultural land and to enhance environmental amenities found in rural areas." That's for the C-A3 zone. In the C-RR1 zone, which is essentially a density of one per one, which this is arguable, because they are one acre lots in size, that there are some comparisons, Planned Unit Developments and Planned Variations are also encouraged for the same reason. The C-RR1 zone, with one dwelling unit per one acre, is described as a rural area that has some pressures for development. To get to the PUD section, in order to be approved for a PUD, you have to meet certain standards and criteria. If there is a finding that those standards and criteria are met, there are density increases that are awarded and so the staff has recommended that this development does meet those standards and criteria for a PUD and for the C-A3 zoning district, you are allowed to go from one per five to one per two. I think your last question has to do with protests?

Chair Curtiss: Right. I know that from some of the comments I read in the Planning Board minutes, there was reference to whether or not the folks had the right to protest.

Colleen Dowdall: The protest requirements in County zoning, if you rezoned this property, everyone within the contiguous C-A3 zone would have a right to protest and if 40% of those people did a valid protest, then that would defeat the PUD rezoning. I believe this happens to be a very large C-A3 contiguous zoning district, so the protest would include several property owners and it looks like Dale has a picture, or a map, of that, right on cue.

Chair Curtiss: So, if the Commission voted to change, I'm just trying to put some of these things on the record so you folks understand, if the Commission did vote to change the zoning, is there a period of time then that folks can protest, or did they have to protest before today?

Colleen Dowdall: No, the protest period in the County begins after you do a Resolution of Intent to Rezone, and that has to be published in the newspaper and then the protest period begins for 30 days. At the end of that 30 days, then, if the protest was successful, the rezoning would be defeated. If it is not successful, then you would pass a Resolution to Rezone. Did you want me to talk about the notice, or why you're voting on this zoning and not the subdivision? When the Planning Board denied the rezoning, or recommended to you to deny the rezoning, they decided then that they didn't need to vote on the subdivision. That is not quite accurate. Montana statutes require that the Planning Board advise you about subdivisions, subdivision plats. Our local regulations have interpreted that or have implemented that to say that the Planning Board needs to vote to approve, approve with conditions, or deny the subdivision and then you have jurisdiction to act. Because the Planning Board didn't do that, if you did approve the rezoning today, or even if you don't, you still need to act on every subdivision that comes before you. So, even if you don't approve the zoning, we still need for the Planning Board to consider the subdivision and to give you advice by either voting to approve, approve with conditions, or to deny it and so that has been set for this coming Tuesday night's Planning Board meeting that they will just, the Public Hearing is closed, but they will need to vote, they're meeting on other matters as well.

Chair Curtiss: So, today the Commission can vote on the rezoning, but the PUD is actually part of the subdivision, or do we vote on the PUD today too?

Colleen Dowdall: The PUD is the rezoning and, yes, if you vote on that today, then the subdivision next Wednesday.

Chair Curtiss: Does the Commission have any questions or comments?

Commissioner Carey: I'd start off by saying that the opponents to this rezoning raise valid points and concerns. It seems like almost on a weekly basis this Board of County Commissioners faces this clash we're facing today, the clash between growth pressures and people wanting to maintain a rural way of life, and we haven't discovered a kind of win/win situation. But I will tell you, that in my view, this proposal is the kind of proposal I think we're going to want to see created 10-15 years from now when we drive by it, this, I hope, will become a kind of standard on how to do it. There'll be sidewalks, there'll be pathways, there'll be setbacks and it won't be one to five or one to ten anymore, that's not going to hold up anyway. We see it time after time after time. So, it's a tough call but I think this is the kind of development we need to have along this highway. Last year, last fall or so, we okayed a 94 unit subdivision about a mile and a half west of Lolo, up Highway 12. We had no grounds to deny it, the developer did everything he needed to do and more. And, I guess unless we figure out ways to approach subdivisions in the way this one is attempting to do, by having the setbacks, by clustering, I think that that's going to be better than the alternative, which is to put it in one per fives or whatever and then hope that people enforce covenants, or even have them. So, as tough as it is, I'm going to support the rezoning.

Commissioner Evans: I think most people will tell you that I don't have a difficult time making up my mind and I usually have my decision made quickly on things. On this one, I haven't made up my mind. I have mixed emotions about it because I hear what you people who live out there say. I think that Mr. Alsaker and Dick have done a yeoman's job in trying to meet the needs and desires you folks want and still provide for open space. They've offered land that would be common space that will otherwise be used up by houses and you would have no open space in the future. They put in sidewalks, they've put the houses back against an area that I don't feel is the most desirable place to put them, if I were going to buy, I'd prefer to be up close to the front of the highway. So, I'm terribly ambivalent about how to vote on this issue. End of speech.

Chair Curtiss: I guess, in my mind, I need a little bit more clarification from Colleen. So, the C-A3 zoning encourages and allows for PUD's to be within that zone.

Colleen Dowdall: That's correct. It's in the purpose section, it describes the purpose of the district and then the last sentence says that Planned Unit Developments and Planned Variations are encouraged to preserve agricultural land and to enhance environmental amenities found in rural areas.

Chair Curtiss: So when you go over to the PUD section, there's some standards and criteria there, to me that's what we have to judge our decision on. If the zoning allows for them to have PUD's, then we need to look and see whether they've met that criteria and I think that they've met most of this criteria. It's in the packet that they developed too. But, they're preserving usable open space. One of the things that I like about this subdivision is the fact that it, in a lot of ways, even though it will be surrounded by some larger pieces of property, because the two properties, Tracts 10 and 11, and 9, are larger, so they kind of give a buffer that way, the common area gives a buffer along Mullan Road and the 50 foot setbacks would give buffer along, and they've written it to say, "No Buildings." The zoning for C-A3 says 50 foot setbacks, a lot of people have interpreted that, in looking at what's on the ground, as that their house needs to be 50 feet away, but there are some barns and other outbuildings that seem to be closer. And then on the Milwaukee side, they'll be setback from there too. So, I see it as a nice plan, even though I understand what you're saying about the fact that the folks that bought 5 acre tracts expected them all to stay that way. I think one of the other things that people don't understand is that, as Colleen said earlier, in the County, we interpret one per five acres to mean a total density, so there can be differences as long as, when you do all the math, you come out with five, and this ends up being 2.2 with the Planned Unit Development. The Primary Corridor landscaping that will be required along Mullan Road, too, I think will look pretty as you drive by rather than just a hay field that's been cut. Any other comments or motions?

Commissioner Carey: Well, again, this is not an easy decision, but I'll move to approve the zoning request, subject to conditions.

Commissioner Evans: I can't second it.

Chair Curtiss: I'll second the motion. Is there any discussion?

Commissioner Evans: I would like to say to the folks who live out there, this plan is probably better than it would be if it was one per five, because it will leave more open space, it will stay nicer from a perspective along Mullan Road than it would otherwise, but to convince you that you'd be better off having something you don't want is not an easy

task and I'm not going to try and do that, but I want you to know I hear your concerns about wanting one per five, even though I don't think it's a very good use of the land. So that's why I have such mixed emotions here. I don't usually have difficulty making up my mind, but this one is a very difficult one for me.

Chair Curtiss: Any other comments? All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed?

Commissioner Evans: I abstain.

The motion carried with two Commissioners voting in favor and one abstention.

Chair Curtiss: So the Board has voted to approve the zoning change so now the Planning Board will have to consider the subdivision and that will come back to us next week.

Colleen Dowdall: Next Wednesday. So, the consideration of this is continued for one week. The Planning Board consideration has been put on the agenda and I believe the agenda has been distributed for Tuesday's Planning Board hearing, it's first on the agenda and the other thing on the agenda is the Wye-Mullan Plan discussion. I just want to make sure we have all our notices and we've told people. And then the applicant needs to give us in writing an extension of time in order to make the decision.

Chair Curtiss: And the applicant has agreed to that. The other thing is, when we consider the subdivision, the Commission could add some conditions or changes of our own, so it could end up looking a little bit different if that was the will of the Commission. Okay, so we've finished that one. We're going to take a short break.

Consideration: Mackintosh Manor No. 35 (2 lots on 10.32 acres) – Dundee Road and Highland Drive (Continued from December 15, 2004)

Tim Worley, Office of Planning and Grants, presented an update using Power Point to show some slides of the property.

The biggest issue at the December 15th meeting was the hillside component of this property. Staff attempted to address the hillside issue through recommended Condition of Approval #2 which reads: "An approach permit for Lot 2 shall be approved by County Public Works prior to final plat approval. If the driveway approach for Lot 2 is from Dundee Road, the building site area shall be located east of the 3,430 foot elevation line. If the driveway approach for Lot 2 is from Highland Drive, the building site area shall be located west of the 3,460 foot elevation line and a private access easement across Lot 1 shall be shown on the final plat. This information shall be included in the covenants, subject to review and approval of OPG and shall not be changed without governing body approval."

Staff is advocating that if access is from Dundee Road, the building site should be located east of the 3,430 foot elevation line. However, if the building site is in the western portion of the lot, west of the 3,460 foot elevation line, then the driveway should access from Highland Drive across Lot 1.

There are some No Improvement Zones on the property. The driveway from Dundee Road does not actually go through the No Improvement Zones but those zones would have to be navigated to reach the western homesite. There are portions of the lot that would be traversed by the driveway that are 20%+ slope.

Chair Curtiss asked for public comments.

Greg Martinsen presented two full color site maps for Lot 2 only, one showing the house east of the 3,430 foot elevation and one showing the house west of the 3,460 foot elevation. The intent of a portion of the hillside regulations is to create the shortest possible roadways in the interest of saving on fuels and pollution. To get to the western building site, which is the best building site, from Highland Drive through Lot 1 would require approximately 3/4 mile more travel distance on steeper roads to a higher elevation to then come back down to the building site. That is totally against the intentions of the hillside regulations. The driveway as shown from Dundee Road maintains a grade of 8% or less for its entire length and is based on sound engineering principals, not guess work. Alongside the driveway there would be some cuts and fills in excess of 25%. The total amount of cut and fill for the driveway would be around 460 cubic yards. It is their firm belief that the best plan is to utilize the better building site on the western portion of the property and to design the driveway as shown; it will create a lot less disturbance. The pictures shown of the lower building site appear to be a gentle slope, but that is not the case, the pictures are

deceiving. The grades across that building site are between 16% and 20%, fairly steep compared to the upper building site. There are several reasons why the drainfield cannot be located on the lower building site. First, the slope is somewhat prohibitive. Secondly, a separation of 100 feet must be maintained from any possible intermittent streams or water. Finally, the test holes showed only 4.5 feet to a limiting layer and the regulations calls for a minimum of 6 feet. The site map with the home located on the eastern portion shows the extensive amounts of cut and fill that would be needed. The drainfield would remain on the western part of the property and effluent would have to be pumped uphill, which could be a problem over time. The area to be disturbed on the eastern site comprises a cut of 2,470 cubic yards and a fill of 1,530 cubic yards, substantially more than both the driveway and the building on the western site. Anyone who spends money to purchase this property should have a choice of where to build. He would again propose an alternative Condition 2 which reads: "An approach permit from Dundee Road for Lot 2 shall be approved by the County Public Works Department prior to final plat approval. If the owner of Lot 2 constructs a residence in the building site area located west of the 3,460 foot elevation line, they shall be required to submit an engineered driveway plan for approval by the County Public Works Department. The grade of the driveway shall not exceed 8% and care shall be taken to minimize areas of cut and fill and other visible scars. If the owner of Lot 2 constructs a residence in the building site area located east of the 3,430 foot elevation line, they shall be required to submit an engineered driveway, grading and site plan for approval by the County Public Works Department. The grade of the driveway shall not exceed 8% and care shall be taken to minimize areas of cut and fill and other visible scars." This gives the owner some options and it provide oversight for the driveway if it is built or the site plan, if the eastern location is chosen.

Jim Schmautz stated he was the property owner. He thanked the Commissioners for their time on this matter. All of this came as quite a shock prior to the last meeting. They did not get any of this information until the night before the previous Commissioners meeting and had not had a lot of time to digest it. Commissioner Carey's concern expressed at the last meeting was that the driveway would create a visible eyesore across the lot. His concern was if access was across Lot 1, it would definitely create an eyesore and destroy the value of the property. If he ever did sell the property, he would lose tens of thousands of dollars and probably get sued at some point because of the easement. He would not live there forever and the next two owners might not see things the way he and the Board do today. He does not want to get sued nor destroy the value of his lot. The new wording of Condition 2 gives some control back to the Board by requiring him to get approval from the Public Works Department. It will cost him more money but it is a cost he is willing to bear. He would ask that the Board approve the subdivision with Greg's alternative Condition 2.

Chair Curtiss asked if the driveway would be paved or gravel.

Jim Schmautz stated there are only one or two paved driveways in the entire Mackintosh Manor area. When he and his wife purchased this property 20 years ago, they had no intention of dividing it. When Greg informed him that dividing the land was possible, he initially said he wasn't interested, but actually, perhaps he was. This planning process has taken two and a half years so far and has been fairly expensive. He would say that initially, the driveway would be gravel, but it could eventually be paved. It would depend a lot on what happens in the area.

Commissioner Carey stated that he wanted Mr. Schmautz to understand that an easement through Lot 1 was not an option, that idea did not make sense and it has been removed from consideration.

Jim Schmautz stated he was glad of that fact, it did not make much sense.

Commissioner Carey stated that the hillside regulations refer often to minimal cuts to a hillside. A driveway to the eastern building site would be minimal. A driveway over 800 feet long to the western site is not minimal.

Greg Martinsen stated that just the driveway is not all that counts, it is the overall building site.

Commissioner Carey stated that leads to his second concern. He felt the scar from the building site would be temporary until trees and shrubs and lawn mature on the site; whereas the driveway is a permanent scar on the hillside. Within 10 years or so, it would probably be impossible to tell that dirt had been moved around the home, but the driveway will remain a visible scar across the land forever.

Greg Martinsen stated that the only thing that would be seen from the driveway would be the cut slopes and the fill slopes, the actual driveway is usually not visible.

Commissioner Carey stated that he would equate the driveway to logging roads that are visible on many hillside around Missoula, those won't go away for a long, long time; they have permanently scarred the hillside. To avoid continuing that trend is one of the reasons hillside regulations were developed.

Commissioner Evans felt this issue was sort of subjective, similar to the condition in Pattee Canyon that there could be no disturbance of the natural physiography; if a rock was moved, the natural physiography was disturbed, so it was a matter of how someone looked at it. There are more reasons to allow this to be done as Greg has suggested than there are reasons not to do it.

Commissioner Carey stated that the hillside regulations language of “minimal cuts, fills and other visible scars” is not subjective.

Commissioner Evans stated that minimal is subjective.

Commissioner Carey stated that the difference between 100 feet of driveway and 800 feet of driveway is not subjective, it is mathematics. One is minimum the other is maximum.

Jim Schmautz stated his neighbor to the west, who has been there more than 10 years, has a long driveway. Shrubs and other vegetation were planted along the driveway and now it can't even be seen; it is not an eyesore from his property nor from driving on the road. He felt that will also happen with this driveway over time, it will not be visible.

Frank Brackley stated he was a new resident of Montana and is purchasing a house at the south end of Highland Drive. He felt the driveway as shown coming from Dundee Road makes the most sense for this property.

Commissioner Evans stated the amount of cut and fill should also be considered. If the eastern building site is used, there would be about 900 square feet of fill that would have to be put somewhere.

Greg Martinsen stated it was worse than that, it would be cubic yards, not square feet. To build the longer driveway would create about 470 cubic yards of cut and fill, roughly equal amounts of each. To build the house on the eastern site would create 2,500 cubic yards of cut and 1,530 cubic yards of fill, a difference of about 940 cubic yards of material that would have to be deposited somewhere. There is almost 5 times as much cut on the eastern building site as there is cut and fill on the entire driveway.

Tim Worley stated the goals of the hillside regulations would apply to any excavation anywhere on this site. Minimizing cuts and fills would be a goal for the lower building site as well. He did feel the cut and fill could be minimized, but could not give any specific numbers. That would also be a goal of constructing a home at the lower site. He did not feel it would require as much cut and fill as Greg has suggested, but he cannot quantify that.

Greg Martinsen stated in his example, the house was given a minimal area, 1,760 square feet per level, then a 20 foot yard around the house, a turnaround area and a driveway out to Dundee Road. To do that would require cuts and fills that are in excess of 25% grade.

Curt Belts, Missoula Rural Fire District, stated his main concern would be maintaining a grade of 8% or less on the driveway. Greg has satisfied that concern, so he would approve the driveway if the 8% grade is not exceeded.

Commissioner Evans stated that she feels Greg has proven his point that less cut and fill will be required to build on the western portion of the property.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations to vary from the required 24 foot surface width and the 60 foot right-of-way to allow the existing 18 foot surface width for Dundee Road and the existing 22 foot surface width for Highland Drive within a 50 foot right-of-way, based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the amended language for Condition 2 as submitted by the developers representative on his letter dated January 4, 2005. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(3)(D) of the Missoula County Subdivision Regulations to vary from the maximum road grade of 8% for Dundee Road, based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Mackintosh Manor No. 35 Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report with the amendment to Condition 2. Commissioner Carey seconded the motion. The motion carried on a vote of 2-1 (Commissioner Carey opposed).

Commissioner Carey stated he was basing his vote on the findings of fact in the staff report under Criterion 2: Effects on Local Services, Findings 16, 17, 18, 19 and 20, which refer to long driveways, transportation systems, minimizing cut and fill, etc.

Chair Curtiss stated she agrees with the intent of the hillside regulations, but in this case based on Greg's presentation, in the end, the driveway has less cut and fill and disturbance.

Mackintosh Manor No. 35 Subdivision Conditions of Approval:

1. Article IV, Section 22 of the covenants shall be amended to include the following phrase at the end of the driveway design section: "Final design shall be approved through the Missoula Rural Fire District." *Subdivision Regulations Article 3-2(10) and Missoula Rural Fire District recommendation.*
2. An approach permit from Dundee Road for Lot 2 shall be approved by the County Public Works Department prior to final plat approval. If the owner of Lot 2 constructs a residence in the building site area located west of the 3,460 foot elevation line, they shall be required to submit an engineered driveway plan for approval by the County Public Works Department. The grade of the driveway shall not exceed 8% and care shall be taken to minimize areas of cut and fill and other visible scars. If the owner of Lot 2 constructs a residence in the building site area located east of the 3,430 foot elevation line, they shall be required to submit an engineered driveway, grading and site plan for approval by the County Public Works Department. The grade of the driveway shall not exceed 8% and care shall be taken to minimize areas of cut and fill and other visible scars. *Subdivision Regulations Articles 3-2(10)(E), 3-4(3)(J), 5-3(5)(K)(x) and developer's representative recommendation.*
3. Article IV, Section 25 of the covenants shall be amended to include the following subsection: "The native vegetation shall be maintained to protect and enhance the riparian resources. Removal of trees, shrubs and other vegetation shall be limited to dead material only." *Subdivision Regulations Article 3-13(3) and OPG recommendation.*
4. The title "No Development Zone" in Article IV, Section 25 of the covenants shall be changed to "No Improvement Zone" to coincide with the label on the face of the plat. *Subdivision Regulations Article 3-13(4) and OPG recommendation.*
5. Lot owners shall provide documentation of participation in shared road maintenance agreements for both Rowan Street and the respective road that will provide physical access to each lot, subject to review and approval by the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-1(6), County Attorney's Office and OPG recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 4:00 p.m.