

PUBLIC MEETING – January 12, 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, Chief Civil Deputy County Attorney Mike Sehestedt, Deputy County Attorney Colleen Dowdall and County Public Works Director Greg Robertson.

Pledge of Allegiance

Public Comment

Ron Ewart, 2622 Circle Drive, stated that he felt there should be building permit requirements in the County. For small two and three lot subdivision out on Mullan Road, it is necessary to go through City annexation. The City should be expanding more or less in a circular method, but it is getting a lot of tentacles because of these spot annexations. In some locations, the annexed area is completely surrounded by the County. The City states the reason for annexation is because of building permit requirements. If the County has building permits, these annexations would not be necessary. It makes it difficult for road maintenance, police and fire protection.

Greg Robertson stated the Commissioners directed him to formulate a program. The job descriptions have been completed and are in for classification. He is working on the certification process right now. In the near future, the proposal will be presented to the Commissioners through the Public Hearing process for further action.

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$228,685.65. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Kummerfeldt-Hubble Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel located in the northeast one-quarter of the southeast one-quarter of Section 29, Township 16 North, Range 19 West.

Ronald Kummerfeldt and Anne Hubble have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 34.9 acres in size located near Arlee, Montana. Ronald and Anne propose to create one approximately 10 acre parcel for transfer to Ronald's mother, Margaret Kummerfeldt, for residential purposes and keep the remaining approximately 25 acre parcel for residential purposes as well.

The history of the parcel is as follows: Joseph A. and Edna Boyer filed a warranty deed in November, 1968, deeding the property to Ralph A. and Marian M. Pedersen. The Pedersen's deeded the property to Ronald Kummerfeldt and Anne N. Hubble in January, 2004.

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

Chair Curtiss opened the public hearing.

Ron Kummerfeldt was present and came forward to answer questions.

Chair Curtiss stated the Board is responsible to make sure these exemptions to the Subdivision and Platting Act are legitimate family transfers as the law allows and not an attempt to evade subdivision review. The Deputy County Attorney would ask a series of questions to determine his intention.

Colleen Dowdall asked if her report that he has owned the property since January 2004 was accurate.

Ron Kummerfeldt stated that was correct.

Colleen Dowdall asked if he bought the property with the intent of dividing it.

Ron Kummerfeldt stated he and Anne bought the property with the intention of owning it.

Colleen Dowdall asked if they resided on the property at this time.

Ron Kummerfeldt stated he and Anne do not, they are renting property right next door, but they do intend to build a house on the property.

Colleen Dowdall stated the 10 acres will be transferred to his mother.

Ron Kummerfeldt stated that was correct.

Colleen Dowdall asked if his mother was going to keep the property.

Ron Kummerfeldt stated she planned to keep the property.

Colleen Dowdall asked if his mother would live on the property.

Ron Kummerfeldt stated she would live on the property.

Colleen Dowdall asked where his mother lives currently.

Ron Kummerfeldt stated she currently lives in Hamilton.

Colleen Dowdall asked if he planned to develop either portion of the property for sale.

Ron Kummerfeldt stated he and Anne did not.

Colleen Dowdall asked if he was in the business of building or developing property.

Ron Kummerfeldt stated he and Anne were not.

Colleen Dowdall asked if he was attempting to evade subdivision review.

Ron Kummerfeldt stated he and Anne were not.

Colleen Dowdall asked if he understood this request is not being reviewed for adequate access, this is not going through subdivision review. This is an exemption from subdivision review so it is not being reviewed as such.

Ron Kummerfeldt stated he understood that.

Colleen Dowdall stated he would still need to get approvals for zoning compliance, sanitation, etc., to build on the lot. This approval is for the division of land only.

Ron Kummerfeldt stated he understood that.

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

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

Hearing (Certificate of Survey): Hughes 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 Tracts 19 and 20 of COS 1677, located in Sections 3 and 4, Township 14 North, Range 20 West.

Brian Hughes has submitted a request to create two parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 27.3 acres in size located near Arlee, Montana. Brian proposes to create one approximately 2 acre parcel for transfer to his wife, Ericka L. Hughes and one approximately 2.4 acre parcel for transfer to his 8-year-old daughter, Ashley B.K. Hughes, for residential purposes.

Brian has also requested a boundary relocation that would add four acres to the remaining parcel which would become approximately 26.9 acres. This parcel would be for residential purposes as well.

The history of the parcel is as follows: Geneva Cates filed a warranty deed in July, 1990, deeding the property to Perry J. and Maxine E. Schneider. The Schneiders deeded the property to Brian Hughes in November, 2003.

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

Chair Curtiss opened the public hearing.

Brian Hughes was present and came forward to answer questions.

Colleen Dowdall asked if her report that he has owned the property since November 2003 was accurate.

Brian Hughes stated that was correct.

Colleen Dowdall asked if he intended to divide the property when he bought it.

Brian Hughes stated he did not.

Colleen Dowdall asked if any of the parcels created were to be transferred within the next year.

Brian Hughes stated they were not.

Colleen Dowdall asked if he understood that a trust must be created for the minor child to hold the property.

Brian Hughes stated he understood that.

Colleen Dowdall asked if he had begun that process.

Brian Hughes stated he had not yet begun the process, he was waiting for the outcome of this request.

Colleen Dowdall asked what the intention was for the property to be transferred to the minor child.

Brian Hughes stated they would just keep the property for her and see what happens later on. He was not sure how long this family transfer process would be around. He had to use a surveyor to do the boundary relocation, so he thought it would be a good time to do the family transfers as well.

Colleen Dowdall asked if he resided on the property at this time.

Brian Hughes stated they did reside on the property.

Colleen Dowdall asked if they would be residing on one of the parcels being created or on the remainder.

Brian Hughes stated they would reside on the remainder.

Colleen Dowdall asked if his wife was intending to keep her parcel.

Brian Hughes stated she was intending to keep it.

Colleen Dowdall asked if he had talked to anyone about going through subdivision review.

Brian Hughes stated he had not.

Colleen Dowdall asked if he was in the business of developing property or building houses.

Brian Hughes stated he was not.

Colleen Dowdall asked if he was attempting to evade subdivision review, was there something he knew about the property that would make it difficult for subdivision review.

Brian Hughes stated he was not attempting to evade subdivision review.

Colleen Dowdall asked if he understood this was not being reviewed for adequate access or anything else that subdivision review would provide.

Brian Hughes stated he understood that.

Colleen Dowdall stated he would still have to go through zoning compliance, floodplain or septic system approval before building on any of the parcels.

Brian Hughes stated he understood that.

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

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

Hearing (Certificate of Survey): Nelsen Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer for that parcel described as Tract 25-A of COS 2279 and Tracts 29, 44 and 45 of COS 5227, located in Section 9, Township 14 North, Range 20 West.

Lance Nelsen has submitted a request to create five additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. Lance Nelsen owns four tracts, each approximately 20 acres in size, located north of the Wye near Missoula, Montana. Lance proposes to divide three of the tracts creating on each of them an approximately 10 acre family transfer parcel and an approximately 10 acre remainder. The fourth tract will be divided into three parcels, two approximately 6.5 acre family transfer parcels and an approximately 7 acre remainder.

Tract 44, approximately 10 acres for transfer to Nicole Jones, his daughter; with a remainder of approximately 10 acres.

Tract 45, approximately 10 acres for transfer to Colette Nelsen, his daughter; with a remainder of approximately 10 acres.

Tract 25-A, approximately 10 acres for transfer to Karen Nelsen, his wife; with a remainder of approximately 10 acres.

Tract 29, approximately 6.5 acres for transfer to Marion Nelsen, his mother, and approximately 6.5 acres for transfer to Kristen Nelsen, his 15-year-old daughter; with a remainder of approximately 7 acres.

The history of the parcel is as follows: The twenty acre parcels were created by filing Certificates of Survey No. 1925 in 1979, exempt from subdivision review as parcels greater than twenty acres in size. Tract 25-A was deeded to Lance Nelsen in November, 2004. Tracts 29, 44 and 45 were deeded to Lance Nelsen in December, 2004. Tract 25-A was transferred by Gladys Mackey as a personal representative for Kevin Mackey. The other three parcels were transferred to him by Steinhatchie Construction and Development Company, of which it appears Lance Nelson is the president.

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

Chair Curtiss opened the public hearing.

Lance Nelsen was present and came forward to answer questions.

Colleen Dowdall asked if the dates when he received the property were accurate.

Lance Nelsen stated they were correct.

Colleen Dowdall asked if he was president of the construction company.

Lance Nelsen stated he was president.

Colleen Dowdall asked how long Steinhatchie had owned the property.

Lance Nelsen stated this was a company he had owned in Florida. He retired nine years ago but kept the corporation. It's a Florida corporation. The corporation owned the parcels for about a year.

Colleen Dowdall asked if purchased the property with the intent of dividing it.

Lance Nelsen stated he did not.

Colleen Dowdall asked if he or the transferees intend to transfer the property within the next year. Will the children live on the property.

Lance Nelsen stated they would live there, even the 15 year old, when she's old enough, the property is hers.

Colleen Dowdall asked if he currently lived on the property.

Lance Nelsen stated he did not.

Colleen Dowdall asked if he was going to live on the property.

Lance Nelsen stated he would be living on the property.

Colleen Dowdall stated there are several remainders being created, did he intend to reside on one and keep the others or transfer them.

Lance Nelsen stated he is not going to transfer any of the remainder parcels.

Colleen Dowdall asked if he understood a trust must be created the for 15 year old.

Lance Nelsen stated he had not done so yet, but he understands that it needs to be done.

Colleen Dowdall stated that if that property is sold, the money has to be held in the trust.

Lance Nelsen stated he understood that.

Colleen Dowdall asked if he intended to develop the property, build houses on it.

Lance Nelsen stated he did not intend to develop the property.

Colleen Dowdall asked if the recipients will be residing on the property.

Lance Nelsen stated it would be their property to reside on if they wanted to.

Colleen Dowdall stated he would reside there as well.

Lance Nelsen stated that was correct.

Colleen Dowdall asked where he lived currently.

Lance Nelsen stated he currently lived in Stevensville.

Colleen Dowdall asked where the recipients lived.

Lance Nelsen stated they either lived with him or within a quarter mile of him.

Colleen Dowdall asked if he talked to anyone at Missoula County about going through subdivision review.

Lance Nelsen stated he did not.

Colleen Dowdall asked if he was in the business of building or developing property.

Lance Nelsen stated he was not.

Colleen Dowdall asked for what purpose the company purchased the property.

Lance Nelsen stated it was for tax purposes. The corporation had money in it and that money was used to purchase the property.

Colleen Dowdall asked if he was attempting to evade subdivision review.

Lance Nelsen stated he was not.

Colleen Dowdall asked if he understood this was not being reviewed for adequate access so if a parcel was sold and there wasn't adequate access, that would be his responsibility entirely.

Lance Nelsen stated he understood that.

Colleen Dowdall stated this was not being reviewed for zoning compliance, floodplain, septic systems, etc., he needs to go through those review processes prior to building.

Lance Nelsen stated he understood that.

Chair Curtiss asked if there were any homes existing on these parcels.

Lance Nelsen stated there were not.

Chair Curtiss asked if there was a reason why these were being divided into long, skinny 10 acres tracts.

Lance Nelsen stated the upper portion of the property is steep and not usable.

Commissioner Carey stated this was unusual because of the division of property. This looks like a subdivision on paper and the Board is relying on his word that this is not an attempt to evade subdivision review.

Lance Nelsen stated he is gifting equal parcels to all his children.

Colleen Dowdall stated that violation of this part of the Subdivision Act is a misdemeanor, so if it is found that the property is transferred subsequent to the family transfer, misdemeanor charged could be brought against him.

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

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

Consideration: Wornath Orchard Tracts No. 3, Lot 2 (2 lots on 2.34 acres) – South Wornath Road and Forest Hill Lane, west of Highway 93

Denise Dundon, Office of Planning and Grants, presented the staff report.

Rob and Heidi Efinger, represented by Ron Ewart of Eli and Associates, are proposing to create Wornath Orchard Tracts No. 3, Lot 2 Subdivision, a 2 lot residential subdivision on 2.34 acres. Staff recommends approval of the subdivision subject to five conditions of approval.

The property is located north of US Highway 93 South and south of Blue Mountain Road, between Forest Hill Lane and Wornath Road. The property is outside the Urban Growth Area and the 1998 Urban Comprehensive Plan recommends density for the area as Residential, 2 dwelling units per acre. The parcel is within Zoning District No. 18, which allows for single family homes with no minimum lots size requirement. Lot 2-A is proposed to be 1.21 acres in size and Lot 2-B is proposed to be 1.13 acres. There is an existing home on proposed Lot 2-B.

Forest Hill Lane will provide access to Lot 2-A and Wornath Road provides access to the existing home on Lot 2-B. Both Forest Hill Lane and Wornath Road are 22 foot wide paved public roads within 60 foot rights-of-way. The applicant is not proposing improvements to either road and is requesting a variance to the 24 foot surface width requirement. County Public Works supports the variance request and Rural Fire did not express concerns in their agency review letter regarding the road widths. Staff recommends approval of the road width variance request. The plat includes a statement waiving the right to protest an RSID/SID for future road improvements to Wornath Road and Forest Hill Lane.

There are no sidewalks or pedestrian access facilities in the area near the proposed subdivision and the applicant is not proposing these improvements. The plat includes a statement waiving the right to protest an RSID/SID for future road improvements, including pedestrian facilities, to Forest Hill Lane and Wornath Road.

Lot 2-B has an existing septic system and well. An individual septic system is proposed for Lot 2-A. Lot 2-B will share the well with Lot 2-A. A waterline easement is proposed along the southern lot line of each lot. Since most new subdivisions lack a water supply for firefighting, Rural Fire has established a large diameter hose fund and a fee of \$100.00 per lot or dwelling unit is being assessed. This has been made a recommended condition of approval.

The property is located on a hillside with a large portion of the land containing slopes of 10% - 20%. A No Build Zone is indicated on the plat for a portion of proposed Lot 2-A and the majority of proposed Lot 2-B to protect the areas with steep slopes greater than 25 percent.

Chair Curtiss asked for public comments.

Ron Ewart, Eli & Associates, Inc., developer's representative, thanked Denise for her work on the proposal. They are in agreement with all the conditions of approval.

There were no further public comments.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(3)(B) of the Missoula County Subdivision Regulations from the required 24 foot road width to allow the existing 22 foot road width for Forest Hill Lane and Wornath Road, based on the findings of fact set forth in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Wornath Orchard Tracts No. 3, Lot 2 Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Wornath Orchard Tracts No. 3, Lot 2 Subdivision Conditions of Approval:

1. Article I, Section 13 of the protective covenants shall be amended to include the following statement: "All new driveways must be paved at least 20 feet back from the edge of the pavement or the right-of-way boundary, whichever is longer." *Subdivision Regulations Article 3-2(10)(A) and City-County Health Department recommendation.*
2. The applicant shall show evidence of contribution of \$100.00 per new lot to the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*
3. The covenants shall be amended to advise the owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by OPG prior to final plat approval. *City-County Health Department recommendation.*
4. The term "renegotiate" in Article 1, Section 10 of the protective covenants shall be changed to "revegetate." *Subdivision Regulations Article 3-1(1)(B) and County Weed District recommendation.*
5. Article 1, Section 11 of the protective covenants shall be amended to include the following statement: "The Missoula City-County Air Pollution Control Program regulations prohibit the installation of wood burning stoves or fireplaces. Pellet stoves that meet emission requirements or natural gas or propane fireplaces may be installed. Pellet stoves require an installation permit from the Health Department." *City-County Health Department recommendation.*

**Hearing (Subdivision): Grizzly Dens (21 lots on 46 acres) – Corner of Mullan Road and Deschamps Lane
(Continued from January 5, 2005)**

Chair Curtiss: Next we have a hearing on the subdivision, which I don't believe we opened the hearing on the subdivision last time, we had the hearing on the zoning.

Colleen Dowdall: Actually, I think we opened it on both of them and left it open, and voted on the zoning.

Chair Curtiss: Okay. So, this is a continuation from January 5, 2005. Last week we addressed the zoning change request and the subdivision went back to Planning Board and so we're anxious to hear Dale's report as to what happened at Planning Board and the subdivision proposal.

Dale McCormick: For the record, my name is Dale McCormick, Planner at the Office of Planning and Grants. Missoula County Subdivision Regulations, Article 4-1(10) requires that, "when a public hearing is held by the Planning Board, the Planning Board shall act in an advisory capacity and recommend to the governing body approval, conditional approval, or disapproval of the plat." The Planning Board held a public hearing on December 21, 2004, to consider the Grizzly Dens Planned Unit Development and 21 Lot Subdivision. The Planning Board voted unanimously to not approve a motion recommending approval of the rezoning request, but it did not take action on the subdivision application. On January 5, 2005, the Board of County Commissioners voted 2-0 with one abstention to approve the PUD rezoning request. At the prior Planning Board meeting and at the Board of County Commissioners meeting, a clarification of staff's recommended Condition 10, regarding the conditional public pedestrian access easement was discussed and because it is a clarification that is acceptable to the applicant, staff has modified the recommended condition to reflect that clarification. On January 11, 2005, with 6 members present, the Missoula Consolidated Planning Board voted 3 to 2 with one abstention to recommend approval of the variance request and voted 4 to 0 with two abstentions to recommend denial of the subdivision request. The findings of fact stated by the Planning Board to support the recommendation of denial are as follows:

- The Planning Board found during its public hearing and review that the proposed 21 lot subdivision did not meet the criteria for the Planned Unit Development as found in Section 3-12 of the Missoula County Subdivision Regulations.
- The land in question is zoned C-A3 which allows one dwelling unit per five acres and would therefore be eligible for 9 lots instead of the 21 lots requested. Without the PUD designation, the Planning Board cannot approve the subdivision request as submitted.

What I've included is the recommended conditions from staff with the minor amendment made to Condition 10 for your consideration. Thank you.

Chair Curtiss: Is the developer's representative ready to present.

Gilbert Larson: My name is Gilbert Larson. I'm with PCI. Dick Ainsworth gave a presentation at the last hearing where he went through in detail about the proposal, including the subdivision. I won't be repeating all that Dick had presented before. I might just explain that Dick had a choice of either coming here or having back surgery and choose back surgery, so. I can let you know that he'll be released today and is going home and everything went well, but because this was unplanned as far as these hearings continuing, he's not able to be here today and has asked that I fill in. He has been over the project with me. I will try my hardest, if there are questions that you have regarding any of it. I am aware that we are in concurrence with staff with the 20 conditions as they came from OPG staff and with the recommendation. I am aware, in talking and meeting with Dick, that there's been a lot of interaction with staff and I know that he would want me to thank Dale, because there's been a lot of discussion about emergency access routes and pedestrians and how the trail should be designed and what needs to happen with future road improvements and RSID waivers and there's been a lot of ground covered to bring it to this point. With that, I'll close though. The owners are here with me, they're here to help me, so if there are questions that they're aware of, having been at the last hearing, we'll try to answer to the best of our ability. Thanks.

Commissioner Carey: I have a question for Dale. Dale, at our last meeting with this, the Board approved the rezoning request. Did that also involve approval of the PUD?

Dale McCormick: Yes. This is a request for a Planned Unit Development rezoning and a major subdivision, so what was approved at the last meeting was the PUD rezoning, to change the zoning from C-A3 to Planned Unit Development.

Commissioner Carey: So, do we in effect have a fundamental disagreement with the Planning Board. They found that this did not meet PUD requirements and you're saying that at the last meeting, we found that it did.

Colleen Dowdall: We found that it complied with the zoning PUD requirements. Planning Board voted no on the subdivision and I was also curious to see Planning Board cited as their reasons that it didn't comply with the subdivision PUD requirements. And I don't think it was reviewed as a subdivision PUD, or at least I don't see the PUD requirements for subdivision addressed in the findings and it isn't required if you review it as a zoning PUD, that you also review it as a subdivision PUD. So, I don't know what the nature of that discussion was last night, Dale, how they got to that.

Dale McCormick: Perhaps they just cited the wrong section. Really, what I think, it should have been Section 5.02. In the staff report, we go through the criteria that is basically on Page 8 of the staff report, Item #10, there are several bulleted items and those bulleted items come from criteria set forth on Page 85 of the Zoning Resolution, which has 10 standards criteria for a PUD rezoning and those are the items that that relates to, so I don't know if they were confused in thinking that it was a PUD subdivision or not.

Colleen Dowdall: Were you there?

Dale McCormick: I was there and my understanding through the whole process is that they understood that, at least all of the Planning Board members understood that the PUD was a rezoning PUD and that the subdivision was a major subdivision, but that because the Planning Board's recommendation was not to approve the rezoning to the PUD zoning district then the density that would be permitted would be the C-A3 density.

Chair Curtiss: And, yet, as we established last week, C-A3 zoning does permit PUD's, or encourage clustering, which would be a PUD within it.

Colleen Dowdall: Right, and Dale does address in the staff report the PUD standards and criteria for a rezoning. It appears to me that maybe Planning Board did attempt to justify the subdivision, claiming it didn't comply with the subdivision PUD standards, because you can also do a subdivision PUD in order to modify the standards for subdivision review. I don't have my Subdivision Regs with me so I don't know if they specifically addressed those or what.

Dale McCormick: It was actually Wayne Chamberlain that made those findings, you're correct in that the 3-12 Section of the Subdivision Regulations is Planned Unit Development, so apparently he was confused on that issue.

Chair Curtiss: And that portion of the Subdivision Regulations is usually used so that someone can have a smaller setback or something like that.

Colleen Dowdall: That section, I think, would usually be used in areas that are unzoned but that had a Comp Plan recommendation for a particular lot size or development in a particular way. It would be used in order to lessen the width of streets, which is a subdivision standard, not a zoning standard. That's what I recall as using them for, we don't use PUD's very often anymore, we typically use variances, but often times PUD's would be proposed as a means of altering the standards and that being permitted because something else was being offered, but this was not reviewed as a subdivision PUD.

Chair Curtiss: I just wanted to clarify on the record, after the meeting last week there seemed to be some confusion from some folks. This PUD only applies to this particular piece of property, it didn't change the zoning for the whole zoning district, so it's only on this piece of property, just to clarify. Are there others who would like to make comments on this subdivision. Are there any comments from the Commission.

Commissioner Carey: Just briefly, I'll reiterate what I said last time, I was very impressed with the work that Dick and the landowner did in terms of bringing this proposal that I think over time will set, I hope, a standard for how that road is developed, the setbacks, the common areas, the paths, the sidewalks. I think, I know the neighbors don't agree with this, but I think that's the direction we need to go in this area and I'm glad it came to us that way rather than us having to fight for it and argue over it and so on. I was pleased with that work. Are you ready for a motion?

Chair Curtiss: One more time, is there anyone who would like to speak on this proposal. Seeing none, we'll close the hearing.

Commissioner Carey: I'll move that the variance request from Section 3-2(3)(B) of the Missoula County Subdivision Regulations requiring Mullan Road to have paved road width of 32 feet within an 80 foot right-of-way, to allow a 22

foot wide surface width, be approved, based on the findings of fact set forth in the staff report and subject to the recommended conditions of subdivision approval.

Commissioner Evans: I'm not going to second that because I will abstain.

Chair Curtiss: Okay. I'll second the motion. Any discussion. All in favor?

Commissioner Carey: Aye.

Chair Curtiss: Aye. Any opposed? Any abstentions?

Commissioner Evans: I abstain.

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

Commissioner Carey: Before I move to approve the subdivision, I'd also like to thank Dale for his work. I think he did a real good job in guiding the process. Dale, thank you. I'll move that the Grizzly Dens Subdivision be approved, based on the findings of fact in the staff report and subject to the recommended conditions of approval.

Commissioner Evans: Same situation.

Chair Curtiss: I'll second the motion. Any discussion? All in favor, say Aye.

Commissioner Carey: Aye.

Chair Curtiss: Aye. Opposed? Abstentions?

Commissioner Evans: Abstain.

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

Chair Curtiss: So, the subdivision has been approved as presented with the conditions.

Grizzly Dens Subdivision Conditions of Approval:

1. The Grizzly Dens Planned Unit Development Zoning District shall be adopted prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B).*

Irrigation Ditches

2. The 25 foot wide irrigation ditch easement recorded on COS 2156 shall be indicated on the final plat, or the developer shall provide proof that the easement has been abandoned, prior to final plat approval. *Subdivision Regulations Article 3-6, County Public Works and OPG recommendation.*
3. A 20 foot wide irrigation ditch easement for the irrigation ditch that runs along the north boundary of the subdivision shall be shown on the final plat. *Subdivision Regulations Article 4-1(11), MCA 76-3-504(1)(J) and OPG recommendation.*
4. The developer shall provide irrigation easements to each lot in the subdivision or provide documentation that the water rights have been removed in conformance with MCA 76-3-504(1)(J)(ii) prior to final plat approval. *Subdivision Regulations Article 4-1(11), MCA 76-3-504 (1)(J)(ii) and OPG recommendation.*

Roads

5. A private road disclaimer shall appear on the face of the plat that states the following:

"The owners of lots within the Grizzly Dens subdivision understand and agree that private road construction, maintenance, and snow removal shall be the obligation of the owners of these lots and that the County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are built to County standards and accepted by the County of Missoula as right-of-way." *Subdivision Regulations Article 5-2(4)(J), County Attorney's Office and OPG recommendation.*

6. The following statement shall appear on the face of the plat and in each instrument of conveyance:

“Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements, including, but not limited to, the installation of paving, drainage facilities, curbs and gutters, pedestrian walkways or bikeways to Mullan Road and Deschamps Lane, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land.” *Subdivision Regulations Article 3-2(3)(E), County Public Works and OPG recommendation.*

7. The design of the approach from Mullan Road to the intersection with Cavern Place shall include a right hand tapered slip lane, the design of which is subject to review and approval of the Montana Department of Transportation prior to final plat approval. *Subdivision Regulations Article 3-1(E), Department of Transportation and OPG recommendation.*
8. The developer shall install landscaping along Mullan Road in accordance with the Primary Travel Corridor standards; additionally, the homeowners covenants shall be amended to require maintenance of the 13.22 acre Common Area north of Mullan Road including the Primary Travel Corridor landscaping. *Subdivision Regulations Article 3-14(3) and OPG recommendation.*
9. The developer shall contribute the sum of \$230 per dwelling unit to assist in signaling the Flynn Lane/Mullan Road intersection, and \$815 per dwelling unit toward the improvement of the Reserve Street/Mullan Road intersection prior to final plat approval. *Subdivision Regulations Article 3-1(E), County Public Works and OPG recommendation.*

Pedestrian Facilities

10. A 20 foot wide conditional non-motorized public access easement located south of and parallel to the 20 foot wide irrigation ditch easement shall be indicated on the final plat, subject to review and approval by OPG prior to final plat approval. The following statement shall appear on the face of the plat and refer to the conditional non-motorized public access easement:

“The owners grant a 20 foot wide non-motorized public access easement for purposes of a public bicycle/pedestrian trail over and across Lots 1 through 9 and the common area in the northeast corner of the Grizzly Dens Subdivision as shown on the subdivision plat of the Grizzly Dens subdivision, conditioned upon said trail being developed at the time it is needed to connect to a trail easement or linear park as part of a public trail system to the west of the Grizzly Dens subdivision. The lot owners and future owners of lots in the Grizzly Dens subdivision will not be responsible for the construction of the future trail. No structures, permanent improvements or utilities shall be placed within said easement so as to interfere with the eventual use of the easement as a public bicycle/pedestrian trail.” *Subdivision Regulations 3-6, 3-2(8)(F), and OPG recommendation.*

Fire

11. The design and location of the buried water tank for fire protection shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-7 and Missoula Rural Fire District recommendation.*
12. The covenants shall be amended to include the requirement that the system for water for fire protection is the property of the Homeowners Association and that the association will be responsible for all costs associated with the maintenance, repair, and upkeep of the system. *Subdivision Regulations Article 3-7, Missoula Rural Fire District and County Attorney’s Office recommendation.*
13. Plans for address signage shall be reviewed and approved by Missoula Rural Fire District prior to final plat approval. The approved plans for signage shall be included as a section in the covenants. *Subdivision Regulations Article 3-1(6) and Missoula Rural Fire District recommendation.*

Floodplain

14. A note shall be placed on the final plat and in the covenants that states the following:

“Basements are prohibited and first floors and all mechanical equipment shall be constructed a minimum of 2 feet above highest adjacent grade. Pre-construction elevation certificates documenting this shall be provided with Zoning Compliance Permit applications and post-construction elevation certificates shall be provided upon building completion.” *Subdivision Regulations Article 3-1(1)(B), and Floodplain Administrator recommendation.*

Covenants

15. Property Owners Association Articles of Incorporation and Bylaws, including the means for determining assessments for maintenance of all commonly owned property and facilities, shall be provided, subject to review and approval by the County Attorney's Office, prior to final plat approval. *Subdivision Regulations Article 5-3(5)(T), and County Attorney's Office recommendation.*
16. The covenants shall be amended to include the requirement that the Common Areas are the property of the Homeowners Association and that the association will be responsible for all costs associated with the maintenance, repair, and upkeep of the Common Areas. *Subdivision Regulations Article 3-8 and OPG recommendation.*
17. The Covenants shall be amended prior to final plat approval to include the following language:

"Radon Mitigation: EPA has designated Missoula County as having a high radon potential (Zone 1). All residences should incorporate passive radon mitigation systems into the design." *Subdivision Regulations Article 3-1(1)(D), Missoula City-County Health Department and OPG recommendation.*
18. Item 2.5 of the Covenants shall be amended to include the following language prior to final plat approval:

"The landowner shall revegetate any ground disturbance caused by construction or maintenance with beneficial species appropriate for the site at the earliest appropriate opportunity after construction or maintenance is completed." *Subdivision Regulations Article 3-1(1), Missoula County Weed Board and OPG recommendation.*
19. The sections of the Covenants addressing Floodplain, Common Area, Primary Travel Corridor Landscaping, Address Signs, Radon Mitigation, Wildlife, and Weed Management may not be amended or eliminated without the approval of the governing body. *Subdivision Regulations Article 3-1(10), County Attorney's Office and OPG recommendation.*
20. The Covenants shall be amended prior to final plat approval to include the following amendments:
 - A. Change sentence 2 in "Trash and Garbage" (section 2.g) to read: "All garbage shall be stored ... to prevent entrance by pets and to avoid attracting animals such as bears, raccoons, etc."
 - B. Add the following to "Seeding and Planting" (section 2.m): "Homeowners should be aware that there is the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer."
 - C. Add the following at the end of "Fences" (section 2.n): "Consider boundary fencing that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence."
 - D. The "Wildlife" section (2.u), shall state that the "Living with Wildlife" brochure is available at Missoula County offices, but is not an FWP publication.
 - E. Delete the "artificial feeding" sentence in the "Wildlife" section (2.u) and add the following as subsections of 2.u:
 - i. Gardens and fruit trees can attract wildlife. Keep the produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
 - ii. Do not feed wildlife or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners should be aware that deer might occasionally attract mountain lions to the area.

- iii. Birdseed can attract bears. If used, bird feeders should: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
 - iv. Barbecue grills should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.
 - v. Compost piles could attract skunks and bears. If used they should be kept indoors or built to be wildlife-resistant.
- F. Add the following at the end of "Domestic Pets" (section 2.w): "Pets should be confined to the house, in a fenced yard, or in an outdoor kennel area, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124). Pet food should be stored indoors or in animal-resistant containers in order to avoid attracting wildlife such bears, skunks, raccoons, etc. When feeding pets do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home." *Subdivision Regulations Article 3-1(1), Fish, Wildlife and Parks and OPG recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:10 p.m.