

PUBLIC MEETING – February 23, 2005

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

Pledge of Allegiance

Public Comment

None

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the routine administrative items adopted the past two weeks and approve the weekly claims lists in the amount of \$546,611.01. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Golf Carts (Larchmont)

Dan Smith, Larchmont Superintendent, presented the staff report.

This is a request to award a bid for 20 new golf carts for Larchmont. Bids were let and opened on February 14, 2005, with the following results:

Bidder	Amount
Johnson Distributing	\$68,780.00
Masek Golf Car Co.	\$65,780.00
Highland Golf	\$66,580.00

Staff recommends the bid be awarded to Masek Golf Car Company in the amount of \$65,780.00 as the lowest and most responsive bidder. Larchmont budgeted \$70,000.00 for this expense.

Chair Curtiss asked for public comments. There were none.

Commissioner Evans moved that the Board of County Commissioners approve awarding the bid for 20 new golf carts for Larchmont to Masek Golf Car Co. in the amount of \$65,780.00, as the lowest and most responsive bidder. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Pinto Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 2 of COS 5047, located in Section 21, Township 15 North, Range 22 West.

Douglas A. Pinto has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 22 acres in size located near Nine Mile. Douglas Pinto proposes to create one approximately 11 acre parcel for transfer to his wife, Daria Galina Mochan, for residential purposes and keep the remaining approximately 11 acre parcel for residential purposes as well.

The history of the parcel is as follows: COS 5047 was filed in May, 2000. The reason for the division of land was Court Ordered regarding the estate of Warren L. Spooner. David and Connie Murray, Kathryn L. Osterud and Lloyd D. Hanson filed a Warranty Deed in August, 2003, deeding the property to Douglas Pinto.

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.

Doug Pinto 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 he currently lived on the property.

Doug Pinto stated he did not live on the property.

Colleen Dowdall asked if there were any homes on the property.

Doug Pinto stated there were no homes on the property.

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

Doug Pinto stated that he did plan to divide the property. He is planning to build on one half. They are contemplating bringing his wife's mother to Montana as she is not well. The hope is to build a mother-in-law house for her on the other half of the property.

Colleen Dowdall stated that his wife would not be residing on the property next door.

Doug Pinto stated she would be the owner of the property.

Colleen Dowdall asked if he had spoken with anyone at the County about going through subdivision review as opposed to an exemption.

Doug Pinto stated originally, he had come to the County and was informed about a pre-app meeting, which he did set up. However, when he spoke with his lawyer and accountant, they both suggested he use the Family Transfer process.

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

Doug Pinto stated he was not.

Colleen Dowdall asked if he understood this was not being reviewed as a subdivision which would identify adequate access, services, etc. This is just a determination of whether he is attempting to evade subdivision review. If this went through subdivision review, it would be determined if this property was appropriate for development. The Family Transfer process is an exemption from subdivision review. He needs to understand that this is not being reviewed for anything.

Doug Pinto stated he understood that.

Colleen Dowdall stated this process also does not make any determination about zoning compliance, floodplain permits, septic permits, etc. There could be another permitting process to go through to be able to build on the property.

Doug Pinto stated he understood that.

Chair Curtiss stated that the piece of property that is being transferred to his wife is for her benefit. If it is sold in the future, the benefit would be for her.

Doug Pinto stated he understood that. He is also aware that for Estate Planning purposes, having the property in his wife's name is a good thing.

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

Commissioner Evans moved that the Board of County Commissioners approve the request by Douglas A. Pinto 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: Intent to Create RSID 8846 (Maintenance of One Fire Hydrant in Elk Ridge Court, Georganna Addition)

Greg Robertson presented the staff report.

This is a request to create RSID 8846 – Fire Hydrant Maintenance District in Elk Ridge Court.

A Resolution of Intention to Create RSID 8846 for a fire hydrant maintenance district to serve the property in Elk Ridge Court was adopted on January 18, 2005. The petition requesting the installation of one fire hydrant was initiated by the owners of the properties within the District. Mountain Water Company will install the hydrant. Missoula Rural Fire District has reviewed the request and has approved the location.

The estimated cost of maintaining the one hydrant per year is \$387.70, including all costs. There are six lots in the district with an estimated annual assessment of \$64.62 per lot.

No protests were received. Staff recommends creation of RSID 8846.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners create RSID 8846 – Elk Ridge Court Fire Hydrant Maintenance District. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Preston Street/Hiberta Street Sanitary Sewer Extension Excavation Permit Request (DJ&A)

Greg Robertson presented the staff report.

This is a request to render a decision on whether to allow the use of County rights-of-way to extend sewer associated with the Preston Street/Hiberta Street Sewer Extension Project.

Dan Summerfield, on behalf of his client Bill Chilcote, is petitioning the Board to grant an Excavation Permit for work with Preston Street and Hiberta Street rights-of-way for the purpose of extending sewer. Mr. Summerfield has advertised this hearing in accordance with the Excavation Resolution requirements.

If the request is approved, Public Works recommends that complete construction plans for the work be submitted to their office prior to granting the permit.

Dan Summerfield, DJ&A, stated that he was representing Mr. Chilcote in his desire to extend City of Missoula sewer to six duplex properties along Preston Street and Hiberta Street. Mr. Chilcote would like to connect his duplexes to City sewer and remove them from raised drainfield systems to eliminate maintenance problems and increase the value of the properties.

Chair Curtiss stated the plan is to extend sewer to existing homes.

Dan Summerfield stated that was correct.

Chair Curtiss asked if there were plans to build additional homes.

Dan Summerfield stated there is no plan for additional homes. The City sewer currently extends down Juno Drive to a lift station at the end of the cul-de-sac.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Carey moved that the Board of County Commissioners approve the request to allow the use of County rights-of-way to extend sewer associated with the Preston Street/Hiberta Street Sewer Extension Project, with a condition that the complete construction plans for the work be submitted to Public Works prior to granting the permit. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing: Amendment to West Pointe PUD – East Butler Creek Foothills Zoning District (Area C)

Jennie Dixon, Office of Planning and Grants, presented the staff report.

This is a request from Joe Stanford, Construction Manager for West Pointe, LLC, to modify the setbacks within the West Pointe Subdivision. This request is apparently the result of designing homes in Phase One that did not meet the currently defined setbacks.

West Pointe is a 240 lot residential subdivision of 73 acres located north of Interstate 90 and east of Butler Creek Road. The homes in Goodan-Keil are generally south and east of this subdivision and this area is unzoned; therefore, no setbacks are required.

West Pointe was approved with a combination of detached dwellings and townhomes (in the form of tri-plex buildings). The subdivision was approved to be developed in five phases up through 2008. Phase I has been filed.

The property is within the Modified East Butler Creek Foothills Rural Zoning District, which applies to both the Circle H Ranch and the West Pointe Subdivision. The applicant is requesting to amend the rear yard setbacks for the detached single dwellings in Phase I from 20 feet to 15 feet. All of these lots are bordered by common area along the rear of these lots. The attached townhome lots were approved with 15 foot rear yard setbacks.

In December 2004, the County Board of Adjustment approved variance requests on Lots 4 and 21 to allow 15 foot front and rear yard setbacks. Reduced setbacks are one way to mitigate construction and site development impacts on hillside land as is found in the West Pointe Subdivision. Staff is recommending that the rear yard setbacks be changed from 20 feet to 15 feet for the detached single dwellings in Phase 1 of the West Pointe Subdivision. The rear yard setback for detached single dwellings in the rest of the West Pointe subdivision would remain at 20 feet.

The applicant has also requested that the front yard setbacks be modified to 15 feet for the entire subdivision. The rezoning request in 2001 included a proposal for 15 foot front yard setbacks. At that time, Public Works stated that if sidewalks were installed, the front yard setback should be 20 feet, to prevent a car overhanging the sidewalk. As a result, the front yard setback is currently 15 feet from "property line" (aka, edge of private road easement) or 20 feet from "property line" if there is a sidewalk in front of the home.

The proposal to reduce the front yard setback to 15 feet in all cases could potentially result in driveways less than 20 feet in length, inhibiting pedestrian access. Staff is not recommending approval of the applicant's request to modify the front yard setback to 15 feet; however, staff is recommending an amendment to the front yard setback to achieve what was apparently intended. That is, a 15 foot setback from "property line," or 20 feet from the back of sidewalk, where one exists, whichever is greater. Comments from the City Engineer and the Health Department support OPG's recommendation.

One public comment letter from the Goodan-Keil Homeowners Association was received in opposition to the request. On Tuesday, February 1, 2005, the Planning Board voted 4-0, with 2 abstentions, to recommend approval of this rezoning request, subject to the condition recommended by staff.

Jay Raser stated that he was representing Circle H Ranch and West Pointe in this matter. He concurred with staff and Planning Board's recommendation. In response to the letter of opposition from the Goodan-Keil Homeowners Association, the Goodan-Keil area is not a subdivision, it is a development that was done by circumventing the subdivision regulations. There is no zoning and their covenants are not enforced. The reason stated for their opposition to amending the setbacks is that it will increase the number of bedrooms in the homes. That is not the case, the request has nothing to do with increasing the number of bedrooms in the homes.

Commissioner Evans stated that the recommendation from staff seemed unclear as to 20 feet from the back of sidewalk. It did not state whether part of that measurement included the width of the sidewalk. It appears to need some clarification.

Jennie Dixon stated that the diagram provided by Jay Raser shows an example of the amendment requested. The measurement from the back of sidewalk is always from the side closest to the house. Fifteen feet of setback is required from the property line, but if there is a sidewalk and it might happen to be closer than 20 feet, they have to be at least 20 feet back from the back of sidewalk. In all cases, they will be 15 feet from the property line. In some cases they might be more, though unlikely, but they always have to be 20 feet from the back of sidewalk, which lets a car park without inhibiting pedestrian access.

Commissioner Evans stated that it seems that more setback is being asked for if there is a sidewalk and less if there was not, which makes no sense.

Jennie Dixon stated that incorrect perception is exactly what the amendment is fixing.

Chair Curtiss opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that Section 6.05 of the Missoula County Zoning Resolution, the “East Butler Creek Foothills Rural Zoning District, Modified,” as adopted by Resolution 2001-073, be amended, based on the findings of fact contained in the staff report and subject to the recommended condition of approval. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Condition of Approval – Amendment to West Pointe PUD
East Butler Creek Foothills Rural Zoning District, Modified (Area C)**

1. Section 6.05 of the Missoula County Zoning Resolution, the “East Butler Creek Foothills Rural Zoning District, Modified,” as adopted by Resolution 2001-073, shall be amended as shown in Attachment C of the staff report.

**Hearing: Houle Meadows (23 lots on 27.5 acres) – NW Corner of Houle Creek Road and Mullan Road
(Continued from February 2, 2005)**

Jennie Dixon, Office of Planning and Grants, presented an update.

Action on this request was continued from February 2, 2005 to allow the applicant time to address concerns raised by the public and the Board of County Commissioners. Staff is not in receipt of any new materials, other than discussion with the applicant indicating their proposal to construct a pedestrian walkway from this subdivision north to the Frenchtown Frontage Road.

Chair Curtiss reopened the public hearing.

Steve Bidlake, the applicant, stated that based on concerns raised at the last hearing, they are asking that cash-in-lieu of parkland be accepted instead of providing one acre of common ground. They are also prepared to construct a 5 foot wide path from Shepard Drive where it intersects with Houle Creek Road to the Frontage Road on the other side of the Interstate where it can then connect with the A.J. Memorial Path. Construction of the path will cost the developers an additional \$46,000. A 5 foot wide path, at a cost of approximately \$62,500, is being provided along the full length of Shepard Drive within the subdivision. This should address concerns raised about children being able to access local park areas. The path will allow pedestrians to stay off the street all the way from this subdivision to Frenchtown and eventually to Huson when the A.J. Memorial Path is completed. The path will provide access to the Frenchtown Pond State Park. He hoped the cash-in-lieu contribution could be used for improvements to the State Park. The Johnson Brothers have indicated they will participate in the cost of installing the path, assuming their subdivision is approved. If for some reason the Johnson Brothers subdivision is not approved, he is prepared to take on the entire cost of providing the path.

Chair Curtiss stated that one of the concerns addressed by the Fire Chief was the open irrigation ditch.

Steve Bidlake stated that the entire length of the ditch across this property will be underground.

Greg Martinsen stated the irrigation ditch is projected to be put into a 30 inch to 36 inch culvert. The details are being worked out with the agency that operates the ditch, but it is not anticipated to be a problem. He presented a photo taken from the center of Houle Creek Road looking north from the north boundary of the subdivision. The pathway will go on the left side of the road, behind the pillars of the overpass to the other side of the road to the A.J. Memorial Path. In the discussion of density, his personal feeling is that the only way to avoid using up more property is to make the density higher. If these 23 lots were on 5 acre tracts, it would use up 115 acres. This subdivision just seems more logical than using up that much land.

Kirby Christian, Christian Samson Jones and Chisholm, Attorneys, stated he was representing the developer. He acknowledged the Board’s authority to approve either cash-in-lieu or parkland dedication. The developer is proposing cash to build the trail system, an additional \$46,000, plus cash-in-lieu for use in the Frenchtown and Huson areas for the development of other parks. Staff’s recommendation is favored because these lots are one acre in size and a one acre park would not provide any substantial recreational activities. He hoped the Board would consider the cash-in-lieu and construction of the trail to address those concerns. He is hesitant to speak too firmly on the issue of density and question the County’s authority. However, since the 2003 Legislature, on unzoned land, the Growth Policy cannot be used as the basis for denying the subdivision. This applicant has already agreed to a density transfer of 120 units from 62 acres that are not part of this subdivision in order to mitigate the impact of this density. He would ask that the Board consider both the density transfer and unzoned land not subject to review under the Growth Policy and approve this subdivision at a density of 1 dwelling unit per acre.

Mike Virga stated that he and his wife wrote a letter in support of this subdivision and wanted to make sure the Board received it. The one acre lots are a perfect size and the same size as lots where he lives.

Chair Curtiss stated the Board did receive his letter.

Terry Webster stated there were some comments made on the proposal concerning the septic systems and water quality. He wanted to know if those had been addressed or if they will be addressed by the Health Department at some future date.

Chair Curtiss stated those issues are addressed by the Health Department and the State Department of Environmental Quality. If the Health Department determines the land cannot support septic systems for the number of homes proposed in a subdivision, even if the Commissioners have approved the subdivision, the subdivision cannot go forward. The Commissioners make their decision based on planning and where houses and roads should go; the Health Department and DEQ make their decisions based on science.

Gary Kees stated he was going to ask some questions about the septic issue, but it sounds like those will be addressed at a later date. The issues dealt with the Missoula Water Quality District and what they talk about in their systems. He hoped the Health Department would look at the densities should this subdivision be approved, and other subdivisions that will follow. The area is very fragile, the ground is very thin silty loam, three to four feet. The problem is what is under that, which is rock and sand. This subdivision and others that will follow could account for 70+ new homes in the area. The other issue is the density transfer. The land that density is being transferred from is 4 to 5 miles away from this subdivision. The people in the area don't get any help or benefit from the density transfer. The transfer was tied to the Bidlake Addition and the two subdivisions were tied together. Both subdivisions used that 62 acre parcel. Another issue is the number of houses being added to the Frenchtown School District. With subdivisions either already approved or proposed, it is close to 425 homes. A portion won't be in the Frenchtown School District, but at least 300 homes will. Even if there is only one child from each home, that is 300 more children being added to a school system that is already full. He did not think that how this will impact the school district had been addressed very well. The bike path is about a mile short of Houle Creek. Even if the access is built, it will not connect anything but the Frontage Road. It gives access to the Frenchtown Pond State Park, but not to Frenchtown proper. The bike path is on the other side of the Interstate and there is no pedestrian access across the Interstate. It is still not a good way for pedestrians or bikes to get to Frenchtown. A petition was circulated which states: "We, the surrounding neighbors, protest Houle Meadows Subdivision (23 homes) due to the lack of infrastructure to support the increased public and pedestrian density. The land transfer clusters development in an area that is rural in nature and on prime agricultural soil, and no benefit to us the surrounding neighbors. We feel this development and those that will follow will be detrimental to the safety of the pedestrian, bicycle and vehicle traffic as well as future drinking water quality, unless the proper infrastructures (roads, walkways, sewer) are in place to support them." 50 people signed the petition.

Chair Curtiss stated that State law specifically says the Board of County Commissioners is not allowed to make decisions on subdivisions based on impacts to schools. It may not make sense, but it is what the Board has to work with.

Greg Robertson stated that Public Works is currently designing of the final phase of the A.J. Memorial Trail system as originally envisioned, to bring it all the way to Huson. The paperwork required to commit Federal funds has been submitted. The plan is to bid the project in June of this year and have it constructed later this summer. It will connect and will most likely be done before this subdivision is complete.

Chair Curtiss stated that the lot size required to support a septic system is again regulated by State law. Currently, a house and a septic system are allowed on one acre.

Jennie Dixon stated there is no connection between the Houle Meadows Subdivision and the Bidlake Addition Subdivision, it just so happens that the 62 acres where the density is being transferred from is adjacent to the Bidlake Addition Subdivision, but there was no other connection made between the 7 lot subdivision and the 62 acre parcel. There was no transfer of density for the Bidlake Addition Subdivision and it was not used to satisfy parkland dedication, it was just adjacent. The density in the Bidlake Addition Subdivision was not attached to the 62 acre parcel at all.

Commissioner Carey asked if Greg has looked at the plans for the walkway going under the Interstate.

Greg Robertson stated that he has viewed some photos of the area and is familiar with the interchange. He felt the design would be very similar to what was done underneath the Interstate at Butler Creek Road which worked quite

well. The plans will undergo review and approval by the State Department of Transportation, the Federal Highway Administration and Public Works.

Chuck Shepard, Jr., stated he has lived in Frenchtown since 1977. Ten years ago he and his brother were each gifted an acre of land next to Bob Touchette. He thinks an acre is plenty of land. He built his house and left a quarter acre for hay between his house and his neighbor's property. He has seen the growth from Frenchtown and has watched many of those opposing this subdivision move here within the past 10 years. He is not opposed to this subdivision.

Craig Shepard stated he lives on a one acre parcel next to his brother. A lot of the people who signed this petition were not there five years ago. It is a situation where they want to move out there but they don't want anybody else to. Growth is inevitable and he would like to see it done right. He knows the developers of Houle Meadows will do a first class subdivision.

Bob Johnson stated he has been a resident of Frenchtown for 48 years. Pictures have been presented of small parcels that are well kept compared to larger parcels that are not. Driving west from Frenchtown on Mullan Road, there are continuous small parcels all the way to Houle Creek. Greg has stated that the infrastructure is more than adequate to handle the density. Some people are opposed to this because when they purchased their property, they were buying into a rural setting at 4 or so acres and this will ruin their rural setting. The people of Houle Meadows will be across Mullan Road, and a rural setting can still be maintained. People who already have their piece of paradise, now want to stop others. The question is if the infrastructure can handle the density and the answer is, yes it can. Instead of trying to demean the project, people should be working together to be sure it is done correctly. These applicants will build their development well.

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

Commissioner Evans stated that the cash-in-lieu is far better than having a one acre common area that will probably not be taken care of. It would be preferable to have the cash that could go toward making an existing park better. She would support staff's recommendation for cash-in-lieu of parkland. It is admirable that Mr. Bidlake and Mr. Johnson are willing to put in a path to connect with the A.J. Memorial Path to provide safe pedestrian travel.

Commissioner Carey stated that he agreed with Commissioner Evans. He asked if the developer's proposal to construct a path to connect with the A.J. Memorial Trail was sufficiently on record or if it needed to be memorialized in a condition.

Jennie Dixon stated she had prepared language for an additional condition. There are two variance requests associated with the subdivision. One is to allow both Houle Creek Road and Mullan Road to be 22 feet, as they currently exist, rather than the required 32 feet. Both staff and Planning Board recommended approval of the variance. The other variance is for through lots on Lots 13 through 16. Staff recommended approval of the variance; but Planning Board recommended denial. As a result of their denial of the through lot variance, Planning Board modified Condition 8 which requires a one foot no access strip along all of Mullan Road. If the Board approves the variance for through lots, then Condition 8 does not need to be modified. Planning Board also modified Condition 7; they felt a one acre park was appropriate at this location. Staff did not and recommended cash-in-lieu of parkland.

Chair Curtiss stated that if the Board chooses not to accept Planning Board's recommendations, do the conditions need to be corrected.

Colleen Dowdall stated that the Board could just make their motion based on the conditions as proposed by staff.

Jennie Dixon stated the new condition would fall under Access: "The subdivider shall install a 5 foot wide paved pedestrian pathway on the west side of Houle Creek Road, extending from Shepard Drive to Frenchtown Frontage Road to connect to the A.J. Memorial Pathway, subject to review and approval by Missoula County Public Works and the Department of Transportation prior to final plat approval."

Chair Curtiss stated it would be a new Condition 9 and the other conditions would be renumbered accordingly.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(3)(B) requiring a 32 foot surface width for Mullan Road and Houle Creek Road, based upon the findings of fact. 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 variance request from Section 3-3(H) prohibiting through lots for Lots 13 through 16, based upon the findings of fact. 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 Houle Meadows Subdivision, based upon the findings of fact and subject to staff's recommended conditions and the additional condition under Access. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss stated that many people are concerned about growth in this area. That is problem all across Western Montana as it is a great place to live. The Commission feels that through the subdivision process, they can approve subdivisions that are designed well and will be a nice place to live. The addition of the trail to connect with the A.J. Memorial Path will be an asset to the community.

Mike Sehestedt stated that this subdivision also carries with it an RSID waiver for eventual improvements on Mullan Road.

Houle Meadows Subdivision Conditions of Approval:

Density Transfer

1. The subdivider shall place a note on the Certificate of Survey and file a development covenant against the 62 acre parcel indicating that all density has been transferred from that parcel to the Houle Meadows Subdivision, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(1)(I) and OPG recommendation.*

No Build Zone

2. The plat shall be revised to show a No Build Zone along the southern portion of Lots 13 through 16. The northern boundary of the No Build Zone shall start no more than 120 feet from the northern boundaries of these lots and shall extend to the Mullan Road right-of-way. The No Build Zone shall be kept open and free of structures, including buildings, mobile homes, garages, carports, etc. The No Build Zone does not exclude fences, underground utilities, water wells and septic systems. A map of the No Build Zone and the above provisions of the No Build Zone shall be incorporated into the covenants and may not be changed or deleted without approval of the governing body. *Subdivision Regulations Article 3-1(5), 3-1(9), 3-3(H) and OPG recommendation.*

Fire

3. The subdivider shall provide a means for fire suppression for this subdivision either by providing a minimum 1,000 GPM water supply or residential sprinkler systems. Final plans for fire suppression shall be reviewed and approved by the Frenchtown Rural Fire District prior to final plat approval. The covenants shall be amended to include the plan for fire suppression and may not be changed or deleted without governing body approval, subject to review and approval by the Frenchtown Rural Fire District and OPG prior to final plat approval. *Subdivision Regulations Article 3-1(1)(F), 3-7(1) and Frenchtown Rural Fire District recommendation.*
4. Section 23 of the covenants shall be amended to include the requirement that driveway plans shall be reviewed and approved by the Frenchtown Rural Fire District prior to final plat approval. This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-2(10)(E) and Frenchtown Rural Fire District recommendation.*
5. The developer shall provide proof of payment to the Frenchtown Rural Fire District an amount adequate to mitigate the impact of the new development on the District, as determined by the Frenchtown Rural Fire District Development Mitigation Program, to be reviewed and approved by the Board of County Commissioners prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*

Drainage

6. Drainage plans shall be reviewed and approved by County Public Works and OPG prior to final plat approval. *Subdivision Regulations Article 3-2(A) and OPG recommendation.*

Open Space Requirement

7. The subdivider shall donate cash-in-lieu of parkland, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-8(6) and County Park Board recommendation.*

Access

8. A one foot no access strip shall be shown on the plat along Houle Creek Road and the south side of Lots 13 through 16, subject to review and approval by OPG and County Public Works prior to final plat approval. *Subdivision Regulations Article 3-2(1) and OPG recommendation.*
9. The subdivider shall install a 5 foot wide paved pedestrian pathway on the west side of Houle Creek Road, extending from Shepard Drive to Frenchtown Frontage Road to connect to the A.J. Memorial Pathway, subject to review and approval by Missoula County Public Works and the Department of Transportation prior to final plat approval.

Driveways

10. Plans for paving of driveways a minimum of 20 feet back from the edge of the Mullan Road right-of-way and 20 feet back from the pavement on Shepard Drive shall be incorporated into the covenants and may not be changed or deleted without governing body approval, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-2(10)(A), 3-2(10)(D), OPG, MDT and Health Department recommendation.*

Radon

11. Section 24 of the covenants, "Radon Mitigation," may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-1(2) and City-County Health Department recommendation.*

Weeds

12. The subdivider shall prepare a Revegetation Plan for disturbed areas in the subdivision requiring revegetation with beneficial species of any areas of ground disturbance created by construction on or maintenance of these lots, subject to review and approval by the Missoula County Weed District prior to final plat approval. The Revegetation Plan shall be incorporated into the covenants and, along with Section 6, may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*

Hearing: Longhorn Flat (24 lots on 163.7 acres) – Highway 12, west of Lolo

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

This is a request from Longhorn Flat, LLC, represented by PCI, Inc., to create the Longhorn Flat 24 lot residential subdivision on a 164 acre parcel located north of Highway 12, west of Sleeman Creek Road. A neighborhood meeting was held July 13, 2004 and the minutes from that meeting are included within the application packet. There have been some public comment letters received which are attached to the staff report. The Missoula Consolidated Planning Board, with six members present, conducted a public hearing on this request on Tuesday, February 1, 2005, and voted unanimously to recommend approval of the subdivision subject to conditions recommended by staff as amended by the Planning Board.

Two land use designations apply to this property. Areas of steep slope (approximately 27 acres) are designated Open and Resource with a maximum density of one dwelling unit per 40 acres. The area of the property south of the toe of the slope (approximately 137 acres) is designated with a land use of Rural Residential with a maximum density of one dwelling unit per five acres.

Lots 1 through 22 are approximately 2.5 acres to 3 acres in size. Lot 23, where the existing ranch buildings are located, is 34.7 acres in size and Lot 24, contemplated for future development, is 49 acres. The proposed density of this 24 lot subdivision on 163.7 acres is one dwelling unit per 6.8 acres. Future development of the large acreage lots would increase the density beyond what is recommended by the land use designation. The covenants are proposed to prohibit further subdivision of Lots 1 through 22, allowing future subdivision of Lots 23 and 24.

The Planning Board recommended a new condition requiring that a note be placed on the final plat indicating that Lots 1 through 22 shall not be subdivided and an amendment to the proposed covenants that requires approval of the governing body to amend or delete that portion of the covenants that prohibits subdivision of Lots 1 through 22. The Planning Board also recommended a new condition requiring that the covenants include the language: "Outdoor lighting shall be designed to minimize light pollution."

The Historic Preservation Officer commented there are preservation and conservation easements, which have standing with the State and the IRS, particularly if the buildings are on the National Register of Historic Places. A determination of eligibility could be made for the main buildings and some of the land as a preliminary step.

The property fronts on U.S. Highway 12, a 32 foot wide paved road within a 100 foot right-of-way. Glen Cameron, Montana Department of Transportation, commented that MDT has conducted a very preliminary field review of the area and did not see any problems with the proposed approach location for Cowcatcher Drive, provided it does not conflict with any approaches on the opposite side of the highway.

Lots 1 through 22 are accessed from Cowcatcher Drive, which intersects with Highway 12. Barns Lane and Hatton Lane are cul-de-sac roads that branch off Cowcatcher Drive. These roads are proposed to be 24 foot wide paved, private roads within 60 foot easements.

Conestoga Way, a County road approved with the Beyer Meadows Subdivision west of Longhorn Flat, has a conditional public access easement on the final plat. This 60 foot wide conditional public access easement is for the purpose of serving future subdivision to the east of the Beyer Meadows Subdivision. Public Works commented that to make the connection between these two subdivisions, it will require that Cowcatcher Drive be dedicated as a public right-of-way. Additionally, if the developer so chooses, Barns Lane and Hatton Lane may also be dedicated as public rights-of-way.

Planning Board is in agreement with staff's recommended condition that the roads within the subdivision be County public roads and that the applicant be responsible for construction of that portion of road in the Beyer Meadows Subdivision that connects the two roadways.

Because the property is unzoned and there is no restriction on further subdivision of Lot 24, the Planning Board recommended a new condition requiring a 60 foot conditional public access easement from the east end of Hatton lane to the west boundary of Lot 23, centered on the boundary between Lots 4 and 5, with the provision that if a conservation easement is placed on Lot 23, the easement may be vacated.

Primary Travel Corridor standards apply to this section of Highway 12. The Planning Board recommended a condition that requires landscaping on Lots 3 and 4 to be in accordance with the Primary Travel Corridor standards, in combination with the variance request from the applicant that Lots 23 and 24 not be required to comply with Primary Travel Corridor landscaping standards. Staff has provided findings to recommend approval of this variance request.

The applicant is proposing 5 foot wide asphalt walkways separated by a drainage ditch on one side of all streets within the subdivision.

There is an existing ditch that flows diagonally from west to east through the center of the proposed development. A 20 foot wide irrigation ditch easement and a 50 foot wide riparian buffer easement centered on the irrigation ditch is shown on the preliminary plat. A Riparian Management Plan has been included in the application packet. The Plan limits use of the area to foot traffic and prohibits alteration or removal of riparian vegetation. The applicant is currently negotiating with the Ditch Company relative to water rights. The Planning Board agrees with staff's recommended condition that if it is determined that irrigation rights exist, the developer handle those rights in accordance with State law.

The applicant is also providing a 20 foot wide pedestrian easement linking the end of the Barns Lane and Hatton Lane cul-de-sacs to the 30 foot wide pedestrian easement centered on the irrigation ditch and 50 foot wide riparian buffer. Pedestrian access to the common area is provided by this trail along the ditch as well as a 30 foot wide pedestrian easement off Cowcatcher Drive that also provides driveway access for Lot 10.

The parkland area requirement for this subdivision with 141 acres of lotted area is 2.7 acres. The applicant is proposing 22.7 acres of common area, more that 8 times the amount of land required by the subdivision regulations.

The Missoula Rural Fire District serves the subdivision. The Lolo Fire Station is located on the west side of Highway 93, approximately 2.5 miles away. The Fire Marshal commented that the property is not currently in the Missoula Rural Fire District. The Planning Board is in agreement with staff's recommended condition that the developer annex into the Rural Fire District prior to final plat approval. Planning Board is recommending a new condition requiring a driveway design for Lot 10 that is acceptable to the Missoula Rural Fire District.

Chair Curtiss asked if the ranch buildings on Lot 23 were already listed on the Historic Register?

Dale McCormick stated they were not at this time, but would be eligible if brought forward for listing.

Dick Ainsworth, PCI, developer's representative, thanked Dale for his assistance on the project. They are in agreement with all of the conditions as proposed by staff and as amended by the Planning Board.

Chair Curtiss opened the public hearing.

Barry Bartlett, 9781 Lolo Creek Road, stated he had a couple of concerns. He is not opposed to the subdivision, but had some concerns about what might happen in the future. The density potential of one acre lots could affect ground water at some point in the future and force areas to connect to public sewer systems. His other concern is the irrigation ditch, which the Planning Board did not address. Beyer Meadows used the irrigation ditch as part of its drainage system. This increased the amount of stormwater flow that reached the ditch, that would not historically reach it because it would be dissipated by the alluvial fan. If the water rights are no longer needed at some time in the future and the ditch is abandoned, it could increase flows to properties downhill of the ditch. He asked that the Board make sure the ditch is never abandoned and maintained to handle the stormwater flows as designed.

Dick Ainsworth stated this subdivision is not planning to use the ditch as part of the drainage system.

Greg Robertson stated that using the irrigation ditch as part of the drainage system was not part of the original subdivision design. Irrigation ditches are usually set up for a specific purpose and not generally used for drainage. The irrigation ditch will always provide some natural collection of stormwater. It is required that a stormwater management system be designed for a 100 year, 24 hour event. Stormwater must either be detained or retained and the equivalent volume of runoff that is generated post development must be limited to pre-development runoff rates as long as the downstream conditions can handle it.

Colleen Dowdall stated the Board has no control over what a Ditch Company may or may not do with their irrigation ditch. There is currently a property owner at the end of the ditch who still maintains water rights.

Chair Curtiss stated Planning Board recommended a conditional access easement from the east end of Hatton Lane to the west boundary of Lot 23. It was discussed in Planning Status to have that be a No Build Zone rather than an actual easement. They would like the ranch to be there for a long time and an easement seems to encourage the land to be divided. A No Build Zone would also prevent any buildings from obstructing a future road, without encouraging future development.

Commissioner Evans stated she did not support a No Build Zone. If a public road is needed in the future, the easement gives the County the ability to install a road without having to purchase the right-of-way.

Colleen Dowdall stated the Department of Transportation stated in their agency review that if Lots 23 and 24 are developed, they might not be approved for access onto Highway 12. Staff did not recommend the conditional easement because of the intent to protect this historic buildings.

Dale McCormick stated that was the intent of the applicant. Lot 24 was clearly contemplated for future subdivision.

Dick Ainsworth stated that was correct. In a series of e-mails with MDT, it was noted the owners of the two larger parcels would realize they couldn't have unlimited access to Highway 12. There is an existing approach to the ranch that would remain and it would be reasonable to have an approach to Lot 24 at some point in the future. Access could also be from Sleeman Creek Road at the far east end of the Lot 24. MDT agreed they would likely grant an additional access for Lot 24. That conditional access was not proposed by the developer because it is likely Lot 23 will remain as the ranch parcel. The developer does not have a problem with either suggestion, a No Build Zone or a Conditional Public Access Easement. The condition is worded so that if a Conservation Easement is placed on Lot 23, the conditional access could be abandoned.

Dale McCormick stated the condition does not mention the conservation easement. It simply says that if future subdivision occurs, the easement kicks in. If the future subdivision does not occur, whether or not there is a conservation easement, it is a moot point.

Colleen Dowdall stated the Planning Board discussion was that if the conservation easement is placed on the property, then the conditional easement could go away.

Dick Ainsworth stated the developer is okay with any of the options.

Dale McCormick stated that Glen Cameron of MDT said that "if Lot 23 is ever to be subdivided, it is understood that the existing access may not be approved for any additional use, for instance, multi-residential. The internal roads and access locations should be designed to access Lot 23 either from the currently proposed 22 lot subdivision or from Lot 24."

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

Chair Curtiss stated that if prior to plat filing a conservation easement is placed on Lot 23, could the developer ask that the conditional access easement be removed before the plat is filed.

Colleen Dowdall stated that was a possibility, but should not be included in the condition.

Greg Robertson stated that the conditional access easement could be petitioned to be removed at any time in the future, even after the plat was filed, if a conservation easement or some other protection is placed on Lot 23.

Commissioner Carey moved that the Board of County Commissioners conditionally approve the variance request from Article 3-14(3)(A)(ii) of the Missoula County Subdivision Regulations requiring Primary Travel Corridor Landscaping Standards, based on the findings of fact set forth in the staff report and subject to the recommended condition of approval. 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 Longhorn Flat Subdivision, based on the findings of fact in the staff report and subject to the conditions as recommended by Planning Board. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Longhorn Flat Subdivision Conditions of Approval:

Roads

1. Cowcatcher Drive, Barns Lane and Hatton Lane shall be County public roads. Plans for construction of the off-site road connecting Conestoga Way in the Beyer Meadows subdivision to Cowcatcher Drive in the Longhorn Flat Subdivision shall be provided subject to review and approval of the County Public Works Department prior to final plat approval. This road construction shall be the responsibility of the developer of the Longhorn Flat subdivision. *Subdivision Regulations Article 3-2(6)(B), County Public Works and OPG recommendation.*
2. The developer shall install landscaping on Lots 3 and 4 along U.S. Highway 12 in accordance with the Primary Travel Corridor standards. Additionally, the homeowners covenants shall be amended to require maintenance of the Primary Travel Corridor landscaping on Lots 1 through 4 and 19 through 22. *Subdivision Regulations Article 3-14(3) and OPG recommendation.*

Irrigation Ditches

3. If it is determined that irrigation rights to the Denton-Hendrickson-Kuney Ditch exist for the subdivision, 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.*

Fire

4. The Longhorn Flat subdivision shall be annexed into the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-7(1)(E) and Missoula Rural Fire District recommendation.*
5. Residential sprinkler systems meeting National Fire Protection Association (NFPA) requirements shall be installed in all homes. Plans for the sprinkler systems shall be reviewed and approved by the Missoula Rural Fire District prior to construction of any residence. The requirement for sprinkler systems meeting NFPA requirements in all residences shall be referenced in the covenants, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Articles 3-1(6), 3-7, 4-1(12), Missoula Rural Fire District and OPG recommendation.*

Covenants

6. The covenants shall be amended to require maintenance of walkways, trails and the drainage basin on Lot 13, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(1) and OPG recommendation.*
7. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Board recommendation.*
8. The covenants shall be amended to incorporate the Riparian Resource Management Plan and the Riparian Area Plan map. The Riparian Management Plan shall be amended to prohibit fencing within the 50 foot wide riparian buffer zone. *Subdivision Regulations Article 3-13(3) and OPG recommendation.*

9. The Covenants addressing prohibition of further subdivision of Lots 1 through 22, Walkways and Trails, Drainage Facilities, Riparian Areas, Primary Travel Corridor Standards, Residential Fire Sprinklers, Address Signs, Radon Mitigation, Wildlife and Weed Management may not be amended or sections eliminated without the approval of the governing body. *Subdivision Regulations Article 3-1(10), County Attorney's Office and OPG recommendation.*
10. The Covenants shall be amended to include the following language, prior to final plat approval:
 - A. To the "Fence" section (VI.9), add the following sentence before the final sentence (that begins, "No fence or comparable structure ..."): "For lot boundaries, consider using 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 and elk becoming entangled in the fence or injuring themselves when trying to jump the fence.
 - B. In the first paragraph of the "Living with Wildlife" section (VI.18), sentence number four should be changed to read: "In addition to the Covenant sections ... and Planting (VI.26)"
 - C. Add the following 2 paragraphs to the end of the "Living with Wildlife" section (VI.18):
 - a. Permanent, outdoor barbecues grills are not allowed in this subdivision and portable grills must 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.
 - b. Compost piles can attract skunks and bears and should be avoided in this subdivision. If used, they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil).
 - D. In the "Planting" section (VI.26), add the following at the end of the paragraph: "Consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer and other wildlife." *Subdivision Regulations Article 3-1(1), Fish, Wildlife and Parks and OPG recommendation.*
11. A note shall be placed on the final plat stating:

"Lots 1 through 22 shall not be further subdivided." *Planning Board recommendation.*
12. The Covenants shall be amended to include the following language: "Outdoor lighting shall be designed to minimize light pollution." *Planning Board recommendation.*
13. A 60 foot wide conditional public access easement extending east from proposed Hatton Lane to the western boundary of Lot 23, centered on the boundary between Lots 4 and 5, shall be shown on the plat prior to final plat approval. The following statement shall appear on the face of the plat and refer to the conditional public access and utility easement:

"This 60 foot easement is for the purpose of public roadways as shown on the subdivision plat of the Longhorn Flat Subdivision, conditioned upon said easements being used as roadway at the time it is needed to serve future subdivision on Lot 23 of the Longhorn Flat Subdivision. The lot owners and future owners of Lots 1 through 22 will not be responsible for the construction of the future roadway if construction of the future roadway is attributable to division of land to the east. No structures, permanent improvements or utilities shall be placed within said easement so as to interfere with the eventual use of the right-of-way as a public roadway." *Planning Board recommendation.*
14. An acceptable driveway design providing access to Lot 10 shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(10)(E) and Planning Board recommendation.*

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