

PUBLIC MEETING – May 18, 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, Deputy County Attorney Colleen Dowdall and County Public Works Director Greg Robertson.

Pledge of Allegiance

Public Comment

None

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$647,378.86. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Deadman Gulch Road Construction (Public Works) – POSTPONED FROM MAY 11, 2005

Greg Robertson presented the staff report.

This is a request to award a bid for reconstructing a segment of Deadman Gulch Road. The improvements to this road are being financed by the Montana Department of Natural Resources and Conservation (DNRC) and landowner Roy Anderson, to facilitate safe interaction between future logging activity and local residents. The Public Works Department is contributing Preliminary Survey, Design, Contracting and Construction Inspection for the project. The Public Works Department is also contributing cushion rock for placement beneath some asphalt surfacing. This project will significantly improve user safety and the road in general.

Public Works solicited bids with the following results:

Bidder	Bid Total
Patterson Enterprises	\$74,680.80
JTL Group	\$72,830.00
Green Diamond	\$65,602.17
Montana Materials dba L.S. Jensen	\$60,273.30

It is the recommendation of the Public Works Department to award the bid to Montana Materials, doing business as (dba) L.S. Jensen Construction, in the amount of \$60,273.30 as the lowest, most responsive bidder.

Chair Curtiss asked for public comments. There were none.

Commissioner Carey moved that the Board of County Commissioners approve awarding the bid for reconstructing a segment of Deadman Gulch Road to Montana Materials, dba L.S. Jensen Construction, in the amount of \$60,273.30, as the lowest, most responsive bidder. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Consideration: Golden West Addition No. 1, Lot 19 (2 lots on 2.51 acres) – east of Cote Lane, south of Mullan Road

Mary McCrea, Office of Planning and Grants, presented the staff report.

Wesley and Lanette Bohlken, represented by Ron Ewart of Eli & Associates, are requesting approval of Golden West Addition No. 1, Lot 19 Subdivision, a proposal to divide a 2.51 acre parcel into two lots. Staff recommends approval of Golden West Addition No. 1, Lot 19 Subdivision.

The property is located east of Cote Lane about three-quarters of a mile south of Mullan Road. Lot 19A is proposed to be 1.01 acres in size and is occupied by an existing residence. Lot 19B is proposed to be 1.50 acres in size and is occupied by an existing barn and pole shed.

The property is located inside the Urban Growth Area. Both lots will be served by individual wells. The current home on proposed Lot 19A is served by sewer that is located along the eastern property boundary. The City Sewer Service Committee approved a contract for extension of sewer to serve the new home proposed on Lot 19B, conditioned on the City's acceptance of the Golden West community septic system, which is connected to the Mullan Road sewer project.

The property is zoned C-RR1, which permits a density of one dwelling unit per acre. The Comprehensive Plan designates the area as Residential, with a recommended density of 2 dwelling units per acre. The proposal is in substantial compliance with both the Zoning and the Comprehensive Plan.

Both lots are served by Cote Lane, a 24 foot wide paved County road within a 75 foot right-of-way. Cote Lane has drainage swales rather than curb and gutter. Subdivision Regulations require Cote Lane to be paved to a 28 foot width and lots with less than 175 feet of frontage are required to have curb and gutter. The applicant has requested variances to these standards. Cote Lane has an 8 foot wide asphalt pedestrian pathway on the west side, opposite the subdivision. Subdivision Regulations require concrete boulevard sidewalks on both sides of Cote Lane. The applicant has requested a variance to this standard.

Staff recommends approval of the variance requests for paving width, curb and gutter, and sidewalks. The proposal adds one additional lot and widening the road or installation of curb and gutter adjacent to the subdivision would disrupt the current drainage system on Cote Lane. Installation of a walkway on the east side of Cote Lane would be impractical at this time, considering this proposal adds only one additional lot and there are no walkways to connect with on the east side of Cote Lane. The plat includes an RSID/SID waiver for upgrading Cote Lane, which includes road widening, curb and gutter, and walkways. Public Works is also in support of the variance requests.

There are seven conditions of approval. Condition 1 requires the developer to donate \$230 per new lot for Flynn Lane/Mullan Road signalization and \$815 per new lot for improvements to the Mullan Road/Reserve Street intersection.

Condition 2 requires that a 10 foot wide conditional pedestrian access easement along the north boundary of Lot 19A be shown on the plat. The pedestrian easement is proposed in the same location as the existing utility easement. There is only one lot between this subdivision and Marianne Drive to the east. Once complete, the pedestrian walkway would provide a safer and shorter access from Cote Lane to Golden West Park. At the time the walkway improvements are constructed on Cote Lane through an RSID, this additional pedestrian connection may be constructed if the easements are in place.

Condition 3 states that an RSID/SID waiver statement for a public water system for fire protection shall appear on the face of the plat. Condition 4 requires a \$100 per lot contribution to the Missoula Rural Fire District's large diameter hose fund. Condition 5 calls for the address signage plan to be reviewed and approved by the Missoula Rural Fire District and included in the covenants. A Revegetation Plan reviewed and approved by the Missoula County Weed Board is required in Condition 6. The final condition states that a Development Covenant for the subdivision shall be provided and include sections on Living with Wildlife, Driveways, Radon, Woodstoves, Weed Control and Amendments.

Chair Curtiss asked if Mary had received a copy of the letter to the Commissioners written by Lois and Jerry Covault.

Mary McCrea stated she had received a copy of the letter.

Chair Curtiss stated the Covault's letter refers to covenants that prohibit division of lots.

Mary McCrea stated she reviewed the covenants for the original Golden West Addition No. 1 Subdivision and the covenants do not say that there cannot be further divisions. The covenants described it as a rural subdivision but no definition of what that means was included.

Ron Ewart, Eli & Associates, developer's representative, thanked Mary and staff for their work on this proposal. There is agreement with all the recommended conditions of approval. The covenants were thoroughly and carefully reviewed some time ago when a subdivision was proposed at the corner of Douglas Drive and Council Way. It was determined that the covenants would allow a subdivision. The covenants require that there be only one home per lot, but does not prohibit creation of another lot for another home. As written, the covenants would prevent a subdivision for lease or rent because no new lot is created. A copy of the proposal was sent to the Homeowners Association.

Chair Curtiss stated that the Covaults thought the covenants had since been amended.

Ron Ewart stated that if the covenants had been amended, it was news to him.

Colleen Dowdall explained that covenants placed on property are essentially a private contract between the parties whose lots are covered by the covenants. They are not typically reviewed by the Commissioners except in the case when certain items are required to be in the covenants. Provisions of the covenants are not enforced by the County. The Board's decision is not influenced by the covenants. The decision is based on the review criteria provided in State law. The enforceability of a covenant provision is up to the homeowners or the Homeowners Association.

Chair Curtiss stated that in looking at an aerial photo of this area, it looks as if connecting roads will be needed in the future. The proposal is to put a conditional pedestrian access easement on top of the utility easement. In the future, there might be a need for a road in that same area. Has that been discussed with the applicant.

Ron Ewart stated that he did talk with the applicant about the pedestrian easement, but not a road easement. The applicant has no problem with the pedestrian easement, but would probably not be in favor of a road easement.

Chair Curtiss asked if there was an RSID waiver for these two lots to contribute toward a pathway in this easement.

Mary McCrea stated the RSID waiver would only apply to Cote Lane.

Chair Curtiss asked for public comments.

Don Lange stated he lived adjacent to the area being subdivided. He purchased the property 10 years ago and all the lots in the area were 2.5 acres in size. They purchased the property with the idea of keeping the area the way it is. The person who owns this property purchased it within the last few years. It seems typical of everything that is happening, people move in and then they want to change things. If people want to live in a smaller area with less acreage, then they should go where that exists, not change an area where it doesn't exist and lower his property values.

Chair Curtiss asked if the covenants in his area had been changed recently.

Don Lange stated the last he heard was about needing 66% to approve any changes and the lot size was to be 2.5 acres.

Chair Curtiss stated that the County Attorney explained that covenants are an agreement between the homeowners and he did have the right to take legal action if he felt it was appropriate.

Don Lange stated he understood that. He did not see how this could be changed unless everybody agreed.

Chair Curtiss stated the covenants do not specifically state a lot size.

Don Lange stated that the posted sign for this subdivision was down the day after it was put up. He called to suggest it be reposted, but nobody did that. There may be a lot of other people that don't know about this.

Chair Curtiss stated that a minor subdivision is posted as a courtesy, it is not required.

Commissioner Carey stated that the Covaults mention increasing traffic on Cote Lane and asked to what extent that could be considered with this subdivision.

Colleen Dowdall stated that the advice received from Public Works is what is used to determine the need for any additional improvements. In this case, Public Works said that this one additional lot would not require this developer to improve Cote Lane. A waiver of the right to protest an RSID for improvements to Cote Lane has been asked for in this case so that when improvements need to be made, these lots will participate, based on benefit.

Commissioner Carey asked if the Board could consider the impact of increasing traffic on a road if Public Works advises there is a potential threat to public safety.

Colleen Dowdall stated it would need to be a threat to public safety that can be connected to this development. The RSID waiver is the best way to address the cumulative impact of minor subdivisions in an area, it is the most effective tool.

Chair Curtiss stated the Covaults also had concerns about adequate sewage lines in the area.

Greg Robertson stated that would be a City issue, but the mains that are installed are of more than adequate capacity to serve the area.

Colleen Dowdall stated that the essence of new legislation requires the Commissioners consider whether any evidence has been introduced at the hearing, upon which they intend to base their decision, that the public or the developer has not had an opportunity to comment on. The developer would be entitled to additional time to respond to any new information, which in this case could include the letter from the Covaults, if the Commissioners were to make a decision based on information provided in the letter.

Chair Curtiss stated the Board did not see anything new in the letter that they would based their decision on.

Don Lange stated there has been a lot of development below Cote Lane which has forced more traffic onto it. There are a lot of children in the area and the new path is great, but this will be adding to the increased traffic on Cote Lane. It is just one lot, but then there will be another and another and eventually the whole area is changed.

Commissioner Evans stated that the legislature makes the laws and the County is an arm of the State. The County is not given a lot of latitude on subdivision approval or denial. The law falls off on the side of the developer. If a subdivision is denied, the developer must be given the opportunity to mitigate any concerns. The Board also does not have the authority to make a decision on septic and water issues, that is given to the Health Department. She hears and understands his concerns, but the Board doesn't really have a legal reason to deny the subdivision.

Chair Curtiss stated that the only variances to the Subdivision Regulations being asked for with this subdivision were ones that make sense, otherwise the developer has met all the requirements in the regulations.

Don Lange asked if Commissioner Evans meant this property had been purchased by a developer.

Commissioner Evans stated that did not mean a Real Estate Developer, the term was loosely applied to the property owner. Mr. Lange could be considered a developer if he chose to divide his property.

There were no further public comments.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(3) of the Missoula County Subdivision Regulations requiring a 28 foot paved width for Cote Lane, based on the findings of fact 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 variance request from Article 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations requiring boulevard sidewalks or walkways on the east side of Cote Lane, based on the findings of fact 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 variance request from Article 3-2(7) of the Missoula County Subdivision Regulations requiring curbs and gutters on Cote Lane, based on the findings of fact 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 Golden West Addition No. 1, Lot 19, 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.

Golden West Addition No. 1, Lot 19, Subdivision Conditions of Approval:

Roads and Driveways

1. The developer shall contribute \$230 per new lot to the Mullan Road transportation system fund for signaling the Flynn Lane/Mullan Road intersection and \$815 per new lot to the fund for improving the Reserve Street/Mullan Road intersection. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 4-1(12) and Public Works recommendation.*

Pedestrian Facilities

2. A 10 foot wide conditional public pedestrian access easement extending from the Cote Lane right-of-way along the northern property boundary of Lot 19A to the eastern property boundary of Lot 19A shall be shown on the plat. A statement describing the conditional public pedestrian access easement shall appear on the face of the

plat and the language of the statement shall be reviewed and approved by the Missoula County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-2(8)(C) and OPG recommendation.*

Fire

3. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision constitutes the waiver of the right to protest a future RSID/SID for a public water system for fire protection, 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 3-7(2) and Missoula Rural Fire District recommendation.*

4. The developer shall contribute \$100 per lot to the Missoula Rural Fire District large diameter hose fund for fire protection purposes. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Missoula Rural Fire District recommendation.*

5. Plans for address signage for each property shall be reviewed and approved by Missoula Rural Fire District prior to final plat approval. The approved address plan shall be included in the covenants. *Subdivision Regulations Article 3-1(6) and Missoula Rural Fire District recommendation.*

Weeds

6. 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.*

Development Covenant

7. A Development Covenant for the Golden West Addition No. 1, Lot 19 Subdivision shall be filed with the Missoula County Clerk and Recorder's Office, subject to review and approval by OPG and the County Attorney's Office, prior to final plat approval. The following sections shall be included in the Development Covenant:

Section 1: Living With Wildlife

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, as well as properly storing garbage and other potential attractants. Owners must be aware of potential problems associated with the occasional presence of wildlife such as deer, black bear, coyote, raccoons or skunks. Contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help owners "live with wildlife." Alternatively, see the Education portion of FWP's web site at www.fwp.mt.gov. The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. Homeowners should be aware of the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. Gardens and fruit trees can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because ripe or 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.
- c. Garbage should be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc.
- d. 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, owners should be aware that deer could potentially attract mountain lions to the area.

- e. Pets must be confined inside homes, in a fenced yard, or in an outdoor kennel area when not under the immediate control of their owners, 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 hoofed game animals and the owner may also be held guilty (MCA 87-3-124). Pet food should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, skunks, 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.
- f. 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.

Section 2: Driveways

Driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus within 150 feet of the building and shall have an unobstructed width not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches. Final designs shall be approved by the Missoula Rural Fire District.

Section 3: Radon

The EPA has designated the Missoula area as having a high radon gas potential (Zone1). Therefore, the Missoula City-County Health Department recommends that all new residences incorporate radon resistant construction features.

Section 4: Woodstoves

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 upon receipt of an installation permit from the Health Department.

Section 5: Weed Control

Lot owners are required to maintain their property in compliance with the Montana Weed Control Act, the Missoula County Noxious Weed Management Plan and the revegetation plan approved by the Missoula County Weed District appended by reference to this Development Covenant.

Section 6: Amendment

The following sections of the Development Covenant may not be amended without Governing Body approval: Living With Wildlife, Driveways, Address Signs, Radon, Woodstoves and Weed Control. *Subdivision Regulations Article 3-1(1), 3-1(1)(B), 3-1(2), 3-1(10), 3-2(10)(E), Missoula Rural Fire District, Missoula City-County Health Department, Montana Fish, Wildlife and Parks and Missoula County Weed District recommendation.*

Hearing: East Meadows Subdivision (16 lots on 2.99 acres) – Farm Lane in Lolo

Chair Curtiss opened the public hearing.

Tim Worley, Office of Planning and Grants, presented the staff report.

This is a proposal by Jetstar, LLC, represented by Daniel Summerfield of DJ&A, Inc., to divide a 2.99 acre parcel into 16 residential lots. The density of this development is just under 6 dwelling units per acre. The Lolo Regional Plan recommends residential density in this area at 6 dwelling units per acre.

The property is located on Farm Lane in Lolo, east of Storage Lane and the Bitterroot Line railroad tracks. Lot sizes range from 4,914 square feet to 10,108 square feet. Farm Lane is the off-site road that provides access to this property. It is 34 feet wide within a 60 foot wide public access easement. Since the regulations require a 40 foot width for a local street, the developer is requesting a variance from the standard. County Public Works did not object to the variance request, noting that Farm Lane functions adequately as is. Ashton Loop is the interior road that provides access to all 16 lots. No lot will access directly to Farm Lane. It is proposed to have a 32 foot paved surface within a 60 foot public access easement. Boulevard sidewalks are proposed for both sides of Ashton Loop

and for the southern side of Farm Lane. The developer proposes to have this road accepted for County maintenance and have parking on one side only.

There are two variance requests. The first is to the requirement for a 60 foot lot width at the building setback line. Lots 9 and 10 in the southeast corner do not meet that standard. Public Works had no problem with this variance request. The second variance is to the collector street width standard which applies to Farm Lane and would require Farm Lane to be 40 feet wide. It is currently 34 feet wide with curbs on both sides of the street. Public Works is also in support of maintaining Farm Lane at its current width.

The Missoula Consolidated Planning Board conducted a public hearing on this request on Tuesday, May 3, 2005. They recommended approval of both variance requests and they voted 6-2 on a motion to recommend approval of the subdivision. Prior to the vote on the subdivision, the Planning Board recommended striking the reference to parking on one side of the street as shown in Condition 6b.

Condition 1 is a recommendation for a waiver of the right to protest improvements to the two roads in the subdivision; Farm Lane and Ashton Loop. Condition 2 is a recommendation for Missoula Rural Fire to review and approve the two fire hydrant locations for the subdivision. Condition 3 is a recommendation for Missoula Rural Fire to review address signage for all 16 homes.

Condition 4 is for final drainage plans to be reviewed and approved by County Public Works prior to final plat approval. There was some re-working of the drainage plan and staff wanted to give Public Works the opportunity to review the re-worked plans prior to final plat approval. The 5th condition is for a revegetation plan per the County Weed District recommendation.

The one recommendation that came out of Planning Board regarding the conditions affects Condition 6b. Planning Board wanted to open up parking to both sides of Ashton Loop and recommended deleting Condition 6b. Staff's original recommendation was for parking on only one side of Ashton Loop. Conditions 6a and 6c through 6g cover radon mitigation, sidewalk maintenance responsibilities, and Living with Wildlife information. Those are all recommendations from reviewing agencies.

The developer is proposing a \$10,000 cash-in-lieu of parkland dedication for this subdivision, which exceeds the requirement. Condition 8 recommends this be paid prior to final plat approval.

Commissioner Evans asked if the condition could reflect the fact that the developer is offering more cash-in-lieu than is required.

Tim Worley stated that could be done. In summary, Planning Board recommended approval of East Meadows Subdivision, subject to the conditions in the staff report with the amendments as mentioned.

Daniel Summerfield, DJ&A, developer's representative, thanked the Commissioners for considering the subdivision and Tim for all his work on the proposal. The development is fairly simple and straight forward. They worked closely with Lisa Moisey and the County Park Board and also with Greg Robertson. The developer is in agreement with all of the conditions as recommended by Planning Board, and those recommended by staff prior to the Planning Board hearing. There might be some further discussion regarding the parking issue on Ashton Loop. He asked if this hearing counts for the new Excavation Policy Resolution for water and sewer in County right-of-ways.

Greg Robertson stated this hearing does cover that required in the Excavation Policy. This is within the RSID 901 district and according to the policy, work within RSID's is exempt.

Colleen Dowdall stated that the resolution for excavation in County rights-of-way allowed for the determination to be made at the subdivision hearing.

Chair Curtiss asked for public comments.

Curt Belts, Assistant Fire Chief, Missoula Rural Fire District, stated that the original proposal was for parking on one side of Ashton Loop only. He asked what the total street width would be if parking was allowed on both sides of the street. The Fire District needs 20 feet of horizontal clearance.

Tim Worley stated the road width is 32 feet from back-of-curb to back-of-curb. The Subdivision Regulations outline a 8 foot width for a parking space. Using that measurement, it would leave less than 20 feet of unobstructed width. There is a difference between what the regulations outline for a parking width and how wide a car actually is.

Curt Belts stated that the Fire District has acquiesced that 6 feet of parking width will fit their needs, but the important thing is to maintain that 20 feet of unobstructed clearance.

Commissioner Evans stated that enforcement is the issue; saying it doesn't always make it so.

Curt Belts stated there are a lot of enforcement issues in the County. He needs to be on record that he needs 20 feet of clearance; if he cannot get his fire equipment there, he will not be liable.

Greg Robertson stated the plans show 32 feet of street width with parking on one side of the street only. If parking on both sides is going to be allowed, then additional width is needed to accommodate that. The plan shows parking on one side with signage to that effect which will maintain the 20 foot unobstructed width the Fire District needs.

Chair Curtiss asked if the covenants address parking.

Tim Worley stated the covenants did not originally make that prohibition of parking on one side of Ashton Loop. Staff recommended it be included in the covenants because that is what was proposed by the developer. Planning Board recommended striking that provision in the conditions recommended by staff.

Greg Robertson stated that as long as no parking is properly signed, snow plows and emergency equipment will be able to get through.

Elmer Palmer, Lolo Community Council, stated this subdivision was review by the Council in February. The plans show a 34 foot width on Ashton Loop. There have been many instances in Lolo of applicants requesting a narrower road width with the promise of no parking on one or both sides of the street. That promise lasts until the first person moves in, makes the garage into a recreation room and starts parking on the street. The Council recommends the width of the road be increased to 40 feet, to insure sufficient room for parking on both sides of the street. They also recommend that Farm Lane be brought up to County standards, particularly because there is another major subdivision going in on the other side of the road. The people that live on or access from Farm Lane say that the road has just been improved under RSID 8465 and they are worried about the condition of the road after construction and installation of water and sewer. They would like to see that the road is brought back to its improved condition after construction of this subdivision is complete. The developer is offering cash-in-lieu of the park requirement, in excess of the amount required, which is appreciated, but there is no public park within miles of this subdivision. The development across the street will have private parks and other developments have private parks as well. The Council feels there should be some park area for these 16 homes. The Council also recently reviewed Avalon Meadows. Between these two developments, it will generate 704 more trips per day, most of which will access Highway 93. The Council has stated before that this added traffic is excessive. At some point, Planning Board, the Office of Planning and Grants and the Board of County Commissioners is going to have to realize that building cannot continue in Lolo without some relief on Highway 93. As mentioned many times before, the Board cannot, without good reason, turn down a subdivision. However, they have the ability to place a full moratorium on building in an area for safety reasons. The Council requests the Board consider something like that, because the traffic is not getting better. There are many large subdivisions in Lolo that have recently been approved or will be coming up soon for approval that continue to add traffic to Highway 93. That doesn't take into account Ken Allen's property or what is happening in Florence. Something has to be done soon, Highway 93 is near or at capacity.

Chair Curtiss stated that there is no variance for the width of Ashton Loop.

Greg Robertson stated the road meets the width standard with parking on one side of the street only.

Commissioner Evans asked Mr. and Mrs. Little if they would be opposed to widening the street.

Reed Little, Jetstar, LLC, stated the problem would be reducing the size of the lots. He appreciates what Elmer has said, but this is a small subdivision and he has invested a lot of money in it. Growth cannot be stopped in the community. They are not proposing anything unusual and are willing to do what they can, but they do not want lot sizes so small they are not reasonable. They are trying to provide affordable housing.

Greg Robertson stated that widening the road by 8 feet would cause problems.

Chair Curtiss asked if no parking could be addressed in the covenants.

Reed Little stated the Planning Board mentioned that covenants are not very enforceable. Once the lots are sold, it is out of his hands. They originally proposed allowing parking on only one side of the street.

Tim Worley stated that the two bulb-outs are 52 feet wide so there is additional width in those area.

Reed Little stated that is usually where the fire trucks have problems, so there is adequate width there for them.

Commissioner Evans stated that even if there are No Parking signs, if someone has a party, people will park on the wrong side.

Reed Little stated that is probably why the Planning Board recommended removing the restriction, it is not enforceable.

Commissioner Evans stated she did not have a problem with restricting parking to one side only and hope that it will work. Fire trucks may have to drive on someone's lawn if there is a motor home in the way.

Greg Robertson stated that, working with Daniel Summerfield, an appropriate signage plan could be drafted. Those signs are regulatory and have the force and effect for enforceable action.

Reed Little stated they could put a restriction in the covenants that motor homes and trailers are not allowed to park on the street. He did not know how enforceable it could be, but at least it would be there. He would do whatever he needs to do. Like Elmer, he doesn't want growth, but it's here and there's not much that can be done about it.

Chair Curtiss stated the Board has to consider whether there was any new information presented at this public hearing that has not been considered by the Planning Board, developer or the Commissioners.

Commissioner Evans stated that asking this question is due to new legislation.

Chair Curtiss stated there was no new evidence presented at this public hearing.

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

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-3(1)(E) of the Missoula County Subdivision Regulations requiring a minimum lot width of 60 feet at the building setback line, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations requiring a 40 foot width for Farm Lane, based on the findings of fact set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the East Meadows Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report, reinstating Condition 6b to allow parking on only one side of the street that the Planning Board recommended deleting, with appropriate signage placed after consultation with Public Works and adding language to Condition 8 that states the cash-in-lieu contribution exceeds the amount required by statute by \$3,700. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

East Meadows Subdivision Conditions of Approval:

1. 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 Farm Lane and all streets within the East Meadows Subdivision, 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) and OPG recommendation.*

2. The design and placement of fire hydrants within the subdivision 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.*

3. 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.*
4. Final drainage plans shall be reviewed and approved by County Public Works prior to final plat approval. *Subdivision Regulations 3-2(B), 3-4(3)(F) and County Public Works recommendation.*
5. 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.*
6. The covenants shall be amended as follows:

- a. Add a section stating that property owners within East Meadows are advised that Missoula County has high radon potential and all new construction should incorporate passive radon mitigation systems.
- b. Add a section stating that on-street parking is permitted on one side of Ashton Loop only. The developer shall work with County Public Works to install signage limiting parking to one side of Ashton Loop.
- c. Article III, Section 8 (after the sentence ending "... each of the trees and boulevard grass they are so require to plant."): Sidewalk maintenance and repair shall be the sole responsibility of each lot owner who faces a boulevard.
- d. Article III, Section 7 (at the end of the section): 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 becoming entangled in the fence or injuring themselves when trying to jump the fence.
- e. Article III, Section 8 (after the sentence ending "... human and wildlife encounters."): Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- f. Article III, Section 13 (add the following after the sentence ending "... containers located within kennel areas."): 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.
- g. **Living with Wildlife** (as an additional section)

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, black bears, mountain lions, foxes, skunks and raccoons. Contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife."

1. **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep 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.
2. **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 97-3-130) 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 must/should be aware that deer might occasionally attract mountain lions to the area.
3. **Bird feeders** 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 plat located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.

4. **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.
5. **Compost piles** can attract skunks and bears. 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). *Subdivision Regulations Article 3-2(1)(E), 3-8, Fish, Wildlife and Parks and OPG recommendation.*
7. Article IV, Section 4 of the covenants ("Amendments") shall be revised to include sections that may not be amended without Governing Body approval. These sections shall include Radon, Landscaping, Parking, Fences, Address Signs, Weed Control and Living with Wildlife. *Subdivision Regulations Article 3-1(10), Fish, Wildlife and Parks and OPG recommendation.*
8. Cash-in-lieu of parkland is accepted in the amount of \$10,000, which exceeds the required amount by \$3,700 and is to be paid prior to final plat approval. *County Attorney's Office and Board of County Commissioners recommendation.*

Consideration: Quite Pines Lots (5 lots on 5+ acres) – north of Highway 10/200, east of Marshall Grade

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

The applicant, John McDonald, represented by Ron Ewart of Eli & Associates, is proposing a 5 lot residential subdivision on 5.07 acres.

The parcel is unzoned and located north of Highway 200 East, approximately one mile east of Marshall Grade, between Tamarack Road and Pinegrove Lane. Access to the subdivision is achieved via a private road to extend off an existing paved driveway west of the project area. According to the 1998 Missoula Urban Area Comprehensive Plan Update, the property is designated "Residential," with a recommended maximum density of 2 dwelling units per acre. The average size of the proposed lots is 1.01 acres.

Individual wells and septic systems will serve the proposed subdivision. Due to the location of the existing well on adjacent Tract D and probably mixing zone/groundwater directional flow, the drainfield for Lot 3 will need to be located in the western end of Lot 5. Therefore, a drainfield easement for the benefit of Lot 3 is proposed to be located on Lot 5.

The covenants include the requirement for residential sprinklers and Rural Fire commented that this is an approved alternative to a water supply. Sprinkler plans must be approved by Rural Fire. Staff is recommending a condition that the covenants be amended to require review of residential fire sprinkler systems by Rural Fire prior to construction.

For the benefit of the subdivision, the applicant proposed to remove the existing pavement of the driveway from the point it meets the highway through to the subdivision boundary and replace it with 20 feet of paved surface with shoulders and drainage swales on each side. The existing driveway easement will be abandoned with plat filing to be supplanted with a 60 foot private access and utility easement. Quiet Pines Lane will serve the existing residence as well as the 5 lots in the proposed subdivision. Staff recommends documentation of legal access across Tract D for the benefit of Quiet Pines Lots be submitted prior to final plat approval.

The applicant is requesting a variance to the Subdivision Regulations for private road standards which require a 24 foot pavement width. County Public Works supports the variance request given the proposed road alignment and the fact that the private road will only serve 6 residences. Rural Fire did not express concerns in their agency review letter regarding the road widths on Quiet Pines Lane. 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 Highway 200 East, including pedestrian facilities. The proposed subdivision is within the Air Stagnation Zone and according to the City-County Health Department, a residential driveway application and permit must be purchased at the Health Department for all new driveways and driveways must be paved at least 20 feet back from the edge of the pavement

or the right-of-way, whichever is longer. Staff recommends a condition that the development covenants be amended to require all new driveways be paved according to County Subdivision Regulations and City-County Health Department standards.

There are no sidewalks or pedestrian access facilities near the proposed subdivision and the applicant is not proposing pedestrian improvements to Quiet Pines Lane. The Subdivision Regulations require all subdivisions inside the Urban Growth Area with a lot frontage of 175 feet or greater to construct concrete boulevard sidewalks or paved boulevard pedestrian walkways on one side of the street. County Public Works supports the variance request. Due to the subdivision's proximity to existing facilities, it is unreasonable to require a walkway with the subdivision. Staff supports the variance request.

The property is vacant and level, with an overall grade of about 2% from the southwest downhill toward the northeast. The property is lightly to moderately forested in Ponderosa pines. According to Fish, Wildlife and Parks, the subject property is visited by wildlife such as deer, elk, black bear, coyotes, skunks, on occasion mountain lions and a herd of bighorn sheep. The subdivision protective covenants include a "Living with Wildlife" section. To reduce the potential for human-wildlife conflicts associated with new developments and to enhance the effectiveness of protective covenants associated with living with wildlife, Fish, Wildlife and Parks recommends proposed "Living with Wildlife" language in the covenants be substituted with an updated version that specifically address the presence of bighorn sheep in the area. Staff is recommending this be made a condition of approval.

There is a condition that requires amending the protective covenants to include a statement that the City-County Air Pollution Control Program regulations prohibit the installation of wood burning stoves or fireplaces. Another condition addresses a Revegetation Plan for disturbed sites to be reviewed and approved by the County Weed Board prior to final plat approval. The reference to "Patinella Estates" in the covenants should be changed to "Quiet Pines Lots." In conclusions, staff recommends approval of the subdivision.

Commissioner Evans stated that she would suggest making FWP a party to the covenants.

Ron Ewart, Eli & Associates, developer's representative, thanked Denise and stated there was agreement with all the conditions of approval. He also did not see a problem with making FWP a party to the covenants.

Chair Curtiss stated the Health Board is generally not in favor of drainfields being on a different lot.

Ron Ewart stated the Health Board is currently reviewing this request. His understanding is that the Health Board will not allow a drainfield that straddles a lot line, but they will allow one totally on another lot as long as the proper easement, agreement and documentation are provided. The proposal has to do with the ground water flow model and the fact that there is an existing well on the adjacent property. A drainfield on Lot 2 would cause the mixing zone to be within the radius of the well.

Colleen Dowdall stated that Deputy County Attorney Marnie McClain, who represents the Health Department, reviewed this proposal. The requirement that a drainfield easement have its own lot only applies to multi-user drainfields, so this does not require a new lot. It appears the reason for locating the drainfield in this spot is valid.

Chair Curtiss stated that Quiet Pines is referred to as a driveway. It should be referred to as a road when it serves 3 or more homes.

Denise Dundon stated it is a private road. To clarify the reference in the conditions, any new driveways onto Quiet Pines Lane, which is a private road, would need those permits.

Chair Curtiss asked for public comments. There were none. The Board did not receive any new information today that would influence their decision.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Section 3-2(1) of the Missoula County Subdivision Regulations requiring a 24 foot paved surface to allow a 20 foot paved roadway on Quiet Pines Lane, 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 variance request from Section 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations to not provide a system of pedestrian and/or bicycle circulation, 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 Evans moved that the Board of County Commissioners add Fish, Wildlife and Parks as a party to the covenants, because of the proximity of the herd of bighorn sheep and the fact that FWP has made it clear there are times when they would like to be able to enforce covenants and protect animals but cannot do so unless they are party to the covenants. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Carey moved that the Board of County Commissioners approve the Quiet Pines Lots 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.

Quiet Pines Lots Subdivision Conditions of Approval:

1. Documentation of legal access across Tract D, Thibodeau and Poitras Tract Amending Block 1, for the benefit of Quiet Pines Lots Subdivision, be reviewed and approved by the County Attorney's Office prior to final plat approval. *Subdivision Regulations Article 3-2(1) and OPG recommendation.*
2. Article 1, Section 5 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.*
3. Article 1, Section 4 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.*
4. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval and shall be appended to the covenants. *Subdivision Regulations Article 3-1(1)(B) and Weed District recommendation.*
5. The reference to "Patinella Estates" in Article 1, Section 13 of the protective covenants shall be changed to "Quiet Pines Lots." *Subdivision Regulations Article 3-1(1)(B) and OPG recommendation.*
6. Article 1, Section 14 of the protective covenants shall be amended to include the following language: "Interior residential fire sprinkling systems shall be installed within each new dwelling, with plans to be reviewed and approved by the Missoula Rural Fire District, prior to construction."
7. The following language shall replace Article 1, Section 15 of the protective covenants and be filed with the Missoula County Clerk and Recorder's Office, subject to review and approval by OPG prior to final plat approval:

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, bighorn sheep, black bears, mountain lions, coyotes, skunks and raccoons. Contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife."

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. Homeowners must be aware of the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners must be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep 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.

- c. **Garbage** must be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. If storing garbage cans indoors, do not set garbage cans out until the morning of garbage pickup.
- d. **Do not feed wildlife** or offer any supplements, baits or attractants (such as salt blocks, grain, hay, garbage, etc.) for deer, bighorn sheep, black bears or other wildlife. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. Feeding can lead to unnatural concentrations of deer and bighorns and increased depredation of vegetation in neighboring lots. Under State law (MCA 87-3-130), it is illegal to attract bears with supplemental feed and it is illegal to provide feed attractants in a manner that results in an artificial concentration of game animals that may contribute to disease transmission or a threat to public safety. Homeowners should also be aware that deer or bighorn sheep could attract mountain lions to the area.
- e. **Bird feeders** attract bears and should not be used in this subdivision between the months of April through October. If used, bird feeders must: 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 plat located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f. **Pets** must 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 hoofed game animals and the owner may also be held guilty (MCA 87-3-124).
- g. **Pet food and/or livestock feed** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc. When feeding pets and/or livestock, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- h. **Domestic sheep and goats** are not allowed in this subdivision because of the proximity to the Bonner bighorn sheep herd. The possibility exists that domestic sheep or goats could transmit a potentially fatal bacterial infection to bighorn sheep, leading to heavy mortality in the native bighorns.
- i. **Barbecue grills** must be stored indoors. Permanent outdoor barbecues grills are not allowed in this subdivision. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.
- j. 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 [and/or elk] becoming entangled in the fence or injuring themselves when trying to jump the fence.
- k. **Compost piles** can attract skunks and bears and should be avoided in this subdivision. If use, 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).
- l. **Apiaries** (bee hives) could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife and Parks or the U.S. Fish and Wildlife Service for help in planning and constructing an apiary system that will help deter bears). *Subdivision Regulations Article 3-1(1)(B), Montana Fish, Wildlife and Parks and OPG recommendation.*

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