

PUBLIC MEETING – JUNE 22, 2005

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

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 list in the amount of \$995,300.24. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Decision: Abandon a Portion of GLO Wagon Road, GLO Trail and Book 1 Road – Highway 12 (Longhorn Flat)

Chair Curtiss: The next item is listed as a decision, we will see if we make one today. We were petitioned to abandon a portion of a GLO Wagon Road, a GLO Trail and a Book 1 Road along Highway 12 in the Sleeman Gulch area or Sleeman Creek area. Chuck Wright and I visited the site yesterday. I don't know that we have a decision, but I will let Chuck give his part of the report first.

Chuck Wright: We visited the site yesterday, Jean Curtiss and myself, and met with fifteen to twenty people out there and talked about the different situations that were going on. We looked at all the way through the Longhorn Flats project and those portions of those roads within close proximity of Sleeman Creek Road, on both sides of that. We had talked and looked at these different things; we knew that the Highway Department is planning on doing some deceleration zones for Lolo Trails, Beyer Meadows and Longhorn and they haven't determined one way or another whether they are going to do Sleeman Creek Road or not. Thinking about that stuff in the future, we had discussed not abandoning the road but altering all three of those roads to the same location along the Highway 12 right-of-way. That's all I have for the staff report.

Chair Curtiss: The other complicating factor is that there are actually two parcels, two different ownerships, and there are folks that use these roads on the Lemm/Dexter property. There didn't seem to be an existing use on the property of Longhorn Flats. We talked about whether or not we could do these separately, it seems like they probably should go together. And I don't know if our legal staff has decided whether we can alter a road when the petition was to abandon? It seems like it makes sense to me, because otherwise we deny the abandonment. So can we have some comment from our legal staff, please?

Mike Sehestedt: Assuming the affected property owner, the one or ones that are going to be crossed by the altered road are in agreement, the answer is, I think, yes we probably can alter as opposed to merely vacate. There is some question about it but the consequences don't seem to me to be particularly bad from our point of view if someone was to challenge it later. The agreement to the alternation is in effect a dedication and assuming that we've proceeded properly, and we are in fact abandoning any other road as a result of the petition. Another way to phrase it would be we simply condition the abandonment of the road upon dedication of other right-of-way. So I think the answer is, yes we can.

Chair Curtiss: Some of it actually means that what we would do is alter the right-of-way of two of the proposed roads so that they are basically stacked upon the other one, so two of them end up kind of being abandoned, they are just relocated.

Mike Sehestedt: Right, and we have land owner concurrence on the location of the remaining road. I think to answer that question, yes. It's almost more that we are granting the vacation conditional on dedication of other right-of-way, would be a way to phrase it.

Chair Curtiss: Because in reality, if we denied this petition, they could petition us to alter it and it would end up being the same thing, if it's in agreement. So Toby if you could come up to the microphone. Did you have a question first Barbara?

Commissioner Evans: A comment more than anything. In having three roads that we are going to pile on top of each other, it would be real helpful to me if we had a map that said this is Road A, Road B, Road C, and in the long run we are going to have A, B and C in the same place and I could see it. I see the picture – I love colors, but that it is a very complicated situation and so I would kind of like a picture of what we are planning to do that will go on the record and make it less complicated for everybody.

Chair Curtiss: And I think that that was what Toby was going to do is to create an exhibit for us. Toby, if could you come to the mic? Could you state your name please?

Toby Dumont: Toby Dumont with Professional Consultants.

Chair Curtiss: So have you had time to visit with the, I know that one landowner was out there yesterday, but the other one probably wasn't. Do you know if they care, would they prefer the altered?

Toby Dumont: I know that on the subdivision portion, if we put it within that Primary Travel Corridor and that doesn't move the Primary Travel Corridor an additional fifty feet out, that the owner doesn't have a problem with that.

Chair Curtiss: Okay.

Toby Dumont: At the same time, if we are doing the platting and subdivision as part of a condition of that petition, we could dedicate that portion to fulfill the – right on the face of the plat – to fulfill the condition of the abandonment that Mike was talking about earlier.

Commissioner Evans: I would like to make it real clear to everybody that when the Primary Travel Corridor Standards were done, they were to have the highway or the roadway and the right-of-way, and then the landscaping on the person's property, close to the highway, close to the right-of-way. Not 50 feet back from the end of the right-of-way and put it in the middle of your property, that wasn't the intent at all. I just want to make that clear.

Chair Curtiss: Mr. Dexter's property, I think he realizes that if two people protest, we can't abandon.

Toby Dumont: When I left the site, I was going to prepare a couple of different exhibits showing different options and meet with the landowners and come up with some sense of a unified comment there and then come back and approach the Commission with that and have an exhibit to go along with it.

Commissioner Evans: That would be nice.

Chair Curtiss: So are you okay with delaying this action for – do you want us to delay a week or two?

Toby Dumont: Why don't you give me two?

Chair Curtiss: Okay. So that puts us to July 6th. Thank you, Toby. Is there anyone else who would like to make comment on this alteration, because the folks on Sleeman use the one corner of the property, Mr. Hendrickson, the Hendrickson's use the other side, so we can't abandon because it is being used on the Dexter property. I know that you probably want to comment.

Jeanette Zentgraf: I live on Sleeman Creek. I just have a question because it pertains to where this road will be, this composite road. I don't understand, I have this question for you. I don't understand how the approved Comprehensive County Plan designated an area based on FEMA maps for a flood risk area. I don't understand how a consulting firm, PCI, I understand, was hired to re-evaluate what hasn't changed in terrain wise, in height and depth and all of that. And it has changed to now be, for 300 feet, no longer a floodplain. I don't understand how that happens.

Chair Curtiss: Well that is through some mysterious process called FEMA, so we don't have any control over that. So you are talking about where the Longhorn Flats is proposed, that use to be considered on the FEMA map, floodplain.

Jeanette Zentgraf: That's right, based on FEMA maps.

Commissioner Evans: I would imagine that Toby or Mike Sehestedt, or Colleen, could explain how that happened.

Chair Curtiss: Toby can explain how that happened. Actually my understanding yesterday was the property east of Sleeman is on the FEMA map.

Toby Dumont: The FEMA map shows that Drake Lemm/Russell Dexter property being encumbered by the floodplain. It does not go on to the Longhorn Flats subdivision. There is a formal process, a bunch of maps are submitted and information submitted to Alexandria, Virginia, to the FEMA Headquarters, and they review it, their engineers and water people review it and go through a process and do the determination. We simply supplied data to them and asked that they look at that particular area and then they report back whether they accept it, agree with you or modify it.

Chair Curtiss: So were the maps modified on the Longhorn property?

Toby Dumont: No, only on the Dexter/Lemm property, which is the Sleeman Gulch portion. I don't have the floodplain map with me.

Commissioner Evans: There is also a couple of different ways of determining floodplain and a couple different processes, the names of which I can't come up with, which can be interpreted differently, is that not so?

Toby Dumont: To formally change a floodplain it has to be done by FEMA. We can have an opinion. There is a, by elevation, whether the FEMA map shows a certain area of being at 3,236 being at the floodplain and you find that the ground is ten feet above that, FEMA can look at that as substantiation. Also, there is a line drawn on the map by FEMA that shows it by horizontal location where it is. There are two different ways to look at it, but the lines around it, only FEMA can remove it.

Commissioner Evans: I think what the problem is, is Mrs. Zentgraf doesn't understand the process and I think it would be nice if someone explained it to her.

Chair Curtiss: So that's kind of what Toby did, talking about you provide data and then they made the decision, right?

Toby Dumont: Yeah.

Jeanette Zentgraf: I just wanted to point out that the land that is still – there is like 290 feet on the west side of Sleeman Creek which is actually higher than this area that has been re-designated to no longer be a flood risk. That footage is still designated as a flood area, it's very, very, very strange that you have higher land that's designated for flood area.

Chair Curtiss: I think we can all agree on that.

Commissioner Evans: Someone needs to ask FEMA to look at that and reassess it. It doesn't just happen.

Toby Dumont: I requested that they look at the entire property and even though it is higher on the east side than it is on the west side, they considered the property on the west side being out and the property on the east side being in. And it doesn't make logical sense to me. But that was their interpretation.

Commissioner Evans: Does that answer your questions Mrs. Zentgraf?

Jeanette Zentgraf: Well that's about as good an answer as we can get at this time. I can understand your frustration as well. I have another question, I've just learned this and I want to be corrected on this, I pray that it is not true. That what we had always thought, up to about two years ago, which was that a master plan through the Office of Planning and Grants when they go to the community and we go to the meetings, as so many of us citizens did, and it was approved that this very area was recommended for one house per 5 acres. And on the opposite side, the east side of Sleeman Creek was designated for a little less, kind of subdivision. Whatever would come in, it would come in under a different category. But this was, both sides were different, but yet very, very much more protected than what I believe is proposed for that area and the thing that I don't understand, I've

just learned this, that a law was passed two to three years ago that gutted what would have been a regulatory type of thing where you folks could say well the Master Comprehensive Plan which was approved, we will hold to it. Somehow or another it seems that you can no longer do that, if it is a master plan that has designated so many houses per acre, that you no longer are in the position to counter that and say, I don't think that that is appropriate.

Chair Curtiss: We always refer to those plans, but we can't use that as the only reason that we do density. And I happen to pull the Longhorn Flats subdivision today and the density equals one house per 6.8 acres and that's because, while it might have smaller size lots, there is some open space that counts towards calculating the density.

Jeanette Zentgraf: Well then, in other words, when it comes to something that seems way out of line for that sort of zoning that was recommended by your people, the Office of Planning and Grants, you would have legal grounds to say that something that so counters that would not be -- ?

Mike Sehestedt: What we have and you are confusing two concepts. One is the so called Comprehensive Plan or Growth Policy, the other is actual zoning. Up until three years ago, we could use a Comprehensive Plan as a basis for denial of a subdivision proposal. What happened three years ago in the legislature was a number of changes, one of which was that the Master Plan, or Growth Policy as they renamed it, cannot be used as the sole basis for any regulatory activity. If you want to regulate, the legislature felt that the appropriate procedure was to use the Growth Policy and to proceed to adopt zoning. Zoning has some procedural protections in it for residents of an area, including the right of 40% of the residents of any given area to kill the zoning by protest. The legislature felt that essentially treating a Growth Policy or Master Plan, to which the citizens had no right of protest, as a regulatory document was inconsistent with the protections that they wanted to afford the people through the zoning process. So they took it away, was it a good idea – probably not, in my judgment. But that is what the legislature said and that's what we are bucking up against now when something is proposed that is inconsistent with the Comprehensive Plan. We've asked the people in Lolo to consider zoning and haven't exactly been overwhelmed by a community response saying it was a good idea to pursue it. Sleeman Gulch did a Citizen Initiated Zoning District about two years ago maybe, but other areas have not felt the inclination and as I recall, the Sleeman Gulch proposed zoning district had to be readjusted as to its boundaries to avoid it being defeated by a 40% protest. It's impossible to do that sort of gerrymandering if you are going to do a community wide zoning initiative. You wind up then with essentially small spots that are zoned and neighbors that are not.

Chair Curtiss: I think, Mrs. Zentgraf, you had a question last week about the Lewis and Clark Trail. None of the three roads and trails that we are considering are identified as that Lewis and Clark Trail either. So just so you knew that we checked that out too.

Jeanette Zentgraf: Thank you very much. I won't take anymore time. I just want you to know that we really have always felt that we had County government that was established to protect what the community valued. This Meadow subdivision that just went up in Lolo, went up in a floodplain. It was against the Planning Board, it was against the recommendation of Mr. Todd Klietz, and I believe it went through because your hands were tied. Now if your hands are tied, I think that what is needed is legislation and would have to wait two years, but to counter this which was passed two years ago. It, in my mind, is so unfair to the little people, we are just common people depending on you guys and I really believe we are left in a lurch here, I'm sorry to say that. I don't mean to be rude.

Commissioner Evans: I would like to say something as well. The legislation isn't just to protect this group of citizens, its to protect all groups of citizens, and the people who own land and want to develop it, also need protection. So finding a middle ground that satisfies everyone, I just don't know that it's possible.

Jeanette Zentgraf: Well I believe the lawyer here mentioned that it very well, that perhaps it wasn't a good law. If you believe it wasn't a good law, it's up to the government to say, let's have some changes, because we really are desperate.

Chair Curtiss: Well, it really is the government of the people and they listen to you more than us. Talk to your legislators.

Jeanette Zentgraf: If we even knew such a bill was pending, you can believe we'd be there, at least speaking with them. Whether it would have done any good or not, I don't know, but we didn't know it was coming up.

Mike Sehestedt: Like I say, the solution is in the hands of the people. If the community wants protection, by at least 60% majority, then the power is there to, in fact, get zoning and make this real. It's the fact that it is very difficult. We hear people like you, but the punch line is that the legislature has chosen a system that, if you will, protects minority rights, at least 40% or more, against an authoritarian majority and with those protections in place, it really is up to the citizens in an area to build a consensus and come up with protections that a majority of 60% can live with. And that, I think, is really what the legislation was about, because you were winding up with, in effect, zoning, a denial with use, without those neighborhood consensus. The citizens of greater Missoula could, for example, declare all of Lolo Creek should remain cow pasture forever and no one should be able to divide anything and that would be the will of the majority of the people. But if the people in that Lolo Creek Valley wanted to divide to give 5 acres off their 10 acres to their children, if they are going to be prevented, it needs to be done by something a little closer to home than by the citizens of greater Missoula. I don't know whether that makes sense to you or not, but the legislature was trying to protect people against actions by what you can best describe as an authoritarian majority of the whole community and let people do it on a neighborhood by neighborhood basis.

Chair Curtiss: Thanks Mike. Any other comments on the petition to abandon part of the Lolo roads in the Lolo area? Okay. Then we will delay our decision to July 6th to give the consultant time to work the landowners and make sure that they are in agreement with an alteration, not an abandonment.

Mike Sehestedt: We're just continuing the hearing?

Chair Curtiss: Right. So we will continue the hearing until then.

Hearing: Application for Tax Benefits for Expansion, Remodeling or Reconstruction of Existing Buildings (Graybeal Heating and Air Conditioning)

Ann Mary Dussault presented the staff report.

Mr. Cannon has submitted an application for tax benefits for the expansion and remodeling of his business, Graybeal Heating and Air Conditioning. If you would turn to Page 2 of your packet you will see Resolution Number 87-079. This is a Resolution adopted by the Board of County Commissioners, pursuant to legislation which granted tax incentives for the remodeling, reconstruction or the expansion of existing buildings or structures. The Board of County Commissioners held a public hearing to determine whether or not such an incentive was in the public interest and did make that determination and on Page 2 of the Resolution, encouraged people who felt they qualified to apply, which Mr. Cannon has done. If you look at the next page, which is Exhibit A, Section 1 lays out what the tax benefits are. And essentially, it is a gradation of increase in the base tax over a period of five years. So you will see that in the first year following construction, the business would be assessed 20% of its newly taxable value and onward up until they reach 100%. To be considered for this benefit, the applicant needed to submit a completed application, which has been done, a copy of the building permit; written confirmation by OPG that the proposed structure complies with applicable zoning, and that is enclosed; written confirmation by the Health Department stating that the business complies with all health related requirements; and then the provision of the estimate of the number of new jobs that will be created, broken down by the required job skills and salary ranges. So if you then flip through your package through the permit manager documentation, we have a statement from Mr. Cannon that indicates, in Paragraph 3, that with the new show room portion of the expansion, they intend to increase their employment by at least one full-time salesperson, in addition to current staff, as well as two new installation persons. He indicates that the salary for these positions should be in the \$12 to \$15 per hour range, depending on experience; that they also have a group health insurance plan, which is 100% funded by the employer, that has been in place for the last 17 years; and they have a group simple IRA retirement plan, also with employer funding. With that, you are suppose to conduct a public hearing on whether or not this application is in the public interest and staff has reviewed this and we have certified that the application is complete and he is a qualified applicant.

Chair Curtiss: So this was noticed in the paper for public hearing then?

Ann Mary Dussault: It was noticed.

Chair Curtiss: So this is a public hearing, so I will open that hearing. Is there anyone here who would like to speak for or against the public benefit of giving Mr. Cannon this tax benefit, as allowed by our resolution? Seeing no one, we will close the hearing. If this is approved, then the Department of Revenue is the one that would verify the increase of taxes from that property.

Mike Sehestedt: We are approving the benefit under the Statute. DOR will be responsible for calculating the increase in value and the size of the benefit. I would note that this applies basically just – our approval covers everything but State levies and the City tax levy, if this is located within the City limits, as I believe it is.

Chair Curtiss: The City would not lose there portion?

Mike Sehestedt: The City would have to make there own determination. Our action doesn't hit the City automatically.

Ann Mary Dussault: Our resolution, if you note, states that if the project is entirely physically located within an incorporated city or town, both the governing body of the affected county and the governing body of the incorporated city or town must approve the application by resolution before all available tax benefits may be extended. If the City approves the application and the County rejects the application, the tax benefit will apply only to the number of mills levied and assessed for high school districts and elementary school district purposes within the incorporated city or town. I would assume the opposite is true too. The number of mills levied and assessed by the County governing bodies will not be affected nor will any tax benefit be extended by the County to the project.

Mike Sehestedt: What it should say, essentially, is when we approve it, school mills, County mills, relief is granted by our approval. If the City does not approve it, we are not going to give them relief from City mills. But the City mills are a City question, for us everything else, State mills are untouchable, but then this was State authorizing legislation after all.

Ann Mary Dussault: So we will advice Mr. Cannon, depending on your action, if you approve this, we will advice Mr. Cannon that in order to achieve the same benefit from City taxes, he will need to submit this application to the City and frankly I don't know if he has done that.

Chair Curtiss: Any discussion?

Commissioner Evans: Is the hearing closed?

Chair Curtiss: I did close the hearing, yes.

Commissioner Evans moved that the Board of County Commissioners approve the request for Tax Benefits for Expansion, Remodeling or Reconstruction of Existing Buildings from Graybeal Heating and Air Conditioning, as it appears to be in the public interest. Chair Curtiss seconded the motion.

Chair Curtiss: I agree, especially because he seems to be a very responsible employer and he offers good wages and benefits.

The motion carried on a vote of 2-0.

Hearing: Buck Creek Homesites, Lot 3 (2 lots on 13.79 acres) – West of Highway 83, three miles south of Condon

Chair Curtiss opened the public hearing.

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

This is a request from Bruce and Joanne Rupp to create Buck Creek Homesites, Lot 3, a subdivision about 13.79 acres, into two residential lots. The subdivision is located within the Swan Valley, between the Mission Mountain Wilderness to the west and the Swan Range to the east, on the west side of Highway 83, three miles south of Condon.

The Missoula Consolidate Planning Board, with 8 members present, conducted a public hearing on this request on Tuesday, June 7, 2005, and voted unanimously to recommend approval of subdivision, subject to conditions recommended by staff and as amended by the Planning Board. The riparian resources on this site are confined to the lower elevations and immediately adjacent to Buck Creek, which forms the northern boundary of the subdivision. This area has been identified on the preliminary plat as an "Area of Riparian Resource" and "No Build Zone" and varies in width from 50 feet to 180 feet. Lot 3A is proposed to be 3.15 acres in size and Lot 3B, 10.64 acres. A gravel pit was previously in use within the southeast corner of the property adjacent to Highway

83. A small dilapidated cabin used for hay storage is located within the No Build Zone along Buck Creek. There is an existing single family residence on the eastern half of the property which has access from Highway 83. There is an existing No Access Strip along the frontage of Lot 3, as shown on the original plat, with a 30 foot gap left for the existing driveway entrance on Lot 3A and to an entrance to Seaman Lane. A new residence is planned for Lot 3B and according to the applicant, the probable location of the residence is south of the existing home, in the south central portion of the property. This residence will have access from Seaman Lane, an existing private access and utility easement along the southern boundary.

The subject property is unzoned and the 1996 Swan Valley-Condon Comprehensive Plan Amendment recommends a land use designation of Low Density Residential, with one dwelling unit per 10 acres. The proposed subdivision has an overall density of one dwelling unit per 6.9 acres. The Buck Creek Homesites Subdivision filed in 1998, created three lots from a 41.34 acre parent parcel. If the parent parcel is considered, the overall density of proposal does not exceed the recommended land use density.

Montana Highway 83 has a 100 foot right-of-way with a 26 foot paved surface width. The plat includes a statement waiving the right to protest an RSID/SID for future road improvements to Highway 83, including pedestrian facilities. Highway 83 is designated as a Primary Travel Corridor and County Subdivision Regulations set standards for landscaping, setbacks and general appearance of properties adjacent to those corridors. These standards were not implemented with the original Buck Creek Homesites subdivision. The subdivision application packet states that the applicant plans to plant trees to meet those standards as required in the protective covenants. Staff recommends that the trees be planted prior to final plat approval.

Currently, Seaman Lane is an unimproved 10 foot wide vehicular trail within an existing 54 foot wide private access and utility easement. The road will provide access to Lots 3B, 1A and 2A and shares an access off the highway with an elementary school to the south. The applicant proposes to construct the road to 12 feet and stabilize the surface with gravel up to the site for a new home to be constructed on 3B. Subdivision Regulations require a paved roadway surface width of 24 feet to the point where it serves a home on Lot 3B. The applicant has requested a variance from the standard. County Public Works does not support the variance request and recommends that since Seaman Lane is a private road serving three lots, the developer should widen the existing access to a 16 foot surface width to the point at which the driveway approaches the road. Staff is recommending conditional approval of the variance request and recommending that prior to final plat approval, the subdivider improve Seaman Lane to a 16 foot gravel surface width to the point at which it would serve a home on Lot 3B, subject to review and approval by County Public Works and OPG.

There are no sidewalks or pedestrian access facilities in the area near the proposed subdivision and the applicant is not proposing pedestrian improvements to Seaman Lane or Highway 83. The applicant has requested a variance from Subdivision Regulations which requires internal pedestrian connections. The plat includes a statement waiving the right to protest an RSID/SID for future road improvements to Highway 83, including pedestrian facilities. County Public Works supports the variance request, given the lot sizes and distance from existing facilities and stated that it would be unreasonable to require pedestrian facilities with this subdivision.

A Shared Access Maintenance Agreement for Seaman Lane has been submitted with the application. The agreement states that Lots 3B, 1A and 1B within Buck Creek Homesites shall share in the responsibility to maintain the easement. This agreement was proposed, but not filed, with the previous Buck Creek Homesites final plat. Staff recommends that the applicants provide documentation of a road maintenance agreement for Seaman Lane, prior to final plat approval.

A Planning Board recommended condition relates to a driveway to service a future home on Lot 3B, which is the larger southern proposed lot, and that condition reads: "A driveway to service a future home on Lot 3B that meets standards for grade and turnaround area, off of Seaman Lane, shall be constructed, subject to review and approval of the Swan Valley Volunteer Fire Department, prior to final plat approval." Language related to driveway design is included within the protective covenants, but this will require a driveway constructed prior to home construction.

An additional recommended condition of approval by staff recommends that a provision be included in the development covenants that discourages fencing within the riparian areas and along the perimeter of the property in a manner that blocks natural movement of wildlife. The Office of Planning and Grants has received three public comment letters regarding the proposed subdivision. In conclusion, staff is recommending approval of the Buck Creek Homesites, Lot 3 Subdivision. I'll be happy to answer any questions you may have.

Chair Curtiss: Is the developer or their representative ready?

Ron Ewart, Eli & Associates, Developer's Representative: Thank you Denise. Good afternoon. My name is Ron Ewart with Eli & Associates. Here this afternoon are Harry and Clarice Wood, they live in the existing house and they are renting right now. Just a little bit of history, this 41 acre underlying parcel was owned by the Seaman family and as I remember, when we did the first subdivision, it was divided into three lots. It was Barry Seaman, Lois Ekstedt and Lois Cerovski, so I think they each got a lot.

Chair Curtiss: It's Rose Marie Cerovski.

Ron Ewart: Okay. So, Lois and Carl Ekstedt lived in the house there. Lois worked for the school district for a long time. Anyway, they sold – well while Lois still owned it, Harry and Clarice started living there and renting from her and then they sold the parcel to Bruce and Joanne Rupp, who live in Ohio. Bruce calls me all the time, he loves hearing me talk, because it reminds him of Montana. He wants to come out here and do a bunch of work and wants to make this really nice. But also, Harry and Clarice want to live here also. So I guess the way to resolve that would be to create two lots so they can both live here. The location of the house, we walked through the whole property trying to figure out the best place for the new house. And the reason that the new house is proposed where it is, is because, first of all, there is a little old ridge there and it's just behind that little old ridge into the woods. Because out front is an old gravel pit and it's open and there is a steep bank and so on. But when you are on that ridge, you get a good view of the Swan Range, the tops of the Swans. But you're back a little bit, so you probably won't hardly see it from the road. But you are somewhat close to the road, so there is not that much of a problem with the wildlife thing. We first wanted to just leave a driveway coming in there, but he is willing to go ahead and build it to actual County Standards with the 16 feet and then, as the Planning Board recommended, go ahead and build that driveway in there also with a turnaround because he would be doing all that at the same time anyway. So anyway, that's all I have.

Chair Curtiss: So, one question for you Ron, it's being built to 16 feet, but is it written somewhere that you're still to have that 20 foot clearance that the fire trucks need? So you are building the road 16 feet, but you are going to have some right-of-way, some clearing on the side?

Ron Ewart: Right. There is a requirement, the covenants require that the clearance. Now, this road, at the bottom there, there is a 54 foot easement there, so there is plenty of room, plenty of clearance there and there wouldn't be anymore trees planted in that. So there is going to be plenty of clearance there and when they build the driveway they will make sure that they have the horizontal clearance.

Chair Curtiss: Okay, thanks.

Commissioner Evans: I have some questions. Colleen, I need some advice. Have we in the past, and have I just forgotten it, that we require RSID's for future improvements to highways, to State highways?

Colleen Dowdall: We sometimes do require them. I remember the first time I was involved in one, it was for Mullan Road, that the State was, at that time, doing the improvements that they had done and the consultant on that subdivision said that would be an RSID that would be so expensive, because of the State Highway standards, that they would never create an RSID. So, he said I don't care if you put down the subdivision, because I know you will never create an RSID to do highway construction. So I have always assumed, I can't imagine it occurring.

Commissioner Evans: It's just that I don't recall us ever doing it, but my memory might be failing me. But, for that very reason, it seem to me to require a waiver of a right to protest inclusion in an RSID for Highway 83, knowing the cost of highway stuff, that just seemed a little off the chart for me. But I noticed the developer isn't bringing it up or fussing about it, but it just didn't seem right to me.

Colleen Dowdall: And it is possible that it could be used for something like a walkway or something similar to what was put on the Frontage Road in Frenchtown, which would not have the cost of a highway but, could possibly – I don't recall the –

Chair Curtiss: So it does say, including pedestrian facilities. So that would be the most likely use.

Commissioner Evans: Correct. I would like to include, after future road improvements, I would like to include the words, "based on benefit." We've done that in the past which limits the benefits to the person who is going to have to pay to actual benefits, which is legally required anyway, but I would like that included.

Chair Curtiss: So which, when we actually get to the motions or the conditions as they are written and not just your notes, where is that one at?

Chair Curtiss: Condition 4 does say, RSID, based on benefits.

Commissioner Evans: But that's for public water and sewer. I would like it to say the same thing on Highway 83, wherever that is at.

Colleen Dowdall: It doesn't look like it's a condition of approval.

Chair Curtiss: We are looking for the one you referred to in your notes today, that says there is RSID language, but I don't see it in the conditions.

Denise Dundon: That's because it is already included on the plat, and the language says "based on benefit."

Commissioner Evans: The other thing that I would like is, in reading the letter from the Fish, Wildlife and Parks on this subdivision, they say that the covenants are good if the people follow them. Having heard what they've said in the past, I would like to make Fish, Wildlife and Parks party to the covenant.

Chair Curtiss: Are we using the same covenants as before, because it says that we are listed on there. So if we could add them.

Ron Ewart: We didn't do additional covenants, because there were covenants on the underlying subdivision.

Commissioner Evans: I would like Fish, Wildlife and Parks to be listed as a party to the covenant.

Denise Dundon: That would just apply to these two lots within the subdivision however.

Commissioner Evans: That's unfortunate that they haven't asked for this previously and I realize that this is from Kalispell verses the ones that asked us, but if they are going to care about fish, wildlife and such, then they can participate in protecting it.

Colleen Dowdall: That would mean that would be the only covenant that they would have to file.

Ron Ewart: What we could do is, we could just write new covenants for this property and then Fish, Wildlife and Parks would be party to those.

Commissioner Evans: The way I would like to see it done in the future is when we have land like this and their letters come in indicating some concern, that we just automatically include them. It's just what they want and I think it gives them the power to protect the critters that I care about, that they care about. That way they don't expect us to fix it.

Chair Curtiss: So Denise, do you see that we need to write that as a new condition?

Denise Dundon: I can make that change, right Colleen? It would require an amendment to the covenant?

Colleen Dowdall: Right. Condition 5 already requires Development Covenants, which are the same as covenants, that could make these covenants and the underlying covenants, or if they choose to file new covenants for this lot split, enforceable by Fish, Wildlife and Parks.

Commissioner Evans: Patty, when you send the letter to Fish, Wildlife and Parks telling them that what we've done on this subdivision, would you highlight that section, because they may not know what we are doing here. Thank you.

Chair Curtiss: I have one question on fencing. I know that we talk about this kind of fencing, this does say 48 inches, so that's better than three feet. I'm just wondering if anybody plans to keep any livestock, is this fence – 48 inches – enough?

Ron Ewart: I don't know if the owners want to keep any or not.

Chair Curtiss: 48 inches is adequate – sometimes it says 3 feet and you can't keep livestock in with 3 feet. I just need to state, on the record, that I did receive a phone call from Marsha Tapp who owns the property across the creek, her concerns were basically the same as the e-mail we received from Judy Wilcox, in that they thought the one per ten was what they were hoping to keep there. And concern about wildlife – that was from Dr. Braun. Just so we have those on the record as letters we've received. Is there anyone else who would like to speak? You guys came all the way to town and you're not going to say a darn thing? I'll close the hearing? Okay Harry you've got to come to the microphone if you are going to talk.

Harry Wood: I got one comment on you Commissioners, we don't realize what you folks have to go through day by day.

Commissioner Evans: You could just send a sympathy card. I'm teasing – I tease all the time. Okay, are you ready.

Commissioner Evans moved that the Board of County Commissioners conditionally approve the variance request from Section 3-2(1)(l) of the Missoula County Subdivision Regulations requiring a 24 foot roadway width to allow a 12 foot gravel surface on Seaman Lane, based on the findings of fact set forth in the staff report and subject to the recommended conditions; and approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections and pedestrian connections to school bus stops and adjoining neighborhoods, based on the findings of fact set forth in the staff report. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the Buck Creek Homesites, Lot 3 Subdivision, based on the findings of fact set forth in the staff report and subject to the recommended conditions. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Chair Curtiss: And we did condition that the Primary Corridor trees be planted before the final plat right? Landscaping or whatever it turns out to be.

Denise Dundon: It was a condition also. I think that they have to be planted, physically in the ground, prior to final plat approval.

Colleen Dowdall: They can be part of the public improvements guarantee.

Ron Ewart: He wants to sell the property in a month to these folks. He would like to have time to plant them. He is going to do an improvements agreement for the road and could put the trees in there, but he does plan to do trees.

Commissioner Evans: The concern I have about saying you have to do it before final plat is, our weather in Missoula, Montana isn't always conducive to planting trees. You get late in the fall and if it isn't a good time to plant trees but they are ready to do their plat, I don't expect them to wait until July of next year. So I think we need some language that addresses weather permitting.

Colleen Dowdall: I think the particular problem on this one was they were suppose to be planted the first time, the first subdivision, and so we wanted to make sure we didn't file anymore plats without them complying with the conditions of the first plat.

Commissioner Evans: So have they finally complied with the conditions of the first plat?

Ron Ewart: The new owner, the guy that owns it now, he will put in the trees.

Commissioner Evans: And we are sure about that?

Chair Curtiss: That's why he wants to put it in the improvements guarantee.

Ron Ewart: The regulations say that you have to put it in the covenants, it doesn't say you have to do it. That's just the way it is.

Commissioner Evans: When my covenants said I had to plant specific number of trees, I did it.

Ron Ewart: Right. Well a lot of people follow their covenants and sometimes they don't.

Commissioner Evans: Okay, well we are going to hold you responsible for the trees.

Buck Creek Homesite, Lot 3, Conditions of Approval:

1. Landscaping which meets the requirements of the Primary Travel Corridor standards shall be in place along Montana Highway 83 prior to final plat approval, subject to review and approval by OPG. *Subdivision Regulations Article 3-14 and OPG recommendation.*
2. The applicant shall provide documentation of a road maintenance agreement for Seaman Lane, subject to review and approval of the County Attorney's Office, prior to final plat approval. *Subdivision Regulations Article 3-1(6), County Public Works and County Attorney's Office recommendation.*
3. Prior to final plat approval, the subdivider shall improve Seaman Lane to a 16 foot gravel surface width to the point at which it would serve a home on Lot 3B, subject to review and approval of County Public Works and OPG. *Subdivision Regulations 3-1(1)(B), County Public Works and County Attorney's Office recommendation.*
4. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision shall constitute the waiver of the right to protest a future RSID/SID for public water and sewer systems, 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 OPG recommendation.*

5. The following provisions shall be included in a set of development covenants filed with the Missoula County Clerk and Recorder's Office, subject to review and approval of the County Attorney's Office and OPG, prior to final plat approval:

Weed Control – Lot owners shall maintain their lot in compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan and that lot owners shall revegetate any ground disturbance with beneficial species at the first appropriate opportunity after the disturbance occurs.

Fencing – Fencing in the riparian areas and along the perimeter of the property in a manner that blocks the natural movements of wildlife is strongly discouraged. This includes but is not limited to the use of chain link fences, woven fire fences or hog panel fences. Landowners must be aware that the Swan Valley is important wildlife habitat and fencing should be compatible with the needs of wildlife to move across the landscape. Fencing of the lots should be kept to the minimum needed. Fences with the top barrier height (rail or wire) of no more than 48 inches and with a bottom barrier 12-15 inches above the ground will best allow wildlife to cross the fence without causing damage to the fence or the wildlife. Woven wire fences are the least wildlife friendly and are most apt to be damaged by wildlife or cause injury to them.

Radon – The property owners of Buck Creek Homesites are advised that Missoula County has a high radon potential and all new construction should incorporate passive radon mitigation systems.

Enforcement – Covenants that protect wildlife and wildlife habitat shall be enforceable by Fish, Wildlife and Parks. *Subdivision Regulations Article 3-1(1)(B), City-County Health Department, County Weed District, OPG and Board of County Commissioners recommendation.*

6. A provision shall be included in a set of development covenants which allows the use of herbicides to control noxious weeds. This provision shall be filed with the Missoula County Clerk and Recorder's Office and supersede an existing development covenant filed for Buck Creek Homesites related to weed management, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed District recommendation.*
7. The Riparian Management Plan Map shall be included as an attachment to the Development Covenants, prior to final plat approval. *Subdivision Regulations Article 3-13(4) and OPG recommendation.*
8. **Driveway** – A driveway to service a future home on Lot 3B that meets standards for grade and turnaround area, off of Seaman Lane, shall be constructed, subject to review and approval of the Swan Valley Volunteer Fire Department, prior to final plat approval. *Planning Board recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:30 p.m.