

PUBLIC MEETING – AUGUST 3, 2005

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Commissioner Barbara Evans, Deputy County Attorney Marnie McClain and Assistant Public Works Director Chuck Wright.

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 \$635,632.75. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Decision (Continued from April 13, 2005): Petition to Abandon a Portion of GLO Road, Book 1 Road – Lolo Trail Ranch, Woodman School area

The public hearing on this matter was opened on March 30, 2005. A site visit was conducted by Commissioner Bill Carey and Assistant Public Works Director Chuck Wright on Monday, April 4, 2005. At the April 13, 2005 meeting, a decision on the petition was tabled to allow Public Works, the petitioner and the Highway Department more time to determine if any right-of-way would be needed in the future.

A petition has been filed with the County Commissioners requesting to abandon a County road, street or alley.

The petition is to abandon those certain County roads located within the East ½ of the NW ¼ of Section 31, the East ½ of the Southwest ¼ and the Southeast ¼ of Section 30, the South ½ of Section 29, the NE ¼ of Section 32 and the North ½ of Section 33 of T12N, R21W, P.M.M., County of Missoula, State of Montana, bounded on the west by the West 1/16th lines of Sections 30 and 31, T12N, R21W, P.M.M., and bounded on the east by the most easterly line of Tract 2 of Certificate of Survey 4304, all within the ownership of Lolo Trail Ranch (AKA OZ Ranch), a subsidiary of the Potomac Corporation, more particularly described as follows:

- 1) General Land Office (GLO) road as shown on GLO plat, surveyed by Charles Albee in September to October, 1899 and approved August 4, 1900, by the Surveyor General's Office. This GLO road is described on said plat and the original surveyor's notes as "Road to Missoula" and located in the E ½ of the SW ¼ and the E ½ of Section 30, Sections 29 and 32, the W ½ of Section 33, and the W ½ of the E ½ of Section 33, T12N, R21W, P.M.M., County of Missoula, State of Montana.
- 2) Road Plat Book 1 road located in Sections 28, 29, 30 and the W ½ of Section 33 and the W ½ of the E ½ of Section 33, T12N, R21W, P.M.M., County of Missoula, State of Montana. This right-of-way is further described in the Road Plat Book 1 on page 057, Sheet 127, and page 067, Sheet 138 as Road File A 141, petitioned by C.E. Muzzie, and accepted June 4, 1895 in Commissioner's Journal Volume G, page 250. Alignment changed by road file A 145, petitioned by T.E. Magee, declared September 11, 1896 in Commissioner's Journal Volume G, page 421.
- 3) Right-of-way easements quitclaimed to Missoula County from the former Clearwater Short Line Railroad, as recorded in Book 111 of Deeds on pages 375 to 378, that are located outside an eighty (80) foot offset, on both sides, as measured perpendicular to the Right-of-way centerline of U.S. Highway 12 as shown on the State of Montana Right-of-way plan S-391 (2) dated October 19, 1961 through March 27, 1962, and located in Sections 29, 30, 31, 32, the W ½ and the W ½ of the E ½ of Section 33, T12N, R21W, P.M.M., County of Missoula, State of Montana.

The reasons for the request are as follows:

1. The right-of-ways (ROWs) are not needed since every property (public or private) crossed or abutted by the ROWs is more readily accessible via U.S. Highway 12, which is paved and maintained, or by private roads with permanent easements.
2. Abandonment will avoid conflicts between the use of ROWs and current uses of the land for ranch operations.
3. Abandonment will avoid other trespass-related problems.
4. Abandonment will clear title to the underlying properties and will clarify that the public is not permitted access on the underlying privately owned lands.
5. Similar abandonment has been granted in the same townships for both GLO roads, Book 1 Roads, and Clearwater Short Line Railroad ROW outside the 160 foot Highway 12 ROW, as evidenced by Missoula County Board of County Commissioners Resolutions No. 96-084, 99-083, and 2000-075.

The following landowners have been notified:

Potomac Corporation P.O. Box 67 Wheeling, IL 60090	Potomac Corporation 2063 Foster Avenue Wheeling, IL 60090	Plum Creek Timberlands LP Attn: Jaime Schaefer Columbia Falls, MT 59912
State of Montana Capital Building Helena, MT 59601	Bruce and Betty Lou Duffalo 16950 Lolo Creek Road Lolo, MT 59847	Steve T. and Lorna D. Robertson 17350 Lolo Creek Road Lolo, MT 59847
Kory S. and Melinda J. Mytty P.O. Box 891 Lolo, MT 59847	Donald G. and Melva I. Campbell 17400 Lolo Creek Road Lolo, MT 59847	Woodman School District #18 U.S. Highway 12 Lolo, MT 59847

Chuck Wright: Bill and I went out and looked at it. We talked about it and Bill wanted to see an opinion from the Montana Department of Highways to find out what was going on. I talked to Dwane Kailey and he told me that the Highway Department was probably interested in the first three miles but didn't have any interest in the 10 or 11 miles up on the Old Woodman Ranch, whatever the new name is, I've forgotten. But, as I said in the last meeting, I told you that I felt that the road right-of-ways in that area really needed to be gotten rid of, they need to be abandoned. With the letter from Dwane Kailey stating that they're probably not going to do anything 10 miles up there for more than 20 years, and when they start projecting out that far, I don't see any reason to leave those things there, either. I don't even see any reason to relocate those road right-of-ways along the existing right-of-way because there's enough room to put walkways and things like that in there.

Commissioner Carey: I just need to be assured that, who knows, 30 or 40 years from now, that we will have room to put a trail along there, if folks want one, and we will. Okay. Thank you.

Chair Curtiss: One of the holdups for this was we continued to wait for a letter from the Department of Transportation that they thought they had sent, but it got lost in the mail somewhere. Is there anyone who wants to make any additional comment on the petition to abandon this section of roads. I believe we closed the hearing last time. If we haven't officially closed it, I will, that way it's covered. So I guess we're ready for a motion.

Commissioner Carey moved that the Board of County Commissioners approve the petition to abandon a County road, street or alley, as follows:

The petition is to abandon those certain County roads located within the East ½ of the NW ¼ of Section 31, the East ½ of the Southwest ¼ and the Southeast ¼ of Section 30, the South ½ of Section 29, the NE ¼ of Section 32 and the North ½ of Section 33 of T12N, R21W, P.M.M., County of Missoula, State of Montana, bounded on the west by the West 1/16th lines of Sections 30 and 31, T12N, R21W, P.M.M., and bounded on the east by the most easterly line of Tract 2 of Certificate of Survey 4304, all within the ownership of Lolo Trail Ranch (AKA OZ Ranch), a subsidiary of the Potomac Corporation, more particularly described as follows:

- 1) General Land Office (GLO) road as shown on GLO plat, surveyed by Charles Albee in September to October, 1899 and approved August 4, 1900, by the Surveyor General's Office. This GLO road is described on said plat and the original surveyor's notes as "Road to Missoula"

and located in the E ½ of the SW ¼ and the E ½ of Section 30, Sections 29 and 32, the W ½ of Section 33, and the W ½ of the E ½ of Section 33, T12N, R21W, P.M.M., County of Missoula, State of Montana.

- 2) Road Plat Book 1 road located in Sections 28, 29, 30 and the W ½ of Section 33 and the W ½ of the E ½ of Section 33, T12N, R21W, P.M.M., County of Missoula, State of Montana. This right-of-way is further described in the Road Plat Book 1 on page 057, Sheet 127, and page 067, Sheet 138 as Road File A 141, petitioned by C.E. Muzzie, and accepted June 4, 1895 in Commissioner's Journal Volume G, page 250. Alignment changed by road file A 145, petitioned by T.E. Magee, declared September 11, 1896 in Commissioner's Journal Volume G, page 421.
- 3) Right-of-way easements quitclaimed to Missoula County from the former Clearwater Short Line Railroad, as recorded in Book 111 of Deeds on pages 375 to 378, that are located outside an eighty (80) foot offset, on both sides, as measured perpendicular to the Right-of-way centerline of U.S. Highway 12 as shown on the State of Montana Right-of-way plan S-391 (2) dated October 19, 1961 through March 27, 1962, and located in Sections 29, 30, 31, 32, the W ½ and the W ½ of the E ½ of Section 33, T12N, R21W, P.M.M., County of Missoula, State of Montana.

Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Pickering Family Transfer

Marnie McClain presented the staff report.

This is a consideration of a request to create two additional family transfer parcels for that parcel described as GLO Lots 3 and 4 and the east one-half of the southwest one-quarter of Section 30, Township 13 North, Range 20 West.

Nancy and John David Pickering, Sr. have submitted a request to create two additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 154.38 acres in size located near Missoula, Montana. Nancy and John propose to create two approximately 20 acre parcels for transfer to their children, John David Pickering, Jr. (son) and Bonnie Jean Pickering (daughter), for residential purposes and keep the remaining approximately 114.38 acre parcel for residential purposes as well.

The history of the parcel is as follows: William R. Maclay, Sr. and M. Josephine Maclay filed a Warranty Deed in April, 1993, deeding the property to James H. Davis. A Warranty Deed was filed in May, 1998, deeding the property to John David Pickering, Sr. John filed a Quit Claim Deed in August, 1999, deeding the property to John David Pickering, Sr. and Nancy S. Pickering, husband and wife as joint tenants with right of survivorship. In September, 2000, a Quit Claim Deed was filed deeding the property to John David Pickering, Sr. and Nancy S. Pickering as tenants in common and not as joint tenants.

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

Chair Curtiss: Are the Pickerings here? Would one or both of you like to come to the microphone please? Could you state your name for the record please?

John David Pickering, Sr. stated his name for the record.

Chair Curtiss: Thank you John. We have a list of questions that we ask on the record, so we'll have Marnie ask those questions for us.

Marnie McClain: Can you tell me how long you've owned the property?

John Pickering: Since 1998, so that's about 7 or 8 years.

Marnie McClain: Did you buy the property with the intent of dividing it?

John Pickering: No. Our kids were small then, they're grown now and want a place to live.

Marnie McClain: Just to clarify, the children are adult children?

John Pickering: Yeah, one is 23, the other one is 28.

Marnie McClain: The purpose of giving the property to them is so they can use it for their residential purposes.

John Pickering: Right, so they can build on it.

Marnie McClain: Have you talked to anyone at the County about going through subdivision review?

John Pickering: No.

Marnie McClain: Are you in the business of building or developing property?

John Pickering: No.

Marnie McClain: Are you attempting to evade subdivision review?

John Pickering: No.

Marnie McClain: Do you understand that this request is not being reviewed for adequate access in all weather for all vehicles, including emergency services?

John Pickering: Sure.

Marnie McClain: Do you understand that this approval does not mean that the property is approved for zoning compliance, floodplain or septic systems?

John Pickering: Sure.

Marnie McClain: I don't have any other questions.

Chair Curtiss: Okay. Do the Commissioners have questions? I have one. The lots are not the way we usually see them, because they are kind of in the center. Is that because of the hillsides or something, that you chose?

John Pickering: Right, steep hills on both sides and the best part's kind of in the middle of it.

Chair Curtiss: Okay. And you continue to live on the property, on the remainder parcel?

John Pickering: We have for five years.

Chair Curtiss: Okay. Any other questions? Thank you. Okay, I don't know if I officially opened the hearing, but this is a public hearing, is there anyone who wants to make comment on that transfer? Seeing none, I'll close the hearing.

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

Chair Curtiss: You'll receive a letter from our office in the next few weeks that says we have granted this and we don't expect you to stay if you don't want to. However, the Public Hearing on the budget will be at 2:30, if you're interested.

John Pickering: No thanks.

Hearing: Rezone Lot 8, Northgate Development Park (from CI-1 to C-C2 and C-C3)

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

This is a request from Chris Koppang, represented by WGM Group, Inc., to rezone Lot 8, Northgate Development Park for the purpose of allowing construction of a car wash and a retail establishment at this location. The applicant is proposing to change the zoning of the property from C-I1 (Light Industry) to C-C2 (General Commercial and C-C3 (Community Commercial). It is the intent of the applicant to submit a proposal for a two-lot subdivision corresponding to the two proposed zoning districts in the near future.

The Missoula Consolidated Planning Board, with 7 members present, conducted a public hearing on this request on Tuesday, May 17, 2005 and voted 5 to 2 to recommend approval of the rezoning request, consistent with staff's recommendation.

County agencies and surrounding property owners within 300 feet of the area of rezoning were notified of the request for rezoning. No public comments have been received prior to issuance of the staff report. Staff is recommending approval of the rezoning request.

The Missoula Urban Area Comprehensive Plan 1998 Update designates the area of rezoning as "Mixed Use" and "Residential" (1 dwelling unit per 5 acres). The land use designation to the south and east of the proposed rezone is Urban Residential. The land use designation to the west of the proposed rezone is Mixed Use. The property is part of a subdivision that was rezoned from C-A3 (Residential) to C-I1 (Light Industrial) in 1998 and is known as the Northgate Development Park. The Northgate Development Park currently has a large distribution facility located at the east end and other lots which are vacant.

This particular parcel is at a key intersection with public roadways on two side and in an area with a variety of non-residential uses to the south and residential uses to the north, east and west. Canyon Creek Village, though primarily residential, does contain some live/work lots. Rezoning the eastern portion of the property to C-C2 will allow the construction of a car wash near the intersection of Wheeler Drive and rezoning the western portion to C-C3 will allow other retail uses as a transition between the C-C2 and Canyon Creek Village PUD residential zoning.

The C-I1 zoning district does not allow any residential uses. The C-C2 zoning district allows a one family dwelling as a conditional use in the same building as other allowed uses. The C-C3 zoning district allows multi-family housing as a Special Exception. The C-I1 zoning district does not allow retail trade and service as permitted in the C-C3 zoning district. The C-C2 zoning district provides for the conduct of retail trades and services that are inherently automotive and highway oriented and for commercial uses of low intensity which may require large areas of land. The C-C2 zoning district permits service stations (car washes) as a conditional use subject to special design standards.

The subject property is accessed from Expressway, a two lane collector road between Reserve Street and the Missoula Development Park. Access along the east boundary of the property may also be provided via Barbados Street in the Canyon East subdivision. Off-street parking and loading requirements will aid in lessening congestion in the streets. The site plan will be reviewed for compliance with parking and loading requirements at the time of zoning compliance permit application. Erik Dickson, County Public Works, had no adverse comments on the rezoning request. Providing commercial services close to residential neighborhoods will decrease the need for trips outside the neighborhood.

There is no minimum lot area requirement in the C-I1, C-C2 or C-C3 zoning districts. The C-I1 zoning district has 25 foot front yard setbacks with 50 foot setbacks on designated arterials and collectors. Expressway is classified as a collector street. The rear and side yard setbacks are 15 feet in the C-I1 zoning district. The C-C2 zoning district has 25 foot front yard setbacks, 10 foot rear yard setbacks and no side yard setback requirements. The C-C3 zoning district has 25 foot front yard setbacks and no side or rear yard setbacks. The maximum allowed height in the C-I1, C-C2 and C-C3 zoning districts is 45 feet. The majority of land uses in the area are light industrial, commercial and residential. The rezoning request to the C-C2 and C-C3 zoning districts will bring the zoning of the property more into compliance with the Comprehensive Plan.

Chair Curtiss: Thank you Dale. Is the developer or their representative here?

Kristin Smith: My name is Kristin Smith, I'm a land use planner at WGM Group, representing Chris Koppang, a developer and applicant for this rezoning. We are in agreement with the staff report and the Planning Board recommendation and I think everybody on board is pretty excited about the proposed commercial area for this area because it would serve the neighborhood and the growing residential uses out there. With that, I have no further advocacy. If you have any questions, I'm here to answer them for you.

Chair Curtiss: Thank you Kristin. This is a public hearing. Is there anyone else who would like to make comment?

Brenda Rankin: For the record, I'm Brenda Rankin and I am one of the owners in the LLC that owns this parcel of ground and Mr. Koppang is trying to purchase from us. Just for the public record, the new proposed zoning is acceptable to our partnership and we're supporting it. Thank you.

Chair Curtiss: Thank you Brenda. Any other comment? Seeing none, I'll close the hearing.

Commissioner Evans: Are you ready for a motion?

Commissioner Carey: Could I ask Dale a question first? Could you summarize Don McArthur's attitude to this. He voted against it and I think he was – I couldn't follow the technicalities, actually, in reading the minutes. Could you sum up what his concerns were, and apparently, they weren't resolved. I think at one point he said C-C2 is closer to more of a zone that would serve residential needs and yet, a car wash and a small restaurant of some kind would seem to meet that too.

Dale McCormick: In terms of intensity of use, the C-C3 or Community Commercial zoning district, which is the one proposed to be closest to Canyon Creek Village, is the less intense of the two, so you can sort of imagine a gradient going from I-1 to C-2 to C-3. So, I think the question was whether or not a – one of the discussion points was whether or not a C-C1 zoning district, which is even less intense in use than C-C3, would be appropriate for the site adjacent to the Canyon Creek Village subdivision. Most of the discussion, as I recall, was regarding the lack of specificity about whether or not a small café restaurant type business would be permitted in the C-C3 zoning district, which does list, under Permitted Uses, retail trade and service with no outdoor storage or display with a gross building floor area of less than 100,000 square feet. I believe the applicant's intent was to have a small shopping center that would include maybe four businesses, one of which would be something like a sandwich shop. Staff's perspective at the Planning Board hearing was that it would be hard, in my opinion, to make the case that a sandwich shop wasn't a retail trade and service but that I would confer with the County Attorney to make sure that was a permitted use in the C-C3 zoning district, because in the C-C2 zoning district, which permits the service station, it specifically says eating and drinking establishment. So the question arose – is an eating and drinking establishment permitted in C-C3. Subsequent to the Planning Board hearing, response from both staff in the Planning Department and the Permits Section that would review a building permit for zoning compliance, as well as from the County Attorney's Office, confirmed that in fact a small café or sandwich shop would be permitted in the C-C3 zoning district, since the intent was not to have a large restaurant and, specifically, what's different with C-C2 is eating and drinking establishment. Anytime you bring alcoholic beverages into the equation, that, it would be a harder fit with the C-C3. So, it's probably a longer answer than you were wanting but that was, I think, his concern and why he voted against it. Kristin, I don't know if you want to add anything to that.

Brenda Rankin: What I thought I picked up too – a big thing was they wanted to table this process for another two weeks because they wanted to feel sure that Mr. Koppang had the right kind of zoning so that he didn't have to come back again with a new request and I think maybe that's where Don McArthur was coming from, was he kept asking if we wanted a vote and I think he just – I don't think he was against any of the situation, but I think he just wanted like a reprieve for people to do a final check.

Dale McCormick: One thing I wanted to be clear on too, just a point of clarification – the Planning Board's recommended motion is the correct motion. There was some confusion about which parcel was zoned to C-C2 and which to C-C3, so the correct motion is Planning Board's recommended motion, which is that Parcel 1 be rezoned from C-I1 to C-C2 and Parcel 2, which is the one closer to Canyon Creek Village, be rezoned from C-I1 to C-C3.

Chair Curtiss: So, staff is comfortable that zoning is the right zoning for what their project will be.

Dale McCormick: Yes, Planning staff and also the County Attorney's Office.

Chair Curtiss: Any other questions. Okay, so we're ready for a motion.

Commissioner Evans moved that the Board of County Commissioners adopt a Resolution of Intent to rezone Parcel 1 from C-I1 to C-C2 and Parcel 2 from C-I1 to C-C3, as described in Attachment B of the submittal, on property legally described as Lot 8, Northgate Development Park, based on the findings of fact and conclusions of law in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

There being no further business to come before the Board, the Commissioners were in recess at 1:55 p.m. The final budget hearing on the Fiscal Year 2006 Budget is scheduled to begin at 2:30 p.m.