

PUBLIC MEETING – August 10, 2005

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

Pledge of Allegiance

Public Comment

Mike Swofford: I live in Potomac and I only wrote one of these letters so you can pass it around. I got some pictures here that I would like you to look at. This is dealing with the intersection of 200 and Johnsrud. I was in an accident July 30th on Saturday. I was going down the highway 65 mph, not even the speed limit and it was a busy day, Johnsrud was hopping. All those kids are trying to cut the corners to beat the traffic and I had one cut in front of me and the second one tried it but I hit him dead in the side. If you look at those pictures, that is what you're looking at. Every day we face that up there and we need to do something about that. I was told that the next weekend, some poor woman died there. The same exact thing happened. Whether it's a light or some kind of a warning something there, a turn lane, I'm not sure exactly what, but something needs to be done there. People are dying on that corner and it is needless.

Commissioner Evans: Is that under the jurisdiction of the State or the County?

Greg Robertson: Johnsrud is partially under the jurisdiction of the County. The balance of it is under the jurisdiction of the Bureau Land Management from about the park entrance on up the Blackfoot. We've got a very small segment that we take care of. Highway 200 is under the jurisdiction of the Department of Transportation.

Mike Sehestedt: I was going to say – with that said, we can pass that information on to State Department of Transportation and ask them to take a look at the situation and do what they can to address these issues.

Greg Robertson: If you would like, Commissioners, I would be happy to draft a letter on your behalf to the region here, asking them to study and make improvements as warranted.

Commissioner Evans: Do we have a phone number on that paper for Mr. Swofford?

Mike Swofford: Yes. The pictures I need back because I am still in litigation.

Chair Curtiss: That's the really sad part, that's a beautiful car.

Mike Swofford: It was but when you see the actual damage it lets you know how bad that intersection is.

Chair Curtiss: We're glad that you're okay. If there are others, just state your name.

Janie Bell: My name is Janie Bell. I have three copies of my letters for the Commissioners.

Commissioner Evans: Is your name Bell, B-E-L-L?

Janie Bell: B-E-L-L. I'm addressing pretty much the same issue that Mr. Swofford did. I would just like to read my letter because I'm really bad standing in front of crowds. *Good day. My name is Janie Bell and I live in the beautiful Potomac Valley. I am here today in regards to what I and every resident that I have spoken with consider an extreme public safety issue. Please hear my train of thought and give consideration to our concerns. Recreation in Montana is popular and promoted. With that comes change and hopefully needed improvements to accommodate the influx of people using those recreational areas. One of this County's most popular being the Blackfoot River and corridor. As a result we now have three dangerous turnoffs congested with curves, a bridge in the middle and a much larger amount of traffic. This is located on and near Mile Marker 11, Highway 200 East. Missoula County has done some road improvements in our area, one of them being the paving of Johnsrud Road from Highway 200 East to the Johnsrud Campground. The campground has also had many recent improvements done by Montana Fish, Wildlife and Parks. Another recent improvement has been the establishment of a new business, Blackfoot River Rentals, which is directly across the bridge on Highway 200 East, before the Johnsrud turnoff. They are currently renting inner tubes for floating but are in the construction phase for much larger recreational business as per the Missoulian, a campground with a café and other amenities. We also have, across from the Johnsrud turnoff, the Wolf Keep, which is a non-profit entity that's listed on the Visit Montana Website. They have approximately 150*

visitors per month. That is run by Carl Bach and I did speak to Carl. I've called around to several Missoula County Departments attempting to get information on many things such as, where the new business is in the permitting process and what the final plan is. What are the counts on the use of the Johnsrud Road and has the County asked the State for any impact information associated with these improvements. I also called the local Potomac-Greenough Volunteer Fire Department looking for the number of calls they have answered in this area, wrecks and otherwise. They have handled two medical calls this summer season and the Chief stated that there were numerous fender benders and near misses at this intersection. In addition, I have called Montana State Traffic Engineer responsible for this stretch of highway looking for usage and accident counts. This is very little information that I can report to you after spending about eight hours on the telephone. I find it frustrating that I can only get meager answers in my search. This is why I am here today. I would like to ask you, our Commissioners, to help this community with improving this extreme public safety issue by working with us, Montana Fish, Wildlife and Parks and the Montana Department of Transportation. You know the ins and outs of government and being our representatives, we are turning to you. I know that there is money recently available to the Montana Department of Transportation that has possibly not all been earmarked for projects as of yet. Please don't let this opportunity go by to make much needed improvements and possible save lives. My suggestion would be to hold a meeting in Potomac at the Community Center inviting residents, Montana Fish, Wildlife and Parks, Montana Department of Transportation, and you, the Commissioners, to hear proposals for short term changes and to work on long term changes that could handle the growth that will be occurring for this future business and the Blackfoot corridor. I would expect a reply on this issue and hope that we could work together and move forward for the enjoyment and the safety of residents and visitors alike. Thank you.

Chair Curtiss: Thank you, Ms. Bell. Give Greg a copy so that he can pass that on when he works with the Highway Department. Anyone else?

Darla Hand: My name is Darla Hand. I am with the Blackfoot River Rentals on the Blackfoot. I totally agree, we have a traffic problem. It's not going to get any better. It hasn't got any better over the years. On Highway 200 there are large shoulders on the right hand side, which maybe we could ask the Highway Department if there is a possibility of us all getting a turning lane. This isn't just for the businesses but the residents or anyone going up Highway 200 East toward Seeley Lake has no options except to really watch out. You go to put your left blinker on to indicate that you are going to pull off the highway and onto your property and you're due to get side swiped because some jerk behind you is going to pass thinking that you're passing someone ahead of you rather than turning off. I've been on the property for nine years now and we've owned it since the '70's. The nine years that we've been there has been plainly hell as far as the recreaters. Yeah, I did, I decided to join them rather than trying to beat them. Highway 200 right off of our driveway is, according to the Highway Department, going to have "No Parking" listed for a quarter-mile. Because the dangers there for people trying to pull out of our property – I want to make it clear that it is not an RV Park, it is a vacation rental cabins and a store and café just so the locals know who haven't come to ask. The highway does need to be improved on up to Seeley Lake, all of that has exploded. It is one of the best ways to get there. It all needs to be addressed. Fish, Wildlife and Parks has made an effort by having police patrol and they are doing breath tests and they are ticketing. Johnsrud Park gets over 175,000 visitors per summer. It's extreme. It just is. You can always watch out for yourself when you're turning but you can't always watch out for what everyone else is thinking when you do it. Therefore, a turning lane is a necessity. I would just like to point, if the Highway Department wants to take any of my land to do that, they can go ahead and do it because it is needed and it's necessary. Thank you.

Chair Curtiss: Thank you. So Greg, as I go forward as we ask them to look at this, is a turn lane one of the options that they will probably consider?

Greg Robertson: Generally, there's design guidelines contained in the AASHTO's Green Book, Montana DOT's own design manual for thresholds for turn movements to determine whether a warrant is satisfied for a turn lane. There are several things that could be done, advanced warning signage, blinkers, congestion, signs, making the motorists aware of into and out of that particular area short of putting in a full blown traffic signal or some other channelization. I couldn't guess what the DOT will do, if anything, but we can certainly put it together in writing and ask them to look into the matter to see what can be done. It is completely within their jurisdiction. It's not something that we have any influence on, other than just asking them to evaluate the existing conditions and make a determination of what can be done.

Chair Curtiss: So they consider all those things?

Greg Robertson: Yeah, they will do an engineering investigation. They'll look at geometry, accident history. They'll probably do turn counts to determine the amount of left turn movements going in to and out of, go through that drill. That is typical investigation that you do when you get a request like this.

Commissioner Carey: I think it is important to have a meeting up in Potomac once we hear back from Department of Transportation. I think it's important for us to share whatever information we get so that we can follow up a letter – as part of the letter say that we would like to meet folks up there to let them know what we've been told.

Greg Robertson: Fair enough. I would be happy to.

Chair Curtiss: Are there others who want to make comment?

Boyd Lambson: I live down by Florence. I want to thank you, the County Commissioners, for paving a stretch of our road. It was needed very bad. I wish there was more money available so that you could do farther but there is always next year.

Commissioner Evans: Nobody ever says "thank you," Boyd, thank you.

Mike Sehestedt: Are we sure he's at the right meeting?

Chair Curtiss: Is there anyone else who wants to make public comment?

Mike Swofford: You kind of cut me off at the pass on this one. I guess it has been a couple years ago now I was hounding poor Greg Robertson about the roads out there. Every day I called when I ran that bumpy road. They finally milled the highway up there. They ground it up and spread it out. We were told that they were going to come back the next summer because it was late in the fall when they did it. They were going to come back and smooth all that stuff out. We haven't seen them yet and that road is really rough. I wanted to get it – while I've got a captive audience, I would like to see them come back out and try to re-smooth that. It's got a good base now.

Greg Robertson: You haven't called me in a while so give me a call tomorrow.

Mike Swofford: Who are you?

Greg Robertson: Greg Robertson.

Mike Swofford: Oh! Glad to meet you.

Chair Curtiss: Any other comments that's not on today's agenda? Seeing none. We'll move on.

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 \$741,687.52. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Bid Award (Public Works): 12,000 Tons of Asphalt

Greg Robertson presented the staff report.

Before you is a Bid Award to L.S. Jensen for the purchase of 12,000 tons of hot mix asphalt in the amount of \$293,400. This represents the Fiscal Year 2006 expenditure – first half of Fiscal Year 2006. We're going to go to a calendar year rather than a fiscal year for putting these bids out, it will just be easier since everyone else is on a different time clock. We received two bids in response to our advertisement; one from JTL totaling \$378,750 and the second one was from L.S. Jensen in the amount \$293,400, which equates to roughly \$24.45 per ton. We would, based on their bid, recommend the award to L.S. Jensen in the amount of \$293,400.

Chair Curtiss: Greg, how many miles do we expect to pave with 12,000 tons?

Greg Roberson: It varies, but generally we expect about 8-12 miles out of it. Some areas we have to thicken up a little more because they are totally blown apart, as experienced out in Frenchtown area this summer. Other areas we can do thin lifts, which will keep them going.

Commissioner Carey: I noticed that JTL put in two different prices for the – the ½ inch got one price, the ¾ inch – just one price from Jensen.

Greg Roberson: That's correct. They will make them either way is basically what they are saying. The difference in cost to them is negligible so they just gave us one price and we use both.

Chair Curtiss: That's the size of the aggregate in the mix?

Greg Robertson: Yeah, there's a maximum size aggregate that's a Class B, which is a ¾ inch minus and Class G, which is ½ inch minus.

Chair Curtiss: Is there anyone who would like to make a comment on accepting this bid award – or awarding this bid, I guess I should say? Seeing none.

Commissioner Evans moved that the Board of County Commissioners approve awarding the bid for 12,000 tons of asphalt mix to L.S. Jensen in the amount of \$293,400 as the lowest, most responsive bid. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Cheff Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 1 of COS 1949, located in a portion of the southwest one-quarter of Section 5 and the northwest one-quarter of Section 8, Township 13 North, Range 16 West.

Floyd J. and Patricia A. Cheff have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size located near Milltown, Montana. Floyd and Patricia Cheff propose to create one approximately 10 acre parcel for transfer to their daughter and son-in-law, Angela and Jason Johnson, for residential purposes and keep the remaining approximately 10 acre parcel for residential purposes as well.

The history of the parcel is as follows: Wayne E. Stephens filed Certificate of Survey 1949 in May of 1979, to create 7 tracts of land, each being 10 acres or greater in size. A Notice of Purchasers' Interest was filed in May of 1979, stating Floyd J. and Patricia A. Cheff had entered into a Contract for the sale and purchase of Tract 1.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act, except as listed below:

COS 1055	01/05/1997	Retracement	SW Sec. 5, T13N, R16W
COS 1098	02/28/1997	Occasional Sale	SE SW Sec. 5, T13N, R16W
COS 1505	06/05/1997	Retracement	NE Sec. 5, T13N, R16W

Jim Cheff: We're proposing to do a land transfer for our daughter and son-in-law. We purchased this property in 1979 and I didn't understand what she said about some previous transfers.

Colleen Dowdall: Did you do an occasional sale?

Jim Cheff: No, we never –

Colleen Dowdall: -- maybe a long time ago?

Jim Cheff: No. My dad's name is the same as mine.

Colleen Dowdall: That could be. We get a list that has your name.

Jim Cheff: So this was really our first proposal to do this.

Colleen Dowdall: Okay.

Jim Cheff: When I talked to the surveyor I proposed a 1 acre. He said that sometime a 1 acre doesn't work real well for a sewer. I actually said a 1-10 acre proposal depending on what we had to do there.

Colleen Dowdall: Okay, that's fine.

Chair Curtiss: So we have a list of questions, Mr. Cheff, that we have the staff ask you on the record and then we make our decision. She has a list of questions to ask you. Thank you for clarifying the ones that were wrong. You say that your name is Jim Cheff, but your legal name is really Floyd, but you go by Jim?

Jim Cheff: My legal name is really Floyd. Yeah. It gets pretty confusing when both go by Floyd. I also have a son, so it gets really bad.

Colleen Dowdall: I cannot find on your affidavit where indicated the size of the parcels but we will note that in the letter that it is 1-10. We aren't so much concerned about the size, just that it is one more parcel. How long have you owned the property?

Jim Cheff: 1979.

Colleen Dowdall: Do you or your daughter and son-in-law intend to transfer either of your parcels in the next year?

Jim Cheff: No.

Colleen Dowdall: Do you live on the other 10 acres?

Jim Cheff: No, we have another piece of property that joins that.

Colleen Dowdall: Are there any other residences on either of these at this point?

Jim Cheff: Just the one we live on. On the 20, there's nothing.

Colleen Dowdall: There's nothing on the 20. Where does Angela live now?

Jim Cheff: She lives with us right now, and her husband and two children.

Commissioner Evans: Is that why you're deciding to give her land?

Colleen Dowdall: It's always interesting to figure out.

Jim Cheff: He just transferred to Missoula County from Ravalli County. They put their house on the market and it sold really quick and they needed a place to live.

Colleen Dowdall: Have you talked to anyone about going through subdivision review on this property, for instance, at the planning office?

Jim Cheff: No. We went and talked to a surveyor.

Colleen Dowdall: A private surveyor?

Jim Cheff: Yeah. He's done some work right there so he's pretty familiar with it.

Colleen Dowdall: Was that Tim Wolf?

Jim Cheff: No. Ken Jenkins.

Colleen Dowdall: Are you in the business of building houses or developing property?

Jim Cheff: No. It would be a crude house if I built one.

Colleen Dowdall: So you're not attempting to evade subdivision review?

Jim Cheff: No.

Colleen Dowdall: Do you understand that when you divide property this way, we don't review it to make sure you have legal access to the parcel or that this review doesn't mean that you'll get a septic system or that you aren't in the floodplain? All those things.

Jim Cheff: It has County road access. In fact, I don't think we'll even have to put in a separate driveway in. The property that joins it, the people already said that they could use that turnoff and then step onto their property.

Chair Curtiss: I did note on the last page of the application that it says proposed 1-10 acres, on the map. Any more questions for Mr. Cheff?

Commissioner Carey: Are you ready for a motion?

Chair Curtiss: Well it is a public hearing, I guess I better open it up and let anybody else have an opportunity to comment. Does anyone else want to make comment on this family transfer? Seeing none, we'll close the hearing.

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

Chair Curtiss: You'll receive a letter from our office, do you have a guess, in a month. We deal with these as we go through the minutes. Within a month.

Mike Sehestedt: It is important to note that you'll need the letter to actually file a survey. This action ought to be enough for you to get the surveyor started getting it drawn up. Probably the two can go in parallel.

Patty Rector: If you need it sooner, let me know, I can always get it out to you.

Hearing (Certificate of Survey): Vines Family Transfer

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 2B of COS 5675, located in the north one-half of Section 11, Township 12 North, Range 20 West.

Heather Vines has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 2.24 acres in size, located near Missoula, Montana. Heather Vines proposes to create one approximately 1.12 acre parcel for transfer to Peter Torbergson, her husband, for residential purposes and keep the remaining approximately 1.12 acre parcel for residential purposes as well.

In the Affidavit, Heather stated that her existing home is on the property and she will continue to live there on proposed Tract 2B-1. Her husband will build a house on proposed Tract 2B-2 and live there.

The history of the parcel is as follows: Gust and Maude Dalberg filed a Warranty Deed in October, 1951, deeding the property to Robert and Marjori Boggess. In 1977, Robert and Marjori filed COS 1126 for the purpose of an occasional sale, creating a parcel 4.259 acres in size. Robert and Marjori Boggess filed a Warranty Deed in April, 1977, deeding that parcel to Luther N. Boggess. In 1980, Luther Boggess filed COS 2470 for the purpose of occasional sale. A Warranty Deed was filed in December, 2004, deeding the property to Heather Vines.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act, except as listed below:

COS 5675	03/14/2000	Boundary Relocation	NE NW 11-12-20
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Chair Curtiss: Is Heather Vines here? If you could come to the microphone and identify yourself for the record please.

Heather Vines: My name is Heather Vines.

Chair Curtiss: Heather we'll have Colleen ask this set of questions to you also.

Colleen Dowdall: I had a hard time with the record, figuring out what's going on and how long you have owned the property.

Heather Vines: We moved in, in January. We purchased it in December 2004.

Colleen Dowdall: When you bought the property, did you intend to divide?

Heather Vines: No, we're actually separated. We have two kids and we're happily separated, if there's such a thing. What we're trying to do is keep the kids in the same house, the same school district. It is kind of a nice little set up. If we split the land, my husband builds a small house, I have a house. The kids have access to either parent. That's what this is all about. It sounds very bizarre.

Colleen Dowdall: Okay. You'd be amazed. Do either of you intend to transfer your property in the next year?

Heather Vines: No.

Colleen Dowdall: Currently, you both reside on the property?

Heather Vines: No, he's actually living somewhere else right now.

Colleen Dowdall: Have you talked to anyone at the Missoula County about going through subdivision review?

Heather Vines: No.

Colleen Dowdall: Are either you or your husband in the business of building houses or developing property?

Heather Vines: No.

Colleen Dowdall: Do you understand that we aren't reviewing this as we would in subdivision review for adequate access, floodplain, any of those kinds of thing? You still need to get those permits.

Heather Vines: Right.

Colleen Dowdall: Zoning compliance?

Heather Vines: Right.

Chair Curtiss: One more question for the record, you said that you're separated but you're not legally divorced?

Heather Vines: No, we're starting to file.

Chair Curtiss: This transfer doesn't work if you're divorced.

Heather Vines: I wondered about that because then it's not a family transfer but we're not divorced yet.

Chair Curtiss: Does that satisfy, Colleen?

Colleen Dowdall: Yeah, as long as the transfer occurs while you're married.

Commissioner Evans: I apologize to you for us having to ask you personal questions.

Heather Vines: That's okay. When I came in here there were all these people.

Mike Sehestedt: I suspect that you can get started using the family transfer exemption. If the divorce should be final prior to the time everything is complete on the transfer, then you may want to have the court, as part of the marital property settlement, order the division along the lines that have been approved here. Our office will have to look at it, but I believe the Commissioners would not raise a question of our approving the continuation. To make it as easy as possible for you, not to make this a further major issue.

Colleen Dowdall: We don't mean to be snooty, but we have to make sure we are doing things within the law.

Heather Vines: I understand. Am I done?

Chair Curtiss: This is a public hearing. I will open the public hearing for comments from the public. Seeing no one, we'll close the hearing.

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

Chair Curtiss: You'll get your letter within a month or so. Or as Patty said, sooner if you need it.

Hearing (Certificate of Survey): Reconsideration of Frick Family Transfer

Chair Curtiss: The Frick Family Transfer was done earlier this year and after the transfer was approved, new information became available and so we need to have a motion to reconsider this family transfer from the Commissioners that were here that day. I know I was one.

Colleen Dowdall: Do you want me to give a little more of the background so you have a basis for the motion. Are the Fricks or their representative here? (No one was present). Okay. Sandra Frick submitted a request to create three additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. She proposed to give property to her husband and her two children. During the course of asking Mrs. Frick questions, one of the questions we asked was whether she had consulted with the Planning Office or anyone in County regarding subdivision review and she replied that she had not. There was a Planner in the audience who later told me that he had done a pre-app on this parcel that looked remarkably like the family transfer exemption, only at that point it was request for a minor subdivision.

Commissioner Evans: By her husband.

Colleen Dowdall: Her husband was the one who did the pre-app, but they were both owners of the property at that time. Her husband had quit claimed his interest to her just prior to requesting the family transfer. So that was the new information. I have corresponded with and spoken on the phone with her representative from Landworks Consulting, Jason Rice, and our office received a letter from Mrs. Frick indicating that she would not be here today. She did not feel as if she had anything more to add to the discussion, that she was truthful the first time and she believes that the plans that she has for the property in the future are strictly personal and that she would not discuss those in a public forum.

Chair Curtiss: So we will need a motion. Do you have the minutes there, so you know which two Commissioners were here, I know I was one.

Commissioner Carey: I don't remember this one.

Chair Curtiss: We only have to have the motion from someone that was here.

Colleen Dowdall: Do you remember this one?

Commissioner Evans: I don't remember.

Commissioner Carey: We need a designated rememberer.

Colleen Dowdall: That's Patty, she writes it down.

Chair Curtiss: The motion for consideration needs to come from one of the Commissioners that was here, but the second doesn't.

Chair Curtiss moved that the Board of County Commissioners reconsider the Frick family transfer based on new information. Commissioner Carey seconded the motion.

Chair Curtiss: Does that reopen the hearing then?

Mike Sehestedt: At this point your motion made and seconded, you're having discussion on that motion, invite the applicants to respond to the issue and anyone else that wants to comment on it should be given the opportunity.

Chair Curtiss: Is there anyone here that would like to comment on the Frick Family Transfer. This is down in Florence area. The new information makes it, to me, less like a family transfer and more – it looks just like the subdivision they brought forward. Therefore, it seems to be an evasion.

Commissioner Evans: My feeling on this matter is, just because someone has explored an issue with the Planning Department, does not make them bad because they decide not to do it that way. Until I would have the opportunity to talk directly to the applicants, I don't tend to vote on this issue.

Chair Curtiss: The difference that I see is that the family are developers. They brought this forward as a proposed development. Then he quit claimed it to his wife and then they did a family transfer instead.

Commissioner Evans: Do we know they're developers?

Mike Sehestedt: I believe that was part of the record earlier. The situation here is, and it could well be an innocent mis-speak, although going through a pre-application process is probably a little more significant than just asking about what's required for subdivision. They were a step beyond that with an actual drawing of what they were proposing to do. That in and of itself, I don't know whether or not it would be decisive, but the fact that they're unwilling, in light of that information, to come back and explain precisely what it is that they have planned, seems to me to tilt it to not showing an entitlement to use the exemption. It's a concern to me whether it was an innocent misrepresentation, she didn't know her husband had started into this subdivision process on this property, or a deliberate falsehood. I don't think we need to resolve that. We simply now have additional information and without some further explanation in light of that, I think you could find that they're not entitled to use the exemption to review. They've been given the opportunity to come in and make that explanation and quite vociferous declined to do so in "a public forum." We don't do anything that isn't in a public forum.

Chair Curtiss: Is there anyone who have any other comments? I will close the hearing for public comment.

Commissioner Carey: Even though I wasn't here for the initial motion, I can still make a motion on this matter?

Chair Curtiss: Is that right?

Mike Sehestedt: I think, it's a motion to reconsider, under Robert's Rules it has to be made by one of the people who voted in the majority.

Chair Curtiss: I did that. Now the next motion, does it have to be made by someone different to deny?

Colleen Dowdall: I think you haven't voted on that first motion to reconsider.

Mike Sehestedt: You haven't voted on the motion to reconsider yet, so that's just where I was confused.

Chair Curtiss: So it was moved to reconsider this. It was seconded by Bill.

The motion carried on the vote 2-1 (Commissioner Evans opposed).

Chair Curtiss: I thought we had done that.

Mike Sehestedt: You are now at the point to reconsider. Anybody can make the motion.

Commissioner Evans: Before you make the motion, I would like to point out that we have not had the opportunity to speak to these folks because they have chosen not to give us that opportunity. However, in my mind they law still gives them the right, once in their lifetime, to give one piece of land to each family member, in one county, period. From my perspective, they have the legal right to do this and I don't have the desire to take it away from them.

Commissioner Carey moved that the Board of County Commissioners deny the request by Sandra Frick to create three additional parcels by use of the family transfer exemption. Based on new information presented, there does appear to be an attempt to evade subdivision review. Chair Curtiss seconded the motion. The motion carried on a vote of 2-1 (Commissioner Evans opposed).

Mike Sehestedt: Just note for the record that of course, they can make a new application and come in and if they make the required showing that this is, in fact, a legitimate use of the exemption and not an attempt to evade subdivision review, the Board can act.

Hearing (Certificate of Survey): Lloyd/Foster Family Transfer (Postponed from July 27, 2005)

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract A of COS 3194, located in the east one-half of the southeast one-quarter of Section 35, Township 13 North, Range 18 West.

Richard Lloyd and Christine Foster have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 4.62 acres in size located near Missoula, Montana. Richard and Christine propose to create one approximately 2.064 acre parcel for transfer to their daughter, Robin Lloyd, for residential purposes and keep the remaining approximately 2.558 acre parcel for residential purposes as well.

Chair Curtiss: This was postponed from July 27, 2005, as there was no one here to represent the family. I just recessed the hearing then, so I will open the hearing back up. Is someone here from the Foster or Lloyd family? Could you state your name for the record please?

Christine Foster: Hi, I'm Christine Foster.

Chair Curtiss: Christine, we'll ask Colleen to ask the list of questions to you on the record also.

Christine Foster: Could I just clarify one item. I think it's only about 2 acres, it's not 4.

Colleen Dowdall: That you own?

Christine Foster: Um-hum.

Colleen Dowdall: You'll be dividing it and each will get one acre?

Christine Foster: Um-hum.

Colleen Dowdall: Alright, that may be our mistake. How long have you owned the property?

Christine Foster: Since 1981, I think. 1989.

Colleen Dowdall: Do you reside on the property?

Christine Foster: Yes, we do.

Colleen Dowdall: Will your transferee reside on the property?

Christine Foster: Eventually, probably.

Colleen Dowdall: How old is she?

Christine Foster: She is 17 now.

Colleen Dowdall: I see from the affidavit that the transfer won't occur until she turns 18.

Christine Foster: Correct.

Colleen Dowdall: So you don't have to form a trust? Do you or your transferee intend to transfer either your parcel or the family transfer parcel in the next year?

Christine Foster: No.

Colleen Dowdall: Have you talked to anyone at the Missoula County about going through subdivision review?

Christine Foster: When we were first talking about this, I went to OPG and talked to them about, what do we do if? I don't think we followed through with an appointment to talk about subdivision or anything like that.

Colleen Dowdall: You were just inquiring how to divide your property.

Christine Foster: Um-hum. They gave me a form to fill out and that kind of stuff, but we never had a meeting on this.

Colleen Dowdall: Are you in the business of building houses or developing land?

Christine Foster: No.

Colleen Dowdall: Everyone smiles when they answer that question.

Christine Foster: I kind of think, I wish.

Colleen Dowdall: Are you attempting to evade subdivision review?

Christine Foster: No.

Colleen Dowdall: You understand that we're not reviewing this for adequate access in all weather, or any of those types of things that we review in subdivision?

Christine Foster: Yeah.

Colleen Dowdall: You'll still need to get the septic permit, floodplain permits if applicable, zoning compliance.

Christine Foster: Yes, I understand that.

Chair Curtiss: Any other questions?

Christine Foster: I apologize that I wasn't here on July 27th, but I didn't get the notice.

Chair Curtiss: This is a public hearing, is there anyone else who would like to speak? Seeing none. We'll close the hearing.

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

Chair Curtiss: Ms. Foster, you'll get a letter also. Thank you.

Hearing (Continued from July 27, 2005): Brennan's Wave – 310 Permit

Chair Curtiss: I know that a lot of you are here for this. Just a reminder, we do have testimony given before on the record. Marnie, if you could just clarify for us what the Commissioner's decision was last time and the reason we delayed. Then we can see if those issues have been addressed.

Marnie McClain: When we finished our hearing on the 27th, the unresolved issues pertained to ownership and maintenance of the structure as well as final approval by Fish, Wildlife and Parks about what that final piece of the structure on the south bank was going to look like. I think that there are representatives here from the applicant who can address both of those issues for you before we move on to how you want to act on the permit application.

Chair Curtiss: Is there someone here either representing the Ditch Company to tell us how we're addressing the issues?

Trent Baker: Hi, my name is Trent Baker and I'm one of the directors of Brennan's Wave. Inc., which is the non-profit that we set up to help raise money to do this project and one of the partners of the Orchard Homes Ditch Company, the applicant. Also here today on behalf of the applicant are Paul Callahan with Land and Water, PBS and J, he's the hydrologist who's been – I think his name is on the permit application and he's been doing a lot of the technical end of things. From the Orchard Homes Ditch Company, the President, Marvin Ross, is seated here in the front row and Jerry Saulters is here as well, another board member from the Ditch Company. After our last hearing on the matter we went and sat down with the Ditch Company, their board of directors, they are all a great bunch of guys who are excited about the project and want to see it happen. While they obviously have concerns and would tell you that they have nothing to with what's there now, they agreed that they don't have a problem with agreeing to ownership and maintenance of the proposed structure. On that issue, that's where we stand with that. The maintenance – the fish passage issue, there was some communication between Paul Callahan and Pat Saffel and I think that Marnie was copied on some of that, I was as well. My understanding of that situation is that there's basic

agreement or conceptual agreement that the side channels that exist on the south side of the river won't be significantly modified or after the project is completed would be restored to their existing grade.

Chair Curtiss: Did you want to address the maintenance?

Trent Baker: Maintenance, I guess in some ways, is kind of a sticky one just because I'm not sure what the County wants to see. I think that Orchard Homes has expressed – I know that they have expressed the willingness to accept a maintenance obligation and Brennan's Wave, Inc., has accepted or has said that we'd be willing to stand behind Orchard Homes Ditch Company to the extent that any maintenance is required. We've set aside a certain amount of funds, \$20,000 for that purpose already. That was a requirement of the funds granted the project by the Missoula Redevelopment Agency and to the extent that additional funds are needed for maintenance, we would commit to raising those funds as necessary and continuing the fund raising efforts in order to bolster that maintenance fund as is necessary for any reasonably necessary maintenance. It was a project that a lot of people in the community are very excited about and have stepped up financial in a big way to support. We were able to raise the construction costs of the project in pretty short order and I don't foresee any trouble raising the monies necessary to take care of the structure. It is something that has a lot of benefits for a lot of people and they are all interested in seeing it happen and making sure that it stays and continues the way it is supposed to.

Commissioner Evans: Can I ask him some questions?

Chair Curtiss: Yes, you may.

Commissioner Evans: Would you mind giving me an idea of how many folks do kayaking that might want to use the river for this?

Trent Baker: Well paddle sports are one of the fastest growing sectors of the outdoor industry. That's not just kayakers, those are rafters, sport craft paddlers, canoeists. In terms of numbers, that's not a figure that I have off the top of my head. I wish I could recall because I've read some newspaper articles related to other kayaking parks that cited figures. In the Missoula community, I know that the Missoula Whitewater Association, which is an organization that I serve on the board for, and was the initial reason that I became involved in this project, represents a couple of hundred people in Missoula who are active paddlers. Again, not all kayakers, some canoeists, some rafters, but those are just members of the Association. I know a lot of boaters who are not members of the Association as well.

Commissioner Evans: That gives me an idea that there is a lot of folks and that's what I needed to know.

Trent Baker: I would also point out that this isn't something that I see as just benefiting kayakers, and neither do other members of the community. A lot of business people in the downtown area have become big supporters of this, the Downtown Association, and the MRA support is an outgrowth of that. Projects like this have been big financial boons for other communities that have put them in place. We see a corresponding type of financial benefit happening here. At the last hearing, I was excited to hear from a lot of youth advocates who talked about the benefits that this project would have for the youth of Missoula and since that time I've gone back and read a couple old newspaper articles about the study that the University did regarding what the Missoula youth would like to see in terms of aquatic facilities and things like that. I think this is a project that fits in that category. It's a project that will be free and open to anybody's use and a real benefit for the youth of Missoula. It will give them something to do and it's right in the middle of downtown and free and open to them.

Chair Curtiss: We have received a letter from the Missoula Downtown Association that they asked to be read into the record. It is sent to the County Commissioners: *On behalf of the Missoula Downtown Association Board of Directors, we ask you to award the 310 Permit to the Brennan's Wave Project today. This project is very important to the downtown business community and timing is of extreme importance right now. Brennan's Wave will be a wonderful addition to downtown, enhancing both recreational opportunity and economic opportunity. The MDA is wholeheartedly behind this project and we ask that you support it as well. What's extremely important is the timing of this project. It needs to move forward now so that the project doesn't lose the tax increment financing that was awarded by Missoula Redevelopment Agency. As you know, the TIF monies must be spent by a certain deadline so the project must move forward now. This project will improve the safety of those using the river as the current weir is extremely dangerous. The recreational wave will be safer than what is there now. We understand you're concerned about liability issues and I hope that you can resolve those concerns promptly. Thank you, Linda McCarthy.* Is there anyone else who wants to make public comment today. We do believe that we have some conditions.

Tony Leon: My name is Tony Leon. I am the area manager for the Department of Natural Resources and Conservation in Missoula. As the Clark Fork River is a navigable river, the bed and bank of that river belong to the

State of Montana. I have the responsibility to administratively perform our process to permit and eventually provide an easement for any use on the bed and bank of a navigable river. For information for the Commissioners, if you proceed to permit this, then the DNRC State of Montana will have to pick up the process to actually provide an easement for this intended use. The steps that we're looking at right now, based on an assumption that you may grant a 310 Permit, is we're looking at how we would address certain concerns that the State of Montana has. 1) The indemnification of the State of Montana for any liability that may result from the development of this structure. 2) Whether or not the State would require bonding as part of our easement for this project. 3) We would be looking at possibly some liability insurance requirements for the proponent of this project. We're looking at those issues to determine what we will require to provide an easement for this project. Then we would have to follow the rules of the Montana Environmental Policy Act. We would have to do an environmental assessment of this project and then have that reviewed by the Department and the Land Board. We also have to appraise the value of the land that would be associated with this and then come up with the appraised value that we would require for an easement for this project. Then we would take this whole package to the Land Board and they would make the decision as to whether it's going to be approved or disapproved. I wanted to inform you of what our process will be if a 310 application is awarded for this project.

Commissioner Evans: If that happens and it drops in your lap, given they are concerned about timing, that sounds like that might take forever and ever to get done. Can that be a faster process than it sounds?

Tony Leon: It can be a lengthy process. I'm given no money. I'm given no people that are assigned for just this type of activity. I have to fit this in with the mandated requirements of my department.

Marnie McClain: I might clarify that when we give these permits, they are good for a year and the applicant can come in before the permit expires and request that the permit be renewed and then we can renew it again for another year.

Chair Curtiss: Thank you. Any other comments?

Scott Dougherty: My name is Scott Dougherty. I'm here on behalf of the kayaking community and Zoo Town Surfers, which is the local junior kayaking club here in Missoula. I would like to speak, just for a moment if I may, to help address the question that you asked on terms of who might be using the structure. I feel that I am qualified to speak on that behalf because I do work in the kayaking world, that's what I do. In terms of the growing demographic of whitewater kayakers that Trent spoke of, the fastest growing portion of that population is in the 15 to 25 year old range. Those young people are the ones who are primarily taking up whitewater kayaking. Of the use and the kayakers that you see using Brennan's Wave, that would be the primary user group. It is definitely a benefit to the young people of the Missoula area. Whitewater kayaking is in a sense what free style skiing was 10 or 15 years ago, which, as you can see, in Missoula, Eric Bergoust, there's plenty of potential for what something like that could potentially lead to and mean to Missoula. Just thought I would clarify on that and hopefully it will help address your question a little bit more.

Chair Curtiss: Anyone else who wants to make comment? Seeing none. I will close the hearing.

Commissioner Evans: I move that we approve the 310 Permit on the condition that the applicants record a written declaration, to be approved by the Missoula County Attorney's Office, assuming and accepting ownership of the Orchard Homes Irrigation Diversion Reconstruction 310 Project without reservation or exception. Orchard Homes Ditch Company must further fully and without reservation or exception, accept the subsequent maintenance and responsibility for the structure in perpetuity. Approval is further subject to final approval by Fish, Wildlife and Parks for fish passage in side channel, including surveying of pre-disturbance conditions and then restoring grade through the side channel to the pre-existing conditions. Does that take care of everything Marnie?

Marnie McClain: Basically, accepting its approval with modifications.

Commissioner Evans: That was my motion.

Chair Curtiss: Is there a second.

Commissioner Carey: I'll second the motion.

Chair Curtiss: It has been moved and seconded to approve the 310 Permit with modifications as stated. Any other discussion?

Trent Baker: Can I ask a question about the conditions?

Chair Curtiss: Sure.

Trent Baker: When I hear words like “without reservation” or “exception,” that makes me a little bit nervous in terms of our ability to fulfill those conditions. While I don’t have any problem with saying what we agreed upon and what the Orchard Homes Ditch Company agreed upon as to maintain the structure, I know that the Commissioners aren’t requesting that we perform unreasonable requests for maintenance or unnecessary requests for maintenance. I would like to see some language in there in terms of the type of maintenance that we’re talking about, that it be reasonably necessary maintenance or something to that effect, rather than language that seems to leave the door wide open for any type of maintenance request, which could possibly put us on the hook for something that’s unnecessary and unreasonable. That kind of wide open language makes me nervous and I’d love to see and would request some type of reasonable limitation be put on that.

Mike Sehestedt: I think we can address that. We have 60 days to come up with the agreement. This approval will let them go forward, get the process that Mr. Leon described, started with the State. I think we can hammer it out. I get what we’re saying is, what we wanted to say, is not that they’ll be required to groom it daily, but that if an act of God washes, we’ve got a 25 year flood – wouldn’t that be lovely – and it washes a couple of boulders out, it’s going to be their responsibility to bring the project back and to maintain it essentially in the form it was approved. I think we can work that language out fairly easily.

Chair Curtiss: This motion, however, Mike, does not have the 60 days written in it because that was in a piece that we left out. However, that statement that we had considered earlier that we decided not to go forward with, talked about addressing debris removal, structural failure and grout crack repair. I guess we could consider putting that language behind ‘maintenance responsibility,’ if that’s the type of –

Mike Sehestedt: Maintenance responsibility, including but not limited to, and just leave it at that. Essentially the purpose is to say the structure is to be maintained in a manner that essentially preserves it in the condition that was represented when the permit was applied for.

Marnie McClain: I think that trying to negotiate this now is inappropriate. I think we need to – that’s the reason for having the language be approved at a later point instead of now. The idea is to sit down and fine tune the language at a time where you can be more careful and thoughtful about exactly what it should say.

Chair Curtiss: It says approved by the County Attorney’s Office.

Marnie McClain: What we need to clarify is that, before they begin construction, they have to have this recorded. This allows them to move forward, it lets them get out the door today with an approval. I would ask that you clarify in your motion that they have approval to – that they are going to have to get final approval of the language, that they can negotiate it further, but that it has to be recorded before they can begin construction and we should probably stick with the ‘within 60 days.’

Mike Sehestedt: The open language, whatever, is all fine. The thing that Trent needs to realize is if they feel we’re being unreasonable, you guys are kind of the ultimate moderators of that.

Marnie McClain: We have talked earlier about being able to come back to review that and that’s true with the Fish, Wildlife and Parks condition as well, is that you do still retain jurisdiction over the permit conditions. It happens all the time, that if there needs to be further refinement of a condition, they can be returned to you in order to get that clarified, but this does at least let them get approval.

Commissioner Evans: Does that meet your concerns, Trent?

Trent Baker: Just to clarify my concern. It was just that with that language, “without reservation or exception,” concerns me that that wouldn’t allow us the leeway and negotiation to limit the maintenance requirement to that which is reasonable or necessary or reasonably necessary. If we have the leeway to negotiate that type of, what might be considered a condition or exception, with the County Attorney’s Office in drafting this declaration, I’m fine with that.

Commissioner Evans: That’s the intent of my motion.

Marnie McClain: What we’re trying to clarify is that without reservation, Orchard Homes Ditch Company has the responsibility of ownership, and without reservation, you have responsibility for the maintenance. I think what you’re

trying to do is limit what the scope of the maintenance is going to be, and I think that that is something that we can work out in writing.

Trent Baker: If that's the understanding of the Commissioners and the intention of the motion, I am fine with that.

Commissioner Evans: That's the intent of my motion.

Chair Curtiss: And it's on the record. Should we, however, add "within 60 days" so we can get that done?

Mike Sehestedt: Let's not put ourselves under that kind of – they're going to be under enough pressure dealing with the State DNRC requirements. We can work this out. It just has to be done before they start construction.

Chair Curtiss: It's been moved and seconded to adopt with modifications as stated. All in favor?

The motion carried on a vote 3-0.

Commissioner Evans: You have your permit.

Trent Baker: Thank you, Commissioners.

Consideration: Schmaus Addition (3 lots on 20.6 acres) – 2 miles south of I-90 on Petty Creek Road

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

This is a proposal by Mike Schmaus, represented by Tim Wolfe of Territorial Engineering & Surveying, to divide a 20.16 acre parcel into three lots. The property is located about 2 miles south of Interstate 90 on Petty Creek Road. There will be lot sizes of 13.34 acres, 3.32 acres and 3.5 acres with designated building envelopes on each lot. The property is unzoned and the Comprehensive Plan recommends Open and Resource Use with a density of one dwelling unit per 40 acres.

Petty Creek Road, a 20 foot wide County road, splits the property. The applicant has requested a variance from the width requirement which is supported by Public Works. This stretch of the road is part of a future Federal paving project. Staff recommends the RSID waiver language on the plat be changed to include Petty Creek Road. An individual driveway serves Lot 1 and a shared driveway serves Lots 2 and 3. Because of tight driveway curves, staff recommends that the Frenchtown Rural Fire District review the curves, plus emergency vehicle turnaround details. Staff also recommends more specific wording in the shared driveway maintenance agreement.

The property is within the Frenchtown Rural Fire District. The Petty Creek station is approximately 4 miles from the subdivision. Frenchtown Fire recommends a \$530 per lot fire service fee and that payment of this contribution be verified prior to final plat approval. Frenchtown Fire also recommends an adequate water supply for firefighting or residential sprinklers for the homes. Staff recommends this information be included in the covenants.

Petty Creek runs through a portion of Lots 2 and 3. Todd Klietz, Floodplain Administrator, recommends a floodplain study to determine the 100 year flood elevation. A related condition prohibits building envelopes in the 100 year floodplain and requires the lowest floor elevation to be 2 feet above the 100 year flood elevation. A second floodplain condition requires elevation information be placed on the plat and in the covenants. Some amendments have been made to Condition 7 to clarify requirements related to the 100 year flood elevation.

Commissioner Evans: Would you explain to me what a flood study entails? Does that just require Todd to go out and look at it or does that require 200 pages done by a hydrologist or what?

Tim Worley: It actually requires, according to FEMA standards, certain – and I don't know a lot of particulars Barbara, but just – it allows a hydrologist to determine flood risk, specifically in this case for Lots 2 and 3. The developer is actually in the process of going through the flood study. There is no FEMA floodplain here for Petty Creek, but since the two homes on Lots 2 and 3 are actually planned for terraces above the creek, Todd felt it warranted to recommend a flood study.

Tim Worley continued with the staff presentation. Designated riparian areas of Petty Creek are located on Lots 2 and 3. Fish, Wildlife and Parks (FWP) recommends clarifying the entire riparian area and adjacent buffer with a "No Improvement/No Alteration Zone" label on the plat. Other FWP recommendations include fencing livestock out of the riparian area and the creek; prohibiting domestic sheep and goats due to the possibility of transmitting disease to

native Bighorn sheep population; and Living with Wildlife information be included in the covenants. The County Weed District will require a revegetation plan for disturbed sites. Staff supports Schmaus Addition.

Chair Curtiss: Is the developer or the representative here?

Tim Wolfe: Tim Wolfe with Territorial Engineering and Surveying. Thank Tim for his work. We don't have any problems with the conditions. Number 7 as amended is fine, that was the only thing that we had a concern about. We are, as Tim said, in the preliminary stages of this HEC-RAS computer modeling and preliminary results show that the building envelopes are going to be out, but we will complete that. It will be reviewed by Todd and I believe DNRC. We're fine with that as a condition of an approval. Mr. Schmaus is here and I'm here for questions if there are any.

Chair Curtiss: Any questions for Tim? Mr. Schmaus, did you want to make any comments? This is a consideration, not a hearing, but we do accept public comment if anybody wants to make any on this proposed subdivision. Seeing none. I guess we're ready for a motion.

Commissioner Carey moved that the Board of County Commissioners approve the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations to permit a 20 foot road width for Petty Creek Road, 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 Schmaus Addition, based on the findings of fact in the staff report and subject to the recommended conditions of approval, including the amendment to Condition 7 as presented by Tim Worley on his memo dated August 10, 2005. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Schmaus Addition Subdivision Conditions of Approval:

Road/Driveway

1. The waiver of the right to protest an RSID/SID for improvements to Petty Creek Road non-motorized facilities shall be revised to state the following:

“Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners to any future RSID/SID, based on benefit, for upgrading Petty Creek Road, including, but not limited to, paving, curbs and gutters, non-motorized facilities, street widening and drainage facilities.” *Subdivision Regulations Article 3-2(3)(E), County Attorney's Office and OPG recommendation.*

2. Plans for driveway improvements for Lots 2 and 3, including turning radii and turnaround details, shall be reviewed and approved by the Frenchtown Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(10)(E) and Frenchtown Rural Fire District recommendation.*
3. The shared driveway maintenance agreement section of the covenants shall be amended to specify maintenance needs, including, but not limited to, snow removal and shall be reviewed and approved by the County Attorney's Office and OPG prior to final plat approval. *Subdivision Regulations Article 3-2(1)(iii) and OPG recommendation.*

Fire Protection

4. The developer shall contribute a fire service fee of \$530 per lot to the Frenchtown Rural Fire District for fire protection purposes. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*
5. The covenants shall be amended to include the following statement: “Interior residential fire sprinklers meeting NFPA 13D standards shall be installed within each new home or a 1,000 gpm water supply with two-hour storage shall be installed for purposes of fire protection, subject to review and approval by the Frenchtown Rural Fire District.” *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*

Floodplain

6. The developer shall identify the 100 year flood elevation of Petty Creek in relation to the subdivision by a HEC-RAS analysis referenced to the National Geodetic Vertical Datum of 1929. No areas of the building envelopes shall be located below this elevation or in the 100 year floodplain. Structures shall have a lowest floor elevation of at least two feet above Petty Creek's 100 year flood elevation. *Subdivision Regulations Article 3-1(1)(B), 4-1(12), Floodplain Administrator and OPG recommendation.*

7. The following provisions shall be added to the plat and to the covenants:

“In order to mitigate the risk of flooding, all structures shall be constructed with their finished floor and all mechanical duct work a minimum of 2 feet above the 100 year flood elevation. *Subdivision Regulations Article 3-1(1)(B), 4-1(12), Floodplain Administrator and OPG recommendation.*”

Weeds

8. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed District recommendation.*

Riparian Area

9. The Areas of Riparian Resource and an adjacent buffer shall be labeled as “Areas of Riparian Resource – No Improvement/No Alteration Zone” on the final plat. The reduced-scale map in the Riparian Resource Management Plan shall contain these changes. *Subdivision Regulations Article 3-13 and OPG recommendation.*

Covenants

10. The covenants shall be revised to state that sections regarding driveways, address signs, water supply for firefighting, radon, floodplain, the Riparian Resource Management Plan, animals, garbage/trash, Living with Wildlife, Wildland/Residential Interface and weed control shall not be amended or deleted without governing body approval. *Subdivision Regulations Article 5-3(5)(T)(x) and OPG recommendation.*

10. The covenants shall be amended as follows:

- a. In Section 8 of the covenants, insert the following sentence after the first sentence: “However, domestic sheep and/or goats – including as 4-H project animals – shall not be allowed or kept on these premises (in order to help protect the Petty Creek bighorn sheep herd from possible disease transmission from domestics).” This should be followed by deletion of the final sentence: “No domestic sheep or goats are allowed.”
- b. Sentence 3 in Section 8 of the covenants and Sentence 8 in paragraph 2 of the Riparian Resource Management Plan shall be deleted and replaced with the following: Livestock shall be fenced out of both the Petty Creek streambed and the riparian area (as designated on the plat) in order to prevent erosion and stream degradation. Any livestock watering areas of facilities shall be developed outside of the creek and designated riparian areas.
- c. The covenants shall be amended to allow enforcement by Fish, Wildlife and Parks of those covenants that protect wildlife and wildlife habitat. The amendment is subject to the review and approval of the County Attorney’s Office prior to final plat approval.
- d. Living with Wildlife **[replace Section 13 with the following]**

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, black bear, mountain lion, wolf, coyote, fox, skunk, raccoon and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners “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.

- i. 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 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.

- ii. **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, skunks and other wildlife. 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.
- iii. Since weekly garbage pick-up is not available, **garbage** must be stored in secure bear-resistant containers or indoors (to avoid attracting animals such as bears, raccoons and dogs) between trips to the landfill. If weekly garbage pick-up were to be available in the future, garbage must still be stored in secure bear-resistant containers or indoors in order to avoid problems with animals.
- iv. **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 purposely or knowingly attract bears with supplemental food attractants (any food, garbage or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- v. **Bird feeders** attract bears. Bird feeders may not be used from April 1st through the end of November. When used during other months, 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 plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- vi. **Pets** must be confined to the house, in a fenced yard or in an outdoor kennel area when not under the immediate control of the owner and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law, it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).
- vii. **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 and other wildlife. 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.
- viii. **Barbecue grills** must be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- ix. 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. We encourage the use of split rail fences.
- x. **Compost piles** can attract skunks and bears and should be avoided in this subdivision. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
- xi. **Apiaries (bee hives)** could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
- xii. **Domestic sheep and goats** are not allowed in this subdivision because of the proximity to the Petty Creek bighorn sheep herd. The possibility exists that domestic sheep could transmit a potentially fatal bacterial infection to bighorn sheep, leading to heavy mortality in the native bighorns. *Subdivision Regulations Article 5-3(5)(T)(x) and Fish, Wildlife and Parks recommendation.*

Hearing: Adoption of Building Codes Enforcement Program for Missoula County

Greg Robertson presented the staff report.

During the 2003 Legislature there was a bill that was enacted into law that eliminated a City's extra-territorial powers to enforce building codes outside their corporate limits. It is also known as the 'doughnut law.' Since then, the County Commissioners have been interested in exploring the possibility of implementing a County wide building code program. You directed me to begin the process of certification. In 2004, you held a series of community meetings throughout the County – Seeley Lake, Potomac, Clinton, Lolo, Frenchtown – to get public input onto what type of program that the citizenry would like to see. Based on that series of public meetings, I developed a Resolution that is before you today, that adopts the codes but also makes certain exemptions from requiring permits. That has to do primarily in the building code area. The plumbing code, the mechanical code and the other variety that are predominantly related to industrial/commercial type uses, have their own statutory requirements and exceptions are typically not allowed through the administrative rules, other than those that are outlined in that. In discussions with the Building Codes Bureau, the two items that I would at least like to call your attention to is in Section 2, dealing with the International Residential Code and the International Building Code, there are – underneath the International Building Code there are two exemptions, first dealing with agricultural buildings not being designed for human occupation. Then all exemptions listed in the 5.2 National Building Code, which covers some agricultural buildings, small out buildings and other exceptions, those are already contained in State Statute as being exempt. Second under the International Residential Code, one of the compromises that you ask me to proceed with, dealt with single family residential structures being exempt. That's how it is written right now. The adoption has the following exemptions, first is the single family residential structures unless requested by home owner or builder. So building permits will not be required for that. Agricultural structures not designed for human occupations, and then all exemptions contained in Section 5.2 of the code is how I have it crafted right now. That is in response primarily to the owner/builder type arrangement that you heard pretty loud from the public. All other elements of this resolution have been reviewed by the County Attorney's Office as well as the Chief Council for the Building Codes Bureau within the division of Labor and Industries, for consistency with State Statute, as well as their administrative rules. The resolution is broken into several parts. Section 1 is the authority that allows local governments to adopt building codes. Section 2 is the actual adoption of the code. Section 3 establishes the powers and duties of the building officials. Section 4 establishes requirements for billing permits with noted exceptions. Section 5 establishes a Building Code Appeals Board that can appeal the decision of the Chief Building Official. The make up of the Board is generally defined in State law, which requires certain professionals within the industry – an electrician, a licensed engineer or architect, a licensed plumber or mechanical engineer and one member at large – for a total of five individuals, to sit on this appellate board. There are certain restrictions that limit the powers of the boards but that is contained in the administrative rules. Section 6 adopts the fee schedule. The fee schedule that I'm using is similar to that of the City although they've ratcheted it up since this one was done. I did this because the old Uniform Building Code used to have a suggested fee schedule or a model fee schedule. With the adoption of the International Building Code by the State, the changes made, they have no longer included that, so I needed a starting point. This will be adjusted upward or downward within the limits of State law as we get some experience with this program, should you elect to proceed with it. Section 7 deals with the enforcement and what protocol we will follow in dealing with that. The certification process is pretty unique, at least that I've seen, in that we have to have a program in place before we can become certified. I have so far to date, done all of the paper side of the certification process. The one step that I have yet to do, is to hire the bodies. There resumes and credentials need to be included as part of our certification packet before we can get accreditation through the State of Montana to begin implementation of a Building Codes Program. We're at the decision point. We have advertised in the paper for three consecutive Sunday's. We've made the Resolution as it is currently drafted available on our website, both Public Works and County Commissioners websites. They've also been available here at the Commissioners office, as well as at my office. I think that is a summary of where we're at today. I'd be happy to answer any questions that you or the audience has.

Commissioner Evans: Greg, could you tell me the effective date that you could expect the first ability to grant a building permit because somebody came in and asked for one?

Greg Robertson: The effective date – this Resolution doesn't address an effective date, because I don't know that. The effective date is when we obtain certification through the State. My guess, by the time, should you elect to proceed forward today, this is just the first step, we will have to develop an operational plan. The first person I would like to hire is the manager, or the Chief Building Official, to assist me in developing that plan and then assisting with hiring the other bodies that will be necessary to implement such a program. My guess is that will be late fall before we'll be in a position of obtaining certification. I may delay even a little bit because that starts to become the slow time, so that I'm not billing up a lot of debt with salaries.

Commissioner Evans: I would like to make sure I understand the building fee schedule. I think I do, but I want to make sure I do. The first column is the amount of the value of the house.

Greg Robertson: Value of construction, yes.

Commissioner Evans: The second one is from \$1 to \$500 would be a \$20 fee. In the additional, when you get down to the expensive houses, is at the bottom of the list?

Greg Robertson: Correct.

Commissioner Evans: Do you have any idea of how many folks you're thinking of hiring, other than the building inspector to start with?

Greg Robertson: As far as I'm concerned right now, no. Part of the issue is kind of a catch twenty-two, in that there are two big unknowns that I don't know about and can't predict. One is how much voluntary interest there is. I know there is amongst a lot of the building community because I've heard that. But, because it is voluntary, I don't know that. That could potentially be the bulk of our work. I don't know that. The second is the City's mysterious annexation policy, that I don't understand, of island hopping where they're annexing pretty much everything right now. Being in the urban area would represent a large piece of our work. I have no way of predicting that. Without knowing those, I don't know. The way I'm going to start is very conservative and small until I get a track record of knowing what I can expect.

Commissioner Evans: There is one thing I would like you to explore and I sort of discussed this over the time but I would like you to look at it and try to come up with an idea for it if the other members of the Board agree. Since we're not requiring that a single family home have a permit, but there are likely those who will want that, I would like to look at some sort of certificate of something that, in the past like they've done – Medallion Homes or Good Sense Homes, or something – that would be a certificate the homeowner could have that showed that indeed, they did do all the building permits necessary and they have a house that meets building codes, so that they can have that to show if they chose to sell their house.

Greg Robertson: There will be, as part of the process, a Certificate of Occupancy – there will be plenty of evidence that they've been through the drill.

Commissioner Evans: I would like to have a carrot for folks to help them to want to do it.

Chair Curtiss: This is a public hearing, so I'll open it officially. Is there anyone who would like to make comment? Just take turns and come to the microphone and state your name.

Mike Mosley: My name is Mike Mosley. I'm opposed to County wide. I'm not only opposed, I'm adamantly opposed. It sounds to me like it's kind of a foregone conclusion, listening to you people about certification and hiring people, that this is what you want to go with. I don't think public input supports that from what I can tell. I take a look at what goes on in the City and I'm definitely not impressed. You talk about some kind of a certificate, maybe you'd like to give people a certificate on all those junk houses built out by the freeway, right in the approach to the airport, they're energy sieves. That's under your jurisdiction. Is this what we can expect County wide. I'm in the trades. If you would like me to prove it, we can go do an energy test on those houses.

Greg Robertson: Those structures are in the City now.

Chair Curtiss: No, they're not. Canyon Creek aren't.

Commissioner Evans: The first half is in the City, the second half is not.

Greg Robertson: But they've all been done under City Building Permits?

Chair Curtiss: We have to have it all on the microphone. So some of those, if they were built when the doughnut law was gone, they were not required to be inspected. Even though the City wanted to inspect, the State didn't let them. Some of them weren't.

Mike Mosley: The early phase, the beginning phase, that would have been under the doughnut and then whatever was in construction until that was resolved. Then the later stuff would be out of it.

Chair Curtiss: Right.

Mike Mosley: In all fairness, we want to test one of the early ones. I can't tell you for sure which batch was tested. A friend of mine owns a business and he does testing and infrared scanning. The houses that he tested are a disaster.

Commissioner Evans: What area of the building trades do you --?

Mike Mosley: Insulation.

Chair Curtiss: Mr. Mosley, one of the things that we heard as we did go out and talk to people – we didn't hold public hearings, we held informational meetings, if we have public hearings we have to drag Patty along and make her record everything – was that people didn't realize that duplexes, triplexes, and four-plexes are only inspected for electrical and plumbing by the State. People felt those were commercial ventures. That's why we decided to go forward with, as Greg mentioned, allowing single family residences, if you were going to build your own house, to opt in or out, which ever you wanted to. I guess we can't make judgment on how somebody has built a house to this point, but our goal would be – at least mine would be – that if we can't have a program that does things the right way, then we shouldn't have a program.

Mike Mosley: I would agree with you.

Commissioner Evans: I would like to state that when we did go out for the informational meetings that there were a goodly share of folks that do want these.

Mike Mosley: Well, how about we have a meeting of people that are in the trades and get your take from listening to them and what they have to put up with.

Commissioner Evans: They've had the opportunity to come and some of them have come and some of them have not.

Chair Curtiss: We actually tried to mail to people that we knew were in the trades and invite them specifically to a couple of meetings that we had in town.

Mike Mosley: One of the problems is most of the people that are in the trades are all working right now.

Commissioner Evans: We had night meetings.

Chair Curtiss: We did have one at night. We had one in town at night and one in town during the day, the rest were all at night.

Mike Mosley: The informational meetings that you had in Seeley and the various places –

Commissioner Evans: They were at night.

Mike Mosley: Okay, do you have any idea how many trades people were there? Were they mostly homeowners?

Chair Curtiss: It was a variety.

Greg Robertson: The ones I attended, and I didn't attend all of them, was a mixture, some contractors, homeowners, developers.

Chair Curtiss: One of the other things we heard as we went out, which needs to be changed in State law, is the fact that as our County Attorney always tells us, anybody with a pick-up truck and a hammer can be a contractor. We can't control that either unless the law is changed.

Mike Mosley: That's an unfortunate situation and it would be nice if that could be dealt with, but even at the State level, it basically looks like all you have to do is fill out some paper work and send some money and you still get whatever you need. I don't consider that to be qualifying anybody.

Chair Curtiss: It sounds like to me that the reason you're opposed is because you don't see it as being effective.

Mike Mosley: No. I see the program within the City as been stretched thin, no good means of recourse for people that have issues with certain building inspectors to be able to deal with them. I've sat in on meetings with State people and they basically said, the person in the field is it and you don't have any recourse, whatever he says, he says. I consider that to be wrong. I consider that to be wrong that when you're dealing with the City, they can put you off for however long they want for whatever reason. Where at the State level, they have so many hours to get

there and if they don't, you continue on. So why is the City so special that they should get away with telling you that you just have to wait until we get there.

Commissioner Evans: Can somebody tell me, do they have a Building Codes Appeal Board in the City, such as we're suggesting here?

Greg Robertson: Yeah, they have an Appellate Board.

Commissioner Evans: Thanks.

Chair Curtiss: We haven't set up our exact rules yet but I think that we've been under the assumption that we were going to do like the State, where you've got the 48 hours – you call and you have 48 hours to inspect.

Mike Mosley: I don't think that people in the trades are opposed to having building inspectors if several criteria – one, they're not being hassled and nit-picked over things that are of no consequence; and if you have some reasonable recourse without getting an act of God to get something done. It should only take a few legitimate complaints for a person to be, the next thing is out the door. There has to be some means of control over the building inspectors that keeps them in line. The other thing, you need to have some people either within the trades or whatever advising you so that you got things in your building code that should be there. There's nothing in the building code about mechanical ventilation and there should be. A lot of the houses that we're doing are extremely tight. We make sure that there is ventilation, but not everybody does that.

Commissioner Carey: You've raised some good points.

Boyd Lambson: My name is Boyd Lambson. First off, I am for a permit and an inspection process done properly. That means every structure that is inhabitable in the County be permitted and inspected. The way it is set up now is a individual homeowner can go out and build his own house and it might fall down six weeks later and that's fine. Being in the trade, I'm on these jobs all the time that the plumbing, the electrical, they're going to kill people. You've got to set it up so every structure is permitted and inspected, because right now, the only people in the State that are being licensed or picked on, that have to buy permits and things, are the licensed trade. We are supposed to know what the heck we're doing. Now, we call for an inspection and like some places north of here, they just pick it to pieces. But yet this gentleman, or this one here, can go out and build a house and not have any idea of what the heck he is doing and that's fine. If you're going to do it, I say do it right and make every house and on up get permits and do it to code.

Commissioner Evans: Which are of the building codes to do work in Boyd?

Boyd Lambson: I'm a plumbing contractor.

Commissioner Evans: I just had to ask. Thank you.

Chair Curtiss: So what you're saying is to not give people the option to opt out?

Boyd Lambson: Do not give them that option. There's too much crap out there – they need to be inspected.

Dan Mason: My name is Dan Mason. I'm a licensed plumber in the State of Montana. I don't have a problem with my work being inspected. I actually encourage it. What I would like to see the County Commissioners do, if you do adopt this policy, is to have your own inspectors, to not out-source this or contract this to the City. One of your variables is the ever expanding annexation bubble. I'm a property owner in the County and I want nothing to do with the City as far as being in my business. If you all want to come inspect my work outside of the City, you are more than welcome to anytime, but I'd like you to see you have your own inspectors, adopt your own codes, maybe use the City as a guideline in some instances, the State as a guideline, but we have some unique circumstances in certain areas in this part of the State that your own inspector, working day to day in this area, would recognize and deal with on a daily basis, where an out-sourced inspector coming from Eastern Montana, or a guy that just works here in the City, just might not address or completely overlook altogether.

Commissioner Evans: Somebody tell me, I think I'm correct in this, that even a person building their own house without a building permit from the County, still has to have the State approve the electrical and the plumbing. Is that not correct?

Dan Mason: Electrical, yes. They can do their own plumbing. If they use me as a licensed individual, then I have to pull the permit.

Commissioner Evans: But both of those still have to be looked at by the State, correct?

Dan Mason: The electrical, I believe, has to be looked at by the State in order for them to get meter set. That's the only requirement.

Chair Curtiss: But if you do your own plumbing, you don't have to –

Greg Robertson: If you engage a contractor like Dan here, then a permit is required.

Dan Mason: I'm mandated by the State to pull that permit.

Commissioner Carey: We do intend to hire our own people.

Chair Curtiss: Thank you. Anyone else?

Dan Crist: My name is Dan Crist. I also work in the plumbing trade and licensed by the State of Montana. I echo what the first two fellows had to say. We being the plumbers out there who have the permits and have the licenses are really, unfortunately, the only ones that the City inspectors and the City authorities can punish if we do something wrong. If we install something incorrectly, we're required to change it. I don't have a problem with that, I don't have a problem with my work being inspected either. We've experienced some unreasonable type of harassment, I think the word was used on occasion, and I believe that there needs to be, as you've formerly mentioned, that some of the people in the trades could help you design your program, design your system. I think we could come up with some ideas in the past, that the City has not necessarily adopted, that would make it easier for you and us to work together instead of them working against us as we so often feel in the trades. I too believe that as long as you're going to be inspecting, I think it may as well be done for each structure. I don't have a problem with being inspected, and so long as it's fair and there is a reasonable way to speak with the inspector and associate in a business-like manner and not feel weighed down by their authority, I think we could work together and make something like this work. It is unfortunate that the County has to structure an entire new entity and entirely new bunch of people to eat up more money for the County, but nonetheless, I think it is important to have your own people.

Chair Curtiss: Thank you. Anyone else?

Curt Belts: I'm Curt Belts, I'm not a plumber. I'm the Assistant Fire Chief for the Missoula Rural Fire District. I would encourage you to proceed with your building program. I know since the doughnut law has gone away, the fire department's ability to be involved in code review has been very limited and in many cases, there are buildings being built in fire districts that we have no idea what they are, have not even been inside of them. I can speak personally that I've had a very close working relationship with the City Building Department, when we were working with them and we were included in all the plan reviews, the inspections that were pertinent to the fire department. I would just encourage you to proceed for safety's sake.

Commissioner Evans: While you're up there Curt, let's talk about the fact that the people building their own houses don't have to have a permit. I want to hear your comments on that.

Curt Belts: We, too, have been in some situations where homes that have been built by the individual without proper inspections and proper building techniques certainly contribute to the difficulty of the fire job. Certainly, some of those that have been as rentals, we've had to go back in and actually try to force landlords to take action in bringing them up to a code that makes it a habitable environment for them. I believe that all residences should be inspected, particularly with the number of residential sprinkler systems that we're putting in to homes now days. If people are not – if there's not an inspection process, many times we've run into this and it is the trades people that are letting us know that it is there, we're having sprinklers that are not even hooked up. Unless one of the trade's people come in and say, we see that you have a sprinkler system in there, but there is no water going to it. The people that are buying these homes that believe that their homes are sprinklered, don't have a sprinklered home. We see, certainly, a lot of electrical issues for the people that do their own add-ons that don't bother to draw the permit because their meters are already set and they do their own remodel, that part may not go away. We certainly have seen some plumbing issues that have caused problems, particularly for those that have done their own plumbing and not thought about freezing conditions and those kinds of things and decided that the proper way to thaw their pipes is using blow-torches rather than hairdryer or commercial type systems. Using the blow-torch results in a less-than-desirable result.

Janie Bell: Hi, I'm Janie Bell and I'm here representing Jim Bell Construction LLC, my husband's business. He is a general contractor. It is unfortunate that the State does not have any kind of testing requirements to be a contractor. I commend Greg for trying to put this thing together. I see a few things that I would like to see changed, or we would like to see changed. We do feel like it should include all structures that any humans would be in, including single family even if they built it themselves, because then what happens is, like some of my neighbors, they purchased a home that unfortunately was built by a licensed contractor and the thing has had a lot of problems and issues. That's what you're going to find with anyone purchasing a home that a homeowner/builder has built. I think to protect the homeowners, which is what you do have written on here somewhere, that you do need to permit those also. I'm thinking that when a home is up for sale and it's less than 10 years old, maybe we should be looking at that also, so those homeowners know what they are getting. I don't think you can really go back to old things, that's beyond, you know what you're getting there, you need to update items. I really would like to see the County somehow lobby the State to get contractors tested before they're licensed. Anyone in this room can go over with their \$70 or \$80, fill out some paperwork and become a general contractor. That's really wrong. It's hard for my husband when he's out there bidding jobs to bid against these folks that really don't have any experience or know the trade well enough to be able to bid correctly and that affects the homeowner too when they get in the middle of their process and people need more money. It turns into a big mess. I feel like we should put everybody in for permits. There should not be exemptions for any human dwellings. I also had a question in Section 5, the at large member, it says: "All appointees shall be persons who are qualified by experience and training to pass upon matters pertaining to building construction and who are not employees of Missoula County." I am wondering, is there a test or something that you're going to actually ask someone to pass? I don't really understand.

Greg Robertson: That was probably a typo on my part. This is called, getting this thing done before going on vacation.

Janie Bell: I realize that it is a pretty daunting task.

Greg Robertson: At large, is just a citizen of the public interested in –

Janie Bell: Right, but it's that next sentence that I'm really asking where it says: "Qualified by experience and training to pass upon matters." I don't understand what you're saying.

Chair Curtiss: I think that would mean the architect, the engineer, the master electrician, the plumber, mechanical that they – to pass upon a matter would be that they'd make a decision. So they're qualified by –

Greg Robertson: And an at large member could have experience in the area.

Mike Sehestedt: I would expect that we'd be – what this says is that we have four members, they have to be an architect, an engineer, a plumber and an electrician. We've got one person –

Chair Curtiss: Sounds like we need a carpenter.

Mike Sehestedt: We don't specify – it's probably not a bad idea. I would anticipate it would be someone involved in the trades sitting on it. I couldn't imagine that we'd just pluck a citizen off the street.

Chair Curtiss: So we could change it to say, one at large member from the building trade.

Greg Robertson: That would be fine.

Janie Bell: Like I said, having a license as a general contractor isn't going to buy you guys anything. You're going to be taking your chances there.

Mike Sehestedt: But someone who carries a master electrician card or master plumber card, hopefully somebody with a degree in architecture or a degree in engineering.

Janie Bell: Should that say possibly, licensed architect or do they have to be licensed in this –

Mike Sehestedt: They all have to be licensed. You can't be an architect without being licensed. Dido engineer.

Chair Curtiss: We put "licensed" in front of everybody else, so maybe we should put license in front of –

Greg Robertson: That would be fine.

Commissioner Evans: There are other people who design houses other than just architects. There's draftsman, homeowners –

Greg Robertson: This is the Appeal Board that deals with fairly technical issues relative to the code.

Janie Bell: I guess, we're not really hep on having a County Building Enforcement Division but I realize there is a need for that because of the way things are happening with the City of Missoula. I would like to see the County somehow lobby the State to change general contracting licensing. They look at you like, gee, we gave you a license, why would you want us to give you a test. We would like to see that, because I feel that would even out the board a little bit and make it more fair so not only is it protecting the homeowners and the future homeowners from somebody just building their own house with this document, but possibly the sale of existing homes that are in the County that there should be some sort of certification on those. I think that would help our stance as being legitimate contractors. I appreciate all your hard work, but I really think that maybe you need to look this over a little harder yet before you adopt it and make sure you have your bases covered.

Commissioner Evans: When are you going on vacation?

Greg Robertson: Leaving again next week. Date and time unmentioned.

Commissioner Evans: Before Wednesday or after Wednesday?

Greg Robertson: Wednesday, or right about, yeah. If I get my computer back, I could get done a lot earlier but right now I just have to –

Commissioner Evans: Nobody gives this boy a computer, okay. What I'm going to suggest is that we delay action on this for one week because there are some issues that we need to explore further and I'm not prepared to vote yes or no on this without exploring those issues.

Commissioner Carey: I concur. I wonder if you'd respond briefly to Mrs. Bell's suggestion that we inspect homes that have been built within the last 10 years. Seems like a lot of what we'd want to inspect is covered up in an existing home.

Greg Robertson: Yeah. I think – to answer Mrs. Bell's question in a little more detail. The State us allows three basic options when it comes to single family residential. One is to exempt them completely making it purely voluntary; second is to not exempt them; and third is to exempt owner built, owner constructed, construction. Those are the only three that are allowed. I've explored other options requiring subdivisions and the chief legal council for the Building Codes Bureau has told me "notta," it's a non-starter. So, those are really the three options you have relative to single family and I think that's what we're talking about here. As far as going back and inspecting buildings that at 10 years old, one, we'd have to track the records to even find them. I don't know that we could.

Chair Curtiss: We couldn't charge anybody for it.

Greg Robertson: It would be very difficult to do.

Commissioner Evans: Isn't that kind of covered when someone wants to buy a house and they put in a home inspection before they purchase.

Greg Robertson: I would have to think that one through before I really respond to it. I think, operationally, it would be very difficult.

Mike Sehestedt: I was going to state that unequivocally, it's not part of a building inspection program as contemplated by State law. We could possibly – I'm not even sure we could find legal authority to do it, but if we did, we'd essentially be in competition with the private home inspection industry.

Chair Curtiss: That's all it would end up being is an inspection on the surface.

Mike Sehestedt: Yeah. And anything that has been covered by drywall or – I mean, you just don't know. You might be able to ascertain whether or not the sprinklers actually had water charged to them, but it's pretty limited as to what you could do after stuff is covered up. I'd just as soon leave that to the private sector. If you're buying a used home, you'd be well advised to get a home inspection.

Boyd Lambson: As far as these home inspectors go, people are buying homes, they demand their inspection. I've had people who have had inspections, the stuff doesn't work. The inspector's got a million items on his exclusion list because he can't see what's underneath that sheetrock. You've got to get it when it's in the construction and get it done right. Once they cover it up, what's there, nobody knows. You got to do it from day one.

Mike Mosley: I'd like to make some rebuttals. I'll start with Boyd Lambson. Boyd and I worked on a project probably 20 years ago, a metal building out by the Wye. I foamed the inside of the building, Boyd installed the boiler. It's a commercial building, I think it had to be inspected. Montana Power had to hook it up. All of these people missed the fact that there was no combustion air coming in to feed the boiler. Nobody but me probably knew that the fellow was living in the building, which I feel is his right. In talking to him after the fact, he was discussing problems, the windows were sweating, the boiler was stuttering in the middle of the night. So I quizzed him about make-up air for the boiler and there was none. You can have all these things in place. The next example would be Johnson Bell Airport. On Phase Two of the expansion, they foamed behind the brick veneer up as high as the façade until the roof came out, then there is no insulation above that. They've got the turn style, they've got the sprinkler system coming out there and then it freezes. You've got architects, you've got State inspectors, you've got everybody involved and things still get done wrong. No matter what you do, it's like trying to legislate honesty and morality, it's not going to happen. There's a phrase called, "Buyer Beware." The best way to deal with these problems is in the appraisal system. If you would appraise houses according to quality, instead of according to square footage and number of bedrooms and bathrooms, you could have two row houses out on Kemp, one built by Edgill and it's going to bring as much money as the one across the street that's an energy star. Where is the incentive? How are you people going to legislate and make people honest and do things the way they should do? It's not going to happen.

Chair Curtiss: You're right. We can't legislate those two things.

Commissioner Evans: Greg, how much change would you have to make in your assessment of how to run this department and what you'd need, if we decided we would not exempt single family homes?

Greg Robertson: I don't think it would really change. There's still a big unknown with the City annexation practices and changing philosophy on that element. If you were to do that it would certainly – I don't think it would change things all that much, it would just, probably, change personnel and how we go about doing that.

Commissioner Evans: I will want to discuss that sometime during this coming week because I'm having second thoughts about exempting the single family homes.

Greg Robertson: I'm available for the next several days. If you would like maybe on Thursday, I could come to your Admin meeting.

Commissioner Evans: Tomorrow you mean?

Greg Robertson: Whenever or next Tuesday.

Commissioner Evans: Yeah, I can't tomorrow.

Greg Robertson: Patty has the only living copy left of my resolution that got tanked on my machine yesterday.

Chair Curtiss: Are there more comments? I though I saw somebody that wanted to come to the mic.

Dan Crist: I just wanted to make a couple other mentions here, with regards to single family dwellings and those who are building their own homes. The question was brought up about whether or not a person who is building his own home has the right to plumb his own house, at least in the County. From what I understand on that, that person can do it so long as he does it and not his brother, not his uncle or that kind of thing. We see that skirted all the time. It's a matter of honesty. We talked a little bit earlier during the time where you were talking about family transition of property, it's the same kind of thing. People try to get around those sorts of things. The homeowner built project should be just right along with the rest of them.

Greg Robertson: I did receive a phone call, for the record, from Bill's Plumbing. The owner I would characterize as very enthusiastic and puts everyone on the same playing field and would urge you to adopt. That was at 1:15 today.

Chair Curtiss: Did he make any mention of the owner occupied or owner built?

Greg Robertson: No. He just wanted a fair playing field for everyone.

Chair Curtiss: If there are still things you want to talk about, is the main thing, whether or not to do the single family.

Commissioner Evans: That's my main one, yes.

Chair Curtiss: Just for process and legal discussion, if we advertised it saying one thing, can we amend it at this time without notifying the public?

Mike Sehestedt: The answer is, I think, yes. This was a public hearing on a proposal and you're hearing from the public. You can, as a result of that process, make changes or it's real silly to characterize it as a public hearing. It would be more like an announcement than a hearing. Yeah, we're having a hearing on it. We're hearing what the members of the public can make it have to say. You guys can take their participation and comments into account and amend what you're doing. You couldn't amend it to make it an animal control ordinance, but if you're tweaking the building codes, you've given notice. What I hear being suggested, if you follow Commissioner Evans' recommendation, I would suggest that you recess the hearing, not close it, and we come back, if there are proposals to make changes, that we air those in a public forum at the continued hearing and see what people have to say about it.

Commissioner Evans: I'm sure Mea heard what I had to say and would likely inform the public that that is a thought that I have.

Mike Sehestedt: Only if her editors find it newsworthy enough to print. I'm sure she'll write a beautiful story.

Commissioner Evans: And I'll take the phone off the hook between now and next Wednesday – little joke there Mea, not for publication.

Chair Curtiss: Any one else who wants to make comment on the adoption of the Building Code Enforcement program before we recess?

Bill Lindstrom: Bill Lindstrom, Chief of Missoula Rural Fire. I want to be short and to the point. To my way of thinking, my biggest charge is fire fighter safety. We have to enter buildings, usually at the wrong time. From my standpoint, an uninspected building is an unsafe building. In keeping with my charge of fire fighter safety, I would encourage you to include all buildings in which people live, to be inspected. Thank you.

Chair Curtiss: The only thing – if that's the only thing that we're considering, the only thing we would have to do is amend Section 2 to take out that single family residential structure exemption. Everything else would remain the same. Any other comment before we recess this hearing and we'll continue it next week?

Janie Bell: Janie Bell again. Listening to the fire chief makes me think that possibly your at large member could be someone from the knowledgeable fire community.

Chair Curtiss: Good idea. Thank you, Janie. One of the other suggestions that we had today was to have an advisory group to help us design the program. Patty has an extra piece of yellow paper for any of you that might be interested or have names of people that are interested, if you could write them down, that way we could consider that. Seeing nobody else coming to the mic, we'll recess this hearing and continue it next week. Is there any other business to come before the Commission? Seeing none, we're in recess.

There being no further business to come before the Board, the Commissioners were in recess at 3:45 p.m.