

## **PUBLIC MEETING – NOVEMBER 2, 2005**

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Bill Carey. Also present were Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt and Deputy County Attorney Colleen Dowdall. Commissioner Jean Curtiss was at an award presentation in Washington, D.C.

### **Pledge of Allegiance**

### **Public Comment**

None

### **Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims list in the amount of \$273,996.18. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

### **Hearing: Rezoning for JTL-Mullan South from C-RR1 to C-A1**

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

JTL Group is requesting rezoning of approximately 74 acres south of their existing gravel operation on Mullan Road, about 1 mile west of Reserve Street. These 74 acres fall south of the Old Milwaukee Railroad Grade and extend across the Clark Fork River. The property is outside of the Urban Growth Area and the City's Wastewater Treatment Facilities Area. The property is currently undeveloped river lands and open space and the applicant has stated that they intend to extract gravel and construct a pond and a trail on the site at a later date.

The applicant is proposing the zone change to comply with the growth policy designation of "Parks and Open Space" and "Potential Open Space Cornerstone." However, this designation is for areas where environmental constraints or public values make development inadvisable and recommends limiting disturbance so other goals of the plan can be achieved. The draft Wye-Mullan Plan recommends a land use designation of "Floodway" and "Open and Resource," which indicates that the property has physical limitations, resource value and is located in an area not suitable for development or disturbance.

The request is to change the zoning from C-RR1 (Residential) to C-A1 (Open and Resource). C-RR1 allows a maximum residential density of one dwelling unit per acre. C-A1 allows a maximum residential density of one dwelling unit per forty acres. C-RR1 does not allow gravel extraction; C-A1 allows for gravel extraction as a special exception which is reviewed by the County Board of Adjustment. Extraction of 10,000 cubic yards or more of material requires a permit from DEQ under the Open Cut Mining Act, which covers a broad range of issues relating to an operation plan, screening and buffering, storm drainage, hours of operation, haul roads, environmental impacts, air pollution mitigation and reclamation.

Staff opinion is that this particular parcel has an incredibly valuable riparian and hydrologic system that should not be disturbed by mining, especially considering how much gravel is available for mining north of the Milwaukee grade where there is little to no riparian vegetation. A map of riparian vegetation was provided with the 2001 proposal and is shown as Attachment H-6 in the staff report.

Staff is recommending approval of the rezoning to C-A1 subject to conditions to provide as many site protections as possible. The applicant has proposed several protections in the form of covenants or conditions, including the prohibition of some heavier equipment normally found in gravel mining operations and restricting disturbances with 500 feet of the banks of the Clark Fork River and 100 feet of the old remnant river slough.

Staff's recommended condition of rezoning establishing a No Build/No Disturbance Area attempts to retain a larger area than the 49 acres proposed by the applicant. The staff and Planning Board recommended area of No Build/No Disturbance is shown on Attachment R in the staff report. It generally follows these setbacks: 500 feet from the base of the Old Milwaukee Railroad Grade; 500 feet from the southeast side of the slough and 200 feet from the northwest side of the slough; 450 feet from the west property line; and 200 feet from the east property line. On the south, the area within 500 feet of the Clark Fork River is shown as No Build/No Disturbance. However, this line may change once the inaccurately mapped floodway is corrected by FEMA.

The No Build/No Disturbance Zone shall be defined to exclude all buildings, structures, fences (except for wildlife friendly fencing on the eastern and western boundaries of the property), roads, motorized vehicle access except for routine maintenance activities, parking, storage, livestock grazing or watering, mining, cutting, burning or removal of live or dead vegetation (except if needed for fire prevention or noxious weed control), filling with substances such as gravel, soil, slash or other debris, or the planting of non-native vegetation such as lawn grasses.

The proposed water feature on this site would be located in the area where disturbance is permitted. As proposed by the applicant, disturbing a larger area which includes valuable riparian resources in order to construct a pond, is not a community value supported by the growth and planning policy documents. Comment from the Health Department is that "replacing riparian vegetation with a water feature would degrade the water quality functions of this river corridor riparian area."

In July, 2001, JTL Group proposed a rezoning of their entire 150 acre parcel at this location to allow for gravel extraction. In October of that year, the Board of County Commissioners approved rezoning the portion of the property north of the railroad grade to allow for gravel extraction phased over a 50 year period. The reclamation plan results in a 90 foot deep pond north of the railroad grade. This district was subject to extensive conditions of approval, including phasing and reclamation plans, and exclusion of the area south of the railroad grade, with the understanding that the south portion of the property was not suitable for gravel extraction and would be left in a nature state since the C-RR1 (Residential) zoning was not likely to result in residential development more than a single residence, unless sewer was extended to this site and floodplain permits were issued. Other conditions imposed on the 2001 gravel mining rezoning included site fencing, landscaping and berming to buffer adjacent residential uses, a setback of mineral processing equipment from residential zones for noise mitigation and dust control measures, among other.

According to the applicant, gravel extraction in the JTL-Allen District, located north of the railroad grade, is not anticipated to begin until 2012 at the earliest. The company is currently operating other gravel mines in the Missoula area and there does not appear to be an immediate urgency to this rezoning in terms of gravel extraction and local need resulting from gravel shortage. Staff has encouraged the applicant to wait or to seek other possible means of compensation for the property as open space, such as a conservation easement.

The prior area of disturbance proposed by JTL in 2001 included greater protections (as shown in Attachment I of the staff report). This includes 250 feet from the slough, instead of the 100 feet now proposed, and 250 feet from the western boundary, instead of no restrictions now proposed. At that time, JTL excluded the 74 acres south of the old railroad grade, based on comments from various agencies expressing serious concern about mining south of the railroad grade. Those concerns still exist.

Previous reviews of the rezoning proposals for this area have raised concerns pertaining to potential gravel extraction, including the following:

- a. Potential loss of riparian vegetation leading to increased velocities of waters during flood events to downstream landowners.
- b. Possible alteration to hydrology of this part of the Clark Fork River and side channels, particularly since this section of the river gains water from groundwater. USFWS and FWP have previously stated that any work that may alter the hydrology of the major side channel and riverine habitats should not be allowed.
- c. Streambank stability.
- d. Potential water quality impacts to the Clark Fork River, including impacts from equipment needed to extract materials from this site.
- e. The removal of the Milltown Dam which could cause greater stream migration northward on this property. Even absent this factor, a comparison to 1975 flood photos documents that bank erosion has been occurring as the river migrates to the north across its floodplain.

The property is located entirely within the 100 year floodplain, a portion of which is within the floodway. Todd Klietz, County Floodplain Administrator, expressed concern about rezoning the property to a zone where gravel extraction may occur. The current FEMA floodplain maps are inaccurate at this location and the floodway is actually located further north than is shown on the FEMA floodplain maps. FEMA and DNRC are aware of the errors on the maps and corrections to the maps are planned to identify more of this site as floodway. Based on elevations, Todd estimates that the new floodway will extend further than the 500 foot setback from the Clark Fork River proposed by the applicant in Attachment A-3 of the staff report.

Ponds, such as the type contemplated by the applicant, can be captured during a flood event. To extract materials from this location, a licensed professional engineer would be required to accurately redefine the floodway and demonstrate that the buffer is of sufficient width to prevent channel capture. Todd commented: "Preventing migration and capture in this lower area will be challenging due to the river being on an outside bend and because floodplain regulations prohibit riprap to prevent additional migration and/or placing rock barbs in the river to redirect flows away from the bank."

According to the US Fish and Wildlife Service, "this is particularly true in this case as the site includes an outside bend of the river, which makes this location a high risk for erosion and possible migration of the river northward into JTL's and other lands lying south of the railroad grade. There are several possible scenarios should the site be opened for gravel mining and most are contrary to protection of the river corridor."

Access to this site is not permitted off of Schmidt Lane and would therefore need to be from the JTL-Allen site to the north, which may require an amendment to the JTL-Allen Special District, since it was not approved allowing access to the southern portion of the property (across the railroad grade). The JTL-Allen rezoning request approved by the County Commissioners in 2001, specifically prohibited traffic from the gravel operation to use Schmidt Lane.

James Freyholtz, Montana Department of Transportation, stated: "If the volume of truck traffic turning movements for ingress and egress to Mullan Road were to significantly increase from current conditions, then MDT would be concerned with the possible effect on traffic at this location. Therefore, some type of mitigation may possibly be needed to ensure the safety of traffic through this location."

The JTL-Allen Special District, north of this site, is accessed by turning south off of Mullan Road, onto a paved haul road which runs along the eastern boundary of the property, adjacent to the Montana Materials (Jensen) gravel operation. At peak operation, the gravel resource recovery operation at the JTL-Allen site north of the railroad is expected to generate about 100 to 150 truck trips per day. That does not include traffic estimates for this site.

As a part of this rezoning, the applicant is proposing to donate to the City a trail easement on the Old Milwaukee grade, as well as dedicate the inaccessible property south of the river to the City to add to the open space lands acquired earlier. This is supported by all reviewing agencies and is a condition of rezoning. Jackie Corday, Open Space Program Manager at the Missoula Parks and Recreation Department, commented that the City would be receptive to these generous donations and dedications, although they do not eliminate concerns regarding loss of high quality riparian area. Jackie recommended increasing the area of No Build/No Disturbance proposed by the applicant to further protect these resources.

The applicant has stated they are in agreement with all the recommended conditions, except that they would prefer that the rezoning be adopted with the larger area of disturbance as shown in Map A3. They have indicated that if a greater area of No Build/No Disturbance is required on this rezoning, they would prefer to sell the property for use as it is zoned and place a trophy home on the site. Any more than one home would require subdivision review. This option would be preferable in terms of environmental impacts; however, providing sanitation to one residence may be somewhat challenging. The Health Department and Floodplain Administrator indicate that septic systems are not permissible in the floodplain which extends clear up to Mullan Road. According to the City Engineer, sewer, which exists approximately 2,000 feet to the north in Mullan Road, may only be extended to serve this site if the City Council approves expansion of the Wastewater Treatment Facilities boundary, which is unlikely.

Both zones allow for placement of one home without further subdivision review. The current zone would allow more homes, but only if approved through subdivision by the Board of County Commissioners and if sanitation could be provided, which, as stated earlier, could be challenging at best. The Planning Board conducted a public hearing on this rezoning request on Tuesday, October 18, 2005, and they voted 6-2 to recommend approval of the rezoning request with staff's recommended conditions.

Conditions of approval not covered earlier include restricting building height to 25 feet; dedicating an actual 30 foot wide easement along the railroad grade; donating the land south of the river to the City; designating the No Build Zone as shown on Attachment R to the staff report; defining the No Build Zone as described in this presentation and in the condition; allowing the No Build Zone to be modified by the County Board of Adjustment only in the case of seeking a special exception for extracting materials from this site and the map may be modified to allow for access along the east side of the property. It also refers to not disturbing certain habitat types, as shown on the Riparian Vegetation Map. It also sets a maximum duration of use of any access at five years, as

proposed by the applicant. The Planning Board also added a sixth condition that the applicant present a plan, prior to issuance of any Zoning Compliance Permit, that would be reviewed by OPG, Parks and Recreation and Fish, Wildlife and Parks. It is also recommended to add US Fish and Wildlife Service as a reviewing agency. This would ensure that the development plans for this property address several criteria with the goal being that the property is developed in an environmentally sensitive manner.

Dan Cederberg: Thank you, Acting Chair Carey. My name is Dan Cederberg. I'm here to represent the applicant, JTL Group, Inc. I'll be making a brief presentation with some of our points on this matter. I also wanted to indicate that Dave Zinke and Dave Orbey from JTL are here today and they are available to answer questions if anything comes up that would be appropriate to direct a question to them. It's nice to be here today because we have a lot of things that we've agreed about with relation to this property. First of all, we've agreed that it is a very special piece of property. Its location makes it special. It is located where it could become an integral part of the trail system that Missoula City and County have worked on a long time to make a good asset to our community. It's also special because it is near a 120 acre piece of open space that has been acquired by the Open Space Committee at a cost of nearing \$200,000. I think if you'll look at your map, and I'm not sure exactly which maps you have in front of you – I'm looking, I think, one that everybody has is Exhibit R that was attached to the staff report. If you look at the piece south of the river there on Exhibit R, that piece is immediately adjacent to a big piece of open space that has been recently acquired by the City. It would tie in nicely to the open space that the City now owns and as you could see, would add a large section, a lot of footage of river access, river frontage, to that open space. The property is also good habitat as Jennie has explained. It's been identified as important for that reason. I think we also agree that the JTL proposal contains a lot of elements that will positively impact the property. First of all, there would be the donation of the trail easement, which would be a major contribution to the trail system in Missoula County. Secondly, there would be the outright gift of the property south of the river, that we just looked at, that is adjacent to the open space. Another very big attribute to the proposal is that there would be either a gifting or establishment of a No Build/No Disturbance Zone over approximately 50 acres of the 74 acres of this property. So that would be a large addition to open space. We've also made available covenants or conditions in what every form you would deem appropriate, so that there would be no mining on the property of gravel. I think it's important to talk a little bit about the distinction between mining and materials extraction. Mining would mean we would go down there with a crusher and other equipment to actually set up on the property and process material on the property. We are not proposing to do that and, in fact, are only talking about possible material extraction on the property. We have put in conditions that there would be no asphalt plant, no concrete plant, no gravel crusher, no wash plant, no field storage facility or any other sand or gravel processing equipment permitted on the property. That's another very positive attribute of the proposal that the applicant is making. We are also, I think that it's very important to point out, indicating that prior to any commencement of any disturbance of any portion of the property, that the then owner must prepare and submit to OPG for its approval, and in consultation with Parks and State Fish, Wildlife and Parks, a plan as to what would happen on the property. It struck me as I was listening to Jennie this afternoon, as to the comments that she was making about what should or shouldn't happen on the property, it struck me that those would be more appropriate, 10 or 20 or maybe 50 years from now, when something is proposed to happen on this property, rather than today, when we would know a lot more about where the river was going to be, for example, at that time. It's very important for the Commissioners to understand that our proposal is that before anything happens to any of the areas that we're talking about here on the property, that that plan would have to be presented to OPG and it would have to be approved by OPG. We think that that's a very positive aspect of the proposal. It's something that the Commissioners should keep in mind in their considerations today. We also have proposed limits that would indicate that there would be no disturbance on the property for more than a five year period, so when there was work done on the property, it would be limited to a five year period. Finally, we would say that a very strong attribute of this project, that sometimes gets lost in the shuffle, is that this application would allow the property to come into compliance with the Master Plan. We all agree that that would be a good positive aspect of our proposal. There is one particular area of disagreement here that we have been left with. At the Planning Board hearing, there were a couple of others like maximum height of 25 feet on any structure, which was not a part of our plan, but which we did agree would be appropriate. We have no problem adding that into the continued restrictions with regard to the property. We had not discussed the use of motorized vehicles on the property in our proposal. The initial staff proposal did indicate that there should be no motorized vehicles in the No Disturbance Zone. We were agreeable, and the Planning Board did pass, a restriction that no motorized vehicles except as were necessary for routine maintenance of the property. We've agreed on a lot and we've come down to, really, one issue. That issue is the size of the No Disturbance Zone. The letter that we delivered to you last Friday, I think, tries to explain that. I think the easiest way to understand it is to look at, once again, Exhibit R, because it highlights what the real difference is here. That is, if you look on Exhibit R, the area that – there's a white line there where there's been a white out – that area would be the limits of the No Disturbance Zone in the applicant's proposal, and it differs from the dark line, that's right in the center of the property on Exhibit R, which is the staff proposal. We submit that our proposed No Disturbance Zone is appropriate for this property for a

number of reasons. First of all, it accomplishes what we want to accomplish here by protecting the property. We have taken a 500 foot setback from the river for the No Disturbance Zone. If you look at Exhibit R, their setback from the river is really the same, the closest point to the river is really the same. So if what you're worried about is the potential capture of a pond or some other feature there, in a flood event at some point in the future, our line is really no different than the staff's line, from that perspective. The other thing that I would point out is that under the existing setbacks with the C-RR1, we're looking at 25-50 foot setbacks. We have gone more than 10 times what would be required if you don't change the zoning of the property with our setback. Frankly, we think that doing that is abundantly cautious and is sufficient to allow for the protections that this property deserves. We also our zone, there is a slough on the north part of the property. You can see that we have gone back with setbacks of 100 feet from the slough. Once again, that setback scenario is much greater than would be required in any currently zoning. Really, even if we changed the zoning and we didn't have additional setbacks, those are 50 and 100 foot setbacks, and so we're well, well beyond what's required to protect the property under the regulations. We've also indicated that there would be at least four layers of review before anything could happen on this property. There would be the OPG review that we've already talked about. There would be Board of Adjustment review that staff mentioned in staff's report. There would also be DEQ – Department of Environmental Quality – review before anything could happen. There would be a floodplain permit that would be required. We're just very confident that the protections that we have proposed here are adequate to safeguard the special nature of this property. Finally we would point out that what we are proposing here constitutes the set aside of two-thirds of this property, roughly 50 out of the 74 acres of the property, for either no disturbance or trails or parks, and that is a very, very significant offer, a very, very significant concession as far as we were concerned and we would like to keep that in mind when you make your decision about the property. I would like to also address some things that I characterize as myths will regards to this property, in considering this, and I would like you to keep it in mind. One of them is that residential development – leaving this residentially zoned would be more protective of the property. We just simply don't think that's true. We did, as Jennie indicated, get a letter from Gilbert Larson at PCI with regard to some of the possibilities, with regard to residential development of the property. Keep in mind that this is kind of a – this is what could happen now, the way the property is zoned now. This does not envision coming in for a subdivision which might ask for more development of the property, more houses. As it is zoned now, there could be one house put on the property. An impediment to that would be handling sewer with regard to the property. Gilbert Larson looked into that and he indicated that we would have to connect to the City of Missoula sewer at the interceptor at Mullan Road. We're not currently in the wastewater area but, he concluded that we probably could be annexed into the Wastewater Treatment Area. The main thing that would be – he just concludes that this could easily be accomplished with the use of an individual grinder pump and a small diameter force main to Mullan Road. That appears to be a relatively ministerial act to get sewer to the property. As for a building permit to construct a house, the owner of the property couldn't build in the floodway, however, they could build on the floodplain. There would be a minimum amount of build up that would have to be done and you'd have to use fill from the area. Obviously there's lots of fill available in the area and so a permit could be obtained to build a house on the property. The final issue that Gilbert looked at was the possibility of a pond on the site. Ponds are allowable – and we could – or the owner, JTL, wouldn't be doing that, but a residential owner could go in and construct a pond on this site. The assertion or belief that leaving this residential is more beneficial to protecting the property just doesn't hold up. There would be livestock allowable to graze on the property with no restrictions. All the timber could be cut off the property with no restrictions in a residential application. As I indicated, a pond could be put in, and all of this would be subject to the 25-50 foot setbacks, way smaller setbacks than we are proposing. Another potential myth that I'd like to address is that JTL would denigrate the property if they were allowed to put some kind of a water feature on the property. Once again, I don't think that that holds up to JTL's history in this community. As part of the Planning Board presentation – and it's in your packet – I have extra copies if you'd like to look at them – we introduced a letter from the people on Marie Lane, which is close to this property, about a road that JTL put into the area as a result of the prior application, I believe. Just part of the letter says: "The professionalism with which all the employees conducted themselves was most appreciated by those of us who benefited from their efforts." It's signed by the homeowners on Marie Drive and that is in your material that was presented to the Planning Board.

Commissioner Evans: I'm sorry Dan, would you read that again? I was reading and my mind didn't catch both.

Dan Cederberg: Sure. Actually I have a copy in here if you would like it. It says: "To whom it may concern: The residents of Marie Drive would like to take this opportunity to commend the employees of JTL Group Inc. who worked so diligently and with such good will to complete the paving of our road. The professionalism with which all the employees conducted themselves was most appreciated by those who benefited from their efforts." And it's signed by six homeowners.

Commissioner Evans: Thank you.

Dan Cederberg: Another myth with regard to this property is that this kind of development is going to be detrimental to wildlife. In particular, there had been discussions about the rookery that's immediately east of the property. We would point out that that rookery is adjacent to, or close to, the pit that Jensen has on the property that's just north of the rookery, and in fact, would be roughly the same distance – any development here would be roughly the same distance. The heron have co-existed with the Jensen Pit for years, as long as anybody that's been associated with JTL can remember, and it has not driven the birds away. We would also point to a picture – I've got another copy – from the operation that JTL has over in the Fort Missoula area, where on the top of one of their pieces of equipment, there's an Osprey nest. It just isn't a given that this kind of work in the area is going to drive all the wildlife out of the area. We would urge you to keep that in mind when you consider this application. We feel that we have proposed something here that is definitely a win-win situation. It's the opportunity to bring some property in compliance with the Master Plan, to add to the trails in Missoula County and to add to the open space in Missoula County. We would do so while protecting the property, as I said, the proposal protects the property. On the one hand, we've got trails and open space and plan compliance; on the other hand, we've got the possibility that a water feature might be built on the property, after extensive review, at some time in the future. In evaluating this, we would like you to recognize that on the one hand, we have a very, very high reward. You've got lots of goals and plans that we are contributing to with this plan. On the other hand, you have a very, very low risk that anything inappropriate is ever going to happen on this property. It's a small portion of the property, about a third of the property that anything at all can happen on, and that would only be after review by at least four agencies. So that just takes your risk down to almost nothing, that there will be anything inappropriate that happens here. With that, we would urge you to vote for the rezoning application as proposed by the applicant. I'd like to conclude with a procedural request. The applicant is in a position where any reduction of the No Build Zone from their initial application is unacceptable. I hope that I pointed that out to you clearly in the letter of last Friday, the 28th, and so we would request that procedurally, if you would consider the one area here where we have a disagreement with staff, and that is what the size of this No Disturbance Zone would be, if you would consider initially the language that's in our letter, as far as the size of that, as one of your conditions. If there's not a favorable vote to make the size of the No Build Zone what is proposed by the applicant, at that point, the applicant would withdraw their application, because they don't want to go forward with the rezoning, if the size of the No Build Zone is increased to the size that the staff is proposing. With that, I would thank you for your attention today and once again indicate that we're here and available for questions if you have any.

Acting Chair Carey: While you're there, Dan, I would like to ask you a question. As I understand, the only difference we have is in the size of the No Build Zone.

Dan Cederberg: That's correct.

Acting Chair Carey: And your position is not that you need a larger amount of land because you'd need that for a home – that's not the reason you're asking for more?

Dan Cederberg: No.

Acting Chair Carey: You're asking for more because that allows for extraction of gravel?

Dan Cederberg: For building of a feature there, yes. We think that that area should be able to be considered in the future for potential extraction. Now that doesn't mean there will be extraction there. There would only be extraction after review by OPG, by Board of Adjustment –

Acting Chair Carey: Okay.

Dan Cederberg: We think that it's appropriate here; that that size of the land be available for that consideration for the future, because we think it's enough to protect the area and we also think it's reasonable, given two-thirds of the property will be excluded and one-third will be included.

Acting Chair Carey: If this was rezoned, according to the staff's recommendation, it would give you, basically, not enough land to do extraction successfully.

Dan Cederberg: That – well –

Acting Chair Carey: You could do it, but it wouldn't pay back over time?

Dan Cederberg: That's – yeah, at this point that's what we would say, correct.

Acting Chair Carey: I just wanted to understand. Thank you.

Commissioner Evans: I'd like to ask a question and it may be not answerable to either of the two Dave's or Dan. As you probably know I love water features. I'm wondering if, after the period of time when you might or might not excavate there, if that water feature would then be something that the citizens of Missoula would enjoy. Certainly I would expect that there's going to be ducks and whatever other critters take to water.

Dave Zinke: Barbara I can answer that. My name is Dave Zinke and I'm the general manager of JTL Group. We're looking into the future. I would say, if there was any sort of water feature even as there is right now on the permitted area – there's lots of ducks and geese and heron and everything else and so forth, on that and I guess that would be our intent, is this water feature would be available for habitat. I can't speak to what the company would do in the future with this property. Like I said, it's going to be a long time out here before we can even consider anything to be done with that. But with what's happening with the Target Range facility and everything else, the nature of JTL, and the community and the trails, I would have to strongly believe that this will be used for the community. I think JTL is very sensitive to the community and likes to be a part of the community.

Jennie Dixon: I would just add that the conditions of this zoning result in only two areas being accessible to the public, which is the trail along the old Milwaukee grade and the land south of the river.

Acting Chair Carey: Thank you. Would anybody else care to speak to this proposal? I'm sorry, I didn't officially open this hearing, did I? I'll do that, thank you, better late than never!

Charlie Brown: Commissioners, for the record, my name is Charlie Brown. I think most of you know that over the past several years I've worked with various open space committees and individuals to acquire open space in Missoula for our community. This particular piece I can date back to about nine years ago. We started talking to JTL and Joe Long about the possibility of donating portions of this land to us. Today I'm here to talk about this particular proviso and what it would mean to this community. Initially, JTL will be donating the property, south of the river, to the City, and designating all 24 acres of the property – the other two-thirds of the property – as a No Build Zone. I want to point out that in the applicant's proposal, there is also nothing to happen in the foreseeable future. As Dan reiterated several times, it would have the scrutiny of four agencies before anything would happen. But I want to talk about JTL and their credibility in this community, and what they have done with various parties in this community, to preserve open space and improve our community's open space that was already existing. I think it speaks to their credibility. They've donated 86.5 acres of land at Fort Missoula to the City of Missoula. I happen to be part of the team that negotiated that and we appreciate that very much. Also, they have built the soccer fields at Fort Missoula, with a royalty to the City where the gravel extracted. The estimated construction value for those fields alone is somewhere between \$2-3 million, not to mention the royalty that's been paid to the City. They volunteered, through Horace Brown some years ago, to build a milled trail system for the Equestrian Park at no cost to those participants. They built the Tower Street Park, at a cost of about \$1 million in materials extracted and taken, at no cost to the participants. They cleaned up the greatest eye-sore we had in this County on the Wheeler property, which anybody coming in from the west would have assumed that this City was much less than it was. They did free landscaping and roads at Fort Missoula for the City Parks Committee and they have consistently supplied free sand for the parks in the Linda Vista area, as well as others in this community. They have been, without a doubt, the most credible business in working with this community and preserving its open space. To me, there's no question, and what they have done, that when they say that this No Disturbance Zone will not be disturbed, they mean it, and that the pond will be constructed in a way so that it won't endanger the habitat. Now we reach a point where JTL is being asked to give up even more, more than the two-thirds they've already acquiesced to the County in this proposition. I guess my question to you would be; is it worth arguing over 5-10 acres, at the loss of losing a trail system for Missoula, the river access that we have on the Tower Street property and the donation and acquisition of 74 acres of open space? Finally, can you imagine a subdivision, or more likely a trophy home, taking up the space with an even larger water feature? Please base your decision today on how you, and you think your constituents, would envision the future landscape of Missoula. For those of us that have worked openly on open space issues, I think there is no one more credible than JTL and I would hope that you would approve as they proposed. Thank you.

Acting Chair Carey: Thank you. I'm sure Commissioner Evans would agree with me that he's accurate in terms of his recounting of JTL's contribution to this community over the years.

Commissioner Evans: I agree.

Acting Chair Carey: Anybody else? Dan, would you mind answering a few more questions? First of all, my understanding is the staff is requiring 58 acres of the parcel to be a No Build Zone and your request would be what?

Dan Cederberg: Our request would be approximately 50 acres.

Acting Chair Carey: So we're talking about 8 acres here?

Dan Cederberg: Correct.

Acting Chair Carey: Okay. I'm concerned by the concerns expressed by various agencies, for example, the Health Department is quoted as saying "that replacing riparian vegetation with a water feature would degrade the water quality functions of this river corridor riparian area." What's your response to that?

Dan Cederberg: I guess we just think that we would protect the riparian area on the property with the setbacks that we have.

Acting Chair Carey: So you'd just disagree with the Health Department's assessment?

Dan Cederberg: We do.

Acting Chair Carey: Okay. How about the concerns – did you get a copy of Jennie's report?

Dan Cederberg: No.

Acting Chair Carey: In Item 27, she says that "previous reviews of the rezoning proposals for this area have raised concerns pertaining to potential gravel extraction including the following ...." We talked about potential loss of riparian vegetation, but you disagree with that concern.

Jennie Dixon: Bill, I'm sorry, I want to make it clear that everything on the yellow sheet, every comment in there, is in the original staff report. So it's not new information.

Acting Chair Carey: Okay, right. Also there's a concern that "possible alteration to hydrology of this part of the Clark Fork River and side channels, particularly since this section of the river gains water from ground water. US Fish and Wildlife Service and US Fish, Wildlife and Parks has previously stated that any work that may alter the hydrology of the major side channel and riverine habitats should not be allowed." I've got two agencies there saying we shouldn't alter this.

Dan Cederberg: It can be altered now, the way it's zoned now, you can go put a pond in there, and before any pond would be constructed, those agencies would all have the ability to have input and there would have to be a decision that it was appropriate to do that.

Jennie Dixon: My understanding is that any extraction from this site – also let me clarify – from a zoning standpoint, extraction and mining are the same thing. I'm not sure where their distinction comes in, maybe it's industry terminology but, removing any materials from the site that requires a permit from DEQ is mining. And my understanding is the threshold for that is extraction of up to 10,000 cubic yards of material.

Acting Chair Carey: Mr. Cederberg in his earlier remarks defined mining as basically setting up and processing materials, as opposed to just extracting them and hauling them away.

Jennie Dixon: I think the site north of this site does not allow those operations; the asphalt plant and that type of thing, and that's a mining operation, from zoning's terminology.

Acting Chair Carey: Thank you.

Dave Zinke: There is a difference between mining and site grading and so forth. If we were hired by an individual to go in and landscape this property, we would not have to get any permits from DEQ or anything else, it would actually be a contract job and it would be site grading. There is definitely a difference between how you extract materials.

Dan Cederberg: I would point out that the Stahl property, which is immediately west, has a large pond on the property.

Commissioner Evans: So if I understand correctly that, extraction means that you dig in and take something out. Mining means, you dig in, you take it out, and you process it some way. Is that correct?

Dan Cederberg: That's correct.

Acting Chair Carey: I take it, Dan, that basically you disagree with our County floodplain administrator's concerns about what this rezoning would amount to.

Dan Cederberg: I guess we disagree with the fact that our proposal does not address those concerns, because we're going to have all that reviewed at some point in the future and at that point, we don't know where the river is going to be, we don't know what method of extraction there's going to be. You are not voting today to say that we can go tomorrow and start taking gravel out of there. What we're discussing today is the area that will be available for discussion, when we make a proposal.

Acting Chair Carey: I understand that, thank you. I'm just perplexed why 8 acres is such a big deal. Why is that a deal killer?

Dan Cederberg: So are we, from our perspective as to why it's – we just feel like, two reasons, basically. We're taking out 500 feet from the river and if you look at the map, the whole capture issue goes away, and we are saying that at some point in the future, we want to talk about a third of the property, and two-thirds of it is going to be gone now. It's just a situation where we think we've addressed the environmental issues and that it is a reasonable amount of the property to be considered as potentially developable in the future.

Acting Chair Carey: Do you dispute one of the conclusions here, that there will be about 100-150 truck trips per day?

Dan Cederberg: I don't know what that would mean.

Dave Zinke: Again, Commissioners, I don't think that's relevant to our rezoning request. Jensen right now has it and actually the operation in front of – to the north – at sometime be an operation in existence. This property, in the future, will not add any traffic per se to the road system. After our permitted permit is in production, yes, there probably will be, but this property in the future, if the existing traffic is there already, this won't add anything to it.

Acting Chair Carey: Thank you, Dave.

Mike Sehestedt: I just want to be clear. You basically view this site as a potential adjunct material source for the processing facilities you're going to develop immediately to the north, rather than a stand-alone operation.

Dave Zinke: That would be the economics of the deal if, in the future, the north side was depleted, possibly this material could be extracted and used in that facility. Again, we're talking years out here. The only reason we didn't go special district – we don't know techniques, we don't know how things are going to happen in the future. We don't know what the river is going to do in the future; maybe it's all washed out. We are not at a point in time right now to discuss what could happen on this property.

Mike Sehestedt: But what we are discussing right now is a proposal that you guys have agreed to, to limit use to purely extraction. So there will be extraction, not mining with the associated processing on this site, which then becomes a question of, once you've extracted the material, where do you process it at?

Dave Zinke: It would be on the north side.

Mike Sehestedt: That's kind of what I was aiming at. So essentially this would simply, if you got into using it, prolong the economic life of the facilities to the north.

Dave Zinke: That's correct. In the future of Missoula, I've stated in the past, aggregates are getting harder to find and everything else. Who knows in 30 or 40 years, how far out of Missoula aggregates will be trucked in? Again, that's going to cost more for the cities, the counties, the residents and everything else. In the future this might be a viable source, but we don't know that at this point.

Mike Sehestedt: I'm not prejudging anything; I'm just trying to get a picture drawn around what we're talking about.

Dave Zinke: That would be correct.

Acting Chair Carey: That's helpful Mike, thanks. While you're there Dave, would you add to why the 8 acres is such a deal?

Dave Zinke: I really haven't calculated it. We have our drawing there and we just looked at the feasibility. We feel really, in all honesty, we've given quite a bit here. We think we have everything protected and we think that, in the future, is a useful piece of property. We want to secure that right to have it submitted in the future. At this point, we don't feel we need to give up more than we have the right to at this point in time. Again, after the agencies, if something happens there, if plans submitted – again, we don't know what's going to happen in the future with the river corridor, and really, without going and working in the river, I don't know how it would, some of these comments, affect the area either, because it will be buffered.

Acting Chair Carey: Alright, thank you.

Commissioner Evans: I would like to point out something and ask you the question. If you're donating a piece of land that includes the railroad grade, which it shows here, and if you indeed developed the piece of land that you're requesting, it would appear to me that anybody who wanted to visit that water feature can come down the railroad grade, onto that piece of property, and enjoy that water. Am I missing something?

Dave Zinke: I think that's one of the main accesses, if that's the bike trail and everything else, and part of the features, that will be the easement and that will be a way to access the property in the future.

Mike Sehestedt: A couple of points, Barbara. At this point, the easement is exclusively the railroad grade for the trail. The fact that these are No Build Zones to the north of the river gives no right of public access. They're similar to typical private conservation easements, with JTL giving up the right to disturb them, but not giving up the right to exclude others from them. If you want to think of property rights as a bundle of sticks, they've given up the stick that says that we can play with the surface anyway we want to but they haven't given up the stick that says we can exclude people from it. South of the river, obviously if that's given to the City, the City has the whole bundle of sticks and can do whatever they want to do. I apologize for being so simplistic but it what I use when I teach the class.

Acting Chair Carey: Thank you. Would anybody else like to speak to this matter? Anyone else? Seeing no one step forward. Jennie would you like to make –

Mike Sehestedt: Can I ask Jennie a question?

Acting Chair Carey: Sure.

Mike Sehestedt: Dan has talked about the four levels of review. Basically, let me make sure I'm clear in my own mind what happens. First level is when they decide to do something here, they will make a proposal to OPG and you guys will look at it and propose conditions, is that accurate?

Jennie Dixon: I believe that was the intent of the Planning Board's Condition 6 that, at any point prior to a issuance of a zoning compliance permit, they do need to submit that plan for review and approval.

Mike Sehestedt: So that's first level review, but do you have carte blanc approval or disapproval authority or is simply your report, then, to the Board of Adjustment?

Jennie Dixon: That's a very good question. I asked that question at planning status and the applicant indicated that their perception, and I believe the way the condition is worded, allows OPG to not approve the plan, based on these six criteria, A through F.

Mike Sehestedt: This is a technical point, but I'm concerned about administrative agency plenary authority without review.

Jennie Dixon: That was my concern that I expressed to the Commissioners at planning status as well.

Mike Sehestedt: Okay. I would suspect that it needs to be addressed with right of appeal to the Commissioners or the courts. What are the standards for the next step of review, assuming we jump this hurdle or address it. So a next step of review is the Board of Adjustment, what are their criteria for determining whether or not a special exception is appropriate?

Jennie Dixon: It's in 807 of the County Zoning, which I was not able to put in my pile to haul over here this afternoon. I don't know if you all have County Zoning.

Mike Sehestedt: Colleen is going to do a ran-sack an office. Essentially those are – it's nice working here where we can just find stuff – essentially those are established criteria and they have to meet each point of that criteria to get approval. Assuming that they successfully jump that hurdle, then the next issue is a floodplain permit. Would that be the appropriate place to address questions of river channel migration and impact on the river floodplain? What's involved in that step of review?

Jennie Dixon: To my understanding the floodplain permit to authorize gravel mining is reviewed under three provisions; that there be a buffer strip of undisturbed land of sufficient width to prevent flood flows from migrating across the site, that the excavation meets all applicable laws and regulations of other local or state agencies, and that excavated material is stock piled outside of the floodway. So river capture is partly addressed in this, but I also believe that it is addressed by DEQ to some extent.

Mike Sehestedt: Right. In the sense of, from impact on the river and the floodplain in terms of that particular issue, that gets fully addressed at floodplain review.

Jennie Dixon: I don't know that for sure.

Mike Sehestedt: The question with the buffer and sufficiency and avoiding stock piling are all covered by floodplain review. What does the fourth layer, I guess is the DEQ permitting, what does that address?

Jennie Dixon: My understanding, and JTL might be able to answer this more comprehensively, but a variety of issues relating to operational plans, screening, buffering, storm drainage, hours of operation, haul roads, environmental impacts, hydrological impacts, air pollution mitigation and reclamation of the site.

Mike Sehestedt: It sounds like many of the – again, I'm just trying to figure out what's appropriate for review here at the zoning level, and given the other layers of review, which will come into play with the specific plan, how much is appropriate in the zoning decision and how much belongs in the Board of Adjustment, the floodplain permitting and the DEQ? I'm coming into this kind of cold, but it seems to me like we're extending zoning into about three other permitting processes, and I'm also concerned about purporting to divest the Board of Adjustment of some of its jurisdiction, but that's another issue. What's the issue with – why, if the specific plan is going to be reviewed for these things, do we need to address it in the zoning decision?

Jennie Dixon: Is that a question for me?

Mike Sehestedt: Yeah.

Jennie Dixon: The applicant presented conditions or covenants with the application and so the conditions of approval, in part, are reaction to that and there were quite a number of conditions proposed by the applicant that we felt were definitely much more appropriate to be reviewed and acted on by the Board of Adjustment. However, establishing parameters within which there could be no disturbance seemed to be an appropriate condition of zoning, since the 12 criteria for rezoning address those type of factors.

Mike Sehestedt: How do those factors, then, justify the reduction from their request to what staff and Planning Board recommend – applying those 12 criteria?

Jennie Dixon: You know, that was kind of lengthy in my presentation and I don't know that – I can go through and pull out a lot of those factors if that would help the Commissioners, but my guess is that that's pretty clear at this point.

Dan Cederberg: Mike, I might be able to answer that question. The reason that we proposed that is that we wanted to make it clear that this was not a carte blanc to go ahead and, at some point in the future, start extracting materials from this property. We wanted to make it clear that we were totally comfortable with review

by OPG of this project before anything else happened on it. That's why we put it in there. If it runs afoul with some procedural requirements that you think we can't include, we don't have a problem with that.

Mike Sehestedt: My belief is that when you go to the Board of Adjustment, OPG is going to review it and make recommendations. But it looks to me like the review criteria for the special exception are what the Board of Adjustment itself considers. There is a clearly defined route of appeal to the courts from that.

Dan Cederberg: Yeah. I have that in front of me and for example it does say recommendations of the zoning on it.

Mike Sehestedt: I guess what I'm concerned about is we're structuring this, or it seems like we're structuring this, so that OPG and Administrative Agency has, if you will, absolute veto power. If they say no, things stop before we get to Board of Adjustment, before we get to floodplain, and before we get to DEQ. I'm not suggesting any sort of bad faith or anything, but some of these your questions of opinion – and where I clerked once for a Supreme Court Judge and what I viewed as a reasonable exercise to the police power he viewed as a damnable taking of private properties – so there's room for significant differences of opinion.

Dan Cederberg: I guess from the applicant's standpoint, we would be willing to go with whatever levels of review that the Commissioners and the County Attorney's office feel are appropriate and legal. And if you think we need to adjust these, we have no problem.

Mike Sehestedt: I think clearly review and recommendation by OPG is required, but I guess I see it as required as part of this special exception process and not as a stand alone, independent step.

Dan Cederberg: And I agree with you there. But I would just say, applicant's willing to do both unless you feel like that's an impediment that should be reviewed.

Mike Sehestedt: I don't have an objection if the applicant's willing, we can agree to anything we want to agree to.

Commissioner Evans: But I do have a problem with it. I have a problem with turning over to an administrative office what I think should be the responsibility of elected officials. I think that they should make a recommendation to the Commissioners in the future if there's any proposal that you wish to bring, but I do not see an administrative office having the power to say yes or no. I just don't see that.

Acting Chair Carey: So, Mike, is this coming from the Planning Board's recommendation, Condition 6, which says that OPG will basically review and approve. Do we need to strike "and approval" in that first sentence?

Mike Sehestedt: I'm not sure how to rephrase it. I would think, submit to OPG, but it then goes on from that to the first review and just strike "and approval" because that whole package is going to go to the Board of Adjustment, which acts as a quasi-judicial board in reviewing these. I think, if they don't have OPG approval they may swim upstream at the Board of Adjustment, but I think to make OPG's okay a pre-requisite of their getting there is to invite future litigation.

Acting Chair Carey: I agree. Jennie, when you said that the recommended conditions were agreed upon except for the larger area, did that include the Planning Board's recommendation?

Jennie Dixon: Yes, that's my understanding. As we discussed with the applicant at planning status on Monday, they acknowledged acceptance as he has today, of Condition 6 and even acknowledged OPG's authority to review and ultimately approve or not approve such a plan. But as I indicated at planning status, if you might recall, staff did not recommend this as a condition, though it was proposed by applicant and imposed by Planning Board, for the very reasons Mike has been discussing.

Commissioner Evans: My guess is that they didn't think it though very carefully and didn't realize that approval instead of recommendation might put them in the position of having a decision by an administrative body.

Mike Sehestedt: I feel like I am probably digging up some issues, the real critical issue between applicant and Planning Board, I think, is the question of how much area is potentially subject to this review in the future.

Jennie Dixon: That would be Condition 4.b.1, and I guess Condition 4.a as well, which set those numerical setbacks, so I think what the applicant is requesting is for you to consider simply at this point, Conditions 4.a and

4.b.1, as to whether you'll go with staff's map or applicant's map or somewhere in between. All of this – if you go with staff's, then this all becomes moot apparently.

Acting Chair Carey: Okay, anything else? I'll close the hearing. Do we have any comments or further concerns or questions?

Commissioner Evans: I'm not inclined to take away from this company anything more than what they've offered. It's an extremely generous offer. The open space director, Jacquelyn Corday, has indicated that it's a very generous offer. I don't use the trails myself, but I don't wish to take away to extension of the trails nor do I wish to give up all of the things that they're offering to give. I think it's an extremely generous offer and at some point, government ought to be willing to accept what's offered and not always want to take more. I'm willing to rezone this property to the applicant's request. If you're ready for a motion, that would be my motion. But I think Colleen and Mike are going to have to help on some wording.

Jennie Dixon: I'd be happy to help you on that.

Acting Chair Carey: I think we're going to need to deal with Condition 6 from the Planning Board striking "and approval" from that.

Commissioner Evans moved that the Board of County Commissioners delete "and approval" from the first sentence of Condition 6.

Mike Sehestedt: That solves my –

Acting Chair Carey: I think it would be good to have it reviewed by OPG.

Mike Sehestedt: Oh, no, I think it's absolutely critical that OPG be involved in the review and in the recommendation process.

Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Jennie Dixon: In that condition, did you want to add US Fish and Wildlife service as another consulting review agency?

Acting Chair Carey: In consultation with City Parks and Recreation, Fish, Wildlife and Parks –

Jennie Dixon: And US Fish and Wildlife Service?

Acting Chair Carey: Yeah, that would be fine with me.

Commissioner Evans: Fine. I never make much delineation between the two in my mind –

Acting Chair Carey: Since they've been –

Commissioner Evans: Just to be clear.

Commissioner Evans moved that the Board of County Commissioners add US Fish and Wildlife Service as a reviewing agency in Condition 6. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Acting Chair Carey: Well let me just say that I for one was leaning towards not approving this application when I came in, but the applicant's persuaded me, along with the questions that the County Attorney asked in terms of the ultimate reviewing process. I think that this will be reviewed very thoroughly and so I'm willing to support a motion to approve changing the language in Conditions 4.a and 4.b.

Jennie Dixon: Third line down after the word "setbacks" of that condition.

Acting Chair Carey: Of 4.a –

Jennie Dixon: Yes, 4.a, third line down. Simply state, "500 feet from either bank of the Clark Fork River or 100 feet from the banks of any slough associated with the Clark Fork River."

Commissioner Evans: I'm uncomfortable with all these numbers. What I would prefer to say, and attorneys please help me here, is that we accept the applicant's map,

Acting Chair Carey: Would that accomplish the same thing?

Jennie Dixon: I can reword the condition to accomplish that, certainly.

Acting Chair Carey: That's Condition 4.a. Dan, you'll need to come to the mic.

Dan Cederberg: I think that what we could do was what Jennie recommended. The only addition I would have is that, one line above that, where it says, "shown on staff report Attachment R," I think we have to also change that to say, "Shown in Attachment A," which is our map, and so I think that that would then substitute the applicant's map in for the Planning Board map.

Mike Sehestedt: The way I would phrase it is to use the numerical and say something then about "as currently shown on Exhibit A attached," which would be the applicant's map. The reason I say that is because I've heard a lot a talk about the development going to occur in 10 years, 20 years, 30 years. If the river moves to the north, I want the buffer to move with it.

Dan Cederberg: We agree with that.

Mike Sehestedt: If the river moves to the south, the City can rip-rap or something to protect their open space.

Acting Chair Carey: So the applicant agrees with that?

Colleen Dowdall: I was wondering, since A requires the survey, if we could just delete A and just go with B, "the applicant shall file a development agreement enforceable ...."

Mike Sehestedt: They've taken off survey and said designate.

Colleen Dowdall: Right, or just designate. What we want is the map to be part of the development agreement, correct?

Jennie Dixon: That's correct.

Colleen Dowdall: So, for B, we want B.1 that the development agreement includes the No Build/No Disturbance Zone as shown, and that's where we would fill in whatever map it is.

Acting Chair Carey: Applicant's A-3.

Jennie Dixon: The reason that doing numerical right here on the spot is difficult, is that I would need to scale it on a drawing. I'm happy to scale it for you and put it in a condition with numerical setbacks, which I actually think is probably a good idea. But if you simply want to go with reference to A-3, then I think the motion would be clear.

Commissioner Evans: But Michael has persuaded me that if the river changes, perhaps the footage is an important thing.

Jennie Dixon: Right, which is in the bottom of 4.a? I think it is important to keep 4.a because that southern boundary could change.

Mike Sehestedt: Right. Frankly, who knows? It's been so long since we've had high water here, everybody forgets what it does to the river, but there are big changes that happen sometimes.

Acting Chair Carey: Dan.

Dan Cederberg: I think we all agree on what we want to do. But I understand the importance of the record. I happen to have, right here, a map that I could submit that we could mark however we want. Would that make things more clear? If we just want to be sure that we're all talking about the same thing.

Commissioner Evans: I think we have this one right here. It looks like the same thing that you have.

Mike Sehestedt: I think we have your Exhibit A, was attached to it.

Acting Chair Carey: I want to get back to Jennie's proposal about – do you think it's better to have the numbers based on –

Jennie Dixon: I would like to keep 4.a, simply modify it to reflect the map in Attachment A-3.

Commissioner Evans: And I have no problem with that. I just didn't feel comfortable setting numerical values when it means nothing to me.

Mike Sehestedt: I think it's appropriate to simply direct staff to approve the rezoning subject to preparation by staff of a development agreement that reflects the revised map and the agreement of the parties.

Acting Chair Carey: Okay.

Commissioner Evans moved that the Board of County Commissioners direct staff to approve the rezoning subject to preparation by staff of a development agreement that reflects the revised map and the agreement of the parties.

Acting Chair Carey: Yes, I can accept that as –

Mike Sehestedt: Staff in conjunction with the –

Acting Chair Carey: But it will come from staff? Is that alright, Dan?

Dan Cederberg: That's agreeable.

Acting Chair Carey: Okay, so that's what we'll do.

Commissioner Evans: To meet the applicant's map as presented.

Acting Chair Carey: But our staff person, Jennie, will be the one to word the condition and the applicant can take a look at it, in conjunction.

Dan Cederberg: We're agreeable to that.

Acting Chair Carey: Okay, good. Thank you. Are you prepared to –

Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Patty Rector: Were we going to keep Condition 6?

Acting Chair Carey: Condition 6 we keep but we struck "and approval" from it.

Patty Rector: What I did notice is that in Condition 6, 'e' and 'f' are identical.

Commissioner Evans: They are indeed.

Acting Chair Carey: So let's strike 'f'. Thank you, Patty. It's good that somebody actually reads. There's a motion to strike 'f'?

Commissioner Evans moved that the Board of County Commissioners delete Condition 6.f. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Jennie Dixon: What I would suggest is that given the modification to 4.a and 4.b.1, that Condition 5 be changed to delete the word "only" at the beginning of the second sentence, so that they may modify that map for other reasons beyond motorized vehicle access.

Acting Chair Carey: Okay, I'm agreeable to that.

Commissioner Evans: Is our council agreeable to that?

Mike Sehestedt: Yes.

Acting Chair Carey: Is that a motion?

Commissioner Evans moved that the Board of County Commissioners delete the word "only" from the second sentence of Condition 5. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Acting Chair Carey: Okay. Anything else? Do we have a motion coming?

Commissioner Evans moved that the Board of County Commissioners grant the rezoning as requested, subject to approval with the development agreement and the conditions as amended. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

**JTL-Mullan South Rezoning Conditions of Approval:**

1. The maximum height of any building or structure on the subject property shall be twenty-five (25) feet.
2. Prior to adoption of the zoning resolution, the applicant shall dedicate a thirty (30) foot wide pedestrian trail easement along the Old Milwaukee Railroad Grade, subject to review and approval by Missoula County Parks and City Parks and Recreation Departments and OPG.
3. Prior to adoption of the zoning resolution, the applicant shall dedicate to the City of Missoula, all land south of the Clark Fork River, subject to review and approval by OPG.
4. Prior to adoption of the zoning resolution, the applicant shall complete the following, subject to review and approval by OPG:
  - a. The applicant shall designate an area of No Build/No Disturbance as shown in Attachment A, generally according to the following numerical setbacks: One hundred (100) feet from the edge of any slough and five hundred (500) feet from the Clark Fork River or the Floodway Boundary, whichever is greater. If the floodway line is later revised by FEMA to a location north of this boundary, the map shall be so revised.
  - b. The applicant shall file a development agreement enforceable by Missoula County to include:
    1. A map of the No Build/No Disturbance Zone as shown generally in Attachment A required in 4.a above.
    2. The Riparian Vegetation Inventory as shown in Attachment B.
    3. The No Build/No Disturbance Zone shall be defined in the development agreement as follows:

“The No Build/No Disturbance Zone shall include the prohibition of all buildings, structures, fences (except for wildlife friendly fencing on the eastern and western boundaries of the property), roads, motorized vehicle access except for routine maintenance activities, parking, storage, livestock grazing or watering, or any other development. Construction and use of a non-motorized pedestrian trail along the Old Milwaukee Railroad Grade easement shall be permitted. It shall also prohibit any mining, cutting, burning or removal of live or dead vegetation (except if needed for fire prevention or noxious weed control), filling with substances such as gravel, soil, slash or other debris, or the planting of non-native vegetation such as lawn grasses.”
5. The No Build/No Disturbance Zone may be modified by the County Board of Adjustment to allow motorized vehicle access if and when a special exception may be granted for mining in a location determined appropriate during the course of their review. Such motorized vehicle access may be located along the eastern property boundary only and shall meet County standards for the intended use. Motorized vehicle access shall not be approved for areas shown on the riparian vegetation map (Attachment B) identified as Habitat Types A, B, C or E, nor shall motorized access be approved to connect to Schmidt Lane. The motorized vehicle access use shall have a maximum duration of use of five (5) years at which point it shall be removed and riparian vegetation restored to its pre-existing condition or better, subject to review and approval by OPG.

6. Prior to issuance of a zoning compliance permit, the then-owner of the property shall be required to prepare and submit a plan, including the location of any roads, to OPG for its review, in consultation with City Parks and Recreation; Montana Fish, Wildlife and Parks; and U.S. Fish and Wildlife Service. Such plan shall address and be reviewed in accordance with the following criteria:
  - a. Minimize the impact of land development on surface and subsurface water through land use allocation, performance standards and education.
  - b. Encourage continued cooperation between all governmental agencies and private organizations involved in water resource management.
  - c. Manage development of those areas identified by wildlife experts as critical to wildlife survival through adoption of sensitive lands and standards in zoning and in the subdivision regulations similar to those adopted to protect riparian areas.
  - d. Minimize the impact of land development in and adjacent to less critical areas through appropriate design.
  - e. Preserve critical plant communities such as species of limited distribution and riparian vegetation.

The intent of the plan is to design the shape, depth and location of any feature developed on the property in an environmentally sensitive way that will allow wildlife use and passive recreation use such as birding and other wildlife observation once any feature developed on the property is put into place.

**Consideration: Proposal to Amend Resolution No. 91-029 (Establishing a Tax Increment Financing Industrial District)**

Barbara Martens, Special Project Coordinator, presented the staff report.

This is to recommend that the Board of County Commissioners give notice and set a public hearing date to adopt a Resolution of Intention to modify the boundaries of the existing Missoula County Airport Industrial Tax Increment Financing District to exclude certain properties. The reason for the boundary alteration is to remove undeveloped property, which may have a more appropriate use, and to remove developed property which comprises uses not meeting the definition of secondary value adding industries. The public hearing dates would be scheduled for November 16, 2005 and November 30, 2005, if approved by the Board of County Commissioners. A handout presented shows a map of those areas for the record.

Mike Sehestedt: The problem is, as the park has developed, even though it has been generally in accordance with our master plan, we've gotten some uses, particularly along the Airway corridor, that really technically don't fit the definition of secondary value adding industry, they're more commercial in nature. Plus we have the whole, what used to be, Reserve D I believe.

Barbara Martens: Reserve B.

Mike Sehestedt: Which is the residential development. Again, on advise of bond council and good old fashion common sense, it seems appropriate to delete those from the TIF. The fiscal impact is that instead of going to the TIF, the taxes currently levied in that area will go to the various taxing jurisdiction; City, County, Schools. The impact on the TIF, we still have more than sufficient TIF revenue coming in to provide coverage for outstanding and for any anticipated bonding to be done in that district. Dale can discuss that if it's a concern.

Acting Chair Carey: Any comments from anybody? Thank you, Michael. Any comments? No comments. Okay.

Commissioner Evans: Does Mea have any questions on what we're doing and why?

Mea Andrews: I will eventually, but not right now.

Acting Chair Carey: This is a consideration and we have considered it, I think.

Commissioner Evans moved that the Board of County Commissioners approve the Resolution Relating to Missoula County Airport Tax Increment Industrial Infrastructure District; Modifying the Boundaries to Exclude Certain Parcels of Land Therefrom and Call for a Public Hearing on the Exclusion of the Property. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

**Consideration: Proposal to Create an Ordinance Establishing a Technology District – Missoula Development Park**

Barbara Martens, Special Projects Coordinator, presented the staff report.

This is to recommend that the Board of County Commissioners give notice and set a public hearing date to adopt a Resolution of Intention to Adopt an Ordinance that would Create a 31 Acre Tax Increment Technology District within the Missoula Development Park. The purpose of the Technology District is for developing infrastructure to encourage the location and retention of technology development projects in Missoula County. The public hearing dates would be scheduled for November 16, 2005 and November 30, 2005, if approved by the Board of County Commissioners. One letter of support was received for creation of this district from the Missoula Area Economic Development Corporation.

Acting Chair Carey: Any other comments?

Mike Sehestedt: I would say, just for the record, that while we're pushing this forward to get it done now because of the possibility of DirecTV, this is something that had been under consideration for some time. We think, in conjunction with our marketing people, it's both consistent with the long term vision of the park and a good idea.

Acting Chair Carey: Thank you, Michael. Do we have a motion?

Commissioner Evans moved the Board of County Commissioners approve the Resolution of Intention to Create and Calling for a Public Hearing on a Proposed Ordinance Establishing a Tax Increment Technology Infrastructure District in the County of Missoula. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Mike Sehestedt: Again, the point is, both of these, you're simply putting them up for consideration. We'll have hearings on them twice. After we've heard what everybody has to say about it, we can make a final decision.

Acting Chair Carey: Any other business to come before this Board? Seeing none, we're in recess.

There being no further business to come before the Board, the Commissioners were in recess at 3:00 p.m.