

PUBLIC MEETING – JANUARY 18, 2006

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Jean Curtiss. Also present were Commissioner Barbara Evans and Deputy County Attorney Colleen Dowdall. Commissioner Bill Carey was attending a MACo Committee Meeting at Fairmont Hot Springs.

Pledge of Allegiance

Public Comment

None

Acting Chair Curtiss announced that the Grand Opening of the Accessible Corridor between the old portion of the Courthouse and the Courthouse Annex will be held tomorrow at 3:30 p.m.

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 \$245,322.98. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Consideration: Bearfoot Estates (1 lot of 74.51 acres) – 6 miles southwest of Alberton

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

This is a proposal from David Goggs and Toni Grealy, represented by Tim Wolfe of Territorial Engineering & Surveying, for Bearfoot Estates, a one lot subdivision to create a 74.51 acre parcel from a 236.79 acre parent parcel. The property is located on the west side of Petty Creek and contains a mix of floodplain/riparian area and steep hillsides with a couple of buildable terraces west of the creek.

Petty Creek Road provides access and the driveway access to Petty Creek Road is via a bridge. The applicant is requesting variances to the road and driveway width. Public Works and staff support the variance requests. Staff supports use of the existing bridge which is less than 12 feet wide, but recommend the driveway be built to standards in the Subdivision Regulations, as shown in Condition 1. The condition also requires any bridge to be able to support emergency vehicles. It is currently an old rail car.

Since it is customary to use an existing access point on a public road, and not create a new one, staff recommends a No Access Strip on the plat in all locations but the existing driveway and creek crossing, as shown in Condition 3. The new driveway location is unknown, but staff recommends that the maintenance needs of the shared driveway be specified to include snow removal, etc., in Condition 2.

Staff is recommending a \$530 per new lot fee for fire service per Frenchtown Rural Fire District comments. It is also recommended that a \$200 wildfire fuel mitigation fee be paid as part of the fire safety permit process as a deposit. Frenchtown Rural Fire would later come to the property and create a cleared perimeter around the homesite. It is recommended that Wildland/Residential Interface guidelines be added to the covenants. It is recommended that fire sprinklers or 1,000 gpm water supply per Frenchtown Rural Fire, with this information be contained in the covenants.

This portion of Petty Creek is not within a FEMA floodplain, but this property could be subject to flooding. A HEC-RAS flood study is recommended by FEMA and Montana DNRC for 100 year flood elevation analysis. Staff is recommending a study that would identify the 100 year floodplain for Petty Creek. A note on the plat and in the covenants stating that the lowest floor elevation of any house be 2 feet about the 100 year floodplain elevation is required by Condition 10.

The Floodplain Administrator also recommends a note on the plat if the bridge elevation is less than the 100 year floodplain elevation. This note would warn of bridge inundation during a flood event.

There is an Area of Riparian Resource on this property which is described in a Riparian Resource Management Plan. In order to minimize its disturbance, staff recommends a condition restricting creek crossing to the current location. Amendments to the covenants are being recommended per Fish, Wildlife and Parks comments, mostly related to Bighorn and domestic sheep and animal grazing in the riparian area.

Based on Planning Status discussion, possible amendments to Conditions 3, 5 and 11 and an additional condition to clarify the No Improvement Zones on the property have been submitted on a memo on blue paper from Tim Worley dated January 18, 2006. It should be noted that the conditions are mis-numbered in the staff report and there are two Condition 11's.

Acting Chair Curtiss: So that number 13 on the blue memo is a new one?

Tim Worley: Correct, that's a brand new condition.

Acting Chair Curtiss: With renumbering, that number will change. Just one question in regard to the domestic sheep. I know that Fish and Wildlife have talked to us about this before, that domestic sheep in the area could actually kill off the Bighorn sheep herd that's up there. Is there anything in the covenants to say they couldn't change that particular covenant without Fish, Wildlife's permission?

Tim Worley: Well, I think – Colleen, could you speak to that as far as having Fish, Wildlife and Parks oversee their portion of the covenants, so to speak. I think we've gotten away from that, haven't we?

Colleen Dowdall: I don't think so, but Jean are you asking whether the covenants say that the applicant may not change that condition?

Acting Chair Curtiss: That particular condition without permission.

Colleen Dowdall: The restriction against domestic sheep without permission of the Commissioners. I think it is included.

Acting Chair Curtiss: Or the permission of Fish, Wildlife and Parks, whichever.

Commissioner Evans: I think that it would work better if we said "of the Commissioners" because we would, no doubt, include Fish, Wildlife and Parks, but I don't know that they particularly want to be subject or party to covenants. I don't remember what our discussion with them was.

Tim Worley: I'll read a condition that I think probably addresses this issue. It's the second Condition 11 on the bottom of Page 5 in the staff report: "The covenants shall be revised to state that sections regarding noxious weeds, driveways, address signs, water supply for firefighting, radon, floodplain, the Riparian Resource Management Plan, animals, waste materials, etc., etc., Living with Wildlife ... shall not be amended or deleted without governing body approval." I think that might address, they would actually have to come before you to get rid of the section that deals with domestic sheep.

Commissioner Evans: Is the developer or their representative ready to present?

Tim Wolfe: I'm Tim Wolfe with Territorial Engineering and Surveying, representing the Goggs. Tim did a good job here, we don't have any problems or anything to add. I guess I would like to defer to Colleen, do we need to move for these amendments or changes on the blue memo?

Colleen Dowdall: No, what they are, I think, is if the Commissioners choose to make those changes, that would be part of their motion. You can tell us whether you like them or not.

Tim Wolfe: We like them. We're in full support of the blue memo.

Tim Worley: On thing I forgot to point out is there's findings of fact that support these changes on the back of the blue memo.

Tim Wolfe: We're here for questions if you have any.

Acting Chair Curtiss: Thank you Tim. This is a consideration, not a hearing, but we would accept public comment if there's anyone who wanted to make comment or ask questions about this consideration. One of the reasons that the Commissioners, at our Planning Status meeting, decided that the 1 Foot No Access Strip on Petty Creek might not be needed is because our Conservation District does such a good job of evaluating, they know that information a lot better than we do. If there's no one coming to the mic, I guess we're ready for a motion.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(1)(I) of the Missoula County Subdivision Regulations requiring a 12 foot driveway width, based on the findings of fact and conditions of approval in the staff report; and approve the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations to permit a 19 foot road width for Petty Creek Road, based on the findings of fact in the staff report. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners accept the changes to the conditions as listed on the memo on blue paper dated January 18, 2006 from Tim Worley: delete Condition 3, amend Condition 5, delete Condition 11 (the first Condition 11 listed in the staff report) and add Condition 13, based on the amended findings of fact. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the Bearfoot Estates Subdivision, based on the findings of fact in the staff report and subject to the conditions as amended, with renumbering to occur as necessary. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Bearfoot Estates Subdivision Conditions of Approval:

Driveway

1. Plans for driveway improvements accessing Lot 1 of Bearfoot Estates shall be reviewed and approved by the Frenchtown Rural Fire District prior to final plat approval and shall address: Construction of a 12 foot driveway surface with a horizontal clearance of 20 feet and a vertical clearance of 13 feet 6 inches not exceeding 8% grade; Construction of turnarounds for fire apparatus; and Engineered plans showing that any bridge structure supports the weight of emergency equipment in all seasons and weather conditions. The requirement for the driveway and bridge construction shall also be included in the restrictive covenants, subject to review and approval of OPG prior to final plat approval. *Subdivision Regulations Articles 3-2(1)(I), 3-2(10)(E) and Frenchtown Rural Fire District recommendation.*
2. 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)(I)(iii) and OPG recommendation.*

Fire Protection

3. The developer shall contribute \$530 per lot to the Frenchtown Rural Fire District to mitigate the impact of the subdivision on the fire district. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*
4. The developer shall contribute a \$200 fuel mitigation fee to the Frenchtown Rural Fire District. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Articles 3-1(1-2), 5-3(5)(J) and Frenchtown Rural Fire District recommendation.*
5. Wildland/Residential Interface Vegetation Reduction Guidelines shall be added to the restrictive covenants, to be reviewed and approved by OPG prior to final plat approval. *Subdivision Regulations Appendix VIII and Frenchtown Rural Fire District recommendation.*
6. A residential fire sprinkler system, meeting NFPA 13D standards with attached modifications permitted by the Frenchtown Rural Fire District, shall be installed within any new home. In the alternative, a 1,000 gpm water supply with two-hour storage or automatic starting generator or pump that will provide continuous system operations shall be installed for purposes of fire protection prior to home construction. The choice of water supply is subject to review and approval by the Frenchtown Rural Fire District prior to final plat approval. The language of this condition shall be included on the plat and in the restrictive covenants, subject to review and approval of OPG prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*

Floodplain

7. 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 structures shall be located below this elevation or in the 100 year floodplain. This information shall be included on the plat and in the restrictive covenants, subject to review and approval of OPG prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B), 4-1(12), Floodplain Administrator and OPG recommendation.*

8. If it is determined that the bridge over Petty Creek on this property would be inundated in a 100 year flood event, a note shall be placed on the plat and in the covenants indicating the bridge would not be passable, with wording to be reviewed and approved by OPG prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*
9. 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 lowest floor and all mechanical duct work a minimum of 2 feet above the 100 year flood elevation." *Subdivision Regulations Articles 3-1(1)(B), 4-1(12), Floodplain Administrator and OPG recommendation.*

Covenants

10. The covenants shall be revised to state that sections regarding noxious weeds, driveways, address signs, water supply for firefighting, radon, floodplain, the Riparian Resource Management Plan, animals, waste materials/junk/garbage, Living with Wildlife, fuel management/defensible space and vegetation, shall not be amended or deleted without governing body approval. *Subdivision Regulations Article 5-3(5)(T)(x) and OPG recommendation.*
11. The covenants shall be amended as follows:
 - a. The last sentence in Section 4 of the covenants shall read as follows: "... therefore the Missoula City-County Health Department recommends that all new construction incorporate passive radon mitigation systems radon resistant construction features."
 - b. 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.~~"
 - c. 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 or facilities shall be developed outside of the creek and designated riparian areas."
 - d. Part B of Section 11 of the covenants shall read as follows: "Driveway ~~unobstructed~~ constructed to 12 feet wide, not to exceed 1,000 feet long."
 - e. Part C of Section 13 of the covenants shall be eliminated.
 - f. Replace Section 16 with the following:

Living with Wildlife

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, fruit trees and/or orchards** can attract wildlife such as bear and deer. Fruit bearing trees and shrubs are strongly discouraged in this subdivision because they can regularly attract bears in the fall. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or 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. Keeping pets confined also helps protect them from predatory wildlife. 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** – including those kept as 4H project animals – 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 Articles 3-1(1)(D), 3-2(1)(I) and Fish, Wildlife & Parks recommendation.*

12. The No Build Zone portion of the legend on the plat shall be changed to read “25% slope or greater – No Improvement Zone for residential structures” and “Riparian Area – No Improvement Zone for residential structures.” These requirements shall also be specified in the protective covenants. *Subdivision Regulations Article 3-1(2), 3-13(4) and OPG recommendation.*

Hearing: Lehman Addition, Lot 2 (2 lots on 15.43 acres) – Lehman Lane, off Miller Creek Road

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

This is a proposal by Cheryl Lehman, represented by Tim Wolfe of Territorial Engineering & Surveying, Inc., for a subsequent minor plat of Lot 2 of Lehman Addition, which was approved in 1999. Lot 2 is 15.43 acres in size and is proposed to be divided into two lots. Lot 2A is 8.24 acres and Lot 2B is 7.19 acres. There is an existing home on proposed Lot 2B. The property is outside the County Urban Growth Area boundary, but inside the County Air Stagnation Zone. Miller Creek flows through the northern end of the property. Much of the southern area contains slopes over 25%. Both lots will be served by individual wells and septic systems.

The property is located on Lehman Lane, just off Miller Creek Road, approximately 3.5 miles from the intersection of Highway 93 South and Miller Creek Road. The property is accessed from Lehman Lane to Miller Creek Road, a public road paved to 24 feet within a 60 foot County maintained right-of-way. Lehman Lane is a private gravel road within a 30 foot private access and public utility easement.

The property is partially zoned C-A3, Residential – one dwelling unit per 5 acres, and partially unzoned. The applicable Comprehensive Plan is the 1997 Miller Creek Area Comprehensive Plan, which designates the property three ways: 1) Parks and Open Space designation follows the Miller Creek floodplain at the northern end of the site; 2) Open and Resource – one dwelling unit per 40 acres – designation for the more remote, steep sloped areas in the southern end of the site; and 3) Residential – one dwelling unit per 5 acres – designation for the area between the Miller Creek floodplain and the steep slope areas of the site.

The proposed subdivision does not comply with the Comprehensive Plan’s recommended land use density for this area. The overall recommended number of units for the parent parcel (Tract A of COS 4103) is three units, based on consideration of the land uses from the 1997 Miller Creek Plan. This includes consideration of no development within the 3.7 acres of Park and Open Space land use, approximately 10.52 acres of Residential – one dwelling unit per five acres, yielding two potential units and 6.03 acres of Open and Resource area, yielding one potential unit. Three units have already been established on that parent parcel, including the existing house on the proposed Lot 2B.

The subdivision complies with objectives of the plan to retain the rural character of the area and to develop areas outside of the floodplain and steep slopes areas on the hillsides. Conditions of approval requiring protection of riparian area brings the subdivision closer to compliance with the objectives of the Miller Creek Plan.

Planning Board reviewed this subdivision on January 3, 2006, and worked their way through the conditions, adding Condition 1 and Condition 19. Planning Board also amended Condition 10 and recommended approval of the amended conditions as follows:

- Condition 1 was added by Planning Board and requires the unzoned portion of Lot 2 Lehman Addition be rezoned to C-A3, prior to final plat approval.
- Condition 2 requires the surface width for Lehman Lane to be increased to 18 feet, with 20 foot unobstructed horizontal and 13 foot 6 inch vertical clearance from Miller Creek Road to the southern edge of the driveway for Lot 1, Lehman Addition, prior to final plat approval. The Missoula Rural Fire District commented that the road beyond the first house on Lehman Lane has only ten feet of travel surface with no shoulders. Fire code requires 20 feet of horizontal clearance and 13 feet 6 inches of vertical clearance for access to the property.
- Condition 3 requires the applicant to contribute \$1,800 per new lot to the Miller Creek Transportation Mitigation Proposal.
- Condition 4 requires a street sign for Lehman Lane conforming to the Manual on Uniform Traffic Control Devices be provided for emergency response, address signage and road signage to be reviewed and

approved by the Missoula Rural Fire District, and the Development Covenants be amended to include the approved signage plan.

- Condition 5 requires the Development Covenants be amended to include the Missoula Rural Fire District driveway requirements and that driveways in excess of 150 feet in length must be approved by the Missoula Rural Fire District.
- Condition 6 requires installation of interior residential fire sprinklers in each new home and that the Development Covenants be amended to include this requirement.
- Condition 7 requires an RSID/SID waiver statement for a public water system for fire protection be placed on the plat.
- Condition 8 requires a 20 foot irrigation ditch easement be shown on the face of the plat in the location of the irrigation ditch which crosses Lots 2A and 2B. Lots 2A and 2B both have access to the irrigation ditch. The easement is required for the ditch company to have access to maintain the ditch.
- Condition 9 requires the Development Covenants be amended to include a section titled Weed Control, requiring lot owners to maintain their lot in compliance with the Weed Control Act, the Noxious Weed Control Management Plan and the revegetation plan approved by the Missoula County Weed District, appended by reference to the Development Covenants.
- Condition 10 requires Section III of the Development Covenants be replaced with a revised section which supplements the Riparian Management Plan filed with Lehman Addition and incorporates recommendations from Montana Fish, Wildlife and Parks and attaches Appendix V of the Missoula County Subdivision Regulations as Exhibit 1. Planning Board voted to amend this condition to restrict livestock in the Riparian Area to an area no closer than 50 feet of the centerline of the creek by erecting a fence. Staff has amended #3 under "Low-impact Use of the Riparian Area" and the "Restoration of the Riparian Area" sections of the Riparian Resource Management Plan in Condition 10 to incorporate Planning Board's recommendation.
- Condition 11 requires the applicant petition into the Missoula Urban Transportation District.
- Condition 12 requires all areas with slopes greater than 25% be designated No Build Zone (25% slope or greater) on the plat. Per the Drainage Site Plan Map provided by the applicant, some areas in the southeastern corner of Lot 2B appear to have slopes greater than 25% and are not designated as No Build Zone (25% slope or greater) on the plat.
- Condition 13 requires the effective date of the FIRM be added to the floodplain notation on the plat.
- Condition 14 requires a note addressing the floodplain access per Floodplain Permit #2000-14 be added to the plat and the Development Covenants.
- Condition 15 requires the Development Covenants be amended to include the requirement for pre- and post-construction elevation certificates.
- Condition 16 requires the Development Covenants be amended to state the new covenants supplement the original covenants for Lehman Addition.
- Condition 17 requires the Development Covenants be amended to include a section on Radon Mitigation as recommended by the Health Department.
- Condition 18 requires the Development Covenants be amended to include a section on Amendments stating which sections of the Development Covenants may not be changed or deleted without governing body approval.
- Condition 19 was added by the Planning Board and requires the Development Covenants be amended to limit each lot to one single family dwelling.

Planning Board reviewed the variance requests and recommended the following: A) Conditional approval of the request to vary from the 24 foot surface width standard to permit an 18 foot surface width for Lehman Lane from

Miller Creek Road to the southern edge of the driveway for Lot 1, Lehman Addition; and B) approval of the request to vary from the requirement to provide internal pedestrian connections.

Planning Board recommended approval of Lehman Addition, Lot 2 based on the conditions of approval as amended by Planning Board and the findings of fact in the staff report. Based on discussion at Planning Status, a memo with possible amendments or deletions to the conditions is attached, on orange paper, dated January 17, 2006.

Acting Chair Curtiss: Thank you Mary. Would the developer or their representative like to present.

Tim Wolfe: Tim Wolfe with Territorial Engineering and Surveying. We don't have anything to add. Mary obviously did a lot of work on this one, with all 18 conditions. We're in support of the possible amendments. Hope you'll consider those. Cheryl Lehman, the owner, is here if you have questions for her and it looks like there's a contingency of neighbors here also, so we'll be here for questions.

Acting Chair Curtiss: Thank you Tim. This is a public hearing so I'll open it officially for public comment. Is there anyone who would like to make comment? Don't be shy, just come up and state your name for the record.

Bill Nolan: Bill Nolan. We are neighbors of Cheryl and we live on Lot 1, so we border the property and I guess, two concerns, and I didn't see the orange sheet, but a couple of our concerns are, #1, if it's going to be required to pave the road from where the pavement ends right now, just 30 feet off of Miller Creek back to what would normally be our driveway, the south end of our driveway, or how far down does that go?

Acting Chair Curtiss: Okay, I don't believe we're requiring paving, right?

Commissioner Evans: Yes I do believe we are.

Bill Nolan: See, it looks like in this report that the Health –

Acting Chair Curtiss: The Health Department may require paving of the driveway because it's in the Air Stagnation Zone, when they come and apply for the permit for septic, but I don't think – Colleen?

Colleen Dowdall: I also thought that the Health Department might define this as a road, a new road, because now it serves more than two lots, but the Health Department has their own process and we don't have anything to do with that.

Acting Chair Curtiss: But as part of the subdivision approval, we're not requiring paving, right Mary?

Mary McCrea: Right. Basically, it's an off-site road greater than 500 which isn't uniquely attributable to these two new lots, so it's not required to be paved, but as part of the agency review, the Health Department did state that they'll require a permit and that all new roads built in the Air Stagnation Zone are required to be paved, per Health Department regulations, so not Subdivision Regulations, but Health Department regulations.

Bill Nolan: So is that something that we would have to go through the Health Department to – or is it something they will require as part of the –

Acting Chair Curtiss: They will require it, the applicant will also have an opportunity to ask for a variance. If it's granted, the variances are usually granted for 6 months and can be renewed once and you have to prove you're working toward accomplishing it or there's some other factors involved.

Bill Nolan: So, based on what we're here for today, the variance is to not pave it, and I guess we would certainly be opposed to that, not only because of the dust, certainly, I'm sure that's part of the Health Board's concern, but, you know, in our case in particular, we got four little children, aged 10 and under, and the driveway goes, or the roadway in goes right past the end of our driveway and certainly, that's a major concern for us.

Acting Chair Curtiss: Right, and we aren't granting a variance on paving. We aren't requiring it to be paved, but they didn't have to ask for a variance because our Subdivision Regulations allow, because it's an off-site road – if this road was all on their property, and it's in the Air Stagnation Zone, we might have looked at it differently, but it's not.

Commissioner Evans: What they're asking is to allow a narrower road.

Bill Nolan: Okay, and then the other issue, and maybe I'm just not clear on that either, but it talks about the Riparian Zone. There was some notes about the Riparian Zone, each owner being responsible on the restoration of Riparian Zone, planting of new riparian vegetation is encouraged but shall not be required. I'm not sure, but that seems to conflict with the original subdivision, where the Riparian Zone or the maintenance called for specific planting of native grasses, willows and cottonwoods, from the original subdivision for the Lehman Addition.

Acting Chair Curtiss: Mary, would you like to address that?

Mary McCrea: Yes, the original Lehman Addition has a planting plan and as part of this subdivision, the applicant requested the planting plan be eliminated for Lehman Addition Lot 2. So, Fish, Wildlife and Parks commented in two ways. Mack Long commented that if the goal of the Riparian Resource Management Plan were to allow the creek to function naturally and perhaps to even improve the riparian vegetation in the creek vicinity, then we would recommend not allowing livestock use of the riparian area and not allowing livestock watering in the creek, and he commented further that the riparian area guidelines that include no livestock use, no mowing, etc., in the riparian area could be more effective in enhancing the natural development of the riparian area than planting trees or shrubs, especially non-riparian vegetation such as Spruce trees. A letter from the applicant that requested not to have the planting plan said that she'd attempted to plant Spruce trees and they died, although the planting plan actually required willows and cottonwoods and riparian vegetation, but based on the recommendation of Fish, Wildlife and Parks, they essentially said that keeping the livestock out of the riparian area would be more beneficial than planting, and so that was the recommendation we went with in the new Riparian Plan, but what we did in the Request for Commission Action, it outlines, essentially, we recommended under that condition pretty much replacing the Riparian Management Plan for Lot 2A and Lot 2B, the new lots, that addresses a little more completely other things like the location of the new driveway, preventing side casting material for the construction of that driveway, and then within that, it says there's no planting, but there also – you had to keep livestock out of the riparian area. Planning Board revised that and they said that they would prefer that livestock only be kept out of, from the centerline of the creek, back 50 feet, rather than the whole riparian area, which is currently designated as a floodplain, and this is sort of difficult, usually riparian areas are defined based on vegetation, but because there isn't any vegetation, because it's overgrazed, it's being defined as the floodplain and so, perhaps if the – I think Fish, Wildlife and Parks recommendation was if you fence them out of that area, then the vegetation will have a chance to grow back on its own, so fencing the animals out rather than the planting plan.

Bill Nolan: And I'd certainly agree, I think keeping the livestock off certainly would make a difference as evidenced by our neighbors property that don't have livestock, where there's a very healthy riparian zone, but I guess, going back to the original subdivision, there's really been very little effort made to plant, although there was some this summer to restore that area through the original subdivision. I guess I'd like to see if we couldn't maybe do some combination of certainly keeping livestock off but also doing some of the planting to help it come back even quicker, it's just per the original subdivision approval. That's all I have.

Acting Chair Curtiss: Thank you. So, Mary, was the original – in the original subdivision was this lot that we're now considering dividing the only one that had the riparian area on it?

Mary McCrea: No, Lot 1 also has riparian area on it, it appears through the planting plan, though, that the riparian planting was on Lot 2, on that side, and there is an exhibit in the existing covenants that shows what the planting was supposed to be and it was supposed to happen – let me find it here, there we go – a portion was supposed to be planted – let's see here if I can find it – okay and I'm sorry, I didn't bring my reading glasses, so let me see if I can get it far enough away – that 20 foot wide area of native willow and cotton planted in the year 2000 at 100 foot intervals along the stream thread and 20 foot wide area of native willow and cottonwood planted in the year – well, it looks like they're both 2000, but I thought it was two years apart, and you can see, these dots represent the planting that were proposed. Long Range did recommend both, they recommended that the planting happen and the livestock be fenced out. Fish, Wildlife and Parks didn't recommend that and we just sort of took the balance.

Colleen Dowdall: This is one part of our regulations where we rely, in part, on what the developer offers because our riparian regulations only protect existing areas of riparian resource. This area had no riparian resource on it when it was initially subdivided. It was important to try and convince the developer to create an opportunity for some riparian vegetation to re-establish itself. I think that the efforts at planting weren't effective but with the fencing out of the livestock, which I've also told you in the past, we are on very shaky ground telling anyone that they can't use their land for any agriculture, keeping of animals, that State law simply says that we can't limit that use, but that this is something the developer is willing to do and Fish, Wildlife and Parks, I believe, or maybe it was the developer has mentioned to us that this area of Miller Creek is now carrying more water because it's

being used less by the Maloney Ranch, so having that additional water is also going to help to establish riparian vegetation.

Mary McCrea: Well, I was just going to say, is, also, with the first subdivision, I think the applicant proposed the planting plan because they didn't want to fence livestock out, so in reviewing the minutes, it looked like, well, if they were willing to fence the animals out rather than planting, it would have met the same standards as before.

Colleen Dowdall: Correct.

Acting Chair Curtiss: Any other comments?

Nick Mostad: Hi, I'm Nick Mostad and I border the property for 500 feet to the east. My concern is paving the road, keeping the dust down. With two more homes going in there, that will be 5 homes on that particular driveway and I guess that's my biggest concern. Do I understand, Mary, that they are going to zone that to C-A3 now in the back where it's not zoned.

Mary McCrea: That was a recommendation from Planning Board but there was some discussion at Planning Status that that was not something that we were going to do.

Nick Mostad: I guess my concern with that is that being it's unzoned and a developer with a lot of money could come in and work the system and put more than two homes back there, I guess I don't know what would stop them from that. That's my concern.

Acting Chair Curtiss: They would have to go through subdivision review again.

Nick Mostad: Right, but being it's unzoned, nobody has control of that. I mean, if we did zone it now, we would have more control of it.

Acting Chair Curtiss: I think our attorney had some advice to us that we were considering. The unzoned being zoned is part of the proposal, it's something we're going to be discussing, deciding here today. Colleen?

Colleen Dowdall: Right, the Commissioners have not made a decision. They cannot zone it today, there has to be separate notice and hearing, but we also cannot require that someone zone their property without their permission. Everyone has a right to protest zoning, it's a property right, and we can't require that someone give that up. So, I have advised the Commissioners that we would be exceeding our authority – or they would be exceeding their authority – if they required, as a condition of subdivision approval, that this land be zoned. I also think there are lots of restrictions on the land that is unzoned that preclude it from being developed. For one, the Comprehensive Plan recommends, I believe, one per 40 as a development density. C-A3 allows one per five. This property, total, has used up its density for the number of acres and it will be four homes, I believe, won't it, just be four homes on the property, not five.

Mary McCrea: On the original parent parcel, right?

Colleen Dowdall: Right.

Nick Mostad: On the original piece, there's three now.

Colleen Dowdall: And there'll be one added.

Nick Mostad: Just one on these two lots?

Acting Chair Curtiss: One has a house on it.

Nick Mostad: Okay. I guess that's my concern, is just the driveway, and my big concern, and not being able to develop more back in that area was one of my concerns, so.

Colleen Dowdall: So that's the advice I have given the Commissioners.

Nick Mostad: Great. Thank you.

Acting Chair Curtiss: And the orange sheet that we're looking at today does address that the development covenants – it's just changing the language a little bit to say the same thing in a better way – "It shall be amended to reflect the statement in the application that no more than one single family dwelling is permitted on each lot" – so that means there will only be one new house. Anyone else that would like to make comment? When I close the hearing, you don't get a chance. Okay, I'll close the hearing.

Commissioner Evans: Colleen, the staff recommendation, conditional approval means we approve it but it's still subject to the Public Works Department, or what does conditional refer to here?

Colleen Dowdall: In which condition of approval.

Commissioner Evans: The varying from the private road surface, the width of the surface. I want to know why we're using the word "conditional" approval here.

Mary McCrea: Basically, they are requesting not to widen it at all, just to leave it as is, and because of Missoula Rural Fire District's recommendation, we're saying you don't have to improve it to 24 feet, but you have to improve it to 18, because Missoula Rural Fire said the access wasn't good enough at this time, and 18 feet is what Erik Dickson with Public Works has said, if they are going to widen it, that's the minimum they would want for safe access for two cars to pass one another.

Commissioner Evans: Then why wouldn't we just say that instead of conditional approval?

Mary McCrea: Well, because, essentially we're not approving the variance because they wouldn't have to do anything and we're not denying it.

Colleen Dowdall: We've done it various ways over time and it depends on how the question is posed to us. If the question is, can I have a variance from 24 feet to 12 feet, then the answer would be either no, or you could have a variance, but the condition is that you build it to 18 feet, 12 feet is too narrow. So they're still getting a variance but it's conditioned upon a greater improvement width.

Commissioner Evans: Thank you. And that satisfy the Rural Fire.

Acting Chair Curtiss: Okay, so the ones that the Planning Board did, was Condition 1, that was requiring it to be zoned which Colleen says we can't do through this process.

Curt Belts: Curt Belts, Assistant Chief, Missoula Rural Fire District. We can live with the 18 foot roadway. Not ideal, but we can live with it and I've been out there and it would be tough to get it much wider than it is, I understand that, so we can live with it. It will barely pass a fire engine and a car, but we'll make it work.

Commissioner Evans: I'll bet if a car sees the fire engine coming, they'll pull over.

Curt Belts: Well, that doesn't always work, Commissioner. You'd like to believe that, but it doesn't always work.

Acting Chair Curtiss: Thank you Mr. Belts.

Acting Chair Curtiss: Okay, and then let's see, 19 – 19 is there. So the orange sheet added that we would – that the road signs would be subject to review and approval by Public Works and I already read the one about one single family dwelling per lot. So, the one's at the bottom, Number 11, is all new.

Mary McCrea: That was just an added finding.

Acting Chair Curtiss: Okay, these are the findings. Okay, got ya. Okay, so I guess we're ready for a motion if we don't have any more questions.

Commissioner Evans moved that the Board of County Commissioners conditionally approve the variance request from Section 3-2(1)(l) of the Missoula County Subdivision Regulations which requires a 24 foot surface width for private roads to permit a 12 foot surface width for Lehman Lane, to permit an 18 foot surface width for Lehman Lane, based on the findings of fact set forth in the staff report. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections and pedestrian connections to school bus stops and adjoining neighborhoods, based on the findings of fact set forth in the staff report. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners accept the deletion of Condition 1 and amendments to Conditions 4 and 19 as shown on the memo from Mary McCrea (on orange paper) dated January 17, 2006, based on the revisions to the Findings of Fact and Conclusions of Law as listed, and renumber the conditions as necessary. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the Lehman Addition, Lot 2 Subsequent Minor Subdivision, based on the recommended conditions of approval as amended and the findings of fact in the staff report and as revised. Acting Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Lehman Addition Lot 2 Subdivision Conditions of Approval:

Roads and Driveways

1. The surface width for Lehman Lane shall be increased to 18 feet, with 20 foot unobstructed and 13 foot 6 inch vertical clearance from Miller Creek Road to the southern edge of the driveway for Lot 1, Lehman Addition, prior to final plat approval. Engineering plans for the road improvements shall be reviewed and approved by County Public Works and Missoula Rural Fire District. *Subdivision Regulations Article 3-2(1)(I) and Missoula Rural Fire District recommendation.*
2. The applicant shall contribute \$1,800 per new lot to the Miller Creek Transportation Mitigation Proposal in order to address off-site impacts to the Miller Creek Road/Lower Miller Creek Road intersections. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 3-1(14) and Missoula County Public Works recommendation.*

Fire

3. A road or street sign identifying Lehman Lane for emergency response shall be provided and shall conform to the Manual on Uniform Traffic Control Devices (MUTCD), current edition, subject to review and approval by Public Works. Plans for address signage for each property and road signage shall be reviewed and approved by Missoula Rural Fire District prior to final plat approval. The Development Covenants shall be amended to include the approved address signage plan, subject to review and approval of OPG, prior to final plat approval. This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations 3-2(2)(F) and Missoula Rural Fire District recommendation.*
4. The Development Covenants shall be amended, to include the following requirement, subject to review and approval of OPG, prior to final plat approval: "Driveways in excess of 150 feet in length must be approved by Missoula Rural Fire District and shall incorporate a turnaround for fire apparatus at the terminus of the driveway. The driveway must provide a minimum of 12 feet of surface width, 20 feet unobstructed width and 13 feet 6 inch vertical clearance the length of the driveway. The surface of the driveway must be engineered to support the weight of emergency equipment in all weather conditions." This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-2(10) and Missoula Rural Fire District recommendation.*
5. Installation of interior residential fire sprinklers that meet NFPA 13D standards are required in each new home for the purposes of fire protection. The Development Covenants shall be amended to include the requirement, prior to final plat approval, as follows: "Each new home shall install interior residential fire sprinklers meeting NFPA 13D standards. Installation is subject to the review and approval by the Missoula Rural Fire District. Failure to install residential sprinklers in any new home may subject the entire subdivision to the cost of installation of a shared water source for fire fighting purposes." This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations 3-7(1)(E) and Missoula Rural Fire District recommendation.*
6. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision constitutes waiver of the right to protest a future RSID or SID for a public water system for fire protection, based on benefit. The waiver shall run with the land and

shall be binding on the transferees, successors and assigns of the owners of the land.” *Subdivision Regulations Article 3-7(2)*.

Easements

7. A 20 foot irrigation ditch easement shall be shown on the face of the plat in the location of the irrigation ditch which crosses Lots 2A and 2B, subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 5-1(4)(J)*.

Weeds

8. The Development Covenants shall be amended, to include the following section, subject to review and approval of OPG, prior to final plat approval: “Weed Control- The owner of each lot is responsible for control of noxious weeds and the vegetation thereon, in compliance with the Montana County Noxious Weed Control Act, the Missoula County Noxious Weed Control Management Plan and the revegetation plan approved by the Missoula County Weed District, appended by reference to this Development Covenant. Owners shall revegetate any ground disturbance created by construction or maintenance with beneficial species at the first appropriate opportunity after construction or maintenance is complete.” This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed Board recommendation*.

Riparian Resource Management Plan

9. Replace Section III of the Development Covenants with the following and attach Appendix V of the Missoula County Subdivision Regulations to the Development Covenants as Exhibit “1” subject to review and approval by OPG, prior to final plat approval. This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-1(10) and Montana Fish, Wildlife and Parks recommendation*.

III. Riparian Resource Management Plan

Introduction:

This plan supplements the Riparian Management Plan filed with Lehman Addition for riparian areas located on Lot 1 and Lot 2 of Lehman Addition. See the existing Riparian Management Plan map, filed as Exhibit ‘A’ with Lehman Addition. This supplement to the Riparian Management Plan applies to Lot 2A and Lot 2B of Lehman Addition, Lot 2 Subdivision, formerly referred to as Lot 2 of Lehman Addition.

The Riparian Resource Area is designated on the plat and Riparian Management Plan Map as “100 year Floodplain per FIRM Panel #30063C1470D/Riparian Resource Area/No Build No Improvement Zone.” Within the Riparian Area there shall be no changes to the topography or to the vegetation except for proper maintenance to remove weeds. There shall be no construction of buildings, wells or drainfields.

Access To or Through the Riparian Area:

An existing driveway constructed to Lot 2 Lehman Addition crosses Miller Creek and the riparian area. No new construction of roads/driveways shall be permitted in the Riparian Area. Outside of the existing driveway easement, no vehicular access is permitted. Access to or through the area is permitted via pedestrian traffic.

The driveway located south of the Riparian Area, providing access from Lot 2B to Lot 2A, shall be located far enough south to prevent sidcasting of material into the Riparian Area during construction of the driveway. The Riparian Area shall remain undisturbed. There shall be no alteration to the topography or the vegetation in the Riparian Area as a result of the driveway construction.

Low-Impact Use of the Riparian Area:

The following guidelines shall direct the use of the Riparian Area:

1. No building or alteration of the Riparian Area is allowed.
2. No motorized use (other than established driveway within the easement as shown on the plat). Only foot traffic is allowed in the Riparian Area.

3. Keep livestock out of the portion of the Riparian Area adjacent to the creek by erecting a fence a minimum of 50 feet from the centerline of the creek. Develop off-stream watering facilities (e.g., water troughs) for livestock.
4. Do not cut or remove live or dead vegetation, particularly shrubs and trees. Wood (i.e., fallen branches, downed trees) is an important part of fish habitat and contributes significantly to overall stream health. Wood regularly causes bed scour that creates pools where fish reside to feed and seek cover. Wood also stores sediment that is used for spawning. Dead trees also function as important wildlife nesting habitat. Exception: proper use of chemicals or other methods of control – not to include mowing – for noxious weeds is allowed (as this will encourage development of native species present on site), and planting appropriate native riparian vegetation (trees, shrubs, forbs, grasses) is allowed. See Exhibit “2” attached.
5. Do not plant lawns or mow in the Riparian Area. Leave, or plant, native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.
6. In summary, allow the Riparian Area to remain undisturbed. Do not modify the Riparian Area unless such change would help return the area to a natural riparian area.

Restoration of the Riparian Area:

Planting of new riparian vegetation is encouraged but shall not be required. Planting appropriate native riparian vegetation (such as cottonwood trees or native willow trees and native riparian shrubs) that enhances the Riparian Area is allowed.

Planned Mitigation of Impacts from All Proposed Uses:

There shall be no land use activities within the Riparian Area except as noted above in “Low-Impact Use of the Riparian Area.” Effective erosion and sedimentation control practices shall be conducted during all clearing, construction and reconstruction operations for development on Lot 2A and 2B to ensure the Riparian Area is not negatively impacted by development outside of the Riparian Area.

Planned Buffer to Mitigate Development Adjacent to the Riparian Area:

The driveway located south of the Riparian area providing access from Lot 2B to Lot 2A shall be located far enough south to prevent sidecasting of material into the Riparian Area during construction of the driveway. The Riparian Area shall remain undisturbed. There shall be no alteration to the topography or the vegetation in the Riparian Area as a result of the driveway construction.

Within the Riparian Area there shall be no changes to the topography or to the vegetation except for proper maintenance to remove weeds. There shall be no construction of buildings, wells or drainfields.

Missoula Urban Transportation District

10. The applicant shall petition into the Missoula Urban Transportation District prior to final plat approval. *Missoula Urban Transportation District recommendation.*

Slope

11. All slopes greater than 25 percent slope, including areas in the Southeastern corner of Lot 2B as shown on the Drainage Plan/Site Map, shall be shown as “No Build Zone (25% slope or greater)” on the plat, subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 5-3(G).*

Floodplain

12. The floodplain notation on the plat shall be amended to include the following, subject to review and approval by OPG, prior to final plat approval: *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*

“EFFECTIVE DATE OF THE FIRM (AUGUST 16, 1988).”

13. The following statement shall appear on the face of the plat and shall be added to the Development Covenants, subject to review and approval by OPG, prior to final plat approval:

"Floodplain Permit #2000-14 was issued for construction of the access serving Lot 2 of Lehman Addition. As designed, a portion of that access will be under shallow/slow moving water during the 100 year flood event."

This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*

14. The Development Covenants shall be amended to include the following information in the Floodplain section, subject to review and approval of OPG, prior to final plat approval: "Pre- and post-construction elevation certificates are required, documenting that the lowest floor is two feet above the base flood elevation of Miller Creek. Crawlspace surfaces may be at the base flood elevation provided they do not contain mechanical equipment. Cahoot Canyon drainage runs across the northeastern portion of proposed Lot 2A. Development should be designed to preclude inundation due to Cahoot Canyon Runoff." This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*

Covenants

15. The Development Covenants shall be amended to revise the following statement at the end of the second paragraph under "NOW THEREFORE" on the first page, subject to review and approval of OPG, prior to final plat approval: "They shall constitute a covenant running with the land for each lot within the properties and shall be used as an amendment a supplement to the original covenants for Lehman Addition, filed under Book 604, Pages 1310 to 1317." This section of the covenants may not be changed or deleted without governing body approval. *OPG recommendation.*
16. The Development Covenants shall be amended, to include the following section, subject to review and approval of OPG, prior to final plat approval: "**Radon Mitigation-** The EPA has designated the Missoula area as having a high radon gas potential (Zone1). Therefore, the Missoula City-County Health Department recommends that all new residences incorporate radon resistant construction features." This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-1(2) and Health Department recommendation.*
17. The Development Covenants shall be amended, to include the following section, subject to review and approval of OPG, prior to final plat approval: "**Amendment-** No sections relating to pets, garbage storage, wildlife, riparian areas, floodplain, weed control, radon, fire standards or driveways, and addressing may be changed without prior written consent of the governing body." This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 5-1.*
18. The Development Covenants shall be amended to reflect the statement in the application that no more than one single family dwelling is permitted on each lot, subject to review and approval of OPG, prior to final plat approval.

There being no further business to come before the Board, the Commissioners were in recess at 2:15 p.m.