

## **PUBLIC MEETING – JANUARY 25, 2006**

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

### **Pledge of Allegiance**

### **Public Comment**

Greg Martinsen: Well, obviously I'm here today as a representative from the Conservation District, I'm on the Board of Supervisors. I'm Greg Martinsen. I try and show up once a year for this and to let you know what we've been doing and see if you have any questions. This year we processed about fifty-five 310 applications and permits and had about 24 complaints that we had to follow up and worked with, some of them even were in the newspaper. We try usually to follow up on things like the applications and permits and complaints and how we resolve them. There were 42 follow ups. We have two employees. Our employees work really hard, they do a tremendous job for us. This is just a little tiny bit of what they do, they're good people. One of the things we're really kind of proud of is our Cost Share Program. The Conservation District, the Board of Supervisors of the Conservation District really is a bunch of tight-wads and so we had money left over and we decided to take that money and put it back into the community via what we call our Cost Share Program. We have people that come in with little programs like trying to vegetate a stream bank or maybe fence one off to keep stock out of there, weed programs, thinning, anything that helps with their property to increase the value from a conservation standpoint, we'll generally put in a little bit of money along with them, realizing that some of those projects are a little spendy for the normal landowner that bought 10 acres and didn't realize how much dirt they had to take care of and now the hard realization hits them. We do a lot of cost share work with DNRC through the National Fire Plan, we're very, very interested in education programs and we work with a lot of sponsorships and stuff for different schools, like Florence School wanted to build an outdoor classroom and they needed some money, so we gave them \$2,500 a year for two years, realizing that there's a whole bunch of kids from Missoula County attend school in Florence-Carlton, and little things like that. And we have a Newsletter we send out every so once in awhile, I don't know how often the ladies put it together. We have our annual Conservation District Conservation Day Tour. This year it was held up at the O-Z Ranch up Lolo Creek and we generally have a lot of attendees, we had a lot of them this year and we try and pick someplace where they're doing good conservation efforts and methods and we have different people speak. It's real educational and a lot of fun besides and we get a lot of people come to that, a lot of ranchers and farmers and hopefully they learn something from it, especially the new people that are becoming ranchers and farmers on that 10 acres they got to take care of. We finally gotten the website up and running, kind of interesting, and we help a lot with things like the, you say in the paper where the State lands had to clean up the mess out there on the road, we tried to do some pass through and sponsor some of the grants for that and things. Some of the more notable efforts that are done in streambeds, like this Brennan's Wave, we're not involved in, you're involved in, because of State laws that you're aware of.

Chairman Carey: Greg, I have a question for you. Do you have any idea how, we had fifty-five 310 applications last year, how does that compare to the year before, do you know? Are we getting more of them or less of them?

Greg Martinsen: I think there were maybe a few less this year. Most of those are like stream crossing in culverts and a few of them are people trying to build ponds in the stream that we turn down and they have to go off and build an off-stream pond. Our complaints have gone up dramatically and I don't think it's because there is less stuff happening out there that we don't know about, I think the public's become a little more aware of us. You still see a lot of people doing stuff they ain't supposed to do, but a lot of the neighbors are becoming more aware and I think a lot of the neighbors don't like their own neighbors, I'm not sure.

Chairman Carey: We sometimes get some of that, yeah.

Greg Martinsen: There's a lot of squabbling anymore that you didn't use to see as much of, I think.

Mike Sehestedt: I just want to make a comment for the record. Generally when Greg's here I have to say something bad about him, but in his context as a Conservation District Supervisor, I've got nothing to say but good about the district and particularly the 310 permitting process with which we're heavily involved. The District has been incredibly effective in addressing and protecting that resource and I don't think they have a bad reputation as regulators either, because they're more than willing to assist people with project design and work with them. The only thing they're not willing to do is agree to something that would compromise the resource. So

I think it's an extremely effective and an extremely valuable program and I wish more of them worked like it does. I really think highly of the Conservation District and its work.

Chairman Carey: Thank you Mike.

Commissioner Curtiss: And I'd like to thank Greg for giving us this annual report, because it's very helpful.

### **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 \$667,026.64. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

### **Hearing (Certificate of Survey): McKinley Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract B23-A-3 of Certificate of Survey 2576, containing 2.50 acres, located in the south one-half of the northwest one-quarter of Section 14, Township 11 North, Range 20 West.

William C. McKinley has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately two and one-half (2.50) acres in size located near Florence, Montana. William proposes to create one approximately one (1) acre parcel for transfer to his wife, Thelma E. McKinley, for residential purposes and keep the remaining approximately one and one-half (1.50) acre parcel for residential purposes as well.

The history of the parcel is as follows: COS 1218 was filed in 1977, to create 24 tracts of land 20 acres or greater. COS 2378 was filed in July, 1980, for the purpose of transferring Tract B23-B as a family transfer and Tract B23-A a remainder parcel. COS 2576 was filed in April, 1981, for the purpose of three parcels as family transfers, one parcel as a remainder and Tract B23-A-3 as an occasional sale. A Warranty Deed was filed in February 2001, deeding the parcel to William C. and Thelma E. McKinley. A Quit Claim Deed was filed December 16, 2005, deeding the property to William C. McKinley.

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

Chairman Carey: Thank you Colleen. With that, I'll open the hearing. Are you William and Thelma McKinley? Thank you for coming. We have some questions that our Deputy County Attorney will ask you in order to get your responses on the record. This is being taped.

Colleen Dowdall: Have you owned the property since 2001.

William McKinley: Yes.

Colleen Dowdall: And when you bought it, did you buy it with the intent of dividing it?

William McKinley: No, we didn't.

Colleen Dowdall: Do you reside on the property now?

William McKinley: Right.

Colleen Dowdall: Both of you do?

William McKinley: Yes.

Colleen Dowdall: Okay. Of the property that being divided, do you intend to transfer any of those parcels further in the next year? Are you going to sell the family transfer parcel or sell the remainder parcel?

William McKinley: No.

Colleen Dowdall: Have you talked to anyone at Missoula County about going through subdivision review instead of doing an exemption?

William McKinley: No.

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

William McKinley: No.

Colleen Dowdall: Are you attempting to evade subdivision review?

William McKinley: No, we're not.

Colleen Dowdall: You understand that evasion of the Subdivision and Platting Act is a misdemeanor?

William McKinley: Yes.

Colleen Dowdall: And you understand that this request to divide land is not being reviewed to determine whether there's adequate access in all weather for emergency vehicles, those of the kinds of things we review a division of land for in subdivision review.

William McKinley: Yes, you can get in there pretty good.

Colleen Dowdall: But we aren't reviewing it for that. And do you understand that this, if the Commissioners approve your family transfer, you still have to get other approvals such as septic, possibly if there were floodplain, zoning compliance. This just approves the division of land.

William McKinley: Okay.

Chairman Carey: Any questions for the McKinley's while they're up there. Thank you for coming. This is a public hearing. Does anybody wish to comment on this particular family transfer. Seeing no one, I'll close the hearing.

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

Chairman Carey: You'll be getting a letter in a few weeks saying we've approved this transfer. You're free to stay but you're also welcome to go if you like.

### **Hearing (Certificate of Survey): Headley Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 5-C of Certificate of Survey 1967, located in the northeast one-quarter of Section 19, Township 14 North, Range 20 West.

Charles and Sylvia Headley have submitted a request to create two additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 7.10 acres in size located near Missoula, Montana. Charles and Sylvia propose to create one approximately two (2) acre parcel for transfer to their son, Everett Neil Headley, for residential purposes; and create one approximately two (2) acre parcel for transfer to their daughter, Nadel Iona Headley, for residential purposes; and keep the remaining approximately three (3.10) acre parcel for residential purposes as well.

The history of the parcel is as follows: COS 1319 was filed in November, 1977, to create five parcels of land greater than 20 acres. In May, 1979, COS 1967 was filed for the purpose of transferring Tract 5-C as a family transfer. A Warranty Deed was filed in June of 1994, deeding the parcel to Charles and Sylvia Headley.

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

Chairman Carey: Are you Charles Headley?

Charles Headley: I am Charles Headley.

Chairman Carey: Thank you. We'll ask Colleen to go ahead and ask you the same questions she asked the previous couple.

Colleen Dowdall: Have you owned the property since 1994?

Charles Headley: Yes.

Colleen Dowdall: You probably didn't buy it with the intent of dividing it or else you were very patient?

Charles Headley: We did not buy it with the intention to subdivide it.

Colleen Dowdall: Do you or your children intend to transfer the property within the next year?

Charles Headley: No.

Colleen Dowdall: And your children are not minors, they're adults?

Charles Headley: They're adults both serving in active duty.

Colleen Dowdall: So neither one of them is living on the property now?

Charles Headley: No.

Colleen Dowdall: Will you be developing the property, building houses on it?

Charles Headley: Not at the present, that's up to the kids to do.

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

Charles Headley: No.

Colleen Dowdall: Are you attempting to evade subdivision review?

Charles Headley: No.

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

Charles Headley: No.

Colleen Dowdall: And do you understand that evasion of the Subdivision and Platting Act is a misdemeanor?

Charles Headley: Yes.

Colleen Dowdall: Any do you understand that we are not reviewing this to determine whether your access is adequate, either legal or physical access?

Charles Headley: Yes.

Colleen Dowdall: And do you also understand that this does not mean that – this approval only is approval for dividing the land, it does not include septic approval or zoning compliance. You have to comply with all of those things as well.

Charles Headley: Yes.

Chairman Carey: Okay, thank you. Any questions for Mr. Headley.

Commissioner Evans: No, but I'd like to say something. All you folks that are here for these Certificates of Survey, these questions are intrusive and I think they're insulting, but the law requires that they be asked, so please forgive us.

Colleen Dowdall: It's so offensive that the Commissioners hate asking them, so they let me, because I think it's fun!

Chairman Carey: If I didn't open the hearing, I'll do so. This is a public hearing. Does anybody have any comment on this particular family transfer. Seeing none, I'll close the hearing.

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

Chairman Carey: Again, you'll get a letter to this effect in two or three weeks or so. Thank you.

**Hearing (Certificate of Survey): Leone Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 8 of COS 2388, being the west one-half of Government Lot 3, located in Section 19, Township 13 North, Range 22 West.

John B. Leone has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 22.77 acres in size located near Petty Creek. John proposes to create one approximately eleven (11) acre parcel for transfer to his wife, Kella J. Babcock, for residential purposes and keep the remaining approximately eleven (11) acre parcel for residential purposes as well.

The history of the parcel is as follows: Certificate of Survey 2388 was filed July 24, 1980, to create eight (8) parcels of land 20 acres or greater in size. A Warranty Deed was filed in August, 2004, deeding the property to John Leone and Kella Babcock. Kella Babcock filed a Quit Claim Deed December 27, 2005, deeding the property to John Leone.

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

**COS 5685**      04/19/2005      Boundary Relocation      NW Sec. 12, T12N, R22W

Chairman Carey: Thank you. I'll open the hearing and will you identify yourself for the record, ma'am?

Kella Babcock: Kella Babcock.

Chairman Carey: Thank you. Okay, Colleen will ask you the same questions she's asked the other folks.

Colleen Dowdall: So, how long has John owned the property, or you folks, I never know if the dates that I've come up with –

Kella Babcock: That date is correct.

Colleen Dowdall: So you purchased it in 2004?

Kella Babcock: Yes.

Colleen Dowdall: Did you buy it with the intent of dividing it?

Kella Babcock: No.

Colleen Dowdall: Do you intend to transfer the property within the next year?

Kella Babcock: No.

Colleen Dowdall: Will the property be developed?

Kella Babcock: No.

Colleen Dowdall: Will the recipient of the property – are you intending to live on one of the parcels?

Kella Babcock: Yes.

Colleen Dowdall: Are there any structures on the property now?

Kella Babcock: No, there's not.

Colleen Dowdall: So you're building your house on one of these?

Kella Babcock: Yes.

Colleen Dowdall: And will the grantor also live on one of the parcels? I know this is offensive, but what I'm trying to figure out is if you are dividing this so he can live on one and you can live on another.

Kella Babcock: No, we'll be living together in the same house.

Colleen Dowdall: I'm sorry. Do you live in Missoula County now?

Kella Babcock: Yes.

Colleen Dowdall: But not on the property?

Kella Babcock: No.

Colleen Dowdall: Have you talked to anyone at Missoula County about going through subdivision review instead of doing an exemption?

Kella Babcock: No I've not.

Colleen Dowdall: Are you in the business of building houses or developing property? Or is John, because it's really John's intent that we're supposed to be getting here?

Kella Babcock: No.

Colleen Dowdall: Are you attempting to evade subdivision review, you or John?

Kella Babcock: No.

Colleen Dowdall: And you understand that evasion of the Subdivision and Platting Act is a misdemeanor?

Kella Babcock: Yes.

Colleen Dowdall: Do you understand that we are not reviewing this to determine whether you have adequate access, either legal or physical access, to the parcel, and that this approval to divide the land does not provide you with zoning compliance, septic or floodplain approval. Those are all separate processes.

Kella Babcock: Right.

Chairman Carey: Thank you. Any questions for Ms. Babcock.

Commissioner Curtiss: I have one. It's always just curious when folks – when husbands and wives give each other a parcel – so I'm just curious as to why you're dividing it in this way. You don't have any homes on either lot at the moment, right?

Kella Babcock: Right. We're planning to build on one and we would like to keep that mortgage separate, you know, and have the other piece separate from that. We own our own company, we travel a lot, so the security of that too, in case something were to happen.

Commissioner Curtiss: Okay. Thank you.

Chairman Carey: This is a public hearing. Does anybody have any comment on this proposal? Seeing none, I'll close the hearing.

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

Chairman Carey: Thank you. You'll be getting a letter as well. Thank you. Thank you all for coming.

### **Hearing: Request to Abandon a Portion of an Easement (Bauman Addition – Farm Lane)**

Chuck Wright presented the staff report.

This is a petition to abandon a portion of that certain County road, specifically described as:

As shown on the attached Exhibit "A," the portion of the Public Access Easement adjoining Farm Lane to be abandoned is the northerly 15 feet of the 30 foot Public Access Easement lying along the southerly lines of Lots 6A and 6B of Bauman Addition, a recorded subdivision of Missoula County, Montana. This portion of the Public Access Easement will be abandoned from the west line of Lot 6A of Bauman Addition to the east line of Lot 6B of Bauman Addition.

And further described in the Road Book of the Missoula County Department of Public Works Surveying Division and shown on the attached Exhibit as:

Farm Lane was dedicated in 1910 as a public street 15 feet in width and lying northerly of the southerly line of the north one-half of the northeast one-quarter of said Section 35 per the Plat of Allomont Orchards, a recorded subdivision of Missoula County, Montana. The Plat of Bauman Addition created a Public Access Easement 30 feet in width lying northerly of the existing 15 foot public right-of-way. Farm Lane had prior use as a public right-of-way and is further described in the Road Book of the Missoula County Department of Public Works Surveying Division as a Road Plat Book 1 Road.

The reasons for the request are as follows:

1. Farm Lane presently has a 45 foot wide right-of-way north of the south line of the north one-half of the northeast one-quarter of said Section 35, when the Public Access Easement created per Bauman Addition is included. The applicant feels that 30 feet would be sufficient. In addition, Farm Lane has 30 feet of public right-of-way south of the south line of the north one-half of the northeast one-quarter of said Section 35 as dedicated per Book 431, Micro Page 1494, and per Book 121 Deeds Page 224, and Quit Claim at Book 431, Micro Page 1494.
2. The land encumbered by the extra 15 feet of public right-of-way could not be used for other purposes.

The following landowners have been notified: Avalon Investors, LLC.

Chuck Wright: My name is Chuck Wright and I'm here to talk about the abandonment. If you look at your exhibit, WGM Group wants to vacate a 30 foot wide public access – actually it's only 15 feet wide, excuse me. But anyway, this right-of-way is along Farm Lane and there has been several different right-of-ways put in there, there was an old, old, old County right-of-way that goes in there, that they all overlap, but this is a portion that was done and you don't need it. If you take a look at the exhibit, you'll see there's lot of room in there for road right-of-ways and the County has no problem with that whatsoever.

Chairman Carey: Thank you Chuck. This is a hearing. I'll open the hearing and ask for any comment on this proposal?

Kirk Adkins: I'm Kirk Adkins, I work at WGM Group, I'm a land surveyor. In terms of abandonment, basically we're just trying to kind of standardize the north right-of-way of Farm Lane. To the west, creating another subdivision, actually there's two to the west where we've done this same thing. In terms of holding the 15 feet that was originally platted and then dedicating another 30 feet. In this case, in Bauman Addition, there was, for some reason, when they platted that they put another, like, 15 to the north and I don't think it's really necessary. You'll still have a 60 foot right-of-way there.

Chairman Carey: Thank you Kirk. Any questions for Mr. Adkins? Thank you. Anybody else to speak to this? Seeing no one, I'll close the hearing. Oh, thank you, we need to leave it open, we need to recess the hearing in order to do an inspection. Whose turn is it?

Commissioner Evans: Probably mine.

Chairman Carey: Okay, we'll schedule a view of that with Commissioner Evans and Chuck. Okay, so this hearing's in recess and we'll have a decision at the Public Meeting next Wednesday on February 1, 2006.

**Consideration: Vintage Acres (2 lots on 9.04 acres) – Old Highway 93, north of Carlton**

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

This is a proposal by Marty Maclay for two lots on 9.04 acres. The property is located just north of Carlton, on the west side of Old Highway 93 South. A shared driveway will serve the two parcels. Old Highway 93 South is 22 feet wide, requiring a variance to the rural collector standard of 32 feet wide. Public Works support the variance because of the small scale of this subdivision.

There are two distinct landscapes on the property; an alluvial channel and a higher bench area. The channel is a No Build Zone. Staff recommends a condition that would expand this to the mobile home location. The proposed design exceeds the depth-to-width maximum in the regulations, thereby requiring a variance.

Fire protection will be through the use of residential fire sprinkler systems. Other conditions include the language required concerning dead end driveways in excess of 150 feet and the need for a revegetation plan.

Based on the discussion at Planning Status, a memo from Tim Worley dated January 25, 2006 is provided with alternative Condition 3 language. This would permit a new dwelling to be located where the mobile home currently is, but require the lowest floor elevation to be above a certain elevation cited by the Floodplain Administrator. I'm going to go ahead and read it and plug in a couple more words that I think will flesh this out a little bit better. Condition 3 as revised would read: "The lowest floor elevation of any dwelling built on the lower bench on Parcel 2 shall be no lower than 118 feet as represented on the September 26, 2005 summary plat of Vintage Acres. The assumed vertical datum represented on the September 26, 2005 summary plat of Vintage Acres shall be tied to the North American Vertical Datum of 1988 or the National Geodetic Vertical Datum of 1929."

There's a choice there essentially for either the existing language, which in the memo is stricken, or the new language, which is underlined. With that, I'll wrap up and be available for your questions.

Chairman Carey: Thank you Tim. Anybody wish to comment on this proposal?

Shanna Dishman: My name's Shanna Dishman and I'm representing my mother, Delilah Dishman, which has property adjoining this property that's being subdivided. I've been with DNRC and I had – Ronald Ewart, who was working – I guess one of the developers on this – and he and I walked and I was showing him where the prior ditches were because they were not noted on the plat when I had reviewed it and so I wanted to make sure there was notation of our ditches on that plat. So, before this is finalized, I want to know that they're there.

Chairman Carey: Okay, thank you, and do we have a mechanism for doing that? Ron do you want to speak to that?

Ron Ewart: Ron Ewart, Eli & Associates. We're in agreement with all the conditions of approval and yes, I went down and met with Shanna and we walked the property. Well, first of all when she called and said there's ditches on the property that didn't get picked up, I a hold of the surveyors and said, what are you doing, you didn't pick up the ditches. They said, we didn't see any ditches. I said, oh, okay, so I went down and we walked the property, there are no ditches on the ground. If there used to be some, I don't know, but we walked the whole property and there are no ditches on the ground, and if there are water rights for this property, maybe those water rights also go to another property, because maybe the ditch used to go through or something, this subdivision would not affect that. We can't show a ditch is there's not a ditch. I'm sorry, I mean we definitely would show it if it's there, we go and try to find out the information on it and what I suggested, I said, well, you know, if there's any kind of documentation, is there any water rights, is there something that we can use to show something on the plat, we would be glad to do that, but in the absence of ditches or any information, there's really nothing we can show on the plat, and again, this subdivision would not affect anyone's ditch rights or water rights or anything like that, because whatever's there, remains there and nothing is shown on the plat now, so we're just doing the best we can with the information we have.

Commissioner Curtiss: Ron, who would be the ditch company in that area?

Ron Ewart: I don't know, there's not a ditch, so I don't know.

Chairman Carey: Carlton Drainage.

Commissioner Curtiss: So there was no easement shown across the property by a ditch company?

Ron Ewart: Right, we went through all the information we could find and we couldn't find any reference to a ditch or to any water rights or anything, but that doesn't mean it's not there, and whatever's there, stays there with this subdivision.

Chairman Carey: Thank you. Chuck?

Chuck Wright: Ron, did your people look at the 1912 Quadrangle at that particular area or look in the Missoula County records for old ditch right-of-ways, because we have several ditches that go clear back into the 1800's. Are you aware of that?

Ron Ewart: I'm not aware of that and we didn't look at that, but I guess, part of my point is, if there is some kind of ditch right that crosses the property, it would still be there. We're not going to adversely affect other people's property.

Colleen Dowdall: Ron is correct in that, but there were revisions to the Subdivision and Platting Act that require that the easements be shown on the plat when you're doing the plat, so we could add another condition that says the final plat shall indicate any ditch easements that may be on the public record.

Ron Ewart: That's fair, I mean, if they're there, we'll show them, but we couldn't find anything, but maybe we'll come and visit with Charlie and he will be able to point us in the right direction and we'll learn something.

Shanna Dishman: The property that my mom is at, she's been there since 1963 and the owners previous to that, the son of the owners, lives next door, since the 1920's, so he's well aware of where the original ditches were at. My mom has had her water rights leased out since 1998 and so the previous owners on Vintage Acres had livestock in there, which, when there's no water in those ditches, those ditches get squished down and they turn into flat field. As a child, I'm aware of where the ditches were at, where they lied and one of the proposals for where the entrance on this road, the previous owner had taken the ditch completely out. My mom's 83 years old, she doesn't go wandering around the pastures anymore to check out ditches, so anyway it was unbeknownst to her that they'd even taken the ditch out, but they graded the ditch out, it's no longer there, so we're asking the ditches be put back, or easement to them, or change, you know, we're not opposed to them changing where they flow, it's just that we need to be able to get water to our property and I'm in the process, with the DNRC, we no longer have a ditch rider in our area, which is part of the problem. There's two area in Ravalli County who do not have a ditch rider and we happen to be one of them for the Carlton Drainage, so we're at a loss there, doing everything through the DNRC. I do have an aerial number for the land map but it does not show the field, it just shows the major ditches and where it feeds us, so that wasn't much help to me either, but I can produce affidavits from people who know where the ditches were at and from my mom.

Commissioner Evans: Would the language that Colleen read satisfy your needs?

Shanna Dishman: As far as –

Commissioner Evans: Colleen, would you read it again please.

Colleen Dowdall: “The final plat shall indicate any ditch easements that may be on the public record.”

Shanna Dishman: Yes.

Chairman Carey: So it sounds like it's a question of documenting somehow the easement.

Shanna Dishman: Right.

Chairman Carey: Okay.

Commissioner Curtiss: But it also sounded like – is there some reconstruction that needs to happen though, too.

Shanna Dishman: If they're going to put in a permanent driveway, there is reconstruction of one of the ditches, it's either that or they change the easement of it. The way the property lies and the gravity flow of it, they could change the flow of the water if they wanted to where it accesses and comes in, they could change it to the northern part of the property, instead of cutting through the middle where they wouldn't have to do that. Either way, it doesn't matter to us, as long as the flow remains gravity and it stills feeds us, it doesn't matter where the ditch is at, but, like I said, I can prove that the ditches are where they should be and they've cut a road across them, so, as it is, if I was to get water to the property at the present time, to that point, they couldn't flow to our property and I don't know if you want the water right number for that or not, referring to it.

Commissioner Evans: I want to know how we deal with this.

Colleen Dowdall: I don't want any water right numbers. What I think that – the first thing to do is to get the – if any ditch easements that exist and if someone has eradicated the ditch, that's kind of a separate matter and I don't know if it was this owner that did that?

Shanna Dishman: No, it's not Marty Maclay that removed it. It would have been who he bought from that did that.

Colleen Dowdall: So that's almost a question of equity in terms of – the person who owns the ditch right or the easement is the – the person who benefits from the easement is the one that is responsible for keeping the easement in a condition that it will function, but the person across whose property the easement exists should not, cannot, do anything to obstruct that easement, so this is very similar to another Lolo disagreement up Lolo Creek, between a developer and a neighbor, where they're fighting that out in court.

Commissioner Curtiss: One more question. So, do I understand that the water flow is actually on the higher bench and then drops down to your mother's property?

Shanna Dishman: No, it's all on the high –

Commissioner Curtiss: We also have an aerial photo that might be easier for you to show, it's in our packet.

Shanna Dishman: No, I just had to get my bearings. Okay, so the water actually enters the property approximately up in here and it's – this part here is the higher bench of the property – and where it enters in, there was a ditch that run along this portion here, because we had this property over here at one time also – there's a major ditch that runs this way and then there was one that feed along the edge of this bench all the way down that came in – and our fence line runs right here – and it came in right along through here and it feed the rest of the way down and the flow sort of goes at a north/northeasterly flow and so it could come down this fence line here and feed the property or it could remain in the same ditch, regardless, it comes in at this area.

Chairman Carey: That's in the northwest corner of the lot.

Shanna Dishman: Yeah.

Commissioner Evans: I'd like to ask Ron what he plans to do about this?

Ron Ewart: We'll just go along with the condition and find out what we can find out, but, I mean, when I was walking, I couldn't see any ditches off the property either, it's not like, you know, there was a ditch and then all of a sudden it ended, so I guess I'm at a loss, I don't want to say something I don't know anything about, but – could never see a ditch at all, but if there's easements, we'll definitely shown them, and then if you can provide me with any information that you have, even if you have a letter or any information and we'll forward copies to our client to explain to him the situation that we're in and then maybe that will gives us some clues to help solve this.

Chairman Carey: Thank you Ron. Anything else? Ron, you said you were okay with the conditions. Does that mean that you're okay with the reworded Condition 3 that Tim read?

Ron Ewart: Yes.

Chairman Carey: Okay, thank you. Any motions, further questions?

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations requiring a 32 foot surface width within an 80 foot right-of-way for Old Highway 93 South, to allow the existing 22 foot surface width within a 60 foot right-of-way, based on the findings of fact set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-3(1)(E) of the Missoula County Subdivision Regulations prohibiting a lot depth-to-width ratio greater than 3:1, based on the findings of fact set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve amended Condition 3 as shown on the memo from Tim Worley dated January 25, 2006, including the additions as read by Tim Worley during his presentation. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners add a new condition with language as read by Colleen Dowdall during the meeting to address ditch locations on the plat. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve the Vintage Acres Subdivision, based on the findings of fact and the conditions in the staff report and conditions and findings as amended. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

#### **Vintage Acres Subdivision Conditions of Approval:**

1. The last sentence of Section 8 of the covenants shall be amended as follows:

“Dead-end driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus. A turnaround shall be within 150 feet of the building. A minimum unobstructed width of not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches shall be provided for any driveway over 150 feet. The opening through a gate should be 2 feet wider than the road. Final design shall be approved through the Florence Rural Fire District.” *Subdivision Regulations Article 3-2(10)(E) and OPG recommendation.*

2. The covenants shall be revised to state that the section regarding address signs shall not be amended or deleted without governing body approval. *Subdivision Regulations Article 5-1(5)(K)(x) and OPG recommendation.*
3. The lowest floor elevation of any dwelling built on the lower bench on Parcel 2 shall be no lower than 118 feet as represented on the September 26, 2005 summary plat of Vintage Acres. The assumed vertical datum represented on the September 26, 2005 summary plat of Vintage Acres shall be tied to the North American Vertical Datum of 1988 or the National Geodetic Vertical Datum of 1929. *Subdivision Regulations Article 3-1(2), Floodplain Administrator and OPG recommendation*
4. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board and shall be included as an attachment to the covenants prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed District recommendation.*

5. The final plat shall indicate any ditch easements that may be on the public record. *Board of County Commissioners recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:10 p.m.