

PUBLIC MEETING – FEBRUARY 22, 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, County Chief Financial Officer Dale Bickell and County Public Works Director Greg Robertson.

Pledge of Allegiance

Public Comment

Don Erickson: Greetings from the Swan Valley. My name is Don Erickson. I live in the Swan. I am here along with some of my neighbors and friends to talk about the proposed \$20 million open space bond issue that we have read and been told you are considering putting before the voters in the fall. We understand that you have not as yet reached a decision about putting this bond before the voters, but felt it important to let you know what we believe is the opinion of the majority of the Swan Valley residents. We were told at a meeting recently by your planner Pat O'Herren and Ann Dahl, who is on the Open Lands Working Group committee, and we have read Commissioner Carey's comments to the Missoula Chamber that 60% to 70% of the residents of Missoula and Missoula County were in favor of this proposed bond. When Pat and Ann were questioned whether or not the Swan Valley was included in that number, we informed that we most certainly were. Ann provided me a copy of the survey report by Moore Information, the opinion research firm that was hired to do the survey. I contacted Moore and asked how many residents of the Swan Valley were included in this survey. They told me that the information was available but that they could not release it without authorization from the party that ordered the survey. They agreed to contact them and get back to me. I called after not hearing anything and was told that a Tim Raphael of the Trust for Public Lands in Portland would contact me. He obviously had not, so I obtained his phone number and called him in Portland. Mr. Raphael asked why I wanted to know and I told him that I did not believe that 60% to 70% of the Swan Valley residents would be in favor of the bond. He asked how many registered voters we had and I told him 471 out of 58,755 in the entire County. That's less than 1% of the entire County. He said that he could almost guarantee me that not one person was called in the Swan Valley. We were misled like I had suspected, as I believe you were. After going to another meeting where we were again told about the survey, conservation plans, zoning and possibly forming a community council, I visited with some of the "old timers" about what was being discussed. These "old timers," by the way, were from 20 years old to 90 years old. Many of them living and working their entire life in the Swan. The Swan is their home. They feel somewhat threatened and are afraid they are losing their identity to a few well-meaning residents who seem to be making decisions that are contrary to their own beliefs concerning the Swan Valley. They want to continue to live and work in the Swan, but are afraid that if the government continues to buy private lands, grant subsidized easements and impose other restrictions, jobs will not doubt be lost forever. Since logging has virtually stopped except on private land, the majority of jobs that are available are in the construction area. Most of this is new construction for year around or seasonal homes. They are also concerned that increased taxes, more fees and bond issues will force them to sell the home that they have lived in most of their lives. When the government becomes a customer for what little inventory of private land that is available for sale, prices obviously will rise even more than they are, raising taxes and making it almost impossible for a young working family to stay in the valley. Like everywhere else, we need to find ways to provide affordable land for housing for these young families. We may be too late, but placing conservation easements on property, buying more open space, creating community forests, placing zoning restrictions on the land, is certainly not the answer. It is my personal experience that the ad hoc meetings that are being held in the Swan are attended by and conducted by a minority of Swan Valley residents. It is like they are preaching to the choir and are surprised when they hear there is opposition to their way of thinking. These folks mean well and sincerely believe in what they are doing, but they are not speaking for the entire valley. With one or two exceptions, none of the "old timers" or their families are represented at these meetings. Mainly, I think because they just do not like meetings. It is frustrating to them. We have a petition for you. We wanted to demonstrate to you that the majority of the Swan Valley is not in favor of any bond. The petition states: "We, the undersigned registered voters in Precinct 1 and Precinct 2, Missoula County, Montana, oppose authorizing the Board of County Commissioners to issue and sell general obligation bonds of Missoula County to be used for preserving open lands, conserving farm and ranch land, preserve working forests or any other purpose in the Swan Valley. If bonds are issued by the County, then areas that include Precinct 1 and Precinct 2 not be obligated for said bonds or any of the proceeds be used for any purpose in Precinct 1 and Precinct 2." We have gathered, in a short time, 191 signatures. At the last general election, 344 people voted in the Swan. Our petition represents 56% of that number. Based on the response that we had in gathering these signatures, if we need more, they are available. Some of the comments that were made by the people who signed were:

- We were just hit with a \$75 increase for the fire department.
- We cannot afford any more.
- Gas and everything else is going up – enough already, we are retired and on a fixed income.
- I don't want to subsidize conservation easements for people who have much more money than I do.
- If Missoula wants more open space, let the residents of Missoula pay for it.
- The new construction in the Valley has to have provided a great increase in revenue for the County, yet the services we receive are virtually the same as they were 10 years ago. Our school has fewer students, we have the same Deputy Sheriff, the roads are in the same or worse condition than they were, we have not been getting anything back and now are being asked for more.

Thanks for your time and attention.

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 \$581,301.78. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Hearing (Postponed from February 1, 2006): General Obligation Bonds (2006 Ice Rink Project)

Dale Bickell, Chief Financial Officer, presented the staff report.

This is a request to conduct a public hearing on the proposal that the County issue its Limited Obligation Bonds in the approximate amount of \$825,000 for the purpose of reimbursing and financing the costs of constructing and improving open-air artificial ice facilities at the Missoula County Fairgrounds, and to pay certain costs associated with the sale and issuance of the Bonds. The project is located at the Fairground and will be owned by the County and leased to the Missoula Area Youth Hockey Association (MAYHA). The project is expected to be leased to MAYHA for six months each fiscal year for the term of the Bonds at a lease rate sufficient, at a minimum, to pay the principal of and interest on the Bonds each fiscal year.

The second rink is substantially complete and the County is ready to issue the Bonds to pay the remaining expenses. The Commissioners will be asked to act on a Resolution to consider issuing the bonds at their February 23, 2006 Administrative Meeting.

Chairman Carey: I'll open the hearing. Is there anybody who wishes to say something about this matter.

Commissioner Curtiss: Could I ask Dale; it's not general obligation, it's what?

Dale Bickell: Limited General Obligation Funds.

Commissioner Evans: Could we ask Dale to explain how the debt will be paid off.

Dale Bickell: The debt will be – they're essentially revenue bonds that are guaranteed by the County. They will be paid back through revenues generated by the ice rink.

Commissioner Evans: They've shown you some projections to indicate that they can cover that?

Dale Bickell: Yes.

Commissioner Evans: Thank you.

Mike Sehestedt: Barbara, we have worked to keep the rosy spectacles off those estimates and I think looked at them very conservatively.

Commissioner Evans: Thank you. I just wanted it on the record.

Chairman Carey: Anyone care to speak to this? Seeing no one. I'll close the hearing. Any questions or comments? We don't take action on this at this time, do we?

Dale McCormick: No.

Chairman Carey: Just hold the hearing. Thank you, Dale.

Hearing (Second of Two Hearings): Proposed Amendments to the County Animal Ordinance (Changing Impoundment Fees and Times of Public Adoption)

Ed Franceschina, Animal Control Supervisor, presented the staff report.

This is a request to change the kennel impound fees and amend the number of days and days of the week available that public adoptions are available at the Animal Control shelter. It is also a request to add the words “dog or cat and ferret” to the sentence describing the cost of adoption at the shelter. The impound fee schedule will match those fees enacted by the Missoula City Council and changing the number of days and days of the week will clarify the actual times that the shelter is open for adoptions. The addition of cats and ferrets will ensure that potential adopters understand that cats and ferrets also require a fee for adoption.

Chairman Carey: I’ll open the hearing to the public. Does anyone wish to speak to this matter? Seeing no one. I’ll close the hearing. Questions or comments?

Commissioner Evans moved to adopt the impoundment fee schedule that has been presented.

Mike Sehestedt: I think, Barbara, if I could be so rude. At this point you would vote to approve the amended ordinance because there are, in addition to the changes in the fee schedule, a couple of other minor amendments to the ordinance.

Commissioner Evans moved to adopt the ordinance as amended. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Mike Sehestedt: Bill, for the record, this was the second reading. The ordinance is now finally adopted; however, will not be effective for 30 days pursuant to statute.

Chairman Carey: Thank you, Mike.

Hearing: Country Crest No. 3A, Lot 36 (Subsequent Minor Subdivision – 2 lots on 1.029 acres) – Peregrine Court

Mirtha Becerra, Office of Planning and Grants, presented the staff report.

This is a request from Craig and Beth Diettert to subdivide a 1.029 acre parcel into 2 residential lots. The property is located on the south side of Peregrine Court in the Country Crest No. 3A Subdivision, a County major subdivision platted in 1995. The development is located on the north side of Mullan Road, opposite Sunset Memorial Gardens.

The property is zoned C-RR2 (Residential – two dwelling units per acre). The recently adopted Wye-Mullan West Comprehensive Area Plan now recommends a land use designation of Suburban Residential, with a maximum density of two dwelling units per acre. The density of this proposal is one dwelling unit per 0.51 acres.

Access to this subdivision is from either Peregrine Court or Peregrine Loop. Both are 24 foot wide paved County roads within a 60 foot public right-of-way.

The subdivider requests a variance to not install curb and gutter along Peregrine Court. Staff recommends approval of this variance. The subdivider is also requesting a variance from the requirement to install boulevard sidewalk on Peregrine Court. Both curb and gutter and sidewalk improvements are include in the RSID/SID waiver statement conditioned for the plat. Staff recommends approval of the variance request.

Staff recommends 9 conditions of approval. The first is a condition which requires the subdivider to contribute to the Mullan Road/Flynn Lane intersection and to the Mullan Road/Reserve Street intersection mitigation fund. The second condition requires the RSID/SID statement to refer to streets in Country Crest No. 3A for improvements along Peregrine Court. Condition 3 states that the Missoula Rural Fire District review and approve plans for installing residential fire sprinkling systems prior to Zoning Compliance permit submittal and that the subdivider file a development covenant that includes the requirement for residential fire sprinkler systems. Another condition recommends that plans for visible addressing be approved by the fire department and be included in a development covenant. A statement on the final plat waiving the right to protest a future RSID/SID for a

community or municipal water system, for fire protection purposes, is required as a condition. Other conditions require that the applicant present evidence of petitioning into the Missoula Urban Transportation District and that a development covenant be filed that addresses weed control and revegetation, radon mitigation systems and prohibition of wood burning stoves.

The proposal was heard by the Planning Board on February 7, 2006. Planning Board recommended approval of the two variance requests and that the Country Crest No. 3A, Lot 36 Subdivision be approved for a preliminary plat approval period of two years, based on the findings of fact and testimony heard at the public hearings, and subject to the recommended conditions of approval.

Chairman Carey: Thank you. I'll open the hearing. Is there someone here to speak to the proposal?

John Kellogg: I'm with Professional Consultants representing the Diettert's. They're in agreement with the staff's recommendation. I want to thank the staff for their thorough report on this. I'm here to answer questions. I wanted to repeat that although we're asking for variances from the sidewalk, curb and gutter, I think it's understood that with the waiver of the right to protest the RSID/SID it will be a done deal probably as soon as a certain number of these subdivisions come through; the sidewalk, curb and gutter will be installed. I will also likely be shared by most of the developers who are residents of the subdivision. That will be coming along.

Chairman Carey: Thank you, Mr. Kellogg. Anybody else wish to speak to this? Seeing none. I'll close the hearing.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(ii) requiring installation of concrete boulevard sidewalk, to not require sidewalk installation on Peregrine Court, based on the findings of fact and approve the variance request from Section 3-2(7) requiring curb and gutters, to not require curb and gutter on Peregrine Court, based on the findings of fact. 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 Country Crest No. 3A Lot 36 Subdivision for a preliminary plat approval period of two years, based on the findings of fact and testimony heard at the public hearings and subject to the recommended conditions of approval. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss: Barbara, after you made that point, I looked, not only Mirtha's report but the real report, it does have that. It says, for fire protection based on benefits.

Commissioner Evans: I was going by what she just gave us.

Mirtha Becerra: I might have given you a short version of that.

Commissioner Evans: That's okay, I just want to make sure that they know that it is for fire purposes.

Country Crest No. 3A, Lot 36 Subdivision Conditions of Approval:

Roads and Access

1. The subdivider shall contribute \$230 per new lot to assist in signaling the Flynn Lane/Mullan Road intersection and \$815 per new lot toward the improvement of the Reserve Street/Mullan Road intersection. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 4-1(12).*
2. The following note shall appear on the face of the plat:

"Lots within this subdivision are subject to the RSID/SID waiver for improvements on the face of the Country Crest No. 3A plat." *Subdivision Regulations Article 3-2(3)(E).*
3. The subdivider shall present evidence of petitioning into the Missoula Urban Transportation District prior to final plat approval. *Subdivision Regulations Article 3-2(6).*

Fire

4. Plans for installing NFPA 13D standard residential fire sprinkling systems in all new dwellings in the Country Crest No. 3A, Lot 36 Subdivision shall be reviewed and approved by the Missoula Rural Fire District prior to

submittal for a zoning compliance permit. This language shall also be included in a development covenant and shall not be deleted or amended without governing body approval. *Subdivision Regulations Article 3-7(1)(6)*.

5. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a future RSID/SID for a public or community 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)*.

6. All residences within this subdivision shall post address signs visible from public streets in all light conditions. Plans for visible addressing shall be reviewed and approved by the Missoula Rural Fire District and shall be included in a development covenant, prior to final plat approval. *Subdivision Regulations Article 3-2(2)(G)*.

Weeds

7. The subdivider shall file a development covenant requiring lot owners to revegetate any ground disturbance with beneficial species at the first appropriate opportunity after the disturbance occurs, subject to review and approval by the Missoula County Weed District, prior to final plat approval. *Subdivision Regulations Article 3-1(1)*.

Radon

8. The subdivider shall file a development covenant advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by the Health Department, prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B)*.

Other

9. The subdivider shall file a development covenant which includes the following statement, subject to review and approval by the Health Department, prior to final plat approval:

"The Missoula City-County Air Pollution Control Program regulations prohibit the installation of wood-burning stoves or fireplaces. Pellet stoves that meet emission requirements or natural gas or propane fireplaces may be installed. Pellet stoves require an installation permit from the Health Department." *Subdivision Regulations Article 3-1(1)(G)*.

Hearing: Country Crest No. 3B, Lot 60 (Subsequent Minor Subdivision – 2 lots on 1.67 acres) – Peregrine Court

Mirtha Becerra, Office of Planning and Grants, presented the staff report.

This is a request from Karl and Jennifer Keintz to subdivide a 1.67 acre parcel into two residential lots. The property is located on the north side of Grassland Drive in the Country Crest No. 3B Subdivision, a County major subdivision platted in 1995. The development is located on the north side of Mullan Road, opposite Sunset Memorial Gardens.

The property is zoned C-RR2 (Residential – two dwelling units per acre). The recently adopted Wye-Mullan West Comprehensive Area Plan recommends a land use designation of Suburban Residential, with a maximum density of two dwelling units per acre. The density of this proposal is one dwelling unit per 0.84 acres.

Access to this subdivision is from Grassland Drive, a 24 foot wide paved County road within a 60 foot public right-of-way. Both lots will access Grassland Drive via a shared driveway.

The subdivider requests a variance to not install curb and gutter along Grassland Drive. Staff recommends approval of this variance. The subdivider also is requesting a variance from the requirement to install boulevard sidewalk on Grassland Drive. Both curb and gutter and sidewalk improvements are included in the RSID/SID waiver statement conditioned for the plat. Staff recommends approval of this variance request.

Staff recommends approval of the subdivision, subject to 7 conditions of approval:

- A condition of approval requires that a shared driveway maintenance agreement be included in the development covenants subject to review and approval by the County Attorney's Office prior to final plat approval.
- A condition of approval requires the subdivider to contribute to the Mullan Road/Flynn Lane intersection and the Mullan Road/Reserve Street intersection mitigation fund.
- A condition of approval requires the RSID/SID statement refer to streets in Country Crest No. 3B for improvements to Grassland Drive.
- That the Missoula Rural Fire District review and approve plans for installing residential fire sprinkler systems prior to Zoning Compliance Permit submittal and that the subdivider file a development covenant that includes the requirement for residential fire sprinkler systems.
- A condition recommends that plans for visible addressing be approved by the fire department and be included in a development covenant.
- A condition of approval requires a statement on the final plat waiving the right to protest a future RSID/SID for a community or municipal water system for fire protection.
- Other conditions require that the applicant present evidence of petitioning into the Missoula Urban Transportation District and that a development covenant be filed that addresses weed control and revegetation, radon mitigation systems and prohibition of wood burning stoves.

This proposal was heard by the Planning Board on February 7, 2006. Planning Board recommended approval of the two variances and that the Country Crest No. 3A, Lot 60 Subdivision be approved for a preliminary plat approval period of two years, based on the findings of fact and testimony heard at the public hearings and subject to the recommended conditions of approval.

Chairman Carey: Thank you, Mirtha. I'll open this hearing and ask if Mr. Kellogg would like to speak.

John Kellogg: Karl and Jennifer are in agreement with the recommended conditions from Planning Board and staff and here to answer any questions that you might have.

Chairman Carey: Thank you, John. This is a public hearing; does anyone wish to speak to this? Seeing no one. I'll close the hearing.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(8)(A)(ii) requiring installation of concrete boulevards sidewalks, to not require sidewalk installation on Peregrine Court, based on the findings of fact; and approve the variance request from Section 3-2(7) requiring curb and gutters, to not require curb and gutter on Peregrine Court, based on the findings of fact. 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 Country Crest No. 3B, Lot 38 Subdivision for a preliminary plat approval period of two years, based on the findings of fact and testimony heard at the public hearings and subject to the recommended conditions of approval. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Country Crest No. 3B, Lot 60 Subdivision Conditions of Approval:

Roads and Access

1. The subdivider shall contribute \$230 per new lot to assist in signaling the Flynn Lane/Mullan Road intersection and \$815 per new lot toward the improvement of the Reserve Street/Mullan Road intersection. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 4-1(12).*
2. The following note shall be appear on the face of the plat:

"Lots within this subdivision are subject to the RSID/SID waiver on the face of the Country Crest No. 3B plat."
Subdivision Regulations Article 3-2(3)(E).

3. The subdivider shall present evidence of petitioning into the Missoula Urban Transportation District prior to final plat approval. *Subdivision Regulations Article 3-2(6)*.
4. A shared driveway maintenance agreement shall be included in a development covenant, subject to review and approval by the County Attorney's Office, prior to final plat approval.

Fire

5. Plans for installing NFPA 13D standard residential fire sprinkling systems in all new dwellings in the Country Crest No. 3B, Lot 60 Subdivision shall be reviewed and approved by the Missoula Rural Fire District prior to submittal for a zoning compliance permit. This language shall also be included in a development covenant and shall not be deleted or amended without Governing Body approval. *Subdivision Regulations Article 3-7(1)(6)*.
6. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a future RSID/SID for a public or community 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)*.
7. All residences within this subdivision shall post address signs visible from public streets in all light conditions. Plans for visible addressing shall be reviewed and approved by the Missoula Rural Fire District and shall be included in a development covenant prior to final plat approval. *Subdivision Regulations Article 3-2(2)(G)*.

Weeds

8. The subdivider shall file a development covenant requiring lot owners to revegetate any ground disturbance with beneficial species at the first appropriate opportunity after the disturbance occurs, subject to review and approval by the Missoula County Weed District, prior to final plat approval. *Subdivision Regulations Article 3-1(1)*.

Radon

9. The subdivider shall file a development covenant advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems. The language of the provision shall be subject to review and approval by the Health Department prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B)*.

Other

10. The subdivider shall file a development covenant which includes the following statement, subject to review and approval by the Health Department, prior to final plat approval:

"The Missoula City-County Air Pollution Control Program regulations prohibit the installation of wood-burning stoves or fireplaces. Pellet stoves that meet emission requirements or natural gas or propane fireplaces may be installed. Pellet stoves require an installation permit from the Health Department." *Subdivision Regulations Article 3-1(1)(G)*.

Hearing: Missoula Development Park, Phase 1, Block 2, Lot 6 (3 lots subdivision of the 4.60 acre Spectrum Pool site) – Corner of Expressway and Butler Creek Road

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

This is a proposal by Thomas Martin, represented by Ron Ewart of Eli & Associates, for a subsequent minor plat of Lot 6 of the Missoula Development Park, Phase 1, Block 2, which was approved in 1996. The 4.64 acre property is located at the corner of Expressway and Butler Creek Road in the Missoula Development Park. The proposal is to divide Lot 6 into three light-industrial lots. Lot 6C is occupied by Spectrum Aquatics. Lots 6A and 6B are vacant. It is within the Air Stagnation Zone, Missoula Water Quality District, the Airport Influence Zone and the Urban Growth Area. The property is relatively flat, with open grassland on the vacant lots. All lots will connect to Mountain Water and City of Missoula Sewer.

The proposed subdivision complies with the land use designation and generally meets the applicable goals and objectives of the 1995 Airport Development Park Plan. The property is zoned Missoula Development Park Special Zoning District (MDPSZD) and is designated for Light Industrial uses. The proposed subdivision complies

with the "Light Industrial" land uses permitted in the MDPSZD zoning district, however, the existing structure on proposed Lot 6C would become non-conforming with respect to the site development standards of the zoning district as a result of the subdivision. Staff has recommended a condition requiring the subdivider to obtain Board of Adjustment approval for the Spectrum Aquatics structure to vary from the applicable zoning district site development standards, prior to final plat approval.

Expressway serves Lots 6A and 6B and is paved to approximately 32 feet within an 80 foot public right-of-way. Butler Creek Road serves Lots 6B and 6C and is paved to approximately 24 feet within an 80 foot public right-of-way. The Subdivision Regulations require a 32 foot to 44 foot pavement width for Butler Creek Road, therefore a variance is required. County Public Works supports the variance request.

Sidewalks are located on both sides of Expressway fronting the property. A sidewalk is located on the east side of Butler Creek Road opposite the property. The applicant is proposing to construct a 6 foot concrete sidewalk along the property frontage on the west side of Butler Creek Road. Expressway and Butler Creek Road are classified as collector streets and as such, are required to have bicycle lanes. The applicant has requested two variances to not provide bicycle lanes on Expressway and Butler Creek Road adjacent to the subdivision. Public Works supports the variance requests.

The Missoula Consolidated Planning Board conducted a public hearing on this request on Tuesday, February 7, 2006, and voted 6-0 to recommend approval of the subdivision, based on staff's recommended conditions of approval and the findings of fact in the staff report. Staff received no public comments on this subdivision proposal.

Planning Board recommended approval of three variance requests. The first to permit a pavement width of 24 feet for Butler Creek Road; the second to not provide bicycle lanes for Butler Creek Road; and the third to not provide bicycle lanes for Expressway. They also recommended approval of the subdivision based on the findings of fact in the staff report and subject to the 10 recommended conditions.

- The subdivider shall receive approval from the Board of Adjustment to vary from the zoning district site development standards for the existing structure on Lot 6C, prior to final plat approval.
- The waiver statement on the plat shall reference both RSID and SID for improvements to Expressway and Butler Creek Road.
- Driveway maintenance agreements for both shared driveways will be provided and included in the Development Covenants.
- Driveways in excess of 150 feet shall incorporate a turnaround for fire apparatus and shall be reviewed and approved by the Missoula Rural Fire District.
- The covenants shall be amended to include the driveway requirements as recommended by the Missoula Rural Fire District.
- Plans for address signage shall be reviewed and approved by the Missoula Rural Fire District and the plan shall be included in the Development Covenants.
- The subdivider shall petition into the Missoula Urban Transportation District.
- An avigation easement shall be provided in compliance with the Airport Influence Area Resolution.
- The Development Covenants shall include information regarding the avigation easement and informing the owners of the requirements of the Airport Influence Area.
- A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board and the plan shall be appended to the Development Covenants.

Chairman Carey: Thank you, Mary. I will now open the hearing to public comment.

Ron Ewart: With Eli and Associates. We are in agreement with all the recommended conditions of approval. We've already submitted our application for County Board of Adjustment to OPG so we will be going next March. I believe, Marvin knows for sure, Spectrum was there before the development park and whoever owned it at that

time agreed to become part of the park, I think. The owner of this property now, Thomas Martin, he has only owned it for about three years so he was here – that predated him so he wasn't sure about that. There's an overhead door that faces Butler Creek Road. Now Butler Creek Road is going to be the primary so we have to go to Board of Adjustment for that. We don't have to go to the Development Authority though; we go straight to the Board of Adjustment. We're proposing to plant some Colorado Blue Spruce in that area to help screen the door. I called Ibey Nursery who knows about trees and they're right across the way and that's what they recommended. That's in the application. Thomas Martin, the owner, just wants to preserve some options by creating a couple more lots. I think this is the first subdivision in the development park, I'm not positive. The way I look at it, it adds for more opportunity for economic activity out there, which helps more and more things to happen. The way it is set up; there will be one shared access off of Butler Creek Road, one shared access off of Expressway. As you got your full development, we're setting it up so that all three lots can use either shared access so there's a little bit of movement through there. The corner lot might be an office or something, maybe it's a way to the airport, I don't know. Lot 6A, which is bigger and longer, could be another type of warehouse or something. Whatever meets zoning. There are no plans right now. He doesn't really even have plans to sell these right now, he just wants to do it and then see what happens.

Chairman Carey: Thank you, Ron. Any other comment from the public?

Commissioner Curtiss: I have a question for Greg. Greg, right now, is the section of the road that – we're putting an RSID waiver for this in the future – but does the section of Butler Creek Road that's kind of narrow and doesn't have sidewalks only from Expressway out to Highway 10 West? Is that the portion that needs improvement?

Greg Robertson: Actually, I think it's all of Butler Creek Road to Interstate 90 from West Broadway.

Commissioner Curtiss: So we put sidewalks on the side by the school but the –

Greg Robertson: There are sidewalks on the side of the side but there's none on the other side.

Chairman Carey: Any other public comment? Seeing none. I'll close the public portion of the hearing.

Commissioner Evans: I'd like to place on the record that Ron is right; that Spectrum Pool was there prior to anything else going in out there. They were pretty much the anchor business that had enough faith in our development park to but their business there. I would like to ask the County Commissioner Board to recommend approval to the Board of Adjustment because I think that they acted in good faith and I would like us to act in good faith and not harm them. So I would like us to recommend approval to the Board of Adjustment for their request, which I don't know if we've ever done that.

Commissioner Curtiss: So you're suggesting that we did a letter or something?

Commissioner Evans: Yes. So I'll make that a separate motion.

Commissioner Curtiss: Is that your first motion?

Commissioner Evans: That's my first motion.

Commissioner Evans moved that the Board of County Commissioners write a letter to the County Board of Adjustment recommending approval of the request by Spectrum Aquatics. 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 3-2(3) requiring a pavement width of 32 to 44 feet, to permit a pavement width of 24 feet for Butler Creek Road, based on the findings of fact; approve the variance request from Article 3-2(8)(D) to not provide bicycle lanes for collector streets within the Urban Growth Area for Butler Creek Road, based on the findings of fact; and approve the variance request from Article 3-2(8)(D) to not provide bicycle lanes for collector streets within the Urban Growth Area for Expressway, based on the findings of fact. 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 Missoula Development Park Phase 1, Block 2, Lot 6 Subdivision, based on the findings of fact in the staff report and subject to the recommended conditions. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss: So you want your letter to be a part of the condition or will that be separate?

Commissioner Evans: Yes (separate), but I want us to support that request.

Missoula Development Park Phase 1, Block 2, Lot 6 Subdivision Conditions of Approval:

Zoning District

1. The subdivider shall receive approval from the Board of Adjustment, prior to final plat approval, to vary from the Missoula Development Park Special Zoning District, Section 6.07, D. Development Standards on Lot 6C.

Roads, Driveways and Drainage

2. The waiver statement on the plat for improvements to Expressway and Butler Creek Road shall reference both an RSID as well as an SID, subject to review and approval by OPG, prior to final plat approval. *Subdivision Regulations Article 3-2(3)(E)*.
3. A driveway maintenance agreement for the shared access between Lot 6A and Lot 6B and the shared access between Lot 6B and Lot 6C shall be included in the Development Covenants for the subdivision, subject to review and approval by the County Attorney, prior to final plat approval. This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-2 (1) (I)(iii)*.

Fire

4. Driveways in excess of 150 feet in length shall incorporate a turnaround for fire apparatus at the terminus of the driveway and must be approved by Missoula Rural Fire District, prior to zoning compliance permit approval. *Subdivision Regulations Article 3-2(10) and Missoula Rural Fire District recommendation*.
5. The following driveway requirements shall be included in Development Covenants for the subdivision, subject to review and approval of OPG, prior to final plat approval:

“Driveways in excess of 150 feet in length shall incorporate a turnaround for fire apparatus at the terminus of the driveway and must be approved by Missoula Rural Fire District. The driveway must provide a minimum 20 foot unobstructed width and 13 foot 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*.

6. Plans for address signage for each property shall be reviewed and approved by Missoula Rural Fire District, prior to final plat approval. The approved address signage plan shall be included in Development Covenants for the subdivision, 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*.

Transportation

7. The subdivider shall present evidence of petitioning into the Missoula Urban Transportation District (MUTD), prior to final plat approval. *Subdivision Regulations Article 3-2 and Missoula Urban Transportation District recommendation*.

Health and Safety

8. An aviation easement shall be obtained for the property in compliance with the Airport Influence Area Resolution prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Airport Authority request*.
9. A statement shall appear on the face of the plat and in Development Covenants for the subdivision, notifying owners that the subdivision is located within the Airport Influence Area and informing the owners of the requirements of the Airport Influence Area and the associated noise levels and soundproofing measures to reduce noise levels. The language of the statement shall be subject to review and approval of the Airport Authority, 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(2), 4-1(12) and Airport Authority request*.

Weeds

10. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. The Development Covenants for the subdivision shall include a section on Weed

Control which notifies owners of their obligation to control noxious weeds on each lot 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 the Development Covenant. The Development Covenants shall state that 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 and are encouraged to contact the Missoula County Weed Control Board for more information on methods of control. The Development Covenant language on weed control shall be 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(1)(B) and Missoula County Weed Board recommendation.*

Hearing: River Pines Estates (17 lots on 21.02 acres) – Intersection of River Pines Road, Big Flat Road, Blue Mountain Road and O'Brien Creek Road

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

This is a proposal by N & G, LLC, represented by Rebecca Weaver of Professional Consultants, Inc., for a 17 lot residential subdivision on a 21.02 acre parcel located at the intersection of River Pines Road, Big Flat Road, O'Brien Creek Road and Blue Mountain Road. There is an existing home on proposed Lot 17. The property is outside the County Urban Growth Area boundary and the Sewer Service Area boundary, but inside the Air Stagnation Zone. O'Brien Creek flows just south of River Pines Road opposite the property. The Big Flat Irrigation Ditch follows the northern and eastern boundaries of the property. Another irrigation ditch crosses Big Flat Road to Lot 17. Property to the north of the subject property is adjacent to the Clark Fork River. Property to the east of the subject property is adjacent to the Bitterroot River. Much of the northwestern area of the subject property adjacent to Big Flat Road and the northern lots adjacent to the Big Flat Ditch contain slopes over 25%. All lots will have individual wells and will be served by community drainfields located in two common areas.

The applicable Comprehensive Plan is the 1998 Missoula Urban Area Comprehensive Plan Update, which designates the property three ways: 1) Open and Resource (1 dwelling unit per 40 acres); 2) Parks and Open Space; and 3) Suburban Residential (2 dwelling units per acre). The applicant is not proposing any development in areas with slopes greater than 25% and has designated them "No Build Zones." FEMA floodplain Zone A for the O'Brien Creek floodplain overlaps a portion of the subdivision. FEMA approved a Letter of Map Amendment (LOMA) removing a portion of the property from the floodplain designation. The area designated Suburban Residential (2 dwelling units per acre) would yield approximately 19 dwelling units. The proposal for 17 dwelling units on 21 acres does not exceed the overall density recommended.

The property also has three zoning designations: 1) C-A3 Residential (one dwelling unit per 5 acres); 2) C-A1 Open and Resource (one dwelling unit per 40 acres); and 3) C-RR1 Residential (one dwelling unit per acre). All of the lots are within the area zoned C-RR1 (one dwelling unit per acre). The area zoned C-RR1 totals 18.6 acres. This proposal for 17 lots on 18.6 acres results in a density of one dwelling unit per 1.09 acres, which complies with the C-RR1 zoning district.

The property is accessed off of River Pines Road, a public road paved to 20 to 22 feet, within a 60 foot County maintained right-of-way. The Subdivision Regulations require a 24 foot surface width for River Pines Road, therefore a variance is required. Public Works approves of the variance request, preferring improvements to River Pines Road to happen as a whole. Blue Heron Lane is an existing private gravel road with a 14 to 16 foot surface width, within a 30 foot private access easement and currently serves Tracts 1 through 4 of COS 4047 to the north of the proposed subdivision.

The southern portion of Blue Heron Lane, Kingfisher Place and Grebe Court are proposed to serve all the lots within the subdivision except for Lot 17, which retains its existing access off of River Pines Road. Kingfisher Place, Grebe Court and the southern portion of Blue Heron Lane area proposed to be paved roads with 24 foot surface widths within 60 foot public access easements. As proposed, these streets meet the Subdivision Regulations. The northern portion of Blue Heron Lane is proposed to remain a 14 foot to 16 foot gravel road within a 30 foot private access easement. The applicant does not propose improvements to Blue Heron Lane north of the intersection with Kingfisher Place. No lots within the subdivision will access off of this portion of Blue Heron Lane.

The Missoula Consolidated Planning Board conducted a public hearing on this request on Tuesday, February 7, 2006 and voted 6-0 to recommend approval of the subdivision based on staff's recommended conditions of

approval and the findings of fact in the staff report. Staff received 3 public comment letters from surrounding property owners, which are attached to the staff report.

Prior to the vote on the subdivision, Planning Board considered staff's recommended motions and conditions of approval and did not amend them. Citizens attending the public hearing expressed concern over impacts to potential contamination of the Clark Fork River, Bitterroot Rive and O'Brien Creek from the subdivision's drainfields, impacts to wildlife corridors, impacts to traffic on River Pines Road and the Maclay Bridge, the lack of non-motorized facilities (sidewalks and bike lanes) on River Pines Road and concerns about the easement width of the northern portion of Blue Heron Lane.

There was considerable discussion about the easement width for Blue Heron Lane. The applicant proposes retaining the existing 30 foot private easement for the northern portion of Blue Heron Lane. The parcels to the north of the subject property currently served by Blue Heron Lane have portions of land that are outside of the floodplain and zoned C-RR1 (one dwelling unit per acre). Therefore, the tracts north of the proposed subdivision have potential for residential development. Erik Dickson of County Public Works recommended that all of Blue Heron Lane that is included in this subdivision be dedicated as a 60 foot public right-of-way. Staff recommended that a continuous 60 foot public right-of-way and utility easement be dedicated on the final plat for Blue Heron Lane, from River Pines Road to the northern boundary of the subdivision. Planning Board agreed with staff's recommendation.

Planning Board recommended approval of a variance request to permit a 20 foot to 22 foot surface width for River Pines Road and the River Pines Estates Subdivision, based on the conditions of approval and the findings of fact in the staff report.

There are 19 conditions recommended by staff, including:

- Condition 1 requires the Development Covenants be amended to require the owner of Lot 5 to access off of Grebe Court and the owner of Lot 6 to access off of Kingfisher Place.
- Condition 2 requires a 60 foot public access and utility easement be dedicated on the final plat for Blue Heron Lane, from River Pines Road to the northern property boundary of the subdivision.
- Condition 3 requires a note on the final plat stating the County of Missoula will not improve or maintain the portion of Blue Heron Lane north of the intersection with Kingfisher Place until the road is built to County standards and accepted by the County.
- Condition 4 requires a signage plan for road and address signs, reviewed and approved by County Public Works and the Missoula Rural Fire District, and Development Covenants amended to include the approved signage plan.
- Condition 5 requires driveways in excess of 150 feet in length to have a turnaround for fire apparatus at the terminus and that driveway plans must be approved by the Missoula Rural Fire District.
- Condition 6 requires the Development Covenants to be amended to include the Missoula Rural Fire District driveway requirements, such as the requirements for driveway surface width, horizontal and vertical unobstructed clearance and turnaround for fire apparatus at the terminus of driveways.
- Condition 7 requires installation of interior residential fire sprinklers that meet NFPA 13D standards in each new home for the purposes of fire protection.
- Condition 8 requires that the Development Covenants be amended to include the interior residential fire sprinkler requirement.
- Condition 9 requires an RSID/SID waiver statement for a public water system for fire protection be placed on the plat.
- Condition 10 requires the subdivider to provide evidence that the property does not have water rights to either of the ditches. If water rights are available to the parcel for either or both ditches, the subdivider shall meet the terms of State law for providing access to irrigation water, or in the alternative, remove the water rights and notify owners that the land is classified as irrigated and the owners may continue to be assessed for irrigation water delivery even though water may be undeliverable.

- Condition 11 requires the public utility easement in Common Area 1 to be restricted to the area of the proposed drainfield and a 20 foot strip along the northeastern boundary of Common Area 1.
- Condition 12 requires the Development Covenants be amended to include a section titled Weed Control, which requires lot owners to maintain their lot 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 the Development Covenants.
- Condition 13 requires the applicant to petition into the Missoula Urban Transportation District.
- Condition 14 requires a floodplain development permit for the construction of Kingfisher Place and the stormwater improvements in the floodplain, subject to review and approval of the Floodplain Administrator.
- Condition 15 requires the 100 year floodplain to be specifically identified for Lots 5, 6, 7, 14, 15 and 17, subject to review and approval of the Floodplain Administrator.
- Condition 16 requires pre- and post-construction elevation certificates for new construction on Lots 5, 6, 7, 14, 15 and 17, documenting the lowest floor and the driveway access is two feet above the elevation of the 100 year floodplain, subject to review and approval of the Floodplain Administrator.
- Condition 17 requires the Development Covenants be amended to include the floodplain information recommended by the Floodplain Administrator such as the requirement for pre- and post-construction elevation certificates.
- Condition 18 requires the Development Covenants be amended to revise the radon mitigation section to provide the updated language provided by the Health Department.
- Condition 19 requires the Amendments section of the Development Covenants be amended to include all sections of the covenants which may not be changed or deleted without governing body approval.

Chairman Carey: Thank you, Mary. Any questions for Mary at this point? No. I'll open the hearing to public comment.

Becky Weaver: I'm with Professional Consultants and I'm here representing the developer. I'd like to thank Mary for her work on this subdivision. We are in agreement with conditions as proposed. I'd like to point out that after the Planning Board meeting, the developer and I had discussions about the easement to the north on Blue Heron Road and have agreed that as long as we are able to do an off-centered easement through there, we're not in opposition of that condition. In other words, we would be in opposition of a condition that required us or an after-the-fact review that required us to center our easement on the 30 foot easement but if we can do an easement off-centered that includes that 30 foot easement, we have no objection to that condition.

Commissioner Curtiss: Becky, can you state on the record why it is that you need it to be off-centered. You told us in planning status but I think it should be on the record.

Becky Weaver: We have proposed community septic system for this development and as part of the design for that system we located septic systems in the area to the east of that easement but would be within a 30 foot center line offset of that existing road. We are opposed to centering it on the easement because that would require us to move those septic takes potentially pushing them deeper than our current design allows. That's why we would prefer an off-centered and be in agreement with an off-centered easement there.

Chairman Carey: Thank you. Any other public comment?

Hal Ort: Representing the Hidden Heights Homeowners Association. We knew this was going to happen for many years so this isn't a big surprise and I'm glad that Gene Mostad is the developer here. The main concern that we have and it was mentioned when Mary was reviewing the past hearings is the issue of contamination of our well – Hidden Heights, for those who may not be familiar with it, is right up in here. We're adjacent to the proposed development. Our well is up in here. This is not the first time, O'Brien Creek Estates, which is up here, when that was proposed back in 1993 there were a lot of concerns about the well contamination, so we had quite a review then. The reason that I came today was to assure us of a couple things; is there a water quality degradation review involved in this subdivision? The County Health Department, okay, I just wanted to verify that.

There was a lot of – that was a contentious issue 12 years ago. Another thing is that our well here, I think all of these drain fields are down river from our well. If that's the case then we have less concern. I'm here to bring that up because that's fairly close but it's not anywhere near like it was back 12 years ago when the ground water current ran right in towards our well. That's the only comments I wanted to bring up. So the County Health will be doing water quality degradation. I talked to Peter Neilson about that and he wasn't quite sure.

Chairman Carey: Colleen, can you help?

Colleen Dowdall: In any event, we're required to pass your comments on to the Health Department. Their process is not a public hearing but we will take the minutes from this hearing and pass them to the – they will either be doing it in their capacity as the Missoula County Health Department or as a contractor to the Department of Environmental Quality.

Hal Ort: I know a number of our residents now were not here 12 years ago and they were quite concerned about this. I was not as concerned because the way the contours run but as long as there is a review – it's passed, that's fine.

Commissioner Curtiss: If their review shows that there would be contamination problem, their approval trumps our approval in essence that they'll make sure that the water quality stuff is done right.

Hal Ort: Then the County defers to the State. Since I was the one that looked into this matter, I was dealing with the State.

Commissioner Evans: The State contacts our local department.

Chairman Carey: Thank you. Any other public comment?

Ruth Havican: One of the owners north of the proposed subdivision. I've got a few concerns. One of the main concerns is that 150 feet north, the roadway at Blue Heron, that's 150 feet north of the two cul-de-sacs. I wrote a letter to the three Commissioners so I'm assuming you got it – I'm hoping you got it. There's quite a bit of dust on that road as is. There's been quite a bit of problems on that road not in the initial 5, 6, 7 years that the three property owners owned it, but more recently. There's been a lot of traffic. The County came out at one point in time and parked some vehicles on it and they sunk and the County did fix the road. It has had some wear and tear. It seems to me that that last 150 feet is almost going to be an attractive nuisance for people. If they come down the road and decide that there's no where to go, they're going to use that last 150 feet to turn around. I also have concerns with the contractors you're going to use and has already used that last 150 feet obviously to take the pictures that they took. That last 150 feet is going to get an awful lot of wear and tear and not from the existing homes that are out there. I'm very concerned about that not being – well number one, accessible but that seems to have been addressed but also not being paved by the contractor. That's my major concern. I also have concerns about the wildlife but I understand that I don't have a lot of say in that. The River Pines Road is a very dangerous road. As County Commissioners you probably know that there has been several accidents along that road; people sliding off towards the river because of the sharp turns on it. The Maclay Bridge goes back to, something like, 15 years with problems on it being a one-lane bridge. I like it being a one-lane bridge but it is a potential danger especially with children, bicyclists, there's verbal confrontations on that bridge now. Sometimes people back up and will go head to head. I want the County Commissioners to please be aware of that as well. Thank you very much for your time.

Chairman Carey: Thank you. Other public comment?

Sandra Hickingbotham: I want to thank you all for your extensive work on this project as well. I have a couple of concerns. One thing I would like to address first is Mr. Ort's comments about his well. Hidden Heights' well is on my property; they have an easement for their well. There's been some thought over the years and rumors circulating because of this development that we would not be able to develop our own 56 acres, which is acreage that their well is on. I don't know that this is – I'm not sure how appropriate this is for this meeting other than I would like it to some how be on the record that my land is developable and the fact that they have a well, an easement, on our land. They have what they have. In the future, if they need to chlorinate that well or whatever they need to do, I think they should be prepared to do that because although they have an easement on the property, they shouldn't be allowed to determine what the surrounding property owners are able to do within the law based on their well, I don't think. I want to make that part of the record that I'm not planning to develop my land tomorrow but it is something that is a future possibility and it is zoned properly. We do have a lot of river-bottom land but it does have potential for 1 house per acre on 56 acres according to what the Health Department

and land would allow. Having said that, my concern with the River Pines Development isn't huge, I've also known that that land would be developed at some point. I think that Mr. Mostad and Professional Consultants have planned a very nice subdivision. Of course I would like to see less houses. I think we all feel that way. I respect the law and what you have worked out, planned and plotted within the law and what's allowable. The section as you saw on the slide where you can see those trees and the ditch; it's kind of up hill and that does face all of our property. We have a little concern about the backyards of the houses facing our property. We would like it not to look like we have a bunch of backyards facing – according to what I've read, the covenants that Mr. Mostad is proposing, it sounds like he's very mindful and respectful of that, but I would like to make sure that that is something that is dealt with. I know they have some issues with the ditch and fencing that they will have to address with them. I think fencing is a good idea. I think it's dangerous for children. As I think about it, I know there's pros and cons on that too because some times a fence can prevent you from rescues as well as prevent it from being necessary. I don't think I have – I can't think of any problem I would have with their moving their easement and not centering it unless it was a weird angle to the place where it meets our roads. I'm not an engineer but from what I can see, it looks like a good compromise to me. I know there are a lot of other issues that sound really scary to all of us that are there – scary; you know the road and the water quality. I think that these things have been very well thought out by Mr. Mostad and Professional Consultants. So with these minor things – that's my comments. Other than I hope that everybody will be as kind and receptive if and when the time comes for us to develop our land if that's what we chose to do and that we won't be penalized by there being houses next to us nor would we be penalized for allowing the easement for the water for Hidden Heights. We would never do anything to jeopardize them purposefully or intentionally but we do own the land and they don't.

Hal Ort: I can understand the concerns about that but to my knowledge, and I've been there a long time, we have never even discussed or brought up the issue of our well preventing any kind of development. We've been mostly concerned with how we keep our well healthy and not require chlorine to be added to it. I thought I would comment on that from the stand point of being there. We never even discussed that issue.

Chairman Carey: Anybody else wish to comment?

Commissioner Curtiss: I have a question for Mr. Belts.

Chairman Carey: Yes.

Commissioner Curtiss: I didn't want you to sleep in the corner, Curt, could you come and answer a question regards to public safety.

Curt Belts: Assistant Chief of Missoula Rural Fire District.

Commissioner Curtiss: Thank you, Curt. One of the things that came up through this subdivision is that the ditch company is always concerned about protecting their ditch. Sometimes they think fence does that. My concern is, from your experience as an emergency responder, if a child gets in to the ditch do you want a fence in the way?

Curt Belts: That's kind of a catch-22 question because the fencing helps keep people away from the ditch. The fencing does hamper some of our rescue efforts; however, we have lots of tools that can get fences out of the way so it's not that big of an issue for us.

Commissioner Curtiss: So how about if you're the parent?

Curt Belts: For the parents, that's probably a different issue. From the fire department aspect, we have lots of tools that can remove lots of things and a fence is a temporary setback for us.

Chairman Carey: Mr. Ort, another comment?

Hal Ort: On that issue of the fence, we've looked at that before. You might know that the Hidden Heights common property extends to the high water mark. That trail, where the ditch operates, is part of our recreational plan. So from our standpoint, we wouldn't like a fence that would cut off the houses from the trail. Safety issue, of course, takes priority of there is that kind of a safety issue.

Chairman Carey: Thank you. Any other comments?

Commissioner Evans: I'd like to explain to Sandy and to Becky Weaver that I'm not inclined for a fence. I think that all the homes that would face backwards onto Hickingbotham's land, would not likely be the same kind of

fence. I would prefer landscaping and an irrigation system, drip system or something to keep the landscaping alive. I sort of base that on the fact that they have put in poplar trees to help obscure the view. It also allows the wildlife to continue through the landscaping where it would not if there were a fence. So I'm going to ask that we make a condition that the back part of the northern piece of land along the property be landscaped to provide a view buffer between Hickingbotham's land and this subdivision, which I think would add to the looks rather than detract from it. I don't know who we would have check – Colleen, who would be appropriate to determine the amount of landscaping and placement, etcetera. Who would approve that?

Colleen Dowdall: That is usually subject to the review and approval of OPG prior to final plat approval.

Commissioner Evans: I would respectfully ask the Commission to consider that as a requirement.

Commissioner Curtiss: So add something to covenants?

Commissioner Evans: I wouldn't want it in the covenants. I would want it as a condition of approval.

Colleen Dowdall: I think that we would probably do it both ways so that they have to – as people come in that they will landscape. Part of the – if we require it as a condition of approval, the landscaping has to go in before the plat is filed.

Commissioner Evans: That suits me fine.

Commissioner Curtiss: I'd like to hear some of the neighbor's comments too.

Ruth Havican: My property is more northeast and not really in a direct line but with the Hickingbotham's, theirs is to the left of the little red "stubbed in" road and ours would be to the right. I would respectfully ask that it would include all of that portion, the boundaries.

Chairman Carey: The landscaping?

Ruth Havican: The landscaping.

Commissioner Evans: That's what I had in mind; the entire northern portion of the property that's being considered.

Ruth Havican: I think that's a fabulous idea because I do have a lot of concerns about the wildlife that inhabit that area. It would allow them a lot more pass-through. They're going to pass through one way or another, so I would certainly be very happy with that idea.

Commissioner Curtiss: So the ditch follows the edge of the property so we could word it such that it would be landscaping between the backyards and the ditch.

Ruth Havican: Yes.

Chairman Carey: Becky, you might want to say something about this.

Becky Weaver: I'd like to point out a couple of issues. I don't think we're opposed to this condition; I just want to make sure that it is written in a way that makes it reasonable for us to meet the condition. A couple of issues is that a good portion of the subdivision, we don't actually back onto the ditch, we're 10, 15 feet away from the edge of the ditch; our property line. So that is something to keep in mind. There is a good chunk of it – there's a portion of it that the Hickingbotham's – they might be able to speak to this better – have already landscaped with the poplar trees. My question would be what kind of landscaping in that area? Do we want more landscaping, the same, continue with that kind of thing? One of Gene's concerns has been the views that will be available to the people in this subdivision. I think having a large screen on the entire northern – is not something that he would be in favor of but some kind of lower shrub landscaping would be acceptable. I would like – if we have a condition on that; also, A) to be able to remove the fencing from the covenants as we proposed it for fencing along the ditch; and B) to specify that it is not necessarily landscaping to completely... trees to block the view shed but more of a lower visual barrier and also more of a psychological barrier to the ditch. I'm not sure exactly – I guess I have a hard time envisioning exactly what the goal(s) could be. So maybe if we talk a little bit more about that to develop an idea of what we're talking about in terms of landscaping because that is such a broad

term; small little flowers to large trees, multiple layers of trees. Those are kind of the issues or concerns that we would have. Maybe you guys have ideas.

Chairman Carey: Okay, thank you. Mary.

Mary McCrea: I think just so that it is clear and there isn't a misunderstanding later, the condition should be worded to specify whether or not it's trees or shrubs; whether they're Evergreen, whether there is an opacity level that you're looking for. If it's a visual buffer, I think shrubs could probably handle it since Hickingbotham's is lower and this property is higher, on a portion of it anyway. So if it is a visual buffer of the backyards of those houses, you could do it with shrubs but they would probably have to be at least a percentage Evergreen to provide that visual buffer. You might want to consider 50% opacity or do you want it a solid hedge? Defining it in some way so that you're not disappointed and they're not disappointed and it's a condition that was so open that it didn't provide that sort of buffer.

Commissioner Evans: I'd like to ask Sandy to come to the microphone. What I had in mind is, in my back yard I put a little tall barn. It's a little bit taller than a lawn shed. Most everybody is going to want a lawn shed. From her property, I think the people who might dwell there would like to look at something besides somebody's back yard. I don't think they would mind looking at landscaping. So I guess what I would like and I want you to respond to, Sandy, is trees or shrubs tall enough to cover a lawn shed and obscure whatever things might be unpleasant to another dwelling north of it.

Sandy Hickingbotham: I think that sounds lovely and I think that some kind of shrubbery would be nice. I do need to talk a little bit about the contour of the land, however. Here's where Blue Heron comes in and then this is the Big Flat Ditch that goes all the way along, all the way here until it meets the river here. The ditch right in here, it's a slight bit of slop and as it goes down – this part of a ditch, we have a fence on the west side, south or west side, of the ditch here. We have a fence that goes down along here. Our property line changes at right about this point and jumps over to the center of the ditch. The property kind of follows this red line here where it takes a steep down hill to the ditch. So this would be the upper parts of the backyards here and then it takes a drop off and goes down to the ditch. What would happen if you just had landscaping and not fencing, I feel that it would be actually very dangerous because from your own backyard, you would not be able to see if your child or anyone else rolled down the hill or was playing in the ditch or whatever, because it disappears. I appreciate the thought and it sounds really good but I have to say that I actually think a fence is the best idea along here for that reason that I said. The people in these houses can't see that ditch. We've had experiences with children living in the house on the corner going over the field and getting down there and playing the ditch out of the sight if their parents. We've chased them out. I do think that a fence is better. I would prefer it to be a fence with a landscaping to camouflage it that would be totally ideal. Another thing to address too, the safety of the fire department; once you come on this side of River Pines Estates, this road goes all the way along here. It's a very – at least on our property, we keep the weeds cut down on the road, it's very passable. We do have a gate here but we tell people that need to know where the key is, mainly to keep trespassers out. Which would be another problem that we foresee not having some kind of fencing in here, a barrier, because everybody wants to get to the river and I don't blame them, it's a great place to go in the summer but we have a terrible time with people wanting to use this as an access to get to the river. There are various reasons; they start fires, they want to pull their rafts in and out. It's something that we really don't want to deal with. Does that make sense? Do you understand what I'm saying about how it slopes?

Commissioner Evans: Yeah, my concern is; how do you have one kind of fence so you don't have orange fence, green fence, brown fence – chain link!

Sandy Hickingbotham: I agree with that totally. We do have, as I say, we have a fence that goes from our property on Lot 5; it goes from Lot 5 and then all the way down through here. We do have a fence that goes here and then at this point, it jumps so it's actually on the other side of the ditch road. We've done it in a way that it kind of fades. Ruth and Karen would probably be able to maybe comment on that a bit because our fence actually borders their property from certain aspects of their property and we tried to do it in a way so that it would be kind of a disappearing, kind of fence. So you see the foliage more than you see the fence. Hopefully as years go by that gets better. I certainly hope that it's been okay for them. Different people have different ideas about fences and foliage.

Commissioner Evans: I have a dilemma here because I would like it as visually pleasant from your side of the property as possible and still provide the protection for the children but the freedom for the wildlife.

Sandy Hickingbotham: Well, now, I can maybe talk about that a little bit; what we do since we have about 15 acres of alfalfa so we have a lot of deer. In order to actually have a crop, those 15 acres are actually fenced with series of gates. What we do is, we have the gates that we open so the wildlife can get through. Certain times of the year when we don't want them eating the crops, we close the gates and then what they do is they have a – it's kind of a unique setup the way it is setup because down in here, this part, there's actually – which is below Hidden Heights – there's probably about 25 acres that is not accessible from any public access other than the river, or the people on Hidden Heights, on this bit of the ditch road. But it is so steep that it's very difficult for them to get to. What we have in here is a lot of deer that that's where they have their babies. We even have bears denning in there. We've had mountain lion dens and you name it. It is kind of a unique area for the deer. With the way we've done this fencing, we've actually been able to preserve this area as a protected area for them. They kind of go around Ruth and Karen's and we have low fencing here with a hole – nobody can see that fencing anyway but there's an area for them. They come through here and go through all this river bottom here. There's a place where they cross Big Flat Road and then go up in the wilderness. That's actually a better place for them to be directed because in here is where they tend to get hit because this is where all the traffic is. With the development of these houses, they're not going to be as welcome in this area as they have been. So it will be really easy for them to just continue on this road and then come around our area here and utilize that wildlife –

Commissioner Evans: So a fence would be beneficial to them instead of a detriment?

Sandy Hickingbotham: I think so, yeah. I do. I think the fence is beneficial to both the wildlife and the people all the way around.

Commissioner Evans: So what kind of fence do you like?

Sandy Hickingbotham: I would rather have something consistent. Beyond that, I have a lot of faith and trust in Mr. Mostad because he wants to do it in a nice way as well and I know that. I trust that he will. As I said, something that's consistent that would look esthetically well. I have, around my house, this fence – it sounds like a lot of fencing I know – around my house I actually have another fence because I have a proper English garden so I have roses, lilies and basically an acre of manicured flower gardens. What we've done there is taken a split rail wood fence and then put rebar up from the wooden part and then fencing on that. You look at it and you don't see anything but the old fashion fencing that you wouldn't think would keep anything out. There's ways to do it that actually looks good and addresses all those problems. I really do think that the wildlife is going to be best served with the fence. And I think the children as well. They do have me; I'm the one who can see them so I have been the policeman there for a long time and I'll continue to do that.

Chairman Carey: Colleen and then Mary.

Colleen Dowdall: Mrs. Hickingbotham, I have a question. At the point where you said the property is steep and goes down to the irrigation ditch and you said that your fence, in that case, is actually on the other side of the irrigation ditch. Would this result in fencing on both sides of the irrigation ditch?

Sandy Hickingbotham: Yes, actually it would. It sounds – it might be better to understand it with the slide back up again because on the, I think, second slide when you're looking down Tortuga Ranch Road, let's see the next slide, there is a fence here, as I was saying is kind of hard to see. This is a fence, there's a fence that goes here and then there is an opening here for the road. This is actually a fence along this side of the road too, the road is lined with poplar trees and it is fenced on each side. The next one I think might show it a little – right, yea. There's a fence here, this is the ditch. On this side of the road it is also the same; there's the same fencing and trees but when you get down here and you go in this direction – you can kind of see right here – this is the ditch road that goes here, the white part is actually the road and then these are the trees. They're both on this side and on this side. It's fenced on this side to this point and that's because our property line shifted a bit so we own to the center – to the edge of the ditch road. The River Pines would own to this center. This is where the hill comes down like this, to the ditch. We do have the fencing here. As I was saying, this is where we have this gate here, we open it and the deer go here. It's actually fenced all the way – this road winds back around here. It's open here, they can come around and they have access to this hill side. They're kept, at certain times of the year, from coming through here and out this way and hitting River Pines Road. I know it sounds kind of confusing. Are you following?

Colleen Dowdall: No. I'm just concerned about whether it will affect having fences on both sides, the ability to maintain the ditch.

Sandy Hickingbotham: Oh, yes, because the road – the fencing – here's the road and the road goes like this.

Colleen Dowdall: So you'll still have ready-access to the ditch to maintain it?

Sandy Hickingbotham: Yes. Actually it works quite well as far as maintenance to the ditch. The ditch people really like our road because we keep it mowed and cleaned of debris.

Chairman Carey: Thank you.

Ruth Havican: Sorry to keep bouncing up here and sorry, Sandy, but Karen and I and our adjacent neighbors, Bruce Barrett and Adair Canter have always been opposed to the fence that Howard and Sandy put up. I don't think it's beneficial for wildlife. I have witnessed, several times, deer getting hung up on the fence and it breaks my heart. I know wildlife isn't the strongest concern but if you're looking at wildlife fencing, you cannot manage deer with fencing. We have an acre of manicured lawn; we plant things that the deer don't eat and in the fall they eat everything and that's okay because it kind of trims the rose bushes back to a manageable size.

Chairman Carey: Okay, thank you. We're kind of staying from – Mary.

Mary McCrea: I just wanted to – in the covenants, just tell you what they have for fencing and that might help in your consideration. They have several – a whole paragraph on the types of fences for the front yard and where they can and can't be. At the end of that it says, "No fence or comparable structure shall be constructed or placed on any lot until after height, color, type, design and approximate location shall be approved by the Architectural Control Committee." Within their own development covenants, they are going to review any fencing.

Commissioner Evans: Is there any sentence that says, "All fencing must be consistent."?

Mary McCrea: No. They do permit, "Such fence may be constructed of chain link, cedar, or redwood and vinyl." But then there is a paragraph specifically dealing with the fencing along the irrigation ditch. It says, "Notwithstanding the above a fence of 5 feet in height and of closed board design shall be installed and maintained by each homeowner whose lot borders the Big Flat Irrigation District irrigation ditch. Such fence shall be installed along the edge of the easement area and shall be installed on or before occupancy of the dwelling erected on such lot." Then there are wildlife friendly fencing and I don't believe a 5 foot high closed board would do that.

Commissioner Evans: Would do what; be friendly?

Mary McCrea: Yeah, would be wildlife friendly.

Commissioner Curtiss: The Section 9 of the covenants addressing fencing would also somebody to fence so that their children were safe from getting in the ditch?

Mary McCrea: Yes.

Chairman Carey: Any other comments?

Commissioner Evans: I guess I would like somewhere in the covenants fencing section that says that the fencing on the north side, which would be the south side of Hickingbotham's land, should be consistent so that we don't have green fence, orange fence, brown fence and a chain link. I would just like it to say, consistent type.

Chairman Carey: Mary.

Mary McCrea: I suppose that we could have an amendment to the covenants. Where it talks about that fencing that's bordering the ditch, instead of just closed board we could also say, "Consistent design and material."

Commissioner Evans: That would be good.

Chairman Carey: Okay. So we can amend the covenants to that. Becky, do you –

Becky Weaver: I think we can be in agreement with that, to leave it as is except with the consistency. I want to point out that Gene has put a lot of thought into how he has put the fencing in the covenants. He wants to maintain the openness of this lot so he doesn't want people to be able to fence a lot. That's kind of behind all the fencing in the covenants. Keeping that in mind, I think with fencing around that border in a consistent manner, we're okay with that since the Architectural Control Committee will be there and it will functionally be Gene.

Chairman Carey: I see, Thank you. If there's no further public comment, I'll close the hearing. How do we want to deal with the staggered easement? How would we work that? Do you have any ideas, Colleen?

Commissioner Curtiss: Conditional access easement is what we're talking about.

Chairman Carey: But it's also off-center.

Commissioner Curtiss: I think Becky had a plat drawn showing it so we could refer to that plat.

Becky Weaver: I think what my – it seems like the original condition said that the right-of-way would be 30 feet of center line of the road.

Mary McCrea: No, where we ended up with the condition – let me find the exact wording. It says that it has to be continuous. It's Condition No. 2. "A continuous 60 foot public right-of-way and utility easement shall be provided for Blue Heron Lane from River Pines Road to the northern boundary of this subdivision." So we didn't say it had to be centered on the 30 foot easement it just has to be continuous from one end to the other.

Commissioner Curtiss: I think Becky's concern was to make sure that at the point where it finally comes in and somebody approves it from Public Works, that we remember that we talked about the fact that they needed it off-center to put their septic tank. I think she has a plat.

Chairman Carey: Becky.

Becky Weaver: That is my concern and I want to make sure, Greg particularly sees what we're proposing so that, at this point, if there are any big issues then we can address them here because this is kind of a big design issue for this subdivision.

Chairman Carey: Okay. It's in the record now. Greg can take a look.

Commissioner Curtiss: Greg, the reason that is partly the depth of the septic tanks is why they need it to jog a little.

Greg Robertson: It's not an issue. It's fine.

Chairman Carey: Okay, it's fine with Greg.

Commissioner Curtiss: I guess I'm still a little bit mixed on the fence thing. I know that I have a 6 foot high, closed board, cedar fence that I've got to talk to my husband into scraping and re-staining this summer. I think that as long as the covenants allows for fencing to protect the children and keep dogs in the yard, that I prefer that it be landscaping along the ditch. How we word that though is again the – maybe it could be as simple as saying, "Shrubbery to screen outbuildings," or something like that. Since the covenants already say that you can't park, if I understand right, you can't park a bunch of stuff in the backyard. Vehicles and parking – any discussion on that?

Chairman Carey: I'm fine with the wording in the covenants. Mary?

Mary McCrea: I think if you have them amend the covenants – this is a question for Colleen too – to say that they had to provide landscaping to screen those outbuildings, then it is just in the covenants rather than it having something that has to be reviewed at zoning compliance permit, where we need some read definable, measurable regulations so that we can make sure that it meets those.

Commissioner Curtiss: Are you alright with that, Barbara? I know that it was kind of the outbuildings that you were talking about.

Commissioner Evans: In reading No. 9 and adding the wording that Mary said that the fencing should be a consistent design and material that sounds fine. But you get down to the next paragraph that says, "Not withstanding the above, a fence of 5 feet in height and of closed board design shall be installed and maintained by each homeowner whose lot borders the Big Flat Irrigation District Ditch. Said fence shall be installed along the edge of the easement area and shall be installed on or before occupancy of the dwelling erected on such lot."

So, everyone of those, if I understand this right, that back onto the ditch are going to have to have a fence of 5 feet in height of closed board design.

Commissioner Curtiss: Right. So that's what I was proposing; to remove and maybe instead, add some language under No. 2 outbuildings, it said, "They should be screened from the ditch side by shrubbery," instead. I guess that's the discussion. Do we want to keep the fence and have it be consistent or do we want to let them screen things?

Commissioner Evans: In my yard, I have one point something acre, we have a lot of deer out there. There was a fence there when we came but, the deer consistently jump. We put a shorter – a 6 foot chain link fence closer to my house to protect the trees and bushes but we leave the rest of it open for the deer. They don't jump the 6 foot fence because it's on a slant so it looks taller. I would think any parent who has a small child and near an irrigation ditch, would put in a protective fence for their child. I'm also trying to provide protection for the folks who would buy and live on Hickingbotham's so that they aren't looking at 6 or 7 different kinds of fencing even if it says consistent design and material, I assume Gene will have to be the one that makes that decision, but it also calls for the 5 foot height closed board fence along every lot that borders the ditch. I guess I'd prefer to change that one to landscaping but allow a fence of some kind on their property to protect their children.

Commissioner Curtiss: My understanding was that the first part of No. 9 would allow the fence for the kids and the back one – just that second paragraph would be the one. I think we're saying the same thing.

Commissioner Evans: I think so too.

Chairman Carey: Does that mean that you're going to amend these covenants to say something different?

Commissioner Evans: I would change that last paragraph and say, "Landscaping to be approved by the Missoula County Commissioners Office instead of Planning, should be, planned for an installed along the property line that borders the Big Flat Ditch." I want to hear what Becky's got to say about that.

Becky Weaver: As I understand it, we'd take – on page 9, second paragraph, No.9 – out completely.

Commissioner Evans: Yes, uh-huh.

Becky Weaver: And either create another section, or add it to the existing landscaping section, a condition that says, "Each owner along the same maintenance issue for lot or home occupancy, each owner shall install landscaping." We would probably have some kind, as part condition of the final plat, approve landscaping plan –

Commissioner Evans: Installed and maintained. We want to make sure it's maintained.

Becky Weaver: I think if we could propose a landscaping plan without construction of that final plat, that approvable, X type of plan and X amount, and then require in the covenants each homeowner install their chunk of it; we would be in agreement with that. That allows the existing irrigation systems installed by the owners to maintain that landscaping instead of having to have a separate irrigation system.

Commissioner Evans: I think I could live with that. How about you Jean?

Commissioner Curtiss: Uh-huh, where would we put that? That would be a new condition then.

Becky Weaver: Yeah, I guess the condition would read to delete – to allow us to delete that portion there of the fencing along the fence and condition us to replace it with – a condition that requires the homeowners to install the landscaping as agreed or as proposed and approved by the Commissioner's office.

Chairman Carey: Mary.

Mary McCrea: You could have a condition that states, "A landscaping plan for landscaping at the rear of the property owners on the northern property be reviewed and approved prior to final plat." Then you could amend that, you have a condition that says, the development covenants would be amended to remove that second paragraph under 9 about the 5 foot fence and instead add the part that Becky was talking about that each homeowner shall install landscaping per the approved landscaping plan and irrigation for that. That would be on or before occupancy of the dwelling erected on such lots.

Becky Weaver: That could be in zoning compliance too?

Chairman Carey: That would be fine, although I wouldn't want the commissioners to get involved in evaluating whether or not the landscaping is suitable. For one thing, we couldn't enforce it unless we suit them and I don't think we want to get into that.

Commissioner Evans: So who do we have to do that?

Chairman Carey: Normally –

Mary McCrea: I think that if it's part – the landscaping plan can be reviewed and approved by OPG so we know what it is that's going to be required. If it's put into the covenants, at that point, then it will go back to the Homeowners Association to have the responsibility. We don't want to have to approve the actual fences unless we want to add those to our building permit program.

Commissioner Curtiss: I think we'd have to do several things then. No. 10 is the one where the irrigation ditch –

Chairman Carey: You're in the conditions?

Commissioner Curtiss: Yeah, Condition No. 10 talks about fencing so we'd have to change that one. Then we need to add new condition to say, "A landscape plan would be reviewed and approved prior to final plat approval," and add it to the covenants.

Mary McCrea: Actually –

Commissioner Curtiss: -- and then remove the second paragraph of Covenant No. 9.

Commissioner Evans: No. 10 that I'm looking at, Jean, has to do with water rights.

Commissioner Curtiss: Maybe it does, okay. Does it talk about the ditch fence?

Commissioner Evans: I think you're looking at something different.

Commissioner Curtiss: I just looked at the irrigation company.

Mary McCrea: I don't believe we have a condition that requires the fence because they already provided it.

Becky Weaver: Can I request that if you do condition that that the condition states something about the purpose of the landscaping. It's not just a condition to require a landscaping plan but it give guidance to OPG when they are reviewing our plan, what they're looking for because it's such a broad term – landscaping to provide a minimum of 5 foot of screening, something like that versus just a landscaping plan with no purpose.

Chairman Carey: I think that's a good idea.

Colleen Dowdall: It's not a landscaping plan but a fencing plan?

Commissioner Curtiss: We took out the fence line ditch.

Colleen Dowdall: Just along the ditch. The other fence requirements would remain.

Commissioner Curtiss: They're all the same.

Mary McCrea: There's actually no fence requirements except that the irrigation ditch company wanted a fence along the ditch. Within the covenants, they have requirements, proposed covenants, that we really didn't comment on one way or the other about what type of fencing they can have where. Then they also added something about the irrigation ditch fence.

Colleen Dowdall: Because the covenants do require a fence along the ditch.

Mary McCrea: And they're proposing taking that out and instead provide landscaping, per a landscaping plan reviewed and approved at final plat, and then that portion, that paragraph, will be removed that requires the fence

at the ditch. Instead it will state that each lot owner on or before occupancy will have to provide the landscaping per the plan and an irrigation for that.

Colleen Dowdall: But no fence.

Mary McCrea: No fence.

Chairman Carey: Okay, so do we need –

Commissioner Curtiss: So, I'm playing with it. If we added under – since this will be a covenant thing, we could add a new No. 20 to be under covenants to state that they would amend the covenants to add a landscape plan to shield the back yards abutting the Big Flat Ditch with 5 foot shrubbery?

Mary McCrea: To provide a minimum 5 foot screening of the property boundary adjacent to the Big Flat Ditch.

Colleen Dowdall: Did you say 5 feet?

Mary McCrea: Becky had suggested that.

Becky Weaver: That was the fence.

Commissioner Curtiss: To provide a minimum 5 foot screening of property bounding adjacent to the Big Flat Ditch. And then we could just add language to that statement that said, this landscape plan will be reviewed and approved by OPG prior to final plat.

Chairman Carey: Okay. Then we're going to strike the second paragraph –

Mary McCrea: So a second condition – another condition 21, strike the second paragraph of No. 9 - fences; requiring a fence along the ditch.

Colleen Dowdall: I did one condition that said paragraph 9 of the protective covenant shall be amended to delete the requirement for the fence along the irrigation district. The covenant shall be amended to require a landscaping plan, which provides a minimum of 5 foot screening along the ditch – that's as far as I got.

Commissioner Curtiss: It should say the Big Flat Ditch, since there are two ditches.

Chairman Carey: Would you like to come up and say something on the record?

Commissioner Curtiss: So you are just making it all one statement, Colleen?

Colleen Dowdall: It's all in the same paragraph.

Mary McCrea: There should be one other thing that we talked about, when it shall be installed. In the development covenants, it should also state in that paragraph, to be installed on or before occupancy of the dwelling. You wanted something to deal with irrigation, as well, that it be irrigated.

Colleen Dowdall: Don't we have that in another –

Sandy Hickingbotham: Well the problem with that is, is that a 5 foot screening along the boarder would do absolutely no good for what they have in their backyards because their backyards are going to be about 30 feet above where the ditch is. To have a 5 foot screening along the boarder of the ditch – are you following me? The screening is going to be here but their backyards are going to be way up there so it's a moot point. It doesn't do any good because it's a hillside. The property goes off the hill and it goes down to the ditch. It's a hill and where they would build would be up here and then it goes down like this and then the ditch is down here.

Commissioner Evans: You're saying that the slope is in their property.

Commissioner Curtiss: But we aren't saying the landscape plan has to say it is clear back at the ditch. It could be anywhere to shield the shed. If it was a 5 foot fence, you would have the same thing.

Sandy Hickingbotham: Right, that's what I thought. I was just trying to clarify that because if it was along the property line then it wouldn't shield anything.

Commissioner Evans: It's supposed to be on the area before it goes down –

Sandy Hickingbotham: Right, okay.

Mary McCrea: Also we could take – where it says in the second paragraph, "Said fence," we could say, "Said landscaping shall be installed along the edge of the easement area." You can see the little dash line is the easement area and that would be above the part where it's sloping down, "and shall be installed on or before occupancy of the dwelling erected on such lot."

Commissioner Curtiss: But do we know that the plan is going to say that it needs to be on the easement? Maybe the plan would say that it's 3 feet from the shed. I think we're getting too worried about (inaudible).

Commissioner Evans: We're driving Patty crazy.

Commissioner Curtiss: Colleen, could you read your thing again, what you wrote?

Colleen Dowdall: Paragraph 9 of the protective covenants shall be amended to delete the requirement of the fence along the irrigation ditch. The covenant shall be amended to require a landscaping plan; I just added, reviewed and approved by OPG prior to final plat approval, which provides a minimum 5 foot screening – what I would recommend doing is just taking that part out or at least the 5 foot and say, "Which provides screening between this property and the property to the north." Yeah, it gives us an idea of what OPG should be looking for but we aren't trying to do it in this room.

Commissioner Curtiss: But it shouldn't just say "north" because of the technicalities that these other folks don't live on the north so it should say, "Across the Big Flat Ditch."

Chairman Carey: Becky.

Becky Weaver: I have concerns about the word screening and the interpretation. It seems like it is such a broad – I guess what I'm asking is that we would really like it to be – I understand that we don't want to get into the nitty-gritty of doing the design here but the purpose of it, conditioning, things like that make it difficult because then we're open to interpretation of what screening – is it the entire house, the roof, what has to be screened?

Colleen Dowdall: The thing is, if there is a difference in interpretation, you always have the Board of County Commissioners to go back to. I think the – this has really worked for the professional staff to go through with you and the developer.

Commissioner Curtiss: Probably on the record, we should say what we want screened.

Colleen Dowdall: Right. Or even in the condition, we can say what the purpose of the landscaping is. It's to provide a buffer or screening or which ever term you want to use but I would rather not set those standards here.

Chairman Carey: And I personally wouldn't want to set them myself. Screening for me is too vague. Somebody is going to say, "It isn't screened." Somebody else is going to say, "It is screened." We're going to have to decide – I don't know.

Commissioner Curtiss: If I'm 5'8" I can see over that 5 foot fence – whether it's a fence or a bush. What do we want to screen, Barbara, the sheds? Or do we care?

Commissioner Evans: Sandy's property is much lower so I agree with Becky. Whatever they put up on the bench; it doesn't have to be a 12 foot tree in order to screen the view of the backyards. It will give privacy to the people in Gene's subdivision and provide a nice view from Sandy's property.

Commissioner Curtiss: Maybe we should say, "As a buffer and not a screen."

Mary McCrea: I'm just wondering if maybe we should – if we could craft some language. We could work with the developer and Colleen. Could we come back next week with that proposed language? I'm not sure we could craft it here.

Chairman Carey: No. We've spent 45 minutes and we have really got anywhere.

Colleen Dowdall: I would rather we do something really general and just have the subdivision approved or disapproved or you take action on it rather than delay action just for this terminology.

Commissioner Curtiss: So we could approve with vague language saying that any changes to that language the Commissioners could have a say on later.

Colleen Dowdall: That would be the case anyway. We would have to come back and request – or we could take a 5 minute break and we could try and get it hammered out, but it still will be vague. I don't want to do – and even in a week, I'm not sure we could get landscaping requirements.

Commissioner Curtiss: The details will be in the plan?

Colleen Dowdall: Yes.

Chairman Carey: Let's go ahead and take a 5 minute break and see if we could work something out.

(5 MINUTE BREAK)

Chairman Carey: Well return to the hearing. Do we have some language?

Commissioner Curtiss: We do.

Colleen Dowdall: So this would be the new condition at the end and it would say, Paragraph 9 of the Protective Covenants, shall be amended to delete the requirement for the fence along the irrigation ditch. The covenant shall be amended to require a landscaping plan reviewed and approved by OPG prior to final plat approval whose purpose it is to screen the outdoor storage and outbuildings along the edge of the Big Flat Irrigation Ditch easement – and that isn't right – whose purpose it is to screen the outdoor storage and outbuildings. The landscaping shall be irrigated and shall be installed along the edge of the Big Flat Irrigation Ditch easement, which puts it up on the hill, on or before occupancy of each dwelling. The landscaping plan shall be made a part of the covenants."

Commissioner Evans: Sounds good to me.

Chairman Carey: Okay. Thank you. Do we have a motion? I believe I did close the hearing a while back. Is there a motion for this?

Commissioner Evans: Do you want to try this one?

Commissioner Curtiss moved that the Board of County Commissioners approve the variance request from Section 3-2(3)(B) which requires a 24 foot surface width, to permit a 20-22 foot surface width for River Pines Road, based on findings of fact contained in staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioner add a new Condition 20 that reads: "Paragraph 9 of the Protective Covenants shall be amended to delete the requirement for the fence along the irrigation ditch. The covenants shall be amended to require a landscaping plan reviewed and approved by OPG prior to final plat approval, whose purpose it is to screen the outdoor storage and outbuildings. The landscaping shall be irrigated and shall be installed along the edge of the Big Flat Irrigation Ditch easement, which puts it up on the hill, on or before occupancy of each dwelling. The landscaping plan shall be made a part of the covenants." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

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

Chairman Carey: Did that cover the Planning Board's motion too, their variance request?

Commissioner Evans: I think it did.

Chairman Carey: It did? Okay. Thank you.

River Pines Estates Subdivision Conditions of Approval:

Roads and Driveways

1. The Development Covenants shall be amended to require that owners of Lot 5 shall access off of Grebe Court and the owners of Lot 6 shall access off of Kingfisher Place. *Subdivision Regulations Article 3-3(1)(G)*.
2. A continuous 60 foot public right-of-way and utility easement shall be provided for Blue Heron Lane from River Pines Road to the northern boundary of the subdivision and shall be dedicated on the final plat, subject to the review and approval of Missoula County Public Works, prior to final plat approval. *Subdivision Regulations Article 3-2(1)(E) and Missoula County Park Board recommendation*.
3. The following note shall be added to the face of the plat:

"The owners of River Pines Estates Subdivision understand and agree that the County of Missoula is in no way obligated to provide road improvements, or perform maintenance, upkeep or snow removal for the portion of Blue Heron Lane north of Kingfisher Place until the road is built to County standards and accepted by the County of Missoula as a public road." *Subdivision Regulations Article 5-2(3)(R)*.
4. A signage plan for permanent road and address signs, as well as temporary (during construction) signs, conforming to the Manual on Uniform Traffic Control Devices (MUTCD), current edition shall be reviewed and approved by Missoula County Public Works and 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 Article 3-2(2)(F), County Public Works and Missoula Rural Fire District recommendation*.

Fire

5. Driveways in excess of 150 feet in length shall incorporate a turnaround for fire apparatus at the terminus of the driveway and must be approved by Missoula Rural Fire District prior to zoning compliance permit approval. *Subdivision Regulations Article 3-2(10) and Missoula Rural Fire District recommendation*.
6. The following driveway requirements shall be included in the Development Covenants, subject to review and approval of OPG, prior to final plat approval:

"Driveways in excess of 150 feet in length shall incorporate a turnaround for fire apparatus at the terminus of the driveway and must be approved by Missoula Rural Fire District. The driveway must provide a minimum of 12 feet of surface width, 20 feet of unobstructed width and 13 feet 6 inches of 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. All new driveways shall be paved 20 feet back from the edge of the pavement or the right-of-way boundary, whichever is longer."

This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-2(10), Missoula Rural Fire District and Missoula City-County Health Department recommendation*.
7. Installation of interior residential fire sprinklers that meet NFPA 13D standards are required in each new home for the purposes of fire protection. Plans for installation of interior residential fire sprinklers are subject to the review and approval by the Missoula Rural Fire District prior Zoning Compliance Permit approval. *Subdivision Regulations Article 3-7(1)(E) and Missoula Rural Fire District recommendation*.
8. The requirement for residential fire sprinklers shall be included in the Development Covenants, including the statement that: "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 is subject to OPG review and approval, prior to final plat approval and this section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-7(1)(E) and Missoula Rural Fire District recommendation*.
9. 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)*.

Irrigation Ditch

10. The subdivider shall provide evidence that this property does not have water rights to the Big Flat Irrigation Ditch and/or to the ditch crossing Big Flat Road to Lot 17. If irrigation water rights are available to this parcel, the subdivider shall provide access to irrigation water for the Big Flat Ditch and/or the ditch crossing Big Flat Road to Lot 17, to all lot owners. In the alternative, the developer may have the water rights removed, for one or both ditches, through an appropriate legal or administrative process, which shall be indicated by a statement on the final plat, or the development covenants shall include notification that the land is classified as irrigated and may continue to be assessed for irrigation water delivery even though the water may not be deliverable. Compliance with this condition is subject to review and approval by the County Attorney’s Office prior to final plat approval. This section of the covenants may not be changed or deleted without governing body approval. *MCA 76-3-504(i)-(j), Subdivision Regulations Article 4-1(13), County Attorney and OPG recommendation.*

Parks

11. The subdivider shall restrict the public utility easement on Common Area 1 to the area of the proposed drainfield east of and adjacent to Lot 13 and a 20 foot strip along the northeastern boundary of Common Area 1, subject to OPG approval prior to final plat. *Subdivision Regulations Article 3-8(6)*.

Weeds

12. The Revegetation Plan, approved by the Missoula County Weed Control Board, shall be appended to the Development Covenants, 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 Article 3-1(1)(B) and Missoula County Weed Board recommendation.*

Missoula Urban Transportation District

13. The applicant shall petition into the Missoula Urban Transportation District prior to final plat approval. *Subdivision Regulations Article 3-2(8)(C) and Missoula Urban Transportation District recommendation.*

Floodplain

14. A floodplain development permit is required for the construction of Kingfisher Place and the stormwater improvements in the floodplain, subject to review and approval of the Floodplain Administrator, prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*
15. The 100 year flood elevation shall be specifically identified for Lots 5 through 7, 14, 15 and 17, subject to review and approval of the Floodplain Administrator, prior to final plat approval. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*
16. Pre- and post-construction elevation certificates are required for new construction on Lots 5, 6, 7, 14, 15 and 17, documenting that the lowest floor and the driveway access is two feet above the elevation of the 100 year flood, prior to zoning compliance permit submittal. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*
17. The Development Covenants shall be amended to include the following information in a Floodplain section, subject to review and approval of OPG, prior to final plat approval: “Pre- and post-construction elevation certificates are required for new construction on Lots 5, 6, 7, 14, 15 and 17 which are constrained by and adjacent to the new 100 year floodplain, documenting that the lowest floor and the driveway access is two feet above the elevation of the 100 year flood. Crawlspace surfaces may be at the base flood elevation provided they do not contain mechanical equipment.” 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

18. The radon mitigation section in the Development Covenants shall be amended to include the following updated information from the Health Department, 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.*

19. Article VII (4) “Amendment” of the Development Covenants shall be amended to include the following sections, which may not be revised without governing body approval, subject to review and approval of OPG, prior to final plat approval: “... Provided that the covenants dealing with garbage, animals and pets, Living with Wildlife, wood-burning devices, irrigation ditches, floodplain, weed control, radon, fire sprinklers, on-street parking, planting, or driveways, addressing, amendments; and use of Common Area 2 as a bus stop, may not be changed or eliminated without concurrence of the appropriate prior written consent of the governing body.” *Subdivision Regulations Article 5-1 and OPG recommendation.*

20. Paragraph 9 of the Protective Covenants shall be amended to delete the requirement for the fence along the irrigation ditch. The covenants shall be amended to require a landscaping plan, reviewed and approved by OPG prior to final plat approval, whose purpose it is to screen the outdoor storage and outbuildings. The landscaping shall be irrigated and shall be installed along the edge of the Big Flat Irrigation Ditch easement, on or before occupancy of each dwelling. The landscaping plan shall be made a part of the covenants.

There being no further business to come before the Board, the Commissioners were in recess at 3:40 p.m.