

## **PUBLIC MEETING – APRIL 12, 2006**

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

### **Pledge of Allegiance**

### **Public Comment**

#### **Routine Administrative Actions**

Commissioner Barbara Evans moved to Approve Weekly Claims Lists of \$149,702.98. Commissioner Jean Curtiss seconded. The motion carried on a vote of 3-0.

#### **Hearings (Certificate of Survey)**

Commissioner Bill Carey: The first of our Family Transfer's today is the John Smith Family Transfer and I'll ask our Deputy County Attorney to brief us on that.

Colleen Dowdall: The first request is from John Smith to create two additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 8.4 acres in size located on Tote Road Lake near Salmon Lake off of Woodworth Road. John proposes to create two approximately 2 acre parcels for transfer to each of his sons, Joseph D. Smith and William Robert Smith, for recreational/residential purposes and keep the remaining approximately 4.4 acres for residential purposes as well. The history of the parcel is as follows: COS #3512 was filed October. 22, 1987 creating a tract of land for an occasion sale. COS #4727 was filed October 1, 1997 for the purpose of relocating common boundary lines. A warranty deed was filed by James E. and Margaret M. Thompson August 12, 2003 deeding the property to John William and Joan E. Smith. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Commissioner Bill Carey: Thank you. Is a member of the Smith family here? Sir, please step forward and identify yourself.

John William Smith: Good afternoon.

Commissioner Bill Carey: Good afternoon. We ask our County Attorney to ask questions on the record in order to indicate that this is not an attempt to evade subdivision review, which would be a misdemeanor. So I'll open the hearing and ask Colleen to ask you some questions.

Colleen Dowdall: Hi. I related here that you've owned the property since 2003, is that accurate?

John Smith: No, no, I bought it in 1997.

Colleen Dowdall: Okay, did you buy it on a contract?

John Smith: No.

Colleen Dowdall: I'll look up that deed. When you bought the property, did you intend to divide it?

John Smith: I have seven children and I intended to have space out there for the family. 19 grandkids and so it's for a family split. My two oldest sons.

Colleen Dowdall: Do you intend to divide it further for your other children?

John Smith: No.

Colleen Dowdall: Your sons are adults?

John Smith: Yes. Both live in Missoula.

Colleen Dowdall: Do you, or do they, intend to transfer the parcels created within the next year or so?

John Smith: No.

Colleen Dowdall: Do they intend to build on them?

John Smith: Yes.

Colleen Dowdall: Is there a home on the property now?

John Smith: I have a large garage that I keep a motor home in and a cabin that is near completion.

Colleen Dowdall: So is this recreational property?

John Smith: Maybe residence as well.

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

John Smith: No.

Colleen Dowdall: Are you attempting to evade subdivision review?

John Smith: No.

Colleen Dowdall: Do you understand that with this request we are not reviewing the property for adequate access like we would in subdivision review?

John Smith: Uh huh.

Colleen Dowdall: We would make sure that you approve that there is legal access to the parcels.

John Smith: Yeah.

Colleen Dowdall: Also, this approval is not the only one that you will likely require. Do you understand that?

John Smith: Yes.

Colleen Dowdall: This is just permission to divide the property. If you're zoned, you still have to comply with zoning to get other permits.

John Smith: I have two access points – 30 feet – off Woodworth Road.

Colleen Dowdall: Okay. Again, we don't review it for that determination. That's something you have to assure yourself of.

John Smith: Thank you.

Commissioner Bill Carey: Thank you, Mr. Smith. This is a public hearing, is anyone else here to speak to this? Seeing no one, I'll close the hearing.

Commissioner Barbara Evans moved to approve the request by John W. Smith to create a Family Transfer parcel as described. There does not appear to be an attempt to evade Subdivision and Platting Act. Commissioner Jean Curtiss seconded. The motion carried on a vote of 3-0.

Commissioner Bill Carey: Mr. Smith, you'll be getting a letter in several weeks showing what we've done here today. You're welcome to stay or go, whichever you'd like.

John Smith: I'd like to stay and see how the next guy does.

Commissioner Bill Carey: The next hearing is the Babcock Family Transfer. Again I'll ask Colleen to brief us on that.

Colleen Dowdall: This second request has been submitted by Kella J. Babcock to create one parcel using the Family Transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 7.38 acres in size located near Lolo, Montana on Graves Creek. Kella proposed to create one approximately 5 acre parcel for transfer to John B. Leone, her husband, for residential purposes as well as business purposes and keep the remaining approximately 2 acre parcel for residential purposes for her parents Don and Mary Ellen Babcock. The parcel going to her husband is where their residence is, as well as their shop and business office, which needs to be a separate parcel for business insurance and financing reasons. The history of the parcel is as follows: A Court Order was entered April 15, 1987 ordering a Quitclaim Deed be filed deeding Tract A to Judy D. Jones. Judy Jones filed a Warranty Deed in December 1999, deeding the property to John B. Leone and Kella J. Babcock. COS #5685 was filed in April 2005 for the purpose of relocation common boundary lines between adjoining properties. A Quitclaim Deed was filed in December 2005 deeding the property to Kella Babcock. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the subdivision except COS #5685 4/19/05 BR NE Sec. 18 T12N R22W. Applicant, per history of use of exemption, is limited to the boundary relocation done in 2005.

Commissioner Bill Carey: Thank you. Is a member of the Babcock family here? Please state your name for the record. I'll open this hearing and ask our Attorney to ask you some questions.

Kella Babcock: My name is Kella Babcock.

Colleen Dowdall: Have you owned the property since the year I said? 1987?

Kella Babcock: Yes, and actually I bought that from my sister. It's been in my family for many many years.

Colleen Dowdall: Your sister was Judy Jones?

Kella Babcock: Yes.

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

Kella Babcock: No. My parents lived there even when she owned it and I built my shop and office there. Now I would like to do this for security for them and no other reason.

Colleen Dowdall: Are you going to transfer either of the parcels from your husband or you?

Kella Babcock: No. I cannot, they're (her parents) elderly and not in good health. I can't do that.

Colleen Dowdall: Okay. So, neither of these parcels will be transferred to anyone else? You're not selling them in the next year or so?

Kella Babcock: No. No.

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

Kella Babcock: No, I haven't.

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

Kella Babcock: No.

Colleen Dowdall: You mentioned there's a commercial use on this property...

Kella Babcock: We have a fencing company and we have a shop with an office, is what it is. It's not a retail type.

Colleen Dowdall: Is this pretty remote? From the map it looks like it's very rural.

Kella Babcock: Yes. Yes, it is.

Colleen Dowdall: So you understand this request does not....we're not reviewing it for adequate access or all the other things we review for subdivision review.

Kella Babcock: Yes.

Colleen Dowdall: And you may need other approvals, even though you have existing houses, in order to get your certificate filed.

Kella Babcock: Yes. I would like to say, I was in here, you may recognize me, you may not. We were going to do a transfer and you approved it on a Petty Creek property, earlier on. I would like to void that, because I don't want that to interfere with this....I don't want to do anything wrong.

Colleen Dowdall: Okay. Thank you for letting us know that. If you could....have you let us know that, Greg?

Greg Martinsen: Just now.

Colleen Dowdall: If you could send a letter to the County Attorney's office, we'll make sure that happens.

Kella Babcock: Okay.

Commissioner Bill Carey: Thank you. Is there anyone else who wishes to speak to this matter?

Commissioner Jean Curtiss: I'd like to ask Ms. Babcock a question. It's our job to decide whether we think anyone is trying to evade subdivision, so when we look at one's where people are transferring from husband to wife, they raise a few questions in our minds. I just need to clarify....the piece that your parents live on will now be in your husband's name? Or the other way around?

Kella Babcock: I will be transferring it to him.

Commissioner Jean Curtiss: The piece that your parents are one, not the one that has the shop?

Kella Babcock: Yes.

Commissioner Jean Curtiss: Explain to me again, it says in relation to your business and financing that you need to do this. Please tell me what that means.

Kella Babcock: In order to finance my business, like most small businesses, I have a lien against it...for operating capital. If something was to go wrong, my parents would be living....I don't know where.

Commissioner Jean Curtiss: Okay, that's helpful, thank you.

Commissioner Bill Carey: Any other questions? Is there a motion? I'll close the hearing first.

Commissioner Barbara Evans moved to approve the request to create one parcel for Kella Babcock as listed and there does not appear to be an attempt to evade the Subdivision and Platting Act.  
Commissioner Jean Curtiss seconded. The motion carried on a vote of 3-0.

Commissioner Bill Carey: Thank you. You'll be getting a letter as well in a few weeks.

Commissioner Jean Curtiss: And this would be contingent upon getting that letter about voiding the other property to the County Attorney's Office, correct? Since that would make two in one county.

Colleen Dowdall: Yes, I'll make a note of that.

### **Decision (From hearing on April 5, 2006)**

Commissioner Bill Carey: I'll reopen the hearing from April 5<sup>th</sup>....this decision is a Petition to Establish a County Road (Tookie Trek, Jar's Gang, Peak's Row Lane and a portion of Fire Bucket Loop) in conjunction with RSID 8482. Greg are you going to speak to this?

Greg Robertson: Yes. In conformance with the state statute, one commissioner, Barbara Evans and myself, did a viewing of the road for establishment purposes. We drove the roads and feel that it is appropriate to establish these at county roads with provision that the improvements contemplated in the two RSID's that have already been created are installed and accepted.

Commissioner Bill Carey: Thank you. This is a hearing, is there any comment?

Commissioner Jean Curtiss: This first is this one, or is it the next one, that some suggested that we shorten the road....its the next one.

Commissioner Bill Carey: Seeing no one step forward, I'll close the hearing. Is there a motion?

Commissioner Barbara Evans: I would like to concur with Greg. Having looked at George Cates Blvd., which was paved already by the residents, and compare it to the road that has not yet been paved, there is no comparison. It really will help the area up there and help the families and I certainly think it would be beneficial for it to be a county road and to do the SID.

Commissioner Bill Carey: Do we need a formal motion to accept the petition?

Mike Sehestedt: Yes, the motion should be to grant the prayer in the petition contingent upon paving of the roads in accordance with the RSID's previously proposed. That keeps us from having these as county roads with maintenance responsibility in the eventuality that they are not improved.

Commissioner Barbara Evans: Do we need to do them separately or can they both be done at the same time?

Mike Sehestedt: I think we need to do them separately, because they were separately petitioned for.

Commissioner Barbara Evans moved to approve the request to Establish a County Road (Tookie Trek, Jar's Gang, Peak's Row Lane and a portion of Fire Bucket Loop) in conjunction with RSID 8482, contingent upon paving of the roads in accordance with the RSID's previously proposed. Commissioner Jean Curtiss seconded. The motion carried on a vote of 3-0.

Commissioner Bill Carey: I'll open the hearing on the next request for RSID 8483. Greg will you briefly comment on this one?

Greg Robertson: Yes. Both Commissioner Evans and myself viewed the planned road improvements and alignment for O'Keefe Creek Blvd. and artillery roads. Contemplated in RSID 8483 and we feel it is appropriate to establish these as county roads contingent upon the installation of improvements contemplated in the RSID.

Commissioner Barbara Evans: Greg, would you also refer to the spot that was recommended, last time, that we take out a little piece?

Greg Robertson: Yes, what we will do is shorten the cul-d-sac length on the first road off of O'Keefe Creek Blvd. And still provide access, it will save a couple hundred feet of road. I don't think that will change our proposal at all.

Commissioner Barbara Evans: I'd also like to address the person (Glenn Sparks) who was very upset and didn't want to contribute to either portion of this road because he didn't feel it would benefit him. Well, it certainly will benefit that person. The stretch of road on which that person lives, I wouldn't live on. It certainly would cost a person's life savings, or thereabouts, to do his portion of the road because it must be at least an 18% grade in several places, both up and down.

Commissioner Bill Carey: This too is a hearing continuing from April 5. Is there anyone else who wishes to speak to this? Any questions from the Commissioners?

Commissioner Jean Curtiss: Just one. The portion of the road that was proposed to be shortened up, would be the portion between lots six and seven, north of lot eight? Is there any way legally, in this, saying if we shorten that up that we could apply is down on lot 52?

Mike Sehestedt: No, we're starting to change the description of the RSID and while I think we can reduce the improvements, I don't see us adding additional improvements.

Commissioner Jean Curtiss: So, this would just reflect a reduction in cost of the RSID?

Greg Robertson: That's correct.

Mike Sehestedt: And the dedication, or acceptance, of the road petition will only be affective as to those portions that are brought up to standards. That kind of automatically adjusts itself as to what we wind up with down at that end.

Commissioner Bill Carey: Any other comments? Seeing none, we'll close the hearing.

Commissioner Barbara Evans moved to approve the request to Establish a County Road (O'Keefe Creek Blvd, O'Keefe Creek-North and Fire Bucket Loop) in conjunction with RSID 8483, contingent upon paving of the roads in accordance with the RSID's previously proposed. Commissioner Jean Curtiss seconded. The motion carried on a vote of 3-0.

Mike Sehestedt: Greg, do we have any update on construction schedule in case there are people here?

Greg Robertson: I'd have to ask the engineer, Matt Smith. We have, I believe, one parcel of right-of-way left to acquire and then we'll be ready to go. The plans have been reviewed; PCI has done an excellent job. As soon as we get clearance, and get you to "sprinkle holy water" on a site title opinion, we'll be "off to the races."

Mike Sehestedt: Just present it to me.

Greg Robertson: I will.

Mike Sehestedt: I just wanted to get an update because we had significant expressions of wanting to know that.

Greg Robertson: I've communicated with the Homeowner's Association, the new president, and we'll give him update periodically.

Mike Sehestedt: Perfect. Actually, no one from there is here now, so this was kind of pointless.

### **Hearings:**

First is Golden West Addition, Lot 27 (2 lots on 2.24 acres) – Corner of Cote Lane and Toby Way

Commissioner Bill Carey: Tim will give us the staff report.

Tim Worley with OPG: I'm here to talk about a couple of Golden West subdivisions, and I'll start with Lot 27. This is a request from Wesley & Kathleen Turner, represented by Ron Ewart. This a proposal for two lots on 2.24 acres at the intersection of Cote Lane and Toby Way. The lots are proposed to conform with the existing C-RR1 zoning, with lots sizes of 1.05 and 1.18 acres. Cote Lane and Toby Way are both county-maintained roads; Cote Lane's surface varies from 20 feet to gravel to 24 feet of mostly pavement. Toby Way's surface is about 22 feet wide and paved. Improvements are not proposed to either road and variances to the 24 foot standard are requested for both roads. This is supported by Public Works, acknowledging the sufficiency of the existing roadway. The average lot frontage for this subdivision requires curb and gutter installation along Toby Way, according to the subdivision regulations. The applicant proposes to vary from this standard and Public Works acknowledges that the swales used in this area are sufficient. Cote Lane has a walkway on its western side, but Toby Way does not, they are requesting a comprehensive walkway network and not spot projects throughout. An individual driveway will serve Lot 27A and a shared driveway is proposed for Lot 27B and 28A. Staff recommends a shared access easement along the common Lot 27/28 lot boundary be filed, or proof of legal access across Lot 28 be demonstrated prior to final plat approval of Lot 27. Staff also recommends a 1 foot no access strip along the Toby Way frontage of Lot 27, in order to confine access to the shared driveway; info is recommended for covenants to alert landowners of this fact. This subdivision is in an area requiring monetary contribution (\$230) for subdivision impacts to the Flynn/Mullan and Reserve/Mullan intersections. This is a very standard condition among subdivisions in this area. Residential fire sprinklers are recommended for this subdivision along with language in the covenants about the fire sprinkler. A corrected RSID waiver is recommended in order to cite the roads relevant to this subdivision, there was on road sited that was outside of this subdivision. Covenant amendments are recommended to address: language about driveway constructions, including paving requirements; language about address sign requirements; information alerting homeowners of the area wildlife issues, as this is in the Kelly Island area and weed control information. Staff and Planning Board are in support of Golden West Addition, Lot 27. Planning board actually recommended unanimous approval of this subdivision.

Commissioner Bill Carey: Thank you Tim. I'll open the hearing and ask for the public comment. Would the developer's representative care to speak?

Ron Ewart: With Eli & Associates. Thank you Tim for all of your work. We are in agreement with the recommended motions and conditions and findings and fact in the staff report. Thank you.

Commissioner Bill Carey: Thank you, Ron. Anyone else wish to speak?

Commissioner Jean Curtiss: We did get a letter from Jerry and Lois Covault. I think we should talk about a few of the things they brought up in their letter. One was to reserve trail rights-of-way...Tim is there adequate right-of-way for trails in the future?

Tim Worley: It's a 60 foot right-of-way, so I assume that would work out here.

Commissioner Jean Curtiss: You've already talked about the sidewalks and that it would be a better thing to do them all at once and not in spots. Another issue talks about traffic and the road...another is don't overload the existing sewage feeder lines. Didn't we just put new sewer lines in that area?

Tim Worley: I think Greg could speak more to that. But yes, the Golden West system was its own system for sewage disposal and it connected in with the main Mullan line within the last year or two, I believe.

Commissioner Jean Curtiss: The last one is about schools which, Colleen, we still aren't allowed to weigh the impact on schools in subdivision, right?

Colleen Dowdall: That's correct.

Commissioner Jean Curtiss: I just want to make sure their concerns are on the record.

Commissioner Bill Carey: Thank you. Any other questions? Comments? Okay, I'll close the hearing. Is there a motion?

Commissioner Jean Curtiss moved to approve the four variances: 1. from Article 3-2(3)(A) requiring a 24 foot paved width for Cote Lane, 2. from Article 3-2(3)(A) requiring a 24 foot paved width for Toby Way, 3. from Article 3-2(8)(A)(ii) requiring installation of concrete boulevard sidewalks or paved pedestrian pathways, so that sidewalks or pathway installation is not required on Toby Way and 4. from Article 3-2(15) requiring installation of curbs and gutters, so that curb and gutter installation is not required on Toby Way all based on findings and fact in the staff report. Commissioner Barbara Evans seconded. The motion carried on a vote of 3-0.

Commissioner Jean Curtiss moved to approve Golden West Addition #1, Lot 27 subdivision based on finding and fact and subject to conditions in the staff report. Commissioner Barbara Evans seconded. The motion carried on a vote of 3-0.

### **Conditions of Approval:**

#### Roads and Driveways

The developer shall contribute \$230 per new lot to the Mullan Road transportation system fund for signalizing the Flynn/Mullan Road intersection and \$815 per new lot to the fund for improving the Reserve Street/Mullan Road intersection. Payment of this contribution shall be verified prior to final plat approval. Subdivision Regulations Article 4-1(12) and Public Works recommendation

A shared access easement along the common lot boundary of Lots 27 and 28 shall be filed prior to final plat approval or evidence of legal access for Lot 27B across Lot 28 shall be provided prior to final plat approval. Subdivision Regulations Article 3-6, 3-2(2)(D) and OPG recommendation

The plat shall be revised to show a 1' no-access strip along the Toby Way Street frontage of Lot 27B from the shared driveway easement to the western lot boundary. The covenants shall be amended to include the following language: "access to Lot 27B from Toby Way shall be limited to the shared driveway easement along the eastern lot boundary subject to approval of County Public Works." *Subdivision Regulations Article 3-2(1)(E) and OPG recommendation.*

### Fire

A residential fire sprinkler system meeting NFPA 13D standards shall be installed within the new home in this subdivision with plans to be reviewed and approved by Missoula Rural Fire District prior to Zoning Compliance permit submittal. Article I, Section 3 of the covenants shall be amended to include this information subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-7(1), Missoula Rural Fire District and OPG recommendation*

### RSID Waiver

The RSID waiver shall be amended to include Cote Lane and omit Council Way subject to review and approval of OPG prior to final plat approval. *Subdivision Regulations Article 3-2(3)(E) and OPG recommendation*

### Covenants

The covenants shall be amended as follows:

Article I, Section 4 of the covenants shall be amended to include the following driveway information: The surface of the driveway must be engineered to support the weight of emergency equipment in all weather conditions. All new driveways must be paved 20 feet back from the edge of pavement or the right-of-way boundary, whichever is longer.

Article I, Section 6 of the covenants shall be amended as follows: “Affixed to each home shall be address numbers contrasting to the home color that are at least 5 inches in height and clearly visible from the street in all light conditions.”

Article I Section 1e (“Pets”) shall be amended to include the following final sentence: “Keeping pets confined also helps protect them from predatory wildlife.”

The following shall be added to become the final section of Article I, Section 1: “Purchasers of lots within this subdivision must recognize the subdivision is located near the Clark Fork River where lawful waterfowl hunting and the associated discharge of shotguns could occur from early morning until sunset, and the season can run from September into January.”

Article I, Section 7 shall be amended as follows: “Lot owners are required to maintain their property in compliance with the Montana Weed Control Act, the Missoula County Noxious Weed Management Plan. The subdivision lot owners shall be required to revegetate any ground disturbance with beneficial species the first appropriate opportunity after disturbance occurs.”

Article I, Section 8.1 of the covenants shall be amended as follows: “Site preparation (topsoil management): Strip and stockpile topsoil. Redistribute topsoil to disturbed area adjacent to newly constructed driveway and compact to firm seed bed. A suitable turf grass mixture should be used in areas intended for maintained turf.”

Article I, Section 8.2 of the covenants shall be amended as follows: “Pryor Slender Wheatgrass 2 lbs. PLS/acre plus Roadcrest Crested Wheatgrass 16 lbs. PLS/acre.”

*Subdivision Regulations 3-2(1)(G)(v), 3-1(1)(F), Missoula Rural Fire District, Fish, Wildlife & Parks and County Weed District recommendation*

### **III. INTRODUCTION**

This is a request from Wesley and Kathleen Turner, represented by Ron Ewart of Eli & Associates to divide a 2.24-acre parcel into two lots.

#### **IV. SUBDIVISION FINDINGS OF FACT**

##### **A.) ZONING AND COMPREHENSIVE PLAN COMPLIANCE**

###### Findings of Fact:

The subdivision is located at the Cote Lane/Toby Way intersection south of Mullan Road.

The property is zoned C-RR1, which permits a density of one dwelling unit per acre.

The subdivision is located in the Urban Growth Area (UGA) and the Air Stagnation Zone.

Two lots are proposed, one at 1.18 acres and the other at 1.05 acres for a proposed density of one dwelling unit per 1.12 acres.

The Wye-Mullan West Comprehensive Area Plan designates this area Residential, with a recommended density of 1 dwelling unit per acre. This land use designation recognizes existing development patterns, matches existing zoning, and reflects existing covenants.

###### Conclusions of Law:

This proposal complies with the standards of the C-RR1 zoning district.

The proposed subdivision complies with the land use designation of the Wye-Mullan West Comprehensive Area Plan.

##### **B.) PRIMARY CRITERIA COMPLIANCE**

###### **CRITERION 1: EFFECTS ON AGRICULTURE AND AGRICULTURAL WATER USER FACILITIES --**

###### Findings of Fact:

The property is not currently under agricultural production.

Soils on the property are classified as Grassvalley silty clay loam, 0 to 4 percent slopes. This is rated as farmland of local importance.

There are no irrigation ditches on the property.

###### Conclusion of Law:

There will be an incremental loss of land considered farmland of local importance, according to soil type, as a result of this subdivision.

There are no impacts to agricultural water user facilities identified with this proposal.

###### **CRITERION 2: EFFECTS ON LOCAL SERVICES --**

###### **Roads**

###### Findings of Fact

Lot 27A has frontage on the east side of Cote Lane and the south side of Toby Way, while Lot 27B has frontage on the south side of Toby Way.

Cote Lane adjacent to the subdivision varies from a 20' gravel surface to 24' of pavement.

Cote Lane is a local street adjacent to the subdivision serving 3-80 dwelling units. Missoula County Subdivision Regulations Article 3-2(3)(A) requires Cote Lane to be paved to 24 feet. The applicant is asking to vary from this standard.

A total of 3235 Average Daily Trips were recorded on 5/18/2005 for the portion of Cote Lane located 300 feet south of Mullan Road. Traffic volumes are far lower on the section of Cote Lane adjacent to the subdivision because of its location south of streets that collect traffic from large area subdivisions.

County Public Works supports the variance because this is a county-maintained road that is wide enough for the volume and speed of traffic on this portion of roadway.

Toby Way has a 22' paved width adjacent to the subdivision. The applicant is asking to vary from the 24' paved width standard. County Public Works supports the variance because Toby Way is an existing county-maintained road with a surface width typical of area roads.

The average lot frontage along Toby Way is 145 feet. Missoula County Subdivision Regulations Article 3-2(7) requires curbs and gutters on roads fronting all subdivisions with lots that have an average frontage less than 175 feet.

The applicant is asking to vary from the curb and gutter standard. County Public Works supports the variance because existing roadside drainage swales are typical of the area.

This subdivision will contribute off-site impacts to the Mullan Road/Flynn Lane and Mullan/Reserve Street Intersections. This corridor is expected to experience significant growth with the extension of the Mullan Sewer project. As each project occurs, it contributes incrementally to the need to provide traffic signals and improvements at these intersections. County Public Works is recommending that the applicant contribute \$230 per new lot to assist in signaling the Flynn Lane/Mullan Road intersection and \$815 per new lot towards the improvement of the Mullan Road/Reserve Street to mitigate the impacts of this subdivision on the two intersections. Staff recommends this requirement be included as a condition of approval.

The plat shows a waiver of the right to protest an RSID/SID, based on benefit, for the upgrading of Council Way and Toby Way, including paving, curbs and gutters, street widening, and drainage facilities. Staff recommends corrections to the statement that include Cote Lane and omit Council Way.

#### Driveways

Lot 27A will use an existing driveway onto Toby Way. A shared driveway is proposed for Lot 27B and Lot 28A of the Golden West Addition #1, Lot 28 subdivision. A shared driveway maintenance agreement is included in the covenants.

Staff recommends a condition requiring the filing of a shared access easement for the driveway or proof of legal access across Lot 28 for the benefit of Lot 27B.

To ensure access is limited to the proposed shared driveway, staff recommends a condition requiring a 1' no-access strip along the Toby Way frontage of Lot 27B, with this information to be included in the covenants.

The Missoula City County Health Department commented that a residential driveway application and permit must be purchased at the Health Department for all new driveways inside the Air Stagnation Zone.

The Health Department also commented that all new driveways shall be paved at least 20 feet back from the edge of the pavement or right-of-way boundary, whichever is longer. This information is recommended for the covenants.

Curt Belts of the Missoula Rural Fire District comments that driveways in excess of 150 feet in length must be approved by the Missoula Rural Fire District. This information has been included in the covenants. Staff recommends amendment of this covenant section to include language about weight-bearing ability of the driveway(s).

#### Other

Stephen Earle of Mountain Line has noted that the area of the proposed subdivision is within the existing boundaries of the Missoula Urban Transportation District and is served by Route 10.

Conclusion of Law:

Access to the subdivision meets the standards of the Missoula County Subdivision Regulations if the requested variances are approved.

**Pedestrian Access**

Findings of Fact:

This subdivision fronts on Cote Lane and Toby Way, which are both county-maintained roads.

There is an 8 foot wide boulevard asphalt walkway on the west side of Cote Lane directly across from this subdivision. Missoula County Subdivision Regulations require rural subdivisions inside the Urban Growth Area with lot frontages greater than 175 feet or less than 500 Average Daily Trips (ADT) to construct concrete boulevard sidewalks or paved boulevard pedestrian pathways on one side of the street. This is a low-volume section of Cote Lane, and the subdivision frontage along its east side exceeds 175 feet. Rural subdivisions in the UGA are required to have concrete boulevard sidewalks or paved boulevard pedestrian pathways. The applicant does not intend to install these pedestrian facilities on Toby Way and has requested to vary from the standard.

County Public Works favors a walkway project that includes all of Toby Way, not spot projects over time, so supports the variance.

The City-County Health Department recommends that walkways are built along Council Way, Toby Way and Cote Lane when this subdivision is built, or at a minimum, that an RSID waiver be put on the plat waiving the right to protest non-motorized improvements.

The plat shows a waiver of the right to protest an RSID/SID, based on benefit, for pedestrian walkways and bikeways on Council Way and Toby Way. Staff recommends correction of the RSID language to include the proper roadways.

Conclusions of Law

The Missoula County Subdivision Regulations are met if the sidewalk variance is granted and the condition of approval is adopted.

**Water and Sewer Systems**

Findings of Fact:

An individual well serves the current residence on Lot 27A. One additional well will supply water to Lot 27B.

Lot 27A is served by City of Missoula sewer. The City Sewer Service Review Committee approved a contract for extension of sewer to serve the new home on Lot 27B.

Conclusion of Law:

Review of water and sewer systems is under the jurisdiction of state and local health authorities under the Montana Sanitation in Subdivision Act.

**Solid Waste**

Findings of Fact:

BFI is able to provide service to this subdivision.

Conclusion of Law:

Solid waste disposal is available to the subdivision.

## **Parks and Recreation**

### Findings of Fact:

No parkland dedication or cash-in-lieu of park dedication is being proposed for the subdivision.

Golden West Park is approximately 600 feet northeast of the proposed subdivision adjacent to Marianne Drive. It was dedicated at the time the original Golden West Addition #1 subdivision was filed.

### Conclusion of Law:

Missoula County Subdivision Regulations Section 3-8(2)(D) and state law states that park dedication is not required for subdivisions in which only one additional lot is created.

## **Schools**

### Findings of Fact:

Children in grades K-8 are within Hellgate School District No. 4. Secondary students will attend Big Sky High School.

Rachel Vielleux, Missoula County Superintendent of Schools, had no comments on the proposal.

### Conclusion of Law:

No adverse impacts to schools requiring mitigation have been identified.

## **Fire Department**

### Findings of Fact:

The subdivision is served by the Missoula Rural Fire District. The Mullan Road Station (No. 6) is approximately two miles from the proposed subdivision.

Curt Belts, Missoula Rural Fire District, stated that driveways in excess of 150 feet must be approved by the district. This information is contained in the covenants. Staff recommends that additional driveway language be added to this section including paving and weight-bearing ability.

Curt Belts has identified residential fire sprinklers meeting NFPA 13D standards as an acceptable water supply for firefighting. Staff recommends a condition requiring fire sprinklers and appropriate language amendments to this requirement in Article I, Section 3 of the covenants.

Mr. Belt's comments that address signs must be visible from the street in all light conditions. Staff recommends a condition amending Article I, Section 6 to include language about address sign visibility in all light conditions.

### Conclusion of Law:

Fire service is available to the subdivision.

This subdivision meets fire protection standards in the Missoula County Subdivision Regulations if the recommended conditions of approval are imposed.

## **Sheriff Department**

### Findings of Fact:

The subdivision is located within the jurisdiction of Missoula County Sheriff's Department.

Mike Dominick, Undersheriff, commented that the Sheriff's Department will provide law enforcement services to the best of their ability should the project come to fruition.

Conclusion of Law:

Missoula County law enforcement services will be available to the subdivision.

**CRITERIA 3 AND 4: EFFECTS ON THE NATURAL ENVIRONMENT AND WILDLIFE AND WILDLIFE HABITAT**

Findings of Fact:

The property is located on a relatively flat site within the UGA and slopes gently to the south. The area surrounding the residence is covered in grasses and contains no streams or riparian areas.

Living with Wildlife information has been included in the covenants. The Department of Fish, Wildlife & Parks reviewed the submittal, and noted the possibility of coyote, mountain lion and black bear in the area.

Fish, Wildlife & Parks recommends covenant amendments addressing confining of pets and waterfowl hunting in this location near Kelly Island. These are included in a condition of approval.

Bill Otten of the County Weed District commented that the subdivision will not require a revegetation plan. He recommended that the seed mix cited in the covenants be amended, and that language be added about revegetating ground disturbances with beneficial species at the first appropriate opportunity after disturbance occurs. This is recommended in a condition of subdivision approval.

Conclusion of Law:

Effects to the natural environment, wildlife, or wildlife habitat with this subdivision will be mitigated if the recommended conditions are imposed.

**CRITERION 5: EFFECTS ON PUBLIC HEALTH AND SAFETY**

Findings of Fact:

The Missoula Rural Fire District serves the property. The Missoula County Sheriff Department provides law enforcement services.

The property is in the Missoula Wastewater Treatment Plan Service Area (MWTPSA).

The current home on proposed Lot 27A is served by a well and City of Missoula sewer. Lot 27B will have its own well and will be connected to City of Missoula sewer following subdivision.

This subdivision is within the Air Stagnation Zone. The City-County Health Department requires a residential driveway application and permit for driveway review. All new driveways must be paved 20 feet back from the edge of pavement or the right-of-way boundary, whichever is greater. This has been recommended as additional language in the covenants.

The City-County Health Department states that the EPA has designated Missoula County as having a high radon potential. The covenants include information about use of radon-resistant construction features.

Conclusion of Law:

Emergency services, water, and sanitation are available to the subdivision.

**C) COMPLIANCE:** This subdivision complies with:

1) SURVEY REQUIREMENTS

Finding of Fact:

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

This proposal meets the survey requirements.

2) SUBDIVISION REGULATIONS

Finding of Fact:

Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

The developer has submitted a plat which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plat into compliance.

3) REVIEW PROCEDURE

Finding of Fact:

Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula County Subdivision Regulations.

Notice of public hearing for this subdivision was published in the Missoulian, a newspaper of general circulation on March 5 and March 12, 2006. Letters to adjoining property owners advising them of the dates of the public hearings on the proposal were mailed on March 3, 2006. The property was posted with a notice of the public hearings on this proposal on March 8, 2006.

The Missoula Consolidated Planning Board conducted a public hearing on March 21, 2006, and forwarded its recommendation to the Board of County Commissioners.

The Board of County Commissioners held a public hearing on April 12, 2006. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The application shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider, a contiguous landowner, an owner of land within Missoula County who can establish a likelihood of material injury to property or its material value, or the Missoula County Board of County Commissioners. In order to file an appeal, the plaintiff must be aggrieved by the decision, demonstrating that a specific personal and legal interest, as opposed to a general interest, has been or is likely to be specifically and injuriously affected by the decision.

Conclusion of Law:

This subdivision proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Article 4.

**PROVISION OF EASEMENTS FOR UTILITIES:**

Findings of Fact:

Utilities are contained in the Cote Lane and Toby Way Public Utility Easements.

A 20' sewer easement is shown crossing Lot 27B for the benefit of Lot 27A. A separate easement runs along the southern boundary of Lot 27B and could serve a similar function if the sewer line were moved.

Utility services will be provided by Northwestern Energy and Qwest.

Conclusion of Law:

Utility easements and services are available to this subdivision.

## PROVISION OF LEGAL AND PHYSICAL ACCESS:

### Finding of Fact:

Both lots are proposed to access from Toby Way.

Lot 27B is proposing shared access with Lot 28A via a shared private access easement shown on the plat. Staff recommends a condition requiring the filing of a shared access easement for the driveway or proof of legal access across Lot 28 for the benefit of Lot 27B.

### Conclusion of Law:

The proposal meets physical and legal access requirements.

## VARIANCE REQUESTS

1. **The applicant is requesting a variance from Article 3-2(3)(A) requiring a 24' paved width for Cote Lane.**

## RECOMMENDATION

The Office of Planning and Grants recommends **approval** of the variance request, based on the following findings of fact:

### FINDINGS:

- A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**  
Cote Lane varies from a 20' gravel surface to a 24' paved surface on the west side of the subdivision. New subdivision access on this road is not proposed. This portion of Cote Lane is south of the Toby Way intersection and therefore has low traffic volume. Erik Dickson of County Public Works supports the variance because its surface width is adequate for the volume and speed of traffic in this location.
- B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and is not applicable generally to other property.**  
This subdivision will add no new traffic onto Cote Lane adjacent to the subdivision because of access onto Toby Way only. Widening would have to occur within a drainage swale east of the road because of the existing walkway location.
- C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations are enforced.**  
It would be a hardship to require road widening that would contain a swale and require it to be partially filled for grade considerations. This would occur on a low-volume section of Cote Lane.
- D. The variance will not in any manner violate the provisions of the Missoula County Zoning Resolution, the Missoula County Comprehensive Plan, or the master plan for the area.**  
The variance will not violate the provisions of the applicable documents.
- E. The variance will not cause an increase in public costs.**  
The lot owners of this subdivision will waive the right to protest an RSID/SID for improvements to Cote Lane, including widening if the recommended condition is adopted.

**2. The applicant is requesting a variance from Article 3-2(3)(A) requiring a 24' paved width for Toby Way**

**RECOMMENDATION**

The Office of Planning and Grants recommends **approval** of the variance request, based on the following findings of fact:

**FINDINGS:**

- A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**  
Erik Dickson of County Public Works supports the variance, as this road is county-maintained and typical of the area. Granting the variance should not be a threat to public safety.
- B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and is not applicable generally to other property.**  
While unique conditions do not exist, it would be unique to require two feet of paving that would only benefit this subdivision.
- C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations are enforced.**  
It would be a hardship to require a small amount of paving that would be minimally beneficial. Drainage swales would likely require partial filling and may lose part of their function.
- D. The variance will not in any manner violate the provisions of the Missoula County Zoning Resolution, the Missoula County Comprehensive Plan, or the master plan for the area.**  
The variance will not violate the provisions of the applicable documents.
- E. The variance will not cause an increase in public costs.**  
The plat shows a waiver of the right to protest an RSID/SID, based on benefit, for road improvements on Toby Way.

**3. The applicant is requesting a variance from Article 3-2(8)(A)(ii) requiring installation of concrete boulevard sidewalks or paved boulevard walkways along Toby Way .**

**RECOMMENDATION**

The Office of Planning and Grants recommends **approval** of the variance request, based on the following findings of fact:

**FINDINGS:**

- A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**  
Erik Dickson of County Public Works supports the variance because of the impracticality of individual sidewalk projects when construction of a comprehensive network at one time is optimum. Granting the variance should not be a public safety threat.
- B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and is not applicable generally to other property.**  
Site conditions would require simultaneous alteration of the drainage and walkway networks, creating a unique problem in this area within the UGA where lots remain rural. It would be difficult to complete such projects in a piecemeal fashion.

- C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations are enforced.**

The strict letter of the regulations would require sidewalks or boulevard pathways on both sides of the road. This would be a significant cost that would require simultaneous upgrades to the drainage network. There is no guarantee that improvements would ever extend beyond the subdivision.

- D. The variance will not in any manner violate the provisions of the Missoula County Zoning Resolution, the Missoula County Comprehensive Plan, or the master plan for the area.**

The variance will not violate the provisions of the applicable documents.

- E. The variance will not cause an increase in public costs.**

The plat shows a waiver of the right to protest an RSID/SID, based on benefit, for walkway improvements. If this variance were granted, it should not cause an increase in public costs.

- 4. The applicant is requesting a variance from Article 3-2(15) requiring installation of curbs and gutters along Toby Way.**

#### **RECOMMENDATION**

The Office of Planning and Grants recommends **approval** of the variance request, based on the following findings of fact:

#### **FINDINGS:**

- A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

Erik Dickson of County Public Works supports the variance and acknowledges the use of existing roadside swales in the area. Permitting the current rural road section should not be a public safety threat.

- B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and is not applicable generally to other property.**

It would be unique to require curbs and gutters within a rural road section. These would be of little use outside of a comprehensive installation that would also require complementary drainage facilities.

- C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations are enforced.**

The letter of the regulations would require curb and gutter installation even though it is unlikely that this infrastructure would be extended beyond the subdivision in the near future.

- D. The variance will not in any manner violate the provisions of the Missoula County Zoning Resolution, the Missoula County Comprehensive Plan, or the master plan for the area.**

The variance will not violate the provisions of the applicable documents.

- E. The variance will not cause an increase in public costs.**

The plat shows a waiver of the right to protest an RSID/SID, based on benefit, for roadway improvements on Toby Way, including curb and gutter. If this variance were granted, it should not cause an increase in public costs.

Golden West Addition, Lot 28 (2 lots on 2.22 acres) – Corner of Toby Way and Council Way.

Tim Worley: Moving on to the subdivision to the east, which is Golden West Addition #1, Lot 28. This is a proposal by Jerry and Katie Miller (represented by Ron Ewart), to divide 2.22 acres into two lots, at the intersection of Toby Way (county rd. to the north) and Council Way (county rd. to the east). One of the lots would be 1 acre and the other would be 1.22 acres. I believe the smaller of the two would be the western most lot. A variance is requested so Toby Way doesn't have to meet the 24 foot county width requirement, this is supported by County Public Works. Because of the north-south split in this subdivision, technically curb and gutter is required out here and a variance is requested because again, Public Works acknowledges the existing network of drainage swales in this area and its sufficiency. Neither Toby Way or Cote Lane has walkways and the developer requests a variance from the walkway standards for both frontages, which is again supported by Public Works. An individual driveway will serve Lot 28B and a shared driveway is proposed for Lot 28A and 27B, a condition identical to Lot 27. This subdivision is also in an area requiring monetary contribution (\$230) for subdivision impacts to the Flynn/Mullan and Reserve/Mullan intersections. Residential fire sprinklers are recommended for this subdivision per Missoula Rural Fires recommendation. Covenant amendments are recommended to address: driveway construction, address signs, wildlife issues and weed control. There is basically one conditions that is different between the two subdivisions and that was the RSID correction for the first subdivision. Otherwise, they are essentially the same and Planning Board recommended supporting this subdivision with only one "nay" vote.

Commissioner Bill Carey: Thank you, Tim. I'll open the hearing on this proposal. Mr. Ewart?

Ron Ewart: Again, we are in agreement with the report.

Commissioner Bill Carey: Thank you, does anyone else care to speak to this? Any comments or questions from the Commissioners?

Commissioner Jean Curtiss: Again, the letter from the Covaults was for both of these subdivisions....just so it's on the record.

Commissioner Bill Carey: Seeing no one come to the mike, I'll close the hearing.

Commissioner Barbara Evans moved to approve the four variances: 1. from Article 3-2(3)(A) ) requiring a 24 foot paved width for Toby Way, 2. requiring installation of curbs and gutters, so that curb and gutter installation is not required on Toby Way, 3. requiring installation of concrete boulevard sidewalks or paved pedestrian pathways, so that sidewalks or pathway installation is not required on Toby Way and 4. requiring installation of concrete boulevard sidewalks or paved pedestrian pathways, so that sidewalks or pathway installation is not required on Council Way. Commissioner Jean Curtiss seconded. The motion carried on a vote of 3-0.

Commissioner Barbara Evans moved to approve Golden West Addition #1, Lot 28 based on the subdivision based on finding and fact and subject to conditions in the staff report. Commissioner Jean Curtiss seconded. The motion carried on a vote of 3-0.

## **Conditions of Approval**

### Roads and Driveways

The developer shall contribute \$230 per new lot to the Mullan Road transportation system fund for signalizing the Flynn/Mullan Road intersection and \$815 per new lot to the fund for improving the Reserve Street/Mullan Road intersection. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 4-1(12) and Public Works recommendation*

A shared access easement along the common lot boundary of Lots 27 and 28 shall be filed prior to final plat approval or evidence of legal access for Lot 28A across Lot 27B shall be provided prior to final plat approval. *Subdivision Regulations Article 3-6, 3-2(2)(D) and OPG recommendation*

The plat shall be revised to show a 1' no-access strip along the Toby Way Street frontage of Lot 28A from the shared driveway easement to the eastern lot boundary. The covenants shall be amended to include the following language: "access to Lot 28A from Toby Way shall be limited to the shared driveway easement along the western lot boundary subject to approval of County Public Works." *Subdivision Regulations Article 3-2(1)(E) and OPG recommendation.*

#### Fire

A residential fire sprinkler system meeting NFPA 13D standards shall be installed within the new home in this subdivision with plans to be reviewed and approved by Missoula Rural Fire District prior to Zoning Compliance permit submittal. Article I, Section 3 of the covenants shall be amended to include this information subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-7(1), Missoula Rural Fire District and OPG recommendation*

#### Covenants

The covenants shall be amended as follows:

Article I, Section 4 of the covenants shall be amended to include the following driveway information: The surface of the driveway must be engineered to support the weight of emergency equipment in all weather conditions. All new driveways must be paved 20 feet back from the edge of pavement or the right-of-way boundary, whichever is longer."

Article I, Section 6 of the covenants shall be amended as follows: "Address signs shall be affixed to the home, being at least 5 inches in height, contrasting to the color of the home and clearly visible from the street in all light conditions."

Article 1 Section 1e ("Pets") shall be amended to include the following final sentence: "Keeping pets confined also helps protect them from predatory wildlife."

The following shall be added to become the final section of Article I, Section 1: "Purchasers of lots within this subdivision must recognize the subdivision is located near the Clark Fork River where lawful waterfowl hunting and the associated discharge of shotguns could occur from early morning until sunset, and the season can run from September into January."

Article I, Section 7 shall be amended as follows: "Lot owners are required to maintain their property in compliance with the Montana Weed Control Act, the Missoula County Noxious Weed Management Plan. The subdivision lot owners shall be required to revegetate any ground disturbance with beneficial species the first appropriate opportunity after disturbance occurs.

Article I, Section 8.1 of the covenants shall be amended as follows: "Site preparation (topsoil management): Strip and stockpile topsoil. Redistribute topsoil to disturbed area adjacent to newly constructed driveway and compact to firm seed bed. The seed mix contained in this Disturbed Area Revegetation Plan is not adequate for areas maintained as turf. A suitable turf grass mixture should be used in areas intended for maintained turf."

Article I, Section 8.2 of the covenants shall be amended as follows: "Pryor Slender Wheatgrass 2 lbs. PLS/acre plus Roadcrest Crested Wheatgrass 16 lbs. PLS/acre."  
*Subdivision Regulations 3-2(1)(G)(v), 3-1(1)(F), Missoula Rural Fire District, Fish, Wildlife & Parks and County Weed District recommendation*

### **III. INTRODUCTION**

This is a request from Jerry and Katie Miller, represented by Ron Ewart of Eli & Associates to divide a 2.22-acre parcel into two lots.

## **V. SUBDIVISION FINDINGS OF FACT**

### **A.) ZONING AND COMPREHENSIVE PLAN COMPLIANCE**

#### Findings of Fact:

The subdivision is located at the southwest Council Way/Toby Way intersection south of Mullan Road.

The property is zoned C-RR1, which permits a density of one dwelling unit per acre.

The subdivision is located in the Urban Growth Area (UGA) and the Air Stagnation Zone.

Two lots are proposed, one at 1.0 acre and the other at 1.22 acres for a proposed density of one dwelling unit per 1.11 acres.

The Wye-Mullan West Comprehensive Area Plan designates this area Residential, with a recommended density of 1 dwelling unit per acre. This land use designation recognizes existing development patterns, matches existing zoning, and reflects existing covenants.

#### Conclusions of Law:

This proposal complies with the standards of the C-RR1 zoning district.

The proposed subdivision complies with the land use designation of the Wye-Mullan West Comprehensive Area Plan.

### **B.) PRIMARY CRITERIA COMPLIANCE**

#### **CRITERION 1: EFFECTS ON AGRICULTURE AND AGRICULTURAL WATER USER FACILITIES --**

#### Findings of Fact:

The property is not currently under agricultural production.

Soils on the property are classified as Grassvalley silty clay loam, 0 to 4 percent slopes. This is rated as farmland of local importance.

There are no irrigation ditches on the property.

#### Conclusion of Law:

There will be an incremental loss of land considered farmland of local importance, according to soil type, as a result of this subdivision.

There are no impacts to agricultural water user facilities identified with this proposal.

#### **CRITERION 2: EFFECTS ON LOCAL SERVICES --**

##### **Roads**

#### Findings of Fact

Lot 28A has frontage on the south side of Toby Way, and Lot 28B has frontage on Toby Way and Council Way. Both roads are county maintained public roads requiring a 24' paved width per the Missoula County Subdivision Regulations.

Toby Way has a 22' paved width adjacent to the subdivision. The applicant is asking to vary from the 24' paved width standard. County Public Works supports the variance because Toby Way is an existing county-maintained road with a surface width typical of area roads.

Council Way is a 24' paved roadway along the eastern edge of the subdivision and meets the required road width standards.

The average lot frontage along Toby Way is 145 feet. Missoula County Subdivision Regulations Article 3-2(7) requires curbs and gutters on roads fronting all subdivisions with lots that have an average frontage less than 175 feet.

The applicant is asking to vary from the curb and gutter standard. County Public Works supports the variance because existing roadside drainage swales are typical of the area.

This subdivision will contribute off-site impacts to the Mullan Road/Flynn Lane and Mullan/Reserve Street Intersections. This corridor is expected to experience significant growth with the extension of the Mullan Sewer project. As each project occurs, it contributes incrementally to the need to provide traffic signals and improvements at these intersections. County Public Works is recommending that the applicant contribute \$230 per new lot to assist in signaling the Flynn Lane/Mullan Road intersection and \$815 per new lot towards the improvement of the Mullan Road/Reserve Street to mitigate the impacts of this subdivision on the two intersections. Staff recommends this requirement be included as a condition of approval.

The plat shows a waiver of the right to protest an RSID/SID, based on benefit, for the upgrading of Council Way and Toby Way, including paving, curbs and gutters, street widening, and drainage facilities.

#### Driveways

Lot 28B will use an existing driveway onto Council Way. A shared driveway is proposed for Lot 28A and Lot 27B of the Golden West Addition #1, Lot 27 subdivision. A shared driveway maintenance agreement is included in the covenants.

Staff recommends a condition requiring the filing of a shared access easement for the driveway or proof of legal access across Lot 27 for the benefit of Lot 28A.

To ensure access is limited to the proposed shared driveway, staff recommends a condition requiring a 1' no-access strip along the Toby Way frontage of Lot 28A, with this information to be included in the covenants.

The Missoula City County Health Department commented that a residential driveway application and permit must be purchased at the Health Department for all new driveways inside the Air Stagnation Zone. The Health Department also commented that all new driveways shall be paved at least 20 feet back from the edge of the pavement or right-of-way boundary, whichever is longer. This information is recommended for the covenants.

Curt Belts of the Missoula Rural Fire District comments that driveways in excess of 150 feet in length must be approved by the Missoula Rural Fire District. This information has been included in the covenants. Staff recommends amendment of this covenant section to include language about weight-bearing ability of the driveway(s).

#### Other

Stephen Earle of Mountain Line has noted that the area of the proposed subdivision is within the existing boundaries of the Missoula Urban Transportation District and is served by Route 10.

#### Conclusion of Law:

Access to the subdivision meets the standards of the Missoula County Subdivision Regulations if the requested variances are approved.

#### **Pedestrian Access**

##### Findings of Fact:

This subdivision fronts on Council Way and Toby Way, which are both county-maintained roads. Rural subdivisions in the UGA are required to have concrete boulevard sidewalks or paved boulevard pedestrian pathways. The applicant does not intend to install these pedestrian facilities on Toby Way nor Council Way and has requested to vary from the standard for both street frontages.

County Public Works favors a walkway project that includes all of Toby Way and Council Way, not spot projects over time, so supports the variance.

The City-County Health Department recommends that walkways are built along Council Way, Toby Way and Cote Lane when this subdivision is built, or at a minimum, that an RSID waiver be put on the plat waiving the right to protest non-motorized improvements.

The plat shows a waiver of the right to protest an RSID/SID, based on benefit, for pedestrian walkways and bikeways on Council Way and Toby Way .

#### Conclusions of Law

The Missoula County Subdivision Regulations are met if the sidewalk variances are granted.

#### **Water and Sewer Systems**

##### Findings of Fact:

The existing home on Lot 28B has a well, and a new well is proposed for Lot 28A.

Lot 28B is served by City of Missoula sewer. The City Sewer Service Review Committee approved a contract for extension of sewer to serve the new home on Lot 28A.

##### Conclusion of Law:

Review of water and sewer systems is under the jurisdiction of state and local health authorities under the Montana Sanitation in Subdivision Act.

#### **Solid Waste**

##### Findings of Fact:

BFI is able to provide service to this subdivision.

##### Conclusion of Law:

Solid waste disposal is available to the subdivision.

#### **Parks and Recreation**

##### Findings of Fact:

No parkland dedication or cash-in-lieu of park dedication is being proposed for the subdivision. Golden West Park is approximately 500 feet northeast of the proposed subdivision adjacent to Marianne Drive. It was dedicated at the time the original Golden West Addition #1 subdivision was filed.

##### Conclusion of Law:

Missoula County Subdivision Regulations Section 3-8(2)(D) and state law states that park dedication is not required for subdivisions in which only one additional lot is created.

#### **Schools**

##### Findings of Fact:

Children in grades K-8 are within Hellgate School District No. 4. Secondary students will attend Big Sky High School.

Rachel Vielleux, Missoula County Superintendent of Schools, had no comments on the proposal.

##### Conclusion of Law:

No adverse impacts to schools requiring mitigation have been identified.

## **Fire Department**

### Findings of Fact:

The subdivision is served by the Missoula Rural Fire District. The Mullan Road Station (No. 6) is approximately two miles from the proposed subdivision.

Curt Belts, Missoula Rural Fire District, stated that driveways in excess of 150 feet must be approved by the district. This information is contained in the covenants. Staff recommends that additional driveway language be added to this section including paving and weight-bearing ability.

Curt Belts has identified residential fire sprinklers meeting NFPA 13D standards as an acceptable water supply for firefighting. Staff recommends a condition requiring fire sprinklers and appropriate language amendments to this requirement in Article I, Section 3 of the covenants.

Mr. Belt's comments that address signs must be visible from the street in all light conditions. Staff recommends a condition amending Article I, Section 6 to include language about address sign visibility in all light conditions.

### Conclusion of Law:

Fire service is available to the subdivision.

This subdivision meets fire protection standards in the Missoula County Subdivision Regulations if the recommended conditions of approval are imposed.

## **Sheriff Department**

### Findings of Fact:

The subdivision is located within the jurisdiction of Missoula County Sheriff's Department.

Mike Dominick, Undersheriff, commented that the Sheriff's Department will provide law enforcement services to the best of their ability should the project come to fruition.

### Conclusion of Law:

Missoula County law enforcement services will be available to the subdivision.

## **CRITERIA 3 AND 4: EFFECTS ON THE NATURAL ENVIRONMENT AND WILDLIFE AND WILDLIFE HABITAT**

### Findings of Fact:

The property is located on a relatively flat site within the UGA and slopes gently to the south. The area surrounding the residence is covered in grasses and contains no streams or riparian areas. Living with Wildlife information has been included in the covenants. The Department of Fish, Wildlife & Parks reviewed the submittal, and noted the possibility of coyote, mountain lion and black bear in the area.

Fish, Wildlife & Parks recommends covenant amendments addressing confining of pets and waterfowl hunting in this location near Kelly Island. These are included in a condition of approval.

Bill Otten of the County Weed District commented that the subdivision will not require a revegetation plan. He recommended that the seed mix cited in the covenants be amended, and that language be added about revegetating ground disturbances with beneficial species at the first appropriate opportunity after disturbance occurs. This is recommended in a condition of subdivision approval.

### Conclusion of Law:

Effects to the natural environment, wildlife, or wildlife habitat with this subdivision will be mitigated if the recommended conditions are imposed.

## **CRITERION 5: EFFECTS ON PUBLIC HEALTH AND SAFETY**

### Findings of Fact:

The Missoula Rural Fire District serves the property. The Missoula County Sheriff Department provides law enforcement services.

The property is in the Missoula Wastewater Treatment Plan Service Area (MWTPSA).

The current home on proposed Lot 28B is served by a well and City of Missoula sewer. Lot 28A will have its own well and will be connected to City of Missoula sewer following subdivision.

This subdivision is within the Air Stagnation Zone. The City-County Health Department requires a residential driveway application and permit for driveway review. All new driveways must be paved 20 feet back from the edge of pavement or the right-of-way boundary, whichever is greater. This has been recommended as additional language in the covenants.

The City-County Health Department states that the EPA has designated Missoula County as having a high radon potential. The covenants include information about use of radon-resistant construction features.

### Conclusion of Law:

Emergency services, water, and sanitation are available to the subdivision.

**C) COMPLIANCE:** This subdivision complies with:

#### 1) SURVEY REQUIREMENTS

### Finding of Fact:

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

### Conclusion of Law:

This proposal meets the survey requirements.

#### 2) SUBDIVISION REGULATIONS

### Finding of Fact:

Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

### Conclusion of Law:

The developer has submitted a plat which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plat into compliance.

#### 3) REVIEW PROCEDURE

### Finding of Fact:

Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula County Subdivision Regulations.

Notice of public hearing for this subdivision was published in the Missoulian, a newspaper of general circulation on March 5 and March 12, 2006. Letters to adjoining property owners advising them of the dates of the public hearings on the proposal were mailed on March 3, 2006. The property was posted with a notice of the public hearings on this proposal on March 8, 2006.

The Missoula Consolidated Planning Board conducted a public hearing on March 21, 2006, and forwarded its recommendation to the Board of County Commissioners.

The Board of County Commissioners held a public hearing on April 12, 2006. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The application shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider, a contiguous landowner, an owner of land within Missoula County who can establish a likelihood of material injury to property or its material value, or the Missoula County Board of County Commissioners. In order to file an appeal, the plaintiff must be aggrieved by the decision, demonstrating that a specific personal and legal interest, as opposed to a general interest, has been or is likely to be specifically and injuriously affected by the decision.

Conclusion of Law:

This subdivision proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Article 4.

**PROVISION OF EASEMENTS FOR UTILITIES:**

Findings of Fact:

Utilities are contained in the Council Way and Toby Way Public Utility Easements.

A 20' sewer easement is shown crossing Lot 28A for the benefit of Lot 28B.

Utility services will be provided by Northwestern Energy and Qwest.

Conclusion of Law:

Utility easements and services are available to this subdivision.

**PROVISION OF LEGAL AND PHYSICAL ACCESS:**

Finding of Fact:

Lot 28A is proposing shared access with Lot 27B via a shared private access easement shown on the plat. Staff recommends a condition requiring the filing of a shared access easement for the driveway or proof of legal access across Lot 27 for the benefit of Lot 28A.

Lot 28B has existing access off Council Way.

Conclusion of Law:

The proposal meets physical and legal access requirements.

**VARIANCE REQUESTS**

**The applicant is requesting a variance from Article 3-2(3)(A) requiring a 24' paved width for Toby Way**

**RECOMMENDATION**

The Office of Planning and Grants recommends **approval** of the variance request, based on the following findings of fact:

**FINDINGS:**

- A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**  
Erik Dickson of County Public Works supports the variance, as this road is county-maintained and typical of the area. Granting the variance should not be a threat to public safety.

- B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and is not applicable generally to other property.**  
While unique conditions do not exist, it would be unique to require two feet of paving that would only benefit this subdivision.
- C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations are enforced.**  
It would be a hardship to require a small amount of paving that would be minimally beneficial. Drainage swales would likely require partial filling and may lose part of their function.
- D. The variance will not in any manner violate the provisions of the Missoula County Zoning Resolution, the Missoula County Comprehensive Plan, or the master plan for the area.**  
The variance will not violate the provisions of the applicable documents.
- E. The variance will not cause an increase in public costs.**  
The plat shows a waiver of the right to protest an RSID/SID, based on benefit, for road improvements on Toby Way.

**2. The applicant is requesting a variance from Article 3-2(15) requiring installation of curbs and gutters along Toby Way.**

**RECOMMENDATION**

The Office of Planning and Grants recommends **approval** of the variance request, based on the following findings of fact:

**FINDINGS:**

- A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**  
Erik Dickson of County Public Works supports the variance and acknowledges the use of existing roadside swales in the area. Permitting the current rural road section should not be a public safety threat.
- B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and is not applicable generally to other property.**  
It would be unique to require curbs and gutters within a rural road section. These would be of little use outside of a comprehensive installation that would also require complementary drainage facilities.
- C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations are enforced.**  
The letter of the regulations would require curb and gutter installation even though it is unlikely that this infrastructure would be extended beyond the subdivision in the near future.
- D. The variance will not in any manner violate the provisions of the Missoula County Zoning Resolution, the Missoula County Comprehensive Plan, or the master plan for the area.**  
The variance will not violate the provisions of the applicable documents.
- E. The variance will not cause an increase in public costs.**  
The plat shows a waiver of the right to protest an RSID/SID, based on benefit, for roadway improvements on Toby Way, including curb and gutter. If this variance were granted, it should not cause an increase in public costs.

**3. The applicant is requesting a variance from Article 3-2(8)(A)(ii) requiring installation of concrete boulevard sidewalks or paved boulevard walkways along Toby Way .**

**RECOMMENDATION**

The Office of Planning and Grants recommends **approval** of the variance request, based on the following findings of fact:

**FINDINGS:**

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

Erik Dickson of County Public Works supports the variance because of the impracticality of individual sidewalk projects when construction of a comprehensive network at one time is optimum. Granting the variance should not be a public safety threat.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and is not applicable generally to other property.**

Site conditions would require simultaneous alteration of the drainage and walkway networks, creating a unique problem in this area within the UGA where lots remain rural. It would be difficult to complete such projects in a piecemeal fashion.

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations are enforced.**

The strict letter of the regulations would require sidewalks or boulevard pathways on both sides of the road. This would be a significant cost that would require simultaneous upgrades to the drainage network. There is no guarantee that improvements would ever extend beyond the subdivision.

**D. The variance will not in any manner violate the provisions of the Missoula County Zoning Resolution, the Missoula County Comprehensive Plan, or the master plan for the area.**

The variance will not violate the provisions of the applicable documents.

**E. The variance will not cause an increase in public costs.**

The plat shows a waiver of the right to protest an RSID/SID, based on benefit, for pedestrian improvements on Toby Way. If this variance were granted, it should not cause an increase in public costs.

**4. The applicant is requesting a variance from Article 3-2(8)(A)(ii) requiring installation of concrete boulevard sidewalks or paved boulevard walkways along Council Way.**

**RECOMMENDATION**

The Office of Planning and Grants recommends **approval** of the variance request, based on the following findings of fact:

**FINDINGS:**

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

Erik Dickson of County Public Works supports the variance because of the impracticality of individual sidewalk projects when construction of a comprehensive network at one time is optimum. Granting the variance should not be a public safety threat.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and is not applicable generally to other property.**

Site conditions would require simultaneous alteration of the drainage and walkway networks, creating a unique problem in this area within the UGA where lots remain rural. It would be difficult to complete such projects in a piecemeal fashion.

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations are enforced.**

This portion of Council Way serves a limited number of properties and dead-ends south of the subdivision. Sidewalk installation would be a significant cost that would require simultaneous upgrades to the drainage network. There is no guarantee that improvements would ever extend beyond the subdivision.

**D. The variance will not in any manner violate the provisions of the Missoula County Zoning Resolution, the Missoula County Comprehensive Plan, or the master plan for the area.**

The variance will not violate the provisions of the applicable documents.

**E. The variance will not cause an increase in public costs.**

The plat shows a waiver of the right to protest an RSID/SID, based on benefit, for pedestrian improvements on Council Way. If this variance were granted, it should not cause an increase in public costs.

Sol Acreage Tracts, Lot 3 (3 lots on 3.16 acres) – Melody Lane, south of King Ranch Road (postponed from April 5, 2006 meeting)

Tim Worley: This is Sol Acreage Tracts third filing, Lot 3 which is a proposal by Jeff Wilson, he purchased the property from Leon and Mary Copenhaver fairly recently. It's proposal for three lots on just over three acres on Melody Lane, east of Big Flat Road and south of Kona Ranch Road. This proposal conforms to C-RR1 zoning with the three lots only slightly larger than 1 acre each. This is an old Christmas tree farm that used to have access to irrigation water, via the Big Flat Ditch, I believe there was a pipe that provided water to the site. As a result of this past irrigation practice, we're recommending that access to irrigation water be provided to this subdivision or that water rights be severed as this is a requirement of State law for subdivisions when the lots are in excess of 1 acre each. Melody Lane is a 20 foot gravel road that provides subdivision access, it is a county road and the applicant is requesting a variance to the 24 foot standard. Planning Board recommended denial of this variance, noting a fairly substantial delay in implementation of the Melody Lane RSID, which has been planned for some time, but has been discussed within the last few weeks since Planning Board. Planning Board also recognizes that there has been a need for a walkway along the subdivision frontage and recommended a 5 foot walkway be installed. This is the next to last, or the last recommended condition in your Commission request for action. Planning Board also made a recommendation for a monetary donation to Flynn/Mullan and Reserve/Mullan fund, noting that this subdivision will impact those intersections, it mirrors what is seen with the Golden West subdivisions, except the amount are 50% of the typical condition because this subdivision would have less impact on the roads than other subdivisions closer to Mullan. This property is subject o shallow flooding in a 100-year flood event, but is no in a FEMA regulatory floodplain, nonetheless, Todd Kliez, our floodplain administrator recommends pre-construction elevation certificates that ensure that the lowest floor elevation of the homes be two feet about the 100-year flood elevation. Todd also recommends post elevation certificates that confirm the lowest floor elevations of the built homes is two feet about the 100-year flood elevation. We are also recommending information in the covenants about this particular issue. We are recommending a condition for fire sprinklers per Missoula Rural Fires typical recommendation within the district. We are also recommending the covenants sections about address signing and living with wildlife be amended to be specific to this subdivision. Particularly with the wildlife, there was a concern that this is in an area were there is shotgun waterfowl hunting might occur in the winter. So Fish, Wildlife and Parks wanted that to be acknowledged in the covenants.

Commissioner Barbara Evans: Will you put in the record that this is more for the noise of the shooting, rather than the safety issue of being shot.

Tim Worley: Yes, the concern is about the noise and discharge from guns and not the safety hazard directly from shotguns. With that, I'll wrap this up. Staff and Planning Board are in support.

Commissioner Barbara Evans: Would you please address the number six contribution that they asked for in regards to mitigating Flynn/Mullan and Reserve/Mullan intersections. I'd just like it on the record.

Tim Worley: There was concern that these subdivisions that are occurring out in this area are having an impact to the two intersections in question. Just like Country Crest split or Golden West split or anything in this general area. But there was also an acknowledgment that this subdivision has other options for getting into greater Missoula than just Mullan Road per say. So they acknowledge that there's lesser impact to Mullan Road, but some impact, so that's why you see the dollar amount at 50% less than the others with direct impact.

Commissioner Jean Curtiss: We should ask our legal advisor to give us her opinion on whether or not there's any basis for this.

Colleen Dowdall: I don't know that Planning Board had adequate information before it to make the determination that there is an impact. I know that Greg has gone to Planning Board and explained how he came up with these numbers, I was at the meeting the night he went. I don't believe Sol Acreage tracts is within the area where the study was conducted. I think Planning Board just speculated, is that what they....Tim?

Tim Worley: I think it was also a means of priming the pump a little to acknowledge that these areas do contribute to traffic on Mullan Rd. and maybe that it could be part of a study that could "piggy back" upon that earlier study. But Greg came up with the earlier numbers.

Colleen Dowdall: But they didn't really think they had a basis for those particular amounts?

Tim Worley: The basis is more that there will be some impact to Mullan Rd., and it's not known what that impact will be, but certainly it wouldn't be like Golden West splits that funnel directly out onto Mullan Rd. Sol Acreage Tracts actually has other options for getting in to Missoula. You can take Big Flat to the south, I don't know really why you would, but that's another option for getting in to greater Missoula. Or you could go right on Kona Ranch and then another right on to Mullan Rd. to get into Missoula.

Colleen Dowdall: I'm looking through the minutes now (from Planning Board meeting), but did they say why 50%?

Tim Worley: I don't know, I think that's just something that was difficult to quantify. I don't specifically why it was 50%.

Commissioner Barbara Evans: I'd like to ask Greg to put on the record the reason there were no recommendations for a mitigation fee for this particular subdivision on Flynn Lane and Reserve/Mullan. We have not done any in that area, yet and you didn't recommend that we do one and so just for the record, I'd like you to say what your rationale was.

Commissioner Jean Curtiss: Let's bring you up to speed, Greg. This one is across the Kona Ranch bridge and we're just wondering when you did your analysis for the other numbers, whether you considered anything on the other side so we have something to base it on.

Greg Robertson: I think the further you get out, the more difficult it is to make the nexus. In this particular subdivision, I think it's a typo. I would....

Commissioner Jean Curtiss: Your department made no comment.

Greg Robertson: Yeah, and I think that's an error on our part because we should have.

Commissioner Jean Curtiss: You should have?

Greg Robertson: Yes.

Colleen Dowdall: Greg, was this portion part of the Phantom Hills study area?

Greg Robertson: It was in the vicinity.

Colleen Dowdall: That was my hunch, that Eric didn't make a comment because it was outside of the area.

Greg Robertson: That's possible. I guess from my perspective, and I'm sure the 50-50 split is reasonable, given the location and its access to adjoining roads. The area that we looked at for this mitigation fund was in the vicinity of, and primary access of, the Mullan Road corridor. Kona Ranch area was included in that, out to Kona Bridge, in that particular area. The study clearly indicated that 95% of the trips generated were in bound to Missoula, with 5% heading out, so essentially it's all of it. This you could make the argument both ways. It's really site specific and that's maybe why Eric didn't deal with it at the time.

Commissioner Barbara Evans: As we know, this is a serious issue to folks that use Mullan Rd. and particularly Mullan and Reserve. And we have been charging mitigation fees for that.

Greg Robertson: Yes we have.

Commissioner Barbara Evans: I don't want to arbitrarily say yes or no on something, so am I to understand, had you looked at this you would've recommended virtually the same thing the planning board recommended?

Greg Robertson: I think I would've been consistent about it and Eric and I have been going in different directions lately. I think it's probably just miscommunication on our part. I will talk to him about that.

Commissioner Barbara Evans: Thank you. I just want to know before we decide to whether to impose it or not.

Greg Robertson: Yes, I think it's reasonable.

Commissioner Barbara Evans: Thank you.

Commissioner Bill Carey: At this point I'll open the hearing. Does the developer's representative want to say something?

Ron Ewart: We are in agreement with OPG staff recommended motions and the recommended conditions of approval. I just need to talk about recommended motion number one; they recommended that the 24 foot paved surface fronting the subdivision variance be denied...quoting from the minutes, someone said "I'm going vote no, just to send the message that I think that process should be started now and that we want to see that road paved."...I think a lot of people want to see the road paved. I was on the phone yesterday with Jesse Sattley and we're working through these issues. We're trying to get another meeting set up, we've already had a meeting with Mae Nan, so we would like for that one to be approved because obviously it wouldn't do any good just to upgrade only this frontage. We want to do all at once and then each of these three lots would participate in an RSID just like all the other lots. Finally, getting around to those last two conditions, those two were also added by Planning Board. Condition number five, about putting in a 5 foot pedestrian walkway along the frontage, that wasn't recommended by OPG or by Public Works and for good reason. There's not a walkway at all on Melody Lane. Melody Lane's about 1000 feet long, it's straight and right now, including this subdivision, there will be 17 homes on this 1000 foot long straight cul-de-sac. It's not going to continue on and it's not going to be a through road. I believe we're looking at putting in a 24 foot wide paved roadway, it hasn't been finalized yet, but

that will be more than adequate width for the number of homes that would be accessing the road in that area. So, if someone did ride their bike or walk along it, there's plenty of room and good visibility. By requiring a sidewalk on this frontage only, that kind of forces sidewalks maybe to that side, when maybe it would be best on the other side where there are more houses. Maybe the sidewalk just isn't needed on Melody Lane. I think there are a lot of places where sidewalks are needed, maybe along Third Street, for example, but here on Melody Lane I just don't think that it's a good use of money. If it's going to be done, it should be done through the SID that'll be taking place. On number six, I guess we've already discussed that, obviously our client would prefer that not be a condition, it did come up at the very end of the Planning Board meeting. We figure there must be some sort of boundary, because all roads in Missoula County connect to Mullan Road, so exactly where is that boundary? Again, that wasn't recommended by OPG either. We'd prefer to see, especially five and six, not become conditions. We'd just like for the staff recommended motions to be approved. Thank you.

Commissioner Bill Carey: Thank you, Ron. Anyone else care to comment on this proposal?

Greg Robertson: Commissioners, I'd just like to add one item. Ron and his folks at Eli & Associates have been working closely with us to establish an RSID, it's really in our court right now, and we have a valid petition in request. We're trying to figure out our method of assessment and that still has yet to be sorted out. So it's not something that they haven't done, we're just trying to get our folks together to deal with it. They have been making progress on it.

Commissioner Bill Carey: So this will happen?

Greg Robertson: Oh yeah.

Commissioner Barbara Evans: Should we then require waivers of the right to protest the inclusion in the SID?

Greg Robertson: I think they are....I don't think there's any protest at this time. I believe there would be a waiver anyway on the subdivision plat. They have indicated a willingness to participate in it, so it is being done.

Commissioner Barbara Evans: Okay fine.

Commissioner Bill Carey: Tim, did you want to comment on that?

Tim Worley: Yes, there is a waiver of the right to protest on the plat.

Commissioner Bill Carey: Okay. Thank you.

Commissioner Jean Curtiss: Does that include sidewalks?

Tim Worley: I believe it does. I'm going to grab Greg's plat here...

Commissioner Jean Curtiss: They are planning to do 24 feet wide county standard?

Greg Robertson: That is correct. County standard road. I believe the earlier waivers that were granted were for road way purposes only and did not include pedestrian improvements.

Tim Worley: Yeah, its pedestrian walkways or bikeways as read in the RSID waiver.

Commissioner Bill Carey: So the Planning Board recommendation's, other than number five and six, we're just adding to the staff recommendations? They didn't strike anything the staff wanted, did they?

Tim Worley: That's correct, they just had the two conditions added.

Commissioner Bill Carey: Okay.

Commissioner Jean Curtiss: Then they suggested denying instead of approving. But I think Greg has answered the questions that the Planning Board had in that regard.

Colleen Dowdall: On the issue of the additional fee, did you decide on what to do on that?

Greg Robertson: I don't think...

Commissioner Jean Curtiss: We haven't decided.

Commissioner Bill Carey: Can we do that though and still be consistent with the meeting we had this morning?

Colleen Dowdall: I would be very...uncomfortable given the meeting we had this morning.

Commissioner Bill Carey: That's what I was thinking.

Colleen Dowdall: Which for Greg's benefit was with Jerry Fisher on the issue of Yellowstone Fly's property and why she wasn't allowed to pro-rate hers because she is in a similar situation and she asked about this subdivision in particular.

Greg Robertson: It's a judgment call.

Colleen Dowdall: Yeah, I am relying legally on a fairly defined area.

Commissioner Barbara Evans: But Colleen, her subdivision is on the north side of the bridge, this one's on the south side of the bridge. Is there not a rationale for a reduced amount since it's further away from the road?

Colleen Dowdall: I don't think we can ask for any south of the river based on this traffic study. I think this subdivision should not have to pay because they are south of the river.

Commissioner Jean Curtiss: And we don't have a study?

Colleen Dowdall: We don't have a study.

Commissioner Barbara Evans: I recently traveled both roads, Blue Mountain and across the north side and down Mullan road. And if I were going to live out there as close to the bridge as they are, I'd take the bridge and Mullan road a hundred times over Blue Mountain. So, I understand Greg's feeling that it ought to be included and I really wish it could be included because that intersection, that whole roadway, needs upgrading, needs more money and people who use it ought to help cover the cost. But you say we have not legal authority on which to do it.

Colleen Dowdall: I think we have...we don't have the background to do it.

Commissioner Jean Curtiss: Could we ask them to provide the background showing their impact, showing which way they're going to go?

Colleen Dowdall: That would be for a three lot subdivision?

Commissioner Jean Curtiss: yeah, pretty small.

Commissioner Barbara Evans: And you don't see any way we could, and I'm making this up, a waiver of a right to protest inclusion in mitigation fees should the be established for that area.

Colleen Dowdall: Mitigation is a subdivision by subdivision basis and we don't establish it under separate authority. It's evaluating each subdivision and determining whether it creates and impact that can be mitigated. The amount that Phantom Hills did, I'm comfortable with, but I don't know that we have anything now to establish that.

Commissioner Bill Carey: Thank you. Anyone prepared to make a motion at this point? I'll close the hearing.

Commissioner Jean Curtiss moved to approve the variance request from Section 3-2(3)(B) requiring a 24 foot paved surface width for Melody Lane to allow the existing 20 foot gravel surface for Melody Lane, based on findings and fact in the staff report and Greg's comments today. Commissioner Barbara Evans seconded. The motion carried on a vote of 3-0.

Commissioner Jean Curtiss moved to approve deletion of Planning Board's motion of numbers five and six based on today's comments. Commissioner Barbara Evans seconded. The motion carried on a vote of 3-0.

Commissioner Jean Curtiss moved to approve Sol Acreage Tract Subdivision third filing, Lot 3 based on findings and fact, subject to recommended conditions as amended with deletion of five and six. Commissioner Barbara Evans seconded. The motion carried on a vote of 3-0.

Commissioner Bill Carey: Thank you.

### **Conditions of Approval**

1. The subdivider shall ensure that all lot owners have access to irrigation water, or have the water rights removed through an appropriate legal or administrative process, which shall be indicated by a statement on the final plat and in the covenants subject to review and approval by the County Attorney's Office. MCA 76-3-504(i)-(j), *Subdivision Regulations Article 4-1(13) and OPG recommendation*
2. The developer shall include pre and post-construction elevation certificates at the time of Zoning Compliance Permit submittal documenting the lowest floor and utility elevations. Language shall be included in the Covenants and a note shall be placed on the final plat that states the following: "The lowest floor elevation, including basements, mechanical equipment, and ductwork shall be a minimum of 3083.5' (NGVD 1929). Pre and post-construction Elevation Certificates shall be required at the time of Zoning Compliance Permit submittal documenting the lowest floor and utility elevations." *Subdivision Regulations Article 3-1(1)(B) and Floodplain Administrator recommendation*
3. A residential fire sprinkler system meeting NFPA 13D standards shall be installed within homes in this subdivision with plans to be reviewed and approved by Missoula Rural Fire District prior to Zoning Compliance Permit submittal. Article I, Section 2 shall be amended to include this information subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations Article 3-7(1) and OPG recommendation*
4. The covenants shall be amended as follows:
  - a Article I, Section 5 of the covenants shall be amended as follows: "Affixed to each home shall be address numbers contrasting to the home color that are at least 5 inches in height and clearly visible from the street in all light conditions."
  - b Article 14, Section c shall be divided to produce a new section (Section d) beginning with the sentence "Do not feed wildlife or other supplements..."

- c Article 14 Section e (“Pets”—to be renumbered as f) shall be amended to include the following final sentence: “Keeping pets confined also helps protect them from predatory wildlife.”
- d The following shall be added to become the final section of Article 14: “Purchasers of lots within this subdivision must recognize the subdivision is located near the Clark Fork River where lawful waterfowl hunting and the associated discharge of shotguns could occur from early morning until sunset, and the season can run from September into January.”  
*Subdivision Regulations 3-1(1)(F), Missoula Rural Fire District and Fish, Wildlife & Parks recommendation*

## **INTRODUCTION**

Leon and Mary Copenhaver, represented by Ron Ewart of Eli & Associates., is requesting approval of the **Sol Acreage Tracts Subdivision, 3<sup>rd</sup> Filing, Lot 3**, a 3-lot residential subdivision on 3.16 acres.

## **SUBDIVISION FINDINGS OF FACT**

### **A.) ZONING AND COMPREHENSIVE PLAN COMPLIANCE**

#### Findings of Fact:

The property is located on Melody Lane, east of Big Flat Road and south of Kona Ranch Road. It is located outside of the Urban Growth Area and the Air Stagnation Zone.

The property is zoned C-RR1, which permits a residential density of 1 dwelling unit per acre. The developer proposes 3 lots on 3.16 acres for a residential density of one dwelling unit per 1.05 acres. The 2002 Missoula County Growth Policy, including the 1998 Missoula Urban Area Comprehensive Plan Update is the applicable plan for this property. The property is within an area designated by the plan as “Low Density Rural Residential”, with a recommended maximum density of one dwelling unit per five to ten acres, and “Parks and Open Space.”

The Low Density Rural Residential land use designation encourages large tract development of 5-10 acres to allow for a more rural atmosphere, while also encouraging clustering to protect environmental resources. Existing residential density in the area exceeds the land use designation.

The Parks and Open Space land use designation encourages limiting development where environmental constraints, including floodplain, make development inadvisable. This designation corresponds with the 100-year floodplain of the Clark Fork River and small areas designated by FEMA as “Shaded Zone X.” Shaded Zone X is defined as 100-year floodplain subject to shallow flooding, 500-year floodplain or 100-year floodplain protected by levees. The covenants restrict construction below the base flood elevation.

#### Conclusion of Law:

The overall density of the proposal complies with the zoning, but exceeds the land use designation of the Growth Policy.

### **B. PRIMARY CRITERIA COMPLIANCE**

#### **CRITERION 1: EFFECTS ON AGRICULTURE AND AGRICULTURAL WATER USER FACILITIES**

#### Findings of Fact:

The property has been used for growing Christmas trees in the past. Christmas tree cultivation continues on a small portion of the property.

The soil on this property is Grantsdale loam, 0 to 2 percent slopes. This is considered to be prime farmland soil if irrigated.

The Big Flat irrigation ditch serves lots within the subdivision. Irrigation water was formerly supplied to this location from the Big Flat Ditch via an underground pipe which has since been disconnected.

The covenants contain a statement that the subdivision property may be classified as irrigated and continue to be assessed for irrigation water delivery even though water may not be deliverable. State law, M.C.A. 76-3-504(1)(j), requires subdivisions with average lot sizes over an acre to either provide irrigation ditch easements for water delivery or document the removal of water rights through an appropriate legal or administrative process. This is recommended as a condition of subdivision approval.

Conclusions of Law:

The subdivision will contribute to the incremental loss of actual or potential farmland based on soil classification.

No impacts to agricultural water users are anticipated if the recommended condition is adopted.

**CRITERION 2: EFFECTS ON LOCAL SERVICES**

**Roads**

Findings of Fact:

Property access is from Melody Lane, a 20' offsite gravel road within a 60' Public Access and Utility Easement. The developer is not proposing improvements to this roadway.

Missoula County Subdivision Regulations Article 3-2(3)(B) requires a minimum 24' road pavement width. The applicant requests a variance from this standard. County Public Works supports the variance because Melody Lane is an existing low-volume, low-speed county-maintained road that does not require improvements at this time.

Curt Belts of Missoula Rural Fire offered support for the variance if plans for the future widening of Melody Lane are in place.

The developer's representative has investigated the possibility of an RSID for paving Melody Lane based on a request from the Board of County Commissioners. One subdivision on the north side of Melody Lane was required to initiate an RSID for paving the entire length of Melody Lane. The majority of property owners that use this road have waived their right to protest improvements. A waiver statement exists on the plat.

Jennifer Place is a 14' gravel cul-de-sac road within a 60' Public Access and Utility Easement along the east side of Lot 3. No subdivision access is proposed from this road.

The developer is proposing single driveway access for Lot 1, and a shared driveway for Lots 2 and 3. A 30' x 30' shared private access and public utility easement is shown on the plat along the common boundary for the two lots, and a shared driveway maintenance agreement has been included in the covenants.

Curt Belts of Missoula Rural Fire comments that driveways in excess of 150' in length must be approved by MRFD, and a turn around must be included in the terminus of the driveway. This information is included in Article I, Section 10 of the covenants.

Conclusions of Law:

If the variance is granted the subdivision meets the road standard requirements of the Missoula County Subdivision Regulations.

**Pedestrian Access**

Findings of Fact:

There are no pedestrian facilities within or adjacent to the subdivision on Melody Lane. The developer is not proposing to install pedestrian facilities with this subdivision.

The Riverwood Meadows and Dawn Acres No. 4 subdivisions were required to install walkways along the southern edge of Kona Ranch Road.

A linear public park easement connects the end of the Sandalwood Court cul-de-sac in Riverwood Meadows with the Melody Lane cul-de-sac. This public park connection was dedicated to facilitate a pedestrian connection between Melody Lane and Sandalwood Court and north to the Kona Ranch Road walkway.

Section 3-2(8)(A)(iii) of the Subdivision Regulations states that all subdivisions outside the UGA served by public roads shall provide for a system of pedestrian and/or bicycle circulation, including easements for boulevard sidewalks or pedestrian walkways/trail systems or combinations.

Discussions about an RSID for Melody Lane have included walkway installation. Walkways are included in the RSID statement on the plat for this subdivision.

#### Conclusions of Law

The subdivision meets the requirements of the Missoula County Subdivision Regulations for pedestrian access by including a waiver of the right to protest an RSID for pedestrian walkways on the plat.

#### **Water & Sewer System**

##### Findings of Fact:

Individual wells are proposed for all lots.

Individual septic systems are proposed for all lots.

##### Conclusions of Law:

Review of water and sewer systems is under the jurisdiction of the State and local health authorities under the Montana Sanitation in Subdivision Act.

#### **Solid Waste**

##### Findings of Fact:

BFI can provide solid waste pickup service to the subdivision.

##### Conclusions of Law:

Solid waste disposal is available to the subdivision.

#### **Parks and Recreation**

##### Findings of Fact:

No parkland is being proposed for the subdivision.

The tract being subdivided was a tract created by Sol Acreage Tract Subdivision, an eight lot major subdivision filed in 1968.

Missoula County Subdivision regulations require subdivisions be reviewed as a second or subsequent minor subdivision if the subdivision is a division of a tract of record which has previously been created by minor subdivision review. Under the current Missoula County Subdivision regulations parkland dedication is required for a second or subsequent minor subdivision.

The proposed subdivision is not a second or subsequent minor per current Missoula County Subdivision regulations.

SB 116, adopted April 19, 2005 with an immediate effective date, amended the definition and expanded the number of subdivisions that require review as a subsequent minor subdivision. A subsequent minor is defined as a division of a tract of record which since 1973 has been divided more than five times by use of exemptions from the Montana Subdivision and Platting Act or the original tract of record has been previously divided through subdivision review. Under SB116 the proposed subdivision is defined as a subsequent minor because it is from an original tract of record that has been previously divided through subdivision review.

The change in state law does identify this subdivision as subsequent minor subdivision which may be reviewed in whatever manner Missoula County adopts in their local regulations, however, new state law does not allow Missoula County to require the dedication of parkland for subsequent minor subdivisions.

Conclusions of Law:

The subdivision is a subsequent minor subdivision pursuant to SB 116 for which parkland dedication is not required.

The subdivision is not a subsequent minor subdivision under Missoula County Subdivision Regulations so dedication of parkland is not required.

**Schools**

Findings of Fact:

Children from this subdivision would attend Target Range Elementary and Big Sky High School.

Rachel Vielleux, Missoula County Superintendent of Schools, had no comments on this subdivision.

Conclusions of Law:

No adverse impacts to schools requiring mitigation have been identified.

**Fire Department**

Findings of Fact:

The subdivision is located within the Missoula Rural Fire District. Fire Station No. 6 is located approximately three miles from the site.

The Missoula Rural Fire District commented that all properties must have address signs that are clearly visible from the street in all lighting conditions. The address signs section does not include illumination requirements, which are recommended for this section.

The applicant has also included language in the covenants that would require driveways with a length in excess of 150' to maintain an unobstructed width of not less than 20' and a minimum unobstructed vertical clearance of 13'6" and to provide facilities for the turning around of fire apparatus, and that final driveway design be reviewed and approved by the Fire District.

Missoula County Subdivision Regulations Article 3-7(1) requires a water supply for firefighting purposes. The applicant has provided language in the covenants that requires residential sprinkler systems meeting NFPA 13D standards.

Staff recommends that language in the covenants be amended to require that fire sprinkler plans be reviewed and approved by the Missoula Rural Fire District. The condition requires approval of sprinkler plans before Zoning Compliance Permit submittal.

Conclusions of Law:

Fire service is available to the subdivision.

The subdivision meets fire protection standards in the Missoula County Subdivision Regulations if the recommended conditions are adopted.

**Sheriff Department**

Findings of Fact:

The subdivision is located within the Missoula County Sheriff's Department's jurisdiction.

The Sheriff's Department reviewed the subdivision, and commented that it will provide law enforcement services to the best of its ability.

Conclusions of Law:

Missoula County law enforcement services will be available to the subdivision in a manner consistent with its distance from services and ease of access.

**CRITERIA 3 AND 4: EFFECTS ON THE NATURAL ENVIRONMENT AND WILDLIFE AND WILDLIFE HABITAT**

Findings of Fact:

The project summary states the property is frequented by white-tailed deer, smaller mammals and birds.

Fish, Wildlife and Parks comments that the property is within 1/5 mile of the Clark Fork River with its associated waterfowl hunting, and therefore recommend that language be added to the covenants acknowledging this practice.

Fish, Wildlife and Parks recommends a division in the "garbage" section of the covenants that segregates garbage requirements from prohibitions of feeding wildlife.

Fish, Wildlife and Parks recommends language for the "pets" section of the living with wildlife covenants that would require confining of pets to protect them from predatory wildlife.

The County Weed District comments that the revegetation plan cited in the covenants is adequate for this subdivision and that Article I, Section 12 satisfies the requirements of the Weed District for covenants pertaining to noxious weed control and revegetation.

Conclusions of Law:

Significant impacts to the natural environment, wildlife, or wildlife habitat will be mitigated if the recommended conditions are adopted.

**CRITERION 5: EFFECTS ON PUBLIC HEALTH AND SAFETY**

Findings of Fact:

The Missoula Rural Fire District serves the property. The Missoula County Sheriff Department provides law enforcement services.

Individual wells and septic systems are proposed to serve the lots.

The City-County Health Department comments that Missoula County has a high radon potential, and that new construction should incorporate radon resistant construction features. The applicant has included this language in the proposed covenants.

The property is outside the regulatory FEMA 100-year floodplain, but a portion of it falls within Shaded Zone X, a designation including 100-year floodplain subject to shallow flooding, 500-year floodplain or 100-year floodplain protected by levees. Todd Klietz, County Floodplain Administrator, comments that while floodplain permits would not be issued for this zone the land is susceptible to flooding during a 100-year event.

Todd Klietz commented that the lowest floors of the homes in this subdivision should be elevated 2' above the flood elevation of 3081.3 feet, or rounded to the nearest half-foot at 3083.5 feet. He recommends that pre and post-construction elevation certificates be submitted documenting that lowest floors and utilities are two feet above the 100-year flood elevation. This information is recommended for the covenants and the plat. Pre and post elevation certificates would be submitted at the time of Zoning Compliance Permit submittal.

Conclusions of Law:

Emergency services, water, and sanitation are available to the subdivision at a level consistent with its rural location.

Adverse effects on public health and safety as a result of this subdivision may be mitigated if the recommended condition is adopted.

**C.) COMPLIANCE:** This subdivision complies with:  
**The survey requirements provided for in part 4 of M.C.A. 76-3:**

Findings of Fact:

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

This proposal meets the survey requirements.

**The local subdivision regulations provided for in part 5 of M.C.A. 76-3:**

Findings of Fact:

Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

The developer has submitted a plat which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plat into compliance.

**The local subdivision review procedure provided for in Article 4 of the Missoula County Subdivision Regulations:**

Findings of Fact:

Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula County Subdivision Regulations.

Notice of public hearing for this subdivision was published in the Missoulian, a newspaper of general circulation on February 19 and February 26, 2006. Letters to adjoining property owners advising them of the dates of the public hearings on the proposal were mailed on February 17, 2006. The property was posted with a notice of the public hearings on this proposal on February 22, 2006.

The Missoula Consolidated Planning Board conducted a public hearing on March 7, 2006, and forwarded its recommendation to the Board of County Commissioners.

The Board of County Commissioners held a public hearing on April 5, 2006. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The application shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider, a contiguous landowner, an owner of land within Missoula County who can establish a likelihood of material injury to property or its material value, or the Missoula County Board of County Commissioners. In order to file an appeal, the plaintiff must be aggrieved by the decision, demonstrating that a specific personal and legal interest, as opposed to a general interest, has been or is likely to be specifically and injuriously affected by the decision.

Conclusion of Law:

This subdivision proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Article 4.

#### **D.) PROVISION OF EASEMENTS FOR UTILITIES:**

##### Findings of Fact:

The proposed subdivision will be served by the Missoula Electric Co-op for electricity and Qwest for telephone.

Utility easements are located in the Melody Lane public access and utility easement.

##### Conclusions of Law:

Utility service is available to the subdivision.

#### **E.) PROVISION OF LEGAL AND PHYSICAL ACCESS:**

##### Finding of Fact:

Physical and Legal access to the subdivision is from Melody Lane, a County road.

The applicant has included a 30' x 30' shared access easement along the common lot boundary between Lots 3B and 3C. The covenants include a shared driveway maintenance agreement.

##### Conclusion of Law:

The proposal meets physical and legal access requirements of the Missoula County Subdivision Regulations.

#### **V. VARIANCE REQUESTS**

##### **1. Variance request from Section 3-2(3)(B) of the Missoula County Subdivision Regulations to allow the existing 20' gravel surface width for Melody Lane.**

#### **RECOMMENDATION**

The Office of Planning and Grants recommends **approval** of the variance request, based on the following findings of fact:

##### FINDINGS:

- A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**  
Melody Lane is a 20' county-maintained gravel road within a 60' public access easement. Users of Melody Lane are discussing an RSID for paving this road, which would be the best mechanism for comprehensive road improvements. This developer has waived the right to protest improvements to Melody Lane. Erik Dickson of County Public Works comments that Melody Lane is a low-volume, low-speed county-maintained road that doesn't require improvements at this time. Granting the variance would not be a threat to public health and safety.
- B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**  
It is not common to have the potential for an RSID that would address comprehensive paving on a county road. Paving along the subdivision frontage would involve undue expense for a limited roadway section. It would be much more efficient to pave all of Melody Lane via an RSID and assess lot owners for the improvements based on benefit.
- C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations is enforced.**  
None of the above considerations would create a hardship to the owner.
- D. The variance will not in any manner violate the provisions of the Missoula County Zoning Resolution, the Missoula County Comprehensive Plan, or the master plan for the area.**  
The variance will not violate the provisions of the applicable documents.

**E. The variance will not cause an increase in public costs.**

No increase in public costs is anticipated with the granting of this variance.

Miner’s Addition (128 Lots on 19+ acres) – 40<sup>th</sup> Avenue at the base of McCauley’s Butte.

**5 minute break**

Commissioner Bill Carey: We’re ready for our staff report. Jennie?

Jennie Dixon with OPG: This subdivision is up for public hearing today. It is presented by Northern Lights Development company. As you said, Bill, it is 128 homes on 19.4 acres. The location is generally the east side of McCauley Butte at the end of 40<sup>th</sup> Avenue. It is accessed by 40<sup>th</sup> Avenue. The staff recommendation for this planned variation and PUD subdivision is for approval, subject to two conditions. The public hearing held by the Planning Board was on March 21<sup>st</sup>. They also are recommending approval of the planned variation as shown in attachment B in our report.

**A. Intent**

The Miner’s Addition Planned Variation was adopted by the Missoula County Board of Commissioners in conjunction with a Planned Unit Development (PUD) subdivision to meet the intent of the base C-RR1 zoning district which states, “planned variations are encouraged to preserve agricultural land and to enhance environmental amenities found in rural areas.”

The Miner’s Addition Planned Variation, in combination with the PUD subdivision, is intended to cluster development, reduce infrastructure costs, protect natural resources, and preserve significant natural features, McCauley Butte and the Bitterroot Riverfront area, as cornerstones of Missoula’s open space system.

The specific intent of the Miner’s Addition Planned Variation is to allow for a front and rear yard setback reduction up to 50% and elimination of some side yard setbacks, excluding those directly adjacent to the outer edge of the property. This Planned Variation permits a lot width reduction of up to 75% and an increase in building height of not more than 50% of the base zoning district (C-RR1). It also establishes building design standards for the residential dwellings in Blocks 6 and 7, and it requires compliance with an approved landscaping plan.

**B. Space and Bulk Requirements**

Number of lots..... 128

Minimum lot width..... 24 feet

Setbacks

Front..... 12.5 feet, measured from centerline of street where adjacent to a street

Side..... none, except that lots directly adjacent to the exterior boundary of the subdivision shall maintain a 15’ side yard setback

Rear..... 12.5 feet, measured from centerline of alley where adjacent to an alley

Garage Setbacks

Rear Yard:

Where garages are accessed from an alley, the rear yard setback, as measured from the property line adjacent to the alley, shall be a minimum of six (6) feet.

Maximum Building Height

Block 4 ..... 45 feet

Blocks 1, 2, 3, 5, 6, 7, 8 ..... 35 feet

## **MINER'S ADDITION PLANNED VARIATION, CONTINUED**

### **PAGE 2.**

#### **C. General Regulations**

Homes in Blocks 6 and 7 shall be oriented with the front facing the public street. Fronts shall be determined by the presence of features consistent with the front of homes such as porches/decks; walkways connecting to the public sidewalk; and windows or other elements of visual interest, such as eaves, varied roof lines, projected or recessed walls, and color variation.

#### Off-Street Parking Restrictions

##### Blocks 5 & 8:

No parking shall be permitted in the driveways of homes in Blocks 5 & 8. A permanent sign, approved by Public Works at time of building permit, shall be attached to the face of the garage stating that Parking in the Driveway is Prohibited.

##### Blocks 6, 7 and Lots 1 & 2, Block 3:

Parking in driveways shall be permitted in Blocks 6 & 7 and Lots 1 & 2, Block 3, only when the garage face is setback 20 feet or more from the back of sidewalk. Where garage faces are less than 20 feet setback from the back of sidewalk, a permanent sign, approved by Public Works at time of building permit, shall be attached to the face of the garage stating that Parking in the Driveway is Prohibited.

Supplementary Regulations in Chapter III of the Missoula County Zoning Resolution shall apply, except that this Planned Variation shall be exempt from Sections 3.06 N. 4. and 3.06 N. 6.d.

#### **D. Permitted Uses**

Single dwelling units, including attached town homes  
Accessory Buildings and Uses

#### **E. Conditional Uses**

Home occupation

#### **F. Special Exceptions**

Public utility installation

#### **G. Utilities**

All utilities shall be installed underground.

#### **H. Landscaping**

Landscaping shall be in compliance with the approved Landscaping Plan.

For folks in the audience, I have left several copies out for you. That request for commission action contains the Planning Board recommended version of the planned variation as well as the Planning Board's recommended conditions of approval of the subdivision. The property owned by Northern Lights Development actually comprises approximately 286 acres. This subdivision is only on a portion of that land. The 19.4 acres located on the east side of the property is shown (on a map in the meeting). It is proposed with 43 single-family detached residences and 85 town homes. The roads are proposed as public roads with a loop connecting road, you can see (on the map) in pink, and then cul-d-sacs at the end and two shorter roads accessing to an alley. Boulevard sidewalks are proposed on all of the streets as well as on offsite road 40<sup>th</sup> Avenue, which runs along the east side of Target Range school. You can see on the map, the common areas are shown in darker and lighter greens. Some of them are in red, which is indicative of slopes over 25%. They have met their park land dedication requirement. Also proposed, but not part of this subdivision application, is possible conversion of the JTL land east of this site, which is currently being mined for gravel, to be a city park. Which would provide recreational opportunities to the residents of this subdivision, but that does not exist at this time. We hope that it does happen. There is also a possibility of a trail easement being dedicated by the subdividers....off the site of the subdivision, but on the portion of their land that gets to the summit of the Butte. To meet the PUD designation criteria as a PUD subdivision, a condition of approval did recommend that the subdividers

install and improve a pocket park in the vicinity of Phase I. That is one of two subdivision conditions that the Planning Board modified, I believe it was conditions number 17, and that condition in its modified form is in your request for commission action packet. The property has riparian areas south of it, certainly the Bitterroot River Floodplain and riparian area. A small part of this property has riparian area....actually a riparian area buffer designated on it, so you can see it's a very small area and simply, that area is to be designated for no improvement. So the three motions on the front page of your request for commission action, will be as recommended by the Planning Board, approval of the Miner's Addition Planned Variation as modified by Planning Board and shown in Attachment B to this Request for Commission Action, based upon the findings of fact. The changes made by the Planning Board are just two fold, one was to address the issue of driveway length and over hang of cars on to sidewalks and how will that be handled. The other one is to allow for 45 foot building height along Block 4 and then require 35 feet along all other blocks. So just that one Block would be the 45 feet and that's evidenced in the model provided by the applicant and we can see that the three story homes, given their physical placement into the hillside, on one side will have the appearance of three story, but on the street will actually be one to one and a half stories. If you choose to take action today, your first motion would be on the planned variation as presented in Attachment B and modified by the Planning Board. The second motion is to a variance in the subdivision which has to do with a third to a half of the lots don't have area of slope less that 25% for a building envelope and as this is designed as a PUD subdivision, there is a geo-technical study that evaluated the site for construction and it can occur safely, in their opinion, on these slopes. The Planning Board and the Staff recommended approval of this variance. Finally, the third motion would be for approval of this subdivision subject to the 30 conditions of approval. As presented to you, with Planning Board's modifications, I believe the applicant is in full agreement with those. The property is zoned C-RR1, a condition of approval does require a transfer of density from remainder portions of the property owned by Northern Lights Development and (pointing out on the map), in order to develop at the level of density on this physical location, the condition requires a transfer of density from remaining ownership. We evaluated the best source of sending areas, or sources of those development rights and the conclusion, as recommended in the condition, is that remainders one and two essentially give up all building right in order to cluster it at this location. There aren't enough here, so 15 others are recommended to come from other portions of their ownership. That would actually be Tract D and Tract C. The idea being that this is presented as a cluster development to preserve the Butte. So we're looking at taking density from that portion of the Butte that is most worthy of preservation and that's what that condition reflects. There were three public comment letters attached to your staff report and at the March 21<sup>st</sup> public hearing at the Planning Board, seven people spoke in favor of the subdivision and five spoke against. You also should have, as part of your record, the Planning Board minutes for you to have read. I think in the interest of letting the public speak, I will conclude my staff report and take questions later.

Commissioner Bill Carey: Thank you, Jennie.

Jennie Dixon: Actually, I do have a slide show and I'll run through that real quick. The Commissioners have actually seen this, so for the record, for basing any decisions, I do want to make sure that this is shown.

### **Two minute slide presentation of property where subdivision is proposed to be built.**

Commissioner Bill Carey: Thank you Jennie, I'll open this public hearing. Would the developer's representative care to speak? Or the developer himself?

Brett Kulina: I am one of two members of Northern Lights Development, the other is Stuart Goldberg, sitting behind me. You will hear from him a little later. Today we have prepared a brief presentation which will familiarize you with our property and offer some insight into our two year planning process on this project. Before we begin, I would like to thank Jennie Dixon and her staff at OPG, as well as Don McArthur and Dick Ainsworth. These three professionals have put a lot of time and energy into this project on our behalf and I think the quality of the proposal before you is evidenced by their hard work. I'm going to take you through a few photos of the property and as you know, the subdivision is proposed

to be located on a small portion of the 286 acres that we own. I would like to show you a few photos of the entire property and then outline some of the issues that we have dealt with during the past two years.

### **Quick photo presentation.**

The planning process that Stuart and I have gone through with the help of MMW and PCI, as I mentioned, really focused around this idea of a "conservation development" and the concept of this was on that was a priority to us prior to purchasing this property. The idea arose out of seeing large properties which contained critical conservation areas come up for sale for dollar amounts that we beyond the means of most conservation and neighborhood groups. All too often, we saw these enormous price tags dictate over development and development of inappropriate portions of the property. Conversely, the conservation development concept recognizes the importance of conservation values and achieves the protection of these areas by developing in appropriate areas. This is exactly what our plan proposes to do. As you know, in your packet, what our plan entails is basically three large portions. The first as we see is personal homesites, located on the west end of the Butte where the existing homes are now. We, Stuart and myself, both plan on building our personal residence there and residing there full time. And the continuation of agricultural practices, right now there's the 80 acre floodplain to the west of the houses to be built, that is being hayed...it's a non-irrigated situation, but it is a healthy portion of the property and one we plan on continuing, in both producing hay and grazing sheep. The second component of the project is the conservation and we're proposing that the Bitterroot River corridor, the floodplain, the public view shed and McCauley Butte would be protected by conservation easement posted by the Five Valley's Land Trust. We'll talk a little more about that in a moment. The portion of the project that is before you today is the Miner's Addition PUD. What we have decided is the development be proposed on the eastern portion of the property and be built at residential urban densities and would be built with the diversity of architectural style, designs and themes. I want to briefly talk about the two most important concepts of the three we just talked about. The development and the conservation. We have spent a number of years deciding how best to achieve this conservation development on this property. It's a very diverse property and seeing that it is in everyone's skyline, it is an important piece of the Missoula Valley that everyone seems to have a desire or an opinion on. So, ranging from our very first neighborhood meeting, which I believe was in January 2005, to several ones following that, we have constantly been engaging the neighborhood and have gotten to know a lot of our neighbors and really a lot of what we've heard from them is reflective in this plan. Three of the most important aspects of the development were the proximity to services and infrastructure, which for us, we looked at some of the services that a neighborhood needs and when we looked at developing the east end of the Butte, you are a few miles down from Community Medical, the fire and rescue are there, the two schools are there, it is....adding a little bit of Reserve Street with the grocery store and gas station, it is very self contained and putting homes closer to those services, in our mind, was important. When we look at infrastructure, obviously this number of homes needs sewer and water provided by the City. We went through the process of getting included into the sewer service district and we have successfully done that. The infrastructure, as planned right now, would be a spur line for our development that would run through the Fort Missoula Complex. When we look at the second portion of the development, the impact on existing neighborhoods. This is one where we've heard, very vocally, from our neighbors because we were in the process of this planning when they were planning their west end zoning. We really took to heart that the traditional neighborhoods of this area do not want to bear the brunt of new development. When we talk about locating our neighborhood on the east side of the Butte, we are out of sight actually quite a ways away from those traditional neighborhoods and I would put forth to you, that there is not a subdivision that does not come through that you have people from traditional neighborhoods or historic neighborhoods saying that they don't want to bear the brunt or the cost of new development. One way to not impose that on traditional and historic neighborhoods is to allow new neighborhoods to come about. We have a perfect opportunity to put one that is self contained, well planned out and quite a ways away from the existing Target Range neighborhood. The third aspect to the development portion, for us, again, was what type of development is needed and marketable? Obviously, any development or construction does have to come down to market reality. One of the areas that we started to explore and have done a lot of research on is the idea of the Town House. The Town House, which I think encompasses about 65 of the 128 proposed home sites, in our mind is underrepresented in the area and they are needed. What we envision are people that want to be in rural area, such as this, but don't necessarily want to maintain a full

yard or the exterior of their house. Folks that are aging, or busy professionals...they are the type that on Saturday they do not want to mow the lawn, they want to be able to...but they also don't want to be in a strictly urban setting. So what this neighborhood could do for those people is offer a low maintenance opportunity to still live in the country, with immediate access to the river to go fishing, to get on bike trails, to enjoy the Fort Missoula Complex. We certainly heard from the surrounding neighborhoods that the density was a little out of proportion of what is there now, but right now there are no town houses. These are not smaller lawns, these are no lawns for 65 of these units, they are townhouses and I think there is a great need for them. I think they'll be well received. The conservation portion, again, we heard from a lot of groups, both in the neighborhood and just in the general Missoula Community that had already identified McCauley Butte as an important conservation area. Preserving the view shed is important, it is seen by travelers, homeowners and by most of the people that are a part of this community. The Bitterroot River is a special concern. The continuation of agricultural practices was also a big issue that we heard from the neighbors and the conservation portion of this development; I think really highlights these three items. One of the reasons that this area is so rural and nice is the open space that McCauley Butte provides as well as the hay field that we're continuing to use. I'm going to take you very briefly, again, on a picture tour of where these areas are.

### **Picture tour, 5 minutes.**

When I see these pictures, I am proud of the fact that we were able to come up with a plan that met the conservation development concept, but we weighed heavily on the conservation side. It's some thing Stuart and I take great pride in. The entire ridgeline of the Butte will be under conservation easement. The 80 acre, non-irrigated, hay field will also be put under conservation easement for no development. One of the special aspects of the riverfront on this property is that on the opposite side of the Bitterroot is the McClay Flats area, so you could float down river and you would see, really, no development on either side of the river. It then runs into the downstream portion of our property, with Blue Mountain road on your left. Since that road is so close to the river, there are no houses there, so it's a nice stretch for recreational users and fishermen that are using the river and you don't really see any of the proposed development from the river. From the summit of the Butte, it's an interesting geological structure, where you look at it and at times it looks steep and cliffy, and you get up there are these very large 5-7 acre benches all around the property. I think, from a real estate standpoint, it certainly puts those areas in competition with others to be developed and that was something that we weighed in quite heavily in our proposal to you. On the far eastern edge of the property is where the actual building will take place, the boundary with JTL is currently just a barbed wire fence. Eventually JTL will be tearing down the towers of the gravel operation and by contract, will turn over their property to the City of Missoula. We only speak of these towers as a reference as to how tall our buildings will be, none of our building, although it will be going into the toe of the Butte, will be visually any higher than these towers owned by JTL. I think river to the summit of the Butte is 380 feet. When we talk about coming off the valley floor 40-45 feet, there is the larger portion of the Butte and that eastern flank that will remain unbuilt upon and protected by conservation easement. Looking toward the river there is a 50 acre cottonwood gallery, which will serve as a visual buffer and wildlife corridor between the development and the river. Due north are houses across South Avenue, these houses are the closest neighbors to the proposed development. Between us and them are two portions of larger ownership. One ownership is College of Technology, where they train their drivers. They are planning to continue use of this property. The larger portion of the field is owned by Missoula County Schools, where some of their agricultural programs are being conducted. Both of these serve as another buffer between South Avenue and what ultimately is proposed as a neighborhood. The location and size of our property make it an invaluable piece of the Missoula Valley landscape, yet the size and importance of the property present some unique challenges when master planning the future land use of such a place. As property owners, we have accepted these challenges and have put forth a proposal that not only serves the community and its need for land preservation, but also respect to our private property rights and our desire to develop our property. Before we address any questions, my partner Stuart will present some additional information on the other components of the project. Namely, the conservation portions of it. I thank you for the opportunity to speak with you and I do appreciate your time today.

Commissioner Bill Carey: Thank you Mr. Kulina.

Stuart Goldberg: Good afternoon, I'm the other member of Northern Lights Development. As Brett mentioned, the Miner's Addition is only a portion of what we, at Northern Lights, have envisioned for the property at McCauley Butte. This is a conservation development proposal and the Miner's Addition is only the development. In fact, it would cover less than seven percent of the total acreage we own and I'd like to take a moment to tell you what we have in mind for the other 93%. The conservation side of the proposal. When we first stood on top of the Butte, we saw two things: an abundance of great wildlife habitat and a perspective our city that deserved to be shared. As you'll see in a few minutes in a short film we have put together, McCauley Butte is an amazing place. After many months of consideration and working closed with the Five Valley's Land Trust, we have come up with a set of conservation easements that will ensure the permanent protection of some of the property's most important assets. While the conservation easement process is by necessity, separate from the subdivision approval process, these easements are an integral part of our proposal. There are in fact three separate conservation easements in this project. They have all undergone numerous revisions, and for intense and purposes, are in their final form. The easement on Tract A will permanently protect almost 90 acres of healthy cottonwood river bottom and allow the large hay field to remain in agricultural production. Significantly contributing to the rural way of life in our area. The conservation easement on Tract C, will protect in the integrity of the ridgeline view shed. Allowing the hundreds, if not thousands of Missoulians, who see the Butte everyday to know that it will remain unchanged. To know that when they look up at the hill in decades to come the whitetails will still be there. And the easement on remainder one of Tract E will ensure that the summit and northeast flank of McCauley Butte, a cornerstone of the communities open space network, will stay permanently undeveloped. We are very proud of the work we have done in cooperation with the Five Valley's Land Trust, and we are very excited about the protection these conservation easements will provide. We look forward to signing the easements in the next few months. One of the questions we're often asked in terms of the conservation side of our proposal has to do with public access. So I'd like to tell you about the ongoing cooperation with the Parks Dept. and the Forest Service and the potential for future enhancements to the communities trail system. By virtue of the existing contract, at the end of 2012, Missoula is going to receive from JTL, the 86 or so acres just east of the Miner's Addition. The gravel pit is to be reclaimed and turned into a park. A more natural area that would extend the public lands, at Fort Missoula, all the way to the eastern edge of the Miner's Addition. Through an agreement that we are working on with the City, as this gravel pit redevelopment occurs, we are prepared to donate to this park the 2.74 acres an over 1000 feet of river frontage shown as remainder 2 of Tract E. This will make the park a much better park. Once there is adequate parking, and facilities on the park property, we are prepared to give a trail easement through our private property to the top of the Butte. The trail is shown as a switch back and is intended to stay on the south side of the Butte to mitigate its visual impact on the neighboring community. On top of this, we have had numerous conversations with the Forest Service about linking the public lands at Fort Missoula and the new park with existing protected lands on the south side of the river at McClay Flats. Wouldn't it be great to have a non-motorized bridge that would connect all of these existing trail networks? We can do this on Tract D. Maggie Pitman, Missoula District Ranger for the U.S. Forest Service, has shown solid support for this idea. As with the conservation easements, we have been working for many months on the legal framework these opportunities for public access and a bridge to create trail connections will require. And we are excited to move forward with formalizing these agreements in the coming weeks. The actual location of the bridge we are proposing would be at the bend in the river on Tract D. It's a narrower section of the river with very stable banks, Brett and I are not licensed bridge engineers; I want to be on record with that. But it looks to us and it looked good to Maggie Pitman. We would want to do something like the wilderness pack bridge in the Bob Marshall that spans a section of the south fork of the Flathead River. Now that we've told you about our plans to protect McCauley Butte, we'd like to show a short film.

### **3 Minute film**

Don McArthur: From MMW Architects. I've worked with Stuart and Brett on this project for about two years and I've been very fortunate to work with them. I think it's a great conservation development, as they've been outlining here and as you've seen from their presentation. I wanted to go through a few of the nuts and bolts of the development portion of the conservation development. I think Jennie went through it a little bit, but this plat (on the wall)....I want to outline where the different uses are on the plat

and then to tie it in to the model so everyone can understand it. The areas in the northeast corner of the property are single family detached housing, pretty traditional neighborhood style lots in that area. There are a series of lots that face to the east across the future city park, these are single family attached housing, and they are still on the flat bench. As you move further down to the south, you start to look out over the riparian area down to the river and there are two u-shaped portions of the development that have lots that area accessed off the back of the lot and then face out through a green space to the riparian zone. Trying to take advantage of the riparian zone. Along a portion of the toe of the Butte, there are two rows of attached town houses and then at the far southern end of that there is one row of town homes. The notion of these homes tucked into the hillside, is that each of these homes can view out over the top of the one below. We had a vision that this development...as Stuart and Brett both eluded to, it's a compact development, but the idea of being able to walk from your house immediately out into the beauty of the surrounding park land was paramount. So we've really tried to do a lot of things to make beautiful boulevard sidewalks along all of our streets, even the street up on a steeper slope. We envision street trees all along the roads and we're trying to make a beautiful public realm for the people who live there.

### **Brief viewing of a model of the development.**

With that, I'm certainly open to any questions that may come up. As Jennie mentioned, we are in full agreement with the planning boards recommendations for approval.

Commissioner Barbara Evans: Don, could you give us an idea of length of time it's anticipated for completion of this project? From beginning to end, how many years?

Don McArthur: I'm not the right person on the phasing thing, maybe Jennie could answer that better?

Jennie Dixon: The first phase are proposed to be filed within six years and all the other phases, of which I believe there are five or six more, are 13 years from preliminary plat approval.

Commissioner Barbara Evans: Thank you.

Dick Ainsworth: With Professional Consultants. As has been indicated, we doing the surveying and engineering work on this project. I would like to echo Don's comments about how it's been a pleasure working with Stuart and Brett. They're an unusual pair of developers, they have different thoughts about development than most of the folks we deal with and most of the folks you see. Thank you Jennie for all of your work. The Planning Board did give the proposal a thorough review, and we were generally favorable with Jennie's staff report. We did have some suggested revisions, the Planning Board, I think agreed with both of those. So the report that you see in front of you from Jennie, both the planned variation and the recommended conditions we're in agreement with all of those. At that I will end and be available for questions.

Commissioner Bill Carey: Who else would like to speak to this?

Curt Belts, Assist. Chief Missoula Rural Fire: I'd just like to make a correction of what Brett said in his presentation. It is my understanding this subdivision is in petition for annexation as it comes into the city, if that is the case Missoula Rural does not protect that subdivision, so fire and rescue is not just down the street. Thank you.

Commissioner Jean Curtiss: Jennie or Dick could you correct that?

Dick Ainsworth: To clarify that, we have entered into an agreement, or the developer has, for contract sewer services with the City. With that, there's a waiver of right of protest of annexation and we anticipate that this development may be annexed as it starts to develop, but it may not. At this point, it's a county subdivision and we've designed it to meet County standards and meet Public Works Dept. standards, which are a little different from the City standards. It's possible that this could be in the county and in that case, it would be served by Missoula Rural Fire. It is going to be served with city sewer, maybe contract maybe annexed, we're not sure. It's going to served with Mountain water, so it's going to

have a water system with fire flows and fire hydrants, but at this point I don't know if anyone knows for sure that this is going to be in the City and served by City fire. It could be, it could also be served by Missoula Rural Fire. At some point and time, that will probably change, it'll go one or the other.

Commissioner Bill Carey: Thank you, Dick. Who's next?

Windy Ninteman, Exec. Director Five Valley's Land Trust: I'm here to speak in favor of the proposal. We've been really tickled to be a part of this project. I was sitting out here thinking about a float trip, about three or four years ago, we took some folks put in at the Fort and floated down to McClay Bridge. At that time the property was for sale, McCauley Butte, and everyone said 'What is going to happen, you have to do something'...and we weren't able to do anything. We tried to negotiate to purchase the property, we didn't have the resources, and we felt really helpless just sitting back and watching. We knew Stuart, he's been a friend of the Land Trust, we've worked with him on other things and we were just delighted that he and Brett came forward with the proposal here. I just feel like this is one time where this community really lucked out. Five Valley's really supports this idea, the conservation development, and it's all about what's being conserved and what's being developed. While we're not experts on what's being developed, and we're not here to speak to that, we can speak to what's being conserved and this is such a fantastic project from that standpoint. They have done a fantastic job from our perspective in this proposal with protecting the riparian, which is so significant along there, as well as the scenic view shed, wild life habitat, agricultural in an area where that is the predominate use of the land. So we're very appreciative of the work that they've done and hope the County supports it. Thank you.

Commissioner Bill Carey: Thank you, Wendy.

Pat MacDonald: I'm a sixty-six year-old guy born and raised in Missoula, spent 90-95% of my life here. I spent about 33 years in the banking business. That doesn't make me an expert on subdivisions or development, I don't claim that at all. The expert is Jennie here and her staff who do this, but I've spent this time here in Missoula and I've seen a lot of changes in Missoula from way back when. The developments, the good the bad, etc. We've all seen those. So why am I here today? Two reasons, One, our family is a sizable owner of real estate, or at least we think it's sizable, at least when we pay our taxes we think it's sizable, here in Missoula. Including a five-acre tract out in Target Range area. So we have a very vested interest in Missoula and what happens to it. Secondly, my reason for being here is my son-in-law, Cameron Lawrence, very proud of him. He teaches out at the University, holds a PHD from the London school of Economics, very credible person. Sometime back he said, 'Pat, you've gotta come and see what my friends Stuart and Brett are doing', and so we went out there, took a tour of the property. Needless to say, it's very impressive. When you listen to the conservation that they're throwing into it and that 93% of the property is going to remain undisturbed, it just strikes you heart, I think. It brought back to me the memory of 1968, I was working for the old First National Bank of Missoula and my boss at that time was a man named George Gilbertson. George was acquainting me with the loans we had out in that area, we're driving down South Avenue, he looks up at the McCauley Butte and says 'You know, Pat, that's where I want to build a house. That would be a terrific place to build a house, greatest view in Missoula.' Well, George got a lot of things done, but he didn't get that done and thank goodness he didn't. Why do I like the project? Because so much of it remains open, the conservation awareness that is there is terrific. Extending these bath...or these bike pathways through the area and tying it in with the others, I think is tremendous. Missoula has a great asset in these and they can extend it by this. I think also, that one little item, whenever I hear of subdivisions coming together normally, the schools are the ones that are hollering and screaming that they're doing to inundate the school with more students than they can handle. It's my understanding that Brett and Stuart went to the Superintendent of Target Range School and his conclusion was 'Bring us some students.' The declining age out there was lacking in young people and they have more facilities than they have students, so just another little plus in their favor. In addition to the project itself, I always like to look at the people. I guess it's the old banking tradition, you like to know who's sitting across the table from you and talking to you. In trying to find out a little bit about Brett and Stuart, of course I start with Cameron, who has known them for almost 20 years. Cameron speaks very favorably of them as you would probably expect, so that was positive. Then we go up to Lakeside and I'm familiar with a commercial building up there and I think Stuart and Brett put it together about 10 years ago. We eat lunch there periodically, in the restaurant. It's a nice building, they

keep it in good shape. They don't build and run, they're there for the term. Like I've said before, I've never quite figured out how you make something like that work in Lakeside, but that's their problem, not mine. Another plus on their side, an old friend of mine, Jerry Burns, a retired dentist in Lakeside, sat on a review board up there. I asked Jerry, 'Do you know these guys?' He said 'Oh yeah, I know 'em. They're good guys. They do what they say they're gonna do.' So, the project is good. If there's a downside to the project, and this may sound a little phony, I think it sets a standard that is so high for future developers that it's going to be very difficult for anyone to reach that bar. But that's a plus for Missoula. I look at all of it as it all comes together, I think it's a terrific project, I hope the Commissioners feel likewise. Thank you.

Commissioner Bill Carey: Thank you Mr. MacDonald. Who's next?

Gail Allaman: I am a Missoula, MT native. I have seen all the changes that Pat has, and I just want to concur with what he has said. I encourage you to approve this. I am the realtor that represented the sellers on this transaction, so I worked closely with Brett and Stuart. I just want to publicly say, and before you all, thank you to Brett and Stuart for doing everything that you have promised at the time of sale and more. I hope that I can be their neighbor and as a realtor, I can tell you, they're going to be lining up to have those properties. Thank you.

Fred Stewart: I live at 4675 South Avenue W., in the Target Range Area, Missoula. I compliment the owners on taking this development seriously. They've done their homework, they've put together a good package of information and there's a lot of information for us to then respond to. I often think of this song, over the last year, when I look at the Butte and I think about what's going on.... "Don't it always seem to go that you don't know what you've got til it's gone. They paved paradise and put up a parking lot." Or town houses, as the case may be. It's true that the proposed development before you today provides significant protection for a large part of McCauley Butte and the flood plain to the west of the Butte. But there are also significant trade offs in order to get the benefits offered by the owners and the developers. I believe that the discussion today must consider whether the conservation easement protections mentioned at length by the property owners are worth the negative community impacts that will come from this proposed development. Before I list the negative impacts, I must bring up a key component of this project, which is transferring development rights from the owner's adjacent tracts. This is, in my opinion, a real difficult situation in terms of the very important benefits and then the tradeoffs that you are faced with because these are significant. When I was before this board last June asking for approval for the special zoning district in our neighborhood, and this property was initially inside that zoning district. Commissioner Curtiss asked County Attorney Dowdall 'Could development rights be transferred from one zoning area to another?' Colleen Dowdall answered, 'I don't know.' As a result of that answer, the Commissioners decided to remove the property from the proposed special zoning district. At the time it didn't occur to me the implications of the question and answer, but in trying to understand this development and how to comment on it, I've become somewhat more educated about transferring development rights. I think Jennie Dixon for being very patient with me, in terms of trying to help me through all the rules and regulations and Colleen Dowdall with her answers to the questions that I had dealing with transferring development rights. In order for this proposed development to happen, development rights have to be transferred from one area to another. Yet the concept of transferring development rights as a planning tool is not well defined in either the County zoning regulations or the subdivision regulations. In fact, it's not defined at all in either document. The theory seems to be 'development rights can be transferred to a parcel, as long as the density of the entire tract does not exceed zoning.' So the concept is, the basis of it, I can get it and the regulations do define density, when the talk about the number of dwelling units per acre measured as gross area inclusive of rights-of-way, parks and open space, so we've got density well defined. But it's more than the theory about transferring development rights, because these undefined development rights are being transferred allowing a small parcel to have much higher density than would normally be allowed by zoning, so long as the density when measured at a larger scale is within existing zoning. So, in the case of this particular proposal, Miner's Addition, transferring development rights from adjacent tracts zoned with density of one dwelling per acre, would allow 128 dwellings to be built on 19.4 acres, so the resulting density in the developed area is going to be 6.6 dwellings per acre. But the density of the entire tract and the adjoining tracts owned by Northern Lights would still be less than one dwelling per acre. So when you look at a large

area, it's below on per acre, but you have very concentrated development in a small area and this can happen because of transferring development rights. As a result of this being allowed, the proposed project area has density that far exceeds anything that's now in our community. I'm going to nag at you a little bit about transferring development rights, because it is such an important issue that it's undefined. Things just happen and I don't think it's fair to the citizens, I don't think it's fair to the owners, developers to not understand and know what the ground rules are on something that is this critical. The only reference to transferring development rights in the subdivision regulations is Section 3-1, it says, 'That all subdivision plats shall comply with laws, ordinances, regulations including, but not limited to: and one of those things is, 'the provision of any agreement for the transfer of development rights.' That's the only place that those words come up. You can do, but in terms of how it happens, who knows. County Attorney Dowdall replied by an e-mail to our request for additional information on transferring development rights on January 20 of this year. In response to our question to point out the statutes and regulations concerning transferring development rights, her reply was, 'Montana statutes do not address the process for transferring development rights' So it's not at the State level, it's possible to do in the County when zoning does not have a minimum lot size, but it's governed by a maximum density. It allows the developer to enter into an agreement with the County to leave parts of their land undeveloped and to use those densities on parcels appropriate for development. We find it odd, to say the least, that something as critical as allowing concentrated density in a small area is based, not on clearly defined rules and regulations, but on a practice that has become common and it's based on an agreement between the proponent and the governing body.' Her full response is attached to my comments. And again, I appreciate the fact that Colleen took the time to try and answer our questions and point us in the direction as best she could. We even see jargon associated with development rights. There are sending locations, receiving locations, there are parent parcels. So how in the world can all of this process evolve without any documentation so that the citizens understand what's going on? And yet the County Commissioners are going to be entering into an agreement to transfer these development rights in order for this project to go forward. What the concept of transferring development rights does, when it's implemented, is that it changes maximum density for a zoning district into a target density. I think that's a very key implication of what's happening. One per acre, I'm sorry, one dwelling per acre average, but you've got areas of floodplain that wouldn't normally be developed because of other restrictions. If you transfer those rights some place else, then what you're doing is you're making a target of one per acre instead of a maximum of one per acre. Community rights, I feel, definitely take a backseat to development rights with this type of development emphasis. So I must ask that you publish the guidelines that you are using when you enter in to these agreements for transferring development rights so the public knows what the ground rules are. And then I would ask that we have some informed discussion on the merits of this planning tool before we have any more surprises like the proposed development before you today. The reason I say it's a surprise is because when I look at the area that Stuart and Brett have, I, and I think many citizens, would look at the area and say much of it is not going to be developed because of river plain, much of it's not going to be developed because of slope restrictions, ridgeline protections, other things that provide protection to the community. And yet, that's not exactly the case, not the case at all with transferring development rights. In terms of this specific proposal, except for one very small corner of the proposed project area next to the gravel pit, the 98 urban comprehensive plan calls for parks and open space. The one small corner shows 16 dwelling units per acre. Thus contrary to the claim of the owner/developer the proposed project is not consistent with the current comprehensive plan and does not 'substantially comply with the comprehensive plan as required in Section 3-1 of the regulations.' I understand that the Supreme Court, Montana has given their opinion about comprehensive plans. The developer requests a planned variation which would allow no side yard setbacks, minimum lot width of 24 feet, front and rear setbacks of 12 ½ feet and a maximum building height of 45 feet, rather than the required 30 foot maximum height. Since the front yard setback is determined from the center line of the street where adjacent to a street, the effect is a 0 foot setback where there is a street in front of the house. The net effect of the planned variation when combined with building on and into the toe of the Butte, where the slope exceeds 25%, would be a nearly solid wall of buildings surrounding the entire base of the Butte. These would be the first three story buildings in our community and according to the project overview, all three story attached town houses would be on lots on the Butte. As one of two people who endured, until the end of the comprehensive planning board meeting several weeks ago, it was a quarter to one when they finally finished voting. There was a lot of serious discussion on the Board, in terms of the planned variation and that height request for 45 feet. I

must say that it was serious discussion about the pros and the cons, the tradeoffs. It seems odd to me that the rationale that the architect and the owners came up with for needing 45 feet, was that it's going to allow more diversity in terms of the architectural styles and of course that's true. But I'm not sure that's a very good reason for going from 30 feet, which is the height throughout our neighborhood, to 45 feet just because it would allow more diversity. With that kind of a rationale, there should be that kind of allowance every place. Why not give builders and developers whatever they want, so there's as much diversification as possible. We'd like to see the conservation easements that have been discussed about so much, either in place when this subdivision is approved by the governing body or written in such a way that Five Valley's Land Trust and the owners have a binding commitment that the conservation easements will be finalized once the subdivision is approved. Again, when we were working on our zoning district, I remember having a discussion with Brett and at that point they were hoping to have the conservation easement signed in July and wanting us to put off our hearing for a month or two, until they got that done. Well we're now a year later and it still hasn't been done, and I don't imply at all that they're dragging their feet, it's a very complex issue. It would still be very helpful for us to have the easements in place with the provision that they could back out of it, if it's not approved. But it's such an important part of their package and this tradeoff that it would be good to have some assurance that it's going to happen. We feel that the primary health and safety issues coming from the proposed subdivision are tied to traffic impacts and congested from the high density development. Traffic on South Avenue from Clements to Reserve is already at high levels during peak traffic flow time because of the school, high school and community hospital. We do not agree with the statement in the project overview that 'the other offsite streets should be able to absorb this additional traffic without the need for any significant improvements.' South Ave will soon need improvements, so this must be factored into the approval for this subdivision. We do not agree with the staff report that recommends allowing the variance from subdivision regulations as they apply to slopes greater than 25%, the objective specified in Section 3-15, many of those will not be met with the proposed subdivision and a variance should not be granted. We realize that it's technically possible to build there and that geotechnical study says yeah you can build there, but it doesn't deal with the other reasons to not build on 25% slope, that are specified in Section 3-15. Approval of the proposed subdivision as presented will set an unfortunate standard for future development in our community. If the housing density of this project is also replicated in other areas, then the integrity of existing neighborhoods will be lost. Even though Brett tries to address that when he says it's an isolated area, I disagree that it won't affect surrounding areas, because there are houses on the other side of South Ave, it is isolated and it concentrates some of the impact, but not all of the impact. The benefits that can come from conservation easements on McCauley Butte and riparian floodplain areas to the south and west of the Butte are extremely valuable and we certainly recognize that, but the costs that come with the proposed subdivision are also extremely high for the community. So we'd like to make a couple of recommendations. We request that the Board of County Commissioners agree to transfer only enough development rights to allow approximately 60-80 homes on the level portion of the proposed subdivision. This will be consistent with subdivision requirements for development on slopes greater than 25% slope. We request that no homes be allowed on the slope of McCauley Butte and we request the Board of County Commissioners not agree to a planned variation for 45 foot height and allow the 0 foot side yard setback only on the level portion of the proposed subdivision. We believe that this would result in the lower density and that would mitigate our traffic, health and safety concerns. In closing, I've personally heard Commissioner Carey state on five different occasions that Commissioners can't deny approval when a developer goes through all of the proper steps and rules that are required for subdivision. But for this specific project, the County zoning regulations in Section 8-13, which deals with planned variations, states that 'the governing body may approve a request for a planned variation,' Not that you must, but that you MAY do that. Also you are not required to enter into any agreement for the transfer of development rights. You have full discretion to approve, reject or negotiate whatever the final condition might be of any transferring of development rights or planned variation. I don't mean to sound like I'm lecturing you and telling you what your job is, I'm pointing out what to me are key areas in terms of concerns that I've had ever since I've heard Commissioner Carey saying that it's very difficult for the Commissioners to not approve a subdivision proposal that comes before you. This is such a large precedent setting subdivision for this area of Target Range and I know you take this seriously, we take it seriously, and again I know that the developer has taken it very seriously also. So, I think it comes down to a difference of vision, Brett talked about the vision that he had for this area, and Stuart has also. The vision of the people who live here and the future of this community is quite different, not that we're right

and they're wrong or vice versa. We have a different vision of what the future holds for this very special place. Again, the tradeoffs are very significant here; you've got a tough job. Thank you for your time and consideration.

Commissioner Bill Carey: Thank you, Mr. Stewart. I think Commissioner Curtiss has a question for you.

Commissioner Jean Curtiss: Mr. Stewart, I'd just like to know, or hear you say what your vision is for the visible part of the Butte. From your house, wherever it is in that area, when you look at the Butte what do you want to see?

Fred Stewart: Well, the protections that they're putting in place on the part that they own, is commendable, other than the toe. So I have to admit that's better than anything I would've expected to happen because of the fact that the land is in private ownership. Unless an entity like Five Valley's was able to enter into an agreement with an owner. Does that answer your question?

Commissioner Jean Curtiss: In other words you like not having houses on it?

Fred Stewart: Is it worth?....given my understanding of ridgeline protections and hillside regulations, I don't believe that there could be very many houses on that Butte. Now, is one house too many? Is it going to ruin my life? I'd rather not see it there, I'm not happy with houses that are up on Blue Mountain and areas that I thought were owned by the Federal Government, but is it worth packing people in at 128 homes on the east side of the Butte? It's a tough call, it really is. It isn't a win-win situation by any means. I believe that there's a way to have a lower density that would answer many of our concerns, in terms of setting the precedent for the next developer that's standing before you, wanting to put that kind of density in. I think there are some ways that we could improve this.

Commissioner Jean Curtiss: Thank you.

Gary Botchek: Good afternoon, reside at 2400 Gunsite Court, Missoula. I have to echo Mr. Stewart's comments primarily because a lot of the people in Target Range share a common vision. A vision that's effected, in a lot of cases, by many of the decisions that will come down relative to the City's need to move city sewer into the area. I think this gives a real prime example of our concern relative to what happens in densities, not just in myths, but in densities relative to bringing city sewer forward. This development could never occur without it and so we're left looking at a good development as stated in the Missoulian, but out of context. That development brings huge issues for us. And a catch 22 for you, I believe, and probably the whole Target Range community. Because I don't know, how legally, you could accept 128 units on 20 acres and turn around and have a multitude of other 20 acre tracts that exist in the Target Range/Orchard Homes area and not end up making the same decision, potential decision for the approval of this subdivision. So, it's a huge catch 22; it's taking a look at a prominent issue with the Butte, the issues that these folks have addressed very well and stacking it up against a lifelong process for many people in Target Range who wanted to desperately, not really eliminate development, there's development going on there without the sewer. And you see very few people, few property owners, coming up against that development. Everyone, I believe, is that if you have a piece of property, you should be able to develop it. That's the purpose of having property, other people have different ideas. But with the combination of this type of zoning/PUD issue coupled with city sewer, you've got just exactly what the Target Range homeowners association, the Target Range residents, the issue of the 500 acre zoning to come up with one dwelling unit per acre. It's coming in direct conflict with years of issues and trying to maintain that neighborhood out there. This unfortunately brings together everything at once and puts you in a unique situation to where the next 20 acre parcel that comes up and potentially can be extended by city sewer ends up with potential of 128 units, which is far exceeding anything in the Target Range comprehensive plan from our perspective and from the overlay zoning that exists for you folks. Good luck, thank you.

Commissioner Bill Carey: Thank you, Mr. Botchek.

Commissioner Jean Curtiss: For the record, I think that the difference would be that they wouldn't have all of these transfer development rights that Mr. Stewart didn't care about, to move onto that property with the current zoning.

Tracy Stonemanning: I'm Director of the Clark Fork Coalition. We stand here before you today and ask you to support this proposal. I don't think you're used to hearing us say that, but we believe this development really has astounding merit. As I was listening today, I thought 'I wonder what the Missoula Valley, the rural suburbs of the city, would look like if in 1970 developments were created like this? And for the last 30 years, this kind of ethic and conservation was brought to bear on those developments. I think we'd live in a very different place and I think the idea of growth would be much less scary and MUCH less divisive. So, I love the idea of going out 35 years and saying 'hey look at that, it looks like it did 35 years ago. There's 200 acres in the valley that remain open,' I really feel like the population of Missoula County has dodged a bullet with this proposal. That through no expenditure of public income, we get protected what we all so cherish, that's the riparian areas, the wildlife habitat, the view sheds, that's the Butte. So I hope that you will support it, thanks.

Commissioner Bill Carey: Thank you Tracy. Dick, I have a question for you, if you don't mind. I think Mr. Stewart and Mr. Botchek raised some compelling points and actually they are along with the question I have. You've worked with a lot of developers over the years, what could've happened here? There are a lot of hillsides that can't be built on, but what could've happened had a developer come in that wanted to squeeze as much the could out of this?

Dick Ainsworth: We have not analyzed the property from that perspective because Stuart and Brett started out by saying they didn't want to do that. But we have looked at the topographic maps and some of the slide that Brett showed, show that there are some areas that can't be developed on. But there's certainly lots of areas on top of the Butte that could be developed and could have homesites on them. It wouldn't be easy getting roads up to them, probably have to be sewer or septic systems could go in. There could be a significant number of homes on the Butte, I don't know how many, certainly it couldn't be developed at a density of one to the acre or in acre tracts of something like that. But you could have a substantial number of homes on the Butte. We really didn't analyze it because they didn't want to do...what could we do if we really wanted to develop the Butte, because that was never their vision. I've been up over it a couple times and I know there could be, and we've got clients all the time that would look at a piece of property like that and say 'tell me what we could do with it'...and I think you could get quite a bit of development up there that would have a significant visual impact to the valley.

Commissioner Bill Carey: Thank you. Who would also like to speak?

Anne Rupkalvis: I'm a Target Range resident and I teach at Target Range School, which is the right by the approach to this proposed subdivision. I work on the playground, so I'm looking at this everyday that school is in session. From the school you would see this development very clearly. To start things off, I do want to say I appreciate the developer's efforts in preserving 93% of this acreage. I do appreciate that. As a Park Board member, many years ago, I remember seeing a map that showed development of the Target Range area, including all the way up the sides and the top of the Butte, so someone thought it could be done many years ago. So I appreciate the fact that, if indeed that protection comes to be, that it is. I'm sickened by the density. I'm disturbed about the development of transfer rights when you have 200 acres you can transfer 200 acre development rights onto a smaller area, even though you don't have 200 developable acres. I'm not comfortable with that. I also appreciate very much Fred, who has done a tremendous amount of work and understands things much better than I. Two questions that I have posed to me from a little lady who lives in the area and couldn't make it today; one is, if this development comes to be annexed into the City, will the taxes paid for the school district be transferred to the County from the City for the school?

Commissioner Jean Curtiss: The taxes are always collected for the school district, so yes, they'll got to the school.

Anne Rupkalvis: That's what I thought. And secondly, she asked, her greatest concern about the development of the Butte itself being open to the public is that she would expect many more dogs would be up there and she has half dead deer being run into her yard from dogs that are loose already. So she has a great deal of concern if this all goes through, with dogs being loose killing deer. That's her concern. I listened very carefully this second time to their presentation and some words stuck in my mind as being very significant as evaluating the land as it exists now and how differently, how inappropriate those words would be to the land with the development at this density. Air filled with quiet beauty...with this development there will no longer be air filled with quiet beauty, there will be mufflers and exhaust and noise from that level of development. Now, they're building their houses where it's still going to be quiet, this area also 'hasn't changed much,' and that's not going to be applicable any longer. This is going to change that area tremendously. If you've ever been on South Ave. trying to get from the west end to Reserve Street at about 3:15 in the afternoon, you can only imagine what 128 x 2 additional cars might do to that situation. School gets out at Target Range, school gets out at Big Sky and there's a shift change at Community Hospital. It's huge. I would also like to indicate that this, there was some reference to this being at the edge of Target Range, that some how those houses up on South Ave are the closest neighbors that this development would have...this is in the heart of Target Range. This is in the middle of Target Range. So, to increase the residences by this amount is going to change, forever, the air filled with quiet beauty of Target Range. It won't be that way any longer. I guess that's all I have to say.

Commissioner Bill Carey: Thank you. Who else would like to speak? Anyone? Seeing none, I'll close the hearing. Questions or comments from the Board?

Commissioner Barbara Evans: I have one thing to correct and I think Fred may not be aware of this particular development down on off the river, I think it's called Clark Fork Commons, those are three story units similar to the model here. So this wouldn't be the first one in town, and I toured those a few weeks ago. As an older person, I would not want to climb all those stairs, but I think they are units that will fit a lot of lives and they do exist and I do believe they are three stories. So I just wanted to correct that this would not be the first one like it. I'd also like to explain to you folks that doing this job isn't easy. It is a balancing decision. I think these subdividers have done an admirable job and I can understand why Mr. Gilbertson thought it would be a great idea to have a house on the Butte, because I've thought it myself. But at the same time, I've thought, 'that would be tragedy for me to have a house on that Butte, no one should have a house on there,' and I still think that. I think that it is a treasure of this valley that we don't want to give up. At the same time, as Commissioner Carey has said before, we're limited on what we can do by law. Sure, we could say no to these people, you can only do X amount of houses, but they have done a really responsible thing for this community. They have looked at it from a conservation point of view, and I may be wrong, Colleen would you tell me, if they were to sign those conservation easements before the subdivision is passed they would lose any tax advantage, is that correct?

Colleen Dowdall: I don't give tax advice and I've had this conversation with many people. If you guys conditioned it upon the granting of the conservation easements, they would not have a tax benefit. That has not, in the conversations I've had with the developers over the last two years that has not been their primary concern. Their primary concern has been making the Commissioners and whoever reviews this comfortable with the fact that this is a conservation development and they mean what they say. I told them I thought they could convey that to you and maybe still get their tax benefit anyway, but that they should consult with their accountant and their tax attorney.

Commissioner Barbara Evans: I didn't mean to ask you a tax question, but I still felt there was a reason for them not to convey it until the subdivision was passed and that's the reason, I thought, they might be holding off until there's a decision.

Colleen Dowdall: I think we also know that a conservation easement is not something that is just slapped on the property. We've learned from Five Valley's and others that they do a great deal of work ahead of time to identify what's being conserved.'

Commissioner Barbara Evans: Thank you. So, from my perspective, while I understand what you're saying and I understand your concerns. 87% of people wanted the Target Range zoning district and it's the only time in all the years I've been here that I can safely say we probably please 87% on something. Which made me very happy to do, and I hope you know that we do care about you folks. We're trying to do a balancing act here that will provide something good and long lasting for our community and still not take away, what I consider, private property rights. The law says if we have something that needs mitigating, we should ask the developers to mitigate it. Then if there are any questions, we're supposed to fall off on the side of the developer. So, to me, the law is fairly clear that private property rights are cherished by the Montana Constitution and I cherish as them a person. I'm going to vote to support this subdivision because I think they've done an admirable job. I think the model clearly shows what they have in mind and Pat MacDonald has been a friend of mine for many years and I trust his word. If he says these people will do what they say they're going to do, then I trust they will. Their reputation does not precede them in a bad way, and we've had some folks that have come into our office that...I remember one who said 'You don't like me very much, do you?' and I said, 'You're right, your reputation precedes you.' And that was said in a negative way, I've heard nothing but good about these folks. I'm going to trust that they're going to keep their word and I'll be I know where to find them if they don't.

Commissioner Jean Curtiss: I too think this is a good compromise for this area. I appreciate having Mr. MacDonald and also Ms. Allaman tell us that these folks have a good reputation and that they've done what they said. We recently re-visited a subdivision where the person who bought the property didn't do what he told the seller he was going to do, and he still got to go forward. So it's nice to see that they have honored the people they bought the property from. In regard to Mr. Stewarts comments about what I said when the Target Range folks who worked so hard brought in their west end zoning change, is that I did anticipate that if we left this property in that zoning district, as proposed, that they wouldn't be able to do a project similar to this. Meaning that they therefore wouldn't be able to protect what I always here from the Target Range/Orchard Homes residents and the rest of the Missoula what we value protecting, which is that Butte. So, it would've resulted in an entirely different project that they would've sold nice homesites dotting that area, probably not 200 homes, but they would've dotted the hill with more expensive homes because I'm sure they didn't get that piece of property for a sale price. In regard to the transfer of development rights, it's really the same principle as those of you who did petition for that west end zoning change that what you didn't want. That was whether you have 200 acres or 10 acres, that you can put the 10 houses wherever in our current zoning as long as it ends up being 1 per 1. You can have 10 houses and put them all on one acre and leave nine open, so it's really that same principle. I know it's not something we talk about a lot, because the problem is, these folks happen to have a large piece of property, so they have a sending area and a receiving area. Because a lot of people want to send, but no body wants to receive, is what we usually find out. So, the few times that we've used it, since I've been here have been when someone owns both the receiving and the sending areas. Again, you can't require the conservation easement on property that's not part of the subdivision. But also, if we don't let them move the development rights from those pieces of property on to this piece of property, then they still remain there. Fred, when you talked about not letting them move so many development rights, then they still stay on that other property and give it that opportunity to be developed. I just think this is a really good project. It has great merit, as Tracy said; it protects the riparian area, the view shed, the wildlife, it continues agricultural use, it's not a piece of property that's covered with weeds. They're working on all of those things, they're going to have sheep. It really protects a valuable piece of real estate in Missoula. It's been identified in the city's open space plan as a great corner stone. As the developer said, it's really visible, we can see it from all over. So, I too would like to thank the developers. I really appreciate this type of project and I think the partnership is very unique with the City Parks, Five Valley's Land Trust and the Forest Service. I happen to be the Commissioner who got to be part of the working group for the Fort Missoula plan and I know that we talked about things like 'how can we get people on horses from the equestrian park to this park and how could we get the to Blue Mountain. So, this really fills a lot of needs and is a good project that I think, because of its placement, still allows the Target Range neighborhood to not be as impacted as if it was thrown right in the middle of some existing neighborhoods. I also live in a neighborhood that's six per acre and I don't think it's quite as bad as people think. It will also be quieter than a gravel operation.

Commissioner Bill Carey: Thank you. The folks that object to some of this proposal, I think, raise some compelling points, there's no doubt about it. But, again, we are in the business of giving and getting, what do we give away, what do we get in return? I think that the principles of conservation development are principles that we ought to try and work towards in terms of our regulations and subdivision regs. I would like to see this proposal be a showcase for that. As Tracy put it, if we developed with the notion that you can develop seven to 10% of your land and the rest is devoted to conservation, we'd look and feel like a very different area than we do right now. I think this is in the right direction, even though there are some concerns about the density levels. The County, as most of you know, has had a group of landowners working towards coming up with some ideas for incentives to preserve open space and it would be nice to bring something to the table as a county to help preserve open space and have the tools to do it. Maybe we can learn from this proposal some of the things that are achievable. With that I'll ask for a motion.

Colleen Dowdall: Before you do that, I'd like to address a few of the issues that I don't want to leave on the public record unaddressed. One had to do with transfer of development rights and raised by a couple of people was the fact that there is floodplain on this property. Are there development rights on the floodplain that are able to be transferred? We're talking about zoning rights and those rights do exist in the floodplain, even if development could not occur in the actual floodplain. Those rights, because we don't require minimum lot size, we require a density requirement could be used adjacent to the floodplain. In addition, the floodplain can be built in. This Board of County Commissioners may not permit it, but another group of County Commissioners may in the future. So, there are ways to build in the floodplain that, if we take that density away and transfer it now, will protect the area along the river. The floodplain is not intended to act as a restriction on development. Or as a protection for wildlife. It is intended to protect from flooding, period. So, those areas designated, if you can build something that is protected from flooding, then you can build in the floodplain. The ridgeline protection was something that was adopted in the comprehensive plan, it was not language specifying ridgelines that was adopted in the County version of the plan. As I recall, we did not set the limit on height that the City did. We do restrict development on 25% slope, unless it can be engineered to be built. That's health and public safety issue, it is not a view issue. So, development can occur on 25% slope, it's not easy, I don't believe this Board of County Commissioners would permit it, but future boards might.

Commissioner Bill Carey: Thanks, Colleen. Is that it?

Colleen Dowdall: There's one more...let me find it.

Commissioner Bill Carey: I have a question for Don. During the briefing, wasn't there an issue about changing the nature of that street to make it more pedestrian friendly? Did we work that out?

Don McArthur: The Planning Board recommendation that's been sent forward to you represents what we think will make the best pedestrian friendly street. There was an issue in the staff original report that was changed by Planning Board.

Commissioner Bill Carey: Okay, thank you.

Colleen Dowdall: The other was the designation as a cornerstone, but we've already covered that.

Commissioner Bill Carey: So we want to deal with the Planning Board recommended motions, correct?

Commissioner Jean Curtiss moved to approve the Miner's Addition Planned Variation as modified by Planning Board and show in Attachment B to this Request for Commission Action, based on findings and fact. Commissioner Barbara Evans seconded. The motion carried on a vote of 3-0.

Commissioner Jean Curtiss moved to approve the request to vary from Section 3-15(4) requiring a 2,000 square foot contiguous buildable area with a slope of less than 25% so that homes may be constructed on lots that do not have 2,000 square feet of contiguous buildable area with a slope of less than 25%, based on findings and fact. Commissioner Barbara Evans seconded. The motion carried on a vote of 3-0.

Commissioner Jean Curtiss moved to approve Miner's Addition PUD based on the findings of fact and subject to the recommended conditions of approval shown in the staff report. Commissioner Barbara Evans seconded. The motion carried on a vote of 3-0.

## **Conditions of Approval**

### **Planned Variation**

The Planned Variation, as shown in Staff Report Attachment B and including the Landscape Plan contained in the Subdivision Application, as modified by conditions of approval, shall be approved prior to final plat approval of Phase 1. *(Missoula County Subdivision Regulations 3-1(1)(B))*

### **Zoning Compliance**

The subdivider shall file a development agreement which transfers zoning density rights totaling ninety-four (94) from the remainder portions #1 and #2 of Tract E, COS #5680, to this subdivision, plus eight (8) zoning density rights from Tracts C, COS #5680, and seven (7) zoning density rights from Tract D, COS #5680. The agreement shall be reviewed and approved by the County Attorney's office prior to final plat approval of Phase One. *(Missoula County Subdivision Regulations 3-1(1)(B))*

### **Roads and Access**

The subdivider shall improve South Avenue with a left turn lane onto 40<sup>th</sup> Avenue at the intersection of South Avenue West and 40th Avenue. Plans for the intersection improvements must be approved by Public Works prior to final plat approval of Phase 1, and the intersection improvements must be completed prior to final plat approval of Phase 1. *(Missoula County Subdivision Regulations 3-1(1)(F) and (J))*

The following language shall be noted on the face of the final plat for each phase:

"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 improvements to 40<sup>th</sup> Avenue and all interior roads within the Miner's Addition, including, but not limited to, road construction, paving, drainage facilities, curbs and gutters, pedestrian walkways or bikeways, 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." *(Missoula County Subdivision Regulations 3-1(1)(F) and 3-2(3)(E))*

The plat shall be revised to show a "No-Vehicular Access Strip" along the east side of Northern Lights Boulevard, along the west side of Waterside Drive on the frontage of Blocks 1, 2 and 3, and along the Waterside Drive frontage of Lot 8, Block 7. The proposed "No-Vehicular Access Strip" along the east side of Lot 8, Block 7, shall be deleted. *(Missoula County Subdivision Regulations 3-1(1)(F) and (J))*

The subdivider shall install traffic calming devices, such as curb bulb-outs, raised medians or traffic circles, on Waterside Drive in approved locations along Block 1, 2 and 3 frontage, subject to review and approval by Public Works prior to final plat approval of the applicable phase. *(Missoula County Subdivision Regulations 3-1(1)(F) and (J))*

The covenants shall be amended to state that all driveways must be paved a minimum of twenty feet (20') back from the edge of pavement or right-of-way boundary, whichever is longer, and changes to this section of the covenants may not occur without governing body approval. The amendments must be made prior to final plat approval of Phase One. *(Missoula County Subdivision Regulations 3-1(1)(D))*

A street signage plan in conformance with the Manual on Uniform Traffic Control Devices, including, but not limited to, provisions for temporary signage during construction, permanent signage, and cost of installation to be responsibility of the subdivider, shall be reviewed and approved by Public Works prior to final plat approval of Phase 1. The developer must install the temporary signs prior to construction and permanent signs with the filing of each phase. *(Missoula County Subdivision Regulations 3-1(1)(F) and 3-2(2)(F))*

### **Erosion Control**

The subdivider shall prepare an Erosion Control Plan, including the use of hay bales and silt fences and other best management practices used to prevent erosion during construction, subject to review and approval by Public Works prior to final plat approval of Phase 1. The plan shall also address erosion control along the trails within the Common Areas. *(Missoula County Subdivision Regulations 3-1(1)(F))*

### **Drainage**

The plat shall be revised to show appropriate drainage areas (either easement or Common Area) to allow for the discharge of storm water out of the detention area within the Common Area in Block 6, subject to review and approval by Public Works prior to final plat approval of Phase 1. OPG shall review and approve any resultant change in design to the subdivision layout prior to final plat approval of Phase 1. *(Missoula County Subdivision Regulations 3-4)*

The detention area design shall include a vegetated bottom and a system to infiltrate water prior to discharging it to the Bitterroot River Riparian Area/Wetland, subject to review and approval by the Public Works Department, the Health Department and OPG prior to final plat approval. *(Missoula County Subdivision Regulations 3-4)*

### **Floodplain/Groundwater**

The plat shall reference the vertical datum, FEMA panel and its effective date subject to review and approval by the Floodplain Administrator prior to final plat approval of each applicable phase. A note shall be placed on the final plat and in the covenants that states the following: "The lowest floor, including basements, of any structure on Lots 3, 4, 6, 7, 8 & 10, Block 6, and Lots 1, 2 & 7, Block 7, shall be a minimum of 2 feet above the base flood elevation. Pre-construction Elevation Certificates shall be submitted to the floodplain administrator prior to issuance of Zoning Compliance Permits with post-construction Elevation Certificates submitted upon completion documenting that the lowest floor elevations are two feet above the base flood elevation." *(Missoula County Subdivision Regulations 3-1(1)(B))*

### **Geotechnical Report**

Alterations to the slopes shall conform to the recommendations of the geotechnical report dated August 27, 2003. A qualified geotechnical engineer shall be on-site during the construction of the slope work. Submittal of the "as built" record drawings shall be accompanied by the certification of the geotechnical engineer that for each applicable phase, all work was completed under the engineer's supervision in compliance with the geotechnical report. Any changes in soil conditions noted by the engineer shall be outlined in the certification with the engineered remedy employed to address the change. *(Missoula County Subdivision Regulations 3-1(2))*

### **Fire**

An On-street Parking Plan for all on-site roads and 40<sup>th</sup> Avenue shall be reviewed and approved by Public Works and the appropriate fire jurisdiction prior to final plat approval of Phase One. This plan shall include, but not be limited to, provisions for a 20' unobstructed horizontal clearance and 13'6" vertical clearance on all roads, and that "No Parking" signs are installed in addition to yellow painted curbs in locations approved by Public Works and the Fire District. *(Missoula County Subdivision Regulations 3-1(1)(F))*

Plans for fire hydrant locations, flow capability and installation timing and cost shall be required of each Phase and shall be approved by Public Works and the appropriate fire jurisdiction prior to final plat approval of the applicable phase. Fire hydrants shall be installed and operational in each phase prior to combustible construction in the applicable phase. *(Missoula County Subdivision Regulations 3-1(1)(F)).*

### **Parks and Common Areas**

The subdivider will create an approximately 17,000 square foot "pocket park" Common Area to be located in the area of Lots 6 & 7, Block 2, to include at least the following improvements: grading, topsoil, seeding, and a commercial irrigation system.

Plans for improvements to this “pocket park” Common Area shall be reviewed and approved by the Parks Department and OPG prior to final plat approval of Phase 1. This “pocket park” Common Area shall be a permanent park and may not be removed, unless and until another comparable pocket park with play structures approved by the Parks Department is located within ¼ mile of this “pocket park” Common Area.

Should adequate facilities be built, at Northern Lights expense, on the future City park on the adjacent JTL gravel pit site to satisfy this condition, the requirement for this “pocket park” will be considered to have been met, and Lots 6 & 7 of Block 2 will be able to be developed as shown on the Preliminary Plat. Should this not take place prior to the filing of the plat of Phase 3, the subdivider will add trees and shrubs and playground/play structures to said “pocket park”, and this shall become a permanent common area and not be able to be removed. (*Missoula County Subdivision Regulations 3-12(3)(E), 3-12(5), and 3-12(7)*)

The subdivider shall file a development agreement that states the developer shall provide maintenance of all the landscaped boulevards (onsite and on 40<sup>th</sup> Avenue) and Common Areas until enough development to support the Homeowners Association has taken place. The development agreement shall be filed prior to final approval of Phase I, subject to County Attorney’s Office approval. (*Missoula County Subdivision Regulations 3-1(1)(F)*)

The covenants shall be amended to include the following: “Fencing along the borders of the Common Areas shall not exceed 4’ in height.” (*Missoula County Subdivision Regulations 3-1(5)*)

### **Pedestrian Facilities**

The subdivider shall install a seven foot wide sidewalk along the western side of 40<sup>th</sup> Avenue, extending from the northern boundary of the subdivision to South Avenue West, subject to review and approval by Public Works prior to final plat approval of Phase 1. (*Missoula County Subdivision Regulations 3-1(1)(F)*)

The subdivider shall install 5’ wide sidewalk and 7’ wide landscaped boulevard to continue and match the sidewalk along the east side of Waterside Drive to the north boundary of the subdivision, subject to review and approval by Public Works prior to final plat approval of Phase 1. (*Missoula County Subdivision Regulations 3-1(1)(F)*)

### **Landscape Plan**

The Landscape Plan shall be revised to state that *all* Common Areas and landscaped boulevards, including the landscaped boulevard on 40<sup>th</sup> Avenue, shall be maintained by the homeowners’ association. (*Missoula County Subdivision Regulation 5-3(T)*)

The Landscaped Plan shall be revised to identify the Riparian Area Buffer Area. This area, as well as the remaining portion of this Common Area that is not developed as a Parking Lot, shall be shaded and improved as a “Meadow/Natural Area.” (*Missoula County Subdivision Regulation 3-13(3)*)

The Landscaped Plan street tree plantings – species, spacing and maintenance plan - shall be reviewed and approved by the Parks Department prior to final plat approval of each applicable phase. (*Missoula County Subdivision Regulation 3-1(1)(F)*)

### **Riparian Resource Management Plan**

The plat shall be revised to show the Riparian Resource Area Buffer as a “Area of Riparian Resource-No Improvement Zone – See covenants for more information” and the following definition of “No Improvement Zone” shall be included on the plat:

“The No Improvement Zone shall include the prohibition of all buildings, structures, fences (except for wildlife friendly fencing), roads, motorized vehicle access (except for routine maintenance activities), parking, storage, livestock grazing or watering, or any other development. It shall also prohibit any mining, cutting, burning, or removal of live or dead vegetation (except if needed for fire prevention or noxious weed control), filling with substances such as gravel, soil, slash or other debris, or the planting of non-native vegetation such as lawn grasses. Future construction and use of a non-motorized, pervious-

surface pedestrian trail may be permitted within the No-Improvement Zone.” (*Missoula County Subdivision Regulation 3-13(3)(E)*)

The Riparian Resource Management Plan and map shall be incorporated in to the covenants, with the definition of “No Improvement Zone” as shown in the preceding condition. The covenants shall also be amended to include the following language: “The covenants restricting the use of the land for the purpose of protecting wildlife and riparian areas and riparian area buffers are enforceable by Missoula County. The right to enforce the covenants does not obligate Missoula County to inspect the property and no claim of damages may be made against the county as the result of undetected lack of compliance with wildlife and riparian protection requirements.” (*Missoula County Subdivision Regulation 3-13(3)(E) and 3-1(10)*)

### **Weeds**

The subdivider shall prepare a Revegetation Plan for disturbed areas in the subdivision requiring landowners to revegetate with beneficial species any areas of ground disturbance created by construction on or maintenance of these lots at the first appropriate opportunity after disturbance occurs. The Revegetation Plan shall also specifically address noxious weed management in the Common Areas and shall be subject to review and approval by the Missoula County Weed District prior to final plat approval of Phase One. The covenants shall be revised to require property owners to comply with the Missoula County Noxious Weed Management Plan and the Montana County Weed Control Act. The Revegetation Plan shall be incorporated into the covenants and may not be changed or deleted without governing body approval. (*Missoula County Subdivision Regulations 3-1(1)(B)*)

### **Public Health and Safety**

The covenants shall be amended advising property owners of the following Health Department recommendations:

All new construction incorporate passive radon mitigation systems and radon resistant construction features; and,

Builders consider using energy efficient building techniques such as building orientation to the sun, appropriately sized eaves, wind breaks, extra insulation, passive solar lighting, solar heating, and ground source heat pumps for heating/cooling; and,

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; and,

Making future lot owners aware of the issues associated with living so close to a gravel operation.

The language of the these provision shall be subject to review and approval by the Health Department prior to final plat approval of Phase 1. (*Missoula County Subdivision Regulations 3-1(1)(D)*)

### **Covenants**

The covenants shall be revised to be in compliance with the conditions of subdivision approval and the approved Planned Variation, subject to review and approval by OPG prior to final plat approval of Phase 1. (*Missoula County Subdivision Regulations 4-1(17)*)

### **Phasing Plan**

Where applicable, the phasing plan shall be revised to account for the revisions to the plat resulting from conditions of subdivision approval, subject to review and approval by OPG, Parks, Fire, and Public Works prior to final plat approval for Phase 1. Final plat submittal for each phase shall be accompanied by a detailed description of how each element in the phasing plan narrative, included in the application packet, is being met. (*Missoula County Subdivision Regulations 4-1(17)*)

There being no further business to come before the Board, the Commissioners were in recess at 4:30 p.m.