

Public Meeting – May 3, 2006

This meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present: Commissioner Curtiss, Commissioner Evans, Greg Robertson Director of Public Works, Steve Hutchins, Chuck Wright, and Mike Sehestedt Deputy County Attorney.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT - none

ROUTINE ADMINISTRATIVE ACTIONS

Commissioner Evans moved to approve the Weekly Claims Lists in the amount of \$1,157,693.85. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

DECISION (from April 26, 2006)

Petition to Establish a County Road (Rumble Creek Road) off Highway 83 in Condon

Chuck Wright: Public Works Survey Dept. Jean and I visited the site yesterday morning and I told the people out there at the time that this was a good thing. It's good for the public to just go ahead do it.

Commissioner Curtiss: We did have quite a few folks join us there and Chuck did a great job of explaining to them that the property did have access, just not for more than one piece of property. I think it's in the best interest of the public and I believe the folks who joined us there understood that when we left.

Chair Carey opened the public hearing. No comments. He closed the hearing.

Commissioner Curtiss moved to accept the Petition to Establish a County Road (Rumble Creek Road) off Highway 83 in Condon, MT. as suggested in the petition. Commissioner Evans seconded. The motion carried on a vote of 3-0.

HEARING

Petition to Abandon a Portion of an Unnamed Road – Swan River Tracts, off Remick Road, near Condon

Chairman Carey opened the public hearing.

Chuck Wright: I've been up there and took a look at it. It is something that I think the County has no interest in keeping. I don't have a problem with this one.

Dick Ainsworth: with PCI. Representing the petitioners. As the petition said and as Chuck stated, this was a road that was platted as part of an old subdivision called Remick Swan River Tracts No. 2 that was platted back in the late 60's. This road was never built. There are only two ownerships that actually touch on this road and both of those parties were signatures to the petition to abandon the road. One of those, Doug Bead, is in the audience today. They're in favor of it and they both have summer homes off of this road, but they're served by a driveway that they share. This road was never built and doesn't serve any other property.

Seeing no comment, the hearing is recessed until May 10, 2006.

Commissioner Curtiss: Chuck could you clarify which piece of the road we're closing. Here on the map.

Chuck Wright showed on the map (map is in file).

HEARING

CDBG Application involving Direct TV for an Economic Development Project

Hearing is opened by Commissioner Carey.

Cindy Wulfekuhle: The request before you today is to consider submitted a \$400,000 grant application to the Montana Department of Commerce Community Development Block Grant (CDBG) Economic Development Program. CDBG funds and funding from Montana Board of Investment, the Big Sky Economic Development Trust Fund and the U.S. Economic Development Administration will be used by the County to purchase a 72,000 square foot building to be constructed by DirecTV at the Missoula Development Park. The County will then lease the building to DirecTV. The company will be the anchor business in the County's new Technology Tax Increment District located in the Park. DirecTV is locating a new customer service and technical support facility in Missoula. As a condition of receiving CDBG funds, at least 51% or 408 of the 800+ jobs to be created will be available to low and moderate-income individuals. The company will create jobs with benefits that exceed the City of Missoula's living wage, which is currently \$9.16 per hour plus benefits. Economic Development Trust Funds and Montana Workforce Training Grant Program will be used to reimburse the company for employee training costs. The Board, after receiving public comments, is asked to determine if the proposal is in the best interest of the citizens of Missoula and if so to authorize the submittal of the grant application by signing the Resolution before you and authorizing Chairman Carey to sign grant application documents. Dick King and Eric Hanson from the Missoula Area Economic Development Corporation are there to answer any questions you or members of the public may have. Dick may have additional information he would like to present as part of the report to the Board. And Charlie Wright who is the Regional Development Officer for the State of Montana is here as well.

Commissioner Curtiss: Cindy, I'm sure that the building costs more than the \$400,000, so that's just part of the package to buy the building?

Cindy Wulfekuhle: Correct. Other sources of funds will be the ones I listed – Montana Board of Investments, EDA, etc.

Commissioner Curtiss: How do we monitor to find out that 51% of the folks were low income? Is there something they will have to fill out?

Cindy Wulfekuhle: We will have a form that will be used by the personnel office at DirecTV that folks will be required to fill out where they give their income information prior to being hired.

Greg Drapes: With the Monida Healthcare Network based here in Missoula. I'm here on behalf of our approximately 450 healthcare provider members in Western Montana, including Community Medical Center. I'm here to support for this application in that this organization has stepped forward and said they are going to provide good healthcare benefits, which are lacking in our community.

Dick King with Missoula Area Economic Development Corporation: As everyone knows this has been a challenging project for us, for Missoula County and for the State of Montana. It's the largest single economic development project under taken in the state that any of us are aware of. The project as we've laid out – the CDBG application would pay a portion of the cost; it reduces the debt on the building, resulting in a lower lease rate to DirecTV and also a lower debt to the Board of Investments. The company will have to document that there was low and moderate income benefit. As Cindy mentioned, the CDBG program has to show 51% low and moderate income benefit. This project will create approximately 800 jobs. I think it's 92...yes, 92 of those jobs will pay \$13.75/hour up. NOT counting benefits. So those jobs are receiving assistance from the Big Sky Economic Development Trust Fund, those are the good paying jobs in management positions, etc. The other portion of jobs will be the customer service representatives, which are the lion share of the employment. Of that, at least 51% will have to be low to moderate income. The documentation of that is going to have to be done on an ongoing basis throughout the duration of the project. There will be the initial hiring and then there will be replacement hiring. So, a hiring and training program is critical to the success of this project. DirecTV fortunately has a human resource department that is very proficient at doing this, they're also reaching out to some non-traditional sources in the community, both for their initial hiring and then for replacement workers as people move on to other jobs. All through that process, together with OPG, we'll be documenting the hiring and training plan, the compliance with their agreement, the compliance with the

low to moderate income benefit and of course the job creation itself, which is the reason we're all doing this. Thank you.

Karen Sullivan, Director of Marketing and Public Relations at Community Medical Center: Ironically this is a national cover the uninsured week, 2006. We are recognizing this week nationally with support from the Robert Wood Johnson foundation. The week is being facilitated to raise awareness to the 46 million Americans who are uninsured. More than eight million of those are children; in Montana 174,000 Montanans don't have insurance. That's almost 20% of our population. For your information, uninsured Americans live sicker and die younger than those with health insurance. One serious illness or injury can wipe out an uninsured family's bank account and the problem is getting worse. Particularly startling information related to uninsured children – they are more likely than insured children to lack a usual source of healthcare, to go without needed care and to experience worse health outcomes. The percentage of working age Americans with moderate to middle income, who lacked health insurance for at least part of the year in 2005, rose to 41%. A % increase...from the 28% in 2001, a striking increase. This is according to the Common Wealth Fund; a New York based private healthcare policy foundation. More than half of the uninsured adults in this study said they were having problems paying their medical bills or had incurred debt to cover their expenses. The study of 4350 adults also found that people without insurance were more likely to forgo recommended health screening, such as mammograms, than those with coverage and were less likely to have a regular doctor. This represents an explosion of the insurance crisis into those with moderate incomes. The study also illustrates how more employers are dropping coverage, or are offering plans that are just too expensive for many people. Community Medical Center is the number two private employer in Missoula County in terms of number of employees. We have about 1250 employees. In fiscal year 2005 we provided \$1.014 million in charity care. In fiscal year 2006, during the first nine months (July – March), we have provided a total of \$1.695 million, or a projected year end total of \$2.26 million – a 222% increase in charity care in one year. Bad debt expense is separate from charity care. In FY05, total \$4.88 million and in FY06 a total of \$5.1 million. The bad debt and charity care write-offs we consider and expense of doing business. But obviously Community Medical Center, St. Patrick's Hospital, all of the hospitals in our region need to produce additional revenue or reduce expense to make up for this deficit. What a difference a company like DirecTV makes, they provide health insurance to their employees. Previously, this segment of the Missoula area population was uninsured or under insured. Obviously as the number two private employer, we're interested in the issue just because we like to see people working. But, more importantly to us, these people will be insured and that helps Community Medical Center in our circumstances. We support very strongly, the DirecTV project and Missoula County's application to the Montana Community Development block grant program for \$400,000. This company will provide an excellent health insurance benefit to employees, again many of these people who will be hired, will come from the uninsured and under insured. This will have an impact on us and I thank you for considering applying for the Montana Community Development block grant. We certainly appreciate DirecTV and everything they signify for our community. Thank you.

Charlie Wright: Regional Development Officer with Montana Department of Commerce. I think you've heard already the positive words from other folks. I look at it from a long term view, as well as the immediate benefits to this. DirecTV, in my opinion, will put Missoula on the map for other organizations and businesses that would like to locate here. Having DirecTV be an anchor, a reputable large Fortune 500 company, I think opens the door for future and economic development. The Department of Commerce has given its full support.

No further comment. Commissioner Carey closed the hearing.

Barbara Evans moved to approve the CDBG application involving DirecTV for an economic development project. Jean Curtiss seconded. The motion carried on a vote of 3-0.

Commissioner Evans: I'd like to echo the comments of the folks who spoke today. I think this is an excellent business. We're very lucky to have them and I can't be happier about them coming.

Mike Sehestedt: And you will execute the resolution that came with the request for action.

Commissioner Curtiss: Do we need an official motion?

Mike Sehestedt: No, this will be signed by all three of you. It authorizes the Chair to execute documents as appropriate.

HEARING

Eliminate Exemption for Owner-built/Owner-occupied Single Family Dwelling in Building Codes Enforcement Program

Commissioner Carey opened the hearing.

Greg Robertson: Before you is a request to amend a resolution you adopted in 2005 that effectively will eliminate owner-built/owner-occupied exemption from obtaining building permits in the area of the county. When we started last year, pursuing certification, we had posed the question to the building codes bureau and their legal council. The language that got included in the original resolution was from the building codes bureau as well as their legal council. As a testament to that, I've included in your packet, a letter dated August 26, 2005 from the bureau stating that the exemption was acceptable. We submitted our certification application January 10 and we were told the process would take two-three weeks, we are now coming on four months. We are anxious to get going. We found out about two weeks ago that the attorney representing the building codes bureau, who furnished the original language, has reversed his opinion and said that there isn't authority currently in statute or administrative rules allowing this type of exemption and that we would not be granted certification without eliminating the exemption. That is what is before you today. This has been noticed up in the paper and the resolution attached...the only change to it as from what was previously adopted, is the elimination of the exemption.

Scott Waldron: Frenchtown Fire District. We certainly support the exemption being canceled because as you toured one of our residences recently, in route to that residence, I'm not sure that Steve showed you all of the other concerns that we have. We have one house between Frenchtown and the Frenchtown Pond that looks like a two story home, but on close examination you'd find that there's a 10x60 mobile home inside of that structure that they just built around. Just to the west of Huson, as you travel up six-mile road to the right, there's some nice looking single story homes that, if you were to look closer, are actually church Universal Triumphant trailers that were hauled here from Yellowstone park years ago, put side by side with a roof built on them with siding. Inside, we don't know what's there. We have no standard and fire fighters are putting these buildings out without any standards or knowledge of construction and it increases our risk considerably. So we do support this.

No further comment. Commissioner Carey closed the hearing.

Commissioner Evans: Greg, on page two of the letter that we have it says: 2. amendments to the general operating procedures which describe a process for granting and tracking temporary waivers (rather than temporary approvals) on construction projects, where the building official believes circumstances warrant issuance of such a waiver. Would you explain this paragraph to me, please? So I know what it's really saying.

Greg Robertson: I've tried to understand...the attorney that represents the building codes, and I honestly couldn't tell you what it means. What I do know is that the issue, when we met with him this past Monday, was basically a term that was used in our language that he found...he wanted clarification on. We had used the term 'temporary approvals' for our inspection process and Steve can explain that if you'd like...

Commissioner Evans: Yes, I would like it explained.

Greg Robertson: He preferred the term 'waiver' in that some legal theory that he had that 'approval' somehow provided tasked and approval and it would be difficult to follow up and defend if it were ever challenged in the future. So he preferred the term waiver and that's where that came from.

Steve Hutchins: Official for the county program. What he's referring to there, Barbara, originally as Greg stated in our proposal we made provisions for granting temporary approvals. A couple of examples of

how that would apply would be: say an inspector is doing a framing inspection and it looks good and would pass, except for he notices a condition like someone had notched a designed beam or structural member in such a way that it was very questionable as to if it would be okay. What we would do in a case like that would give them a temporary approval, pending an acceptable report from the licensed engineer stating that the condition is good. Or in a case of someone having a service change done on their electrical in the middle of winter to keep the heat going, quite often we've seen where there are minor violations of electrical code that should be fixed, but it wasn't something that would warrant making people go without heat in the winter. We wrote that as a temporary approval or a conditional approval and that seemed to cause a little bit of heart burn with the building codes bureau. So, they're response was to grant temporary waivers and I in turn had an issue with that, because in my mind a waiver is a waiver, when something is waived it's not longer applicable. Essentially it was a lot word-smithing that was requested by the building codes bureau. He was really nervous about any semblance of the word 'approval' when something wasn't fully approved, although I did try to provide some examples as I did just now, and it was very specific that it would be temporary or conditional approval. There are quite often situations that arise where you can't predict every nuance that's going to occur on every job. The variables are just innumerable and there has to be the ability to allow projects to continue without making them stop and reflect on every problem. That was our intent behind granting temporary or conditional approvals.

Commissioner Evans: And that makes sense to me. But a waiver...are we doing the waivering? Is the applicant doing the waivering? This is a very....

Greg Robertson: Basically, we're not changing our process, we're changing the term being used.

Commissioner Evans: I don't have a problem with that, but I have....I don't think this is clear to anyone and when a citizen comes in and wants to know what it means, I don't think we're going to be able to tell them because we don't understand it either. A temporary approval is perfectly clear; a temporary waiver of what? The rules? Of the safety? What?

Greg Robertson: Their opinion, legally, was that an approval or even a temporary approval gives some sort of acceptance without the follow through that goes along with it. The attorney felt more comfortable using the term waiver with the same process and follow through.

Commissioner Evans: A waiver in my mind means 'okay, I'm signing this, but I'm not responsible?'

Greg Robertson: No, what we're saying is on a temporary waiver, you can proceed with the work with the provision that you follow up as we have requested with whatever documentation to show that it's satisfactory.

Mike Sehestedt: Let me try to explain. Let's use the example of the notched beam. The beam does not appear to meet code and without getting engineers certification that it will in fact meet the load bearing requirements of the plan, not withstanding this modification, it doesn't meet code. We have a couple of choices: without some language in some form here, we simply slap a stop work order on them and tell them not to do anything until they bring us the certification. Whether you call it temporary or conditional approval or waiver, we are still saying it does not meet code and they have to follow up and take specific corrective action or get us specific certification, but we're not going to stop the project while you get that certification or take corrective action. I don't think there's a nickels worth of difference between the word temporary and conditional approval or the phrase temporary and conditional waiver. But at this point I'm willing to do almost anything to make the building codes division happy so we can get our program up and running. I think in terms of application, this is going to come up when we're out on the ground and the inspector sees a problem and the inspector is going to explain it to the citizen. He's going to say 'I'm going to give you a temporary waiver or a conditional waiver of this requirement, but you need to do this, this and this or I'm going to have to give you a stop work order.' I think it's a nice alternative to have instead of saying stop work until you get us a solution.

Commissioner Evans: I don't disagree at all.

Mike Sehestedt: But, it'll come up on the ground with the inspector and I think the inspector can handle the explanation.

Commissioner Evans: I just wanted it on the record what we meant when we said okay.

No further comment. Commissioner Carey closed the hearing.

Commissioner Curtiss moved to eliminate the exemption as presented so we can get our program up and running, but also because I think it is good for the safety of the public in Missoula County. Commissioner Evans seconded. The motion carried on a vote of 3-0.

Commissioner Curtiss: One quick question for Greg and Steve. Once we get this approval, how do we plan to notify builders that the program is in effect?

Greg Robertson: There will be a mass mailing in tomorrow's mail.

Steve Hutchins: I would like to add that the program...the state has determined that pending the outcome here, which was favorable, the 8th of May is when they will certify our program as officially starting.

CONSIDERATION

Homestead Estates (4lots on 152.65 acres) – north of Condon

Chairman Carey opened the public hearing.

Tim Worley with OPG: This proposal is for four lots on about 152.65 acres about 1 ¾ northeast of Condon. The parent parcel in question is about 160 acres, but this subdivision will only be 152.65 acres and requires a boundary line relocation to actually create the parent parcel. In condition number two we are recommending this boundary line relocation be filed prior to final plat approval. The drainage in question in this area is Smith Creek and this is in a grizzly bear linkage zone. This zone affects building sites on Lots one and two. Linkage zones are recommended for Open and Resource Uses with a residential density of 1 dwelling unit/40 acres; this proposal is slightly denser than that. There are extensive riparian areas on this property. Driveways were built to four building site prior to subdivision review. There's an offsite access road, that once it becomes an onsite road and traverses through the subdivision, does fall short of the County private road width standard and that requires a variance from the developer. Staff recommends this. Driveways that were built do exceed the grade standards in some locations, particularly on Lots one and two. Variances were required in this and staff recommends approval. Actually this was rolled into the grade standard variance. Staff particularly supports this because Swan Valley Emergency services was able to traverse these driveways with their emergency vehicles.

Commissioner Evans: Will they be able to do that in winter?

Tim Worley: They actually did that when there was snow on the ground.

Commissioner Evans: Thank you.

Tim Worley: Swan Valley Emergency Services says that additional emergency vehicle turnouts may be necessary here, based on the potential size of the homes on each of these four lots. I should note that some driveway sections do require completion, these are mostly built driveways, but they still require a ¾" mantel of gravel. There are some areas on the property where there's been erosion of the driveways, especially in fill slope areas. So there are some areas of the driveways that will need some repair and most of the repair is the adding of this ¾" gravel fill. Condition number one requires review, approval and inspection of driveways by Swan Valley Emergency Services; there was fairly severe erosion on both sides of a bridge that crosses Smith Creek and because of this we're recommending that bridge access be reviewed and approved by Swan Valley Emergency Services and County Public Works. Eric Dickson of County Public Works actually went on site and inspected the bridge and took pictures. There have

been some repairs done to the road areas, or the driveways areas, adjacent to the bridge since Eric was up there, but we think it's important that both he and Swan Valley Emergency Services get a chance to take a look at what's been done on the ground. This subdivision is in a Wildland/Residential interface, we're recommending an RSID for 'second way out' built for this subdivision. This was something that was mentioned by Swan Valley Emergency Services. The water source for firefighting for this subdivision would be a dry hydrant with a pond that has yet to be constructed. Condition five requires accessibility and use of this pond all year round and we ask it to be reviewed by Swan Valley Emergency Services. Condition six requires riparian disturbance caused by pond excavation to be followed up by native plant restoration according to a plan. Condition seven requires more extensive mapping of Areas of Riparian Resource on the property. The area of Riparian Resource adjacent to Smith Creek was mapped, but no other areas were and there are fairly extensive areas of riparian resource on this property that we feel need to be acknowledged. We're recommending that these areas become No Improvement Zones with adjacent 50 foot buffer areas and these would also show up on the plat as that. Condition seven also requires the Riparian Resource Management Plan to include language about minimizing riparian area impacts, particularly regarding driveway completion. So when they add that mantle of gravel there has to be a minimum of side casting or impact to adjacent riparian areas once those driveways are completed. Condition seven requires that riparian areas, particularly No Improvement Zones, be defined for prohibited uses. You can see that of uses in condition seven in your packet. We worked with Territorial Engineering to amend covenant language, we just weren't able to tie everything up and get a complete form of covenants for you before this meeting but you'll see some of the amendments that we made in Attachment C and we're just recommending that those changes that have been made be added to the final form of the final covenant prior to final plat approval. As of money, there were some questions to the sufficiency of the existing offsite road, which is again about 1/3 of a mile west of the subdivision and does connect this subdivision to Highway 83. There was a concern that the scope and use of the original easement document was lacking in specificity. The two parties involved actually came together after the planning status meeting on Monday and were able to resolve some disagreements about that easement agreement that was drafted up. It appears that this new easement agreement does properly address terms and scope of the offsite portion of the easement and it would work essentially for Homestead Estates and would provide legal access to it. So you'll see in an attached memo that in condition 10 it is pretty much a requirement that would get this document, actually I believe the document has been recorded, and the document that's been recorded in an agreement between Darrell Hastings and Mr. Stolp. That condition basically allows that document to be the new easement for the offsite road. The staff strongly recommends approval of new condition number ten to deal with this legal access issue. You'll see another condition, number eleven, dealing with the issue of the grizzly bear corridor. This condition would pull building sites out of the corridor itself. The latter sentence requires driveway decommissioning and could be considered on its own, if you would prefer to go that direction. This condition is simply offered for your consideration based on some of the grizzly bear habitat discussions that we had at the planning status meeting on Monday and some of the subsequent e-mail communications. With that, I'll sum things up and be available for questions. Staff is in support of Homestead Estates.

Commissioner Carey: This is a consideration, not a hearing, but we certainly welcome any comments.

Tim Wolff with Territorial Engineering: We just became of condition eleven, so I am at a little loss for words. Basically the first nine or ten conditions we've already addressed, we don't have any problems, and we think they're all pretty reasonable. Condition eleven about the grizzly bear corridor and removing the building sites, I guess we'd like to have that deleted or whatever is necessary. I think Mr. Stolp is here and would be more than glad to expound on that reason. We were aware of the grizzly bear corridor and we sent agency review requests to Fish, Wildlife and Parks and the Forest Service as well as to Chris Servheen. We got back boiler plate type responses that we tried to incorporate into our covenants. So I guess we're just surprised and upset with this last minute condition and not really sure how to deal with it. I'm asking that you eliminate it and I know that Steve Stolp would like to talk about it too. We did have some more stuff on some of the other conditions that we've been working on and a lot of them are already complete. Including the easement problem, that was filed today, so that's a moot point. I think we need to concentrate on proposed condition eleven and I'll let Steve talk.

Commissioner Carey: Tim, have you seen Chris Servheen's e-mail from yesterday?

Tim Wolff: Yes, I got that late yesterday and then Tim Worley just handed us proposed condition eleven a while ago.

Steve Stolp: I'm representing Homestead Estates. On this grizzly corridor, I recognize that there is a corridor in the Swan Valley. The grizzly corridor in the Swan Valley is the entire Swan Valley. Nobody has taught these bears how to follow the paths that we want them to cross. If you look at the southeast corner of this subdivision, there are two 10 acre parcels which do not meet the Swan Valley comprehensive plan and our 38.5 acre parcel does. These two parcels and the two parcels behind them have no grizzly corridor on them. Do you know why? It's the same hill that I want to put this building site on, lot number two is just down that same hill. But the reason that that isn't in the grizzly corridor is because Sharon O'Mar is one of the ones who put the grizzly corridor together. And every single name on your grizzly corridor book has a piece of property and no corridor linkage on it. There is one, two...five houses within a half mile of where I want to put the building on Lot 2. This does not make sense, it is not acceptable and I'd like to have condition eleven just plain thrown out. To top it all off, here's a picture taken last week, the entire area is clear cut, we lost all of our timber in the 96'-97' snow. We had to literally clear cut it and start over. There is no grizzly bear habitat here. It's ridiculous. Some of these riparian areas that Mr. Worley, who became awfully knowledgeable of this property on a one day visit, I've spent 10 years going over every foot of this property. Part of these riparian areas that he wants classified as riparian areas were still hay meadows. They were still being hayed until 1993 when Lee Anderson got sick and passed away. Tim went up there in the spring, the wettest spring we've had in 10 years and it looked like the whole place was a lake, because it was. But, it drains off and dries up. We have redesigned the riparian areas and on the southwest corner there is a riparian area. They used to hay it, but the entrance plugged up and that's where the riparian area is now. We've addressed all of those conditions. I'm asking the County Commissioners to take a look and go up and look at the property yourself before you say that we have to move these building envelopes. The reason we subdivided it this way, and only into four 40's, is because each building site has a view of the Swans and the Missions and total privacy. There are only four spots on that property and our house, we have the 47 acres next to it, and ours is on a hill. Our daughter's is on a hill. If you put these building envelopes any place else on the property, you're going to be looking in each others windows. These are the only private spots on this property. I'm sorry we don't want to cluster them together like the do here in Missoula. We'd rather have some privacy. Thank you.

Commissioner Evans: Tim, would you come up to this map and show me please where the proposed sites are and where the grizzly bear corridor is.

Tim Worley: Roughly, Lot 1 is the bottom 40, Lot 2 is bottom middle, Lot 3 is top middle and Lot 4 is the northern most of the 40's. The corridor runs through the middle of Lot 1 and 2.

Commissioner Evans: You've been up there, I have not. Do you see these four locations as the only sites where people could build and have privacy?

Tim Worley: I don't know if I can speak to the privacy issue. I think you probably could find alternative sites for privacy, ultimately I don't think I can speak to that issue. But there are definitely alternative sites.

Commissioner Evans: Okay, let's talk a little bit about the comments from Chris Servheen. And please keep in mind that I was not here for the briefing, as I am technically on vacation. I would like to know what Chris is saying. Is he saying don't put the housing where it's being proposed? Is that what I understand here?

Commissioner Curtiss: I think he wants it to preferably be a cluster. He didn't even refer to it being out of the corridor, did he?

Tim Worley: I think Chris was concerned about dispersal of homesites. Chris technically recommends covenant language so that folks keep their garbage in check and deal with their animals in a discrete way as to not attract grizzlies or other wild animals.

Commissioner Carey: Tim, do you know how the corridor itself was established? Who created that, as Mr. Stolp says the whole area has grizzly bears.

Tim Worley: I think it's hard to discreetly define it at this scale, it was a joint venture of at least the U.S. Fish and Wildlife service and Fish, Wildlife and Parks. Chris himself may have been a part of that, but beyond that I can't really say.

Commissioner Carey: Thank you.

Commissioner Evans: I have some serious concerns about this. I always try to find a compromise if there's one to be found and I recall back some years ago when we had a proposed subdivision where someone wanted to put their house in the grizzly bear corridor. We didn't let them do that and I don't want to do...we have enough of our wildlife that are under stress because of the growth. I don't want to add to that problem. I would like to find a compromise somewhere here that takes into account the concerns of the Fish, Wildlife and Parks and to me the best grizzly bear expert that I know is Pat O'Herren from our Rural Initiatives Office. He also has a place up there somewhere and I would like to have his recommendation on whether we should do this. Also, I'd like a clearer understanding of what decommissioning a road means, does that mean that we go back and replant it? We take it off the face of the earth? Or do we just continue to use it. And Tim, you know I try to be fair, but I would like someone to address my issues, please.

Steve Stolp: Is there anyway that I could convince you County Commissioners to come to the property and look at it? I'll pay the mileage, the time, everything involved.

Commissioner Evans: That isn't how we do business. But I appreciate the offer.

Steve Stolp: I'm just trying to get you up there.

Commissioner Carey: She was referring to you paying our expenses. We do make site visits.

Steve Stolp: What is your question again?

Commissioner Evans: I would like to have a grizzly bear expert look at this and that's Pat O'Herren, who's in our employ. I'd like him to look at it and make a recommendation to me.

Steve Stolp: I would love to have him do that as well. If you would like to put this on hold until then, that's fine.

Tim Worley: I've been working with Pat the last few days on this and he referred to Chris, actually, as being the expert as far as commenting on this issue. Not that he couldn't be further involved if we decide to put this off, but he was instrumental in trying to contact local biologists and that sort of thing. He basically referred to Chris' comments as being the expert witness for this.

Commissioner Evans: And maybe he understands exactly what Chris is saying here. I understand the problems he's pointing out, but that doesn't tell me where the houses ought to be and what we ought to allow. I'd like a little more clarity on that before I say you can't do it or you can do it. I don't want to further stress the wildlife, that's what we care about as well as people in this area. Wildlife are an important consideration and grizzly bears, also, don't read signs and I don't want to put people's lives in jeopardy by putting them in a grizzly bear linkage corridor.

Mike Sehestedt: I just want to note that without the applicant's agreement to an extension, you have to make a decision today. So he would have to consent on the record to extend the time for plat review or you have to decide today. That really is the only point I want to make.

Commissioner Evans: Are you willing to give us an extension of time, so that we can have our....assuming the other two wish to send whom I'm consider the grizzly bear expert up there. Or to get a more clear clarification from Mr. Servheen. This doesn't tell me what to do here.

Steve Stolp: Well, Mr. Servheen has never been on that property either.

Commissioner Evans: So would you give us an extension so someone can go on the property?

Steve Stolp: Yes. For the record, I will give an extension.

Commissioner Carey: Tim, do you have something to add?

Tim Worley: Yes. We had talked about an extension to the 17th of May, which would be two weeks from today.

Commissioner Carey: We have Commissioners out of town for the next couple of weeks. I'm not sure we can act...I'm gone next week. Commissioner Curtiss is gone next week.

Tim Worley: Unfortunately, I'm gone the week after the 17th.

Commissioner Carey: Should we try to get it done by the 17th?

Tim Worley: At least from OPG's perspective, there's no other subdivision scheduled for that day.

Tim Wolff: I've been involved with Mr. Stolp from the beginning and I know that he's done a really good job with that property. If you go and look at it, it's been logged, but it's beautiful. It's not a mess. He picked those sites because he lives there and other than the existing homes, there actually is a big area that we are preserving for....it's not totally in the grizzly bear corridor, but we've got an area right in the middle where basically there's not going to be any building. We've designated those building envelopes; that's the only place there can be any development. So there's going to be a pretty extensive area with no development that the grizzly bears can use. By doing the subdivision the ways it's proposed, that's going to be preserved because we've agreed and it was Mr. Stolp's idea that he doesn't want any other building other than those homesites. I'm not sure how big they are, but they're roughly one-two acres out of each 40 acre lot that the people are restricted to build on. The rest of it is going to remain the way it is now and so I guess in my mind, it's already an effort to preserve the corridor.

Commissioner Evans: Could you also explain decommissioning a road, what does that mean?

Tim Wolff: That means taking it out, all out, and cleaning it.

Commissioner Evans: Replanting it, so that it doesn't show there was a road there?

Tim Wolff: Yes, that would be my interpretation.

Mike Sehestedt: My belief, if we go with this condition, it would require essentially re-contouring, replanting and probably when we start taking about these vegetation plans, we need to come up with some standard both for the plan and for subsequent inspection to see that they've been implemented. I don't want to make this an issue with this particular subdivision, but this raises what I think has becoming an increasingly troublesome area. People doing a lot of improvements before they come in with a subdivision plat and again, I'm not one to do something random to send a message, but I think people need to understand that the fact they've done all of this stuff prior to coming to see us with a subdivision proposal doesn't in any way obligate us to approve it or to agree to it just because they've already

constructed the roads. I don't know how to phrase that and I don't want to hold, and I don't think it should be held against, the applicant here. But this kind of activity doesn't need to be rewarded or penalized, it just needs to be treated as irrelevant, if that makes sense.

Commissioner Evans: I would also like to say that certainly the covenants that have been mentioned and that we have included in numerous subdivisions that are intended to prevent the attraction to the wildlife. It puts the wildlife in jeopardy, it puts the people in jeopardy, and I support putting those in. And I also realize that covenants are not very enforced because the people who live in the home owners' area don't very often get attorneys to enforce them. I usually don't like to have changes to covenants come to the County Commission, but in cases of this particular concern to be about the bears, I would like to have any changes to the covenants come before the Commission, if it involves anything that will affect wildlife.

Commissioner Curtiss: Tim, Mr. Stolp said that there were several houses within a half mile, do you know where those houses are? Maybe we should have him come up and show me.

(Viewing of the map)

Tim Worley: I was just going to point out that in the covenant, there's actually a section called covenant related to wildlife, riparian resource, garbage handling and fire protection shall not be amended without permission of the governing body. So wildlife is already touched upon in the amendment section.

Commissioner Evans: I would also like to put in what we did in another subdivision some time ago that they are enforceable by Fish, Wildlife and Parks.

Commissioner Carey: The owner is on record as accepting an extension to the 17th of May. Do we want to do that?

Commissioner Evans moved to extend the consideration of Homestead Estates to the 17th of May, 2006 in order to do a site visit of the property. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

HEARING

Browder Addition (2 lots on 1 acre) – Peregrine Loop (Country Crest 3A, Lot 35)

Commissioner Carey opened the hearing.

Mirtha Becerra w/OPG: This is proposed by the owners, Dan and Phyllis Browder. They are proposing two residential lots on one acre. The property is located on the west side of Peregrine Loop in the Country Crest No. 3B Subdivision. It is zoned C-RR2, two per acre and the land is designated residential two per acre. The proposed density is one dwelling unit per half acre. Access to the subdivision is from Peregrine Loop, a 24 foot wide paved County road within a 60 foot public right-of-way. The subdivider is requesting two variances: One is from the requirements to install curb and gutter along Peregrine Loop and the other is from the requirement to install boulevard sidewalks on Peregrine Loop. Staff recommends both of the requests. Staff recommends 10 conditions of approval condition number 10 is what is listed on the purple memo in front of you. It is regarding contribution to RSID 8486 for sewer. The other nine conditions of approval are the same conditions that have been applied to previously approved Country Crest Subdivisions and I'd be happy to read them for you, but I will give you the option to not have me do that.

Commissioner Carey: I think we know what they are. Thank you.

Mirtha Becerra: In conclusion, staff recommends approval of this subdivision based on the 10 conditions of approval.

Commissioner Carey: Would the developer or the developer's representative like to speak?

Kristin Smith with WGM Group: Thanks to Mirtha for her work. This is one of the Country Crest lots that was planned for with the original Country Crest subdivision. You've seen many of them before you. We have a formal process to get approval, we have no problems with the conditions and would ask that you make a motion to approve it. Thank you.

Commissioner Carey: Seeing no one, I'll close the hearing.

Commissioner Evans moved to approve both variances: One from the requirement to install curb and gutter along Peregrine Loop and the other from the requirement to install boulevard sidewalks along Peregrine Loop. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Commissioner Evans moved to approve the Browder Addition subdivision based on findings and fact subject to the recommended conditions of approval found in the staff report, including number 10. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

CONDITIONS OF SUBDIVISION APPROVAL

Roads and Access

1. The subdivider shall contribute \$230 per new lot to mitigate the impact of additional development by assistance in signaling the Flynn/Mullan Road intersection and \$815 per new lot to mitigate the impact of additional development on the Reserve Street/Mullan Road intersection. Payment of this contribution shall be verified prior to final plat approval. *Missoula County Subdivision Regulations Article 4-1(12)*
2. The following note shall appear on the face of the final plat:
"Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Peregrine Loop, including, but not limited to, paving, the installation of 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 3-2(3)(E)*
3. The subdivider shall present evidence of petitioning into the Missoula Urban Transportation District prior to final plat approval. *Missoula County Subdivision Regulations Article 3-2(6)*

Fire

4. Plans for installing NFPA 13D standard residential fire sprinkler systems in all new dwellings in the Browder Addition Subdivision shall be reviewed and approved by the Missoula Rural Fire District prior to submittal for a zoning compliance permit. This language shall also be included in a development covenant and shall not be deleted or amended without governing body approval. *Missoula County Subdivision Regulations Article 3-7(1)(6)*
5. The following statement shall appear on the face of the final plat:
"Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a future RSID/SID for a public or community water system for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land."
Missoula County Subdivision Regulations 3-7(2)
6. All residences within this subdivision shall post address signs visible from public streets in all light conditions. Plans for visible addressing shall be reviewed and approved by the Missoula Rural Fire District and shall be included in a development covenant, prior to final plat approval. *Missoula County Subdivision Regulations Article 3-2(2)(G)*

Weeds

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

Radon

8. The subdivider shall file a development covenant advising property owners of the Health Department recommendation that all new construction incorporate passive radon mitigation systems.

Other

9. The subdivider shall file a development covenant which includes the following statement:
"The Missoula City-County Air Pollution Control Program regulations prohibit the installation of wood-burning stoves or fireplaces. Pellet stoves that meet emission requirements or natural gas or propane fireplaces may be installed. Pellet stoves require an installation permit from the Health Department". *Missoula County Subdivision Regulations 3-1(1)(G)*
10. The newly created lot shall contribute to sewer RSID 8486 in the amount specified in the resolutions, prior to plat approval. If the Missoula County code enforcement program is in force, payment will be due at time of permit issuance,

III. INTRODUCTION

Dan and Phyllis Browder, represented by WGM Group, Inc., propose to subdivide a 1.00 acre parcel into two residential lots. The property is located on the west side of Peregrine Loop in the Country Crest No. 3A Subdivision, a County major subdivision platted in 1995. The development is located on the north side of Mullan Road, opposite Sunset Memorial Gardens. Future subdivision of the lots within this subdivision was anticipated at the time of the original plat (1995), predicated on the availability of sewer service in the area.

IV. SUBDIVISION FINDINGS OF FACT

A.) ZONING AND COMPREHENSIVE PLAN COMPLIANCE

Findings of Fact:

a. Zoning Compliance

1. The property is zoned C-RR2 (Residential 2 du / 1 acre).
2. The intent of the C-RR2 zoning district is to promote a single family residential environment in areas served by an adequate water or sewer system, and promote a residential density consistent with the availability of public facilities and with the physical limitation of the land.
3. The area of subdivision is 1.00 acres. The applicant is proposing to subdivide the property into two residential lots, with a resulting density of 1 dwelling units per .50 acre.
4. Setbacks in C-RR2 district are 25' for front yard, 15' for side yard and 25' for rear yard. Accessory structures may be located within 3' of side and rear lot lines. Maximum building height is 30' and minimum lot width is 100'.
5. All existing structures on Lot 35-A meet the setback requirements of the zoning district with the lot lines as proposed.

b. Comprehensive Plan Compliance

6. The 2005 Wye Mullan West Comprehensive Area Plan was adopted by the governing bodies in November of 2005 and it is now the applicable plan. The Wye-Mullan West Comprehensive Area Plan recommended land use designation is Residential, with a maximum density of two dwelling units per acre.
7. The Wye-Mullan West Comprehensive Area Plan states that the recommended land use designation of two dwelling units per acre "recognizes land where the residential pattern is one of uniform lot sizes with urban services. It functions as a transitional area and recognizes existing land use patterns or the possibility of redevelopment. The recommended density may be clustered to allow open spaces between developments" (Page 7-6).
8. Development in vicinity of the proposed subdivision is suburban-style single family residential development.

Conclusions of Law:

1. The proposal complies with the C-RR2 (Residential) zoning and the land use designation of the 2005 Wye-Mullan West Comprehensive Area Plan.

B.) PRIMARY CRITERIA COMPLIANCE

CRITERION 1: EFFECTS ON AGRICULTURE AND AGRICULTURAL WATER USER FACILITIES

Findings of Fact:

1. The property is not currently used for agricultural purposes.
2. The soils are classified as Grass Valley silty clay loam, 0 to 4 percent slopes, which is classified as Farmland Soils of Statewide Importance by the *Inventory of Conservation Resources, Missoula County, Montana*.
3. There are no irrigation ditches contained within or adjacent to the property.

Conclusions of Law:

1. This subdivision will result in the loss of potential farmland, based on soil classification. However, this property is not within active agricultural production, and its zoning and proximity to urban services make it appropriate to consider residential development at least to the scale proposed by this subdivision and the previous development.
2. No impacts to agricultural water users or agricultural water user facilities are anticipated.

CRITERION 2: EFFECTS ON LOCAL SERVICES

Roads

Findings of Fact:

1. Access to this subdivision is from Peregrine Loop, a 24' wide paved County road within a 60' public right-of-way.
2. The existing home shown on Lot 35-A accesses Peregrine Loop via an existing concrete driveway.
3. This subdivision is expected to generate an *additional* 7 –10 trips per household per day.
4. The Missoula County Subdivision Regulations require mitigation of identified impacts in Section 4-1(12), and MCA 76-3-608 (4) and (5) state,
“(4) The governing body may require the subdivider to design the subdivision to reasonably minimize potential adverse impacts identified through the review required under subsection (3)...”
“(5) (a) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.”
5. Section 3-1(14) of the Missoula County Subdivision Regulations states that the governing body may require the subdivider to “pay or guarantee payment for part or all of the costs of extending capital facilities related to the public health and safety, including but not limited to public roads and transportation facilities.” MCA 76-3-510 further states that, “The costs must reasonably reflect the expected impacts directly attributable to the subdivision.”
6. The Mullan Road corridor is expected to experience significant growth with the extension of the Mullan Sewer project. As development occurs, it contributes incrementally to the need to provide traffic signals and improvements at intersections along the Mullan Road corridor. Two of these intersections are the Mullan/Flynn Lane intersection and the Mullan/Reserve intersection.
7. A condition of approval requires the subdivider to contribute \$230 per new lot to assist in signalizing the Mullan/Flynn intersection and \$815 per new lot toward the improvement of the Mullan/Reserve intersection which is the proportionate share of the cost of those improvements based upon current traffic counts and taking into account the impact from existing vehicle trips. County Public Works states this condition will mitigate the impacts of this subdivision on these two intersections.

8. Glen Cameron, (acting) Engineering and Projects Manager for the Montana Department of Transportation commented that MDT is concerned about current and future traffic volumes on Mullan Road and strongly recommends alternative ways such as impact fees to fund needed transportation improvements in this area.
9. Steve Earle, General Manager of the Missoula Urban Transportation District (MUTD) commented that the proposed development is very near the Missoula Urban Transportation District which is currently served by Route #10 and recommends the property owners petition into district. A condition of approval requires the subdivider to present evidence of petitioning into the Missoula Urban Transportation District prior to final plat approval.

Drainage

10. The proposed subdivision is within Country Crest No. 3A subdivision. The original drainage plan directed rainfall runoff along roadside swales and toward common areas designed to retain drainage.
11. According to the Drainage and Grading Report, the small amount of storm water generated by this subdivision and all increased storm water will be retained on site through landscaping and overland flow.
12. Section 3-2(7) of the Missoula County Subdivision Regulations requires curb and gutter to be installed in rural subdivisions with lots that have an average street frontage of 175 feet or less. The lots in this subdivision have an average street frontage of 124 feet; therefore curb and gutter is required along Peregrine Loop.
13. The subdivider requests a variance to not install curb and gutter along Peregrine Loop. Staff recommends approval of this variance.
14. Staff recommends a statement be placed on the final plat waiving the right to protest a future RSID/SID for improvements to Peregrine Loop including but not limited to curb and gutter installation.

Conclusions of Law:

1. Access to the subdivision and drainage meets the standards of the Missoula County Subdivision Regulations if the variance is approved and the recommended conditions are adopted.

Pedestrian Access

Findings of Fact:

1. The Missoula County Subdivision Regulations require 5' concrete boulevard sidewalks with 7' to 10' landscaped boulevards in all subdivisions located within the Urban Growth Area.
2. The subdivider is requesting a variance from the requirement to install boulevard sidewalk on Peregrine Loop. Staff recommends approval of the variance request.
3. County Public Works commented that they do not oppose the variance request from providing boulevard sidewalks on Peregrine Loop where these roads abut the subdivision.
4. Missoula City-County Health Department stated, "As this part of the valley becomes more developed, safe pedestrian/bike routes become important" and recommends at a minimum that waivers of the right to protest these improvements should be placed on the face of the plat.
5. Staff recommends a statement be placed on the plat waiving the right to protest a future RSID/SID for improvements to Peregrine Loop including but not limited to the installation of non-motorized facilities.
6. The City Bike/Pedestrian Program Manager did not have any comment on this proposal.

Conclusions of Law:

1. If the variance request is approved and the recommended condition is adopted, the proposed subdivision will meet the required standards for non-motorized pedestrian facilities.

Water and Sewer Systems

Findings of Fact:

1. The existing home on proposed Lot 35-A is currently served by an existing well.
2. Water is proposed to be provided to Lot 32-B by an individual well.

3. The lots within this subdivision are proposed to connect to a wastewater collection system now under construction within RSID #8486. This collection system in turn connects to the City sewer via a gravity sewer trunk main located within the right of way of Mullan Road.
4. Sanitation will be reviewed under the Sanitation Act by state and local agencies.

Conclusions of Law:

1. 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:

1. BFI will provide disposal service to the subdivision.

Conclusions of Law:

1. Solid waste disposal is available to the subdivision.

Parks and Recreation

Findings of Fact:

1. The applicant does not propose to dedicate parkland or cash-in-lieu of parkland.

Conclusions of Law:

1. No parkland dedication is required for subdivisions that create only one additional lot per Missoula County Subdivision Regulations 3-8(2)(D).

Schools

Findings of Fact

1. The subdivision is expected to result in approximately 1.5 additional school age children being added to Hellgate Elementary School in the Hellgate district and Big Sky High School in the Missoula County Public School district (based on an assumption of 1.5 children per new household).
2. Rachel Vielleux, Missoula County Superintendent of Schools, had no comments on this subdivision.

Conclusions of Law:

1. No adverse impacts on schools requiring mitigation have been identified.

Fire Department

Findings of Fact:

1. The property is served by Missoula Rural Fire Station No. 6, located approximately 1.5 miles from the property over paved roads.
2. There is no public water system serving this area. Staff recommends a statement be placed on the final plat waving the right to protest a future RSID/SID for a public or community water system for fire protection.
3. A waters source for fire protection was not identified in the submittal packet.
4. Curt Belts, Assistant Fire Marshal/Chief for the Missoula Rural Fire District, commented that a water supply must be provided and that residential fire sprinklers are an acceptable water supply for fire fighting as long as they are installed to NFPA 13D standards. The Missoula County Subdivision Regulations state that the requirements of installation shall be included in an agreement with the governing body to be filed with the plat, and this is recommended as a condition of approval.
5. Curt Belts commented that all properties must be properly addressed with address signs clearly visible from the street in all light conditions. A condition of approval requires plans for visible addressing to be reviewed and approved by the Missoula Rural Fire District prior to final plat approval.

Conclusions of Law:

1. Fire service is available to the subdivision. Safety could be improved if the recommended conditions are imposed.

Law Enforcement

Findings of Fact:

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

Conclusion of Law:

1. 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:

1. There is no critical wildlife habitat located on or near this subdivision. Small birds and mammals common to the area can be found on the site.
2. There are no riparian areas identified on the property.
3. Fish, Wildlife and Parks commented that the covenants which are currently in place for the parent subdivision were reviewed last year and should help homeowners in this new subdivision avoid potential problems with wildlife.
4. The existing covenants address Noxious Weed Control but fail to address revegetation. Staff recommends a condition that a development covenant should require lot owners to revegetate any ground disturbance with beneficial species at the first appropriate opportunity after the disturbance occurs.

Conclusions of Law:

1. No adverse impacts to the natural environment and wildlife habit have been identified as a result of the proposed subdivision.
2. Potential impacts to the natural environment will be minimized if the development covenants are enforced and the recommended conditions are adopted.

CRITERION 5: EFFECTS ON PUBLIC HEALTH AND SAFETY

Findings of Fact:

1. The Missoula Rural Fire District serves the property and the Missoula Sheriff's Department provides law enforcement services.
2. Missoula City sewer will serve the lots. Individual wells will provide water service.
3. No portion of the property is within a FEMA designated floodplain.
4. The proposed subdivision lies to the southwest of the Airport Influence Area boundary.
5. Missoula City-County Health Department commented that the Missoula City-County Air Pollution Control Program regulations prohibit the installation of wood burning stoves or fireplaces. Pellet stoves that meet emission requirements or natural gas or propane fireplaces may be installed. Pellet stoves require an installation permit from the Health Department. A condition of approval requires the subdivider to file a development covenant reflecting these regulations.
6. Missoula County has a high radon potential, and the Missoula City-County Health Department recommends that all new construction incorporate passive radon mitigation systems. A condition of approval requires the subdivider to file a development covenant advising property owners of the Health Department recommendation that all new construction incorporate passive radon resistant construction features.
7. Public water is not available in the area at this time. The Health Department comments that the Missoula Valley Water Quality District supports development served by public sewer.

Conclusions of Law:

1. Emergency services, water, and sanitation are available to the subdivision.
2. If conditions of approval are imposed, effects on public health and safety will be minimized.

C. COMPLIANCE: This subdivision complies with:

1) SURVEY REQUIREMENTS

Findings of Fact:

1. 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:

1. This proposal meets the survey requirements.

2) SUBDIVISION REGULATIONS

Findings of Fact:

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

Conclusion of Law:

1. The developer has submitted a plat which complies with the requirements of local subdivision regulations, variances have been requested, or conditions have been required to bring the plat into compliance.

3) REVIEW PROCEDURE

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula County Subdivision Regulations.
2. Notice of a public hearing on this subsequent minor subdivision was published in the Missoulian on April 02, 2006 and April 09, 2006. Certified letters were mailed to adjacent landowners on March 31, 2006. On April 03, 2006, a poster including the date, time and location of the public hearings was placed within 300 feet of the proposed subdivision.
3. The Missoula Consolidated Planning Board held a public hearing on the subdivision on April 18, 2006, passing on its recommendation to the Board of County Commissioners.
4. The Missoula County Board of County Commissioners held a public hearing on the subdivision on May 03, 2006.
5. 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:

1. This subdivision plat 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:

1. An existing 15-foot wide public utility easement is located along the back of all proposed lots.
2. The proposed subdivision will be served by Missoula Electric Cooperative, and Qwest telephone.

Conclusion of Law:

1. Utility services will be available to this subdivision.
2. The proposal meets requirements for utility easements.

E. PROVISION OF LEGAL AND PHYSICAL ACCESS:

Finding of Fact:

1. Physical and legal access will be provided to the subdivision from Peregrine Loop.

2. The County Public Works Department will review applications for driveway approach permits off of all public roads.

Conclusion of Law:

1. The proposal meets physical and legal access requirements.

VARIANCE REQUESTS

1. **A variance request from Section 3-2(7) of the Missoula County Subdivision Regulations requiring curb and gutter on Peregrine Loop.**

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.**

This subdivision is proposed as a rural subdivision within the Urban Growth Area with an average lot frontage of less than 175'. Therefore, Missoula County Subdivision regulations require curb and gutter to be installed on Peregrine Court. The original Country Crest subdivision was approved without curb & gutter and instead drainage swales run along the lot frontage on Peregrine Loop. There is no curb and gutter in the vicinity.

County Public Works supports approval of this variance as Peregrine Loop is an existing County-maintained road with roadside swales that function well for drainage. The Missoula City-County Health Department supports this request contingent on a RSID/SID waiver for improvements being noted on the face of the plat.

The Grading and Drainage Report indicates a relatively small amount of surface drainage resulting from this subdivision. The granting of this variance should not result in a threat to public safety, health or welfare or be injurious to other person's property since this subdivision is already developed with one residence, and only two more are proposed.

- 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.**

The conditions upon which the request is based are unique to this property. The property is along an existing County-maintained road tied into an existing drainage system of roadside swales; curb and gutter wouldn't function without extensive off-site improvements.

- 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 road section consists of a 24' wide paved road within a 60' right-of-way, resulting in 18 feet on either side of the paved road. Currently, there are drainage swales occupying this area. There appears to be enough room for curb and gutter to channel overland drainage flows. Although there are no land-based conditions presenting a hardship to the owner to install curb and gutter, to require improvements that are not part of a comprehensive improvements plan and may need to be modified at a future date would present a hardship to the owner to comply with the regulations.

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

Approval of the variance will not violate the provisions of the Missoula County Zoning Resolution, the Missoula Urban Area Comprehensive Plan, or the master plan for the area.

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

A condition of approval requires a statement on the face of the plat waving the right to protest a future RSID/SID for installation of drainage facilities and curb and gutter on Peregrine Loop; therefore, no increases in public costs are foreseen with the granting of this variance.

2. A variance request from Section 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations requiring installation of concrete boulevard sidewalk on Peregrine Loop.

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.

This subdivision is proposed as a rural subdivision within the Urban Growth Area with an average lot frontage of less than 175'. Therefore, Missoula County Subdivision regulations require 5 foot wide boulevard sidewalk and 7 foot wide landscaped boulevard be installed on Peregrine Loop. The original Country Crest subdivision was approved without sidewalk and instead the street shoulders slope down to drainage swales. There are no sidewalks in the vicinity to connect to.

County Public Works supports approval of this variance request, commenting that there are no existing facilities in this area and requiring a few hundred feet at a time with no guaranteed adjacent improvements is unreasonable. The Missoula City-County Health Department supports this variance request contingent on a RSID/SID waiver for improvements, including pedestrian facilities, being noted on the face of the plat.

The granting of this variance should not result in a threat to public safety, health or welfare or be injurious to other person's property since this subdivision is already developed with one residence, and only three more are proposed.

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.

The conditions upon which the request is based are not unique to this property.

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 road section consists of a 24' wide paved road within a 60' right-of-way, resulting in 18 feet on either side of the paved road. Currently, there are drainage swales occupying this area.

There appears to be enough room for drainage and pedestrian facilities.

Although there are no land-based conditions presenting a hardship to the owner to construct sidewalk, to require improvements that are not part of a comprehensive plan and may need to be modified at a future date would present a hardship to the owner to comply with the regulations.

The conditions upon which the request is based are not unique to this property.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance, the Missoula Urban Area Comprehensive Plan, or the master plan for the area.

Approval of the variance will not violate the provisions of the Missoula County Zoning Resolution, the Missoula Urban Area Comprehensive Plan, or the master plan for the area.

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

A condition of approval requires a statement on the face of the plat waving the right to protest a future RSID/SID for installation of non-motorized facilities on Peregrine Court; therefore, no increases in public costs are foreseen with the granting of this variance.

Hearing

KMJ Addition (3lots on 3.83 acres) – between Canyon Creek Village and Canyon East

Commissioner Carey opened the hearing.

Mary McCrea with OPG:

- I. Introduction
 - A. Chris Koppang, represented by Kristin Smith of WGM Group Inc. is proposing a three-lot commercial subdivision of a 3.83 acre parcel located north of Expressway between Canyon Creek Village and Canyon East subdivisions.
 - B. This is a subsequent minor plat of Lot 8 of the Northgate Development Park Subdivision, which was approved in 1998.
 1. It is within the Air Stagnation Zone, Missoula Water Quality District, the Airport Influence Zone and the Urban Growth Area.
 2. The property is relatively flat adjacent to Expressway, slopes moderately to the North to a low spot, and slopes downward along the eastern property boundary adjacent to Barbados Way.
 3. All lots will connect to Mountain Water and City of Missoula Sewer.
 4. Staff received no public comments on this subdivision proposal.
 - C. Zoning and Comprehensive Plan
 1. The 1998 Missoula Urban Comprehensive Plan Update and the 1996 Butler Creek Plan designate the property as “Mixed-Use and Residential, 1 du per 5 acres”.
 2. Lot 8 was rezoned from C-11 (Light Industry) to C-C2 (General Commercial) on the west of the site and C-C3 (Community Commercial) on the east of the site in 2005.
 3. Though the proposal is not in compliance with the land use designation of the comprehensive plan for the area it does comply with the Goals and Objectives by providing a transition between areas and serving the adjoining neighborhood with mixed use services.
 4. The proposal is consistent with the applicable zoning for the property.
 - D. Roads and Access
 1. The property is accessed from Martindale Way via Expressway Boulevard.
 2. Access to lots within the proposed subdivision is provided from Martindale Way, which continues across Barbados Way providing a connection to the Canyon East subdivision.
 3. Due to the triangular shape of the property, proposed Lot 1 will have frontage on Expressway Boulevard, Wheeler Drive, Martindale Way, and Barbados Way; however access to the lots is proposed to be from Martindale Way only. The subdivision regulations require that no lot be double fronted, therefore, the applicant has requested a variance. County Public Works supports the variance request.
 - E. Pedestrian and Bicycle connections
 1. The applicant has proposed a 6' wide sidewalk with a 10' landscaped boulevard along the Expressway Boulevard and Wheeler Drive frontage continuing the Canyon Creek Village and Canyon East sidewalk designs.
 2. A variance is being requested from the requirement for a 6' wide sidewalk with a 10' wide boulevard to allow a 5 foot sidewalk and 7 foot boulevard along the portion of Martindale Way within the subdivision. County Public Works and the Health Department did not have concerns with the sidewalk design for Martindale Place and staff is recommending approval of the variance request.
 3. The applicant does not propose any pedestrian facilities along Barbados Way, a 24' wide road in a 27' wide public access easement and has requested a variance from the requirement to provide a 5' wide sidewalk with a 7' wide boulevard in this location. The Health Department commented that Barbados Way should have a sidewalk on at least one side.

4. Conditional approval of the variance request is recommended with a condition that the developer install a 5' wide curbside sidewalk in a 6' wide public access easement along the west side of Barbados Way from the boulevard sidewalk on the north side of Addington Drive to the boulevard sidewalk on the south side of Deveraux Place.
 5. Another condition of approval is that the proposed plat includes a statement waiving the right to protest an RSID/SID for improvements to Wheeler Drive, Expressway Boulevard, and Martindale Way, including but not limited to the installation of pedestrian walkways or bikeways. Finding of Fact #6 under pedestrian access includes Barbados Way in the RSID/SID, therefore staff recommends that Condition #2 be amended to add Barbados Way to the RSID/SID waiver statement.
 6. Stephen Earle, with Mountain Line, requested that the property owners petition into the Missoula Urban Transportation District prior to final plat, which unfortunately was not included in the staff report. Staff recommends that Condition #8 be added to include the requirement and I have a handout that includes proposed Condition #8 and the revision to Condition #2.
- F. Planning Board, acting upon staff's recommendation at the public hearing, voted unanimously to amend condition of approval #2 and add condition of approval #8. Planning Board recommended approval of the remaining conditions of approval recommended by staff and contained in the staff report.
- G. Planning Board's recommended motions:
1. **Approval** of variance request #1 to permit a 5 foot sidewalk and 7 foot landscaped boulevard on Martindale Way.
 2. **Conditional approval** of variance request #2 which requires a sidewalk on Barbados Way but permits a 5 foot curbside sidewalk.
 3. **Approval** of variance request #3 to permit Lot 1 to be double fronted lot.
- II. In conclusion Planning Board recommends **approval of the KMJ Addition Subdivision** subject to the 8 conditions of approval as amended by Planning Board and based on the findings of fact in the staff report.

Commissioner Carey: Comments from anyone?

Kristin Smith: With me today is Chris Kopang, the developer and his partner, Justin Anderson. I'm pleased to represent this proposal before you today to provide some connection to those neighboring residential areas. The extension of Martindale Way, which might not otherwise been proposed, which facilitates the use of the new commercial services that would go on these lots. We have no problems with the conditions of approval or the changes, nor the conditionally approved 5 foot sidewalk on Barbados. That's acceptable to us.

Clint Sherbondy: Quick question. I live in Canyon Creek Plot E15. I see there's a proposed...some sort of pond? Is that true? Is there really going to be a pond?

Kristin Smith: No, it's a stormwater detention, which is required with the subdivision process. You have to be able to retain your stormwater onsite.

Clint Sherbondy: Okay, now I understand. Thank you.

Seeing no further comment, the hearing is closed.

Commissioner Curtiss: Kristin, could you address some of the questions that were put forward by the Homeowners Association in Canyon Creek Village? They're on the very last page of your packet. I did have a call from one of the Homeowners Association members asking about...they'd heard that one of the proposed uses was going to be a carwash?

Kristin Smith: A carwash, yes.

Commissioner Curtiss: They were concerned about water, but any carwash would be required to take care of its runoff water from washing the cars.

Kristin Smith: Yes.

Commissioner Curtiss: So it wouldn't just go into the retaining pond?

Kristin Smith: No, there are pretty stringent guidelines for treating the runoff.

Commissioner Curtiss: The one that...there's one here about connecting, by sidewalk, into the neighboring development. Number 3...the business located in the subdivided lots would be useful to the residents of the area, so they'd like to see a pedestrian connection. And there isn't any....isn't there kind of a missing connection there in the upper corner?

Kristin Smith: There is a park, which is the start of a drainage area. The proposed sidewalk on Barbados Way, I feel would address this concern, it certainly provides access to Canyon East. The folks living in the Canyon Creek Village wouldn't have too far to go to get to that sidewalk.

Commissioner Curtiss: So they could technically walk across the park.

Kristin Smith: Sure, they're just a half a block away.

Commissioner Curtiss: I haven't read the landscaping, but is there a landscaping plan that's going to make it fit in well with the neighboring areas?

Kristin Smith: Yes and the landscaping plan happens at the time of zoning compliance. So once the sight goes in for actual onsite improvements and developments, there's buffering required to have tree and shrub space accordingly. That all gets reviewed by OPG.

Commissioner Carey: Michael, the last question, number 11 from the Homeowners Association, could you address that? The question is: Can non-family oriented businesses, such as adult video, strip businesses, tattoo parlors be excluded?

Mike Sehestedt: Probably not as a part of the subdivision process.

Commissioner Curtiss: What about the zoning? Does this zoning allow that?

Mike Sehestedt: It's commercial zoning, I believe.

Commissioner Curtiss: CC2 and CC3.

Mike Sehestedt: Without the zoning regulations in front of me, I can't say for certain. I would imagine based on my general knowledge of the zoning regulations that those sorts of businesses could locate within that zoning classification. The thing is, it's not a location that would inherently be very attractive to any of those types of businesses. I understand the homeowner's concerns, but I don't believe it's really a subdivision issue. It's more a zoning question. It would be opening up a lot more if we tried to address that in the particular proceeding.

Jean Curtiss moved to approve variances: one from the requirement for 6' wide concrete sidewalks with a 10' wide landscaped boulevard on Martindale Way. Two from Section 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations requiring 5' wide concrete sidewalks with a 7' wide landscaped boulevard on Barbados Way. Three from Article 3-3(1)(H) of the County Subdivision Regulations requiring no lot be double fronted. Also including the variance being conditionally approved Commissioner Evans seconded. The motion carried on a vote of 3-0.

Jean Curtiss moved to approve the KMJ Addition Subdivision subject to Planning Board's amended conditions of approval, based on the findings and fact in the staff report. Commissioner Evans seconded. The motion carried on a vote of 3-0.

CONDITIONS OF SUBDIVISION APPROVAL

1. The following statement shall appear on the face of the plat: "This property is within the Airport Influence Area and subject to the requirements of the Airport Influence Area Resolution." Prior to final plat approval, the applicant shall grant an avigation easement to the Missoula County Airport Authority.
2. The following statement shall appear on the face of the final plat: "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Wheeler Drive, Expressway Boulevard, Barbados Way and Martindale Way, including but not limited to the installation of 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."
3. The developer shall install a 5' wide curbside sidewalk in a 6' wide public access easement along the west side of Barbados Way from the boulevard sidewalk on the north side of Addington Drive to the boulevard sidewalk on the south side of Deveraux Place.
4. Final plans for fire suppression water flow and hydrant placement shall be reviewed and approved by Missoula Rural Fire District prior to final plat approval. A fire hydrant shall be installed and an RSID created for installation and maintenance of the hydrant prior to issuance of the first building permit.
5. The following statement shall appear on the face of the plat: "Acceptance of a deed for a lot within this subdivision constitutes waiver of the right to protest a future RSID or SID for installation and maintenance of a public water system for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land."
6. Businesses within this subdivision shall be addressed from Martindale Way and post address signs visible from the street. Plans for these signs shall be reviewed and approved by the City Fire Department prior to final plat approval.
7. The developer shall file a development agreement, subject to review and approval by the Missoula County Weed District prior to final plat approval that requires the developer or future lot owners in the KMJ Addition subdivision to revegetate any ground disturbance with beneficial species at the first appropriate opportunity after disturbance occurs in compliance with a Revegetation Plan for Disturbed Sites approved by the Missoula County Weed District, and maintain all lots in this subdivision in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan.
8. The applicant shall petition into the Missoula Urban Transportation District prior to final plat approval.

SUBDIVISION FINDINGS OF FACT

A. ZONING AND COMPREHENSIVE PLAN COMPLIANCE

Findings of Fact:

1. The property is zoned C-C3 (Community Commercial) on Lots 2 and 3 located on the west side of the property and C-C2 (General Commercial) on Lot 1 located on the east side.
2. The Missoula Urban Area Comprehensive Plan 1998 Update designates the area of subdivision as "Mixed-Use" and "Residential, 1 dwelling unit per 5 acres.
3. The land use designation to the south and east of the proposed subdivision is Urban Residential (6 dwelling units per acre). The land use designation to the west of the property, where Canyon Creek Village is located is Mixed-Use.
4. The goals and objectives of the Urban Comprehensive Plan emphasize the need to establish transitions between areas.
5. Providing commercial services close to residential neighborhoods will decrease the need for trips outside the neighborhood.

Conclusion of Law:

1. The proposal is consistent with the applicable zoning for the property.
2. This commercial subdivision does not comply with the land use designation of the Growth Policy; however it does comply with the Goals and Objectives of serving the adjoining neighborhood with mixed use services.

B. PRIMARY CRITERIA COMPLIANCE

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

Findings of Fact:

1. The property has no recent history of being used for agricultural purposes.
2. The soils are classified Urban Land. The Natural Resources Conservation District does not consider these soils to be prime agricultural soils.
3. There are no irrigation ditches or irrigation ditch easements on the subject property.

Conclusions of Law:

1. No loss to agricultural land will result from the proposed subdivision.
2. No impacts to agricultural water users or agricultural water user facilities are foreseen as a result of this subdivision.

CRITERION 2: EFFECTS ON LOCAL SERVICES --

Roads

Findings of Fact

1. The property is accessed from Martindale Way via Expressway Boulevard, a 44' wide two lane collector road between Reserve Street and the Missoula Development Park in a 100' right-of-way.
2. Access to lots within the proposed subdivision is provided from Martindale Way, a 33' wide back-of-curb to back-of-curb (boc to boc) road within a 60' wide right-of-way.
3. Martindale Way becomes a 29' wide boc to boc road within a 54' wide right-of-way on the other side of Barbados Way, in the Canyon East subdivision.
4. Surface run-off will move over the property from southeast to northwest as overland flow and through storm drain inlets in Martindale Way and the parking areas toward a detention basin located in the northeast corner of Lot 3.
5. The peak 10-year flow from the proposed development will increase from a pre-development rate of approximately 1.22 cubic feet per second (cfs) to a post development rate of 7.28 cfs.
6. Erik Dickson, County Public Works had no adverse comments on the subdivision proposal except for concern about a bulbout at the intersection of Martindale Way and Expressway which was removed prior to submittal.

Conclusions of Law:

1. Access to the subdivision meets the standards of the Missoula County Subdivision Regulations for roads and drainage.

Pedestrian Access

Findings of Fact:

1. There are pedestrian facilities to the west along Expressway Boulevard adjacent to the Canyon Creek Village subdivision and are required in the Canyon East subdivision along Wheeler Drive, Addington Drive, Martindale Way, and Deveraux Place in the Canyon East subdivision.
2. The applicant has proposed a 6' wide sidewalk with a 10' landscaped boulevard along the Expressway Boulevard frontage continuing the Canyon Creek Village sidewalk design and a 6' wide sidewalk with a 10' landscaped boulevard along the Wheeler Drive frontage continuing the Canyon East sidewalk design.
3. A variance is being requested from the requirement to provide a 6' wide sidewalk with a 10' wide boulevard along the portion of Martindale Way within the subdivision. (Variance request #1) County Public Works and the Health Department did not have concerns with the sidewalk design for Martindale Place and staff is recommending approval of the variance request.

4. The applicant does not propose any pedestrian facilities along Barbados Way, a 24' wide boc to boc road in a 27' wide public access easement and has requested a variance from the requirement to provide a 5' wide sidewalk with a 7' wide boulevard in this location. (Variance request #2) The Health Department commented that Barbados Way should have a sidewalk on at least one side.
5. A conditional approval of the variance request is recommended with a condition that the developer install a 5' wide curbside sidewalk in a 6' wide public access easement along the west side of Barbados Way from the boulevard sidewalk on the north side of Addington Drive to the boulevard sidewalk on the south side of Deveraux Place. (Condition #3)
6. Another condition of approval is that the proposed plat includes a statement waiving the right to protest an RSID/SID for improvements to Wheeler Drive, Expressway Boulevard, Barbados Way and Martindale Way, including but not limited to the installation of pedestrian walkways or bikeways. (Condition #2)

Conclusions of Law

1. Pedestrian access to the subdivision meets the standards of the Missoula County Subdivision regulation if the variances are granted and the recommended conditions of approval are adopted.

Water System

Findings of Fact:

1. Mountain Water will serve the subdivision

Conclusions of Law:

1. Water will be provided to the subdivision.
2. State and local agencies will review water resource issues.

Sewer System

Findings of Fact:

1. Municipal sewer service is available in the Expressway Boulevard and Barbados Way rights-of-way adjacent to this subdivision.

Conclusions of Law:

1. Sanitary services will be provided to this subdivision.
2. State and local agencies will review sanitation under the Sanitation Act.

Solid Waste

Findings of Fact:

1. BFI will provide disposal service to the subdivision.

Conclusions of Law:

1. Solid waste disposal is available to the subdivision.

Parks and Recreation

Findings of Fact:

1. The applicant is not proposing any park area with this subdivision.

Conclusion of Law:

1. Missoula City Subdivision Regulations Section 3-8(1)(E) exempts non-residential subdivisions from the provision of parkland dedication. Therefore, parkland dedication is not required for this subdivision.

Schools

Findings of Fact:

1. The subdivision should not result in additional children to the school district since this is a commercial subdivision.

Conclusion of Law:

1. No adverse impacts on schools requiring mitigation have been identified.

Fire Department

Findings of Fact:

1. The subdivision is located within the jurisdiction of the Missoula Rural Fire District.
2. Curt Belts, Assistant Fire Chief, stated that access to the subdivision is adequate. He also stated that all properties must be properly addressed. Staff is recommending a condition that businesses within this subdivision be addressed from Martindale Way and post address signs visible from the street. (Condition #6)
3. Mr. Belts also requested a fire hydrant be located at the corner of Expressway and Martindale Way and that an RSID for installation and maintenance of hydrants needs to be initiated. A condition of approval requires installation of a hydrant and that the final plat include a waiver of the right to protest an SID/RSID for the installation and maintenance of a water system for the purposes of fire protection. (Conditions #4, #5)

Conclusions of Law:

1. Fire service is available to the subdivision or conditions have been recommended to mitigate impacts to fire service.

Sheriff Department

Findings of Fact:

1. The subdivision is located within the jurisdiction of the Missoula County Sheriff's Department.
2. Undersheriff Mike Dominick, Missoula County Sheriff's Department, stated that the Department has 50 sworn officers. The nationally accepted state average is 1.7 officers per thousand population. At the present rate, the Missoula County Sheriff's Department is funded to protect a population of 30,000. Each new subdivision proposal will have to be evaluated for the impact that it has on the ability of the Department to provide basic services over longer distances. The Department will provide services to the best of its ability.

Conclusions of Law:

1. Missoula County law enforcement service is available to the subdivision, though the Sheriff's Department is concerned about the ability to provide adequate police protection.

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

Findings of Fact:

1. The site contains no areas of riparian resource and is not located within a 100-year floodplain.
2. Bill Otten, the Weed District Supervisor recommends the subdivider file a development agreement to require lot owners to maintain their lots in compliance with the Montana Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. The development agreement should also require lot owners to revegetate any areas disturbed by construction or maintenance with beneficial species as soon as construction or maintenance is completed (Condition #5)

Conclusions of Law:

1. This subdivision proposal should not negatively impact the natural environment or conditions have been recommended to mitigate impacts to the natural environment.

CRITERION 5: EFFECTS ON PUBLIC HEALTH AND SAFETY

Findings of Fact:

1. The subdivision is located within the Airport Influence Area. The Missoula County Airport Authority has requested information regarding the Airport Influence Area be included in covenants for the property. Covenants do not exist for this property. To ensure future lot purchasers are made aware of the implications of the Airport Influence Area, OPG staff is recommending a condition that requires the developer to include a statement on the final plat indicating the

property is within the Airport Influence Area. Additionally, the applicant will be required to grant an Avigation easement to the Missoula County Airport Authority. (Condition #1)

2. The subdivision is located within an established area serviced by the Missoula Rural Fire District, the Missoula County Sheriff's Department and Missoula hospitals.
3. The subdivision will be served by individual well and septic systems.
4. The property is within the Air Stagnation Zone. The Missoula County Health Department commented that commercial/retail services near where people live encourage a healthier lifestyle by making it possible for people to conveniently walk or bike to these services.
5. The installation of wood stoves or fireplaces is prohibited. Pellet stoves require an installation permit.

Conclusions of Law:

1. Emergency services, water, and sanitation are available to the subdivision.
2. Air quality impacts will be mitigated through existing regulations.

C. COMPLIANCE

1) SURVEY REQUIREMENTS

Findings of Fact:

1. 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:

1. This proposal meets the survey requirements.

2) SUBDIVISION REGULATIONS

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision regulations provided for in part 4 of M.C.A. 76-3.

Conclusion of Law:

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

3) REVIEW PROCEDURE

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula County Subdivision Regulations.
2. Notice of a public hearing on this subsequent minor subdivision was published in the Missoulian on April 2 and April 9, 2006. Certified letters were mailed to adjacent landowners on March 31, 2006. On March 31, 2006, a poster including the date, time and location of the public hearings was placed within 300 feet of the proposed subdivision.
3. The Missoula Consolidated Planning Board held a public hearing on the subdivision on April 18, 2006, passing on its recommendation to the Missoula Board of County Commissioners.
4. The County Commissioners held a public hearing on the subdivision on May 3, 2006.

Conclusion of Law:

1. This subdivision proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Article 4 of the Missoula City Subdivision Regulations.
2. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty 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 the City of Missoula who can establish a likelihood of material injury to property or its material value, or the City Council. 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.

D. PROVISION OF EASEMENTS FOR UTILITIES

Findings of Fact:

1. The proposed subdivision will be served by Montana Power Company and Qwest.
2. The plat shows utility easements within the rights-of-way of Expressway Boulevard, Wheeler Drive, Martindale way, and Barbados Way.

Conclusions of Law:

1. Utility easements have been provided, and utility services will be available to this subdivision.

E. PROVISION OF LEGAL AND PHYSICAL ACCESS

Finding of Fact:

1. Physical and legal access to this subdivision will be provided via Expressway Boulevard and Martindale Way.

Conclusion of Law:

1. The proposal meets physical and legal access requirements.

V. VARIANCE REQUESTS

1. **A variance request from Section 3-2(9)(A) of the Missoula City Subdivision Regulations requiring 6' wide concrete sidewalks with 10' wide landscaped boulevards on Martindale Way to allow 5' wide sidewalks with 7' wide landscaped boulevards.**

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.**
The applicant has proposed a 5' wide sidewalk with a 7' landscaped boulevard on both sides of Martindale Way. County Public Works and the Health Department did not have concerns with the sidewalk design for Martindale Place. Martindale Drive is a much lower volume street than Expressway Boulevard or Wheeler Drive, where a 6' wide sidewalk with a 10' wide boulevard is proposed. The granting of the variance will not result in a threat to public safety, health, or welfare.
- 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.**
The conditions upon which the request is based are unique to this property. The sidewalk will connect to the east in the Canyon East subdivision which is a 5' concrete sidewalk with a slightly narrower 6' wide boulevard.
- 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.**
Because it is undeveloped land, the physical surroundings, and topographical conditions do not present a hardship to the owner to comply with the regulations.
- D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance, the Missoula Urban Area Comprehensive Plan, or the master plan for the area.**
Approval of the variance will not violate the provisions of the Missoula City Zoning Ordinance or the Missoula Urban Area Comprehensive Plan.
- E. The variance will not cause an increase in public costs.**

No increases in public costs are foreseen with the granting of this variance. Staff is recommending a condition that the applicant place a note on the plat waiving the right to protest improvements to Martindale Way based on benefit.

2. A variance request from Section 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations to not provide boulevard sidewalks on Barbados Way to allow a curbside sidewalk on the west side of Barbados Way.

RECOMMENDATION

The Office of Planning and Grants recommends **conditional 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.

This is an area where there is a well established network of boulevard sidewalks. Barbados is a low volume street in the neighborhood which provides a pedestrian linkage between Addington Drive to the north and Deveraux Place to the south. The Health Department commented that Barbados Way should have a sidewalk on at least one side. Staff is recommending a condition that the developer install a 5' wide curbside sidewalk in a 6' wide public access easement along the west side of Barbados Way from the boulevard sidewalk on the north side of Addington Drive to the boulevard sidewalk on the south side of Deveraux Place. (Condition #3) If the recommended condition is adopted, the variance request will not result in a threat to public safety, health, or welfare.

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.

The conditions upon which the variance is requested are unique because Barbados Way is a low volume 24' wide street which does not front any residential properties. However, it does provide an important connection between the proposed commercial uses and the nearby residential neighborhood. A curbside sidewalk will provide a pedestrian linkage which is appropriate for Barbados Way

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.

There is an abrupt grade change along the west side of Barbados Way. To have a boulevard sidewalk along this portion of the property would present a hardship to the owner because it would require 7' of additional fill to accommodate the boulevard.

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.

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

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

No increases in public costs are foreseen with the granting of this variance. The RSID/SID waiver to address future improvements to Barbados Way would mitigate costs of future improvements.

3. A variance request from Article 3-3(1)(H) of the County Subdivision Regulations requiring no lot be double fronted.

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.

Due to the triangular shape of the property, proposed Lot 1 will have frontage on Expressway Boulevard, Wheeler Drive, Martindale Way, and Barbados Way; however access to the lots is proposed to be from Martindale Way only. County Public Works supports the variance request. Due to the restricted access proposed for the lots, granting the variance will not result in a threat to public safety, health, or welfare.

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.

The conditions upon which the request is based are unique to this property. The triangular shape of the parcel results in lots which have double frontage.

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.

Due to the topographical features along Barbados Way, access to the proposed lots is more easily accomplished from Martindale Way, which creates a double fronted lot. To provide access to Lot 1 from Barbados Way would present a hardship to the owner.

D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance, the Missoula Urban Area Comprehensive Plan, or the master plan for the area.

Approval of the variance will not violate the provisions of the Missoula City Zoning Ordinance or the Missoula Urban Area Comprehensive Plan.

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

No increases in public costs are foreseen with the granting of this variance.

Hearing

Ridgewood Ranchettes, Lot 19 (2 lots on 21.19 acres) – Rennie Creek Road, Huson

Commissioner Carey opened the hearing.

Mary McCrea:

I. Introduction

- A. Nick and Michelle Arthur, represented by Nathan Lucke of Landworks Consulting and Design, Inc. are proposing a two-lot residential subdivision of a 21.19 acre parcel located approximately seven miles northwest of Huson.
- B. This is a subsequent minor plat of Lot 19 of the Ridgewood Ranchettes Subdivision, which was approved in 1967.
 1. It is outside the Air Stagnation Zone and the Urban Growth Area.
 2. The site is steeply sloped and the developer has designated the entire site as a no build area, except for two building envelope areas, one around the existing residence on Lot 19A and one on Lot 19B. Both building envelope areas contain a minimum 2,000 square foot area with slopes less than 25%.
 3. Both lots will be served by individual wells and septic systems.
 4. Staff received three public comments on this subdivision proposal which are attached to the staff report.
- C. Zoning and Comprehensive Plan
 1. The 2002 Land Use Guide, recommends a land use designation of Open and Resource, 1 dwelling unit per 40 acres.
 2. The property is unzoned and the proposal for 2 lots on 21.19 acres results in a density of one dwelling unit per 10.6 acres.

3. Though the proposal is not in compliance with the land use designation of the comprehensive plan for the area, it does comply with the Goals and Objectives by designating steep sloped areas outside the two building envelopes as no-build zones, designating the area around the spring a riparian management resource area and including a riparian management plan and living with wildlife sections in the development covenants.
- D. Roads and Access
1. The property is accessed from Rennic Creek Road via West Nine Mile Road, the nearest county maintained paved road located approximately ¼ mile from the subdivision.
 2. Rennic Creek Road has an 18 to 20 foot gravel surface width within a 60 foot County road easement, which was dedicated on the plat for Ridgewood Ranchettes in 1967. Subdivision Regulations require a 24 foot surface width for public roads outside the Urban Growth Area. A variance has been requested and is supported by County Public Works. The developer has included an RSID/SID waiver statement on the plat for improvements to Rennic Creek Road.
 3. A 30 foot wide forest service easement was granted in 1952-53. The 60 foot county road easement for Rennic Creek Road was dedicated with the Ridgewood Ranchettes Subdivision in 1967. Prior to issuing the staff report Chuck Wright with the County Surveyor's office expressed concern that the location of the described center lines of the two rights-of-way may not coincide with one another.
 4. Subdivision Regulations require that the plat show the location of all existing easements. In order to address the concerns of the County Surveyor, condition of approval # 3 was included in the staff report which requires the location of the forest service easement to be determined and, if located on Lot 19, be shown on the plat prior to final plat approval.
 5. Prior to Planning Board Chuck Wright received confirmation from the project surveyor that the centerline of both easements do coincide with one another. Therefore, at Planning Board, staff recommended condition #3 be deleted and Planning Board agreed.
- E. Driveways
1. The existing house on proposed Lot 19A is accessed via a driveway directly from Rennic Creek Road which loops around north of the house and crosses the property line onto Lot 19B. The developer proposes to abandon the section of the driveway that crosses the property line rather than provide an easement. Condition of approval #2 requires the Covenants be amended to include the requirement for the removal and revegetation of this portion of the existing driveway.
 2. An existing driveway leads to the building site on Lot 19B but the steep grade does not meet subdivision regulations. The supplemental data sheet shows a proposed new driveway configuration that does meet subdivision regulations. Condition of approval #1 requires Lot 19B to be accessed by a new driveway meeting subdivision standards, plans for the driveway to be reviewed and approved by Frenchtown Rural Fire District and County Public Works prior to building permit approval, and the Covenants be amended to include the driveway requirements, prior to final plat approval.
- F. Water Rights
1. A natural spring exists adjacent to the eastern property boundary on Lot 19B and is shown on the Plat. Water rights to the spring will be removed from Lot 19A. A condition of approval requires the plat include a note specifying that the water rights to the spring are removed for Lot 19A and that information regarding the removal of water rights for Lot 19A be included in the Covenants prior to final plat.
- G. Planning Board, acting upon staff's recommendation at the public hearing, voted unanimously to delete condition #3 and recommended approval of the remaining conditions as recommended by staff and contained in the staff report.
- H. Planning Board's recommended motions:
1. **Approval** of variance request #1 to permit a 18 to 20 foot surface width for Rennic Creek Road.

II. In conclusion Planning Board recommends **approval of the Ridgewood Ranchettes Lot 19 Subdivision** subject to the amended conditions of approval and based on the findings of fact in the staff report.

Nathan Lucke w/Landworks: We're the representative firm for Michelle and Nick Arthur for this two lot subdivision. I want to thank Mary for her work on the staff report. We don't have any issues with the conditions of approval as listed. Again the Planning Board recommended the deletion of condition 3. We did receive some public comment for this subdivision, the comments were mainly directed to DEQ related issues - as far as the location of the septic system. We do anticipate DEQ approval shortly on this subdivision and the septic systems and the wells have been located in accordance to all local and state requirements. There was also some comments on drainage. A drainage report has been prepared in accordance with both the subdivision and DEQ regulations. Generally what they were talking about was a concern about the detention pond, there is a detention pond and that is because the way that the calculations work out we have to show that we're detaining water, which will actually be an improvement in the end, because right now the water would just drain off without any kind of restriction. I'm here for any questions that you may have. Thank you.

No comment, Commissioner Carey closed hearing.

Commissioner Evans: Would someone explain to me which condition three we're talking about?

Commissioner Curtiss: It's in the packet with a strikeout through it.

Commissioner Curtiss moved to accept the variance as presented: request from Article 3-2(3)(B) of the Missoula County Subdivision Regulations which requires a 24 foot surface width for public roads outside of the UGA to permit a 18 to 22 foot surface width for Rennie Creek Road. Commissioner Evans seconded. The motion carried on a vote of 3-0.

Commissioner Curtiss moved to approve Ridgewood Ranchettes, Lot 19 Subdivision based on finding and fact and recommended conditions in the staff report as amended by Planning Board. Commissioner Evans seconded. The motion carried on a vote of 3-0.

CONDITIONS OF SUBDIVISION APPROVAL

Roads and Driveways:

1. Lot 19B shall be accessed by a new driveway that meets subdivision standards and plans for the driveway shall be approved by County Public Works and Frenchtown Rural Fire Department, prior to building permit approval. Driveways in excess of 150 feet in length shall incorporate a turn around for fire apparatus at the terminus of the driveway. Section 3 of the Development Covenants shall be amended to add driveway requirements which include minimum width, turn around for fire apparatus, and the requirement for removal and revegetation of the abandoned portions of the existing driveway, subject to review and approval of OPG, prior to final plat approval. This section of the covenants may not be changed or deleted without governing body approval.
2. The portion of the existing driveway extending north of the building envelope on Lot 19A to the point of intersection with the driveway on Lot 19B shall be removed and revegetated. Section 3 of the Development Covenants shall be amended to include the requirement, subject to review and approval of OPG, prior to final plat approval. This section of the covenants may not be changed or deleted without governing body approval.

Fire:

3. The developer shall contribute a fire service fee of \$530.00 per new lot to the Frenchtown Rural Fire District for fire protection purposes. Payment of this contribution shall be verified prior to final plat approval.
4. Section 4 of the Development Covenants shall be amended to state that "Fuel Mitigation measures are required to conform to the defensible space standards as set forth for the State of Montana by the Department of Natural Resources and Conservation and be reviewed and

approved by the Frenchtown Rural Fire District prior to home construction.” This section of the covenants may not be changed or deleted without governing body approval.

5. Section 1 and 3 of the Development Covenants shall be amended to reference the Frenchtown Rural Fire District as the applicable fire district and require that the interior residential sprinkler systems meet NFPA 13D standards, include a domestic valve connection, a fire department connection and be approved by Frenchtown Rural Fire District prior to home construction, subject to review and approval of OPG, prior to final plat approval.

Water Rights

6. The plat shall include a note specifying the removal of water rights to the natural spring for Lot 19A and the Development Covenants shall be amended to include the information regarding the removal of water rights for Lot 19A, subject to review and approval by the County Attorney’s office prior to final plat approval. This section of the covenants may not be changed or deleted without governing body approval.

Wildlife

7. In Section 10 of the Development Covenants the last sentence shall be amended to state that “Only wildlife friendly perimeter fencing shall be allowed on each lot within the Area.”

Covenants

8. The Amendments section of the Development Covenants shall be amended to include the Riparian Resource Management Plan, and the WRI roofing standards in the list of sections that may not be changed or deleted without governing body approval, subject to review and approval of OPG prior to final plat approval.

SUBDIVISION FINDINGS OF FACT

A. ZONING AND COMPREHENSIVE PLAN COMPLIANCE

Findings of Fact:

1. The subject property, Lot 19 of Ridgewood Ranchettes, is unzoned, and located about 7 miles northwest of Huson on Rennie Creek Road.
2. Lot 19A is 10.46 acres and has an existing home, while Lot 19B is 10.73 acres and vacant. Parcel sizes within the Ridgewood Ranchettes Subdivision range from 5 to 27 acres. A parcel adjacent to the south is 357 acres.
3. The 2002 Missoula Regional Land Use Guide designates the property as Open and Resource, with a recommended density of one dwelling unit per 40 acres.
4. The Regional Land Use Guide states the following: “In order to promote orderly development and protect the resource that stimulates that development, the designation of Open and Resource Land is made to protect areas of important natural resource production and extraction (i.e. Forestry and agriculture); to protect areas of natural hazard (i.e. steep slopes and floodways); and to reserve land for the future where development during the time frame of this plan would be premature and costly. While Open and Resource Land is not a primarily residential designation, residential development of no more than 1 dwelling unit per 40 acres would be in keeping with the intent of the classification.”
5. The site contains a mostly coniferous forest which is dense on the north half and scattered on the south half.
6. The site is steeply sloped and the developer has designated the entire site as a no build area, except for two building envelope areas, one around the existing residence on Lot 19A and one on Lot 19B. Both building envelope areas contain a minimum 2,000 square foot area with slopes less than 25%.
7. The new building site is an open area surrounded by forest. Trees will be retained except as required to construct the new driveway and to create a defensible space per Wildland Residential Interface standards.

Conclusions of Law:

1. The proposed subdivision does not comply with the comprehensive plan’s recommended land use density for this area. However, the designation of the majority of the site as no-build areas for slopes greater than 25% brings the subdivision closer to compliance with the objectives of the 2002 Missoula Regional Land Use Guide.

2. Missoula County Subdivision Regulations require that subdivisions be reviewed for compliance with the Comprehensive Plan. Due to changes in state law, no land use proposal shall be conditioned or denied based solely upon the lack of compliance with the Growth Policy. For that reason, no conditions are recommended based upon failure to comply with the Growth Policy or its amendments.

B. PRIMARY CRITERIA COMPLIANCE

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

Findings of Fact:

1. There is no indication that the property has been utilized for agriculture.
2. Soils on the property include the Nemote-Sharrott Association, theTk1-Tarkio Silty Clay Loam, 0 to 4 percent slopes, and theTk2-Tarkio Silty Clay Loam, 4 to 8 percent slopes.
3. There are no irrigation ditches on the property.
4. A natural spring exists adjacent to the eastern property boundary on Lot 19B and is shown on the Plat. Water rights to the spring will be removed from Lot 19A. A condition of approval requires the plat include a note specifying that the water rights to the spring are removed for Lot 19A and that information regarding the removal of water rights for Lot 19A be included in the Development Covenants prior to final plat.

Conclusions of Law:

1. There are no adverse impacts to agricultural production identified with this proposal.
2. Impacts to agricultural water user facilities will be mitigated if the recommended condition is imposed.

CRITERION 2: EFFECTS ON LOCAL SERVICES --

Roads/Driveways

Findings of Fact

1. The property is accessed from the frontage road north of Huson to West Nine mile Road, which intersects Rennic Creek Road about ¼ mile from the subdivision. West Nine mile Road is the nearest county maintained paved road.
2. Rennic Creek Road is a County Road within a 60 foot right-of-way with an 18 to 20 foot gravel surface width. The right-of-way was dedicated as a 60 foot county road easement on the plat for Ridgewood Ranchettes in 1967. A right-of-way in nearly the same location was granted to the United States of America as a 30' wide easement (Forest Service easement) in 1952-53. County Surveyor' s office acknowledges that, upon review of the exhibit associated with the Forest Service easement, the location of the described center lines of the two rights-of-way may not coincide with one another.
3. Missoula County Subdivision Regulations Article 5-1(4)(J) requires that the plat show the location of all existing easements. Since the exact location of the forest service easement is not known, a condition of approval requires the location of the forest service easement to be determined and, if located on Lot 19, be shown on the plat prior to final plat approval.
4. Missoula County Subdivision Regulations Article 3-2(3)(B) requires a 24 foot surface width for public roads outside the Urban Growth Area, therefore a variance is required for the surface width of Rennic Creek Road.
5. County Public Works noted that adding one lot will not affect the capacity of Rennic Creek Road to the extent that improvements are needed.
6. The existing house on proposed Lot 19A is accessed via a driveway directly from Rennic Creek Road which loops around north of the house and connects to the existing driveway on proposed Lot 19B. Missoula County Subdivision Regulations Article 3-2(1)(I) requires an easement for driveways crossing an adjacent property. The supplemental data sheet shows the loop connection that crosses the property line between Lot 19A and Lot 19B will be abandoned so that a shared access easement is not necessary.
7. An existing driveway leads to the building site on Lot 19B but the steep grade does not meet subdivision regulations. The supplemental data sheet shows a proposed new driveway configuration that does meet subdivision regulations. Frenchtown Rural Fire District commented

that the proposed new driveway must meet subdivision standards and be approved by the fire district prior to construction.

8. A note on the supplemental data sheet states that the actual driveway constructed on Lot 19B will be per the discretion of the new owners, but must meet the standards as set forth in the Development Covenants. A condition of approval requires Lot 19B to be accessed by a new driveway that meets subdivision standards. It also requires plans for the driveway be approved by County Public Works and Frenchtown Rural Fire Department, prior to building permit approval.
9. All portions of the existing driveway that are proposed to be abandoned must meet the Missoula County Noxious Weed Management Plan requirement of revegetation. Staff recommends a condition of approval requiring the abandoned portions of the existing driveway to be removed and revegetated.
10. A geotechnical and slope stability analysis will be completed by GMT Consultants Inc. for the new driveway on Lot 19B.
11. Missoula County Subdivision Regulations Article 3-2(10)(E) requires dead-end driveways in excess of 150 feet to have approved turnarounds for fire apparatus, and Article 3-2 (1)(I) require driveways to have a 12 foot surface width. Staff recommends a condition of approval requiring the turnaround for fire apparatus and the driveway surface width be added to the Development Covenants.

Conclusion of Law:

1. If the requested variance is approved and the recommended conditions are imposed, the subdivision meets road and driveway standards in the Missoula County Subdivision regulations.

Pedestrian Access

Findings of Fact:

1. There are no sidewalks or pedestrian access facilities in the area near the proposed subdivision.
2. Missoula County Subdivision Regulations Article 3-2(8)(A)(iii) requires that a system of pedestrian and /or bicycle circulation be provided for subdivisions outside the Urban Growth Area and served by public roads.
3. The developer has included an RSID/SID waiver statement on the plat for improvements to Renic Creek Road, which includes pedestrian facilities.

Conclusion of Law

1. The subdivision meets the non-motorized facilities standards of the Missoula County Subdivision Regulations.

Water & Sewer Systems

Findings of Fact:

1. The existing home is served by an individual well and septic system.
2. The new lot will also be served by an individual well and septic system.
3. According to the Missoula City-County Health Department the subdivision is outside the Water Quality District. Impacts to surface and ground water will be assessed through non-degradation review.

Conclusion of Law:

1. Water will be provided to the subdivision.
2. Sanitary services are available to the subdivision through private systems.
3. 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:

1. Allied Waste Services will provide solid waste pickup service.

Conclusion of Law:

1. Solid waste disposal is available to the subdivision.

Parks and Recreation

Findings of Fact:

1. No parkland dedication or cash-in-lieu of park dedication is proposed for the subdivision.
2. Park dedication is not required for this subdivision per Missoula County Subdivision Regulations Section 3-8(2)(D) because it is a subdivision in which only one additional lot will be created.

Conclusion of Law:

1. Missoula County Subdivision Regulations 3-8(2)(D) do not require park dedication for subdivisions in which only one additional lot will be created.

Schools

Findings of Fact:

1. Students in the proposed subdivision will attend Frenchtown Schools.
2. Rachel Vielleux, Missoula County School District, reviewed the proposal and had no comment.
3. No comment was received from Frenchtown School Superintendent Jerry Pease.

Conclusions of Law:

1. No adverse impacts to schools requiring mitigation were identified.

Fire Department

Findings of Fact:

1. The subdivision is in the Frenchtown Rural Fire District (FRFD). Station #3 is less than two miles from the subdivision.
2. The site contains a mostly coniferous forest which is dense on the north half and scattered on the south half.
3. Generally, all areas outside the building envelopes exceed 25% slope, and have been designated no build zones.
4. Sections 4 and 12 of the Development Covenants contain defensible space standards and roofing material standards for use in areas of Wildland-Residential Interface (WRI).
5. Section 1 of the Development Covenants includes a requirement for new homes to install an interior residential sprinkler system with plans for the sprinkler system to be reviewed and approved by the fire district. A condition of approval requires the Development Covenants be amended to reference the Frenchtown Rural Fire District as the applicable fire district and require that the interior residential sprinkler systems meet NFPA 13D and Frenchtown Rural Fire District standards.
6. Cindy Crittenden of FRFD comments that fuel mitigation measures shall be reviewed and approved by the Frenchtown Rural Fire District and completed prior to home construction. Staff has recommended this be added to the covenants as a condition of subdivision approval.
7. Frenchtown Rural Fire District commented that payment of a fire service fee will be assessed to this subdivision in the amount of \$530.00 per new lot or new home and must be paid prior to final plat approval. This is a condition of subdivision approval.
8. Frenchtown Rural Fire District commented that all homes must have a County approved address sign approved by the Frenchtown Rural Fire District. (FRFD). Section 2 of the Development Covenants requires address signage for Lots 19A and 19B to be approved by FRFD.

Conclusions of Law:

1. Fire service and water for fire protection is available to the subdivision.

Sheriff Department

Findings of Fact:

1. The subdivision is located within the jurisdiction of Missoula County Sheriff's Department.
2. The Sheriff's Department commented that it will provide law enforcement services to the best of its ability should the proposal come to fruition.

Conclusion of Law:

1. 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:

1. The site contains a mostly coniferous forest which is dense on the north half and scattered on the south half.
2. The site is steeply sloped and the developer has designated the entire site as a no build area, except for two building envelope areas, one around the existing residence on Lot 19A and one on Lot 19B. Both building envelope areas contain a minimum 2,000 square foot area with slopes less than 25%.
3. The applicant reports in the submittal packet that a geotechnical and slope stability analysis shall be completed by GMT for the new driveway prior to final plat.
4. Riparian resources exist on the property adjacent to the natural spring. Section 11 of the Development Covenants includes a Riparian Resource Management Plan and Map and the Riparian Resource has been designated on the plat.
5. The applicant reports in the submittal packet that there are no known areas of shallow bedrock and that high groundwater may be on the property due to the presence of the natural spring, but it is likely at the toe of the slope, which is located away from the building envelope areas.
6. Per Missoula County's 1992 *Inventory of Conservation Resources* and Missoula County cadastral data the site is designated as winter range for elk and white tail deer.
7. Section 13 of the Development Covenants contains living with wildlife provisions. Sharon Rose of the Montana Fish, Wildlife and Parks recommended that only wildlife friendly perimeter or boundary fencing be permitted. Staff recommends a condition of approval requiring the last sentence of Section 10 of the development covenants be revised to state that all perimeter or boundary fencing shall be wildlife friendly.
8. Bill Otten of the County Weed District recommended that the grass mix in the Revegetation Plan be revised but otherwise found the Revegetation Plan and Section 6 of the Development Covenants satisfy the state and county noxious weed control requirements. The applicant included the revised grass mix as recommended by Bill Otten in the Revegetation Plan appended to the Development Covenants.

Conclusion of Law:

1. Impacts to the natural environment and wildlife habitat will be mitigated if the recommended conditions are imposed.

CRITERION 5: EFFECTS ON PUBLIC HEALTH AND SAFETY--

Findings of Fact:

1. The Frenchtown Rural Fire District serves the property. The Missoula County Sheriff's Department provides law enforcement services.
2. The property will be served by individual wells and septic systems.
3. The City-County Health Department comments that Missoula County has a high radon potential, and therefore recommends that all new residences incorporate radon resistant construction features. The Health Department language addressing radon mitigation has been included in Section 5 of the Development Covenants.
4. The property is in a Wildland Residential Interface (WRI), and fire protection guidelines regarding fuel management and roofing materials have been included in Section 4 and 12 of the Development Covenants.

Conclusions of Law:

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

C) COMPLIANCE: This subdivision complies with:

1) SURVEY REQUIREMENTS

Findings of Fact:

1. 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:

1. This proposal meets the survey requirements.

2) SUBDIVISION REGULATIONS

Findings of Fact:

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

Conclusion of Law:

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

3) REVIEW PROCEDURE

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula County Subdivision Regulations.
2. Notice of a public hearing on this second or subsequent minor subdivision was published in the Missoulian on April 2 and April 9, 2006. Certified letters were mailed to landowners within 300 feet of the subdivision on March 31, 2006. On April 3, 2006 a poster was placed near the intersection of West Nine mile Road and Rennie Creek Road, which included the date, time and location of the public hearings to be held on this subdivision.
3. The Missoula Consolidated Planning Board held a public hearing on the subdivision on April 18, 2006 passing on its recommendation to the Board of County Commissioners.
4. The Missoula County Board of County Commissioners held a public hearing on the subdivision on May 3, 2006.
5. 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:

1. 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:

1. Easements for utilities are contained within the 60-foot public access and public utility easement for Rennie Creek Road. Both lots access directly off of Rennie Creek Road.
2. The developer has included a declaration of general utility easement on the face of the plat.
3. This subdivision will be served by Northwestern Energy and Qwest telephone service.

Conclusion of Law:

1. Utility services will be available to this subdivision.

E. PROVISION OF LEGAL AND PHYSICAL ACCESS:

Finding of Fact:

1. Rennie Creek Road provides legal and physical access to both lots on the property. Rennie Creek Road is a County Road with a 60 foot right-of-way and an 18 to 20 foot gravel surface width.

Conclusion of Law:

1. The proposal meets physical and legal access requirements.

VARIANCE REQUESTS

1. **The subdivider requests a variance from Article 3-2(3)(B) of the Missoula County Subdivision Regulations which requires a 24 foot surface width for public roads outside of the UGA to permit a 18 to 22 foot surface width for Rennic Creek Road.**

RECOMMENDATION

The Office of Planning and Grants recommends that the request be **approved** to allow an 18 to 22 foot surface width for Rennic Creek Road based on the following Findings of Fact listed below.

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.**
Rennic Creek Road is an existing public road with an 18 to 22 foot gravel surface width within an existing 60 foot public easement. Drainage is provided with swales on both sides of Rennic Creek Road. The applicant has included an RSID/SID waiver statement on the plat for improvements to Rennic Creek Road, which would permit the improvements to be taken as a whole, not in portions by individual property owners along their frontage. Approving the variance to permit an 18 to 22 foot surface width for Rennic Creek Road will not threaten public health and safety.
- B. **The conditions upon which the requests for variance are based are unique to the property for which the variance is sought and is not applicable generally to other property.**
It is a unique situation to be responsible for widening a very small portion of a public road, while creating one additional lot. Only the portion of the roads adjacent to this two lot subdivision would be widened, resulting in disruption of the drainage system. Adding one lot in this area will not affect the capacity to the extent that improvements are needed therefore County Public Works supports the variance request.
- 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.**
Rennic Creek Road crosses just the very tip of the southeast corner of the site, so the frontage is barely 100 feet for both lots combined. Widening such a small portion of the road would be ineffective and disrupt the drainage system.
- 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 would not violate the provisions of the Missoula County Comprehensive Plan or provisions of the Missoula County Zoning Resolution.
- E. **The variance will not cause an increase in public costs.**
No increase in public costs is anticipated with the granting of this variance. The plat includes a statement waiving the right to protest a future RSID for improvements to Rennic Creek Road.

There being no further business, the Commissioners were in recess at 3:08 p.m.