

Public Meeting – May 17, 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, Chuck Wright, and Mike Sehestedt Chief 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 \$685,584.84. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

BID AWARD (*Public Works*)

Greg Robertson: Before you are a request to award to a dust palliative applicator to apply magnesium chloride to approximately 37 miles of county maintained roads throughout Missoula County. We received three bids in response to our solicitation. The low bidder was WE Dust Control in the amount of \$67,642.50. We have evaluated their bid and find it acceptable and recommend that you award to WE Dust in the amount of \$67,642.50.

Commissioner Carey: Thank you, Greg. Questions or comments for Greg? Public comment? None.

Bids were let and opened on May 8, 2006 with the following results:

WE Dust Control	\$67,642.50
Dustbusters, Inc.	\$95,007.08
Desert Mtn.	\$120,200.25

Commissioner Curtiss moved to approve awarding the bid for dust abatement go to WE Dust Control in the amount of \$67,642.50, as our lowest and most responsive bidder. Commissioner Evans seconded. The motion carried on a vote of 3-0.

DECISION (*From May 3, 2006*)

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: Public Works Survey. Commissioner Evans and I visited the site. We found the area, there's no road built. It looks like there is no reason for us not to abandon it. It's a good idea as far as we were concerned and I'll turn this to Barbara.

Commissioner Evans: I agree with him. In addition, when we do this, then the piece of property goes on the tax roles, which the person apparently knows.

Commissioner Evans moved to grant the request to abandon the portion of the unnamed road off Remick Road, near Condon per the request. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

HEARINGS

Hayden Family Transfer

Commissioner Carey opened hearing.

Mike Sehestedt: This is consideration of a request to create a family transfer parcel for that parcel described as Tract A of COS 2547 located in the S ½ SW ¼ NW ¼ Plat I Section 35, Township 11 North, Range 20 West. Samuel R. and Florence N. Hayden have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is

approximately 20.29 acres in size located near Florence, Montana. Samuel and Florence Hayden propose to create one approximately ten (10) acre parcel for transfer to their daughter, Tammy O'Conner, for residential purposes. They intend to keep the remaining ten plus (10.29) acres for use as their residence and for pasture. The property is not zoned. The history of the parcel is as follows: Samuel and Florence Hayden purchased the 20 plus acre parcel of land in 1959 and retraced their ownership in 1980 as evidenced by COS 2547. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act. I would note for the record that we have received a Certificate of Survey in draft form from Mr. Martinsen. I believe he's representing the Hayden's. Based on this, it appears that the proposal has been modified to create a five acre and retain a 15 acre, but the other information remains the same.

Tammy O'Conner: I'm the daughter.

Samuel Hayden: The owner.

Commissioner Carey: Thank you. We ask our Chief Deputy County Attorney to ask you, the applicants, several questions on the record just to make sure there is not attempt to evade subdivision review, which is a misdemeanor.

Mike Sehestedt: As Commissioner Carey indicated, the purpose of this interrogation isn't to embarrass you or suggest anything in the nature of wrong doing. We need to verify that this is in fact a bonafide use of the exemption, this it is really going to be a transfer to a family member and not simply a ruse to evade subdivision review. You have owned the property since 1959, correct?

Samuel Hayden: Yes.

Mike Sehestedt: Clearly, if you've waited this long, if you bought it with the intent to divide, you're very patient. We'll let those questions go. Do either you, or your daughter, intend to transfer to some third party within the next year?

Samuel Hayden & Tammy O'Conner: No.

Mike Sehestedt: If your daughter is a minor and she clearly isn't, so we'll skip that question. Have you talked to anyone at the County about going through subdivision review?

Samuel Hayden: They sent us there first, and we went through the whole thing. We kept telling them we were looking for a family transfer, but they said we had to hear the subdivision rules first.

Mike Sehestedt: But you hadn't proposed to subdivide, been turned down and then tried for a family transfer?

Samuel Hayden & Tammy O'Conner: No.

Mike Sehestedt: Are you in the business of building or developing property?

Samuel Hayden: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Samuel Hayden: No.

Mike Sehestedt: You do understand that when property is divided by use of an exemption, all we look at is whether or not you're evading the law by dividing property through use of an exemption. We don't review it for adequate access, availability of emergency services or health purposes, zoning...this property is not zoned. All you get out of this is approval of the division and not approval for any particular development plan.

Samuel Hayden: Yes.

Mike Sehestedt: I have no further questions.

Commissioner Curtiss: Is the new proposal of the five acres what you're planning to transfer, rather than the original 10?

Samuel Hayden & Tammy O'Conner: Yes.

Commissioner Curtiss moved to approve to request by Samuel R. and Florence N. Hayden to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Evans seconded. The motion carried on a vote of 3-0.

Leak Family Transfer

Mike Sehestedt: Consideration of a request to create a family transfer parcel for that parcel described as Tract 12C-1, COS #5746 in the E ½ of Section 19, Township 14 North, Range 20 West. Roger and Donna Leak have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately ten (10) acres in size, located on the Western Farms Road, near Pulp Mill Road. Roger and Donna propose to create one approximately five (5) acre parcel for transfer to their daughter and son-in-law, Tanya and Wayne Rudnitski, for residential purposes. They intend to keep the remaining approximately five (5) acre parcel for continued use as a residence and small farmstead. The property is not zoned. The history of this parcel is as follows: COS #1720 was filed in December 1978 to create a parcel of land for occasional sale. In 2002, the property was deeded to Roger K. and Donna W. Leak. COS #5746 was filed in 2005 to relocate the common boundaries between Tracts 12A, 12B and 12C of COS 1720. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except: COS #5746, 09/15/2005, BR, NE SE Sec. 19, T14N, R20W.

Tanya Rudnitski: I'm the daughter.

Wayne Rudnitski: The son-in-law.

Mike Sehestedt: The Leaks originally acquired the property in 2002? Did you acquire it with the intention of dividing it?

Tanya Rudnitski: No.

Mike Sehestedt: I take it your daughter is not a minor.

Tanya Rudnitski: I am the daughter. My parents are not here.

Mike Sehestedt: I'm sorry. Have you or your parents talked to anyone at the County about going through subdivision review for this parcel?

Wayne Rudnitski: The County, no. We talked to the surveyors.

Mike Sehestedt: Are you in the business of building or developing property?

Tanya Rudnitski: No.

Mike Sehestedt: Are you attempting to evade the subdivision review?

Tanya Rudnitski: No.

Mike Sehestedt: And your intention with regard to the property is to do what when you receive it?

Tanya Rudnitski: It's residential. My parents when I got divorced and I put my home on it. I had a mobile home that I put on it.

Mike Sehestedt: So essentially this is just to create a homesite for an existing mobile home.

Tanya Rudnitski: Yes.

Mike Sehestedt: You do understand that when property is divided by use of an exemption, all we look at is whether or not you're evading the law by dividing property through use of an exemption. We don't review it for adequate access, availability of emergency services or health purposes, zoning...which isn't applicable because this property is not zoned. All you get out of this is approval of the division and not approval for any particular development plan. If you want to do things on the property, you'll need to apply for all of the other permits, building permit, floodplain permit, sanitation and so on.

Tanya Rudnitski: Right.

Commissioner Curtiss moved to approve the request by Roger and Donna Leak to create on parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Evans seconded. The motion carried on a vote of 3-0.

Stratton Family Transfer

Mike Sehestedt: Consideration of a request to create a family transfer for that parcel described as COS # 5697, Tract 55-B2, Section 17, Township 14 North, Range 20 West. Shelly Carol Stratton has submitted a request to create one parcel using the family transfer exemption of the Montana Subdivision and Platting Act. The current parcel is approximately four plus (4.18) acres in size, located on Fire Bucket Loop in the area known as the Meadows of Baron O'Keefe. Shelly Stratton proposes to create an approximately two (2) acre parcel for transfer to her seven-year-old son, Logan Derrick Stratton. The stated purpose for creation of the parcels is for residential lots. Shelly Stratton asserts that a trust will be established to hold title to the property for the benefit of her son. The history of the parcel is as follows: COS #1925 was filed in 1979 for the purposed of creating parcels in excess of 20 acres in size. COS #4865 was filed in 1998 to create a tract of land 10.80 acres in size for a family transfer from Adam and Hazel Holzer to their son, Daryl. In August 2003 Daryl Holzer deeded the tract of land to Richard D. Stratton. In June 2004, Richard Stratton requested permission to divide the 10.80 acre parcel by use of the family transfer exemption, for transfer to his wife, Shelly. He testified at the Board of County Commissioners hearing that he bought the property with the purpose of dividing it and he intended to immediately see on the of parcels created if a family transfer was approved. Mr. Stratton argued that he was just creating two five acres lots and, 'if he was creating three or four lots, he could understand that he was evading subdivision. This is just two lots, one will go to my wife and one I will retain.' If this request is approved, it will be the third parcel created by Mr. Stratton and his wife through exemption. Mr. Stratton's representative, Gilbert Larson, testified that the cost of a two lot subdivision was two to four times the cost of a family transfer exemption and the time required is much longer for subdivision. The Board of County Commissioners approved the family transfer by a vote of 3-0. COS #5697 was filed on May 20, 2005 by Richard Stratton creating two tracts of land, one of which he transferred to his wife, Shelly Carol Stratton. On June 5, 2005 Richard Stratton sold the remainder parcel of COS #5697 to Stephen and Dawn Steadele.

Shelly Stratton:

Mike Sehestedt: Did we accurately state that you acquired this parcel May 20, a year ago? And is it accurate that this parcel was created by the use of the family transfer exemption?

Shelly Stratton: Yes.

Mike Sehestedt: Did you acquire the property as a result of the previous division with the intention to divide it?

Shelly Stratton: No.

Mike Sehestedt: What facts have changed that caused you to now decide to divide it?

Shelly Stratton: We have decided to divide it to establish a college trust fund for my son.

Mike Sehestedt: And this property will then be sold and the proceeds placed in the trust fund?

Shelly Stratton: We will hold on to the property for 10 or 11 years and when he turns 18 that is when we plan on selling the property for his college.

Mike Sehestedt: Since your son is a minor, have you established a trust for your son to hold title to the property?

Shelly Stratton: Yes, I have contacted an attorney and it is in process.

Mike Sehestedt: Who will be the trustee for the trust? Who will actually control it?

Shelly Stratton: Richard Stratton.

Mike Sehestedt: If the property is sold, you understand that all of the proceeds go to the trust?

Shelly Stratton: Yes.

Mike Sehestedt: And that it's a violation fiduciary responsibility and potentially theft for a trustee to misappropriate proceeds from a trust? It's a felony.

Shelly Stratton: Yes.

Mike Sehestedt: Subdivision evasion is a misdemeanor, misappropriation of funds is a felony. Have you talked to anyone at the County about going through subdivision review for this parcel?

Shelly Stratton: No.

Mike Sehestedt: Are you in the business of building or developing property?

Shelly Stratton: No.

Mike Sehestedt: Have you divided in other counties by the use of the exemption process?

Shelly Stratton: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Shelly Stratton: No.

Mike Sehestedt: How do account for the fact that in less than a year, we've gone from 10.80 acres to a 10 and a couple of twos, as it were....if you're not in the business of dividing property?

Shelly Stratton: This is the first time we've actually had land to do this with and in retrospect, we would've done this one time and separated it into three different parcels. Build a home on one and save the other two for college for our children.

Mike Sehestedt: Since the representation last time was you were going to build on the parcel retained, have you actually commenced that process?

Shelly Stratton: No, we're waiting for that.

Mike Sehestedt: Are you attempting to evade subdivision review?

Shelly Stratton: No.

Mike Sehestedt: Do you understand that this request is not being reviewed for adequate access in all weather for all vehicles, including emergency services?

Shelly Stratton: Yes.

Mike Sehestedt: Do you understand that this approval does not mean the property is approved for zoning compliance, floodplain, septic, or any other consideration regarding use of the land?

Shelly Stratton: Yes.

Commissioner Evans: It may seem like an inquisition and we apologize for that. But the law burdens us with determining whether land splits are being done really to give it to family members, as outlined by law, or whether it's a nice way around the law to get the land split. So we have to ask these questions. The area in which you are living, or wanting to split, is in the area where we've had so many problems and have been to court on this issue. So, it does make us a little bit extra careful and it makes us question. I did see Gilbert say that the trust would be established before the plat is filed? Is that correct, Gilbert? He said yes.

Commissioner Carey: Before I call for the question, I would just like to ask our attorney if....it may not have been their intention, but has there been a subdivision in fact without subdivision review?

Mike Sehestedt: Well, any division of land is a subdivision. The question is whether or not this is subject to review. Essentially we've gone from a 10 acre parcel a year ago, to three tracts now. First they split it into two fives and now we're splitting it again. The call is for you, I think these facts give me grave reservations. In fact, they represented they were going to hold one to build on it and sell the other – that was a stretch the first time. Now it turns out they're going to divide one and we sold one, just like we said. The one held, they haven't built on yet, but they're splitting it into two pieces....I leave it to you to decide what's happening here. You three are the finders of fact, but this is about as far as you can go factually with a Certificate of Survey and be able to have any basis for finding it's not evasion.

Commissioner Evans moved to approve, with a little fear and trepidation, to approve the request by Shelly Carol Stratton to create one parcel by use of the family transfer exemption for transfer to her son, Logan, based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Burklund Family Transfer

Mike Sehestedt: Consideration of a request to create a family transfer parcel for that parcel described as Tract B, COS #1467, Section 25, Township 14 North, Range 21 West. Louis William Burklund has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10.84 acres in size, located at the intersection of Mullan Road and Fairbanks Lane. Mr. Burklund proposes to create one approximately five (5) acre parcel for transfer to his daughter, Jodie Burklund, for residential purposes and keep the remaining approximately five plus (5.84) acre parcel for residential purposes as well. The property is unzoned. The history of the property is as follows: COS #1467 was filed in April 1978 to create parcels of land in excess of 20 acres with Tract B a remainder parcel less than 20 acres in size. Louis W. and Lucretia A. Burklund entered into an agreement to purchase the property in 1978. Lucretia Burklund quitclaimed her interest to Louis Burklund in 1991. According to records kept by the Missoula County Surveyor, the applicant has not previously used exemption to the Subdivision and Platting Act.

Commissioner Carey: Is Mr. Burkland or his representative here? No one is here for the Burklunds?

Mike Sehestedt: That would suggest that we take comment from anyone who wants to comment on it and continue it.

Commissioner Carey: Okay, do we have anyone to comment on this?

Tim Wolff: With Territorial Engineering. I might be out of line, but I have talked to Mr. Burkland about this. He didn't ask me to come and I'm not sure if he wants me to speak for him, but....

Commissioner Carey: Do you think you're familiar enough with the situation to be able to answer the questions, Tim?

Tim Wolff: I think I am.

Mike Sehestedt: Do you know if Mr. Burkland or his daughter intends to transfer the property within the next year?

Tim Wolff: What my recollection is, no. Actually, his daughter lives there now and he wants to do the family transfer so she can get title to the property where her house is.

Mike Sehestedt: Does Mr. Burkland also have a house on the property?

Tim Wolff: That I don't know. I think that he, if he doesn't, he has something very close by.

Mike Sehestedt: I'm betting that this is an adult daughter.

Tim Wolff: Yes.

Mike Sehestedt: We don't know precisely what the situation is, so we don't know about development on the property. Do you know if they talked to anyone at the County about going through subdivision on this piece?

Tim Wolff: I'm sure that they did not.

Mike Sehestedt: Do you know if Mr. Burkland or his daughter are in the business of dividing or development property?

Tim Wolff: No, they're not.

Mike Sehestedt: Do you know if they're attempting to evade subdivision review?

Tim Wolff: I don't know, but I'm guessing they are not.

Mike Sehestedt: You believe they understand that this request is not being reviewed for adequate access, all weather, all vehicle including emergency services.

Tim Wolff: Yes, they are aware of that.

Mike Sehestedt: And you believe they understand that this approval does not mean the property is approved for zoning compliance, floodplain, septic or any other regulatory issues.

Tim Wolff: Yes, they're aware of that.

Seeing no one come forward, the hearing is closed.

Commissioner Evans: Should we go forward with this even though there isn't a representative here to question directly?

Mike Sehestedt: If you are satisfied with the information before you, then you can go ahead and approve it. If you're not satisfied, or feel that you'd like to hear directly from the applicant more directly, then my recommendation would be that you continue.

Commissioner Evans: If these things had happened yesterday, I might be less inclined to go ahead with it. But these are things that have happened several years ago so....

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

Grenager Family Transfer

Commissioner Carey opened the hearing.

Mike Sehestedt: Consideration of a request to create a family transfer parcel for that parcel described as Lot 10, COS #3611 of Section 33 and 34, Township 15 North, Range 22 West. Karl and Nancy Grenager have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20 acres in size, located near the Nine Mile exit off of I-90, adjoining the Clark Fork River. Karl and Nancy propose to create one approximately ten (10) acre parcel for transfer to their 14-year-old son, Jess Grenager, for a single family residential parcel. They will keep the remaining approximately ten (10) acre parcel where there is an existing home. The property is not zoned. This history of the parcel is as follows: COS #3611 was filed in October 1988 creating parcels of land greater than 20 acres in size. The parcel was deeded to Lyle, Karl and Nancy Grenager in 1989. In July 2001, all the parties quitclaimed Lot 10 to Karl and Nancy Grenager as joint tenants. According to the records of the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except: COS #5348, 12/05/2002, RET, SE Sec. 10, T12N, R19W.

Karl Grenager: Owner of the land.

Mike Sehestedt: You've owned the property since 1989?

Karl Grenager: That sounds about right.

Mike Sehestedt: Lyle was your father?

Karl Grenager: Yes.

Mike Sehestedt: He quitclaimed his interest out to you and your wife in 2001?

Karl Grenager: Yes.

Mike Sehestedt: Do you or your son intend to transfer the property to a third party within the next year?

Karl Grenager: No.

Mike Sehestedt: What is the intention with regard to the parcel when given to your son?

Karl Grenager: There is no intent; we're just trying to pass something on to him.

Mike Sehestedt: Since your son is a minor, have you established a trust to hold title to the property?

Karl Grenager: Yes, I have that right here.

Mike Sehestedt: Who will the trustee be?

Karl Grenager: Me and Nancy.

Mike Sehestedt: You do understand if the property sold, the proceeds have to be held in trust for your son?

Karl Grenager: Yes.

Mike Sehestedt: Have you talked to anyone at the County about going through subdivision review?

Karl Grenager: No.

Mike Sehestedt: Are you in the business of building or developing property?

Karl Grenager: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Karl Grenager: No.

Mike Sehestedt: You do understand that when property is divided by use of an exemption, all we look at is whether or not you're evading the law by dividing property through use of an exemption. We don't review it for adequate access, availability of emergency services or health purposes, zoning...which isn't applicable because this property is not zoned. All you get out of this is approval of the division and not approval for any particular development plan. If you want to do things on the property, you'll need to apply for all of the other permits, building permit, floodplain permit, sanitation and so on.

Karl Grenager: Yes.

No further comment, Commissioner Carey closed the hearing.

Commissioner Evans moved to approve the request by Karl and Nancy Grenager to create one parcel by use of the family transfer exemption based on the fact that there doesn't appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

CONSIDERATION (Continued from May 3, 2006)
Homestead Estates (4 lots on 152.65 acres) – North of Condon

Tim Worley: with OPG. This proposal is to divide 152.65 acres into four residential lots. This subdivision was reviewed originally knowing that the property had important natural resource concerns, including extensive riparian areas. It was also known that part of the proposed subdivision was within a mapped grizzly bear linkage zone. Specific agency comment regarding the grizzly bear issue was lacking until the week of the public hearing, May 3, 2006. As a result, staff recommended approval of the subdivision at that time. Riparian resource protection and mitigation was included in the recommended conditions, but there were no conditions based on the grizzly issue because of a lack of agency comment up to that point. The subdivision was originally heard at the May 3 public meeting and late the week before the subdivision went before the Commissioners and the week of the meeting, the grizzly linkage zone became an issue of increasing concern. Chris Servheen, Grizzly Bear Recovery Coordinator for the U.S. Fish, Wildlife Service communicated some of his concerns about residential development in this area the week of the original public meeting. Staff provided the Commissioners with additional conditions at the meeting on the 3rd as an attempt to mitigate two concerns. The first was legal access and the second was the impact to grizzly bear habitat. Homestead Estates was continued until today, May 17, to allow time to address this grizzly issue. Between May 3 and today, a separate meeting occurred between

OPG, the U.S. Fish and Wildlife Service and the Fish, Wildlife and Parks Department. And yet another was held between OPG staff member, Steve Stolp the landowner and his attorney, Tom Orr. The legal access issue has since been fully resolved, but the grizzly habitat issue was further addressed by a subsequent e-mail from Chris Servheen. His concerns included the impacts of disbursed development to grizzly habitat in this area. The problem of increased bear attractants that potentially bring bears and humans into conflict. Based on this latest information, staff has three different options for the Commissioners consideration today. The first is to approve the subdivision per staff's original recommendation. You'll see those recommendations in the staff report. The second option is to approve the subdivision with conditions that mitigate impact to grizzly habitat. These conditions require relocation of building envelopes and decommissioning of built driveways and/or graded building sites. The number of lots has been left open in the condition. You'll see this is the brown memo I have give you (in Homestead file). The third option is to deny the subdivision based on probable impacts to grizzly bears as a result of this subdivision. You'll see those findings and the denial motion on white bond paper (in the file). I should note that if option 2 is chosen and you chose to mitigate impacts, it's also appropriate to move the motions contained in the original staff report. That's all I have, I am here as a resource. Thank you.

Tim Wolff: I'll start on behalf of Mr. Stolp. We would like to go with option one, where we approve the subdivision and the original conditions of approval as submitted by the staff at the May 3rd meeting. The reason that we feel that we've met the intent of the subdivision regulations, we went back after the original e-mail from Chris Servheen, that said the same things, nothing specific that I saw, that are contained in the grizzly bear study. The only document we had at our disposal was Managing Private Lands in the Swan Valley Linkage Zones for Grizzly Bears and other wildlife. We thought we were in total compliance with that and just as a matter of background, I'd like to go to that. On page 6, under recommendations it says: The management recommendations that follow were forged during the course of our meetings. They are meant as a set of guidelines for those who want to voluntarily manage their private lands to lessen the threats to grizzlies and other wildlife that use the valley bottoms for habitat and travel. So, that being said, that's what we thought we were doing. We were voluntarily trying to allow for the grizzly bears. We had statements in the covenant that we worked with Tim Worley back and forth, so we thought we were in compliance. If you go further on that same page, the subdivision development and land use – there are nine recommendations and we feel that we've substantially complied with all of those. Number one being that we recommend no more than one dwelling per 40 acres within the linkage zones and we think that we've done that. We thought that was the goal and that we had accomplished that, and all of the rest of them have to do with informing buyers and creating conservation easements, which we have not formally created a conservation easement, but informally or in the aspect of creating the building envelopes and the rest of the property as 'no improvement zone', it's the same effect as a conservation easement. That land will be held in its natural state, other than those areas designated for the homesites. I just feel that we've met those goals and recommendations. We don't feel that there's any evidence that there's a substantial impact on wildlife that has been presented since the May 3 meeting. Lem Koblinski, I talked with him this morning, he is Mr. Stolp's realtor, but he was also a member of the Swan Valley group that put this plan together. He asked me to...he couldn't make it down today, he asked me to mention three things. 1. the management plan is a voluntary guideline, and we've volunteered the things. We're in compliance with the rest of it. The other thing he said that I found interesting is that it's a temporary agreement between Fish, Wildlife and Parks, the state Forest and Plum Creek. This agreement has to be revised and renewed every five years. The significance of that is the grizzly bear situation could change with time and we would all hope that, like in Yellowstone Park, that the grizzlies will be de-listed as endangered species. I just find it interesting that it's a temporary agreement and what we're talking about doing, or the condition that's out there is pretty permanent as far as Mr. Stolp is concerned. The last thing is that this plan was implemented without any of the private landowners being notified that it was going in to effect, so it was kind of put in behind their backs and without their consent or input. That's just a statement from him and I don't know that's true, but I would believe that it is. I ask that you approve this subdivision with the original staff report that we presented at the May 3 meeting, minus the conditions 10 and 11. Thank you.

Commissioner Carey: Tim, do you have Chris Servheen's e-mail of May 10?

Tim Wolff: Yes, we got that with Tim's handout today.

Commissioner Carey: I have a quick question for Tim Worley. The comp plan I know doesn't have any force in law, but doesn't it speak to clustering homes in open and resource lands?

Tim Worley: Actually, I do have a handout that Nancy Heil got me up to speed with that I will hand out to you that points out some areas that point to the clustering issue. Nancy took some time, since I was at a hearing this morning, and did some highlighting that I think it pretty helpful on this document entitled 'Land Use in the Swan Valley'. Really, within the Swan plan there is some language about clustering. It speaks a little more to clustering in higher density situations. For instance, I think under the rural residential cluster development option, on dwelling per five acres. I think there's some reference to clustering. I think in the Swan Plan, there's really no direct reference to clustering with the open and resource areas because residential development isn't an assumed given in these open and resource areas. I'll just read something that Nancy highlighted on page 29, 'While open and resource land is not a residential designation, on dwelling per 40 would meet the intent of the classification and meet the goals and strategies listed in this plan. Development in these areas should be grouped or clustered, so there is somewhat of a cluster reference there, near existing facilities such as roads, to protect the open and resource designation. I think that's the only reference that I know of.

Commissioner Carey: Again for the record, if a subdivision is denied, the developer has the opportunity to mitigate the proposal to address the reasons for denial.

Tim Worley: Yes. I actually have another handout that Nancy equipped me with regarding the issues of mitigation and also the issue of denial. This is out of state law MCA 76-3-608, if you look at what Nancy has highlighted, it says 'the governing body may require a subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under sub section 3. And the governing body shall issue written findings to justify the reasonable mitigation required under the sub section.' I think that's option 2 that I spoke of in my original presentation. If you look under 5(A), it says, 'in reviewing a proposed subdivision under sub section 3, when requiring mitigation under sub section 4 a governing body may not unreasonably restrict the land owners ability to develop land.' I think Tim touched on that. 'But it is recognized in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.' So that's option three that we furnished you with today.

Commissioner Carey: Will you please go ahead to page 80 on this handout.

Tim Worley: Right. That's out of article 4 in the subdivision regulations, outlining the five criteria that every subdivision is reviewed under. You can see under 4-112, the citation is taken pretty much directly out of state law. It sites whether unmitigated impacts of a proposed subdivision are unacceptable precluding approval of the plat.

Pat O'Herren: Rural Initiatives. As you know, Chris Servheen has provided you with a fair amount of information. I think it's important for the record to note the qualifications of Mr. Servheen. Chris has been the Grizzly Bear Recovery Coordinator for the U.S. Fish and Wildlife Service since its inception as a program. He has his PhD and his masters and bachelors. It's interesting to note that his earlier work in his masters and PhD programs specifically revolved around the Swan Valley, so he's fairly cognizant of the issues that are occurring there. As Grizzly Bear Recovery Coordinator, he is responsible for all research and management of the grizzly bears, *Ursus arctos*, in the lower 48 states. He also consults with British Columbia and is a government consultant to Greece, France, Italy, Spain, Austria, Japan, Malaysia, Thailand and I believe a couple of other countries that I've forgotten on bear issues. He is a recognized worldwide expert in the field. He has some 75+ publications and reports, most of which deal with the *Ursus arctos*, the grizzly bear. He's had somewhere in the neighborhood of a dozen masters graduate students in the field, working on grizzly and other wildlife issues. He has a number of publications that deal with interagency cooperation and the desirability of local government to work with state and federal agencies. Chris wanted me to let you know that he apologizes for the lateness of his comments and he and Fish, Wildlife and Parks hope to work much better with local government to

provide such comments earlier in the process, so it does not leave the applicant wondering what's going on at the last minute, nor should it leave you in that position. I would like to add that in Chris's e-mail, he does talk specifically about impacts of development particularly in the Swan. The bear's a wide ranging species of limited distribution. It's reduced to approximately 1% of its historic range in North America. It's called wide ranging, because it has home range need of hundreds of miles. That home range has to surpass to provide feeding, breeding, bedding and denning habitat. Its limited distribution is in part because of something called homozygosity and homogeneity. Simplified, what that means is the bear needs to move across long distances to make sure its gene pool is diversified. It's like human beings, it can get isolated and that isolated population is susceptible to extinction. Tim Wolff mentioned earlier that we hope the bear will certainly be de-listed at some point, that's possible in Yellowstone, because it still has gene dispersal but throughout the population there is very real concern that the Mission Mountain bears will lose that diversity if the connections to the greater northern continental divide ecosystem of the Swan Range, the Bob Marshal, the Scape Goat, Great Bear and Glacier National Park are lost because of the development in the bottom lands along the Swan. Chris also noted in his e-mail that there will not be probable impacts on grizzlies with development in the Swan; he noted there WILL be impacts on the grizzlies in the Swan. Those impacts are displacement which is further loss of habitat, reducing that 1% even further and an increased risk of mortality in the bears' native habitat. He notes that there have been six malicious killings of bears in the Swan, three tied directly to site development in the area. One of the key components of the Swan Valley Comprehensive Plan and the linkage study that was done was to note that indeed the study was voluntary and the legislature has told us that indeed comprehensive plans provide guidelines. I think it is important, as Tim noted in his handout to you, that the Swan Plan says that if you are going to develop in sensitive habitat, it is important to limit the dispersal of that development as much as possible. That is voluntary, it's not a requirement. It is a guideline, but it's a guideline that was indeed reviewed through the public hearing process. It was not a secret agreement; it was an open, transparent process that brought the Swan Valley Comprehensive Plan to you. So the public has certainly had the opportunity to review that. Tim probably wasn't in the neighborhood at the time, so he's not aware of the extensive public process that went through. Obviously, I need to talk to Ken and let him know that's the case. I'd also like to note that if indeed local government wants to work with state and federal agencies to de-list the bear, as Tim hopes we will, it is important to try to mitigate impacts on the bear, if at all possible. If it's not possible, then we need to look at other alternatives. Lynn noted, according to Tim, that it is a temporary agreement – the Swan Valley linkage plan – but the Swan Valley Comprehensive Plan, the amendment to the growth policy is also temporary, but on going. It gets reviewed and updated, that's something that will continue to happen. Implementation of any sort of recovery of the bear has to happen with the consent of the public. There is no way the bear in the Swan Valley, or anywhere else, will survive unless local government, private landowners and state and the federal agencies get together to find some way to allow some sort of development, but also somehow mitigate impacts if those impacts can be developed. In the case of grizzly linkage areas, it's especially critical because of the fact of the bears wide ranging, and does need to be able to exchange genes from one side of the ecosystem to the other. That's all I had in terms of additional information for you, as well as giving you some documentation on the record of the information you've received so far. Thank you.

Mike Sehestedt: Pat, I want to ask a couple of questions for the record. I want to direct your attention to the Homestead Estates...in the extreme northeast corner of the proposed homestead, up against the boundary in that corner, can you tell me what the land ownership is immediately to the north of that parcel.

Pat O'Herren: Immediately to the north is Forest Service.

Mike Sehestedt: So that building envelope effectively borders on Forest Service to the north?

Pat O'Herren: It does.

Mike Sehestedt: What is the ownership to the east of that envelope?

Pat O'Herren: The ownership to the east, as I've discussed with the property owner and with others in state and federal agencies, is currently in Plum Creek ownership. Cooperate timber ownership is scheduled for acquisition by the U.S. Forest Service.

Mike Sehestedt: So essentially, the building envelope is located so that it borders on Forest Service and soon-to-be Forest Service property in that location?

Pat O'Herren: correct.

Mike Sehestedt: Okay, let's go to the building envelope at the extreme southeast corner. What borders that building site to the east?

Pat O'Herren: To the east, again is the same section of Plum Creek that is targeted for acquisition by the Forest Service.

Mike Sehestedt: What is the Forest Service's principle motivation to acquire that parcel?

Pat O'Herren: Protection of sensitive species habitat.

Mike Sehestedt: Does that include the bear?

Pat O'Herren: It does.

Mike Sehestedt: What is the ownership immediately to the south of the building envelope in the southeast corner?

Pat O'Herren: To the southeast, that is actually private. To the immediate south, it's again a Plum Creek section that is scheduled for acquisition by the Forest Service for the same reasons as the parcel to the east.

Mike Sehestedt: Now to the parcel to the southwest and I believe it's Lot 1. Could you tell me what the ownership is immediately adjacent to that parcel?

Pat O'Herren: Immediately to the south is Plum Creek land and immediately to the west is existing Forest Service.

Mike Sehestedt: Will locating homes immediately adjacent to those forest and perspective Forest Service ownership adversely affect their value as habitat for sensitive species?

Pat O'Herren: Yes.

Mike Sehestedt: No further questions. I apologize for going through the description, but we're building a verbal record.

Commissioner Curtiss: Pat, could you show us on the map on the wall of the proposed subdivision, could you show us where the subdivision fits in the linkage zones?

Pat O'Herren: In the center of the northern linkage area which is the Swan front on the east and the Mission Mountains on the west. This is the area that, again recognizing that bears nor any other species recognize hard lines, the Fish and Wildlife Service, Forest Service and Plum Creek and Fish, Wildlife and Parks believe is critical to the exchange of bears from the Bob Marshall on the east to the Mission Mountains on the west. The subdivision is right there in the middle of that linkage area. Note that there are islands that are cut out of the linkage area to the southeast and again to the north and somewhat to the west. Those were cut out, I believe because of existing development that has occurred in there that impedes the safe movement of bears and other wildlife through the area.

Commissioner Curtiss: So the areas that are shown as islands were developed prior to the linkage zones being established.

Pat O'Herren: Correct.

Commissioner Curtiss: While the whole valley is bear habitat, these linkage zones were recognized to permit that travel, the corridor, rather than just because they live there. They live everywhere.

Pat O'Herren: Correct. At the time linkage areas were first proposed as critical, it was believed that if one were to prioritize areas for protection of a specific species, it was important to look at all of the features that species needs including movement. Consequently, or subsequent to that, there has been additional research. We know that bears utilize the area throughout the Swan Valley, but the Forest Service and others, including private sector, are allocating monies to acquire Plum Creek lands in those areas and that's why those are two high priority acquisition items for the Forest Service. It's not that these are not also important, but they are not quite as important to the Forest Service.

Commissioner Evans: Pat, if you were to look at the proposed locations for the houses, which Michael has described for us on the record, is there land on the islands or the pieces of land that are exempt that a clustering of houses would be less of an impact to both the bears and the humans? If so, could you point that out?

Pat O'Herren: I was fortunate enough to tour the site with the owner, Steve and his attorney, Tom and there are indeed limitations to development on this property. There indeed steep slopes, there are wetlands, bog, moving water, high ground water, there's sub-irrigated pastures and other things. Steve has, from my limited exposure to the parcel, picked four very good sights for development that exploits the exceptional views on the property. Those four sights are the sights that Mike walked us through earlier. Those four sites certainly disperse development and cause more displacement than one would have occur if they were grouped together. I quite honestly don't know the land well enough to tell you where other specific sites would be, although Steve has the ability to tell there are, and has been up front, saying there are sights that do not have those great views that are not where he has picked his best development site potential. It's obviously possible, if you look at the area to the middle of the property with the already existing development with two homesites, the issue becomes one of how much clustering can you have that is acceptable to humans and is also not too disruptive to species in the area. So there are other sites, exactly where they are, I can't tell you.

Commissioner Evans: Another question I have is in the past when we've met with the Forest Service, no sorry Fish, Wildlife and Parks, they indicated an interest in them enforcing covenants. Being a party to covenants that had to deal with the wildlife, because that's about the only legal way that they would have to deal with a violation of the covenants from an agency perspective. Do you feel that the Fish, Wildlife and Parks or U.S. Fish and Wildlife Service or someone would be amenable to being named as parties to the covenants that deal with the wildlife issues?

Pat O'Herren: They have accepted that responsibility in the past. Quite honestly, Commissioners Evans, I don't know where they stand today.

Commissioner Evans: That's all of my questions for now. Thank you.

Tom Orr: I'm the attorney for the owner of this property. Steve will be speaking to you in a minute. I hope that you're as concerned about this process as I am. We all care about the bears. I think Steve's development proposal shows how much he cares about the bears. He's not trying to put a lot of homesites in here. One of the reasons he's not putting in a lot of homesites is that he wants to maximize the aesthetic values for the few homesites that he's proposing. The other thing that you've heard is that there are some very tough topographical issues with development of this parcel - significant wetlands and steep hillsides. In fact, the most logical and best building sites are the three new ones that he's proposing. We do take seriously what Chris Servheen said and we do not dispute his credentials but in his first e-mail, one of the things he says in there is that the entire Swan Valley in Missoula County,

including this subdivision is intensively used by grizzly bears. That's a real general statement, but I think a question that you need to ask yourself if you're looking at adopting any of the new recommendations, I'll get to those in a minute, but if you want to recognize that the entire Swan Valley is used by grizzly bears, I think what you then have to be ready to say is we're going to prevent development of the entire Valley, because any development up there is going to have an impact and displace the bears. Another thing that Mr. O'Harren just said was all that public ownership and proposed public ownership, if U.S. Fish and Wildlife and Fish, Wildlife and Parks want to acquire this area which they're saying is part of that linkage zone, we would be interested in selling that property to them. But to say that we need to turn our land into a park, simply because it's surrounded by public and soon to be public lands, just doesn't make sense. What I'd like to come back to is the process. From the beginning, there's been a problem with getting comments from Fish, Wildlife and Parks and from the dept of Fish and Wildlife. In fact, there is no representative here and all we have are two ambiguous e-mails which say there are bears in the area and there will be some impacts. Again, unless your prepared to prevent development in that area, and then start looking at how you're going acquire that with public funds from all the private land owners I think that you have to ask is there a specific unmitigatable impact caused by the landowners proposal? We haven't seen anything that says there's going to be a specific impact that's not mitigated. Sure, anytime you develop in the area there's going to be an impact, but what Steve has done, if you actually look at some of the areas...the bears like the wetlands, he's staying out of the wetland areas because that's going to be an area the want to be. All of this land here is going to effectively become the same as the Forest Service and the Plum Creek lands because you can't build on it. The only building envelopes....that's another interesting point is that affect of this subdivision is going to be the creation of no-build zones which are simply going to be like conservations easements, except the public won't have to pay for those at all, they'll be owned by the landowners who will pay taxes on it. Another thing that I think you need to remember is that our potential clients, people that will purchase these lots, we're looking at people who are going to spend upward of \$500,000 for each lot. Those lands are going to be held...those homes are probably going to be someone's second or third home. There's not going to be a lot of living in those homes. Probably, no more than 40 days a year. You couple that lack of use with the covenants and the fact that they are surrounded....there's plenty of places for those bears to go in the areas that are going to be developed because they're public. We think that those more that adequately mitigate....and unfortunately because Mr. Servheen's not here we can't question him on whether that theory is correct. But there is a lot of land there and to single our Mr. Stolp to turn his property into essentially public land without paying for it, simply is unfair and I think it goes way beyond your discretion as Commissioners in this. We ask you to approve this subdivision and adopt the conditions that were first recommended on May 3 without the reduction of the homesites or the decommissioning of the roads. Mr. Stolp will talk to you about why those roads need to be where they're at. Thank you for your time and I hope you'll approve this subdivision.

5 minute break

Steve Stolp: Landowner, well I don't own the property, but my wife does and I have power of attorney and I am representing her. These....Tim already read this and I'm not going to be redundant about things that have already been said. I did speak with Glenn Grey, he's the second name in the back of this book that put the grizzly corridor together. His adoration for Chris Servheen is not near as great as Pat O'Herren's is. He explained to me that when they put this linkage zone together, they did not based on any scientific evidence of how or where the bears traveled through the Swan Valley. He'd be here today, but he's in the VA hospital having his blood tested. They put it together on the available undeveloped land without any regard for where the bears go. The only input that we got is two e-mails for Chris Servheen saying the bears use the entire Swan Valley and now we'd like to cluster development. In the recommendation's right here, which I've followed through the last 10 years, it says to discourage concentrated development within linkage zones and one building per 40 acres. Now, you've discussed ownership. North of us is 120 acres of Forest Service. To the west of us is 40 acres of Forest Service. Those two pieces are on the Forest Service To Sell list the Bush just came out with, you can find that right on the internet. Are they going to be sold with restrictions or not? Due east of us, not only is that Plum Creek property, but that's Plum Creek property clear to the Bob Marshall wilderness, there is no more private property back there. No one's building back there, they're not going to. There's Plum Creek south of us, part of that goes right over the highway and there's another road that goes through a portion of it. That one probably

has about two building sites on it too and the rest is down in the bottom, you couldn't build on the bottom of that it's a pretty wet piece of property. I think this....Mr. Worley's request that we donate 80 acres because...to the grizzly bear....I don't know where you want to send the tax bill. I wouldn't be paying it. I think it is way above and beyond any reasonable expectation. I cannot find where we are making a significant impact that's going to be to the detriment of these bears! So I'm going to ask you to vote for option number one. I'm going to ask you to not consider number two because I will not accept it or deny it. Thank you.

Commissioner Carey: Thank you Mr. Stolp. Any other comment? Any questions or comments among the Commissioners? I for one wish we had some zoning in the area so we might take a look at transferring development rights. We've just done that over on McCauley Butte. That worked to everyone's satisfaction. I also wish we had a bond to buy...or to find ways to preserve open space, I wish we had those monies in the bank because we might be able to come up with some cash and some transfer of rights and get creative about all of this. Unfortunately those are just wishes at the moment.

Commissioner Evans: Michael, Mr. Stolp brings up the tax on land that might be considered a no-build zone based on one of these recommendations. If that were the case and it were designated no-build, is there the potential for a reduced tax based on the fact that the person can't use it?

Mike Sehestedt: Actually, I believe, because these are 40 acre tracts everything but the building site would be taxed at the timber tract value of production rates. So we're not talking significant taxes on the ground whether it's no-build or just continues in forest. I guess I just don't think that issue...giving him the four lots that he wants, or any other configuration of four lots, as long as they're all in excess of 20, I think they're probably entitled to be taxed at the....the homesite out of it and then the balance of the ground is taxed, not at the residential tract rate but at the rate applicable to forest grounds which is based on production, not market value.

Commissioner Carey: Is there a motion?

Commissioner Curtiss: This is one of those really difficult ones, I guess I'm disappointed in a couple of things. One is that the packet presented didn't have any grizzly bear corridor even market in it and second was that Fish and Wildlife made such a late comment, which I think put all of us in a bad spot. When you look at those zones and go up and look where the private land is, it's rather odd that most of the private property has been left out of the zone but this piece has got a little section on it. Unfortunately that's the smaller grizzly linkage zone, so it adds more pressure than the other one does for having what was referred to earlier as a pinch zone. I have the aerial photo here...you can kind of see where those roads are....

Commissioner Evans: Neither Bill nor Jean were here in the past when we had a subdivision up nearly in the same area, where the Commissioners said you can build, I believe it was one house and Pat help me if you remember, but you cannot put it in the grizzly bear corridor. That's how I feel about this one. I don't wish to deny Mr. Stolp his four sites, but I would like them out of the identified corridor. So I will move....

Commissioner Evans moved to grant the four home lots but they cannot be located within the grizzly bear corridor as identified. Motion died for lack of a second.

Steve Stolp: Here's the grizzly corridor and as Pat O'Herren says, the grizzlies can't read, so they don't necessarily stay in that zone. Building Lot 1 is here in the southwest corner, if I have to move the building site out of the corridor, I have one steep hill up top of this parcel that I cannot build on and the other place is all swamp land. So effectively, moving this site would eliminate that 40 acres completely because there is no building site out of the corridor. Lot 2, lies in the southeast corner, if you put that out of the linkage zone, it will be in the culvert that's swamp. So we cannot move those two zones out of the corridor as designated on the map because there is no other logical place to move them to.

Commissioner Curtiss: Mr. Stolp on Lot 2, which is the southeast corner, further down the road toward the main road there's kind of a wide spot on the map, is that a buildable area?

Steve Stolp: Yes, that's a possible building site. But the one I've already designated is within 500 feet of Lamar's house and there's eight residents right in that area. They're not bothered by any bears and I don't think they're slowing down the bear traffic.

Commissioner Curtiss: So it's 500 feet between your proposed lot and the other cluster?

Steve Stolp: Just about from Lamar's house to my building site.

Tom Orr: In your cluster development it talks about houses being within 500 feet of each other, so that actually, while we're not clustering with that development, we would fall into the cluster development standards if that's what you want to apply for that building site. The other thing about the clustering sites, they're asking the developments be clustered close to roads, all of these proposed sites are within 3/10 of a mile of the highway, so they're all really close. We could almost be part of a cluster development with Lot 2 and we're trying minimize those impacts with all of the proposed lots.

Commissioner Curtiss: Did you mean 3/10 of a mile of these main roads? They're more like....

Tom Orr: Right 3/10 of a mile, yes. From his main road.

Commissioner Curtiss: Pat, we know in the Swan the private property is basically on the valley floor and looking at the map that shows the linkage zones does that mean there is no potential for development in the Swan on the other properties?

Pat O'Herren: No, quite the opposite. In discussions with Fish and Wildlife Service and Fish, Wildlife and Parks, their concept of clustering is certainly not to spread development within 3/10 of a mile, obviously if you did that then you're causing a greater area of impact. There are a number of parcels that have already been divided, if not built upon, in this area and Fish, Wildlife and Parks and Fish and Wildlife Service is in the process of meeting with Rural Initiatives and discussing the fact that if there is to be development in the Swan, this is where it should go. So it's not that there should be no development in the Swan at all.

Commissioner Carey: Could you describe in words for the record?

Pat O'Herren: The middle part of the Swan, as it's in Missoula County, which is north of the main linkage area that goes through Lindberg Lake and is south of the smaller linkage area that goes through the subject property that's under discussion today.

Commissioner Curtiss: Does that in effect mean that anyone who lives outside of that middle band between the two linkage zones, their property doesn't have the same development potential?

Pat O'Herren: You certainly have potential for developing, but there are constraints to that development that local government should evaluate on each particular subdivision that comes in. An example of that is the subdivision that you had at Lindberg Lake, close to existing development and County road, but again still utilized by a threatened and endangered species, so you put conditions on that subdivision.

Commissioner Curtiss: In looking at Homestead Estates, if you were going to make judgment call on Lot 2 in the southeast corner, would clustering a new home closer to the existing homes of the other property (Lamar's)...would that be any worse than moving it halfway down the hill closer to the other main road? Is the impact partially having the long main road?

Pat O'Herren: It is. That's I think a component that hasn't been discussed today....what this road does is provide for additional opportunities for conflict between humans and wildlife. When you bisect parcels you have created a barrier that the wildlife must cross, whether it's amphibians on Highway 93 or grizzly bears trying to cross residential roads. It just creates more opportunity for both human and wildlife mortalities. The issue here is one that the bear movement has already been pinched by development on the Lamar property. Judging from the data that's been gathered by the two state and federal agencies, this has move the bear movement north. Pinching this off further in effect, reduces the ability of the bear

to use that area because there will be traffic going in and out, particularly during construction season, as well as the normal everyday activities of the residents. And it effectively reduces the ability for wildlife to move through the roughly 500 foot area without conflict.

Commissioner Carey: Barbara, in your motion, building sites for a total of four lots – none of which could be in the corridor?

Commissioner Evans: That was my motion. That they find a box outside of the corridor. That could mean that they put them all in one spot and maybe that spot wouldn't be a good spot, I don't know. All I'm trying to do is preserve the species that is important enough to be an endangered species and I certainly think the bears are that. I was at the wildlife thing a couple three weeks ago and they showed actual pictures with spots where the grizzly bears had been tagged and I think it was every hour that they marked where they were. It was a zig-zaggy, there was no straight through. The bears covered the entire area in a zig-zaggy pattern and if I'm not mistaken they went hundreds of miles. Those bears don't read signs. I really don't want to kill of the things that make Montana Montana and that would make it an attractive place for people to be. It also endangers the people. You put them in the middle of a grizzly bear corridor and what's going to happen if the bears come...what's gonna happen is somebody's going to shoot, shovel and shut up! And the bears disappear. I don't want to see that happen, nor do I want to deny the man the ability to develop his land. I just think there ought to be a compromise position where he gets to put four homes and we protect the bears.

Commissioner Curtiss: I don't think we're going to be able to find that compromise and not have any houses in that corridor. Just because of the type of land that's up there, I know it seems really funny, even looking at that aerial photo, it's hard to see how much wetland there is in the middle of the forest in this valley, but it is there. My compromise might be to let Lot 1 stay where it is and move the house on Lot 2 part way down....

Commissioner Evans: Could you please use the laser?

Commissioner Curtiss: This is Lot 1 in the southwest corner at the edge of the property. Lot 2, maybe move it down the hill a ways by a wider spot in the road...he said that would be buildable. That move would give the 500 feet from Mrs. Lamar's property plus it looks like another 700 feet, so there isn't as much of a pinch.

Commissioner Evans: What about the other sites?

Commissioner Curtiss: The other sites, the existing house is out of the corridor and the other is up in the northeast corner out of it as well.

Steve Stolp: I'll move the building out of Lot 1, there is not place on Lot 1, absolutely no place to build except where I've proposed.

Commissioner Curtiss: Lot 1 is down here in the southwest corner, right?

Steve Stolp: Right. I'll make an offer and compromise – I'll pull Lot 1 and sell Lot 1 and Lot 2 as an 80 acre piece instead of two 40's.

Commissioner Evans: And locate the house where?

Steve Stolp: The house would be right over by Lamar's. Keep that one and get rid of the other one.

Commissioner Evans: Can you move it a little further away so that it's not creating such a pinch?

Steve Stolp: Actually no, I can't, because it goes straight down a hill right to a sub-irrigated meadow.

Mike Sehestedt: Bear in mind, if you move building sites, lot lines can be moved as well. If we say this or that, Tim's very skillful he can draw a line and make them both 40. I haven't been on the ground, so I don't know values but moving.....and using the current building site that's on Lot 1, and I recognize that you can't go down the hill I accept what you said there. You can't go back toward the road. But eliminating the one right across Lamar's would open what we've been referring to as the choke point more. Economically, what difference does that make to you?

Steve Stolp: Probably about \$400,000. That hurts.

Mike Sehestedt: Okay, so the site by Lamar's is your prime site?

Steve Stolp: Prime site of the whole property.

Commissioner Curtiss: Because of the view?

Steve Stolp: Yep. You're looking right in Smith Creek Falls.

Commissioner Curtiss: And coming down just a little to this other spot along the road, you don't have the same view?

Steve Stolp: No, you drop off the hill and you lose the view.

Mike Sehestedt: One of my thoughts and I assume you have kind of a ridge view between the sites on one and two....basically the topography is a ridge along there.

Steve Stolp: Between one and two? No, you go down the bottom, go over and then back up to Lot 2. You would think with 160 acres we could find an awful lot of building sites, but on this particular piece of property there aren't spots.

Tom Orr: I guess the last thing I would like to say, as Pat said this line....it's just an ambiguous line (the line defining the grizzly bear corridor); it could be down lower or up higher. The line itself is not a fixed point in space; it is just where they decided to put it. I really think you need to consider that. When you see the line on the map, it looks fairly definitive about where things should be, but again this is the line that some folks go together and said 'we think this is our best guesstimate.' That line could be up higher or well down higher, it's not a fixed place. The other thing was that your own...the bear book and the Swan Valley Comp. Plan says one house per 40 IN the linkage zone, not outside of it, but within. So that's where we are, we're pretty close to that figure within the linkage zone.

Commissioner Evans: I'd like Mr. Stolp to please come up and show these sites to me on an aerial map because that's too far removed over there on the wall and I can't see what's being pointed out.

Mr. Stolp showed Commissioner Evans on the map up close.

Commissioner Evans: There's not place congregated together that would serve as three building sites that would be less problematic?

Steve Stolp: Three building sites right there up higher, you'd be looking in each others windows. Who's going to pay for that?

Commissioner Evans: Well, I live right next door to someone and I love them a lot.

Steve Stolp: That's not this type of property. You can see no one's else's house or driveway from any of these building sites.

Commissioner Curtiss: You don't look into Lamar's?

Steve Stolp: Nope.

Commissioner Curtiss: It looks like if we went Mr. Stolp's compromise, and Lot 1 went away and we had the existing house on Lot 3 and Lot 2 stays as a shown in the southeast corner....you'd have about ½ mile between those two houses?

Steve Stolp: Correct.

Commissioner Curtiss: And 500 feet the other way. The problem is if you look at the whole grizzly linkage zone, this particular zone which is the smaller of the two, you can see that there really isn't very many places where the bears aren't going to run into a house.

Steve Stolp: Well, they've gotten by our place for 30 years. We've never seen one. I've seen their tracks, but I've never seen a bear....because we live up on a hill and they use the bottom lands. Every one of these building sites is up on top. I really don't want lose building site 1, that's going to be awfully expensive and I REALLY don't think it's necessary. There are eight residences next to us and those bears travel through all the time and there's never been a complaint in 20 or 30 years to the Fish, Wildlife and Parks. I don't see where this development is creating a problem for the bears. It isn't! I've been out there logging and cleaning that property for 10 years and never run into one, all year long. But I know they come through there, I know they come....we've got a sow and two cubs right by my office on Cooney Creek. Last year, they were there all summer. But we didn't hurt them. I've seen two bears come out of Swan Line Drive where Pat O'Herren has a cabin, go right across the road through where my brother's logging and right past his pickup. They go where they want to when they want to and they don't slow down.

Commissioner Carey: I'd like to point out that Chris Servheen does say that the cumulative impacts of potential developments on important wildlife habitat must be considered. Each individual development, when considered alone may seem to have minimal impact, however the cumulative impacts of all ongoing development will, if continued, push the grizzly and other key species out of their present range in Missoula County and other counties where such development is on going. So, my question is and it's rhetorical: What do we tell the next developer who wants to come and put a couple homes in the corridor? We can't very well say no, because they'll address our attention to this. So the corridor either means something or it doesn't. According to the bear expert, it means something.

Commissioner Evans: I'd like to point out to Tom Orr, you're right, it could be anywhere. But, they had collars on the bears and they marked where they were. This wasn't a guess by golly, this was based on facts and figures that they did with collars. So, it may not be a 100% accurate, but I don't think it was based on just pie in the sky either.

Tom Orr: Could I just say one thing?

Commissioner Evans: You can say anything you want, as long as it doesn't take until tomorrow.

Tom Orr: It won't, but never give a lawyer that kind of an opportunity. One of the things I think that we really do need to focus on and think about is that we do live in an area of Montana that is desirable. I think that people....we are going to have interactions with wildlife; we're going to have to learn about interactions with wildlife. But, one of the things I think is not really....I think it's very unfortunate that Mr. Servheen, who has been the focal point for this discussion, didn't have time or couldn't get a staff member here so we could actually have some experts. I think we all know what's going on in the Rattlesnake with bears, there are a lot of them and there's a lot more bears. Bears are learning to live with humans. We're unfortunately having to deal with deer all over the Missoula Valley, especially in town. I see more deer in my yard than a lot of time when I go hunting in eastern Montana. I think that's something I would've liked to have asked Chris, yes there is going to be some impacts, but the other thing is...and we know because we're talking about de-listing grizzlies...their population is going up. So, unless you're prepared to say there will be absolutely no more development, we have to the best of our ability minimize impacts on the grizzly bear. I think Mr. Stolp has tried to do that, but those bears....again these homes are going to be limited time residents. I think that's something you need to think about. The bears will learn, eventually, how avoid the developments. Hopefully the people will be responsible enough in the management of

their property that they're not going to be adding bird feeders and dog food and all of that as an attractant. I don't think anyone will be having horses or cows or pigs on these properties, so that shouldn't be a problem. Unless you're ready to just lock up the whole Swan Valley and Missoula County for that matter, it is very difficult question and I think it should be, to ask 'Is Mr. Stolp the person we're going to draw our line with and not let this development go forth?' Thank you.

Commissioner Evans: Covenants are fine if someone enforces them.

Tom Orr: Right.

Commissioner Evans: I appreciate Mr. Stolp's offer and I guess I would reluctantly be willing to accept that offer with a couple of caveats. I would like Fish, Wildlife and Parks to be parties to the covenants, so they are capable of enforcing the wildlife covenants. I would also like to have either a conservation easement or something on the remaining property, so that we know the remainder of that property will always be a corridor for the bears. That seems to me to be a reasonable compromise, even though I'd rather not have any human conflict because it endangers the humans – it endangers the species.

Tom Orr: I think one of the things we could do to address your second condition would be to put a deed restriction saying that there will be no building outside of the building envelope. That would have the same effect as a conservation easement.

Commissioner Evans: Except, I need to ask our attorney, is a deed restriction removable without approval of the Commissioners? A conservation easement I don't believe is.

Mike Sehestedt: Basically you need....a deed restriction I think has to be in favor of someone or no one has standing to enforce it.

Commissioner Evans: How about the deed restriction given to Fish, Wildlife and Parks? Or a conservation easement.

Mike Sehestedt: I would suspect that a conservation easement would clearly work. The second option would be if it's required in the covenants, and Missoula County or its assignee is given authority to enforce it. That particular provision in the covenants would work as well.

Tom Orr: We could put a restriction. Mr. Stolp is wanting to place a deed restriction on there giving Fish, Wildlife and Parks notice and naming them as a party that would be able to enforce the no building zone. He, for reasons of his own, is not interested in the conservation easement. But you need to understand that what we've talked about at this hearing is the topography of this land, by default; there in no....there may be one or two other building sites in very undesirable places on that property. But otherwise, it's steep hillside and swamp. So, you're getting the no build by default anyway, but we will put a deed restriction in the covenants that Fish, Wildlife and Parks could enforce.

Tim Worley: I'd just like to point out condition 11 on the brown memo: The legend on the plat shall be revised to show approved building envelopes, and designate areas outside the building envelopes as No Build Zones where residential and accessory structures are prohibited. This information shall also be included in the subdivision covenants. Now for that to go away, they would have to come before you and request a plat adjustment. So that's something that would require approval of the Commissioners in and of itself, if this condition were adopted.

Commissioner Evans: Thank you, Tim. That would be satisfactory to me. Then we need to address the decommissioning of roads.

Pat O'Herren: To clarify a couple items...as your employee in Rural Initiatives, you have required me to work with various agencies and as part of that work; I attended a workshop that was presented by Rick Mace who is the state Grizzly Bear Recovery Coordinator for Fish, Wildlife and Parks. Relative to the issue of urban wildlife, black bears and deer and their increasing numbers, that has also resulted in

increasing numbers of conflicts with humans and that's a problem. Grizzlies are entirely different. We do not know that their population is increasing in the northern continental divide ecosystem. Dr. Mace, made a presentation to all state, federal, tribal entities two weeks ago that indicated it will be somewhere in the neighborhood of four to seven years before the state actually has enough data to indicate whether the grizzly population is increasing, is stable or decreasing. So, we know that there are more conflicts between bears and wildlife, but the assumption at this point is the reason there is increasing conflict and because there is increasing human habitation in occupies grizzly habitat.

Commissioner Curtiss: Pat, is one of the ways they're gathering that data through the DNA testing, where they catch the hair on the wire?

Pat O'Herren: Correct, it's an interagency approach to monitoring wildlife rather than trying to capture a specific number of animals and radio collar them and watch their movements. They are putting up what are called 'hair snares' throughout the ecosystem that grab hair as the bear pass by. They analyze that, they can tell not only species and gender, but age and relative abundance from that as well as the interrelation between the animals that are snared. That will take a number of years and more after they get that data. They're in the second year of that project.

Commissioner Carey: Did you state earlier that the grizzlies in the lower 48 have been reduced to about 1% of their former range?

Pat O'Herren: Correct.

Commissioner Carey: I'll tell just a very brief story...many many years ago I taught school in the Sierra Nevada's or the foothills of the Sierra Nevada's mountains. Before that, it was gold rush country, Mark Twain wrote about it and so on. For sport, they used to catch grizzly bears, put them in a ring with a bull and see who won the fight. They chained the bear to a post some how. The thing is grizzlies are long gone from California. The more homes you build, the fewer bears you have until eventually the homes win out, so to speak.

Pat O'Herren: That is THE main issue of concern in western Montana as population continues to grow. If we can direct growth into the appropriate areas, we will retain the existing resources and allow for future development as well as protect private property rights such as Mr. Stolp:

Commissioner Curtiss: Pat, do you think that Mr. Stolp's offer of reducing the one house and having the other one clustered by Mrs. Lamar's would be beneficial to the bears?

Pat O'Herren: In discussions with the agencies with this map in front of them, they were extremely concerned about the placement of unit two, the best site from the landowners perspective, because it does create an additional choke point. It takes this area from the intersection of the access road to the home site for unit two and reduces it. This area of conflict now is created by the existence of the road. This formally open undeveloped area for movement is reduced by the placement of this site. Removal of this site, certainly will help alleviate the problem, this remains a significant concern. Mr. Stolp has done an excellent job in terms of locating these sites for their resource value, this pond on Plum Creek is excellent habitat for a number of species and site two looks right down on it. Just like you and I would like to live in a house that has that sort of amenity to it. The others are equally situated, Lot 4 looks down into an incredible meadow, that is certainly summer and spring wildlife usage.

Commissioner Evans: Pat, if we accepted this offer and Lot 1 goes away, should that road be decommissioned?

Pat O'Herren: I think the concern would be use of any roadway and Mr. Stolp has graciously indicated that he'll put a deed restriction and a no build zone. I think what's even more important than that, however, is no build no alteration. As he stated on the record, there is a gravel extraction site...certainly not having homes, but having gravel extraction continue on other areas or having vegetation management that reduces the functioning wetlands or the ability to provide thermal and regulatory cover

for wildlife species. This obviously is used by other species besides grizzlies, so no build no alteration is probably equally as important as no build.

Commissioner Evans: Is that acceptable?

Steve Stolp: Unacceptable.

Commissioner Curtiss: Where is the gravel extraction?

Pat O'Herren: Steve, will you show them where the gravel extraction is?

Steve Stolp: We're required to put in a pond by the fire fighters. The pond is going in right here....to the west of Lot 2. That's the only place I can get a year round pond for fire fighters, that's part of the requirements. I'm not going to decommission roads, I give up. I would like to withdraw my offer to take one building zone out. I would like to have you vote on it. Vote on the original nine conditions, I don't want.... (Walked out of the room)

Commissioner Carey: Okay, Mr. Stolp has withdrawn his offer.

Commissioner Evans: What does that mean? Does that make the subdivision request go away?

Mike Sehestedt: No.

Commissioner Carey: He just withdrew his compromise offer.

Commissioner Evans: Okay.

Mike Sehestedt: What it means is that you're here with the obligation to approve, disapprove or approve with conditions addressing what you find to be impacts that can be mitigated and that we don't have....the only way we have agreement is if you approve it in accordance with the original staff report. Mr. Stolp has indicated that he would be in agreement with that. If you deny it, obviously he is in disagreement. He also disagrees and does not accept any alternative conditions or conditioning and I don't think it relieves you from your obligation, even if he doesn't agree with it, to do what you think is appropriate in addressing mitigation and going forward.

5 minute break

Tom Orr: My client, after discussions, has asked me to...he's conveyed his thanks to you for the process and for the opportunity you've given him to present his case. I think he has reconsidered his initial offer because he simply....we believe that we're in compliance with the comp plan. There has not been definitive evidence shown of the impact on the grizzly bears. We think that what we've done meets the mitigation that's recommended by the comp plan and he's asked me to have you consider the original subdivision proposal and the staff report without the new conditions. That's how he would like you to vote. Thank you.

Commissioner Carey: Is there a motion?

Commissioner Carey moved to deny Homestead Estates based on the findings and fact contained in the memo of May 17, 2006 from Tim Worley addressed to the Board of County Commissioners.

Commissioner Evans seconded. Commissioner Curtiss abstained. The motion carried on a vote of 2-0.

Commissioner Carey: I do hope that you can go back to the drawing board and maybe involve someone who might be able to find some new sites.

Commissioner Evans: Attempt mitigation, that's what the law allows.

Mike Sehestedt: We, having denied the subdivision, he has the opportunity to come in a propose mitigation to the conditions that we used or the fact finders that we based the denial on. I think and I realize it was very emotional and again, we all understand that. I think the decommissioning of the roads is what finally....

Commissioner Evans: No, I think it was the gravel extraction.

Mike Sehestedt: Well, gravel extraction. We can...and his representations to me in the hall earlier were that these were necessary resource roads. We might have been able to say, just leave them as resource roads, not...you don't need to kelly hump them or grade them back to slope. There are things that we could've talked about.

Commissioner Evans: We didn't really discuss much about the roads, I asked a question, but it didn't go anywhere.

Mike Sehestedt: I think that was kind of where things tipped over for him. Again, I...I think we can go off the record with this.

Seeing no further business, Commissioner Carey recessed the hearing at 3:40 p.m.