

Public Meeting – May 31, 2006

This meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present: Commissioner Evans, Tim Elsea Assist. Director of Public Works and Mike Sehestedt Chief Deputy County Attorney. Commissioner Curtiss was in Helena.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT - none

ROUTINE ADMINISTRATIVE ACTIONS

Commissioner Evans moved to approve the Weekly Claims Lists in the amount of \$979,547.18. Commissioner Carey seconded. The motion carried on a vote of 2-0.

HEARING

Wentland Estates (6 lots on 23.24 acres) – Lazy H Trail (Lot 2 of Sweetwater Hills) west of Cote Lane, South of El Mar Estates.

Commissioner Carey opened the hearing.

Jennie Dixon: w/OPG. I would like to present to you a proposal for a six lot residential subdivision from the Wentlands, represented by Montana Northwest Company. This proposal went to Planning Board and they recommended, as did staff, approval of this subdivision. The vote from the Planning Board was unanimous, 9-0. They also voted to recommend conditional approval of the one variance request, which I will explain in just a moment. The proposal does comply with zoning and with the comprehensive plan. The applicant is proposing an extension of Lazy H Trail, as shown on the plat behind me. (description of the map) The conditions of approval that were recommended by the Planning Board, there are quite a few, none of which I believe are contested by the subdivider, except a new condition proposed by the Planning Board requiring installation of a five foot wide gravel pathway on ones side of Wentland Court. The staff recommended approval of a variance request to not install pedestrian pathways at all on Wentland Court. However the Planning Board felt that the subdivider should be required to at least install a gravel pathway on one side of Wentland Court. The conditions of approval include contributions to funds for signalizing Flynn/Mullan and Mullan/Reserve a signage plan to be reviewed and approved by Public Works. No parking sign on both sides of Wentland Court, as the fire district feels that the road is not wide enough to adequately provide their 20 foot minimum unobstructed width and still allow parking on both sides. Therefore, the subdivider would be required to install no parking signs on both sides of that road. That driveway plan to be reviewed and approved by rural fire and that the conditional access easement, which is shown along the northern property line, be clarified to expressly determine when that road would be improved and used as a public roadway. And that all roads within the subdivision, including future roadways such as the one on the northern property line, be included for an RSID. The plat shows the drainage easements proposed on the property and a condition of approval recommends an additional 70 foot wide drainage easement on the furthest west lot, the large Lot 3. And that these drainage easements be designated as no build, so as to not obstruct any drainage areas. The conditions relating to the parks and the common areas and trails within this subdivision are probably....one that the subdivider has some concern about, as presented on the plat, exceeds the required amount. Actually through the use of private pedestrian access easements, it makes a loop around the five smaller lots which is proposed to be used as horse trails, no improvement trails, gravel or asphalt trails are proposed there. Simply a grassy area for use by pedestrians or horses, it is a non-motorized easement. Staff has recommended a public access easement to extend off of Kailand Estates and up to the north property boundary so that if and when a park is located north of this property, as anticipated by County plans, there would be public access at that location. The fire district recommended that the subdivider provide a means of fire suppression of this subdivision to meet their standards. The applicant indicates they intend to be residential sprinklers. Those plans would be reviewed and approved by Missoula Rural Fire, and to include a waiver on the plat, waiving the right to protest a future RSID for a water system. Finally that the fire district review plans for addressing the buildings. The last several conditions are related to the weed district's recommendation requiring a re-vegetation plan and applying a covenant of this subdivision to all the lots within this subdivision and finally the new Planning Board condition that recommended having the

five foot wide gravel pathway on the one side of Wentland Court. Those are all of the recommended conditions of this subdivision and your request for commission action on the front cover will contain the two recommended motions from the Planning Board as well as the final set of conditions that I would suggest you use if you want to consider modifying any conditions of approval. Thank you.

Commissioner Carey: Does the developer's representative care to speak to this?

Ken Jenkins with Montana Northwest Company: I don't have a whole lot to add. Thank you to Jenny for a thorough job. As Jenny indicated, we don't have any problem with any of the conditions as originally approved out of OPG. The one condition imposed at the Planning Board hearing for a five foot gravel walkway along one side of the road, I think certainly we could build that. I think these are two acre rural lots and the road will see very little traffic. At some point, it certainly is possible that we could see much higher densities in this subdivision. These lots are not restricted to further subdivision and with public water and sewer extending westerly, that's in the realm of possibilities. At the time of higher density, I suspect the pedestrian facility requirement for Wentland Court would change significantly. The design would be something that would not be cohesive with a five foot gravel pathway which would most likely be built right at the edge of asphalt. So, I think now that gravel pathway would see very little use. If children are riding their bikes, they're going to ride on the paved street and there's plenty of pedestrian areas to walk in other places in the subdivision. Therefore, from a practical standpoint, I think the gravel pathway at this point is a waste of resources. Beyond that, we're comfortable with the conditions and we think it's going to be a nice subdivision and a nice addition to Missoula County. I'm open to any questions you might have and the owner, T.J. Wentland is here as well.

Commissioner Carey: Any one else wish to speak to this? Seeing none the hearing is closed.

Commissioner Evans: I think the staff did a very good job on this. Jenny, could you interpret number six for me? I assume that the waiver of right to protest future SID's would include the area the Planning Board is wanting to require a five foot gravel path is that correct?

Jennie Dixon: That road is proposed as a private road, so RSID's as I understand it cannot be used on private roads. This condition however is to address if it were ever to become public or the extension of Lazy H along the northern property boundary.

Commissioner Evans: Thank you. I have no desire to require a five foot paved pathway on that road. I guess...I'm ready to make a motion if you're ready to hear one.

Commissioner Evans moved to approve the variances as they have been requested: 1. that the request to vary from Section 3-2(8)(A)(ii) requiring concrete boulevard sidewalk be installed on one side of Wentland Court to allow installation of a five foot wide gravel pathway on one side of Wentland Court. 2. that Wentland Estates subdivision be approved for a two-year approval period, based on findings and fact and testimony. And do not require a gravel walkway. Commissioner Carey seconded. The motion carried on a vote of 2-0.

Commissioner Carey: I seconded because I agree with Mr. Jenkins, it is premature, but at some point it may well be justified.

Commissioner Evans moved to approve the subdivision subject to the conditions that have been outlined. Commissioner Carey seconded. The motion carried on a vote of 2-0.

Jennie Dixon: I would just note for the record that would be 17 conditions of approval, condition 18 from the Planning Board has been removed.

Commissioner Carey: Correct.

II. STAFF'S RECOMMENDED CONDITIONS OF SUBDIVISION APPROVAL

Roads/Driveways

1. The subdivider shall present evidence of contributing \$230 per new lot or dwelling unit to assist in signaling the Flynn Lane / Mullan Road intersection and \$815 per new lot or dwelling unit toward the improvement of the Reserve Street / Mullan Road intersection prior to final plat approval. *Subdivision Regulations 3-1(1)(E) and 3-1(6)*
2. A street signage plan in conformance with the Manual on Uniform Traffic Control Devices, including, but not limited to, provisions for temporary signage during construction, permanent signage, and cost of installation to be responsibility of the subdivider, shall be reviewed and approved by Public Works prior to final plat approval. The developer must install the temporary signs prior to construction and permanent signs prior to final plat approval. *Subdivision Regulations 3-1(1)(F) and 3-2(2)(F)*
3. The subdivider shall install "No Parking Signs" on both sides of Wentland Court to ensure a minimum 20' unobstructed width for fire apparatus access, in locations approved by Public Works, as part of the approved signage plan, prior to final plat approval. *Subdivision Regulations 3-1(1)(F) and (J)*
4. Driveway plans for Lot 3 shall be reviewed and approved by Missoula Rural Fire District and OPG prior to final plat approval. Driveway plans for all driveways within this subdivision, including length, width and surfacing requirements as specified by Missoula Rural Fire, Public Works and OPG, shall be incorporated into the covenants which may not be changed or deleted without governing body approval. *Subdivision Regulations 3-2(10)(A) and (D)*
5. The proposed future public easement along the full length of the northern boundary of the property shall be relabeled as a Conditional Public Access Easement. The following statement shall appear on the plat and in the covenants and refer to this 30 foot wide Conditional Public Access Easement:
"This 30 foot Conditional Public Access Easement is for the purpose of a public roadway or trail as shown on the subdivision plat of the Wentland Estates Subdivision, conditioned upon said easement being used as a public roadway or trail in the event a motorized or non-motorized connection is made or planned to be made to the north or west of this property. No structures, permanent improvements or utilities shall be placed within said easement so as to interfere with the eventual use of the right-of-way as a public roadway." *Subdivision Regulations 3-2(1)(E)*
6. The RSID waiver statement on the plat shall be amended as follows and included in the covenants:
"Acceptance of a deed for a lot within this subdivision shall constitute the assent of the lot owners to waive the right to protest a future RSID/SID for improvements including, but not limited to, the installation of paving, drainage facilities, curbs and gutters, pedestrian walkways or bikeways, to Lazy H Trail, and all roads within the subdivision including those for which conditional access easements are shown for future roadways, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations 3-2(3)(E)*

Drainage

7. The plat shall be revised to show a 70' wide drainage easement along the southern boundary of Lot 3. *Subdivision Regulations 3-4 and 3-6*
8. The covenants shall be revised to include the definition of "No Build" with respect to the drainage easements, as defined on the plat and on the drainage plan, and to clarify that the Homeowner's Association shall be responsible for maintenance of all drainage easements and facilities, subject to review and approval by OPG and the County Attorney's Office prior to final plat approval. *Subdivision Regulations 3-4*

Common Areas and Pedestrian Trails

9. The plat shall be revised to show a 20' wide public pedestrian access easement in the location recommended by the County Park Board in the letter dated March 7, 2006, extending east from the

point where a 60' conditional access easement between Lots 6 & 7 on Caitlin's Estates intersects this subdivision, then turning north to coincide with the proposed common area and continuing to the north property boundary, subject to review and approval by OPG and County Parks prior to final plat approval. *Subdivision Regulations 3-8(8)(C) and 3-8(8)(D)*

10. The plat shall be revised to rename the proposed "20' wide private common area, non-motorized access and utility easement" located on the south side of Lot 3 to "20' wide private non-motorized access and utility easement", thus deleting the reference to common area in this easement. *Subdivision Regulations 3-6 and 3-8*
11. The covenants shall be amended to include the Common Area Notes shown on the plat, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations 3-8*

Fire

12. The subdivider shall provide a means for fire suppression for this subdivision either by providing a minimum 1000 GPM water supply with hydrants spaced every 500 feet or residential sprinkler systems meeting NFPA 13D Standards. Final plans for fire suppression shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. The covenants shall be amended to include the plan for fire suppression and may not be changed or deleted without governing body approval, subject to review and approval by Missoula Rural Fire District and OPG prior to final plat approval. *Subdivision Regulations 3-1(1)(F) and 3-7(1)*
13. The following statement shall appear on the face of the plat and in the covenants:
"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for a community or municipal water system, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." *Subdivision Regulations Article 3-7*
14. Plans for addressing buildings so that address signs are clearly visible from the street in all lighting conditions shall be reviewed and approved by the Missoula Rural Fire District and included in the covenants which may not be changed or deleted without governing body approval. *Subdivision Regulations 3-1(1)*

Weeds

15. The subdivider shall prepare a Revegetation Plan for disturbed areas in the subdivision requiring revegetation with beneficial species of any areas of ground disturbance. The Revegetation Plan shall be incorporated into the covenants and may not be changed or deleted without governing body approval. The covenants shall note that the grass species included in the Revegetation Plan are not turf species but for reclamation purposes and are not suitable for maintained turf or lawn use. The Revegetation Plan and the covenants related to weeds are subject to review and approval by the Missoula County Weed District prior to final plat approval. *Subdivision Regulations 3-1(1)(B)*

Covenants

16. The covenants shall be revised to apply to all lots within this subdivision, subject to review and approval by OPG and the County Attorney's Office prior to final plat approval. *Subdivision Regulations 3-1(1)*
17. Section 10.2 of the covenants shall be amended to state that sections which address the following provisions may not be changed or deleted without governing body approval:
Weed Control, Radon, Energy Efficiency, Woodstoves, Address Signs, Fire Protection, Wildlife, Common Area Management, Drainage Facilities Maintenance and Management, Drainage Easements, Conditional Public Access Easements, RSID waivers, Driveways, Signage Plan, and Exhibit A (applicability of the covenants). *Subdivision Regulations 3-1(10)*

SUBDIVISION FINDINGS OF FACT

A. ZONING AND COMPREHENSIVE PLAN COMPLIANCE

Findings of Fact:

1. The property proposed for subdivision is legally described as Lot 2, Sweet Water Hills.
2. The address of the property is 8405 Lazy H Trail, where the owners, Tari Johannson-Wentland and John R. Wentland, reside.
3. The subject property is located approximately 3½ miles west of Reserve & Mullan, south of El Mar Estates, west of Cote Lane at the end of Lazy H Trail which is proposed to provide access to this subdivision.
4. Approved subdivisions, River Heights and Caitlin's Estates, border the property to the east and south, respectively.
5. The property is within the Urban Growth Area.
6. The property is zoned C-RR1 (Residential) and Kona East Residential Rural Zoning District.
7. The maximum residential density in the C-RR1 and Kona East Residential Rural Zoning District is one dwelling unit per acre.
8. The applicant is proposing to subdivide 23.24 acres into 6 residential lots, resulting in a density of approximately one dwelling per four acres.
9. The average lot size is 3.4 acres, and the median lot size is 2.15 acres.
10. Five of the six lots are clustered on the east side of the property, leaving a larger farmstead lot on the west, where the existing residence is located. The five smaller lots range in size from 1.5 to 2.2 acres, and the large lot is proposed at 12.4 acres.
11. The County Subdivision Regulations, Section 3-15, requires density to be adjusted based on slope categories within the Urban Growth Area. As a result, the maximum number of dwellings on this property, based on Hillside Regulations, is 22 dwellings.
12. The 2005 Wye-Mullan West Comprehensive Plan is the applicable amendment to the 2002 Growth Policy, which applies to this property. The land use designation for the subject property is Clustered Residential, at two dwelling units per acre.

Conclusions of Law:

1. The proposal complies with the zoning and is consistent with the land use designation in the 2005 Wye-Mullan West Comprehensive Plan.

B. PRIMARY CRITERIA COMPLIANCE

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

Findings of Fact:

1. The subject property is currently in agricultural use, as a hay field, for personal use by the Wentlands who reside on the property.
2. The soil type on the subject property is Grassvalley silty clay loam, 4-8% slopes. This soil type is not considered to be prime farmland or farmland of local importance.
3. There are no irrigation ditches contained within the property.

Conclusions of Law:

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

CRITERION 2: EFFECTS ON LOCAL SERVICES --

Findings of Fact

Roads/Driveways

1. The property is accessed from Lazy H Trail, which connects to Cote Lane approximately ¼ mile east of the site.
2. Lazy H Trail is a dedicated public road by the Kona East Phase One subdivision. An SID/RSID waiver appears on the Sweet Water Hills plat for continued maintenance of Lazy H Trail.
3. The subdivider has proposed a 30' wide conditional public motorized and pedestrian access easement along the northern 30 feet of the property. This future public access easement is intended to become effective in the event that Lazy H Trail extends westward as a public street.
4. The plat includes an RSID waiver statement for improvements to Lazy H Trail and Wentland Court.

5. Approval of the subdivision is conditioned upon amending the waiver of the right to protest a future RSID/SID for improvements to Lazy H Trail, and all roads within the subdivision including those for which conditional access easements are shown for future roadways, based on benefit.
6. This subdivision is estimated to generate a total of 42 to 60 vehicle trips per day, base on 7-10 AADT per lot.
7. Lots 1, 2, and 4 – 6 are proposed to access from a new cul-de-sac road, Wentland Court, which, at a paved width of 24' feet within a 60' private access easement, will meet all County road standards.
8. Provisions for private road maintenance of Wentland Court are included in the proposed covenants, and the private road statement required in Subdivision Regulations 5-2(4)(J) is shown on the plat.
9. The Missoula Rural Fire District (MRFD) commented that all roads shall maintain an unobstructed width of 20'. Without any parking restrictions, Wentland Court does not provide the 20' clearance required by MRFD to adequately provide fire protection services to the homes on this cul-de-sac road. Therefore, Wentland Court is recommended to restrict parking on both sides to maintain a 20' unobstructed width to allow safe and efficient access by MRFD apparatus. A condition of approval requires the subdivider to install "No Parking" signs on both sides of Wentland Court.
10. All homes are proposed to be served by paved individual driveways, as stated in the proposed covenants. This is intended to apply only to Lots 1, 2, and 4 – 6.
11. Lot 3, the 12.4 acre lot with the existing residence, is proposed to access directly from Lazy H Trail from an existing driveway. This driveway is proposed to be relocated slightly to the north so it does not cross any of the proposed lots.
12. The Health Department commented that all new driveways built within the Air Stagnation Zone must be paved 20 back from the edge of road pavement or the right-of-way boundary, whichever is longer.
13. Lot 3 is proposed to be exempt from the covenants, and thus the driveway paving requirement.
14. A condition of approval requires the covenants to be modified to apply to all lots within this subdivision. The covenants may exclude Lot 3 from the driveway paving requirement, except for the minimum required by the Air Quality District.
15. Driveways are required by the County Subdivision Regulations to be a minimum of 12 feet wide with a gravel surface and less than 8% grade. In addition, the Fire District commented that driveways must have a 20' horizontal unobstructed width and 13'6" vertical clearance and must be engineered to support the weight of emergency equipment in all weather conditions.
16. The Fire District also commented that a turn-around must be incorporated at the terminus of the driveway on Lot 3. The existing driveway on Lot 3 has a turn-around roughed in.
17. A condition of approval requires that driveway plans for Lot 3, including the turnaround at the terminus, shall be reviewed and approved by Missoula Rural Fire District and OPG prior to final plat approval to ensure this driveway meets County Subdivision and Rural Fire District standards.
18. A condition of approval also requires driveway plans for all lots within this subdivision, including length, width and surfacing requirements, to be incorporated in to the covenants.
19. This project has off-site impacts to the Mullan Road/Flynn Lane intersection and the Reserve Street/Mullan Road intersection. Therefore, County Public Works recommends that the developer contribute \$230 per new lot or dwelling unit to assist in signaling the Flynn Lane/Mullan Road intersection and \$815 per new lot or dwelling unit toward the improvement of the Reserve Street/Mullan Road intersection. This is recommended as a condition of approval.
20. Missoula County Public Works recommends a signage plan to include provisions for temporary (during construction) and permanent signage to be installed by the subdivider. A condition of approval requires a street signage plan be reviewed and approved by Public Works prior to final plat approval. This plan shall specify that the cost of sign installation shall be the responsibility of the subdivider and included in the security deposit.
21. The subdivider presented storm calculations and supplemental data in a Grading and Drainage Engineering Design Report in the application packet. This report concludes that the small increase in run-off anticipated for a ten-year storm will be mitigated with a detention basin onsite. Stormwater which does not infiltrate onsite will be discharged to an existing natural drainage swale which runs along the southern property boundary.
22. Stormwater facilities for this subdivision include swales, culverts and a detention pond, as shown on the drainage plan. The drainage plan and the plat specify all drainage easement areas as "No-Build" Zones to exclude all buildings, structures, roads (except approved access), parking, storage, or any other development. In addition, mining or filling with substances such as gravel, soil, slash, or other

debris shall be prohibited in the "No-Build" Zones. A condition of approval requires the definition of the No-Build Easement be included in the covenants.

23. The Road and Drainage Plan states that the Wentland Homeowner's Association shall be responsible for the maintenance of the stormwater drainage facilities; however, the covenants contain no such provision. A condition of approval requires the covenants to be amended to include provisions for maintenance of all drainage structures and facilities.
24. Drainage plans will be reviewed and approved by County Public Works prior to final plat approval.

Conclusions of Law:

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

Pedestrian Access

Findings of Fact:

1. Article 3-(2)(8)(A)(ii) of the Missoula County Subdivision Regulations requires all rural subdivisions within the UGA with a lot frontage of 175' or greater or less than 500 Average Daily Trips (ADT) to construct concrete boulevard sidewalks or paved boulevard pedestrian walkways on one side of the street.
2. The subdivider is requesting a variance to not install sidewalk on Wentland Court. Staff is recommending approval of this variance (see Variance Section).
3. There are no sidewalks on or near the subject property.
4. Caitlin's Estates, an approved subdivision south of this property, contains a conditional access easement connecting to the southern border of this property.
5. The County Park Board recommended a 20' wide public pedestrian access easement with a 5' wide gravel pathway running north-south approximately midway through the property connecting a conditional access easement in Caitlin's Estates to the south with Lot 1, Sweet Water Hills to the north. This public pedestrian access easement and pathway follow the proposed common area and private access easement shown on the plat.
6. Such connection would allow for future public pedestrian access from Haven Heights Road, future development to the west and this subdivision to a future park on Lot 1, Sweet Water Hills,
7. The land north of the subdivision is identified in the recently adopted Wye-Mullan plan and the *2004 Master Parks and Recreation Plan for the Greater Missoula Area* as an area for a potential future neighborhood park.
8. A condition of approval requires the plat be amended to show a 20' wide public pedestrian access easement in the location recommended by the County Park Board.
9. The proposed subdivision contains a common area loop which encompasses the five smaller lots on the east. This common area is not proposed to contain any trails; however, the subdivider intends for this to be an equestrian trail for the residents of the subdivision.
10. The plat includes an RSID waiver statement for improvements to Lazy H Trail and Wentland Court, including pedestrian facilities.
11. This subdivision is within the Missoula Urban Transportation District and is served by Mountain Line Bus Route #10.

Conclusion of Law:

1. The subdivision meets the requirements for pedestrian facilities if the requested variance is approved and the recommended conditions of approval are adopted.

Water and Sewer Systems

Findings of Fact:

1. Water is proposed to be provided to the subdivision via private wells.
2. The existing home on Lot 3 is currently served by an individual septic system.
3. The new lots are proposed to be served by individual septic systems.
4. Travis Ross of the Health Department, Water Quality District, commented that approval of a dry laid sewer system should be obtained through City Engineering. The nearest public sewer is approximately ½ mile from the site, and Public Works Director, Steve King, commented that dry laid sewer is not appropriate at this time since locations and size of mains is as yet uncertain.
5. Review of water and sewer systems is under the jurisdiction of state and local health authorities under the Montana Sanitation in Subdivision Act.

Conclusion of Law:

1. Water and sanitary sewer will be provided to this subdivision.

Solid Waste

Findings of Fact:

1. Allied Waste (formerly BFI) can provide disposal service to the subdivision.

Conclusion of Law:

1. Solid waste disposal is available to the subdivision.

Parks and Recreation

Findings of Fact:

1. County Subdivision Regulations Article 3-8(3)(A) requires the subdivider dedicate park land or cash-in-lieu of parkland totaling 5 % of the lands proposed to be subdivided into lots between 1 acre and 3 acres in size. Parkland dedication is not required for lots greater than 5 acres.
2. The parkland dedication required for this 23.24-acre subdivision with 20.9 acres of lotted area is .47 acres.
3. To meet the parkland dedication requirement for this subdivision, the subdivider is proposing 1.33 acres of common area within this subdivision located on the south side of Lots 4 – 6 and on the east side of Lot 3.
4. This common area connects to pedestrian access easements proposed on the east side of Lot 6 and on the north side of Lots 1 & 2.
5. In combination, this will make a looped connection around an area of approximately 9½ acres which is intended for private use by the residents of this subdivision as an equestrian trail.
6. The plat also show a 20 foot wide private access easement along the southern boundary of Lot 3. This easement is incorrectly labeled as common area, and a condition of approval requires the plat be corrected to delete the reference to common area from this easement.
7. No trail improvements are proposed within any of the common areas or private pedestrian access easements.
8. Common areas are proposed on the plat as No-Build/No-Improvement Areas where no structures of any kind, including fences, are allowed. The covenants to not contain this provision, and a condition of approval requires the covenants to be amended to include this provision.
9. Conditions of approval recommend providing the opportunity for public pedestrian access across the site, both east to west, and north to south, as recommended by County Park Board and the Health Department. (See Pedestrian Access Section).
10. The plat and the covenants specify that the Homeowner's Association shall be responsible for the maintenance of common areas.

Conclusions of Law:

1. The proposed subdivision will meet the required standards for parkland dedication if the recommended conditions are adopted.

Schools

Findings of Fact:

1. Children from this subdivision will attend Hellgate School District No. 4 and Big Sky High School.
2. This subdivision is estimated to house a total of nine (9) school-age children, based on 1.5 new students per residence.
3. Rachel Vielleux, Missoula County Superintendent of Schools, had no comments on the proposal.

Conclusions of Law:

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

Fire Department

Findings of Fact:

1. The Missoula Rural Fire District will serve the proposed subdivision from its nearest station located less than one mile east of the subject property, on Mullan Road.

2. County Subdivision Regulations Article 3-7(2) states that “if no community or municipal water system with 1000 gallons per minute minimum fire flow is provided, an RSID/SID waiver statement shall be required stating that at such time as a community or municipal water system is available, the property owner shall be required to participate in an RSID/SID.” A condition of approval requires an RSID waiver statement for a community water system.
3. Curt Belts, Assistant Fire Chief for Missoula Rural Fire District, commented that a water source for fire fighting was not identified in the proposal. The subdivider clarified the means for fire suppression to be residential sprinklers. As recommended by MRFD, a condition of approval requires the subdivider to provide a means for fire suppression for this subdivision either by providing a minimum 1000 GPM water supply with hydrants spaced every 500 feet or residential sprinkler systems meeting NFPA 13D Standards. Final plans for fire suppression shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. Further, the covenants shall be amended to include the plan for fire suppression and may not be changed or deleted without governing body approval.
4. Curt Belts, Assistant Fire Chief for Missoula Rural Fire District, also commented on the road and driveway access in this subdivisions. See Roads Section for detailed discussion and recommended conditions regarding roads and driveways.
5. Curt Belts also stated that all properties must be properly addressed with signs clearly visible from the street. This is a recommended condition of approval.

Conclusions of Law:

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

Sheriff Department

Findings of Fact:

1. The subdivision is located within the jurisdiction of Missoula County Sheriff’s Department.
2. Sheriff Mike Dominick comments that at present there are 50 sworn officers, which is sufficient to protect a population of 30,000 (based on 1.7 officers per thousand populations). Missoula County population outside the City limits is estimated at 40,000 residents; therefore, the department is approximately seventeen officers short of providing basic law enforcement services.
3. The Missoula County Sheriff’s Department will provide law enforcement services to the best of their 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 property consists of gentle, undulating slopes, generally less than 10%, with some areas of slope (2.2 acres) between 10 and 20% slope.
2. The broken topography of the site—including low elevation, incised slopes or gullies ultimately draining to the west through the subdivision—function as wildlife corridors and habitat.
3. There is a likelihood of human/wildlife interactions in this area. In particular, wildlife such as white-tailed deer, coyote, raccoon, skunk and magpie are found in the area, as well as an occasional black bear and possible mountain lion. Numerous small mammal and bird species can be found nearby, as well as nesting birds.
4. The property is approximately ½ mile northeast of the Clark Fork River which provides significant wildlife habitat.
5. Fish, Wildlife and Parks recommends that “living with wildlife” issues should be conveyed to homeowners as part of the covenants in order to help homeowners deal with and avoid potential wildlife issues. The covenants contain the recommended language.
6. There is a natural drainage area located on the southeastern portion of the property. Drainage easements are proposed to accommodate the natural drainage ways on Lots 2, 4 and 5. These drainage easements are indicated as “No Build” to ensure these areas remain clear of any obstructions.

The runoff from this drainage area exits the property on the south and west sides of Lot 3, as noted on the Drainage Plan.

7. Fish, Wildlife and Parks noted that the drainage easement on Lots 4, 5, and 6 does not continue across Lot 3. A condition of approval requires a 70' wide drainage easement along the southern boundary of Lot 3.
8. The Missoula County Weed District recommends that the subdivider prepare a Revegetation Plan for disturbed areas requiring revegetation with beneficial species of any ground disturbance created by construction on or maintenance of these lots. This is recommended as a condition of approval.
9. The covenants contain a provision requiring lot owners to maintain their lots in compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan. The Weed District commented that this section satisfies the requirements of the Missoula County Weed District for covenants pertaining to Noxious Weed Control and Revegetation.
10. A condition of approval requires the Revegetation Plan to be incorporated into the covenants and may not be changed or deleted without governing body approval.

Conclusions of Law:

1. There will be an incremental loss of wildlife habitat with this subdivision. Impacts to the natural environment will be minimized if the 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. The Missoula County Sheriff's Department provides law enforcement services.
2. Individual wells and septic systems are proposed to serve the lots.
3. The subject property is inside the Air Stagnation Zone.
4. The property is not within the regulatory floodplain.
5. The covenants contain Health Department recommended language regarding radon mitigation, energy efficiency and woodstoves.

Conclusions of Law:

1. Emergency services are available to the subdivision.
2. Septic systems and wells are available if approved by local and state authorities.

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 will meet 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.
2. As required by Section 5-1(5)l), the application contains proposed covenants for this proposed subdivision.
3. These covenants are proposed to only apply to Lots 1, 2, and 4 – 6.
4. Covenants are typically used to enforce and inform future owners of subdivision regulations which are not shown on the plat. These typically include address signs, weeds, wildlife, woodstoves, driveways, radon mitigation, energy efficiency, fences, lighting, utilities and in this case common area use and maintenance, conditional access easements, drainage facilities maintenance and easements, No-Build areas, a signage plan, and fire suppression.
5. Lot 3 is currently subject to the covenants for Sweet Water Hills. These covenants were prepared and executed in 1999 and do not address all of the current provisions required by this subdivision.
6. A condition of approval requires the Wentland Estates covenants, as amended by the conditions of approval, to be revised to apply to all lots within this subdivision. This will ensure the applicable

provisions which require compliance with subdivision regulations and conditions are met by all lots in this subdivision, not just the five smaller lots.

7. Provisions for private road maintenance of Wentland Court are included in the proposed covenants. Lot 3 does not use Wentland Court, and the road maintenance provision of the covenants may be written to the exclusion of Lot 3.
8. A condition of approval also specifies that certain provisions which provide for enforcement of County Subdivision Regulations or conditions contained within the covenants not be amended or deleted without governing body approval.

Conclusion of Law:

1. The developer has submitted a plat which complies with the requirements of local subdivision regulations or conditions have been required or variances have been requested 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 public hearing on this subdivision was published in the Missoulian on April 30th and May 7th, 2006. Certified letters were mailed to adjacent property owners on April 14th, 2006. On April 27th, 2006, a poster was placed at the property.
3. The Missoula Consolidated Planning Board held a public hearing on the subdivision on May 16, 2006.
4. The Missoula City Council held a public hearing on the subdivision on May 31, 2006.
5. The applicant held a neighborhood meeting on December 13, 2005. A summary of the neighborhood meeting is included in the submittal packet.
6. 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 of the Missoula County Subdivision Regulations.

D) PROVISION OF EASEMENTS FOR UTILITIES:

Findings of Fact:

1. The plat indicates utility easements to all lots in this subdivision within the street rights-of-way or other proposed or existing utility easements.
2. The proposed subdivision will be served by Missoula Electric Cooperative for electrical, Northwestern Energy for natural gas, and Qwest telephone service.

Conclusions of Law:

1. The provision of easements for utilities will be met by this subdivision.

E) PROVISION OF LEGAL AND PHYSICAL ACCESS:

Finding of Fact:

1. Physical and legal access will be provided to the subdivision from Lazy H Trail, connecting to the proposed cul-de-sac road—Wentland Court.
2. The County Public Works Department commented that driveway approach permits will be required.

Conclusion of Law:

1. The proposal meets physical and legal access requirements.

V. **VARIANCE REQUESTS**

1. **A variance request from Section 3-2(8)(A)(ii) requiring a concrete boulevard sidewalk on one side of Wentland Court.**

Recommendation: **Approval** of the variance request so that sidewalk is not required on Wentland Court.

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 County Subdivision Regulations require subdividers to construct concrete boulevard sidewalks or paved boulevard pedestrian walkways on one side of the street in all rural subdivisions within the UGA with an average lot frontage of 175 feet or greater, or less than 500 Average Daily Trips (ADT), and waive the right to protest an RSID for future public improvements.

The subdivider requests a variance from the requirement to construct sidewalk on one side of Wentland Court. Wentland Court is proposed as a private cul-de-sac road serving 5 lots. The County Public Works Department supports the variance request, stating that installing sidewalk on Wentland Court would not be appropriate at this time.

The Health Department stated that the subdivider has submitted a good trail system plan that should encourage exercise and future trail connections in the area; however, the Health Department qualifies this comment on the condition that the public can use the trail system. As proposed, the open space areas are proposed for private use only, and the Health Department and the County Park Board support creating opportunities for future public pedestrian access across this property north-south and east-west (see Pedestrian Access Section). Granting this variance will not threaten public health, safety 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.**
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.

Wentland Court cul-de-sac road is not likely to connect to any roads in the future. There are no existing sidewalks on Lazy H Trail to connect to, nor are there any plans for improving Lazy H Trail with pedestrian facilities. The conditions upon which the variance request is based are unique to the area; however, it does not appear that a hardship would result if the strict letter of these Regulations are enforced.

- 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.**

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.**

The plat contains a waiver of the right to protest an RSID for improvements to Wentland Court. No increase in public costs is anticipated with the granting of this variance.

HEARING

Cora Court Addition (Subsequent Minor Subdivision: 5 lots on 5.05 acres) – 2819 Strand Avenue. Commissioner Carey opened the hearing.

Mirtha Becerra: Today you have in front of you, Cora Court Addition. The owners are Morris and Lida Homme, they're here. They are represented by Montana Northwest Company, also here. The proposal

is five residential lots on 5.05 acres. There are two variance requests. One is for installation of boulevard sidewalks and curb and gutter on Strand Avenue. Staff recommended approval of this, Planning Board recommended denial of this. The second is to not install boulevard sidewalks on one side of Cora Court. Staff recommended approval of this and again, Planning Board recommended denial. There are a total of ten conditions of approval. Number 10 was added by Planning Board a couple of weeks ago and it reads, 'A 60 foot public right-of-way shall be designated on the plat from the end of the Cora Court cul-de-sac easement to the southern boundary of the property, subject to review and approval of County Public Works, prior to final plat approval.' The other conditions of approval include the standard conditions of approval regarding fire, radon mitigation systems, RSID's...and I'll be glad to go over them, but I would like to highlight just a few of them which are more relevant to this subdivision. Condition 2 required engineering plans for a bridge over the irrigation ditch at the intersection of Strand Ave and Cora Court shall be approved by County Public Works and Missoula Rural Fire District prior to final plat approval. The next condition of approval that I would like to highlight for you is Condition 3, under Pedestrian Access, that one calls for a 20 foot pedestrian access easement from Cora Court to North Avenue to be dedicated to the public prior to final plat approval. And this one was amended by Planning Board and those changes are reflected on the sheet you have (in the file). The next one is an irrigation ditch condition and this required the developer to provide a 10 foot wide irrigation ditch easement along the east property boundary of Lots 4 and 5 prior to final plat approval. The last is a condition under pedestrian easements (under condition 9) that calls for the development covenants to be amended to include a section on the 20 foot public pedestrian easement located on the property line between Lots 3 and 4 and shall state the area is a No Build Zone and restrict to a height of 4 foot fences bordering the easement area. With that I will conclude.

Ken Jenkins: Again, thank you to Mirtha for her hard work. I think we came out of OPG with a recommendation for conditions of approval that make sense and work well with the design of this subdivision. It was designed with a significant amount of input from the governing body, from the Public Works departments of the County and the City. To get to this point, we like the subdivision and we like the design and we think it'll work. At the Planning Board hearing, there were several conditions that...one new condition and a recommendation for denial of two of the variances that, to say the least, are significant impacts to the subdivision as it was proposed. The new condition imposed by Planning Board was to extend Cora Court down to North Avenue. We intend today to give you testimony that extending Cora Court to the south to North Avenue, not only is unnecessary as we don't really see the future improvement to North Avenue ever taking place for one thing. Secondly, we will testify that approval of that condition would be a denial of the subdivision as proposed. There's just no way that that can be done without losing a lot. The design is too tight. Jason Rice, a project engineer for this project, with Landworks is here and will talk about that. The denial of the two variance requests has to do with the pedestrian facilities along Strand Avenue and also pedestrian facilities along Cora Court. The review process revealed and the agency comments revealed that Public Works Department did not feel that there would be that much benefit from pedestrian facilities along Cora Court and along Strand, for that matter. Again, it's a five lot subdivision on a cul-de-sac street, very little traffic is expected. It's a short street, so there really isn't room to have speeding cars. I think the one thing I always try to keep in mind, this one is being proposed as a public street. We are willing to do an RSID waiver so that at some point if the public benefit is there then these lots would participate in an RSID for sidewalks. I don't think the benefit is there now and that is a trigger mechanism for RSID waivers to actually take place. I think if we're considering getting this walkway up front, we need to look at that benefit criteria now. Mr. and Mrs. Homme, the owners are here. Their daughter and son-in-law are here and I believe some of their neighbors that wish to testify. The first thing we would like to address is the connection to North Ave and I'm going to ask for Debra Eveson to give you a little history of North Ave and then Jason Rice is going to discuss the subdivision design itself. Thank you.

Debra Eveson with Montana Northwest Co.: The area in purple on the map provided, this was the original 1870 plat with a fort. In 1907 Orchard Homes #3 came in and everything in orange on the map are the original platted streets...they were Oak, 27th which is Cherry and Maple. North Ave was not an idea. Then came, there were several different subdivisions within there starting in 1956 there was Oak Addition, Lloyd Addition, Bryan then Mulberry then Brewers. Subsequently, they all dedicated little bits and pieces, but as you can see there are large portions of North missing through these properties. There

are also garages and barns presently in the right-of-way. There's a home in the right-of-way. Some folks who actually left, they couldn't stay, there's a woman that lives at the end and she would not like North Ave go through. Actually with the new Veterans Cemetery coming in, I've talked with the Veteran's rep, there are not plans. They have not made any designation for 30 feet of right-of-way to come through. I don't think North Ave will ever actually be built in our lifetime. There isn't a possible connection through there to make it.....

Commissioner Evans: Don't forget for the record, we abandoned...

Debra Eveson: Yes, for the record, 29th was abandoned due to an encroachment of a home. So there's no possible north/south connection through that area at this time. I would also like to point out one small detail: at the Planning Board hearing there was a Franklin to the Fort representative who go up and said that these folks were in the Franklin to the Fort neighborhood, he wanted to see connectivity and sidewalks....this property is not the Franklin to the Fort neighborhood. It is in the County, these folks are not represented by Franklin to the Fort. Thank you.

Jason Rice: with Landworks Consulting and Design. I actually have three things I want touch on. The first one is something that I just picked up on today, it's condition 2 – this requires that a bridge be designed and approved by the Public Works Director. That irrigation ditch that we're crossing is not that large and we had intended to use a box culvert to cross that. So we'd like the wording changed to bridge or box culvert. If that pleases the Commissioners.

Commissioner Carey: We'll have to ask our engineer. Tim?

Tim Elsea: We would be happy with the word structure.

Commissioner Evans: Or a structure over the irrigation ditch? Okay.

Jason Rice: I think it's more of a clarification of the terminology. With regard to the road right-of-way to North Ave, when this whole project started we actually were the first step that helped with Montana Northwest Co. Mainly because we were also helping with the sanitation review on this project, the sewers and wells and this particular property has some challenges. There are ditches along essentially every border, except the border that would have been the old North Ave right-of-way. So, in sanitation, with today's rules, your wells and sewers all have to be 100 feet away from those ditches. We went to a pretty extensive study before we even started this subdivision because you usually look at the first thing that could kill a project. There is 5.00 acres, here, I mean it is VERY tight. In order to get five acres, I think the comment was made that you could easily redesign and keep five lots and that's not true. We looked at every option possible. We actually thought that might be something that would come up, it's not possible. When we thought it was a possibility of it coming up, the research was done on North Ave and the connectivity and whether or not that would even occur and we were told that was not likely to occur. So we proceeded with the five one acre parcels, given the sewer and water constraints and you can see the wells on the map here. There are circles around them (review of map), so the way they're clustered along the road is why when we say it will effectively deny the subdivision as proposed, it truly will. There is not redesign that can result in five lots as was proposed originally, without bringing in public water or public sewer. There is a dry laid sewer for the County regulations, but that doesn't give them a smaller lot design. As far as the sidewalks go, we took a look at that and first on a technical side we looked at the engineer's estimates for that. It is a burden for these folks, who for all practical terms which hasn't been mentioned, but this might have been proposed as family transfer for what the goals on this project, if it had met the criteria. So the cost is a big issue for a project like this because they're not professional developers. The sidewalk costs with the curb and gutter are going to double the cost of the road infrastructure for this project. That's a pretty significant up front cost for someone who doesn't have the investment capital to do that. The other side of it, more on a personal note, is I live on a road up in Lolo that has 13 houses on it and we do have a sidewalk. But every time I look out my window, everyone is walking on the curb right next to the sidewalk, they're walking on the road because for whatever reason they don't want to be on the sidewalk. I'm just a study of these things, being an engineer and coming around these issues all the time, and I can't for the life of me figure out why people don't walk on

sidewalks. Supposedly they're safer...and our road is really narrow as well, it's only 20 feet wide. So, I think the reason is and this comes back to AASHTO, you look in the green book of AASHTO and it talks about design speeds and warrants for pedestrian access adjacent to roads. When your speeds on a road are 15 MPH and less, which on a short road like this, there's no way accelerations would allow you to get to 25-35 MPH, the pedestrian safety is not a big issue. And they don't warrant the sidewalks. Now, that comes down to judgment and each person is going to have a different opinion and I think sometimes it comes down to people wanting to landscape their community with sidewalks and pretty boulevards, but at the cost of others. With that I'm going to turn it back over to Ken to summarize things.

Ken Jenkins: I'll be brief, I just want summarize this. I know there are a few other folks who would like to speak to this. To finish up our comments, I will say is what we would ask for is an approval of the subdivision with the original conditions proposed by OPG with the clarification of the structure terminology in condition 2. At any rate, approval with those conditions and approval of the variances as was recommended by Public Works and as was recommended by OPG. Essentially striking the condition imposed by Planning Board. Thank you.

Commissioner Evans: Ken, on number four, the developer shall provide a 10 foot wide irrigation ditch easement, I'm assuming that the ditch is there and all this does is verify it and provide an easement, is that correct?

Ken Jenkins: That is correct.

Commissioner Evans: So you don't have a problem with that?

Ken Jenkins: No.

Gay Putnam: I'm the daughter of Morris and Lida Homme and I just want to say we were so lucky to live and grow up on Orchard Homes. My parents had planned to keep their land, their orchard and their gardens for the rest of their lives. Unfortunately a retired teacher's pension just no longer allows that luxury. After many tears and long discussions, they decided they had a choice – sell the property or move. This is the most difficult decision they have ever made. It's very important for my parents to maintain the rural feel of the area and the goodwill of the neighbors. The acre plots were designed to keep the area open, allowing the mother deer and her babies, the duck and pheasant families to be part of the neighborhood. Both of my parents are very worried about the sidewalk issue. At 88 and 94 years old, they know there's no way they can maintain a sidewalk. I know my mother hasn't slept for many nights worrying about this huge expense and I just want to ask you to please allow the variance that OPG and Public Works gave us. Thank you.

Cheryl Leeman: I plan to be living on this property. I want to live there because it's rural. I don't want to shovel sidewalks. I want to be able to plow the court, maybe. I don't want...people should not be walking through there on the sidewalks anyway...it's just a little court. There's a whole Forest Service area for that. I just want you to know I'm moving from 15 acres to this and I want it to stay as rural as possible. Thank you.

Ted Putnam: I am the son-in-law of the Homme's. My job here was to take a lot of stress off of my in-laws, I don't know how well I did that, but it has been a very stressful process. A lot of what I wanted to cover has already been covered, so I'll be brief. I did go out for three bidders just to get an idea of what this would all cost and I got \$120,000 for just the basics as we had asked to do it. The cost due, if you just literally extrapolate costs, they double if you put in the road and the sidewalks. With the loss of a lot financially it isn't there to do the subdivision. To gain that extra money, or to have some money for the Homme's left over, the gamble would be to bring in either sewer, water or both. That takes the costs up into the \$300,000 to close to half a million dollars. In order to do that, and I don't even know that we could, you would have to pay interest at the rate of over \$7000.00 a month. So if we didn't sell those lots right away, the possibility exists that is not only wouldn't make money, but we could lose money. I think that goes along with what other people have said, if the road goes through that essentially kills the project. I would also like to add, in the beginning of our planning phase, the first thing we did was look at

the neighborhood and our neighbors who were out there, the Homme's did most of that. But we designed this to be a low density subdivision in a low density neighborhood. Since Strand Ave is kind of a cul-de-sac anyway in a larger sense, we feel the neighborhood's going to stay low density for a long time to come. I'd just like that to be considered. Thank you.

Dave Pierce: I live on Mulberry Lane. My backyard is adjacent to Cora Court. For 25 years I've had the luxury of looking at a horse pasture in my back yard, it's been very nice. I've known that sooner or later, they would probably need to develop the land and I've always had some concern about what will go there. When I originally saw the plans for Cora Court I was just delighted, I think it's a wonderful plan. It's the kind of thing you want in your backyard. When I heard the direction that the County Planners, who were heading the thing, I really got concerned. I had visions of a through street, increased traffic, the cost if they had to bring in the sewers and water, high density housing it the only thing that would make that feasible. It's just not what I want in my backyard. I have been delighted with the idea of this plan and I sure hope that's the way it proceeds.

Commissioner Evans: Mr. Pierce, I'd like to correct one thing. You said the County Planners, the planners made an original recommendation and the Planning Board....

Dave Pierce: Planning Board, I'm sorry.

Commissioner Evans: I'm just pointing out that our planners weren't the ones who did it.

Doug Hayes: Possible purchaser of one of the lots, if everything goes through. What attracted me to that specific location was the size of the lots, still having a decent size lot out in that particular area. I've been in contact with Mr. Ted Putnam on occasion throughout the process and he had expressed some of the changes and concerns which is exactly what I didn't want to see out in the Orchard Homes area where we now live. I don't want to see it going into high density subdivision and we could possibly see that occurring with the particular lot if it got into the right hands of different developers going into a higher density, lower cost housing. But the surrounding area just really, if you look at the area, it doesn't support that particular type of development. So the one acre lot was very attractive to me and my wife and kids. It also back up again my in-laws, which was an added bonus, they are Vern and Sharon Joliffe off of Mulberry Lane.

John Nelson: I don't hear too well, so I'm going to try and shoot from the hip, if you don't mind. I live at 2709 Strand Ave which is just up the street from the Homme's. I've known them ever since they moved out, wonderful neighbors, and wonderful family. We'd like to keep that in the area of small places where they be one acre lots, which is just something that the people could have yards, gardens and so forth. I'm pleased that the Homme's and their people are willing to do that with five acres, rather than get something like we have down there by Hawthorne School, where they put 20 houses on the same place. God bless us that we never have that. But they have a problem with the Planning Board, I was listening to some of the Planning Board the other night. One was that need access to go to North Ave. North Ave of course is not there and probably never will be, because if North Ave was extended out, it'd end up in the government land. There you don't get through, you'd have to go clear way into the Target Range area before you find North Ave again. So it would seem like North Ave would never be a possibility. But yet, they wanted a pathway to North Ave which seems to me would be a pathway to nowhere. The Commissioners, I'm sure will take that into consideration. Also the sidewalks...if you would take a look at the Strand...there are irrigation ditches that first whole length of Strand and I can't imagine how they'd ever put a sidewalk in there. But then that's beside the point again for the Commissioners to consider. I do hope that you do approve this subdivision that they're asking for without any encumbrances because the sidewalks and so forth would be an expense that would be unnecessary. Thank you.

Commissioner Carey: Thank you. Anyone else wish to speak? Seeing none, I'll close the hearing.

Commissioner Evans moved that we do not approve the condition calling for a 60 foot public right-of-way from the end of Cora Court to North Avenue. Commissioner Carey seconded. The motion carried on a vote of 2-0.

Commissioner Evans: On Pedestrian Access, I would suggest that we put a period after the words No Build Zone and remove 'and restrict to a height of four feet for fences bordering the easement area.' Michael, I see you grabbing for the mic.

Mike Sehestedt: I think there may be a way....and I think I know what you're aiming at with that restriction on height of fences. I know what their concern is. I would suggest to restrict to a height of four feet wood or masonry fences bordering the easement.

Commissioner Evans: No restrictions on other types of fences such as chain link?

Mike Sehestedt: Right, we're simply restricting the height of the kind of fence that would obstruct views.

Commissioner Evans: I'd have no problem with that wording as long as we add no restrictions on other types of fencing. I live in an area that has deer. A four foot fence does not keep them out. Ours is chain link, you can see through it. I think that's what you're aiming at and that's what I hope to give you.

Commissioner moved to restrict a height of four feet for wood or masonry fences that may block views on Cora Court. This restriction does not apply to other kinds of fences, such as chain link or something you can see through. Commissioner Carey seconded. The motion carried on a vote of 2-0.

Commissioner Evans: The 20 foot wide pedestrian access easement...I think that one is the one that runs.....

Mike Sehestedt: That's correct, it ties in to the linear park. It runs between Lots 3 and 4.

Commissioner Evans: I think the last question I have before I do that is, Tim, on engineering plans for a structure over the irrigation ditch could be misconstrued to say it has to be a structure over the ditch, instead of a culvert that encompasses the ditch. I just want to make it clear that you're not saying a structure equals a bridge or whatever, it could be a culvert, is that correct?

Tim Elsea: I thought we were going to say a bridge or other structure.

Commissioner Evans: Okay, a bridge or other structure that would be fine.

Commissioner moved to approve the original staff recommendation with the changes that we have made, including the one that deals with the bridge or other structure to approved by Public Works. Commissioner Carey seconded. The motion carried on a vote of 2-0.

Commissioner Carey: Okay, so I understand, condition 3 is originally written by the staff and this is what you wish to adopt.

Commissioner Evans: Yes.

Commissioner Carey: Okay, and then condition 2 we're just adding 'or other structure' over the ditch....

Commissioner Evans: Yes.

Mike Sehestedt: I want to get something in real quick for the record. On the North Ave conditional right-of-way there's language on the plat that says this is conditional and in addition to needing a street opened, they can't exercise that option until sewer is extended to the area because of the potential drain field incursion that would cause. So you're okay with reserving that conditional 30 foot right-of-way?

Commissioner Evans: Yes. I'd also like to say, just by way of discussion, that I have wanted North Ave opened for many years, unsuccessful. If I'm not mistaken, there's a house maybe on both ends of North Ave that are in the middle of what would be the road. With the Veterans Cemetery and state lands, the likelihood of that road ever being a road and opening up, in my mind is very slim to none. So that's additionally one of the reasons why I think the conditional easement is a good thing.

Commissioner Evans moved to approve the variance requests for number one not to install boulevard sidewalks and curb and gutter on Strand Avenue and for number two not to install a boulevard sidewalk on one side of Cora Court. Commissioner Carey seconded. The motion carried on a vote of 2-0.

Commissioner Evans: Now I'd like to make that clear to you folks, you don't have to put in a sidewalk. You don't have to put in a road at the end of Cora Court to North Avenue. Virtually everything that the planning staff recommended for you is what we have given you.

Commissioner moved to approve Cora Court Addition Subdivision with all the changes noted based on the finding and fact presented in the staff report. Commissioner Carey seconded. The motion carried on a vote of 2-0.

CONDITIONS OF SUBDIVISION APPROVAL

Roads and Access

1. 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 Strand Ave, North Avenue and Cora Court, 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) and County Public Works recommendation)
2. Engineering plans for the bridge over the irrigation ditch at the intersection of Strand Avenue and Cora Court shall be approved by County Public Works and Missoula Rural Fire District prior to final plat approval. *(Missoula County Subdivision Regulations 3-2(1)(H) and County Public Works recommendation)*

Pedestrian Access

4. The 20' wide private pedestrian access easement extending from Cora Court to North Avenue between Lots 3 and 4 shall be dedicated to the public prior to final plat approval. *(Missoula County Subdivision Regulations 3-2(6)(C) and City Engineering and City-County Health Department recommendations)*

Irrigation Ditch

5. The developer shall provide a 10' wide irrigation ditch easement along the east property boundary of Lots 4 and 5 prior to final plat approval. *(Missoula County Subdivision Regulations 3-6)*

Fire

6. The developer shall provide a water supply for fire protection that produces 1000GPM with a hydrant or, in lieu of a water supply with hydrant, the developer shall install interior residential fire sprinklers that meet NFPA 13D standards in each new home. Plans for the installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to building permit approval. Plans for a water supply and hydrant location shall be approved by Missoula Rural Fire District prior to final plat approval. *(Missoula County Subdivision Regulations 3-7(1) and Missoula Rural Fire District recommendation)*
7. 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))*

8. A signage plan which includes a road sign for Cora Court, address signs , and temporary (during construction) signs shall be reviewed and approved by County Public Works and Missoula Rural Fire District prior to final plat approval. *(Missoula County Subdivision Regulations 3-2(2)(F) County Public Works recommendation)*

Water and sewer

9. The following statement shall appear on the face of the final plat:
"Acceptance of a deed for a lot within this subdivision shall constitute a waiver of the right to protest a future RSID/SID for public water and sewer systems, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owner of the land."
(Missoula County Subdivision Regulations 3-1(6))

Development Covenants

10. The development covenants shall be amended as follows and these sections shall be included in the list of sections under "Amendments" that may not be changed or deleted without governing body approval:

Fire Protection

The approved water supply for fire protection shall be added to the development covenants. If the method for fire protection is interior residential fire sprinklers, the following note shall be added to the development covenants:

"Installation of interior residential fire sprinklers that meet NFPA 13D standards are required in each new home for the purposes of fire protection. Plans for installation of interior fire sprinklers shall be approved by the Missoula Rural Fire District prior to building permit approval. Failure to install interior residential sprinklers in any new home may subject the entire subdivision to the cost of installation of a shared water source for fire fighting purposes."

Radon

The development covenants shall be amended to add a section on radon, including the statement on Radon mitigation as recommended by the City-County Health Department in the agency comment letter. *(Missoula County Subdivision Regulations 3-1(2) and Health Department recommendation)*

Pedestrian Easements

The development covenants shall be amended to include a section on the 20' public pedestrian easement located on the property line between Lots 3 and 4, and shall state the area is No Build Zone, and restrict to a height of 4' fences bordering the easement area.

Wood Stoves

The development covenants shall be amended to include 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)*

Road and address signs

The development covenants shall be amended to include the signage plans approved by County Public Works and Missoula Rural Fire District.

SUBDIVISION FINDINGS OF FACT

A. ZONING AND COMPREHENSIVE PLAN COMPLIANCE

Findings of Fact:

a) Zoning Compliance

1. The property is zoned Z.D 12A (Residential 2 du / 1 acre).
2. The Z.D 12A zoning district allows for a maximum residential density of two dwelling units per acre and a minimum lot size of half acre.

3. Setbacks in the Z.D 12A district are 25' for front yard, 15' for side yard and 25' for rear yard. Maximum lot coverage is 25' and maximum floor area, excluding basements and garages for single dwellings. Maximum building height is 30' and minimum lot width is 100'.
4. All existing structures on Lot 1 meet the setback requirements of the zoning district with the lot lines as proposed.
5. The area of subdivision is 5.05 acres. The applicant is proposing to subdivide the property into five residential lots, with a resulting density of 1 dwelling unit per acre.

b) Comprehensive Plan Compliance

6. The applicable plan documents are the 1973 and 1993 Fort Missoula Plans. The Plans recommended land use designation is Residential, with a maximum density of two dwelling units per acre.
7. The 1993 Fort Missoula Plan states that a general goal is to ensure that new development and use, or expansion of existing use, meets the following conditions: it responds to significant community needs, it involves a site uniquely suited for meeting those needs, and it respects the distinctiveness and harmonizes with the character of the Fort area. (Page 35).

Conclusions of Law:

1. The proposal complies with the Z.D 12A zoning and the designated land use.

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 72 Moiese gravelly loam, 0 to 2 percent slopes.
3. There is an irrigation ditch which runs along the northeastern and part of the western boundaries of the proposed subdivision.
4. The Missoula Irrigation District commented that easements were not provided to Lots 2, 3, and 4.
5. The plat includes a 10' irrigation ditch easement along the western boundary of Lots 1 and 2.
6. A condition of approval requires a 10' irrigation ditch easement be added to the plat along the eastern boundary of Lots 4 and 5.

Conclusions of Law:

1. 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.
2. If the recommended condition is approved, 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 Strand Ave, a 24' wide paved County road without curb and gutter within a 60' public right-of-way.
2. Subdivision regulations require the installation of curbs and gutters in a rural subdivision where the lots have an average street frontage of 175' or less. The applicant is requesting to vary from this requirement on Strand Avenue. County Public Works supports the variance request.
3. A proposed access from Strand Ave. to the new lots is from Cora Court, a 24' wide paved public road within a 60' public-right-of-way.
4. Cora Court crosses an irrigation ditch near its intersection with Strand Avenue
5. Subdivision regulations require bridges and drainage structures to be reviewed and approved by the County Public Works. A condition of approval requires engineering plans for the bridge over the irrigation ditch to be approved by County Public Works.
6. The existing home shown on Lot 1 accesses Strand Ave via an existing concrete driveway. All other lots will access from proposed Cora Court.
7. A 30' foot wide public right-of-way was dedicated with the Oak Addition subdivision adjacent to the west and with the Mulberry Addition subdivision adjacent to the east for North Avenue.

8. The developer has shown a 30' conditional access easement along the south property boundary for North Avenue with a note on the preliminary plat that the easement is conditioned on the City of Missoula acquiring an additional 30 feet of easement for the improvements of North Avenue and conditioned on public sanitary sewer be extended to the subdivision.
9. This subdivision is expected to generate an additional 7 –10 trips per household per day for a total of 32 additional trips.
10. The subdivision regulations require an RSID/SID waiver statement on the plat for improvements to streets. A condition of approval requires the waiver statements on the plat for Strand Avenue, North Avenue and Cora Court.
11. The developer has included a maintenance agreement for Cora Court in the development covenants.

Drainage

12. The proposed subdivision is within C&D Orchard Homes No. 3 subdivision. The original drainage plan directed rainfall runoff along roadside swales.
13. According to the Drainage and Grading Report, the amount of storm water generated by this subdivision and all increased storm water will be retained on site or directed along roadside swales.

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 Subdivision Regulations require 5' concrete boulevard sidewalks with 7' landscaped boulevards in all subdivisions located within the Urban Growth Area.
2. The subdivider is requesting a variance from the requirement to install boulevard sidewalks on Strand Ave. County Public Works approves of the variance request.
3. The Subdivision Regulations require rural subdivisions within the UGA with an average lot frontage greater than 175 feet to install boulevard sidewalks on one side of the street.
4. The subdivider is requesting a variance from the requirement to install boulevard sidewalks on Cora Court. County Public Works recommends approval of the variance request.
5. City Engineer, Steve King recommends curb, gutter and sidewalks be installed on Cora Court.
6. Cora Court is proposed as a public road. A condition of approval requires an RSID/SID waiver statement be added to the plat for improvements to Cora Court including sidewalks.
7. Subdivision regulations require developments with Cul-de-sacs to provide non-motorized access easements which connect the end of the cul-de-sac to reasonably expected future streets and trails.
8. The County Park Board commented that the Mulberry Addition to the east includes a 10 foot wide linear park located parallel and adjacent to the 30 foot wide dedicated public right-of-way for North Ave. While this park area is not presently improved, it may someday in the future provide a corridor.
9. The County Park Board comments further that a pedestrian link from Cora Court to North Avenue will provide subdivision residents a shorter route to adjacent schools and provide opportunities for pedestrian travel between subdivisions.
10. 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.
11. The plat includes a 20 foot wide private pedestrian access easement extending from Cora Court, a public road between Lots 3 and 4 to North Avenue, a public right-of-way for the use and benefit of Cora Court lot owners.
12. A condition of approval requires the 20 foot wide pedestrian easement between Lots 3 and 4 to be dedicated to the public to provide a public access between the Cora Court and North Ave. public rights-of-way. County Parks Coordinator Lisa Moisey, requested the easement be public as well.
13. A condition of approval requires an RSID/SID statement be placed on the plat waiving the right to protest improvements to Strand Ave, North Avenue, and Cora Court including but not limited to the installation of non-motorized facilities.

Conclusions of Law:

1. If variance request #1 is approved and variance request #2 is denied, and the recommended conditions are adopted, the 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 1 is currently served by an existing well.
2. Water is proposed to be provided to Lots 2, 3, 4, and 5 by an individual wells.
3. The nearest public water system exists approximately 300 feet to the east in Mulberry Addition, however no easements are currently in place for public water extension to the subject property.
4. The developer has submitted a request for a waiver to public water supply connection requirements. The Water Quality District comments that the waiver has been denied until information is submitted showing that easements for main extensions cannot be obtained.
5. Dry lay sewer will be installed to facilitate future connection to public sewer.
6. A condition of approval requires an RSID/SID waiver statement added to the plat for connection to future public water and sewer systems.
7. 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. No parkland is being proposed for the subdivision.
2. The subject property was a tract created by Sol Acreage Tract Subdivision, an eight lot major subdivision filed in 1968.
3. Missoula County Subdivision regulations require subdivisions be reviewed as a second or subsequent minor subdivision if the subdivision is a division of a tract of record which has previously been created by minor subdivision review. Under the current Missoula County Subdivision regulations parkland dedication is required for a second or subsequent minor subdivision.
4. The proposed subdivision is not a second or subsequent minor per current Missoula County Subdivision regulations.
5. SB 116, adopted April 19, 2005 with an immediate effective date, amended the definition and expanded the number of subdivisions that require review as a subsequent minor subdivision. A subsequent minor is defined as a division of a tract of record which since 1973 has been divided more than five times by use of exemptions from the Montana Subdivision and Platting Act or the original tract of record has been previously divided through subdivision review. Under SB116 the proposed subdivision is defined as a subsequent minor because it is from an original tract of record that has been previously divided through subdivision review.
6. The change in state law does identify this subdivision as subsequent minor subdivision which may be reviewed in whatever manner Missoula County adopts in their local regulations, however, new state law does not allow Missoula County to require the dedication of parkland for subsequent minor subdivisions.

Conclusions of Law:

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

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

Schools

Findings of Fact

1. The subdivision is expected to result in approximately 6 to 8 additional school age children being added to Franklin Elementary School, CS Porter Middle School 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 located approximately 0.7miles from the property over paved roads.
2. There is no public or community water system serving this area. Subdivision regulations require an RSID/SID waiver 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. A condition of approval requires the waiver statement to be placed on the plat.
3. A water 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 that provides 1000GPM with a hydrant, or that residential fire sprinklers meeting NFPA 13D standards be installed in each new home. A condition of approval requires the water source for fire protection be reviewed and approved by the Missoula Rural Fire District and be included in the Development Covenants.
5. Missoula Rural Fire District commented that all properties must be properly addressed with address signs clearly visible from the street in all light conditions.
6. County Public Works requires a signage plan approved by County Public Works prior to final plat. A condition of approval requires a signage plan to be reviewed and approved by the Missoula Rural Fire District and County Public Works prior to final plat approval.

Conclusions of Law:

1. Fire service is available to the subdivision if the recommended conditions are imposed.

Law Enforcement

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 are no riparian areas or areas with steep slope identified on the subject property.
2. Montana Fish Wildlife and Parks commented that due to the proximity of the subject property to the large open tracts of DNRC's nursery and orchard, there's a possibility of human/wildlife interactions.
3. The developer has included a Living with Wildlife section in the Development Covenants as recommended by MFWP.

Conclusions of Law:

1. Potential impacts to the natural environment will be minimized by the inclusion of the Living with Wildlife section in the development covenants.

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. The subject property is within the Air Stagnation Zone. 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 include this information in the development covenants.
3. Missoula County has a high radon potential, and the Missoula City-County Health Department recommends that all new residences incorporate radon resistant construction features. A condition of approval requires the subdivider to include this information in the development covenants.
4. The proposed subdivision will use on-site water wells and sewage disposal.
5. The nearest public water system is located approximately 300 feet to the east in Mulberry Addition subdivision; however no easements are currently in place for public water extension to the subject property. The Health Department comments that a waiver to public water supply connection requirement has been submitted and has been denied until information showing that easements for main extensions cannot be obtained is submitted.
6. The nearest public sewer system is located half a mile away from the subject property. Dry lay sewer will be installed to facilitate future connection to public sewer.
7. Sanitation will be reviewed under the Sanitation Act by state and local agencies.

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 30, 2006 and May 07, 2006. Certified letters were mailed to adjacent landowners on April 28, 2006. On May 1, 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 May 16, 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 31, 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. A 60-foot wide public road, utility, and irrigation easement is located along the front of proposed lot 1 and 2.
2. The proposed subdivision will be served by Northwest Energy, 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 Strand Ave.
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.

V. VARIANCE REQUESTS

1. **A variance request from Section 3-2(8)(A)(ii) of the Missoula County Subdivision Regulations requiring installation of boulevard sidewalks and from Article 3-2(7) requiring installation of curb and gutter along Strand Ave.**

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.**

Strand Avenue is an existing County maintained road paved to 24 foot width with no curb and gutter or boulevard sidewalks. Drainage is provided with swales on both sides of Strand Ave. An irrigation ditch is located within the right-of-way adjacent to the southern right-of-way boundary. County Public Works supports the variance request and commented that these improvements should be constructed as a whole rather than for a short section of the right-of-way adjacent to the subdivision. The Missoula City-County Health Department supports this variance request contingent on a RSID/SID waiver for improvements to Strand Avenue, including pedestrian facilities, and curb and gutter being added to the face of the plat.

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

It is a unique situation to be responsible for providing curb and gutter, and boulevard sidewalks on a County maintained and paved road for a small portion of the road fronting the subdivision, rather than improvements being installed on Strand Avenue as a whole.

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.

Currently, there are drainage swales and a ditch occupying this area. There appears to be enough room for drainage and pedestrian facilities. However, if curb and gutter were installed on the south side of Strand Avenue for the length of this subdivision, it could result in the disruption of the surface drainage system.

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 applicable documents.

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

If the condition of approval which requires an RSID/SID waiver statement be added to the face of the plat waving the right to protest a future RSID/SID for improvements to Strand Ave. including curb and gutter and boulevard sidewalks is approved, 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 boulevard sidewalks along one side of Cora Court.

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.

Subdivision regulations require rural subdivisions within the UGA with average lot frontages greater than 175 feet to install boulevard sidewalks on one side of the street and an RSID/SID waiver statement for improvements to the road be included on the plat.

Cora Court is a proposed 24 foot public road within a 60 foot road easement. County Public Works supports approval of this variance request, commenting that Cora Court will be a very low speed, very low volume road and there doesn't seem to be a pressing need for installing pedestrian facilities on it at this time.

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 physical surroundings of the subject property would not constrain installation of these facilities.

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 applicable documents.

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

A condition of approval requires an RSID/SID waiver statement for the future improvements to Cora Court, which includes sidewalks, be placed on the plat.

Seeing no further business, Commissioner Carey recessed the hearing at 2:20 p.m.