

**July 12, 2006 Public Meeting** – Chairman Bill Carey called the meeting to order at 1:30 p.m. Also present were Commissioner Curtiss, Commissioner Evans, Deputy County Attorney Colleen Dowdall and Director of Public Works Greg Robertson.

## **PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENT** - none

## **ROUTINE ADMINISTRATIVE ACTIONS**

Commissioner Evans moved to approve Weekly Claims List in the amount of \$677,220.31. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

## **HEARING**

### **Reid Family Transfer**

Commissioner Carey opened the hearing

Colleen Dowdall: Lorraine R. Reid has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10.38 acres in size located near Wye Mullan around Pulp Mill Lane, Moccasin Lane. Lorraine proposes to create one approximately five (5) acre parcel for transfer to her husband, James B. Reid, for residential purposes and keep the remaining approximately five plus (5.38) acre parcel for residential purposes as well. In her narrative, Mrs. Reid stated that there is one house on the parcel and she proposes to sell that to her son and transfer the other parcel to her husband which they would keep and someday perhaps build a house on it. The history of this parcel is as follows: COS #1595 was filed in 1978 to create parcels of land greater than 20 acres. COS #1724 was filed in 1978 to create a parcel of land for transfer to a member of the immediate family, creating Tract 17C. The owner, Mary Tucker, filed a Quit Claim Deed in 1986, deeding the parcel to Leo and Frieda LaCasse. A Warranty Deed was filed in 2000, deeding the parcel to Gerald and Betty Ebel. The Ebel's deeded the property to Lorraine R. Reid in May of 2006. According to records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act. The recommendation is to consider a request to create a family transfer parcel by dividing the parcel described as Tract 17C of COS #1724 located in the SE ¼ of Section 19, Township 14 North, Range 20 West.

Commissioner Carey: Thank you, is Mrs. Reid here?

Lorraine Reid: Hello.

Commissioner Carey: We ask our attorney to put some questions to folks who are doing the exemption because we need your responses on the record and hopefully your answers will indicate that this is not an attempt to evade subdivision review. This is a misdemeanor.

Colleen Dowdall: How long have you owned the property?

Lorraine Reid: We just purchased it in May.

Colleen Dowdall: Did you buy it with the intent to divide it?

Lorraine Reid: We bought it. I have two sons and one has lived in Missoula since he got out of the service. The other one was in Japan for 12 years and came back to the states about a year and a half ago. This spring he got the opportunity to move back to Missoula and work online, from home. So I went online and found that the property right next to my other son was for sale and it's this property. It was kind of like a meant to be thing. So it was just ideal. I don't know if you all have a copy of the plat map, but there's already road going right through the middle of the property for some reason. It's just an ideal thing and it made the ability for us to have a lot here next to my kids that we can actually build on and make an affordable purchase for my other son who's finally back in the state of Montana.

Colleen Dowdall: You don't intend to transfer the lot that you are transferring to your husband in the next year?

Lorraine Reid: No.

Colleen Dowdall: And it won't be developed? For instance like a subdivision?

Lorraine Reid: No. The community or covenants right now are for five acre minimums.

Colleen Dowdall: Okay and your son will be residing on the property?

Lorraine Reid: Yes, he's already renting it from us for a...

Colleen Dowdall: Did you talk to anyone at the County about going through subdivision review?

Lorraine Reid: When I called the County Attorney's Office about it, the gal that I talked to originally said she wasn't sure if this qualifies as a family transfer and then she called me back and said it did qualify.

Colleen Dowdall: Are you attempting to evade subdivision review?

Lorraine Reid: No.

Colleen Dowdall: You understand that this request is not being reviewed for whether you have adequate access, whether your easements are good, that sort of thing.

Lorraine Reid: Um hmm... (yes)

Colleen Dowdall: And you understand that you may need other approvals to divide the lot. Septic approval, zoning compliance....

Lorraine Reid: Yes I understand there are additional expenses.

Colleen Dowdall: Okay.

Commissioner Curtiss: Did I hear you correct that we should correct our paperwork to say that you bought it in May 2006? It says 2000 on our paperwork here.

Lorraine Reid: Oh, I must have had my six look like a zero, yes it is May 2006.

Commissioner Evans: Is this the one Colleen that you said she could just deed to her son instead of having to go through the extra work of giving it to her husband?

Colleen Dowdall: We...you could have just done a family transfer to your son rather than doing it to your husband.

Lorraine Reid: I didn't understand the mortgage, whether having it in his name before he went to get a mortgage to buy it from us. Obviously he doesn't have the money to pay us for it, so that's why I thought it might be simpler that way.

Colleen Dowdall: Okay, well that makes sense.

Commissioner Curtiss: Because a family transfer doesn't mean that you have to give it to him, you can...it just means that it can be put in his name, but you can still have him pay you for it. So, it's okay to do it this way, but you could just skip the step of giving it to your husband and having him sell it. The whole thing is in your name now, not you and your husband, right?

Lorraine Reid: Just mine, yes.

Seeing no further comment Commissioner Carey closed the hearing.

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

Commissioner Carey: Next we have a hearing on the Block family transfer.

Colleen Dowdall: Would this be Davis?

Commissioner Carey: I've got Block here, is it Davis?

Commissioner Curtiss: If we have the wrong name listed does that mean that we...

Commissioner Evans: We did Block a long time ago.

Randy Block: The Blocks are here.

Commissioner Evans: They are?

Colleen Dowdall: So it's Block-Davis'?

Commissioner Curtiss: We have the wrong...

Colleen Dowdall: Are Davis' here? No. Well this one says July 19<sup>th</sup>; she gave me the wrong one. If you want to continue it and do one subdivision, I can go find the paperwork on the Block transfer.

Commissioner Carey: Fine. We'll recess this hearing and we'll move on to Equestrian Estates. Okay, if you'll bear with us, there's been a little mix up so hopefully we can find your materials (to the Blocks).

## **HEARING**

### **Equestrian Estates (5 lots on 27.26 acres) – Barb Lane, near Mullan Road**

Commissioner Carey opened the hearing.

Mirtha Becerra with OPG: Before you today is Equestrian Estates. This is a request from Patricia Steinbreucker represented by Eli & Associates. They would like to subdivide 27.26 acres into five residential lots. The property is unzoned and the land use designation is open and resource with a maximum residential density of one dwelling unit per 40 acres. This subdivision will have a density of 1 dwelling unit per 5.45 acres. The lots are accessed from Unbridled Way, a new approach cul-de-sac which intersects Barb Lane near the end of the Barb Lane cul-de-sac, approximately one mile from the Mullan Road/Moccasin Lane intersection. Lot 1 is 7.25 acres in size and has an existing home. All of the rest of the lots, not including Lot 1 are approximately five acres in size. Staff has received four public comment letters from surrounding property owners and they are included in the staff report. The applicant is requesting four variances. The first one is a variance from the requirement to improve Barb Lane to a minimum roadway length of 24 feet. Barb Lane is a 20 foot wide gravel private road and regulations require all private roads to have a minimum surface width of 24 feet. Staff recommends approval of this request. Planning Board held a public meeting on this proposal June 20 and recommended denial of this variance request. The second variance request is from the requirement to pave Unbridled Way. Unbridled Way is a proposed 24 foot wide gravel private cul-de-sac and regulations require that all new subdivisions have roads. Staff recommends approval of this request and Planning Board recommended approval as well. Number three is a request from the requirement to install internal pedestrian connections, and connections to school bus stops and adjoining neighborhoods. Subdivision regulations require that subdivisions outside the UGA and located on private roads provide internal pedestrian access to school bus stops and adjoining neighborhoods. Staff recommends approval of this variance request and Planning Board recommended denial. The fourth variance request refers to the requirement of a maximum cul-de-sac length of 1000 feet. Staff recommends approval of the request and Planning Board did as well. There are 12 conditions of approval for this subdivision (this includes the two additional conditions you have in the memo today. And that takes into account removing condition of approval number 11 which was to provide improvement of solid waste removal service to the property. There's a letter that's attached to that memo also. The remaining conditions of approval are the typical conditions of approval that apply to subdivisions in the County such as: A signage plan for permanent road and address signs as well as temporary signs that meet Public Works and Missoula

Rural Fire standards. Driveway standards for fire protection purposes, RSID waiver statements for public sewer and water and installation of residential fire sprinklers approved and reviewed by Missoula Rural Fire District. However, I would like to highlight conditions of approval 1, 2, 3 and 6 as they are particular to this subdivision. Condition one was amended by Planning Board. Right now there is an easement that runs along the southern boundary of the property and that is an old road, a GLO road, and the condition read: The road easement along the south property line of the subdivision per County Road Plat Book 1 shall be shown on the plat or the developer shall provide legal documentation that the road has been abandoned subject to review and approval by County Public Works and the County Attorney's office prior to final plat approval. Planning Board had discussions about this and they recommended that it be shown on the plat for purposes of future connections in that area. Condition two was added after that Planning Board hearing and it requires a 30 foot conditional public access easement extending from Barb Lane along the entire length of the western property boundary shall be shown on the plat, prior to final plat approval. I think in the name of connectivity they also thought of that as a viable option especially if you have that easement along the southern boundary of the property. Number three is the road easement for Unbridled Way shall be designated as a public access easement and two notes shall be added to the plat subject to review and approval by County Public Works prior to final plat approval: (1) an RSID/SID waiver statement for improvements to Unbridled Way and to (2) 'Unbridled Way shall not be maintained by the County until such time the road is brought up to County standards and accepted by the County for maintenance. Finally condition number six under pedestrian connection Planning Board added this condition to read, a five (5) foot wide trail shall be installed along one side of Unbridled Way to Barb Lane, subject to review and approval by County Public Works prior to final plat approval. With that I conclude my presentation. Thank you.

Commissioner Carey: Mirtha, how could we say that there has to be a property line on the subdivision for County Road Plat Book 1, that we need to show that when is there a possibility that there's no legal documentation for it?

Mirtha Becerra: The Surveyor's Office does have documents that show that easement extending all the way from...so it is showing in that book and so they just wanted to make sure that it's either shown on the plat here or take the legal steps to remove it.

Commissioner Carey: Okay. Greg, would you comment on condition three as it relates to Unbridled Way?

Greg Robertson Dir. of County Public Works: Hmmm...I'm really not sure the need for a public access easement in the area. Both Barb Lane and Gowan Lane were created through certificates of survey and are all private to my knowledge. I don't foresee anytime in the future, given my experience at having to deal with Gowan Lane over the last couple of years and a lawsuit, that I would be interested in taking that anytime soon. I'm not sure of the purpose of establishing it as a public roadway or what the purpose of that would be at this time.

Commissioner Evans: So are you suggesting we delete condition number three in its entirety?

Greg Robertson: Yes my recommendation would be to leave it private as everything else is out there.

Commissioner Curtiss: In regard to number three, the suggested one that starts with number two, I guess this if for both Colleen and Greg – I wouldn't think that we would want to put something like that on the plat saying in essence it would obligate the Public Works department to accept it for County maintenance if they brought it up to County road standards.

Greg Robertson: There are several things that would have to happen both Barb Lane would have to be upgraded and Gowan Lane which is not a whole lot better than a cow path right now.

Commissioner Carey: What portion of Barb Lane, under this variance request, is requested to be improved to 24 feet? What part of Barb Lane?

Commissioner Curtiss: Just the part that touches the subdivision.

Greg Robertson: I believe it's the part that's fronting the subdivision.

Commissioner Carey: So there would be a little 24 foot patch.

Greg Robertson: Yes, a real small piece.

Commissioner Carey: Thank you. Would the representative of the developer care to speak to this?

Ron Ewart w/ Eli & Associates: Here this afternoon is Patti Steinbreucker, she's the owner of the property and she lives in the small house that's on proposed Lot 1. Essentially what we would prefer is that the Commission adopts all of the recommended motions and conditions of approval as they came from OPG. Just to talk about, first of all I do want to state that these five acres lots or this five acre lot subdivision will be equestrian oriented. Patti does have some horses out there. She likes horses and she wants to continue living there. We have restrictions on the number of horses and quite a few things like that. There are existing covenants on this whole area and it requires a minimum of five acre lots. Now there are some smaller than five acres lots, but we are respecting the covenants. Again we have supplemental covenants that go into the County requirements plus some other things to help make it a nicer subdivision. So basically we'll have four additional lots on this 27 acre parcel. There is an existing road maintenance agreement for Barb Lane and Gowan Lane and we're proposing a road maintenance agreement for Unbridled Way as well and then if we can get other people to sign on to an agreement to Barb Lane just to tighten it up a bit we could always do that. Getting back to the conditions, the...Barb Lane is flat, it's about 20 feet wide and it works fine. It looks fine to me, it's just a little country road and it only serves something like six or seven lots. So, it doesn't have a lot of use at this time, but it's got good gravel on it. So on condition one, we would ask that it be as OPG had recommended for approval. On number three where we have the next discrepancy between OPG and the Planning Board, OPG recommended that we not require the installation of pedestrian connections and Planning Board felt that they wanted to see a walkway. I guess when you only have five lots using a cul-de-sac road, that's not really the time to have a gravel walkway. You might do that at a later time, later on down the road. We do have the statement on the plat that we would waive the right to protest an SID for improvements to Unbridled Way because it could in the future become public and all those streets could become public and they could be upgraded. So we just have that statement on there anyway. I think now if we have a gravel walkway it would never get used at all. We have a 24 foot wide County standard road that will be just fine. Those are the two recommended motions that we would just like to stay with OPG's recommendation. On that first one, the reason that they recommended denial of the Barb Lane was they said they could be okay with it being 20 feet if Unbridled Way were public. Condition number one we would like it to read just as OPG originally had it. If the Commissioners don't want us to get rid of that easement on the south boundary, then they won't allow it anyway. Number two is the conditional public access easement from Barb Lane all the way south. Lot 2 then would have an easement on two sides of it and it's only a three sided lot. Again, that was added by the Planning Board. Three is about the public...requiring Unbridled Way to become a public access easement; I guess it doesn't matter to us either way. I do agree with what Greg said though. Four and five would be the same. Six, they're recommending a five foot gravel trail, again the Planning Board, but OPG and no one else seemed to think that would be warranted at this time so we would like that not to have to be a condition. Then OPG did order, excuse me I did add, one more condition having to do with the easement, getting the 30 feet on the other side of that other property. That's fine and the other one had to do with wildlife and they dropped on having to do with Allied Waste. So with the addition of these two conditions on today's memo and the original conditions as proposed by OPG, we would be fine with that. Thank you.

Commissioner Curtiss: Mirtha, is the road for the Unbridled Way...is being proposed at 24 feet, so that does meet County standards.

Mirtha Becerra: Yes it does. I think the requirement was to have it be paved and there's a variance request for that requirement so that it's not paved.

Commissioner Curtiss: Okay, so they way the Planning Board did number three then, once it was paved then it would have to be accepted.

Mirtha Becerra: Yes.

Curt Belts, Chief Missoula Rural Fire District: I'd just like to make a correction to the conditions that wherever Missoula Rural Fire District is put in there for approval that should state Frenchtown Fire District.

Commissioner Carey: Thank you.

Commissioner Curtiss: Good catch.

Scott Waldron, Chief Frenchtown Rural Fire District: We've had some difficulty with some of the covenants here of late and these covenants, I don't think, reflect that the residential fire sprinkler systems can't be removed without County Commissioner approval or approval of the governing body. I think we need to make sure that's added in there.

Commissioner Carey: So we're dealing with condition number eight, then?

Commissioner Curtiss: Yeah, you could probably add language on number eight.

Ron Ewart: Just to help out here, Article 2 Section 2, that's the amendment section and we should add in that amendment section that the section relating to internal residential sprinklers cannot be changed without prior written consent of the governing body. We have a list of things in there...it's on page seven of the covenants. We need to add that in there as well.

Commissioner Curtiss: Colleen, we were briefed today on the Davis family transfer which now we've discovered is on next week's agenda. So if we consider some of the things...the fact that that piece of property is going to be proposed for division by family transfer and that they're proposing a 60 foot easement on their side of the line...do we have to consider that as new information if we weight that in part of our decision? Because it wasn't, of course, presented to Planning Board and the owners probably don't know anything about it.

Colleen Dowdall: It....that's a tough one because it's under the new law that I think we do have to comply with and if it is new information you would have to set a hearing just on that issue.

Commissioner Curtiss: If we use it to make our decision today. The only reason it would make any difference is in regard to the Planning Board proposal to put a 30 foot easement. And the Davis' are proposing a 60 foot easement on the other side of their property.

Colleen Dowdall: Perhaps the...if the applicant isn't aware of this, maybe we could talk to them about it and see if that makes adding that additional easement more palatable.

Commissioner Curtiss: And Greg hasn't seen it either because if you look at the whole picture, maybe the one that they're proposing....we can't impose an easement on a family transfer, right?

Colleen Dowdall: Correct.

Commissioner Curtiss: So if they chose to move it to the...I'm mixed up on my directions.

Colleen Dowdall: Greg, if you look at the Davis family transfer that you have by accident and look at the picture of the proposed division.

Commissioner Curtiss: One of them shows an easement.

Greg Robertson: Yes, the one going along the west boundary.

Commissioner Curtiss: Right. In some respects if you look at the whole picture that one might make fine sense anyway to have....they're proposing 60 feet on that side. If we did that I would think maybe we don't need the 30 feet on this side.

Greg Robertson: Generally, we like to either combine them or have that as a separation between and I think because these are really low volume roads it's pretty irrelevant which side it goes on.

Commissioner Carey: So we could just go with the 60 foot on the family transfer and call it good?

Colleen Dowdall: Except...well because they're proposing that, but it wouldn't go all the way to the end of the property....

Commissioner Carey & Jean Curtiss: Right.

Colleen Dowdall: ...and it wouldn't be public, necessarily.

Commissioner Curtiss: Oh that's true.

Colleen Dowdall: But, I think...it's tough to put a public road attached to a private road.

Greg Robertson: You just don't have the public right-of-way going along the south boundary line that crosses Gowan Lane. That's still an easement of record that serves that area, so I think you're achieving the same thing.

Commissioner Curtiss: Right.

Colleen Dowdall: I think Planning Board was trying to connect Barb Lane with that southern GLO, or Book 1 road.

Commissioner Carey: So we could have a 60 foot...propose a 60 foot easement on the other side of this.

Commissioner Curtiss: It's going to serve those lots, it wouldn't necessarily serve these, but in the future if...it doesn't seem like with five lots that a public road is needed right now and in the future if someone decided to divide that might be the time when you could do it. Colleen, is it good to have a conditional access easement there even though it's not attached to a public road?

Colleen Dowdall: I always discourage that because it is a public right-of-way at that point, the condition is that it's not opened or maintained. So....

Commissioner Curtiss: So it's really still public.

Colleen Dowdall: Right, so you have a public easement hooked on to a private road. The very fact of this request is new information also that I don't want to....

Commissioner Curtiss: Did the Planning Board put it on there?

Colleen Dowdall: No, the fact that the family transfer is new information. You may want to consider just in terms of infrastructure that...I never like to say delay this, but there was a reason that I brought you the wrong family transfer.

Commissioner Carey: Are we up against any timelines here in terms of approving or not approving?

Colleen Dowdall: Under the statute if you have the new information then you determine that's something you're going to use in making your decision, then the timelines stop.

Ron Ewart: We're here to make things as smooth as possible so, however it works out we can go along. We're waiting for health anyway, so...

Commissioner Curtiss: Should we let them....I guess we can make sure they have a copy if we delay it...

Colleen Dowdall: I have an extra copy here I think.

Commissioner Curtiss: Or we could recess for five minutes and let them look at it to see...who decides whether we need to have more time? We can decide or the developer.

Colleen Dowdall: What the statute says is that if there is new information that you're going to rely upon, then you set an additional hearing because there may be other people who want to comment on that and you can't really waive the public's right to have that ability to comment on that new information, nor can the developer.

Ron Ewart: Patti was just wondering are we going to go ahead and figure out the motions and the conditions at this time? Or is that something that we're going to do at the....next week or whenever.

Commissioner Evans: Supposing that I made a motion to accept the recommendation of the planning staff and to approve this subdivision based on their recommendations with the addition of the change that Mr. Belts and Mr. Waldron made, does that mean that it doesn't have to go back and we can decide today?

Colleen Dowdall: That would be the case because you would not be relying upon the new information.

Commissioner Evans: If that's the case, I so move.

Commissioner Curtiss: I'm thinking.

Commissioner Carey: Me, too.

Commissioner Evans: I kind of figured the steam was rolling off here a little bit.

Commissioner Carey: Greg, does it simplify matters to strike that last half of proposed condition number one? I mean to make it very clear that there is a road easement along the south property line?

Greg Robertson: I think as the proposal is written, or the condition is written, is appropriate.

Commissioner Carey: By OPG?

Greg Robertson: Yes. Correct.

Commissioner Curtiss: Because they can do one or the other and if they have...

Greg Robertson: They can do one or the other and it's a separate and unrelated process from the subdivision process so what this condition does it acknowledge the fact that there is a public right-of-way along the south boundary and that it either needs to be referenced or extinguished by petition and abandonment.

Commissioner Curtiss: So my question about the way it's worded though, does it need to say abandoned by the Board of County Commissioners....

Greg Robertson: Yes, I think it's...that part of the condition needs to be changed. It needs to be....

Commissioner Curtiss: I think it's just confusing because it would be abandoned by us, but the review and approval of whether or not they had everything on the plat correctly is by you and the County Attorney's office.

Colleen Dowdall: I think it's also...the opinion we have from an old County Attorney opinion is that Road Book 1 roads are presumed to be County roads unless otherwise proven that they aren't. So typically we tried to insert that language in in the event it was something that could be established that the road was abandoned at another time or that it never....it makes Road Book 1 but it never got all the process done.

Commissioner Curtiss: That way it does say it correctly.

Greg Robertson: Actually, yes, in re-reading the condition what the subject to review and approval language is referring to is the legal documentation and not the process per say. So I think it's correctly written.

Commissioner Carey: What do you think about the five foot wide gravel trail just along Unbridled Way?

Commissioner Curtiss: I guess I'd like to have the owner comment on that. Hi Patricia, so my question would be...since you're the horsewoman, would it not be of an advantage to have a separate area to ride a horse through there in case there was a vehicle on the road? 24 feet I guess I pretty wide, but I've also been on horses that don't like to be that close to a car.

Patricia Steinbreucker: I think we have a 60 foot easement on that whole road. My fear was that if I put in a bike path it would just get all grown in because nobody would use it. Basically there's going to be four houses that would use that and that's it. It's only 1000 feet long and it doesn't attach to anything but another private road.

Commissioner Curtiss: Okay. And the RSID waiver is there in case if ever gets to that point?

Commissioner Carey: Right.

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

Greg Robertson: I think the closest pedestrian trail is over at Kona Ranch, several miles away and not even remotely close.

Commissioner Curtiss: Then I will second Barbara's motion if it's still on the floor.

Commissioner Evans: I don't think anyone took it away.

Commissioner Evans moved to accept the recommendation of the planning staff and to approve Equestrian Estates Subdivision based on their recommendations with the addition of the change that Mr. Belts and Mr. Waldron made. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Commissioner Curtiss: Just for the record, that did reflect the changes that the two fire chiefs...

Commissioner Carey: Yes, she did mention that.

Mirtha Becerra: And the changes as stated in the memo?

Commissioner Carey & Jean Curtiss: Yes. Yes.

## **Conditions of Approval**

### **Roads and Driveways**

1. The road easement along the south property line of the subdivision per County Road Plat Book 1 shall be shown on the plat or the developer shall provide legal documentation that the road has been abandoned subject to review and approval by County Public Works and County Attorney's office prior to final plat approval.
2. A signage plan for permanent road and address signs as well as temporary (during construction) signs conforming to the Manual on Uniform Traffic Control Devices (MUTCD), current edition shall be reviewed and approved by Missoula County Public Works and Frenchtown Rural Fire District prior to final plat approval. The Development Covenants shall be amended to include the approved address signage plan, subject to review and approval of OPG, prior to final plat approval. This section of the covenants may not be changed or deleted without governing body approval. (*Missoula County Subdivision Regulations 3-2(2)(F), Missoula County Public Works and Frenchtown Rural Fire District recommendations*).
3. Driveways in excess of 150 feet in length shall incorporate a turn around for fire apparatus at the terminus of the driveway and must be approved by Frenchtown Rural Fire District prior to building permit approval. (*Missoula County Subdivision Regulations Article 3 2(10)and Missoula Rural Fire District recommendation*)

### **Fire**

4. The following statement shall appear on the face of the plat: "Acceptance of a deed for a lot within this subdivision constitutes waiver of the right to protest a future RSID or SID for a public water system for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land." (*Missoula County Subdivision Regulations Article 3 7(2)*)
5. Installation of interior residential fire sprinklers that meet NFPA 13D standards, and include a domestic valve connection and a fire department connection are required in each new home for the purposes of fire protection. Plans for installation of interior residential fire sprinklers are subject to the review and approval by the Frenchtown Rural Fire District prior Building Permit

approval. (Missoula County Subdivision Regulations 3-7(1)(E) and Frenchtown Rural Fire District recommendation)

6. The developer shall contribute a fire service fee of \$530.00 per new lot to the Frenchtown Rural Fire District for fire protection purposes. Payment of this contribution shall be verified prior to final plat approval. (*Missoula County Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation*)

#### **Water, sewer and solid waste**

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 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)*)
8. The developer shall obtain a letter confirming Allied Waste Systems is available to serve the subdivision for solid waste removal. (Missoula County Subdivision Regulations Article 3-7)

#### **Development Covenants**

9. 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:

##### Address Signs

Article I Section 11(a) Address Signs shall be amended to include the signage plans approved by County Public Works and Missoula Rural Fire District.

##### No Build/No Improvement Zone

Add a section titled No Build/No Improvement Zone stating the size, location, intent, and use restrictions within the No Build/No Improvement Zone.

##### Maintenance of Unbridled Way

Article I Section 13 shall be amended to include "dust abatement" in the second sentence for required maintenance of Unbridled Way.

## **HEARING**

### **Block Family Transfer**

Commissioner Carey opened the hearing.

Colleen Dowdall: This is a request from Randall and Julie Block to create two additional parcels using the family transfer exemption. Their parcel is approximately 33.28 acres in size and it's located near Frenchtown. Randall and Julie propose to create two approximately 11 acre parcels for transfer to each of their daughters, Andrea Zenner and Rachel Meissner and to keep the remaining approximately 11.28 acres for themselves. This parcel was created in October 1994 for the purpose of retracing an existing parcel. Boundary lines have been relocated. In March of 2001 there were additional parcels created by family transfer and Kenneth and Judy Miller deeded this property to Randall and Julie Block in June 2006. It appears that Randall and Julie Block have previously done family transfers? No? Probably the wrong Block, huh? Or maybe Davis', who knows. Having not looked at this one until now, I am not...oh, it looks like it's on U.S. Highway 10 and it looks like it was the Millers who transferred property to their children to Robert Murray and to Jolene Ann Saylor. So it doesn't appear that this is the same family.

Commissioner Carey: Thank you, would either Mr. or Mrs. Block care to come to the microphone and answer a few questions?

Randy Block: From Huson.

Commissioner Carey: Hello. As you heard from the previous family transfer hearing, we ask our attorney to ask applicants several questions in order to have on the record the indication that you're not trying to evade subdivision review, which is a misdemeanor.

Colleen Dowdall: So you have owned the property since June 2, 2006?

Randy Block: April, I believe it was.

Colleen Dowdall: Okay, I think I have a Warranty Deed here from Millers to you that was at least....oh maybe it was...

Randy Block: At least that's when they got our money.

Colleen Dowdall: Okay, I'm not going to ask any more leading questions because I don't have good information in front of me. Did you buy the property with the intent of dividing it?

Randy Block: Yes we did because our daughter, who had graduated from Frenchtown, was out-of-state teaching and she was going to move back with her husband. Her husband was getting transferred for the Forest Service to the Nine Mile Ranger station, which is only three miles away and my daughter got a job at Frenchtown School.

Colleen Dowdall: So do your daughters intend to live on the property?

Randy Block: Yes.

Colleen Dowdall: Both of them do?

Randy Block: The other daughter lives in Minneapolis, her husband is an engineer and he is looking for employment back here too, so yes. I think 11 acres a piece will keep us far enough apart so we can be friends. Incidentally our house is up for sale and we're going to build there too.

Colleen Dowdall: So the property will not be developed except with your family.

Randy Block: This is the end of the line and that's going to be written in. There will be no more splitting of that property.

Colleen Dowdall: Okay. Did you talk to anyone at Missoula County about going through subdivision review?

Randy Block: No we didn't.

Colleen Dowdall: Are you in the business of building or developing house or property?

Randy Block: No, we're not.

Colleen Dowdall: And are you attempting to evade subdivision review?

Randy Block: No we're not.

Colleen Dowdall: You understand that we are not reviewing this request to make sure your roads have adequate easements or are built for vehicle and all weather traffic?

Randy Block: Yes.

Colleen Dowdall: With private roads you won't get maintenance, you'll have to do that yourself.

Randy Block: Yes.

Colleen Dowdall: And you understand that this does mean that the property's been approved for zoning compliance, floodplain permit, septic...those are all separate approvals.

Randy Block: Yes.

Colleen Dowdall: I did find the deed and it was recorded May 2, 2006...but those tiny little new recording it looks like a six, but they signed the papers April 28 and it was recorded in May, not June 2.

Seeing no further comment, Commissioner Carey closed the hearing.

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

## HEARING

### **Shadow Mountain Estates (31 lots on 35.86 acres) – Clinton, off highway 10**

Commissioner Carey opened the hearing.

Tim Worley w/OPG: Before you today is Shadow Mountain Estates which is a proposal by Art and Dena Pamin and they are represented by DJ&A. And yes the proposal is for 31 lots on just short of 36 acres located south of the Clinton freeway interchange on highway 10 east. The property is unzoned. The density of just less than one home per acre does exceed the comp plan land use designation of one home per five acres, but the property is within the Clinton activity circle where increased residential and commercial activity are expected. The property has been used to raise hay and is adjacent to the main Clinton irrigation district ditch. Per state law condition of approval eight is a requirement that each lot have access to ditch water or the water rights be severed for the lots that aren't adjacent to the ditch. Condition 11 requires the offsite portion of the irrigation ditch easement to be shown on the final plat and that's a 20 foot portion of easement. Highway 10 east, again, provides subdivision access. It meets the 24 foot County road standard and Pamin Loop is the loop road that's proposed to provide access to the interior subdivision lots and it's also proposed to meet the standard. Pamin Loop will provide access to all but two lots. Lots 2 and 3 are proposed to have access directly on to highway 10. Condition one is requirement that a 12 foot shared driveway be built along the common lot line between Lots 2 and 3. This condition also requires a shared driveway maintenance agreement. The shared driveway will require an access permit, an approach permit, from the Department of Transportation and you'll see that outlined in condition two. In order to confine subdivision access to the shared driveway and the two Loop road access points out onto highway 10 condition three requires a no-access strip along the highway 10 frontage of the subdivision, excepting the three access points. A five foot gravel walkway is proposed along Pamin Loop. Ongoing maintenance of the walkway is required in condition 14c. The subdivision has been designed with a system of drainage swales intended to both detain water onsite and direct it offsite at predevelopment levels. Condition 10 requires that these swales be within public drainage easements to ensure their perpetual maintenance. Maintenance will be carried out by lot owners and mowing and debris removal are required as outlined in condition 14e. The drainage swales are generally located adjacent to lot boundaries with some swales centered along common lot boundaries. Condition 12 requires a slight boundary realignment between Lots 28 and 29 so that half of the swale in question is on either side of the common lot boundary between those two lots. This area was subject to a localized flood event based on an ice jam on the Clark Fork River and related irrigation ditch structure failure in the 1990's. Flood depths are estimated on the elevation of the interstate, I-90 is west of here, west of highway 10. The Interstate was over topped by floodwater and was a limiting factor in water flowing downgrade to the Clark Fork. The developer's proposing to build up designated portions of the lower lots to 3474 ½ feet as shown in the gridding and drainage plan and this elevation is 3/10 of a foot higher than the critical freeway elevation. Development in other low areas, not proposed to be built up by the developer, would require lot owners to provide fill to 3474.5. Crawl spaces and mechanicals will have to be above ground level with basements prohibited and that's a requirement that's already stated in the covenants. The Floodplain Administrator supports the Developer's plans, but recommends the fill elevation be two feet higher than the freeway elevation which would be 3476.2 and this would be, again, just for building sites. Fill for building sites would have to meet a 95% compaction test with elevations verified through pre and post construction elevation certificates. An elevation certificate would be required both before building permit submittal and following construction respectively. Because no parkland is proposed, cash in lieu of parkland will be required as stated in condition 16. Clinton Rural Fire originally recommended a \$150 per new dwelling unit contribution in lieu of the subdivision meeting uniformed fire code requirements for water supply for fire fighting as outlined in original condition number seven. Planning Board recommended actual water supply for fire fighting as outlined in the very last condition, 17. Along with this condition they recommended deletion of two fire related conditions and those are condition six and seven. Fish, Wildlife and Parks recommends covenant language that will help wildlife conflicts in this area, included is a prohibition against the keeping of domestic sheep because of disease transmission potential to an area big horn herd. Just one variance is being requested with this subdivision and that's the prohibition against lot lengths being three times greater than lot widths which was supported by both Public Works and OPG and Planning Board as

well. The remainder of the conditions for this subdivision are of the routine variety, so I won't review them at this time, but I will be available if you have any questions. Thank you.

Commissioner Carey: Thank you, Tim. Would the representative for the developer like to speak?

Paul Drivestein w/DJ&A: I represent the owners, Art and Dena Pamin. They are also present and they are in the back. They live, currently, on Lot 1 of the subdivision and they don't plan to move. They've lived there since 1987 and they've been haying the subdivision for all those years. At this time we do not have any objections to the conditions and amended conditions and we're comfortable with meeting all of those. We're also in agreement of the recommended motions. If you have any questions, I'd be more than happy to discuss those and I think at this time I have nothing more to say.

Commissioner Curtiss: Tim, we talked in the planning status meeting about the problems that occur periodically in the County when we have nice drainage swales that are designed well, built well and then someone moves in and fills 'em in so they can mow them easier. We did talk a little bit about whether Missoula County should be a party to a covenant on drainage swales, but I notice there isn't one, or I can't find it.

Tim Worley: It may be under a different category.

Commissioner Curtiss: Paul, maybe you can help us find where it talks about who's going to maintain the drainage swales even though we suggested that they be public.

Tim Worley: I think it might be under exterior maintenance in the covenants. Actually that section, if you look at condition 15 that is one of the sections that we're recommending cannot be amended without prior approval of the governing body.

Commissioner Curtiss: Okay, but we don't actually refer to drainage swales either in 15 or in that exterior maintenance, so maybe we should add that.

Paul Drivestein: In condition 14e, they've asked us to amend the covenants so that Missoula County does not assume maintenance responsibility of the drainage easements on the property. Easement maintenance responsibility shall include routine mowing and removal of any debris that would impede their function. If we want to make that clearer, you could add some homeowner language in there that it's their responsibility.

Commissioner Curtiss: So it's 14, what Paul?

Paul Drivestein: Letter e.

Tim Worley: Under easements, which is under section three in the covenants, it says drainage easements shown on the grading and drainage plan are intended to provide a means for water to move through the subdivision. No building fence improvement or landscaping of any kind that may impede the flow of water shall be constructed on a drainage easement. So that whole section actually, I believe all of exterior maintenance cannot be amended without prior approval of the governing body.

Commissioner Curtiss: Just so we have it covered because I know people tend to...it's easier to mow if something's flat, so they fill them in and don't realize what they're there for.

Commissioner Evans: Let me ask a personal question. I live in an area that has a drainage swale, everybody's doing what they should be doing with it, but the last rain event that we had brought the folks from the east...all of their dirt is in my culvert and I have no way of cleaning it. So does anyone have a suggestion?

Commissioner Curtiss: Is the culvert under the County road?

Commissioner Evans: The culvert's under the County road.

Commissioner Curtiss: That is Greg's responsibility.

Greg Robertson: Call the Public Works Director.

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

Greg Robertson: That doesn't mean I'll do anything about it! No, we can send a jet truck out to clean it, no problem.

Barbara Evans: Okay, thank you.

Seeing no further comment, Commissioner Carey closed the hearing.

Commissioner Curtiss: I don't think there were any changes today, right Tim? We can just do it as in the Commissioner Action?

Tim Worley: Correct.

Commissioner Curtiss moved that the request to vary from Article 3-3 (1)(E) prohibiting a Lot depth to width ratio exceeding 3-1 be approved based on the finding and fact in the staff report. Commissioner Evans seconded. The motion carried on a vote of 3-0.

Commissioner Curtiss moved to approve Shadow Mountain Estates Subdivision based on the finding of fact and subject to the conditions of approval as amended. Commissioner Evans seconded. The motion carried on a vote of 3-0.

### **Conditions of Approval**

***(Planning Board recommended revisions are shown in strikeout and underline)***

1. Lots 2 and 3 shall be accessed from a 12' shared driveway on the common boundary of Lots 2 and 3 which shall be constructed with approved turnarounds for fire apparatus, and have a 20' unobstructed width and a 13'6" vertical clearance within a 20' shared driveway easement, subject to review and approval by the Clinton Rural Fire District prior to final plat approval. The covenants shall include a shared driveway maintenance agreement to be reviewed and approved by OPG and the County Attorney's Office prior to final plat approval. Subdivision Regulations Article 3-2(I)(1), 3-2(10)(E) and OPG recommendation
2. An approach permit for the shared driveway between Lots 2 and 3 shall be reviewed and approved by the Montana Department of Transportation prior to final plat approval. Subdivision Regulations Article 3-2(1)(E) and MDT recommendation
3. The plat shall be revised to show a 1' no-access strip along the Highway 10 East frontage of Lots 1, 19, 21 and 31 and along the frontage of Lots 2 and 3 except for the location of the shared driveway easement. The covenants shall be amended to include the following language about the access restriction: "No access shall be located along the Highway 10 East frontage of Lots 1, 19, 21 and 31 and a long the frontage of Lots 2 and 3 except for the location of the shared driveway easement." Subdivision Regulations Article 3-2(1)(E), OPG and MDT recommendation
4. A signage plan in conformance with the Manual on Uniform Traffic Control Devices, including provisions for temporary signage during construction, permanent signage, and cost of installation to be the responsibility of the subdivider, shall be reviewed and approved by County Public Works prior to final plat approval of each phase. Subdivision Regulations 3-2(2)(F) and OPG recommendation
5. Plans for address signs, including size and location, shall be reviewed and approved by the Clinton Rural Fire District prior to final plat approval and the approved design shall be incorporated into the covenants. Subdivision Regulations Article 3-2(2)(G) and OPG recommendation
6. ~~The community or municipal water system RSID/SID statement shall be amended to include the 1000 GPM minimum fire flow requirement, with language to be reviewed and approved by OPG prior to final plat approval Subdivision Regulations Article 3-7(2) and OPG recommendation~~
7. ~~The applicant shall show evidence of contribution of \$150.00 per new dwelling unit to the Clinton Rural Fire District prior to final plat approval. Subdivision Regulations Article 3-7(1) and Clinton Rural Fire District recommendation~~
8. The subdivider shall ensure that all lot owners have access to irrigation water, or have the water rights removed for Lots 1-6 and 16-31 through an appropriate legal or administrative process,

which shall be indicated by a statement on the final plat and in the covenants to be reviewed and approved by the Clinton Irrigation District and OPG prior to final plat approval. MCA 76-3-504(1)(j), Subdivision Regulations Article 4-1(13) and OPG recommendation

9. Lowest floor elevation for all residential dwellings shall be 3476.2' (NGVD 1929). The developer or individual lot owners shall include pre-construction elevation certificates at the time of Building Permit submittal documenting the lowest floor and utility elevations with post-construction elevation certificates submitted upon building completion. Fill for building sites shall be compacted to 95% proctor as certified by a geotechnical engineer. Corrected language shall be included in the covenants subject to OPG approval prior to final plat approval and a corrected note shall be placed on the final plat that states the following: "The lowest floor elevation, including basements, mechanical equipment, and ductwork shall be a minimum of 3476.2' elevation (NGVD 1929). Pre-construction elevation certificates shall be required at the time of Building Permit submittal documenting the lowest floor and utility elevations, with post-construction elevation certificates submitted upon building completion. All building sites shall be compacted to 95% proctor as certified by a geotechnical engineer." Subdivision Regulations Article 3-1(1)(B) and Floodplain Administrator recommendation
10. The drainage easements on the plat shall be labeled "Public Drainage Easements" with language to be reviewed and approved by OPG prior to final plat approval. Subdivision Regulations Article 3-6 and County Public Works recommendation
11. The 20' irrigation ditch easement east of irrigation ditch centerline shall be shown on the final plat to be reviewed and approved by OPG and the County Surveyor's Office prior to final plat approval. Subdivision Regulations Article 5-1(4)(G) and County Surveyor's Office recommendation
12. The common boundary between Lots 28 and 29 shall be relocated and centered within the 40' drainage easement to be reviewed and approved by OPG prior to final plat approval. Subdivision Regulations Article 3-4(3)(J) and OPG recommendation
13. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval. Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed District recommendation
14. The covenants for Shadow Mountain Estates shall be amended to include the following items, and shall not be amended, deleted, modified, added to or deleted without consent of the governing body:
  - a. Radon

Property owners within Shadow Mountain Estates are advised that Missoula County has high radon potential and all new construction should incorporate radon-resistant construction features.
  - b. Driveways

Dead-end driveways in access of 150 feet must be approved by the Clinton Rural Fire District, and a turn around must be incorporated at the terminus of the driveway. All driveways must provide 20 feet horizontal clearance and 13' 6" vertical clearance the length of the drive. The surface of the driveway must be engineered to support the weight of the emergency equipment in all weather conditions. Amend Article III, Section 2
  - c. Weeds

The landowner shall maintain the property in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Amend Article III, Section 2

The landowner shall revegetate any ground disturbance with beneficial species at the first appropriate opportunity after the disturbance occurs. Amend Article III, Section 2
  - d. Walkway maintenance and repair shall be the sole responsibility of each lot owner whose lot is crossed by the walkway. Maintenance shall include addition of gravel and weed control. Amend Article III, Section 3
  - e. The covenants shall be amended to state that Missoula County does not assume maintenance responsibility of the drainage easements on the property. Easement maintenance responsibilities shall include routine mowing, and removal of any debris that would impede their function. Amend Article III, Section 3

f. Living with Wildlife

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, black and/or grizzly bear, mountain lion, wolf, coyote, fox, skunk, and raccoon. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see FWP's web site at [www.fwp.mt.gov](http://www.fwp.mt.gov).

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- i. Domestic sheep and goats (including those kept as 4H projects) are not allowed in this subdivision because of the proximity to the Rock Creek and Bonner bighorn sheep herds. The possibility exists that domestic sheep could transmit a potentially fatal bacterial infection to bighorn sheep, leading to heavy mortality in the native bighorns.
- ii. Homeowners must be aware of the potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- iii. Gardens and fruit trees can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because rotting vegetable material can attract bears, skunks and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- iv. Garbage must be stored in secure animal-resistant containers or indoors to avoid attracting wildlife such as bears and raccoons. If stored indoors, garbage cans may not be set out until the morning of garbage pickup, and must be taken back indoors that day after garbage pickup.
- v. Do not feed wildlife or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- vi. Birdseed is an attractant to bears. Use of bird feeders is not recommended from April 1st through the end of November. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- vii. Pets must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Keeping pets confined also helps protect them from predatory wildlife. Under current state law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).
- viii. Pet food must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, and other wildlife. When feeding pets do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- ix. Barbecue grills must be stored indoors, and permanent outdoor barbecue grills shall not be allowed in this subdivision]. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.

- x. Consider boundary fencing that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer and/or elk becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.
  - xi. Compost piles can attract skunks and bears and should be avoided. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
  - xii. Apiaries (bee hives) could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)  
*City-County Health Department recommendation; Subdivision Regulations Article 3-2(10)(E) and OPG recommendation; Subdivision Regulations 3-1(1)(B) and County Weed District recommendation; Subdivision Regulations Article 3-8 and OPG recommendation; County Public Works recommendation; Fish, Wildlife & Parks recommendation*
15. Article IV, Section 4 of the covenants ("Amendment") shall be revised to include sections that may not be amended without Governing Body approval. These sections shall include Radon, Landscaping, Exterior Maintenance, Address Signs, Driveways, Driveway Maintenance Agreement, Weed Control, Amendment and Living with Wildlife. Subdivision Regulations Article 3-1(10), Fish Wildlife & Parks and OPG recommendation
  16. The applicant shall provide proof of payment of cash-in-lieu of parkland subject to the review and approval of County Parks prior to final plat approval. Subdivision Regulations 3-8 and County Parks recommendation
  17. Plans for residential fire sprinklers or installation of hydrants prior to combustible construction for the new homes shall be reviewed and approved by the Clinton Rural Fire District prior to building permit submittal. *Planning Board recommendation*

## HEARING

### Missoula Development Park Phase 3D, Lot A Subdivision (14 industrial lots)

Commissioner Carey opened the hearing.

Jennie Dixon w/OPG: This proposal is to divide this lot into 14 industrial lots located in the Missoula Development Park near the interstate. The access from Expressway contains approximately 18 ¼ acres. There are no variance requests on this proposal, staff has recommended approval of the subdivision for a two year period subject to 10 conditions of approval and the Planning Board included an eleventh condition regarding a geotech study. What I've presented to you this afternoon is a new version of the condition for a geotech study which has a newly added last sentence based on advice from the County Attorney's office this week to further ensure compliance with the recommendations of the geotech study. I believe the applicant's representative has a preliminary draft of that study if you're interested in taking a look at any of that information. I think Public Works is taking a look at that as well. The existing area is light industrial and heavy commercial. It's zoned for the Missoula Development Park's special zoning district, light industrial. Within in the airport influence area and the conditions of approval, aside from the geotech study, are pretty much standard conditions regarding granting avigation easements and RSID waivers and street sign plans. So I will not describe those to you here, they're in the staff report. The site will be served by public water and sewer. The plat shows the configuration of the lots with a road that comes in and makes a loop, accesses lots on the inside and the outside of the loop road. There's a property between the interstate and this site and this site will be graded steep slopes on the rear and sides and gentle downslope, about 2%, to Expressway. Between this property and Expressway there are parks and drainage retention areas along the southwestern side of this property. There are also drainage channels which we recommended to be contained in an easement. As I said, staff is recommending approval with the conditions as recommended by Planning Board with the modified condition 11 before you this afternoon. Thank you.

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

Mark Bellon w/Territorial Engineering: We feel this is a very nice expansion to the Missoula Development Park and it's generated a lot of interest from the local and non-residential industrial community. We have reviewed the conditions recommended by staff and modified by the Planning Board and we're in agreement with all the conditions. If you have any questions, I'd be happy to answer them.

Seeing no further comment, Commissioner Carey closed the hearing.

Commissioner Evans moved to approve the request for the Missoula Development Park Phase 3D Lot A with the addition and change to condition 11 and everything else as submitted in the staff report. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Commissioner Carey: And this is approved for a two year approval period?

Jennie Dixon: Yes.

Seeing no further business, Commissioner Carey recessed the hearing at 2:40 p.m.

## **Conditions of Approval**

### Roads and Access

1. 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 to all streets within the subdivision and Expressway, including, but not limited to, road construction, paving, drainage facilities, curbs and gutters, pedestrian walkways or bikeways, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land described herein. All documents of conveyance shall refer to and incorporate this waiver." Subdivision Regulations 3-2(3)(E)
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 present evidence of petitioning into the Missoula Urban Transportation District (MUTD), prior to final plat approval. Subdivision Regulations 3-2

### Airport Influence Area

4. An aviation easement shall be obtained for the property in compliance with the Airport Influence Area Resolution prior to final plat approval. Subdivision Regulations 3-1(2)
5. The covenants shall be revised to include a statement notifying owners that the subdivision is located within the Airport Influence Area and informing the owners of the requirements of the Airport Influence Area and the associated noise levels and soundproofing measures to reduce noise levels. The language of the statement shall be subject to review and approval of the Airport Authority, prior to final plat approval. This section of the covenants may not be changed or deleted without governing body approval. Subdivision Regulations 3-1(2), 4-1(12)

### Drainage

6. The plat shall be revised to include minimum 20' wide drainage easements encompassing the drainage swales running across the northwest side of Lots 1 and 2 and the southeast side of Lots 6 – 9 and the 50 foot wide areas around the two proposed retention ponds. Subdivision Regulations 3-4 and 3-6

### Fire Protection

7. 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 prior to final

plat approval and shall be included in the covenants which may not be changed or deleted without governing body approval. Subdivision Regulations 3-1(1)

#### Weeds

8. 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

9. The development covenants shall be amended to include the following provision:
  - a. Builders should consider using energy efficient building techniques such as building orientation to the sun, appropriately sized eaves, wind breaks, extra insulation, passive solar lighting, solar heating, and ground source heat pumps for heating/cooling.  
The language of this provision shall be subject to review and approval by OPG prior to final plat approval, and the covenants shall state this section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations 3- 1(1)(D)*
  - b. Section 2 of the development covenants shall be revised to state,  
“The Environmental Protection Agency has designated the Missoula area as having a high radon gas potential (Zone 1). Therefore, the Missoula City-County Health Department recommends that all new residences incorporate radon resistance construction features.”  
The language of this provision shall be subject to review and approval by OPG prior to final plat approval, and the covenants shall state this section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations 3-1(1)(D)*

#### Geotechnical Study

- c. The subdivider shall prepare a geotechnical study of the site, and site alterations shall conform to the recommendations contained in this geotechnical study, subject to review and approval by Public Works and OPG prior to final plat approval. A qualified engineer shall be on-site during site remediation and construction of subgrade. Submittal of the “as built” record drawings shall be accompanied by the certification of the engineer that all work was completed under the engineer’s supervision in compliance with the geotechnical report. Any changes in soil conditions noted by the engineer shall be outlined in the certification with the engineered remedy employed to address the change. The results of the geotech study shall be recorded with the final plat and the final plat shall be recorded with the engineer’s certification of compliance with the geotechnical report recommendations. *Subdivision Regulations 3-1(2), Planning Board recommended condition.*