

Public Meeting – August 2, 2006 Commissioner Carey called the meeting to order at 1:32 p.m. Also present were Commissioner Curtiss, Chief Deputy County Attorney Mike Sehestedt, Director of County Public Works Greg Robertson, and Assistant Director of County Public Works Chuck Wright. Commissioner Evans was on vacation.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT - none

ROUTINE ADMINISTRATIVE ACTIONS

Commissioner Curtiss moved to approve the Weekly Claims Lists in the amount of \$873,251.28. Commissioner Carey seconded. The motion carried on a vote of 2-0.

DECISIONS

Petition to Abandon a Portion of Mullan Road through East Missoula (from I-90 to Highway 10 West)

Commissioner Carey reopened the hearing from July 19, 2006.

Chuck Wright: As you mentioned from Interstate 90 north to Highway 200, it is my opinion that we abandon Old Mullan Road from the south boundary of the Dodge property north to Highway 200.

Commissioner Carey: We did take a look at this last week along with some of the neighbors. This is a decision process, but we're certainly willing to hear from anyone who may have something to say regarding this matter. Would you care to say anything first Mike?

Mike Sehestedt: What I will touch on is I believe that the Somers and the owner immediately to the south, Ainsworth, both object to the closure of that portion of Old Mullan Road or the vacation/abandonment of the right-of-way. North from that point I think there's near agreement among the property owners that they want it abandoned and in pretty much every case I believe they also have alternative access to their property. So should the Commissioners choose to grant the petition in part by vacating the northerly portion of the right-of-way I think it would be legally sustainable.

Commissioner Carey: Thank you Mike. So that's the recommendation we have in front of us, does anyone care to speak to that?

Greg Schultz: I represent various landowners. I'm here more to speak about the Wagon Road, but I'd like some clarification about the pathway of the Old Mullan Road because the exhibit I'm working off of depicts it farther west and not touching the Dodge parcel. Rather it's going through the Baxter parcel to the immediate west of the Dodge parcel and I guess if we could have some clarification about where this thing supposedly runs or ran it would help everyone try to decide the merits of what's on the table here.

Chuck Wright: That's our best guess of where the road is because we can see the right-of-way, or excuse me the bed, of the old railroad and street car and we believe that the Old Mullan Road was in the same location.

Commissioner Carey: Does that help?

Greg Schultz: I guess.

Mike Sehestedt: Basically....

Greg Schultz: Is this photo here your exhibit, Charlie? With the GLO roads on it.

Chuck Wright: That's one of them, yes. You can see it up here on the display if you want to look, Greg.

Greg Schultz: I guess my problem, Charlie, is on this aerial photo with the GLO roads – and I presume that encompasses the Old Mullan Road – the road is plainly depicted on this photograph as farther west than the Dodge parcel. I'm not trying to cause problems here.

Chuck Wright: No. That's true and the reason for that, if you look at the lower right hand corner of the original GLO right-of-ways, it says that within 300 feet on the ground because we were putting those things on the maps by digitization which is difficult at best.

Commissioner Curtiss: Doug, could you zoom in on the Dodge property so that we can see what it looks like on the ground?

Chuck Wright: It is right here. (To the west of Old Mullan Road)

Greg Schultz: So where is the road then?

Chuck Wright: (It runs inside the east side of the Dodge property) if you walk this, Greg, we walked it and there's a....

Greg Schultz: Now you're not picking up the pathway of the old NP railroad bed, are you?

Chuck Wright: That's what we were talking about the railroad bed and the Mullan Road were very similar in location, so that's our best guess right there.

Commissioner Curtiss: Charlie, is your proposal to...could you again please point to Mr. Dodge's property?

Chuck Wright: Right here, I'm talking about starting from right here going north....

Commissioner Curtiss: So we would be abandoning the portion on Mr. Dodge's property?

Chuck Wright: Yes.

Greg Schultz: And everything farther north of there?

Chuck Wright: Yes.

Greg Schultz: So as council for the Dodge's and....who is across from them, the Hills?

Chuck Wright: The Hills are across and a little north, the Baxter's are directly across and I think these are the Olson's.

Greg Schultz: Okay, so as council for those people, I do no object to that proposal.

Phillip Clause: 1550 Speedway. I have somewhat of 500 feet of the Old Mullan Road runs through the center of my property and right through the middle of my house and I'm in favor of having this road abandoned.

Dexter Delaney: I represent Bert and Gladys Somers who as you may recall own the property down south adjacent to the Old Mullan Road and have previously registered their objections to closing it as the road runs adjacent to their property, roughly on the west side of it. The reason why I'm speaking now is because it's my understanding from the County Surveyor's point of view that his recommendation is to close the Old Mullan Road from a point essentially north of the north property line of the Somers property, is that correct sir?

Chuck Wright: That is correct.

Dexter Delaney: The reason why I make that point, particularly is that we have been pointing with the laser pointer and I'm not sure that the journal which ultimately will record these proceedings will record that. So I wanted to make certain that was clear. Thank you.

Commissioner Curtiss: Mr. Delaney, you're clients are okay with us abandoning the portion that isn't on their property, correct?

Dexter Delaney: They really have no position to take on that, but yes I'm sure that's right.

Commissioner Curtiss: They wanted to keep it open on their property if I remember right.

Dexter Delaney: Yes, on their property. Thank you.

Bill Watkins: I'm one of the proposed owners of the Lonnie Todd property and I just would like to make note for the public record that the creative to abandon this which in effect benefits most everybody in this room that has spoken today has come through our efforts and our effort to simply be a good neighbor, because the creative to abandon this positively effects most everybody in the room and I just want to bring to light the fact that that was our creative that we brought forward and we appreciate your abandonment of that property.

Mardel Peterson: We live at 1235 Speedway and this Old Mullan Road goes right through our living room and so we would also like it to be abandoned. Thank you.

Dick Ainsworth: My wife and I own the other parcel that Chuck has proposed to remain open or the parcel at that portion of the Mullan Road that crosses through, which is north of the Somers property and we don't object to that and we would like to have that remain open. Thank you.

Mr. Dodge: I'm the owner of Tract B (inaudible) there and I do approve this abandonment.

Valerie Brunson: I'm more concerned about the Canyon View Park. It is also, we feel, that should be abandoned too because it'll take out part of our park that I've worked with since 1991. We have it very well fixed and we want to keep it that way.

Commissioner Carey: I'm sorry, what's your concern about that?

Valerie Brunson: The Canyon View Park?

Commissioner Carey: Yes, with regard to this particular action.

Valerie Brunson: Yes. The Canyon View Park is right at the top of where you want to start the abandonment and we are in support of the road being abandoned.

Commissioner Carey: Okay, thank you.

Commissioner Curtiss: Charlie, just to clarify, the proposal would leave the piece that's on the back side of the park, right?

Chuck Wright: Yes it would.

Seeing no further discussion, Commissioner Carey closed the hearing.

Commissioner Curtiss moved to grant the petition to abandon, in part, Old Mullan Road through East Missoula from the southern property line of Mr. Dodge's property up to Highway 200, based on the recommendations of staff and Commissioner Carey as well as the public comment. Commissioner Carey seconded. The motion carried on a vote of 2-0.

Petition to Abandon a Portion of Old GLO/Wagon Road (965 Montana Avenue to 835 Speedway – Old Bandmann Toll Road)

Commissioner Carey reopened the hearing.

Chuck Wright: After discussion and more discussion we have decided to dismiss the petition to abandon this road.

Commissioner Carey: That's your recommendation to us?

Mike Sehestedt: Let me say that we didn't decide anything. We're recommending to the Board of County Commissioners that the petition be dismissed. The basis for this recommendation is that the County has never actively asserted that this particular segment of road is a county road. I got a petition to vacate it, we got a petition to alter it. My belief is that there is substantial uncertainty about the existence or non existence of the road. However, if it is a county road it provides I think the sole public access to a number of properties, all of which would have to consent to its vacation. If it isn't a county road, then we don't have any business taking action on it one way or the other. I think at this point in time the best action would be to simply dismiss the petition and let the parties decide whether they want a quiet title or bring an action for declaratory judgment to establish that it is a county road. Again, the County has not asserted that it is and I'd like to keep this as clear of that can of worms as we can be given the fact that the assertion has been made in the form of a petition to abandon and a petition to alter.

Greg Schultz: I think the problem here is really procedural. This petition in front of you was filed by the Olson's before they retained me. Had they retained me first, I would have said lets not do a petition to abandon, instead let's challenge the relocation petition because to me the existence of the road is so suspect. The problem of course is that unless you make some statement in the record of some kind setting forth the County's position regarding this alleged road, this bogus encumbrance is going to remain on these people's properties and you are inviting – which probably doesn't bother you – litigation of some kind against the County. Some kind of declaratory action or quiet title action to clear it off because this specter has now been raised and I don't want to be back here on behalf of these people in a year or two or three when the developer's get ambitious again and assert this thing again. So, to use the new-age term, these people need some closure. All four of these parcel owners, these citizens, are unanimous in objecting to the relocation petition and impliedly asserting the road does not exist. If all you do is just dismiss the petition because really you don't want to address the issue of the existence of the road, then I can't force you to obviously, but just be advised you are leaving that uncertainty out there hanging over the title to the properties of these people.

Commissioner Curtiss: I think we can only address what we've been asked to address, but ask Mike.

Mike Sehestedt: We've been asked to vacate the road, we've been asked to relocate it. I think what Mr. Schultz says is entirely accurate, it does leave whatever cloud there might be on title out there, but that's the situation we found them in when these petitions came in and we're certainly not leaving them any worse off. The problem is if it is a public road that we could vacate then we've got some property owners without equivalent existing public access to their property and we've got – if it is a county road – we've got access to public property to wit the Clark Fork riverbed to which arguably there's not other equivalent access. I would be reluctant to grant the petition to abandon the road. I'm equally reluctant, given my examination of the evidence to assert that at least as from the section line on Section 18 westerly that we in fact have a public road. I'm not convinced either way. Frankly I think a judge in a declaratory judgment or quiet title action is probably the best place to have the existence or non existence of this road determined. It's kind of a catch 22 for us, if we act to abandon the right-of-way we've committed an act that we can't do because we don't have the consent of all of the affected property owners. If we act on the next petition to realign the road, we're asserting that the road exists and I'm not sure the evidence would sustain that. So, rather than paint ourselves into a corner, we're going to try stop painting and just dismiss the petitions and let the situation be clarified by the courts or otherwise.

Greg Schultz: I was going to suggest a compromise for you to make a decision and that is if you're going to dismiss the abandonment petition, at least on the relocation petition – which I presume you will deny – make some kind of findings that it is more likely than not that there is no road to be moved around. I think the Board has to make some kind of findings in support of its decision and I'd like to come out of here with some certainty for these citizens in the future to the extent I can. That's all I'm urging. I appreciate the procedural awkwardness of the abandonment petition being filed first and coming before the relocation petition, but the relocation petition is fairly well briefed by proponents and opponents and I would think that the Board would be in a position to make some kind of findings in support of a denial of the relocation petition. That's what I ask, if that's not possible then so be it.

Dave McClain: I represent Lonnie Todd who owns property down along the river which Mr. Watkins is attempting to acquire. I am not opposed, on behalf of Ms. Todd, of the County dismissing the petition. I agree with the comments of Mr. Sehestedt. I know Mr. Schultz wants to talk about the issue being fully briefed, but I think that a court is probably a more appropriate forum to determine the legalities of the briefing and what the U.S. Supreme Court propositions stand for. There's a public use exception in the Supreme Court decision cited by Mr. Schultz that talk about this development as on going. Roads are contemplated within railroad rights-of-way and things of that nature. I don't think this is the best forum to get bogged down in trying to interpret Supreme Court decisions and trying to determine whether or not there is the existence of a road. I think it's sufficient to say that whether or not the road existed is in doubt and there's a dispute over it and there's probably a more appropriate place and time instead of consuming the Commissions time to determine whether or not the road existed. If it's determined that the road did not exist, you don't have to take action. If there's a determination by the court that there was a road, at that point people can come back to you, you'll know there's a road and you can make an appropriate decision based upon the courts findings. Thank you.

Seeing no further comment, Commissioner Carey closed the hearing.

Commissioner Curtiss moved to dismiss the petition to abandon a portion of the Old GLO/Wagon Road based on the recommendation of staff and the uncertainty of the legal status of this road. Commissioner Carey seconded. The motion carried on a vote of 2-0.

Petition to Alter a Portion of Old GLO/Wagon Road in East Missoula

Commissioner Carey reopened the hearing.

Chuck Wright: I again am saying that we would like to dismiss this petition to relocate the old road that was the GLO road/old toll road.

Mike Sehestedt: I'd just like to repeat my comments. If we can't determine with some degree of certainty that there was a road there to be relocated, I again think dismissal is appropriate. At this point the County really doesn't have a dog in this fight and I think waiting for clarification from the courts as to the existence or non existence of that road is probably the wisest course. I understand very fully what Mr. Schultz is saying and I sympathize with him and his clients, but I think the courts are really the place to have this decided. The courts will second guess us no matter what position we take – yes or no – there's a possibility the courts will second guess us and I would just as soon – given that possibility – let the court make that determination in the first instance and then we will act based on what they find, if it ever comes to that.

Commissioner Carey: Thank you.

Greg Schultz: I'll just repeat by reference my prior comments.

Seeing no further comment, Commissioner Carey closed the hearing.

Commissioner Curtiss moved to dismiss the petition to alter a portion of Old GLO/Wagon Road based on the staff report and recommendation and the undetermined status of this road. Commissioner Carey seconded. The motion carried on a vote of 2-0.

HEARING

Approve Industrial Infrastructure Projects for the Airport Industrial District

Commissioner Carey opened the hearing.

Barb Martens with the Special Projects Office: Today's public hearing is to provide an opportunity to comment on the resolution to approve proposed industrial infrastructure development projects in the Missoula County Airport Industrial District. These would be approved as tax increment industrial infrastructure projects. In 1997 the County issued and sold its tax increment industrial infrastructure bonds and the County also previously constructed from its own funds for certain improvements within this industrial district for which it could be reimbursed. The County also has identified additional industrial infrastructure projects as future projects within this district. The County wished to refund all of the previous series 1997 bonds and to provide a more sufficient financing mechanism for the improvements and for improvements to be financed within the County's industrial district. The projects that are proposed within this resolution include projects that were installed as part of Phase 3B which include street, sewer, water and electric utilities. Projects that were constructed as part of Phase 3 – actually which have been constructed and are under construction within Phase 3C – street, sewer, water, water service lines and gas veins. Also the cost of a retracement survey for Reserve parcel C which is now known as Tract C of COS #5807. Future construction projects that are proposed include: completing the remaining sidewalk infrastructure throughout the industrial district, landscaping the medians which are located near the intersection of Airway and Express Way, completing the construction and installation of pathways and the landscaping and any improvements in the remaining parks in the industrial district as well as street lights along Expressway and fire hydrants where needed. It would also include architectural and engineering cost related to any of these improvements. One additional comment, on July 19 the Port Authority also known as Missoula Development Authority, did approve the 2 mil Port Authority levy. I know Dale's going to talk a little bit more about the bonds.

Dale Bickel County Chief Financial Officer: I'm going to talk a little bit about the sizing of the bonds, the use of tax increment dollars to repay the bonds and the 2 mil pledge that the Port Authority approved. The total bond issue...the maximum bond issue under the resolution before the Commissioners is 5.3 million dollars. Of that amount one million eight hundred and seventy thousand is for the refunding portion to refund the 1997 bonds. The remaining 3.4 million is for the new projects and the reimbursement resolutions that Barb mentioned. As far as repayment of the bonds, these are all paid through the tax increment revenue generated by the industrial district so there is not impact to the county tax payers or to the tax payers within the increment district. It's just that those property taxes are earmarked for these bonds. I'll also mention the pledge of the 2 mils from the Port Authority. That's as an additional guarantee that the possibility of those 2 mils being levied to pay this are remote and historically the industrial bonds that are outstanding now were pledged at a time when there were no increment dollars being generated and the 2 mil levy was never imposed. Now we have adequate bond coverage to sell these bonds, so the possibilities of the other mils being used is remote.

Seeing no further comment, Commissioner Carey closed the hearing.

Commissioner Curtiss moved to approve the Industrial Infrastructure Projects as listed and the issuance of bonds not to exceed 5.3 million dollars. Commissioner Carey seconded. The motion carried on a vote of 2-0.

HEARING

Pontrelli Addition (3 lot Commercial Subdivision on 4.39 Acres) – Enterprise Way and Alita Drive.

Commissioner Carey opened the hearing.

Mirtha Becerra with OPG: The request for the Pontrelli Addition is from Dave and Diane Pontrelli, represented by WGM group. They are requesting to subdivide a 4.89 parcel into three light industrial/commercial lots. Planning Board conducted a hearing on this request about two weeks ago and voted to deny this subdivision and to deny three of the four requested variances. The variance requests

are: A variance from the requirement to pave Enterprise Way and Alita Drive to a 32 foot surface width. Staff recommended approval of the request based on Public Works comments and Planning Board recommended denial of that variance request. The second one is a variance to the requirement to install concrete boulevard sidewalks on Enterprise Way and Alita Drive. Staff recommended approval and Planning Board also recommended approval. Number three is a variance from the requirement to install curb and gutter on the onsite private road. Staff recommended approval of this request, Planning Board recommended denial. The last is a variance to the requirement to install concrete boulevard sidewalks on the onsite private access road. Staff again recommended approval of this request and Planning Board denied it. There are 12 conditions of approval, most are the typical conditions of approval that apply to subdivisions in the County, but I would like to focus on four that apply to this subdivision. Condition one was to include a one foot no access strip along Alita Drive to avoid having double fronted lots. Number four requires the onsite private road to be improved to commercial road standards with a minimum right-of-way of 60 feet and paved to 32 feet prior to final plat approval. Condition 11 is an avigation easement to the Missoula County Airport to be granted and a note on the plat stating that this property is within the Airport Influence Area. Finally condition 12 is that development covenants be included with this development to address issues such as address signs, fire issues, road maintenance, etc. In conclusion staff is in support of this subdivision based on the conditions of approval and the findings of fact in the staff report. Thank you.

Nick Kaufman: I'm a land use planner with WGM Group and I'm here today representing Mr. Dave Pontrelli, who's also here in the audience. We were a bit shocked and amazed when we went before the Planning Board. The spent very little time discussing this, I think they looked at private roads and decided that it was not a subdivision they wanted to approve. There was very little discussion after that. I think this is a developing area of Missoula County. I think that if we all had our pixie dust we could sprinkle it and get immediate infrastructure, but we don't have any pixie dust. What we do have here is an opportunity to develop this property and develop it with an enterprising young fellow who's willing to risk his fortunes to invest in business in Missoula. I think, if I understand what the Commissioners decided at Planning Status, is to place an additional condition that the roads become conditional public rights-of-way and expand the – or broaden the – waiver of the SID that we would be inclined to go along with that. If you have any questions for us, both Dave and I are in the audience. Thank you for your time.

Mike Sehestedt: With Mirtha's blessing I'll summarize what I recall of the discussion at Planning Status and that is that the Planning Board has a valid point about the need for public roads and interconnection in this area and in other areas of Missoula County. We need to address that on a case by case basis and not throw the whole burden of past sins on the first developer that comes in after we've identified the problem. I think along those lines what we thought would be appropriate was to add a condition requiring that the plat show that portion of Alita Drive and Enterprise Way adjacent to the property – the 30 feet that is in fact part of this project but burdened by the private road easement – be conditionally dedicated as public roads. The condition being that when Alita Drive and Enterprise Way become public roads these portions are already dedicated and then continue with the existing RSID waiver to bring Enterprise and Alita up to County road standards should they become public roads. Again assessment to be based on benefit and to add to that agreement to participate based on benefit in any RSID improving Derby Drive which is the direct Highway 10 to the corner of this property access. I would ask that Mirtha correct me if I'm wrong, but I think that was how we thought we could address both the Planning Board's concerns and continue to be fair to this particular applicant and not burden him, again, with all of the sins of others.

Mirtha Becerra: I believe that's what we talked about in Planning Status as well, to plan a compromise.

Commissioner Curtiss: Do we have some proposed language?

Mirtha Becerra: I don't have it with me.

Mike Sehestedt: I think you could probably take the wording of the condition from the minutes as I just stated it.

Commissioner Carey: Okay and that would be condition number five then?

Mike Sehestedt: Or actually, number 13.

Commissioner Carey: Oh.

Mirtha Becerra: There are four variances but 12 conditions of approval.

Commissioner Carey: We wouldn't want to put it under roads?

Mike Sehestedt: I was thinking the dedication, we'd just show the conditional dedication on the face of the plat and the modification to the RSID waiver on the face of the plat.

Commissioner Carey: Okay. So we'll take the wording of that condition from the minutes that Season will generate.

Mike Sehestedt: Well, assuming that's what you choose to do.

Nick Kaufman: Once that's drafted, could you e-mail it to us so we could have a chance to look at it before it becomes final to the Commissioners, please?

Commissioner Curtiss: I think we should just work on the language here so that we have it.

Mike Sehestedt: No, I fully understand your concern. Let me see if I can repeat myself. The additional condition be added requiring that the dedication language on the face of the plat show a conditional dedication for that portion of the right-of-ways for Enterprise Way and Alita Drive that are in fact within the boundaries of this subdivision. It's anticipated that that would be essentially co-terminus with the area now burdened by the existing private road easements. Also, that the RSID waiver on the face of the plat be amended to include improvements on Derby Drive which is the principle access from Highway 10 West to this subdivision.

Commissioner Carey: I'm impressed that you could say it once, much less two times.

Mike Sehestedt: And I certainly hope no scoundrel compares the text of the two statements.

Commissioner Carey: I was going to say...Season could e-mail you both statements and then you could take a look at it and send it on to the developer?

Nick Kaufman: That's okay.

Seeing no further comments, Commissioner Carey closed the hearing.

Commissioner Curtiss moved to approve the four variance requests based on the finding of fact in the staff report. Commissioner Carey seconded. The motion carried on a vote of 2-0.

Commissioner Curtiss moved to amend the conditions to add a new number 13 as worded by Mike Sehestedt. Commissioner Carey seconded. The motion carried on a vote of 2-0.

Commissioner Curtiss moved to approve the Pontrelli Addition Subdivision based on the finding and fact and subject to conditions as amended in the staff report. Commissioner Carey seconded. The motion carried on a vote of 2-0.

Seeing no further business, Commissioner Carey recessed the hearing at 2:15 p.m.

Conditions of Approval

Roads

1. The plat shall be revised to show a 1' no-access strip along Alita Drive. The covenants shall be amended to include the following language: "access to the subdivision shall be limited to the shared private road off of Enterprise Way." subject to approval of County Public Works. Subdivision Regulations Article 3-3(1)(H) and OPG recommendation.
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 Missoula Rural Fire District prior to final plat approval. Missoula County Subdivision Regulations 3-2(2)(F), Missoula County Public Works and Missoula Rural Fire District recommendation.
3. The developer shall receive approval from the County Surveyor's office for the roadway name for the on-site road and the approved road name shall be referenced on the plat, prior to final plat approval. Missoula County Subdivision Regulations 3-2 (12), and Missoula County Public Works recommendation.
4. The private drive shall be designated a private road on the plat, meeting commercial road standards with a minimum right-of-way of 60 feet, prior to final plat approval. The private road shall be paved with a minimum 32 foot surface width for the entire length of the on-site road. Engineering plans for the road improvements shall be reviewed and approved by Missoula County Public Works and Missoula Rural Fire District, prior to final plat approval. Missoula County Subdivision Regulations Article 3-2(3) and Missoula County Public Works recommendation.

Easements

5. The plat shall be amended to show a minimum 20 foot wide public utility easement along the southeasterly property boundary relating to the existing aerial power line, prior to final plat approval. Missoula County Subdivision Regulations Article 3-6 and Missoula County Public Works recommendation.

Fire

6. The developer shall install a hydrant system meeting fire flows, storage and spacing requirements or alternatively interior fire sprinkler systems in all new buildings regardless of occupancy or size, subject to review and approval of Missoula Rural Fire District prior to building permit approval. Plans for providing water supply for fire protection via a hydrant system or interior fire sprinkler systems shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. Missoula County Subdivision Regulations Article 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 Article 3-7(2)
8. 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 Missoula Rural Fire District prior to building permit approval. Missoula County Subdivision Regulations Article 3-2(10) and Missoula Rural Fire District recommendation.

Weeds

9. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. Missoula County Subdivision Regulations 3-1(1)

Transportation

10. The subdivider shall present evidence of petitioning into the Missoula Urban Transportation District (MUTD), prior to final plat approval. Missoula County Subdivision Regulations Article 3-2 and Missoula Urban Transportation District recommendation.

Airport Influence Area

11. The following statement shall appear on the face of the plat: "This property is within the Airport Influence Area and subject to the requirements of the Airport Influence Area Resolution." Prior to final plat approval, the applicant shall grant an avigation easement to the Missoula County Airport Authority. Missoula County Subdivision Regulations Article 3-1(2) and Airport Authority recommendation.

Development Covenants

12. The developer shall file a Development Covenant, supplementary to the covenants for the Haffner Subdivision No. 2, subject to review and approval by the County Attorney's office and OPG, prior to final plat approval. The Development Covenants shall include a private road maintenance agreement for the on-site private road, the requirement for interior fire sprinkler systems in all new buildings regardless of occupancy or size reviewed and approved by Missoula Rural Fire District prior to building permit approval if an approved hydrant system is not provided, and a statement, approved by the Airport Authority, 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, prior to final plat approval. The following sections shall also be included in the Development Covenants prior to final plat approval:

Address Signs

Each property shall post an address sign that is clearly visible from the street in all light conditions, and clearly visible from the street. During construction temporary signs are allowed, but shall properly display the property address for construction purposes. At the time of construction completion, all permanent signs shall comply with the Missoula Rural Fire District Standards and Manual on Uniform Traffic Control Devices (MUTCD) current edition. *Missoula County Subdivision Regulations Article 3-2(2)(G) and Missoula Rural Fire District recommendation.*

Driveways

Driveways shall maintain a minimum 20 foot unobstructed horizontal and 13'6" vertical clearance and must be approved by Missoula Rural Fire District prior to building permit approval. Driveways in excess of 150 feet in length shall incorporate a turn around for fire apparatus at the terminus of the driveway. *Missoula County Subdivision Regulations 3-2(10)(E) and Missoula Rural Fire District recommendation.*

Paving of Road, Driveways, Parking Lots and Outdoor Storage Areas

All new roads, driveways, parking and outdoor storage areas built in the Air Stagnation Zone must be paved and a permit must be purchased at the Health Department (second floor at 301 W. Alder). *Missoula County Subdivision Regulations 3-1(2) and Health Department recommendation.*

Radon

According to the Missoula City-County Health Department, 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 resistant construction features. *Missoula County Subdivision Regulations 3-1(2) and Health Department recommendation.*

Woodstoves

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)*

Noxious Weed Control

The Owner of each lot is responsible for control of noxious weeds and the vegetation thereon, in compliance with the Montana County Noxious Weed Control Act, the Missoula County Noxious Weed Control Management Plan and the revegetation plan approved by the Missoula County Weed District. Weeds shall be controlled by the use of allowable chemicals, cutting, pulling, tillage or some other form of weed management allowed under the guidelines of the Missoula County Weed Control Program. Owners shall revegetate any ground disturbance caused by construction or maintenance with beneficial species at the first appropriate opportunity after construction or maintenance is complete. The grass species included in the Revegetation Plan are not turf species, but are intended for reclamation purposes and are not suitable for areas proposed for maintained turf or lawn use. (For Revegetation Plan, please see attached.)

Wildlife

Owners and/or renters of lots in this industrial subdivision (hereafter, "residents") 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 and livestock feed, and other potential attractants. Residents must be aware of potential problems associated with the potential presence of wildlife such as deer, black bear, mountain lion, coyote, fox, raccoon, skunk, and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help owners "live with wildlife." Alternatively, see FWP's web site at www.fwp.mt.gov.

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

- a. Residents must be aware of the potential for **vegetation damage by wildlife, particularly from deer** feeding on landscaping--green lawns, flowers, ornamental shrubs and trees--in this subdivision. Residents 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.
- b. **Garbage** should be stored in secure animal-resistant containers or indoors to avoid attracting animals such as bears, raccoons, other wildlife, or dogs.
- c. **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, residents must be aware that deer might occasionally attract mountain lions to the area.
- d. If **pets** are allowed on site, they must be confined to buildings, in a fenced yard, or in an outdoor kennel area, 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). **Pet food (and/or livestock feed)** should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, raccoons, and skunks. When feeding pets, do not leave food out overnight, and consider feeding pets indoors so that wild animals do not learn to associate food with your buildings.

- e. If tall **security fencing** is used, if possible consider installing a second egress gate in the back of the lot, away from the main entry gate. It is not uncommon for wildlife such as deer to become trapped inside large fenced compounds, and being able to leave a back gate open for awhile when this happens can often facilitate getting the wildlife out of the compound without risking animal or human injury by their leaving through the main gate onto a potentially busy road.

Amendments

No covenants or sections thereof relating to addressing; private road maintenance; interior fire sprinkler systems; airport influence area; paving of driveways, roads, parking lots and outside storage areas; radon; woodstoves; noxious weed control; wildlife; and amendments may be changed or deleted without prior written consent of the governing body.

- 13. The plat shall reflect an additional condition requiring that the dedication language on the face of the plat show a conditional dedication for that portion of the right-of-ways for Enterprise Way and Alita Drive that are in fact within the boundaries of this subdivision. It is anticipated that the conditionally dedicated right-of-way will be essentially co-terminus with the area now burdened by the existing private road easements. Also, that the RSID waiver on the face of the plat be amended to include improvements on Derby Drive which is the principle access from Highway 10 West to this subdivision.