

**Public Meeting – August 30, 2006** Commissioner Carey called the meeting to order at 1:30 p.m. Also present were Commissioner Curtiss, Commissioner Evans, Chief Deputy County Attorney Mike Sehestedt and Director of Public Works Greg Robertson.

## **PLEDGE OF ALLEGIANCE**

## **PUBLIC COMMENT**

Jack Hane: I represent Liberty Day Montana. That is an organization dedicated to educating Americans about the Declaration of Independence and the Constitution. My purpose of being here today is simply to announce that Liberty Day Montana is promoting a celebration honoring the Constitution and the men and women of our armed forces this year on September 18. Constitution Day is on the 17<sup>th</sup>, but with it being on a Sunday, it will be celebrated on the 18<sup>th</sup>. We invite you to consider joining in this celebration. The celebration is simply a recitation of the preamble to the Constitution led by General Colin Powell and it's synchronized to consider the time zones in the United States, but all at one time this recitation can take place. I had visions of getting the County Commissioners to join in this and I know the time is late, but we are planning a celebration on the steps of the Capital Building in Helena on that day and our time would be 12:00 – noon – the recitation is taking place at 2:00 p.m. ET and we hope that you will join. If you can't make that, you can have a celebration of your own and consider honoring the greatest document that America has and honoring the greatest fighting men and women to keep that liberty that we have in the United States of America. Thank you very much.

Commissioner Carey: Thank you for bringing that to our attention.

## **ROUTINE ADMINISTRATIVE ACTIONS**

Commissioner Evans moved to approve the Weekly Claims Lists in the amount of \$1,792,357.18. Commissioner Curtiss seconded. The motion carried on a vote of 2-0.

## **HEARING (Continued from August 23, 2006)**

### **Resolution to re-create RSID 8482 (Paving Tookie Trek Area)**

Commissioner Carey opened the hearing.

Greg Robertson: Last week at your public meeting you received testimony that helped you make a decision to postpone action on creating RSID 8482 which is to pave Tookie Trek in the Meadow's West area and related roads. In addition to that, there are two bid awards that were also – actually a single bid award – that was also continued because of a non-vote on the creation of the RSID, on that is contingent upon the other. This matter is before you again. I don't know what you'd like in terms of a staff report. I did brief you earlier this week on proposed revisions. If you decide to go that route and cancel this RSID and re-form with potentially three others. One item that should be mentioned is that the method of assessment and the district boundaries that were recommended last week to be used have not been truthed out with Mae Nan Ellingson, our bond council. Any sort of boundaries that we came up with would have to be blessed by her or her staff. So a brief summary, there was a proposal by at least one of the folks that testified last week that they would like to see the district created in three different districts and that would be one for Fire Bucket Loop, one for the cul-de-sac portion of Tookie Trek and related roads Jars Gang and Peaks Row and then a third on for that portion of Tookie Trek that everyone uses. I did some analysis and there was a shift in cost away from the Fire Bucket Loop folks and it was put on the Tookie Trek cul-de-sac portion. Assessments were shifted by about \$2000 on my rough analysis, but I think I got all the ancillary costs in there and trusting my quantity takes offs that I did, so that the folks who live on Tookie Trek on the cul-de-sac – if we went with the methodology – their assessments would go up to about \$19,000 and change and the folks on Fire Bucket Loop would go from about \$15,000 down to about \$13,100 or \$13,200, something along those lines.

Commissioner Carey: Thank you, Greg. I have a question for our attorney, but is there any public comment at this point? Okay, Mike when we were briefed earlier this week about this Greg had the judge's order with him and to my layman's mind it's clearly stated that the judge said they will pave the road. Are you familiar with that particular phrasing and...

Mike Sehestedt: I've read it, not recently, I think that has always clearly been what was intended – that these roads be paved when development hit the trigger. The precise methodology used to pave them is open, I think, to your policy making decision.

John Mazola: I'm the former president of the Homeowners Association for Meadow's West and I'm also a resident of Peaks Row. We've been working on this project for a long time, several years in my case. I think that the original proposal was fair. I think we should move forward with that. I think delaying this any further would...well I think if we were to go with the redesign of that RSID we're pushing this project into next year and I think it's time this project be done and completed and get it off my desk and yours. It sounds like we have the bids and they're ready to go, so I would urge the Commissioners to go with our original plan and let's get this project done.

Glen Sparks: I just want to renew my objections from last week.

Commissioner Evans: As I said last week, I'm not willing to impose this kind of cost on people. We had a meeting the other day with the Public Works Director and I've also had comments from the Regional Director – I believe his position is – for the Montana Department of Transportation. They believe that magnesium chloride can do the job for keeping the dust down, helping to keep the roads from having washboards, less maintenance – less expensive maintenance. One of the fellows who talked last week is on social security and \$1000 a year additional taxes is onerous in my mind to someone who's on a fixed income. What I prefer to do is not to do this with asphalt. It's my preference that we look at doing it with magnesium chloride which will cost the residents significantly less money and still accomplish keeping the dust down, so that's my preference.

Commissioner Carey: I guess I'll phrase my question another way, well go ahead Mr. Mazola.

John Mazola: I just wanted to ask Mr. Sehestedt, if we were to go to some sort of magnesium chloride, would that satisfy the judges order in this case?

Mike Sehestedt: No, but the Homeowners Association – having initiated the RSID would be discharged from its responsibilities under the order. We'd still have the ability, and probably the duty, to go forward with paving. Again, the precise...how you slice and dice the RSID's and various segments to be paved is a policy question, I think, for the Board of County Commissioners. The intent of the judgment that these roads be paved back when it was entered I think is clear and remains.

Commissioner Carey: So Mike, what I'm hearing you say is that if this Board did not require the paving we'd be in violation of a court order, yes?

Mike Sehestedt: The answer to that is that it's a judgment in our favor and the County's favor. I'd have to think about whether or not we'd be in violation if we didn't pave it now. I think ultimately paving is required out there under the order. I think we've got some flex on time and again methodology of spreading the cost.

Commissioner Carey: But it's certainly not going to get any cheaper to wait.

John Mazola: Exactly. That's my point.

Commissioner Evans: It seems to me that paving is a matter of...it's a subjective thing. To me the point of paving is to provide a decent road surface and to keep the dust down. I believe that magnesium chloride does that, it costs less for our Public Works to maintain it and it still provides the same benefit to the residents. Greg told us yesterday, or someone did, that it almost becomes a concrete and to me that is the same thing and I think a judge would find it the same.

Glen Sparks: I'd like to point out that if the judgment is that the roads have to be paved, then the current proposed RSID doesn't meet that intent either because not all the roads are being paved. A good share of the roads are being left out completely.

Mike Sehestedt: I'd point out the key trigger there was when there was development on 52% of the original tracts. I think this is picking up the areas where we have that and not going into the areas that are not.

Greg Robertson: One other thing that the Board needs to consider, last week you did form RSID 8483 which is the other half of the paving work for O'Keefe Creek Blvd and those related roads. We have a bid – at the request of the association leadership – we bid this jointly for economy of savings also. So essentially half the roads would be paved and half wouldn't.

Commissioner Evans: I'd like to ask Mr. Sparks a question. One of the things that I think you were concerned about is that if it gets to the point that Fire Bucket Loop would be paved that you would be paying twice.

Glen Sparks: Everyone on Fire Bucket Loop would be. We're paying for roads now that don't benefit us - that we never drive on. Those folks who are receiving paving now that we're helping to bear the cost of won't be asked to share the cost of paving Fire Bucket Loop. We'll be paying double.

Commissioner Evans: One of the things that was brought up at our briefing meeting was that we don't believe that Fire Bucket Loop will ever be paved and if that doesn't happen you would not be asked to pay for something that doesn't occur. I also asked Greg if there was some way, if it ever was paved, to say that you don't have to pay again. I would ask you to respond to that once more and Michael to respond to that as well. I'd like to find some accommodation for you folks and perhaps some compassion for you...the tune of 14 – 18 or whatever thousand dollars it is, is not something I wish to impose on people. The other one – O'Keefe Creek – there was no protest. Obviously they didn't care and obviously there are people on this one who do care.

Glen Sparks: That was also something that was brought up among some of us on Fire Bucket Loop. If there was some way to ensure that, if in the event Fire Bucket Loop is paved sometime down the road – that area is still being developed and there's potential for enough people up there to come together – or people from down the road who don't like the dust on Fire Bucket Loop to do this again and want the roads paved for whatever reason. If there was some way to ensure that we wouldn't be paying again, or that those folks who are in this district that's being created now would share the equal cost just the same as we are now for roads that don't benefit us, then I think that would be fair. I'd actually prefer to see it go away, but for me that would be an acceptable solution because that's the biggest concern that we're going to end up paying twice down the road.

Commissioner Evans: Would that still be the case if we split it into three RSID's instead of just one?

Greg Robertson: I think, well I'm not an attorney, so you need to talk to the big guy across the way here on that issue. But, I think we'd want to run that, truth that out with bond council just to see what options would be available. I didn't look into to it to find out.

Mike Sehestedt: You know they'd wind up paying less now under the three split, but if you'll recall the three split is a chunk of Tookie Trek from or you'd come off an existing paved road through the junction of Fire Bucket. Everybody on Fire Bucket Loop uses that stretch. Then we're paving a chunk of Fire Bucket up to the end of George Cates. I don't know what percentage of folks on Fire Bucket Loop use that, but it's clearly to their benefit. Those two, their share of those two segments puts them at about \$13,000...

Greg Robertson: A little over.

Mike Sehestedt: A little over \$13,000.

Greg Robertson: Yeah.

Mike Sehestedt: The actually assessment based on the bid prices we've got under the existing RSID is?

Greg Robertson: About \$15,000.

Mike Sehestedt: About \$15,000, so there'd be some savings for them doing it this way. If the rest of Fire Bucket is paved, the question would be who benefits from that paving? That would be a question you'd have to analyze at that point, but I would expect that everybody in Fire Bucket would share those costs and nobody else would. Again, you about need a specific proposal in front of you because assessment has to be based at least proportionately on benefit. Then the remaining segments, the third segment, would be Tookie Trek from Fire Bucket Loop to the cul-de-sac, Peaks Row and Jars Gang.

Commissioner Carey: Is there a way for this board to hold another Board of County Commissioners to some sort of ruling we make about folks on Fire Bucket Loop not having to pay for additional paving there? That they're basically exempt somehow...could we bind another board to that?

Mike Sehestedt: Since the judgment is in your favor, you could probably release the judgment, but if/when the majority of the stuff develops on Fire Bucket, if/when the property owners up there say they're the only unpaved roads in the area and their house would be worth \$50,000 more if they had a good road and they want it paved then a future Board of County Commissioners could still go ahead and create the district. What you could do is release – essentially bind a future Board of County Commissioners by releasing the balance of Fire Bucket Loop from any obligation under that judgment.

Commissioner Carey: In other words, could we address Mr. Sparks' concerns of the double charge?

Mike Sehestedt: You get there halfway, but sooner or later the folks up there are going to want that road paved and at that point the Commissioners sitting as you sit will probably be responsive to it and the property will pay again. Or not again, but they'll pay for those portions of that new road that weren't paved by this RSID.

Commissioner Carey: But Mr. Sparks wouldn't have to pay for that. I'm trying to find a way for...

Mike Sehestedt: Mr. Sparks lives there until he's old and gray...40, 50, 60 years from now and all of the other lots build up. Mr. Sparks loves the ambiance of a dirt road leading down to his house – some people do – the other people on the road don't share that view and say they want the road paved. They come in and petition a future Board of County Commissioners that sits here just like you do. Now because you've released them from the judgment you're looking at the 60% petition requirement and people bearing 60% of the cost are in petitioning for that road. I don't think you can keep that Board of County Commissioners from granting that petition, even though Mr. Sparks is opposed. That's the...I wish you could say that you could give him a guarantee forever, but I don't....

Commissioner Carey: It doesn't work that way.

Mike Sehestedt: I think you can release your ability to require it to be paved. I don't think you can bar a future Board of County Commissioners properly petitioned from granting that petition.

Commissioner Carey: Thank you.

Glen Sparks: If you could release the remaining portion of Fire Bucket Loop from the judgment, why couldn't you release all of them right now from the judgment and do it another way?

Mike Sehestedt: Because there is no other way to get it paved.

John Mazola: Commissioner Evans if your concern the cost, is your concern the cost to the people on Fire Bucket or the cost to the over all association for the cost of paving?

Commissioner Evans: My concern is 15 to 20 to \$30,000 per person. That's my concern. I'd still like to have you folks who want the paving to have something that keeps the dust down. That's why I think the mag chloride is a good answer. But I know there's at least one person who has two lots and his assessment will be \$32,000 or more – I care about that.

John Mazola: I have two lots and my assessment will be \$30,000 and I don't have a problem with that.

Commissioner Evans: Well, you're not on a fixed income either.

John Mazola: I think to an extent we're all on a fixed income. But it's the desire of the association to have the road paved and I don't believe the level of protest has reached the percentage required to put a stop to this project, is that true?

Commissioner Evans: That's a questionable question.

Mike Sehestedt: Well, legally there is not sufficient protests to bar.

Commissioner Evans: No, legally there is not, but when two people own a piece of property and only one signed, they got credit for half and that's perfectly legal, but that still does mean to me that I'm willing to pay or have people pay that kind of money! Now that's my personal belief. I may not prevail here. I'd like you to have the dust palliative, but I'd also like not to have people have to lose their home because they can't pay for the paving.

John Mazola: And then with regard to the back end of Fire Bucket, if then going back to your comment about whether it will ever be paved, I recall I think Greg was there and Tom Hansen from PCI and in reviewing those roads we all – well I didn't, but Greg and Tom – came to the conclusion to bring that road up to County standards would be an enormous expense and they could never see that ever being paved in the condition that it's in now with the grades and terrain that's back there. I think we might be arguing about something that may never happen and probably won't. And I think that's something that needs to be kept in mind.

Debra Eveson: My representation here is actually twofold. My mother just bought a house on Fire Bucket Loop and we moved her in the past weekend. And I also represent a home/landowner on the corner of Fire Bucket and O'Keefe Creek. I'm late to debate on this and I apologize for that. I understand where people are coming from in regards to cost for paving the road, however we all have to look in our crystal ball – paving does add value to homes. It adds value to the lands. Definitely something needs to be done to the roads up there, they are in poor condition. I also understand the process – being a land planner – in which things get improved. Historically things get improved when there is a benefit, there is a majority, and there is density that requires the benefit. You're taking privately maintained roads that are now going to be publicly maintained roads. Initially the next baby step would be to have a gravel, county maintained road. Unfortunately that option, the way that I read it and the legal documentation stipulates, that we have to pave that road, so that natural progression of going from a privately maintained road to a county maintained road – we're missing that step where we have to now go to a full blown county paved road. I understand the heartburn about that and the cost there. But I also think that the people who own the land up there are going to see that return in the value of that property and I would just like to keep that in mind as far as looking at the big picture. Thank you.

Seeing no further comment, Commissioner Carey closed the hearing.

Mike Sehestedt: Might I ask one question? Greg, to bring this to a County gravel standard would require pretty much all of the cut and fill work that's projected as part of this project and it would also require at least the base course amount of gravel. So essentially what you're looking at, if we go with an option that doesn't pave the roads, to bring them to any kind of County standard so we could mag chloride them – accept them as County roads and mag chloride them – we're doing just about everything we do except the actual pavement?

Greg Robertson: Yes. We would still have to replace culverts. We would have to widen. We would have to improve the areas that are exhibit poor subgrade characteristics – or lack of surfacing. Just from a road design standpoint, geometrically things would have to change. Grades would have to drop and...so yeah, there is still a significant cost associated with just bringing them up to a county gravel road standard.

Mike Sehestedt: I guess the point I was trying to make is this isn't as simple an issue as we do this project or we do mag chloride at \$3000.00 a mile, or whatever the cost is. It's not that simple of a decision and the people are still going to bear pretty substantial costs, they just won't get a paved road out of it.

Commissioner Evans: One of the things I'd like to point out to everybody is that these subdivisions - and I'm using that term loosely because they weren't subdivisions – this was done by certificate of survey. It didn't go through the subdivision process or the County would have required the roads to have been paved. So I just want you to know that it didn't originate that problem here.

Commissioner Curtiss moved that we create RSID 8482 to pave Tookie Trek and related roads as proposed. Commissioner Carey seconded. The motion carried on a vote of 2-0. Commissioner Evans was opposed.

Commissioner Carey: I guess I would say for all three of us that none of us enjoy, or wish to, increase the cost of living for any of the citizens we represent. But in this case, I'm persuaded that we don't really have a choice in the matter.

Commissioner Curtiss: I'd like to speak to my motion. The reason that I'm moving this – I understand that \$14,000 to \$30,000 is a huge amount of money for folks to be obligated to pay, but I think through this whole process the Homeowners Association, as Mr. Mazola mentioned, has worked for many years on this project. The majority of the public comment has been in favor. The lawsuit says that the roads need to be paved – that was part of the whole lawsuit because these didn't go through subdivision. The bidder is holding this bid so that we can do this as a larger project with the other roads. All the public comment that we've received has been about paving, not about mag chloride that was a new concept that we discussed this week, but it hasn't been out for the public to comment on. So I think it would be unfair to change horses in the middle of the stream and as Mike and Greg have referred to it, it would still cost a lot of money to get that road to the point where you'd want to even put mag chloride on it. The split to do it three ways, I know that it would make it a little less onerous for the folks in the Fire Bucket Loop area, but it would make it more expensive, actually, for the folks further up Tookie Trek. But we haven't proofed tested that, as Greg said, with our councils so we don't know if that would be a legal assessment. The numbers that Greg came up with are probably pretty darn close, but we'd have to take a lot more time to do that. In the future, the solution for Fire Bucket Loop may be just for the homeowners to just use mag chloride for dust abatement because just from the knowledge of that road, and those of you who live on it, you know it will be very difficult to ever get that road up to County standards because of the way it was built in the first place. So, I just wanted to give a little background for why I feel that it's important to go through with this today.

Commissioner Carey: And could we look into, Michael, the benefits of releasing the judgment or some legal way to address Mr. Sparks' concerns?

Mike Sehestedt: I'll take a look at that for you.

Commissioner Carey: Thank you.

#### **BID AWARDS**

**RSID 8482 – Paving in Tookie Trek area**

**RSID 8483 – Paving in O'Keefe Creek Blvd area**

Commissioner Carey: We've referred to these two in our previous hearing, do we need to add anything?

Greg Robertson: No – other than just to advise you that we solicited bids from responsible contractors. We received four bids. The apparent low bidder was JTL Group, Inc. in the amount of \$1,389,975.00. This was below the revised engineers estimate and is within the budget for the two RSID's. We've evaluated JTL's bid, found everything in order and recommend that you award the bid to JTL Group, Inc. in the amount of \$1,389,975.00.

Commissioner Curtiss: So Greg, these folks – if we award the bid today – they're ready to get the work done this fall?

Greg Robertson: I'd have to ask the guy at the back of the room, but yeah they'll most likely get started post haste. Yes.

Commissioner Curtiss: Okay.

Commissioner Curtiss moved to award the bid for these two RSID's 8482 and 8483 to JTL Group, Inc. as they are the lowest and best bidder. Commissioner Evans seconded. The motion carried on a vote of 3-0.

## **HEARING**

### **Graham Family Transfer**

Commissioner Carey opened the hearing.

Mike Sehestedt: This is a consideration of a request to create a family transfer parcel for that parcel described at Tract B of COS #1978A in the SW ¼ SE ¼ SE ¼ of Section 19, Township 13 North, Range 19 West. Debbra Graham has submitted a request to create two additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately one (1) acre in size located in Missoula, MT. Debbra proposes to create two (2) approximately .25 acre parcels for transfer to her daughter and son-in-law, Veronica and James Nelson, and to her son, and to her son Anthony Graham, for residential purposes and keep the remaining approximately .50 acre parcel for residential purposes as well. The history of the parcel is as follows: it was a remainder owned by Joyce Folsom under COS #1978 and again re-surveyed as COS 1978A. According to records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act. I'd like to qualify that, I have one item in the application that I'd like to ask the applicant about when this comes up.

I am Debbra Graham.

Commissioner Carey: Thank you for coming in today. Our attorney will ask you some questions on the record in order to help assure us that this is not an attempt to evade the subdivision review process which would be a misdemeanor.

Debbra Graham: I understand.

Mike Sehestedt: How long have you owned the property?

Debbra Graham: We purchased the property in the fall of 2000.

Mike Sehestedt: When you bought the property, did you buy it with the intent to divide it?

Debbra Graham: No we did not.

Mike Sehestedt: Do you or either of your transferees intend to transfer the property within the next year?

Debbra Graham: No they do not.

Mike Sehestedt: And these children are not minors?

Debbra Graham: No. Both are adults.

Mike Sehestedt: What's on the property now?

Debbra Graham: We have a single family dwelling, single car garage, a shop, pasture...

Mike Sehestedt: It's your home.

Debbra Graham: It's our home.

Mike Sehestedt: Okay, that's really what I was aiming at. Do you know what your transferees propose to do with their parcels?

Debbra Graham: My daughter Veronica and James Nelsen plan to put a single family dwelling on their section. At the present time my son has no definitive plans, other than we wanted it divided equally between them.

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

Debra Graham: Not that...no.

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

Debra Graham: No we're not.

Mike Sehestedt: Are you attempting to evade subdivision review?

Debra Graham: No we're not.

Mike Sehestedt: And this is – because of the size of the parcels – the next two questions are going to be pretty important. Do you understand that this request is not being reviewed for adequate access in all weather for all vehicles including emergency vehicles?

Debra Graham: Yes.

Mike Sehestedt: And do you understand that this approval does not mean that the property is approved from zoning compliance, floodplain, septic systems or any of those?

Debra Graham: Yes.

Mike Sehestedt: As an aside, how do you propose to provide sewer services to the new parcels?

Debra Graham: I'll let my husband, Alton, answer that.

Alton Graham: Sewer services are coming into that area and we will be annexed. I've already talked to the Health Department.

Mike Sehestedt: I kind of suspected that. That's a perfectly complete answer.

Alton Graham: Okay, thank you.

Mike Sehestedt: Since one acre is the minimum for a septic system, it can be an important question. I have one other question. It indicates in your application that - the question is: either the claimant or the intended recipient...well let me skip that – you've never used any other exemptions to the subdivision and platting act?

Debra Graham: No.

Commissioner Curtiss: One question – the state law now says that we can't do these family transfers if it happens to be zoned against it. So in looking at this location, I think that you're probably in a zoning district, but one that doesn't have density. Do you know if you're in a zoning district? A citizen initiated zoning?

Mike Sehestedt: It's my understanding they're okay on that point from our review.

Commissioner Curtiss: Okay.

Seeing no further comment Commissioner Carey closed the hearing.

Commissioner Evans moved to approve the Graham family transfer in that there does not appear to be an attempt to evade subdivision review or the Subdivision and Platting Act. Commissioner Curtiss seconded. The motion carried on a vote of 2-0.

## HEARING

### Petition to Abandon 10 feet of Utility Easement on Lot 8 of Glacier Estates

Commissioner Carey opened the hearing.

Steve Jensen: I own Lot 8 of Glacier Estates, also known as 1701 Kootenai Drive. They petitioned abandonment because for the listed reasons on the petition. All the signatures on the petition are either from the Glacier Estates subdivision or from the people in the area. The names include Betty Kalduhl, who's also the original owner of what is now known as Glacier Estates and she also owns the 20 foot section of the adjoining easement to the west of our lot. When we first bought the lot we were attracted to it because it was an end of the cul-de-sac lot. We were unaware that there was an easement running through it. The listing realtor, basically we asked him about what looked like an old road through the property, but he quoted to us, "it's a non-issue, we couldn't secure any land to the west of the lot for continuance of a preliminary pedestrian easement plan, so just grow grass on it, it's a non-issue. It'll never be anything." That's what he told us. Anyway the non-issue has become quite an issue, it's been a lot of work for my wife and me. Some disclosure would have been nice and was required I think for the most part. We purchased the property believing it was one full acre piece with no conditions that were ever disclosed to use before we bought it. We paid full acre price. Since then we've worked with the Public Works Department with Clint Harris, Tim Elsea. A number of times I've had them onsite to inspect, to pre-approve and inspect fencing and landscaping, access issues, that type of stuff. And of course, getting to know a little bit more about the easement itself. We've been extremely cooperative with the County after finding out about the easement. It seems that when the County purchased the portion to the west, 20 feet seemed to be sufficient enough for the access and the purposes of the easement. There's 30 feet of it running through the southern end of my property. What I'm asking is to abandon the 10 feet to match the 20 feet that the County has proposed for the same purposes to the west. My wife and I have endured quite a bit after buying the property – learning from it has been quite an experience for us. So, we've worked cooperatively with the Public Works Department and pretty much all the necessary County departments in making sure we've maintained access, kept it useable and Tim Elsea actually expressed to us that we've gone above and beyond what probably most people would have done to make sure that we've been compliant and work cooperatively with everybody. So, what I'm asking for is not what I feel is unreasonable. But I would like to get that 10 feet released so I can do landscaping and beautify our property to the best of our abilities.

Commissioner Carey: Is there a certain event that has suddenly made this an issue?

Steve Jensen: Since we bought the property – of course most of that stuff was undisclosed when we bought it. We purchased it as a one acre piece with no real expression to the fact that there was an easement when we actually bought it. We kind of learned it as we went through the buying process.

Commissioner Carey: Okay, thank you.

Commissioner Evans: Where is Kootenai Drive?

Steve Jensen: Kootenai Drive is just this side of the Sunset Memorial Gardens, the sunset cemetery.

Commissioner Curtiss: This was put in there to be a pedestrian connection to get over to Douglas Drive.

Steve Jensen: That is correct.

Commissioner Curtiss: Actually, my preference at the time was to have a road, because those folks' emergency services have to go all the way down Cody Lane and do a roundabout loop to get close to the end of Douglas Drive there. So, it's been pointed out to me by some of your neighbors that there's a gate on that pedestrian drive.

Steve Jensen: That was suggested to me to put in by Clint Harris. It has a County lock on it. Clint Harris gave me the lock to put on it.

Commissioner Curtiss: But when we put something in for a pedestrian drive there's....

Steve Jensen: Oh, there are openings.

Commissioner Curtiss: There are openings?

Steve Jensen: There is a considerable opening just east...

Greg Robertson: Pedestrians are not impeded from using it.

Commissioner Curtiss: So does the Fire Department have a key?

Greg Robertson: Yes and I've spoken to the Fire Department about the gate and their attitude is that if it's in the way they'll just roll over it with the big truck. So, they weren't concerned about it as far as the fence goes. I went out and looked at it, in response to a complaint I received about it and the gate did not appear in anyway to impede its use for pedestrian purposes.

Commissioner Curtiss: The other complaint I've received in this area, and it isn't related to your easement, but the whole drainage issue – filling in swales which are designed to retain water.

Steve Jensen: Yes. I've had Tim Elsea recently onsite and I've worked with him on various improvements to that and he's been out after the fact and inspected all that. His comment was that we've done basically overkill.

Greg Robertson: Actually, both of the property owners – this gentleman as well as the property owner to the east – both have made improvements on their property to deal with the runoff issue.

Commissioner Curtiss: That was a huge issue when we did this subdivision, the water running across.

Greg Robertson: Uh huh. Yes.

Commissioner Curtiss: So you're proposing then, you have a fence between the walkway and your property now?

Steve Jensen: I have it at the 20 foot line. When I originally - I waited for the County to put up their fence on the west end of that.

Commissioner Curtiss: So it lines up with the other one?

Steve Jensen: It lines up with the other one, yes.

Commissioner Curtiss: Okay, so you're asking us to remove the easement so that your fence is in the right place?

Steve Jensen: So that it's on my property line rather than in the middle – or 10 feet into the easement so I don't have to worry about something...my fence being torn up.

Mike Sehestedt: I think we about need to treat this like we would a typical petition to vacate a road. I would suggest that you take whatever testimony you have here, recess the hearing, the County Surveyor and one Commissioner make an inspection, we reconvene and make a decision next week.

Commissioner Curtiss: Could we put it off a week since Monday's a holiday – we might not be able to fit it in.

Mike Sehestedt: Certainly. It's at your discretion, but one week or two weeks or even three Jean if we're going to stack stuff up.

Steve Jensen: The sooner, the better for me.

Commissioner Carey: Right.

Mike Sehestedt: I was going to say I understand the property owner has urgency, but legally there is no urgency. We just need – but I do think we need to do the inspection, we need to just follow...

Commissioner Carey: Okay. Is there any further comment? We will go ahead and recess the hearing and then just schedule it for September 13. That should work. We'll take a look at it sometime before the 13<sup>th</sup> and then act on it on the 13<sup>th</sup>.

Steve Jensen: Okay, there will be another hearing then?

Commissioner Carey: Yes, we're continuing the hearing from this week.

Commissioner Evans: We could do this on Tuesday, September 5 and then have the continuation on the 6<sup>th</sup>.

Greg Robertson: Tomorrow or Friday would work for me, too.

Commissioner Carey: So we can do it on the 6<sup>th</sup> then. We'll act on the 6<sup>th</sup> Mr. Jensen.

## **HEARING**

### **Dougherty Ranch Rezoning (342 acres south of Highway 10, west of Flynn Lane) – from Residential to Commercial/Light Industrial**

Commissioner Carey opened the hearing.

Jennie Dixon w/OPG: The rezoning request comes from James Dougherty and the area encompasses approximately 342 acres of the ownership of the Dougherty Ranch Limited Partnership, the estate of Mary Jane Dougherty and the ownership of James Dougherty himself. The request comes to you to change the zoning of this property from CA3 residential, CRR-3 residential and CI-1 light industrial to a combination of CI-1 light industrial, CC2 general commercial and CC3 community commercial. There are some attachments in the staff report and I have some maps up behind you that show the breakdown of the tracts involved and the staff recommendation for zoning the property. I also brought an air photo that is a little over 15 years old, but it gives you context of where the property is located relative to the airport and Hellgate School. I just think it's kind of fun to look at and see what 15 years can do. You can see the general location is almost entirely west of Flynn Lane but for a small corner that's east of Flynn Lane and it's south of West Broadway and the highway and east of the airport. The application came to us as a request to rezone 15, what are called Zoning Tracts which essentially encompass 15 legally described parcels. The legal descriptions for these 15 tracts are in your staff report and they're shown as tracts 1-15 on the maps behind you. The properties involved are generally vacant, used for some agricultural purposes, except for Tract 12. You might be able to see a small X near Flynn Lane on the map where the old homestead is in location. That home was built in 1864 and there are also some various outbuildings on that Tract from the 1920's. As these buildings are in fair to poor condition, the Historic Preservation Officer had no comment in terms of preserving those structures. Adjacent land uses to the property – and the air photo actually is in some respect accurate – there has not been much development to the west of this site, so there's some vacant and Ag land. Also, the airport is still there, of course. Residential uses have built up to the east, which is the Pleasant View Homes Subdivision, Hellgate Elementary School, there's an open space conservation easement directly west of the school. Of course West Broadway borders this property to the north and then across West Broadway are some heavy commercial/industrial uses. The properties are proposed to be accessed from major roads that exist or are proposed to be constructed, such as Flynn Lane, Mary Jane Blvd, England Blvd and Dougherty Drive and these roads generally match the conceptual street grid system adopted by the Commissioners in 2001. The application for rezoning on this property at CI-1 zone – and the OPG recommendation that went to Planning Board was to support that request – the applicant requested CC2 which is the heavy commercial zone in the county for part of the property to the west. In our recommendation that went to Planning Board we supported the applicants request for all of that area. The tracts to the east of which there are five, the applicant requested CC3 for these which is a moderate commercial zone in the County and staff recommendation that went to Planning Board for those tracts was the light commercial CC1. I would also point out the EADA on the map here that I will discuss in a moment. Our recommendation to the Planning Board – the reason I keep mentioning that is because I have an alternative proposal here for you to consider based on the Planning Boards recommendations – but our recommendation to Planning Board was to not support the applicant's request for moderate commercial and instead go for light commercial zoning there. Ultimately the neighbors were – especially in the Pleasant View Homes area – very opposed to the commercial designation there and the Planning Board also recommended denial of the entire request. All three of these commercial zones that

are requested – CC1, CC2 and CC3 – allow for caretaker residences within the same building as other allowed commercial uses, however the light industrial zone which is only up in the north does not allow caretaker residences. The two lesser intensive County commercial zones, CC1 and CC3, also allow for multi-family housing as a special exception. That requires a public hearing and review by the Board of Adjustment and consideration of review criteria in the County zoning resolution and if approved by the County Board of Adjustment, could have special conditions attached to any development of multi-family housing. The land use designations for these properties are most recently adopted by the County in the 2005 Wye-Mullan West comprehensive plan and I don't have a map of that, but I can tell you this parcel here is recommended in the Wye-Mullan plan for light industrial and therefore this zoning request complies with the land use plan. That's the reason staff is supporting it. From this line (on the map) to here is a recommendation for commercial or industrial and I let the applicant know that either one would be appropriately supported by the plan, but maybe in terms of a transition from heavier uses on this end to lighter uses over this way to go with the heavy commercial zone and that's what the applicant requested. It complies with the land use plan and staff supported it, or supports it. Here it's just simply a heavy commercial zone and that's, you may recognize that as the Pioneer Subdivision that was approved a few years ago, the designation there is heavy commercial and the request is for heavy commercial. The Wye-Mullan Plan recommends community commercial on Tracts 9, 14 and 13, which is comparable to the light commercial zone in the County which is a CC1 district and the applicant was requesting a moderate commercial. So that's one point where we had some disagreement and said really to comply with the plan that area needs to be CC1. The area that's outlined in the brown is a bit of an ambiguous area in the plan in terms of it's designated in the plan as mixed use/residential 16 dwelling units per acre and commercial for which the County does not have a comparable zone. So we really struggled with what to request, what to support, what matches the plan and looking at the context of the area is also very important. So the applicant requested CC2 for that area and in our recommendation to Planning Board, we supported that and requested CC3 here. Again, I mentioned we are recommending the CC1. The problem with CC2 is that does not allow any residential and therefore on this piece you're not meeting the comp plan in its entirety. So, on these two tracts however at CC1, as I mentioned earlier, allows multi-family housing as a special exception and through those means you could achieve the comp plan through that process. The Planning Board's recommendation on number 15 – as I mentioned earlier they recommended denial and in part they were concerned about the ambiguity of zoning these tracts upon annexation into the city which many of the conceivable uses here would require sewer and thus annexation. So we had to think about what these properties will be zoned upon annexation. The greatest ambiguity, again, lies in Tracts 9, 13 and 14 and it's likely that an equivalent zone in the City may be a lesser intense commercial zone than the County's CC1 simply because the County doesn't have a lesser intense commercial zone. Upon annexation it's entirely possible that a recommendation for zoning there could be in an R5BNBC zoning district or a C1, but that's down the line and it is something that Planning Board keyed on to and felt like that this should just be a City rezoning request and take the ambiguity out of it. Also they were very responsive to the complaints from the neighbors about bringing light commercial directly up to the frontage of Flynn Lane and the impacts that it would have on them. I just want to spend a minute on the other map here which is an alternative recommendation that I've prepared in response to the Planning Board recommendation and the concerns raised there by the Board as well as the citizens. Also some additional research and discussion with County staff and County Commissioners to prepare an alternative recommendation for you to consider somewhat put forward by the Planning Board. This is to do a special district along the Flynn Lane frontage and on the east side of this property that would take into account the ability to do mixed use – to actually allow it outright as a permitted use and a special district that I would propose for you to consider is a hybrid of two city zones that allows a neighborhood commercial level of intensity which is the City's BC zoning district. For anyone who picked up the memo up front, it contains the zoning districts that I'm referencing (in the file). A hybrid of the City's BC district and the City's R12 district; that allows for residential 12-16 dwelling unit per acre and therefore meets the plans intent of mixing of uses at the density recommended and hopefully provides some...better integration, from the neighbors point of view, to Pleasant View Homes. On this piece, this zoning district does not allow residential although the plan calls for it, a possible alternative is to zone it CC3 so that you do have that mixing of uses allowance, even a feasibility for that to happen on that tract. None of the reviewing agencies had any adverse comment on this rezoning request and so at this point I'd like to just discuss two possible conditions on this rezoning request and then turn it over to the public. The airport and two possible conditions – I pointed out the EADA which highlighted on both maps in gray and staffs report to the Planning Board contained a condition to prohibit certain uses within that area. That's supported by the Wye-Mullan plan as well as the Airport Authority. I contacted Chris Jensen over at the Airport Authority and asked if there was any way to prohibit uses, other than through zoning, and he said no that's why they

worked so closely with the plan that when projects come in there's a way to attach conditions that prohibit these uses. That's the only way to really get that. So the condition of approval is to prohibit, within the EADA as shown, residential uses, schools, churches, retail or office building with a gross floor area over 30,000 square feet, daycare centers, hospitals and nursing homes. That was the only condition that staff recommended to the Planning Board. As I prepared this alternative plan I also, in response to concerns raised, have drafted another condition for the Commissioners to consider, to help mitigate impacts on the residential areas along Flynn and in the Pleasant View Homes area. That condition would set a setback and a landscape buffer from both Flynn Lane and Camden Street. The setback would be 25 feet from the edge of those two rights-of-way and a landscape buffer that could occur within that setback of 20 feet, to be planted with trees, shrubs and vegetative ground cover. Furthermore, if those properties are developed as commercial rather than residential – both of which would be possibilities with the special district – that if there's a parking lot for a commercial business in that area and it's in the front of the business along Flynn Lane or Camden, that there needs to be some sort of buffering – a visual buffer – to a parking area that would consist of several options: a hedge, a fence, a wall or a berm. It also sets some specifications for berm construction. With that, I think I've covered everything. The Planning Board's recommendation – their public hearing was August 15 – and this is the hearing. There's no deadline for action on this, so if you find that you don't want to take action today you're not under any deadline. Thank you.

Bill Wagner: I'm the attorney for Jim Dougherty, Dougherty Ranch Limited Partnership and the estate of Mary Jane Dougherty who are the landowners affected by this application. We've worked on this for a long long time and we have, our client, has held off submitting a zoning application while you went through the Wye-Mullan plan project. That took many years, we're all aware of that, but we've finally submitted this. We have submitted it first in the form of a special zoning district and we were convinced that it would be better to go with traditional county zones. We have done that and now we're being flip flopped back to special zoning. We've worked well with Jennie Dixon of OPG with regard to this matter. The closer we get to your point or decision however, we are starting to move apart a little bit, but only in some limited areas. At the outset, let me just say that my clients have absolutely no plans for any projects at the present time on any of the land. There is nothing pending. There are no sales that are eminent. There are not projects that are eminent. We stated that to the Planning Board and that the situation now. Our client simply wants to get the land zoned so that it can proceed with marketing, with planning in regard to what needs to be done at the property. With regard to bringing in City zones, this was discussed at length by the Planning Board and we explained to them that we were not in the City. We were not asking to be annexed into the City. We are not asking for City zoning and we're not asking for City zoning today. We're asking for County zoning. We're in the County and that is exactly how we want to be treated at this time. There are two maps up there, neither of which represents what we asked for. Please recall that – the maps that are up there are what OPG has recommended. First in one situation, the first zoning map is a proposal that OPG came back with and tried to convince us would be a better proposal. The second map is one that we received yesterday, late afternoon, we've been trying to consider it. Jim Dougherty traveled over from Spokane this morning, he's not had a great deal of time to review that, but I think we can address everything today and maybe come out with the proposal that makes some sense. The Planning Board made no recommendation to you other than denial. The Planning Board came at you with a decision of denial only, not that there be any compromise or anything else, so keep that in mind – Denial Only! We think that's the wrong approach. The reason they did that was because of Zoning Tracts 9, 12, 13, 14 and 15. Those are the areas that are highlighted in lighter pink on the maps and they are in different colors on the other map because of the recent proposal that OPG is advancing. What we are proposing, first of all, is that the County Commissioners zone as we have requested and that OPG has agreed with as to Zoning Tracts 1-8 and 10. Again, those are the areas about which there is no controversy, no issue. Just to point those out, that is the commercial area up in a darker blue to the west of the Pleasant View Homes. It's the area of CC2 all the way through and down into Pioneer Addition. On the map up here is it all the area shown in purple all the way down to Zoning Tracts through 8. 9 is at the bottom, but again Zoning Tracts 1-8 and 10 there are no issues. We ask that you certainly adopt that. As far as the zoning maps, or the Zoning Tracts in issue, first is Zoning Tract 9 which is bounded on the south by a conservation easement. On the west by Flynn property concerning which there are possible plans, but nothing has come before the Commissioners, and a small portion of it on the east by Hellgate Elementary. No one has opposed our proposal to this land, it does not abut Pleasant View Homes. Pleasant View Homes used to be a part of the Dougherty Ranch, they sold it to the developer who developed that, Mr. Diddel and the people from Pleasant View Homes are the ones who had the most objections to this zoning proposal and I'll address that in a few minutes. Zoning Tract 9, we came in with a proposal for CC3 – again this is the lower 20 acre parcel – most of it is covered by the EADA, the extended areas of departure and arrival I think it was EADA

stands for. So there can be no residential building in that area, most of Tract 9, anyway. We are proposing that it be zoned CC3. OPG has come back with a recommendation of mixed use, but primarily as I understand it CC1. In the Wye-Mullan plan it is designated, as I understand it, as community commercial. On staff report page four it defines community commercial as an area for retail goods and services, financial institutions, business and professional offices and personal services routinely used by residents throughout the community. These areas need to have convenient access. Ideally building footprint size would not be limited not more than 50,000 square feet per establishment. The CC1 limitation is 2,500 square feet, so what OPG is recommending for Tract 9 we believe and submit is inconsistent with the Wye-Mullan Plan. As far as Zoning Tract 11 we have proposed at CC2. OPG is recommending CC3. In the plan document, the Wye-Mullan plan, it designates it for mixed use and there is no such thing. We are suggesting that it follow and be consistent with what is immediately to the north and immediately to the west of that tract. Also what will be immediately east of it which is Phelps Addition that abuts Highway 10 and that is also highway heavy commercial CC2. So again, we would propose that Tract 11 be CC2, not CC3. Tracts 13 and 14 are two of the other issues we have. We are proposing that you allow those to be zoned CC3, not a special district. That is consistent with the community commercial designation and the Wye-Mullan Plan. We're also proposing that Zoning Tracts 12 and 15, which are really the heart of the matter that they be pulled today. We will withdraw those from the application and ask that they not be rezoned today. The reason we're doing that is simply that I don't think we can reach consensus among everyone on that issue. The residents of Pleasant View Homes raised many points. We've gotten a proposal that came to us late yesterday, we don't have time to address all of that, and we'd just as soon pull it. Let's see what happens with this property down the road, we will come back with something else. Whether we do it or some buyer comes back with a proposal for zoning, it can be addressed at that time. Again we have no plans for any of this property now. We're pulling that as a concession, again Zoning Tracts 12 and 15, but we would like to see Tract 9, 13 and 14 zoned CC3 and we want Zoning Tract 11 zoned CC2. None of those abut Pleasant View Homes and that is our presentation at this time. If you have any questions, Allen McCormick is with me and he has been very intensely involved throughout the Wye-Mullan Plan process. Jim Dougherty, the landowner and also the personal representative for the estate and the managing and general partner for Dougherty Ranch Limited Partnership is present today and can answer questions.

Commissioner Curtiss: Mr. Wagner, on number 13 which is the one that is directly across Flynn Lane from Pleasant View, does your client have a problem with the...I think it's 13.

Bill Wagner: I have to look at the map.

Jennie Dixon: Jean if I could just...they're requesting to drop these two tracts (12 and 15) out of their zoning request.

Bill Wagner: Yes, not 13.

Jennie Dixon: Not 13. And they're asking that 11 be zoned CC2 and 9, 13 and 14 be CC3.

Commissioner Evans: Which is heavier than 2?

Jennie Dixon: No. Lighter than 2.

Bill Wagner: Lighter than 2. In the County CC2 is the most intensive use, CC3 is a less intensive use and CC1 is the least intensive of commercial uses. I misspoke, the area, thank you Jennie, Tract 13 does abut Pleasant View Homes on the other side of Flynn Lane. We are proposing that that stay as designated in the Wye-Mullan plan. We believe that the zoning proposal that we are asking for is consistent with that.

Commissioner Curtiss: So my question to you is, would your client be in favor of the proposed buffering that was mentioned today.

Bill Wagner: We talked about that at one time, about doing some kind of a buffering perhaps 300 feet into the area. The Pleasant View Home residents talked about 500 feet and then suddenly we were faced with a proposal by Planning Board that took the entire zoning away from that area and pushed it up to the lot line considerably, some 1300 feet away from Flynn Lane. We didn't think that was fair. We think that appropriate development with some type of buffering, whether it be the walls, the berm or the landscaping

that is proposed is something that would be acceptable to my client. Right Jim? (Nod from Jim Dougherty). So as far as Tract 13 we will do that, but again what we're proposing is consistent with the Wye-Mullan Plan. If berming, buffering, walling, landscaping, if that needs to be done or should be considered as part of the condition we're willing to accept that, yeah.

Commissioner Carey: Bill do you want to kind of take it from another point of view, do you think the alternate proposal here is contrary to the comp plan?

Bill Wagner: Yes I do. First of all the comp plan designates Tract 9 as community commercial and the zoning is being proposed as very light commercial.

Commissioner Carey: What we call here neighborhood commercial.

Bill Wagner: Yes. The comp plan called it community commercial. I think there is, and Jennie pointed this out, there is some wording differences between zoning regulations and the Wye-Mullan Plan. But it certainly doesn't show up in the plan. What I read in the plan is what they designate community commercial, in the plan, and there is a vast difference between a 50,000 sq foot building and a 2500 sq foot building maximum size. These other areas we're willing to pull because that's a concession, we need not address those now. That's the home place and the area that is immediately north of and adjacent to Pleasant View Homes and those are areas I just don't see us coming to an agreement on at this time.

Commissioner Carey: Okay could you or Jennie give me an example of the difference on the ground between the CC2 and the CC3, besides the 50,000 sq foot building.

Jennie Dixon: Actually I was hoping to also make a clarification about that building size and I'd like to try and answer that. In the Wye-Mullan Plan, it designates these three tracts as community commercial (9, 12 and 14) and Bill read the section that says the goal is to not have buildings over the 50,000 square feet. It's true the retail buildings in CC1 are limited to 2500 square feet, as they are in the City's neighborhood commercial zones as well. The problem is in the County once you go up to the next zone it allows buildings up to 100,000 square feet, so that again is an inconsistency we had between the plan and zoning. Yes it does keep it lower than what's recommended by the plan, but if you go to the next zone up which they're requesting the CC3, then you're twice what the plan is envisioning. So we had some trouble there. Now remind me of the question, the differences between the language and the....

Commissioner Carey: The neighborhood and community. I'm trying to get a sense of what difference that would be an example on the ground of what would be allowed for those.

Jennie Dixon: Yeah, that's a really good question that they're debating right now in the City because there's a request to go from a moderate commercial to a heavy commercial and what's really the difference. I'd say the main differences are more highway oriented, automotive oriented, certainly larger facilities, outdoor storage and display are allowed in the heavier commercial zones and so that would be the CC2. CC3 which is the moderate commercial is more like a general commercial area you might see along Brooks Street perhaps and once you get down to CC1 you're more like a Higgins Avenue commercial, that hip strip area. I'm using city examples because I can't really think of any County examples at the moment.

Commissioner Carey: Well that's helpful, thank you.

Commissioner Curtiss: So give me an example of a building that's 50,000 square feet. Is that Sportsman's Warehouse?

Jennie Dixon: If I could just use the Wal-mart South building because I've been working on that lately, that's 116,000 and Costco I think is about 150,000 or so. Maybe Shopko would be close to 50,000...75,000? I don't know for sure on that one.

Bill Wagner: If I may, we're willing to make one additional concession and that is to allow for a limitation in the CC3 zone of no building greater than 50,000 square feet. That's truly what is contemplated by the Wye-Mullan Plan and even though there is a larger footprint allowed under that zoning designation, we would agree to a restriction within CC3 to the level of 50,000 square feet. Then I think we are absolutely within the intent and the spirit of the Wye-Mullan Plan.

Commissioner Evans: Bill and Jim, my concern is that right across the street from Pleasant View Homes, and they haven't testified yet but I'm assuming they are concerned about what might be across the street. Is there some compromise we can come to that would make it more tolerable for the folks in Pleasant View Homes and still be acceptable to your client.

Bill Wagner: I'm not sure Barbara if we can do that today. Immediately across the street, I mean they participated in the Wye-Mullan Plan I'm assuming, maybe not, but had Pleasant View Homes done that – that document evolved over many years and there were lots of meetings involved and I know that you were bored to tears with it at some point. You should have been if you weren't. It just seems to me that we're making, I think, a considerable concession by allowing for buffering or other requirements that are not specified in the plan. We're willing to do that. But, going beyond or to a lower zone than CC3, I don't see that as being feasible today. If additional time, again we don't have proposal we're putting on the table today as far as any specific project, so we're operating in somewhat of a vacuum and I think we need to see what may come down the road as far as a use proposal. If we can do that and ensure to them that they will have a buffer of landscaping and a combination of the other amenities that have been suggested by OPG through Jennie, I would think that would be a sufficient concession at this time. If that is not, then we're open to discuss any of these. We don't have a closed mind on this and yet at the same time, we would like to get this rezoned at this time if we could.

Jennie Dixon: I'd like to make a comment. Visually a way that may be easy for you to think about what the applicant is requesting is to look at this map, imagine these two tracts gone (12 and 15) and imagine this as a CC1, CC2 and CC3. So if that helps to visualize it.

Bill Wagner: Exactly, that's what we're proposing it to take those two off the table.

Commissioner Carey: Okay, thank you. Maybe we can hear from some of the residents.

Christian Lakin: I have two little girls who go to school at Hellgate Elementary. Could you point out where they are on that map, please. So if I live at 2910, I'm connected to the green patch on that map? I am across the street from the green? Perfect. Okay, so I have traffic that goes by my house now. When I built my house in December 2000, I started building in June, I was told that there would never be anything across the street. The reason why was because it was in the fly zone.

Mike Sehestedt: The reason why was what?

Christian Lakin: It was in the fly zone?

Mike Sehestedt: EADA, it is not.

Commissioner Curtiss: Well it's close.

Christian Lakin: It's really close, if not, because I sit in my hot tub every day and watch that field. I grew up at Hellgate...

Commissioner Carey: You need to address the Board, please.

Mike Sehestedt: I'm going to ask, who made that representation?

Commissioner Carey: Sure, who told you that?

Christian Lakin: Actually I have a friend who's an airplane pilot and the Diddel's actually told me that. They also let me know that there was going to be a cul-de-sac at one point in front of the Dougherty's house? Was that not...you were told that as well? (Referring to someone in the audience) I don't mind the traffic in the morning and I don't mind it at 3:00 and at 5:00, but I don't want big huge trucks going in front of the school. I don't want to be looking at Shopko across the street. I'm a single mom. I love it there. I went to school there. It's just sad.

Commissioner Evans: Christian, I want to tell you something if my memory serves me right and I don't guarantee it's accurate. We didn't like what the City did joining onto Flynn Lane. We told them we didn't like it. We didn't want any more impact on the road next to the school and we had no impact whatsoever.

Christian Lakin: Let me ask this – if you were on that road and your kids or your grandkids were there, wouldn't you think that all these other little kids are going to need a place to play. Couldn't they bring in soccer fields or something like that over there?

Commissioner Evans: Well, I don't think I'm qualified to answer that question, but someone owns the land across the street and maybe they don't....

Christian Lakin: Maybe they could donate part of that, it looks like they have enough.

Commissioner Evans: That would be up to them.

Christian Lakin: I'm sorry, that's just my opinion.

Commissioner Evans: That's okay, I understand your concern.

Christian Lakin: I know that we're going to be building another school there, eventually, we're all having more kids – I'm not – but other people are. If there's going to be four buildings, there is going to be a need for more area for those kids to play. And if you've ever gone to Fort Missoula on a Sunday where all those YMCA kids are playing soccer and over behind Sentinel, those soccer fields are full. So consider that, please.

Cathy Deschamps: I have some questions and some statements and also some letters from my neighbors who could not be here today because they couldn't get off of work. I was lucky enough, my supervisor's let me leave work to come to this meeting. My first question would be when someone is trying to get their property rezoned, and those of us living on Flynn Lane did receive letters in the mail that state letters within 300 feet of the property that's up for rezoning and it also states signs in conspicuous places on the subject property – three signs – and is that only for the city or does that apply to county also?

Mike Sehestedt: Everyone's entitled to notice. The particular requirements for County notice essentially are publication requirements but we try to supplement that so we hear what everyone has to say. If the question is who has the protest rights, the right of protest is only that property within the proposed zoning district. Not other property.

Commissioner Evans: Does that answer your question?

Cathy Deschamps: Not totally and I bring about the question because if indeed the signage should be on the property up for rezoning to those that is directly affects, this did not happen in this case. We finally found the rezoning sign on Highway 10 where people are going 55 miles per hour and no one on Flynn Lane would see this, probably. So that's the reason for my question. If you would like to look at the picture, you'll see that way in the background is Pleasant View Homes and here's the Dougherty Ranch, so the sign really didn't benefit anyone living on Flynn Lane if you will. So that was on question I had, I don't know if we really have an answer for that. A couple of – I have read the Wye-Mullan Plan. I can honestly tell you I don't know when the plan started, I moved back to Missoula in 2001 from Spokane, WA where I was living for a number of years. I was very glad to get back to Missoula. But my – so as I read through the plan, I do have some things I would like to bring up. In the plan it listed the number of homes in Pleasant View subdivision, but the number is incorrect. The correct number is now 412 homes and the homes border the Dougherty property on Flynn Lane and Camden Street. From the Wye-Mullan Plan its potential neighborhood draft map – it says enhance the neighborhood character and overall quality of life in the community with compatible and complementary development and re-development. Consider continuity of character and development. Establish buffer areas in less dense development adjacent to already established subdivisions. So I consider the subdivision and we are really hoping for what this states, less dense development including commercial zoning. Chapter four – housing – provide high quality of desirable living environment. Compliment the character of existing neighborhoods. We are here at this meeting because the character of our neighborhood is at serious risk, should the rezoning of commercial be directly across the street from us. Chapter seven says land use types – while the mapped land use

designation recommends the most appropriate uses for the area, generally commercial and industrial uses are not recommended in residential areas. This is directly from the Wye-Mullan Plan. We must factor in this statement – how many of us would chose to live across the street from commercial and industrial? Mixed use in the Wye-Mullan Plan is north of Flynn Lane, mixed is already existing from Reserve Street to Connery Way – that's the east side of the subdivision. Must we have commercial on every side of us? Now, granted they are pulling Tracts 15 which is on Camden – they're tabling that for the moment – so the other thing is that since the Dougherty property is in the County do the business have to hook up to sewer system? Has anyone considered the waste management of commercial properties? What affects septic systems could have on the area. The homes in Pleasant View do not have basements because of the water table. The possibility for ground water contamination is a threat should septic systems leak. In Chapter five of the Wye-Mullan Plan for the economy it says participants in the economic development forum overwhelmingly at 87% agreed that quality of life was the main reason they continue to live in the Missoula area. And that's the reason I moved back. Chapter six A – transportation – states Flynn Lane is a collector, a minor collector road. Traffic volume on Flynn Lane has increased at 16.4% - even higher than Mullan Road. The transportation plan recommends disconnecting Flynn Lane from Mullan Road once Mary Jane Blvd is completed. Flynn Lane would then function as a local street, clearly not intended to carry thousands of vehicles for community commercial businesses. I have to ask all of you to consider if this rezoning is the best thing for the character of our neighborhood. I feel our property values, along with the quality of our living, would suffer greatly. Please consider this matter as if you were the homeowner impacted by your decision. Please keep the commercial industrial on the Broadway side of the Dougherty Ranch while maintaining residential zoning surrounding the Pleasant View subdivision and its residential neighbors. I have earmarked those statements if anybody needs to verify them. If I could have your permission to read these short letters from my neighbors who couldn't be here. At least 60 folks did send in letters of protest or concern when this issue came about and some of the folks that did not send in letters at that time asked me if I could read their letters at the meeting. With your permission...

Commissioner Evans: You're not going to read 60 letters, are you?

Cathy Deschamps: Pardon?

Commissioner Evans: You're not going to read 60 letters?

Cathy Deschamps: Oh no, no. No ma'am.

Commissioner Evans: Thank you.

Cathy Deschamps: Just a few that could not respond to the first meeting. I would like to just pass around some photographs that will show you a little better where exactly the Tracts in question are. Especially Tract 13 which is right across from many of us on Flynn Lane. Tract 15 is across from Mr. Moran and you can then see how close this actually is and where Hellgate Elementary sits. I'll just pass these real quick.

Dear Commissioners, as a homeowner in Pleasant View subdivision across from the Dougherty Ranch, I would like to voice my objection to the proposed rezoning of the Dougherty property on Flynn Lane and the property on Flynn and Camden. My residence is located at the corner of Flynn and Camden so the proposed rezoning of both areas will substantially impact the value, both financially and aesthetically of my property. When I was contemplating the purchase of my current residence I was told by the developer's of the subdivision that the land around the lot I was considering could not be commercially developed. Because of the assurance I purchased my home with confidence that its value would not be compromised by the development of commercial enterprises in the area. The proposed rezoning reeks of industrial park potential and this is unacceptable. I strongly believe property owners should be able to realize the financial benefits of their investments, however I don't believe that they should be able to do so at the expense of the other property owners, particularly when a compromise can be achieved. In the current situation the Dougherty property owners can reap the benefits of their investment without causing a devaluation of property values in the Pleasant View subdivision by maintaining the zoning as residential in the areas bordering Flynn Lane and Camden. Thank you for your consideration of this important matter. Kathleen O'Conner. And she is at the corner of Flynn Land and Camden.

I am unable to attend your hearing this afternoon due to my job constraints but I would like my input to be considered as if I were present. I live at 3070 Flynn Lane since 2001. I bought my home like everyone else did with the understanding that the field across from Flynn Lane and the field north of Camden was zoned one dwelling per five acres along the streets and commercial zoning was back toward the airport and Broadway. I understand that development is inevitable and the Wye zoning which covers a very large area and does impact our neighborhood was set up as a guide as to what could be done, not something that was set in stone. And it would create problems for any residential areas such as ours. Jim Dougherty is not a developer, nor has he proposed a subdivision or development that would require such drastic zoning to the extent that he's requesting and as far as I know he has not submitted any plans to substantiate this request. With that in mind I propose a compromise with a buffer zone of some type within the zoning to be no more than four dwellings per acre, across from Flynn Lane and Camden which encompasses parcels 12, 13, 14 and 15 on his zoning request. The rest can be zoned commercially and the traffic could flow out towards the airport and Highway 10. Please keep in mind that the zoning he is asking for will bring large commercial vehicles into the streets that were not built for commercial traffic, such as Flynn Lane and we all know that even the arterial streets that are supposed to handle traffic – everyone will bypass these for the less congestion such as Flynn Lane instead of Dougherty Drive and others. Thank you for your time. Donna Dietz.

To Whom It May Concern at the County Commissioners office, I am the original buyer of 3050 Flynn Lane. I purchased this property for its views and closeness to the Missoula city, yet it's far enough away that I felt it was in the country. Now there are so many houses behind me I can't count them all and the traffic is horrendous. When I bought this property I was told Diddel's that there wasn't going to be any development on the west side of Flynn Lane. Now here is a plan to develop large commercial zoning which will block any view I have as well as bring more unwanted traffic. This is a small quiet, peaceful, safe neighborhood but that will change if the County and the Diddel's and the Dougherty's are allowed to build whatever they want at the small taxpayers expense. I am completely against the rezoning and request your office to reconsider this action. There must be a better place to put all this commercial industry and all the traffic and pollution that goes with it. I see no problems putting commercial along West Broadway going to the airport on either side, but not on Flynn Lane. Corey Breck, 3050 Flynn Lane.

Dear County Commissioners, I am unable to attend the rezoning meeting regarding the Dougherty Ranch but I wish to express my deep concerns regarding this rezoning. I purchased my home on Flynn Lane with the knowledge that the ranch property across from me is zoned for residential use. I chose this location for its lovely views and relative peace and quiet. I must ask that you please consider the character of this neighborhood, I feel that commercial property across the street from me would be devastating to the area. I live in this area for the quality of life it offers, because it's close to shopping yet away from the noise and large traffic volumes. The area enjoys multiple neighborhoods and the commercial zones on Broadway and Reserve are far enough away to keep the rural feel we have now. It is not reason enough to rezone the Dougherty property to commercial use just because it lies in the airport noise and safety zone. The air traffic ascends and descends right over my home every day. Please do not rezone the land across from the Pleasant View subdivision in to commercial use. It would have a negative affect on the property values of the homes and the character of our neighborhood. Respectfully Yours, Shirley Carpenter, 2810 Flynn Lane.

And last – Thank you for listening. This is my statement. We all realize that growth is inevitable. How we manage it goes directly to the heart of this rezoning issue. I grew up in Target Range and Lolo. At the time in Lolo, there were no houses on the west side of the mountain and the lake with the homes around it didn't even exist. But people need homes as the population grows and people need shopping and services to fill their consumer needs. The issue is what impact does a residential neighborhood suffer if commercial zoning surrounds it? Does the residential atmosphere diminish if a large box store is placed across the street? Or a Super 8 Motel? The north to south portion of Flynn Lane is residential, one business and Hellgate Elementary School. When I purchased my home I was aware the Dougherty property across from me – Tracts 13 and 14 – were zoned CA3, that's one dwelling per five acres. In the five years I have lived in my home, I have seen a constant increase in traffic along with excessive speed and disregard for safety on Flynn Lane. I know much work was done on the Wye-Mullan Plan, but I don't believe it's truly understood what kind of impact this type of rezoning would have on infrastructure of the streets and the homes in the immediate area. The combined value of the Pleasant View Homes on Flynn Lane and Camden Street directly affected by this decision is a conservative sum of \$6.3 million. Property values of the homes on Flynn would most likely drop dramatically. Honestly I would prefer that no tract south of the

Dougherty Ranch house be rezoned for commercial use. It doesn't fit the area and there's not really a need for it. All the land north of the house, bordering Highway 10 West, should be zoned for commercial use. The access is already in place from Highway 10 West. I just need to make a quick clarification on the extension SID of Mary Jane Blvd. from the Planning Board meeting on August 15, 2006 – I was aware at the time I purchased my home that Mary Jane was designed to be a thru street. I did not oppose the SID on the project and I legally could not. I felt that it would mostly benefit Mr. Dougherty once it goes through. I would ask that Mr. Wagner not complain that the Dougherty Ranch was my hero for protesting and stopping the extension. It ended up costing us more to extend just England Blvd. Basically, do I need commercial business of any kind across the road from my home? I'm five minutes away from a plethora of commercial businesses on Reserve Street. I don't see any homes mixed in with Burger King and Sportsman's Warehouse. Will this rezoning create a large burden of traffic through a subdivision? Absolutely, England Blvd could be the next Russell Street. When a person buys a home, they look at the area. I did just that – knowing the property across from me was zoned CA3. If it had been zoned commercial, I would have kept looking. I started out with a house on a dirt lot, my father and I put in the trees and the fence and the grass. I have a lot of work and money in that house. Does that count for nothing? I'm asking you to retain residential zoning on Tracts 12, 13, 14 and 15 with up to five dwellings per acre. Townhouses, duplexes, four-plexes – I think those are pretty acceptable to most of the people in this subdivision, but I am not speaking for everyone. The Wye-Mullan Plan recommendations for usage do not state the term "requirements." There are many issues that should be addressed. I request the consideration for a minimum of a 500 foot buffer zone to separate any homes from the unknown commercial possibilities this presents. Open space with landscaped areas should be a requirement within the mix of industry and giant commercial businesses. I request that not access to the commercial or industrial property be from the north/south portion of Flynn Lane. The access can be established by two north/south roads through the Dougherty property from Highway 10 West. I want to thank you for your time and serious consideration regarding the rezoning issue. I care about this city and that's why I'm here. As some of you are familiar with the Deschamps family – my great grandfather Philip Deschamps owned the land this now where the Wilma building sits and the Old Milwaukee Depot. He unfortunately lost it in the Depression when the banks closed their doors and locked his money inside. My grandfather, Hector, owned 500 acres near Alberton. My father, Ernest, owned a ranch in Lolo which is not Traveler's Rest State Park. We have deep roots here. We call this place home. I'll close with this little philosophy on life – Stand up for what you believe is right, even if you're standing alone. But I'm not standing alone. Thank you.

Commissioner Carey: Thank you. Could we get copies of those letters?

Cathy Deschamps: Yes, I do have copies for you.

Anne Galli: I live at 2890 Flynn Lane. My first question that I'd like answered is for the attorney here. There was a question about the zoning, I handed a piece of paper on whether the zoning postings were...

Mike Sehestedt: Cheerfully respond. What you handed me was a Missoula City Design Review, a city procedure. City statutes governing city zoning are different than statutes governing County zoning. Our requirement is publication twice and posting one place within the area to be rezoned. Those requirements were met. The mail notice to people within 300 feet and the three postings are a requirement of state law incorporated into City ordinance. They're not applicable to this.

Anne Galli: Thank you. I do want to point out that the only rezoning sign that was posted was on the highway, closer to the airport. It was, as the pictures show, facing the road so that unless you pull over – which I did a couple days ago – get out of your car and practically climb in the ditch to see it. That was the only notice. I talked to Jennie and asked why she didn't put it where the community members such as myself would see it. It seems a little deceptive to me to put it out there when obviously no one on Jim Dougherty's property is going to notice it. There were no community members that noticed it. Pleasant View is a residential community and everyone keeps talking about how we don't abut on that land across the street. It's across the street! It's across a two lane street. So in my opinion we do abut on it. There's all this other property up there than Jennie has talked about that can be used for commercial. There is a conservation easement around the school which by the way did not get notice of the rezoning because they're not within 300 feet. I talked to the Superintendent. They have a conservation easement and so they were not concerned about it. Why can't we have a conservation easement? It's a community, there's people, it's one two lane road across the street from us. Our property values will go down; does that mean

our property taxes will go down? If we have box store...as Cathy said, we have Reserve Street, we have Broadway – there's plenty of stores. When we bought the property, Jim Dougherty's attorney mentioned that this has been in the planning for year...why didn't we hear about it when we bought the property then? We were told, every single one of us who bought on Flynn Lane, that was zoned for residential and that it would not be built on. I'm very disappointed with the Office of Planning and Grants. If you look at their website, they are there to promote development that contributes to the community goals and is in harmony with our natural environment. You tell me how putting commercial across from a residential community is in compliance with that. If this were going in any other – if this were going in the Rattlesnake where some of you live, or Miller Creek where some of you live it wouldn't happen. It would not happen. There's property back from Flynn Lane that can be used for any of these purposes that he wants. But we, as tax payers and residents of Missoula, do not deserve to have...well; he can't even say what he's going to do with it. None of you woke up at 3:00 last night and the first thought that came into my mind was the movie "It's a Wonderful Life," we have choices. Do we have Potterville or do we have Missoula? Do we have cement plants or commercial across from residential communities when there's all this land, once again, back there that he can use for that. What do we do? I guess my other question is why can't we get an open space conservation easement like the school did?

Mike Sehestedt: That conservation easement was donated by the property owners for these specific purpose, or at least a purpose among others, of trying to make sure the school didn't attempt to expand in that direction. The property owner received certain tax benefits for it, but it was a straight donation. My understanding, a big part of the issue there, was they were concerned when the school needed ground to expand it might try to go west instead of going north as it had to.

Commissioner Curtiss: The conservation easement doesn't belong to the school.

Mike Sehestedt: It doesn't belong to the school, it belongs to an outfit called SOS, I believe, Save Open Space. And in fact was dedicated for the specific purpose of trying to make sure the school did not expand in that direction, or at least among other purposes.

Commissioner Evans: Michael aren't there restrictions on what can be counted as a conservation easement? I mean if you have a house on it, let's say they have an acre; they can't likely put ¾ of an acre in conservation easement.

Mike Sehestedt: It requires some conservation values, although those are loosely interpreted, but a single tract winds up being not generally what you look at for a conservation easement. It's something larger than an acre usually, although I can conceive of a situation where you have a one acre with significant conservation values.

Commissioner Curtiss: I think that you're also misunderstanding that we don't put conservation easements on people's property, people choose to put a conservation easement on their property to protect something.

Anne Galli: I don't want to get hung up on that, all I'm saying is none of you want a commercial zone across the street from your property. It will lower my property values; it'll lower the property values of everybody in that community. We should not be treated differently than other parts of this city as far as putting commercial and industrial across the street from densely populated homes. So that's all I'd ask you to do. If we had been notified of this like apparently since it's been in the planning for quite some time, no one would have bought a house on Flynn Lane. Thank you.

Christian Lakin: I have a question I guess for the attorney. You had asked earlier the Graham family when they wanted to subdivide that land in to parcels for their family members. You asked if they were anticipating the other acreage to be zoned something differently? Does that have any recent...the reason I'm asking this is because...

Mike Sehestedt: The reason for that – they were utilizing and exemption to the Subdivision and Platting Act which allows an individual to make one transfer in their lifetime within a county to a member of their immediate family. The last legislature - without going through subdivision review or any study or anything else – the last legislature put a limitation on the use of the family transfer exemption to subdivision review that says you can't create parcels that would not comply with the applicable zoning in the area. Thus, if that particular property had been in an area that had required one acre lots, we couldn't have approved it.

It happened it was not in an area that required...it didn't have any density requirements whatsoever in the zoning so zoning did not prohibit it and it simply was approved when the Commissioners found it was a bonafide transfer to family members and not an attempt to evade the Subdivision and Platting Act.

Christian Lakin: So then my understanding is the other five acres that they kept, they will not be able to subdivide right?

Mike Sehestedt: No, they didn't keep another five acres. They had one acre, she gave a ¼ of an acre to one child and a ¼ of an acre to another child. If she came in with a subdivision proposal assuming it passed muster, they could divide the remaining half acre into as many pieces as permitted by zoning.

Christian Lakin: Okay. I guess the reason why that triggered is because if we've been – the Dougherty's have been waiting on the Wye-Mullan review to be done and then they were also waiting for Pleasant View to be done and then they submitted this? Were they just waiting for the rest of it to like fill in the piece?

Commissioner Carey: That would be a question that you would have to ask them.

Mike Sehestedt: I couldn't answer that for the Dougherty's timing issues.

Commissioner Carey: But that's something for another time, not during this hearing.

Christian Lakin: Okay.

Tom Moran: I live 3622 Biggers Lane and had I known five years ago about the piece of property I bought, I probably wouldn't be standing here. My biggest concern about all of this – I went yesterday and I spent a lot of time reading the Wye-Mullan Plan. A lot of this seems to be based around so many questions – you've got the Wye-Mullan Plan, we've got City vs. County, we've got maps that from what I've heard today neither one of those maps reflect the actual proposal. The best one that I can see is the one that is actually in the Dougherty Ranch zoning exhibit which I can actually understand. I attended the sewer or the Wye-Mullan sewer meetings which when we bought our property we had no idea about and were never informed of until we got a letter five months after buying the property and we did all kinds of research and found out some good news on that. But now you go to the Wye-Mullan map – according to their map none of what is in here – we'll take my piece of property which borders Tract 15 – what's got me concerned on all of this is we have all these maps and I don't hear any consistency. We have a lot of proposals, but right now I don't know if they way I understand the letter that we just got is a proposal to remove Tract 15 and Tract 12 at this time? Is that correct?

Commissioner Carey: That's correct.

Commissioner Curtiss: That was proposed today by the applicant.

Tom Moran: Okay, so I guess that's good in my part. How did the Wye-Mullan project, I'm going to call it, have so much impact into this? It seems like a lot is based off of that, not so much – there's a lot of confusion – but the obvious question is which map are we actually going to go with? Any of the three on the walls here? This one in the Dougherty proposal? Which I understand the proposal to remove two tracts, but does this keeping drawing out and going and going and going? Should the Commissioners...I don't know where you're heading with this, in all honesty. I don't know where I'm headed with this. It's like the last meeting was City vs. County and Mr. Wagner said we're dealing with County. Now I want to know are we dealing with Wye-Mullan's impact on this? Are we dealing with...I don't know what we're dealing with. I mean it's just mass confusion. I can leave here thinking okay this is good, 15 and 12 have been set aside, but that's just a proposal. Where do we go from that proposal? Is that what the meeting is for today? To, I think Mr. Wagner said or someone said, go with C2 and hold on 15 and 12? Is that what you are trying to decide today?

Commissioner Evans: He has changed his proposal and withdrawn those two, leaving the rest.

Mike Sehestedt: Actually we've got jurisdiction over all of them right now. The reality is they can kill by protest anything they don't like because they own 100% of the property. The whole point of this hearing – the Dougherty's made a proposal, planning staff responded to that with a counter proposal with another

alternative. That was followed by Planning Board rejection essentially based over the lack, as I understand from the transcript, lack of an appropriate zoning classification for those mixed use parcels immediately to the north. Jennie, trying to respond to the Planning Board's objections, the concerns of the Flynn Lane people and the Dougherty's request, put forward yet another proposal that addresses that. The Commissioners are attempting to gather information to decide what, if anything, they should do with the original request – approve it, reject it or amend it in some particular regard and that's what we're gathering. What they're doing is hearing what everyone has to say and trying to decide what to do next.

Commissioner Curtiss: I think one other clarification might be that the property that Mr. Dougherty owns was zoned; Mike was that in the 80's or the 70's that they zoned that property?

Mike Sehestedt: That property was zoned, I'm 100% sure as part of our major zoning initiatives late 76' early 77', precisely when it happened I can't say.

Commissioner Curtiss: And at that time, of course Missoula was much smaller, people had no idea that there was going to be a Phantom Hills way out there or any of that.

Mike Sehestedt: Yeah, by way of example, up until about five years ago the property across from where I live was zoned one per 40 – one dwelling unit per 40 acres. It was rezoned in response to a specific project development to eight to 10 per acre and I now have a row of 40 foot tall triplexes 20 feet apart 20 back from the right-of-way across from me. The community benefit was it acquired some open space on the other side of the hill.

Commissioner Curtiss: So the reason that it's confusing is that was zoned a long time ago and the town has continued to grow out that direction. So the Wye-Mullan Plan was a long process to look at what did we think the best use in the future would be, that's where that part came from. Now Mr. Dougherty is asking us to rezone to come close to, at least, that Wye-Mullan plan which is a guide for our area. So that's kind of where we are today. The Planning Board reviewed it and now it's to the Commissioner level. We can either accept it, like Mike said, reject it, modify it or do part of it and send it back.

Seeing no further comment, Commissioner Carey closed the hearing.

Commissioner Carey: Jennie did you have something?

Jennie Dixon: Probably insignificant, but it's been raised a couple times about why the applicants proposal isn't up there and I would just mention that those maps are the applicants proposal, but colored with staffs and if it would make it easier for people to understand, the progression of applicants proposals, staffs recommendations to Planning Board and then an alternative recommendation prepared today I have a smaller size one that I can set up for you. I'll just do that for your discussion.

Commissioner Carey: Well, I don't think we're prepared to act on this today. I don't know what the other Commissioners think.

Commissioner Curtiss: I think we could act on some of it.

Commissioner Carey: If you want to act on some of it, that's fine.

Commissioner Evans: I'm prepared to act on everything but these three, so we can have more time to look at the development.

Commissioner Curtiss: So Barbara can you read those numbers for the record? Just the green ones.

Mike Sehestedt: Why don't we see if Jennie can go up and outline it – there are certain parts of this proposal that are not apparently subject to any dispute. There are parts of it that are in significant dispute.

Jennie Dixon: If the Board is ready, I could help this along in the format of helping you to make a motion at this point, unless you have further discussions. But at this point, I provided on the second page of your green sheet a motion that would go tract by tract, or groupings of tracts that are similar. So you could make a motion to rezone Zoning Tract 1 to C11 of which there's no controversy or discussion.

Commissioner Evans: Do you want to do these one by one?

Commissioner Carey: It's probably the clearest way.

Commissioner Evans moved to approve Zoning Tract 1 to C-11 (light industrial). Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Jennie Dixon: And then Tracts 2, 3, 4, 5, 6, 7 and 8 to CC2.

Commissioner Evans moved to approve Zoning Tracts 2 thru 8 to CC2 (general commercial). Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Jennie Dixon: Tract 9 maybe you want to hold off on it for a moment. Tract 10 would also be CC2 and again I don't believe there's been any opposition.

Commissioner Curtiss: On Broadway.

Jennie Dixon: Zoning Tract 10 on Broadway.

Commissioner Carey: So this is for Zoning Tract 10?

Jennie Dixon & Commissioner Curtiss: Yes.

Commissioner Carey: Okay.

Commissioner Evans moved to approve Zoning Tract 10 to CC2 (general commercial). Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Jennie Dixon: Now 11, I don't believe there's been neighborhood opposition, I don't think, to either the CC2 or the CC3? The applicant is requesting CC2, staff went to Planning Board with that as a possibility and here's an alternative of one step down in intensity.

Commissioner Curtiss: Jennie, could you remind me what CC3 allowed some multi-family housing was the reason that we went to that one?

Jennie Dixon: Yes. The Wye-Mullan Plan does recommend mixed commercial residential in this area. This zone does not allow that and so in this alternative proposal for you to consider this is a zone that would perhaps better meet the comp plan designation in the Wye-Mullan Plan by allowing multi-family.

Commissioner Evans: And which tract is this?

Jennie Dixon: I'm sorry, that's Tract 11.

Commissioner Carey: For CC3, is there a motion?

Commissioner Evans moved to approve Zoning Tract 11 to CC3 (community commercial). Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Jennie Dixon: Tract 12 has been dropped. Tract 13 I think you definitely want to hold off on. 15 has been dropped. So Tracts 14 and 9 are the two left that I think you may want to act on today? Barbara you indicated that you may be ready to do that?

Commissioner Evans: That was a May.

Jennie Dixon: That's why I said it that way. We are recommending CC1. The applicant is requesting CC3, again just one step difference in intensity.

Commissioner Evans: CC1 being the least.

Jennie Dixon: Least, light commercial.

Commissioner Carey: Oh commercial?

Jennie Dixon: And the applicant is asking for moderate commercial.

Mike Sehestedt: I'm going to suggest that if there are any of these that you choose not to act on that you just table them for a week. I mean there may be some discussion that we can undertake that would let us come to some resolution on these at least as far as the recommendation.

Commissioner Curtiss moved that action to rezone Tracts 9, 12, 13, 14 and 15 be tabled to give the applicant more time look at it and all of us to review and discuss them.

Mike Sehestedt: The ones you've acted on with the exception of that CC3 that the applicant wanted as CC2, there was no controversy regarding all of the other action that you took. Everybody says swell place for it.

Bill Wagner: With regard to 11, since your tabling action on the others, we would respectfully request that reconsider your action on Zoning Tract 11 and table that as well. The reason is, as Mike pointed out, we can protest that out as being the only landowner there. We'd rather not even address that right now, but if you're tabling the others lets have a universal or global approach. What you've approved are the ones about which there is no controversy whatsoever – 1 thru 8 and 10.

Commissioner Evans moved to amend her motion and remove Tract 11 from action today.

Commissioner Curtiss: I thought you made that motion.

Mike Sehestedt: I think you did, Barbara.

Commissioner Evans: Did I?

Mike Sehestedt: Yes.

Commissioner Evans moved to table Tract 11 and therefore annul her earlier motion regarding Tract 11. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Commissioner Curtiss: Actually I think we had another motion on the floor that we haven't acted on.

Mike Sehestedt: You've reconsidered.

Commissioner Evans: What was your motion?

Commissioner Curtiss moved that action to rezone Tracts 9, 11, 12, 13, 14 and 15 be tabled to give the applicant more time look at it and all of us to review and discuss them. Commissioner Evans seconded. The motion carried on a vote of 3.0.

Mike Sehestedt: Okay, the only reason I suggest you do that is we've gotten a great deal of information and a great deal of time and resources to get us to this point and it may be possible to take the information you've got and propose the zoning that will address concerns of the neighborhood and the wishes of the applicant. If we can't find it, we can always kill it later.

Commissioner Evans: I'd like to say some things to the folks in the audience.

Commissioner Curtiss: Barbara, excuse me. Don't we still need to take action on number one? So that we make sure we have that EADA on there?

Commissioner Carey: Condition number one.

Mike Sehestedt: Oh right.

Commissioner Curtiss: Should we...okay.

Jennie Dixon: And also I would ask you to think about tabling until what date so that I can do appropriate notice.

Commissioner Evans: I'm not willing to have just one week. Two weeks at least.

Jennie Dixon: I would want at least two weeks.

Mike Sehestedt: I would suggest since there's no urgency on...well I shouldn't say no urgency, but not crisis urgency on the part of the applicants, two weeks or even a month might be inappropriate.

Commissioner Curtiss: So if we do the condition number one as proposed, does that mean we have done the zoning on the one? Or are we kind of holding everything up?

Mike Sehestedt: No. You've done the zoning basically everything that shows up there on the alternative map as either I1 or CC2, those areas have been zoned subject to the condition that there be no residential development in the part of those zones designated within the fly zone, or the extended...

Jennie Dixon: So did the motion (inaudible) that condition?

Commissioner Curtiss: Not yet.

Commissioner Curtiss moved that we condition the approval of the zoning changes with the written condition number one that has the listed prohibited uses in the EADA. Commissioner Evans seconded. The motion carried on a vote of 3-0.

Mike Sehestedt: No what you've actually done is adopted a resolution of intention to zone or intention to rezone. We will publish notice and any person owning property within the affected zone has a 30 day right to protest.

Commissioner Evans: The thing I'd like to say to you folks is it seemed prevalent through your conversations with us today that you were told specific things by specific other folks. And I really am sorry about that because I don't think they had the right to tell you the things they told you. The Wye-Mullan Plan has been in the process for more years than I can count, like eight or ten, okay? Admittedly there was a hiatus in the middle and then it was picked back up again, but it was clearly covered in the newspaper. If you didn't see it, we can't notify everybody of everything. And I'm sorry you didn't know it. I'm certainly sorry that you're in a position that makes you feel vulnerable. The reason we didn't adopt these other requests today is obviously we hear you and we're going to find a middle ground. Maybe it doesn't exist, and maybe you'll end up disappointed, but that's the reason we didn't – because we're going to try to find a middle ground.

Anne Galli: Can I make a request that Jennie move that rezoning sign to a place on Flynn Lane so that the people that are affected by this, the rest of the homeowners and the people that pay taxes and have homes there see that rezoning request? Instead of along side the highway. Is that a possibility?

Jennie Dixon: I would be happy to put another poster up on Flynn Lane announcing the same information that's on that poster, sure.

Commissioner Curtiss: The one other thing that I think folks – and I understand that you bought a house and you have expectations – but I want you to remember that when that was part of the Dougherty Ranch I'm sure it was probably zoned not as densely as the housing you all live in and the zoning was changed for your subdivision as well. You were a cattle pasture at one time. Just also remember that as you want the housing to move further out, those people are going to abut up against this commercial zoning, so it isn't an easy cut and dried thing to do. But we did hear what you said today and hopefully we can come to some conclusion.

Cathy Deschamps: Yes, in response to that, Commissioner Curtiss, when we purchased the homes we knew that the land across the street was zoned for one per five and even residential we don't have a problem with – even four per acre. But the next people will know that the property beyond them is commercial. So there's no hidden surprise and all of a sudden now the whole area is changing. All we're asking you is to consider the character of our neighborhood. It's mostly residential out there except for on Broadway, so we are just trying to address that fact. At least the next, if there are homes that go across the street from us, they will know the rest is zoned for commercial. Thank you.

Christian Lakin: Please consider the kids who go to school there. Consider the little kids who walk to school every day. I was there this morning. I dropped my kids off this morning, it was the first day. All those kids are walking to school right there on that road. Big trucks are out there, they're going to get hit. They're going to get squashed and those are little kids. So try to keep it like safe.

Seeing no further business, Commissioner Carey recessed the hearing at 4:00 p.m.