

Public Meeting – September 13, 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 Director of Public Works Greg Robertson, Assistant Director of Public Works Chuck Wright and Chief Administrative Officer Ann Mary Dussault.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT - none

ROUTINE ADMINISTRATIVE ACTIONS

Commissioner Evans moved to approve the Weekly Claims Lists in the amount of \$288,171.72. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

DECISION

Petition to Alter Deadman Gulch Road (aka Cochise Drive) – Highway 93 S.

Commissioner Carey opened the hearing.

Chuck Wright: I went out with Jean Curtiss and looked at that last Friday and we decided that we need to alter the road.

Commissioner Curtiss: I concur with Chuck. This has been a work in progress for many years and it's a much improved road location, so I would agree to recommend to the County Commissioners that we accept the action as requested.

Seeing no public comment, Commissioner Carey closed the hearing.

Commissioner Curtiss moved to alter the portion of Deadman Gulch also known as Cochise Drive as referred to in the request for commission action. Commissioner Evans seconded. The motion carried on a vote of 3-0.

HEARING

Resolution of Intent to Adopt City Open Space Plan, Update 2006

Commissioner Carey opened the hearing.

Jackie Corday w/OPG: Today I'm here to ask the Commissioners to adopt the – well it's an update of the 1995 Open Space plan and so it will not be called the Greater Missoula Area Open Space Plan 2006 Update. I'll give a little update on and background on how we came to updating the plan. It was drafted in 1995 by OPG and OSAC members and brought before the City Council and County Commissioners in August of 1995 and both governing bodies passed it back then. The 1995 then served as the blue print for how to conserve, purchase or acquire conservation easements on open space of the next 10 years with a \$5 million dollar bond that the citizens passed in November 1995. That program has been very successful. There have been acquisitions of almost 1500 acres on Mount Jumbo. Next came Mount Sentinel with almost 1000 acres. Land in the North Hills has been preserved and lands along the Clark Fork River have also been preserved with money from the open space bond. That money is almost gone now and OSAC and I in 2005 decided it was defiantly time to update the plan since it was 10 years old. OSAC formed a sub-committee to start working on that plan and then in the fall of 2005 a 20 member citizen group was put together with citizens from all over the city and the county and within the open space plan boundaries. They met for five times and then those citizens made recommendations on how to update the plan as far as guiding principles and criteria that should be in the plan. Those guiding principles and criteria have been incorporated into the plan throughout every chapter. What I would like to do is go through just some of the major differences between what the plan was in 1995 and what it is today. In 1995 there was no other parks plan in existence and so the 1995 plan pretty much tried to cover everything from urban parks to greater open spaces that we think of such as Jumbo and Sentinel. Today, we have a master parks plan that was adopted by both the City and the County that thoroughly addresses all of the needs of urban parks and the goals of that plan are to increase the quality and the quantity of urban parks. So now with that plan in place, this open space plan could focus more on conservation land. From many different polls that were taken from citizens, we found out that that was their highest priority – any money that did come into the open space program, their priority was to put that money towards preserving conservation land such as the surrounding view shed hill and the river corridors. These were important for many reasons including water quality reasons, river access, recreation and wildlife. This plan, unlike the 95 plan, pretty much focuses and comes right out and says that is the priority. The priorities are identified in the map that is behind me.

The dashed yellow lines on that map are the cornerstone areas and those are going to be our priorities for any money that comes into the program, whether it's a bond or grants that would be our focus. This is completely a voluntary program with the landowners. That's another new thing that the – it's not new in that it's voluntary – what's new is that this plan specifically states that. The previous plan did not say that in 1995, although that was the case. But I thought it would be good to go ahead and put it right in the text. So those are our priority areas and as far as the changes from 1995 there are actually very few, but I will point them out. Pretty much the same bubbles that you see here all across the north hills from the Wye-Mullan area all the way to the Rattlesnake – those are the north hills – and those bubbles stayed the same other than the fact that they were actually enlarged to capture more of Butler Creek Drainage and some of the farmland that is in that area. The faint orange line shows you where the original boundaries were for the 1995 open space plan, so you can see that this far northern bubble was enlarged a bit. Same with the South Hills – we had quite a few comments from people who said they live in the south hills and they'd really like to see some land preserved there. They also talked about the elk herd that exists in the south western portion of the area, so the bubble was also extended to include some of that land. A lot of people came and talked about how important the river corridors were and agricultural land, so we did our best to try to increase the width of the corridor along the Clark Fork and the Bitterroot to make sure we captured all of the riparian areas and some additional farmlands. Then in the grass valley area, that is a very important agricultural area that was also increased. The only new place is the Grant Creek Corridor. If you're traveling out on Mullan Road and you get to about where 44 Ranch Estates is, Grant Creek floodplain stretches between Mullan Road and Highway 10. That area was identified in the Wye-Mullan planning process over the years as being a very important place for a new community park. Since this area is going to be growing very quickly over the next decade, we saw that as important to designate some acreage there for a community park – keeping in mind, of course, this is all voluntary and it's whether or not these land owners want to work with the City or the County to place conservation easements or actually sell the land for open space. So what this shows to people is based on all the citizen comments that we received. This is where, if we can preserve land, where people would like to see it preserved. Mike just informed me that the Grant Creek Corridor is near Mullan Trail Subdivision, just a correction for the record. So one other thing I want to go over is what happened at Planning Board. At Planning Board on July 11 the members present voted unanimously to approve the plan. They asked for two changes and that's on page one of the request for commission action. One change was to strike some words, a fairly minor change and the second one was to expand the Bitterroot River Cornerstone near Lolo to include what's known as the Big Hill and that is the geographical separation between Lolo and the Miller Creek area. It came out in the 1997 planning of that area, the Miller Creek plan, that citizens felt that was a really important geographical area to preserve. But the plan, as far as the open space plan, was not being amended at that time so it couldn't be changed to become a cornerstone. So the Planning Board felt that now is the time to go ahead and honor that request from citizens back from 1997 and include it as a cornerstone. One of the things that we didn't know at the time, on July 11 when this motion was made, is that there is actually a conservation easement on the top of the Big Hill that was granted by the property owners to Five Valleys Land Trust. I was contacted by both the representative of the landowner, WGM and by Five Valleys Land Trust to let us know that conservation easement does exist and they wanted acknowledgment of that in the plan. So the motion that I would recommend that you make is that you adopt the plan with the recommended changes by the Planning Board, but also include the language on page two, which I will read for the record. During the public hearing process to review this plan, the area known as the Big Hill located between Miller Creek and Lolo was identified as a potential cornerstone because of its geographic significance and wildlife habitat. Fortunately the large majority of the hill is already protected by a conservation easement that the property owners granted to Five Valleys Land Trust, shown on Map E which limits development to 14 residential building sites across 1300 acres with nearly 900 acres protected as open space. The property owners also donated the land along the Bitterroot River at the base of the Big Hill to Fish, Wildlife and Parks. So that is something I'm recommending and I believe that there was another change that Commissioner Evans has requested in Appendix A and I'll let the Commissioners decide how you want to deal with addition regarding the acquisition of Mount Sentinel. It was a – mentioning that Barbara Evans had requested Senator Burns to secure money from the Land, Water and Conservation fund - \$650,000 – to help purchase that. One thing that we emphasized throughout this plan is how very very important our partners have been in order to stretch the bond money further. That \$5 million of bond money has been stretched almost to \$8.5 million through the help of the Forest Service, Fish, Wildlife and Parks, Five Valleys Land Trust, the Trust for Public Lands and of course the money that came from Land, Water and Conservation fund was a very big help as well. So we do mention our partners throughout the plan and say how important that is.

Commissioner Evans: It's always been my observation that when someone helps you, that you ought to say thank you. I thought Senator Burns had gotten us \$750,000, but this says \$650,000 and so I'll take that as accurate and without including his name here I think that would very discourteous. The fact is we got the money because I asked him for it and this is the only time I've ever asked my name to be on anything. This is important to me to recognize the fact that the back side of that hill will be saved because Conrad and my efforts, so I would like it included in the plan.

Ron Ewart: I live at 2642 Sheffield Drive. I would hope that this plan does get approved. It represents a lot of work. I think it's more or less a general statement of the people of the Missoula area that saving open space is very important. There are a lot of different ways, I think to preserve open space, and this plan helps to give us guidance and direction and purpose. Thank you.

Kristin Smith: I would also encourage you to adopt the plan, particularly with the recommendations for the changes. I worked with Jackie and I was also a participant in the working group and can say with confidence that the plan before you has accommodated all of our recommendations and it's a great improvement over the 1995 plan. Thanks.

Karen Knudsen: I chair the city's Open Space Advisory Committee which is charged with implementing Missoula's Open Space Plan. Given this assignment, our committee obviously has a very strong interest in making sure any overhaul of the plan produces an effective guide for protecting Missoula's special places in the face of rapid growth and change. The good news is that our committee believes that this 2006 update will do exactly that. In fact, our committee has been involved every step of the way to make this update an action plan for taking Missoula's open space system to the next level. So the document that you're seeing today, you know that it's the culmination of a year long process that had a multitude of meetings, lively debate, even group editing free for alls at the committee level. As a result we see this as being in some ways truly a success story for the democratic process. As you look at endorsing this plan this afternoon, you just should know that it has gone through rigorous citizen involvement and as a result the Open Space Advisory Committee feels that it captures Missoula's aspirations for continued open space protection, that it provides the frame work for getting that job done and that it also give voters who will be facing the County wide open space bond in the fall some important information. We do encourage you to give it your stamp of approval. Thank you.

Commissioner Carey: Thank you Karen, we very much appreciate the work that your committee did.

Jeff Stevens: I live at 123 Saranac Drive. I'll be brief today, as I've already expressed my support for the open space bond and the revised open space plan that is before you today. I served on the OSAC sub-committee that helped update the plan and I believe that it will serve the needs of the urban area open space program for many years to come. I would especially like to thank Jackie Corday and Karen Knudsen for the excellent work they have done in completing this plan and I urge you to approve it. Thank you.

Jennie Faye: I am a resident of Missoula County and I was also a member of the Open Space Working Group. I really appreciate you all listening to our plan, reading our plan and accepting it. It was in my perception a diverse group who came together and worked together well. We had a nice plan to start with, there was a lot of agreement that the 1995 plan was a good plan and that all we really had to do was fine tune it and I think that's what we did. I think it gives us a strategic vision to move forward as we hopefully pass more bonds. I would also like to say I think that most of us who are residents both of the County and the City are a little bit like the birds, fish and other wildlife – we migrate past the lines on the map and it really doesn't matter that much to us – we want clean water, we want places to live and play and be healthy. I also have to throw in I'm a natural resource economist and I think that the plan lays out a strategic vision for maintaining a quality of life and really a high value of living and the property values in Missoula. So thank you very much for the opportunity to testify.

Seeing no further public comments, Commissioner Carey closed the hearing.

Commissioner Evans moved to approve the Open Space Plan as presented with the amendments that were requested, with gratitude to all the folks who worked on it and the recognition if that's why we live in Missoula, MT, because it's such a great place. Commissioner Carey seconded. Discussion

Commissioner Curtiss: Which motions? Do you mean the ones that the Planning Board recommended?

Commissioner Evans: The ones that Jackie mentioned.

Jackie Corday: I can read the language that we had talked about earlier. It would be – as the request for commission action states, and then on page 55, the Mount Sentinel backside Appendix A it would be the second sentence and it would say: at the request of Commissioner Evans, Senator Conrad Burns secured \$650,000 from the Land, Water and Conservation Fund.

Commissioner Evans: And the one that mentions the Big Hill, with the recognition that those folks did this on their own and the 14 houses that they were promised when they did this are still promised.

Jackie Corday: Yes. That's in the request for commission action.

Commissioner Curtiss: Barbara, I agree that what you did working with Senator Burns was paramount to complete the project on the Cox property, I think it's officially called, but there are a lot of people who were involved in every single one of these deals so I think it would be better if included some language in this last paragraph on page 55. We could add: Many people deserve thanks and credit for the success of these projects – the landowners who wanted to protect the open space, the land trusts, the federal and state agencies, not for profits, elected officials and the many volunteers. Because my fear would be that if we put two names in then there are many other names that should be recognized as well and we'd be risking missing someone's name and I think that would be a good way to recognize all the people who worked on this.

Commissioner Evans: I have no problem with putting that in the last paragraph. But I want, in the paragraph that refers to the east side of that mountain, put in it as I suggested.

Commissioner Carey: And that's in your motion and...

Commissioner Evans: That is in my motion.

Commissioner Carey: You'll accept Commissioner Curtiss' language as a friendly amendment to your motion?

Commissioner Evans: To the last paragraph, yes I would.

Commissioner Curtiss: But I don't second putting the names in there.

Commissioner Carey: So you don't second her motion?

Commissioner Curtiss: No.

Commissioner Evans moved to approve the Open Space Plan as presented with the amendments that were requested, with gratitude to all the folks who worked on it and the recognition if that's why we live in Missoula, MT, because it's such a great place. Commissioner Carey seconded. The motion carried on a vote of 3-0.

Commissioner Curtiss: I'm only opposed to the names, but I'm in favor of the motion and the plan, so I'll vote for it. Jackie, just to clarify – when you started you said this would be referred to as the Greater Missoula Area – so did we want a different title than is listed on here?

Jackie Corday: I'm sorry if I misspoke, let's see it's going to be called the Missoula Urban Area Open Space Plan 2006 Update.

Commissioner Curtiss: Okay, so it's listed right, I just wanted to make sure. Thank you.

Jackie Corday: And I can get that added language that you wrote from Season?

Commissioner Curtiss: Yes.

HEARING

Adoption of the new Missoula County Subdivision Regulations

Commissioner Carey opened the hearing.

Ann Mary Dussault: I am Missoula County Chief Administrative Officer. I'd like to outline for you what is in the request for commission action. Missoula County began review of its subdivision review regulations in 2002, focusing primarily on road standards. The intent was to focus on one area of the regulations at a time – review, re-write and adopt then move on to the next area of concern. It was, if you will, a one bite at a time strategy knowing how complicated the process could become if we tried to do it all at one time. While a great deal of work was conducted on this project at the staff level, the process stalled and the task was not completed. In November 2004 Sally Mullan was contracted to "assist Missoula County in restructuring the Office of Planning and Grants, providing analysis and recommendations." One conclusion of the Mullan report which was transmitted in August 2005, was "the regulations are unclear, poorly written and internally contradictory. They are therefore difficult to enforce as well." Sally recommended that the governing bodies "develop, adopt and implement County and City zoning and subdivision regulations that are clear and concisely written." Sally further advised "that the greatest chance of success lies with each entity contracting separately for those services from a qualified regulation writer who has credibility with the respective bodies." In the meantime, back at the ranch, the 2005 legislature made changes to the Montana Subdivision and Platting Act – notably Senate Bill 116. The legislature required local government compliance with Senate Bill 116 by October, 2006. Therefore, in September 2005 the County contracted with Linda Stoll to "coordinate efforts related to rewriting Missoula County's subdivision regulations with the following objectives – 1. Meet statutory obligations arising from changes made to the Montana Subdivision and Platting Act by the Montana state legislature in 2005 notably compliance with Senate Bill 116 and Senate Bill 290. 2. Identify and include any changes necessary to implement revisions to Missoula County's growth policy. 3. Identify and recommend ways the subdivision regulations can be simplified per the Mullan Report. 4. Include updated road standards. 5. Identify emerging issues that will require further consideration and revision." What you have before you today is a document which includes the activity begun and refined in 2002 and further influenced by all of the various factors described above. The date required for adoption at least of a portion of this document is October 1, 2006 and just for your information, the 1st is a Sunday. Let me give you a tiny bit of background, this document has had extensive staff review. There has been several review sessions with the Technical Advisory Group, i.e. agencies and the development community, as well as with the Board of County Commissioners. There has been a review of the SB116 compliance provisions with the consolidated Planning Board. In order to facilitate, and this is recommendation from staff, further review and comment by the Technical Advisory Group, the Planning Board, the Board of County Commissioners and the public the following schedule is proposed – Sept 13, today, open the public hearing with the primary focus being on the legislative compliance sections however testimony on anything the public wants to testify on. Continue the public hearing on Sept 20, next Wednesday with primary review being the road standards and any other changes in the document. Leave public comment open until Sept 27 which is a Wednesday, but a Wednesday in which there will be no Commissioner meeting. On Sept 29, probably in this room and probably in the afternoon though if you adopt this schedule we'll refine that, hold a briefing on the proposed comments and recommended changes to the Board of County Commissioners with whomever would like to be here whether it be the Technical Advisory Group or members of the public. Then on October 2 which is a Monday, hold a special public meeting to act on the proposed regulations. It's my belief, Mr. Chairman and members of the board, that we've heard a lot of comment from folks about feeling like they don't have enough time. As you know we were scheduled to have you act on these regulations next week. By providing at least another two weeks, if not more, for comment – at least I'm advised by some members of the Technical Advisory Committee that that should be sufficient time and this also allows the public at least three weeks of comment. Thank you.

Commissioner Carey: As you heard Ann Mary say, we'd like to kind of focus on the legislative compliance section, but you're certainly welcome to speak to any part of this proposed document.

Debra Eveson: I work with Montana Northwest Company, I'm a land planner with them. Last night I was here until the wee hours of the Planning Board meeting and the articles that they adopted – they made some minor changes – and I personally don't have a problem with those. I think Linda has done an exemplary job of going through and re-working our County subdivision regs into a document that we can all work with and actually be proud of. So I think Linda deserves some recognition there, as well as the working groups that have given up their time and their energy from their lives to come together and comment on this. That being said, I only have one nit to pick, as the language goes these days and that is in the adopted articles that the Planning Board suggested last night. In Article 1.9 on page five, there's repeal language and then 4.2.7 on page 51 – and I'm not an attorney, so I could be reading this wrong and

this might have been something that was already cleared up earlier between Linda and Mike. I believe we're still working with what is referred to as Document B. 1.9, for those of you who are just getting this, on page five says that upon adoption of this resolution, all prior Missoula County subdivision regulations are hereby repealed. That means all the old regs go out the window and these are the new regs. Then if you turn to page 51, 4.2.7 under applicable regulations says subdivision review and approval, conditional approval or denial shall be based on the regulations in affect at the time the subdivision application and preliminary plat is deemed to contain sufficient information for review. If regulations change during the elementary or sufficiency review, the determination of whether the application contains the required elements and sufficient information and the subdivision review shall be based on the new regulations. What that says to me, and like I said I'm not an attorney, is that even though I've had a pre-app on certain projects, they're in the works, if they are not deemed sufficient by your date of adaptation of these new regulations they therefore have to comply with the new regulations. That means the pre-app that I had three months ago, I've been engineering, working on and getting toward compliance for sufficiency gets thrown out and I then have to submit under the new regulations. I don't necessarily think that's fair given that once you've had a pre-app and you start the process there is a lot of work and a lot of time that goes into preparing the package that you get before you and I think we need some - the developing community needs some time to adjust as well as OPG. If you make these mandatory come October 1, I can guarantee you when I walk out that door I'm going to have a mad rush to get everything into OPG before October 1 and they're not going to have time to deem everything sufficient. Right now I've got a project that has been in since - and this in no way against OPG I know they're overworked and understaffed like everybody else - but it's been in for over a month and I still don't have sufficiency on it. So, I know the stresses they're under, I don't want to add to that and I just want some clarity as to when this comes into effect and how it's going to affect projects already in the mix.

Commissioner Carey: That's a good question, Deb. Who would like to tackle it, Mike or Linda?

Linda Stoll: There is always, I think there is always, this period of time when you're adopting new regulations that has to do with the effective date and my sense was - and Michael correct me if I'm wrong - we talked a little bit about this at the Technical Working Group meeting last week and I think I heard Mike say that for those applications that have already had pre-application conferences that they would be treated under the old rules. I think for the purposes of implementing this, I think that's a good policy because it doesn't - I think it leads to the clearest route for everyone. But we don't want to change the new regulations because they are reflective of the new law, so my sense of this is that a memo from the County Attorney stating that for those application conferences that have been held and in between the point at which they bring in the application. I mean there has got to be some way we can resolve this and I think the easy way is if you've had a pre-application conference under the old rules, and you've started your process for submittal, done all the engineering as Deb talked about then that needs to go in under the current rules. Then the point at which everything is under the new rules is for the pre-app conferences that start October 1 or after.

Mike Sehestedt: That is in fact my interpretation. I think there's an issue of fundamental fairness in that someone who takes action based on the rules in place at the time they act, fundamental fairness says we can't change "the rules" in the middle of the game. The game says you can only bring 11 players, then we can't change the rules mid-game and require 12 players. I think I can probably address that with a memo or during the time period we have and maybe discuss with Linda and the other actors some saving language to write in to the applicable regulations part of this. But essentially, in my view, once we're pre-app we're deeply enmeshed in the project. The individual wanted to develop the property has begun to spend money based upon that and I would prefer that we not - and I think fundamental fairness requires we not change the rules in the middle of the game.

Commissioner Curtiss: Mike, would we want to put some sort of - you don't want to dream up that there's going to be trouble, but someone could come in with a pre-app and they don't ever really get around to their project for several years. Or the other would be that we have 29 people come in just to slide in under a pre-app that they aren't really ready to go forward with either. So how do we address those?

Mike Sehestedt: I think that's something we can take up with the Technical Committee and planners and come up with - I think to some degree there we're just borrowing trouble that probably doesn't really exist.

Commissioner Curtiss: Okay.

Mike Sehestedt: But, it is a valid concern. I know Deb would not do that. I know Dick would not do that. But there are some people who probably couldn't take the time to be here today who might.

Commissioner Evans: Shame on you!

Denise Alexander: I might suggest we might be able to incorporate that language into the adoption resolution. Possibly that could be put in the adoption resolution.

Mike Sehestedt: I think it's, at this point, probably just note it as a valid issue and I say work with the Technical Review Committee and OPG, of course, and come up with a way to address it with everybody at a comfort level we need. Just as soon not try to draft a resolve now, it's just this is what I hear everybody wants and we'll figure out language to get it done.

Denise Alexander: And a time frame.

Mike Sehestedt: Yep.

Dick Ainsworth: I would like to echo Deb's comments and thank Linda for all her effort. We got kind of a late start at this, unfortunately, or at least the meat of it. Over the last two or three weeks it's been rather intense. It's a good thing I'm retired because I wouldn't have had enough time to devote to this if I was trying to make a living. I was also at the Planning Board meeting last night, but I'm too old to stay up to the wee hours like Deb, so I went home about 10:30. So I wasn't here when they – and they started working on the City version and went through those first and then started on the County. I wasn't here when they dealt with the County regulations, but one area that several of us on the working group had voiced concerns with – we talked with you folks when we met with you a week ago – is in Section 4.2.11 amended applications, the way that's worded. As you'll recall when we met with you folks, and I think Nick Kaufman made the point, the process of developing a plan for a subdivision and taking it through review is kind of a process in motion and it's ever changing and you put together the best submittal you think you can and once it gets submitted you start getting comments from neighbors and agencies and OPG and a lot of people. A lot of times those recommendations prompt some revisions to the plan that make it a better plan. The fear is that the way this is written is that if you make changes to the plan you'll have to go back and start over again with a new pre-application. We don't think that was anybody's – and under certain circumstances that could still happen – but we had suggested adding a sentence and I don't think this – the Planning Board last night was taking that out of the City and I think they probably did the same with the County? Okay, we had suggested at the end of – I guess we put it in a different place actually – under sub 2 under there it says the review period is suspended while the planning office considers whether the changes to the subdivision application or preliminary plat are material. We had suggested adding some language that said, changes made by the subdivider to an application or preliminary plat in response to agency or public comments shall extend the review period by an addition of 10 working days. Which wouldn't make you go back to square one, but it would give the staff another opportunity to review the changes. And correct me, Linda, if I didn't have that language correct. In our group, everybody felt comfortable with that. Linda did, the folks at OPG did, everybody seemed to be comfortable with it. You folks sounded like you probably would be when we met with you. Don MacArthur, I think, at the Planning Board has some concerns about it even though he recognized the potential problem and I think he's maybe the one who made the motion to take it out. We still think that is important in some manner, whether that's exactly the way it would get worded or not, but we want to promote change to the plan if everybody that's working on it thinks those changes are good. If the way it's written says you make a change, you go back to ground zero, you're going to have people saying we just won't make the changes and we'll leave the plan the way it is even though we know it could be improved, we're not going to start over again because time is important. So that's one thing that I would like to have you consider. Other than that this – I guess we called it draft B which is the same document that you folks have in front of you – did this get the changes, Linda, that we made in our meeting yesterday?

Linda Stoll: Not yet. They'll be out there soon, but I was going to save it – you know we had that Planning Board meeting until after midnight.

Dick Ainsworth: Well, I don't know what you've been doing! We met from 10 until 4:30 yesterday afternoon and the Planning Board started at 7:00 and went until after midnight, so you've had some hours in there. Hahaha.

Linda Stoll: I know, but...hahaha.

Dick Ainsworth: With the revisions that our working group suggested to this document yesterday, I'm in support of this the way it is. I think I would say – and I think a lot of folks in that working group felt – that some of the things that Senate Bill 116 did are bad. It wasn't the best legislation in the world. We're making changes to this that we have to make because of it, but we don't like them very well, but we don't have any choice. Hopefully the legislature, this next time – although anytime you open the door with the legislature you never know what's going to come out the other end – but hopefully they'll make some changes and we may be back fixing some of those. Because like I say – and I think everybody that worked on this felt that we were doing some things here we weren't very crazy about, but we need to because that's what the law says. Thank you.

Commissioner Evans: Would you give me your wording again, Dick, please?

Dick Ainsworth: And correct me if I'm wrong, Linda, but I think we suggested putting this language at the end of 4.2.11 sub 2 and that presently reads : the review period is suspended until the planning office considers whether the changes to the subdivision application or preliminary plat are material. Then we wanted to add: changes made by the subdivider – this is probably already in your copy up at the end of the end of the opening part of that statement and under amended applications this wording is there pretty much like it says, is it? Okay, we thought it ought to move down under sub 2 and we changed it a little bit to read: changes made by the subdivider to an application or preliminary plat in response to agency or public comment shall extend the review period by an additional 10 working days? Is that right?

Linda Stoll: Yes, that's what I have.

Dick Ainsworth: Okay. Thank you.

Tim Evans: I'm with the Missoula Organization of Realtors and what I just put in front of you – I'm here representing Wolf League, I might add, Colin Bangs who's the draftee of this letter in front of you. Unfortunately Colin wrote this letter on the 11th which was Monday, so some of the work that was done yesterday at the Technical Advisory Group meeting and the Planning Board meeting are not part of this document. If you'll look on pages two, three and four, he has addressed some of the sections specifically to his concern. I'll just read you the first part of his letter and then I'll (inaudible) because some of the things he may have addressed in his letter may have already been taken care of and addressed through the Technical Advisory Group. Colin starts out: The road to hell is paved with good intentions. I always wondered what that meant. Now as I struggle to get my mind around all of the huge changes proposed for the County subdivision regulations, and the short time we have to consider the ramifications I'm beginning to understand. While these regulations, as proposed, probably wouldn't send someone directly to hell, they would certainly cast landowners, surveyors, OPG staff and County Commissioners into a mess which would seem much more like purgatory than paradise. Make no mistake, all this is based upon good intentions. The County Commissioners decided that because some of the subdivision regulations had to be rewritten to confirm the state law, that it would be a good idea to update all of the regulations. They recognized the lack of time OPG staff has available and hired an outside consultant to handle the heavy lifting. Linda Stoll, who is the outside consultant, describes the changes as an attempt to clean up and simplify regulations while bringing them into compliance with current state law. All good intentions, all reachful goals, but unfortunately there is a lot of work left to reach those goals. One of the things I have learned in over 25 years of involvement with state and local government processes is that writing regulations is the most difficult process of all. When you write regulations to control one situation, you then have to look at what affect the regulations will have on a myriad of other situations you weren't thinking about. That is why new regulations usually are written in the rough draft form and then sent out for agency review and public comment, before they are brought forward for public hearing. What you have before you is a rough draft. It has a lot of good things in it and a lot of problems. In the day and a half that we worked on this rough draft, on August 28 -29, we covered pages one thru 26 and pages 52 thru 56. The rest of this document has not had many full reviews from the development community. While City and County staff had input in the writing, they have not had the opportunity to review and comment on the rough draft before you. Unfortunately there is a state imposed deadline to update subdivision regulations to conform to state law by October 1, 2006. The only solution I see is to pass the changes now that are needed to conform to state law and work on the other changes after the October 1 deadline. This is a very strong recommendation of the Planning Board and apparently the direction the City is going. I understand you will still hope to pass the complete revision by October 1, I will structure my comments to first address what has to be passed and then address the rest of the document. And again, I won't go into all the mundane comments that he has because that is before you, so I thank you for your time.

Robert Doore: I'm the public affairs director of the realtors association here in Missoula. County Commissioners, thank you for the time and effort that has gone into the draft changes of the Missoula County subdivision regulations. We have been working diligently with Linda Stoll and drafting language that is suitable for our industry, time is of the essence given the October 1 deadline to adopt changes to current subdivision regulations mandated by the 2005 legislature. Members of our association have spent as much time as possible to read the document and comment on those items that appear obvious to us. Yesterday, a stakeholders meeting was held with Ms. Stoll to work through the document with some of recommended changes. We were able to work through some, but not all of the document nor have we reviewed the "Subdivision Application," which is a concern for some of our members. While we are making written and oral comments to the regulations, so are fire service agencies, the Montana Department of Transportation, neighborhood groups and other potentially affected individuals. In addition, the Planning Board met last night regarding concerns with the current language. As of today's hearing, we have no way of knowing what has been changed, added or deleted from the current regulations and cannot focus on just those changes. It would be irresponsible for us to comment until we see the updated changes. With the county providing the "model" changes and the city following the lead of the county, there are two documents of about 80 pages each that need review and comment during this short window of opportunity. MOR members with extensive knowledge such as Colin Vic, Nick Kaufman and others who are familiar with the subdivision process have not had time to review the changes worked on over the last 48 hours. On behalf of the over 750 Realtor members that I represent today, we applaud the Commissioners, and Linda, for taking the opportunity to conduct a long over due review of the entire subdivision process rather than just complying with the state mandate. Given the magnitude of that project, we strongly suggest that the Commissioners focus now only on adopting what is needed to meet the October 1 deadline. Then we will have an opportunity to give a more comprehensive review of the entire document the time it deserves and that can result in the best outcome possible. Our final recommendation is that we agree with Ann Mary Dussault's recommendation and maybe just have another stakeholders meeting with the changes to come, so keep the public hearing open and review some more. Thank you.

Judy Smith: I'm hear as a citizen and as a member of the Montana Smart Growth Coalition. I wasn't aware of stakeholder meetings or task forces occurring and I would appreciate perhaps more integration of some of the concerns that folks at the Montana Smart Growth Coalition could bring to those. So as that goes forward, I would hope perhaps there's a chance for some integration. That means I'm coming to you fairly uninformed, perhaps, on some of this discussion that the other gentlemen have been bringing up. But I will just bring to you what I'm particularly concerned about. I've heard several of the Commissioners, in the past, discuss their real concern about managing growth in the county and that they can't really do more than just approve subdivision by subdivision. What they really would like to be able to do is to have very clear grounds for what it is that we can approve and deny and how to look at cumulative impact. Those of us that are concerned about smart growth, those are the things that we are very interested in, too. You need tools that will allow you to move beyond subdivision by subdivision and to really get a sense of what is a predictable process that all of us who go into the same situation together can know a head of time who's responsibility it is to say whether it succeeds or fails on the criteria. Right now as a citizen who has occasionally come in front of you, it's been my responsibility to try to prove how it fails. I don't think that's a particularly helpful position for me to be in and it's not a particularly helpful position for the county to be to say okay, we'll prove how this fails which is to write up your findings of fact and whatever. I think if you move in a different direction, where it's the proposer's responsibility to show you how this actually fits into the approval and denial categories, that makes a lot more sense. To do that you're going to need some really clear development standards. Again, since I haven't been in the conversation with you, I may not be totally in synch with how this is moving forward, but without that I think whatever changes you're discussing are really not going to move you to that kind of predictable process. Where all of us come together and understand that this is what we have to prove in order to move forward or not. So if this is a timing issue I would say that I would urge you to do what you need to do for the timeline, but you realize that it's these development standards that will actually take us out of what we've been in which is each time coming back having to argue over particular subdivision. We're very interested in trying to move forward with development standards and doing cumulative impact of subdivision and as I say as a citizen I'm very interested – and actually I'm interim director of Home Word, so I'm a developer too. I'm very interested in where that responsibility should lie and how we have a very clear open discussion about how we meet criteria. Thank you.

Ken Allen: One of the things that I think would be good to help speed things up is when the changes are made that it be done in a legislative type way where cross out a word, and then underline new words that are being put in. Just as an example of that, if you go to page 49 of the packet Ann Mary just handed out,

you have 4.1.1 at the top. If you go to the next page and you go to 4.2.2 – it's obvious that there have been some things that have been changed and crossed out and whatnot, but the whole document needs to be reviewed and the changes made and then done so it will save the Commissioners time, all the reviewers time, the writer time and whatnot. I think if we can make those changes and make it so that everybody only has to go in and read the changes that are made and we know no other changes were made, it will make it a lot simpler to get this done. One other comment that I have is on the definitions, Prime Agricultural Land, if we're going to use the soil type as designating what is prime agricultural land it's kind of misleading because you've got the majority of the Missoula valley will have this type of soil that says it's prime agriculture, yet prime agriculture to me would be a piece of property that somebody could raise something on that they could make a living. If you can't make a living on it whether it's five acres or 500 acres, it really shouldn't be considered as prime agricultural land. So, that's something where the definition's of some of these I think would probably be a good thing to look at, too. Thank you.

Neva Hassanein: Sorry, to rush in late I was at a class that I teach at the university. I'm also a member of the community food and agriculture coalition and I know you all and I appreciate this opportunity to testify today. Although, I must admit I'm a little baffled to by the speed of some of this. The comments I have refer to a draft from August 5. I was unaware of the revisions made last night or last week. And I didn't actually get my copy until last week anyway. I'm representing CFAC which is committed to the greater food security of all residents in Missoula County and the food security of our community as a whole as we look to the future. We can't assume that we are always going to be able to bring in food from elsewhere and we need to protect some of our farmland and support our farmers in order to be able to provide for our security in the future. So one component of our mission is ensuring that agricultural land remains available for food production and so my comments are focused on that that have to do with agriculture. I want to say first of all that I recommend that you delay action on standards and mitigation language related to agriculture until more of us have had an opportunity to discuss this in depth. It appears that there have been some stakeholder meetings, but it's unclear who gets to be a stakeholder and how. I request, secondly, that a representative of our organization be included as a stakeholder in this process. Through communications with you all this summer I had been led to believe that we would be involved in the process and instead I've had very little time to review this and to engage in any meaningful dialogue around it. With that said I do have some specific concerns with the language. Your definition of agriculture on page 5 of the August 5 draft – and I think the current version I was handed as I walked in – it refers to activities that take place such as dairying, the cultivation of soil, growing of commodities, raising feeds and so on. Those are agricultural activities. Later in the document there is reference to agricultural land and there's a specific reference that the gentleman just made with respect to impacts on agriculture under Section 3.2.2 of the August 5 version refers to prime agriculture land. Actually most of the valley is not prime agricultural land, it's a fairly high standard to be considered prime agricultural land. There's also agricultural lands which are state wide and of local importance as defined by the Natural Resource Conservation Service. Those are all very valuable and if Helen Attough was here today she would also explain that there are many lands that can produce food that are not necessarily designated in those categories. And so we have a confusion in the document between the definition of agriculture that's very up front and the use of the term later on in the document. Personally, I'd like to see us have a more comprehensive version than just focusing on activities. We can incorporate the idea of historic and current and potential future use of the land into the definition of agriculture as they've done in a number of other states where there has been a real commitment to protecting farmland such as Vermont. I'd be happy to share some specific language with you on that. The definition also includes Forestry as an agricultural activity and while there is indeed overlap, I think that creates some confusion in the document and the standards often refer to soils of agricultural importance and those may not be the same as those soils that are for timber – productive for timber. On page 19 of the draft that I reviewed it's confusing whether there are standards – or rather whether the standards are really referring to standards or mitigation measures. I think a comprehensive approach to mitigating the loss of our agricultural land needs to incorporate the idea that sort of losing the land is the last resort and what ways can we go about through design standards and working with landowners to avoid that loss. But right now, it was very unclear to me how that would occur. The draft application states that subdivisions must be designed so that they do not adversely impact agriculture or that impacts have been mitigated. But there's no reference to avoiding the impact in the first place. One of the things that I explained to the Commissioners this summer that I think really needs to be done, is we need a comprehensive inventory of agricultural land and we need a really clear definition of what constitutes agriculture. Then we can assess whether or not we're losing that land and also address the cumulative impact problems that Judy Smith referred to. So the draft standards state also that if 30% of the land is left undeveloped that agricultural impact has been mitigated – well where does the 30% come from? There's not really a provision that the remaining 30% would be left in such a way that it would actually be used, or could be used for agriculture. What's to prevent it from becoming another field of knapweed?

What kind of analysis will go on to determine whether that 30% - why the 30? Why isn't it 50%? Why isn't it 75%? Where is this number coming from? So to me a development with 70% of the land divided into lots does not really constitute a cluster development that conserves agricultural land. And also as I said before, that section refers to prime agricultural land, it's unclear – are you referring only to that land that is designated as prime agricultural soils? And if so, why? Why not those that are of statewide and local importance? Why not those that have been historically used as agriculture? Why not those that could be used as agriculture? The standards relate to protecting adjacent agricultural land from adjacent development, I think could also be expanded and become more comprehensive with further discussion. It seems to me that we should have a discussion about where these standards apply in the County. They apply equally as written to areas such as Target Range and more outlying areas, but we have very different kinds of agriculture and parcel sizes in different parts of the county and that doesn't seem to be reflected here. The definition of impact is based on soils or productive land and as I noted above, that doesn't really match with the definition section of the document. Finally as you know CFAC presented a proposal to the Board of County Commissioners on July 10 to create mechanisms for better protecting farmland. We've been doing extensive research on what kinds of policies have been put into place in other places. We've outlined some specific steps that could be taken. I reiterate them here in this letter so I won't go through them now. But I feel that although this is a great step and I'm glad you're going in the right direction, I feel like we need much more dialogue about what this means and sort of feel caught off guard at how fast this has moved. So I appreciate your attention and your care about the issue and I wanted to bring forward some of these concerns as well. Thank you very much.

John Richards: Currently a developer and in the Planning Board meeting last night there were numerous changes made. As Linda pointed out, she hasn't even had time to get the changes in front of anyone yet. So, I would like to make a suggestion on the timing that Ann Mary presented. The closing of public comment on September 27 when there's not going to be any Commissioners here to hear public comments?

Commissioner Evans: That includes written comments.

Ann Mary Dussault: Yes, that was mentioned for the written comments.

John Richards: For the written, okay. Well, if you're going to have a briefing on the 29th that means you're going to be here, maybe the public comment needs to go until you're here until the last – to have all these changes – they're coming so fast nobody even knows what the changes are at this point! I think a little bit of caution on the speed at which things are moving would be very useful there. I also want to speak to the amended applications in the – I made comments last night in the Planning Board. The amended applications, if public agency for the public or OPG has recommendations to a developer and the developer makes those changes we shouldn't have to go back to square one to start the process again. That's a penalty for working with them. This is an ongoing process between everyone involved and it moves forward pretty fluidly and to say we've crossed the line and we have to go back to square one, I think that really penalizes the developer and takes the incentive to make changes away. So I would hope you would incorporate some language in there that fosters working together, not making changes. Thank you.

Commissioner Evans: I guess I would ask Linda, how soon do you think you'll have all this stuff in front of us?

Linda Stoll: Well, I was wondering how long it was going to take me to get our changes from the working group meeting that we had yesterday and I'm a little unclear on the process with regard to the Planning Board recommendations because I did sit through and participate in that meeting last night. They have proposed to change – well you've heard from some of the members of the Technical Working Group and I have to agree with them, I don't think that will work. We need to solve that problem. We have language that solves it. But to answer your question, I believe – may I take just a bit of time to talk about the process to date? I just want to point out that on August 11, or 10th we had the document out along with the application which is a real critical component of this document in the sense that it contains the requirements that the county is proposing be submitted for your review of subdivisions. I would encourage Judy – because one of the components of the application is to demonstrate how the proposed subdivision complies with zoning and growth policy and all this. In any case, that's been out and that's the document that is basically the document we're talking about. Last Thursday at the working group meeting, or rather at the commission working meeting, on this subject I was asked to in addition to having the application, the request was made and I was directed to write a new article on submittal requirements. Up until that point in time, I had believed that the submittal requirements had been dealt with effectively in our application

process. So, I did that. It was sent out late Monday or Monday night and that is really an article that hasn't been thoroughly vetted, though I don't think it's difficult to get through. So I'm going to take the comments back – and we've been doing this all along the way – we get comments from people in writing or through hearings that we had with the board or through the commission work sessions, we've been making note of them and then my next part of the process is – as I did with you last week – is to send out a memo saying this is where I think the resolved changes are and when people agree that those are resolved changes, then they get incorporated into a document. You'll recall that last Thursday you said you wanted to see the document, where the resolved changes have been incorporated and that's the document that you have right now. Those resolved changes are shown tract changes. I believe, not to directly answer your question, that I can get the resolved changes from yesterday to you folks probably tomorrow night – no later than Friday. Ann Mary and I talked a little bit and I'd like to include Michael in a future conversation about what the process needs to be for the commission when they go through article by article to adopt the subdivision regulations. What I hope to have ready, what I will have ready for the commission is a document that has analyzed all of the comments, incorporated the resolved changes – now when I say resolved changes, those are changes that when we take these comments back to the Technical Working Group. We vet them across a broad variety of interest groups and when we come to an agreement that's a resolved change that gets put into your document that shows up right now in the tract changes. There are some comments people have made that we've rejected and it's important that when you meet you understand why we've rejected it, for what reasons we've rejected that. This is one of those times when I just wish everyone in the room could have been at every single meeting for the last year that I've been to. But that's just not possible and I understand that, but I think it's important to understand that at every step of the way as we get comments, we deal with them and so as not to overwhelm you in the final day we wanted you to be kept abreast of them and that's why we created document B. A new Document B will be forthcoming in the next 48 hours as a result of these resolved changes that we have considered this week. But I think the real important thing to know here is that we're at the point with this document, with the possible exception of Article 9, where we're picking nits. We're nit picking. We've had a whole lot of major policy discussion and we went through a little bit of that last week in this same room and I didn't take time to go through that today, but I believe that everybody, I know that everybody has the memorandum that spoke to the significant differences between your current regulations and what are being proposed in these regulations. It might be useful to have that on the website or something so that everyone can see that. I won't take the time right now, unless you want me to, to go through all of the comments from the folks who have presented comment here at the public hearing today.

Ann Mary Dussault: Linda and I started the discussion just before this meeting and we'll complete the discussion with Mike before Linda leaves for Helena. Our intent, and we just have to figure out how and what form, is to have posted on the website and have available in hard copy if anyone wants it a legislative format rather than a tract changes format. So a legislative format so the document that we've been working from today, you'll be able to pick it up and look at it and see where we think – the changes that are made are where we think we've achieved consensus with anybody who's been talking about it and that that will be clear from the original document. There are a couple of areas that Linda has sort of obtusely referred to and I'll be more explicit about it. But there were proposed changes that the Planning Board made that were different from what the Technical Advisory Group and the staff agreed to. I think what we'll do with those is leave in the document, but note that what – we won't put those recommendations from the Planning Board in to the strikeouts, but we will note that the Planning Board had a different idea about it. I think what we want to do at this point is, you know where the Planning Board and Technical Advisory Committee and the staff and agencies all agreed, we'd like those in there so people can look at them and see if that's what they meant. We need to separate for you, I think, and for anyone else looking at the document that just cause the Planning Board or just cause Colin or just cause somebody else said they liked this change and if we haven't vetted it and gotten consensus, we'll have it there in some form, but it won't be included. The other, so hopefully I think we're all trying to get to the same place and I hope we'll have a working document from which we'll move forward starting next week, out to you by Friday. I'd also like to say, and Neva this may relate to some of your comments and I need to talk a little with staff about it, the intent of what we're trying to do here today is changes in the road standards and changes related to legislative mandates. We know that there are all kinds of arenas that people have identified that they would like more work on outside of those two things and here's what we've tried to say about that – for example we've had fire agencies come in and they wanted to redo all of the fire standards, we had other folks come in and they wanted to redo all of the water resources standards and we said, great. And part of Linda's job is to set out here a set of emerging issues that we're not going to be able to do now, but that we may want if the Commissioners so decide to look at those emerging issues and say they think it's time to go in to the subdivision regulations and maybe the zoning regs and look at all of the impacts on agriculture. That was not the intent of what we were trying to do here today, but it's a really good point. Fire standards are on

that list, DNRC concerns about water are on that list, so what we'll do is keep a list of those emerging issues because they're really important and then the Commissioners at some point will get an opportunity to decide if they want to go back to them and revise. Again, we're trying to get to sort of the one bite at a time so we can do this in an organized comprehensive way. So, for you Neva, I wanted you to hear that so that even though we may not recommend what you're asking now, we will set it aside and on the list of emerging issues and if the Commissioners want to they can address.

Neva Hassanein: Sounds like I might have misread it as far as which are changes and which aren't.

Ann Mary Dussault: I know and what's a little bit difficult and it's not – what I think is that most, and maybe not all of what you were looking at, is current language and there have been no changes to it. That doesn't mean it doesn't need to be looked at in the future, though.

Commissioner Carey: Okay at this point I think we're read to recess the hearing until the 20th.

Seeing no further comment, Commissioner Carey recessed the hearing.

Mike Sehestedt: Everyone be clear that written comments can be delivered at any time to the Commissioners and that would include e-mail, fax, U.S. Postal. This is an interactive process, just like subdivision review is and the purpose here is staff is going to try and reduce a draft so that what's consensus and is not subject to dispute comes to the Commissioners. Where there are issues of dispute, they're noted and the Commissioners can make a policy choice from whatever the positions are being advanced. It ultimately, on those issues, will be a Commission choice not staff doing it.

Commissioner Evans: And I really appreciate the comment that we will have a legislative format because it's very – the tracting ones I have a difficult time seeing what was in and what was out, so I really like the legislative format.

Mike Sehestedt: Okay, I want to be careful about that. We're going to do legislative format, are we going to go all the way back to?

Ann Mary Dussault: No.

Mike Sehestedt: The changes will be from the earliest draft of this forward.

Commissioner Curtiss: The one that we got today called Document B?

Ann Mary Dussault: I think so.

Linda Stoll: I think that's part of what we need to discuss today. It's going to be easier for me – and remember that we've got this resolved changes list out there like we did last week, we've been checking it every week, here are the resolved changes, but I need to write some language to make sure that the Technical group agrees that – as I thought it was resolved, but everyone agrees. Now, if it's any indication, the last resolved changes listing was 100%. So when I put those resolved changes in then we went through them again in the Technical Committee and everyone agreed that I got it right. I'm batting 1000% actually right now on that, but it could be the case that when I take the resolved changes and put it into writing that people say that's not exactly what we said. So, I want to play with Document B until we get those things right with the working group and anyone else who wants to participate. Then I guess on my own, Michael what I had in mind is then we've got this document that we've sent out for public comment, we'll call that Document A. We now have Document B which in its own tract changes version shows where we responded to comments and came to consensus. Then it's my understanding that the Document A, if I understood Ann Mary correctly in the brief time we had, would then be converted to lined/strikeout based on the resolved changes from Document B. Does that make sense?

Commissioner Evans: As long as the development community understands and they are satisfied.

Mike Sehestedt: What we're working from and everybody...

Linda Stoll: Well, because it is. You're trying to work through these changes and you've got 30 days and we're not ignoring comments, we're responding to comments in a way you get beat up for that because now you've got to have this other document that is separate from the one that's out there for public comment. And that's a hard thing to do, but it's not impossible, it just needs to be organized.

Commissioner Carey: And Barbara, I would agree with you, the development community needs to be satisfied, but so do Neva's organization and Judy's and so on. We need to get everyone on board here.

Commissioner Evans: Absolutely.

Commissioner Curtiss: Do we need to take any action to say that we want to adopt this schedule of times or anything? Or is it just kind of assumed?

Ann Mary Dussault: That would be very helpful if we could get an indication from the Commissioners because then we know the direction that you're wanting us to go and we can put that out on the website and respond when people have questions about how they comment and what they should comment on. So yes, that would be helpful.

Commissioner Carey: So we could have motion accepting your recommendation which you read into the record during your testimony?

Commissioner Curtiss moved to adopt the time schedule proposed by Ann Mary Dussault during her testimony. Commissioner Evans seconded. The motion carried on a vote of 3-0.

Seeing no further business, Commissioner Carey recessed the hearing at 3:00 p.m. The public hearing on Subdivision Regulations will reconvene on September 20, 2006.