

Public Meeting – September 20, 2006 Commissioner Carey called the meeting to order at 1:30 p.m. Also present were Commissioner Curtiss, Commissioner Evans, Deputy County Attorney Marnie McClain, Chief Administrative Officer Ann Mary Dussault and Director of Public Works Greg Robertson.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

Bob Tarlton: I live up on Lolo Creek Road. I came here to probably enlighten Jean and Bill. I've talked with Barbara about this so called "spite fence" that has been erected. It runs partially in front of my house between my place and my neighbor. I moved here a year ago in May. The home I bought was built 20 years ago. The neighbor moved into his place approximately 8 or 10 years ago. There are a total of four yard lights on this property. There are about 18 acres and a good portion of it goes up the back of a hill. When we moved in last May, one yard light was working.

Commissioner Carey: Mr. Tarlton, this is on your property?

Bob Tarlton: Yes. These other three, all energized but not working. In other words there was power to them, it's like having a light bulb burn out, the switch is on. That's what was wrong with two of them. They had bulbs burnt out. The other two, the photo cells were not working. One was stuck on and the other would not let the light on. At one time they were all working and I don't know when they quit. So I moved in and I fixed everything up. We started building a new shop/garage. I took time to fix the yard lights. Turned off two of them and left two on. One of the yard lights is out at the entrance off of Highway 12, half way down the driveway. We left that one on. The other is behind the house and we left that one on. Shortly after fixing them, the neighbor came over – by the name of Kim Kaufmann – she came over and asked me if I could turn off my yard light. Or maybe it was yard lights. I told her I would turn off the one – she said her reason was that her husband was an amateur astronomer and my yard light was interfering with some thing he wanted to look at this coming week. She said it would only be for a week and I said okay why not be neighborly? So I turned it off and heard nothing more. Probably left it off, I would be, three weeks or more. Then on a weekend night about 1:30 in the morning someone drove into my driveway. Now, this place that we bought was owned by a couple out of Arkansas. It was a retreat during hunting season. They were only here for one month out of 12 and for the last seven or eight years that's the way it was. It was not being maintained. No one was living in it. Someone come in my driveway and we have this new building being built. I'm sure whoever it was – I didn't hear – something woke me up but it didn't wake me completely until the automobile left. Then the exhaust rumble woke me up and I looked out and said to myself who's here? All I saw were taillights going down the driveway. I had no idea how long they were there or what they were doing. So of course, I'm out of bed and I'm looking. No one's there. I thought I could find a body to trash or someone broke into the building, I had no idea. So I decided that yard light has to come back on and it had been well over a week, so I turned the yard light back on. Probably a few weeks went by, I don't know exactly how long and Mrs. Kaufmann came over again. This time she's carrying some metal rings and she said she has these for me to put around my lights. She said she had them and she took them to the City Council of Missoula to try interest them in putting these on yard lights to keep light pollution down. When she said light pollution I thought oh boy what am I in for now for a neighbor? So she wanted to know if I would put one of these on this on particular yard light. I thought that's going to defeat the whole purpose of a yard light. All it would do is let the light shine straight down and when you have a yard light you want to light up your yard so you can see who's coming and going. So I told her what I would do is put a shield on the backside. I put a black shield on the backside of that yard light hoping that would take care of it. I don't know how long after that, I really didn't hear anything more from them. We have a large pond out front near the highway. 99% of it is on my property. A VERY small piece goes under the fence and they have that on their side. It was full of weeds, those ones that grow in a pond. I don't know what you would call the weeds, but I would ¾ of it was overgrown with these weeds and there was a lot of brush around the bank. Well, we're trying to enhance the property by cleaning it up, fixing it up. I thought I'd clean that pond out, dig it out and make a swimming hole and probably put fish in it. So I got a hold of DNR and they asked if water was flowing in or out and I said no it was surface water, so they said I could go ahead. So I hired an excavator to come in with a tract hoe and he started digging to clean out the weeds and deepen the pond. Pretty soon along came my neighbor, Mr. Kaufmann, and he came over and asked me what I was doing. I said we were trying to enhance this pond, we're going to put in a swimming hole and maybe put some fish in it and get the weeds out of it, clean it up. He then proceeds to tell me that I couldn't do that without his permission. He said he had water rights to that pond. Well I've dealt with water rights in the past – I lived in the northwest for 40 some years and I thought maybe it could be different here. He said he wished we would stop, he said he'd life for us to not do anymore on the pond and he said he might be willing to work with me on this, but he wanted to see what I was planning

to do on paper. I thought what do I do? Do I try to be neighborly? Do I go ahead and quit for a while? That's what we decided to do. I told the contractor what was going on and that I was going to look into this myself. So the contractor pulled off the job. I went down to DNR and talked to – and I can't remember the fellow's name – but I talked to, he looked like he was the fellow in charge, I told him what I was doing with the pond and he said I was within my legal rights to do whatever I want, but he said if we plant fish in there we'd have to go through the fisheries department and I'd have to get water rights on the property. I said okay and filled out the paperwork and we then received our water rights. So I got the contractor back and it was probably a couple of weeks before he returned and he started digging again. Here came the neighbor wanting to know what I'm doing, he said he thought I was going to get something on paper to show him what I was doing because he said he told me I'm not legally in my rights to do this. That's when I told him that I didn't need his permission to do anything on my property. He said he didn't think that I was right about that and I told him what I found out from DNR and he wanted to know who I talked to so I told him. He left. The contractor was still digging. Pretty soon the contractor is yelling at me and pointing toward the neighbor's. I looked over to see what he was talking about and there's Mrs. Kaufmann in a crouched down position taking pictures and when she saw me look, she stood up and gave me the finger and walked away. I thought boy those two are first class. Then a period of time lapsed - and again I didn't keep track – there is some earth moving going on next door and approximately 200 feet of earth berm was pushed from their field, along the fence line, six feet high. Then some contractors show up and they start to erect a 20 foot high steel frame – they strung chain link on it – and then attached tarps. The total length on that fence is approximately 270 plus feet long, 26 feet high if you count the earth berm. I thought oh God now what do I have to look at? This takes in part of my view and I thought now they've just decreased the value of my property – I wouldn't buy a place with something like that running down along the side of it. So I thought I'd call the county. I called the county building department and I spoke with Dave – real thorough fellow – he came out and took some pictures. He couldn't believe what he was seeing. He just shook his head. He said he would send a letter to them and he wanted to get some information about it from them (the Kaufmann's). He said at that time Missoula would have required a building permit and for a fence that's over six feet, they'd have to have an engineering study done on it. He said that fence, for sure. So, to our knowledge, there was never a permit issued or an engineering study done. That means that fence is up illegally and should be taken down. I have since contacted an attorney. We have been to court - I believe it was yesterday, for a hearing. The other party, the Kaufmann's, want to have a little time. They say they have some witnesses and I don't know what the witnesses means. So the judge granted them a little stay for another week. I got home and I decided I was going to look into something, because I think they're either mad because they couldn't control that pond or my yard light does interfere with his amateur astronomy. There was something Mrs. Kaufmann said on her last visit...oh yeah, she told me when she brought those metal rings she said that our yard lights interfere with – she said she couldn't sleep at night because they light up her bedroom. She also said that they couldn't see the TV. because it lights up their living room. Well I know better than that because I'm retired from a power company and I've been around yard lights and I've had them as well. I thought I would call to get some information on the lumen power of lights. All lights are rated in voltage, wattage and lumens which is the amount of light they put out. So I called Northwest Energy and the connected me with a consulting firm that they used called Kima and I spoke with a fellow names Ryan. Ryan asked me about these yard lights, how old they were. I told him the place was built 20 years ago and he said yard lights, especially ones that old, lose a lot of their lumen power. One that is 10 to 15 years old, they lose about half of their lumen power. The one that the neighbor wanted me to turn off has 175 watt bulb. He said brand new, those would measure about 7,800 lumens. In five to 10 years, he said they are approximately half that value – so we're looking at approximately 3,800. I asked him to relate that to something and he said it would be like two to three 100 watt bulbs on a pole. Now, that yard light is almost 1000 feet away from their house. Can you imagine three 100 watt bulbs, 1000 feet away lighting up the inside of your house so you can't see your TV. and it keeps you awake? Not likely. So, that's where we are. My attorney told me this could be expensive and if we could get the county to step and enforce their not having a permit, or the engineering study, he said this could be less costly to all the parties involved. That's what I would like to see happen.

Commissioner Evans: Mr. Tarlton, did you bring any of the photographs to show the others?

Bob Tarlton: No, my attorney has them. I know you've seen them; they're something you have to see.

Commissioner Evans: I've seen them. You can't believe you'd have to see it to believe it. In addition, Chief Deputy County Attorney Mike Sehestedt did send him a copy of a case that was related to spite fencing and so apparently there have been some cases that...

Bob Tarlton: Right, I believe there were three or two of them that told them they had to take them down. They couldn't do that in the in the state of Montana.

Commissioner Evans: So I'm just filling in the little gaps for what he told us. It would be my understanding that if it's against the building inspection rules and it clearly violates and they don't have a permit that we ought to do whatever the law requires us to do.

Greg Robertson: Yes. I am familiar with this particular case and we did indeed send a letter to the Kaufmann's. We have not received a response. Our next step – because the fence was essentially already in place at the time we performed our inspection and received the complaint – is to refer the matter to the County Attorney's office for action. When I get into the office tomorrow, I will circle the wagons with our chief building official and get that referral made.

Commissioner Carey: Thank you.

Commissioner Evans: When I talked to Steve Hutchings about it, the one thing he mentioned and I think the major concern, is the wind resistance of a 26 foot fence.

Greg Robertson: Oh yes, it acts just like a sail. Huge structural loads that are placed on it and it will probably in all likelihood come down on its own.

Commissioner Evans: The thing I thought when I looked at the pictures was that he's ruined his own view as well as Mr. Tarlton's view. It's a horribly ugly thing. It's black tarp on the fence.

Greg Robertson: Well, we may not be able to remove it, but what we can ensure is that whatever is installed is done safely. So, we'll do our part.

Bob Tarlton: I talked with a Pat Hurley and he's with the state, I believe. And something to do with scenic highways and I was informed that is now a scenic highway. So they cannot just put up anything in the way of signs along the highway and that's I guess his part where he can step in. He felt that this was a county issue – that fence.

Commissioner Evans: The other thing you might look at – and I know the County Attorney's office is busy with things that are of more serious nature than a neighborhood squabble over a fence – but I think there is a law or something that the county attorney can bring a neighborhood nuisance charge against someone. I think at the time I was familiar with it, it took the signatures of about 10 neighbors. So you might talk to the County Attorney also and see if the neighbors are as upset about it, maybe they're willing to sign a nuisance claim and maybe the county attorney can find time to do something about it when he's through prosecuting murderers.

Bob Tarlton: I have done just what you said. I didn't talk to the county attorney about it. I have hit several of the neighbors. There are a few homes there that are, I think, also retreats that no one lives in all year. But I have probably at least six people. Three of my neighbors have come into my place and asked what the heck I did to make him so mad at me! I said I didn't do a thing. So I've had one neighbor say that he has a 70 foot tamarack on his property that's dead and he said he'd cut it down and we'll put a yard light on it and a flag under it! He said they can't build a fence that high. Yeah and I've had other says they want to get one of those commercial reader boards and put it out on the corner of my property and we'll light it up. So the neighbors don't like it. We're having a meeting this Sunday. My attorney said he will show and we're going to have six, I hope, that are going to show and look at this fence.

Commissioner Evans: And it wouldn't be quite so ugly if he'd take the tarps off of it, nor would it have such wind resistance.

Bob Tarlton: But then...

Commissioner Carey: That would defeat the purpose.

Bob Tarlton: ...like I said I don't know what their intent. I don't know; I've never seen anything like this in all my life. I don't think anyone else has either. My attorney says he's taken those pictures to the rest of the lawyers in his firm and they all laugh so hard, they've never seen anything like this.

Commissioner Evans: Whatever your neighbor's mad at you about, he's REALLY mad.

Bob Tarlton: Well, God yeah. I haven't been here long enough and I haven't done anything to him! Don't even know him!

Commissioner Evans: Thank you.

ROUTINE ADMINISTRATIVE ACTIONS

Commissioner Evans moved to approve the Weekly Claims Lists in the amount of \$787,477.95.

Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

HEARING – Leslie Family Transfer

Commissioner Carey opened the hearing.

Marnie McClain: This is the consideration of a request to create a family transfer parcel for that parcel described as Tract D-2-A, COS# 3047 Section 22, Township 12 North, Range 17 West. Lucas J. and Angela R. Leslie have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately two (2) acres in size located near Clinton, Montana. Lucas and Angela propose to create one approximately one (1) acre parcel for transfer to Angela's parents, Rodney D. and Rosalie R. Petersen, for residential purposes and keep the remaining approximately one (1) acre parcel for residential purposes as well. History of the parcel is as follows: COS# 1413 in 1978 established as 20 acres or greater to Frank and Lorraine Cunningham. A year later in 1979, COS# 1738A the Cunningham's used the family transfer exemption and transferred Tract D to their daughter Rita Faye Stiner. In 1980 COS 2431 and the remainder of Tract D-2 to Rita Faye Stiner and finally in 1984 COS 3047 the remainder of Tract D-2-A and the owner again was Rita Faye Cunningham (Stiner). According to records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Commissioner Carey: Is Mr. or Mrs. Leslie here?

I'm Angela Leslie.

Commissioner Carey: Thank you. We ask folks who are applying for this exemption to come down and basically assure us, through answers to certain questions here, that this is not an attempt to evade subdivision review. That would be a misdemeanor. So Marnie, are you prepared to go through that list of questions?

Marnie McClain: Yes. How long have you owned the property?

Angela Leslie: We've owned it, probably a month now. We've been renting to buy it and purchased it about a month or so ago.

Marnie McClain: So did you buy the property with the intention of dividing it?

Angela Leslie: No.

Marnie McClain: Do you or your parents intend to transfer the property within the next year?

Angela Leslie: Do we intend to?

Marnie McClain: Yes.

Angela Leslie: Well, we want to gift it to my parents.

Commissioner Curtiss: But you don't plan to sell your portion or they don't plan to sell theirs?

Angela Leslie: No.

Commissioner Curtiss: It's kind of a confusing question.

Angela Leslie: No, we're living there and plan to stay there.

Marnie McClain: Have you talked to anyone at the County about going through subdivision review?

Angela Leslie: Nope.

Marnie McClain: Are you in the business of building or developing property?

Angela Leslie: No.

Marnie McClain: Are you attempting to evade subdivision review?

Angela Leslie: No.

Marnie McClain: Do you understand that this request is not being reviewed for adequate access in all weather for all vehicles, including emergency vehicles?

Angela Leslie: Yes.

Marnie McClain: And do you understand that this approval does not mean that the property is approved for zoning compliance, floodplain or septic systems?

Angela Leslie: Yes.

Marnie McClain: So you'll have to go through those permitting processes.

Angela Leslie: Yes.

Commissioner Curtiss: You're planning to transfer to your parents, correct?

Angela Leslie: Yes.

Seeing no public comment, Commissioner Carey closed the hearing.

Commissioner Evans moved to grant the family transfer exemption for the Leslie's to create one parcel based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

HEARING

Country Crest #3, Buckhorn Lane (Lots 14, 15, 18, 21 and 22: two lots split each for a total of 10 lots) – Buckhorn Lane, N. of Mullan Road

Commissioner Carey opened the hearing.

Mirtha Becerra w/OPG: Before you today is a request from five property owners to subdivide their lots into two lots each. These are Lots 14, 15, 18, 21 and 22. The properties are located along Buckhorn Lane which is a 24 foot wide county maintained road within a 60 foot right-of-way. The original lots were approximately one acre and each new lot will be approximately .5 acre. I believe there's on that is .40 acres, but approximately a half acre. The area is zoned CRR2, two dwelling unit per acre and the comprehensive plan calls for a density of two dwelling unit per acre. Therefore this proposal complies with both zoning and land use designation. The applicants have requested three variances. One is to not install curb and gutter along Buckhorn Lane. The second is to not install sidewalks on Buckhorn Lane and the third is to not have to dedicate parkland. An RSID waiver statement is included on the plat waiving the right to protest improvements to Buckhorn Lane including curb and gutter and sidewalks. Staff supports all three variance requests based on agency comment letters. Staff recommend that four conditions of approval – and these are the standard conditions of approval that have been required for all of the Country Crest Subdivisions lately – except for number two which requires a driveway maintenance agreement for Lots 15B and 16 to be included in the development covenants. Staff recommends approval of the proposed subdivision based on the findings of fact and conditions of approval contained in the staff report. This subdivision went in front of the Planning Board a couple weeks ago and it was approved the way staff recommended, so there are no changes. However, I should note that there has been a change to the preliminary plat that was submitted and that was to reflect line relocation between Lots 22A and 22B. I am not sure if we need to add, or if you would like to add, a condition of approval that requires the final plat to

be amended to reflect those changes prior to final plat approval, but I'll let somebody else decide that. If you have any questions, I'll be happy to answer. Thank you.

Ken Jenkins w/Montana NW Company: I don't have a whole lot to add other than we don't have any problem with the conditions. Relative to the minor change in one of the boundaries, that was a result of setting the corners and actually seeing how it looks on the ground which sometimes prompts those sorts of changes. I would guess that the preliminary plat that's in front of you today is what you will be approving, so I don't know that we necessarily need to make that a condition. The preliminary plat today does have that change already made as far as that boundary is concerned. I'd just like to follow up with some thank yours to Mirtha for doing a nice job of helping us through the process and to the Commissioners and the planning office and everyone else who's involved in this process. When we started this project, we had a handful of folks who wanted to do a subdivision and we started looking into the concept of combining the process and pretty much county wide, initially the idea was not well received. Something that hadn't been done before and we had issues with parks and we had issues with sanitation and we had a lot of different ideas of why we couldn't do this. Ultimately after discussing the matter with the various county departments and with the Commissioners, we were able to do this and I'm grateful for that and I think it's of benefit to your constituents and also of benefit to the county departments in that we don't have to go through this process five times. So much appreciated and if you have any questions, I'd be happy to answer.

Commissioner Carey: Thanks, Ken.

Commissioner Evans: I'd just like to add some things to the record that weren't mentioned so if when someone is reading the record, they'll understand that this subdivision was designed, a long time ago, deliberately so that they could be split again and that's what is occurring now. The reason for doing them several at a time instead of one at a time is much better for the staff and everyone else. The parkland that they want a variance from is because the original subdivision donated the parkland, so it's not necessary for each subsequent house to do that. So, I just wanted that in the record.

Commissioner Curtiss: I think the other thing we might want to state on the record that all of us have heard before is that the reason we are granting the variance to the sidewalks and such is that it makes more sense to do them all at once. There are quiet a few subdivisions happening in there and rather than have each one do their own piece, it makes more sense to do them all at once. That's why the RSID waiver is on there.

Commissioner Carey: Thank you, Jean.

Seeing no further comment, Commissioner Carey closed the hearing.

Commissioner Evans moved to grant approval for the Buckhorn Lane Subdivision for Lots 14, 15, 18, 21 and 22 in Country Crest #3 with the three variances approved and the conditions as mentioned. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Commissioner Carey: And we're relying on Mr. Jenkins' recommendation that we don't need to do anything about changing the boundary since it already shows it on the preliminary plat.

HEARING (Cont'd from September 13, 2006)
Adoption of the new Missoula County Subdivision Regulations
Commissioner Carey continued that hearing.

Myra Schultz: I'm a local land use attorney. I missed last weeks hearing, I was at Chico at the Montana Association of Planners meeting lecturing on subdivision regulations. I did send a letter to the County Commissioners dated September 11 in which I outlined my concerns with the draft. I read the minutes and I didn't see that this letter was made a part of the record, perhaps it was. On Monday I received part of Document C. At noon today, or about 12:30 I picked up the remaining pages that I couldn't open, so while I was eating I looked at pages 53 and 54 of Document C. On page 53 section 4.2 minor subdivision review procedure, I noted that no changes had been made. I don't know what went on at the – I guess there was a working group meeting last week – I don't know what went on at that time or whether my concerns were addressed. Today's agenda is a good example of why we put a subsequent minor (inaudible) 76-3-609 you approved a family transfer. You approved, I guess they come in with I don't know Ken can tell you this but I guess they come in with five lots at a time so it's considered a minor subdivision on Country Crest #3.

But there is no way to consider the cumulative impacts of exemption after exemption after exemption or minor subdivision after minor subdivision after minor subdivision. Now Linda Stoll has said that she thinks her application which I've yet to review in detail, is a substitute for the environmental assessment. She also – and we've talked about this before – the differences between a first minor and subsequent minor are with the subsequent minor you have to present an environmental assessment and you also have to have a hearing. So, Linda said her application is a substitute for the environmental assessment and she said the procedure in Missoula County is to really have a hearing and I don't know what went on with number six on the agenda. It says hearing. It seems to me those were minor subdivisions, although I'm not sure, so apparently the procedure in Missoula County is to really have a hearing. Whether it's noticed as a hearing, you know with the 15 – between 15 and 30 days or whatever the hearing requirement is, I don't know because I don't know that much about Missoula County's procedure. But I'm concerned about notice and an opportunity to be heard. That's basic due process with respect to minor subdivisions. So maybe on Friday someone can assure me that that's not going to be a problem because Missoula County is treating all minor subdivisions the same. That's what Eastern Montana is doing. All Eastern Montana has its minor subdivisions so they're treating them all the same out there and I've drafted those regs for them. The other concern I had was with the condominiums and I don't know if that was addressed at the working group meeting or not. I have spent hundreds of hours and thousands of dollars of my money litigating a case in District Court and in the Supreme Court over the condominium exemption. I've won twice in District Court, it's been appealed to the Supreme Court, it's been certified to five justices, submitted on briefs. The issue is whether the condominiums proposed below my house were on land divided in compliance with the Montana Subdivision and Platting Act. That particular provision is eliminated, purposely or otherwise, from the Missoula County subdivision regulations. If someone just reads the Missoula County subdivision regulations, they will not realize that state law requires that the property have been divided in compliance with the Subdivision and Platting Act. We have year after year and year after year of AG's opinions that have addressed this issue and what this means. And now we have a District Court case and frankly I'm surprised when there's a fourth judicial district decision that this language is not being included in the Missoula subdivision regulations or the Missoula County subdivision regulations. I've made the same suggestion to the City of Missoula and I don't know what they've done. So that's all I'm going to address today, but I wanted this to be part of the public record that I'm concerned about the minor subdivision process and I'm very very concerned about the way the Missoula County subdivision regulations read with respect to condominiums. Thank you.

Commissioner Evans: Are you leaving us written comment, Myra? Or have they been sent previously?

Myra Schultz: I hand delivered this on September 11, Barbara, the letter and everything that I've testified today about today is in that letter.

Commissioner Evans: Okay thank you.

Commissioner Curtiss: So could we just state on the record that we make sure her letter is part of the record in case we missed saying that last time.

Myra Schultz: Thank you, Jean.

Greg Robertson: Just as a matter of summary, Myra, we did spend quite a bit of time at our last working group meeting discussing each point you raised in your letter. Several changes, as a result, have been made. Some, I think we disagree or at least Mike Sehestedt disagrees, but we spent quite a bit of time and Deb Eveson can validate that going over each particular item that you had and we gave it due discussion. The ones that we felt we could support were incorporated.

Myra Schultz: And am I correct that no change is being made to the proposed minor subdivision?

Greg Robertson: That is an item that we probably spent the most time discussing, as I recall. I believe we have not finished our discussion on it. It was one thing that I don't think we finally closed the loop on; at least that's my recollection of the meeting. So, I would expect to discuss that at our 29th final meeting.

Myra Schultz: Okay and what about the condominiums, was that discussed?

Greg Robertson: Yes, the matter of condominiums was discussed. It Mike's opinion that the language as was written in our subdivision regulations complied with Montana law and he felt no need for changes. But, I'm sure that's a matter for you and him to talk about.

Myra Schultz: Okay, I'll be there on the 29th.

Commissioner Carey: That meeting starts when? What time?

Ann Mary Dussault: The working group meeting starts at 8:00 in the morning.

Commissioner Carey: And that will be here?

Ann Mary Dussault: No, that will be in room 374 which is on the old side of the courthouse, third floor. It's the old Clerk of Courts office. The reason for that is this room, as of next week, will be used for absentee balloting. That meeting is scheduled to run as long as necessary and at 2:00 there will be a briefing with the Board of County Commissioners in that same room.

Commissioner Carey: Than you Ann Mary.

Myra Schultz: Thank you.

Andy Sponsler: I'm a member of the Missoula Urban Transportation Board and also a voting member on the Transportation Policy Coordinating committee and I'd like to make it clear that my comments are not related to either one of those organizations, but I've been active in transportation for a long time and so I feel compelled to make a few comments about the subdivision regulations. From a transit point of view, the regs should do everything possible or everything needed I should say to provide for future connectivity and transit friendliness and roads. We've started to do that actively here in the city and in the greater valley the last few years with growth management and it has made a huge difference in the way our busses move about here in the valley and the way that they can conveniently pick up passengers. The accessibility of transit has much improved. So the regs really should provide for that in every way possible. I'd also like to urge you to not consider allowing for non-public roads in subdivisions. Streets need to be public. I understand in a world of diminishing resources that roads are more and more difficult to keep up. This is true at almost every level of the federal, state and local governments, so perhaps a mechanism that provides maintaining roads and add a public standard perhaps by the public and paid for by members of a Homeowners Association or a particular platted area would be in order. I'm sure you've considered something like that, I don't know, it's been handled on the RSID level in the past. I don't know what the specifics are, I know that resources are short but we also need to keep things up to public standards, especially when we expect that roads should be transit friendly. I can't stress enough about this connectivity issue. There are places throughout the valley where plats don't connect well together and I'm sure you've seen that Greg. We don't have roads that connect, we have whole subdivisions that are isolated from each other and provisions for connectivity really need to be a condition of development and I don't know exactly how that gets worded in the subdivision regs, but it certainly needs to be addressed. Let me see...transit friendliness, affordability...there were four things that I wanted to speak to and I think I pretty much got to all of it. One example that I can think of in regards to styles of development, regardless whether it happens out in Seeley Lake or the Swan or closer in to the core of the city of Missoula, I shouldn't have notions about a particular style of development – demanding one kind of road or another or whether the might use transit or not. I've got a good example for you - The Mansion Heights subdivision that I dealt with when I first came on the City Council in 1996 they discussed that as being a gated community. It didn't end up being a gated community. But one would assume that folks with the resources to build homes like that would probably be most interested in using their own cars most of the time, but currently today we have a request before our local transportation district to provide a service there and to service a special turn around that's being developed in the development so that busses can actually service that subdivision. I was surprised by that. I think it's really great that the folks up on the hill are interested in using the bus and so I just would ask you to not have any notions about what style of development should be transit friendly or have public streets. I'd urge you to make it so that all subdivisions have public streets and they're all transit friendly. Thank you.

Jim Cusker: I'm a member of the Farmland Protection and Economic Viability Committee for CFAC, the Community Food and Agricultural Coalition. I'm speaking on behalf of CFAC. The Commissioners most certainly don't need to be reminded that when a subdivision comes up that they are requested to look at possible adverse impacts on agriculture. In the subdivision regulations itself, I believe that there is no definition provided for what consists of agriculture and therefore you go back to the definitions that are on page 10 of that horrendously long document. That's noted on the sheet here. Article 2.2 (5) agriculture – the first part of that definition as listed on this particular page that I've given you is the one that is in place. It is suggested, strongly suggested, by our committee that you add the second half to that which says

agriculture depends on agricultural land. Which then you land issues for farming and ranching or any land that has the potential for farming or ranching and that has soils identified by the Natural Resource and Conservation service as prime, if irrigated, statewide importance or local importance. The reasons for so doing is there are several noted below as to why we're proposing this definition. First of all it doesn't make much sense to speak of an agriculture activity unless you refer to the land upon which that activity is based. Then each type of soil, and we've requested that you include all three types of soils, will grow food on which our community – if not now certainly in the future – may be dependent upon for securing its produce. Another reason for providing this particular definition is that it will enable CFAC, and I believe we've already obtained the Commissioners blessing for so doing, to make an inventory of the agriculture lands that are present here in Missoula County. And if we can use this definition it will make it much easier to go about making that inventory and as subdivisions come along, then we can take a look at the agricultural land that is slowly being gobbled up and this may hopefully assist you in bringing about the mitigation of the impact on this extremely important natural resource that we have. Thank you for looking at this. I understand that this has already been, or is being addressed by the working group, but we wanted to bring it to your attention today.

Commissioner Carey: Thank you very much, Jim.

Ken Jenkins: To be honest, the newly printed sneaking up on final version I have not had a chance to read through that entire document yet. I'm glad there is one. I would like to respond, generally speaking, to the last two speakers and their comments. One of the things that I've tried to bring forth to this process as its gone on is the difference between large subdivisions where we're going to take 300 acres and put 600 units on it and small subdivisions – small rural subdivisions, mom and pop who want to split their land in half and that sort of thing. We do a lot of that type of work. We don't typically get involved in a lot of the bigger projects and as we've gone through this process I think there's a tendency for the focus to be mostly on the large developments that you see. And when we consider comments about connectivity, I certainly understand that connectivity is good and it is something that the County needs to be looking at. That being said, the County currently doesn't have a transportation plan that you can go to and look at areas of connectivity. So, connectivity has been a buzz word at the planning office for about the last couple years and what happens when you bring – for instance we brought in a two acre piece of land out in Orchard Homes that's within of about a block of a major east/west thoroughfare and within in of a block of a major south/north thoroughfare and we were asked to provide connectivity in two different directions through this piece of property that was two acres to begin with. Essentially when we're done with the connectivity that we've been asked to do we have nothing left to build on - so as you consider all of this and connectivity there needs to be some plan and some guidance for the planning office. I think very well intended that they're trying to follow what they're being asked to do, but there needs to be some guidance because connectivity isn't always a good idea. In some smaller subdivisions there is a great benefit to the public of quiet neighborhoods that don't have major streets running through them. And if every new subdivision that we create from this point forward – if every street that we create is number one public and number two connected to somewhere else, I think you lose a little bit of the livability of what we're creating. So yes, it's a good idea and I think certainly on large projects it's something that needs to be looked at, but I think it needs to – we need to be cautious how we use that. I don't think we want to have something in regs that require connectivity. My second comment has to do with the agricultural lands and impacts on agriculture. Once again I've been, as we go through this process, adamantly against defining prime Ag lands by soil type. It has to be tied to the use because a lot of the subdivisions, and again we're talking smaller subdivisions, you could probably take most of the Orchard Homes area and see that it's go prime ag land and there's nothing happening out there except knap weed. The practical use of that land for agricultural purposes certainly will never have any benefit to the public. The parcels are too small. Can someone take that five acre tract of land and make a living with it? Probably not – yet it may have prime Ag soils and so I think we need to be careful with that one. We could introduce a dilemma where every constituent of yours that happens to own a piece of property with prime Ag lands could really be up against it if life dictates that they sell some of their property. Again, I think the definition is a tough one to work with, but the use of the property and potential use of the property have to be part of that equation. Thank you.

Commissioner Carey: Ken, do you think we could reasonably ask ourselves if say five acres of prime ag land could be farmed by a couple who wants to supply local stores with fresh produce or get engaged in the Farmer's Market, is that something that we could take a look at under certain circumstances? Or should take a look at?

Ken Jenkins: Well, it would be interesting to do an economic assessment of that question. In today's cost of living in the Missoula Valley, could you take five acres and sustain yourself off of what you can make off of that? I suspect not.

Commissioner Carey: Or supplement their income perhaps.

Ken Jenkins: Perhaps.

Commissioner Carey: Thanks.

Debra Eveson: Just to touch a little on what Ken said. I grew up on a farm and to try and turn a tractor on five acres, you can't even lease that to someone to be quite honest with you. Not even for haying purposes. You need something a lot larger than five acres. I understand the importance of having a garden and needing to produce your own food. There was something that was introduced during World War II and they were called Victory Gardens. I don't know if many people here know what I'm talking about, but the government actually encouraged people to plant their own gardens. They gave you seeds to do it to make you more self sustaining so that the mass produced food could go overseas to our troops. We haven't been asked to do that in today's society however when push comes to shove – and I know I've seen them actually here on the valley floor, in around the University area – people still have victory gardens. So I think if people want to grow a garden, they find the land to do it, even on a small city lot. If you want to produce something that can supplement your income, you can do that on a small lot if that is something that you so choose to do. I know in most subdivisions that we do there are no covenants that say you can't have a garden. Most people do have a garden, be it vegetable, flower or whatever. So I think there is a possibility that if you want a garden, you can have one. I don't think that the underlying land and its present use should dictate what you have to do with that property for future generations. Thank you.

Paul Hubbard: I'm a research assistant for the Community Food and Agriculture Coalition, though I'm more comfortable speaking for myself. I'd love to respond to the previous two comments or speakers comments. I personally think that it's important that we do consider the soil in reviewing development proposals. One of the interesting things is if you actually chart the profitable agriculture in this country it tends to be around city centers and a lot of them are really small farms. Clark Fork Organics, I think they're on three acres. They send their kids to private school. There are other small farmers who are making a very good living on not a lot of land. If you wanted to hay it, if you wanted to grow grain, raise cattle is five acres enough? No way. But other people are really finding a niche in the market place within the city and making a living on a few acres. I also think that it's dangerous to assume that community gardens, home gardens are just going to take shape on their own and that we don't really need to plan for it, that people will find a way to grow food because we depend on the land in order to grow food. So I think that's important. I also agree that use needs to be included. The NRCS, I think, has done a pretty good job in the three categories – prime soils, soils of statewide important and local importance. I really urge that we include locally important soils in that because if you look at a map of those three soil types, that's a huge chunk of a very important resource to us. But current use is a way that local farmers and ranchers have shown that this is also an important resource that goes well beyond the NRCS's designations. So, I encourage us to include both of those – both current use and the three NRCS designations. As well, I would guess and this is more of a question, I don't know but when we look at the NRCS's three soil types, we're not really talking very much about the smaller parcels but we're looking at countywide – this is just a guess, it's really a question – is where would that have the most impact across the county on larger parcels or would we really be affecting those smaller parcels in the city? Because I do believe that we need to be efficient with land and no one likes the words infill, but people do have to go somewhere and I'm very practical about – I think it's important for us to try to live efficiently on the land and not sprawl out. And if that mean Orchard Homes versus another – then there's a transportation issue, connectivity if it's another subdivision 10 miles out, I'd rather see Orchard Homes personally. But I would be very curious to see what the NRCS designation would impact in reviewing developments. That's just a question. Thanks.

Commissioner Carey: Can anyone answer his question? Not at this time, I guess.

Andy Sponsler: In as much as I'd like to rebut some former comments, I'll resist the temptation because I know public hearings really shouldn't become that. I want to make a comment in regards to soils and farming. As most of you know I have a farm in the upper Rattlesnake and I can't tell you how difficult it is to farm in soil that's about 70% rock. Fortunately what I grow grows well in 70% rock. The thing that I'd like to say is that farming is valuable and there is something beyond the tangible or the immediate consequence

of market value of vegetables. There is the value of agriculture in the community. Just preserving the ability in the community to produce food, the value of showing people how food can be produced and that open space is preserved through agriculture. All those things are part of an equation that don't automatically figure in to market value. One thing that you might consider if you want to consider it in light of the subdivision and zoning regs is that armed with information about soil values and where the zones of really good soil are – and there's some excellent soil as a matter of fact some of the best soil in the state of Montana is right here in the Missoula Valley – if we have an inventory of that. There is a standard for that in these regs. Then that gives you the ability to assign some density and create special projects and this should be the next step for growth management, having regs that go a step further in determining how density should be awarded. Here's a good example: say for instance you have a project that comes up somewhere in the Missoula Valley that's sighted on an area identified with extremely good soils. There should be a mechanism for assigning density to part of that property that would either create a sum value for the owner of the property that would be equal to the situation where they would develop the whole property. I'm kind of going around in circles here, but the long and the short of it is that density would be awarded so that part of the property could remain in community gardens and open space and perhaps even additional density if there were additional performance criteria that were met. But that's the kind of performance we need in this valley and there are a lot of good ends that could be met. The needs of the people who own the land in terms of recouping investment, open space, preserving valuable agricultural land and providing food for community organizations like the Missoula Food Bank which is what our community gardens are doing right now to the tune of I think somewhere around 30 tons. These are the kinds of things that performance regulations in our zoning and our subdivision can do. It's not la la stuff, it's stuff that we can achieve and meet almost everyone's needs.

Seeing no further comment Commissioner Carey recessed this hearing at 3:00 p.m. The continuation of the subdivision regulations hearing will be October 2, 2006 in room 374.

Ann Mary Dussault: And I think, just to make it clear, that's for submission of any further written comments.

Commissioner Carey: Thank you.

Seeing no further business, Commissioner Carey recessed the hearing at 3:00 p.m.