

Adoption of 2006 Updated Subdivision Regulations, Public Meeting – October 2, 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, Chief Administrative Officer Ann Mary Dussault and Director of Public Works Greg Robertson.

Ann Mary Dussault: We are gathered here today to conclude a process we began quite a while ago for consideration of amendments to the subdivision regulations primarily having to do with updating the road standards and complying with action from the 2005 legislative session. You have before you Document D. Document D contains the changes that were agreed to last Friday. And Bill you have a highlighted copy and those areas indicate the areas that were changed after consideration last Friday. In addition you have before you a request for commissioner action which simply requests that you adopt resolution 2006-134 a resolution to amend Missoula County Subdivision regs. You also have resolution 2006-134 for you signatures should you choose to amend the subdivision regs. You have, I believe, the drafter comments which is a list of about 32 items. That's essentially a list that Linda sent this morning with Document D that just walks through the various changes and we won't go through all of those today. Finally, I think you have before you three amendments for your consideration and I'd like to add another one. Amendment one, I think Commissioners Evans you asked that this amendment be placed for consideration. This is the definition on page 10 2.2(5) which is the definition of Agriculture. The proposed amendment strikes soils from the definition. Amendment two, Commissioner Carey I believe this is the one you asked to have for consideration. It's the Planning Board's suggested definition of small lot subdivisions contained on page 17 2.2(80)(c). Amendment three and four are both recommendations from Myra – we got one of them, but we didn't get the other – Mike, after reviewing Myra's comments, recommended amendment three which is on page 57. It's essentially amending the title in 4.4 to clarify this as the review procedure for condominiums not exempt from review under section 8.2. Then amendment four would be a clarification on the language that we discussed last Friday. It's in 4.2.3, the last sentence would read: In addition, the notice shall provide that public comment can be made in writing to the planning office or in person to the governing body at the public hearing. So that would be amendment four. That's all I have by way of introduction. I think Greg and Denise are going to do a little bit of a summary for you and that's all I have.

Commissioner Curtiss: Ann Mary, number 25 on the drafter's notes it says Pg. 54 (add public comment phrase), I wondered if that's where we're going to end up putting it if it doesn't look like it got in?

Ann Mary Dussault: I'd have to go back and check. I didn't look that closely at that. There is one other thing I'd like add. I really want to thank, this is in not particular order, but the staff group that has worked very diligently on this project and that includes, of course, Denise from OPG and Greg Public Works, Mike Sehestedt County Attorney's Office.

Commissioner Carey: And you.

Ann Mary Dussault: Thank you, Ann Mary. Yes. Actually, they did the work, I just kind of herded cats now and then. Of course to Linda who was the team leader on the project, then also, to all of the members of the public, but particularly the working group. They stayed with us to the end and I think it's a much better product as a result of their input and the consideration and the time that you folks took to sit through it also. I think we have a much better product as a result of everyone's efforts. So I just wanted to say thank you to everyone who's been involved in this process.

Denise Alexander with OPG: The process to revise the County's Subdivision regulations started in 2002 when County Public Works began to work to review and revise the road standards. Then in 2004 a study of the Office of Planning and Grants reported that the zoning and subdivision regulations were poorly written and internally contradictory. The report suggested that county zoning and subdivision regulations be developed and adopted that are clear and concisely written by a qualified regulation writer. Also changes to state subdivision law have been adopted the last three legislative sessions that needed to be incorporated into the local regulations. The document before the County Commissioners today is a concise, clear and reorganized version of the current subdivision regulations. There are also revisions to the document that were made to conform to legislative changes since 2001 and there are some revisions to the design standards. I'll give a brief overview of most of the revisions and Greg, County Public Works Director, will give an overview of the changes to the road, pedestrian facilities and grading and drainage sections. Article I General Provisions was not substantially changed, except that sections dealing with permission to enter, construction timing and transfer of title were moved from Article 4 and vacating recorded plats was moved from Article 6. Construction timing was revised to clarify when a subdivision was considered submitted for the purpose of that section. The movement of sections between articles was

done so that any provisions that applied generally to subdivisions were all in one section. 23 words were removed from Article 2 definitions. Some of these words have common definitions that could be found in the dictionary. Some of these words were deleted due to changes in standards and other parts of the regulations such as rural and urban subdivisions and urban growth areas. 14 new definitions were added. The new definitions were added to conform to the requirements of legislation or to define terms in revised standards such as defining major and minor subdivisions, the primary review criteria and small lot and large lot subdivisions. The major changes to Article 3 Design Standards are revision to the hazardous land section to add specific reference to lands located in the floodways and the Wildland Residential Interface; deletion of the Density Bonus and Hillside Design Standards; deletion of reference to the Urban Growth Area; deletion of reference to 'remainder lots'; considerable changes to the road, pedestrian facilities and grading and drainage sections; revision the standard for lots to permit building sites with slopes in excess of 25% if a certified engineering plan and geotechnical investigation is provided; addition of specific irrigation easement requirements per House Bill 340 and provision that parkland may be dedicated to a school district. Article 4 is the Application and Review Procedure article. This article was substantially rewritten to conform to new state law passed by Senate Bill 116, Senate Bill 290 and House Bill 589. The major changes are: require a pre-application meeting and list required material; change the review process for minor subdivisions by including property owner notification and treat subsequent minors the same as first minors; establish a completeness and sufficiency review of the subdivision application and timelines for such review; address amended applications; address the procedure for multiple hearings when new information is presented to a governing body; add an explanation of what may be impacts to the primary review criteria; require a governing body to collect public comment on the water and sanitation information so that the subdivider can forward that information to the appropriate sanitary reviewing authority and revise the exemption from subdivision review for condominiums. Article 5 is the Submittal Requirements article. The article was revised to require water and sanitation information to be submitted with a preliminary plat for local subdivision review and to require more information related to the primary review criteria. Article 5 was designed to work hand in hand with a revised subdivision application that will be part of the subdivision administrative materials that will be attached to the new subdivision regulations. There were no changes made to Article 6 variances or Article 7 error corrections and plat adjustment procedure. Article 8, divisions of land exempt from review, is a new article necessitated by recent legislation that requires local governments to adopt evasion criteria for exemptions to the Montana Subdivision and Platting Act. The article provides procedures and criteria by which the governing body may review exemption requests to determine whether they are an attempt to evade subdivision law. Article 9, provisions for public and private improvements and maintenance is also a new article that moves all material regarding provisions for improvements into one article. There is also a new provision that requires corresponding maintenance RSID's to be created through the subdivision process for all new roads. Planning Board recommendations are as follows – the Planning Board reviewed Articles 1 through 4 and made recommendations for revision to those articles. The recommendations for changes to Articles 1, 2 and 4 and most of Article 3 were incorporated into the final document, however, several recommendations regarding Article 3 were not forwarded by the Board of County Commissioners or have been put on the list of emerging issues that will be addressed in future regulation revisions. The recommendations regarding Article 3 from the Planning Board that were not forwarded by the Board of County Commissioners are: the requirement that all roads be paved; a revision to park design standards to add 'urban appropriate' part standards for small lot subdivisions; the deletion of Short Courts and a revision to the definition of small lot subdivisions to include the requirement that they are located in an established sewer service area or an area zoned at a density of two or more dwelling unit per acres. The Planning Board also recommended retention of a revised hillside design standard. This recommendation was not forwarded by the Board of County Commissioners but will be put into the emerging issues file to be considered in the future along with revised fire standards requested by the rural Fire Chiefs; consideration of adding primary review criteria impact mitigation standards; consideration of requiring both public water and sewer where lots are less than 20,000 square feet at the request of the Missoula City/County environmental Health Division; addressing highway noise issues in land use planning per MDOT's suggestion and adopting aquifer protection measures per DNRC water quality divisions request. That is the conclusion of my presentation. I tried to make this very condensed, short and sweet, even though there are quite a few other things that were done that were just reorganization, renumbering and formatting. But in general I think that this revision will be much easier to use. It's much shorter and that's always a bonus. Now Greg can expand if the Chair so desires on the changes that were made to the roads, pedestrian facilities and the grading and drainage. Thank you.

Commissioner Evans: Before we do that I would like Michael to explain to me, if you would, the differences in the certificate of survey process from what we had before to what will be in here.

Mike Sehestedt: I don't think you'll notice it, Barbara. We simply moved what has been our practice and the questions I ask, or that are asked, moved them into the regulations along with our affidavit. We had done it under, essentially authority of an EG's opinion and then the legislature in effect codified that.

Commissioner Evans: Okay thank you.

Greg Robertson: I'll also try to be brief. To start off with on page 18, which is the beginning of Article 3, I'll briefly walk you through – this is the chapter that I probably spent the most time on. Under (2) of section 3.1 there was language added at the request of both DNRC and the Floodplain Administrator to include language dealing with floodplains. This section primarily deals with unmapped floodplains that are not currently contained on a FEMA panel map. The 15 square mile watershed is also somewhat of a compromise. I believe the model regs that are drafted call for 25 square mile watershed and DNRC had proposed a five mile watershed, this is somewhere in the middle. Next on page 21, this is the road standards section, this has changed significantly. Currently our regs call for all roads in Missoula County to be paved and I've not been real quiet about it, since I started here, that we just simply can't afford to do that. So I had proposed language that allowed for a gravel road standard on rural, small type subdivision lots which is primarily most of the things that we see here in conjunction with a dust abatement district. That's the biggest complaint that I hear on gravel roads is the dust associated with them, but the experience that we've had with dust palliatives over the last several years have proven them to be very appropriate and seem to be economical also.

Commissioner Evans: Greg, I'd like to interrupt for a second and tell the folks out in the audience that there are copies of these documents up here if they'd like to follow along. Thank you.

Greg Robertson: Table 3.2.1 also has changed in that it has been significantly simplified. This is just the surface width requirements for roadways. We used to have all sorts of tables that were – a table that was fairly large and cumbersome to work with. This is much simpler and much more straightforward and it seems to be acceptable to the working group. We also included language, and I can't remember exactly where it is, that geometric design standards for roads, utilizing the latest edition of the AASHTO Green book which is a policy on geometric design that is used throughout the 50 states. So that's adopted in here by reference as well as the standard specifications developed by the Montana Contractors Association, that's also included in here for subdivision related contract work. Under grading and drainage, that's an area that needed some revamp. The current regulations, if you can picture a drainage system like a bathtub with a drain the size of a drain but it didn't tell you how to size the tube itself for figuring out how much water you had to have. So we've included language in here that deals with the recurrence interval that needs to be used as well as the rainfall distribution and also discharge limitations. I've not really had much feedback one way or the other, but it represents the current practice that I've implemented in the last six years. I don't think there's much in the way of changes in utilities, easements. Parks and open space I can't really talk to you about that, but I can tell you about pavement. So if you have questions relating to that, you might ask Denise, she's probably a little more tooled to deal with that.

Denise Alexander: Greg, I think I went through the rest of that.

Greg Robertson: What's that?

Denise Alexander: I think I went through all the rest, so we're good.

Greg Robertson: Okay. I think that's really about all that I can think of. It's kind of all hazy.

Commissioner Carey: I imagine. Thanks Greg. Commissioners, any questions? At this point should we accept, entertain rather, some proposed amendments?

Mike Sehestedt: Here's what I think you should do in terms of parliamentary procedure. Probably move and second the document and then kind of go through it and move, second and discuss amendments. Dispose of the amendments one by one and then do as you will with the document as amended.

Commissioner Evans: At what point do we ask the public if they have any comments?

Mike Sehestedt: Probably after you've got the document moved and seconded and before you.

Commissioner Carey: Before we vote on it. That makes sense.

Mike Sehestedt: Yes. I think you could accept general comments and then probably accept comments on each amendment.

Commissioner Carey: I agree. Okay, good that's helpful. Is there a motion?

Commissioner Curtiss moved to adopt Document D as amended to the subdivision regulations for Missoula County. Commissioner Evans seconded and also recommended to allow staff to make no substantive changes and added a friendly amendment to the motion in the recognition that at some point we may require amendments that generally are standard procedure, but if we find we flubbed a little bit we can fix it.

Commissioner Curtiss: We always have the ability to make changes.

Ann Mary Dussault: I just want to request as part of the motion that you allow staff, with the consent of the County Attorney's office, to make non-substantive changes. In essence to act as a co-Commissioner and to differentiate that between substantive amendments which would have to come back through public hearing process.

Commissioner Carey: I think Commissioner Evans put that wording.

Ann Mary Dussault: I think that's what she meant.

Commissioner Evans: That's what I meant.

Commissioner Carey: And I think Commissioner Evans just wants to underline the fact that we can and will change this document from time to time.

Robert Doore: I'm the public affairs director for Realtors Association. For the record as well, I'm speaking on behalf of Colin Bangs, Nick Kaufmann and Tim Evans from our association. I'd like to read a letter we'd like to have on the record. On behalf of the Missoula Organization of Realtors, thank you for the time and effort that has gone into drafting necessary changes to the Missoula County Subdivision Regulations. We also appreciate the opportunity to work with the consultant Linda Stoll, on rewriting more effective language. We are concerned, however, with the process that we experienced in recent weeks. As you know, the 2005 legislature mandated the adoption of certain changes by October 1, 2006. In recognition of the importance of this legislation to the community, MOR sponsored a community forum on January 26 with Michael Kakuk, one of the drafters of the 2005 legislation. He outlined the requirements of the legislation and the amendments governing bodies needed to draft locally. Periodically after that we requested information about the status of the project and a timeline when we could expect to be called upon to participate in the discussions. Members of MOR were present in July when transportation issues were discussed. However, it wasn't until September, seven months after the initial community forum, that we received a draft document of over 80 pages (also 80 plus pages with the City's version) to review and prepare comments. Although we were still committed to participating in the process, due to short notice of meetings and member schedules, we were not able to attend some of the stakeholder meetings. In some instances, we received a draft and prepared comments, only to be provided with a different version (with different provisions from the one we had been working on) when we arrived for the meeting. Members of our association have spent as much time as possible to read the entire document and participate in discussions to produce the most workable language possible. However, we feel the job is far from over because there maybe unforeseen issues as we go forward with the new rules. It is our hope that the issues that arise over the next eight to 12 months we be re-evaluated and addressed. Ms. Stoll has created a list of emerging issues and we encourage ongoing work to address that list of issues. With the 2007 legislative set to convene in a few months, we face the possibility of additional mandates being issued. From our perspective, the process which resulted from the 2005 legislature was seriously flawed and prevented the timely development of an appropriate response by the local governing bodies. We continue to be committed to bringing the expertise of our members and the collective commitment of the Missoula Organization of Realtors to the community and to these discussions. On behalf of the over 750 Realtor members, we applaud the Commissioners and Ms. Stoll for taking the opportunity to conduct a long overdue review of the entire subdivision process. We support the changes made for compliance and look forward to working on the rest of the regulations. Please advise us as to when the final adopted document will be made available to the public. Thank you for your time, effort and leadership as we move forward on building a stronger community.

Mike Sehestedt: He raises a very important issue that I think everyone on the technical crew recognized and staff involved in this also recognized and that is that we really need to watch to see where we have problems and to not just set problems aside and save them until we have enough to justify going through amendment. We need to be alert, working and going forward amending this as necessary to respond and identify problems. Or at least kicking proposed amendments up to you as the Board of County Commissioners for perceived problems and letting you all make a decision on it. But I think it's a valid point. We went a long time without – kind of cobbling things together by interpretation and not moving to clearly delineate where we had issues. It's a variety of reasons and we just need to not let it happen again.

Commissioner Carey: Thanks Mike. I think I can speak on behalf of the Board that we totally concur with those thoughts.

Debra Eveson with Montana Northwest Company: Thank you for the opportunity to speak here today. Again, thank you to everyone who has worked on this project. Long hours have been put in – a lot of blood, sweat and tears as it were. I'm not exactly sure of the order in which we're doing this. I do have some comments to make about amendment one and amendment two that's on the agenda.

Commissioner Carey: We're dealing with Document D right now, accepting that and then entertaining amendments. At that point, you'll be able to speak to those.

Debra Eveson: Okay, then that's all I have at this time.

Myra Schultz: I'm a land use attorney and I'm here not to beat on you, but to thank you for all the consideration you've taken and also to second what Mike Sehestedt said because only when you start working with these regs will you realize whether or not they work. Thank you.

Commissioner Carey: Thank you, Myra. Thank you for your help as well.

Dick Ainsworth: I would like to echo what the other folks have said here. Thank Linda and the staff, Denise, Greg and Mike particularly. As a member of the working group, I think we are happy in general with the changes being proposed. Although I think we also feel that some of the legislation that has required these changes is flawed in some ways and you have to adopt these because the legislature said you have to. But hopefully the legislature, next session, will be a little wiser and make some changes so that we can undo some of the things that we think we're creating some problems here that we're not very crazy about, but we realize you haven't got any choice. So we're making the best of what we have to work with. Thank you.

Commissioner Carey: Seeing no further comment, we're ready to take action on the motion.

Commissioner Curtiss: I do have one question. We've had several of these discussions, so did we take out the pieces that we had talked about early on about requiring new subdivisions and establishing road maintenance RSID's?

Greg Robertson: That is still in there. It's in Chapter 9.

Commissioner Curtiss: Okay.

Commissioner Carey: All those in favor of the motion say I....

Mike Sehestedt: oooohhhh!!

Commissioner Curtiss: We have to do the amendments first.

Ann Mary Dussault: Now, that you've got this on the table...

Mike Sehestedt: Yep.

Commissioner Carey: Oh okay.

Mike Sehestedt: We can add it early.

Commissioner Carey: Okay, amendments.

Commissioner Evans moved to approve the following amendments that have been suggested and are listed on this document called Amendment One.

Ann Mary Dussault: Barbara, I would recommend that you take them one at a time.

Commissioner Carey: I knew you'd recommend that.

Commissioner Evans moved to accept amendment one which is for page 10 2.2 which is the definition of agriculture. Commissioner Curtiss seconded to have discussion.

Debra Eveson: The definition as it is in Document D, I believe you were told, came from the growth policy of Missoula County. That's why I was late, I ran down and I got that document. There is no definitions page in here for agricultural lands and I looked to see what they had to say about it. It was actually very interesting and if you want, I will entertain that. What I found remarkable about it was that even though the document was prepared in 2002 it says that in the state farming land has decreased and housing has increased. Whereas in Missoula Valley, we've actually increased the number of farms in Missoula County, so we've gone against the grain. I support taking out the soils, the reference to the soils. My reason for that is I've discussed this with the NRCS and basically anything under 15% slope would then be considered agricultural lands. They've updated that list in 2005, they were asked to by various organizations, the reasoning behind updating that list and including more soils into that list was so that more individuals could get federal funding for conservation easements and things like that. It was not the purpose to stop subdivisions. I think if you leave in the soils reference, and if you turn to pages 52 and 53 in Document D, page 52 says that we should allow developers to mitigate those impacts. Potential significant adverse impacts identified through their due process. On page 53 under agriculture, it says proposed subdivisions or associated improvements located on or adjacent to agricultural lands may be considered to have an impact on agriculture. Proposed subdivisions which will replace productive agricultural lands with residential or commercial development may be considered to have an impact on agriculture. I like the wording that is may, however if you're tying it to soil type by definition you're saying that you are impacting agriculture. I don't see where there's a tool that allows you to mitigate that soil type. I've seen this happen in other states and heaven forbid it ever happen here, where someone with five acres in Orchard Homes, they all of a sudden have big arm soils on there and they say it's a prime Ag land – they then go through and strip the top soil off and sell it so that they can then do a subdivision. I'm just warning you that I've seen that happen before, I'm not saying it's something that could happen here today, but I think you need to be very careful about tying agriculture to soil type. I would recommend that you keep the definition as it is on your amendment one. I'd also like to point out that the city has adopted the same language that is on amendment one. They have stricken the part that relates to soil type.

Commissioner Curtiss: I have a question for Denise. As you're reviewing a subdivision, what tool would you have to address what Deb just mentioned? If soil is the only thing that is saying it's an impact on agriculture, how would you be weighing that?

Denise Alexander: Well, right now when we review subdivisions, we always let you know what soil types the land has. We usually weigh every other agency comment that we have and the location of the property and the development pattern around it before we make a recommendation to the governing body. But I don't really, I don't see that having the soil type in the definition would hinder or help what our recommendations are.

Commissioner Carey: Thank you.

Josh Slotnick: I wear a handful of different hats, but I'm here just representing my family and my family's farm. We have a small, what would traditionally be called a truck farm, in the Target Range area. I came just to comment on this amendment. From a farmers perspective there is one fundamental truth that is embodied in this amendment and that is that all agriculture depends upon soil. All food production depends upon soil. If you all believe, or feel, that having agriculture as part of the future of Missoula is important then I would urge you to maintain the language that has not yet been stricken. If we were to say yes agriculture is important and we'd love to see more of it, but soil doesn't matter, then we're basically saying that agriculture doesn't matter. You can't farm without soil, that's just the bottom line truth. Thanks.

Jim Cusker: I'm speaking on behalf of the Community Coalition for Food and Agriculture. But I also speak on behalf of myself. I have lived in the Missoula Valley on the family farm, which is still productive, for over 60 years. It has been remarkable to see the productive farms go by the wayside. As you started Reserve Street and go west on Mullan Road, there are commercial entities, residential districts and just today I was eyeing an asphalt road that went through the oldest ranches there in Missoula that is on prime soils. As Josh pointed out it is irrational to suggest that you can separate the soils from agriculture. I think I can also speak for those hundreds of vendors at the Farmers Markets that we have here, having been on myself for 15 years. We now have two flourishing markets and I'm sure I can speak for all of the consumers that flock there on Tuesdays and Saturdays throughout the summer and are enjoying the luxurious produce that is put forth by these largely small scale folks. I'm also quite comfortable as suggesting that I can speak for the farmers and ranchers that were fellow members of the Open Lands Task Force working group that you Commissioners so wisely appointed. It was in December of last year, after just a few meetings, and we had met with people in our various regions throughout the County, that we obtained the feedback and recommended to the Commissioners at that time that the only thing that's going to keep these farm and ranch families on the land are some sort of tools that they can use so that they don't have to succumb to the all mighty dollar. You folks, again very wisely, said okay lets add this open space mill levy. I thank you for that. I know that I can speak for the hundreds of folks who showed up at the Harvest Festival this past Friday evening at the University of Montana and believe me there weren't just a bunch of old fogies like myself. There were a lot of young folks there, some of them even younger than Josh. When the speaker asked the question how many of you are farmers or ranchers? There were a few of us who raised our hands. Then she asked how many of you have parents who lived on a farm? A few more hands came up. Grandparents, a few more. As our roots seem to get a little further from the soil, I think we seem to lose sight of the value of it. I know as I was walking through a lush pasture this morning out at our place, admiring the growth even at this time of the year – prime soils, I thought you've got to speak for the land. There aren't too many that do because lets face it, our roots are removed from the soil. I would hardly suggest that you don't go along with this amendment. The soils are there. Agriculture is necessary – I've heard people say in opposition to the proposal that times have changed here in Missoula, that you don't need that land for growing produce. I would have to suggest that I agree with the fact that times have changed, but they always will. When, down the pike, we see times change again where it is all together too costly to import because of the high price of fossil fuel, produce from other parts of the country. We may depend upon this soil that we have here in the agriculture, or the potential agriculture that exists here in the Missoula Valley. I would suggest that we not look at the short term gain, but instead look at the heritage that we may be forsaking for our great grandchildren, etcetera. So, it's my pleasure to speak for the soil. Thank you.

Ken Jenkins with Montana Northwest Company: I would just like to voice my support for the amendment in that it is less restrictive and would designate less land in Missoula County as agriculture at this time. We've already talked about the desire and ability to amend these subdivision regulations and certainly at some point when it might be more appropriate, the definition of agriculture could be tightened up to include soils. As of right now though, the definition is almost all inclusive. As Deb mentioned, most of Missoula on lands that are less than 15% slope would fall into these agricultural or into this definition by soil type. Until there is discussion as to mitigation of that fact, and what that means to land development, until we have that discussion it seems to me to be premature to define most of the developable land in Missoula County as agricultural. There has been a lot of long range planning that has identified areas west of Missoula, west of urban Missoula, as target growth areas and yet at the same time those areas also have the type of soils that we're discussing. And I know it's an emerging issue, but until we know what we're going to do about the fact that there's Ag soils, the definition should be a little looser until we know what the impacts will be. If we stick strictly with a definition based on soil types, I can certainly make an argument that when we go into a piece of property, the top soil is stripped off of the road template and the house templates and for the most part the top soil is replaced elsewhere on the property. We have mitigated, we protected the soils. I'm making that sort of as an arbitrary point that there's more to it than soils. There is the use of the land. We've heard that small parcels can be productive farms. There is nothing in these regulations now that talks about, or in state law for that matter, that talks about what we do if it's prime Ag soil. Do we not subdivide period? Do we mitigate such as the wetlands where there's no net loss? Do we set it aside as parklands? Do we use the open space fund and buy it out from under the developers if it's that important? All of those things need to be discussed before we bring in a definition that encompasses all of Missoula County. I guess that's all I have. I just would be in support of the less intrusive definition at this point in time and encourage further discussion. One other point I'd like to make is if we're going to impose a definition that includes most of the developable land in Missoula County, there's nothing in these regulations that requires farmers to subdivide. We hear people who have land that do raise food or crops speak passionately about limiting development on that type of property, but there is nothing here that says

that they have to subdivide. What typically happens is the dollars and cents get to the point where they can't resist, or it makes more economical sense for them. At some point, maybe the County – maybe it isn't an open space bond issue or something like that where if it's important enough to the residents of the County that the County could then step in and acquire those lands. But to try to regulate all subdivisions that have Ag soils is going to be a very difficult thing and a very difficult thing to mitigate with nothing in writing as to how we might go about doing that. If we're going to prohibit development on Ag soils that discussion probably should include all of the farmers and ranchers and the people that have that type of property. Thank you.

Dick Ainsworth: I would like to speak in favor of the amendment. We certainly need to protect our agricultural land in Missoula County, but adopting the definition with the proposed stricken language included will create a sort of head on collision between the growth plans for the County and protection of the Ag land. One of the – and I unfortunately didn't bring my proposed city regulations with me – but the city has, and I guess they haven't technically adopted theirs yet although I think they will tonight, isn't that correct Denise?

Denise Alexander: nods yes.

Dick Ainsworth: One of the things that the city did, and their draft at this point does not include this stricken language as I think someone mentioned, but they included another sentence. Of course one of the things you folks are doing is getting rid of the urban growth area in your regulations. The city has not gotten rid of the urban growth area, but they included language that says that areas within the urban growth area are deemed to not have significant impacts on these listed which includes agricultural. This makes sense if the urban growth area, the plans for the community is said properties within the urban growth area are planned for growth. So basically they've said that areas within the urban growth area are deemed to not have significant impacts. So even if this definition was left as it is and that language was not stricken, if you were proposing to develop a piece of property that was within the urban growth area the way theirs is worded it would be deemed to not have significant impacts and you wouldn't have this conflict that you're potentially creating here. I might suggest that you might include something similar to that in yours and actually the language that was included in amendment two was aimed at the same sort of situation when they were talking about the definition of small lots subdivisions, and the Planning Board was talking about the urban growth area but they knew that the county didn't have an urban growth area so instead of saying urban growth area they said it's located in an established sewer service area. In the city the sewer service area basically is the same as the urban growth area. So I suggest that you could include some language that would say that lands or developments within the established sewer service area would be deemed to not have significant impacts, or something to that effect. And I do agree with Ken, I do think it's a problem that we need to spend more time dealing with. This issue kind of came up at the eleventh hour, or close to it, and everyone has hurried up to address it. It's certainly a big concern and something that needs to be addressed, but I'm not sure that we've spent enough time to try to figure out a good solution to it. And I'm concerned with the language that's been proposed to be added I think it's very restrictive. I would speak in favor of amendment one and maybe suggest that you could add language similar to what I mentioned. Thank you.

Myra Schultz: I want to point out to you that these are county subdivision regulations and what the city does for the City of Missoula is completely different than what the County Commissioners do for the county as a whole. In my experience over the last ten years of representing counties, one of the biggest issues is the impact on agriculture and whether a county can deny a subdivision if it removes prime agricultural land from production. Of course, as you probably know and as people have testified, there's no specific authorization for that. In every staff report I've ever seen, they give the Commissioners the soil types on the proposed subdivision. If you're not going to take that into consideration, I don't even know why the staff does that other than it at least gives you some idea of whether it's expansive soil or that kind of thing. If you pass the amendment with the stricken language, I do suggest that you put this on the list of emerging issues. As Linda Stoll pointed out repeatedly to the working group, this is just a definition. I do not recommend that Missoula County ignore the primary criteria. I wasn't at the Planning Board meeting, so I don't know what the City of Missoula did, but it sounds to me like for the urban growth area they're not going to consider the effects on agriculture, agricultural water user facilities, local services, natural environment, wildlife and wildlife habitat and public health and safety. I mean I can't – surely that's not what the City of Missoula is doing in the urban growth area. If it is, then I'm concerned about the future of development in the City of Missoula. Thank you.

Commissioner Evans: Certainly everyone in this room likes to eat. I like to eat and I think it's admirable that people want to get out of bed in the morning and they want to go plow the ground. But not everyone does. This is an aging community. The whole country is aging and we're living longer. I tell you quite frankly I ain't gonna get out of bed to go plow. I don't have the strength to do that anymore. If we are required and if we include every single kind of land that there is in our prime agricultural definition, I think we're sending a message that the landowner or the person who's buying it will indeed go out and strip the top soil, the growable soil, and they'll move it and sell it. Then the subdivision which they would likely be approved for will not have good soil for shrubbery and such that the people want to put in. I think that sends a really bad message. I admire the folks who farm. I've lived here for over 60 years, I remember Hughes Gardens. The stores in town love to sell local produce and we like to buy it and I certainly don't want to impact that. But putting every single kind of soil and including it as prime agricultural land, I don't think makes sense. I lived in the South Hills guys, I felt sorry for the Egyptians every time I went out and worked in that clay. It was terrible. It might be great soil for growing a garden, but I doubt it. So my perspective is we don't include the last language. I think the definition as shown in Document D is clearly inclusive enough. That's why I would like to have the amendment and I have no problem with putting it on the emerging issues and looking at it further, but I think we should start with a little bit and work towards more later.

Commissioner Curtiss: I seconded the motion so we could have the discussion on the record, but I don't agree with the motion. I think it is important that we have the Ag lands. We're called the Garden City for a reason. We had truck gardens here. The county has done the Coalition for Food and Agriculture because we know that we need to find ways to have the agricultural community and give them some backing here. We're not making anymore dirt. I think it would be interesting to know how many acres it would take to feed the people who live in Missoula. If we couldn't have food trucked in here or flown in here for a week, how much soil would we need? Josh told us he has a small farm, but he produces food we could all eat. This is only one factor that we weigh when we're looking at subdivisions and I don't think we give it enough weight, really. So I will vote against the motion to strike that language. I think it has some good backing from the folks that work in agriculture.

Commissioner Carey: I think the proponents to the amendment make a lot of valid points and I think it is an emerging issue. But in my view, really what it's doing is saying that we may take a look at it. And may is used about a half a dozen times. I think there are a number of people in Missoula County who would love to have shalls instead of mays in this language, so I would like to see us put it on as an emerging issue. I would vote to defeat the amendment, recognizing that it's just the beginning and that we're going to run into circumstances which will lead us to change it at some point, probably not too far from now. But I think it needs to stay in there because without referencing soils, it's pretty hard to talk about defining agriculture. So, look at it as a beginning. Look at it as something that we will no doubt revisit here pretty soon and also look at it as a shift – at least I see kind of a shift in our society's relationship to food. You see it with people wanting locally grown produce, organically grown produce. You see restaurants using it now. 10 or 15 years ago didn't even think about it. Schools using locally grown produce. Who knows how much produce we could ever do here, but it's probably a lot more than we're doing now. Just generally I think food in our culture is beginning to take on a much great significance – how it's produce, how it's transported, how it's prepared. So it could well be 25 years from now we'll be putting shall in here I don't know, but let's keep it in for now and then see what bumps in the road we hit.

Commissioner Evans moved to accept amendment one which is for page 10 2.2 which is to change the definition of agriculture and delete wording referring to soil types defined by the Natural Resource Conservation Service. Commissioner Carey seconded to have discussion. The motion carried on a vote of 2-1. Commissioner Curtiss was opposed.

Commissioner Curtiss moved to approve amendment number two. Commissioner Evans seconded for discussion.

Debra Eveson: I would ask that you not approve amendment two and that you keep it as it is in Document D. The reasoning is this is the wastewater sewer area here (on a map provided for the hearing), as of 2005. Reserve Street is in yellow for reference. The pink is the air stagnation zone, everything within that area by definition, already has to be paved – all roads, driveways, everything. The green here, is the new Wye-Mullan extension of the sewer line and it doesn't cover this whole area, as you can see. Well you're telling people who own property out here, say they want to do six acres lots, just because they're in the wastewater/sewer area that means even though they're over 500 feet, they can't connect to the sewer line. So they dry lay sewer, which is a given since they're in the sewer area, they'd have to do that – but what you're telling them is that they then have to put in curb, gutter and sidewalk. The whole objective of this

document is to limit the amount of variances that you're going to be seeing. If you include the language that's in your amendment, I can guarantee you're going to see a whole bunch of variances from people developing out here where growth is slated and encouraged to be. In this same area, in our newly adopted 2005 Wye-Mullan Plan, you're encouraging growth of one dwelling unit per five acres, one dwelling unit per acre, one dwelling unit per 10 acres even out there. That kind of large lot I think does not necessarily warrant installing curb, gutter and sidewalk. So I would ask that you keep the language as it is written in Document D and not approve the amendment, thank you.

Mike Sehestedt: Maybe I could give a little bit of staff background on this. This particular amendment is a Planning Board recommendation. I think the purpose of the Planning Board was to try to get at the idea of requiring urban level services in the form of streets and roads in areas that are either urbanized or soon to be urbanized. I'm not speaking in favor, I'm simply trying to explain why the Planning Board made this amendment. What you do with it is up to you. But their concern is that we would have areas developing as large lot, one per acre, where we knew that they were soon to become increased or higher density in the area and they were grappling with that problem of how in those areas of developing urban density do we make sure that they have urban quality streets. I don't know whether they succeeded with this, but that was their purpose. That was just offered by way of background.

Commissioner Carey: Thank you Michael, that's helpful.

Dick Ainsworth: I would speak in opposition to amendment two. The small lot subdivision language was – as originally proposed without these changes was a definition our working group spent a lot of time with and I think it's a good one. Although I suspect that after we've lived with that awhile, it's one that we debated at some length because we've switched from urban to rural sorts of standards and small lot to large lot and I suspect you will probably learn that these definitions need a little work. And as Mike explained, the Planning Board was looking at these areas that – as Deb mentioned may be out on Mullan Road and people are wanting to do acre and two acre lots and somewhere in the foreseeable future, they may be further divided and then they should perhaps have curb and gutter and more urban style of improvements. Those can always come later. I think one of the things we have a serious problem with in this county, with the community, is affordable housing. Of course one of the things that makes it unaffordable is more improvements required. In the 40 or 50 years that I've been doing this, back when I started what they used to do – subdivisions, even out off of Russell like where our office is south of the fairgrounds, the subdivisions originally had a gravel road and people moved in and after they lived there for a while and got tired of the dust they got together and did a SID and paved the roads when they could afford it. Then they would pave it and a few years later they would see the need for sidewalks, so they'd do another SID and put in sidewalks and gutters. Again, as the group in the neighborhood felt and saw the demand and could afford it. If you adopt this amendment you're going to have subdivisions with one, two or three acres lots that would have curbs and gutters and the cost to those lots would be horrendous. I don't think we need to try to drive people to necessarily make smaller lots because we're requiring such significant improvements that they can't afford to make a little bit larger lots. So I think the definition as it was is good and I would speak against the amendment. Thank you.

Ken Jenkins: I would also speak against the amendment in that in the last several years I cannot think of one subdivision outside of the Missoula city limits that we've worked on where it would be economically feasible to do curb, gutter and boulevard sidewalks because we don't have sewer out there. I realize that these areas are in the sewer service district, but in many cases it's going to be years and years and years before the sewer comes out there. It's just not economically feasible to do one, two, three or four acre lots and put that type of infrastructure in on the hope that someday the sewer might be there. It may or may not, we don't – none of us know that. So, I can't think of a project that I've done in last several years in those types of areas that we wouldn't or didn't ask for the variance. Thank you.

Commissioner Carey: Ken, it seems like the opponents to the amendment are working under the assumption that there won't be any variances granted, is that the case?

Ken Jenkins: Well, I know that one of the introductory premises of this whole operation here was to eliminate those areas that are constantly variances. With that in mind, I guess my understanding would be that we will have a set of regulations here that are a little more solid and that the Commissioners may be less inclined to grant variances given that we've theoretically eliminated some of those items, or changed the regulations such that it's not as necessary as it used to be, I guess.

Commissioner Carey: I think that's a correct evaluation, but I also think that all of us try to be open minded about making the distinctions when they're necessary.

Ken Jenkins: As a side note, variances for those of us in the business of taking a client with an unknown and providing them some assurance that yes we can get this done, variances are the things that get your blood pressure up because you don't have the answer until you're done spending all their money. We don't like them either, so I think if they can be avoided that's good. I was glad that that was one of the goals of this exercise to eliminate those. But in this case, I think there is going to be a lot of property outside the city that would still lend itself to a variance.

Mike Sehestedt: Let me touch here with a little bit of follow up that I wanted to add. Deb has thoughtfully provided the city sewer service area map. I want to point out to you that we also have sewer service areas in the Lolo area for RSID 901 and there is an established sewer district and hence soon-to-be sewer service area in Seeley Lake to which this would apply. I honestly think that what the Planning Board was driving at probably isn't the idea of requiring these large lot subdivisions out in the clay hills and the areas where our very own plan calls for larger lots under the zoning. I think no matter what action the Commissioners take, whichever way the vote goes on this particular amendment, this is going to be an area where we need further study and refinement. The Planning Board raises valid issues as do all of the people who spoke in opposition and I'm not suggesting an answer, I'm just saying whatever action you take is going to result in further study. I think clearly if you adopt the Planning Board proposed amendment, they will see and you will see many more requests for variances with a certain level of uncertainty. If in fact the variances are almost certain, then we ought to reflect them in the regs. If the variances aren't certain, then blood pressure goes up and the Planning Board meeting and the Commissioners meeting become an emotional moment for the developer and the developer's representatives. I'm trying very desperately to be even handed here and if I'm failing, I'm sorry.

Commissioner Curtiss: Mr. Chairman, I put the motion on the table just for discussion today because I think that in our work group last week, I agree with the people who have spoken today. This would require them to come forward with a variance which we didn't want to do and I think if you read it carefully the way it is in Document D, we don't need to change it. While I understand what the Planning Board is saying about the need for urban improvements, if they start out with a lot that's four acres and eventually the sewer does get there it'll go through subdivision again and we'd have the opportunity at that time to get the urban improvements that are needed. So I vote against this.

Commissioner Evans: You're voting against your own motion or you're withdrawing it?

Commissioner Carey: She just made it for discussion.

Commissioner Evans: Okay, I'm going to vote against it as well.

Commissioner Carey: Well again, Michael, I think you're right both opponents and proponents have very strong, valid arguments. It could go either way I suppose.

Commissioner Curtiss moved to approve amendment number two to change the definition of Small Lot Subdivisions. Commissioner Evans seconded for discussion. The motion failed 1-2. Commissioner Carey in favor.

Mike Sehestedt: Let me give a little background on amendment three.

Commissioner Curtiss: Should we put the motion on the table first?

Mike Sehestedt: Yes.

Commissioner Curtiss moved to adopt amendment three and change the title for section 4.4 to **REVIEW PROCEDURE FOR CONDOMINIUMS NOT EXEMPT FROM REVIEW UNDER SECTION 8.2.** Commissioner Evans seconded for discussion.

Mike Sehestedt: Okay, now a little background. I think everyone agrees with what I think this amendment does. Certain condominiums are exempt from review under specified statutory criteria. Other condominiums are not exempt from review. We've got the review procedure for condominiums in section 4.4. What this does is preferences you then to – it makes it clear that this review procedure is only for

condominiums that are not exempt from review under section 8.2. When you hit review procedure for condominiums you don't say, 'whoa stop the boat,' you say, 'oops I need to go check and make sure this condominium is not exempt from review.' I think everyone, the working group and probably all of the Commissioners, certainly all of the OPG staff are aware of that now but it will make these regulations speak a little more clearly to those that are not so initiated.

Myra Schultz: I asked for an amendment and I think what Mike suggested satisfies what I was concerned about. Thank you.

Commissioner Curtiss moved to adopt amendment three and change the title for section 4.4 to **REVIEW PROCEDURE FOR CONDOMINIUMS NOT EXEMPT FROM REVIEW UNDER SECTION 8.2.**

Commissioner Evans seconded for discussion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved to approve amendment four to make Section 4.2.3 to read In addition the notice shall provide that public comment can be made in writing to the planning office or in person to the governing body at the public meeting. Commissioner Evans seconded for discussion.

Ann Mary Dussault: This would strike the last sentence and then insert the new language.

Denise Alexander: I don't know if we'd want to strike the whole last sentence, because it does say the notice shall indicate the timeframe per review.

Mike Sehestedt: Strike everything after meeting.

Denise Alexander: After public meeting, yes.

Mike Sehestedt: So it would then read, the notice shall indicate the timeframe for review and the date of the governing body public meeting. In addition the notice shall provide....

Denise Alexander: Yes.

Myra Schultz: I ask for this change as I look at it on the board, maybe the word can should be may. Who's an expert in grammar here? Thank you.

Commissioner Carey: Okay, change the can to may.

Commissioner Curtiss: I'd just like to thank Myra for bringing it to our attention that even though it's our practice, it wasn't written anywhere.

Commissioner Carey: Right yes, thanks Myra.

Commissioner Curtiss moved to approve amendment four to make Section 4.2.3 to read In addition the notice shall provide that public comment may be made in writing to the planning office or in person to the governing body at the public meeting. Commissioner Evans seconded for discussion. The motion carried on a vote of 3-0.

Denise Alexander: I just went through the whole Document D and I think there are some corrections that are probably non-substantive that we can make later, but I wasn't sure about three of them and thought I might want to run them by you. On page 26, under Standard for Lots, the recommendation from Friday's technical group and 3.3.12 right now there's a change there that's successful – slopes in excess of 25% shall be deemed unsuitable for building sites and shall be shown as such on the plat, unless a certified engineering plan and geotechnical investigation is provided. Then the next sentence says all lots must have a minimum contiguous area of 2000 square feet at slopes less than 25%. I think the recommendation was that should say all lots must have a minimum contiguous area of 2000 square feet that is not deemed hazardous.

Mike Sehestedt: I believe that's correct.

Ann Mary Dussault: Say that one more time, please.

Denise Alexander: So the last sentence would read say all lots must have a minimum contiguous area of 2000 square feet that is not deemed hazardous.

Commissioner Carey: So we'll incorporate that language? Thanks.

Denise Alexander: And then the next one down, number 3B I think just to make things clear we recommended that B say no single lot shall be divided by a street, road, alley, road right-of-way or road easement or other lot. So add the word road before easement.

Commissioner Carey: Okay, thank you.

Denise Alexander: And I think that's all. The rest of them are just numbers and formatting issues.

Commissioner Curtiss: So if this went out to the public the way it is, wouldn't it probably be a good idea to do the changes in an amendment?

Mike Sehestedt: I think it wouldn't hurt to...

Ann Mary Dussault: Why don't you just – if you move that, I'll write it down.

Commissioner Curtiss moved to correct 3.3.12 Standard for Lots numbers 2 and 3 as was just worded by Denise Alexander. Commissioner Evans seconded. The motion carried on a vote of 3-0.

Commissioner Curtiss moved to adopt Document D as amended to the subdivision regulations for Missoula County. 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.