

**Public Meeting – October 4, 2006** Commissioner Carey called the meeting to order at 1:30 p.m. Also present were Commissioner Curtiss, Commissioner Evans and Chief Deputy County Attorney Mike Sehestedt.

## **PLEDGE OF ALLEGIANCE**

### **PUBLIC COMMENT**

Will Biggs: I live at 7402 Peregrine Court and that's in the Country Crest Subdivision. I was before you a couple of months ago to get my lot split as a number of people are. I thank you for doing that. But one of the conditions that you set on it was that one any homes that I was to build on one of the new lots would have to have fire sprinklers in the home. I didn't think that was a real good idea, but that was your decision and so that's fine. But then one of my neighbors split his lot and someone came in and built a home, it's 7452 Peregrine Court. No sprinklers. So I contacted OPG to ask them why and I was referred to Pat Kylie. Pat told me said that it wasn't really clearly explained to those people and so it was the mistake of OPG and so OPG was just going to let them pass on it. I then asked about me. He said I didn't get a pass. I just thought it was – it would be the right thing to do to bring this to your attention so that's what I'm doing. I'm just wondering what is the County's position on that?

Commissioner Carey: First, when was 7452 built?

Will Biggs: Well, it was in the Parade of Homes that just happened here last month, so...

Commissioner Carey: Recently then.

Will Biggs: Yeah, just recently. This individual who split it is my next door neighbor. He started his split a little bit before I did. He was a little ahead of me, but his was like all of them, that was a condition of the split.

Commissioner Carey: Mike, do you want to respond in terms of the County's position and the options?

Mike Sehestedt: As the Commissioners will recall, I brought this situation to your attention as soon as I heard of it. There was a straight out failure by OPG to adequately review the record of the particular subdivision in question. As a result, the person's application was, I believe, even marked no fire sprinkler required and of course they went forth happily and contracted and built. To the best of my knowledge of all of the Country Crest splits we've had, it's the only time that happened and I am assured by OPG that it will never happen again. As I indicated, this is exactly the sort of question that I anticipated being raised by that problem and I leave the resolution of it to the Board. We're in a situation where, given what happened we were stopped or legally barred from going back. The first thing I did when I heard about it was to go find out how far they were on the house and at that point the house was complete. So we - and we were again given estoppels arguments that happened when a permit's issued erroneously we were pretty much precluded from enforcing it against this particular house. That's...

Commissioner Curtiss: Mike, are you saying that we did not have a condition in that particular one?

Mike Sehestedt: We did have a condition in that particular one. When you approved the subdivision, the condition was I believe the standard either fire flow water supply of a 1000 gallons a minute or install residential fire sprinklers. The individual who bought the lot came in to get his zoning compliance or land use permit and his building permit. It was marked by OPG, as I understand it, fire sprinklers not required and so the person went forward and built the home. It's in Missoula Rural, I don't know if they have any – I see we have a representative here today – I don't know if they have any additional information on it or not. But that's what I know of it. I would've – as you know I act and force that requirement where I can – in this case the ship had sailed, the train has left whatever you want to say and it was beyond our ability legally to enforce it at that point.

Commissioner Evans: How many more houses – how many more pieces of land are yet to split out there?

Mike Sehestedt: That I can't answer. Jennie do you have any idea?

Jennie Dixon: I don't.

Will Biggs: I think there's about five or six people that are – cause now they're doing it in a group?  
Commissioner Evans: And I think we approved five or six last meeting.

Will Biggs: I know there was a notice out there that there was going to be – that those five or six were going to come before you here last meeting or something.

Mike Sehestedt: That was approved with the fire sprinklers requirement. You've been very consistent about imposing that requirement. I do not know and I don't think Jennie would know, or would be the appropriate person to ask, how the mistake happened at OPG on this particular house. But it clearly was an error on our part and...

Will Biggs: Our problem is, okay there was an error made somewhere, but when I split mine – I've got five lots out there and it's about a \$7,000 bill for each one of them. Since I'm not going to build them all tomorrow, some of those in the tail end are going to be more than that. So it's real money and I just think that you guys have set a precedent here. Thank you very much.

Pete Peterson: Chairman Carey and Commissioners Evans and Curtiss, I'm here from the Chamber of Commerce and our Forest Resource Committee. We have an annual timber tour every year. I wanted to bring it to everyone's attention. I'm sure I don't have to remind you of the tremendous impact wood product still has in this city and county with over 2000 employees living within the county lines and over \$100 million payroll let alone all the other taxes and income that goes into this city and county. But we wanted to invite you because it's a special tour. We'll be looking at a whole log chipping operation in Missoula and seeing that chipper in action. We'll be visiting Five Valley's Salvage Sale near Missoula where Greg Tollefson of Five Valley's Land Trust will speak along with Mike Vetter and Matt Arno. This was an interesting thing and some of the products actually being sold and money returned and Greg was quite excited about that. And then we'll end up and John Ottman's recently harvested area up in Huson. He will discuss forest management options in the urban interface along with forest health issues including insect, disease and fire. Then we go out to the Frenchtown golf club for a big dinner and return about 7:00 on Friday night, October 13. It's all free. It's open to the public and reservations, as you see on the bottom of the flyer are needed. We have two busses reserved, that's about 80 people and that's the max we can take. So just wanted to bring it to your attention and encourage you to attend that if you haven't. It's an exciting, enjoyable kind of tour. Thank you kindly.

Commissioner Carey: Thank you for taking the time to come and invite us, Pete.

Commissioner Evans: Mr. Biggs, before you leave, I want you to know that your distress is not overlooked. I feel terrible about it. Since I'm one of the ones who helped pass that rule based on the recommendations of the fire department, I also had to put them in my house and I wasn't real thrilled with the cost. If it's any solace to you, my guess is that over a period of time there will probably be more and more people who will take up installing those systems. So they may end up less expensive than those who have a corner on the market today. Have you spoken to our Rural Fire Department to understand the rational for why we require this? If not, Curt is here and he gives a really good talk on it.

Will Biggs: I've heard them speak on it. I just don't understand why – I have heard the rational behind it. I just don't understand why my house that was built eight years ago is deemed okay and it's not going to burn down, but the one that I'm going to build right next door is prone to burn. I understand what their rational is, but I just think that – I think what's good for the goose is good for the gander. Whether somebody made a mistake or not, it's just hard to swallow.

Commissioner Evans: Is there any legal thing we can do to help Mr. Biggs, Michael?

Mike Sehestedt: Not without changing your policy and the subdivision regs.

Commissioner Evans: I really apologize. I'm very sorry.

Commissioner Curtiss: Mike, maybe you ought to explain what you mean by the fact that his house is built too far along for us to stop it. The legality of it.

Mike Sehestedt: I think his reference this time was the fact that he built out there before we were addressing the fire concerns.

Commissioner Curtiss: Right.

Mike Sehestedt: Essentially what happened out there is we just gave a variance to the fire flows in the original Country Crest. As we began giving more and more – having more and more of those variance requests appear we felt we needed to develop some alternative to just saying everything's okay even though it doesn't meet standards. The alternative we came up with was to allow, instead of providing fire flows, the installation of residential sprinklers. But prior to that time we did a number of different things to try to address the issues that arise out of not having adequate fire flows as required by the fire code in all of these subdivisions that we're doing. Typically our subdivisions aren't big enough to economically sustain a water system that meets standards, so one you give a variance and just say nothing need be done or alternatively the fire sprinklers are one alternative. Before we did that, we had the quasi impact fee contribution to the large diameter hose fund or to equipment funds where the various fire departments try to come up with funding. We moved from those impact fees – well we moved from that particular aspect of an impact fee to residential sprinklers as an alternative some years ago and you've been pretty consistent. With five lots, it may be there's a third option of providing an alternative water supply. We, subject to the approval of the fire department, have gone with cisterns and hydrants. The whole purpose is to make sure that - have water on the fire early does more or if you don't have that when the fire department gets there and they use up their onboard water, they've got a ready source of re-supply. Those are the policy reasons underlying it. The sprinkler option is - I really can't remember how long it's been an option, three or four or five years. Before that, there were various things from cisterns with hydrant connections to pumps with power supplies – a well and a separate pump. Then a large diameter hose fund/equipment contribution requirement. So, we've been struggling with this for a long time and we'll probably continue to struggle with it. But the best solution is a water supply that meets fire fighting standards for every subdivision. That simply isn't economically possible, so we look for choices as to alternatives.

Commissioner Evans: Curt, is there adequate fire flow out there in Country Crest without the sprinklers?

Curt Belts: No.

Mike Sehestedt: No, they're not on a community water system.

Commissioner Evans: There is no hydrant or anything there to take care of the water need?

Mike Sehestedt: No.

Curt Belts, Fire Chief Missoula Rural Fire District: There is no water system out there at all. The closest available hydrants are El Mar Estates and New Meadows.

Commissioner Evans: I would ask if there's anything between you and Mr. Biggs you could look at to find an alternative that would satisfy the fire department and maybe give a little relief to Mr. Biggs. At least as something to look at. If not, then the condition still is there.

Curt Belts: We can certainly look, but the trouble that we have is just as Mr. Biggs has brought up. He feels he's been wronged because somebody got away with it. I had several calls over this home, but it was way too late. OPG called me, actually fairly early on, and said we made a mistake what do we do? I suggested that they get a hold of Mike so that we could maybe put a stop work order or something and have the sprinklers put in. I got a call sometime probably about two months later from another representative of OPG saying hey we just discovered this mistake on this home. I said, well I gave that same person the information, call Mike. So, he should have received two phone calls.

Mike Sehestedt: I got one e-mail. I don't know.

Curt Belts: Well, I'm not blaming anyone, but what I'm saying is I'm getting phone calls when we don't follow through. I'm getting these same phone calls that Mr. Biggs is bringing to you saying why do we have to do it when they didn't have to? The explanation is if – well, we're sorry that it happened, I didn't want it to happen obviously. If I had my way we'd put sprinklers back in that home or better yet, I'd have a hydrant system out there Country Crest.

Commissioner Carey: Thanks, Curt.

Commissioner Evans: I just wanted you to know Mr. Biggs that your distress was not unnoticed.

Will Biggs: Thank you very much.

#### **ROUTINE ADMINISTRATIVE ACTIONS**

Commissioner Evans moved for Approval of Weekly Claims Lists in the amount of \$363,589.98.

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

#### **HEARINGS (Certificates of Survey)**

##### **Redman Family Transfer**

Commissioner Carey opened the hearing.

Mike Sehestedt: This is consideration of a request to create a family transfer for that parcel described as Tract 58, COS#219 SW ¼ of Section 28, Township 13 North, Range 15 West. Walter Roy and Karen J. Redman have submitted a request to create one parcel using the family transfer exemption from the Montana Subdivision and Platting Act. The current parcel is approximately 10.47 acres in size located near Bonner, MT. Walter and Karen propose to create one approximately six (6) plus acre parcel for transfer to their son Brandon J. Redman, for residential purposes and to keep the remaining four (4) plus acre parcel for residential purposes as well. The history of the parcel is it was created by COS #219 in 1974. The exemption used at that time was greater than 10. This is the area known as the Jordan Ranch tracts. Lee Jordan created it and the Redman's are apparently the first purchasers from Lee Jordan. According to records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act. I would as supplement to this record, it appears to me from the materials submitted that homes are developed and currently exist on both tracts.

Commissioner Carey: Thank you Michael. Could you please identify yourselves for the record please?

Walter Redman and Karen Redman.

Commissioner Carey: We ask our attorney to ask several questions of applicants to put on the record your responses. We want to be assured that this is not an attempt to evade subdivision review. That would be a misdemeanor.

Mike Sehestedt: I'll apologize in advance if my questions seem personal and prying. About how long have you owned the property?

Karen Redman: We've owned it and lived up there for 30 years.

Mike Sehestedt: Okay, so the next question is kind of silly. Did you buy the property with the intent of dividing it?

Karen Redman: No, we didn't.

Mike Sehestedt: And frankly if you did, you're very patient. Do you or your son, either of you, intend to sell the portion that you're keeping within the next year?

Walter and Karen Redman: No.

Mike Sehestedt: Your son isn't a minor, is he?

Karen Redman: No, he's 27.

Mike Sehestedt: Well, some people take longer than others, but legally that's not a minor.

Karen Redman: He's married with three children.

Mike Sehestedt: I'm teasing, he sounds fully responsible. Your son will be residing on the property?

Karen Redman: Yes.

Mike Sehestedt: And he lives there now?

Karen Redman: Yes.

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

Walter and Karen Redman: No.

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

Karen Redman: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Walter Redman: No.

Mike Sehestedt: And you understand that this request is not being reviewed for adequate access in all weather for all vehicles, including emergency services? All we're reviewing here is whether or not you're entitled to split the property. We're not reviewing it as to suitability or usefulness or anything else.

Walter and Karen Redman: Yes.

Mike Sehestedt: Do you also understand that this approval doesn't mean the property is approved for zoning compliance, floodplain or septic systems. Of course since you have two existing residences it's probably not terribly relevant.

Walter and Karen Redman: Yes.

Commissioner Curtiss: Just one question, because the property already had two homes on it, did you get permission from the county to do a for lease or rent? Or how did you build the second house?

Walter Redman: We just built it as we could afford it.

Commissioner Curtiss: So both of them are there now? You didn't know that you should've asked the county for permission to build the second home?

Walter and Karen Redman: No.

Commissioner Curtiss: Okay.

Jennie Dixon: I'd like to add that if you started construction on the second home prior to October 1994, then that's when for lease or rents were not required.

Walter and Karen Redman: Yes, we did.

Commissioner Curtiss: Okay.

Mike Sehestedt: I suppose I should, I happen to know the area's not zoned; it's in the Potomac Valley.

Commissioner Evans: The laws change every time we turn around and we were told yesterday that we now have to look at the zoning and so I was asking Mike if indeed we do have to look at it. But apparently you're not zoned.

Mike Sehestedt: We do, but sometimes when I know the answer I don't ask the question. I've been involved with a couple of zoning initiatives in the Potomac area and one that's specifically involved the Jordan Ranch tracts area and I know they're not zoned.

Commissioner Curtiss: I think we should correct the commissioner action form to say – well, it's near Bonner, but it's really closer to Potomac. So it should say Potomac.

Seeing no further comment, Commissioner Carey closed the hearing

Commissioner moved to approve the Redman Family Transfer request made by Walter and Karen Redman to create one parcel in that there does not appear to be an attempt to evade subdivision review. Commissioner Evans seconded. The motion carried on a vote of 3-0.

### **Wright Family Transfer**

Commissioner Carey opened the hearing.

Mike Sehestedt: This is a consideration of a request to create a family transfer parcel for that parcel described as COS#5622, Tract 50A-4, NE ¼ Section 17, Township 14 North, Range 20 West. Jason and Jami Wright 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 five (5) acres in size. It says located near Frenchtown Montana, to be more specific it's in the Meadows of Baron O'Keefe. Jason and Jami propose to create one approximately two (2) acre parcel for transfer to Gary B. Wright, Jason's father, for residential purposes and keep the remaining approximately three (3) plus acre parcel for residential purposes as well. The history of the parcel is it was created in 1979 by COS#1925 using the greater than 20 exemption. It was divided by family transfer in 2002 by COS# 5263 and then created by family transfer exemption in 2004, further divided down by COS#5622. According to records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Commissioner Carey: Could you please identify yourself for the record please.

Jason Wright and Jami Wright.

Commissioner Carey: As you heard from the previous applicants, we're going to need to ask you some questions for your responses on the record. We want to be confident that this is not an attempt to evade subdivision review as that would be a misdemeanor.

Mike Sehestedt: Our records indicate that you acquired the property in 2004, is that correct?

Jami Wright: No, 2006.

Mike Sehestedt: 2006 is when you...

Jason Wright: Yeah, this spring actually.

Mike Sehestedt: Okay, when you bought the property, did you buy with the intent of dividing it?

Jason Wright: No.

Mike Sehestedt: Do you plan to transfer your remainder, or does your father plan to transfer the portion you're giving him within the next year?

Jason Wright: Not that I'm aware of, no.

Mike Sehestedt: Do you know if your father plans to reside on the property?

Jason Wright: He does.

Mike Sehestedt: And what do you plan to do with your remainder? Do you live there now?

Jason Wright: We do. We just completed construction.

Mike Sehestedt: Do you plan to stay there?

Jason Wright: Yes. We want him close to us for health purposes. So we plan on both living there.

Mike Sehestedt: Okay. Have you talked to anyone at the county about going through subdivision review on this parcel?

Jason Wright: No sir.

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

Jason Wright: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Jason Wright: No sir.

Mike Sehestedt: Since this property is located on Fire Bucket Loop, this question has maybe more importance than it does sometimes. Do you understand that this request is not being reviewed for adequate access in all weather for all vehicles, including emergency vehicles?

Jason Wright: Yes sir.

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

Jason Wright: Yes.

Mike Sehestedt: Just for the record, are you aware of any zoning on this property?

Jami Wright: I spoke with zoning some time before I put the application in to your office and they said that is was unzoned.

Mike Sehestedt: That's again a question I happen to know the answer to, but we'll be good about getting it on the record in the future.

Seeing no further comment, Commissioner Carey closed the hearing.

Commissioner Evans moved to approve the family transfer request for Jason and Jami Wright in 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**

### **Ball Addition, Lot 2 (Amended Subdivision, 2 Lots) – 949 Tox Drive**

Commissioner Carey opened the hearing.

Jennie Dixon: This is a proposed two lot, residential subdivision located just west of the intersection of Tower and 7<sup>th</sup> Street. The property contains 2.9 acres and the proposal is to create Lot 2A which has an existing home and this new lot would be 1.89 acres. Lot 2B would be 1.01 acres. It's zoned residential, one dwelling unit per acre and therefore this proposed subdivision meets zoning. It also meets the comprehensive plan which recommends a density of two dwelling unit per acre, so it's actually under that recommendation. The site is accessed from Tox Drive which connects to 7<sup>th</sup> Street and this extends south off of Tox Drive. There is an extension of Tox Drive to the north which is a paved cul-de-sac road that has approximately seven homes accessing it. This portion of Tox Drive is paved to – the first 90 feet are paved and at that point it access two homes. You can see on the map, 7<sup>th</sup> Street runs along the top portion of the subdivision and then the existing home then access via a gravel driveway from there to the existing home.

Tox Drive is a 60 foot wide public right-of-way, clear down to that point where Mike is indicating on the map. This subdivision will add one additional home accessing off of Tox Drive. The first 90 feet is paved to 25 feet wide, the subdivider is proposing an additional 75 feet of Tox Drive to the 24 foot width. They are asking to leave the remaining 90 feet as gravel and of course then the remaining driveway to the two homes as gravel. There are two variance requests involved with the proposal. One is a requirement in the subdivision regulations to pave Tox Drive to their northern property boundary. Staff is recommending that this variance be denied and that a condition of approval be imposed on this subdivision to pave Tox Drive to the northern property boundary. The second variance has to do with the width of the paving. The required paved width is 26 feet wide and staff is recommending approval of the variance request to pave only to 24 feet wide as the existing road is already paved to 24 feet. The plat contains and RSID waiver for improvements to Tox Drive, however a condition of approval on the subdivision does recommend that that RSID waiver also be amended to include 7<sup>th</sup> Street. There is a 54 foot wide conditional public access and utility easement that bisects Lot 2A and it comes from the west to connect to the Tox Drive right-of-way. That was imposed in a prior subdivision. It is in the event that development occurs to the west and would allow for a looped road system in this area. Although this easement was part of a prior approval, this subdivision is required to request a variance to that and of course staff is recommending approval. Curb and gutter are not required on Tox Drive, however sidewalks are and the applicant has requested a variance and staff has recommended approval. A shared well and septic system serves the existing home as well as the lot to the north. The proposed Lot 2B will be served by an individual well and septic system. Another condition of approval, one that you had extensive discussion about this afternoon at the beginning of the meeting, does require Missoula Rural Fire District approval of final plans for fire suppression which would involve either residential sprinklers or 1000 gallon per minute water supply with a hydrant. That would be subject to the approval by the fire district prior to final plat approval. Finally, the Weed District recommends a condition to provide a revegetation plan and that is also a condition of approval. The Planning Board conducted their public hearing on this subdivision on September 19. They voted consistent with staffs recommendations on all variances and on approving the subdivision subject to conditions. However, they did vote to delete the condition regarding – the irrigation ditch easement. If you're looking at your request for commission action, that condition actually was – I deleted it. I didn't put it in there for you review, but it's three or four pages in on the staff report, at the beginning of the staff report which states that the plat shall be revised to show a 20 foot wide irrigation ditch easement along the western property boundary extending from the existing irrigation ditch easement and across the 54 foot wide conditional access easement to Lot 2B. That's a condition that Planning Board voted to delete because the applicant is proposing to provide access to the existing irrigation ditch which is on 7<sup>th</sup> Street via Tox Drive to both lots in this subdivision. This property is within the irrigation district, the Missoula Irrigation District, and the reviewing agent for that district did not support that proposal. OPG staff supported that proposal, however I met with the ditch writer on site and he felt that that would not be a feasible way to provide irrigation ditch easement to the two lots. Planning Board did not agree and deleted that condition. With that I'll conclude my staff report. Thank you.

Commissioner Evans: I'd like to know at what point we got so that all these conditions are subject to written consent of the governing body if we want to change them. We have in the past not wanted to be parties to the covenants unless there was just a very limited thing and this isn't very limited for me.

Jennie Dixon: There are portions of the subdivision regulations in which there is no mechanism in final plat review to enforce, or to monitor. So what has become our tool for doing that are the covenants. What we do is whatever people want to put in their covenants is fine as long as it's legal and that is a binding agreement between the property owners. The county is not a party to it; it's a development covenant between the landowners. These sections that have to do with fire suppression, the wildlife conditions that usually accompany these subdivisions, as I said there is no way through final plat review to ensure compliance and ongoing compliance. So those are provisions that are required to be placed in the covenants and cannot be changed without your approval. It does not mean you are a party to the covenants, it means – it's still a private agreement, contractual agreement between those landowners and only at the point that they might want to change that do you get involved. The likelihood of – I guess I can't predict the likelihood of you being willing to change it unless our policies or regulations change later. That's why we enable them to be changed later, those sections.

Commissioner Evans: Well the woodstove requirement is a Health Department requirement. I don't think it ought to be in here. And energy efficiency – in the past we have not wanted to be the ones that they had to come to every time they wanted to change covenant. I would like the Commissioners to make a decision

whether or not they wish it to be that way or they don't! I remember when we had someone coming in to fuss about their barbecue. We really don't have time to deal with those tiny little issues. End of speech.

Commissioner Carey: Thank you. Would the developer or his representative care to speak to this?

Nathan Lucky with Landworks: I want to thank Jennie for her staff report. The applicant is in agreement with the staff report except for two items. The one item, I believe has been mostly taken care of as far as the irrigation ditch condition being removed that the Planning Board recommended. I can answer any further questions to that if you would like. Otherwise I'll move on to the second item which is the roads and the fact that the staff report discusses denial of the variance to Section 3-2(14)(b)(i). In this application that was submitted to OPG, there is no request for a variance to that section. You might ask why that is and in my opinion the reason for that is because we do already meet that requirement and there is no variance needed from that section. Let me explain – the section says that you need to pave offsite roads that are within 500 feet of your subdivision. Well we do have a road within 500 feet of our subdivision and the applicant is proposing to pave up to the end of where that road ends. So what we have here is Tox Drive serving what will be proposed to be four lots and right now what is paved is up to the road portion of Tox Drive which is where it would serve the existing three lots, one of which is to the south. So what the applicant is proposing is to pave this for 75 feet, 20 feet past the driveway as the Health Department requires and then the pavement would end and it would become a shared driveway at that point. So I guess the simplistic point of it, as far as what I would like to talk about today, is the fact that the variance was not in the application and it wasn't because it was not needed. To go beyond that, we did have the Public Works Department in agreement with that proposal and there was a letter to that. I realize Jennie spoke to Greg afterwards and when this whole issue of whether this variance may or may not have been needed came up and Greg recommended that it be changed and that we do pave up to the north property line. Unfortunately, to everyone's credit that's worked on this project, the road requirements are a little unclear in the subdivision regulations and I think that's why it took all the way to the end for anyone to figure out really exactly what was needed. It really bounced back and forth quite a bit during the entire process. So I think we've landed where we need to land. The applicant's proposing what I see as required in the regulations. Thank you very much.

Commissioner Carey: Jennie, would mind going ahead and giving staff's reasoning for the recommendation to deny that variance. I understood it on Monday, but I don't really now.

Jennie Dixon: Based primarily on the most recent recommendation out of Public Works, the letter in the packet is from a different staff person than the Public Works Director. And Nathan's right, I did not catch this variance during my cert review and during my actual review of the project to bring it to you realize that that part of Tox Drive needed to be paved. When I come across those things, my immediate response is to contact Greg Robertson and I explained to him the need to pave that portion of Tox Drive and what was his opinion. He thought that not only to the northern boundary, but all of the roads and driveways should be paved, but I felt that it was most reasonable to go with our regulation which is to pave to the northern property boundary. I double checked that with the Health Department and their regulations are actually in this situation, which I believe is an anomaly, less stringent than the subdivision regulations. So the basic reason is to comply with the regulations and to provide a full, at least almost full, width roadway offsite so that when there's a future subdivision of another property in that area then the road would become onsite and that would need to be paved.

Commissioner Carey: Thank you.

Robert Magstadt: I own that northeast corner on 7<sup>th</sup> and Tox. One acre there. This subdivision, I haven't got anything against this subdivision, but I think there are a few things that we should have in mind that should be done such as that street. The street is paved about 50 feet or so. My driveway's that go on to my property are all blocked out. As soon as you come off of that pavement, you're on gravel, so I'm getting dust and everything from that road that goes back on Tox Lane. I think they should have to pave the whole road including the south cul-de-sac. This is, say a new subdivision was created here about three years ago and now they're here again creating a new subdivision and they don't want to pay to pave the road. But yet they say the road is maintained by the county which was done the last time they had that subdivision. With the traffic getting more and with more residents going back in this property, we're going to have more dust than we get now. We get dust all the time. Every time I go in, I have to go off the pavement about 20 feet before I can turn left into the last driveway of my property there. And we're getting more dust and the

gravel up on my blacktop, but no one wants to do anything. The developer, he doesn't want to do it because it's going to cost him money. But this is an advantage to him if he looks at it because this street is going to be paved, or should be paved. That's what I'm here for today, I would like to see that whole street paved because this is the second subdivision on the same properties. Why do they continue to get by with it?

Commissioner Carey: Mr. Magstadt, it's my understanding that if and when they put another, or subdivide again, then it will become a road and we can require it to be paved.

Robert Magstadt: Yeah, but it's already maintained by the county and is accepted as a public road already. We get all this traffic. We get the FedEx and the cars come back – they think that's a through street there. But they don't realize until they get halfway down there that they've got to turn around and come back, so they go down there and by the time they turn around they're upset because they've come to a dead end street, so they spin their wheels and create more dust.

Commissioner Evans: Would a sign at the entrance saying No Outlet be a help to keep people from thinking it's a through street?

Robert Magstadt: It's still going to create a lot of dust there and if we get more residents back there which is going to happen. The same with the gravel, pretty soon it's spotted all over my lawn and so I don't think that – it may help, I'm not going to say it won't, I mean anything sometimes helps. Maybe it'll irritate them a little bit more, but that's about it.

Nathan Lucky: I guess I don't really feel that there's much of a rebuttal. The one thing that Jennie brought up before is the fact that if this property to the west were ever to be developed, that they would want this paving as far as it could be because of the whole 500 foot requirement. If it's down to this northern property line, then they would have to pave. According to my measurements, it would still be within 500 feet, if the applicant did stop the paving where he's proposing. Again, just where I sit, I think we're meeting the rules as is and that currently it's been misinterpreted as to why we need this variance. Thank you.

Seeing no further comment, Commissioner Carey closed the hearing.

Commissioner Curtiss moved that the variance request from Section 3-2(8)(a)(ii) requiring concrete boulevards, sidewalks or paved pedestrian walkways on one side of Tox Drive from South 7<sup>th</sup> Street West to the north property boundary be approved based on the findings of fact of the staff report. Commissioner Carey seconded. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the variance request from Section 3-2(14)(B)(i) requiring Tox Drive be paved from south 7<sup>th</sup> Street West to the north property boundary be denied based on the findings of fact in the staff report. Commissioner Evans seconded. The motion carried on a vote of 2-0. Commissioner Evans abstained.

Commissioner Curtiss: I might add, this being in the air stagnation zone, I think it's important to pave it.

Commissioner Evans: I have a concern legally, since they didn't ask for a variance that we should act on something they didn't ask for. It would seem to me that instead, if we want it paved, we should use the statute or the regulation that gives us the latitude to increase the requirements instead of acting on a variance that wasn't requested.

Mike Sehestedt: The situation is the applicant interpretation of the regulations that did not – was not the same as the interpretation of the regulations by OPG. Under OPG's interpretation of the regulations, this street is an offsite road. It is within 500 feet of pavement and the regulations require that those offsite roads be paved. The variance wasn't requested because they felt that since it only served two additional homes, it continued as a driveway, so they didn't request a variance. Given that our regulations do require offsite road paving if the offsite road is within 500 feet of pavement, if we're not going to require it to be paved, we need to grant a variance. Otherwise it will just be paved in accordance with the regulations.

Jennie Dixon: The only other thing that I would add is that it is not an infrequent occurrence that variances get missed during certification. We try to, of course, minimize that. But there are situations when that

happens and what we do is we contact the subdivider during the review of the project once we discover it and let them know that they didn't ask for the variance, they don't need to prepare a new one we'll do that for them and we handle that through the staff report.

Commissioner moved that the variance request from Section 3-2(3) requiring Tox Drive to be paved to a 26 foot width from south 7<sup>th</sup> Street West to the north property boundary be approved to allow Tox Drive to be paved to 24 feet based on the findings of fact in the staff report. Commissioner Evans seconded. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the variance request from Section 3-3(1)(D)(ii) to allow a public road easement to divide Lot 2A be approved based on the findings of fact in the staff report. Commissioner Evans seconded. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Ball Addition, Lot 2 Amended Plat Subdivision be approved based on the findings of fact and subject to the recommended conditions as amended by the Planning Board, which includes the deletion of the ditch easement condition of approval. 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.

**CONDITIONS OF APPROVAL**  
**BALL ADDITION, LOT 2 AMENDED SUBDIVISION**  
**OCTOBER 6, 2006**

Roads / Driveway

1. Tox Drive shall be paved to 24' wide from South Seventh Street to the northern property boundary, subject to review and approval by Public Works prior to final plat approval. *Subdivision Regulations 3-2(14)(B)*.
2. The RSID waiver statement on the plat and in the covenants shall be amended to include South Seventh Street West, subject to review and approval by OPG prior to final plat approval. *Subdivision Regulations 3-2(3)(E)*.

Fire

3. The subdivider shall provide a means for fire suppression for this subdivision either by providing a minimum 1000 GPM water supply with a hydrant or residential sprinkler systems meeting NFPA 13D Standards. Final plans for fire suppression shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. The covenants shall be amended to include the plan for fire suppression and may not be changed or deleted without governing body approval, subject to review and approval by Missoula Rural Fire District and OPG prior to final plat approval. *Subdivision Regulations 3-1(1)(F) and 3-7(1)*

Weeds

4. The subdivider shall prepare a Revegetation Plan for disturbed areas in the subdivision requiring revegetation with beneficial species of any areas of ground disturbance. The Revegetation Plan shall be incorporated into the development covenants and may not be changed or deleted without governing body approval. The covenants shall note that the grass species included in the Revegetation Plan are not turf species but for reclamation purposes and are not suitable for maintained turf or lawn use. The Revegetation Plan and the development covenants related to weeds are subject to review and approval by the Missoula County Weed District prior to final plat approval. *Subdivision Regulations 3-1(1)(B)*

Covenants

5. The last section of the development covenants (Amendments) shall be amended to state:  
"No section relating to driveways, addresses, radon, weeds, fire suppression, woodstove, energy efficiency, or wildlife may be changed or deleted without prior written consent of the governing body." *Subdivision Regulations Articles 3-1(2) & (10)*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**BALL ADDITION, LOT 2 AMENDED SUBDIVISION**  
**OCTOBER 6, 2006**

**A) ZONING AND COMPREHENSIVE PLAN COMPLIANCE**

Findings of Fact:

1. The proposal is to create the Ball Addition, Lot 2, Amended Plat, a subdivision of a 2.9-acre parcel into 2 residential lots
2. Lot 2A is proposed to be 1.89 acres, and Lot 2B is proposed at 1.01 acres.
3. The property is located on the south side of South Seventh Street West, approximately one block west of Tower Street.
4. Surrounding land uses are primarily single dwelling residential and some agricultural and vacant parcels.
5. The property is zoned C-RR1 (Residential), with a maximum residential density of one dwelling unit per acre.
6. Setback requirements for the C-RR1 zoning district are 25' front yard, 25' rear yard, and 15' side yards.
7. The 1998 Missoula Urban Comprehensive Plan Update designates the property as Suburban Residential land use, with a recommended density of 2 dwellings per acre.
8. The property is located within the Building Permit Jurisdiction, the Air Stagnation Zone, and the Urban Growth Area.

Conclusions of Law:

1. The proposal complies with the zoning and is consistent with the land use designation in the 1998 Missoula Urban Comprehensive Plan Update.

**B) PRIMARY CRITERIA COMPLIANCE**

**CRITERION 1: EFFECTS ON AGRICULTURE AND AGRICULTURAL WATER USER FACILITIES --**

Findings of Fact:

1. The property has not been used recently for agricultural purposes, though it was used for grazing land and hay production in the past.
2. The soils on this property are from the Grantsdale loam, 0 to 2 percent slope series, which are considered to be prime farmland soils if irrigated. These soils are generally very deep and well drained.
3. The property is within the Missoula Irrigation District, and there is an existing irrigation ditch along the south side of South Seventh Street.
4. The Missoula Irrigation District commented that this plat "does not comply with the requirement of an irrigation ditch easement for Lot 2B.
5. There is a 20' wide irrigation ditch easement which runs along the west boundary of Lot 69B, Dinsmore's Orchard Homes Addition No. 5, connecting to Lot 2A.
6. The subdivider proposes to provide an irrigation ditch easement in the Tox Drive right-of-way.
7. Tox Drive is a 60' wide public road and utility easement, and although it will meet the requirement to establish an irrigation ditch easement to Lots 2A & 2B, the Missoula Irrigation Ditch Rider, Jerry Supola, stated that a ditch flowing from this point is infeasible.
8. Instead, Supola recommended extending the easement down the west boundary and across the conditional access easement. This is recommended as a condition of approval.

Conclusions of Law:

1. The subdivision will contribute to the incremental loss of potential farmland, based on soils; however, the parcel is too small to be considered economically viable for agriculture use.
2. No impacts to agricultural water users are anticipated if the recommended conditions are adopted.

**CRITERION 2: EFFECTS ON LOCAL SERVICES --**

**Roads**

Findings of Fact:

1. The property is accessed from Tox Drive, which connects to South Seventh Street West.
2. South Seventh Street West is one of only four east-west through streets in the Target Range-Orchard Homes area, supporting the majority of the vehicular and pedestrian traffic moving east-west in this area.
3. South Seventh Street West is a County-maintained road with a 32-foot wide paved surface within a 60-foot public right-of-way.
4. Tox Drive is a 60' wide public right-of-way and utility easement, which meets County standards for off-site road rights-of-way.

5. Tox Drive currently provides access to three homes. This subdivision will add one additional home accessing from Tox Drive.
6. The first 90' of Tox Drive is paved to 24' wide. The subdivider proposes to pave an additional 75' of Tox Drive to the existing 24-foot width.
7. Tox Drive is an off-site road, and according to Section 3-2(14)(B) must be paved to 26' wide.
8. The subdivider is requesting a variance to not pave the southern 90 feet of the off-site portion of Tox Drive. Staff recommends denial of this variance, and a condition of approval requires Tox Drive to be paved from South Seventh Street West to the northern property boundary.
9. The subdivider is requesting a variance to pave Tox Drive to the existing 24', rather than 26' as is required by Section 3-2(3). Staff recommends approval of this variance request.
10. The plat contains an RSID waiver for improvements to Tox Drive. A condition of approval requires this RSID waiver statement to be amended to also include South Seventh Street West.
11. There is a 54' wide conditional public access and utility easement through Lot 2A from the west property line to the Tox Drive right-of way. This conditional easement is conditional on future development to the west of this proposed subdivision.
12. The property to the west of this proposed subdivision is a three-acre parcel and is currently zoned C-RR1 (Residential), allowing potentially up to three residences. There is limited access to this adjacent property from South Seventh Street West. The conditional public access easement allows the potential for a future looped road system in this area.
13. This conditional access easement was approved by the County in the prior subdivision. The subdivider has requested a variance to allow this conditional access easement to remain as it was originally approved, since the Subdivision Regulations prohibit a public road easement from dividing a lot. Staff recommends approval of this variance.
14. The plat contains an RSID waiver for improvements to Tox Drive. A condition of approval requires this waiver statement be amended to include South Seventh Street West. The covenants shall also be amended with notification that this RSID waiver includes both Tox Drive and South Seventh Street West.
15. The existing home on Lot 2A is accessed by a gravel driveway. The new home on Lot 2B will also use a portion of this gravel driveway. The development covenants contain a shared driveway maintenance agreement.
16. The development covenants contain provisions for meeting the Missoula Rural Fire District's standards regarding driveway construction, and this section of the covenants cannot be amended or deleted without governing body approval.
17. According to the Grading and Drainage Design Report, no increase in stormwater will result from the development of Lot 2B. The increase in surface area of improved lawn will mitigate any increase in storm water from the addition of impervious surface. Lot 2A is already developed and will not see an increase in runoff.
18. Tox Drive is proposed with roadside ditches to convey and infiltrate any stormwater along this roadway. Curb and gutter are not required on Tox Drive.

#### Conclusions of Law:

1. Access to the subdivision meets the standards of the Missoula County Subdivision Regulations if the variances and conditions of approval are adopted as recommended.

#### Pedestrian Access

##### Findings of Fact:

1. Missoula County Subdivision Regulations Section 3-2(8)(A)(ii) requires concrete boulevard sidewalks or paved pedestrian walkways on Tox Drive from South Seventh Street West to the north property boundary.
2. The subdivider is requesting a variance from the requirement to provide boulevard sidewalks or pedestrian walkways on the off-site portion of Tox Drive extending from the north property boundary to South Seventh Street West. Staff recommends approval of this variance request.
3. **The plat contains an RSID waiver for improvements to Tox Drive. A condition of approval requires this waiver statement be amended to include South Seventh Street West. This would include pedestrian facilities on these streets.**
4. **This subdivision is within the Missoula Urban Transportation District and is served by Mountain Line Bus Route #9.**

#### Conclusions of Law:

1. The subdivision meets the pedestrian facilities requirement of the Missoula County Subdivision Regulations if the recommend conditions are adopted and the variance request is approved.

## **Water and Sewer Systems**

### Findings of Fact:

1. A shared well and septic system serve Lot 69B of the Dinsmore's Orchard Homes No.5, Lots 69A, B & C Subdivision (to the north) and proposed Lot 2A. The necessary easements are shown on the plat.
2. A use and maintenance agreement for the shared well and septic systems was approved with the prior subdivision, Dinsmore's Orchard Homes No.5, Lots 69A, B & C Subdivision.
3. Lot 2B is proposed to be served by an individual septic system and well.
4. Review of water and sewer systems is under the jurisdiction of state and local health authorities under the Montana Sanitation in Subdivision Act.

### Conclusions of Law:

1. Water and sanitary sewer will be provided to this subdivision.

## **Solid Waste**

### Findings of Fact:

1. Allied Waste (formerly BFI) can provide disposal service to the subdivision.

### Conclusions of Law:

1. Solid waste disposal is available to the subdivision.

## **Parks and Recreation**

### Findings of Fact:

1. No parkland dedication or cash-in-lieu of park dedication is being proposed for the subdivision.

### Conclusions of Law:

1. Subdivision Regulations Article 3-8(2)(D) states that parkland dedication is not required for subdivisions in which only one additional parcel is created.

## **Schools**

### Findings of Fact:

1. Children from this subdivision will attend Hawthorne Elementary, C.S. Porter Middle School and Big Sky High School.
2. This subdivision is estimated to house a total of three (3) school-age children, based on 1.5 new students per residence.
3. Rachel Vielleux, Missoula County Superintendent of Schools, had no comments on the proposal.

### Conclusions of Law:

1. No adverse impacts to schools requiring mitigation have been identified.

## **Fire Department**

### Findings of Fact:

1. This subdivision will be served by the Missoula Rural Fire District, which is located approximately 1.8 miles from the subject property.
2. Curt Belts, Missoula Rural Fire District Fire Chief, commented that all properties must be property addressed with address signs clearly visible from the street in all light conditions. This provision is contained in the development covenants and cannot be amended or deleted without governing body approval.
3. The Missoula Rural Fire District will require a means of fire suppression, either by providing a minimum 1000 GPM water supply with a hydrant or residential sprinkler systems meeting NFPA 13D Standards. The covenants include a provision that the new home on Lot 2B will be constructed with residential fire sprinklers. A condition of approval requires MRFD to review final plans for fire suppression.
4. Missoula County Subdivision Regulations Article 3-7(2) states that "if no community or municipal water system with 1000 gallons per minute minimum fire flow is provided, an RSID/SID waiver statement shall be required stating that at such time a community or municipal water system is available, the property owner shall be required to participate in the RSID/SID". This statement is shown on the plat.

### Conclusions of Law:

1. Fire service is available to the subdivision if the recommended conditions are adopted.

## **Sheriff Department**

### Findings of Fact:

1. The subdivision is located within the jurisdiction of Missoula County Sheriff's Department.

2. Sheriff Mike Dominick comments that at present there are 50 sworn officers, which is sufficient to protect a population of 30,000 (based on 1.7 officers per thousand populations). Missoula County population outside the City limits is estimated at 40,000 residents; therefore, the department is approximately seventeen officers short of providing basic law enforcement services.
3. The Missoula County Sheriff's Department will provide law enforcement services to the best of their ability should the proposal come to fruition.

Conclusion of Law:

1. Missoula County law enforcement services will be available to the subdivision in a manner consistent with its distance from services and ease of access.

**CRITERIA 3 AND 4: EFFECTS ON THE NATURAL ENVIRONMENT AND WILDLIFE AND WILDLIFE HABITAT**

Findings of Fact:

1. The property is relatively level with a gentle depression located in the middle of the parcel. The majority of the property is mixed grasses with a few older trees and a large garden on the south end of the property.
2. **Although the property is within the Urban Growth Area, it is less than one-half mile of the Clark Fork River and its associated sloughs and wetlands, and undeveloped lands are scattered throughout the area.**
3. **Wildlife such as white-tailed and mule deer, raccoon, skunk, fox squirrel and magpie are found in the area, and potentially an occasional black bear. Numerous small mammal and bird species are found nearby. According to Mack Long, Regional Supervisor at the Montana Department of Fish, Wildlife and Parks, there is a general probability of human/wildlife interactions at this location, and he recommend that "living with wildlife" covenants be included in the development agreement in order to help them deal with and avoid potential wildlife issues. This language is included in the development covenants, and a condition of approval prohibits amending or deleting this section without governing body approval.**
4. **This is an area where waterfowl hunting might occur, and as there may be potential conflict between waterfowl hunters and residents of the subdivision, the Montana Department of Fish, Wildlife and Parks has recommended covenants to address this issue. This is reflected in a recommended condition of approval.**
5. The Missoula County Weed District recommends that the subdivider prepare a Revegetation Plan for disturbed areas requiring revegetation with beneficial species of any ground disturbance created by construction on or maintenance of these lots. This is recommended as a condition of approval.
6. The covenants contain a provision requiring lot owners to maintain their lots in compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan. The Weed District commented that this section satisfies the requirements of the Missoula County Weed District for covenants pertaining to Noxious Weed Control and Revegetation.

Conclusions of Law:

1. There will be an incremental loss of wildlife habitat with this subdivision. Impacts to the natural environment will be minimized if the covenants are enforced and the recommended conditions are adopted.

**CRITERION 5: EFFECTS ON PUBLIC HEALTH AND SAFETY**

Findings of Fact:

1. The Missoula Rural Fire District serves the property. The Missoula County Sheriff's Department provides law enforcement services.
2. Individual wells and septic systems are proposed to serve the lots.
3. The subject property is inside the Air Stagnation Zone.
4. The property is not within the regulatory floodplain.
5. The covenants contain Health Department recommended language regarding radon mitigation, energy efficiency and woodstoves.

Conclusions of Law:

1. Emergency services are available to the subdivision.
2. Septic systems and wells are available if approved by local and state authorities.

**C) COMPLIANCE:** This subdivision complies with:

- 1) SURVEY REQUIREMENTS

Findings of Fact:

1. The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

1. This proposal will meet the survey requirements..

2) SUBDIVISION REGULATIONS

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

1. The developer has submitted a plat which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plat into compliance.

3) REVIEW PROCEDURE

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in Article 4 of the Missoula County Subdivision Regulations.
2. Notice of public hearing on this subdivision was published in the Missoulian on September 3<sup>rd</sup> and 10<sup>th</sup>, 2006. Certified letters were mailed to adjacent property owners on August 10<sup>th</sup>, 2006. On August 30<sup>th</sup>, 2006, a poster was placed at the property.
3. The Missoula Consolidated Planning Board held a public hearing on the subdivision on September 19, 2006.
4. The Missoula Board of County Commissioners held a public hearing on the subdivision on October 4, 2006.
5. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The application shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider, a contiguous landowner, an owner of land within Missoula County who can establish a likelihood of material injury to property or its material value, or the Missoula County Board of County Commissioners. In order to file an appeal, the plaintiff must be aggrieved by the decision, demonstrating that a specific personal and legal interest, as opposed to a general interest, has been or is likely to be specifically and injuriously affected by the decision.

Conclusion of Law:

1. This subdivision proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Article 4 of the Missoula County Subdivision Regulations.

**D) PROVISION OF EASEMENTS FOR UTILITIES:**

Findings of Fact:

1. The plat indicates utility easements to all lots in this subdivision within the street rights-of-way or other proposed or existing utility easements.
2. The proposed subdivision will be served by Northwestern Energy for electricity and natural gas, Qwest telephone service and Bresnan Cable.

Conclusions of Law:

1. The provision of easements for utilities will be met by this subdivision.

**E) PROVISION OF LEGAL AND PHYSICAL ACCESS:**

Finding of Fact:

1. Physical and legal access will be provided to the subdivision from South Seventh Street and Tox Drive.
2. The County Public Works Department commented that driveway approach permits will be required.

Conclusion of Law:

1. The proposal meets physical and legal access requirements.

**II. VARIANCE REQUESTS**

1. **A variance request from** Section 3-2(8)(A)(ii) requiring concrete boulevard sidewalks or paved pedestrian walkways on one side of Tox Drive from South Seventh Street West to the north property boundary.

Recommendation: **Approval** to not require sidewalk or pedestrian walkways on Tox Drive from

South Seventh Street West to the northern property boundary.

FINDINGS:

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

There are no sidewalks in the vicinity to connect to. The off-site portion of Tox Drive is 265 feet long, with only two homes accessing this portion of the road. None of the reviewing agencies opposed this variance. No threat to public health, safety or welfare is anticipated as a result of approving this variance.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations are enforced.**

Since the off-site portion of Tox Drive is relatively short, the conditions upon which the request is based are unique to this property. There do not appear to be any existing site conditions which present a hardship to the owner to comply with the regulations.

**D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance, the Missoula Urban Area Comprehensive Plan, or the master plan for the area.**

Approval of the variance will not violate the provisions of the Missoula City Zoning Ordinance or the Missoula Urban Area Comprehensive Plan.

**E. The variance will not cause an increase in public costs.**

The plat contains an RSID/SID waiver for improvements to Tox Drive, and a condition of approval requires amending this RSID waiver statement to include South Seventh Street West. No increase in public cost is foreseen with the granting of this variance.

**2. A variance request from Section 3-2(14)(B)(i) requiring the off-site portion of Tox Drive to be paved.**

Recommendation: **Denial** of the paving variance for the off-site portion of Tox Drive.

FINDINGS:

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

The property is within the Air Stagnation Zone, and all new roads are required to be paved. The off-site portion of Tox Drive is already paved 90 feet back from South Seventh Street West, and the subdivider proposes to pave an additional 75 feet. The regulation requirement would only necessitate an additional 90' of paving to the northern property boundary, at which point, the two homes in this subdivision would be served by a gravel driveway. The Public Works Director provided verbal comment (Sept. 1, 2006) that Tox Drive should be paved the full length. There is a potential threat to public health, safety or welfare if this variance is approved.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations are enforced.**

The conditions upon which the variance request is based are not unique to this property and present only an economic hardship to the owner to comply with the regulations.

**D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance, the Missoula Urban Area Comprehensive Plan, or the master plan for the area.**

Approval of the variance will not violate the provisions of the Missoula City Zoning Ordinance or the Missoula Urban Area Comprehensive Plan.

**E. The variance will not cause an increase in public costs.**

The plat contains an RSID/SID waiver for improvements to Tox Drive, and a condition of approval requires amending this RSID waiver statement to include South Seventh Street West. No increase in public cost is foreseen with the granting of this variance.

**3. A variance request from Section 3-2(3) requiring Tox Drive to be paved to a 26-foot width from South Seventh Street West to the north property boundary.**

Recommendation: **Approval** of the variance request to allow the off-site portion of Tox Drive to

be paved to a 24-foot width from South Seventh Street West to the north property boundary.

FINDINGS:

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

The off-site portion of Tox Drive is already paved to 24' wide extending 90 feet back from the South Seventh Street West intersection. The Public Works Department support paving Tox Drive to 24' instead of the required 26'. None of the reviewing agencies opposed this variance. No threat to public health, safety or welfare is anticipated as a result of approving this variance.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations are enforced.**

Since there is an already existing portion of Tox Drive paved to 24' wide, the conditions upon which the request is based are unique to this property; however there do not appear to be any existing site conditions which present a hardship to the owner to comply with the regulations.

**D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance, the Missoula Urban Area Comprehensive Plan, or the master plan for the area.**

Approval of the variance will not violate the provisions of the Missoula City Zoning Ordinance or the Missoula Urban Area Comprehensive Plan.

**E. The variance will not cause an increase in public costs.**

The plat contains an RSID/SID waiver for improvements to Tox Drive, and a condition of approval requires amending this RSID waiver statement to include South Seventh Street West. No increase in public cost is foreseen with the granting of this variance.

**4. A variance request from Section 3-3(1)(D)(ii) prohibiting a public road easement from dividing a lot.**

Recommendation: **Approval** of the variance request to allow Lot 2A to be divided by a condition public access easement.

FINDINGS:

**A. The granting of this variance does not result in a threat to the public safety, health, or welfare, and is not injurious to other persons or property.**

The 54' wide conditional access easement which divides Lot 2A was approved with the previous subdivision. None of the reviewing agencies opposed this variance. No threat to public health, safety or welfare is anticipated as a result of approving this variance.

**B. The conditions upon which the request for variance are based are unique to the property for which the variance is sought and are not applicable generally to other property.**

**C. Because of the physical surroundings, particular shape, or topographical conditions of the specified property involved, a hardship to the owner will result if the strict letter of these Regulations are enforced.**

Since the 54' wide conditional access easement which divides Lot 2A was approved with the previous subdivision, the conditions upon which the request is based are unique to this property and present a hardship to the owner to comply with the regulations.

**D. The variance will not in any manner violate the provisions of the Missoula City Zoning Ordinance, the Missoula Urban Area Comprehensive Plan, or the master plan for the area.**

Approval of the variance will not violate the provisions of the Missoula City Zoning Ordinance or the Missoula Urban Area Comprehensive Plan.

**E. The variance will not cause an increase in public costs.**

The plat contains an RSID/SID waiver for improvements to Tox Drive, and a condition of approval requires amending this RSID waiver statement to include South Seventh Street West. No increase in public cost is foreseen with the granting of this variance.