

PUBLIC MEETING – November 15, 2006

The Public Meeting was called to order at 1:33 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Director of Public Works Greg Robertson, Parks Project Assistant Lisa Moisey, Rural Initiatives Assistant Planner Matt Boulanger, and Rural Initiatives Office Administrator Season Holloway.

Pledge of Allegiance

Chairman Carey: Before we get to the public comment item, just let me tell you that we do have a packed house today as you can see. That door of course is an egress in case the fire alarm should go off. This door is as well; it goes through a judge's chambers. And you know, there probably is a good chance the fire alarm will go off with all these people here. But seriously, from time to time, a faulty smoke detector will set the whole building's system off and we will have to proceed out of here in a very orderly way. But I can pretty well assure you there will not be a major blaze here, but the fire alarm could go off. Just so you know that.

Public Comment

None.

Routine Administrative Actions

Commissioner Evans moved that the Board of County Commissioners approve the weekly claims list in the amount of \$332,295.64. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Hearing: Transfer Pineview Park to City of Missoula (Rattlesnake Area)

Lisa Moisey presented the staff report.

Hi, I'm Lisa Moisey and I'm here on behalf of the County Parks Board today; I'm County Parks staff. I'm here to request on behalf of the Pine View Park Association approval from the County Commissioners to transfer Pine View Park located in the Rattlesnake to the City of Missoula for ownership and maintenance contingent on the City Council approving the creation of SID 541 for Pine View Park.

Pine View is about a four and one-half acre park. It's located – it's a county parkland located within the city limits. It is located adjacent to Rattlesnake Elementary School between Mountain View Drive and Pineview Drive. It is a park with presently lots of developed amenities. It has tennis court, picnic shelter, playing fields, play equipment, basketball court, parking, and ice-skating in the winter. The park is bordered by a school, residential area and a county conservation park called the Tom Green Memorial Park.

The history of the park is that it was dedicated to the public in 1960 with the platting of the Pine View Homes addition. In 1972, the County Commissioners created Rural Special Improvement District RSID 902. The purpose of that was to pay for the cost to maintain the park. The Commissioners also created the Pine View Park Association, which has come to be known as the Pine View Park Board to assist, oversee, and be responsible to maintain, preserve, and repair the park. The park has continued to operate under the direction of the Pine View Park Association since its inception in 1973.

As I noted, Pine View Park is located adjacent to the Tom Green Park, and that park was deeded to the County in 1974. When the County received that park, there were specific deed restrictions requiring

that the Tom Green Park be kept in a natural state. The grantor at the time specifically named the Pine View Park Association as representative to enforce the restrictive covenants. At about the time Tom Green was received by the County, County Attorney legal opinion provided to allow the County to expand the scope of the original RSID to include the land that would become known of the Tom Green Memorial Park, so the RSID is inclusive of both park areas. As such, the Pine View Association has been managing both parks.

As I mentioned, Pine View Park is presently funded by RSID 902, which generates approximately \$14,500 through tax assessments of about 770 parcels. The funded in concert with limited City Parks and Recreation maintenance has allowed for basic maintenance of the park.

The request before you today is from the Pine View Park Association. They've been working with city and county staff concurrently on this request. The Board has requested the City approve a City SID for Pine View Park, and the proposed SID would extend the boundary of its present funding. Presently there's about 772 parcels in the county RSID. The proposed City SID would incorporate 1,750 taxable properties. This would include properties that aren't presently in the County RSID beyond the existing boundary up to – on the north, it would be inclusive of the City limits.

The reason for the request is that the amount of revenue that can currently be generated by the county RSID is insufficient to continue to maintain and manage Pine View Park to acceptable and safe standards. Nearly all of the capital improvements that I mentioned in the park were put in the park 30 years ago, a generation ago. Many are in need of significant repairs and replacement. Some have had to be removed for safety reasons. The \$14,500 is not enough to even begin to cover the needs.

This proposal for transfer does not include Tom Green, the adjacent county conservation park. If the new city SID is approved, those funds would not be used for Tom Green Park. As such, the members of the Pine View Park Association are proposing that the County retain the existing County RSID at a reduced rate of 75% so that funding would be available for Tom Green for which they are responsible at a much reduced rate. They're requesting that we retain the County RSID and reduce that rate by 75%. The average cost then per household be reduced to \$5 per home for funding for Tom Green and also to be used for incidental funding for Pine View.

The proposal for the City SID would allow the City to issue bonds to finance costs for improvements in Pine View Park. So that is how the proposal would be to address the need for improvements in that park and for dealing with the deferred maintenance if you will of most of the capital in that park area.

The County Parks Board held a public discussion on this at their August Park Board meeting. The Board voted to recommend to the County Commissioners that they transfer the park contingent on funding to the City of Missoula. If the proposed City SID fails, then the transfer would not go through. The rationale that the County Park Board has is that for many years the County Park Board has been concerned about the numerous County Parks that are located within the City of Missoula, which essentially are in holdings, if you will, resulting from past annexation practices by the city. The County Park Board has expressed an interest and desire to transfer these in holdings to the City for ownership and maintenance.

So the request today is two-fold. One is to approve transferring the park contingent on approval of the city SID. And the second request would be to retain the existing County RSID 902 at a level reduced by at least 75% for costs associated with the Tom Green Memorial Park and other incidental costs in Pine View Park. The proposed cost – average cost of the new City SID would be approximately \$35 per household per year and if the existing County RSID is retained, the costs within that original district, which is again, smaller would be on average of \$5 per year. There's some members from the Pine View Park Association, or the Pine View Park Board here, and if you have questions, I'm sure they'd be happy to speak.

Chairman Carey: Any questions for Lisa at this time? This is a public hearing, if anybody wishes to comment on this they can step forward please and give us your name and let us know what you think about this.

Commissioner Curtiss: I would like on the record someone from the Pine View Board to reiterate why you think this is a good idea. If one of you would like to do that please.

Bill Bevis: I'm Bill Bevis. I've been on the Pine View Park Board since 1975, so I'm the historian. This issue's actually not complex even though with county, city, they look complex now. 30 years ago, neighbors created a neighborhood park in the county and created a sufficient SID for maintenance. Now 30 years later when you have to replace a shed, redo tennis courts, put in new playground to code, that SID is inadequate. Because of city annexation, to expand the old SID by even one household it must be a city SID by law. By law, a City SID can only go to a city park. So there are really only two options: the county tries to keep the park as an in holding and finds a way to pass its own bond or fund us 1,2,3,4 hundred thousand dollars minimum to redo the park. The other option is to go ahead and get a bond in the area where about 80% of the use is within the Rattlesnake, do what we want to the park, turn it over to the city with that expanded SID and then the City maintains it from now on. So that's the history. Do you have other questions or would you like me to address something else?

Commissioner Evans: Have you checked with the folks that will be included in this to make sure that they're going to approve it?

Bill Bevis: Oh, boy, have we. A very quick version: there are 1233 resident homeowners in the new district, the enlarged district. We stopped knocking on doors when we had signed "yes" cards from 52% of those. The response rate of the 730 we were able to contact either by mailing or at the door was 85% of those signed the card in favor of the bond.

Commissioner Evans: Thank you

Chairman Carey: Any other questions? Thank you Mr. Bevis. Anybody else wish to speak to this? Seeing no one, I'll close the hearing.

Commissioner Curtiss moved that the Board of County Commissioners approve the request from the Pine View Association to transfer the Pine View Park from the County to the City for ownership and maintenance, contingent on Missoula City Council approval of SID 541 for Pine View Park. In addition, to retain the existing County RSID 902 at a level reduced by at least 75% for costs associated with Tom Green Memorial Park and incidental costs in Pine View Park, based on the recommendation by Missoula County Parks Board. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): O'Steen Family Transfer

Chairman Carey opened the hearing.

Mike Sehestedt presented the staff report.

Thank you Commissioner Carey. Before you is consideration of a request to create a family transfer parcel for that parcel described as SW ¼ of Section 18, Township 20 North, Range 16 West. By way of background, Judi K. O'Steen has submitted a request to create two additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 156 plus acres in size located near Condon. Judi proposes to create two approximately 20 acre parcels for transfer to each of her sons, David A. O'Steen and J. Patrick O'Steen, for residential purposes and keep the remaining approximately 116 plus acre parcel for residential purposes as well.

The history of the parcel is as follow: The parcel has been deeded five times over the last 55 years. It has never been subdivided. According to records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

My recommendation is that you consider a request to create a family transfer parcel by dividing the described property.

Chairman Carey: Thank you Mr. Sehestedt. Is somebody from the O'Steen family here to speak to this? Or a representative of the family?

Ken Jenkins: Thank you my name is Ken Jenkins; I'm with Montana Northwest Company. I'm not an O'Steen, but I will try to represent them. The O'Steens seasonally occupy this property and they have left to state. I am familiar with their situation and the circumstances on which this request is made. I will do my best to answer any questions you might have.

Chairman Carey: As you know, we ask these questions for responses on the record in order to help assure us that this proposal is not an attempt to evade subdivision regulations. Mike, go ahead.

Mike Sehestedt: Thank you again Commissioner Carey. How long have the O'Steens owned this property?

Ken Jenkins: I don't have the exact number, I believe for a good number of years.

Mike Sehestedt: Do you know, when they acquired it, did they intend to divide it?

Ken Jenkins: I guess I'm not sure. I don't believe so.

Mike Sehestedt: The children are not minors?

Ken Jenkins: No.

Mike Sehestedt: Do you know if there are plans to develop the property? Either the remainder property or the two family transfer parcels?

Ken Jenkins: No. The remainder parcel contains the summer home, if you will, of the O'Steens. One of the family transfer parcels I understand has a cabin on it, and the other one will be vacant, or is vacant. It might be developed with a cabin I suppose.

Mike Sehestedt: Do you know what the plans are? The recipients, will they be occupying the property either permanently or seasonally?

Ken Jenkins: I believe so. They currently use the cabin is my understanding.

Mike Sehestedt: Do you know where they reside?

Ken Jenkins: I'm not sure. I presume out of state.

Commissioner Curtiss: It says right here Florida.

Mike Sehestedt: Well, I'm trying to get this on the record as well. Do you know if they've talked to anyone at the county about going through subdivision review on this parcel?

Ken Jenkins: They have not.

Mike Sehestedt: Do you know, are they in the business of building or developing the property?

Ken Jenkins: No, they are not.

Mike Sehestedt: Do you understand and have you explained to your clients that this request is not being reviewed for adequate access in all weather for all vehicles including emergency vehicles?

Ken Jenkins: Yes.

Mike Sehestedt: I know you understand, but have you conveyed to your clients the fact that should the Commissioners chose to approve this use of the exemption it is not approval for floodplain, septic system or any other permanent requirements?

Ken Jenkins: Yes.

Mike Sehestedt: For the record, would you agree this property is not currently zoned?

Ken Jenkins: I would agree with that.

Mike Sehestedt: Commissioner Carey, I have no further questions.

Chairman Carey: Thank you sir. Any other questions from the Commissioners?

Commissioner Curtiss: No, but on the record, we can say that the file – the tax report shows Vero Beach, FL as their permanent residence.

Ken Jenkins: Yeah. That I believe is where the O'Steens live. I'm not sure where their sons live. Just maybe a little more background that didn't make it into our application: my understanding is that the O'Steens intend to set up sort of a life estate concept with this conveyance to their children that their children have to hold this property so long as the O'Steens are alive. Just to assure you that this is a very legitimate use of the exemption.

Chairman Carey: Thanks for your help Ken.

Mike Sehestedt: For once, someone attempting to guarantee the loyalty purchased with the family transfer.

Chairman Carey: This is a public hearing. Is there any other comment about this? Any other comment, questions? Seeing none, I'll close the hearing.

Commissioner Evans moved that the Board of County Commissioners approve the request by Judi K. O'Steen to create two additional parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Mike Sehestedt: Can I add a couple of words to that?

Chairman Carey: Yes sir.

Mike Sehestedt: This is in an area of high wildlife use and particularly the number of sensitive species. We'll be attaching to the letter of approval living with wildlife brochure and we'd ask that you call it to your client's attention. I understand that having wildlife means that you have to conduct yourself in a manner consistent with having them around. For the record, I would point out that when an exemption

to the Subdivision and Platting Act is used, the only thing we look to see is whether they're evading subdivision review, and if it is not an evasion, the Commissioners do not have the ability to condition or to deny the request. Thank you Ken, and I'm sorry to lecture you like this, but I'm hoping you'll pass it on to your clients.

Chairman Carey: Thank you.

Hearing: Ramos Addition Subsequent Minor Subdivision (2 lots on 2.64 acres) - Approximately 2 miles South of 39th Street at 3000 Lorraine Drive

Elaine Hawk, Office of Planning and Grants, presented the staff report.

This is Ramos Addition, a proposal by Michael and Wendy Ramos. The proposal is for two lots on 2.64 acres located at 3000 Loraine Drive, 2.25 miles south of 39th Street. The property is zoned CRR-1. This district does permit single-family with the residential density of one dwelling unit per one acre. The property contains slope greater than 10%. Subdivision regulations require development located on slopes over 10% to conform to the Hillside Design Standards. The applicant was required to provide a hillside density reduction worksheet. According to the worksheet, the adjusted density permitted on this is 1.83 dwelling units. Density is adjusted down for development that is regulated by the Hillside Design Standards. The total density permitted in one dwelling unit. The applicant requested and received approval of a variance request from the County Board of Adjustment for the Zoning Ordinance Hillside Design Standard to allow the 2.64-acre parcel to be split into two lots. Subdivision Regulations also have Hillside Design Standards, which would limit the subject property to one dwelling unit. The applicant has requested a variance to the subdivision Hillside Design Standards to allow two dwelling units on the subject property. County Public Works supports this variance request.

The property is accessed from Loraine Drive. Variances are requested from improving the road surface width standard to meet the county standard of 26 feet for approach cul-de-sacs and to install concrete boulevard sidewalks. An RSID/SID waiver statement has been included on the plat waiving the right to protest future improvements to Loraine Drive. County Public Works and the Office of Planning and Grants are in support of this variance request.

Access to Lot 1 is proposed via a driveway within a 30-foot wide private access and utility easement extending north from Loraine Drive to the southern boundary of Lot 1. The southern portion of the driveway is shared with Lot 2. The driveway easement splits Lot 2. Subdivision Regulations prohibit lot design where lots are divided by access easements. The applicant requests a variance to the standard. County Public Works and the Office of Planning and Grants do support this variance request. For a visual aid, the plat is on the wall behind me here and you can see that as the hashed brown for the driveway.

Utilities are proposed to be extended in the 30-foot private access and public utility easement for the driveway accessing the lots. The existing 10-foot easement along the northern edge of Lot 2 and a 10-foot utility easement along the eastern boundary of Lot 1. Subdivision Regulations require a minimum 20-foot easement width for utilities. The applicant has requested a variance to the standard. County Public Works recommends denial of this request, which would permit a 10-foot wide easement along the eastern boundary of the subdivision. County Public Works commented, "The utility easement along the northern border of Lot 1 may remain at 10 feet since the total available easement width is 20 feet centered on the property line." County Public Works further commented, "Since it appears that most utility providers will access Lot 2 though the easement across Lot 1, a 20 foot easement width should be provided." A condition of approval requires a minimum 20-foot wide utility easement shown on the plat along the eastern boundary of Lot 1.

The County Surveyor commented that the existing private road easement adjacent to the utility easement along the southern boundary of Lot 3BB, South Meadow Tracts, Lot 3A, and 3B should be

shown on the plat. This has been required in a condition of approval. That again is to the north in the blue.

The subdivision is located within the Missoula Rural Fire District. The nearest Fire Station is located four miles on paved roads from the proposed subdivision.

The subdivision will connect to Mountain Water Company public water supply system. Individual septic systems are proposed for the lots. Though the subject property is within the Missoula Wastewater Treatment Plan Service Area, the nearest City sewer main is located approximately one mile north of the site. The Health Department commented that, "an RSID/SID waiver statement requiring owners to participate in a public sewer system should be added to the plat." A condition of approval does require that a note with language for an RSID/SID waiver for a future public sewer system be added to the plat.

A condition of approval recommends that development covenants be amended to add driveway design, address signage, radon, and wildlands residential interface vegetation to go under amendments that may not be changed or deleted without governing body approval.

County Public Works commented that this subdivision has offsite impacts to the Miller Creek Road/Lower Miller Creek Road intersection. Therefore, County Public Works recommends that applicants contribute \$1,800 per lot to the Miller Creek Transportation mitigation proposal. On condition of approval, requires the applicant to contribute to the Miller Creek transportation plan prior to plat approval.

Following discussion with the applicant's representative, staff recommends deleting condition of approval of number three regarding design standards for the driveway. Subdivision regulations would require this condition be met if the driveway was existing; however, there is no existing driveway on site.

In conclusion, our ten recommended conditions of approval – this does include the number 3 – and staff recommends approval of variance requests number 1, 2, 3 and 5 and denial of variance request number 4. Finally, staff recommends approval of the Ramos subdivision request. Thank you.

Commissioner Curtiss: Just one thing Commissioner Carey that I'd like to add to the record is that Elaine had this great big list to read – there will not be a requirement for additional water supply because there are already hydrants in the area.

Elaine Hawk: Oh, did I skip one? Thank you.

Chairman Carey: This is a public hearing. Would someone like to comment on the proposal? Is the developer's representative here?

Jessica Hennell: I'm Jessica Hennell with Territorial Engineering and Surveying and we're in agreement with the staff report.

Chairman Carey: Thank you Jessica. Anybody else care to comment about this proposal? Seeing no one, I'll close the hearing.

Commissioner Curtiss moved that the Board of County Commissioners approve the following variance requests: from Article 3-2(8)(A)(ii) requiring concrete boulevard sidewalks or paved boulevard pedestrian walkways on one side of Loraine Drive; from Section 3-2(3) requiring a road surface width of 26 feet to allow Loraine to remain at 22.5 feet wide; from Article 3-15 requiring the permitted density to be adjusted down for land within slope categories greater than 10% to allow the permitted density to be rounded up from 1.83 to two dwelling units; and from Article 3-3(1)(D)(ii) requiring lots to be designed so that no lot shall be divided by a public street, road, alley, existing right-of-way or easement or other lot so that the driveway easement to Lot 2 may split Lot 1, all based on the findings of fact. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners deny the request to vary from Article 3-6 requiring a 20-foot easement width based on the finding of fact in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that Condition #3 be deleted based on the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Ramos Addition Subdivision be approved based upon the findings of fact and subject to the recommended conditions as amended in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Ramos Addition Subsequent Minor Subdivision (two lots on 2.64 acres) Conditions of Approval:

Roads and Driveways:

1. The applicant shall contribute \$1,800 per new lot to the Miller Creek Transportation Mitigation Proposal to mitigate the impacts to the Miller Creek/Lower Miller Creek Road intersections. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 4-1(12).*
2. The existing 30-foot private access easement adjacent to the utility easement and along the southern boundary of Lot 3BB, South Meadow Tracts, Lots 3A and 3B shall be shown on the plat prior to final plat approval. *Subdivision Regulations Article 5-3(5)(N) and County Surveyor recommendation.*
- ~~3. The driveway accessing Lot 1 and 2 shall be paved according to City design standards for private driveways prior to final plat approval. *Subdivision Regulations Article 3-2(10).*~~

Fire:

4. All residences within this subdivision shall post address signs visible from Loraine Drive in all light conditions. Plans for visible addressing shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(2)(G), Missoula Rural Fire District and OPG recommendation.*
5. Driveway plans including the turnaround for fire apparatus shall be reviewed and approved by the Missoula Rural Fire District prior to building permit approval. *Subdivision Regulations Article 3-2(1)(I), Missoula Rural Fire District and OPG recommendation.*

Sewer:

6. The following note shall appear on the face of the plat:

“Acceptance of a deed for a lot in this subdivision shall constitute: 1. Assent by the owners of the lots to waive the right to protest an RSID/SID affecting said property for the purpose of financing the

design and construction of a public sewer benefiting said property; and 2. An agreement whereby the owner(s) shall connect to public sewer within 180 days after public sewer is installed and available in the public right of way adjacent to the property. This waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land depicted herein. All documents of conveyance shall refer to and incorporate this waiver.” *Subdivision Regulations 3-1(I)(E)(6) and 3-7(3)*.

Easements:

7. A minimum 20-foot utility easement shall be shown on the plat along the full length of the eastern property line of Lot 1 prior to final plat approval. *Subdivision Regulations 3-6 and County Public Works recommendation.*

Pedestrian Facilities:

8. The applicant shall present evidence of petitioning into the Missoula Urban Transportation District prior to final plat approval. *Subdivision Regulations Article 3-2(6)*.

Covenants:

9. Article 1, Section 8 of the Development Covenants shall be revised as follows:

...”Each owner shall revegetate any disturbed areas caused by construction or maintenance with beneficial species ~~in conformance with the Revegetation Plan for Disturbed Areas (see Revegetation Plan for Disturbed Areas located in the Exhibit “B”) of this document~~ at the first appropriate opportunity after construction or maintenance is completed.”. *Subdivision Regulations Article 3-1(1), and Missoula County Weed District.*

10. Article II, Section 4 of the Development Covenants shall be amended to add driveway design, address signage, radon, and Wildland Residential Interface vegetation to the list of sections under Amendments that may not be changed or deleted without governing body approval.

Trout Meadows Ranch Rezoning (from C-A3 to C-A1) - 160 acres, South of Lavoie Lane, West of Mallard Way:

Chairman Carey opened the hearing.

Zack Brandt, Office of Planning and Grants, presented the staff report.

The proposal is to rezone from C-A3 Residential to C-A1 Open and Resource land. The applicant has indicated their intent to mine gravel from the site. The proposed C-A1 Open and Resource zone has a density of one dwelling unit per 40 acres, significantly less than the current zoning, which permits one dwelling unit per 5 acres. However, gravel extraction is listed as a special exception in the proposed C-A1 zone. Special Exceptions require a separate public hearing by the County Board of Adjustment to approve or deny the request, but in the case of gravel mining; state law does not allow the County Board of Adjustment to prohibit gravel mining in a non-residential zone; they can however reasonably condition its approval. Staff and Planning Board have recommended approval of the rezoning request, subject to conditions of approval.

The 1975 Comprehensive Plan’s land use recommendation for the area is Parks and Open Space. The proposed C-A1 Open and Resource zone is intended to encourage the continuing use of land for recreation and natural resource production; protect open lands not capable of supporting urbanized development and limit development in resource-sensitive areas.

The C-A1 zone allows gravel extraction as a special exception, which could cause disturbance in some portions of the property and consequently conflict with the cautions raised in the Comprehensive Plan. For these purposes, staff and Planning Board have recommended conditions of approval to address potential impacts of extracting gravel from the site.

The applicant's proposal is to mine gravel on the property for no more than 10 years followed by a reclamation period to create four to five ponds to be used for wildlife and recreational purposes.

The re-zoning application states that the applicant will apply for a mined land reclamation permit through the Montana Department of Environmental Quality and will follow all applicable laws and procedures in extracting the gravel and creating the ponds including DEQ requirements for Revegetation and Reclamation. The ponds are proposed to be 15-20 feet deep.

The required Reclamation Permit covers a broad range of issues relating to an operational plan, screening and buffering, hours of operation, haul roads, dust mitigation, and reclamation. DEQ administers the Open Cut Mining Act and would review and monitor a proposal for gravel mining with respect to impacts on environmental quality, such as hydrological changes. DEQ issues water quality permits for gravel operations after reviewing storm drainage and operational plans. Air pollution permits are required by DEQ for crushers, which may be part of a gravel operation. Water rights will also need to be acquired and a floodplain permit issued.

At this point, I would like to display a few images via Power Point as I discuss some of the natural resources and wildlife habitat located on the site. The property is fairly level, dry, open land with riparian areas encompassing river sloughs and wetland areas, two small ponds, and lightly forested areas. Just to kind of orient you quickly, if you look behind me back at these maps, in this picture I'm standing right here at the entrance point and I'm looking northwest. I'm going to kind of just take you around the property like this and then show you some pictures looking from Mallard Way back.

Commissioner Curtiss: So Zack, just to clarify, those houses that are over to the right, those are on Lavoie Lane.

Zack Brandt: Right, the end of Lavoie Lane, yes. So this picture now looking directly to the north, you can see the eastern slough, which wraps around to the north onto the west side. This is looking south on Lavoie Lane from where those houses were in the first picture, and right there on the left is the first existing small pond, and there's a second pond to the south of it. This is what that pond looks like, and it connects to that river slough that wraps around the northern part of the property. This is the southern slough area. Again, the southern slough and then back to where I was in the beginning. The proposed are for gravel mining would be in this open flat area in the middle. The camera doesn't cover all of it, but it also goes further to the left, the south there. This would be if I turned around and looked directly due east, and this is the proposed access road, which heads out through these trees and goes to the northeast to approximately where his home is located on Mallard Way. This is looking from the gate at Mr. Edwards's property on Mallard Way, looking back towards where all the other pictures were taken, which is right on the other side of that tree line. It's about a half mile away from Mallard Way to the 160 acres. This picture is the same, just looking directly west. The other picture was southwest. We'll stop there. If we can turn the lights back on I'll get back to some slides in a moment.

In the submittal packet, you'll find a floodplain map. Except for a small area in the northeast corner of the site, the property is primarily located within the 100-year Floodplain, with a smaller area in the southwestern portion of the property located within the Floodway. Floodplain regulations do authorize gravel mining in the floodplain and even the floodway subject to floodplain regulations and special restrictions.

The applicant hired PBS&J to perform a riparian mapping study for the property as well as a geomorphic and hydrological assessment. This is the map they produced showing the existing ponds,

the river sloughs and trees. Just to show you here, this is that slough that I showed you pictures of, the two existing ponds, those trees where you would go through to exit out unto Mallard Way.

The 1995 Missoula Urban Area Open Space Plan identifies the Clark Fork River, which – it's not on this map, but it goes around here. The Clark Fork River corridor is a Potential Open Space Cornerstone. The 1992 Inventory of Conservation Resources designates this area as an important recreation corridor and scenic open space. The area is also important wildlife habitat. So let's get the lights again and I'll get back to one more slide a little bit later.

Jim Brown, President of Five Valleys Audubon Society, states, "regardless of where gravel extraction occurs, the possibility of habitat loss remains a distinct likelihood. The extent of loss will obviously depend on the specific locations of the access roads and gravel pits. We would recommend that approval of the rezoning request be conditioned on the presentation of a reclamation plan that addresses the mitigation of specific habitat losses. The plan should also demonstrate how the gravel pits themselves would become viable wildlife habitat."

Now to go over the conditions of approval as recommended by Planning Board and staff. And just to give a little bit of background, because the County does not have a Zoning District that directly correlates to the Comprehensive Plan's land use designation for Parks and Open Space and in an effort to protect the natural resources and wildlife in this area, staff is recommending the following Conditions of Approval, amended by Planning Board, to mitigate potential adverse impacts as a result of gravel mining.

Condition #1 restricts the maximum height of any building or structure on the subject property to not exceed 25 feet. This is intended to meet the Parks and Open Space designation from the Comprehensive Plan. The same condition of approval was imposed on the JTL Mullan South C-A1 gravel re-zoning.

Condition #2 requires a "No-Build / No Disturbance Area," as shown in staff report Attachment A, which applies to any gravel extraction operation on the subject property. I have this on the PowerPoint and I'll show it after---I can show it now or describe a little bit further. I just don't want to--that's the map. Let's get the lights here and show the map again. This is what staff has created as the "No Build / No Disturbance Area" Map. All this area in hatched blue is "No Build / No Disturbance" protecting the riparian areas. In addition, we've left this middle area and an access point to those existing two ponds as area outside that "No Build / No Disturbance Area."

Areas identified as riparian and areas within 150 feet of areas identified as riparian are recommended to be included within the "No-Build / No Disturbance Area", with the exception of two small ponds located in the northwest corner of the property and the existing access farm road extending from Mallard Way and located approximately at the midpoint of the eastern boundary of the area to be rezoned. This restricts access for gravel mining from the end of Lavoie Lane and permits access to the site from Mallard Way only. Missoula County Public Works had no concern regarding either access point or the condition of the roads.

Condition #3 requires that the applicant to file a development agreement enforceable by Missoula County to include the map of the "No Build / No Disturbance" area, and to include a definition of the "No Build/No Disturbance" Area as amended by Planning Board and defined as follows: The No Build/ No Disturbance Area shall include the prohibition of all buildings, structures, fences (except for wildlife friendly fencing), roads, motorized vehicle access except for routine maintenance activities, parking, storage, or any other development. It shall also prohibit any mining, cutting, burning, or removal of live or dead vegetation (except if needed for fire prevention or noxious weed control for safety considerations or for healthy forest management), filling with substances such as gravel, soil, slash or other debris, or the planting of non-native vegetation such as lawn grasses."

And last, Condition #4 requires any haul or access road used for a gravel extraction operation be paved from the extraction site to Mallard Way.

So if we could get the lights again.

Commissioner Curtiss: Before you get the lights again, could you show on there where the – you talked about the floodplain and the floodway. Could you show us where the floodway is?

Zack Brandt: This is approximate, but basically, the floodplain goes diagonally about like this and extends towards the river – excuse me, the floodway, thank you. So this is the – the bottom triangle portion in the floodway. Everything else is in the floodplain except for a small piece of property about like that.

Now to summarize Public Comment and Planning Board Comment. At the September 19 Planning Board hearing, several neighbors, and other residents expressed concerns about the proposal to rezone the property to a zoning district that could potentially allow for gravel extraction. The concerns were primarily related to truck traffic and safety, dust, noise, erosion, lowered property values, wildlife, environmental damage and water quality. The Planning Board recognized these concerns and further recommended that the applicant provide additional information at today's public hearing relative to the specifics of the gravel mining operation. OPG received additional comments from the Missoula City-County Health Department and I'll summarize those. These comments came after the Planning Board hearing. They stated that assuming there are no spills such as diesel fuel, I have not heard of a gravel pit causing water quality problems for surrounding wells. Again, this is from the Health Department.

Second, although we are not aware of any documented contamination resulting from the Frenchtown Pond and the JTL sites, gravel mining in areas of shallow groundwater expose groundwater to the surface making it more susceptible to contamination. These areas are often reclaimed as valuable recreation areas and wildlife habitat. And three, air pollution for any type of pit operation is always a concern and control measures are typically required to limit emissions, which would be taking place during the air pollution permit by the Health Department.

Prior to the Planning Board hearing, OPG received two public comment letters and a petition expressing opposition to the proposal. One of these letters contained several pictures and they are on display here today. These pictures show the condition of Mallard Way, and they are on display. After the Planning Board hearing, staff received several more signatures to the petition, all of which are included as an Attachment to the staff report. In addition, several agencies have provided comment or additional comment after the Planning Board hearing and these comments are included as attachments to the Staff report today.

Also this is out of order, but I just remembered when I was talking about the proposed access to the site, Missoula County Public Works they have no comment as to the condition of Mallard Way. They say it's a County maintained road in good condition. They've reviewed the bridge on Mallard Way and it's built to sustain haul trucks that have a legal load limit.

Also, just to conclude here, we've been receiving additional comments, they keep coming in. After November 9, we received a comment from Dave Zinke, who's the Vice President of JTL, and he provided a copy of the materials required of him for the JTL Allen Special District Rezoning proposal. That packet is in front of Commissioner Evans there. He makes a point in his letter that once this rezoning is in place as proposed, nothing prohibits this property from being sold and the duration of the mining proposal being amended or extended. As a result, the Commissioners may want to consider a condition that limits the duration of the mining operation on this property. Other types of conditions the Commissioners may want to include relate to hours of operation, extent of operation, contribution of money for improvements to Mallard Way, the depth of the ponds and the distance to residences. And after November 9, OPG also received a comment letter from the Confederated Salish and Kootenai

Tribes Council, and they identified the are proposed for rezoning to be located a little more than ½ mile from the Council Grove State Park area. The Tribal Preservation Department believes there is a remote possibility of finding human remains or artifacts at or near this site, and have requested that with the permission of the land owner, their Preservation Department be allowed to conduct a cultural resource survey prior to the approval of any disturbance on this site. As a result I've included a condition amendment that is the green piece of paper I've handed out, which states a new Condition #5 recommended by staff which states, "Prior to any disturbance of the site, the Confederated Salish and Kootenai Tribes of the Flathead Nation, or their agent, shall be permitted to conduct a cultural resources survey of the site." And also, Fish, Wildlife, and Parks provided comment late this afternoon. OPG has not had time to review these comments in detail, but I believe you have a copy of these and they were distributed at the front today. And this concludes my presentation. I have more information if you'd like me to clarify things. And with that, I conclude my staff report. Thank you.

Chairman Carey: Excellent job Zack, thank you. Next, we ask the developer or his representative to make their presentation.

Ron Ewart: Good afternoon, my name is Ron Ewart. I'm with Eli & Associates. Here with us this afternoon are Jim and Melinda Edwards. Warren Brandt of Riverside Contracting and Bob Phillips, attorney. I want to just go over the rezoning proposal a little bit and talk some about the proposed use. There are really a lot of positives here that we can discuss. I definitely want to hit on those.

Jim and Melinda and their children live on this property. It's 420 acres in size that they own – excuse me, 470 acres. They call it the Trout Meadow Ranch. They want to refurbish it, they want to improve it, they want to make it better. They want to create ponds for fish, aquatic life, birds, and other types of area wildlife. Jim even wants to reintroduce pheasants to the property. Through the gravel extraction and reclamation process, we can create ponds. This is sort of a quick rendering of how that could come about. He would allow the YMCA and others to use these ponds to fish in. They do have a camp right now; Jim lets the people use this property right here for a YMCA camp. Folks could fish and canoe in the ponds. Ponds would be about 15-20 feet deep. Less than 3:1 slopes. We'd do planting of riparian vegetation, that type of thing around the ponds. There would be some type of islands. They may not be this big or they may be multiple islands, but the DEQ recommends islands.

Now any time something is under construction it is not as nice as when it is finished. Whether you're building a subdivision or your backyard patio, things are a little bit messy, but when you're done, you have a finished product that looks really nice. I have no doubt that when this is finished it will be very nice. It will be an improvement to the environment, for recreational possibilities and for wildlife. Regarding the rezoning itself, the proposal is to down zone the property from C-A3 to C-A1. Now the C-A3 allows an average of one home per five acres, C-A1 is one home for 40 acres. Most of this property is in the floodplain, this 160 acres here. Some of it is out of the floodplain, there's quite a bit of property that is out of the floodplain and some of it over here that Jim owns. You could figure out ways to cluster drain fields, to cluster home sites, but what he is proposing here is to reduce the density rights quite a bit; from 32 down to four. Now half of the property – again, 160 acres is to be rezoned, they own 470 acres, but of this 160 acres, about half of it is in the "No Build / No Disturbance Area" that's been outlined here. So you take out half of that 160 acres for "No Build / No Disturbance." And then that area of the ponds would be about 35 acres, so only about a quarter of this 160 acres would be in ponds. The first pond that would be built, okay, right in this area here as Zack showed the pictures there, they're just holes in the ground where someone started to dig gravel. What they would do is to coalesce those two holes into one pond for the YMCA to use, initially. Then they would move on and do one pond after another. Again, this No Build zone encompasses all these trees, the sloughs, so therefore the sloughs would not be touched. None of these trees would have to go that's outside the No Build area. In fact, I don't think there are hardly any trees within this area where operations would take place. The area is flat. There's a little bit of water that came on to – it was mostly ground water. I'd like to show that.

Montana Air Photo took it upon themselves to fly over the river drainages immediately after the 1997 flood, right at peak time. And what happened was in this area there was some groundwater that came up. It was primarily in the northwest section of the property. I have this here if anybody wants to look at it. We just wanted a good aerial perspective because I see there's some pictures, but what we had here was some ground water that came up, and it wasn't even higher than the road. There's a gravel road, north-south gravel road here, right along here, and it wasn't even higher than that. So it was mostly some ground water that was coming up.

Back in the 1970s there was a huge swath of land that was zoned C-A3 without really looking at other factors. Now this property is more suitable for C-A1 because that would more closely follow the Comprehensive Plan. This proposal, with the conditions were recommended for approval by OPG and by Planning Board with some quite stringent conditions. The next step would go through the County Board of Adjustment where they would look at a lot more details. We will certainly follow the law and follow process to a T. We have a DEQ mining and reclamation permits that we have to go through, bonds of hundreds of thousands of dollars have to be in place to ensure reclamation, to ensure that the environment, the wildlife and the vegetation are take care of during this process. We also look at water and air quality. They're asking for berming to mitigate noise and view, and that would need to be right along the edge of this 150 feet, maybe just into it, but again, none of the sloughs or anything would be harmed with any berming. We would work with Missoula County Public Works on any road issues that there might be with Mallard Way. Now the reason that this particular property was chosen of the property that Jim and Melinda own is first of all, it's as isolated as possible from other homes on Mallard Way. In fact, in a lot of ways, this is probably the most isolated property with good access – private property that you're going to find where good gravel is available. This property can hardly be seen from most angles. Now there are some houses here that Jim and Melinda own. There's the house here and some scattered out here. For the most part, it's about half a mile to any of these houses on Mallard Way. And then at least a quarter – well, depending on how far you want to talk, this would be half a mile from here to here, so there are some homes in this area. But for the most part, it is fairly isolated. It is difficult to see this property from just about any angle unless you're close to it. I've driven around there and I've looked at it quite a bit. There are a lot of trees that you saw from pictures. There's 50-foot cottonwood trees all around that help to buffer the view. Also, this particular site was chosen because it's closer to the YMCA camp, so they could use the ponds that would be created. The particular gravel here is very good, small diameter, hard river gravel. It's the best there is. Also, the area of these ponds that we're proposing are away from the sloughs and away from any trees. Through the reclamation process, the land would be reseeded, riparian vegetation put in place, islands, we'll work with Fish, Wildlife & Parks. It was asked the other day why we wanted to use Mallard Way instead of Lavoie Lane. The reason is because Mallard Way is paved to 24 feet, it's in relatively good condition, it's straight, and you only drive by about five homes along Mallard Way from the haul road to Mullan Road, about five homes including Jim and Melinda's home. Riverside said that they would agree to widen Mallard Way by about six to eight feet using material from the project to create a stripped off pedestrian and bikeway. Finally, something needs to be said about cost and supply and demand. Obviously, when the competition is low then cost goes up. Where there's something that's higher in supply, the cost goes lower. Right now, there's a great need for gravel. There are two national corporations that have gravel pits. And by the way, they have them all over, or near town. There's one a half a mile from me and it doesn't bother me at all. But if we can't do gravel here, then where else could we do gravel? You'll have to truck it in from Arlee, from the Bitterroot, that would cause more miles traveled and there's a whole lot of problems with that besides cost. Riverside is a local, family owned Missoula company. They offer good-paying jobs and benefits. We are a resource based economy and there definitely a need for gravel. We have laws and rules in place. We will follow all those rules and laws. Believe me, getting through DEQ is not an easy task. We need to use our natural resources but use them in a responsible way. This project would be good for Missoula County. It would be good for workers. It will help lower the cost for gravel and construction products to keep costs down and to help our economy. Thank you.

Chairman Carey: Thank you Mr. Ewart. We're going to ask the proponents of this proposal to speak first, then the folks who are not in support will certainly have plenty of time to speak. Mr. Phillips?

Bob Phillips: Thank you Mr. Carey. Good afternoon Commissioners, my name is Bob Phillips. I'm an attorney here representing both Jim and Melinda Edwards and Riverside Contracting. As mentioned, we have Loren Brandt here from Riverside Contracting to answer any questions the Commissioners might have about the relationship between Riverside and the Edwards, or about Riverside's proposed plan of operation. My job here is to talk about some of the legal and regulatory issues that the Edwards face and that the Board of County Commissioners face in reviewing this rezoning of the 160 acres from C-A3 to C-A1, actually a down zoning as your staff notes in its report. This body is addressing now the issue merely of the zoning, and the issue you are facing is a fairly specific one. Given the proper zoning considerations, is this property properly to be rezoned C-A1, Open and Resource land? As mentioned, I think looking at the map, and particularly if you look at a map of the entire, this part of Missoula, you'll see that this is probably the most isolated piece of property that a gravel resource is on along the Clark Fork River. I'm told that the gravel that the Bitterroot River brings down is not as high a quality. It's not as hard, the material tends to break down into fines when it gets wet. This land is located along the river as almost all gravel pits are, because that's where the gravel is. That's the reason why the Legislature had initially restricted the ability of the zoning function to not affect mining, because you have to go where the mineral is located. The question that you face comes back to the twelve points that we're all so familiar with in making zoning and planning decisions, and I'd just like to review those twelve points briefly. As I know your staff has already done it, I won't go through them adnauseam. But there are some points that I think need to be made in connection with the twelve considerations. First of all, the zoning is compatible with the Comprehensive Plan as your staff has explained and the Planning Board found. Second, the zoning, and particularly if we limit ourselves to the issues that surround the zoning question, will lessen congestion in the streets. We estimated that if dwellings could be placed here, there could be as many as 30 dwelling units on this property the way it's zoned now. Under a C-A1, only four could be placed here. That's a substantial reduction in the congestion, and of course we can't ignore the fact that there's going to be gravel trucks that are going to be traveling into and out of this for the probable life of the gravel operation, but then they will cease. So you need to weigh those two things. But just purely from the zoning point of view, there is a reduction in density, as we'll talk about – a reduction in congestion in the streets. Zoning to secure safety from fire and other dangers is your third consideration; not really a factor here except that if it were developed, there would be an additional burden that was placed on your safety, fire and other emergency personnel. Zoning promotes the health and general welfare; that's very broad language. It's difficult to know exactly what that means, but I will remind that the – with regard to the JTL operation, your staff determined and you agreed that reducing the residential density on this site by rezoning to C-A1 will promote the public health and general welfare. The fifth consideration is whether the zoning provides adequate light and air. The sixth is whether it will prevent overcrowding of the land. Obviously, the light and air is promoted by having fewer buildings on the property, and with your "No Build / No Disturbance Area" on the property, light and air is promoted. Zoning obviously prevents overcrowding in the land, that's evident from the lesser density that we're asking for, and it will avoid undue concentration of the population. That's your seventh consideration. Zoning facilitates the adequate provision of public services. This zoning doesn't affect the provision of public services, just as the application of JTL did not, and your staff found and you agreed. The zoning gives reasonable consideration of the character of the district. This district is agricultural, it is sparsely populated, it is river bottom, it is resource land. It is agricultural resource; it is not much timber resource; but certainly mineral resource done in this area. The request that we make here is consistent with the consideration of the character of that district. And your tenth consideration; is the particular suitability for this particular use. For the ten years that the gravel operation will be ongoing, that is clearly peculiarly suitable for this property because that is where the gravel is located. Once the gravel operation is over, this land will be most particularly suitable for recreation, and that's exactly what it can be used for. That's probably all it can be used for once we're done if we agree with this "No Build / No Disturbance Area," something that we do agree with. The eleventh consideration is whether the zoning was adopted with a view toward conserving the value of the buildings, not relevant to this because there

aren't any buildings on it. And the final one is the zoning will encourage the most appropriate use of land throughout the county. And as you said with regard to the JTL rezoning application, with the recommended conditions of approval, this rezoning proposal may encourage the most appropriate use of this land in the community. We agree with that. We think that this proposal does exactly the same. Again, those are the fairly narrow focuses that this board has to deal with. Other questions are going to be addressed to other organizations, other departments, other agencies. This will not be our first or last public hearing obviously on this entire project. First of all, the Department of Health will have to deal with the air pollution control permit that we'll apply for. The DEQ will have to deal with the open cut mining permit. And I want to stop for a moment and just talk about the DEQ process.

There is almost no consideration that the Department of Environmental Quality does not take into account. We just today got a letter, maybe yesterday, got a letter from DEQ asking us a question about the riparian nature of the property, whether there's some bird habitat and how that can be ameliorated, asking us very specific questions about that. I say that so that you know that those questions are being asked by the Department of Environmental Quality. By the way, we have copies of that letter that we'll leave with you so that you can see the depth of their concern about things as specific as bird habitat. The Board of Adjustment of course will have to have further comment on this because of the special nature of the sand and gravel mining that will be done here. So while many of the issues are not your issues, we are willing to address every question that you have on any topic today. We think we've got the people here to answer your questions, whether they're concerns that the Commissioners have or concerns that other people in the room raise. We are not going to say that it's not in your jurisdiction; we're going to try to answer everything you have. We think that it's an important project for the community, certainly for the Edwards and for Riverside, but it's one that can be done properly within the rules and regulations. Regulatory compliance and permitting are extremely expensive, evident how much work has gone into this and how much work is yet to do. We are years away from commencing this operation. The cost can be prohibitive, particularly for a local company like Riverside and for landowners like the Edwards.

One of the considerations that the Board of County Commissioners has to maintain is one of consistency. That's just required by the zoning authority, and I'd like to talk for a moment about consistency. The nearest pit that is to this proposed pit is the JTL pit, which was recently, as you know, rezoned. You recently allowed the change of that rezoning and I think it's important for you to consider what the differences are between this land and the JTL land. Of course, the JTL land is immediately adjacent to the Jensen pit. Both of those pits belong to national corporations, not local ones, but they both – the first Jensen pit was put in, of course, before there was requirement of zoning compliance. The JTL pit did, of course, have to have zoning compliance. It is much closer to town, at least from the point of view of those of us that live here in the city. It is much closer to dense residential areas, and that residential area near the JTL pit is becoming denser every moment as we speak here. It is much more visible to all of us that live in this area, and they proposed the same kind of processing and mining operation that Riverside is considering here.

Your staff has put together a staff report and I have some specific comments about things that I need to supplement the proposal with. Generally, the staff report in all of its respects is agreeable with Edwards and Riverside, and I include in that the final one that the staff just included that was suggested by the Federated Salish and Kootenai Tribes that there be a cultural assessment prior to the commencement of any excavation. That is something that I think we couldn't go forward without having done. We can live with the restrictions that the staff recommends be placed on the property. That includes the "No Build / No Disturbance Area." I want to make a comment about that just so we know what we're doing here. It may be that some other agency will say to us, "you need to put a berm up." And I know this because I was involved with the American Asphalt application back in the 80s, 70s, I don't know, showing my age here. And in that one, the Department of State Lands, then the regulatory agency for the Open Cut Act required that a berm be placed, what would be right in that area, and then right in that area. And usually when they say a berm, they mean strip the topsoil from all of that area and save it. It needs to be stored onsite and it needs to be built up into a berm, which provides both a

visual and sonic barrier for all of the homes in the area. It allows you to store all of that topsoil so that it's available for reclamation later. In this case, I will bet dollars to donuts that DEQ says, "we want you to put a berm up," perhaps entirely along that side of the property and perhaps along the north side. I don't know what they will require, but you may rest assured that a berm will be put there. Even if it weren't required, it's a good idea and Riverside will do it because we need to store the topsoil somewhere and it's a good visual and sound barrier as I say. So I'm not sure exactly whether the "No Build / No Disturbance" – I've read the suggested language from staff about four times, and I don't know that the specific language that you have proposed there would prohibit us from storing the topsoil there, but the buffer right there is 150 feet, so there's room for us to put that berm, and I'd suggest that if you think the "No Build / No Disturbance" prohibits the placing of that berm there then we might need to look at that language, but otherwise, that is something we definitely would like to do. The "No Build / No Disturbance Area," the language that staff has proposed we think is probably doable. I see no difficulty with the definition of "No Build / No Disturbance" in that area, and generally the map that is here that we're looking at is the same one that your staff put together and we think that that's probably the appropriate place. It also gives us a 150-foot buffer between any operation by Riverside and any slough or wooded areas as well.

I need to mention just a couple of things because of public comments that you've received from other people. First of all, with regard to Mr. Zinke's comment, you got a letter I think just yesterday, I was just handed it, and he suggests that this should be turned down until there is some Comprehensive Plan is prepared. Of course, this is a different zoning that we are asking for. You have the classification that we're asking to be fit into, and that is C-A1 Open and Resource land. We don't need a special district for what we are asking for. Secondly, he suggests that Mr. Edwards and Riverside could enter into some kind of right of first refusal or sell this property and thereby avoid some regulation. First of all, there is no right of first refusal between Mr. Edwards and Riverside, at least that we're aware of. I don't know where Mr. Zinke's information comes from. Secondly, there's no plan to sell the property, and most importantly, it doesn't make any difference who owns this land. If you're going to mine gravel there, you have to have a permit from the Department of Environmental Quality and all the other permits that I have discussed. There is no effort to avoid regulation. You can't avoid the regulation in any case.

You've been shown photographs of the flood of 1997, and there were photographs on the wall over there that I think probably don't quite describe it as well as the one we have that was created by Map Inc that was taken in 1997. Most of the gravel removal will be done here – I think there's six or seven feet, is that right Loren, of gravel until you get down to the water table. Between seven and ten feet of gravel will be removed before you get down to water. And then the fact that you are removing gravel underwater doesn't interfere with the operation at all. When the first pit south of Mullan Road was proposed to be installed, that's the American Asphalt pit; there was a concern hydrological that it could be captured by the river. Captured, of course, means that the actual channel of the river would invade it, and actually take it over. That's a concern because of the pit now that's underneath the Reserve Street Bridge, which was in fact captured. The water flows in that area, and in fact, in this area, if you look at the photographs, you'll see that there is no flow to any of that water. If there is a flood, the water simply rises. This is very porous, sandy, gravelly soil. Water just comes up. There's no risk of any erosion. It's probably a greater risk of deposition, in other words land and soil is going to be deposited there. Removing sand and gravel from underwater likewise is a good thing because it reduces the dust and the noise from the....

The ponds that are drawn on this diagram I don't think will satisfy the DEQ's requirements. I think that DEQ will tell us that - we just found this out, and that's why they're not correct – DEQ will tell us we need one island for every – how many acres was it Ron? For every 4-5 acres, we will need one island. And I think they anticipate separate smaller islands rather than these that look like donuts or something that you drew I guess. I know that one of the things that you asked us to come here with was to bring additional information answering some of the questions that the Board of Adjustment may have had in its concerns. We think we are going to be able to answer all of those today. To the extent, we can't,

we will be addressing those to the agency that has regulatory authority into the future. With that, I stand ready to answer any questions that the Commission has, to respond when this is over to any of the public comments or concerns that the neighbors have. We think this is a good project, and it's probably the best place for continued removal of sand and gravel in Missoula County. Thank you.

Chairman Carey: Any questions for Mr. Phillips at this point?

Commissioner Curtiss: Just to clarify Mr. Phillips, you stated that the land was – there was no plan to sell. According to some records that have been reported in the media, this ranch is for sale. Is this piece not part of that ranch that's for sale?

Bob Phillips: It is not for sale.

Commissioner Curtiss: It's been pulled off the market Mr. Edwards stated on the record.

Chairman Carey: Let's move on. We don't have any questions right now Mr. Phillips, thank you. Anybody else who supports this project like to speak at this point? Any other proponents? Seeing none, we'll ask people who oppose this project to speak to us. We won't limit the time you can speak, but we certainly urge you, you can see there are a lot of people here and I suppose a lot of folks want to speak, so please try to make your remarks as brief as you can, but say everything you need to say. We might ask our attorney to just very briefly say again what the parameters are of our decision-making here. What can we use in our basis of – to make a decision and what we can't use.

Mike Sehestedt: Ok, this is a land use decision, not a personal referenda. What we need to look at, what the Commissioners need to consider is in light of the zoning criteria, the surrounding neighborhood, considering the Comp Plan and again, all of the statutory criteria, is this an appropriate rezoning or is it not? If they do decide to do some rezoning, what conditions and limitations should that rezoning be subject to? They are going to be looking at it from the point of view that absolute honesty on the part of everyone. People get hit by trucks every day, or drop dead on the golf course, and we want our regulations in place, and clear enough so that there's no question and no misunderstanding at any point in the future regarding what the zoning classification is and what is expected, required, permitted or not permitted. We want to focus on the issues. The proponents have talked about why this is a good place to mine gravel. I suspect we're going to hear from a number of people who want to tell us why it isn't. That's what we want to focus on and not on personalities of parties involved on either side.

Chairman Carey: Thank you, Michael. I'd just like to say I know how strongly all of you feel about this and we admire the way you've listened to the proponents in a very polite and civil way, so thank you.

Wayde Whitmire: Thank you. My name is Wayde Whitmire and my home is located at 5246 Mallard Way. I am also a member of Grass Valley Against Gravel, also known as GAG. At this time, we would like to present you with signatures of over 2000 people, addresses, names, and phone number. There's three copies here. They are all against the change in zoning. In brief, I would like to share with you who is GAG and why our group of concerned citizens and neighbors have come together. We have made an informed decision to oppose the proposed gravel, concrete, asphalt operation at Trout Meadows Ranch. We are a diverse group of people coming from all walks of life, different ages, backgrounds, with one common goal: to be able to live our lives with quality that has been promised to us per the Montana Constitution Article 2-3. And it states, "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health, and happiness in all lawful ways." We come together here today to reveal the truth about the request for rezoning. And as you will hear from many GAG members, they have spent endless hours researching information and many concerns encompassing the proposal. This proposal is not about rezoning from one house to 5-acres, one house

to 40-acres. It is about a full-blown gravel operation. It hides behind a disguise of open space and YMCA youth camps. The benefit is only for one, which is in complete defiance to Montana's spot zone policy. I'd like to quote Mr. Edwards at this time. "I hope if anyone cares about the quality of life in Missoula and in Montana you will stand up for your rights for clean air, clean water, against noise pollution and against economic pollution." This was taken from the Missoulian in September 12, 2001. At this time, I'd like to turn the podium over to those people who do care.

Jim Brown: I'm Jim Brown, President of Five Valley's Audubon. I'm here because of a concern about the proposal. It falls in something called an Important Bird Area. I'd like to briefly tell you what that is, what our concerns are, and our recommendations. An Important Bird Area is an international program that's managed by National Audubon Society in the United States. The purpose is to identify habitats that are critical for species of conservation concern and then encourage their protection and try to avoid the degradation of that habitat. This is accomplished by raising awareness. There are no legal binding things with this IBA. It's strictly a matter of education and informing people about what these habitats are. There's a – this last spring IBA was approved, Important Bird Area, that we call the Clark Fork River-Grass Valley IBA. It's described in this brochure, which I'll leave for the record. It runs roughly from Reserve Street to Huson and includes cottonwood bottomlands associated grasslands and wetlands along that strip. It was approved because of the criteria it has to meet. To be approved as an IBA there are certain criteria, very specific ones that you must meet. This particular one was approved because there are 13 species of conservation concern that are doing well and breeding in this area. A couple of those are duck species, Hooded Merganser, borrows golden eye for example. There are species that need cottonwood trees, there are species that need willows, and there are species that need wetlands. There's four heron rookeries, six bald eagle nests in this area. And one other thing that counts this way, it's a very bird-rich place. There's 230 species have been recorded in this fairly small area. The critical habitat components for these species of concern are cottonwood trees, willows, tall shrubs, and then wetlands, and they all go together because the cottonwoods and willows do well in the wetland habitat. Wetlands, just to define them a little bit, are shallow water areas for the most part, that is say one to five feet of water. These wetlands support a lot of aquatic vegetation and invertebrates that provide food for bird life and cover, hiding cover, nesting cover and so forth. That's an idea. Our concern is the loss of this habitat or the disturbance to breeding birds, so what we recommend is that the gravel mining extraction be only approved if there's an acceptable restoration plan to create wetlands. And that really means not maximizing gravel production. The gravel pits ought to be designed for wetlands, and that would include quite a bit of shallow water area – lot of shallow water area. And there should be a substantial bond posted to be sure that the restoration plan is accomplished. We recommend that only the zoning – the zoning only be done for the pit area. Now maybe your non-disturbance area accomplishes that, but there ought to be real clear on where the gravel mining is allowed so that desirable habitats that exist now such as willows and cottonwood trees are not damaged. Roads that are needed to cross-sloughs should go over, not through sloughs so that the water area is not disturbed. One other thing I've heard, it wasn't in the original proposal, was an asphalt-concrete plant was proposed on the site to utilize that gravel. This could have substantial impacts offsite on breeding birds. I talked to our professional ornithologist, Jeff Marks with Montana Audubon, and we don't know of studies that say how far away an asphalt plant would cause disruption of breeding of these species of conservation concern, but our sense is that over a ten-year period, it could be substantial. We're very concerned about those kinds of activities. We would recommend they not be allowed on that site. Finally just to close with this, when you fly over Missoula if you're looking out the window, and you look down you can't help but be struck by this ribbon of cottonwoods and associated wetlands that runs its way through the Missoula Valley. This is a very limited and a very valuable resource, and I hope you can do what is right to protect and sustain that resource.

Betty Dyke: This is the very first time I've ever done anything like this, so please forgive me. My name is Betty Dyke and I'm 70 years old. Shortly after the first of the year, I will have lived at 4550 Mallard Way for 30 years. I want to go on record as adamantly opposed to any rezoning, which is being requested, and I'm equally opposed to the application for the gravel pit, crusher, washer, asphalt plant, and cement plant which has been filed. At least one of these requests has a start date of November

15th, today's date, and will be contingent on your action today on the rezoning request. Mallard Way is a dead-end road, one way in and one way out, with a small bridge half a mile from Mullan Road, over which all traffic including gravel trucks, haul trucks and any other industrial equipment will have to travel. What happens if the bridge can't handle the increased traffic and the weight of the heavy industrial equipment needed for an operation of this size? If the road is blocked for any reason, what could the residents do in case of fire or the need for an ambulance in case of medical emergency of which has happened several times. Mallard Way is in serious disrepair, and I'm sorry, I don't agree with the good repair on that. Every year when the potholes appear and we call the county, we are told, there isn't enough money in the budget to fix your road. This is very frustrating for the residents, and I'm sure for the County Road Department as well. Mallard Way was never intended for anything other than a residential road, and added traffic, especially heavy trucks running frequently will undoubtedly damage the road as documented by pictures of other operations that we have. Mallard Way is a narrow quiet road with no sidewalks, bike paths, or shoulders. Many residents, both adults and children walk the road for exercise, to a friend's house, or to catch the bus at the corner of Mallard and Mullan. During the school year, there are also two school buses, which pick up and drop off kids. In addition, residents, both children and adults ride their bikes and skateboards, walk their pets and 4-H animals, particularly before fair time, and ride their horses on the roadway. I feel this entire operation is inappropriate for this residential area and will cause a volume of noise, dust, and safety issues to adults, children, and animals living on Mallard Way. Please carefully consider our concerns prior to taking action on this rezoning request. Does this request meet with the Growth Policy approved by your office? I don't think it does, but that's my personal opinion. Thank you for the opportunity to share with you a very few of my concerns.

Gailyn Wood: My name is Gailyn Wood. I live on the corner of Mallard Way and Mullan Road. I've lived here quite a few years. My dad and mom moved over here in 1955 to put us kids through high school. I raised my three boys here by myself. They go to Hellgate – they went to Hellgate Grade School, they played on that dead-end road, they rode their bikes, they went over fishing, they – it's a dead-end road, quite, no sidewalks. I also the house that I live in, the property is history behind it. That's where the stagecoach years ago used to stop--covered wagons, they put their horses in the barn, and they slept up in the hayloft. My main concern is the – right on the corner when you – they'll have to stop to get on to Mullan Road, and they'll go, you know, they'll have to gear down to be able to stop, and you know how the exhaust and all that comes out; same way with going again. I'm against the gravel pit, asphalt, and the cement plant going in. My concern is the chemical that's going to be coming from the asphalt, the smell that's going to get into your houses. The wind blows a lot. It's going to drift. I want to – with my health, I won't be able to sit out and watch the birds and listen to them. I feed them, there's a lot of wild animals around there. There won't be any. My little foxes that I watch that raise the little babies there, I won't be able to watch them play around. I'll have to stay in the house instead of enjoying the outside. I don't know whether – I'm against the rezoning, the gravel, asphalt and cement, and I'm concerned about my health, whether I'll be able to live there. When we moved over here, it was just a beautiful, quite, clean neighborhood. And if this goes in, I just can't see how – it's going to be a big operation. You know that. There's eagles that fly right over my place, they light in the cottonwood trees, they go across over across by the other cottonwood trees over by Edwards's property, and they nest. They will be – I don't know, I think that chemical and stuff, the dust and the dirt and the all of that is going to interfere with not only the animals, and me and people, it's going to interfere with the horses. There's some beautiful horses over there, highbred horses. They're going to get a cough from that dust and that asphalt. And they're going to – I mean when they go in the horse shows and they start coughing, what's going to happen? They get eliminated. And that's my concern, safety too. I'll let somebody else talk.

Julie Sauter: Good afternoon Commissioners. My name is Julia Sauter and I reside at 4750 Mallard Way. I want to quickly run down the chain of events as they happened for us, so perhaps when different people get up and speak to you, you'll understand why these issues mean so much to them. My husband and I noticed the zoning request on a pole on Mallard Way on the way home from work. We're contractors, so to us it just said the newest owner of this property is planning to subdivide it.

We've seen this before. We both grew up there; we've been there since the mid-70s. So we never took the time to get out and read it. Growth is coming we both said to each other. Let's hope that this is done tastefully, and won't they be surprised when they learn how few homes they can really put over there because of the floodplain. A call came in to us from a neighbor on September 14. She boasted to me, "They're planning a gravel pit. Be at the meeting on September 19." A few folks had received letters dated August 15, received around 22nd of that time. This was the notification that residents got for this proposed thing. Not everyone got one. So we go to the meeting, and this project is presented to us like this: "He wants to rezone 160 acres for gravel extraction. This will not be a full-scale mining operation," he boasts, and for you all, I have copies of that. Zack, do you want to pass those around? You can follow along and see, I've highlighted everything I'm talking about so that you know that I'm speaking the truth, and from the notes. The applicant indicated to us, "There will only be a few trucks." "It's for the YMCA kids," with promises of ponds for the public. "It's such a small operation; it could only take two of the ten years proposed." The gravel is for Riverside's use only. The applicant stated he wasn't moving. When it was time to answer the really hard questions that the planning board had for the applicant, he was already gone. He left Mr. Ewart to represent him. When he could not answer questions like "how many trucks will there be?", "will there be an asphalt plant, a crusher?" Ron referred just by saying "I'll look into that. I'm not sure." Those are on pages four through six, and they are highlighted for your reading. We neighbors knew at this point in time if we really wanted to know what was happening in our neighborhood that we best find out for ourselves. Hence how GAG got started. So we left the meeting, and immediately the next day we went to work. Some of us had known each other for years, and others were just meeting for the first time. However, without talking, each one of us seemed to take a different path, and before you knew it, our cell phones were ringing off the hook. We learned that proper notification of residents had not been followed. A second letter was drafted on September 27. You'll find that on page seven. This was eight days after the Planning Board meeting and after the Planning Board had voted in favor of this rezoning. The very next day, one of our neighbors learned that the property is for sale and had been for sale for a while. Conveniently, today it's off the market. This outfit that will be doing extraction is by their own admission one of the largest companies in the Northwest with revenues of over \$40 million per year. What do they want with a small pit is what residents had to say. Someone else came across a lease agreement dated May 1, 2005 – sixteen months prior to this notification of residents and prior to the rezoning meeting. Riverside has first dibs to buy it, and if not, they can extend the lease. You'll find that on page eight. Applications to the DEQ were found. The first, a land reclamation plan shows a relatively small operation stating operation would begin June 15, 2005. Once again, long before any rezoning process. The second was received on 10-22-2006. This was the open cut permit. This permit now tells us that they plan to produce asphalt, and the project just gets bigger from there. The second DEQ permit we came across was dated 11-1 received by the DEQ. We just learned of this on the ninth of this month. This states it's bigger even yet, and now they want to host a concrete plant. The most recent permit was obtained just today. This is the one that you have been presented with. You'll note the two copies of those applications, both of them dated 10-30-06, both of them signed by the same exact person by Riverside Contracting, one of which was sent to the DEQ and it is stamped received, one of which was sent to you, however, they don't state the same information. I don't know how to say this is a real nice diplomatic way, that I really should, but someone's trying to pull a fast one on someone here. And the neighbors Mallard Way, Mullan Road, Lavoie Lane, Primrose, and Harper's Bridge, we're not going to stand still. We want to know the truth, and we hope that you do too. We couldn't get much help as the applicant was running for office and no one wanted to get into a political battle, so we as residents were on our own at this point in time. I'm very proud to say that I'm a part of a terrific neighborhood, not just Mallard, but Primrose, Lavoie, Harper's, Mullan Road. I live amongst some of the greatest people anyone ever would want to know. Each one of these people deserve a better quality of life than a full-scale mining operation that was originally presented to them as a gravel operation to make ponds for children. Simply not the truth. I want to talk to you a little bit about the issue of rezoning. Let's just assume for a minute that this rezoning is not about land to accommodate gravel, asphalt and a concrete plant. Would we really be here? Would this be necessary? The first argument that the applicant wants for you to consider is that this is an open space issue. I'd like to bring your attention to a letter that the applicant himself wrote to the editor. It was published in the Missoulian May 28, 2001.

It refers to money being spent by the city on open space floodplain land, and it reads, "What a waste of a quarter of a million dollars, a piece of land that will always be open space because of the floodplain." The applicant is telling us that this land, the very land that he's talking about, will always be open space, irregardless of the zoning that's put on this land. The applicant, in an interview with the Independent stated, "Would the members of GAG rather have 100 infill houses?" He's not the first owner of this property to consider subdivision homes. In 1990 when the property was known as the Eagle River Ranch, percs were done also. You have a copy of that in front of you. These percs were conducted within the full 320 acres and not just the 160 acres that we're talking about. Out of 48 holes, 36 failed. Twelve additional homes on that property could have been possible. That would still allow for a whole lot of open space in that area. Jennie Dixon stated on September 19 at the zoning meeting that, "we do not recommend approval of any lots in the floodplain that support residential development. It would be a no-build zone anyway." She also made mention of that to you on Monday. Also, if open space really was an issue here to him, wouldn't he be asking for rezoning of the entire piece of property and not just a portion of it? The second argument the application wants you to consider is being able to build ponds for the Y children to enjoy. You'll later hear in this hearing from another resident who has researched this issue and will prove to you on an environmental level that this is not an appropriate idea for this area. This is not the last piece of land available to the Y children and [tape end]. Council Grove Park is right down the road and has a lot of historical value, which the kids could learn about. I was a teenager in this neighborhood; raised four children in this neighborhood, and I can tell you, kids live in a neighborhood like this are encouraged to play outdoors. They're encouraged to explore the land that we live near. They're not encouraged to sit in front of televisions. We saw a picture of one of the ponds at the original Planning Board meeting, and there was a rowboat that had just been left at the pond by the children of the Y. What child wouldn't try to take the boat for a ride if found exploring? Some years ago, there were two teenagers who drowned in the Frenchtown Pond. I know this because their family went to church with me. A public area this was with a lot of people in it and they still drowned. Accidents happen; we know that. And this is a residential neighborhood. Who would be responsible for these kids? I simply cannot believe that a smart businessman would actually consider putting 20-25 foot ponds in an area where he knows that there'll be children. The liability alone would be incredible. So I say to you Commissioners that this rezoning is not about lessening the number of homes built on this land, and it's not about ponds for kids to use. It's entirely about gravel, asphalt and a cement plant. I'd like to bring your attention, how things are zoned right now, that I think are really important. Make way for a subdivision. My map, unfortunately, is located behind you, and I'm going to be going right through you in order to do that. So, what I'll do is point out that this is the proposed gravel area. This ribbon right here that you see represents a one mile area, and we have done our homework and have proven that gravel, the dust particles, the smell of asphalt is going to travel at least one mile. We do have proof of that. So I welcome any to you to go up and swing that ribbon around and see how many folks will really will be affected. They want you to think that the only people that are opposing this area is Mallard Way, and we're right here. Look at the number of homes up here that are going to be affected, and the Luarks [phonetic], who are right here. So when we're talking about the current zoning issues, the 75 acres that the applicant owns is right here above this area. That right now is listed for sale and ready to develop. You have a copy of that in your packet. There's approximately 34 parcels on his plan for this 75. Some parcels are larger than others, so easy math average would be one home per 2.2 acres is what he's proposing right here. This also is going to require rezoning – a decrease in the current rezoning, or in the zoning that we have. The property directly to the west right here; you see here the Y camp, this piece of property right here is owned by Melinda Edwards. This is the property that the camp is on. Right here in the corner the Edwards own a duplex. That particular piece of property is zoned commercial. He has two homes on one acre there. So is he talking about open space? The five acres that his home sits on is in this area right here, and it's zoned, it complies with the one per five zoning. In 2005, you folks approved a family transfer, making way for a subdivision of one house per one acre. You also have a copy of that, and that is right here. In this area, we have one house per one acre, we have a proposed one home per 2.20 acres, we have a two home per one-acre parcel, which is zoned commercial, a one per five acre with the possibility of one home per one acre. The remaining 160 acres in this area right here of the ranch is one per five, but a preliminary subdivision plat has been drawn, so who know how he's going to ask you to rezone that

area. You also have that in front of you. Now he says he wants to extend the one to five in this area to one to 40. After we've seen a history of him zoning the other way, he wants this to go this way. Why? To make way for a gravel pit. There's one zoning evaluation that I want to go over, and that is, is the zoning compatible with the Growth Policy? One article says that we have the right to a clean and healthy environment. The right to a clean and healthy environment is fundamentally important. I couldn't agree more. My mother lives in the house on Mallard Way, my father passed away 14 years ago. He wanted to stay at home during the end stages of his illness in the home that he shared with my mother on the land that he loved, so I quit my job and nursed him for six months. I was there when he took his last breath. In some of the last conversations, I was able to have with him he made me promise to always take care of my mother. "Never let her go to a nursing home Julie," he'd say, "She deserves better than that." This is the very home my mother still lives in on Mallard Way. She'll be 83 next month. She is diabetic, has high blood pressure, and is crippled with severe arthritis. During last summer, she had troubles breathing and became hoarse over the smoke-filled air due to the fires. Imagine what the dust pollution and asphalt diesel smells would do to her lungs. She has the right to fresh air and a clean environment, and it really angers me that if you decide to rezone this property, the very quality of her life could be compromised. I thank you for your time.

Chris Brick: Hi, I'm Chris Brick with the Clark Fork Coalition, I'm their staff scientist, and we've got some written comments which I'll give you after I just summarize them here. Primarily we're concerned about the long-term impacts of this proposed gravel mining. First of all, artificial ponds we feel are inappropriate adjacent to a wild native fishery. We're dismayed to see yet another proposed gravel pit selling itself as open space and trout ponds. The Clark Fork River below town has an outstanding wild native trout fishery that most cities would kill to have in their backyard. The last thing the river needs is yet another series of artificial ponds adjacent to its channel especially if they're stocked with non-native species on a put and take basis. In Ohio or South Dakota, the proposed ponds might be considered an amenity, but here, really, they're not. Secondly we are actually worried about significant risk of evulsion and pond capture, namely if the channel were to move in a large event. We looked at the PBS&J report, and we note that in the period of time that they analyzed, between 1936 and 1997, the largest event they say was a 25-year event. And what we're more concerned about, I think is the 50 to 100-year event for the possibility of pond capture. And, I think that is quite possible. Actually if you read the PBS&J report, they really don't dispute that possibility through the possibility of channel evulsion, mainly because in a larger event, flooding is more random. And primarily that is because you get more debris in the channel. Especially in the lower Clark Fork, the area that we're looking at, there are a lot of riparian trees, large trees that come down in large floods, create debris jams, the channel then evulses, or erodes around those debris jams, and so it's a very unpredictable to be able to say where the channel would go. And the PBS&J report does not necessarily dispute this, so we are concerned about long-term evulsion and pond capture. Finally, we just would emphasize that the question before you is the requested rezoning, a matter over which you have great discretion and denial of this request would not result in a realistic threat of a Fifth Amendment taking. Although granting it would certainly threaten the quality of life, not only of those living near the site, but also of the countless citizens who recreate on this reach of the Clark Fork every year. And so for those reasons, we would urge you to deny this proposal. Thank you.

Jack Gillespie: Hi, my name is Jack Gillespie. I live at 4705 Mallard Way. If you need to know where that is, it's about a half mile down from this project. My wife and I bought our home at 4705 Mallard Way 33 years ago to raise our family. We are totally opposed to changing the zoning of the Trout Meadows Ranch. Here are some of our reasons. We chose this area for residential/ag mix, as well as the configuration of the roadway to control the amount of traffic. We raised our three kids in this quite residential area; we gave them freedom to ride their bikes, walk their 4-H animals, and generally enjoy the neighborhood. We've been blessed with several grandchildren and great-grandchildren. We hope they can also enjoy the same quite, residential area to play and enjoy. We have two morning and two afternoon school buses per day that come through our neighborhood to pick up and return our school age children. We also have a city bus stop at Mullan and Mallard. All of these activities will become more at risk for residents and children with the increased heavy commercial truck traffic, not to mention

the health concerns of exhaust, dust, noise, and pollution related to this type of operation being considered with this zoning change. At the present time, our roadway measures 24-foot wide. Two heavy commercial trucks passing would measure 18 feet, that's if they were touching mirror to mirror. That leaves less than three feet on each side of the road. Since we have no sidewalks or shoulders, where would our walkers, children, or bike riders fit? We have no problem with the current zoning of one dwelling per five acres. It is obvious that the applicant has a proposed change of one dwelling per 40 acres is doing so for the sole purposes of extracting gravel, mixing cement, building an asphalt plant to the benefit of one family and the disadvantage of the entire community. It would appear that if the applicant was truly interested in lowering the density of housing to this area, he would have requested that the entire ranch be rezoned instead of just the 160 acres that sits in the floodplain, which would be a no building area anyway. It's also apparent that there has been considerable planning on the remainder of the ranch, which is not in the floodplain, of one dwelling per five acres or less. As per the Growth Policy, one of the questions refers to traffic. Its 160 acres in the floodplain, who'd be building in there anyway? Even if they did, I would personally prefer a few more cars rather than a fleet of heavy commercial trucks. A reference was made at the hearing on the 13th to five trucks per hour using a formula for 1 million yards of gravel to be removed. That was before we discussed that now we're intending a hot plant, cement plant. This will add even more trucks to the mix. And who's to say we're going to stop at 1 million yards? The entire proposal is opposed by your own Growth Policy, but I've been led to believe is the guideline adopted by Missoula County--more potential problems? How about the water table, how about well contamination, and what are the effects of the Milltown Dam removal going to do to that river? I appreciate your time. Thank you very kindly.

Chairman Carey: Thank you Mr. Gillespie. Perhaps the next speaker could wait like that lady has done, and we'll speed things along a little bit.

Carol Kinney: My name is Carol Kinney. I live at 12555 Mullan Road, and this is a little addition to my little handwritten speech. This is not just about rezoning. They're talking to us about an asphalt plant, a concrete plant, a wash plant, a cement plant, and I just had to say that because I heard the man say it. I was born on the farm that I live on. We are one of the people who were not given notice, and did not get the notice until after the Planning Board meeting. There are two active sloughs on our property that flow directly into Trout Meadows helping create the wetlands area on that property. I will freely admit that the gravel pit, asphalt plant, concrete plant would negatively affect my quality of life until the day I die, since I intend to live there until I'm gone and no, my land's not for sale, it will be for my children. My health would be compromised by the constant pollution, the abrasive noise, congestion, horrendous traffic, and industrial scene in our pastoral community. My wildlife would be shocked, shattered and their environment damaged, probably forever. My garden will be smothered with dust, which inhibits the sun's absorption and then the bees, by being coated with the dust, their sensory organs, and their breathing apparatus. Now to go to the facts and figures of why this is not a workable form – that was my emotional part. The request is for a spot zoning change for a gravel pit, which you know has now become much, much more. In the growth design plan for Missoula County, you noted, "communities should be involved in the planning and decision making process that affects them." Here's my involvement. The traffic congestion on Mullan Road definitely affect all living there. By your own words, Mullan was at near capacity in the year 2000. Each development and family transfer puts a heavier strain on the roadway. Since the inception of the 2000 Growth Policy the corridor has flourished with development. Before you even consider giving an open door to hundreds of thousands of gravel trucks, hot oil trucks, and concrete trucks, I would like for you to see what you've already approved. For brevity, I will give you totals, however in the handouts I have given you it is broken down by month. Please note some fairly large subdivisions are not included as their approval came before July 1999 where I started my research. The breakdowns are: 1999 – 63; the year 2000 – 32; the year 2001 – 457 and one commercial; the year 2002 – 59 and three commercials; the year 2003 – 449, 218 in review, and two commercial; the year 2004 – 40 and three commercial; the year 2005 – 1,559, 858 proposed, 346 discussed, six commercial; 2006 – 83 and nine commercial. That is through October 4, that's when I stopped the study. The total bar: 2,742 home sites, 1,076 in review, 346 in discussion, and 18 commercial sites. These are all on the Mullan Road corridor. Reality tells us each house has at

least one car, and most have two or three, so the total added traffic is from 4,202 cars to possible over 9,000 additional on Mullan Road. That is not including traffic from the churches that have been established in our area. School, church, private activity buses, plus the Mountain Line run regular routes along Mullan Road. I am quoting a letter enclosed in your packet from Hellgate Transportation. "Of the 15 buses we run, ten of them transport children using Mullan Road as a main access to their homes. As you are aware, Mullan Road is currently a very busy road with large truck traffic, school buses and so on. With increasing traffic and the speed this traffic drives, our professional drivers have a tough job of daily navigating Mullan Road safely with their most precious cargo." The subdivisions and the family transfers have already been approved. The homes have been built or are in process at this time, and as progress goes on our road, it's becoming severely overburdened and dangerous. Now imagine a very large number of trucks added to our daily traffic mixed with fog, ice, pulp mill workers and you have a mix for mayhem and death. Therefore, your last question to you is how can you consider spot zoning in any way, as it would not go with your growth policy of embracing values and the quality of life in our community, or our ultimate safety. As I'm sure you realize I'm against the rezoning of our peaceful valley. I thank you for giving me this opportunity to be part of your decision process.

Richard Larson: Hi, my name is Richard Larson. I live at 5635 Primrose Lane in this other area that's going to be affected by this gravel pit. I had quite a few points that I was going to bring up here, but preceding speakers have covered quite a few of those. One of the things I wanted to mention too thought that I don't think a lot of people realize unless they live out there. My neighbors I'm sure are all aware of, that we get a considerable amount of west and southwesterly winds there. Much, much more than closer into town or in town area, so any excavation in that area there is going to severely impact the neighbors down wind. In addition, in the summertime, more days that not we have a fairly strong breeze blowing too and sometimes up to gale force winds. And it's going to carry that gravel and noise and diesel smell and asphalt smell much, much further than it would happen in other places. Something else I'd like you to consider too in this, this doesn't – which the applicant had nothing to do with – but 1982 I was looking for a place to set up residence with my wife, and we looked at an area until we found out they were going to put in a gravel pit there. And it turned out to be American Asphalts, which is now Jensen's. That was a 20-year gravel pit they were putting in, in 1982. They had planned at the end of it to reclaim the land, put in a permanent roadway with houses around their pond, and it looked really nice in the plans. Here we are 24 years later and I don't think they intend to close that pit anytime soon. It just keeps getting bigger and bigger. As for the number of trucks driven on this, they're implying that it'd be less than if they put those houses in there. I really doubt if they put in a gravel pit and/or hot asphalt plant or cement plant that the number of trucks driven is going to be less than the number of cars driven if they put houses in that area. Most of these residents I'm sure would probably like to see cars vs. big trucks. The intersection of Mallard Way and Mullan Road is kind of a dangerous intersection because of the geometrics and the narrow roadway. Most of those oversize trucks are going to have to swing into other lanes in order to make that turn. They can't make that turn and not go into another lane. So I think there's a potential for a dangerous situation there as well. My former neighbor who's deceased now, Bill Kinney, who's a long time resident out there, he told me that roadway on Mullan Road was one of the oldest unimproved sections of road in the state. When that road was built, they plowed the dirt up, flattened it out, and put asphalt on it. It's not a very good road. And in 1997, during the floods, they were concerned about damage to the roadway because the be is so poor, that at that time County Surveyor Horace Brown put a severe weight restriction on the road because he was concerned with damage to that road because of the lack of adequate bed underneath it. I think this increased truck traffic will do nothing but tear that road up. And it's a very narrow road. Thank you for the time listening.

Bill Vaughn: Hi, my name is Bill Vaughn. It just occurred to me – can I ask these guys what happens to the kiddies when construction of the gravel pit and asphalt plant...

Chairman Carey: You need to address your remarks to the board.

Bill Vaughn: Could you ask the representatives of the other side what happens to the kids during the construction of the facility?

Chairman Carey: At this point, no. We can address that when they have a chance to stand up again.

Bill Vaughn: Okay, good. Another thing. I just drew this map yesterday. Can I approach the Commissioners and give you a copy of it? Could I also pass these out to the crowd? Anyway, part of what I do for a living is draw maps, so I know how to lie with them. This particular map is based on two things; one is the USGS surveys, and that's superimposed on the sketches that were submitted showing the facility that's being proposed. Now I have two concerns, and one of them is addressed by this map. The first concern I have is that my wife and I use our property to establish line of credit. We need this ten acres and this house and this shop and these corrals to continue to get credit because like a lot of people here, we just don't make very much money, so we're using the property to stay afloat. Now my calls to real estate agents the last few days have revealed that the second this project is approved the value of our land is decreased. Now what the dollar figure of that is is what the market will bear. Who do I bill to recover the loss of the value of my property? That's one question I have. Let me move on quickly to this map. Now what this shows is unlike the map these guys submitted, those two sloughs join and create what the State of Montana calls the unnamed waterway. That waterway I named the Mabel after my grandmother just because I like to name things. And it flows from, it rises from these sloughs at the – where the facility is. And it flows to the properties belonging to 12 families. Each one of these families filed for and received water rights. And we just got billed \$40 to renew these water rights. Now that slough I call the Mabel flows I don't know, I guess a mile, maybe a mile and a half from the Trout Meadows Ranch and flows – on a good year, assuming there's enough water, into the Clark Fork River. So these waterways are connected. And since we own water rights, and if the water rights are injured or deflated or eroded by this process, again my question is who do we bill? Because we considered that the approval of this project is a visible taking of our property. Thank you.

Tonya Arkell: My name is Tonya Arkell. I live on Harper's Bridge Road. I will make this very short and brief because obviously we've covered everything that needs to be so far. I am a parent out there of a ten-year old boy. One of the reasons we moved out there was for the peace and quiet and to raise our son. A lot of these great people that stood up here they talk about their children grown. I actually have a child that is still young. I will just make this brief. This is not something that will only affect us, but we need to think about the children. That is far more important than a gravel pit/asphalt plant that only benefits the person that owns the land, not the families that live around it. We can see no good reason nor outcome for putting a gravel pit/asphalt plant in neither a floodplain nor a residential area. We would really like to see you vote against the rezoning request. Thank you for taking the time to read our concerns. This was a letter that I hadn't given to you people. So anyway, I am a parent of a young boy and I do look to see his future becoming more. That is one of the reasons we moved out there, for safety and to have a good life. So, thank you.

Marsha Hauck: Good Afternoon. I am Marsha Hauck. I live at 12305 Mullan Road and I've lived there for 33 years. I'm here today to clearly object to rezoning any acreage at Trout Meadows Ranch from C-A3 to C-A1 because I am adamantly opposed to the proposed gravel extraction project that that rezoning would allow. Before I go any further, however, I want to tell all of you that before this rezoning request for the purpose of gravel extraction was brought to my attention I did not know who the owner of Trout Meadows was. I knew nothing about the rezoning applicant or his family, and although I object strenuously to the proposed gravel extraction project, I have nothing against the applicant or his family and never will, okay. Just so everybody understands that. Who the applicant is has nothing at all to do with the fact that I am appalled at this proposed project. I am opposed as an individual property owner, as a member of the larger Grass Valley/Mullan Road community, and yes, as a citizen of planet Earth. Whether the gravel extraction would cover 28, 33, 58, or the entire 160 acres, it is entirely wrong for that piece of land. It would involve all the things that we've heard about all day. It is dismaying to inhabitants of our Grass Valley area that have come to appreciate so much our area. It is dismaying that a few people who have so very much to gain financially could be allowed to create such havoc and

such a tremendous loss of quality of life for so many other people. Contrary to what either Ely & Associates said at the Zoning Board meeting on September 19, 2006, this whole area did have water on it in the high water of 1997. And I see pictures that indicate that they recognize that, but they don't think that was really flooding. Well, water covered parts of Mallard Way and Harper's Bridge Road and much of the applicants land. I live approximately ¼ mile north of the applicants land, farther away from the river. One Sunday morning during that high water I was stopped by the County Sheriff's Deputies who were positioned at Mallard Way and Mullan Road. They told me that a key bank of the Clark Fork River threatened to wash out and although much large rock had been added, it all washed away. The deputies told me to go back home, box up my pictures, papers, anything valuable and irreplaceable because they could not guarantee that my house would be safe if that bank, which is just east of Council Grove could give away. We all know the power of water, and especially now as we listen to reports of destruction coming out of Washington and Oregon during these heavy rains, we have to recognize that we cannot control or predict entirely what a river will do. Although we can't predict the course a river will take, we do now know what a river does to survive. This floodplain is an alluvial floodplain. The river depends on the underground gravel for its health. By washing through these gravel deposits, the river cleans itself. When gravel is removed and holes filled with water are left behind, rivers lose their quality. Silt destroys the life of rivers and the rivers themselves eventually die. Or at least they don't work very well. They don't clean out the crap that we cannot – that we can't drink and that's hard on the environment. All floodplain gravel extraction is bad for all rivers. There was a time when we didn't know how bad it is, just like we didn't know how bad it was to dump raw sewage from the packing plant and the dives on Front Street and the mine tailings from Butte into the river. We were ignorant then, almost innocent. We are no longer ignorant or innocent. In the age of Super Fund cleanup of rivers all over the country, in an age where we have had to recognize that our rivers all over the country are dead and dying, we have to stop the destruction and start paying attention. We know from what limnologists other biologists tell us that rivers cannot stand any more gravel extraction in floodplains. This floodplain gravel extraction project must not be allowed to begin. I sent a letter to the Commissioners, and I'm going to read just a little tiny bit of that letter. "Perhaps if a person could believe this would be for the greater good of all people, it would make that person glow with a self-righteous recognition that their sacrifice would be appreciated. Instead, this project causes environmental havoc for the people, the wildlife, the birds, and especially the river as this is a floodplain. Visit with any member of the Clark Fork Coalition, any fisheries biologist, or especially with Dr. Richard Hauer, the limnologist at Flathead Lake Biological Station, whose telephone number is (406) 982-3301 ex. 232. You will learn that we are living in a Fool's Paradise as we extract this beautiful gravel from the floodplains and rivers are dying all over the country. Here's a little quote, listen to this. "Development along rivers and streams that destroys protective riparian areas is possibly the single most urgent ecosystem threat facing Montana today." Governor Brian Schweitzer, letter to the DEQ, DNRC, DFWP, their directors, March 8, 2006. Thank you.

Josh Illig: My name is Josh Illig. I live at 4750 Mallard Way. I grew up on Mallard Way, actually at 4855 and also at this time and student teaching, after which I'll have my degree to teach children – kindergarten through 12th grade. Obviously, after this, the first thing that came to my mind was the effect that it's going to have on the children. The effect that it would have had on me growing up there as well. One thing Mr. Vaughn didn't really get around to being able to get the answers for was where are the children going to go? Where are the kids going to go right now? That road is used a lot for recreation. That's where a lot of the kids play, that's where I played. The bridge they're going to cross, the bridge that they're going to be using straight into Mallard Way is actually a bridge that we used to – and kids still do, I see them doing this right now – get out at when they float the ditch. There's a hill right there that the kids ride their bikes down. As you guys, or as people have already said, it's a very narrow road. We get one dump truck, also maybe one car on there, there's kids riding their bikes right there, it doesn't leave a lot of space. I just ask that you guys consider the effect it will have on the children of the neighborhood as an ex-child of that neighborhood and as somebody that cares about the children right now. Thank you.

Lynn Startin: Good afternoon. My name is Lynn Startin and I reside at 4855 Mallard Way. I'm the new kid on the block. I've actually lived there just over a year and I have a ten year old and a 13 year old and they are the reason we moved to Mallard. We looked for three years for a house before we picked that one. I have a thirteen year old who has asthma. Of course they've heard us talking about being worried about the dust, the smell, the this, the that, and last night – this is not on my paperwork – my child said to me in the car, I said to them their grandpa had to pick them up today because I was going to a meeting with the Commissioners. And he said, "Is this about the gravel pit?" And I said, "Yeah." He said, "They won't do it mom." And I said, "I don't know son, we're doing our best." He said, "If they do it, how am I going to breathe? What's going to happen to me?" This is last night in my car. How do you look at a 13 year old and say, "Too bad. Tough." I agree with all the speakers here today and I vehemently oppose the rezoning and the gravel pit proposed at Trout Meadows Ranch. While many of the people here are speaking on the factual matters concerning safety issues, with machinery, roadway overcrowded, vehicle traffic, blah, blah, health issues, I'd like to address some other areas of safety concerning our neighborhood children. First of all, my family comes from a construction background. My brother actually runs a huge gravel pit and concrete plant and when I called him he said, "Dig in, bite hard and don't let go." The issue that he actually brought and some of the other members of GAG were transient employees with operations of this magnitude. This is a huge deal. This is not a couple of people with a backhoe. How will these men and women affect our neighborhoods? Who will be responsible for them? They will have the opportunity to track when we come and when we go, what time our children leave for school and arrive home, if we as parents have left for meetings or events, our kids, and our kids are home. How do we know who they are? Are they bringing drugs into our neighborhood? Do they have criminal records? Are they pedophiles? I would like each of my Commissioners to think about people like that living in your backyard, and if you could still be at ease letting your kids ride their bikes and be adventurous and be kids. How would it affect the way you had to live? Second, who will this rezoning and gravel pit really benefit. My answer is the applicant and Riverside Construction. The ponds that they claim they would create would not benefit the community as a whole or really in any part. And let's address these ponds that the applicant says is the goal of this extremely large project. As a resident of this area, I can tell you first hand that the mosquito problem is massive already and I see these giant ponds as a giant breeding ground for more of the same. This will only add to the potential of disease-spreading insects for our kids. I believe that this is an attractive nuisance for our kids. The ponds themselves will be enticing to our kids. This brings my attention to unattended bodies of water that are not accessible to us as a neighborhood. And while I would like to think that my boys will do as I ask, I can assure you they will push the envelope now and then, and yes, they will disobey their parents and be caught somewhere they are not supposed to be. I think everybody's kids are like that. I am thinking they are not the only ones and that my Commissioners can relate to a child wanting to do something so badly they will risk being punished if they get caught. This would include sneaking in to see what the big trucks are doing, trying to race one of their trucks on my bike, trying to get a glimpse of the loaders, and in 15 years, when they are grown and gone, should they make it through that and driving on the same overloaded roads as the dump trucks, the new neighborhood parents can worry about their children drowning in the unsupervised, mosquito-infested ponds that will remain. Last, I believe that these issues can be related to the Growth Policy. And that's really all I have to say. I'm going to request, one of my neighbors, Michelle Whitmire, and she is extremely ill today ahs sent me what she was going to read, and will you allow me to do that for her?

Chairman Carey: Sure.

Lynn Startin: So this is actually from Michelle Whitmire. "I am Michelle Whitmire. My home is located at 5246 Mallard Way. SO many have concerns about safety, air quality, water quality, lack of proper information, the enormity of this proposal and the impact that this could have for generations. While all of these concerns are of the utmost importance, I believe we need to wrap our arms around the right to leave this life peacefully. For my entire life, I witnessed my mother journaling and marveled at her diligence and passion for letting her emotions escape on paper. She has many stories as we were a military family and traveled around the world several times. She was an accomplished pianist and a

published songwriter and left behind a treasure of works. Her loving devotion to my father, her children, and her country are evident as I let her words wash over me. Her unwavering devotion to my father is a story in itself as she walked with him to heaven's door. As he died from injuries incurred in the Viet Nam way, I had yet to open most of her journals as I have a hard time getting past the first sentence, so I'll do my best today. My husband Wayde and I brought her home to be with us in October 2004. She was a young 68 and we were baffled by her obvious failing condition. We scrambled from doctor to doctor to find the cause. She was diagnosed with Lou Gehrig's in April of 2005, a death sentence, no cure, only a matter of time. By this time her speech, her breathing, and her ability to swallow had become quite compromised. "What a blessing," she would write. Her ability to communicate on paper was still strong and full of life. These are my mother's words, October 15, 2005. "What a blessing. I've been delivered from what seemed to be a dead-end and have been sat down in paradise. If heaven is close to this, I am ready. The sweet smell of pine rolls off the western mountains in the evening. My daughter is always so excited to bundle me up and take me for my daily walk down the drive. The peace that I have found here passes all understanding. My world has become much smaller these days, but that's ok because it does not get any better than this. The quiet envelopes my senses. The birds and Mr. Squirrel communicate their sense of joy going about their daily activities getting ready for winter, as I am. I am proud and humbled by my daughter, her husband and my grandson David's sacrifice to make this modest space their heaven on earth. I have scolded Michelle in the past for working too hard, to slow down, to take some time for herself, only to be told that it's all worth it at the end of the day. When all is done, there is peace. I get it now. To my daughter Michelle, I am very proud of you and all you have been able to overcome to be where you are today. Your father is proud and would say, "Let nothing get in the way of your dreams." I see his determination in you. I know that he asked you to take care of me, and your promise to be evident in the love you have given without condition. Thank you for the peace you have been able to share with me. My time is short, but that's ok, I've been assured by my maker that your home, which you have graciously and lovingly opened to me is just one short, sweet step to heaven, and I am promised and eternity of pine-scented walks down the drive. I'm with you always. Love Mom." I walked my mother to heaven's door December 3, 2005 less than a year ago, and I can with all my heart say that giving my mother the gift of quiet, sweet peace has been my greatest blessing. She and I are opposed to the rezoning of Trout Meadows Ranch. Thank you."

Chairman Carey: Thank you Mrs. Startin. Can we get an idea of how many more people wish to speak?

Dennis Startin: Hi, I'm Dennis Startin. I live at the same address that my wife does. I'm here today to speak on the opposition of the rezoning of Trout Meadows Ranch. If they put in a gravel pit and they put berms around it, water comes up from the river; it's going to cause major flood problems upstream because the water's going to back up. Downstream it's going to cause major flooding because the water has no place to go. After it gets upstream and goes so far, it's got to go downstream. And this is from Dr. Vicki Watson, a professor of Watershed Health Clinic at the U of M. In fact, I talked to a couple of 30-year residents of the area. Both of them assured me that that place had flooded at least twice in the '80s, and as you can see, in 97. The one in 97 on a flood table was considered a 12.18. That's just above a moderate flood. But you ask the people who were evacuated; they consider that a major flood. Now on a business note, if the applicant claimed in the Missoula independent that Riverside would have bought it, bought the property by now, why would they buy a piece of property that's not rezoned for a gravel pit? But then I just found out it's off the market. On a personal note, [end of tape] I'd rather see cars than to deal with a dirty, smelly gravel pit that's – they already said they're going to put an asphalt plant and a concrete plant in. And like everybody else said, that's a one-lane road. I mean, that's one way in, one way out. It says "dead-end" right on Mallard Way. Thank you for letting me speak.

Ray Win: Hi. I'm Ray Win, from Frenchtown. And I'm not part of the GAG group. I'm a little upset because my group is NIMBY, not in my backyard, and I just want to make sure that you County Commissioners rely on this anecdotal evidence and not the professionals, the DEQ and so on about

this. I want you to make sure that you believe that the more times that we say something over and over it'll become true. That that's the way we'll make you vote in our favor. That's about all I have to say, because I have a job to go to, but just remember, not in our backyard.

Commissioner Evans: I gather that was a negative comment.

Phil Schlaht: Hi, my name is Phil Schlaht and I live at 4950 Mallard Way. I'm against this rezoning. I've lived on Mallard Way since the spring of 1976. This is one of the best neighborhoods in Missoula. People there, if you need something, they're right there to help you. And I've needed help a few times. In the executive summary, and I think you guys have that, the PBS&J states on page 7, line 30 that the river will not capture these ponds in the near future. It's kind of like playing Russian roulette with the river I think. Line 31 states that the river has not changed its border since 1936. I think – I don't think this is actually true. I agree with the gentleman that was up here earlier and stated that maps can be changed. And I know for a fact in one place a map was redid and re-dated to a later date and it didn't show the river where it actually was. It's a fairly common practice in the government. In fact, the spring of '97 we were all evacuated because of the danger of the river changing its borders. Maps show my home completely surrounded by water. We were completely surrounded by water. That summer, the County put a culvert under Mallard Way, and it's going to be, it's just about where the trucks I believe will be entering onto Mallard Way. So that when we fold again, the water will pass through and onto Trout Meadows land. So this land will not only have its own floodwaters, but it will also have the water that crosses Mallard Way through the culvert. Please vote against this zoning. Thank you.

Jennifer Shamp: I have a couple of letters in addition to what I was going to say that somebody asked me to hand in. I believe they're both the same. And also, I have some information I've put together here. There's one for each Commissioner, two different ones. My name is Jennifer Shamp. I live at 5050 Mallard Way. I agree with what has been said in opposition to this project. I'm 100% opposed to this rezoning and related activities. The area is floodplain and wetlands that are situated in an area on the Clark Fork River where they riparian habitat is nearly a mile wide. This riparian habitat is rich in species diversity and is important habitat for a large community of wild mammals, birds, amphibians, and reptiles. Areas such as this are rapidly decreasing in the Missoula Valley. My belief is that the ponds themselves will create a danger to the fragile ecosystem, which makes up a wetland or riparian area. The applicant has stated the idea behind this proposal is to create private ponds for recreation and fishing and further enhance the wildlife habitat. The gravel permit filed November 1 asks to describe the types of post-mining, and uses in the main permit area. The applicant has stated recreational fishponds only, nothing referring to the wildlife. In doing research on ponds, I found that the attributes for a pond for swimming and trout are very different from those required to enhance a wetland for wildlife habitat, which has been touched upon by a couple other people. Any body of water is going to attract some wildlife. There is a difference however between just creating a hole in the ground and calling it a pond and creating a safe pond to be used for fishing or swimming, or ponds built to create a proper habitat to attract a wide range of wildlife. Ponds deep enough to house fish can have a negative impact on the production of wildlife such as frogs, toads, salamanders, and even ducklings. To quote an email which is included in that packet from Lad Knotek, a fish biologist with Montana Fish, Wildlife & Parks, "as far as the wildlife benefits of the a gravel pit/pond, negligible. We generally do not see private fishponds as an asset to wild fish and wildlife populations. A great deal of planning as well as a great deal of maintenance is required for a pond to be successful. If not done properly, these ponds could become nothing but eyesores, which are mosquito breeding grounds full of noxious weeds and toxic to their environment, in which case it would not help either the human or the animal aspect." The information I have seen regarding this proposal does not go into much detail as to the extensive planning that ponds of this size would require. This puts doubt in my mind that the ponds are the reason for this project. Instead, they seem to be an afterthought, a way to make putting a gravel pit in a wetland or residential a better sounding idea. Your Growth Policy from 2002 asks if the zoning will create a truly healthy community by protecting critical lands and natural resources. I believe the answer is a definite no. In addition to that, the information from the county shows that there are already 59 gravel pits with permits issued in Missoula County in addition to the 32 that are county-owned. So is

there truly a shortage of gravel in the community? To quote from the Planning Board comments in the minutes regarding the JTL proposal from November 2, 2005, "There does not appear to be an immediate urgency to this rezoning in terms of gravel extraction and local need resulting from gravel shortage." Since this was just a year ago, and the JTL rezoning was approved since then, so now there's one additional large gravel operation, I would assume the answer is still no. I would ask that the Commissioners deny this request for rezoning. Thank you.

Janice Schaberg: Hi. My name is Janice Schaberg. I just have, I didn't know how many to bring, I brought ten packets. This is some research that I did on my topics. I'd like to talk about health and historical value, and I live at 5050 Mallard Way. I live directly across the street from the proposed gravel mining entrance. I will look out my kitchen window and see the entrance and trucks coming and going. So I agree with those who have expressed opposition. Thank you. I'd like to address some health concerns. Gravel mining operations generate large quantities of dust and noise in the process of digging, transporting and processing. High levels of dust particulate matter can be a significant health risk and can lodge deep within the lungs to cause serious health problems, respiratory ailments chronic bronchitis, hay fever, allergy complications and yes, even premature death in both humans and animals. Some substances from gravel or asphalt plants are toxic and carcinogenic and will be carried in the dust. Chronic inhalation of dust could lead to increased cancer risk. You will find that in your pack. Toxic substances can be introduced into the soil and nearby river. Dust suppressors come with problems including contamination to local ground wells. And I did find these. There were several that I found on the internet where ground wells were contaminated by local gravel operations. Research show many gravel operations, once approved don't adhere to regulations causing more suffering. I found a lot of these. All the way across the United States I found it in Canada, I found it in England. Gravel mining operations are extremely noisy. Noise is more than just a nuisance. Noise pollution produces serious physical and psychological stress and can lower resistance to disease and infection. Evidence links noise with hear disease, circulatory problems, stress, psychological stress and can lower resistance to disease and infection. Evidence shows a Japanese study of over 1,000 births produced a high proportion of low weight babies born in noisy areas. Children who play in noisy areas may never develop the ability to listen well enough to learn properly. The elderly and sick are particularly sensitive to disruptive noise. My mother is 87 years old, stays with me very often and we are making preparations now for her to move in with us. She's had several strokes and one heart attack. Dust and noise have proven to be harmful, especially to the elderly or the sick. I don't want to lose my mother from unnecessary damage that this could bring. It is clear that gravel operation noise and dust is a significant hazard to public health and to my family's health. The Growth Policy of 2002 includes protection for the right to a clean and healthy environment. Rezoning for a gravel mining operation in a residential area does not provide that protection. One of my daughters has been gifted with severe health issues that cause among other things chronic pain and suffering. I've nearly lost her more times than I can count. She has found it therapeutic to garden, and when able to do so will spend many hours outside in her now extensive flower and vegetable gardens. If this rezoning is approved, you'll be making my daughter a prisoner in her own home. Health complications do not allow her to be outside in dusty conditions. She will be confined to inside the house year round with the windows shut tightly. Her gardening will have to cease. One of my sons has fought asthma all of his life and I wondered if he would ever reach the ripe old age of 8 years of age. He had been in the hospital and in emergency rooms, more by that time than most people ever experience in an entire lifetime. Rezoning will also affect him negatively as we haven't figured out yet how to do without breathing. Another son is in the navy and on his way at this moment to the war. Approving this rezoning will drastically change things when he comes home from the horrors and trauma of war. I want him to have the same serene, quite place that he can expect now. Approving this rezoning will drastically change the quality of my family's life. It will destroy the reason we are living there. It will destroy our lives, as we know them. Rezoning will not have any beneficial effects to us. Rezoning does not enhance human resources such as health and safety as indicated in the Growth Policy. Rezoning to allow for gravel mining operations can increase the impact damage to the surface and subsurface water vital to our health. I also found a lot of these on the internet from gravel operations elsewhere. Rezoning this property will not recognize the fragile status of air and water quality. Instead, these will be jeopardized. Financial and economic

considerations of residents will be affected negatively by a possible RSID to be paid by residents so the applicant can conduct gravel operations. Rezoning will go against your Growth Policy by sacrificing long-term economic stability and high quality living environment for short-term economic gain. Montana Code Annotated 76-2-203 requires provision for promoting the health and general welfare of our citizens. Increased noise, traffic, dust pollution, forced confinement to their houses and other potential health hazards to residents will not promote health and general welfare. Rezoning this property will cause you to be in non-compliance with your own Growth Policy. It will also go against laws that are already on the books of the State of Montana. I also want to address very briefly a historical value. At the corner of Mullan Road and Mallard Way, one of the local residents resides on property with important historical value. She mentioned that briefly. The family ran a stagecoach stop at this location with passengers sleeping in the hayloft. Food was also served it was understood. This location is in the beginning stages of a historical site. Due to the historical nature of this location, it should be protected from encroachment of any kind. I also want to mention Council Grove State Park. Council Grove runs along the Clark Fork River. As I understand it, it is a river of high importance to Native American history and culture. Council Grove's land touches part of Trout Meadows property. This park is a vital link to preserving Native American culture and history, hopefully for many generations to come. The Hellgate Treaty was signed at Council Grove. Native Americans, I am told, were camped all around this area, not just on the Council Grove State Park land. From all indication, they camped on what is now Trout Meadows property as well. Rezoning to allow for a gravel mining operation so close to Council Grove State Park will negatively affect that park. It will diminish the serenity, the birds, and wildlife available in the quietness necessary to contemplate such vital history that happened there. The Growth Policy indicates culture and education are important to protect and preserve. Culture and education will negatively be impacted if this project is allowed to proceed. Rezoning this property from C-A3 to C-A1 will harm not only those alive today, but also future generation of children and grandchildren. We as neighbors have stood behind this opposition and are fighting for our very quality of life. We are fighting for the character of the area to remain. We have nothing against the applicant or his family. Thank you very much for this wonderful process in the United States that we are able to come and voice our opinion and bless you for listening.

Bob Dischner: My name is Bob Dischner. I live at 4895 Mallard Way. Everybody awake? I'm sure County Commissioners are getting tired of hearing from us, but we appreciate your time.

Chairman Carey: No, we're doing our job.

Bob Dischner: We just hear that Trout Meadows ain't for sale. Well there's the sale bill, okay. Anyway, I greatly disagree with this gravel pit, asphalt plant, concrete plant, whatever else is going to be down there. The applicant told the Missoulian he wasn't going anywhere. Trout Meadows has been for sale since 2005. The Riverside Contracting company has first dibs on this property, and it ain't for 160 acres, it's for 293.6 acres. Real estate regarding the property is a long, over a mile of Clark Fork River frontage. The property goes both side of two canals, two channels from the Clark Fork that pass through the property along with two warm water sloughs. These ponds in their own natural habitat right now we have wood ducks down there, we have beavers down there, we have osprey down there, we have deer, we have foxes, we have pheasants. We have an abundance of wildlife that are just flourishing down there. I don't think he has to do anything down there. Everything is fine. It's going to do a few people some good, but if you look around this room, there's a lot of concerned residents. I hope you fine people take every one into consideration. And I really do appreciate you sitting here and listening to our problems this afternoon. Thank you very much.

Chairman Carey: Thank you Mr. Dischner. Before you speak sir, can I just tell you what the Commission's thinking about? We've still got a lot of people who wish to speak to this. It's our responsibility to give this a very thorough and fair hearing. We've got a lot of information that our staff and we and our attorney are going to have to digest, so we're not going to be able to reach a decision tonight, or this evening. We need to give time for the proponents to prepare an adequate response to these points that you've raised. So I think the best thing to do would be to go for another half hour or

so and then reschedule to basically recess the hearing and then bring it back together again. We're looking at December 6 since we're not meeting next week on the 25th. And the following week we've got the Rock Creek matter coming before us. So if that's ok, we'll go ahead and proceed in that way. When we do reconvene, again let folks have a chance to say what's on their minds, and again the proponents to say what they think about these points that have been brought up, and also for the staff to give us their take on some of the new information as well as the County Attorney's take on this. Yes sir, Mr. Bond?

Mr. Bond (from audience): The people who spoke today, are they going to be allowed to speak again?

Chairman Carey: Well, they'll be allowed to, but I hope within reason. We've listened carefully; we've made notes and so on, so sure. I mean it's a public meeting, but hopefully there won't be the need for too much repetition.

Jack Gillespie, Jr.: I'm Jack Gillespie Jr. I live at 5855 Lavoie Lane. I was going to take quite a bit of time going over this, but obviously, my neighbors have covered a majority of this topic. The packet in front of you we can read through real quick. It basically shows you my concerns. There is a couple things in there that have not been mentioned yet to the extent that I've looked into it and I would like to cover those in an expedient manner for you. The neighbors and citizens around the proposed rezoning of Trout Meadows Ranch would like to share our thoughts and concerns. We understand this is a zoning request. We also understand the financial demands since you argue our position beyond this point against a political and financial resources of the applicant could be devastating to our families. What we mean is obviously cash is a concern, but obviously we've spent a lot of time investing trying to find out what's truly going on as well as time away from our families. However, the neighbors around the proposed request feel the following issues are of serious concern and would like your assurance they will be addressed prior to your decision. The second page is the finding of the facts, and I think that's been covered several times. I do not agree with the OPG that these are all yeses. I think that there's four "no's" in there than you can see. On page three, it goes over one of the first ones, whether the zoning is compatible with the Comprehensive Plan. I know this area has been requesting more housing, not less. Harper's Bridge, Lavoie Lane just requested a zoning request from C-A3 to CRR1. [Inaudible] on Lavoie Lane, there was a residential area that requested that, which the County Commissioners approved. Thank you for that. Ironically, the applicants requested a family transfer on his five-acre parcel to allow family members to have a piece of the American Dream as well. Again, showing that there's more demand for housing in that area. On the next page, you'll see the intersection of Mullan Road and Mallard Way as it is today. You'll see a semi truck parked there at the stop sign. You will also see the following page is the driver's view out the window looking to the east of that intersection, and you can see how limited of view he has. Mallard Way- Mullan Road where it connects there is a 55 mph zone currently, so that also multiplies the issue. The following page shows the restricted visibility as well as the irregular angle of Mallard Way to Mullan Road and what a driver has to do to make that corner. The driver has to swing wide on Mallard Way, swing into oncoming traffic on Mullan Road to make that corner and the example we used was with a semi that was a 69-foot in length, from bumper to tail. The following page shows you the intersection as far as Google Map to give you an idea of the angle of which it is. Then we have some literature here from the angles of what is required for a semi truck to make an appropriate turn, so if you questioned our photos session there with the semi truck, these are hard facts for you to look at. Also, the next page shows the stopping distance, and with the visibility that we have from the driver's window, we would have to reduce the speed to 30 mph is my understanding. Now we'd probably have to verify that with someone's who's more knowledgeable than me. But with the limited visibility, that intersection would have to be slowed down for safety reasons. Obviously, Mullan Road is a very popular bike route. This photo show a truck that what you have to do to get around a bike. Obviously, he's well into the oncoming traffic to get around the bicycle without the safety of it. The gravel trucks or any kind of heavy equipment is very hard on road traffic. That is not an uncommon thing. We went and took photos of the ruts that were caused by this type of equipment on roads and we obviously, as has been pointed out several times, we have one way in to Mallard Way and one way out, and we want tot make

sure that we're able to make the transition. There's a couple different quotes by the applicant in the editor that have already been addressed. I won't go over it extensively, but one of them is on February 8, 2006 "when you ask for tax increases from the overtaxed citizens of Missoula, we might want to take a look at the economic unbalance there is in Missoula." Obviously, we want to make sure that we're not going to be paying the bill for trying to maintain something that we had no control on. These roads, I don't believe are in good repair now. I believe they're serviceable, but I believe with the increased traffic it's going to be a serious issue. In the last two days, there's been events on Mullan Road in what we would consider the safety area that we're talking about here. A truck driver was trying to make a U-turn, I have no idea why, but they had to stop traffic and get a wrecker out there and pull him out of the ditch and what not. This was on a portion of the road that had shoulders. The banks were not real steep. Had this been another ¼ miles more west, there is no shoulders or anything to that effect. That was on the 13th of this month, two days ago. The following photos are of a truck that just went in the ditch yesterday. We had the roads get a little bit icy and I think he lost control there, but it also shows the angle and the steepness of the banks from Deschamps Lane, well past Harper's Bridge Road. There is no shoulders on Mullan Road. Whether the zoning will secure safety from fire and other dangers, I believe that the reduction in the possible housing limits the community's ability to increase police, fire, and emergency services in the future due to the inability to increase population. With the zoning change that's requested, obviously it limits our ability to bring up the population out there. Air quality, it's been hit on numerous times, so I won't go to in depth on that, but it is a major concern and I think is one that needs to be looked at. The wildlife out there has also been hit on quite a bit, and I believe it's another issue that needs to be seriously thought about. The applicant has had several articles in the paper. I won't take time to read all of them, but there are several articles that he has the same opinion at the time of the quotes that we do. An article that was in the letters to the editor titled "Discussion needs to include business," the applicant stated, "Listen to the people and consider its effect on our quality of life and our neighborhood rather than focusing on someone's pocketbook or new tax pod." I don't think you'll find very many people in this room that won't agree with that. In the same article he states, "The quality of life is the most important reason to live in Missoula, and as I have said time and time again, when it's gone, it's gone." I believe that the current zoning provides ample protection from whether the zoning will prevent overcrowding of the land, whether the zoning will avoid undue concentration of populations. Number nine on that list is whether the zoning will give reasonable consideration for the character of the district. I believe that this zoning request, it does exactly the opposite. You can see by the room the character of this community. I mean, if anything, this has brought the community more together. Everyone's put in a share to work hard to make sure to keep the community as it is. And I believe that this is something that this zoning would destroy. This is a question I got, and don't know the answer, I would hope that you would. The applicant, on the rezoning request is Jim Edwards. The notice to the residents was Trout Meadows Ranch, but the parcel is listed as owned by Bi-Lo Inc. Three different names causes confusion on what they're trying to accomplish, and for people that are not familiar with the government way of controlling things, I believe it is one of the issues that we're not – there was a lot misrepresentation I guess of what was actually being passed of. The next page is basically the same discussion. The public notice has already been discussed, so I won't go over that a whole lot. I believe there is a serious question if all the people within the area were notified properly by the OPG.

Chairman Carey: Perhaps we can quickly answer that question. Zack, you want to tackle that?

Zack Brandt: It might not be so quickly, but basically, in the first mailing, there were, and I can check the specific names, that there were 3 people that were not notified, but at the same time there were seven people in addition that were notified that didn't need to be. In the second mailing, all the required people were notified in addition to several more people. In the third mailing, because we postponed it at the request of the applicant, all of the required and additional people were notified.

Chairman Carey: Ok, thanks.

Jack Gillespie, Jr.: Now, if I'm not mistaken, those second and third notices were after the Planning Board meeting.

Chairman Carey: That's correct, apparently after that.

Zack Brandt: Can I just say, yes they were, and new posters were put up, new legal ads were put in the paper, and the letters were given so that the adjacent and affected property owners had at least 15 days to review those letters.

Jack Gillespie, Jr.: So the next page is about notification. You've got a rezoning request next to a no trespassing sign. Whether the – number 11 is whether the zoning was adopted with a view towards conserving the value of the buildings. The proposed special use zoning may reduce the value of the current neighborhood. Considering the value of the buildings, would that include the residents that would be greatly impacted? Number 12, whether the zoning will encourage the most appropriate use of the land through municipality. Missoula area has shown itself as a growing area. Keeping the current zoning allows an area for the applicant for nice five-acre parcels for those who would like to be close to the river. I believe that the 12 facts of finding are important and that we really need to review each of them in part of your decision. Missoula housing, the applicant has said that he could build housing in this area. Though most of the neighbors would miss the large open spaces, they agree that nice housing is an expected change. Missoula needs more nice housing to accommodate the growing population. Our future and health lies in your vote. Remember, good neighbors build strong communities. Our kids are the future, and they are not always able to detect danger. Drivers may be safe, but blind spots still exist in trucks this size. Working a lifetime to share in the American Dream of homeownership is not a right, but a privilege. Reducing the value of that dream for someone else's profit is heartbreaking. Missoula has better rural areas to find gravel. The current zoning is proper for the area and the neighborhood. The last page is kind of a personal note. That's my grandson, and I'm very proud of him and I want him to grow up with clean air, clean water and everything that life has to offer. This is a great community and I hope you keep it that way. Thank you.

Chairman Carey: Thank you Mr. Gillespie. I understand some folks from the Tribes are here. Any Salish & Kootenai folks here? We know that you've come a long way sir, so I would ask that after this lady you could go ahead and speak; that you get a chance to speak and then we'll wrap it up for this first part of the hearing.

Angela Zielinski: Members of the board, my name is Angela Zielinski. I'm an attorney with the firm of Sullivan, Tabaracci & Rhoades in Missoula, and I'm honored to represent the homeowners here today who live adjacent to Trout Meadows Ranch who oppose the rezoning proposed by Mr. and Mrs. Edwards. I can't begin to state as well as the people here have all of the reasons that the rezoning does not comply with the Missoula Growth Policy and Montana Code Annotated 76-2-203, which contains the twelve factors that you are required to consider when determining whether this rezoning is appropriate legally. The people here today live in the area, and there's no one better than them to describe the dramatic effect that the rezoning will have. I commend all of them for coming today and exercising their right to public participation and to speak about something that is so very important to them. One of the first things I would like to do is address Mr. Phillip's legal argument and one of the ways that I'll do that is by not saying anything, because I submitted a 12-page letter, which addresses the legal points, which I believe, are extremely important and need to be considered very carefully by the board. Suffice it to say that today's comments by the public regarding safety, health concerns, noise pollution, water pollution, high traffic concerns, wildlife and riparian degradation, and a breach of the fundamental right to a clean and healthful environment all add up to non-compliance with the Missoula Growth Policy and the factors listed in 76-2-203. Mr. Phillips argued that the factors in 76-2-203 all added up with compliance with the Growth Policy and I have to say that his comments were made in a vacuum. His comments did not take into account that there will be an extensive gravel mining operation on the property. I've done research, and when the Montana Supreme Court looks at whether rezoning is appropriate, they look at how the property will be used. For instance, there are

cases addressing the appropriateness of shopping malls, or planned unit developments. The Montana Supreme Court doesn't look at rezoning issues in a vacuum. It looks at how the property will be used. And it's very important here not to be fooled into thinking this is an open space and parks designation. It's a gravel pit operation, and that's why all of these people are here today, and that's why they've hired me, because their life and the way they live their life is at stake, and it's very important that you consider that when looking at the factors of 76-2-203 and the Growth Policy. You can't look at it in a vacuum. The other thing that I would like to bring to your attention is I believe it was Mr. Phillips who said he didn't believe that Riverside Contracting had a right of first refusal. In addition, I'd like to introduce into the records the sand and gravel lease that was recorded in Missoula County it looks like on May 3, 2005. If you look at page six, I'll just read, it's very brief. It says, "It is agreed that should lessor," and that would be Mr. Edwards, or whatever entity owns the property, "desire to sell the ownership of the described property, that the lessee," which would be Riverside, "shall have a right of first refusal at the price established in a written buy-sell agreement with a third party." And then it goes on to state how that right of first refusal will work. And so it's not mass mania to think that possibly Riverside will purchase this property. Indeed, they have a right of first refusal in the lease that I will enter into the record. So the public's concerns in this regard are very important and it's very critical that you consider this when making your decision. The next thing that I would like to address, I took a look at the PBS&J report and as an attorney, I'm qualified in a lot of things, but I am not qualified to understand practically one word of that report because it's a geomorphologist's opinion on how the riparian mapping study, or how the riparian are will be affected by the gravel operation. And so what I did was contact Cam Stringer who's senior hydrologist with Geomatrix here in Missoula. And he took a look at it, and also said this was beyond his level of understanding. So he sent it off to the geomorphologist that Geomatrix has in Seattle. And I'd like to read you briefly the comments. First, honestly, the comments at the very initial outset said they're limited because they didn't have aerial photographs, they haven't seen the property, so we take that into account. But the comments that they did have after reading the PBS&J report was that the report was very cursory consider the problem of gravel mining in floodplain areas, which is very well studies. They said that head cutting would be the most likely effect, and while PBS&J said that there will be no effect from head cutting, the geomorphologist in Seattle who's name is Garrett W. Jackson, said that he doesn't know how they could come to that conclusion given the study, the report that they issued. Because he doesn't see how they could say that the ponds would not decrease sheer stress, because ponds create a grade and this increase in grade increases sheer stress. Mr. Jackson states that the TMR is on a point bar, and there's a contradiction in the PBS&J report because a point bar by definition occurs with meander belts of the floodplain, and the author of the PBS&J report doesn't define the active channel belt.

Commissioner Evans: Can I suggest to you that you give us that information and we have our Public Works Director explain it in English to us.

Angela Zielinski: I will. And you know that is a much better idea. It's just that the email that I got came in while I was actually here this afternoon and so I would be happy, believe me, no one would be happier than me to send that to you and not have to try to explain it. I will send that over tomorrow morning. The next thing that I would like to talk to you about is that the Planning staff has looked at the situation; it basically said we have a problem here. This doesn't comply with the Growth Policy. So in order to make it comply, or comply more with the Growth Policy, we are going to impose these conditions, which include a height restriction and a No Build / No Disturbance Area. But the problem is that those conditions are not going to solve the problems that will be created by the gravel operations. Conditions simply cannot overcome the fact that the rezoning does not afford the land, environment, riparian, wildlife and human resource protections included in the goals, policies, and objectives of the applicable Missoula Growth Policies. Even with the conditions, rezoning will jeopardize citizen values and economic stability in the residential area. Even with the conditions, open space protections and recreational opportunities will diminish. Even with the conditions, the rezoning will undeniably allow disturbance of wildlife and riparian resources and violate area citizens' fundamental right to a clean and healthful environment. And it's not just me saying this as the folks here's attorney. It's Fish Wildlife and Parks. It's the Audubon Society. It's the Clark Fork Coalition. And again, I'm limited as an attorney as

to how much of this I understand, so I'll defer to their expertise, and I urge you to also. If these folks who study these issues are saying to you, this is not going to work, this is going to harm the area and the wildlife and the riparian habitat. I believe that we have to listen to them. And I believe that we also have to understand that if they're saying this, then this can't possibly be in compliance with the Missoula Growth Policy, or the factors listed under 76-2-203. One of the reasons that our firm was hired and I looked into this was because – and I'll interject that I intended to speak after everyone else had spoken today, but that didn't work because there are so many people here to speak, which is fantastic, and I'm very excited about that. But my intention was to get up after everyone had spoken and tell you what does all this mean legally? Because we're hearing the concerns of the community and my job is to show you, or try to explain to you how I think this affects the community legally. In looking into this, I researched it carefully, and I believe that it constitutes spot zoning. And the reasons that I believe that are set out in three factors in Montana Case Law, all of which are sited in detail in my letter that I wrote to you. These three factors can – the first of these three factors is a question of whether the proposed use is significantly different from the prevailing residential use in the area. Well, in my mind, that's a no-brainer. We've got all these people here today to tell of the quiet residential nature of the area vs. a gravel pit, and so I don't think we need to think about that one too hard. The next item to consider is whether the area is relatively small and looks to benefit only one person. And it's a little misleading, because when you look at the case law, it doesn't look to the size of the parcel. What it focuses on is is this going to benefit one person at the expense of a large group. And I think we're seeing that here today. We're seeing one person here, as a proponent, and I don't know how many others here to say that this is going to affect them negatively. Again, I think it just is visually – you're visually able to see that that factor is met. We are going to put into effect special legislation for the benefit of one person at the expense of everybody else in this room and those who couldn't be here today. And that, from the case law that I've read is the definition of spot zoning, and you cannot do that. And so I would urge you to take a look at the case law in my letter, take a look at the arguments in my letter, and very seriously consider the effect that this particular project will have. The fact that the use is so significantly different from the prevailing use in the area that there is no other conclusion that you could reach but that it is invalid spot zoning. And on that basis, the Board is not able to grant the applicant's request. As past of that, and I may not be explaining this that well, but one of the things that you look at for spot zoning is does the rezoning comply with the Growth Policy? And for all of the reasons everybody's talked about here today, for all of the reasons in my letter, no. The rezoning does not comply with the Growth Policy. And if it doesn't comply with the Growth Policy, and it doesn't comply with the other factors in 76-2-203, even if you decide this isn't spot zoning, you still cannot grant the applicant's request, because if those twelve factors aren't met and the Growth Policy is being violated by the rezoning, you can't go forward with it. And our clients would respectfully request that you don't, for their lives that they have lived for many, many years and their children's welfare, and their health and welfare. The last thing I'd like to talk about is a notice issue. And I think we've addressed it briefly. I think the thing that I want to stress is while the Planning staff did send out a second letter to all of the residents in the 300-foot zone that they're required to send it to, that letter was sent out after the Planning Board meeting. So the Planning Board meeting was September 19, and the letter that went out per requirement to residents within 300-feet went out on September 29, so it was ten days after the Planning Board meeting. Well, what that means is people who didn't receive that letter, maybe they got the second one, but they were deprived of their opportunity to speak at the Planning Board meeting, which is a problem. That's one reason that I think in the event, unfortunate event that you decide that you will not deny the applicants request, I want you, in the alternative, to think about this notice problem that we have and require a second meeting before the Planning Board to discuss these issues. Now, the notice is one issue. The bigger issue for purposes of having a separate meeting before the Planning Board is the fact that just today we're finding out the true nature of Mr. Edwards' operation. When I first saw the application, I think, I have a visual memory, and I'm remembering two "Xs," and I think they were for by asphalt and mining. And then, today, almost everything but one, every box that can be checked is checked. So we've come a long way from the first application to the application that is before you today. The other thing is, if I remember right, the first application had 200,000 yards of material being removed. The application that you're looking at today has 1 million yards. So look where we've come, from the Planning Board meeting until today. And what really concerns me about

this is the fact that when you look at the minutes of the Planning Board meeting, the Planning Board had several questions having to do with what kind of operation will this be, and not to be long winded, but I'd like to go through a few of them. The questions were, "Will there be an asphalt plant incinerator? A rock crusher? How many trips will there be by the trucks per day? If it's an open-ended contract for ten years? What surface area will be involved in the gravel extraction? How many yards of material will be removed? Where is the floodway? Where will material be stockpiled? Will there be a restriction on the amount of particulate matter that is measured onsite?" And these are just a few. And the reason that I read these to you is because Mr. Edwards wasn't there to answer these questions. So what happened is we had a Planning Board meeting where not everybody was notified as required, and we had a Planning Board meeting with an application that is so completely different than the one today. Which, ok, maybe he didn't know at that time that he intended to do that. But he didn't even stay at the meeting so that the public who was there and the Planning Board members could have these questions answered. And that's problematic to me because the whole reason we had the public participation process is so that everyone can look at the documents, be on-board with what's going on, and make comment, and that didn't happen here. That's very, very troubling, and I think under the Montana Supreme case of Bryan vs. The Yellowstone County School Board, we have a real problem here. Because what's happened here is now we have new information which the Planning Board didn't get to consider when it made its recommendations, and which the public didn't get to comment on when the Planning Board held its hearing, and for that reason I would urge you, if you don't deny the applicant's request to rezone based on spot zoning and a failure to comply with the Growth Policy and 76-2-203, which I think is the right decision, but if you come to a different decision, I urge you strongly to back the process up so that we can have the right kind of input and the right kind of process to consider the very important and critical aspects of this gravel operation, which to date we don't know anything about. In summary, this rezoning is not in compliance with the Missoula Growth Policy, it benefits only one person at the expense of everybody else in this room, it constitutes invalid spot zoning. The rezoning does not comply with the factors in 76-2-203, and myself and everyone in this room respectfully request that the Board deny Mr. Edwards' request to rezone 160 acres of Trout Meadows Ranch to the C-A1 designation. I thank you very much for your consideration.

Chairman Carey: Thank you Ms. Zielinski. Sir, I was going to have the last person be a tribal member. Did you have something that you really... very briefly, yes.

Don Kinney: Thank you very much for listening, and Commissioners, thank you for serving. I suspect there are a few moments in your life when you feel you are very unappreciated. You have several issues... you were just handed some documents. I folded it down so we won't have repetition on things that have been discussed earlier. It seems that you have several issues, and I think one of the important ones is representative government, or more directly, people represented by government officials, being you. And you have before you what I think is a very serious ethical issue. It's about accuracy. We could each put our spin on the way things look to us, but from my view, what we have seen is omission of important facts, misrepresentation of the magnitude of what is planned, and what is good for the community. We've heard about the pollution issues, the safety issues, and I guess I would say only, to keep this brief, that my family moved to our farm in the winter of 1945. We share about 1/3 of a mile of fence line with the applicant. We could talk about his housing plans of earlier, but I choose to skip it now, but many questions were asked at that September 19 meeting. And Mr. Ewart responded, as you'll see on that printed page, that he thought possibly more than 10,000 cubic yards of material would be removed. And the Planning Board then made its decision to forward the issue to you on a 4-2 vote. In May of 2005, so we're talking about 15 to 16 months earlier, in an application for mine land reclamation permits, the estimated quantity was 250,000 cubic yards, somewhat more than the 10,000. In an open cut permit application of October 2, 2006, the number was reduced to 200,000 cubic yards, but also the disclosure of a crusher and an asphalt plant. Then in a new open cut permit application, two weeks ago today, the cubic yards remain the same, but in addition to the crusher and asphalt plant, they've added a wash plant and a concrete plant. At the end of last week, probably on Thursday, another open cut permit application was received at the Planning Department. The document was dated October 30, as was the earlier one. It included a crusher, a wash plant, a pug

mill, a screen, asphalt plant, and concrete plant, and the estimated quantity of material to be removed, 1 million cubic yards. Now, there's something incorrect if an application dated October 30, one says 200,000 and one says 1 million. There's an issue of water also in the documents I passed to you. It says they plan to use more than 100,000 gallons of water each day. The application states the Department of Natural Resources will be contacted to discover where water might be available, 100,000 gallons a day. We hold the senior water rights to the slough. We shall continue to use that water for crops. As it was stated up here earlier, on the final page the contract between the applicant and Riverside Contracting Inc, one is for 293 acres, it can be extended beyond ten years, and it gives Riverside Contracting right of first refusal to purchase the land. I feel, I say this respectfully, and not as a personal thing between Mr. Edwards and me, I feel this is a Trojan horse at this community's doorstep. It's not filled with warriors; it's filled with huge environmental nightmares, destruction of another piece of rural Missoula. We have safety issues, water consumption, all questions that have not been answered. So I request that you deny this proposal. Thank you very much.

Chairman Carey: Thank you Mr. Kinney. Our last speaker will be the gentleman speaking on behalf of the tribal perspective.

Tony Incashola: My name is Tony Incashola. It's been a long afternoon and I forgot what I was going to say. Seriously, we have a – I want to talk a little bit about the tribal concerns, not necessarily concerns, but just more or less the process that has taken place. Today I heard many good things that I was listening to a community come together. I've heard a lot of things being talked about--talked about the process that we're going through. A great process that our ancestors left us. We talked about our families; we talked about many things, a lot of things that our parents or grandparents have left us. Well today, I just want to say a little bit more about prior to the Hellgate Treaty of 1855 there at Council Grove's where that treaty was taking place. Prior to that, the Confederate Salish, the people, the Kootenai people had been in this area. Missoula is a big part of their lives, a big part of their history. There are a lot of place names in this area going back to what we call creation stories, of the time beginning. This area where you're talking about today consists of that part of that creation story. The creation story is compared to I guess it's like a history book, it's like the bible, it's like many things that we believe in today. The creation story teaches our children the dos and don'ts of life, the values of life. And so as we talk about this area, that's one page of our creation story. To destroy or to alter that page is like taking one of your reports here and taking one page out and destroying it. You void part of that story. And I guess I just wanted to say that through our process and through this process and how we got here, I would like to – I would hope that we think about what's taking place here. We were lucky enough to be put in the positions we are today. As leaders, as decision makers, as parents, grandparents, leaders in our community, and I think our lives are too short to think about something other than preservation, protection, and a better future for our children and grandchildren. When I was 15, I thought 20 was old. When I was 20 I thought 30 was old, but today I'm a little older than that, and I won't say how old, but I'm a little older. But life is very short. It is very short and we all in our lifetime all we want is a better place for our grandchildren. We work hard to create a place to raise our children, safe, clean most of all, a place that we can raise children without worry. How many of us thought that today we'd be buying water to drink. Buying water to drink when I was growing up was something that was not, was not possible. You could drink water from any of these streams that you see here. Today we can't do that. We have destroyed, as people, as humans we have destroyed many things. Many things that we have destroyed and we can't replace. You take a little bit, you can't put back. So we're talking about an operation here that there's no guarantees what can happen. There's no guarantees that what will take place, will it be safe 20 years from now, 30 years from now? We can have as many experts come in and tell you what's going to happen, but there's no guarantee. So we as people, as humans, we have to decide on our own of what is best for our future. What is best for our children? What are we going to leave in our short lifetime? We might say you can do this in 20 or 30 years. How many of us are going to be here in 20 or 30 years? There's no guarantee. We have to protect and preserve today. We have to do those things for future generations, for our grandchildren. I thank our ancestors for creating such a system. And I believe the people who have been up here before me have said there's no animosity towards the landowners. There's no hatred. There's only concern about what

is taking place in this land, in this area. And as I said, prior to what you see. The development that you see there, thousands of years where there's many people that call that home. And there's the possibility, there's always a possibility that there's remains, that those people are still there. Part of our creation story is still there from Frenchtown down to the Bitterroot, down the Musselshell, there's a lot of - Missoula is [Salish word]. [Salish word] is what we call Council Grove. These are all place names that describe the events ascribed to land formations there. These are part of creation stories, and that's our main concern is that some of these areas aren't destroyed for purposes that might not benefit the future generations. And I thank you for your time and I want to thank all the people that were here that provided some good information, and again, thank our ancestors for this system that they have developed for us. And thank our people, our veterans, our warriors who have fought to give us this opportunity to voice our concerns as we do today. And I hope that when you make a decision that all the things that have been said up here are considered. Because once you make a decision, it can't be changed. Once you destroy an area, you can't repair it. Once you take a page out of a book, you can't replace it. And again, I don't want to be too windy here, I know we've been sitting here all afternoon, and again, I want to thank each and every one of you for your time.

Chairman Carey: Thank you sir. Okay, we're going to go ahead and recess this hearing. When we reconvene on December 6, we'll let the opponents who haven't had the opportunity to speak this afternoon, give them a chance to speak. Any opponents who did speak and wish to add something, we'll allow that, and then we'll let the proponents respond to the various issues that have been raised, we'll close the hearing, and then the Commissioners will ask questions to anybody they have a question for. Keep in mind that you can submit written materials until the sixth if you think we need to see anything that we haven't already received today or the last few weeks, then go ahead and send it to us. Thank you all for coming. Thank all of you for being civil. We'll be in Room 201. The public meeting starts at 1:30 pm, we'll probably get to this shortly thereafter. Is there any other business to come before the Board? We're in recess. Thank you.

There being no further business to come before the Board, the Commissioners were in recess at 5:25 p.m.