

PUBLIC MEETING – NOVEMBER 29, 2006

The Public Meeting was called to order at 1:32 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Jean Curtiss, Deputy County Attorney Patricia Bower, Director of Public Works Greg Robertson, Assistant Public Works Director Charles Wright, Assistant Chief Deputy Clerk & Recorder Kim Cox, and Planning and Zoning Commission Member Sylvia Weisenberger.

Pledge of Allegiance

Public Comment

None.

Routine Administrative Actions

Commissioner Evans made a motion that the Board of County Commissioners approve the Weekly Claims Lists for two weeks in the amount of \$774,288.09. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Rose Family Transfer

Chairman Carey opened the public hearing.

Patricia Bower presented the staff report.

Loren R. and Pamela R. Rose have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 52 plus acres in size located near Seeley Lake, Montana. Loren and Pamela propose to create one approximately 20 plus acre parcel for transfer to their children, Andres John Rose, a son, Erik Daniel Rose, a son, and Meagan Rae Rose, a daughter, for residential purposes and keep the remaining approximately 32 plus acre parcel for residential purposes as well. All the children are 18 years or older. The Tract will be transferred to all children in joint ownership.

The history of the parcel is as follows: The Roses' purchased a tract of land containing 17.76 acres in July of 1994. In June of 1996, the Roses purchased a tract of land containing 34.92 acres and filed COS #4601 creating Tract 3A. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except as listed below:

COS #4450	02/23/1995	RET	NW	Section 2, Township 16 North, Range 15 West
COS #4455	03/17/1995	BR RET	NW	Section 2, Township 16 North, Range 15 West
COS #4601	07/22/1996	BR	NW	Section 2, Township 16 North, Range 15 West

The Commissioner's may wish to consider a request to create a family transfer parcel by dividing the parcel described as Tract 3A, COS #4601, Section 2, Township 16 North, Range 15 West.

Loren Rose: Loren Ray Rose.

Chairman Carey: Thank you. Our attorney will ask you a set of questions in order to get your responses on the record and hopefully to be able to ensure us that this request is not an attempt to evade subdivision regulations, which would be a misdemeanor.

Patricia Bower: How long have you owned the property?

Loren Rose: We purchased part of it in 1994 and the rest of it a couple years later. Actually, we bought three different parcels from Champion International when they were leaving and they had a quarter of a section and somehow the high school or the school district got a chunk right out of the middle, kind of a horseshoe. And when we ended up with all three parcels, the road was on two sides, the creek was kind of out of place, so that's the boundary adjustments and the retracements to line up parcels that kind of made sense and then we ended up with the two parcels that you described which were all on the same side of the road, the same side of the creek, in contiguous.

Patricia Bower: Did you buy the property with the intent of dividing it?

Loren Rose: No.

Patricia Bower: Did you or your transferee intend to transfer the property within the next year?

Loren Rose: No.

Patricia Bower: It's my understanding that those you are transferring this property to are not minors. Will the property be developed?

Loren Rose: No.

Patricia Bower: Will the recipients of the property be residing on the property?

Loren Rose: There's no plan to, I have a son in Iraq and one in college, and a daughter ready to go to college, so any residence there from one of those three would be quite a ways off.

Patricia Bower: Could you just explain again where the recipients live now?

Loren Rose: I have a son, Andrew, who's a Lance Corporal in the Marine Corp, and he lives in Baghdad right now, so pray for him. I have a son who's a freshman here at the University and a daughter who's a senior in high school. She's still at home.

Patricia Bower: Have you talked to anyone at the County about going through subdivision review?

Loren Rose: No, I haven't.

Patricia Bower: Are you in the business of building or developing property?

Loren Rose: No, I'm not.

Patricia Bower: Are you attempting to evade subdivision review?

Loren Rose: No.

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

Loren Rose: Yes.

Patricia Bower: Do you understand that this approval does not mean that the property is approved for zoning compliance, floodplain, or septic systems?

Loren Rose: Yes, I do.

Chairman Carey: Thank you. Any questions for Mr. Rose?

Commissioner Curtiss: Just to clarify, she kind of touched on it, but the property is not zoned currently right?

Loren Rose: Correct.

Commissioner Curtiss: Because we can't do a transfer that goes against zoning.

Chairman Carey: This is a public hearing, does anybody wish to step forward and make any comment about this application? Seeing none, thank you Mr. Rose.

Commissioner Evans made a motion that the Board of County Commissioners approve the request by Loren R. and Pamela R. Rose to create a family transfer parcel 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.

Hearing (Certificate of Survey): Tingle Family Transfer

Patricia Bower presented the staff report.

Gene Tingle and Patricia Tingle have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 160 acres in size located near the north end of the County. Gene and Patricia propose to create one approximately 50-acre parcel for transfer to their son, Jeffrey A. Tingle, for residential purposes and keep the remaining approximately 110-acre parcel for residential purposes as well.

The history of the parcel is as follows: Plum Creek Timberlands, L.P. filed a Grant Deed, deeding the property to Gene and Patricia Tingle on June 15, 2006. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

The Commissioners may wish to consider a request to create a family transfer parcel by dividing the parcel described as the northwest one-quarter, Section 33, Township 21 North, Range 16.

Chairman Carey: Thank you. Is a member of the Tingle Family here?

Gene Tingle: Yes sir.

Chairman Carey: Would you identify yourself for the record?

Gene Tingle: I'm Gene Tingle.

Chairman Carey: Thank you. As you saw before in the previous hearing, we'll have our attorney ask you a set of questions just to help to assure us that you're not attempting to evade the subdivision regulations.

Patricia Bower: How long have you owned the property?

Gene Tingle: We purchased it in June of this year.

Patricia Bower: Did you buy the property with the intent of dividing it?

Gene Tingle: No.

Patricia Bower: Do you or your transferee intend to transfer the property within the next year?

Gene Tingle: No.

Patricia Bower: And, how old is Jeffrey A. Tingle?

Gene Tingle: He's my adult son, he's 38.

Patricia Bower: Will the property be developed?

Gene Tingle: No.

Patricia Bower: Will the recipient of the property be residing on the property?

Gene Tingle: No, not initially, I don't know what the future holds, but no.

Patricia Bower: Where does the recipient live now?

Gene Tingle: Atlanta, Georgia.

Patricia Bower: Have you talked to anyone at the County about going through subdivision review?

Gene Tingle: No.

Patricia Bower: Are you in the business of building or developing property?

Gene Tingle: No.

Patricia Bower: Are you attempting to evade subdivision review?

Gene Tingle: No.

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

Gene Tingle: Yes.

Patricia Bower: Do you understand that this approval does not mean that the property is approved for zoning compliance, floodplain, or septic systems?

Gene Tingle: Yes.

Patricia Bower: Thank you.

Gene Tingle: If I may just give you just a...

Chairman Carey: Certainly.

Gene Tingle: ...give you a 30-second background on this? My wife and I bought a tract of land in the Swan Valley where this is, close to the Mission Mountains about four years ago. We decided we really--this is an area that we like quite a bit and wanted to try to keep it in its rural--to the extent we could, try to keep it in a rural, natural setting. The piece we bought was about to be subdivided. We put a conservation easement on the property and kept it together. We've decided this is an area that we want to have a, kind of, permanent involvement in, realizing getting a little older, my sight currently is about--the one I just mentioned to you is about six miles, very remote, no utilities, no anything. Great place, tough to get to, so we're thinking, well, as much as we like the area, could we find something similar in character that was not quite as remote and that's what we did. We bought this tract from Plum Creek, whereas we put up a conservation easement on the other property [inaudible] already in conservations and they're well down the road with a land trust, putting a conservation easement on this tract as well. We're just trying to determine, you know, the timing, whether we can do it this year or next year or whatever. I guess the upshot of it all is, I guess, technically this is a subdivision of land, but the development of the land is on the far end of the spectrum of what we have an interest in doing. We're trying to, you know, keep it from being developed.

Commissioner Curtiss: This is a public hearing, is there any other...?

Commissioner Curtiss: Mr. Tingle, I have one question for you. So currently there are no residences on the property.

Gene Tingle: No.

Commissioner Curtiss: It's bare land. Okay.

Chairman Carey: Thank you, Mr. Tingle. Any other comments about this, questions?

Pat O'Herren: Thank you, Mr. Chairman. Mr. Tingle, I'm Pat O'Herren with the Rural Initiatives program and it sounds like you're well aware of the extensive wildlife resources that are in the Swan Valley and on this particular parcel. The Commissioner's ask that in cases like this, we request that the landowner, whether it be your son or

you, visit with our staff and with the Fish, Wildlife, and Parks to discuss ways to mitigate impacts on wildlife. Since this isn't a formal subdivision review process, there's not an opportunity to mitigate those impacts. We do have some handouts we'd be happy to provide you and we can also arrange a meeting onsite with a wildlife biologist if you would like to do that. And again, if you're working with a land trust, you've probably done a great deal of that work, but we did want to make that offer available to you.

Gene Tingle: [inaudible, spoke from audience.]

Chairman Carey: Mr. Tingle, could you please step to the mic? We record these and we can't pick you up from there.

Gene Tingle: Sorry, yes, I'd be glad to and look forward to doing that and we are, I think, aware of many of the things that you are referring to, but yeah, I would love to meet with you.

Pat O'Herren: Great, thank you very much.

Chairman Carey: Thank you Pat.

Commissioner Curtiss: The one thing that's unique about the Swan Valley is the grizzly bear corridors and though your property is not in the corridor, the bears can't read and they sometimes step over the line. It's very close to the corridor. That's one of the reasons we wanted you to be aware.

Chairman Carey: Any other comments before I close the hearing?

Chairman Carey closed the hearing.

Commissioner Curtiss made a motion that the Board of County Commissioners approve the request by Gene and Patricia Tingle to create one parcel 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 Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans: Before you leave, I'd like to commend you on your attitude towards trying to protect the land and the critters thereon. Thank you.

Chairman Carey: Much appreciated, thank you.

Hearing: Petition to Alter a Portion of Blanchard Creek Road (near Clearwater Junction)

Chairman Carey opened the hearing.

Charles Wright, Public Works Department, presented the staff report.

If you'll look at the page that has the little square box here down at the very end, that is a right-of-way that we received in 1978 and we wanted to make sure that that road right-of-way remains the same for that creek crossing. But as far as anything else goes, this will be fine and that's all we've looked at so far. We haven't looked at it on the ground, but we will.

Chairman Carey: Thank you. This is a hearing, is there any other comment about this request at this time? Seeing none, I'll close the hearing. We need to set a date to...

Commissioner Curtiss: ...recess.

Chairman Carey: ...recess the hearing rather, thank you. Do we have a date in mind already?

Commissioner Evans: I think we have the 5th of December.

Charles Wright: Right, correct.

Commissioner Evans: By law, we have to go and--a Commissioner and a Surveyor have to go look at it before we can act on it. So we'll be going up there probably Tuesday.

Chairman Carey: So this hearing is in recess until at least next week.

Hearing: Petition to Alter a Portion of Underwood Road (Condon area)

Chairman Carey opened the hearing.

Charles Wright, Surveyor's Office, presented the staff report.

This is another situation where the engineer has come in and touched the bases with everybody in regards to this alteration. We don't have any problems with it. They've designed it and everything.

Chairman Carey: This is a hearing, a public hearing, any comments on this request?

Nathan Lucke: For the record, Nathan Lucke, of [inaudible]. I'm representing the applicant. If there's any questions, I can certainly answer them. L-U-C-K-E. Thank you.

Commissioner Evans: Same response, Nathan, we'll be doing both of those at one time.

Chairman Carey: Okay, so I'll recess this hearing to a future date.

Hearing: Paradise Acres Subsequent Minor Subdivision (2 lots on 20.54 acres) - west of Paradise Road, north of Big Flat Road

Chairman Carey opened the hearing.

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

This is a proposal by Geraldine Curry. The proposal is for two lots on 20.54 acres located at 2325 Paradise Road just north of Big Flat Road. The property is split zoned. The eastern half of the property is C-A3, which permits single dwelling residences with a density of one dwelling unit per five acres. The western half is zoned C-A1, which permits single dwelling residences with a density of one dwelling unit per acre. The C-A1 and the C-A3 zoning districts each require a minimum lot width of one-third of the lots average depth. This lot does not currently comply with this standard and the creation of an additional lot would increase the non-conformity. A condition of approval requires that the applicant receive approval of a variance request to the C-A1 and C-A3 zoning district standards for minimum lot width from the County Board of Adjustment prior to final plat approval.

An irrigation ditch regulated by the Big Flat Irrigation Ditch Company enters the property through a pipe from the south. The pipe splits on the property and terminates on Lot 2. The applicant proposes that water rights be removed from Lot 1. State law requires water rights to be severed to lots larger than one acre that do not have access to ditch water through an appropriate legal or administrative process. This is required in a condition of approval to be reviewed and approved by the County Attorney's Office prior to final plat approval. No alteration of the ditch is proposed and no comments were received by the Big Flat Irrigation Ditch Company.

Paradise Road is currently a 15-foot wide graveled County road within a 60-foot wide right-of-way. Subdivision regulations require a minimum 24-foot paved surface width. The applicant requests a variance from this standard. County Public Works supports the variance request. The applicant proposes to widen and improve Paradise Road to a 20-foot graveled surface for a distance of approximately 600 feet, to the point where the driveway serving Lot 1 intersects with Paradise Road. I just want to correct myself real quickly. That should have just been a 15-foot width road, the subdivision regulation, not paved. I believe I inserted paved.

The subject property is approximately 310 feet from Big Flat Road which is the nearest paved publicly maintained road. Subdivision regulations require paving of off-site roads providing primary access to the subdivision if the distance to the nearest publicly maintained paved road is less than 500 feet. The applicant requests a variance from this standard. County Public Works supports the variance request.

The applicant has included an RSID/SID waiver statement on the plat for improvements to Paradise Road. A statement on the plat addressing road maintenance refers to Paradise Road as a private road. A condition of approval requires the statement be revised.

Post development stormwater is proposed to be retained in retention swales to be constructed as part of the driveway improvements. The applicant does not propose adding pedestrian walkways along Paradise Road. Subdivision regulations do require a system of pedestrian and/or bicycle circulation on all subdivisions outside of the UGA served by public roads. An RSID/SID waiver statement has been included on the plat waiving the right to protest future improvements to Paradise Road including pedestrian walkways and bikeways.

The Health Department comments that, "If future subdivisions begin the construction of the non-motorized facilities on major roads such as Big Flat Road so that future development in the area has something to connect to." A condition of approval requires that the RSID/SID waiver statement on the plat shall be amended to include Big Flat Road, prior to final plat approval.

The subdivision is located within the Missoula Rural Fire District. The nearest fire station is located three miles on gravel and paved roads from the proposed subdivision. Missoula Rural Fire District commented that, "The conditions outlined in the development covenants regarding driveways, water supply (residential sprinklers), and addressing meets with my approval." Missoula Rural Fire District also commented that access to the property is acceptable if the road is improved to 20-foot wide and no parking is allowed on Paradise Road. A condition of approval requires signage plans designating "No Parking" along the subdivision frontage of Paradise Road to be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. The approved signage plans shall be included as a section in the covenants.

The applicant has proposed Residential Fire Sprinklers to satisfy the subdivision requirement for means of water supply for fire protection. At the November 28, 2006 Planning Status meeting with the Board of County Commissioners it was recommended that staff add a condition of approval to requiring residential fire sprinkler. This condition is included in the memo I have provided you today and there are extras for the public if they're interested, up in front.

Lot 2 has an existing well and drainfield and an individual well and drainfield are proposed to serve Lot 1. The nearest City sewer main is located approximately three miles northeast of the site, in Phantom Hills and El Mar Estates. The Health Department commented that, "impacts to surface and groundwater will be evaluated through non-degradation review during MCCHD/DEQ sanitation review."

Fish, Wildlife and Parks (FWP) commented that, "This subdivision includes steep terrain rising upwards towards Black Mountain, and large expanses of forested lands start within this subdivision and extend westerly." Article 1, Section 1 of the Development Covenants includes Living with Wildlife covenants. Fish, Wildlife and Parks (FWP) recommends the covenants be replaced with an updated version. A condition of approval requires replacement of the submitted language recommended by FWP.

In conclusion, with the additional condition, there will be 13 recommended conditions of approval. Staff recommends conditional approval of variance request #1; approval of variance requests 2, 3, and 4. Finally, staff recommends approval of the Paradise Acres Subdivision request. Thank you, I'm open for questions.

Chairman Carey: Thank you, Elaine.

Commissioner Curtiss: Elaine, one thing that seems confusing, it's not in what you're stating, but how it's worded [inaudible] in regard to the pedestrian access and the comment from Health Department. It doesn't seem like that sentence makes sense, so I'm wondering if it should say, "If future subdivisions begin," maybe have a comma, "construction of non-motorized facilities on major roads such as Big Flat Road," and insert the word, "are needed," so that future development in the area has something to connect to.

Elaine Hawk: And that's actually a comment from Health Department.

Commissioner Curtiss: And so they wrote it in kind of an odd way, but...

Elaine Hawk: I can make that...

Commissioner Curtiss: It doesn't make sense the way it's written.

Chairman Carey: Is the applicant or her representative here?

Ron Ewart: Good afternoon, my name is Ron Ewart. I'm with Eli and Associates. I'd like to thank Elaine for all of her work on this project. I read the entire staff report. I think it's very well-written and comprehensive and covers all of the bases. We are in agreement with all of the recommended conditions of approval and variance request. With us this afternoon is Geraldine Curry. Geraldine owns the property, she is the applicant, she lives there in a home. Geraldine teaches 4th Grade at Hellgate Elementary.

She went around and talked to all of her neighbors about the project and, of course, we have a lot of no-build zone are to protect the hillside, [inaudible] covenants, the whole works. I think it will be a nice little subdivision. Thank you.

Chairman Carey: Thank you, any questions for Ron? This is a hearing is there any other comment or questions from the public? Seeing none, I'll close the hearing.

Commissioner Curtiss: One of the things I think we need to reinforce on the record is that Elaine put in her report is the fact that the applicant themselves have proposed residential fire sprinklers and that's why it doesn't show up as a condition on this one, but it's in the packet as a proposal to address water supply for fires. With that, are you ready for a motion?

Chairman Carey: Are you ready? We're ready.

Commissioner Curtiss: Oh, I do have one other question. Recommended motion #4 in the request on the width, because that has to go before the Board of Adjustment, is our motion conditional or...?

Elaine Hawk: If they are not approved at the Board of Adjustment, the subdivision could not be filed.

Commissioner Curtiss made a motion that the Board of County Commissioners conditionally approve the variance request from Article 3-2(3)(B) requiring Paradise Road to be constructed to a surface width of 24 feet to allow a 20-foot surface width; approve the variance request from Article 3-2(14)(B)(i) requiring Paradise Road to be paved from the northern boundary of Lot 1 to the intersection with Big Flat Road to allow Paradise Road to remain a gravel road; approve the variance request from Section 3-2(7) requiring curbs and gutters on Paradise Road to allow roadside drainage swales; approve the request to vary from Article 3-3(1)(E), prohibiting Lot 1 and Lot 2 from having an average depth greater than three times their average width, all based on the findings of fact. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner made a motion that the Board of County Commissioners approve the Paradise Acres subdivision, based upon the findings of fact, and subject to the recommended conditions of approval in the staff report. Commissioner Evans seconded the motion.

Chairman Carey: And that's including the amendment to the recommended conditions we received today?

Commissioner Curtiss: Yes.

The motion carried on a vote of 3-0.

Paradise Acres Subdivision Conditions of Approval:

Zoning

1. The applicant shall receive approval of a variance request to the Zoning Resolution No. 76-113 for minimum lot width in the C-A3 and the C-A1 zoning districts from the County Board of Adjustment prior to final plat approval. *Subdivision Regulations Article 3-1.*

Roads and Driveways

2. Paradise Road shall be constructed to a 20-foot surface width from the northern boundary of Lot 1 to the intersection with Big Flat Road, prior to final plat approval. Engineering plans for roadway improvements shall be reviewed and approved by County Public Works and Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations 3-2(14)(A)-(D)*.
3. The RSID/SID waiver statement on the plat shall be amended to include Big Flat Road, prior to final plat approval. *Subdivision Regulations 3-2(3)(E)*.
4. Prior to final plat approval the following statement on the plat shall be amended as follows:

“The purchaser and/or owner of the lot or parcel understands and agrees that private road construction, maintenance, and snow removal shall be the obligation of the owner or Property Owner’s Association and that the County of Missoula is in no way obligated to perform such road construction or maintenance or upkeep until Paradise Road are is brought up to standards and accepted by the County of Missoula for maintenance.”

Fire

5. The developer shall install interior residential fire sprinklers that meet NFPA 13D standards in each new home. Plans for the installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to building permit approval and the development covenants shall be amended to include the following prior to final plat approval:

“Installation of interior residential fire sprinklers that meet NFPA 13D standards are required in each new home for the purpose of fire protection. Plans for installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to Building Permit approval. Failure to install residential fire sprinklers in any new home may subject the entire subdivision to the cost of installation of a shared water source for fire fighting purposes.”

This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations 3-7(1) and Missoula Rural Fire District recommendation.*

6. Signage plans designating “No Parking” along the subdivision frontage of Paradise Road shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. The approved signage plan shall be included as a section in the covenants. *Subdivision Regulations 3-2(1)(A) and Missoula Rural Fire District recommendation.*

Irrigation

7. The subdivider shall ensure that both lot owners have access to irrigation water, or have the water rights removed from Lot 1 through an appropriate legal or administrative process, which shall be indicated by a statement on the final plat and in the covenants subject to review and approval by the County Attorney’s Office. *MCA 76-3-504(1)(j-k), Subdivision Regulations Article 4-1(13) and OPG recommendation.*

Weeds

8. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulation Article 3-1(1)(B) and Missoula County Weed Board recommendation.*

Covenants

9. Prior to final plat approval, Article 1, Section 4 of the Development Covenants shall be revised to remove the following sentence:

“A shared private driveway maintenance and construction agreement has been filed with this subdivision.”

10. Prior to final plat approval, Article 1, Section 7 of the Development Covenants shall be revised to add the following sentence at the end of the paragraph:

”The grass species contained in the Revegetation Plan are reclamation species not suitable for ornamental turf.”

11. Article 1, Section 11, of the Development Covenants, shall be amended to include all four statements included on the plat. *Subdivision Regulations 3-1(B)*.

12. Prior to final plat approval, Article 1, Section 1 of the covenants shall be replaced with the following:

Living with Wildlife

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, black bear, mountain line, coyote, fox, skunk, raccoon, and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners “live with wildlife.” Alternatively, see FWP’s web site at www.fwp.mt.gov.

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. There is high potential for vegetation damage by wildlife, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners must aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. Gardens, and fruit trees or orchards can attract wildlife such as bear and deer. Fruit bearing trees and shrubs are strongly discouraged in this subdivision because they can regularly attract bears in the fall. Keep produce and fruit picked and off the ground, because ripe or rotting vegetable material can attract bears, skunk and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- c. Garbage should be stored in secure bear-resistant containers or indoors to avoid attracting wildlife such as bears. If stored indoors, do not to set garbage cans out until the morning of garbage pickup and bring cans back indoors by the end of the day. (Contact FWP for information on obtaining or building bear-resistant trash containers or structures.)
- d. Do not feed wildlife or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in “an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.” Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- e. Birdseed is an attractant to bears and outdoor birdfeeders are strongly discouraged annually from April 1 through the end of November. If used, bird feeders must:: 1) be suspended a minimum of 20 feet above ground level; 2) be at least four feet from any support poles or points; and 3) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.

- f. Pets must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.
- g. Pet food and/or livestock feed must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, and other wildlife. When feeding pets and/or livestock do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- h. Barbecue grills should be stored indoors, and permanent outdoor barbecue grills are discouraged. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- i. Consider boundary fencing that is no higher than three and one-half feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.
- j. Compost piles can attract skunks and bears and should be avoided. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
- k. Apiaries (bee hives) could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
- l. These "living with wildlife" covenants cannot be altered or eliminated without consent of the governing body (County Commissioners).

Subdivision Regulations 3-1(1)(F) and 3-1(10) and Fish, Wildlife & Parks recommendation.

- 13. The Amendments Section of the Development Covenants shall be renumbered Article 1, Section 12 and shall be amended to include no parking signs, prior to final plat approval. *Subdivision Regulations 3-1 and Missoula Rural Fire District recommendation.*

Hearing (Planning & Zoning Commission): Part 1 Zoning Initiative (Rock Creek)

Jennie Dixon: For anyone in the audience who would like a copy of the zoning district as recommended by staff, maybe you could raise your hands and I could see and I could pass some out. I have a few copies of the staff report, just a few because it's fairly thick. I'll distribute those as well, but the proposed zoning district with staff changes might be what you're most interested in seeing and of those, I have 30 copies so you'll probably end up having to share anyway.

Chairman Carey: The Board of County Commissioners will recess and we will convene a meeting of the Planning and Zoning Commission. Members of that Commission are Sylvia Weisenberger, Greg Robertson, and the three County Commissioners. So, that's who we are now and we'll ask for a staff report.

Jennie Dixon, Office of Planning and Grants, presented the staff report.

Thank you Commissioners and Planning and Zoning Commission. This is a request from landowners in the Rock Creek area to create a Part 1 Zoning District. This proposed zoning district is located in the Rock Creek/Clark Fork River Confluence Area, south of I-90, approximately 20 miles of downtown Missoula. Of course, anyone who likes the outdoors knows where Rock Creek is. This Part 1 Zoning District is proposed to allow single dwelling residential, tourist homes, and home occupations, which are home-based businesses. This district specifically prohibits commercial and industrial uses and it establishes a maximum residential density of one

dwelling unit per 40 acres. It encompasses approximately 500 acres and homeowners that have signed the petition to create the district represent more than 60% of the freeholders in this 500-acre area. This map up here, which I apologize for the size and maybe difficulty for people reading it, it's what I have. It identifies a 500-acre area with parcels A through N and those 14 parcels are shown up there, and I will explain the color-coding here in just a moment.

This petition is presented to Commissioners in accordance with Title 76, Chapter 2, Part 1 of Montana Code Annotated, thus the name Part 1 Zoning. The petition that was certified by the Clerk & Recorders for meeting the 60% certification was certified on September 25 of this year as having 64% of the signatories required.

Staff has reviewed the proposed zoning district standards, which if you have a staff report, are shown in Attachment D. If you have what I've distributed today, it's essentially the applicant's—and it's also Attachment O in the staff report, that's the applicant's proposed zoning for this area with staff's recommended changes. Staff has recommended changes to this district only to the extent to make it legal and implementable by our staff and also taking into account a few key agency comments that would meet those goals as well. And I'll describe those briefly in just a moment.

The petition includes signatures of seven freeholders. What I've colored in the orange color are the lands of those freeholders who have not signed the petition to create this district. B, C, D, E, and F are all one owner and that's the large area on the top part of this piece of paper. The other owner is Alan M. down below. The parcels vary in size from one and one-quarter acres to just over 163 acres. Most of the parcels are either vacant or have a residence on them. Also, Parcels I, K, and M, which many know as Ekstrom's, has a commercial fly fishing shop, grocery, lodging with six motel rooms. Parcel K contains restaurant, campgrounds, cabins, and commercial recreation uses. Parcel M contains cabins for transient lodging. I believe just three rental cabins are located on Parcel M. The owners of Parcels I and K did sign the petition, however, and as shown up there, did not.

Ten of the 14 parcels are less than the 40 acres required by this proposed zoning district. However, the zoning district contains a provision to allow legal non-conforming lots of record to continue to be used in accordance with the zoning. The zoning district also proposes to allow non-conforming uses that would be the commercial uses, as this district has not authorized commercial uses. Those would be allowed to continue to be replaced and to be expanded. And as I mentioned earlier there are three sites like that.

Parcel A, which is the large 160-acre parcel in the northwest corner of this area is subject to a conservation easement held by the Montana Land Reliance that was put in place in 1992. Parcels G and J, the other two large parcels in the south central part of this zoning district, all of which are shown in the green up there, are proposed for conservation easement held by Five Valleys Land Trust. However, these easements have not yet been filed.

Fish, Wildlife, and Parks commented that Rock Creek is an exceptional natural resource for wildlife and density of this proposed zoning district would benefit wildlife. The Lower Rock Creek and Clark Fork River Confluence Area is an extremely valuable habitat for fish population and in order to protect these areas of riparian resource along these water courses, we have recommended a change to the zoning district that would include applying the County Subdivision Riparian Resource Regulations. So that's one change that we have recommended to the applicant's proposal.

A second change that we've recommended is to include language recommended by the County Floodplain Administrator that simply states, and it's an informative provision that property owners may have land within the FEMA designated floodplain and would be subject to County Floodplain Regulations. It's not adding any new regulation; it's simply informing them that there are other regulations to pay attention to beyond just the zoning district. The recommended land use in the County Comprehensive Plan or Growth Policy is for open and resource at a density of one dwelling unit per 40 acres. There is also in this plan a note of general commercial in the southeast corner of Section 12, northeast corner of Section 13. That's generally in the locations of Parcels H, I, and K and those are the commercial parcels that I mentioned earlier. Staff has provided, as I mentioned, a proposed zoning district for you to consider should the Commission decide to adopt this zoning and of course, during the course of this hearing or at a later meeting by the Commissioners and the Planning and Zoning Commission, I would be happy to provide any guidance in making revisions should you choose to do so. Thank you very much.

Chairman Carey: Thank you Jennie. We'll ask members of the audience who are in favor of this proposal to come forward first. I'll note for the record that I'm told that about 30 or so people are outside in the hall watching this on MCAT. Who would like to speak first?

Don King: My name is Don King. I'm the landowner of Parcel A and I guess we just heard what I certainly believe that this 500 acres is a very special place a little bit. I mean, much of the land around here has very important value to sports enthusiasts and we use it well, but the confluence of the two rivers and the gateway to Rock Creek and the whole Rock Creek drainage is usually important. I know I'm a legal resident of Chicago, although I'd like to point out that the temperature there is 35 degrees warmer than it is here today. But, I'm here because I think it's important to make this statement. I believe that, you know, I came to Rock Creek in 1992 with a group of partners and we partnered up with Greg Tollefson and the Rock Clark Trust to protect Parcel A--this land here and at that time, the landowner was thinking about splitting it up into 20 acre parcels. It was seen as a thing that would be very detrimental, so we, working together and I think the trust was out looking for someone that had like interest and we did. We ended up buying this and putting the conservation easement on at the time. At that time, we were able to have three residences on the property. About three years ago, I bought out my partners and built a house there and at that time, restricted my use to only having the house we have now and the possibility of building one caretakers cottage, but subsequently reduced what was able to be built on the property again. I believe that was 2002.

I come to the place with a history of trying to protect it from overdevelopment and it seems to me that's exactly the reason I'm standing here today. Fred Madsen's letter, I was in contact with Fred, he's become a good neighbor and we talked quit a bit. He's very upset about not being able to be here, some kind of a family matter came up. He's was planning to be here and I think his statement will be read here in a little while, but he probably even has more reason to--I mean he's been there longer, grew up on the property, and so his love of the place has probably more than somebody from the outside. Although I must say that I'm planning to spend more and more time here as things go on. And I think that we'll talk about his easement, it's not in place and I think that everybody with one or two--I'm the only person I know for sure that doesn't benefit from this because I've--or doesn't lose something because of signing this petition. Everyone else I think, there may be one or two exceptions--are really not able to build right now. They could come forward and build one or two residences on something where they won't be able to do that if this goes through. So the idea that people--the other people signing it doesn't have much to lose, I think is false. That's really especially true in the case of Fred because in signing it, he reduced the value of the potential conservation easement that--the gain that he might make.

I think that--I'm going to sit down here fairly soon, but I'd like to say, I've been in the real estate business for 35 years. I guess it looks like it too. I've been a developer and an owner of property and so as I see what's going on here and hear the idea that talking about fairness of what's being proposed here, I'd like to bring up a point. Any real estate investor/developer, and certainly this company LEMB Co, if you look at their website, is a sophisticated group of people. Come into a property and they take a look at what they're going to be allowed to do on the property and surely they had to see the Comprehensive Growth Plan and what was there. It's understood, it's not a regulatory took, it's not something that's a rule, it's a guideline. But to come in and propose seven times what the guideline would say and then when challenged, call that unfair, seems to me a very interesting use of the concept of fairness and unfairness. Seems to me, my position, building a house right across the property line from this and watching this potential seven times what I thought was a guideline that probably would be followed. I feel like I'm being a little unfairly treated by the action, so that's sort of where I come from. I think that the other people who signed this petition feel that way. There's been some fairly shocking things that have happened up there from the point of view of people who thought there was going to be the status quo and there's an awful lot going on up there that I think is the reason why all these people are standing out here and people from around the county, I think have been--I know a lot of my friends come to Rock Creek to spend a couple of weeks in the summer and I know they were here and saw what was going on and I think they were shocked and maybe you've heard from a few of them since they--copied me, blind copied me on some of their emails. In any case thank you for your time.

Carol Steinberg Ekstrom: Carol Steinberg Ekstrom. We own Ekstrom's Stage Station on Rock Creek, which has been there now for--oh, I think 35 years. And in all fairness when Mike bought the property down there and was purchased, he had told us--or it was--that there would be probably anywhere from five to 10 homes, that would be built down there and they would have exclusive use to the barns and the horses could run in the pastures. And I think if that was done, everybody would be okay with it. But to build as many homes as he has platted for now, it's just way too many we feel. So if it [inaudible] to the original plan, I think everybody would be totally happy with it and I know we would be. Thank you

Lorraine Corra: Good afternoon, thank you for having this meeting. I want to point out...

Chairman Carey: Speak your name for the record, please.

Lorraine Corra: I'm sorry, thank you. My name's Lorraine Corra.

Chairman Carey: How do you spell you last name?

Lorraine Corra: C-O-R-R-A.

Chairman Carey: Thank you.

Lorraine Corra: I currently work in Harlem and drove down this morning, but my home and my heart is on the Lot marked H and I'm not sure that was defined well by the planning lady. When this petition came about, I really struggled to sign it. I like to keep my options open, see what the future brings, but I [inaudible] really wanted to retire there and build a single home. Signing this, I also realize and struggled that I'd be giving up my ability to develop my 10 acres and with the price and the money that is being thrown at Montana; I could make a bundle on 10 acres. I could earn interest off of it and quit my job or maybe quit it sooner than I'd planned.

My small presentation is not about the legality, but may be about the culture. My grandparents farmed that ground and they sold it to the Sousa's. My father was born on that ground. If you go out to Fort Missoula and you see the fire tower out there, that was from Slide Rock and he manned that. If you remember the Italians that were interned there, my grandmother was Italian and she went out to visit them. But times change and I realize that, but I wanted to tell a couple of stories about the ground.

One, that the short story is that about in the Parcel B, my family and including a living aunt remember the Native Americans coming through and camping there and fishing on the creek. I think that's pretty amazing that we go from that to all the houses that are going to be on there now. The other story is just a quaint story; remember the flu, the pandemic of 1918? That struck the whole family and a fellow that was schizophrenic came through and he took care of the farm. He took care of the animals because everybody was down with that major flu. And when everybody survived, my grandmother said, he can have a place on the property for the rest of his life. And so, she had the boys build him a cabin and occasionally he would do funny things like schizophrenic people sometimes do and people would want to put him in Warm Springs, but my grandmother always fought for him. So there's that history on there. There was a mill that was on the creek at one point and there was a fellow that was drowned in it and his grave is on that property. The schizophrenic's ashes are on that property. So I just wanted to relate those stories to give you a little color background on it.

I have to say that when I go through places like Greenough Park, I thank the Greenough family. I say, my gosh, what a gift to give that open space so that I can walk through it. I don't know who the people are that have worked on all the open space things in the County, but I thank them because it's a wonderful resource and I get to look at it and I get to walk on it.

So maybe in closing I'd like to say that I'm a pharmacist now, but my first degree was geography and I had this fantasy of working for National Geographic and drawing maps, but I was too timid to go for it. But my other fallback was city planner, but I didn't do that either because I realized that you have to have asbestos shorts because you take the heat every day. So I appreciate how hard this decision is for you guys and I hope you put your shorts on and side with us. Thank you very much.

Doug Persico: Good afternoon, my name is Doug Persico and together with my wife, I own and operate Rock Creek Fisherman's Mercantile. I guess we're Parcel I. We signed, both my wife and I, signed the petition, my signature is on the cover letter that sent it to you. Unlike most of the other people in the area, I don't have a whole lot of property, so I don't have--I don't stand to lose a whole lot of money from not being able to put a conservation easement or develop it. What I do have is a fly shop and the more people who come in to my fly shop, the money that I'm going to make. And if this goes through, there's going to be 36 more homes where people could come into my fly shop. But there's something more important than that, than making money off of a fly shop. I honestly and truly believe that the degradation that this proposed subdivision is going to cause to the confluence of Rock Creek and the Clark Fork, which I, like almost every other fly fisherman in this County consider sacred ground. I think that's going to do more damage to the ecosystem of Rock Creek from whirling

disease, from effluence into the water, from any number of things. It's going to hurt a lot more than it's going to help. I believe that when you're in my business and you're making your living off the creek, you have a duty to defend the creek. If it calls for my making a little less money by not having this subdivision to draw on, I'll gladly make that trade to keep the sacred ground of the confluence of Rock Creek and the Clark Fork just the way it is. Thank you very much.

John Menson: [Inaudible, spoke from the audience.] This is a statement from Fred Madsen as indicated before, was not able to fly in from North Dakota, although he originally planned to.

Chairman Carey: I'm sorry, you need to identify yourself.

John Menson: My name is John Menson.

Commissioner Evans: Pull the mic up just a bit more.

John Menson: I'm a little taller. This is a statement from Fred Madsen that has been sent to me for the County Commissioners' meeting today. "Due to a prior family commitment I am sorry I will be unable to attend the commission meeting on November 29. This matter is very important to me and I would like to share some of my thoughts on the proposed Barnes development. My father purchased his property on Rock Creek in 1960. This property has been in our family over 45 years. My family and I have been blessed to have had the opportunity to enjoy the beauty and tranquility of this area for so many years. My children and grandchildren love to come here in the summer time. Like many children today, my children are from the city. They may not totally understand how lucky they are to experience nature and wildlife on our property, but they will someday. Many local people and tourists have enjoyed Rock Creek over the years and continue to do so. As an adjacent landowner to the Barnes property, I hate the thought of a large housing development occurring in this area. Prior to learning of the Barnes proposed development, I was in the process of negotiating with the Five Valleys Land Trust to put a conservation easement on my property. Unfortunately, I have had to put this on hold until I know more about the proposed development next door. It would be my hope that the scope and size of the Barnes development be limited to protect our natural resources of Rock Creek and the Clark Fork River. Hopefully we can continue to have an abundant habitat for the precious wildlife in the area. It is my desire that the County Commissioners would sincerely consider rezoning the area to a more acceptable density. If we do this, we will be doing a big favor to future generations of people who can continue to enjoy this area as we have." That was his statement. Thank you.

Tracy Stone-Manning: Hi, for the record, my name is Tracy Stone-Manning. I'm the Director of the Clark Fork Coalition. We represent 1200 members, give or take, who care about protecting and restoring the Clark Fork Watershed. What we're talking about here today is the future of the confluence of Rock Creek and the Clark Fork. Rock Creek, as we know, is no secret. People fly in from all over the county to come fish its waters and it's also a bit of a family river. My nephew, age 13, caught his first trout in the west in Rock Creek and I expect people in Annapolis, Maryland could have heard him and his hollers the day he did that. So it's a family place, it's a place of national renowned--it's a place that we don't make any more of. And over and over through the years as we've worked with the Commission, we've heard you say, gosh, we don't have the tools to do what you're asking. And today you've got that tool, you've got citizens who have banded together to say, "We want to zone ourselves." How often does that happen? Choosing to zone themselves, choosing, as Lorraine Corra is doing, to give up potential profit because they are aspiring to a greater good for their place and that's what we're asking you to do today. What we're asking you to do is to take the tool that you are given in statute, which is to let citizens zone themselves, and it turns out, that if people within the district don't like it, they have the appeal process. They can overturn it if they have enough numbers. It's democracy at play, citizens coming together, asking their government to do something for them. And if it's not fair, democracy works, it's gets overturned.

I don't think we ever get to revisit this decision. I don't think that 10 years from now, citizens in Rock Creek are going to say, "You know that chance we missed 10 years ago? Let's zone ourselves" because I think it's going to be too late. So we are asking you today to take one of the very few tools you have left in growth planning, which is citizens doing the work of government and to say yes to that. Thank you.

Greg Tollefson: My name is Greg Tollefson. I heard Lorraine ask you folks if any of you remembered the flu epidemic of 1918 and if any of you do, I want to know that I applaud you because you're holding up real well, whoever you are.

I'm here today on behalf of the Rock Creek Council. The Rock Creek Council is an advisory group to the Five Valleys Land Trust. In its previous lives, it has been a freestanding organization and a ward of the State back at its beginning in 1986. And since 1986, the Rock Creek Council has been working directly with private landowners to effect conservation throughout the Rock Creek drainage. I don't need to elaborate the importance of Rock Creek and all its splendors for any of you folks. You've lived here long enough to know what Rock Creek is about, but in those 20 years that we've been working in Rock Creek, we have through the use of conservation easement, and some public acquisition, protected something in excess of 14,000 acres in the drainage. All of this has been done with tools that we often consider band-aids. Things to do because the planning rules and the zoning rules are not in place to provide the necessary protection otherwise.

The Rock Creek Protective Association has been active for a decade longer, I believe, than the Rock Creek Council. Working cooperatively with the Council and with agencies, State and Federal agencies, to protect those same values that we've been involved in and I think that it's important to note that this is just another proactive step on the part of the Rock Creek Protective Association and in some ways, a milestone. To take the further step of assuming responsibility and taking the future of a portion of the drainage into their own hands and the Rock Creek Council applauds this effort and urges you, to the extent possible, to give this a most favorable consideration you can do. Thank you.

Gary Matson: Hello, I'm Gary Matson, M-A-T-S-O-N and I'm a resident of Milltown. I'm presenting comments for the Friends of Two Rivers. We are a membership organization representing approximately 40 households in the Milltown area, as well as supporting members who live out of the area. Friends of Two Rivers is active in supporting cleanup, restoration, and redevelopment of the Milltown Superfund Site. Some of our members also serve on the Milltown Redevelopment Working Group and we recognize the uniquely rich recreational and aesthetic enhancement that the Superfund Cleanup will bring to the entire region and have worked hard to enable them.

Rock Creek is an existing uniquely [inaudible] component of the areas recreational and aesthetic resource. Friends of Two Rivers supports the citizen-initiated zoning proposal that will ensure that Lower Rock Creek is not degraded by overdevelopment. And it's our understanding that this zoning won't affect existing uses of the property, so it was with that understanding that we give our support.

We believe that land developers operating in such special Montana places as Rock Creek are taking advantage of the rich resources already present to increase the value of their development. In so doing, they owe a special obligation to those of us who already live here and work hard to keep special places available for future Montanans. We believe the citizen-initiated zoning proposal will allow for a profitable development and still protect the resources we now all share. Thank you.

John Menson: I can now stand up. My name is John Menson and I live on the Rock Creek Road. My address is 11 River Rock Lane, Clinton, Montana. I'm also president of the Rock Creek Protective Association. The Rock Creek Protective Association is made up of members that own land in the Rock Creek Valley and are interested in protecting and improving this special place. Much of this has to do with the blue ribbon trout stream in the rural setting and the adjacent Clark Fork River. It is a special place and we are happy to share this place with Missoula County residents who make great use of this area and with visitors from around the globe. It is hard to find such an area so close to an urban area that has a rural atmosphere that one first experiences when exiting I-90. Along the valley, there are trail accesses to both the rivers and the mountains and although you find a few small areas with houses relatively near each other, for the most part they are far apart and you do not feel like you are in a developed area. In addition, many of us have put conservation easements on the land as well. For example, our family only has one resident on 130 acres and we have two trail easements for the public to use for public access. We support a group of our members who had proposed the currently considered zoning district. All they're trying to do is follow Missoula County Growth Plan, which expresses the desires of Missoula County residents and visitors to the valley. This was overwhelmingly confirmed by the recent petition submission with over 3600 signatures, most of them from Missoula County. We've also previously provided you an analysis that shows the direct economic benefit of fly fishing in the valley is at least 1.3 million dollars annually.

The head of the valley is at the confluence of two major rivers. As a result, the environment is extremely fragile. Surface water flows into the two rivers off this property. The water table, as you know, is less than 10 feet below the surface. The County has previously committed to reduce the flow of nutrients by 50% into the Clark Fork and any development density greater than the Missoula County Growth Plan so close to the two rivers will go against this commitment. As a minimum there [inaudible] flows from lawn surfaces into the rivers. There currently is an

abundance of wildlife in this proposed area, including the eagles nest, and I believe you have a letter from National Fish, Wildlife, and Parks about an eagle nest.

By following the Missoula County Comprehensive Growth Plan, we believe the area can support further development and for the most part, protect the special area that it is. By approving this proposal, the Missoula County Zoning Commission will be fair to the residents of Missoula County, to the visitors that come to this special place. At the same time, they will be protecting the fragile environment that exists in this area. And I close, and I'm the last official speaker from our group, so thanks.

Jack Tuholske: I'm going to make myself an unofficial speaker. My name is Jack Tuholske and I have been the attorney for this group in another context. I didn't draft this petition ... T-U-H-O-L-S-K-E. And in fact the first time I saw it was last week, but in listening to the comments here today, I felt compelled to add a couple of points here.

First of all, echoing what Tracy said that this is legitimate citizen-initiated zoning under the statutes that the legislature has given you, the County Commissioners and the citizens of the State of Montana, the tools to work with. This is not the heavy-hand of government coming out of the blue, but rather an effort that truly was generated at the grassroots.

The second point that I'd like to make is that under the criteria for zoning regulations in 76-2-203, which ultimately, after all the dust and the emotion settles, is what I think you need to base your decision upon, that this proposal really meets the legal requirements and the purposes for zoning. And I want to just touch on four of those that are in the statute.

The first is that, you know, the question you must ask yourself, does it lessen congestion, and I think the answer to that by limiting the number of homes. You know, on a rural county road, you certainly lessen congestion.

The second criteria is whether it promotes public health and general welfare and I think the answer to that question must be yes. You've heard a lot of people talk about the special value of this place and by reducing density you will promote the qualities--not only the aesthetic qualities, but the protection of water quality and wildlife resources that are legitimate public concerns.

Third criteria under the statute, prevent overcrowding of land and I think that question answers itself by implementing a zoning district that echoes the master plan from 1975 at that same density, you are preventing the overcrowding of land.

And finally, characteristic under the statute, avoiding undue concentration of population and again this specific proposal meets that criteria. And so again when the dust settles and you look at the reasons that the legislature has said this is what you enact as zoning for, I think that this proposal really meets those both within the spirit and the letter of the law. Thank you.

Stuart Goldberg: Hello, my name is Stuart Goldberg. I have a lot of affiliations here and why this is an important issue for me. First of all, I live at 769 Rock Creek Road. I bought my property there in 1992 and like Tracy's nephew, I too caught my first trout in Rock Creek. Didn't catch him on the first try, but I got it done nonetheless a few years later. I'm also an avid supporter of the Five Valleys Land Trust and avid supporter of the Clark Fork coalition, and a member of Missoula's Development Community.

When I stood before you as County Commissioners a short while back to discuss a conservation development proposal at McCauley Butte, one of the things that I said was that there are certain places that should be developed and certain places that should not. And too often in my profession people show up without a sense of what the community wants, without a sense of what is appropriate, without a sense of the history of a place. And they come in and impose ideas upon a place and the neighbors are forced to react and forced to catch up, and forced to scramble for this mythical tool that really doesn't exist for them to protect themselves after that point. I just want to say that this is an extraordinary place, everybody knows that. And I think you as Commissioners have an extraordinary opportunity to protect this place, not because it's necessarily the right thing to do, although it absolutely is, but because you have the tool handed to you by the people of this community who know the place, who know the history, and who know what's best. Thank you very much.

Bryant Rolston: Good afternoon, can you guys hear me okay? My name is Bryant Rolston and I live on the Wallace Creek Road in Clinton and have for six years. I work out of my home for a high technology mapping

company, so Jennie you can blame me for the map I guess. One of the main reasons I chose to settle in the Clinton area was easy access to a variety of recreational amenities, such as Rock Creek and Welcome Creek wilderness. Lots of quality open space was also another one of the reasons I settled in this place, quality of rural life and, of course, down home friendly people in the area. Due to my work in all levels of government, I have come to an understanding and appreciation for the constant delicate balance, community leaders such as you must attempt to strike between the competing interests, private property rights, and what is to be done for the public good and preservation of the community.

I believe subdivision does not in any way meet with community approval and is not at all smart, nor sustainable development. It threatens the very quality of life that has become the reason people are moving to Montana in the first place, with me being a good example. [Inaudible] development represents the kind that turns Paradise to parking lot and that the residents of Oregon voted against in the early 1970s with support of Governor Tom McCall. As a result of that early legislation, Oregon has some of the earliest, most progressive land use control laws on the books and has helped retain Oregon's quality of life. We have practically none of this in Montana.

Hopefully leaders in Montana, both here in Missoula County and at the State level in January, won't learn this lesson too late, like they did in Colorado and California. So, quality of life, if you can look at it as Montana's golden goose, let's not kill the golden goose with approving a subdivision that just doesn't make sense for anybody but those who seek to directly financially benefit and/or live out of state. Thank you.

Celeste River: For the record, my name is Celeste River. I wasn't planning to speak, but I've been listening to all of these people and I've been reading the articles about this development and I watched your meeting from last week and I was touched by the words of Mr. Tony Inkashowla [phonetic], who spoke to you--he was the last person to speak at your meeting last week. And his gentle, kind voice, appealing to the wisdom within all of us to think about how when decisions are made that allow great changes, they can't be reversed. And when the land is dug up and the earth is moved, we can't put it back in place. I read a study that was done by [inaudible] students back, I think in the 1960s or 70s about the Clark Fork Canyon. It's a 60-mile stretch off the Clark Fork River, where the students did a study about the scarred trees and they went to many known campsites along that stretch of the river banks. And I think about all of us who live here now who are--either have great plans for reaping wealth from land that we own or who are hurting because of those other people's plans for their profit. And I think about what the descendents of the people who lived here before, who didn't buy and sell land, who simply moved throughout the land and had familial, generational familial camping places where they stayed and they had the place names for events that had occurred in those areas and the pain that they must have felt when they were no longer allowed to stay for even a short period of time on a piece of land because somebody now owned it. And I think that it's important for all of us who live here today to remember the people who went before us on this land and what they experienced in having that taken away from them. And how they're striving to live good lives today, those descendents of those people

And all of us who benefit here now, I believe have a great responsibility to make decisions that help build a healthy, happy communities here and not to break down communities that have worked hard to establish themselves in this place. And I also had an experience of helping my neighborhood conduct, not a citizen-initiated zoning change, because that's very difficult to do, but we did get a zoning change in our old Farviews area to help protect the people there. And so I commend--acknowledge the people who have taken the time to come together and initiated this citizen-initiated zoning change. I think it's very important in Montana right now to stand up for the beauty of this place and as people have mentioned the word sacred, it's a beautiful word, sacred, the sacredness of this place. We can't go back once these things have been changed. Well maybe we can do something like the Milltown Dam removal, but we know how difficult that is to do and what a long and difficult process it's still going to be, to safely, to safely try to bring that back into a healthy place.

So I'm just speaking off my heart, from my heart here to acknowledge what these people are attempting to do and sometimes it's important to stand up, sometimes--I'm just going to share this with you--sometimes I have a vision of, like a--kind of just see the way we are here without the rules in place, that it's just like we could all just roll down on the ground and lay over on our backs with our arms up in the air, saying take me. That's kind of what it's like here right now. And it's time for Montanans to put structures in place and respect people's attempts to help preserve the beauty and sacredness of this land. Thank you very much.

Chairman Carey: Anyone else in favor? Shall we move then to folks who are opposed to this request?

Michael Barnes: My name is Michael Barnes with LEMB Co, property owner we have been referring to today. I have a 200-acre parcel there just off the interstate on Rock Creek Road. This zoning initiative affects only a portion of my ranch, 150 acres. Like I was saying, my ranch consists of 200 acres. This zoning initiative before you today only affects 150 acres of my ranch. The reason for that obviously is the 60% density in order to have this petition in front of you today. We've heard the emotional testimony of many people here today.

We're in the process of completing our application, subdivision application and should have by the end of this week, early next week, in for subdivision review. The reason for the time lag since our last neighbor meeting was to address and take seriously the comments we heard, similar to today, most often comments revolved around the environment, water quality, and how we were going to deal with the gray water septic fields.

Today's initiative before you is an obvious attempt to stop development. The subdivision process--we have started the subdivision process on our 200-acre ranch and intend to have that, once again, in for review by next week. We ask that our project be judged on its merits and a lot of the concerns that we've heard today and continually heard will be addressed. The application will be complete and many, many extreme measures have been taken to assure the quality of Rock Creek, Clark Fork, and the project as a whole. When the application is reviewed and made public I think the Protective Association and its members as well as the community will be pleased with, not the development per se, but with the extraordinary measures that we are taking in order to protect the environment.

This zoning petition, the initiative in front of you today, I don't believe that the intention--that this was intended to stop development. In essence, a property owner adjacent to a potential project that would own more than 60% of the land would in essence be able to stop any development as property owners of the State and the County. I'm sure this concerns a large majority of the population. It would nullify the subdivision process and the ability for staff and for Commissioners to rule on projects. We ask that our subdivision be judged by its merits once again.

Many of these properties are non-conforming. As you read through the initiative, I think it's very evident to everybody that it is just an attempt to stop development. If we have a half-dozen or better non-conforming commercial parcels, one would have to ask, why not zone those commercial? Why zone those residential 40-acre minimums? I think Jack said it best when he said there are four criteria need to be met in order to impose a zone. One, lessen congestion. I ask how imposing a residential zone on a commercial-use project would lessen congestion. It wouldn't. Second, Jack stated, protection of public health. I ask how a residential 40-acre minimum zoning on a 1.6 acre fly shop, motel with six rooms and a grocery store, how that would pertain. Avoiding undue concentration of population, those parcels, the densities are built out. Once again, it would be non-applicable. Prevent overcrowding, would not be applicable.

Mr. King's property, my neighbor, he has a conservation easement as he stated. He's willingly limited development to, if I understood him correctly, no more than three dwellings. How would any of the four criteria that Jack stated apply to his parcel? Mr. Matson I believe, if he was here today, would be the one that some of these may pertain to, although I question on his property, which I've spent some time with him and his now-past sister. His property--a large portion of his property is in the floodplain and we were interested in his property to add to our common area. So I question the zoning on that as well.

I wanted to make a trip over here to show the Commissioners that I do take this seriously, I take the community seriously and it's important and we do take the time, and we are taking the time to make sure that our application is complete and that the concerns that we heard from our neighborhood meetings and continued concerns are addressed and at the time of subdivision review, is when any other comments, concerns, or questions should be brought forth. Do you have any questions?

Chairman Carey: Not right now apparently. Thank you. Anybody else in opposition to this?

Dan Ekstrom: My name is Dan Ekstrom and I'm a resident out there in that area. I've lived there for 62 years. I own a pretty large piece of property across the river from here and to tell you the truth, this zoning thing scares the hell out of me.

I would like to ask one question on the exemptions there. Is that, in the brown area, is that the Fisherman's Mercantile, the campground, and my mother's property with the three rentals, is that in the brown area? Is that the way I understand it? It's crossed out here in the paper, but I don't--you know.

Jennie Dixon: My understanding is that L and M is the Ekstrom family trust.

Dan Ekstrom: And that's the entirety of it?

Jennie Dixon: That's my understanding, L and M and they're highlighted in orange. And so the uncolored or the brownish-tanish areas are not part of that Ekstrom family trust property. Does that answer your question?

Dan Ekstrom: How many--do you know the acreage of it or anything? I mean--

Jennie Dixon: I can sure tell you real quick. L is 3.49 acres and M is 7.12, for a total of approximately 10 and one-half acres.

Dan Ekstrom: And the Fisherman's Mercantile is entirely out of the zone too?

Jennie Dixon: And you know who would be the owner?

Dan Ekstrom: Mr. Persico.

Jennie Dixon: I show Persico's property as I, which is a small piece kind of taken out of H in the tan--yeah, the one you said that you [inaudible]. And that's 1.26 acres.

Commissioner Curtiss: But Dan, did I hear you say taken out? It's not taken out, it's just--that is all that's in it.

Jennie Dixon: Yeah, it's not colored, because what I'm showing in the colors. The Commissioners asked me--

Dan Ekstrom: So, if this zoning issue is taken up with the County, then those brown areas would be included in the zoning too?

Jennie Dixon: Yes, all parcels lettered A through N are in the zoning district, as proposed.

Commissioner Evans: But would you explain non-conforming use to Dan, so that he knows [inaudible].

Jennie Dixon: All of the parcels in this zoning district, A through N, are--the provision in the zoning district is that any commercial property that is there, that does not comply with the proposed zoning may continue, can be replaced if it is destroyed by any means, and may even expand, that is the proposal. Does that answer you?

Dan Ekstrom: So, if I understand that, then Section 7.04 of the Missoula County Zoning Resolution would not apply to that property.

Jennie Dixon: No part of the County Zoning Resolution applies to this property, but we did, I believe use 7.04 as a guide in how we wrote the non-conforming language in this district.

Dan Ekstrom: So it could be replaced if fire or be enlarged?

Jennie Dixon: It could be replaced for any reason. Let me just read you what it says, I think its one sentence. "Nothing in these regulations are intended to prohibit the expansion or replacement of structures," any structure, "existing at the adoption date of this zoning district."

Dan Ekstrom: And can it be added to? I mean...

Jennie Dixon: Yeah, that's expansion.

Dan Ekstrom: ...and you could put houses on it or whatever in those properties?

Jennie Dixon: Well, in accordance with the zoning, now, if there's a non-conforming use on a piece of property, yeah I guess I would have to give some thought to whether you could also put a house in addition to a commercial use. I don't know the answer to that right off, but I can...

Dan Ekstrom: Well, I think it's very important, you know, to consider this. Some of these properties...

Jennie Dixon: If you're talking about L & M, they're already--well they are less than the 40 acres. I would probably need to confirm with legal staff about whether you could, in addition to a non-conforming commercial business, also place a home.

Dan Ekstrom: Well I guess what I want to say is I'm in total opposition to this zoning district 100% and, well, we've lived there on Rock Creek our whole life almost and, you know, just things have to change, I mean, just everything can't stay the same forever and when--basically five people can cause a piece of ground the size of 200 acres or 150 at this point to be zoned to where it's going to be an economic disaster for the fellow. I don't think that's fair at all, I really don't.

This thing was set up entirely just to zone this piece of property. He didn't include anybody, even on the other side of the road. If it's that way, he could guarantee getting his 60%. The whole entire community should have been involved in this. That's all I got to say.

Commissioner Curtiss: While somebody's coming up, I have a question for Jennie. There are a couple parcels, J, which is being proposed maybe for a conservation easement, but H, that's vacant right now, it just goes through somebody who owns a parcel can still put a house on that one parcel if it has nothing on it right now, right?

Jennie Dixon: Correct.

Dan Vanacker: Hi, my name's Dan Vanacker. I've known Mr. Barnes for many years and I've kind of followed along on this--V-A-N-A-C-K-E-R. That's all right, good little Belgian name. At any rate, I've kind of followed this through. I own LA Construction, it's my construction company that's done the work on this parcel and what seems to be just a zoning hearing is really just a continuation of a slanderous, almost weekly affront on Mr. Barnes personally through paper, through media. Myself and my company, my employees that have tried to work there and I can understand, I feel the emotion that they've got. I own 30 acres on the main [inaudible] River in Oregon and I moved there to have my family out of LA County. You know, my kids built forts, they did everything, they placed on the river, they were never at the house, they were always up in the forest in the back and it's surrounded on three sides by BLM land. And I understand that. Conversely, I've been involved in subdivisions where my God you couldn't hardly turn the tractor around and they were going to build a home here, three-bedroom home and put families side-by-side-by-side-by-side. And somehow between that and to take a large parcel like that and say one home per 40 acres, and we are talking about that one parcel. This is just a big slam on this one parcel. It's just incredible to me, that America has come to the point where, you know, we don't even have his subdivision on the wall. It's a beautiful proposal--from up on the ridge, I looked down at it the other day, the pond is awesome and if you had a--I think the way it works out, it's close to five acres per lot. I'm not for sure on that, but on Mike's proposal. One home on five acres with, you know, huge amount--I think the way it gets laid out there, they're like two acres per lot, but like a hundred acres or so is common area. And common area by the highway, common area, a couple hundred foot wide all around the pond, access to the Clark Fork. As far as I know the property doesn't even front Rock Creek.

It's just been kind of an insane situation from what we're used to of a normal, this is the property, this is the subdivision procedure. It comes before you guys everybody gets their chance to comment, to jump in there, cut it exactly the way it's drawn for a specific purpose and eliminate several homes on the other side of the street that would not give them 60% and try to slam something through before you get a chance to see the actual subdivision drawings that's going to be brought you in a week or so--I mean it's just here we go again. Mike's not been vocal, we've been on TV, we've been in print--they've just stomped on the guy and I've known him for several years to be honest. My family has thrived under--from working with Mr. Barnes. If he agrees with people that we're going to have one lot, five acres or there's going to be 36, instead of coming before you and saying, we want 200 homes and we're going to fight you through every legal means at our disposal, no. First thing we did is had a meeting at the ranch there about the proposed subdivision, had a box there on the table, passed out these flyers for people to put comment on, passed out 40 flyers. When our engineer picked up the box after the meeting, not one flyer got put back in the box to give additional comment to Mike or his engineering staff. And at that point right off the bat, it was pretty certain that we weren't going to get fair, impartial, this is what the community wants. You know and I think it started with the pond being built without having a public meeting, maybe. I'm not sure on that, but--you know, what the pond represented and but I do know that they spent--this started in like 02 or something with several meetings with all the Fish and Game and everybody had their input on how that was to be built. It wasn't just something that equipment showed up [inaudible] and we started working.

Anyway, I would just like to say that I know Mike personally to be a very good and honest guy and he will do what's right within the community through the standards and I think if you see the proposal that they're going to put before you next week, you'll find it to be very nice. It's going to upgrade the community access right to the freeway is right there, it's not like it's in the back of Rock Creek and going to affect transportation. These are going to be, you know, fairly expensive homes probably, good people, contributors, not take awayers, if that's such a word. But, at any rate, that's what I got to say. Thanks.

Commissioner Evans: I'd like to correct one thing for you and for the audience, and Jennie jump in if I'm wrong, the subdivision, if it's submitted next week or thereabouts, it won't be in front of us right away. The planning staff works with it, it goes to the Planning Board, and then it comes to us. So it could be a month or two before we ever see it. I just wanted to clarify that for you.

Dan Vanacker: Okay, well, it--yeah--in my opinion then as well, one month, six weeks, two weeks, I think that still has merit as to--I mean I can see how this fits and it might be, you know, legally correct, but there might be some other homes that are directly adjacent to that might not be. I feel like we're on this--thrown together something to get something through to yank Mike out of his deal and I mean we're right back to [inaudible] and the hanging chads and all that. I think there's a procedure that's involved that's before you that you've had and this is just a way to slipstream something else in. I don't think it's right. Thanks

Katie Ward: I'm Katie Ward, I've been in business in Missoula for ten years as a real estate broker and pride myself with working with responsible developers throughout the community. I've known Mike Barnes for six of those years and I've worked with Mike on the Ridge over Rock Creek. I've also visited him in Oregon and seen some of his projects there. I know Mike to be a responsible developer and someone who listens to feedback and creates a very quality product.

I've also been involved in public processes that involve obstructionists. Most notably, the Playball Missoula effort that went through in the last couple years and I find a lot of similarities between the Playball effort and this effort, except these obstructionists have money. We see t-shirts, we see signs, we see zoning efforts that rezone--they basically exclude all of their own personal interests and they can rebuild their personal interest and expand them, we could turn the little Fisherman's Mercantile into Costco, the way it's written. But it penalizes the rest of the land. If you asked everyone in this room who lived in Rock Creek how many have acres--have parcels that are 40 acres or bigger, I bet you'd see two or three. Okay, so it's a big have and have-not.

I also see throughout the last four to six months, Mike being accused publicly and of a lot of mis-end truths. Number 1, developing in a floodplain, where that pond is isn't even close to the floodplain. But it makes a good headline. Number 2, he was accused of not having a mining permit. The judge ruled no mining permit was necessary, did nothing wrong. Number 3, he was accused of lying about saying that he was going to do eight to 10 homes. I was in those meetings. Yes, that was an idea that was discussed. Mike never said he was only going to do eight to 10. Sure, he looked at that, it'd be great if the numbers worked on a project like that. It doesn't. All it does is let that project be for the multi-millionaires. If you build great big parcels on that parcel that the plan is coming in on, it prices it out of most of our range. And it also, everything that's said here today is basically saying what he's going to do, which they've seen only at the public meeting at the ranch is not responsible. I find it very hard to understand why when you take 200 acres and put 36 homes on it, which is an average of 5.5 acres, and you're left with 120 acres of open space, how that is irresponsible. I feel like we're putting a trailer court in. You know, we could do that and rent out all the homes and not go through subdivision and that would be terrible, but it could happen. What he's doing is a responsible development and I look at other developers that could have gotten this land and what they might have done. What we have here is a beautiful project.

And the other thing that I take extreme objection to is the way that these signatures were gathered. Save Rock Creek? You'd think we were going to shut off the creek and take all the fish out or, if it was Dairy Queens, take away the soft serve. We're not touching Rock Creek. I love Rock Creek as much as anyone else does. I've fished, I've swam in it, I love Rock Creek. And this property is not going to taken away a beautiful resource and a beautiful valley, it's just going to just change the entrance to what's going to look like a beautiful gated community. That is not the same as taking away Rock Creek.

Most importantly, I want to say as a citizen, I would hate to see zoning become a hammer. Zoning is a tool, let's take this project, look at it on its own merits, let's not let obstructionists with money turn zoning into a hammer. Thank you.

Alan McCormick: I'm Alan McCormick, Garlington, Lon, and Robinson. I represent LEMB Co, the owners of Parcels B, C, D, E, and F on this map. What I just handed out to you is a land use map that shows the land uses of the properties for approximately the first nine and one-half miles of Rock Creek road. I wanted to just show you what the actual pattern of development is out here and you'll note that there's quite a node of development pattern, higher density parcels, parcels of less than five acres around the interstate intersection where the campground is, where the Mercantile is, all of those parcels. And you have a big gap, for the most part, quite a ways up, that's because that's a very steep property, a lot of that is public land. Then you've got miles after miles after miles of high-density development. If what's proposed in the subdivision is high-density development, then you'd certainly have to call that high-density development because you've got a pattern of parcels that have been created, for the most part, not through subdivision review. Most of those parcels were created through occasional sales, 20-acre exemptions, and then broken-down family transfers, a repeated pattern of no subdivision review. And in fact, if you look at the parcels that are within this [inaudible] zoning district, none of those ever went through subdivision review. They were created through occasional sales and various other splits, including a 1.26 acres that has the mercantile on it, a number of other parcels. Ten of those 14 parcels in the zoning district are less than 20 acres. We're not even talking 40 acres, we're talking less than 20 acres.

What Mike's proposal you do to here is allow you to have an opportunity to have a comprehensive and thorough review of his subdivision proposal. That hasn't occurred on any of this development that you see on this map. Most of these properties have never been reviewed for potential impacts, have never had wildlife mitigation plans associated with them, they haven't had riparian habitat plans associated with them, all of which you are familiar with that because you require them on subdivisions when you need to mitigation particular impacts. What we're talking about here today is really fundamental fairness this subdivision started. Missoula County Regulations require all developers to have neighbor meetings. Why do we do that? Because we want to give the neighbors, the folks who are most likely to be affected by development, an opportunity to preview the proposal. Not only preview it, but comment on it. Developers are supposed to and required to take that comment and build that into the application, which you hope is of course that they take that seriously.

The reason that we are here then is because the neighbors have had a preview of the development. We've intentionally not rushed this application process. Applications need to be complete, particularly under the new regulations. As you know there's a new process for certified [inaudible] complete. Want to make sure that you have sufficient information to adequately review the potential impacts of that subdivision. So what's the unintended consequence on that? The unintended consequence of course is to give neighbors and interest groups the opportunity to mobilize and propose a zoning district that would take away the right to present that subdivision application for your review. That's fundamentally unfair. There's another unintended consequence for you. The next time the next subdivider is going to have that application ready to go. They're going to go out and they're going to have that neighborhood meeting and then tomorrow morning, the day after the meeting, they're going to knock on Jennie's door and they're going to say, "Here's the application. I've stapled any written comments on the back of that." That technically complies with you regulations. But that's future subdividers and future developers are going to have to do to preserve their right to give you a subdivision application for your review.

If you deny this zoning, as we're asking you to do, there's nothing to prove, there's no new development approved, there's not suddenly 36 homes out there. All that's left is Mr. Barnes and LEMB Co's ability to present an application to you to have it reviewed. I'm not going to tell you that it's the best development, the most beautiful development, it's going to protect all the resources, it's going to protect Rock Creek, it's going to protect the Clark Fork, because I'm going to let you judge that for yourself. State Law, of course, gives you the opportunity to, what's the fancy phrase? Mitigate potentially significant adverse impacts identified during the review process. I think I got that mostly right. And so when you have an application in front of you, you get to determine whether it's going to have a potentially significant adverse impact and you get to mitigate it.

And so what I will tell you is that the process as it's worked here, is two neighborhood meetings were held. The second meeting was held actually because not enough signs were posted for the first round and so had to post the required number of signs and have a second meeting. Public comments were collected. As Mike mentioned, most of those public comments dealt with effects on Rock Creek, effects on Clark Fork River, the septic systems that might go in there. In fact, I remember the Clark Fork Coalition was there and said it would be really nice if you guys didn't go with minimum State standards for your septic systems, but if you go above and beyond. Well, when the application comes in, you'll see that in fact Mike's proposing to go above and beyond State standards and provide Level Two treatment that, to my knowledge, nobody else out here has, to help mitigate a potentially

significant adverse impact. What we're just allowing here is to allow that process to continue. You'll see in that application that there's a wildlife habitat plan and that there is a riparian habitat plan to address the comments and the information that were commented on during the process of the neighborhood meetings and then afterwards. That's the way this is supposed to work. During that first meeting, we made a list of folks that we'd like to talk to. Clark Fork Coalition was on that list, Rock Creek Protective Association was on that list, other folks were on that list. Unfortunately, not long after that meeting, relationships turned pretty sour. That's unfortunate, that's not a judgment statement of who's to blame, I suspect both sides can take some blame for that relationship turning sour. If there's something that we can do to repair that relationship, to reopen lines of communication, to make sure this application does protect Rock Creek, it does protect the Clark Fork, it does respect the wildlife values that are around here. It would be better for all of us and I'll make that offer to you now. If there's something that we can do to reopen those lines of conversations, let us know.

But at the end of the day, of course, the fundamental fairness that's at play here is to allow that application to come in, because the process has already been started and let it be judged on its own merits. If the evidence demonstrates that there aren't impacts to Rock Creek or that they can be mitigated, same with the Clark Fork, same with the groundwater, same with the wildlife, most of the concerns that you're hearing today that have been addressed. We've allowed that process to take its course. That's fundamental fairness, not changing the rules in the middle of the game. We know why this is here, we know this is a reaction to a single proposal. We know that the boundaries have been picked so the 60% threshold can be reached and we know the boundaries have been picked--there were comments made earlier that this is democracy in action. If people don't like it, they can protest it. Well, the fact of the matter is the boundaries and the number of parcels have been picked so that the person who doesn't want the zoning can't meet that threshold of 50% to protest it. That's not fair. That's not good planning. You guys are in the process of undertaking comprehensive planning for the entire Seeley Area. That's good planning. That's proactive planning. That gives all the stakeholders to come before you and have their two cents about what the planning's going to look like, not this.

So, I'll leave you with that. You have our letter I assume and I won't reiterate the other things that are in that letter, except to reiterate that we do hope you will deny this request to allow the subdivision application process to continue and to let this project be judged on its own merits. And we'll certainly answer any questions you have.

Commissioner Evans: I'm going to ask, if you don't mind, that you do read those things into the record that were in your letter.

Alan McCormick: Okay.

Commissioner Evans: Does anyone have a problem with that?

Alan McCormick: I'll have to remember those off of the top of my head. I don't want to read this letter, but I think I've hit most of the highlights that are in here.

Commissioner Evans: How about I give you a copy of your letter?

Alan McCormick: Jennie just did. Well, as I mentioned, there's 14 parcels in this zoning district, minimum density of 40 acres. We've heard a lot about the Comprehensive Plan. The Comprehensive Plan designates this as one per 40 acres. The Ashgrove case, that's Ashgrove vs. Jefferson County says comprehensive plans can't ignore actual development patterns. When you've got a zoning district that has 10 of the 14 parcels are less than 40 acres, that comprehensive plan designation does not fit. It doesn't legally provide a basis for zoning the rest of this because of the number of non-conforming parcels. To our knowledge, this would be the first time Missoula County and anywhere, that I'm aware of, would adopt a zoning where there are more non-conforming parcels than actually conforming parcels, that's terrible planning and it's not reflective of the development pattern that's on the ground.

That reminds me of something that Mr. Ekstrom was asking about in the non-conforming lot. I disagree. Non-conforming uses are allowed to continue by these regulations. It says structures. If the mercantile burns down, you can rebuild the mercantile, but you have to use it as a residence. If Mr. Ekstrom's tourist homes burn down, you can rebuild them, but you have to use them as a residence. Campground or Laundromat, both burn down? You can rebuild them, but their residences. Montana Law makes a distinction between uses and structures. That's true in covenants, that's true in zoning. In this case, the zoning district only says you get to rebuild the structure, you get to enlarge the structure. You don't get to enlarge the use, you don't get to rebuild the use, and

that's a critical distinction. I don't know if that was made clear when the zoning petition was sent around because that zoning language has actually changed. The original proposal had something in it if it was destroyed more than 50% or 100%, it could be rebuilt at 100%, but it couldn't be enlarged. Now we're talking about enlarging it, but regulations do not allow commercial uses to continue. Once they're gone, they're gone, they can't be rebuilt.

I mentioned the second portion here about the boundaries. These boundaries have been picked obviously to meet the 60% requirement and then also to overcome a 50% protest. We have already begun the subdivision process with a neighborhood meeting. Those meetings were held on April 12 and May 4. LEMB Co has carefully considered those public comments. Obviously, there's going to be a disagreement throughout the process about the number of homes, but the impacts hopefully have been addressed. You'll be able to judge that for yourself.

LEMB Co easily could have finished that application and presented it to you before this hearing and intentionally chose not to. And in fact, at one point, there was a topic of conversation about well, why doesn't LEMB Co just propose it's own citizen's zoning district for it's property because you only have to have 40 acres to do that. My advice was no, you've begun the process, let's let the process continue. That's what's fundamentally fair and I think that would be the preferred outcome obviously.

I mentioned the unintended consequences that's on display here. Adopting a zoning and changing the rules after the neighborhood meeting will obviously instruct everyone of how to do the applications next time.

Mr. Madson's property here, I don't know the details about why he's held up the conservation easement consideration on that. That property doesn't have a County compliant access road to it. The access to that property is decreed in a court settlement of a lawsuit and wouldn't meet County standards, so I'm not so sure that it has any real significant development rights anyway because it would require a pretty significant variance from you guys to allow that development to occur.

And really, I appreciate it. I think I made a mistake in writing my letter. I think Ms. Corra is certainly giving up some development rights here, but Mike Barnes is obviously the impact here. His parcel--you know the mercantile lot is fully built out. The campground lot is fully built out and that's a real important point here. All of the other landowners in this zoning district have been given the opportunity to determine for themselves what kind of development they would like to propose. Some have chosen to do voluntary conservation easements, some have built campgrounds before those were required to go through review, some have built other commercial structures before they were required to go to review, but they're fully built out. They've had that choice and now the proposal here is to say Mr. Barnes, you don't get to make that choice. It's not a choice for him to say I get 36 homes. It's a choice for him to say, I get to abide by the rules and regulations and I get to propose to you a 36-lot subdivision. If it works, it works. If it meets your regulations, it meets them, if it doesn't it doesn't. But he gets to choose that opportunity and this is taking away his right to do that. Nobody else has had that right taken away. Ms. Corra, correct me today, obviously she is giving up an amount of rights as well.

I mentioned in a letter that obviously there'd been a lot of controversy about this. It's a very sensitive parcel. There are a lot of allegations made that this is going to have significant harmful effects. Let's let the evidence speak for itself. Let's let everybody consider the evidence. Let's let Mr. Barnes present you with the evidence. Let's let those folks who oppose it, review and comment on that evidence and then let's all make a reasoned decision based on the evidence that's presented in front of you rather than making an allegation now that this subdivision is going to have significant impacts.

With about 140 homes, this is based on DJA's calculation, there's about 140 homes that already exist in the lower reaches of the Clark Fork. It's a healthy fishery. Obviously, there's a significant amount of development that's already occurred and it's occurred without significantly damaging the area. So again, the point here is allow this subdivision application to come in front of you so it can be judged to determine the impacts that it's going to create and allow Mr. Barnes to demonstrate that in fact those impacts can be mitigated.

So we do encourage you to not adopt this zoning district. If you choose that you'd like to adopt it, we'd recommend doing one thing and that is to take out those who did not sign the petition. You would still have an area that's large enough to qualify for the 40-acre minimum. You would then still have, obviously, a 60% petition for that area. State law apparently--have to look at it little closer, but I think it gives you the opportunity to take certain parcels out of it. So take B, C, D, E, F out of there. I don't speak for the other landowner who did not, but I assume that landowner would like the same accommodation. I'm not entirely sure which parcels are, but I think

Jennie could probably get that for us. And with that, I will answer any questions that you have and encourage you not to adopt this zoning district.

Chairman Carey: Alan, you mentioned the 140 homes along the Clark Fork?

Alan McCormick: Certainly, I misspoke. In the lower reaches of the Rock Creek area, there's about 140 homes, so that includes what you've seeing on the map there. It includes a little bit to the north. I'm not sure, Paul could tell me if it includes any further on, but they didn't count all the way up Rock Creek, so that's not the full extent of the number of homes that are already along Rock Creek.

Jennie Dixon: Alan is correct and I want to correct a mistake that I made in staff's recommendation, Attachment O, which is the proposed zoning district with staff's revisions to it. As I stated in my staff report, our attempt to make revisions to this zoning district was simply to make it legal and implementable and not really change the intent of what was proposed. So if you would go to Page 2 of Attachment O, which is also the document that I handed out to most everybody here today, Section 2, which is right above "General Provisions," and this is a section about non-conforming uses. Alan pointed out that it is only applicable to structures and my mistake was not to include in the second to the last line, "Nothing is these regulations are intended to prohibit the expansion or replacement of structures and uses"--I should have put, "and uses"--"existing at the adoption date of this zoning district." That I believe was the intent of the applicant as I read it and I simply neglected to include that, my apologies for the confusion.

Chairman Carey: Thanks Jennie. We have another opportunity for anybody to speak if they care to, otherwise I'll close the hearing. Please step forward ma'am.

Cherene Menson: My name is Cherene Menson and I live at Rock Creek road. Sure. You know, I guess I've just been struck with a lot of the non-conforming things and I just wanted to comment on that. You know if we look at all Montana, you know we've grown up over time and certainly in the 50s, 60s, 70s, and through the 80s, there's a lot we didn't know about the rivers and about watersheds and aquifers, and we know more now. We know more about where to put homes and where not to put homes and how we can negatively impact on rivers and how we can do less to disturb our land. I don't think because of the historical development that is Montana's nature, that that ought to be against what is going to be potentially new and destructive on a very special piece of land. That's all I want to say.

Chairman Carey: Thank you. Anyone else before I close the hearing, anyone else care to speak?

Commissioner Curtiss: Could someone peak in the hall and see if there's any hands raised or anyone running in?

Chairman Carey closed the hearing.

Commissioner Evans: I'm asking myself whether we should close the hearing at this point or if we should leave the record open. Our regular attorney is not available to us today and we have imposed upon Patty to come and that's not fair to us or to her to not have services of our regular attorney to answer any questions we might have. I'm not ready to make a decision today and I recognize that the Planning and Zoning Commission that's currently on the floor here, but I'm still not ready to make a decision today, because I need more information than what I've got. I need some legal advice and I want time to ponder over the things that have been given to us. So I'm wondering if we should leave the hearing open and allow testimony in written form in the future and perhaps you can advise us on that?

Chairman Carey: I think, yeah, I think that's a good idea. We'll go ahead and not close the hearing right now. We'll recess it to a date to be determined. Any comments from Commissioner members over there?

Greg Robertson: I'm ready to vote right now.

Chairman Carey: Okay, Sylvia.

Sylvia Weisenberger: I have a question. Just looking at the map [inaudible, spoke without mic] little confused, so maybe you can help me out here. I've heard a lot about the boundaries that have been picked. I'm looking at a map here that shows Missoula County and Granite County. Are we talking about the boundary--I mean the boundaries obviously couldn't go across into Granite County, could they?

Jennie Dixon: No, you're looking at a document, an exhibit prepared by WGM Group in Attachment C-1; I believe that shows the exterior boundaries of the proposed zoning district. Granite County does border it on the east, but the entire proposed district, which is outlined in--not obvious at this distance--but at the thicker black line around the green and the orange and some of the tan there, which is the 505 acres in this district.

Sylvia Weisenberger: Okay, so what we're talking about is the boundaries that seem to be in contention here [inaudible, spoke without mic] straight down and across?

Jennie Dixon: In terms of the last--

Sylvia Weisenberger: [Inaudible, spoke without mic].

Jennie Dixon: No, the last speaker asked to include--Barbara if you could point out--all of the orange parcels...

Unidentified Speaker: These two.

Jennie Dixon: Well, the one's L & M, the owner did not make that request. As Alan indicated, he could not speak for that owner, but he is speaking for B, C, D, E, and F, which is the orange there. He wants those to be excluded and he, you know, presumes that L & M, also in the orange on the lower part of that, would want to be excluded, but did not speak for Mr. Ekstrom.

Sylvia Weisenberger: One other question that you might be able to help me out on. The County's Growth Policy recommends one dwelling unit per 40 acres, and this is something that was done in 2002. What's its purpose? I mean [inaudible, spoke without mic] what we're talking about here [inaudible, spoke without mic] the Growth Policy has no bearing on zoning or subdivisions, what does it have a bearing on?

Jennie Dixon: The County Commissioners updated the Growth Policy in 2002 and that was text, but at the same time readopted the 75 land use plan. So these land use designations are from 1975 and it includes primarily open end resource, which is a one dwelling unit per 40 acre designation on that entire area, except for as I indicated, I think it was the H, I, and K parcels in the tan between the two orange areas have a little note of like a general commercial designation and that's where you see the commercial uses primarily.

Sylvia Weisenberger: But how does it apply to zoning and subdivisions and...

Jennie Dixon: Well, it's a guide in Part 2 Zoning that we use as a finding that was mentioned by Mr. Tuholske and others as one of the 12 criteria for rezoning in Part 2. This is Part I Zoning and, while it's still relevant, there are not those same 12 findings. It's simply a guide for what the Commissioners at one point in time felt would be an appropriate level of development at this location.

Sylvia Weisenberger: Thank you.

Chairman Carey: Does the Planning and Zoning Commission then have a recommendation at this point or do we want to agree to recess the hearing for, what, until the 13th?

Commissioner Curtiss: I tend to agree with Barbara, there are a few questions, legal questions, that Mr. McCormick brought up that I would prefer to have, no reflection on you Patty but, more experienced counsel on land use, give us some advice on before we make a decision.

Just to clarify for Sylvia and the audience is that when we do this type of zoning, there are two things. First, we can adopt the boundaries, so the boundaries could be readjusted unless counsel tells us different, but we have done that in other cases. Then we adopt what applies within those boundaries. So, there really are some questions I think that I would like to have [inaudible].

Sylvia Weisenberger made a motion that the Planning and Zoning Commission recommend to the Board of County Commissioners that the Commission recess until December 13 to seek legal counsel on the Rock Creek Citizen-Initiated Zoning District proposal. Commissioner Evans seconded the motion. The motion carried on a vote of 5-0.

Commissioner Evans: And I would ask that the next briefings we have and the legal advice that we receive that Sylvia and Greg be invited to those meetings, so that they're not thrown into the fray without hearing the briefing.

Chairman Carey closed the Planning and Zoning Commission meeting and convened the Board of County Commissioners meeting.

Commissioner Evans moved to accept the recommendation of the Planning and Zoning Commission that the Board of County Commissioners recess until December 13 to seek legal counsel on the Rock Creek Citizen-Initiated Zoning District proposal. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Other Business

None.

There being no further business to come before the Board, the Commissioners were in recess at 3:50 p.m.