

## **PUBLIC MEETING – DECEMBER 13, 2006**

The Public Meeting was called to order at 1:32 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, Director of Public Works Greg Robertson, Clerk & Recorder/Treasurer Vickie Zeier, and Planning and Zoning Commission Member Sylvia Weisenberger.

### **Pledge of Allegiance**

### **Public Comment**

None.

### **Routine Administrative Actions**

Commissioner Curtis moved that the Board of County Commissioners approve the weekly claims list in the amount of \$505,644.12. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

### **HEARING (Certificate of Survey): Anthony Family Transfer**

Chairman Carey opened the hearing.

Mike Sehestedt presented the staff report.

This is consideration of a request to create a family transfer parcel for that parcel described as Tract A-1 of Certificate of Survey #2320 in Section 8, Township 20 North, Range 16 West. Alexander Reid Anthony has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately five acres in size located near North of Holland Lake. Alexander Anthony proposes to create one approximately 2.5 acre parcel for transfer to his son, Charles Anthony, for residential purposes and keep the remaining approximately 2.5 acre parcel for residential purposes as well.

The history of the parcel is as follows: Barbara W. Medland filed COS # 2035 in February 1980 creating a 9.99-acre parcel for gift or sale. COS #2320 was filed in April 1980 by owner Cynthia Lee Dooley, creating a 4.99 acre parcel for the purpose of an occasional sale. In April 1984, Norman and Paula Wilcox filed a Warranty Deed, deeding the property to Alexander Reid Anthony and L. Jean Anthony. Alexander filed a Quitclaim Deed in April 2006, deeding the property to himself, Charles Anthony, and Linda Clow. Linda Clow died in October 2006. An Acknowledged Statement to Terminate Joint Tenancy Property of the Decedent was filed on October 18, 2006. Charles Anthony filed a Quitclaim Deed also on October 18, 2006, deeding the property to Alexander Reid Anthony. According to the records kept by the Missoula County Surveyor, the applicant has not used exemptions to the Subdivision and Platting Act with the exceptions as follows:

COS #1697 12/01/1978 OS REM Southwest Section 16 Township 13 North Range 20 West  
COS #1697 12/01/1978 OS REM Southwest Section 01 Township 15 North Range 23 West

My recommendation is that you consider a request to create a family transfer parcel by dividing the parcel described as Tract A-1 of Certificate of Survey #2320 in Section 8, Township 20 North, Range 16 West.

Chairman Carey: Michael, our paper has Certificate of Survey 2323, which ...

Mike Sehestedt: I'm sorry, I misspoke, 2323.

Commissioner Carey: Thank you. Is Mr. Anthony here or a member of the family or a representative? Would you step to the microphone and identify yourself? Your name is?

Alexander Anthony: Alexander Anthony.

Chairman Carey: I don't know if you have been briefed about this process, but we're going to ask our attorney to ask you a few questions so that we can put your answers on the record and hopefully ...

Alexander Anthony: I have copy [inaudible].

Chairman Carey: Good, hopefully you'll be able to assure us that you're not attempting to evade subdivision regs.

Mike Sehestedt: I apologize in advance if these questions seem prying, but we do have people who from...

Alexander Anthony: I can't hear you.

Mike Sehestedt: Oh, let me see if I can get closer to the microphone. I apologize if these questions seem prying, but from time to time, there are attempts to evade subdivision review by use of these exemptions. Now, is it accurate to say you've owned the property since 1984?

Alexander Anthony: Yes, [inaudible].

Mike Sehestedt: When you bought the property, did you have the intent of dividing it?

Alexander Anthony: No.

Mike Sehestedt: Do either you or your son to whom you're transferring the parcel if it's created intend to transfer this property within the next year?

Alexander Anthony: No.

Mike Sehestedt: What is your intent with regard to the property?

Alexander Anthony: Well, I'm just going to just live there until I die and then he [inaudible] probably will too.

Mike Sehestedt: Have you talked to anyone at the County about going through subdivision review?

Alexander Anthony: No.

Mike Sehestedt: I'm going to assume your son is not a minor.

Alexander Anthony: No.

Mike Sehestedt: How old is he? Okay, thank you. You know I've made that mistake before and been surprised. I thought I'd better cover that base.

Unidentified Speaker: [Inaudible].

Mike Sehestedt: I'd say we're safe. Let's see, are you in the business of building or developing property?

Alexander Anthony: No, I just make boxes and things is all.

Mike Sehestedt: Are you attempting to evade subdivision review?

Alexander Anthony: No.

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

Alexander Anthony: Yes.

Mike Sehestedt: Do you understand that if the Commissioners approve the use of the exemption, it simply says you don't have to go through subdivision review, it doesn't mean that the property is approved for floodplain, septic systems, building permits, anything else of that nature?

Alexander Anthony: Yes.

Mike Sehestedt: Quick question, I happen to know the answer, but is the property zoned?

Alexander Anthony: I didn't hear you.

Mike Sehestedt: Is there zoning on the property.

Alexander Anthony: Not that I know of.

Mike Sehestedt: Okay, thank you very much.

Chairman Carey: Any questions for Mr. Anthony from the Commissioners? Thank you Mr. Anthony. This is a public hearing, does anybody wish to speak to this matter? Anyone wish to speak? Seeing none, I'll close the hearing. Is there a motion?

Commissioner Evans made a motion that the Board of County Commissioners approve the request by Alexander Reid Anthony 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 Curtiss seconded the motion. The motion carried on a vote of 3-0.

**Hearing (Postponed from December 6, 2006): Country Crest Addition (Subdivide 3 parcels into 6 lots) - Grassland Drive & Peregrine Loop**

Chairman Carey opened the hearing.

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

This item is located off Mullan Road and is a major subdivision request from three lot owners in the Country Crest Subdivision to subdivide their lots into six lots. They are represented by Kristen Smith with WGM Group. Lots 63 and 64 are located along Grassland Drive and Lot 46A is located on the corner of Grassland Drive and Peregrine Court. Both Grassland Drive and Peregrine Court are County maintained roads within a 60-foot right-of-way and paved to a surface width of 24 feet. The original lots are slightly greater than one acre and each new lot will be approximately one-half acre in size.

This area is Zoned C-RR 2, which has land use designation of two dwelling units per acre and the Comprehensive Plan also calls for a density of two dwelling units per acre. Therefore, the proposal complies with both the zoning and Comprehensive Plan land use designation.

Similar to other Country Crest subdivisions, the applicants have requested three variances. The first to not install curb and gutter along Grassland Drive and Peregrine Court, the second to not install sidewalks on Grassland Drive and Peregrine Court, and third is to not have to dedicate parkland for major subdivisions. The applicant has included an RSID waiver statement on the face of the plat waiving the right to protest improvements to Grassland Drive and Peregrine Court including curb and gutter and sidewalks. Based on the agenda comments, staff and Planning Board are in support of the three variance requests.

Staff has recommended seven conditions of approval and I will summarize a few of these conditions at this time. Condition of approval #1 requires the subdivider to contribute to the mitigation fund for the Mullan/Flynn and Mullan/Reserve intersections. Condition of approval #4 requires each new home to install interior residential fire sprinklers for the purposes of fire protection and that these plans for the installation of interior residential fire sprinklers be approved by the Missoula Rural Fire District prior to Building Permit approval. The Planning Board is recommended an amendment to this condition that they specifically reference the name of this subdivision, Country Crest Addition in Condition #4. Condition #5 requires that plans for visible addressing be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. Condition #6 requires that new lots contribute to sewer RSID #8486 and both staff and Planning Board recommend approval of the proposed subdivision and recommended conditions of approval with the amendment to Condition of Approval #4. Thank you and that concludes my report.

Chairman Carey: Thank you Zack.

Commissioner Curtiss: Could we, Zack, on the record explain why we're not requiring parkland for this subdivision.

Zack Brandt: The County Parks has said that adequate park was dedicated with the original Country Crest Subdivision and that they don't need any more parkland at this time.

Commissioner Curtiss: Thank you, Zack.

Chairman Carey: This is a public hearing, does the developer's representative wish to speak? No, so they're apparently concurring with the report. Anybody else wish to speak to this? Seeing none, I'll close the hearing.

Commissioner Evans: I have a concern that I've shared with Michael. It seems to me that the language that is being recommended here on Condition, was it, 4?

Mike Sehestedt: Correct.

Commissioner Evans: It's problematic in that we have a problem.

Mike Sehestedt: I think Barbara if you realize that the reference to Country Crest Addition is just this subdivision. The larger subdivision is just known as Country Crest, so this particular language applies only to these new lots being created.

Commissioner Evans: Thank you that clarifies my concern and puts it on the record.

Chairman Carey: Thank you. Anything else?

Commissioner Curtiss made a motion that the Board of County Commissioners approve the following variance requests: from Section 3-2(7)(B)(i) requiring installation of curb and gutters so that curb and gutter installation on Grassland Drive and Peregrine Court is not required; from Section 3-2(8)(A)(ii) requiring installation of concrete boulevard sidewalks so that sidewalk installation on Grassland Drive and Peregrine Court Lane is not required; and from Section 3-8(6) requiring parkland dedication, all based on the findings of fact in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss made a motion that the Board of County Commissioners approve the Country Crest Addition based on the findings of fact and subject to the recommended conditions of approval as amended by the Planning Board. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

## **Country Crest Addition Conditions of Approval**

### **Roads and Access**

1. The subdividers shall contribute \$230 per new lot to mitigate the impact of additional development by assistance in signaling the Flynn/Mullan Road intersection and \$815 per new lot to mitigate the impact of additional development on the Reserve Street/Mullan Road intersection. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 4-1(12).*
2. Driveways in excess of 150 feet in length must be approved by Missoula Rural Fire District prior to building permit approval. A turn around for fire apparatus must be incorporated at the terminus of the driveway. The driveway must provide 20 feet of unobstructed horizontal clearance and 13 feet 6 inches unobstructed vertical clearance the length of the drive. This language shall also be included in a development covenant and shall not be deleted or amended without governing body approval. *Subdivision Regulations Article 3-2(10) and Missoula Rural Fire District recommendation.*

### **Pedestrian Facilities**

3. The subdivider shall petition into the Missoula Urban Transportation District and the filling of the petition with the MUTD Board of Directors shall be verified prior to final plat approval.

### **Fire**

4. Interior residential fire sprinklers that meet NFPA 13D standards are required in each new home for the purposes 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 sprinklers in any new home may subject the entire Country Crest Addition subdivision to the cost of installation of a shared water source for fire fighting. *Subdivision Regulations Article 3-7(1)(6)*.

5. All residences within this subdivision shall post address signs visible from public streets in all light conditions. Plans for visible addressing shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval. *Subdivision Regulations Article 3-2(2)(G)*.

#### **Sewer**

6. The newly created lots shall contribute to sewer RSID 8486 in the amount specified in the resolutions, prior building permit approval.

#### **Development Covenants**

7. The Development Covenants shall be amended as follows, subject to review and approval by OPG, prior to final plat approval:

- a. Replace the section titled "Radon" with the following updated language as recommended by the Health Department:

RADON MITIGATION: EPA has designated the Missoula area as having a high radon gas potential (Zone 1). Therefore, the Missoula City-County Health Department recommends that all new residences incorporate radon resistant construction features.

- b. Add the following Driveways section to the Development Covenants:

DRIVEWAYS: Driveways in excess of 150 feet in length must be approved by Missoula Rural Fire District prior to building permit approval. A turn around for fire apparatus must be incorporated at the terminus of the driveway. The driveway must provide 20 feet of unobstructed horizontal clearance and 13 feet 6 inches unobstructed vertical clearance the length of the drive.

- c. Add the following Amendments section to the Development Covenants:

AMENDMENTS: Sections of the covenants relating to driveways, interior residential fire sprinklers, address signs, weed control, radon, driveways, woodstoves, or amendments may not be deleted or amended without governing body approval.

These sections of the covenants may not be amended or deleted without governing body approval.

#### **Hearing: Hall Addition Subsequent Minor Subdivision (5 lots on 10.07 acres) - West of Old Highway 93, 3/4 mile north of Ravalli County Line**

Chairman Carey opened the hearing.

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

This is a proposal by Eldon and Cheryl Hall represented by Montana Northwest Company. The proposal is for a five-lot subdivision of a 10.07 acre parcel into four residential lots and one utility/common area lot, located at 20755 Jones Road, one mile west of Highway 93 South, just north of the Missoula Ravalli County Line. The property is unzoned. The 2002 Lolo Regional Plan designates the property as Rural Residential with a recommended density of one dwelling per ten acres.

The Hendrickson Irrigation Ditch crosses the southern portion of the property. The applicant has proposed easements to allow all lots access to the ditch. The area of the irrigation ditch has been identified as a riparian resource area and a riparian management plan has been included in the submittal packet. A community sewer system is proposed which will require a sewer line be constructed under the irrigation ditch at the property boundary between Lots 2 and 4. A condition of approval requires the riparian resource management plan to be amended to include mitigation measures for construction of the sewer line and restoration of the riparian resource area and buffer after construction is complete. No permanent alteration of the ditch is proposed. A condition of approval requires the riparian resource area and buffer to be designated with shading on the plat and

included in the plat legend. Also, a condition of approval requires the riparian management plan and map be attached to and referenced in the development covenants.

Missoula County Weed District commented that, "The Declaration of Restrictions, Conditions, and Road Maintenance Agreement for Hall Addition should require all landowners in the subdivision to maintain their property in compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan." A condition of approval requires that the covenants be amended to include the recommended language and another condition of approval requires that this section of the development covenants may not be changed or deleted without governing body approval.

Jones Road is an 18-foot wide gravel County road within a 60-foot right-of-way. Subdivision regulations require a minimum 24-foot paved surface width. The applicant requests a variance from these standards. County Public Works as well as OPG do support this variance requests. The applicant has included an RSID/SID waiver statement on the plat for improvements to Jones Road, which includes road widening and paving. Access to Lots 3 and 4 is proposed via a 12-foot shared driveway within a 30-foot wide private access easement for the use and benefit of Lots 3 and 4 and a private utility easement for public and private utilities serving Lots 2, 3, and 4. The driveway and easement meet County standards; however, subdivision regulations do require a maintenance agreement for shared roads and driveways and this is required in a condition of approval. The applicant has proposed "No Access" strips along the Jones Road easement at the eastern edge of Lot 3 and along the 30-foot private access easement at the northern edge of Lot 2. This is required as a condition of approval.

Post development storm water is proposed to be retained through the increase of landscaped area and proper grading of the buildings and drainfield area. There are no pedestrian facilities within the subdivision or adjacent to the subdivision on Jones Road. The applicant is not proposing to add any. 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 Jones Road including pedestrian walkways and bikeways.

This subdivision is located within the Missoula Rural Fire District as well as a mutual provider with Florence Volunteer Fire District. The nearest fire station is approximately three miles from the proposed subdivision. There is no community or municipal water system for fire protection in this area. Subdivision regulations do require a water source for fire protection to be provided. Article XXV of the development covenants states that the Florence Volunteer Fire District is willing to accept a payment of a \$500.00 fee in lieu of providing a water supply for fire protection. This proposal does not meet the water supply for fire protection standards in our subdivision regulations. Curt Belts with Missoula Rural Fire District commented that installation of residential fire sprinklers that meet NFPA 13D standards are required in each new home to provide for water supply for fire protection. This would be in compliance with subdivision regulations. A condition of approval requires that the developer install interior residential fire sprinklers meeting NFPA 13D standards in each new home. These plans for installation of interior fire sprinklers shall be approved by the Missoula Rural Fire District prior to building permit approval and Article XXV of the development covenants shall be amended to include language referring to plans and installation of the sprinklers. Further, another condition of approval would require that this section of the development covenants may not be changed or deleted without governing body approval. A condition of approval requires that Article XXV of the development covenants be amended to delete all references to Ravalli County Subdivision Regulations and to delete all references to payment of fees in lieu of providing a water supply for fire protection. Subdivision regulations require a RSID/SID waiver statement on the plat for a future community or municipal water system with 1000 GPM fire flow for fire protection. This is required as a condition of approval. Curt Belts with Missoula Rural Fire District commented that driveways in excess of 150 feet must include a turnaround for fire apparatus, meet unobstructed width and height standards, and have driveway plans reviewed and approved by Florence Volunteer Fire District prior to building permit approval. This is required as a condition of approval and that the driveway standards do be included in the development covenants. Curt Belts again commented that all properties must be properly addressed with address signs clearly visible from the street in all light conditions. A condition of approval requires plans for address signage to be reviewed and approved by Missoula Rural Fire District prior to final plat approval.

Individual wells are proposed for residential lots within the subdivision. A shared community sewer system located on Lot 5 is proposed to serve the subdivision. A 20-foot wide sewer line easement is provided from Lot 5 providing access to each lot. A sewer line is proposed to cross the existing irrigation ditch within the sewer line easement. The subdivision is approximately 10 miles from the nearest public sewage system. An RSID/SID

waiver statement has been included on the plat waiving the right to protest future connection to a public sewer system.

High groundwater has been identified on the subject property. The applicant has included a groundwater note on the plat. A condition of approval requires that the development covenants be amended to include the groundwater note in Article VIII of the development covenants.

In conclusion, there are nine recommended conditions of approval. Staff recommends approval of the variance to widening and paving of Jones Road. Finally, staff recommends approval of the Hall Addition Subdivision request. Thank you.

Chairman Carey: Thank you, Elaine. This is a public hearing, does the developer or their representative wish to speak to this first?

Ken Jenkins: Good afternoon, for the record, my name is Ken Jenkins with Montana Northwest Company. I'd like to thank Elaine and initially we started with Tim Worley on this project, for their efforts to help us through the review process.

Essentially, we concur with the staff report and recommended conditions with a couple of exceptions. Condition #7, which requires shading on the plat to indicate the riparian no-build zone in a buffer area and then it asks that that title be placed in the legend on the plat. We're fine with that condition, but would like to be able to add language to that no-build zone title that allows for all activities associated with the normal operation and maintenance of irrigation ditch. Then Condition #8 calls for a mitigation plan for the sewer that will cross under the ditch and it's a riparian resource mitigation, which means, among other things, that we would have to revegetate that area with riparian species. We've already heard from the people that operate the ditch that they would prefer that we not be planting more riparian species along the ditch. The only reason there's any riparian species on this property period is the fact that the irrigation ditch is there. Nonetheless, the purpose of the ditch is for irrigation and to assist in the ditch doing its job and functioning properly the cottonwoods and brush and things that are growing in the ditch, next to the ditch and have roots tapping the ditch most likely will be periodically removed. So I guess what I would ask is that we delete the riparian resource mitigation condition entirely.

A couple of other things, I know there has been some concern raised about the water rights in that irrigation ditch, who is entitled to them. I understand that that matter is in some process in the courts being determined. State law requires us to provide easements to allow for access to irrigation water. That requirement is somewhat aside from whether or not these folks would have irrigation rights and so I don't know that that necessarily has to be an issue. As I previously indicated, we will plan to put a note on the final plat that addresses the fact that just because there are irrigation easements doesn't necessarily mean that the lots would have irrigation rights. That may well be determined by the courts and how they divide up those water rights.

I also understand there's been some concern about the proximity of the community sewer system to the ditch. I would once again point out that that was a consideration in the design and it's been reviewed and approved by DEQ, but if there are any additional concerns about that, the project engineer is here today and could certainly take questions, as can I.

Chairman Carey: Thank you. Anyone else wish to speak to this?

Susan Thraen: Good afternoon, my name is Susan Thraen. I'm providing comments on behalf of not just myself. Sure. T-H-R-A-E-N. I'm providing comments not just on behalf of myself, but other second water right owners and neighbors to the proposed Hall Subdivision. As Ken mentioned the second water right ditch, the Hendrickson Ditch, passes through the proposed subdivision and that's the reason why we're commenting. We asked that this subdivision request be rejected or as minimum the approval be delayed based upon our comments provided in our letter dated October 19 that was included in your subdivision packet. I'm going to outline some of our concerns right now. Basically, we have three major concerns.

Our first concern is the Lolo Regional Plan identifies this parcel of land as a proposed density of one per 10 acres, which is as it currently exists today. We take exception to any further subdivision of land that is not in concert with the Lolo Regional Plan. Much time and effort was expended by all of the second water right owners and the homeowner within the Carlton Creek Drainage Area. They commended extensively on the plan with the hope and belief that it would be used as a guidance document in determining the character and density of the area in which

we live. We have seen over and over again the subdividing of parcels with disregard for the Lolo Regional Plan, such that the Lolo Regional Plan appears to be some expensive joke that is better served as fire-starter in our wood stoves than an actually government guidance document. We ask that you abide by the planning as outlined in Lolo Regional Plan, which is the density of one per 10 acres.

Our second concern is the second water rights owner have filed a motion and brief that the Fourth Judicial Court, a Montana Water Court, to certify that the water rights claimed by the owners of the proposed subdivision. This process is the highest priority for the Montana Water Court and we fully expect an expeditious response from the court. It would be environmentally and fiscally responsible to avert damager to the second water right ditch until the Montana Water Court certification is complete. We respectfully request that if the subdivision is not approved that the approval of the [inaudible] is approved not disapproved, excuse me, that the approval of the subdivision be delayed until a decision is rendered from the Montana Water Court. As I said, it's their highest priority; it's already in the hearing process. We expect to have something shortly.

Lastly, we take great exception to the placement of septic system in Lot 5. The proposal states that the soils on the property are very limited as it relates to septic tank absorption fields. No provision has been made for failure of the septic system. Further, failed or not, cross contamination of the second water right cannot be ascertained due to the lack of monitoring or mitigative measures. At a minimum, we would expect a monitoring well be placed between the drainfield and the ditch to monitor potential contamination. It would appear that Lots 2, 3, or 4 would be better served [inaudible] community on lot system, which is downslope from the ditch and thereby negating the need for a forced-main system allowing a gravity sewer system and alleviating our cross-contamination concerns. In the absence of monitoring, we would fully expect mitigative measures to be applied. We request that the subdivision be denied based upon our concerns with water quality as well as the other two concerns. That's all we have.

Commissioner Curtiss: Could we request that Mr. Jenkins indicated that someone was here that could talk to us about the testing they did for the location of the septic system?

Nathan Lucke: My name is Nathan Lucke with [inaudible] Works Consulting and Design, for the record. I'm filling in a little bit here today. The gentleman that worked mostly on the project was not able to attend, but hopefully I can answer all your questions. Basically, the site was groundwater monitored and this was--the location of the drainfield was the best location determined for the multi-user sewer system for the project. The other spots did have too high of groundwater and so this was the location that was best determined for the multi-user. And then I'm going to use the chalkboard or whatever--dry erase board, I guess, to kind of draw a picture for you real quick.

Commissioner Curtiss: You can take the microphone with you.

Nathan Lucke: So basically, this is my rendition of kind of what's going on here. We have slope, ground here, and then this is somewhat level ground. This was monitored down in here and it showed to be too high of groundwater. But what we have is somewhere along here there's some kind of ditch and then we had groundwater monitoring pipes stuck in the ground. So if that's your groundwater monitoring pipe, what we found is on that pipe that that one was actually dry. There was no groundwater that was observed and that's where the drainfield's located. The bottom depth of this is actually below the bottom of the ditch and so as you all probably know, groundwater has a direction, a gradient, associated with it. This is up gradient, upstream from the ditch. So if you have groundwater in this, even if groundwater is at the very bottom of the groundwater monitoring pipe, and if groundwater were level, like a lake versus actually in a stream like it truly is, you would find that the groundwater--this is my little symbol for groundwater elevation--would be below the ditch. So it's just not possible for the groundwater to be entering into the ditch. I don't know if that was too fast, but that's basically what it boils down to is that the groundwater can't get into the ditch.

Commissioner Curtiss: So the elevated land there is the one that's on Lot, is it 5?

Nathan Lucke: Yeah, this is the general location of the drainfield and the ditch runs through here. This is the slope that I was showing and then it kind of levels off in here. This all had groundwater [inaudible] located in it and these were not [inaudible] locations for drainfields, so this hole, your direction of groundwater is going something like this and even if were completely flat, which it wouldn't be, the bottom depth of the dry monitoring pipe is below the bottom of the ditch. So water flows downhill, it's just not possible for it to get into the ditch because the ditch is above the groundwater level. Does that answer your question?

Commissioner Curtiss: I guess one other question, at what depth would the drainfield be? It just means that [inaudible] doesn't matter what the depth of the drainfield is, it's all going to seep down to the groundwater to move through the property.

Nathan Lucke: Yeah, that's a valid point. The location of the drainfield is over 100 feet away from the ditch; I think it's actually right at about 100. [Inaudible] the soils on site, yeah, groundwater is not going to go out level, it's going to seep down to the groundwater and then continue on its way. So it's proximity to the ditch, it's not going to surface into the ditch, it's going to first go down and hit groundwater and continue on it's way. Okay, thank you.

Susan Thraen: What our concern is...

Commissioner Curtiss: Could you state your name again.

Susan Thraen: Susan Thraen, again. But what our concern is since if that drainfield fails, and these are extremely loamy soils. Some of us have lived there 30 some years. We know how the water flows very very very well. And if--there's not monitoring of the septic field whatsoever, so if it fails, based upon those loamy soils, what's going to happen is, it's going to pass through that loamy soil into the ditch. Without monitoring or mitigative measures, [inaudible] of some sort in the ditch, there's no way of knowing--us knowing--except after the fact that our ditch has been contaminated.

Commissioner Curtiss: So I think if Mr. Lucke could clarify it for me, the way I understand it though is that the only thing that would carry, even if it failed, the only way that the septic residue would be carried would be by the groundwater, so it would have to filter on down to get carried. Is that what you...?

Nathan Lucke: Yeah, basically, you could have a system fail. I guess first of all though this system's been sized according to DEQ requirements and so there's little concern that it would fail. There is replacement area provided, as required by DEQ if it were to fail. But certainly if it were to fail, more of in a clay-type situation, [inaudible] actually have it surface and then it could actually travel along the surface down to the ditch. I'm sorry, I guess I just don't see that as a valid concern, given the soil types that we have on site and the fact that the drainfields are sized according to science and typically, we don't see them fail. It's a pressurized system, which in Missoula County is a preferred-type system. I guess that's my comment. Thank you.

Commissioner Curtiss: Could we have Michael please comment a little bit on the Water Rights Court and the use of the regional plan.

Mike Sehestedt: I guess two things and I'll take them in the order they were presented. An unfortunate event happened either or legislature or two legislatures ago, when the legislature said that plans could not be used as the basis for any land use regulation decisions, and that is going to take the legislature to fix. Subdivisions have to be evaluated based on subdivision review criteria and hopefully the legislature will be willing to give back some meaning to the planning documents that have been developed all over the State of Montana, but until they do we can't rely on that, we have to look at the subdivision, specifically applicable subdivision review criteria.

With regard to the Water Court determination, if I heard Mr. Jenkins correctly, he is going to add language to the face of the plat that says the existence of ditch easements or potential ditch easements is not in and of itself an indication that you have a water right. Such matters are determined by the courts. They're in kind of a tough place because State law with regard to subdivision review and approval requires us to address water rights. Whether or not there is a water right is something the courts decide and I think we can let them decide it, but against the possibility there is a water right, I think we have to require that they provide the easements so that if there is a water right it's in fact accessible to the parties entitled there too.

Commissioner Evans: Does this proposal do that?

Mike Sehestedt: Yes, it does.

Commissioner Evans: Thank you.

Mike Sehestedt: But the problem--the reality that's been raised by the people that own the water right in this ditch is that even if it's absolutely clear that there's no water right to water in that ditch, we got a lot of people here that just don't believe it and can't resist the temptation to dip in. Then that creates problems for the owner of the

actual water right. I think addressing it on the face of the plat is about the best we can do. We got all kinds of ditches through the City of Missoula that aren't part of the irrigation district, but people what to drop a pump in and dip a little out as it goes by.

The other thing we're required to do is in any subdivision plat is to provide an easement for any existing irrigation ditch of a suitable width that the owner of the ditch right can come in and maintain their ditch. That includes doing all of the things Mr. Jenkins referred to in terms of removing vegetation, digging the ditch out, generally adjustment the environment. Our approval and designation of this as a riparian area impacts the homeowners and denies them the ability to do it, but it would not prevent the ditch company from coming through and cutting the willows and the cottonwood trees and doing whatever else is necessary to reasonably maintain their ditch. Does that adequately respond to your questions, Commissioner?

Commissioner Curtiss: Yes, so you're saying that #7 for example that just because we list it as a riparian area, which is I understand that staff was following our own regulations by doing that, that leaving it there doesn't keep the ditch company from doing it, but should we just remove it?

Mike Sehestedt: No, I think we need to leave it there. I think this is one of those--because it's what's called for by the regulations. It may prevent some unnecessary disturbance. Mr. Jenkins suggestion with regard to adding language to it saying shall not be construed as preventing normal ditch maintenance activities may prevent a fistfight in the future and I would concur with that. This is one of those things that we need to look at here maybe in July when we take another look at the new subdivision regs and say what's caused this problem, there's been issues, and what's the best way to resolve them.

Commissioner Curtiss: So in #8 however where they plan to go through the ditch and need to of course address erosion, sediment control and all that. But if the ditch company really doesn't want them to plant new riparian vegetation there, should we leave a portion of that out or add something about with approval of the ditch company or the ditch organizers because I don't think it's a company?

Mike Sehestedt: It basically is just a group of citizens who own the ditch and come and-- I'm not sure how to phrase that, but clearly you've got--any construction we have to revegitate just for weed control. You might say revegetate in an appropriate manner and just leave it at that.

Commissioner Evans: So do you just suggest taking out the word restoration and replacing it with revegetation?

Mike Sehestedt: I'd kick it over, does that sound okay to you?

Elaine Hawk: That was going to be my suggestion, yes. That would be fine.

Mike Sehestedt: Okay, very good. You need to understand that I'm not the planner.

Chairman Carey: How about the issue of the monitoring well, it seemed to me to be a sensible thing to do. Does anybody want to speak to that?

Commissioner Curtiss: Monitoring of the septic system?

Chairman Carey: Yeah, that Ms. Thraen brought up.

Nathan Lucke: Mr. Commissioner, this is Nathan Lucke, for the record. What would the monitoring well accomplish, I guess?

Chairman Carey: Yeah, it seems reasonable to think that if you put a well in to monitor whether or not it was failing and it told you early rather than later that the system was failing.

Nathan Lucke: That wouldn't actually accomplish telling you whether it's failing or not. It would tell you [inaudible] test the water if there was water there even and tell you some of the parameters and characteristics of that water, but it wouldn't be able to tell you if it was failing or not. They only real way to tell if it's failing is right there at the interface in the drainfield, so a monitoring pipe, I'm afraid, wouldn't get you the results that you're looking for. And again, I guess I just think that, you know, these drainfields get put in all the time and they're being sized according

to regulations and it's a pressurized drainfield design, I just don't see the concerns of it failing in a loamy sand material, which is frankly some of the best filtering earth out there. Thank you.

Elaine Hawk: I'd just like to clarify Ken's concern with Condition #7. The way that it's worded, I don't believe it requires a change because it doesn't specify what language he may use and he may include that language as the condition is written regarding the ditch company regular maintenance.

Commissioner Curtiss: So we wouldn't want to add it to the thing just to have it clarified in the ...?

Elaine Hawk: I think that would lock it in. I think leaving it the way it is gives him the freedom to write it how he would like to.

Commissioner Curtiss: Oh, because he's going to put it on the plat?

Elaine Hawk: Right.

Commissioner Curtiss: He could add that language to the plat?

Elaine Hawk: Right.

Commissioner Curtiss: And what about the one that he suggested putting on the plat, should we add that as covenant just so that we look for it, the one that's per a new condition? I mean, the one that says just because irrigation easement is shown on the plat doesn't guarantee water rights?

Elaine Hawk: I would recommend that we add that as a condition of approval so that it can be checked at final plat approval.

Susan Thraen: This is Susan Thraen again. One is in regards to the monitoring well, what our expectations was is that somewhere between the drainfield and the ditch, this well would be installed that would monitor things like nitrate, phosphorus, fecal, e-coli, the typical things that you would monitor for for septic system-type failures. So that's what the expectation was there.

In regards to the water rights, I just want to clarify we're not questioning whether the land has a water right or not. It does have a water right. What we're questioning is whether it's off of the Hendrickson Ditch or some other ditch. That's what's being certified in the Water Court is that that water right is not on the Hendrickson Ditch, which means there would be no need for the easement for a water right on the plat because it wouldn't even exist on the Hendrickson Ditch. The ditch that it does come out of, which is the Bostitch, has been abandoned.

Ken Jenkins: Just a brief comment about this monitoring well concept, the State regulations require a 100-foot setback from surface water and various other things. This isn't an unusual situation at all. Septic systems are put in all the time along ditches and rivers and streams and that 100-foot buffer has been proven to work.

I guess the other issue I would have with a monitoring well somewhere in closer proximity to the ditch. This is an open ditch out in agricultural country susceptible to cows, livestock, dogs, all of those sorts of things. If we were to go test that ditch water today, it would have all of those things that Ms. Thraen mentioned already in it. We know that, we've tested what we thought was domestic water supplies that in fact came out of a ditch. Ditches are incredible highly polluted by their very nature. They're open water that run through agricultural areas, so it's very likely that if we were to put in a monitoring well with the ditch located above the aquifer that the water in the monitoring well would show contaminants and the source of that would be the ditch. I think the ditch would be a much more likely contributor to any pollution than would the septic system that is well filtered by the soil. Thank you.

Commissioner Curtiss: Ken, what is your estimated time that you may file this plat?

Ken Jenkins: As soon as we can, which may be--it certainly would be probably a matter of months rather than weeks, but...

Commissioner Curtiss: I was just wondering if it happened to fall within the time that the water rights had been decided in court and that easement shouldn't show, then you could come in, I think, for a plat--for an amendment. Is that correct, Mike, before he filed the plat so that we could not have it on there if it's not...?

Mike Sehestedt: Right, it would be a minor plat adjustment I think if the water rights clarified the way the Hendrickson Ditch owners think it will be.

Commissioner Curtiss: So that might be something that gave them some comfort, if it's happened before the time you file?

Ken Jenkins: Sure, I'm sure I would need somebody to clarify what all of that means to me. Water rights are a very complicated thing, but....

Commissioner Curtiss: But if there are no rights from this particular ditch, then maybe you wouldn't need to show that easement on the plat is what I mean?

Ken Jenkins: Correct.

Chairman Carey: Anyone else? Seeing none, I'll close the hearing. Oh, does Jennie...?

Jennie Dixon: I think Mary and Elaine might be working on a condition revision to suggest so that it would not require a minor plat amendment, but rather set perimeters. Are you working--is that something you want to suggest? I just want to make sure that before you take action that you consider that.

Commissioner Curtiss: Can we give them a second to do that?

Chairman Carey: Sure, I'll reopen the hearing.

Elaine Hawk: I'm looking for the right condition to be amending. What we're suggesting is that we add a condition of approval that if the Water Rights Courts determine there is no water rights to this property through the Hendrickson Ditch that the easements can be removed from the plat as well as the note that Ken offered to also add to the plat and that would take away the need for him to come back and do an adjustment in the future.

Chairman Carey: Sounds good, thank you. Okay.

Mike Sehestedt: With all due respect, I think the note is still probably a good idea.

Ken Jenkins: I may be a little concerned about the timing of such a condition. Are we going to have to wait for the court to finish its business?

Commissioner Curtiss: No, it's if the Water Right Court has clarified by the time you file a plat. Is that all right?

Ken Jenkins: Okay, I'm not sure how I will determine that. I would suggest, you know, I've already suggested a note, we add more verbiage to the note that says that it's in litigation and if it's determined there is no water right out of the Hendrickson Ditch, then the easement shown hereon are null and void.

Elaine Hawk: I have seen those previously on plats, very similar language to what Ken just stated.

Mike Sehestedt: Works for me.

Chairman Carey: Did you get that language, Cathie?

Commissioner Curtiss: I'll take a whack at it to see if we--are you going to...?

Chairman Carey: I'll close the hearing.

Commissioner Curtiss: I would propose a new condition, which would be # what?

Elaine Hawk: Ten.

Commissioner Curtiss: New #10 to add that there will be language--the developer will place language on the face of the plat stating that just because irrigation easements are shown on the plat does not guarantee water rights for--would you say all lots or just end with does not guarantee water rights to the ditch. Does it have a name?

Elaine Hawk: Hendrickson irrigation ditch

Commissioner Curtiss: Hendrickson irrigation ditch. Then a second line that says if the Water Court determines there are no water rights all easements are null and void. Is that enough, Mike?

Mike Sehestedt: I think that covers it.

Commissioner Curtiss: Okay, so I think that's...

Elaine Hawk: And also, that it should be placed prior to final plat approval at the end.

Commissioner Curtiss: But this should be put on...

Elaine Hawk: Prior to final plat approval.

Commissioner Curtiss: Okay.

Chairman Carey: And that's all in Condition #10.

Commissioner Curtiss: Yes, and Mike do you want your office to review that language?

Mike Sehestedt: Only if there's a question on the part of the Planning Department. They can refer it to us.

Commissioner Curtiss: Okay.

Mike Sehestedt: We get into a lot of loops here and it just slows things up.

Commissioner Curtiss made a motion that the Board of County Commissioners approve a new Condition of approval #10 that the developer will place language on the face of the plat stating that just because irrigation easements are shown on the plat does not guarantee water rights for the Hendrickson irrigation ditch. If the Water Court determines there are no water rights, all easements are null and void. This language should be placed on the plat prior to final plat approval. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss made a motion that the Board of County Commissioners approve the change in Condition of approval #8, line four, to strike the word "restoration" and insert "revegetation." Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss made a motion that the Board of County Commissioners approve the variance request from Article 3-2(3)(B) and 3-2(14)(B) requiring Jones Road to be constructed to a paved surface width of 24 feet to permit the existing 20-foot gravel surface width on Jones Road, based on the findings of fact. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss made a motion that the Board of County Commissioners approve the Hall Addition subdivision be approved based upon the findings of fact and subject to the recommended conditions of approval as amended. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

## **Hall Addition Conditions of Approval**

### **Roads and Driveways**

1. Driveway plans for driveways in excess of 150 feet in length must be approved by Florence Volunteer Fire District prior to building permit approval. A turnaround for fire apparatus must be incorporated at the terminus of the driveway. The driveway must provide a minimum unobstructed width of not less than 20 feet and

unobstructed vertical clearance of 13 feet 6 inches the length of the drive. This language shall be included in a Development Covenant prior to final plat approval.

2. A shared driveway maintenance agreement section for the shared driveway accessing Lots 3 and 4 shall be added to the Development Covenants and shall specify maintenance needs, including but not limited to snow removal. The agreement shall be reviewed and approved by the County Attorney's Office and the Office of Planning and Grants prior to final plat approval.
3. A one-foot no access strip shall be shown on the plat along the Jones Road easement at the eastern edge of Lot 3 and along the 30-foot private access easement at the northern edge of Lot 2 prior to final plat approval.

#### **Fire**

4. All residences within this subdivision shall post address signs visible from Jones Road in all light conditions. Plans for visible addressing shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval.
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."

6. The following statement shall appear on the face of the plat, subject to review and approval by the Office of Planning and Grants prior to final plat approval:

"Acceptance of a deed for a lot within this subdivision constitutes waiver of the right to protest a future RSID/SID for a public water system for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land."

#### **Riparian Resource Management Plan**

7. The Riparian Resource Area and Buffer shall be shaded on the plat and included in the legend with the title "No Build Zone/Riparian Resource Area and Buffer" prior to final plat approval. *Subdivision Regulations Article 3-13(3) and Office of Planning and Grants recommendation.*
8. The Riparian Resource Management Plan shall be amended to include plans for mitigation of the sewer force main crossing of the riparian area and buffer prior to final plat approval. Mitigation measures shall address effective erosion and sedimentation control measures during construction, and restoration revegetation of the riparian resource area and buffer at the first appropriate opportunity after construction is completed.

#### **Development Covenants**

9. The Development Covenants shall be amended prior to final plat approval as follows:

- a. Weeds

Article VIII of the Development Covenants shall be amended as follows:

The owner of any lot shall not allow noxious weeds to remain or grow on the lot. Weeds shall be controlled by the use of allowable chemicals, cutting, pulling, tillage or some other form of weed management allowed under the Missoula County weed control program in compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan. Ground disturbances caused by construction or maintenance shall be revegetated with beneficial species at the first appropriate opportunity. ~~and in accordance with the Revegetation Plan approved for this development, other plan acceptable to the Missoula County Weed Control District.~~

b. Basements

Add the following groundwater note to Article VIII of the Development Covenants:

“High groundwater is known to exist on portions of the property shown heron. Owners of Lost 2, 3 and 4 shall not construct homes with living areas or mechanical equipment below the natural ground surface. Only crawl spaces are allowed. This restriction may be waived if the lot owner agrees to install a foundation drain system that has been designed and stamped by a Professional Engineer licensed in the State of Montana. The waiving of this restriction is subject to the approval of the Missoula County Public Works Department.”

c. Riparian Resource Management Plan

1. Article XXIV, No Build Zones and Riparian Resource Area shall be amended as follows:

“The policy of protecting ...policy. To protect the natural environment and the wildlife it serves, including the riparian resource area and buffer zone as platted on the final plat and shown in The Riparian Management Plan and Map attached to the Development Covenants ~~and the wildlife it serves.”~~

2. Provide a reduced copy of the plat designating the Riparian Resource Area and Buffer Zone titled “Riparian Resource Area Map” and attach The Riparian Management Plan and Map to the Development Covenants.

d. Water Supply Requirement

1. Delete the last two paragraphs of Article XXV, Florence Rural Fire District as follows:

~~“The Fire District realizes the financial burden of installing and maintenance a water supply and or storage tanks capable of providing the required water flows and is willing to accept a payment of \$500.00 the required water flows and is willing to accept a payment of \$500.00 (Five Hundred Dollars and no/100) per lot, in lieu of the water supply required by the UFC. The Fire District is willing to accept half upon closing of each lot. The Fire District is willing to accept half of the payment upon approval of the Subdivision and the remaining half upon closing of each lot. The Fire District will then upon its elective purchase fire fighting apparatus or develops water supplies.”~~

~~“**EXCEPTIONS:** When buildings are completely protected with an approved automatic sprinkler system, the above listed water supply and payment schedule may be reduced by 50%. The Subdivision Covenants must state that “All residences constructed within the subdivision by completely protected with an approved automatic sprinkler system.” Payment for the reduced amount of \$250.00 per lot will be accepted at the time the Subdivision is approved. If at any time any residence is built without an approved automatic sprinkler system within the subdivision, all lots will be subject to an additional \$250.00 dollar payment, regardless weather they have sprinklered residences located on them or not.”~~

2. Delete all references to the Ravalli County Subdivision Regulations in Article XXV of the Development Covenants.

3. Add the following requirement from Missoula Rural Fire District:

“Installation of interior 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.”

e. Covenants

Article XII shall be amended to add the following statement subject to review and approval by the Office of Planning and Grants prior to final plat approval:

"No covenant or sections thereof relating to radon, wildlife, weed control, address signage, driveway standards, energy efficiency, driveway permits, woodstoves, no build zone, riparian resource area, residential fire sprinklers, and amendments may be changed or deleted without prior written consent of the governing body."

10. The following statement shall be included on the final plat prior to final plat approval:

"The developer shall place a note on the face of the plat stating that easements shown on the face of the plat do not guarantee water rights to the Hendrickson Ditch. If the water court determines the property does not have water rights to the Hendrickson Ditch the easements shown on the plat shall be considered null and void."

**Hearing (Planning & Zoning Commission) (Continued from November 29, 2006): Part 1 Zoning Initiative (Rock Creek)**

Chairman Carey resumed the hearing of the Planning and Zoning Commission continued from the November 29 hearing.

Jennie Dixon: I'll just give a brief summary of the presentation I that I made last week, which would be a request from 64% of the landowners within approximately a 500-acre area, the Rock Creek Interstate 90 interchange area to create a Part 1 Zoning District that would zone that 500 acres as a district that would allow residential with a density of one dwelling unit per 40 acres and allow some existing non-conforming uses, which are some commercial uses near the H and I and K and M area on that map to continue and also to expand. I provided a correction to the proposed staff recommendation for the zoning district, which is Attachment O that I distributed also last week to the audience. We have received additional public comment since the testimony that was given last time, November 29 hearing. I believe the Commissioners have all of that and I have a copy up here available if anyone would like to see that additional public comment.

Chairman Carey: Thank you Jennie. We can go ahead and hear from anybody who did not get a chance to speak at the hearing on the 29<sup>th</sup>, anybody who's in favor of the zoning request would care to speak who hasn't spoken yet? Anybody who's not in favor of the zoning request that hasn't spoken yet? Anybody who's already spoken that would like to say something again?

Jack Tuholske: For the record, my name is Jack Tuholske and I'm here on behalf of the Rock Creek Protective Association and I will not plow ground that has previously...

Chairman Carey: I think she's going to want you to spell your name.

Jack Tuholske: T-U-H-O-L-S-K-E. But I do want to bring up a point that I think is pertinent especially in light of the discussion of the previous subdivision and that is the role of the Growth Policy or the Comprehensive Plan in this particular decision. Mike and I could engage in a nice academic debate about the role of a comp plan in a subdivision, but this is different here. This is a zoning request and the Montana Supreme Court has said in the 93 North Neighbors case that came down in 2006 this spring that the growth policy or comprehensive plan does play a role in zoning decisions. In fact, in that case they looked at the Flathead County Master Plan and upheld a zoning--a spot zoning challenge to that zoning amendment based upon the consistency of the amendment with the master plan. I think if you look at the Missoula County Growth Policy Master Plan and you compare it to what's trying to be accomplished with this zoning district, you will see that this district implements many important aspects and it gives life and breathes meaning into the goals that the citizens and our county government have adopted through that document. So that document provides a legitimate basis for upholding or approving this zoning request and there's no doubt that the statute says they are written require that the master plan or the growth policy be taken into account in these decisions. That's a distinction from the subdivision issue, where I think it's a more debatable proposition.

I will not reiterate the comments, but I do want to point out that there were a number of issues raised by the Commissioners and others last time about how this fits within the overall density of the area. You've been provided with some information that shows that, if you look at the aggregate of the lower Rock Creek Valley that it's like one home per 59 acres if you aggregate the whole thing. The other point that was made had to do with the boundaries. Again if you look at the zoning district map in fact there is logic to trying to preserve what I would call the gateway to Rock Creek and that's you have a County road dividing Missoula in Granite County. That's a

logical boundary at the-- think it's the western or the southern end, excuse me, of the district, it borders against Forest Service land, so obviously that's a logical place to stop. Then on the other side, the northern end, we have the Burlington Northern right-of-way and the Clark Fork River. So there is logic to the boundaries of this--and when you look at it on a map, it really does represent the gateway to Rock Creek and that's a legitimate area that you can breathe life into, not only the goals and objectives of the Master Plan, but the 75 Comp Plan's suggestion or requirement that the area have one house per 40 acres that that--you know obviously right now that is not a regulatory tool, but with the implementation of zoning, that concept that's been on the books for over 30 years then has some life and has some meaning and I think that's important. Unless any of you have any questions, I will refer you to the other written comments that were provided.

Chairman Carey: Thank you, any questions? Anybody else who's already spoken care to add something to the proponents?

Mike Barnes: Since nobody else was going to speak, once again, Michael Barnes. I just want to take a few moments to clarify some topics that I think are important, some issues to raise. Although I reside in Oregon, I've always considered Montana home. My immediate family and I left Montana for Oregon during my childhood years and I frequently returned to the area to visit family and friends for holidays, family reunions, and many outdoors adventures. I've been fortunate enough to be able to bring some of my businesses back to Montana. This is a choice, not a necessity. I chose the Rock Creek area for the same reasons you've heard from the public. Its natural beauty, charm, along with the character seldom found elsewhere. My desire for the area was [inaudible] needed my proposed development, the ranch at Rock Creek.

I'm speaking today in opposition to the Citizens-Initiated Zoning District petition. There are several reasons I feel the proposal is ill conceived and I'd like to take the time to share a few of those reasons with you today. The proposed zoning district is an obvious attempt to stop my development before plans are reviewed by Missoula County under current land use laws and regulations. Zoning my ranch before the application is reviewed would pre-empt the intent of public involvement in the land use process. The boundaries of the zoning district were drawn to include only a portion of my ranch. This was a strategic decision by the initiatives proponents. If all my land were included, the effective freeholders that signed the petition would account for only 57.2% rather than the needed 60% to bring this action before you today. Many of the properties included in the initiative are non-conforming uses with the zoning. The zoning would then not even apply to many of the property owners who've asked for you to approve this initiative.

This isn't about zoning. This isn't about protecting the confluence of the Rock Creek and the Clark Fork. The confluence is some 2500 feet to the west on a neighboring property protected with a conservation easement. This is about change. My neighbors don't want my ranch to change. My development proposal presented recently to Missoula County should be reviewed and decided upon based on the facts. Change is inherent of development; development is change. I've listened and taken seriously the concerns of the community. I've taken time to address the environmental concerns, traffic concerns, and potential impacts to the wildlife in the aquifer. My application demonstrates how I propose to develop my ranch into a unique residential development without sacrificing the unique character and charm of the Rock Creek Valley. We show how we propose to mitigate impacts to the environment, wildlife, and the aquifer while enhancing and protecting the Clark Fork River with a stream restoration plan including in our application. The clustering of residential structures allows us to preserve over 120 acres in the natural and restored common areas. The proposed 36-lot subdivision will only develop 68 acres in the deeded residential lots. With stringent [inaudible] be affected or developed lot area will be much less. There's no stream bank ownership, but rather common areas along all the waterways and streams to ensure good accessibility to these natural features.

In addition to providing you with the reasons why I'm opposed to the zoning, I'd also like to offer you the potential solutions for you to consider. One option is to redraw the boundaries of the district and only include the properties who support this initiative. Another option would be to simply vote no on the zoning. The third is to hold off on the decision until after a full review of my application has taken place.

Alan McCormick: Alan McCormick, Garlington, Lohn & Robinson, representing LemCo. I hadn't planned to speak but whenever an attorney gets up other attorneys in the audience start to itch and we feel like we need to comment just for the purpose of fleshing out the entire public record. Mr. Tuholske mentioned that this is appropriate zoning because we're protecting the gateway. If the zoning district's intent is to protect the gateway, why are we only protecting half of the gate? The zoning district does not extend to the other side of Rock Creek to include those properties that are also part of the gate, could be purchases the developed as well. The zoning

district boundaries have been drawn carefully to get the 60% necessary; that's clear by the boundaries of this district. Mike is entirely correct, if you include all of Mike's property that would be put into this subdivision into the zoning district, the 60% disappears. So I think the intent of drawing those boundaries is clear.

I want to comment the North 93 case with respect to the interplay of a growth policy and the zoning regulations. I am intimately familiar with the North 93 case because I represent the Flathead County Commissioners in there. I represent them in their decision to approve a growth policy amendment, as well as their decision to approve the zoning district. That is a Part 2 Zoning District; it's not a Part 1 Zoning District. It wasn't citizen-initiated; it was a county-initiated zoning district under Part 2 of that Planning and Zoning Regulations, not the Part 1. So that case is not applicable here. Generally speaking, it is true and Mr. Tuholske is correct that Montana Law generally says that zoning regulations must be made in accordance with an adopted growth policy, but the Montana Supreme Court has never said that in the context of a Part 1 Zoning [inaudible] that I'm aware. Instead, there's a whole separate statutory process for adopting a Part 1 Zoning that refers, not to a growth policy adopted by a county, but to the particular development pattern of the area that's within the zoning district. In fact, most counties do a two-step process. They first take a vote on the boundaries of the planned zoning district without reference to any particular regulations and then come back at a later date and decide what the appropriate regulations are based on the development pattern within the adopted boundaries rather than the single approach that we have here. So I disagree that the growth policy is directed related to a Part 1 Citizen-Initiated Zoning, but even if it is, Montana Law is quite clear that a growth policy cannot ignore what's on the ground now nor can zoning regulations ignore what's on the ground now. That's effectively what we're doing here. If the growth policy truly says one per 40 acres, then how come 10 out of the 14 parcels within the zoning district are less than 40 acres in size? It's clear that the 1975 land use designation of one per 40 does not accurately reflect the development pattern of the area. The more recent adoption said we're going to have a commercial node right there where the existing commercial uses are, but the zoning district doesn't establish a commercial node. It establishes a residential district. And then it says there happens to be three commercial properties here, but we're going to ignore that. They can expand, they can rebuild, they can add on. There is now zoning regulation that affects those commercial uses and in fact of intent of the zoning regulation is to not affect those, so their signature counts, but they get to sign up for a zoning district that has no affect on them.

This gets me to my last point, there is a legal principal that has not been the subject of case law in Montana and its called reverse spot zoning. It's a legal doctrine that recognizes that it's not proper to single out a particular parcel or landowner for differential treatment and that's fundamentally what's happening here is the singling out of a project before that project can be adequately reviewed through the subdivision review process. Just to return to our comments from the earlier meeting, there's a fundamental fairness issue here and you have an opportunity to participate in crafting a development that will better protect the environment than this zoning district will because if the zoning district is enacted, then you have parcels that can be developed, but those parcels undergo no review. The only review they go through is a building permit and two houses based on this zoning district could be approved for each one of those lots. Boundary line adjustments can be done without any review at all. But if you reject this zoning district, you have the opportunity to review this subdivision application. And in that subdivision application, you have the opportunity to adopt appropriate conditions, to adopt the riparian management plan that's been proposed with the application, to adopt the wildlife mitigation plan that's been proposed with the application, to protect that common area, to require restoration or preservation of all the riparian habitat that's there now, and to provide protecting of the existing riverbank. None of these houses will be viewable from Rock Creek, by the way. It's quite a distance from there and there's a big chunk of property that you can see there in Parcel E that's separates the proposed subdivision from Rock Creek there. But you have an opportunity to protect all of that as well, if it goes through the subdivision process. By carefully considering the subdivision through that process, you have an opportunity to say here's the appropriate way to develop this property, here's the appropriate conditions on the development that's going to occur there. You will lose all if that opportunity by adopting this zoning district. Certainly, we'll answer any questions that you have.

Dan Vanacker: Dan Vanacker, V-A-N-A-C-K-E-R. I just wanted to note that in reading the paper this morning that in the opinion section there was a gentleman that was against another subdivision and I can kind of see why where that one was 200 acres as well, but they were offering up for 199 homes. A lot of the local residents that I've talked to, whether it's a the market, Clinton Market or whatever, is when they finally realize that in the 200 acre subdivision, 36 homes with huge open spaces, that that might be something to jump on instead of let it go 10 years, let more people move in, move consolidation of land, and next thing you know another developer wants 199 units on 200 acres. So I think if they really got to look--a chance to look at this in it's entirety the way its been designed, not just in rumor, that it's really kind of a beautiful thing with the pond and the open spaces. I just think if they had a chance to see it in it's entirety that a lot of the people would change their mind. That's all.

Roy O'Connor: My name's Roy O'Connor, I live at [inaudible] Ranch in Lower Rock Creek about two miles above the proposed project. I think, you know, I'm hearing all this talk and what a beautiful thing this project's going to be. I hope you've seen some of the aerial photos of what's happened to the land to the approximately--I don't know how much land was disturbed, but in putting in that pond they took all the topsoil off. They've moved huge amounts of gravel; they've put it right along the Rock Creek Road so you can't even look that direction from the Rock Creek Road. You know we're hearing a lot of stuff about how great this is going to be. It's been a disaster for those of us that live in Lower Rock Creek. It's changing the wildlife patterns, it's--you know just changing how we perceive that area.

Now as far as the review process, you know more about that, if this gets developed. I think they've got all the tools; we have no tools if it gets to the review process. At this stage with the zoning, we do have some tools and we would like to use these tools. I'd like to see you use these tools.

I want to mention one other thing. They said there's 140 houses in Lower Rock Creek. I sure don't count that many. I don't know how far you want to go up to do that, but I took a look into it, I wrote you a letter just recently. I think there's about 18 or 20 houses in the lower part of Rock Creek in Missoula County. There may be a few more if you include Granite County. In Missoula County, there's not many more. This is double the number or triple the number of houses that are down there now. It is going to impact that part of the creek; it's going to impact everyone that comes into the creek. Anyway, that's my position on it. Thank you.

Ron Wheeler: Again, my name is Ron Wheeler. I live on Rock Creek. I'm a retired school teacher and wildlife biologist. I guess I want to speak about zoning and wildlife. Rock Creek as you know is the only blue ribbon trout stream west of the mountains in Montana. It brings in dollars to Missoula County. It brings in people from all over the county and all over the world who enjoy a very very rural and elegant experience. We hear about how wonderful it will be to drive into Rock Creek past the beautiful gated community. This is Montana, this is Missoula County, this is not LA. The stream in question is at the confluence of the Clark Fork. A pond has just been built on Mr. Barnes' Ranch that, in my opinion, with some expertise, will eventually become a reservoir for whirling disease and will constantly be a threat to the Clark Fork River, which we are now spending untold millions of dollars to clean up and which Missoula County has dedicated itself to improving. If we in fact find that this all comes to pass and that we have 36 homes in a gated community with a pond that's going to be emptying it's trash into the Clark Fork River, the fish that will be entering from the Clark Fork River into Rock Creek will be carrying back with them the diseases that they have picked up from the upstream pollution caused by the pond. We also have 36 lots, which will require lots of phosphates and nitrates to grow beautiful green lawns and this will also enter into the Clark Fork River. We're probably dealing with two or three automobiles per unit. It's a good guess there going to be going up Rock Creek; they're not going to go there because they want to commute to Missoula. If someone wants to live in Rock Creek, they're going to want to live in Rock Creek.

There are so many reasons why the citizens of Lower Rock Creek would like Rock Creek to adhere to the planning of the County, of the rural area of the County and we urge you to please to zone us as one per 40. Thank you.

Dan Ekstrom: My name is Dan Ekstrom and I'm a resident of Lower Rock Creek. E-K-S-T-R-O-M. I really don't have a comment, I commented last time about being against this zoning, but I do have a question that I asked in a letter and didn't get an answer from the legal staff for the County. It was on the non-conforming use, if this zoning district was to go through, the commercial use, if it was destroyed by fire or some other reason, would it be able to be built back as a business or would it be a residence?

Mike Sehestedt: The way this zoning is written, it would allow it to be rebuilt as a business; however, I think that's a problem with this zoning. The usual rule with regard to zoning is of course that any non-conforming use is allowed to continue, it's a matter of law and a kind of a given. However, if the purpose of zoning is to bring an area to a certain standard, then as the non-conforming uses either cease to be used for the non-conforming purpose for a period or they're destroyed by fire or earthquake or landslide, or whatever, if they're more than 50% destroyed, than the general rule is that right to the non-conforming use is lost. In your particular application as the zoning is proposed now, they've sought to perpetuate your use as a restaurant/campground basically forever. They've also done the same for the mercantile and the same for the three rental cabins. They're specifically allowed to continue.

I think that's a problem because it's not a uniform zoning standard for all of the property. It's something that I think the Commissioners will need to address. Ordinary zoning and non-conforming use burns down, the right to the non-conforming use goes with it.

Dan Ekstrom: So that would have to be a determination by the Commissioners if this zoning was passed.

Mike Sehestedt: That is an issue they'll have to present and it would be one for the courts. I think it tends to invalidate the proposed zoning by saying we're zoning this residential because we want to protect it as residential. We're zoning it at one per 40 because we want it at one per 40, but for these three people, its three specific identified uses. I don't know how many people it is. Their particular use, even though it isn't residential, is preserved forever amen by the zoning regulations. So that's an issue.

Dan Ekstrom: All right.

Mike Sehestedt: It's something for the Commissioners to consider.

Dan Ekstrom: Thank you.

Commissioner Evans: Dan, before you leave.

Mike Sehestedt: I was going to say for the record, it seems to me I saw an email indicating you wanted certain properties withdrawn from the zoning district.

Dan Ekstrom: Yes, yes.

Mike Sehestedt: Could you state what those properties were?

Dan Ekstrom: It's the rental property.

Mike Sehestedt: Okay, the rental property ...

Dan Ekstrom: It's L and M I believe.

Mike Sehestedt: Okay, L and M and you've okay with the other two parcels that are...

Dan Ekstrom: No connection with the other, the restaurant and the campground.

Mike Sehestedt: Okay, thank you.

Commissioner Evans: Also, you wanted to know whether or not rental houses are considered commercial or non-conforming.

Dan Ekstrom: He just answered that.

Commissioner Evans: Okay.

Jennie Dixon: Before you leave the podium, Mr. Ekstrom, are you the owner of L and M?

Dan Ekstrom: No, my mother and I are.

Commissioner Evans: And his mother has called me and asked to be excluded.

Jennie Dixon: So L and M are--at this point, no written request, but a verbal request to remove L and M?

Commissioner Evans: Actually, there is a written request.

Commissioner Curtiss: We have an email.

Chairman Evans: [Inaudible] an email on December 5.

Jennie Dixon: Okay, great, thank you sir.

Sharene Menson: My name is Sharene Menson and I spoke at the--M-E-N-S-O-N, first name S-H-A-R-E-N-E. You know I recognize the bind this is in with this zoning. I mean, everyplace you go, you've got historical things. I mean the old stage station/restaurant there is an old historical building you know. It's very pretty and it has--to go back and say we have to take everything back that's always been done, you'll never be able to make any changes if you have to take area where people have ever lived and say, okay we have to start all over again. I think there has to be some accommodation in the zoning thing to say there have been historically these places here and we can't just jerk things out from under people. They're trying to be more careful in terms of how they handle things and if we'd known this that many years ago granted these things probably wouldn't have been allowed, but you have to go from where you are now into the future. To not use laws and things you have at hand to help improve and keep the rural nature of the valley, I think you're losing a big chance. I also realize it's got to be a very gutsy decision for you to look at doing something like this with all these sides pulling in every direction, but I think you've got to look at what the citizens want of the County and how to use the law and what the people who live there want.

Celeste River: Hi, my name's Celeste River. I just came to listen. I've listened to a lot of meetings in the last two years, but only a few County Commissioner meetings. And it takes a long time to even try to understand all the ins and outs and the language and rules and laws that it requires of you to manage our--the place where we live. But I have heard the use of several terms at quite a few meetings and I ponder what they really mean and one of those is the word stakeholder. And who are the stakeholders who are consulted when rules are being made or when hearings are given. And it seems to me that usually that term is applied to business people and that includes realtors and developers and they seem to be the important or the identified stakeholders in most issues. But when I'm listening to the issues at the meetings, I begin to feel like--that that term should be applied to the citizens who come and try to share their feelings and experience at what they have a stake in a particular issue, their lives and their family life and their feeling of health and well-being in their homes. And then the other word is obstructionist and that word was used by someone addressing you two weeks ago at the first hearing that we're now listening to the completion of, I guess. I looked that up today and I didn't copy down the definitions, but in three dictionaries, they were quite similar. Obstructionist, obstruction, and obstruct, and I started that in that order and obstructionist and obstruction seem to usually be applied towards people or those who are creating blockages or trying to stop or hinder legislation or progress or a plan. But when you look at obstruct, it refers to, oh, like blocking the flow of something, and the final definition for obstruct has to be with blocking a view.

And that brings me to what I want to try to get across about the use of the word obstructionist being applied towards those in a denigrating way, towards those citizens who come forward to speak about these personal and interpersonal and community and familial concerns, about change. Yes, it is change, and life is movement. If we did not have movement, we would not have life. And in that movement, we usually experience change, but we have to--we can examine our responsibility in the direction of these changes that occur. And I think sometimes to myself that developers are obstructionists. The development is obstructing in some instances the health, welfare, maybe even moral integrity of a community. So as a community, we might look at these words that are used and how they're applied towards the citizen to demean or disempower the citizen's right to be a stakeholder and to speak up and be heard in these issues.

I'm just speaking from my heart again, just a few notes here. It's not just about this particular issue that you have to ponder and think about and make a decision about right now...

Chairman Carey: ...need to change the tape.

Celeste River: Okay, but in saying these things I'm trying to address I think a deeper and more spiritual issue that's going on right now. Of course, if we watch the news and even documentaries on PBS and so on, I've seen how development is affecting people in China and development is affecting people in Russia and many places. It's partly just the population explosion on this planet. But another thing to consider is this article that was in the paper about the contractor's association asking or warning the County that we need to identify gravel pits so they don't get built over because we might not have the accessibility of gravel for the infrastructures and the foundations for the new houses that are being built, which of course we need those things more and more because of more and more development. But, I would also way in listening to the contractor's association, we should give just as much credence to someone like Professor Neva Hassaneen [phonetic] when she comes forth and tries to speak for agricultural soil and the need for that, the possible and probably probable need for that in

the future in our midst in our area, that we should be careful not to build over all of our beautiful fertile soil. Those are my thoughts and thank you very much.

Jack Tuholske: I just want to make up a point of order here. Jack Tuholske again. I--all of the proponents of the district are not here today and I would try to discourage you from going down the road of cleaving out individual parcels. I think this was presented as, you know, an up or down thing. The boundaries were drawn the way they were. If you look at the two parcels that were suggested to be cleaved out, it would create a very irregularly shaped district. I think open the door for anyone that didn't want to be part of it in this or any future zoning district to just say I want to opt out as you did in the Rock Creek case. So my sense is that they would want an up or down vote on the way it was presented.

Jennie Dixon: Just want to note for the record after doing a little bit of checking here, L and M did not sign the petition to begin with, Mr. Ekstrom family.

Chairman Carey: Okay, thank you. If nobody's going to step forward, I'll go ahead and close the hearing. I'd like to ask for Mr. Sehestedt's comments.

Mike Sehestedt: Well, I would say that I don't envy you guys in making this decision. There are [inaudible] procedurally you've got two steps to take as was indicated. First of all, you need to decide whether or not to establish the zoning district and then second, should you choose to establish the zoning district, you need to decide what the regulations are or should be with regard to development in the zoning district. I would caution you that this is not a plebiscite or a review of any particular subdivision. That may be what motivated the citizens to bring it and it is the gorilla in the corner, but it's not what you're deciding as a Planning and Zoning Commission.

Looking at this, it's a comparatively small zoning district in terms of ownership. We have 17 owners and 14 parcels. Of those parcels, six want out, the five owned by Mr. Barnes or his LLC, and as we heard today, the parcel owned by Mr. Ekstrom and his mother. In terms of size, the requested development pattern calls for one residential unit per 40 acres. Only four of the parcels of the 17 or 14 parcels in the district rather conform to this standard. I've never seen us adopt a zoning district that basically said the majority of the parcels in the district will be non-conforming. That's an issue. I note that one of the four conforming parcels is already subject to a conservation easement, which raises some issues.

Second, as I alluded to earlier in my response to the questions from Mr. Ekstrom, I think it's somewhat problematic that instead of following normal zoning practice, which is if you have a non-conforming use, you of course have the right to continue that use until you either decide to quit and do something else with your property or it's destroyed by natural catastrophe, at which point, the normal zoning rules apply. If you had a restaurant and it burned down, then you'd have the right to use that parcel for a residential purpose in accordance with the zoning regulations. As formulated here before you, the regulations say well you could have a restaurant there forever and ever, the same thing with regard to the mercantile, the three tourist homes on the property of Mr. Ekstrom, who addressed this. That raises, to my way of thinking, serious problems. Looking at this, the 14 parcels, seven of the 10 are either--the largest of the small seven are right at 10 acres, 10 and a fraction, so you've got a breakpoint in terms of that. I'm a little concerned while they argued about the logical nature of the district boundaries, they did not pick up the five or six small parcels that are in Missoula County that are immediately across the road. You can see them shown on the map up there; raises an interesting issue. Also, none of the portion along Rock Creek Road that's in Missoula County is included, so it raises some questions about the definition of district boundaries. That said, the Planning and Zoning Commission are the fact-finders in this matter and it's up to you to determine-- I would say that while strictly speaking the Comprehensive Plan or Growth Policy, and there is specific case law that says it is inapplicable to Chapter 1 Zoning, Sager [phonetic] versus National Wildlife Federation, a case out of Gallatin County. I believe that you can use it as a guide and certainly, to the extent you move closer to the goals of Comp Plan, you can more effectively resist either spot zoning or reverse spot zoning challenge. That said, I leave it to you ladies and gentlemen.

Chairman Carey: Thank you Michael. Any questions from the Commission?

Commissioner Curtiss: So just to clarify, you said that the case law does say that you can't use the Comp Plan on this type of zoning.

Mike Sehestedt: It says you're not obligated to.

Commissioner Curtiss: What's that?

Mike Sehestedt: It says you're not obligated to.

Commissioner Curtiss: Not obligated to.

Mike Sehestedt: The Gallatin County case I referred to was a citizen-initiated zone that was argued to be entirely inconsistent with the comp plan. The Supreme Court said, gee, doesn't apply to this, that's fine, not a problem.

Commissioner Curtiss: I guess my big concern is the number of non-conforming lots and the non-conforming uses. So we have--we can deny this, we can approve it, or we can amend both the boundaries and the regulations within...

Mike Sehestedt: Actually, you do not have jurisdiction in my judgment to amend the boundaries at this time.

Commissioner Curtiss: Can't amend them.

Mike Sehestedt: The boundary jurisdiction was given to you by petition. I would believe that you could zone less than the entire area, but I don't think you have the jurisdiction at this point in time to ...

Commissioner Curtiss: So we could reduce but not extend. Okay. In looking at the map that was provided to us by, I think Mr. McCormick last time that shows the--kind of the valley there. It seems that if the goal of the group that brought this forward is to protect the Lower Rock Creek area that the boundaries should be larger. There's some other potential for future development and there's also some things that actually conform that are in the 20-40 acres. And in talking about what the development pattern is in the area, it seems that we would have to go beyond the boundaries of the proposed area to get land use patterns that are consistent with one per 40. I know we were looking at this earlier this week and if you take the median, it's more like 14 acres. There's 14 parcels, seven are larger than 11 and seven are smaller. So I understand why it was drawn as it was, but it doesn't seem to be consistent with me. I guess my one question to Mike would be is there a compromise in the development standards within it, the regulations, that we could go to a different number than one per 40 that might be--might meet it better, like one per 10.

Mike Sehestedt: The answer is yes. I mean you're being called upon to adopt--this again presumes that the district is created and we're now at the stage of adopting regulations for the district. You could go, if you found it appropriate based on all of the evidence presented, go to a lower number than has been requested in the petition. You could...

Commissioner Curtiss: The other is could we also amend the regulations to actually address the fact that there is a commercial node there that--so that you have different regulations for different parts or is that something that should--is changing things too much at this point of the game.

Mike Sehestedt: In theory, you've got the ability to do that. I'm a little concerned in a district this small. In the great scheme of things, it is pretty small, that that really then becomes a spot zoning challenge.

Commissioner Evans: I do want to hear from the rest of the Planning and Zoning Commission before I make my comments.

Chairman Carey: Sylvia, Greg, Vickie?

Sylvia Weisenberger: My name is Sylvia Weisenberger; I'm a citizen volunteer on the Zoning Committee. Zoning is becoming more and more the tool and perhaps the only tool to manage growth in Missoula County and probably all of Montana. I think historic development will always be an issue in any of the proposed zoning initiatives that come forward just because we've managed to develop over the last hundred years just the way we have. I think this proposal for an upscale, gated community is not in keeping with the land use policy or the Missoula Comprehensive Plan and while perhaps not obligated to do so, I think that was provided as a guideline on where we wanted to be and where we wanted to go in the future. I think having this kind of a development in Rock Creek where it is would have a negative impact on the land and the wildlife and frankly on our Montana way of life. We have lots of gated communities and lots of upscale developments that are moving in all over Montana.

We need to be able to figure out how we're going to deal with those and how we're going to address the concerns of the people that live here and have been here for all these many years and are trying now to find the tools that would enable them to protect their property and the property surrounding them. This zoning seems to be the tool that's available, at least to most people anymore and trying to manage that growth. So that's my comment.

Greg Robertson: Okay, good afternoon, for the record, Greg Robertson, Public Works Director. I've thought about this quite a bit and looked at a lot of the correspondence that was received and listened to the testimony and two things struck me and it was the supplemental information received since the last hearing. One from the attorney, Mr. McCormick, and then another one, an affidavit so to speak or at least a letter from Jan and Mike Susa [phonetic] who were the original owners or the sellers of the properties to Mr. Barnes. It's consistent with my observations and what I have heard and talked to folks about.

My position on this, my recommendation to the Commissioners is to approve this zoning request. I'm a little troubled with the language in Section V dealing with non-conforming uses. It has to do with the commercial facilities. I would concur with Mike in that it is almost a hall pass and really isn't consistent with case law that has built over a number of years. So I would preface my recommendation with elimination of the last sentence of the--the last paragraph of Section V.

Jennie Dixon: That would be Attachment O of your staff report and Greg is referring to Page 2 of Attachment O, middle of the page, where there is some underlined text referencing non-conforming lots of record and non-conforming structures. Greg is suggesting deleting the last sentence of #2, non-conforming structures.

Greg Robertson: And I would replace it with the language that is currently in the zoning regulations that deals with non-conforming structures and uses to make it consistent. One thing that--getting back to what Jan and Mike Susa had to say and comments that Mr. McCormick provided, I was struck by the last paragraph of his email to you dated, I think the 13<sup>th</sup> of December. I'll summarize it by saying regardless of whether the zoning is approved or disapproved, he states that the parcels can still be developed and that there will be no wildlife habitat lands, no riparian management plans, no level 2 treatment septic systems, and no enforceable covenants. This strikes me as a kind of a veiled threat that--and I'm troubled by that also, that if Mr. Barnes was indeed a good steward of the land and the resource as he purports to be, he would do all these things regardless of whether this was approved or disapproved. So my recommendation Commissioners is to approve this zoning as amended. Thank you.

Vickie Zeier: For the record, I'm Vickie Zeier, the Missoula County Clerk & Recorder/Treasurer/Surveyor. I wasn't present for the November 29 hearing, so I'm going to defer because I have no public comment.

Commissioner Evans: I can't in good conscience support this zoning. The reason for that is 17 owners, 14 parcels, six of the people want out of it, one per 40 would be the zoning, and yet seven out of the 10 parcels are less than that. This is in the middle of the process. These people proceeded to put in their subdivision request and I think they have the right to go through the subdivision process, so that we have the right to look at it and say this is acceptable, this is not, your subdivision is denied, your subdivision is approved. I can't in good conscience support doing this because--I would strongly support a request for zoning for the entire Rock Creek Canyon, maybe even a joint, two-county zoning district. Mike tells us that's possible and that seems to me to then would really protect all of Rock Creek. Just to pick this one parcel, I don't think is fair and I can't do that.

Chairman Carey: Any final remarks Commissioner Curtiss?

Commissioner Curtiss: I think that I'm concerned about the--what was referred to today as kind of reverse spot zoning. One of the tests that we're supposed to use for spot zoning, which those of you that have been following our exciting schedule for the last few weeks know that this isn't the first time that we've had this discussion, is whether the requested use is significantly different from the prevailing use in the area. To me that's kind of it, the use in the area proposed is significantly different on the majority of the parcels than the prevailing use in the area. The prevailing use is different than what's requested. The second test is whether the area what the requested use is to apply is small and it doesn't just mean physical size. Again, if we look at what's on the other side of the road basically in that area and the other side of the freeway too in some regards. Number 3 is whether the request to change is more of the nature of a special legislation designed to benefit one or a few landowners at the expense of the surrounding landowners. The one that Greg referred to, it's almost like special legislation with a hall pass, as he stated, to the folks that already have some sort of non-conforming use. So we have the non-conforming size and the non-conforming use both in the area. I guess I would like to have some discussion among the Zoning Commission about whether one per 10 might be a compromise.

Jennie Dixon: I would just point out for you that with the one per 10 you will still have six of 14 being non-conforming in size.

Commissioner Curtiss: And the one is really close.

Jennie Dixon: And one is three-quarters of an acre, but it still conforms [inaudible].

Commissioner Curtiss: Mike, quick question, if this Commission did not act on this proposal today, would the subdivision move forward? I mean it doesn't influence that does it?

Mike Sehestedt: The subdivision as I understand it moving forward in the ordinary course of subdivision review, the question I guess would be one of vesting, whether or not it has vested or will vest during the period of review. That really is a question of fact that I don't think I can answer for you without getting a whole lot of information I don't have right now.

Chairman Carey: I guess I should have asked whether it could legally move forward.

Mike Sehestedt: Yeah, the subdivision right now, there's no zoning there and unless and until Planning and Zoning Commission acts, there is no zoning there. So it's going forward as we speak. There's no real provision in this particular zoning to address the concept of vested right. Our General County-Initiated Zoning has a provision, I think its Section 8.16 in the General Zoning Resolution that provides when zoning is newly imposed or altered. A project that would otherwise have been permitted under the zoning becomes non-conforming, there's a window, I think 60 days, in which they can apply to the Board of Adjustment for a determination as to whether or not their right is vested. The criteria are expenditures to date, alternatives, I won't try to list them all, but essentially, it's a way to determine whether or not it would be fundamentally unfair to impose the new regulations on a project because it's gone so far under the existing rules.

Chairman Carey: Well I drove up there real quickly over the lunch hour and--just to look at it and get a sense of it because it had been a while since I'd been up there. A small flock of wild turkeys crossed the road just in front of me as I drove past the mercantile. I really don't see how putting a gated subdivision of 36 some units in there is going to preserve much less enhance the current character of that place. I don't think it should be any more dense than one per 40, but I'm not certain that this is the best legal avenue to get to where most of us want to get to. Personally--well I read in the paper today, I'm sure some of you did too, that Gallatin County's putting more acreage in easements now than it is in subdivision development. It's interesting because I think Montanans are starting to wake up to what threatens their quality of life forever. I'm trying to work out a way that we would be able to, given the fact that the County does have some new monies available and its open lands bond that was passed. There might be other monies for easements. I'd like to see the developer come away from this with a decent profit on his investment and then find some way to put that property into what will in fact enhance and preserve its unique quality. So I'm wrestling with if I vote for the rezoning, does that put us on such a slippery, thin icy slope, that we end up with a decision that harms the overall intent and effort. Any further comments?

Commissioner Evans: I think you're exactly right. It would put us on a slippery slope and it would not give us the power to review the subdivision ask for conditions and things that would help to make it a more tolerable subdivision to the folks who live there. Certainly, you wouldn't want us to do zoning of one per 40 that allows them to, without review, do what--is that not correct Michael?

Mike Sehestedt: Well, you know, right now there are five tracts on the property. The zoning as proposed says you can have one home on each tract of record, otherwise half the tracts would be unusable. I think you have to continue that, so they would have five building rights as I recall just without any subdivision, that's with the three twenties, about an eighty, I think, and a ten. Question of relocating boundary lines on those parcels are--a lot of issues, but theoretically they're entitled to five now. The 80-acre parcel could even under the zoning be split once to create two 40-acre lots. So that would put them at six units under this zoning with very little review.

Commissioner Evans: I would think you and the developer would want to work together to come up with a proposal that's the best for your area. I've never met Mr. Barnes, I don't know what his intentions are or what his desires are, but it is his ranch and he has a right to make a proposal. I think he has a right to bring that to us to make an informed decision on what he wants to do. I think you might get something worse if you got the zoning today than you might otherwise get if he comes in with a subdivision proposal, upon which you will have every

right to comment and try to smooth or mitigate concerns that you have. I would ask you to work with Mr. Barnes and see if you can't come to some sort of an understanding that's good for everybody.

Mike Sehestedt: There's been a lot of talk and argument about the subdivision proposal. That is, but it's not really the driver for your zoning decision. You need to decide based upon land use patterns, the Comp Plan, the input of the citizens, what's an appropriate development pattern for this particular zoning district should you choose to create it. That requires to look at what's been done both in the area and around it and I do think that you can look at the Comp Plan for additional guidance to see what it says, however, you are not obligated to do so in this type of zoning.

Commissioner Curtiss: My biggest concern is, and I guess I would like to know if the folks who brought this would like to have us not make a decision today, so that you have more time to bring more of the area in. We really aren't making a decision based on the subdivision today, so we all know it's the 800-pound elephant in the room however, which would be an awful skinny elephant. If you brought this to us and there wasn't a subdivision proposed on that land right now, what would we be looking at? We would be zoning land with all these non-conforming uses and I think that that's what we really have to weigh. I totally agree with what the folks have said that just because we've done poor planning or no planning in the area is no reason not to plan for the future. I don't know that--I think that our best bet in this subdivision is for us to review the subdivision based on its facts, keeping in mind what all of you folks have said and I'm sure that you will say again at a subdivision meeting before the Planning Board and us. That's wearing our other hats because right now we're not the County Commission, we're the Zoning Commission. It's kind of like what we often hear is, we would sure like to zone our neighbor's property and because we don't want this or that to happen. I just would have a hard time if that subdivision wasn't the thing that's hanging out there weighing over us. I would have a really hard time doing this in a normal setting, so I really will have trouble to do that today. I understand what everybody wants there and what everybody wants to protect there. I agree, it's the groundwater, it's the wildlife, it's the quality of life, it's the viewshed, it's the agricultural use, it's the fact that's what you see coming into Rock Creek, although I always weigh on there what about the Testy Festy because it actually is the first thing that's there a few days of the year and hopefully that will go away some day too. Weighing this on the merits of what it would be without that subdivision, I have a hard time going forward with it as proposed. So, would the folks in the area like us to just wait so that we could look at this as a bigger picture and maybe even have some different zones or would you like us to make a decision today, which is kind of a mix at this moment.

Chairman Carey: And as part of that, we're told in a letter from Mr. Don King that the Lower Rock Creek drainage now has a--is basically one residence per 59 acres. That's what you feel when we're out there. I don't know, driving up to a one per five or whatever is essentially changing the character of the place. What's the response from...?

Unidentified Speaker: Take a time out.

Commissioner Curtiss: So you'd rather we just delayed this.

Chairman Carey: We need that for the record, Mr. O'Conner or if you're speaking for them or who's speaking for the group?

Commissioner Curtiss: Would you like to have us break for five minutes, so you can discuss it.

Commissioner Carey: All right, let us take a break.

Okay, I'll resume the hearing of the Planning and Zoning Commission. Let's hear from the proponents for the zoning first if they will.

Jack Tuholske: Thank you, Commissioners.

Commissioner Curtiss: Jack, could you say your name for the record.

Jack Tuholske: I will, thank you, Jack Tuholske, T-U-H-O-L-S-K-E. I cannot speak here today for all of the people that signed the petition because they're not here and I don't feel like I'm in a client/attorney relationship with all of them. But I can say this, certainly the comments about the need for zoning in all of Rock Creek are well taken and well supported and including the suggestion that even this zone could have been made bigger. But I think

the reality is is that this is what they have presented to you folks here today and they don't feel like they have the authority to say let's hold off on this. In terms of the non-conforming uses, that the County Attorney suggested might be a problem. I think it's fair to say that they don't want to create a zone that is legally indefensible on your part and don't want to ask you to do that. So if those had to be removed because of some, what I take it as, pretty strong comments from the County Attorney's office that that is something that they would not oppose.

In terms of the density-change suggestion by Commissioner Curtiss, again, because I can't speak for all the people, I can't say for certain that that would be acceptable. I think that it's a concept worth considering and if you in your deliberations end up in that place then so be it. The final thing is that they want to make sure that you understand that when they did draw these boundaries here, that it would have been great to sort of march south through the valley and really do it right. But there's huge blocks of Forest Service lands and to get a contiguous block and to get the people together necessary to do citizen-initiated zoning on that scale simply wasn't feasible. So that's where I'll leave it. Thank you.

Chairman Carey: Thank you. Mr. McCormick would you like to speak?

Alan McCormick: I certainly only speak for LemCo and we've always maintained that doing reactionary zoning of this size is inappropriate. Certainly, we'd continue to encourage you not to adopt this zoning and allow the subdivision to be reviewed on its own merits. I think I have a little different opinion than Mike does on the extent to which you can alter the regulations in the zoning district. Certainly, the two-step process gives you some leeway to revise the boundaries and in a typical process where you first adopt boundaries and then you come back and you adopt the zoning regulations, I think you do have some leeway then to play around with what those zoning designations are. In this case, the petition was handed to people for consideration for their signature based on the boundaries and the zoning regulations that were in them. If you make significant changes to those zoning regulations that are in them now, that questions whether those signatures are effective because it's not what they signed. So I think this is an all or nothing vote on the petition that's been brought to you. For other reasons that Mike has mentioned to you today, we don't feel like this is a legally defensible zoning district.

Chairman Carey: Thank you, all right, Planning and Zoning Commissioner members, is there any final comment or a motion?

Commissioner Curtiss moved that the Planning and Zoning Commission recommend to the Board of County Commissioners that the proposed zoning district be denied as it doesn't seem legally defensible or the majority is non-conforming use and size. Commissioner Evans seconded the motion. Vickie Zeier abstained from voting. **SEE ROLL CALL VOTE BELOW.**

Chairman Carey: Is there another motion?

Sylvia Weisenberger: Did you mean all those in favor of the motion or--I'm [inaudible].

Chairman Carey: The motion was to deny the rezoning.

Sylvia Weisenberger: So those in favor of denying said aye?

Chairman Carey: Yes.

Sylvia Weisenberger: So we had three, two?

Mike Sehestedt: Let's do this, let's do a roll call vote.

**The vote was as follows:**

<b>Commissioner Bill Carey</b>	<b>No</b>	<b>Sylvia Weisenberger</b>	<b>No</b>
<b>Commissioner Jean Curtiss</b>	<b>Yes</b>	<b>Greg Robertson</b>	<b>No</b>
<b>Commissioner Barbara Evans</b>	<b>Yes</b>	<b>Vickie Zeier</b>	<b>Abstain</b>

**The motion failed with a vote of two ayes, three nays, and one abstention.**

Commissioner Curtiss: So then, this Commission makes the recommendation to the other.

Mike Sehestedt: Right now, we don't--the motion was to deny, it failed. The next step would be, I guess, a motion in the reverse to create a district.

Commissioner Evans: That's after we've adjourned as Planning and Zoning Commission.

Mike Sehestedt: No, no...

Commissioner Curtiss: We don't have a recommendation...

Mike Sehestedt: We don't have a recommendation...

Commissioner Curtiss: It failed for lack of a majority.

Mike Sehestedt: We can sit here...

Commissioner Curtiss: So somebody else can make...

Mike Sehestedt: ...forever with no motion or...

Jennie Dixon: You have the motion, excuse me Greg, I just want to direct you to Page 3 of the staff report, the two motions are there for wording to approve it, if you want to use that and I can [inaudible]...

Mike Sehestedt: And we need to vote on these two items separately. The first is the creation of the--whether or not we should create the zoning district. That requires a simple majority, I believe, of those present and voting. However, then we have the second motion which is adoption of the development regulations. That specifically requires a majority of the entire Commission, which is four votes since it's a seven-member Commission even though we have one vacancy.

Commissioner Evans: So if it passed on this board, but the development stuff didn't pass, what do we have an empty vessel?

Mike Sehestedt: We would have an empty vessel, which would then be the subject of future hearings, I would guess. That's the way it is Barbara.

Chairman Carey: Is there a motion?

Greg Robertson a motion that the Planning and Zoning Commission recommend to the Board of County Commissioners that they create the Rock Creek Part One ("Citizen-Initiated") Zoning District #45 as shown in the map contained in the staff report as Attachment K.

Mike Sehestedt: Let me correct myself. We need a majority vote of the entire Commission both to create or to adopt a development pattern because the entire Commission is seven members even though we have one vacancy, it requires four votes to create the district.

Chairman Carey: And Greg, do you want to include in your motion the existing non-conforming structures issue...?

Greg Robertson: I think you deal with that in the second motion.

Chairman Carey: All right, is there a second?

Sylvia Weisenberger seconded the motion.

Chairman Carey: Let's have a roll call vote then.

The vote was as follows:

Commissioner Bill Carey	Yes	Sylvia Weisenberger	Yes
Commissioner Jean Curtiss	Yes	Greg Robertson	Yes
Commissioner Barbara Evans	No	Vickie Zeier	Abstain

The motion carried with a vote of four ayes, one nay, and one abstention.

Mike Sehestedt: Let the record reflect there were four affirmative votes.

Greg Robertson made a motion that the Planning and Zoning Commission recommend to the Board of County Commissioners that they approve the development pattern for the Rock Creek Part One ("Citizen-Initiated") Zoning District #45 subject to the recommended amendments shown in Attachment O of the staff report and further amended by eliminating the last sentence of the last paragraph of Section V of the District Regulations reading, "In the case of destruction by fire, natural disaster, or otherwise of any structure that is utilized as a non-conforming use as described in Sections V(1) and V(2) of this regulation, the owner of the lot on which such destruction occurs shall be allowed to reconstruct the destroyed building and use it in a manner as a non-conforming use that is substantially similar in size, occupancy, type of use, and character as it was prior to the destruction of such building." Sylvia Weisenberger seconded the motion.

The vote was as follows:

Commissioner Bill Carey	Yes	Sylvia Weisenberger	Yes
Commissioner Jean Curtiss	No	Greg Robertson	Yes
Commissioner Barbara Evans	No	Vickie Zeier	Abstain

The motion failed with a vote of four ayes, one nay, and one abstention.

Chairman Carey: So that does not pass.

Mike Sehestedt: No, we do not have the four votes required. It might be useful to have somebody--well, I don't know what would be useful.

Commissioner Evans: In the past, do we not recess as the Planning and Zoning Commission and make a recommendation to the Commissioners to either pass or deny their motion?

Mike Sehestedt: That would be correct. At this point, however, you have a recommendation from Planning and Zoning Commission to create and district, but the Planning and Zoning Commission has not yet acted on the development standards to be imposed in that district. You can do any number of things. We can have further discussion of possible formulations that would command the necessary majority of the whole Commission support or we can close the hearing without a recommendation, direct staff to meet with interested parties to determine and re-notice a second hearing of the Planning and Zoning Commission to see if you get a recommendation as to development regulations in the district that would work. Probably there are lots of other things I haven't thought of that you could do in between...

Commissioner Curtiss: I'd like to explain my strange voting, is that I thought that if we create the vessel, we can figure out how to fill it later is kind of...

Mike Sehestedt: And that's certainly an option. I leave that to the six of you.

Commissioner Curtiss: So what you're saying is we can either say that this group doesn't have a recommendation at this time or we can recommend adopting part of it and not the other.

Mike Sehestedt: You can recommend adoption of the zoning district and say you'll conduct a further hearing on Part II, or on the second part of this, which is what is the development pattern. By the by, I've litigated the very question of whether or not you can create a district and then adopt different regulations. Admittedly, it was about 30 years ago, so the value of that law may not be here, but at that time, the district court sustained the action.

Commissioner Evans: So did I hear you earlier or Mr. McCormick or someone say that we could reduce the size of the district? We have had the request by Mr. Ekstrom and his mother to be removed from the district and that seems to me to be fair if we can reduce the size of the district. I know we've already voted, but folks I've got to tell you, I think we really look stupid here.

Mike Sehestedt: Well, this is a difficult question and it requires more than a simple majority of those present and voting, which...

Commissioner Evans: Is it too late for me to make a motion to remove them from this district?

Mike Sehestedt: Well, first it would be a motion to reconsider, that I think has to be presented by someone who voted with the majority if I recall my parliamentary procedure. Then you'd have to vote on the motion to reconsider. If that passes, then we'd be back at the point where someone could amend the previous motion. My understanding of parliamentary procedure, although we're getting a little nuanced for me. Bill, you're an ex-legislator.

Commissioner Evans: I'm a great supporter of the book, Drop Dead Mr. Roberts.

Mike Sehestedt: That may be a good idea, but we need some rules and we've basically adopted Robert's Rules as our rules of procedure.

Chairman Carey: So Commissioner Evans, is it your wish that the Planning and Zoning Commission take another look at the...

Commissioner Evans: The request to be...

Chairman Carey: ...request to be excluded...?

Commissioner Evans: It is.

Chairman Carey: Is there a member of the Commissioner willing to make that request. It has to be somebody who voted...

Mike Sehestedt: My understanding of parliamentary procedure would be to reconsider it has to be somebody who voted for the motion.

Jennie Dixon: Also, if you do head in the direction of wanting to remove those who have not signed, it would be B through E and L and M. So that would reduce the district--it would still be contiguous, it would still meet the requirement for signatures and it would still meet area requirements.

Commissioner Evans: Which ones, B through L and M?

Jennie Dixon: B, C, D, E, F and L and M.

Chairman Carey: I thought [inaudible].

Jennie Dixon: I'm just letting you know, those are all the ones that did not sign, and by removing any and all of those, you would still meet all of your other legal requirements for signatures.

Mike Sehestedt: Oddly enough, there's also a request by Mr. Barnes or by is LLC, whatever it is, to withdraw too. None of...

Commissioner Evans: And that was what Jennie was referring to.

Mike Sehestedt: All of this is over to your hands now. I feel that we start reducing the district, and particularly creating, if we simply pull a little spot out, we're really opening the door to future legal troubles.

Chairman Carey: So if there's no motion to reopen it, then we move forward?

Mike Sehestedt: That would be again my understanding.

Chairman Carey: Is there a motion to take L and M out? Hearing none, so now the Planning and Zoning Commission has a recommendation to okay the rezoning, but not the regs that would support it or...

Mike Sehestedt: But, no, basically what you have is a recommendation to create the requested planning and zoning district. We do not have the regulations that would be applicable when that district approved by the Planning and Zoning Commission. So as a matter of fact, Planning and Zoning Commission could not make a recommendation in that regard to the Board of County Commissioners.

Commissioner Curtiss: I think what this does is it allows the folks that brought this forward to go back and talk to their other folks in the area and see if they are interested in one per 10, which might be more defensible. So I don't know whether we want to take part of it forward and table the rest or.... I guess we need to take at least forward to the Commission the part...

Chairman Carey: Well we could do what Mike suggested earlier is pass on the recommendation to approve the rezoning and instruction to the staff to work with the parties involved to see what they can come up with in terms of....

Mike Sehestedt: Assuming that's the recommendation of the Planning and Zoning Commission.

Chairman Carey: Is that...?

Greg Robertson: I think that's a good middle ground to at least continue on with this.

Chairman Carey: Okay.

Commissioner Curtiss: I'd second that.

Mike Sehestedt: What we would do at this point is probably recess as Planning and Zoning Commission. The Board of County Commissioners would then reconvene. You have before you the recommendation of the Planning and Zoning Commission that the zoning district be created. You could then vote on whether or not to accept that recommendation. The other recommendation from the Planning and Zoning Commission I think would be that staff work with interested parties to attempt to determine an appropriate development pattern. We may come right back with everything exactly the same and at that time we may have more voting members to hear the issue and we may come to a decision.

Chairman Carey: Okay, then that seems to be okay with the majority of the Commissioner.

Vickie Zeier: Can I make a request that I receive the minutes from the 29<sup>th</sup> so that before we meet again [inaudible, spoke without mic].

Chairman Carey: So noted.

Commissioner Evans: We also have the tapes; we could have her listen to the tapes.

Commissioner Curtiss: Or the CD from MCAT.

Mike Sehestedt: The minutes are quicker.

Commissioner Evans: Except for the person who has to type them.

Chairman Carey: Okay, so the Planning and Zoning Commission is now in recess. The Board of County Commissioners is reconvened and it has a recommendation in front of it from the Planning and Zoning Commission to approve the rezoning request and to direct staff to work with interested parties on regulations.

Commissioner Evans: And those are two separate items that they've given us.

Commissioner Evans made a motion that the Board of County Commissioners not accept the Planning and Zoning Commission's recommendation on creating the district.

Jennie Dixon: Two separate motions.

Chairman Carey: Two separate motions. The first one is to not accept the Planning and Zoning Commission's recommendation to create the district. These is no second, is there another motion?

Commissioner Curtiss made a motion that the Board of County Commissioners accept the Planning and Zoning Commission's recommendation to create the Rock Creek Part One ("Citizen-Initiated") Zoning District #45 as shown in the map contained in the staff report as Attachment K. In addition, that the Board of County Commissioners approve the recommendation from the Planning and Zoning Commission that staff work with interested parties to attempt to determine an appropriate development pattern. Chairman Carey seconded the motion. The motion carried on a vote of 2-0, with Commissioner Evans voting nay.

Chairman Carey: Okay, I think we've done as much with that as we could. Thank you very much.

### **Other Business**

None.

There being no further business to come before the Board, the Commissioners were in recess at 4:14 p.m.