

PUBLIC MEETING - DECEMBER 6, 2006

The Public Meeting was called to order at 1:35 p.m. by Chairman Bill Carey. Also present were Commissioner Jean Curtiss, Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt, and County Public Works Director Greg Robertson.

Pledge of Allegiance

Public Comment

None.

Chairman Carey: A note on our agenda; we have scheduled the Trout Meadows Ranch Rezoning near the end of the agenda because most folks who are here on the other matters aren't going to take an hour or two or however. Hopefully their business is done rather quickly and we want them to be able to go if they want to or need to.

Routine Administrative Actions

Commissioner Curtiss moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the claims list for two weeks in the amount of \$1,440,089.77. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Decision (Continued From November 29, 2006): Petition to Alter a Portion of Blanchard Creek Road (Near Clearwater Junction)

Chairman Carey asked for a site visit report.

Commissioner Evans presented the report.

Charlie Wright from the Surveyor's Office and I went up and observed both requests and Charlie has suggested and I agree that the alteration for this road should be contingent upon the filing of the Clearwater Meadows Ranch subdivision.

Commissioner Evans made a motion that the Board of County Commissioners continue the decision to approve the petition to alter a portion of the Blanchard Creek Road described as Blanchard Creek Road, located in Section 5, Township 14 North, Range 14 West from 975 feet northwest of the centerline of the intersection of Blanchard Creek Road with the centerline of Montana Highway 200 to northwesterly, along Blanchard Creek Road for approximately 1740 feet, to the north boundary of Tract 1, Certificate of Survey #5720, which is co-incident with the south boundary of COS 5536 until the Clearwater Meadows Ranch subdivision is considered. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Decision (Continued From November 29, 2006): Petition to Alter a Portion of Underwood Road (Condon Area)

Chairman Carey asked for a site visit report.

Commissioner Evans presented the report.

As I said Charlie and I went there yesterday, we looked at it and the road configuration that the applicants wish to do is perfectly fine.

Commissioner Evans made a motion that the Board of County Commissioners approve the petition to alter a portion of Underwood Road, located in Section 6, Township 19 North, Range 16 West, P.M.M. from the northeast corner of Tract 1, COS 729 (approximately 400 feet west of the intersection of Underwood and Pine Ridge Road) to it's end (approximately 1,200 feet west of the starting alteration point) contingent upon a complete set of road plans being submitted and approved by the Public Works Department. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificates of Survey): Walter J. Smith 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 the west half, southwest quarter, northwest quarter, Section 24, Township 21 North, Range 17 West.

Walter J. Smith 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 20 acres in size located near Condon, Montana. Walter proposes to create one approximately five acre parcel for transfer to his wife, Barbara R. Smith, for residential purposes and keep the remaining approximately 15 acre parcel for residential purposes as well.

The history of the parcel is as follows. This parcel was deeded by George W. and N. Joyce Engdahl in 1968 to Geoffrey G. and Kathie J. Foote. In 1975 a Warranty Deed was filed deeding the parcel to Grover C. and Judy H. Ligon. The Ligon's filed a Warranty Deed in 1977 deeding the parcel to Dean and Jack Himes. In 2005 a Warranty Deed was filed, deeding the property to the current owner, Walter Smith. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

My recommendation is that you consider a request to create a family transfer parcel by dividing the parcel described as the west half, southwest quarter, northwest quarter, Section 24, Township 21 North, Range 17 West.

Chairman Carey: Thank you Mr. Sehestedt. Is Mr. Smith here? Could you come to mic and identify yourself please.

Evan Vernon: My name is Evan Vernon. I work with Eli and Associates and I am here to represent Mr. Smith. V-E-R-N-O-N.

Mike Sehestedt: As in the home with the same last name.

Chairman Carey: You're probably aware that our attorney will ask you a set of questions for your replies on the record. We just want to hopefully assure ourselves that this is not an attempt to evade the subdivision regulations, which would be a misdemeanor.

Evan Vernon: I faxed the same list to Mr. Smith and he faxed me back the answers, so I'll just be reciting his answers to the questions.

Chairman Carey: Okay, thank you.

Mike Sehestedt: And if you could provide a copy of his written answers, it would be helpful.

Evan Vernon: Sure.

Mike Sehestedt: Have they owned the property, was I correct in saying, since 2005?

Evan Vernon: Fourteen months is what his answer was to that question.

Mike Sehestedt: That would be consistent with the 2005 purchase. Did they buy the property with the intent of dividing it?

Evan Vernon: No, was his answer.

Mike Sehestedt: Do either of the Smiths intend to transfer either parcel within a year?

Evan Vernon: No.

Mike Sehestedt: Do they have plans to develop the property, either parcel at this time?

Evan Vernon: No.

Mike Sehestedt: I guess it would follow then that the recipient of the family transfer does not intend to reside on the parcel?

Evan Vernon: His answer is if a vacation home or cabin is built in the future, to that question.

Mike Sehestedt: Where does the recipient live now?

Evan Vernon: Somewhere in Pennsylvania.

Mike Sehestedt: Close enough.

Evan Vernon: A long ways. Apparently, they don't like to fly because he says it's a three-day drive to get here.

Mike Sehestedt: Do you know if the spoke to anyone at the County about going through subdivision review for this parcel?

Evan Vernon: No.

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

Evan Vernon: No.

Mike Sehestedt: Are they attempting to evade subdivision review?

Evan Vernon: No.

Mike Sehestedt: Do they understand that this request is not being reviewed for adequate access in all weather for all vehicles...

Evan Vernon: Yes.

Mike Sehestedt: ...including emergency services? Do they understand that should the Commissioners approve this transaction all they are approving is the division of the land and not assuring zoning, assuring there is compliance with zoning, floodplain, or that they'll be able to get a septic system, or any other permit?

Evan Vernon: Yes.

Mike Sehestedt: Thank you, Mr. Chairman.

Chairman Carey: Thank you, any questions for Mr. Vernon?

Commissioner Curtiss: I just think that there's a couple things that should be on the record. One is: there is an existing home on Tract 2, so they do have one home. The other is when you look at the map, in some ways it does resemble subdivision, but I know people often buy land up here and want to build a nicer house. I actually know what the existing house used to look like anyway. The other is this is grizzly bear territory, so it would be good if you let your clients know that they might not be in the thing, but the bears don't read and they cross lines and there's probably grizzlies right around there.

Evan Vernon: Okay.

Mike Sehestedt: And I should have picked up on that. I thank you Commissioner Curtiss. We do have living with wildlife brochure available. If this was a subdivision, it would be required as part of the covenants. I ask that you pick up a copy of that and forward it to your clients and we will also enclose a copy with our letter of approval, if that's what the Commissioner's choose to do.

Commissioner Curtiss: That would be good.

Chairman Carey: Any other questions? This is a public hearing, is anybody interested in saying anything about this family transfer proposal? Seeing none, I'll close the hearing.

Commissioner Evans made a motion that the Board of County Commissioners approve the request by Walter J. Smith 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 (Certificates of Survey): Williford 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 the Southwest one-quarter, Northeast one-quarter, Plat T, Section 35, Township 12 North, Range 20 West.

Charles D. Williford 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 17,600 square feet in size located in Lolo, Montana. Charles proposes to create one approximately 8,800 square foot parcel for transfer to his wife, Bonita R. Williford. The Willifords plan to sell the property.

The history of the parcel is as follows: Robert C. and Helen J. Bramsen, filed a Warranty Deed in April 1970 deeding the property to Arnold R. and Betty E. Munson. Arnold and Betty Munson filed a Quit Claim, deeding the property to Gene F. and Eileen E. Allen in November 1970. The land was deeded by the Allen's to Charles D. and Bonita R. Williford in September 2006. Bonita Williford filed a Quit Claim in October 2006, deeding the property to Charles Williford. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

My recommendation is that you consider a request to create a family transfer parcel by dividing the parcel described as the SW ¼ NE ¼ Plat T, Section 35, Township 12 North, Range 20 West. I would supplement this report by noting that the property is in Lolo adjacent to the railroad tracks. My understanding is they have applied for and obtained sewer service, sewer and water service, from Lolo RSID 901, which explains the small size of the two tracts.

Chairman Carey: Thank you. Is Mr. Williford here?

Charles Williford: My name is Charles D. Williford.

Chairman Carey: Thank you. As you have learned, we'll ask our attorney to ask you a set of questions, and I notice there's a response--did you write the response?

Charles Williford: Yes.

Chairman Carey: For the record, he'll ask you these questions, again, in order to help assure us that this is not an attempt to evade subdivision regulations.

Charles Williford: Sure.

Mike Sehestedt: Was I correct in saying that you've owned the property since September of 2006?

Charles Wright: That's correct.

Mike Sehestedt: Did you buy the property with the intent of dividing it?

Charles Williford: We bought the property with the intent of dividing it, yes.

Mike Sehestedt: And, will the property be developed? My understanding is there's a house on one parcel. Will the other parcel be developed as well?

Charles Williford: The intention is to do that, yes.

Mike Sehestedt: Will the transfer to your wife, will she be residing on the property?

Charles Williford: No.

Mike Sehestedt: Where does the recipient live now?

Charles Williford: We reside together in Hidden Valley in Florence.

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

Charles Williford: We did not.

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

Charles Williford: No, not generally.

Mike Sehestedt: Are you attempting to evade subdivision review?

Charles Williford: Not at all, no.

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

Charles Williford: Yes.

Mike Sehestedt: Do you understand that this approval does not mean that the property is approved for zoning compliance, building setbacks, floodplain, sewage disposal, availability of utilities?

Charles Williford: Yes.

Mike Sehestedt: I have no further questions, Mr. Chairman.

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

Commissioner Curtiss: Yes, in looking at the packet that you submitted, there are several conflicting things I think on the third page from the last in that you did buy it wanting to divide it, which you stated, but because you couldn't get access, you decided to use this route. So you're going to sell both lots or...?

Charles Williford: No--well, there's a house on one lot. The proposed lot does not have a house currently. We thought about maybe developing that ourselves or selling the lot and having somebody else develop that or whatever, but when we talked about--or researched subdivision, we had to put in a wider paved road to access that property. When we did that, then of course we don't have the area, square foot, left to develop more than just one lot anyway. And so the most economic way to go would be the family transfer for us and then have one shared driveway, a 16-foot wide, shared driveway. And then we have 8800 square foot of property left to build a house on. That's what our thought was.

Commissioner Curtiss: But it's not zoned out there, right?

Charles Williford: It's not zoned.

Commissioner Curtiss: ...zoning requirement for a lot [inaudible].

Charles Williford: Right.

Commissioner Curtiss: So, comparing this to other family transfers that we've done, it seems to me like this is being used as a tool to subdivide land. I mean you wrote here you're avoiding subdivision, not evading, but, I don't know if it's legal. I guess I'd like Mike's opinion.

Mike Sehestedt: Well, the inference is yours to draw as a finder of fact as to whether or not this is in fact subdivision in fact or if it's a legitimate use of the family transfer exemption. Generally I use a kind of economic sort of test and works easier when the grantee is your children. I mean whereas the incident--you know, who benefits from the transaction financially, the kids or the grantor? That's a not particularly useful tool here, so I think it's a very close question. I think you can conclude whichever what you wish.

Commissioner Curtiss: So do you plan to sell both lots?

Charles Williford: Eventually, we're going to rent the property that we're remodeling right now and the idea was to do the split and then eventually either build a rental there or go ahead and sell that lot to a developer, a builder, or go ahead and build ourselves. We're not sure what route we intend to take at this point.

Chairman Carey: I guess--Mike, I need to follow-up on your reply because a family split is for a gift or sale, I believe as he states. But isn't for the benefit of a family member?

Mike Sehestedt: It's difficult to pin down. You can use the family transfer exemption to do a sale to your kid that is in fact cash-value market transaction. The kid gets a particular lot, but doesn't get any economic benefit or you can do the family transfer and the kid gets the lot for free. What doesn't work is when you do the family transfer, deed it to the kid, the kid deeds it back to you and you sell it and get the proceeds from the third party sale. Does that make sense? I mean it is really an area that is subject to your discretion and judgment as the finder of fact. It isn't something I can answer as a matter of law.

Chairman Carey: Would you comment briefly on the distinction between evading and avoiding?

Mike Sehestedt: I'll use my usual. It's a sin and a crime to evade taxes. It's a cottage industry and highly thought of to avoid taxes. It's when you slip over the line that you get in trouble and the purpose of this hearing is for you to decide whether or not this is in fact a subdivision and not a bona fide gift or sale transaction.

Commissioner Evans: But there is no law against splitting property and selling it, is that correct?

Mike Sehestedt: No, I mean in a husband and wife situation, it's kind of challenging. The husband deeds to the wife, the wife sells. Who's to say whether that's her separate property, the profit, or simply goes into the joint family account? In the case of a child, you give it to the child; the child sells it, and puts the money in trust or uses it if he's old enough to buy himself a fancy car. It benefits the kid, the transaction clearly legitimate. It's avoidance, not evasion.

Chairman Carey: Any other questions for Mr. Williford?

Commissioner Curtiss: Just one. Mr. Williford, which road do you access from?

Charles Williford: Well, we've gone to the County and had the address changed. Our approach is now going to be off of Expedition. The original approach to that property was on MRL right-of-way and so we've been informed that that will no longer exist. So the County has given us a permit to access off Expedition and the new address will be off of Expedition.

Commissioner Curtiss: So when you--in your notes here, you refer to finding out that a new road would be required to divide it into three lots made it impossible. Is that because [inaudible] ...

Charles Williford: Correct.

Commissioner Curtiss: ...because to serve three lots, it has to be bigger than 16 [inaudible]...

Charles Williford: Exactly and that's why it negated the possibility of us pursuing the subdivision. It just seemed like a very expensive route to go and we wouldn't be able to accomplish any more than we would with a family split.

Commissioner Curtiss: Well I think it looks a lot like a subdivision, but when you look at the whole area there, I don't see that we would disapprove a subdivision of two lots of this property anyway and so...

Commissioner Curtiss made a motion that the Board of County Commissioners approve the request by Charles D. Williford to create one parcel by use of the family transfer exemption based on the fact that there does/does not appear to be an attempt to evade subdivision review.

Chairman Carey: And before we second that motion, could we ask if there's any other comment from the public on this? Any public comment?

Chairman Carey closed the hearing.

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

Consideration: Double "R" Acres, Lot 3 (2 Lots on 2.07 Acres) - Humble Road & Spurgin Road

Chairman Carey opened the hearing.

Mirtha Becerra, Office of Planning and Grants, presented the staff report.

Before you today is a request from Phyllis Gingerich, represented by Montana Northwest Company, to subdivide a 2.07 acre parcel into two residential lots. The property is located on the north side of Spurgin Road in the Double "R" Acres Subdivision. There is an existing home on proposed Lot 3-A. The property is zoned C-RR1 (Residential-one dwelling unit per acre). The proposed lots and existing structures are in compliance with the requirements of the C-RR1 zoning district. The land use designation is Residential, two dwelling units per acre. The proposal meets both zoning and the land use designation.

There are two variances requested. The first one is to the requirement for installation of concrete boulevard sidewalks on both sides of Humble Road and Spurgin Road. Staff recommends approval of the variance request based on the fact that there is a 9-foot wide pedestrian trail along the north side of Spurgin Road and a 7-foot wide trail along the western side of Humble Road. The second variance is to the requirement for installation of curb and gutter on Spurgin Road. Spurgin Road is an existing public road with roadside swales and ditches that work well for drainage and there is not a need for curb and gutters at this time. There is an RSID waiver statement on the plat, which includes improvements to Spurgin Road and Humble Road including sidewalks and curb and gutters.

There are a number of recommended conditions of approval, but I will summarize them for you. The most important ones are meeting standards for an approved plan for a turnaround for driveways in excess of 150 feet in length; provision of a water supply for fire protection and approved plans for the method proposed; posting address signs visible from public streets in all light conditions. Other conditions of approval require that the development covenants be amended to include language that relates to weed control and living with wildlife recommendations.

In conclusion, staff recommends approval of this subdivision based on the findings of fact included in the staff report and the recommended conditions of approval. Thank you.

Chairman Carey: Thank you Mirtha. Does the developer or representative wish to speak to this?

Ken Jenkins: For the record, Ken Jenkins with Montana Northwest Company. I really don't have anything to add. We're in agreement with the conditions of approval and I'd be happy to take any questions or respond to comments. Thank you

Chairman Carey: Any questions for Mr. Jenkins? Anybody else wish to speak to this?

Commissioner Curtiss made a motion that the Board of County Commissioners approve the following variance requests: from Article 3-2(8)(A)(ii) requiring installation of concrete boulevard sidewalks on both sides of Spurgin Road and one side of Humble Road and from Article 3-2(7)(B)(i) requiring installation of curb and gutter on Spurgin Road, both 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 Double "R" Acres, Block 2, Lot 3 Subdivision subject to the recommended conditions of approval and based on the findings of fact in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Double "R" Acres, Lot 3 Conditions of Approval

Roads and Driveways

1. Driveway Plans for driveways in excess of 150 feet in length shall have approved turnarounds and a minimum unobstructed width of not less than 20-feet and unobstructed vertical clearance of 13 feet 6 inches, subject to review and approval by Missoula Rural Fire District prior to building permit approval. *Subdivision Regulations Article 3-2(10) and Missoula Rural Fire District recommendation.*

Fire

2. The developer shall provide a water supply for fire protection that produces 1000 GPM with a hydrant or, in lieu of a water supply with hydrant, the developer shall install interior residential fire sprinklers that meet NFPA 13D standards in each new home. Plans for a water supply and hydrant location shall be approved by Missoula Rural Fire District prior to final plat approval. If water supply for fire protection is to be provided by interior residential fire sprinklers then plans for the installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to building permit approval and the development covenants shall be amended to include the following prior to final plat approval:

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

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

3. 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 and Missoula County Public Works and shall be included in a development covenant, prior to final plat approval. *Subdivision Regulations Article 3-2(2)(G) and Missoula Rural Fire District recommendation.*

Development Covenants

4. The development covenants shall be amended prior to final plat approval as follows:

Re-title the Development Covenants and add a section on applicability that states the covenants apply to all lot owners of the Double “R” Acres, Block 2, Lot 3 subdivision and their heirs, successors and assigns.

Add the “Amendments” section as follows:

Amendments

No section of the covenants relating to driveways, address signs, weed control, radon, woodstoves, living with wildlife and amendments may be amended or deleted without governing body approval.

Weeds

The development covenants shall be amended to delete reference to the revegetation plan and amend language as follows prior to final plat approval:

The owner of any lot shall not allow noxious weeds to remain or grow on the lot. Weeds shall be controlled by the use 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, or other plan acceptable to the Missoula County Weed District. All lot owners are required to maintain their lot in compliance with the Montana County Weed Control Act and the Missoula County Noxious Weed Management Plan.~~

Wildlife

Section 2 of the Development Covenants shall be amended as follows and shall include the following language prior to final plat approval:

Each lot owner shall ~~obtain or be provided and read a copy~~ follow the recommendations included in the brochure "Living with Wildlife" included in these Development Covenants and also available from Montana Fish Wildlife and Parks or the Missoula Office of Planning and Grants at 435 Ryman, Missoula, MT, 59802.

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

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

- a. Homeowners must be aware of the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because ripe or rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- c. **Garbage** should be stored in secure animal-resistant containers or indoors to avoid attracting wildlife such as bears, raccoons and other wildlife. If stored indoors, it is best to not set garbage cans out until the morning of garbage pickup; bring cans back indoors by the end of the day.
- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- e. **Birdseed** is an attractant to bears. If used, bird feeders must: 1) be suspended a minimum of 20 feet above ground level, 2) be at least four feet from any support poles or points, and 3) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the direct control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.

- g. **Pet food** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as skunks and raccoons. **When feeding pets** do not leave food out overnight. Consider feeding pets indoors so that wild animals such as bear, skunk or magpie do not learn to associate food with your home.
- h. **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- i. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences or other wildlife-friendly designs.
- j. **Compost piles** can attract skunks and bears. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
- k. Residents of this subdivision must recognize that this subdivision is located about one-fourth mile of the Clark Fork River's associated sloughs, where lawful waterfowl hunting and the associated **discharge of shotguns** could occur from a half hour before sunrise through sunset, and the season can run from September into January.
- l. These "living with wildlife" covenants cannot be altered or eliminated without consent of the governing body (county commissioners).

Consideration: Double "R" Acres, Lot 6 (2 Lots on 3.08 Acres) - Sierra Drive & Spurgin Road

Chairman Carey opened the hearing.

Mirtha Becerra, Office of Planning and Grants, presented the staff report.

This one is also owned by Dean and Phyllis Gingerich and also represented by Montana Northwest. As you mentioned, this is 3.08 acres in size and the proposal calls for two lots. There is an existing home on proposed Lot 6-A and it meets both zoning and land use designation for the area.

The variances are the same as for the previous one and staff recommends approval of both the variance requests. The recommended conditions of approval are also the same for this one. Staff recommends approval of the subdivision.

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

Ken Jenkins: Once again, Ken Jenkins, Montana Northwest. I'd like to thank Mirtha for assisting us through the review process on both of these and I have nothing to add. We're in agreement with the conditions and happy to respond to questions.

Chairman Carey: Thank you. Any questions for Mr. Jenkins? Would anybody else like to speak to this proposal? Is there a motion?

Commissioner Evans made a motion that the Board of County Commissioners approve the variance requests from Article 3-2(8)(A)(ii) requiring installation of concrete boulevard sidewalks on both sides of Sierra Drive and from Article 3-2(7)(B)(i) requiring installation of curb and gutter on Sierra Drive, both based on the findings of fact in the staff report.. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans made a motion that the Board of County Commissioners approve the Double "R" Acres, Block 1, Lot 6 Subdivision subject to the recommended conditions of approval and based on the findings of fact in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Double "R" Acres, Block 1, Lot 6 Conditions of Approval

Roads and Driveways

1. Driveways plans for driveways in excess of 150 feet in length shall have approved turnarounds and a minimum unobstructed width of not less than 20-feet and unobstructed vertical clearance of 13 feet 6 inches, subject to review and approval by Missoula Rural Fire Department prior to building permit approval. *Subdivision Regulations Article 3-2(10) and Missoula Rural Fire District recommendation.*
2. A shared driveway maintenance agreement section 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 OPG prior to final plat approval. *Subdivision Regulations Article 3-2(1)(I)(iii) and OPG recommendation.*
3. The following note shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a future RSID/SID for improvements to Sierra Drive, including, but not limited to, paving, the installation of drainage facilities, curbs and gutters, pedestrian walkways or bikeways, 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." *Subdivision Regulations 3-2(3)(E).*

Fire

4. The developer shall provide a water supply for fire protection that produces 1000 GPM with a hydrant or, in lieu of a water supply with hydrant, the developer shall install interior residential fire sprinklers that meet NFPA 13D standards in each new home. Plans for a water supply and hydrant location shall be approved by Missoula Rural Fire District prior to final plat approval. If water supply for fire protection is to be provided by interior residential fire sprinklers then plans for the installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to building permit approval and the development covenants shall be amended to include the following prior to final plat approval:

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

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

5. The following statement shall appear on the face of the final plat:

"Acceptance of a deed for a lot within this subdivision shall constitute assent of the lot owner to waive the right to protest a future RSID/SID for a public or community 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." *Subdivision Regulations 3-7(2).*

6. 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 and Missoula County Public Works and shall be included in a development covenant, prior to final plat approval. *Subdivision Regulations Article 3-2(2)(G)*.

Development Covenants

7. The development covenants shall be amended prior to final plat approval as follows:

Replace the 1st sentence under Article II, Section II with the following:

“No section of the development covenants relating to driveways, address signs, weed control, radon, driveway maintenance, living with wildlife and amendments may be amended or deleted without governing body approval”.

Weeds

Section 8 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 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.~~

Wildlife

Article I, Section 19 of the Development Covenants shall be replaced with the following:

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

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

- a. Homeowners must be aware of the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because ripe or rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- c. **Garbage** should be stored in secure animal-resistant containers or indoors to avoid attracting wildlife such as bears, raccoons and other wildlife. If stored indoors, it is best to not set garbage cans out until the morning of garbage pickup; bring cans back indoors by the end of the day.
- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to

overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.

- e. **Birdseed** is an attractant to bears. If used, bird feeders must: 1) be suspended a minimum of 20 feet above ground level, 2) be at least four feet from any support poles or points, and 3) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- f. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the direct control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.
- g. **Pet food** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as skunks and raccoons. **When feeding pets** do not leave food out overnight. Consider feeding pets indoors so that wild animals such as bear, skunk or magpie do not learn to associate food with your home.
- h. **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- i. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences or other wildlife-friendly designs.
- j. **Compost piles** can attract skunks and bears. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
- k. Residents of this subdivision must recognize that this subdivision is located about one-fourth mile of the Clark Fork River's associated sloughs, where lawful waterfowl hunting and the associated **discharge of shotguns** could occur from a half hour before sunrise through sunset, and the season can run from September into January.
- l. These "living with wildlife" covenants cannot be altered or eliminated without consent of the governing body (county commissioners).

Hearing (Postponed until December 13, 2006): Country Crest Addition (Subdivide 3 Parcels into 6 Lots) - Grassland Drive & Peregrine Loop

Chairman Carey: The hearing on the Country Crest Addition, subdivision of three parcels into six lots has been postponed until December 13.

Hearing (Continued from November 15, 2006): Trout Meadows Ranch Rezoning

Chairman Carey opened the continued hearing.

This is a continuation of a hearing we began on November 15. What we'll do is ask opponents of the proposed rezoning who did not have a chance to speak on the 15th to come on up and speak to the matter. If anybody did speak on the 15th and wishes to say something again, that's fine, we just urge you to know that we did listen intently the first time around. Everyone, of course, is welcome to speak their mind on it. After that, the proponents of the proposed rezoning will have a chance to speak as well.

Keep in mind folks this isn't a court of law, we don't make decisions on legal issues and so on. We're here to consider a rezoning on its merits. So, anybody wish to speak that didn't--Mike?

Mike Sehestedt: You know we have some new information a little bit related to floodplains and I'd ask if the Chair would be so inclined if we let Scott--Todd, I'm sorry Todd--our Floodplain Coordinator, just give us a brief comment. He's been following this and had been involved early and realized there were some changes from what he had looked at and wanted to be clear on some points.

Chairman Carey: Thank you. Todd, would you identify yourself for the record please.

Todd Klietz: I'm Todd Klietz, Missoula County Floodplain Administrator (and my mother calls me Scott, too.) The initial proposal that I looked at was back several months ago: at that time, we were only looking at gravel mining in the floodway and in the flood fringe. The entire property proposed for this zoning is located within the hundred-year floodplain of the Clark Fork River and any gravel mining that would happen here would be subject to floodplain permitting.

Our Floodplain Regulations do allow for gravel mining in the floodway and they allow for gravel mining in the flood fringe. The primary components or primary regulatory requirements of the Floodplain Regulations regarding mining are that if it occurs in the floodway, that any excavated materials be taken completely out of the floodway: they're not stored there, but completely removed from the floodway; and the other is that a sufficient distance needs to be kept from the river to prevent channel migration into the excavation. From the initial proposal that we had, that pretty much coincided with what we'd look at in our separate floodplain regulatory position in that we would want to see at least 300 feet from the Clark Fork River to prevent any kind of channel migration and we wouldn't want to see any storage of materials in the floodway, from the Regulations. So, from the initial proposal, that essentially looked well and good and something that we could accommodate during our floodplain permitting process.

But recently I was made aware of the potential for some other things that may be occurring - or may be asked to occur - which would be the construction of buildings and the placement of berms in the floodplain to prevent floodwaters from accessing the site. I don't know... I actually haven't received the floodplain permit application to know for certain whether or not that's accurate or not, but I did want the Commission to know that berms in the floodway would not be permitted - dikes cannot be permitted, they're prohibited - as are structures in the floodway. A solid berm around the entire structure to prevent floodwaters from accessing the property would also not be permitted as we do want to ensure that the floodplain can... the Clark Fork River can access its floodplain. We do see berms around gravel sites, but they're open berms that allow for floodwaters to access the site. But if this was proposed to be a solid berm around it to prevent the waters from entering into the site, that would not be something that we could permit under our Floodplain Regulations.

One key component, though, about our Floodplain Regs is that if there are alternative locations outside of the mapped regulatory floodplain for any proposed development, by Regulation, that's where that development must occur; a reasonable location. We would not require... this property is a very large property and there are significant portions of the property that are out of the floodplain... so we would not require that the gravel mining be relocated outside of where it's currently being proposed. So, again, that fits well with the initial proposal that I reviewed several months ago. But the proposal for locating structures would be denied because there are alternative locations on the parent parcel outside the Floodplain. We would deny that floodplain permit request and say "no, those structures could not be built in the floodplain because there's reasonable alternatives outside of the floodplain for any permanent structures or placement of permanent equipment." And the way that this is currently being proposed for

zoning, if the zoning limited the gravel operations strictly to the floodplain, that would be an issue where the Floodplain Regulations and the zoning would be at odds. I wanted to make that clear.

Chairman Carey: Thank you Todd. Any questions for Todd?

Mike Sehestedt: I want to be clear that the whole floodplain permitting process is an additional regulatory layer and it would come into play only if this were an otherwise permitted activity.

Commissioner Curtiss: Mr. Chairman I just wondered if Todd needed to get back to a different job if maybe Mr. Edwards would like to ask him any questions before he leaves.

Robert Philips: Thank you for the opportunity, specifically with regard to the floodplain.

Chairman Carey: You want to identify yourself for the record?

Robert Philips: Oh, I'm sorry, Robert Philips on behalf of Mr. Edwards and Riverside Contracting. The proposal would call for no permanent structures, no buildings in the floodway or the flood fringe. My understanding is it would only be portable equipment that would be there. Likewise, like the other berms that are in the area both on what was the American Asphalt, now the JTL Pit, they would not go around the property. It would only be berms for noise and site obstruction around the north and perhaps a portion of the east sides of the pit. But again as Mr. Sehestedt advised, that's an issue that we expect will be fully explored in the floodplain permitting process. Thanks very much though Todd for your investigation.

Chairman Carey: Thank you. Thank you Todd. Anybody who wishes to speak who did not have that opportunity on the 15th of November? We'll ask those folks to speak first. Yes sir, come to the mic and identify yourself.

Eugene R. Starlin: Eugene R. Starlin. I reside at 14125 Harpers Bridge Road.

Chairman Carey: How to you spell your last name sir?

Eugene R. Starlin: S-T-A-R-L-I-N. I've resided at that address since 1970 and in the mid-80s Johnny Stigler [phonetic] owned the property. He put in a small gravel pit to use to build roads down in that area and at that time, he cut our surface water. I have a little place and I use the water for irrigation rights out of the slew that runs through there. By putting the small gravel pit in, as soon as the water table goes down, June, July, then the water no longer flows because it goes into the gravel pit and goes back into the river. So with a large pond, all the people below this site are not going to have surface water flowing for irrigation and that's my main concern.

My other concern is I was a highway patrolman here for 25 years and the road from Mullan Road out there needs to be rebuilt before you can put heavy trucks and do it safely. That section of road has not been redone since I moved here in 1970. There's deep barrow pits, there's no lanes for people to walk on. Frenchtown gets a bike path all the way to Huson and we don't even have--on that section of road--we don't even have a shoulder. From Marvin Jobs [phonetic], you can not even pull over if you have a flat tire and get off the roadway.

Those are my concerns is I'm going to lose my water. What does come down now, if you allowed big ponds to be all the surface water will stay in those ponds and filter back into the river system. Thank you.

Carol Sheridan: My name is Carol Sheridan, S-H-E-R-I-D-A-N, and I live on Harpers Bridge also. Just to-from the last gentleman that spoke, I used to be a miner. In fact I'm three generations of miners. My grandfather was in Butte mines, underground. He died of silicosis. I was up the Golden Sunlight Mine. I know something about mining; I was a heavy equipment operator. My son works at Colstrip. The one thing that most of us are worried about is our groundwater, what is going to happen to our wells. Not only that, we do live in somewhat of a basin, Missoula it's whole self and what goes up has to come down. It's

just as simple as that. Same way it was in Butte. We have a low fog and it is detrimental to the health of all of us. If this does affect our wells, which as the gentleman before me said it is a fact. If it does affect our wells, then we are going to be without our homes because we're not going to be able to sell them. No one's going to want to buy anything without water and nobody can guarantee that this won't happen. But the fact remains that we've got so much congestion as it is. I'm not against mining. My God, that's how we live--all of us live. But all I'm saying is there has to be a better place, you can't just park this in somebody's front yard and say we have--we just can't live with it. That's about all I have to say, but I thank you for your time and have a nice day.

Grant Luark: My name is Grant Luark, I live at 5400 Primrose, L-U-A-R-K. My property is the only actual property that touches this excavation. The envelopes I've handed you they're pictures that I've taken right off my desk. My property adjoins Mr. Edwards right at the northwest--northeast corner and in picture #1 you'll see a lovely view I have from my dining room table, that's right out my door. It's 370 yards to this tree that I have marked the benchmark tree. According to the original drawings that we were all sent, the benchmark tree will be about 500 feet closer to my property than the actual pit. That puts it at 1600 feet from my deck, that's only three times the following distance from behind a fire truck. That's pretty close. Picture #2 is outside looking from my deck again. You can see the osprey nest in the center on the telephone pole. If you go to picture #3, you'll see the benchmark tree, osprey [inaudible]. The nest will only be 861 feet from the crusher and the plant. That's less than one and three-quarters distances of a fire truck. Picture #4 is a view from my corner. It shows the benchmark tree at 591 feet away, that's less than two football fields. It also shows the current groundwater of four to five feet, not the eight or nine feet that Mr. Edwards said was there. Picture #5 shows the houses on LaVoie Lane that are actually less than a half a mile away. It also shows a water level. Picture #6 shows the water level in the slew/irrigation ditch along with the nesting and food source trees for osprey and woodpeckers. Picture #7 shows more houses on LaVoie Lane. They're also at a half a mile. Picture #8 shows the bench that separates the 500-year floodplain and the 100-year floodplain. It also shows the location of Mr. Edwards's house and other houses on Mallard Way also about a half a mile. Picture #9 shows houses on LaVoie Lane from my deck. Picture #10 goes back to my corner, shows the benchmark tree again, with the area where the Canada geese gather in the spring to mate and feed and the trees in the picture are used by Blue Herons during the summer. Picture #11 shows the same view from my deck, along with a rare Lewis [phonetic] Woodpecker. Last year we had three pairs of these through the winter and into the summer. Picture #12 shows another rare bird, this is the Peliated [phonetic] Woodpecker. We had two of these birds during the winter and through the middle of the summer and is extremely rare to see these birds in the forest let alone here on the flats. I would assume that both species nest in the cottonwoods on Mr. Edwards property because they bring their young to our feeders every year.

I doubt that a million plus gravel pit would be conducive to good habitat. Mr. Edwards is touting about how this will all be so great for the YMCA, but we don't hear how they will like camping next to a crusher for the next 20 years. This is only good for Mr. Edwards. You three were elected to guide our County into the future. In 20 years, excuse me, I'm not much a public speaker, the city or at least this area will be in the city or at least very close. Then what will the new County Commissioners do with another gravel pit in town. Your jobs are to think ahead as well as to do what is right at this time. In closing, I will say that I'm not a man that likes to infer with what other people do on their own property, but this will directly affect me and my neighbors and will definitely lower my property value. I am totally against the rezoning and the future intended use of this property. Thank you very much.

Jim Cusker: My name is Jim Cusker, C-U-S-K-E-R. I live several miles upriver from the property that's being considered here. Very similar habitat down on the river bottom and the question, I think, that needs to be addressed is will the action of the Commissioners in approving the zoning of this particular proposal. Will that be in concert with the desires of the 30,000 people who voted for open space? I considered that question when I was walking with a friend a month ago. We started at the base on Council Hill, just to the east of it, walking up along the river. We did so because my friend has 40 acres up the river from there that he can only get to by foot. I was pleased, as I always say when I walk along a route such as that, at the primitive riparian zone along the river. But I was also reminded that the floodplain that goes to the

north of the riparian zone is highly productive farmland. Very similar to the situation that exists on the property where I live.

As we walked upstream, we came into--the site that came to view were very interesting. Right at the base of Council Bluff there's a small bison farm. Did you know that? Just a little ways further up there's a--this is all in the floodplain--a highly productive Black Angus cattle range, with hayfields and pasture and they're in the floodplain. Then we come to some horse pasture. Next we can to a floodplain area that had been set aside as open space by the gentleman who had developed the bluff next to Mullan Road up above, so that the new residents of that development can get down to the river and enjoy the walk along it as we were doing that day. We walked past the extensive open space that consists of the Skull [phonetic] Ranch, much of which is in the floodplain, and sheep, grain, and hay. And as you probably recall, John Stall [phonetic] recently arranged a conservation easement on part of this property with the City to make sure that a large part of that area can be used in the future by people who enjoy open space.

So as I walked along I realized that what I was observing was river bottom open space at its most scenic and it's most productive. But had I gone a half a mile upriver, I would have seen something very, very different. There is a huge gravel mining and processing plant in operation there on Mullan Road. How did it come to be? Well, I remember that very well, 24, 25 years ago. I was a member of the crowd that packed the gymnasium at Hellgate Elementary School, listening to the proposal and then responding to the proposal. Now zoning was not a question at that time and therefore the hearing was held by the State. Those people were there to determine whether or not to issue the mining permit. The hearing and the testimony went on for hours. It was--and everyone who stood were most heartfelt in their opposition to the project. I must say that the research that has been done by the people who have spoken prior to me was not nearly as good or as intent and I congratulate those of you that have spoken before me in documenting the things that you're going to be impacted with because of that. At the end of the session, the representative from the State stood up and said, "Well it's very obvious where you people stand." And we went out feeling pretty good. A few weeks later, the gravel mining permit was issued. The point here is that if the Commissioners approve the zoning request, it would appear that the gravel mining request is almost automatic.

Now, there is a reason why when people place their property in a conservation easement that there are certain activities that are excluded. When you place your property in conservation easement, you can continue to do anything you want to on it, agricultural-wise, open space-wise. But there are certain activities that are always excluded, gravel mining is one of those. Now, why is that? Well, as we look at the evolution of that gravel mining and processing plant there on Mullan Road, I think we'll see why. Initially, it was operated by some local folks and operated at a rather low scale. That changed over time, in fact very quickly. A family who had a beautiful ranch home, a little bluff overlooking that gravel mining operation and, remember this used to be highly productive hay and grain land. They saw the writing on the wall and it didn't take them very long to sell their property to the folks who were running the operation. It's now being used as offices there and they're two or three acres up on top used as parking space for the immense number of trucks and other heavy equipment that are associated with the project. Now as you drive past that, you see huge mountains of gravel. The ponds are now 90 feet deep and they'll go deeper. The reason for that is that there's gravel down here and its good gravel and they're going to go after it.

We're looking at an operation that occupies approximately 30, 40 acres. It probably will not be restricted to that. Another gravel operation is going to occupy the 40 acres immediately to the west of that one and numerous inquiries have been made of the owner of the ranch immediately to the east for the purchase of their 70 acres for that same purpose. So, when we look at the gravel mining operation, including the processing, realize that there has been the total destruction of the farmland. I know on my property the soil over the gravel is five to six feet deep and in some places deeper, a gravel operation, it's gone forever. Plus the scenic viewscape has been totally destroyed. And to add onto that, the long-term impact on the community due to the noise, the dust, the smoke, I would suggest that such an operation is totally incompatible with the concept of open space that seems to be so important here in Missoula County. I would certainly urge the Commissioners to take that into consideration and to continue to support open space by saying no to this proposal. Thank you.

John Herzer: Howdy, I'm John Herzer, H-E-R-Z-E-R. I live at 4555 Mallard Way, that's right at the end of the cul-de-sac on the same street that Mr. Edwards lives on. This is my first County Commissioner meeting and I must say I'm a little disappointed. It seems like you're in the business of approving things, seems like the discussion was pretty short on a lot of deals and I hope that's not the case. It's my understanding that this is really just about from one to five houses per acres to one to 40. Typically, someone like myself, I'm a fishing outfitter in Missoula. I've been here for 16 years and I actually put boats in right at my house on Mallard Way. Typically, someone environmentally-minded like myself and this seems like a no-brainer, if you're going to change it from one to five to one to 40 houses per acre I'd be all for that, but obviously this isn't about anything subdivision or development. It really is about building an open pit mine in a rural residential area, which that's why my wife and I moved there just a couple years ago with our two kids [tape ended].

I really see this a whole lot different than someone deciding to go up to Highlands Gold Course and changing the zoning up there and digging that up and making a gravel pit next to Commissioner Evans' house.

Unidentified Speaker: She doesn't live there anymore.

John Herzer: Oh, she doesn't. It seems to me that it's--I know it's the nimbi kind of thing, not in my backyard, I don't want it there. I was stunned. When we moved there we expected full well that Mr. Edwards would probably subdivision that property at some point. I just figured that was an obvious end to that large parcel, but in no way ever envisioned that he would open a mine in our backyard. My dad was a miner; he just died actually on the 15th of last month, when you had your first meeting. That's why I wasn't here. He was a miner for 23 years and I know about mining; he died from silicosis. So it's not that I'm against mining or anything, I just don't think that's the place for it and it's [inaudible] gray in color, gravel pit, but it's pretty much a full-scale mine.

Without a doubt, another thing is I--when we bought that property, I mean it was a big stretch for us. Being a fishing guide, I don't make a whole bunch of money. And I would expect that my piece of property that adjoins the river there is--you know that could be my retirement some day and if this open pit mine goes in there, chances are that's going to be really lessened.

I had three other things that I wanted to, just specific issues that I wanted to make. One is that, I read the little sheet that Mr. Edwards wrote and it said that the reclamation of this area will be for everyone to enjoy. I'd like to say that's pretty unlikely because it seems to me I see Mr. Edwards going up and down our street on weekends spending much of his time trying to chase off fisherman and hunters from our backyard. There's a public access right adjacent to my house. I let people--you know, people have a legitimate right to go fishing and hunting back there. I knew that when I bought that, he knew that when he bought his place. That's one of the reasons we live here and I think it's funny that he would say that this would be for the enjoyment of everybody when he doesn't want to even let people go hunting and fishing legally within the high water mark behind his house.

Secondly, if Mr. Edwards really believed in open space, and he talks about those conservation easement things. It's kind of a joke. If he really believed in that and he wanted a conservation easement on there, it would have been on there already. You know after you dig a bunch of pits, it's a little late for a conservation easement.

Lastly, I think it's interesting that we're talking about this with a Bi-Low Foods Mr. Edwards deal when really it seems to me the writings on the wall. If this 40--one to 40 is approved zoning, he's really going to just sell that parcel to Riverside Contracting. We should really be talking to them and not him because it's really not about development or anything, it's about an open pit mine. These people are looking for a way to buy that property. That's my feeling.

I guess that's all I have. I urge you to do the right thing. I hope that this isn't just a [inaudible], check the boxes, yeah, it's good to go because it seems like that's what the last few things that I heard here happened. So, thanks and I appreciate your time.

Chairman Carey: I can assure you this is quite different than those first few things.

John Herzer: Good.

Commissioner Curtiss: And we were actually briefed on those before, so it wasn't like we hadn't seen them.

Chairman Carey: Who else would like to speak to this in opposition?

Duane Sauter: My name's Duane Sauter and I live at 4755 Mallard Way. I oppose the rezoning on several issues and I know there was talk about compromise and I oppose that because of the safety of our trucks that we're going to have and the fact that Gaylyn [phonetic] Woods' family has been there before any of us were there and to make a good, safe access for Mallard Way onto Mullan Road, she's going to lose her property. Well that's going to come down to another suit of [inaudible] suits.

Riverside talks about putting sidewalks in. Who's going to pay for that and put that in and take people's land to get it because we don't have the space for that? So there's more problems with that. We hear the applicant talking about the fact that they're going to drive by his house. Well, from his mailbox to his driveway to the south is 425 feet on approximation. When the Shabergs [phonetic] live across the street and their house is 65 feet from his driveway. Now who's it really going to affect and come down to? Those trucks are coming within--closer to their house than Edwards's house. We're talking of a huge safety aspect. Okay, sidewalks, truck traffic, children, this is not--this is a residential area, this is not a commercial site. We're talking about in the middle of Primrose, LaVoie Lane, Mallard Way, putting a commercial site in next to the river that you're going to see it from the river. It's next to an RNA from the Forest Service, which is one of three study groups in this region. It's next to historical sites being the Council Groves, the Salish-Kootenai Tribe. We've moved out there for understanding that there's going to be growth of houses, but not commercial. I don't care how you cut this, how you roll it, how you fold it, this is a commercial site. They're even said for them to be competitive, we need to have the full-scale operation. That is commercial. This is zoned residential and I believe that Zack said that only 12% of Missoula County is zoned. So go to an unzoned area. This has already been zoned residential, not commercial. I'm opposing it and I'm even opposing--just stop it. I'm opposing everything about it. I also think there should be no middle ground. This just needs to stop and stay residential, not commercial. Thank you.

Bill Jones: My name is Bill Jones. I live at 16520 Wildlife Lane in Huson. You'll have to excuse me; I'm not prepared for this. I just happened to see that it was going on today. I'm not involved in the Mullan Road dispute, the Trout Creek. What I have is a gravel pit next to my home on a private road that has an easement that has really destroyed our lifestyle. The gravel pit is owned by Dennis and Marty Rehbein of the Riverside Rehbeins. For the past year and a half, you've seen all the traffic on the freeway out here, on I-90. Each of those trucks passed in front of my house twice, every minute and a half. This is a private road. We have not been able to utilize our properties for a year and a half because of dust, fumes. It's unbelievably bad environmentally. Safety is of major concern. We could not slow the trucks down. They're racing up and down these hills, which should be a 15 mile an hour speed limit. We managed to get--Dennis Rehbein, he finally posted a speed limit of 25 miles an hour, which is never adhered to and too fast for the road. We have had Riverside Contracting's driver superintendents come down and lambaste my wife and my daughter-in-law for letting us let our grandkids play out in our yard because it's a hazard. Those trucks kick up rocks, they fall off the truck, and they are foolish to let our kids play outside.

I can go on and on about this. I have pictures showing dust plumes coming off this gravel pit from seven miles away. There is no such thing as clean vehicle. You can wash your vehicle, five minutes later, she's covered with dust. The people on this Trout Creek thing have no idea as to what they're going to

encounter. This is pathetic and when confronted--we have managed to curtail some of it because we are private and it's covered in the covenants. We were able to curtail some of this, but at the expense of being told, you interfere, we're going to make your life miserable, which they have done. We now have the County trucks, gravel trucks and plows running up and down the road, disregarding safety or that they're on a private road. Not to take up the whole road and force the residents off.

Where does it stop? We can't go to the police or the sheriff's department and say, hey, can you site these people? You're private property. We attempted with our attorneys, discussing what options do we have, ask can we bring it up with the County Commissioners? We were informed that one of the County Commissioners is supposedly involved in a gravel dispute, gravel pit dispute, so don't bother...

Commissioner Evans: We haven't met him.

Bill Jones: Okay, I don't know what that is. This is what we were just informed. Don't go that way, may not do you any good.

Commissioner Evans: Our door is always open, you can come and...

Bill Jones: I don't know, he did not mention who it was.

Commissioner Evans: Our door is still open. If you've got a problem, come and see us.

Bill Jones: Great.

Commissioner Curtiss: Mr. Jones, could you tell us how big is...

Bill Jones: We've also...pardon?

Commissioner Curtiss: How large is the gravel pit next to you?

Bill Jones: This is just a couple acres, yet these trucks coming by, and I have it on film, dated, timed, minute and a half with the dust plumes coming off the trucks. I have put a \$2,000 electronic air filtration system into my house because my wife has asthma and it got bad. It's not doing it.

Transients, this hasn't been addressed. The gravel pit, where our covenants say no trailer house living, tenting, that type thing. This is an upscale neighborhood. It's a tent city, which we were told that goes hand-in-hand with a gravel pit. These people move from gravel pit to gravel pit. They'll bring in a pit toilet and that's it and they live up there. We were a gated road to keep people out. This is very upscale. Riverside took the grates out or Mr. Rehbein took the gate out. It's his gate, you don't need it there. That way his trucks can get up there easy, which we kept gated during hunting season to keep people from coming up there and trespassing, looking for animals. Gone. We have been told pointblank they are going to do what the hell they want and most of their contracts are State or federal and you can't afford to fight us. We don't have the money to fight them and they're just throwing it in our face.

We tried to work with them. The gravel pit is in our covenants, that a gravel pit for the excavation of sand and gravel can be operated, that was never a problem. For a number of years when people moved up there, it was maybe two, three gravel trucks a week, independents that just work around town. Not a problem. All of a sudden, we've just lost hundreds of thousands of dollars in valuation on our houses. We have no recourse. Right now, it's slowed down; Riverside is not operating out of there now. Come spring, we expect it to start back up, hauling asphalt 50 plus miles each way to a project, doesn't make sense to me. How do they afford this? But it does happen. That came about after we decided you know you got to stop this, this asphalt plant you're operating up here 24 hours a day. It's not supposed to be here. You're not approved for that. Well, they go hand-in-hand with a gravel pit. No, they don't.

As Commissioners you need to look at these people and their future and if you let this gravel pit go in, they don't have one. They will not enjoy their properties; they will not be able to sell their properties. It's time for people to stand up and say I don't care how big your company is, you're going to be held accountable. That's all I've got to say. Thank you.

Debbie Horne: My name is Debbie Horne. I live at--it's H-O-R-N-E--I live at 4805 Mallard Way. I just have a quick email from a friend who's in St. Ignatius, which we talked about last time with the gravel pit up there. I just asked her how it was going because she's approximately a mile away and this is what she wrote, "It's dusty and noisy. They all but ruined our county roads with their loaded trucks running up and down. I don't know if they plan on repairing the roads after the road construction, but both paved roads from our home to town have buckled and broken up. Our quiet little neighborhood has been noisy from first thing in the morning until late at night when you hear the trucks and the loading equipment, beep, beep, beep. You get the picture?" And I guess that's what's going to happen to us if it goes through.

I have a picture that was taken of my home about in the late 90s, a helicopter flew over and they went around and sold pictures. I would just like to pass it to you three Commissioners and I have a request. If you please could come out and see our neighborhood and look where we live and where this is going to go. Thank you.

Angela Zelinski: [Inaudible, spoke from audience.] I was wondering if you'd rather have summations at the end.

Chairman Carey: I think you could summarize your position and then we'll let the proponents summarize theirs.

Angela Zelinski: My name is Angela Zelinski and I'm an attorney for adjacent neighbors to the proposed rezoning area. I don't have a whole lot more to say than the comment that I made last time because not very much has changed. My previous comments still apply. The letter that I wrote to you still applies and it's just reinforced by what you've heard today from the people who have spoken to you and told you about how this will affect them personally and directly.

One of the issues that has come up this week is some talk about creating a special residential zoning district and I'd like to address that. I looked into that a little bit after that came up on Monday and one of the questions that I wanted to answer is whether it's legally permitted to create such a special residential zoning district. I looked in the Zoning Regulations for the County and I didn't find anything that addressed that directly. I found Section 5 of the Zoning Regulations, which addressed special zoning districts, but they were very specific. I think they dealt with PUDs, mobile homes, and shopping centers, if I remember correctly. Then there was nothing in there that addressed setting aside a piece of land that could be residential, but yet have a limited gravel operation on it. So it troubled me a little bit because I couldn't find what authority there was to create such a special residential zoning district. From what I understand, it's the County's position that when you place conditions on a zoning designation, such as C-A3 or C-A1, then it becomes a special zoning district. And that may be the practice, but I don't know that there's authority for that in the Missoula Zoning Regulations. That is a bit of a concern.

Permitting any type of a gravel operation whether it's limited to extraction or whether it's a full-blown gravel operation is problematic. The reason for that is pursuant to 76-22-09, a county regulation can reasonable condition, but not prohibit the complete use, development, or recovery of a mineral by an operation that mines sand and gravel and make condition an operation that mixes concrete or batches asphalt in all zones other than residential. So what does that mean? We have two roads we can go down. We can rezone to C-A1 or we can leave it C-A3. If we rezone to C-A1, this is a non-residential designation, and then the Board of County Commissioners, if it's a special district or the Board of Adjustment if it's just a straight rezone to C-A1, can't prevent the processing activities or it would be difficult to prevent processing activities under Montana law. It would conflict with 76-11-09 in my understanding of the case of American Asphalt. If it's a non-residential area, you can't prevent anything. And so if a special district is created, with it in mind that, well, we'll call it a special district and then we'll be able to limit it just to extraction. If

you do that in a non-residential area, you could be in violation of 76-22-09 by my reading of the statutes. I'm sure that you would never intentionally want to try and violate the statute, but I think effectively if you have a special district that is involved with a C-A1 designation and you try to limit it to just extraction, you could run afoul of that statute.

So the other option you have is to instead keep the C-A3 residential designation or on the other hand, create a special residential zoning district and if you have this residential zoning district, whether it's special or C-A3, that's problematic in my opinion because in May of 2005, the County passed a resolution that prohibits any gravel mining operations in residential areas. So, if you keep the C-A3 and then create a special residential zoning district, which allows some gravel mining, to my mind that is a direct violation of the County Resolutions that are currently in place, which the spirit of those was to prevent gravel mining in residential areas. This would be directly in conflict with that.

The other thing I'd like to say about a special residential zoning district is that it wasn't applied for and so what we've done is we've had public comment and input based on a C-A3 to a C-A1 zoning change, that's what's been recommended. Now, when we're talking about a special zoning district, that wasn't applied for and so the public process that we've had hasn't addressed that. So it leaves a lot of questions, which are really important such as what conditions will be imposed in a special district? Who will impose the conditions? When will the public hear about the conditions? What kind of input can the public have on these conditions? That's a concern because as you can see there are very many people who are very concerned about this operation being in this particular area. If you create a special district and then impose conditions afterwards, public input is very limited. I don't think that's right given the concerns that we have in the community on this issue.

And so it would be my conclusion in looking at the zoning issue that zoning amendment, whether by creation of a special district or a straight rezone to C-A1 will not adequately address the critical concerns about wildlife in the sensitive riparian area. You can't prevent a full-blown gravel operation if you rezone to a non-residential designation, that's statutory. So each and every one of the concerns discussed at the last meeting, by the public, by experts at agencies and discussed by me apply to any zoning designation that would permit a full-blown gravel operation. On the other hand, even if only extraction is allowed, which, you know, I don't think is consistent with Missoula's current zoning resolutions, but even if there's some way just to say okay, you're just limited to extraction, each and every one of the concerns expressed by the public, by the agencies, and by me remain exactly the same because you need to keep in mind, the public and these agencies and myself weren't apprised of the extent of this gravel operation until pretty much the day of the last hearing. And so when people were preparing their comments, including the Clark Fork Coalition, the Audubon Society, Fish, Wildlife, and Parks, there's a whole list of them, when they were preparing their comments for the last meeting, it was based on a very limited operation. I think it was 200,000 cubic yards of material and they still said no, this won't work and these are the reasons why. I don't need to be repetitive, you have those before you. But if you're just talking about let's limit it to extraction, these remain in full force, these concerns that people have remain in full force. This is telling because even if the operation is limited in some way, all of the important threats to wildlife in this riparian area still exist. There's no evidence that has been brought forth that these threats will disappear even if the operation is somehow limited. And if it's a full-blown gravel operation, it's just a foregone conclusion that these concerns will be realized.

We've received additional information today again. I don't want to be repetitive, I just want to say that this further reinforces that even a limited gravel operation will have exceedingly detrimental affects on the area. Just to recap a little bit, the Clark Fork Coalition has stated that ponds will threaten fish habitat and artificial ponds are inappropriate adjacent to a wild native fishery. DEQ reclamation measures, such as [inaudible] may threaten the health of the river. Nothing in the PBS&J report adequately addresses flooding issues. The Fish, Wildlife, and Parks letter that we received last time discourages creation of fish ponds in close proximity to the Clark Fork River or its floodplain. You received information from Vickie Watson, who said that ponds in the area have a real potential of increasing flooding for adjacent landowners and she urges the Board of County Commissioners to avoid an incremental approach when considering the flooding that may occur. Todd Klietz talked about his issues with building in the floodplain

and something else that is very important to consider is that there is a right of first refusal and so, as I stated last time, it's a very real threat that the property could be sold and turned into a full-scale mining operation. It's a very real threat. And if this is the case, then any idea that somehow this is going to be reclaimed and turned into a wonderful place for everybody adjacent to the property and Missoula citizens in general, I think that that is not going to happen. There's a very real possibility that that won't happen precisely because of the right of first refusal that's in place.

I have some information from Sandra Brown, a real estate agent, because we've heard several property owners say that they're concerned about the financial degradation that will occur, the financial decrease in their property values and they have contacted a real estate agent, who I would like to give you a copy of her letter. She basically says that it's her opinion that neighboring residential properties market value will be greatly affected by olfactory dust and sand omitted from the operation. And she says the increased traffic of large volume trucks would also pose a hazard on a now-residential secondary road. And so I'll just give you copies of this.

The concerns discussed today and at the last meeting by the public and those interested agencies, in particular safety, health concerns, noise pollution, traffic, wildlife, and economic repercussions, and riparian degradation, these exist whether it's a full-blown gravel operation or whether it's limited only to extraction. For all of these reasons, creation of a special district or rezoning to C-A1 will not bring this project in compliance with the Growth Policy or 76-22-03. Based upon the testimony and information we received on this issue from the public and experts alike, this project doesn't come close to meeting the goals of the Growth Policy. Therefore, this adds up to illegal spot zoning and, as I discussed last time, there are three factors. All three of these factors are still met. The gravel extraction is significantly different from the surrounding residential use. The gravel extraction benefits only one developer and the rezoning to permit the gravel operation is special legislation, which does not comply with the Growth Policy. My comment on the idea of a special zoning district just to allow gravel mining in this particular residential district, it makes it to me appear even more obvious that it's spot zoning. Not only are we putting a gravel mine in the middle of a residential area, we're bypassing 76-22-09 and we're bypassing Missoula County's current resolutions prohibiting gravel mines in residential areas just to create a special district for which this activity can take place. And I don't--words aren't everything, but a special district is going to equate to special legislation. There's just no other way to look at it in my mind.

I've been thinking about this a lot and, you know, in the practice of law, sometimes things are easy, sometimes things are hard. And what it appears to me is that if you're talking about putting together a special zoning district, you're working hard to make something fit into a spot that it--where it doesn't belong. If this was a different type of area, if this wasn't a residential area, then perhaps it would be easier to make this gravel operation fit in this spot, but it just doesn't because it's a rural residential area. And if you have to sort of finagle the current zoning regulations in Missoula and [inaudible] zoning resolutions in order to find a way to make this operation comply with the growth policy, then it doesn't comply. You shouldn't have to work that hard to get this to comply with current Montana law.

In conclusion, you know we all live in Montana for different reasons, but I think there's a common thread, especially of those--for those of us who live in Western Montana. We want to live in a rural setting in which we can peacefully raise our families and enjoy all of the environmental beauty that surrounds us, which is basically in our backyards. This is definitely the case for my clients. They moved to their property just for this reason and it's no surprise that the County zone this area residential. It would be devastating for this environmentally-sensitive, rural, residential area to lose the very qualities that my clients and all Missoula citizens have protected and enjoyed for so many years. A quiet residential area, which is home to countless wildlife on the banks of the Clark Fork River is simply not the right place for a gravel mining operation. This rezoning will violate the Growth Policy, 76-22-03, and the County's own resolutions and it will result in illegal spot zoning.

I don't envy your position here and I respect the work that you do and I respect the fact that this is a very difficult decision. And I can't imagine how hard it must be to have to weigh the--just weigh between residential growth and development. I think that would be a very difficult spot to be in, especially in this

particular case. What I urge you to think about is take a look at all the people in this room and think about--seriously think about the concerns that they have and whether they should be subjected to a gravel mining operation in their backyard. We respectfully request that the Board deny the developer's request to rezone the 160- acres of Trout Meadows Ranch to the C-A1 designation. Thank you.

Chairman Carey: Thank you, now we'll hear from proponents of the...

Jim Brown: One more?

Chairman Carey: One more.

Jim Brown: I'm Jim Brown, President of Five Valley Audubon Society. I'd just like to make two points that I didn't make in my earlier testimony. The important bird area, which this gravel pit lies in are designated at tree levels. This one was approved at the State level. There's also a Continental and an International level. The data we have on the Lewis's Woodpecker exceeds the threshold for the Continental level. So when National Audubon evaluates the data the end of January, early February, it will be called a Continental IBA and that really means the North American Continent, that this area and population of Lewis's Woodpeckers has importance within the North American Continent. It's interesting that birders come from all around the country to Missoula and one of the keys birds they're looking for is the Lewis's Woodpecker because this is a fairly rare bird elsewhere and hard to find.

The other point I'd like to make is that we mentioned that if these wetlands or gravel pits could be restored as wetlands, then they would be acceptable within the concerns of the important bird area, but there's absolutely no indication that the developer, the gravel pit, wants to make shallow wetlands. In fact, it's pretty clear they would like to maximize gravel production, so the plan that they have is definitely incompatible with an important bird area and we recommend that the zoning not be allowed.

I think I mentioned earlier that the asphalt plant, the crusher, the concrete plant should not be allowed either because of tremendous offsite impacts, not just on the area where they occur, but considerable offsite impacts on not only these species of conservation concern, but a lot of other wildlife as well. Thank you.

Chairman Carey: Thank you. Now we'll here from the proponents of the rezoning.

Carey Hegreberg: Members of the Commission, for the record my name is Carey Hegreberg, it's H-E-G-R-E-B-E-R-G. I am here representing the Montana Contractor's Association. I'd like to appear more as an informational witness and make more general comments if that's appropriate. I don't pretend to be an expert in the background on this particular issue but I would like to make some general comments. We represent the companies throughout the State of Montana that extract, process, and build stuff with gravel. We work very hard to maintain a level playing field for our member companies, the political and the environment arena. There's a growing opposition throughout Montana, not just in Missoula, there's a growing opposition throughout the United States on gravel mining and that's largely because there's a huge growing demand for the product and you cannot construct anything without gravel. If you want streets, roads, foundations for buildings, sidewalks, parking lots for new subdivisions, parking lots for new retail development, you've got to have gravel.

There's another fundamental truth, you've got to go mine the gravel where the gravel is. You can't go where there's no gravel and mine gravel. We seem to hear a lot of public outcry anywhere there's a proposed gravel pit and there is any residences anyway near the area that we should mine the gravel somewhere else. And I have not heard at any public hearing anywhere in Montana anybody suggest where the alternative location should be to a proposed gravel mine. I would venture to say if you look at that map on the wall and anybody were to draw those squares anywhere else on the map and propose a gravel mine in that area, that a similar outcry would arise from the neighbors and the surrounding citizens. It's a tough job to try and sort out how to balance all this.

Our association helped write 76-6-209. I was at every hearing, I helped draft the language. It was in the spirit of trying to be good neighbors with the State of Montana and the companies we represent strive to be good corporate citizens and they try to build infrastructure that benefits the State of Montana in a way that's compatible with the neighborhoods that they operate out of and that they travel to as they build highways and infrastructure throughout the State. I will tell you that we are very likely to go back to the legislature in January and ask for an amendment to that piece of legislation because it has already caused tremendous problems as, [inaudible] just pointed out moments ago. One of the suggestions that we are likely to bring to the legislature is that a county could prohibit a gravel mine in an area that is both zoned and taxed as residential.

There's been some interesting comments made here today about rural residential property. Most rural land is zoned Ag, it's not zoned residential. And we have a real dichotomy occurring throughout the State and we're seeing numerous attempts all over Montana as people want to prohibit a gravel mine in their neighborhood to leapfrog over this statute, wave a magic wand and declare it residential for the purposes of prohibiting a gravel mine when it really does not fit the true definition of residential property.

We are urging local leaders throughout the State of Montana to not foreclose future development by allowing building over the top of all of the gravel reserves and it wouldn't take much research to find that an area such as Portland, Oregon, they literally built subdivisions, retail developments right over the top of all of their gravel reserves and now they don't have any. They're trucking it for vast distances and that increases the cost of virtually all construction to virtually all users, including county road departments, including the state highway department, any private developer, and any homebuilder. It's just a truism that gravel is not a very valuable commodity by the ton and the further you have to truck it, the more expensive it's going to be. We are encouraging people to work towards reasonable approaches. And you folks are in a very difficult position because it's all too easy to placate a group of concerned citizens on a case-by-case basis by denying applications for new permits, but if that happens on a recurring and routine basis, pretty soon you'll find yourselves in a situation like other parts of the country where there virtually is no reasonable and affordable source of gravel by which to construct infrastructure.

The one point I would like to make because we work with these folks all the time in Helena. In fact, my office is only three blocks from theirs and that's the Montana Department of Environmental Quality, which is charged with the environmental analysis. There's been a lot of conversation here today about birds and about water and about aquifers and that's DEQs job. They have a whole cadre of experts in Helena and throughout the State that are charged with analyzing and disclosing those impacts to the public. And I would just say that that is not your job. This is an issue of zoning and land use and its DEQs job to analyze the environmental impacts.

You know, gravel is not an evil thing and I realize that people don't necessarily like living next to a gravel pit and we certainly understand that. Our industry is working hard to develop best management practices that our companies will abide by and voluntarily adhere to because we understand that we have to be good neighbors. But gravel is not an evil thing and Riverside Contracting, JTL Group, Jensen Paving, companies that operate right here in Missoula have built a lot of infrastructure in this State. They have built hundreds of miles of roads and streets. They have poured concrete for hundreds of miles of sidewalks and streets that the people of this State enjoy and add to our quality of life. And we need to have that resource and I certainly don't envy your job trying to sort it all out.

One of the things, in conclusion, that we are also going to ask the Montana Legislature to consider is some guidance and parameters for counties that engage in zoning because we think it should be important that if a county is going to engage in zoning that part of that process be to identify where the gravel reserves are and disclose where those reserves are and zone appropriately so that we don't have these kinds of problems to the extent that we're having them in the future. If somebody buys property, they know that there's gravel either on their property or adjacent to it and that it's zoned for potential gravel extraction and processing in the future.

I think it's safe to say that the majority of people, whether you're in Montana or anywhere else, the majority of folks if you were to just hold a popularity contest, would say that they don't want the trees in their viewshed harvested, but they all aspire to own a nice home. The majority of people probably don't favor a coal-fired energy generating facility anywhere in their neighborhood or a coal bed methane mine that's going to be used to generate electricity, but we all want readily available and affordable power. And if you ask the average person, they probably don't want a gravel mine anywhere within their immediate vicinity, but we all want good roads and streets and parking lots and good public infrastructure. So we've got to figure out a way to get there and if I can be of any assistance, please call on us in Helena. Thank you.

Robert Philips: Mr. Carey, members of the Commission, thanks very much for this opportunity. I'd like to start where the last speaker ended up and that is to say that I don't think that the task that the Commission faces is as difficult as everyone as said, if the compartmental view of this decision-making process is adhered to. What I mean by that is that as the Montana Contractor's Association has just said, the issue that you are facing is purely the zoning issue. There are many, many other entities that-- organizations and agencies that are going to be reviewing all of the other aspects of this, including the Montana Department of Environmental Quality, the Air Pollution Control Board, et cetera. The question that you have to answer is really a fairly narrow one and that is the simply change from the one in five single-family residences per acre to the one in twenty.

Now I know that there are other considerations that you have heard about here and, as I said at the beginning, that we were here to listen to all of the concerns of all of the neighbors because only by doing that can we, #1 demonstrate everybody that Riverside is the kind of responsible contractor that we need to develop property like this within all of those ground rules. And that's an important consideration. Number 2, we want to hear all of those things because we know that if we don't address them today, we're going to be addressing them at the next level, which is the Montana Department of Environmental Quality or thereafter. So, in that regard, without giving up the point that these specific issues aren't really ones that are facing you. There are some things that I think that the Board of County Commissioners should hear. First of all with regard to the gentleman from the Audubon Society, the Department of Environmental Quality has the authority to direct that when the ponds are built, that they actually be designed to include wetlands. If topsoil is stripped and stored onsite, as they will probably require, that topsoil can be used to put back into the pits or a portion of them in order to create good wetlands. That's a question for the Montana Department of Environmental Quality. They have regs that allow that kind of requirement to be imposed. And it sounds like for the preservation of important bird habitat that that may be something that they will want to consider. I'm sure that that consideration will hit their desk.

We had some comments from your Floodplain Administrator concerning the existence of a berm. We understand and agree that a berm cannot be built completely surrounding these pits that would be a mistake. It would prevent the river waters or ground waters from intruding into these pits, which is something that needs to happen. The berm will only be--and this is something I'm predicting based upon my prior experience in this with the Department of Environmental Quality will probably only be along the north and the east side, maybe a bit on the west side in order to act as that visual noise barrier.

You have a comment from the Confederated Salish and Kootenai Tribes concerning a desire to have cultural resources or a cultural inventory done of this area. We have no objection to that and believe that it should occur, probably will in the course of the DEQ's analysis of this property. A comment from the Clark Fork Coalition I thought was an important one and [inaudible] point and that was that they ponds next to native fisheries, if stocked with non-native species can be a problem and I think the Department of Environmental Quality will be advised of that so they will tell us that if any stocking is to be done, it has to be with native species of trout, native species of fish.

I'm not going to respond to a lot of other comments, like where will the kiddies play. We hope not in a gravel pit, but there are a lot of slews through this entire area, so there's no way to keep children from playing in water and whether it's a natural or a manmade impoundment. What we can say is during the industrial phase of this operation, that the property will be fenced in whole or in part in order to eliminate or reduce the risk of that.

I talked with the hydrologists that mentioned in their hydrological report that they chance of river capture in this area is not expected in the quote near future and I ask whether that meant five years, ten years, or what it meant and the hydrologists said, and they will say when the Department of Environmental Quality does a greater investigation as is in their purview, that they were talking about in terms of geologic time. In other words, the river is not approaching this land. The river channel will not capture this pit, at least within our timeframes.

Ms. Zelinski mentioned the existence of the right of first refusal that is included within the lease agreement and indeed there is one and it would require that before Mr. Edwards sell this property to anyone else that he sells it--offers it at the same price in terms and conditions to Riverside. There's been a lot made of that, but the point is that wouldn't change anything about the permitting requirement. That that property could be sold now by Mr. Edwards to anyone he wanted, whether it was Riverside Contracting or someone that wanted to put in some other even more industrial kind of application. The point is it wouldn't change a bit the permitting process that Riverside will have to go through before gravel can be extracted there. That is what we call in the law a red herring.

Finally, I want to address the point that Ms. Zelinski made about the spot zoning issue. And I--the case that we've all been talking about is this Greater Yellowstone Coalition versus the Board of County Commissioners of Gallatin County. That's the one where the Montana Supreme Court listed the three considerations from the Little Case from 1981. And I just want to go through those three considerations so that you can see how this property and the rezoning request that's being made by the owner here does not constitute spot zoning. The first consideration is whether the use is significantly different from the prevailing use in the area. You've heard the term many times over that this is rural residential area. A look at the map by the Commissioners indicates that this property is not residential; at least it's not residential like the area that is closer to the other gravel pits along Mullan Road. The closest house, I was listening and trying to figure out where the closest one is and I thought Mr. Luark was the closest landowner that actually resides to this and I wasn't quite sure exactly how far he said he lived away from it. It may have been as far away as 1600 feet. Commissioners, that's a very rural area. I thought it was also important that the Montana Contractor's Association said almost the same thing I was going to say, which is if not here, where? It has to go where the gravel is located and it's difficult to find a place in this County particularly where the haul isn't so far that it cost prohibitive to extract gravel.

I think the first consideration from that Little case and as it was discussed in this Greater Yellowstone Coalition is an important one because the district court looked there in order to determine whether that first element was meant, not at what the developer proposed to do, but what the zoning--the rezoning of that property would allow the owner to do. The owner was, in the Greater Yellowstone Case, was going to put up a golf course in addition to a number of single-family residences and therefore argued that well, that's going to be a lot of open space, which is compatible with the very rural nature of the property that was involved in that case, 323 acres of completely undeveloped property. But the Montana Supreme Court said, well, hold it. You don't look at what the person is planning to do, but what the zoning change alone would allow to be done. Now in that case, it went the other way because looking at what the zoning would have allowed, some 969 single-family residences on that 300 acres, or 615 multi-family residences on that property. It was a PUD that was sought to be established. But the Montana Supreme Court said no, you look at what the zoning law would allow them to do and that's what's incompatible with the surrounding area. If you do that here, you're looking at a change from one in five acres to one in 20 acres.

The second consideration from the Little case is the size and--one in 40, yeah, got by numbers mixed up. The second consideration is the size of the land to be rezoned, if it's small or would benefit only one owner. There are many cases where the Montana Supreme Court has said a single ownership does not necessarily mean that it is spot zoning. The most important consideration here is not the single ownership of the property, but how many people will benefit from the change. That's what brings us to the third consideration. Will this zoning change benefit only one at the expense of the others or the general public? Now the first way to analyze this is look at it from only the zoning point of view and that is, would it benefit us all if the density of dwelling units on that property were reduced by a factor of eight? And I daresay that

you would determine that yes that is for the public benefit to reduce densities in this area. Indeed that's what the staff report said in this case. But if you look further and say, well really we have to consider in spite of what the Supreme Court said, we're going to look at what the developer actually wants to do. Who will benefit from this change if it's actually going to result in said and gravel extraction or development? The gravel has to be removed from an area where the resource is located. Montana has minerals; Montana Mineral Development has been used to benefit the public in this State for 150 years probably. It cannot be said that mineral development in this State benefits only the landowner. That is why the earlier draft of the statute that the American Asphalt Pit was allowed under prohibited zoning restrictions to prevent the complete use development recovery of mining because you've got to do that where the mineral is; timber, you have to do that where the timber grows; and agriculture, you can't zone that out, because those things have been critical for the entire growth of this State. I submit to you that's exactly the kind of public benefit that the third prong of the Little test is talking about.

As the gentleman from the Contractor's Association said, we need mineral development. We particularly need industrial mineral development because we all use it. Now there are very few of us that would benefit directly from a precious metals mine or a gem mine or something like that, but industrial minerals are something that we all use and we all use them everyday. The County uses them. The fact that there may be other gravel pits in the area doesn't change the truth of the statement that industrial minerals needs to be available and the more available they are, the less costly they will be.

In addition, the ponds that are going to be cleaned out, [inaudible] to the public benefit and the persons of the YMCA. Mr. Luark made an important comment, I thought. He said you've got to look to the future. The plan that we have here is to consume about 10 years in extracting the mineral resource from this property. That may sound like a real long time to some of us, but in the real long-term, the future is that this will be a pond, that this will be open space, it will be not developed, it won't have someone's trophy home located upon it.

I urge the Commission to view this question in its most precise form, which is as a rezoning question. If you do broaden your perspective, think about the things that we all do with this industrial mineral and the fact that Riverside Contracting, a local Montana contractor, is the developer that has demonstrated they care about doing this project correctly and will proceed through all the balance of this permitting process. Thanks very much.

Dwayne Rehbein: Hello, my name is Dwayne Rehbein, that's R-E-H-B-E-I-N. I'm the general manager at Riverside Contracting. I wanted to come before you, give you a little insight as to why we selected this site. In the selection process, I never [inaudible] public meetings to this extent and to this much opposition because what I was really looking for is a rural area with low density of housing. In the packet I handed out to you, on one of the back sheets shows a circle superimposed upon that piece of property. That's of a half mile radius and within that half mile radius of the facility site, we count, and I went out there yesterday, eight homes. When we exit this property to get to Mullan Road, I think there was eight to 10 homes which we go by. So in selecting this site, those were very important things to me.

I brought with me a map that I think will cause a couple of people in the audience to cringe, and that is not the intent. It's a map of JTL's pit in Grant Creek. I've got the utmost respect for JTL, let me say that. I think they do an excellent job when it comes to dust mitigation, noise, they follow their hours of operation, they do an excellent job. But when we were looking for a place to build a gravel pit, we were comparing ourselves to what currently was in--

Commissioner Curtiss: You can use those magnets.

Dwayne Rehbein: We looked around Missoula and the first thing I found is that the major gravel pits in Missoula were already placed in residential areas and they had residential zoning and people got special districts, and I don't know the legal aspect of it, but if you take a look in the back of your pamphlet and draw and similar circles around either one of the two asphalt plants in these pits, you have literally hundreds of homes. So in looking for a site, we wanted to be in a less obtrusive area and we thought we

had found that and I think we have. There has been lots of concerns expressed here by lots of citizens. I'd like to say that it is our intent with this project to be good citizens. We intend to do the mitigations required for noise, for dust, and for traffic, and other factors. There's a lot of things that could be done with regard to these. Somebody mentioned smells, sometimes you think it's hard to mitigate smells but the new asphalt plant technology that's been available for five to 10 years now, even has significantly reduced impacts with regard to smells. So there are lots of people with lots of concerns and I would like to say that most of those concerns can be mitigated and it would be our goal and our intent to mitigate those concerns and act as a good neighbor.

There's been some concern here and opposition as to real estate values. That's something that I've read many articles over the years with regard to gravel extractions. Nobody that I--I've never seen a report that really quantified a reduction in real estate values. All's I can say is north of this JTL property is the old LS Jensen Pit. It was operated by Bob and George Jensen, they did an excellent job. Mine home is within a half mile of the LS Jensen Pit, which is no longer in use, but it was in use for over 10 years while I lived there. In the time I have lived there since 1990, my home has gone up two and a half to three times in value. I've spoken to people who live closer, immediately on the boundary of LS Jensen's old pit and their concerns are minimal. A lot of the times that these pits are operational are times when people are normally at work. You know, gravel crushing is an important component to this but the gravel crushing actually takes place in a very narrow window, especially in Missoula County with [inaudible]. The gravel crusher will probably come into this pit once a year, maybe twice for a month to two months at a time, then it will leave. It's a completely portable operation. So again, a lot of the concerns with regard to real estate values haven't been seen or realized in Prospect Subdivision. It's quite the contrary; the homes of those values next to Jensen Pit have done nothing but gone up.

I think we have a lot to bring to the community here. Riverside pays a very livable wage. We anticipate the employees here making between \$18 and \$22 per hour, the experienced operators and truck drivers. We provide a family health plan that covers all people in the family at no expense to the individual, a very good plan. We provide at our expense a pension plan to all of our employees. We have very good benefit plans. These jobs we're creating are \$30,000 and \$40,000 a year jobs. Not too long ago, and I don't know the specifics and who was involved, but members of the governments for the City, the State, and the County courted DirecTV to come to Missoula to provide \$9.50 an hour jobs. I applaud you, it was a good thing to do and all's I want to say is the jobs we're offering are \$18.00 and up and they're very livable wages with great benefit packages.

I really don't think I have time to go through this whole letter and people probably don't want to listen to me. As was pointed out by the previous two people, there is significant and real potential benefits here for reducing infrastructure costs. We intend to come to Missoula, we intend to be very competitive, we are family-owned, our overhead is very low. We are going to be price competitive to take a share of the market, that is our goal. We have similarly done so recently in another Montana city and I could provide examples of where prices in that city have already dropped and I don't know sustainably how long, 25% on some projects, which are very significant when you're talking about buildings and bringing DirecTV to town. When you're talking about affordable housing, when you're talking these things, when you're talking County road maintenance, there are multiple letters--or articles in the Missoulian this summer. So I think there are benefits there.

I think not allowing gravel pits has some very detrimental side effects. They won't be felt tomorrow, they won't be felt five years from now, but probably within 10 years I would say the major suppliers in Missoula will be out of gravel. At that point, the gravel is going to have to come from other communities, some in Missoula County, some in Lake County, some in other counties. If I look at the gravel resources outside of Missoula, the first area I go to is Arlee. Arlee has a lot of gravel. Then I can go out to Clinton, in Rock Creek, there are some good gravel reserves out there or I can go south to Florence. Anyone of those sources is 20-25 miles away. This product is a relatively inexpensive product. The trucking cost to get those materials to town could easily add 100% to the cost of the production of those materials, so, long-term I think zoning gravel pits out will have a detrimental effect to the community and I really don't want that to happen.

Like I said earlier, when I looked at this site, I saw a lot of beneficial reasons to go with this site. The biggest was the density as demonstrated by this photo, is that it is a low-density area; we're impacting very few people. The site itself has very good topsoil resources out there, good thick topsoil, productive topsoil that leads to good reclamation. I don't have the numbers before me, but I would venture to say Riverside Contracting has in the last 15 years has permitted more pits in the State of Montana than any other contractor. The difference being is up to this point we have been a highway contractor where we move into one site and do a site-specific job and then move on. This is different, this is a site, we intend to stay here for 10 years and we intend to be good neighbors.

I really think Jim Edwards heart is in the right place. The day I met him, he talked about the YMCA camp down by the river. He talked about wanting to build ponds for the YMCA kids. People have criticized him for getting money from this, you know, one million dollars plus. I've never heard that in Jim in--expressed in a derogatory way. He wants to help those YMCA kids and I think ultimately this project will benefit those kids. So I don't know if you have any questions for me specifically. I just want to come before the Board, introduce myself, and tell you that I think this is a good project for Missoula and I think this is a good location. Thank you.

John Richards: I'm John Richards. I also own a gravel pit. I've known the Rehbein family for 20 plus years. I've done work for them as subcontractors; they've done work for me as subcontractors. They're reputable people and they will do what they say they will do. Thank you.

Chairman Carey: Thank you, Mr. Richards. Any other proponents? Seeing none, are there any questions or comments from the Commissioners at this point?

Chairman Carey closed the hearing.

Commissioner Evans: I'm going to apologize in advance because this is not going to be a short comment, okay? There are many things that weigh heavily on my mind on this issue. I have long been a personal property rights advocate and I think anybody in Missoula County will say that. So there are some things that bother me a little bit about this and I'm going to lift the petition that was given to us and I'm going to show it to you. There's two or three thousand signatures in here. Now you can't convince me that these two or three thousand people live around the area because I don't believe they do. There's one page in here that is almost entirely folks from Spokane. Well I don't believe that all the folks in Spokane, or Texas, or Pennsylvania or wherever they came from that signed this have a personal stake in this issue. I personally would have preferred a petition with 50 signatures of the people who lived around than two or three thousand people who don't.

It also concerns me that the desire of the area residents who want to prevent the proposed use do that without any intention or hope to compensate Mr. Edwards or his family for whatever economic loss they have for this.

[Audience noise.]

Commissioner Evans: Hey, how about you be polite and listen to what I have to say. There were numerous comments by folks saying they would prefer housing and I think that's good. I have no desire to hurt Mr. Edwards or his family and his community involvement has been notable.

Commissioner Evans made a motion that the Board of County Commissioners deny the rezoning request from C-A3 (Residential) to C-A1 (Open and Resource) for property legally described as the northwest ¼ of Section 6, Township 13 North, Range 20 West.

I [moved] to deny the zoning request for the following reasons. And those reasons are: currently it is a residential zone, not commercial and I believe that the gravel operation would be commercial. The Growth Policy comments enter into my thinking and this is where I apologize, it's going to take a little while

to read these to you, but I think it's important that you know what I am going to say. The 2002 Missoula Growth Policy lists the following guiding principles, goals, and objectives relative to this rezoning request.

"Tools used by the City, County, and other governing bodies should reflect the values of the citizens they serve and effectively accomplish the goal to a) protect critical lands and natural resources, and b) enhance human resources and the valued characteristics of our communities. The right to a clean and healthy environment is fundamentally important. Economic and social well-being is tied to the quality of the natural environment. Long term economic stability and a high quality living environment should not be sacrificed for short-term economic gain. ...Manage growth in a proactive rather than reactive way. Create a truly healthy community by: 1) protecting critical lands and natural resources, such as wildlife habitat; riparian resources; hillsides; air and water quality; and open spaces; and 2) enhancing human resources, such as health and safety; social, educational, recreational, and cultural services; employment; and housing and the valued characteristics of communities. Create sustainable relationships between human activities and natural systems. Protect the natural environment and improve it where degradation has occurred. Integrate development patterns with preservation or enhancement of the environment. ...Minimize the impact of land development on surface and subsurface water. Protect areas critical for wildlife survival and minimize impacts on less critical wildlife habitat. Preserve critical plant communities such as species of limited distribution and riparian vegetation. ...Minimize the spread of noxious weeds. Preserve areas with scenic open space value (river corridors, vistas). Increase opportunities for preservation of and appropriate use of natural areas and green spaces within and around Missoula."

I do believe that the road conditions, although the Public Works Director has not stated any complaints about this, I don't believe that the road conditions are satisfactory for this use, and it came to our attention this morning that the Montana Department of Transportation either didn't get asked about their feelings on this matter or they may have gotten lost somewhere in the morass of government, but they didn't know about them. We have received a request from them today, asking us to postpone action on this matter until their process is looked at. Well if we don't allow the zoning change, that's probably not going to be necessary. However, I do have concerns about the roads. And I have a serious concern about Reserve and Mullan, that road is already way over-packed and more heavy trucks in and out of that intersection will not help what is already a failed intersection.

The wildlife impacts are considerable. We have letters from FHWA; we have US Fish and Wildlife--pardon me, not FHWA, Fish, Wildlife, and Parks. Subdivisions are currently allowed in this zoning district and I would suggest to the proposer that you submit a use that is currently approved within the zoning district and that it would very likely meet the concerns of the public who have stated they would prefer housing and would very likely be found to be far more in concert with the values of the folks around you and with the values of this community.

So that is my motion and I'm sorry it was so long.

Chairman Carey: Thank you Commissioner Evans. Commissioner Curtiss?

Commissioner Curtiss seconded the motion.

I agree that the rezoning here does not fit the intent of the goal of the Comprehensive Plan, even though it says open end resource, the goals were not for gravel extraction. We've learned I think, I don't think the Planning Board was aware that the State Law, as was reiterated several times today, says that if there is a gravel operation, they are allowed complete recovery. That's means concrete plant and asphalt plant and all the other things that they've asked for in their permit. And I think the reason that the State Law addressed this in residential zones is just exactly for the reason that all the folks here have talked about.

Mr. Philips told us to look at what the zone change would allow and while the zone change looks like it's a reduction in the number of houses allowed, what it really means is that it has a special exception for gravel extraction. I don't think that it passes the 12-point test that we're supposed to look at in regards to zoning. In regard to public, health, and safety, I happen to represent the Commission on the Health Board and

Missoula now has to start looking at PM 2.5, not just PM 10. That's the tinier particles and those are the ones that really cause health problems and we, at the last hearing, we heard several people talk about family members who were impacted by poor air.

I agree with Commissioner Evans that the road is not a good place to add this many trucks. This would result in a heavy industrial use in a residential neighborhood. If there wasn't gravel extraction, things like concrete plants and asphalt plants have to be in an area that's zoned for heavy industrial use. But because they would be tied to a gravel pit, they would be permitted if we changed the zoning.

I am concerned about the wildlife, the birds, that fact that it's basically a rookery for blue herons and I agree that it--it's funny how you can read the same thing and come up to different ideas, but I agree that it looks a lot like spot zoning. So I would agree with Commissioner Evans.

Chairman Carey: I agree with both Commissioners.

The motion carried on a vote of 3-0.

Commissioner Evans: I would like to say to the public that we've had some staff illnesses that have lengthened the time it takes to get minutes. If you want minutes of this meeting, it will be several weeks before they're ready, but minutes of our meetings are always typed, which is why Cathie has to stop you when you're talking in order to change a tape. I also think that MCAT is recording this and I would expect that you could get copies from them if you're interested. I thank you all for your attendance and to the young man who has never been to one of our meetings, I hope he had a great time.

Other Business

None.

There being no further business to come before the Board, the Commissioners were in recess at 3:53 p.m.