

## **PUBLIC MEETING – MAY 16, 2007**

The Public Meeting was called to order at 1:30 p.m. by Chairman Barbara Evans. Also present were Commissioner Bill Carey, Commissioner Jean Curtiss, and Chief Civil Deputy County Attorney Mike Sehestedt.

### **Pledge of Allegiance**

### **Public Comment**

### **Routine Administrative Actions**

Commissioner Curtiss moved that the Board of County Commissioners approve the weekly claims list in the amount of \$609,960.77. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

### **Hearing (Certificates of Survey): Klepper Request to Remove Agricultural Covenant**

Chairman Evans opened the hearing.

Mike Sehestedt presented the staff report.

One correction, on your printed agenda, it indicates family transfer. This is not a family transfer; it's a request to remove an agricultural covenant. The request is to remove an agricultural covenant from that parcel described as Tract 1 and Tract 2, Certificate of Survey [COS] #5169, Section 26, Township 15 North Range 20 West. By way of background, Donald K. Klepper has submitted a request to remove an agricultural covenant from the property described on Certificate of Survey 5169. The additional owner, Karen H. Hagglund, and Donald Klepper would like to return the property to a single tract and eliminate the agricultural covenant.

The history of the parcel is as follows: Donald F. Klepper and Vivian L. Klepper purchased this property in 1946. COS 4426 was filed in December 1994 for the purpose of a single gift or sale. A Warranty Deed was filed in 1994 deeding Tract 1 to Donald K. Klepper. COS #5169 was filed in 2001 for the purpose of an agreement to buy and sell in which the parties to the transaction enter into a covenant running with the land and revocable only with the mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. According to the records kept by the Missoula County Surveyor, the applicant has previously used exemptions to the Subdivision and Platting Act except solely for the creation of:

COS #5169 06/26/2001 AG REM NE NW 26 16 20

My recommendation is that you consider a request to remove the agricultural covenant from the parcel described as Tract 1 and Tract 2, Certificate of Survey 5169, Section 26, Township 15 North, Range 20 West. That concludes my report.

Chairman Evans: Thank you, Michael. Is there anyone here representing Mr. Klepper?

Ken Jenkins: Good afternoon, for the record, I'm Ken Jenkins with Montana Northwest Company. A little bit of additional background on top of what Mike provided, the certificate of survey and division that created the two tracts and imposed an agricultural covenant, it's kind of a long story, but that was necessitated by a sale that was necessary to cover medical expenses and that sort of thing. I think there was a legitimate misunderstanding as to what an Ag covenant really is and what it means to the property. The two applicants in this case are the people that have owned the property since that action took place that created the agricultural covenants. It is their desire to essentially undo that. This isn't an attempt to develop the property or divide the property without subdivision review. Essentially, what we're asking to do is to put the property back into one tract of land by virtue of a boundary adjustment, eliminating the division line and at the same time, removing the agricultural covenant. What this would do is put the property back into the status that it was prior to the Ag covenant being put on the property. I would be available to answer any questions and the applicant's attorney, Zane Sullivan, is also here if you have any questions regarding the Ag covenant.

Mike Sehestedt: From what I've heard you say, should the Commission choose to revoke the agricultural covenant, would it be acceptable to you if they conditioned that revocation on filing of a boundary relocation survey that took us back to the original Tract 1 or whatever, COS 4426.

Ken Jenkins: Yes, that is correct and maybe our application wasn't as clear as it should have been in that regard. We are actually asking for the use of a boundary adjustment exemption together with the revocation of the Ag covenant. That's an accurate statement.

Chairman Evans: Would you explain to me the benefits to a person for doing an agricultural covenant?

Mike Sehestedt: Well, Barbara, if you want to divide property and the proposed use for the new parcel to be created doesn't require the erection of a structure requiring water and sewer, then use of the Ag covenant is a way to divide the property without going through subdivision review. However if property is restricted with an Ag covenant, you're obviously very limited on what you can do. The classic case would be a piece of ground in the floodplain; it's useful for only pasture. The owner of the part of the tract that's out of the floodplain with a house has decided he or she is extremely tired of horses and/or cows and they have someone who would like to purchase some pasture. You can use the Ag covenant to create and convey that pasture without going through subdivision review. On the other hand, if the river dries up and the property goes out of the floodplain, you're still stuck with the limitation on what you can do with the property.

Chairman Evans: Is there a tax benefit to having it in an agricultural covenants?

Mike Sehestedt: No, the taxation or tax benefit is based on actual use of the property and either use and acreage or generating a certain dollar amount in Ag product. It gives you a very strong argument to the assessor that they shouldn't be assessing it as a home site, but the technical criteria for taxation as ag land is either some use limitations combined with acreage or some production [inaudible]. I think if property produces a gross value of \$1500 a year in Ag product, be it hay or strawberries, you can exempt it if it's ten acres or even one acre. Or, not exempt by get it taxed as Ag property. Assuming that a piece of ground subject to an ag covenant does not otherwise qualify for taxation under the agricultural classification of the tax laws, you then have the argument to the assessor in terms of market value that's it's substantially less than market value because you can't use it as a home site. It becomes valued as additional acreage, I think.

Chairman Evans: So are there any legal impediments to the Commissioners doing this?

Mike Sehestedt: There's certainly no legal impediment. I wouldn't have brought it before you if you couldn't act.

Chairman Evans: Well, okay.

Mike Sehestedt: Well, actually I might have and let you take the heat rather than me, but....

Chairman Evans: Mr. Sullivan, did you wish to address the issue?

Zane Sullivan: Commissioners and staff, Zane Sullivan, Sullivan, Tabaracci & Rhoades, appearing on behalf of the applicants to this matter. Really, I could add a great deal of detail to what has already been said, but I'm not sure that it would fulfill any purpose. I think there was a significant mistake as to what the parcel was going to be after the division and the parties now realize that, recognize that, and wish to return this property to its original state. This is exactly the opposite of what you folks typically see. We're trying to back up and amalgamate, we not trying to subdivide and go forward. Unless you have specific questions, I think I will stop at that point.

Commissioner Curtiss: I do have one question. So this property has not changed hands since we did the--put the Ag exemption on it in 2001?

Zane Sullivan: Actually it did. Mr. Klepper did sell off a portion of the property that had the Ag exemption on it to Karen Hagglund and that now she and Mr. Klepper that this is not where this property was intended to go and that's not where they want to go. They want to return it to a single ownership and, therefore, the request to use the boundary relocation to go back to the original position of the property.

Mike Sehestedt: I think this is really an anomaly. Usually when you have someone wanting to lift the Ag exemption, they want another building site. This is a request to lift the ag exemption and you can condition the lifting on a condition that they relocate the boundary and return this to a single tract originally described as COS 4426. They'll be happy. We're simply returning to the status quo after a brief detour.

Chairman Evans: Thank you, other questions? Bill? This is a hearing; does anyone wish to speak to the issue? Anyone wish to speak either for or against this request? There being none, we'll close the public hearing, and I would accept questions, discussion, or motions.

Commissioner Curtiss: So we'll need to amend the proposed motion a little bit. Should we also correct the agenda to refer--you already said it was to remove an Ag covenant, but should we also add--I guess the condition would be the boundary relocation.

Mike Sehestedt: Ordinarily, a simple boundary relocation, particularly of this nature to aggregate lots would be approved administratively by our office, but because this also requires lifting of an ag covenant, which only the governing body can do, it is before you.

Commissioner Curtiss made a motion that the Board of County Commissioners conditionally approve the request by Donald K. Klepper to remove the agricultural covenant on the parcel described as Tract 1 and Tract 2, Certificate of Survey #5169, Section 26, Township 15 North, Range 20 West conditional upon the return of the two properties to a single tract to match the property previously described as Certificate of Survey 4426. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

### **Hearing (Certificates of Survey): Hoenke Family Transfer**

Chairman Evans opened the hearing.

Mike Sehestedt presented the staff report.

This is consideration of a request to create a family transfer parcel for that parcel described as Tract D-2 of Certificate of Survey 3191 located in the Northwest half of Section 28, Township 15 North, Range 21 West. Cecile Hoenke 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 seven plus acres in size located near Frenchtown. Cecile proposes to create one approximately three-acre parcel for transfer to her daughter, Karen Jacobs, for residential purposes and to keep the remaining approximately four plus (4.36) acre parcel for residential purposes as well.

The history of the parcel is as follows: Certificate of Survey #65 was filed in August 1973 creating four parcels. A Quitclaim Deed was filed in August 1997, deeding the property to Cecile Hoenke. Certificate of Survey 3491 was filed in May 1985 creating Tract D-1 for an occasional sale and Tract D-2 as the remainder. According to records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except for the use of the Occasional Sale, Certificate of Survey 3191 in May of 1985.

The action is to consider a request to create a family transfer parcel by dividing the parcel described as Tract D-2, Certificate of Survey 3191 located in the Northwest half of Section 28, Township 15 North, Range 21 West.

Chairman Evans: Thank you, Michael. Okay, Ms. Hoenke, would you care to come up and...

Mike Sehestedt: We'll start out by correcting the pronunciation of your last name.

Cecile Hoenke: It's Hoenke. I just wanted to transfer that piece that's--three-acre piece over to my daughter is all.

Chairman Evans: Michael will ask you some questions on our behalf and I'll explain to you the law requires us, and this isn't the fun part of our job, to determine whether or not you're attempting to evade the subdivision act. That's why he will ask you the questions.

Cecile Hoenke: I understand.

Mike Sehestedt: How long have you owned the property?

Cecile Hoenke: Since--I'd say about 46, 47 years.

Mike Sehestedt: Obviously, if you bought with the intent of dividing, you've been fairly patient.

Cecile Hoenke: A long time.

Mike Sehestedt: The last division occurred in 1985. Is your daughter an adult?

Cecile Hoenke: Yes.

Mike Sehestedt: Does she have plans to develop the property, put a house on it, or...?

Cecile Hoenke: Probably, I have no idea. She just hasn't said what she plans.

Mike Sehestedt: Well as her mother, you should insist she tell you.

Cecile Hoenke: Well, I should insist.

Mike Sehestedt: I'm teasing, I'm teasing. Do you reside on the property?

Cecile Hoenke: Yes, I do.

Mike Sehestedt: Do you intend to continue to reside there.

Cecile Hoenke: [Nodded her head.]

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

Cecile Hoenke: No, I haven't.

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

Cecile Hoenke: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Cecile Hoenke: No.

Mike Sehestedt: Do you understand that if the Commissioners approve the use of this exemption, that the request isn't being reviewed for access to the track in all weather or emergency service vehicles?

Cecile Hoenke: [Nodded her head.]

Mike Sehestedt: Do you understand that if the Commissioners should choose to approval this use of the exemption that it does not mean that your property is approved for floodplain, septic, they're not saying that it's suitable or approved for any particular use? All they're doing is saying you can divide it without subdivision review.

Cecile Hoenke: [Nodded her head.]

Cathie Cichosz: Oh, oh, I'm sorry. I didn't notice that you're not speaking into the mic.

Cecile Hoenke: Oh, you need that?

Cathie Cichosz: Yeah, thank you.

Mike Sehestedt: All of her answers were entirely appropriate. I have no further questions, Madam Chairman.

Chairman Evans: Do either of you have questions for Ms. Hoenke? Okay, thank you. This is a hearing; would anyone care to speak on this issue at all? There being none, I'll close the hearing and accept motions, discussion, whatever.

Commissioner Carey made a motion that the Board of County Commissioners approve the request by Cecile Hoenke 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.

Chairman Evans: You have been approved and you will get a letter from our secretary giving you that information as soon as she can get to it. Thank you, enjoy your day.

**Consideration: Bechtold's Paradise Subdivision for Lease or Rent (Add second dwelling to 7.96 acre parcel) - north of Thibodeau Lane off Highway 200**

Chairman Evans opened the consideration.

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

Behind you are several maps, the one on the left is the vicinity map showing where this property's located. The line in blue is Highway 200 and the parcel is Tract D of COS 3943 outlined in yellow and is located between the Marshall Grade Road and Bonner on the northside of Highway 200. The owners of the property are Joe and Cherie Bechtold, who currently live on Tract A, which is just south of Tract D. Tract D is a parcel that is 7.95 acres. Currently there is an existing mobile trailer on this parcel in the southeastern portion of the property. The Bechtold's have recently constructed a new home where they intend to move, also located on the southwestern portion of the property. So if you look at the middle map, there on Tract D, the red "X" is the newly constructed home and the blue "X" is the existing mobile home.

Now to explain a brief history of the timeline of events leading up to today, on March 2, 2006, Joseph Bechtold completed a project intake form at OPG to discuss the process for a subdivision for lease or rent. On March 28, of 2006, the Bechtold's contractor, Lane Freisen, met with an OPG Planner, Tim Worley, for a pre-application meeting to discuss the subdivision for lease or rent. Where he explained to him that a subdivision for lease or rent would be required in order to add a second residence to the property and the Bechtold's did not pursue this subdivision at that time. In June 1, of 2006, Lane Friesen applied for a building permit to build a new residence on Tract D of COS 3943. However, the submitted building permit site plan did not show the existing residence and the building permit application did not indicate that there was an existing home. As a result, the permit was approved based on false information. In December of 2006, Ed Zuleger of the Missoula City/County Health Department visited the site in response to neighborhood complaints and found that the site has two residences and therefore, would require a subdivision for lease or rent for approval of a second dwelling unit and informed them that they would need to go through the Department of Environmental Quality review to have approval for a second septic site on this location. In February 8, 2007, Joe Bechtold met with myself for a pre-application meeting to begin again the subdivision for lease or rent process. On March 30, 2007, OPG accepted the application packet for review and today the Bechtold's are requesting of the Commissioners approval of the subdivision for lease or rent.

In addition, for some background information, there's been an ongoing dispute over alleged violations to existing restrictive covenants that pertain to this area. In December of 2006, a court order directed the Bechtold's to bring Parcels A and D of COS 3943 into compliance with those existing restrictive covenants, one of which states that only one single-family residence is permitted on that site. As a result, as you'll see in the staff report, we're recommending Condition of approval #1, which states that the subdivider shall present evidence of judicial approval for a second unit on Tract D of COS 3943 prior to the issuance of a certificate of occupancy permit for the new residence from the Missoula County Building Division. What that means is basically that if the Bechtolds--if this condition were passed, the Bechtolds would not be able to move into the new home until they won their appeal process and present judicial approval of winning that appeal process or they could--there's other options that they could pursue. That's the significance of our recommendation for Condition of approval #1

Now to discuss some background to the subdivision proposal; in 1991, this certificate of survey was created, creating Tracts A-E with a 60-foot private access easement providing access to Tracts A, C, D and E, which on the map in the center, you can see in brown where that private access easement extends off of a public road, which is Thibodeau, which connects to Highway 200. This area is unzoned. The Comprehensive Plan designates a portion of this area as open and resource, one per 40 and the southern half as residential at two per acre. The proposal substantially complies with the Comp Plan's recommended land use density. The property is

mostly forested and the rear portion of the property slopes upward at slopes greater than 25%. That's been shown on the submitted plan as a no-build area. This area is also within the air stagnation zone.

The applicants are requesting four variances from the subdivision standards. The first is a request to vary from the requirement to pave the on-site portion of the private access road. Missoula County Public Works and Missoula Rural Fire District support this variance request and recommend that the road only meet County gravel road standards, however, the Missoula City/County Health Department requires that the road be paved because it is within the air stagnation zone. However, their requirement is slightly different from subdivision requirements and they would require that if you pave from the end of Thibodeau Lane to the point where the road only serves two lots, which is basically the north/south portion there, not the east/west portion. The Office of Planning and Grants is recommending denial of that variance request because it is within the air stagnation zone and our newly approved subdivision regulations require paving of the entire road.

The second variance is a request to vary from the standard prohibiting an easement from dividing a lot. This existing 60-foot private access easement splits Tract D and that is an existing situation and all agencies were in support of this variance and OPG is also in support of the variance. The third variance is a request to vary from surface width requirement for the north/south portion of the private access road to permit a 14-foot surface width rather than the required 18-foot surface width. Public Works is in support of the variance request stating that road only serves three lots and appears to be adequate, however, they defer to the fire department for comment regarding emergency vehicle access and other emergency concerns. Missoula Rural Fire is not in support of the variance request given that for fire protection purposes, an unobstructed horizontal clearance of 20 feet is required having an 18-foot surface width would provide better clearance in this situation. OPG recommends denial of the variance request so that the requirement of the new subdivision regulations are met.

The last variance request is a request to vary from the two-foot shoulder requirement along both sides of the road. Again, Missoula Rural Fire does not support the variance request given that for fire protection purposes, they would like to see 20 feet of unobstructed surface. OPG recommends denial of the variance request. In the staff report, Conditions of approval #2 and #3 pertain to the paving, the surface width, and the shoulder requirements as recommended by staff for this on-site private access road.

In total, there are 17 conditions of approval I've mentioned Conditions of approval 1, 2 and 3. I'll highlight a few others. Condition of approval #4 states that a turnaround for fire apparatus at the end of the private road shall be reviewed and approved by Missoula Rural Fire prior to the issuance of an occupancy permit. You'll find in these conditions that because the new homes already built, they trigger that sees that these conditions are met, usually it's prior to building permit, but in this case we have to do it prior to an occupancy permit. Condition of approval #6 requires the subdivider to file a development agreement for road maintenance of the on-site portion of the private road with an option to alternatively obtain a shared road maintenance agreement with all the property owners using this road. Condition of approval #7 requires a 2,000-gallon storage tank and hydrant be installed for water supply for fire protection purposes prior to the issuance of an occupancy permit. Condition of approval #14 requires the subdivider to receive approval of the proposed private road name prior to final plat approval. It's proposed as Bechtold's Lane. Public Works has recommended that the road be named Thibodeau Lane, which is a continuation of the existing public road located to the south. Condition of approval #16 requires that Fish, Wildlife, and Parks recommended Living with Wildlife language be included in a development agreement with the County. The purpose of the Living with Wildlife standards is to reduce potential attractants to wildlife. To highlight a few of the included standards that Fish, Wildlife, and Parks has recommended, is letter (c) which requires bear resistant containers for garbage and letter (h) prohibits domestic sheep and goats within the subdivision.

In conclusion, staff has received several public comment letters disapproving of the proposed subdivision, all of which are included as attachments to the staff report or of which have been distributed to you today. I'd be happy to discuss other conditions of approval that are needed, but they're standard conditions of all subdivisions. That concludes my report, thank you.

Chairman Evans: Thank you Zack. Do the Bechtold's have a representative here that wishes to speak on this issue?

Commissioner Curtiss: I think maybe they just do their own.

Lane Friesen: My name is Lane Friesen. I represent the builder. Yes, I did sign for that building permit and I did submit those plans to the building department at the County, but in no way was the absence of that trailer an

attempt to mislead the County. Somehow, the sewer got drawn in there, the existing sewer, but not the existing trailer. The wording on the directions for filling out the building permit led me to believe that there would be a site inspection. They asked me to stake the corners of the building and paint them, so that they could be seen, so I assumed somebody was coming out to inspect it. I just want that understood.

Chairman Evans: Thank you, Mr. Friesen. Anyone else who'd care to speak?

Tom Orr: Commissioners, for the record, my name is Tom Oren, attorney for Joe and Cherie Bechtold. You're going to probably hear a lot of--there's going to be a lot of testimony from opponents to this subdivision. I'm not going to make any--I'm not going to respond to what they have to say, other than I ask you to just take a look at the rules and consider this application in light of what your statutory review procedures are. Condition 1 is the only condition that the Bechtolds have a problem with and if you look at Condition 1, Condition 1 does not relate to any of your statutory review criteria. It doesn't have anything to do with the impact on agricultural. It has nothing to do with an agricultural water use facilities, has nothing to do with local services, natural environment, wildlife, wildlife habitat, or public health and safety. None of those--that criteria that's being proposed by the County Attorney has nothing to do with any of the statutory issues upon which you can deny or condition your approval.

I also urge you to be cautious about intervening in a dispute between neighbors in a situation where the County never gets involved in this. This is a hotly disputed issue about whether a deed restriction applies to Tract D. That issue is up in the Montana Supreme Court right now. The opponent--or the plaintiffs, Mr. Thibodeau and Mr. Gilles [phonetic], have not filed their response to the appeal. Indeed, the reason that we're here right now is because back in February when the appeal was filed, included with our appeal was a motion to the judge that issued the ruling declaring that there was a restrictive covenant, asking him to stay enforcement. That's a very standard procedure and, unfortunately, the Thibodeaus and Gilles [phonetic] and their attorney never bothered to respond to the motion for the stay and, as a result, the District Court has not ruled on it either. In the midst of all of that, they Bechtolds are simply trying to complete their house and move into it.

Now what happens if you deny it today? Well, you're getting a lot of what the County wants to see in these kinds of developments. You're going to get a paved road, you're going to get curbs, you're going to get some amenities out there to this development that you won't get if we don't go through subdivision review. What happens if you deny it? Well, you don't get those and the people in the trailer who have some affordable housing at this point in time get kicked out. Is that--I mean I guess I'm going to ask you is that what you want? Do you want to kick out some people from their home so that the Bechtolds can hookup to the subdivision? Do you want to lose all of the amenities that are going to be a result if the subdivision is granted? I suggested that it's probably not appropriate to cut the nose off to spite the face in this situation. The issue of whether they'll be a second residence is going to be decided as a result of what happens in the Montana Supreme Court. When the Montana Supreme Court comes back, if they say that the District Court was correct, then the Bechtolds are obligated at that point to get rid of that trailer so that they can have only one residence on this lot. They'll do that, and in fact, if you need a condition for your approval, that would be the condition that we ask, that a written assurance be provided or recorded that upon the conclusion of the appeal, if the appeal is unsuccessful, that one of those two residences will be disconnected from the sewer. I think that that's the fair way and that also respects the process and respects the Bechtold's constitutional and statutory rights to obtain an appeal from the Montana Supreme Court.

Unfortunately, our courts are simply overwhelmed with a lot of business and they are not--we don't know when the Supreme Court is going to be able to issue that decision. It could be the first--it certainly won't be in the next one month or two months. It will--the earliest is probably be six months, but quite possibly it could be up to a year or two years down the road. These appeals take a long time. Now, should we hold the Bechtolds hostage to that decision or should we make the people in the trailer homeless as a--while we wait? I don't think that that is a good decision for this body to be making. I certainly don't think it's supported by law and I ask you to approve this subdivision based on your statutory and regulatory--the statutes and the regulations that you have, Missoula County Subdivision Regulations, none of which apply to or require a condition such as the one that the County is proposing regarding the judicial approval. Thank you very much and I'm here for questions.

Cathie Cichosz: Excuse me, sir, could you spell your last name?

Tom Orr: O-R-R.

Chairman Evans: Thank you. As I said, this is not a public hearing, but I will open it anyway because we always take comments. So, anyone who'd care to speak on this issue, please come to the podium and if your name is difficult to spell, would you please spell it for Cathie.

Jack Thibodeau: My name is Jack Thibodeau and its spelled T-H-I-B-O-D-E-A-U. I wrote a letter to you folks and I'm assuming that you've read it and I won't elaborate on the material in the letter.

Chairman Evans: I would ask that you put the material that was in the letter on the record, please. Just give us a brief synopsis of what was in the letter.

Jack Thibodeau: Okay, in the letter I ask you to not approve this subdivision and I ask that--and I, in support of that, I gave the following exhibits: a 1991 letter from the Montana State Health Department that conditioned the approval of the COS 3943, that's Exhibit 1. Exhibit 2, we sold the property to Mr. and Mrs. Bechtold and when we did, there was supposed to be deed restrictions on the property. Somehow, through the closing, those deed restrictions did not get recorded properly. We don't know what happened. That's Exhibit 2. Someone at the bank or title company was probably responsible, but again we don't know who. Exhibit #3 is a decision by Judge McLean that says that the deed restrictions should be there.

My item #4, Bechtolds have drilled a well on the property. They drilled the well too close to--let's say reservations for septic systems on adjoining properties on Tract E and also on some property to the south. Now since my letter, they've re-drilled another well. The second well, I still believe is too close to the reserve sewer facilities for Tract E. Incidentally, that tract belongs to my daughter. This kind of stuff kind of reflects Bechtold's attitude with the whole neighborhood.

Tract 5--or I mean item #5, Bechtolds got a building permit all right. They got a building permit by falsifying the site plan. Yes, maybe they have some hardships here. I believe the hardships are brought on by themselves. I believe that they applied for the building permit when they knew that the court decision was coming. I believe that they falsified the site plan and I think that any hardships in this case, they deserve. Thank you.

Chairman Evans: Thank you, Mr. Thibodeau. Is there anyone else who'd care to speak? Yes, would you come to the podium please?

Alice Gillis: My name is Alice Gillis. A few moments ago, Mr. Orr said that they were going to pave and put curbs on. The Bechtolds always say a lot of things and how they're going to do things, but they don't do. We've been on an ongoing lawsuit because of their lies. The things they say they're going to do, they do not do. If they tell the court that they're going to do something, they have no respect for the law. I don't want them to build another house to be another problem in the little community that we have. Thank you

Chairman Evans: Thank you, Mrs. Gillis. Does anyone else care to speak? Yes.

Roger Richardson: My name's Roger Richardson. I'm just a renter on Thibodeau Lane.

Chairman Evans: Is it Richards or Richardson?

Roger Richardson: Richardson. It just shouldn't happen. They tried to sneak this right under the County's nose and I think it's all illegal.

Chairman Evans: Thank you, sir. Anyone else who'd care to speak?

Andrew Paul: Good afternoon, my name's Andrew Paul. I'm here just as a concerned citizen, I live in the vicinity. Basically, I'm here to ask the Commissioners to allow the judicial process to go forward. As it's been noted before, this has been part of an ongoing lawsuit. There is an appeal to the Montana Supreme Court. Judge McLean has ordered that there are restrictions on these parcels. In spite of that order, those violations go on even today. I think it would be getting the cart before the horse for the Commission to allow them to go forward with this subdivision plan.

I think the evidence and the Planning--Zack from Planning has already told you and there have been others that have told you that this building permit was approved on false information. I believe that be the case. I think that it

shows or reflects the general attitude of the Bechtolds towards rules and regulations that the rest of us have to live by. I'd urge you not to approve this here today. Thank you.

Chairman Evans: Thank you, Mr. Paul. Anyone else who'd care to speak? Yes, sir.

John McDonald: My name is John McDonald. I'm a neighbor to the Bechtolds also and I'm not going to get into what everything Jack has said, I'd just be repeating everything. I will say that basically what Andrew just said is--their attitude towards the whole neighborhood is a reflection and probably what they've been trying to do for the whole time is slip this underneath the radar to do this subdivision. I oppose it basically, that's all I'm going to say.

Chairman Evans: Thank you. Anyone else who'd care to speak? Yes, sir.

Cayce Jones: My name is Cayce Jones, C-A-Y-C-E. My wife and I bought the property just adjacent...

Chairman Evans: Would you pull the microphone up just a tad? Thank you.

Cayce Jones: My wife and I bought the property just adjacent to Bechtolds late fall of last year and have since built a new home on it, that corner that's in the map is right where our property is. Half of our property line, which I'm getting ready to build a fence on, is directly adjacent to what I would call the stock barn of Bechtolds, the two pigs that they have in a 8X8 pen and their two Shetland ponies, their five dogs that bark consistently. We, along with other neighbors have filed complaints with the Animal Control. There consideration of a nuisance is a dog that barks for five minutes without stopping for more than a minute before it starts barking again, which to me is basically non-stop. The set of dogs that they currently have, three or four that have run onto my property are the little, what a lot of people call, kick dogs that bark consistently. They have no effort to stop them. I have yelled at the animals from my property line. Their children currently--one of their children is currently yelling at these animals. These animals, I don't think, are the same set of animals that they had before. They've had several complaints about their animals they have and the way they have them running around. One of their goats was in our home as we were building it, had droppings of this animal on there. The attorney came up here and said you don't understand what you're going to get, the improvements you're going to get. I don't think you also understand what the neighbors are going to get. They are building a beautiful home; it's not going to be beautiful very long. If any of you would like to take a drive out to see where their living now and the type of home they live in now, that's what they're going to be...

Cathie Cichosz: Please, hold on a second, please.

Cayce Jones: Sure. This is what's going to end up being, again, people in the trailer, very nice people, they're--as I was laying out my fence line, they're trailer is here to the wall or less, very nice people, don't bother anybody. My concern as a neighboring homeowner is the health issues that are going to come about, the smell from the animals being penned up, not cleaned up in a way that I think is adequate. Like I said, we moved in less than a month and a half ago. I have not had a chance to contact the Health Department about the issues with the way these animals are being taken care of. That doesn't address the fact that we need to contact the Fish and Game because there's a resident herd of mountain goats that wander through everybody's property there.

I think there's a lot more issues with this development than just whether or not the--it's legally right to grant a variance so you can have two pieces of property on there. It's what's going to happen to these properties in addition to the legality. The people came up and spoke about the legality and that's something for you guys to decide but I want to state, as a neighbor, I want to state my concerns about what's going to happen to this property if and should this happen. Thank you.

Chairman Evans: Thank you, Mr. Jones. Anyone else who'd care to speak? Yes, Ms. Bechtold.

Cherie Bechtold: Hi, I am Cherie Bechtold. Do you need me to spell my last name?

Chairman Evans: No, I think we have the documents for that.

Cherie Bechtold: Okay, I just want to say that whether this subdivision goes through or not, we won't be the ones that will be moving. Our neighbors will still have us there. Obviously all our neighbors are not animal lovers. We have animals for 4-H for my kids to be in 4-H. I do disagree that we do not keep the animals' pens cleaned. There was a problem with a manure pile. I talked to the Health Department, they said that was not a health

violation, however, we went ahead and started putting it in the garbage, the dumpster. My dogs, I'm home most of the time and I've really got a handle on my dogs. I have bark collars and everything else. Animal Control has not--when they come out, they say that I need to contact the County Attorney because when they come out, they don't hear my dogs barking. There are several other people in the neighborhood that have barking dogs and one just got a violation yesterday for it. I just feel, you know, whether my neighbors don't like me or not, I'm not going away. That really doesn't have anything to do with this subdivision.

Chairman Evans: Thank you.

Cherie Bechtold: Thanks.

Chairman Evans: Anyone else who'd care to speak? Anyone else who'd care to speak? Last call, anyone else who'd care to speak? Then I will close the consideration and have questions, motions, comments.

Commissioner Carey: I wonder if Michael would respond to the argument that we don't have grounds to use Condition #1, because it doesn't have anything to do with the statutory regulations regarding subdivisions.

Mike Sehestedt: Yeah, and I--let me respond to a lot of what was said. There was a request that there be some respect for the process. Right now, we have an order not stayed that says there should be only one residence on this tract. It also imposes other covenants, which among other things, prohibit the keeping of stock, limit the total of animals to two dogs or cats per household, and requires them to be fenced or otherwise restrained on the owner's property. That's the queer decision of the court, that order hasn't been stayed. If we're going to respect the process, I think we have to have some respect for the standing decisions of the court.

I'd also note in terms of respect for the process, back in March of 2006, the Bechtold's started a subdivision for lease or rent. March 28, it was followed through by Lane Freisen, their contractor, met for pre-application meeting to discuss it, we're advised that a subdivision for lease or rent was necessary to add a second residence to the property. Whether he expected he'd be caught and stopped before he sinned by the building permit people or not, the fact is they turned in a site plan that didn't show the second residence, knowing beyond any shadow of a doubt that subdivision for lease or rent was required to add a second residence.

All of this gives me a great deal of concern as to the reliability and enforceability of promises or commitments. Since we're not a party to the action, we probably couldn't be found in contempt for approving the subdivision, but it is a source of concern for me. Among the recommended conditions we have are no sheep or goats on the property. Apparently, that's going to be an issue. I don't know and I've never had a case--and typically, we do not enforce restrictive covenants, it simply is not our business. They're the subject of dispute and their enforceability can often be in question. In this case, however, we have at this moment, an unstayed court order that says one residence on this tract. I'm not certain how we can lawfully approve this without giving some recognition to the fact we've been told by a court that it's only one residence as to how we can say two. I thought that moving this forward and saying you're approved provided the court will allow a second residence was a way to that. You know, in terms of rendering the people in the trailer homeless, decision on this isn't going to do that. The decision, if you should impose the condition or turn the subdivision down, what will render those people homeless is the decision by the Bechtolds to move into their house, which necessarily will involve decommissioning and/or removing the trailer from the property as a residence, at least pending court decision.

A second residence goes on this property, they're still not going to get an occupancy permit until DEQ has lifted the sanitary restrictions on the property for a second residence. That requires a second drainfield, a drainfield for placement location, and an approved well. We've heard some testimony on that, that's not something you can resolve here, but it's not so simple as using the existing drainfield, which I heard the builder say was what was drawn in on the plan. You simply can't connect in the ordinary course two houses to a one-house drainfield.

I think I've expressed concern about the follow-through. As I read the court decision, there really was no substantial question that the restrictive covenants applied to Tract A, where the Bechtold's live now. But reading the court decision, there's apparently a lot of issues about whether or not they comply with those covenants even on that property. Should you approve it, we need, I think, to have a very strong guarantees of performance on the conditions you do approve. I'm not quite sure how we get there because covenants are not a particularly useful tool where the property subject to the covenants is in single-ownership. Any decision based on covenants or restrictions of use is going to have to have some independent enforcement mechanism and I don't know for sure. You need to decide where you want to go with this subdivision and we can respond with appropriate conditions,

but I think this is truly unique and that we have an unstayed court order that states one residence and we have an application before us that says we want two.

I've never been confronted with that before and I personally feel that respect for the process involves giving respect to judicial decisions and not in effect defying the court and saying notwithstanding we'll approve two. This is a situation where it's very to have a lot of feeling that this is an innocent accident. The applicant himself, the builder himself were in, had a discussion about the need for subdivision for lease or rent and then they went ahead.

Chairman Evans: Thank you, Michael. Questions, comments, or motions?

Commissioner Curtiss: I guess I would like to give the builder the opportunity, if they would like, or the owners, to withdraw until the court decision is made, otherwise my motion's going to be to deny.

Mike Sehestedt: Would it be to withdraw or to table pending...

Commissioner Curtiss: Right, if they would like to table it, believing that the court's going to make a different decision, I think that if they want to move into their new home, they know exactly what they have to do. They have to move the other house, the mobile home off, so that they can get a sanitary lifting for a new house. I just think that's it's a pretty blatant going around the law and the rules and the process to get here, possibly because of a court case, but I'm ready to move to deny unless they'd like us to table it.

Chairman Evans: Bill, do you have any questions, comments, or motions?

Commissioner Carey: No, I'm kind of waiting to see how they respond to that.

Chairman Evans: Do you wish to speak to that? If not, I'm ready to second Jean's motion. There being no response from the applicant...

Commissioner Curtiss made a motion that the Board of County Commissioners deny the Bechtold's Paradise Subdivision for Lease or Rent based on the testimony heard today, the clear judicial determination that this property has covenants that say one residence on this property, and the fact that the neighbors have taken the correct route by taking this issue to court. Chairman Evans seconded the motion.

Chairman Evans: And by way of discussion...I echo Mr. Sehestedt's comments that I don't care to second-guess the court. The court has looked at the issues, the court has made a decision, and they have not stayed their order. Until it goes through the judicial review process and the Supreme Court decides whether or not to uphold Judge McLean, I don't care to be in the position of second-guessing the judge. That's what the judicial process is there for and so I second your motion. Is there any discussion?

The motion carried on a vote of 3-0.

### **Other Business**

There being no further business to come before the Board, the Commissioners were in recess at 2:31 p.m.