

PUBLIC MEETING – JANUARY 16, 2008

The Public Meeting was called to order at 1:30 p.m. by Commissioner Larry Anderson. Also present were Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Special Projects Coordinator Margaret Borg, Sheriff Mike McMeekin, Office of Planning and Grants Senior Planner Mary McCrea, and Office of Planning and Grants Planner Chad Newman. Chair Jean Curtiss was out of the office.

Pledge of Allegiance

Public Comment

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the weekly claims list in the amount of \$797,725.21. Commissioner Anderson seconded the motion. The motion carried on a vote of 2-0.

Consideration: Adopt Resolution Updating the Jail Work Program Policies & Procedures (Rescinding Resolution 96-076)

Commissioner Anderson opened the consideration.

Margaret Borg presented the staff report.

In 1996, the Board of County Commissioners authorized a jail work program in conjunction with some policies administered by the Sheriff's Office at that time. We've been doing that for years now. In the meantime, the law has changed slightly, procedures have changed slightly. What we're asking you to do today is rescind that old resolution, adopt the proposed new one, which just continues in force and effect the jail work program with updated policies that govern both what we do, the procedures we've put in place over those years and the amendments to statute that have happened between 1996 and today. Last week the Sheriff approved new policies and procedures. They are in the packet for your consideration. By adopting the new resolution, you would be rescinding the old, adopting the new, and endorsing the current policies.

Commissioner Anderson: Sheriff, do you have anything to add to that?

Sheriff McMeekin: I'm just here to answer questions.

Commissioner Anderson: Any members of the public that would like to comment on this? Seeing none, is there a motion?

Commissioner Carey: Well, this is our first look at it, I wonder if--is there anything we want to highlight in terms of any significant changes?

Margaret Borg: Commissioner, the impetus to actually make the changes, be reduced to writing came from a statutory amendment in 2005 that changed the number of days credit for a [inaudible work. It used to be if you were committed to the jail for 24 hours, you could work off that commitment by doing eight hours of jail work time. In 2005, the legislature saw fit to double the credit, so all of our old documents say one-day credit for one-day work and now we need to be given two days of credit for each one day worked. All of those changes have been made since that statute was amended. We had not reduced those significant changes to writing. That is the substance. The others are minor, just little procedural, how we have learning to make it work better over the years.

Commissioner Carey: Thank you.

Commissioner Anderson: Any other comments by anybody? Staff? Mike, would it be appropriate to read this into the record or just...

Mike Sehestedt: I think just reference it. It's part of your packet. If you have no comment, you can move that it be signed and forwarded.

Commissioner Carey made a motion that the Board of County Commissioners adopt the resolution rescinding Resolution #96-076 and updating the Jail Work Program policies and procedures to comply with current policies, procedures, and statutory mandates based on the staff report. Commissioner Anderson seconded the motion. The motion carried on a vote of 2-0.

Hearing (Certificate of Survey): Parker (Wade & Deborah) Family Transfer

Commissioner Anderson 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 3 of Certificate of Survey 4244, Section 7, Township 13 North, Range 17 West. By way of background, Wade and Deborah Parker have submitted a request to create two additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is 15 plus acres in size located near Bonner. Wade and Deborah propose to create approximately two five-acre parcels for transfer to their daughters, Madison Kay Parker, age 7 and Katie Eileen Parker, age 12, to be placed in trust and keep the remaining approximately five-acre parcel for residential purposes.

The history of the parcel is as follows: A Quit Claim Deed was filed in 1979 by Stanley E. G. Hillman, trustee of the property for the Chicago, Milwaukee, St. Paul, and Pacific Railroad Company, Quitclaiming the property to Champion International, Champion Timberlands Division. Certificate of Survey 4064 was filed in 1992 for the purpose of relocating common boundaries. Certificate of Survey 4244 was filed in 1993 for the purpose of relocating common boundaries. According to the records kept by the Missoula County Surveyor, the applicants have not previously used exemptions to the Subdivision and Platting Act.

My request to you is that you consider a request to create a family transfer parcel by dividing the parcel described as Tract 3 of Certificate of Survey 4244, Section 7, Township 13 North, Range 17 West. I would advise the Commissioners of a somewhat unusual circumstance regarding this consideration. Generally, you call the property owners or, their absence, their agent to answer certain questions to aid you in your determination as to whether or not this is an evasion. I've been advised that the Parkers are currently assigned by the military to Fort Knox and are residing in Kentucky. Because of that, they have submitted answers to our standard questions in writing. With the Commissions leave, I would read those questions and recite the answers into the record for your consideration.

Commissioner Anderson: Okay, go ahead.

Mike Sehestedt: How long have you owned the property?

Wade and Deborah Parker in writing, read by Mike Sehestedt: Since 2001.

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

Wade and Deborah Parker in writing, read by Mike Sehestedt: No.

Mike Sehestedt: Do you or your transferees intend to transfer the property within the next year?

Wade and Deborah Parker in writing, read by Mike Sehestedt: No.

Mike Sehestedt: Since this involves minor children, do you have a trust established for the children to hold the property?

Wade and Deborah Parker in writing, read by Mike Sehestedt: Not yet. We have an appointment set to discuss and outline the details.

Mike Sehestedt: Who is the trustee or who controls the trust?

Wade and Deborah Parker in writing, read by Mike Sehestedt: That has not been established yet.

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

Wade and Deborah Parker in writing, read by Mike Sehestedt: No.

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

Wade and Deborah Parker in writing, read by Mike Sehestedt: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Wade and Deborah Parker in writing, read by Mike Sehestedt: No.

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

Wade and Deborah Parker in writing, read by Mike Sehestedt: Yes.

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

Wade and Deborah Parker in writing, read by Mike Sehestedt: Yes.

Mike Sehestedt: Having no further information, I leave the matter to the Board.

Commissioner Anderson: I guess my question is given that they aren't here, would it be appropriate to request some sort of an affidavit or a fact that they appear before a notary or something to make sure these are their answers to these questions?

Mike Sehestedt: Certainly, if the Commission wished to require that, I think it could be arranged. I would note that it is also a criminal offense to subject unsworn falsifications to a governing body or to a government agency. While these are not under penalty of perjury, it would be if [inaudible] were an affidavit, if these answers are false, it is in fact--would submit them to criminal sanctions.

Commissioner Carey: I wonder if it would be best to wait until we have proof that the trust has been created and trustees named?

Mike Sehestedt: I certainly would not object to that. The one thing you do is that when they come with the certificate of survey and the deeds, we require the deeds be made in trust rather than directly to the minor children. That's an issue that we catch at filing. It's standard, on all of our family transfer exemptions, when they show up to file the family transfer, they must also accompany that with a deed to the intended recipient. Here because they're minor children, the deed has to be in trust.

Commissioner Anderson: Do you feel the procedures we have in place would adequately address those concerns?

Mike Sehestedt: Not to be flip or unduly cynical, I think the procedures are more than adequate to assure the honesty of honest people and I'm not sure that any procedure we could devise reasonably would be sufficient to defeat on the front side the evil-minded. I'm sorry, I don't mean to be flip or to make light of it. It's just that if people are willing to lie and engage in false filings, at the end of the day, the criminal law's our recourse, not procedure. That may be over-simplistic.

Commissioner Anderson: Does that answer your question?

Commissioner Carey: That's fine with me. Would you like a motion?

Commissioner Anderson: Yes, if there's no more questions or comments?

Commissioner Carey made a motion that the Board of County Commissioners approve the request by Wade and Deborah Parker to create two additional parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Anderson seconded the motion. The motion carried on a vote of 2-0.

Hearing (Certificate of Survey): Vannoy (Frank & Shirley) Family Transfer

Commissioner Anderson 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 1-A, Certificate of Survey 5800, Section 5, Township 14 North, Range 14 West. Frank M. and Shirley J. Vannoy have submitted a request to create one parcel using the family transfer exemption to the Subdivision and Platting Act. The current parcel is approximately seven acres in size located near Clearwater Junction. Frank and Shirley propose to create an approximately five-acre parcel for transfer to their daughter, Josephine Foster, for residential purposes and to keep the approximately two-acre parcel for residential purposes as well.

The history of the parcel is as follows: A certificate of survey was filed in 2006. The purpose of the survey was to create a parcel of land in conformance with an order of the Fourth Judicial Court, Missoula County, Montana, Cause #DV-05-423. The parcel was created by Order of the Court. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except as listed below.

Certificate of Survey 4599	07/15/1996	Right-of-way	NE 4-14-14
Certificate of Survey 5720	07/20/2005	Boundary Relocation	NE SE SW NW 5-14-14
Certificate of Survey 5734	08/15/2005	Retracement	SE 5-14-14

By way of little bit further background, this parcel is located adjacent to Highway 200 just south of the access road to Camp Utmost. It may help orient you. My recommendation to you is that you consider a request to create a family transfer parcel by dividing the parcel described as Tract 1-A, Certificate of Survey 5800, Section 5, Township 14 North, Range 14 West.

Commissioner Anderson: These previously used exemptions don't have anything to do with the subdivision of property there?

Mike Sehestedt: They do not.

Commissioner Anderson: I guess in this context.

Mike Sehestedt: In this context. You can look at them for their relevance. They do not appear to me to show any kind of pattern of evasion or creation of additional parcels.

Commissioner Anderson: We have some questions we need to ask, so would the proponents please come up and you can answer those questions. I'll go ahead and open the hearing, then so we can conduct that.

Mike Sehestedt: Now, Frank, Shirley, I'm asking questions. It's going to sound like I'm prying. I'm going to be asking you some questions. It's going to sound like I'm prying into your personal and family affairs. In fact, I am, but the purpose of the questions is simply to aid the Commissioners in determining whether or not this is a bonafide use of the family transfer exemption or if in fact there's a purpose to evade subdivision review. With my apologies in advance, about how long have you owned this property?

Frank Vannoy: We've owned the property at least 10 years, but we leased it 10 years prior to it.

Cathie Cichosz: Excuse me, I'm sorry. Just for the record, could you state your name?

Frank Vannoy: I'm Frank Vannoy.

Shirley Vannoy: I'm Shirley Vannoy.

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

Frank Vannoy: No.

Mike Sehestedt: Do either you or your daughter intend to transfer the property within the next year?

Frank Vannoy: No.

Mike Sehestedt: What is the intended use of the property by your daughter, do you know?

Frank Vannoy: Right now, they live in Belgrade and--she we give each one of our others kids a piece of property already. Not in Missoula County, one out of Big Fork and one out of Idaho and she says, when's her turn?

Mike Sehestedt: A certainly understandable position for the third child.

Frank Vannoy: This is why we wanted to keep a parcel because it's where my granddad's retirement home was back in the 60s. We want to keep that for our own personal use and allow her to have the other property. They want to come up and camp in the summertime right now, but they want a piece of property that's private to camp on and they don't have any intentions of selling it.

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

Frank Vannoy: The only thing that I know about subdivision [inaudible] is what John Richards has been going through.

Mike Sehestedt: You did not approach anyone at the county and say what would be involved in subdividing this parcel?

Frank Vannoy: No, no.

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

Frank Vannoy: Not really.

Mike Sehestedt: Could you elaborate on that?

Frank Vannoy: The only business I've developed in property did you say?

Mike Sehestedt: Right.

Frank Vannoy: The only business that we have of developing property wasn't in Missoula County, when we bought our property for our son in Big Fork that he built a house on. He's still living in the house and our daughter's still got her property in Oregon, or not in Oregon, but in Idaho.

Mike Sehestedt: I told you I was prying, but you don't need to volunteer so much, Frank, but thank you. Are you attempting to evade subdivision review?

Frank Vannoy: No.

Mike Sehestedt: Do you understand that this request is not being reviewed for adequate access in all weather for all vehicles, including emergency services? If the Commissioners should approve the use of this exemption, we haven't looked at and we're not saying you can get in there, we're not saying the fire department can get in there, we're not saying the sheriff can get in there. Do you understand that?

Frank Vannoy: Oh, yeah, there's that main road for them to come into any time.

Mike Sehestedt: If you're happy with it, do you understand the county's not saying it's adequate?

Frank Vannoy: What's not adequate?

Mike Sehestedt: The County isn't taking a position one way or the other on whether or not you've got adequate access.

Frank Vannoy: Okay, but there's adequate access.

Mike Sehestedt: I happen to suspect that too, having been on the road, but I just want it in the record that we're not reviewing for that. Do you also understand that if the Commissioners approve the use of this exemption, they're not approving the property for zoning compliance, floodplain, septic permit, or telling you you're sure to be able to get a building permit for the property? We're just approving the division; you'll have to get all of these other approvals separately.

Frank Vannoy: Okay.

Mike Sehestedt: Do you understand?

Frank Vannoy: Right.

Mike Sehestedt: Thank you, no further questions and I am sorry.

Frank Vannoy: That was no problem. I left my hearing aid at home.

Mike Sehestedt: You guys might want to stay up here in case the Commissioners have questions.

Commissioner Anderson: Mr. Carey? I don't have any further questions for the Vannoys. Anybody else, since this is a public hearing, does anybody else have any comments they'd like to make? Seeing none, we'll close the public hearing.

Commissioner Carey made a motion that the Board of County Commissioners approve the request by Frank M. and Shirley J. Vannoy to create one additional 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 Anderson seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey: You'll be getting a letter in awhile saying we've taken this action.

Mike Sehestedt: At this point, as Deb will tell you, your surveyor can feel free to start going forward with the real work and expense of the project.

Consideration: Duffield Subdivision (3 lots on 15.16 acres) - Arnica Road in Pattee Canyon

Commissioner Anderson opened the consideration.

Chad Newman presented the staff report.

This agenda item is the Duffield Subdivision. Michael and Kathryn Duffield, represented by WGM Group, request to subdivide a 15.16 acre parcel into three lots, each roughly five acres in size with a density of 5.05 acres per dwelling unit. The subject property is located approximately at the intersection of Arnica Drive and Pattee Canyon Road along the south side of Pattee Canyon. There is currently one home on the property that is accessed from Arnica Drive.

The property is situated on a small spur ridge adjacent to Pattee Creek (shown in blue on the plat) and Pattee Canyon Road (in gray) with slopes ranging from 0-5% on top, increasing to over 25% as it drops down into the Pattee Creek drainage along Pattee Canyon Road. Condition of Approval 19 requires a clear delineation of no-build zones and slopes greater than 25% on the final plat, and that the no-build zone for steep slopes be defined within the development covenants. These areas are shaded in red. All three lots are heavily timbered with stands of Douglas Fir and Ponderosa Pine. It is evident that some thinning has occurred on the property within the last 10 years. Lot 1 and Lot 2 (outlined in orange and green) are adjacent to Pattee Creek and Pattee Canyon Road which comprise the northern most property boundary. Condition of Approval #13-15 require that Pattee

Creek be shown on the final plat, that a riparian management plan be included in the development covenants, and that the riparian resource area and riparian buffer area be designated on the plat and on the riparian management plan. Lot 3 (outlined in pink) is situated along the southern property boundary. A building envelope, which is proposed in the southeastern corner of this property and is indicated with the dashed pink line. All three properties will be served via private wells and septic systems.

The applicable amendment to the 2005 Growth Policy is the 1998 Missoula Urban Area Comprehensive Plan Update and recommends a land use designation of residential at one dwelling unit per 5-10 acres. The property is zoned ZD #4, which calls for a maximum density of one dwelling unit per five acres and a minimum lot size of three acres. The proposal is in compliance with the Comprehensive Plan and the ZD #4 regulations.

Staff recommends approval of the subdivision subject to 19 conditions of approval. In addition to the conditions regarding Pattee Creek and its riparian resources, I would like to highlight some conditions of approval regarding road and driveway access. The subdivision is accessed via Pattee Canyon Road (shown in gray on the plat) and Arnica Drive (shown in brown). Pattee Canyon Road is a 24-foot wide paved county maintained road within a 60-foot public right of way. Lot 1 and Lot 2 border Pattee Canyon Road, but access to these lots is proposed from the new private road (shown in blue). Condition of Approval #6 requires a no-access strip be shown adjacent to Pattee Canyon Road to protect Pattee Creek, its riparian resources, and areas of steep slope. Arnica Drive is a 14 to 18 foot wide private road within a 60-foot private right-of-way. Lot 3 will access directly from Arnica Drive. A new private road with a 14-foot gravel surface width within a 60-foot wide private access easement extending west from Arnica Drive (again, shown in blue) will provide access to Lot 1 and Lot 2. Condition of Approval #1 requires the road to be built to a 14-foot width with 3-foot shoulders each side and shall have an emergency vehicle turnaround at its terminus in order to meet fire access and road standards. Additionally, Condition of Approval #2 requires that the new road be named and signed. The driveway for accessing Lot 1 begins at the end of this new road and is an 800-foot long driveway within a 30-foot private access easement across Lot #3. The driveway for Lot 2 also crosses Lot #3 within a 30-foot private access easement. Conditions of Approval #7 and 8 require no access strips along both driveway easements to be shown on the final plat as they cross Lot #3. These driveway easements are shaded in yellow and outlined in black to show the location of the no-access strip.

The remaining conditions of approval address a shared private road maintenance agreement, the approval of design and engineering specifications of all roads and driveways, an RSID/SID waiver for future improvements to Pattee Canyon Road and the installation of pedestrian walkways, the installation and approval of addressing requirements, the installation of fire sprinklers and inclusion of these requirements within the development covenants, an RSID/SID waiver for the future installation of municipal water, the inclusion of a revegetation plan, amendments to the covenants regarding address signs, wildlife urban interface standards, weed control, woodstoves, wildlife, and last, the structure and format of the development covenants section.

The subdivider has requested one variance from the requirement to provide pedestrian walkways along Pattee Canyon Road. Montana Fish, Wildlife, and Parks and County Public Works recommend approval of the variance request because of the potential negative effects to Pattee Creek, its associated riparian area, and steep slopes adjacent to Pattee Canyon Road and Pattee Creek. Additionally, we're looking at an amendment to Condition of Approval #10, where we state the subdivider shall install interior residential fire sprinklers and we're going to changing that to interior residential fire sprinklers that meet NFPA 13D standard shall be installed in each new home. That's for the developer, not for the owner.

In closing, staff recommends the approval of the variance request and approval of the Duffield Subdivision subject to the conditions of approval recommended in the staff report.

Mary McCrea: Mary McCrea, for the record. Just wanted to add one thing, we've had some conversations with the applicant after Planning Status and realized with Condition #10 that we were requiring the way it had stated that the subdivider install the sprinklers and it will be the new owners that will install those, so that's why we're recommending the revision to Condition #10.

Mike Sehestedt: Just for the record, on this requirement, and I'll ask the developer's representative to confirm this, the fire sprinklers are being offered by the developer as an alternative to our basic subdivision requirement, which would require fire flows of a thousand gallons a minute for, I think, 20 or 30 minutes. If they do that, then there's no variance required and we don't need a condition for fire sprinklers. That's an unrealistic expectation in this as in other subdivisions and we allow developer's to propose other mitigations, one of which is the internal residential fire sprinklers.

Commissioner Carey: So the amended Condition #10 would read, "Interior residential fire sprinklers that meet NFPA 13D standards shall be installed in each new home," and the rest of its unchanged?

Chad Newman: That's correct.

Commissioner Anderson: All done with your comments, Chad?

Chad Newman: Yes.

Commissioner Anderson: Anybody else wish to make any comment? After the developer's representative.

Kristin Smith: Thank you, Commissioners, good afternoon, I'm Kristin Smith. I'm a land use planner with WGM Group representing the Duffields, who are also here today should you have any questions for them. Thanks to Mary and Chad for putting the staff report together. We don't have any issues with the staff report, the recommended conditions, and the changes as have been highlighted. We do have one concern however with respect to requiring a road name. I guess I'd like us to maybe just think about it a little bit. Since the Duffields, who live right here in the existing house, their address is Arnica Road, that's their address. If this little stretch of road is to have a new name, this is where they access their house. This house would clearly have Arnica as their address, so the only other house, way out here, would have a road name of a tiny little road. That seems to actually, in my opinion, would cause more confusion for emergency services. I guess I'm a little concerned about that because you're talking about one house that would have a road name different from the others that are immediately adjacent to it. I don't know, those are my observations, it seems like it might actually be more confusing. Thanks.

Commissioner Anderson: Staff, did you want to comment?

Mary McCrea: Mary McCrea again. Chad spoke with the Surveyor's Office and because the road would end up splitting and going in two different directions there, they recommended that--and it's a requirement in the subdivision regulations, that a road be named. So if a road serves more than one residence, it's a new road, not a driveway, and has to be named. It would be Lot 1 and Lot 2 that would be addressed off that new road. Lot 3 will have a driveway directly off of Arnica Drive, so we can have an address off of Arnica Drive. Missoula Rural Fire District representatives are here, so perhaps they have some additional comments.

Brent Christopherson: My name is Brent Christopherson; I'm the Deputy Chief with the Missoula Rural Fire District. We would conclude and recommend naming the additional road for emergency response and also concur with the staff report as presented to you. If you have any questions for me, I'd be glad to answer them.

Commissioner Anderson: So you're in concurrence with a separate named road for that stretch there, that private road?

Brent Christopherson: Yes, since it does change and go off into a different road, as subdivision regulations say. Thank you.

Mike Sehestedt: I think something we ought to note for the record is if this road is established and named, the Duffields address will change. It will no longer be, whatever it is, Arnica Drive, but whatever it is off the new road. Critically important they do that, because if they call the fire department or call the ambulance and give the old street address on Arnica Drive, they're going to cruise up and down Arnica looking desperately for a mailbox with those numbers on it and they're not going to get to the Duffields in a timely manner or at least there's a significant risk. Part of the cost of this subdivision as far as the Duffields are concerned will be getting a new address as a result of that spur road.

Commissioner Anderson: Question, currently, how do they access their property? Is that from the point there of that lot?

Chad Newman: Access to the property is via that piece of roadway.

Mary McCrea: It's a driveway at this point.

Commissioner Anderson: Oh, it's a driveway now. Okay, thank you. Any more public comment? Ma'am, yes? Could you please state your name?

Barbara Barmeyer: My name is Barbara Barmeyer.

Cathie Cichosz: Could you spell your last name?

Barbara Barmeyer: Barmeyer, B-A-R-M-E-Y-E-R. Thank you. I'm not very used to public speaking. The Duffields are our nearest next-door neighbors to the east across the gully, down which our shared property line runs. So this is our property line.

Commissioner Anderson: Could we have you grab that microphone Mary? Thank you.

Barbara Barmeyer: So this is our shared property line. The Duffields are our nearest neighbors. In the center of this map here, and I think it's right here, is a little two-rut track, goes across Lot 3 I think. Yeah. With all neighborliness and courtesy to the Duffields, I'd like to make it very clear that what I'm about to say is no opposition to their subdivision at all. You kind of located that track on the map. Okay, that track...

Commissioner Anderson: Can you please speak into the microphone?

Barbara Barmeyer: Sorry, can you hear me now? That track originally went all the way now to where what is now Arnica Drive intersects with the Pattee Canyon Road. It came through down here and along here to there. I could give you a lengthy dissertation on the history of that track. When my parents first bought their little five-acre piece, it had no deeded access, so they accessed their property along that track on a gentleman's handshake and dollar a year, which is what you did in those days.

Arnica Drive and the road that takes off from it and goes on up here to the very top of the mountain is a private road. As far as I know, it has no fire egress or no other exit, except where Arnica meets Pattee Canyon Road right here. In case of a wildfire, that would be the only way out and we've had some really horrendous wildfires recently. I survived the fire of 1977 in Pattee Canyon and there was one fire previous to that one. Our parents still owned the property there early on. They're pretty scary, especially with more building now going on in the wildland urban interface.

Now, Arnica intersecting Pattee Canyon Rod there is the only way out except for the two-lane track, which my dad used to make house calls down before my parents put their road in. It crosses the gully, goes through the woods on an old logging road, up over the hill, and then down through the Barmeyer property, where it can hit their driveway and hit the Pattee Canyon Road a great deal west from here, probably way over here somewhere. So it would be a need--emergency fire egress. Mom and Dad have, over the years, now that their old, my father is no longer with us, my mother is 92, we kids are managing the property and living there. Over the years, we have never had a fence, we never had a gate, and we've patrolled it regularly for downed timbers, so that it is a good fire egress, not only for all of these guys over here, but now here comes the self-serving part, it's also a good fire egress for us and our only way out, unless of course you rappel off the precipitous cliff down to the road if a fire should come from the west. I talked to my brother about this; he said that the prevailing wind is from the west, but that in the mornings, the prevailing wind is from the east. Now, John fought fires on the hotshot crew down new Darby when he was going to school, so he has a little experience in this. He said oftentimes, not very often, but fire can come down Canyon. Okay. So, we've maintained over portion of that little track for over a half a century and it's always been available for anyone to use it. My concern is that the road building and stuff in here would preclude egress. Now, at this point, and Mr. and Mrs. Duffield have been enormously gracious about this because I was really scared this summer when it was so dry and went over and inspected that gate several times on their property. If this road goes in, is it going to preclude coming along, along the track, over the road, down through Arnica and out that way if a fire should come from this direction? By the same token, is it going to preclude these people that all these new subdivided places all up in here, is it going to preclude them from going the opposite way over our property and down to the road there. I guess my concern is that should somehow remain open, so that people have more than just a dead end way to get out. I think that's all I have to say. Yeah.

Commissioner Anderson: Thank you for your comments. Any further public comment?

Larry Westover: My name is Larry Westover and I'm also an adjacent owner. I own a house right here. I don't oppose the subdivision in any way, shape, or form, but I'm here to make a plea for my existing neighbors and the

neighbors in the future, to please, please drive slower. The dust is so intense at my property; I cannot even enjoy my backyard. There are currently 21 houses up that road. You figure two people per household [inaudible, spoke away from mic] going to and from work, that's over 85...

Cathie Cichosz: Excuse me, sir.

Larry Westover: No, oh, 85 trips a day. The dust is just terrible and I'd just like to make a plea for them to please--we posted a sign, please drive 10 miles an hour. Few people do and when they do drive the 10 miles an hour, it's bearable, but there's a lot of people who drive 25 and 35 miles an hour and I cannot see 200 feet off my deck. As far as the subdivision, I'm in the real estate business and I think it's great and I think they're doing a good job. I just want to go on record saying I really don't like the dust. Thank you.

Commissioner Anderson: Thank you. Any further comments? Does anybody have any comments regarding Ms. Barmeyer's concurs about that access in and out? Kristin?

Kristin Smith: Thank you. I think that the continued access would be provided on the new easement through there, so that this little two-track would actually become a wider area for emergency access. I don't know how that could be precluded from continuing to be used as an emergency access for folks that don't--that might be blocked in if they're farther down to the west, if something happens because, and actually you can see on your plat, that old two-track actually just crosses right there and we had to demonstrate a better grade for the new road, which is why we didn't actually follow the two-track because it's steeper than what's permitted. I think that can still be accommodated quite easily. With respect to the dust, actually each of these three new lots will be part of a road maintenance agreement and with all the other 21-lot owners in there for Arnica, perhaps it's a cost benefit to look at some other dust abatement options, magnesium chloride or something. Thank you.

Commissioner Anderson: Yes, Mary.

Mary McCrea: The only concern I have, I suppose the lot owner of Lot 3 could provide access for people to use this as an emergency access, however the easement is described as a 30-foot wide private access easement for the use and benefit of Lot 1, so it's specific to that lot. Mike, do you have any comments?

Mike Sehestedt: I don't think it could be used for any future development without further changes, but what we're talking about is essentially continuing the physical connection that exists now and if it's used only in a fire emergency or a similar situation, I think you'd have a necessity defense to trespass claim. I just don't think there's a major legal issue, but the way it is structured, I mean that's simply going to be an emergency [tape ended] an emergency as long as the physical connection is there, it would remain available and usable. It probably is not going to be available for any other purpose without the consent of the property owners on the yellow section. So going in to do [inaudible] work, fuel mitigation, anything other than an emergency, you're going to have to get permission from the Duffields or whoever the owner of that easement might be in the future. Physically, as long as a connection exists and if fire comes up, nobody's going to be counting, and the deputy's are going to be pushing people, not barring them from using roads. Is that a reasonable response?

Commissioner Anderson: I think that when road construction takes place, they would make some sort of accommodation to incorporate that so there's not a ditch or a big berm or something there.

Mary McCrea: This is Mary again, or a fence with no gate in that location.

Commissioner Anderson: Any further comments? Any comments by the rural fire departments and this is a fire access issue? If there's no further comments, I'll go ahead and close the hearing portion. Is there a motion?

Commissioner Carey made a motion that the Board of County Commissioners approve the variance request from Article 3.2.3(3) of the Missoula County Subdivision Regulations, requiring installation of pedestrian walkways along Pattee Canyon Road adjacent to the subdivision based on the findings of fact set forth in the staff report. Commissioner Anderson seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey made a motion that the Board of County Commissioners approve the Duffield Subdivision based on the findings of fact set forth in the staff report and subject to the recommended conditions of approval as amended. Commissioner Anderson seconded the motion. The motion carried on a vote of 2-0.

Duffield Subdivision Conditions of Approval

Roads/Access

1. The subdivider shall build the new private road west of Arnica Drive to a 14-foot wide gravel surface width, with 3-foot shoulders on each side, within a 60-foot wide private road and public utility easement from the point where Arnica Drive currently curves south near Parcel 4A of COS 1858 to the point on Lot 3 where the private driveways for Lot 1 and Lot 2 intersect prior to final plat approval. All obstructions to a 20-foot horizontal clearance and or 13 foot 6 inch vertical clearance shall be removed prior to final plat approval. An emergency vehicle turnaround shall be provided at the end of the new private road and engineering plans shall be reviewed and approved by County Public Works and Missoula Rural Fire District prior to final plat approval.
2. The subdivider shall name the new private road as approved by County Public Works and include the name on the plat prior to final plat approval. The subdivider shall install street signage for the new private road subject to review and approval by County Public Works prior to final plat approval.
3. A shared private road maintenance agreement for Arnica Drive and the new private road west of Arnica Drive shall be filed with the Missoula County Clerk and Recorder's Office subject to review and approval by OPG, County Public Works and the County Attorney's Office prior to final plat approval.
4. Driveways in excess of 150 feet in length must be approved by Missoula Rural Fire District prior to building permit approval. The driveway must provide 20 feet of unobstructed horizontal clearance and 13 feet 6 inches unobstructed vertical clearance the length of the drive. Driveways greater than 150 feet in length shall provide a turnaround for fire apparatus every 300 feet and at the terminus of the driveway. Driveways shall not exceed 10% in slope. This language shall also be included in a development covenant prior to final plat approval and shall not be deleted or amended without governing body approval.
5. The subdivider shall revise the RSID/SID waiver statement on the plat as follows, subject to review and approval of OPG prior to final plat approval:

"Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID, based on benefit, for improvements to Pattee Canyon Road, including but not limited to paving, curbs and gutters, non-motorized facilities, street widening and drainage control. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land."

6. The plat shall be revised to show a one-foot "No Access Strip" along the northern property boundary of Lot 1 and Lot 2 adjacent to Pattee Canyon Road, prior to final plat approval.
7. The plat shall be revised to show a one-foot "No Access Strip" along both sides of the private access easement crossing Lot 3 to serve Lot 1 prior to final plat approval.
8. The plat shall be revised to show a one-foot "No Access Strip" along both sides of the private access easement crossing Lot 3 to serve Lot 2 prior to final plat approval.

Fire

9. Plans for addressing, visible from Arnica Drive in all light conditions, shall be reviewed and approved by the Missoula Rural Fire District and included in the Development Covenants prior to final plat approval.
10. Interior residential fire sprinklers that meet NFPA 13D standards shall be installed in each new home. Plans for the installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to building permit approval and the development covenants shall be amended to include the following prior to final plat approval:

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

This section of the covenants may not be changed or deleted without governing body approval.

11. The subdivider shall include the following RSID/SID waiver statement on the plat prior to final plat approval:

“Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for developing and installing a municipal or community water system with 1,000 gallons per minute minimum fire flow. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land.”

Weeds

12. The Developer shall provide a Revegetation Plan subject to review and approval by the Missoula County Weed District prior to final plat approval.

Riparian Management Plan

13. The subdivider shall develop a Riparian Management Plan and map addressing Subdivision Regulations Article 3.13.3(1)-(5) and incorporate the comments from Montana Fish Wildlife and Parks, subject to review and approval of OPG prior to final plat approval. The Riparian Management Plan and map shall designate the creek and areas with riparian vegetation adjacent to the creek as a Riparian Resource Area / No Build / No Alteration Zone and shall designate the area from the edge of the Riparian Resource Area, extending at least 50’ from the edge of the creek, as a Riparian Buffer Area / No Build / No Alteration Zone. The Riparian Resource Management Plan and map shall be referenced in, and attached to, the Development Covenants subject to review and approval of OPG prior to final plat approval.

14. The plat shall be revised to show Pattee Creek, the Riparian Resource Area/No Build/No Alteration Zone, and the Riparian Buffer Area/No Build/No Alteration Zone prior to final plat approval.

15. The Riparian Resource Area/No Build/No Alteration Zone shall be defined in the covenants and in a note on the plat as follows:

“The Riparian Resource Area/No Build/No Alteration Zone shall include the prohibition of all buildings, structures, fences, utilities, parking, roads, motorized vehicles (except for routine maintenance activities), storage, containment of domestic animals, or any other development. It shall also prohibit any mining, cutting, burning, or removal of live or dead vegetation (except as needed for wildfire prevention, noxious weed control or conservation management), filling with substances such as gravel, soil, slash or other debris, or the planting of non-native vegetation, such as lawn grasses.”

Covenants

16. The subdivider shall amend the Development Covenants as follows subject to review and approval of OPG prior to final plat approval.

- a. Amend the section titled Address Signs by replacing the reference to Missoula City Fire Department with Missoula Rural Fire District.
- b. Amend the section titled Wildland Urban Interface to include all the language under Subdivision Regulations Article 5.2(10) and reference Exhibit 8 – WRI Vegetation Reduction Guidelines.
- c. Amend the section titled Weed Control by removing the last sentence in the second paragraph on grass species and the entirety of the 3rd paragraph.

- d. Add the following section to the Development Covenants:

“Woodstoves: The Missoula City-County Air Pollution Control Program regulations prohibit the installation of wood burning stoves or fireplaces. Pellet stoves that meet emission requirements or natural gas or propane fireplaces may be installed. Pellet stoves require an installation permit from the Missoula County Health Department.”

17. The Wildlife section of the Development Covenants shall be amended as follows prior to final plat approval:

- a. Replace “ii” with the following: Gardens, fruit trees or orchards can attract wildlife such as bear and deer. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or organic material can attract bears, skunks, and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. The top rail should be made of something other than wire to prevent wildlife from entanglement. Netting over gardens can help deter birds from eating berries. To keep wildlife such as bears out of gardens and/or away from fruit trees, use properly constructed electric fences and maintain these constantly. (Contact FWP for information on “all-species electric fencing” designed to exclude wildlife from gardens and/or home areas.)
- b. Amend “iii” to state: “Garbage must be stored in secure animal-resistant containers . . . If stored indoors, do not set garbage cans out until the morning of garbage pickup . . .”
- c. Amend “v” to state: “Birdseed is an attractant to bears. Use of birdfeeders is not recommended from April 1 though the end of November. If used, bird feeders must: . . .”
- d. Replace “vii” (pet food) with the following: vii. Pet food and/or livestock feed must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such bears, mountain lions skunk, and raccoon. When feeding pets and/or livestock do not leave food out overnight. Pets must be fed indoors or inside kennels, so wild animals do not learn to associate food with your home.
- e. Add the following: xi. Bears can be attracted to food smells associated with outdoor food storage; therefore, freezers and refrigerators should not be placed outdoors on porches or in open garages or buildings. If a freezer/ refrigerator must be located outdoors, attempt to secure it against potential bear entry by using a stout chain and padlock around the girth of the freezer.
- f. Add the following: xii. Apiaries (bee hives) could attract bears in this area. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)

18. The subdivider shall amend the Development Covenants as follows subject to review and approval of OPG and the County Attorney prior to final plat approval:

- a. Re-title the covenants as “Declaration of Covenants, Conditions, and Restrictions for Duffield Subdivision.”
- b. Revise the first two paragraphs to remove references to the Missoula Board of County Commissioners.
- c. Revise the first two paragraphs to state that these covenants are a supplement to the covenants dated February 15, 1977.
- d. Revise the first two paragraphs to state that the covenants apply to Lot 1, 2 and 3 of Duffield Subdivision, and that the covenants shall run with the land.
- e. Add an Amendments section at the end of the covenants that states the following: “No covenants of sections thereof relating to Address Signage, Wildlife, Radon, Residential Fire Sprinklers, Weed Control, Wildland Urban Interface, Driveways, Private Road Maintenance, Riparian Resource and Buffer Areas, Woodstoves, No Build Zone for Steep Slopes and Amendments may be changed or deleted without prior written consent of the governing body.”
- f. Remove the signatory lines for the Missoula Board of County Commissioners.

Plat

19. The Plat shall be revised to clearly designate the No Build Zone for areas with slope greater than 25% prior to final plat approval. A definition of the "No Build Zone / Slopes greater than 25%" shall be added to the Development Covenants and shall prohibit construction of primary and accessory structures, subject to review and approval of OPG prior to final plat approval.

Other Business

There being no further business to come before the Board, the Commissioners were in recess at 2:21 p.m.