

PUBLIC MEETING – JANUARY 23, 2008

The Public Meeting was called to order at 1:30 p.m. Chair Jean Curtiss. Also present were Commissioner Larry Anderson, Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Director of Public Works Greg Robertson, Planning and Zoning Commission Member Laura Howe, and Office of Planning and Grants Planner Jen Gress.

Pledge of Allegiance

Public Comment

Routine Administrative Actions

Commissioner Anderson moved that the Board of County Commissioners approve the weekly claims list in the amount of \$607,238.83. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Decision (From January 9, 2008 Hearing): Petition to Abandon Historic Roads in Mill Creek Road/Spring Creek Road Area in Frenchtown

Chair Curtiss opened the decision.

Greg Robertson presented the staff report.

Before you is, and included in your packet, a viewer's report. Both Commissioner Anderson and myself went to the site to evaluate the proposed vacation. Based on our viewing, there is no visual evidence of existence of these roads, nor is there any public interest, or at least in our opinion, public interest in maintaining or keeping the right-of-way. It's our recommendation that the petition be granted and the road be vacated.

Chair Curtiss: This is a hearing, is there anyone who would like to make further comment? We did accept comment when it was on our agenda before. Seeing no one, I'll close the hearing. Did you have anything to add, Commissioner Anderson?

Commissioner Anderson: No, there was no visible site of those roads.

Chair Curtiss: For the public's benefit, a lot of times there are old historic roads that cross people's property that aren't being used anymore and we have to go out and do a site visit and see if there's any future possible use. In this case, it doesn't seem there is [inaudible], so I'm ready for a motion.

Commissioner Carey made a motion that the Board of County Commissioners approve the petition to abandon portions of historic roads in Sections 25 and 36, Township 15 North, Range 21 West, Missoula County, Montana and further described as GLO Road and Road Book 1 in the Road Book of the Missoula County Department of Public Works Surveying Division. Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Sardot (Niki) Family Transfer

Chair Curtiss 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, Certificate of Survey #5679, Section 34, Township 11 North, Range 19 West. By way of orienting you, this property is located along the southern edge of Missoula County, not on the border, but close to Ravalli County. Niki Sardot has submitted a request to create five (5) additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 80 acres in size located in the southern portion of the Bitterroot Valley, close to the Ravalli County line. Niki proposes to create the following parcels for transfer to family members for residential purposes and keep the remaining approximately 12-acre parcel for residential purposes as well: Tova Sardot – daughter – 12 acres; Sashin Hume – daughter – 16 acres; James Retfus – father – 12 acres; Marti Retfus – mother – 12 acres; Aldo Sardot – husband – 16 acres.

The history of the parcel is as follows: Certificate of Survey #2061 was filed in 1979 for the purpose of creating parcels greater than 20 acres. Certificate of Survey #5600 was filed in 2004 for the purpose of a boundary adjustment. Certificate of Survey #5679 was filed in 2005 for the purpose of a boundary relocation. 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 #5600	09/09/2004	BR	NE NW 34-11-19
Certificate of Survey #5679	03/29/2005	BR RET	NE SE SW NW 34-11-19

My recommendation to you is that you consider a request to create a family transfer parcel by dividing the parcel described as Tract 1, Certificate of Survey #5679, Section 34, Township 11 North, Range 19 West.

Chair Curtiss: Thank you, Michael. Is Ms. Sardot here?

Niki Sardot: I am Niki Sardot.

Chair Curtiss: We have a list of questions that we ask the County Attorney's Office to ask you on the record. I'm sure you're aware of these, but we need to have it on the record so that we can decide whether or not it's a legal transfer.

Mike Sehestedt: Thank you. These will be fairly prying questions, but there's no way to ascertain whether or not it's an evasion quickly without being fairly intrusive. With my apologies, approximately how long have you owned the property?

Niki Sardot: I think we've owned it three years, maybe a little bit longer.

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

Niki Sardot: No, I was just happy to get it through a fluke of two questions I asked.

Mike Sehestedt: Do either you or any of your five transferees propose to transfer the property within the next year to the best of your knowledge?

Niki Sardot: No.

Mike Sehestedt: What is the intended use of these parcels?

Niki Sardot: One daughter just moved here from Virginia with her two kids and her husband and they're planning on building a house. That's the 16 acres. My other daughter, Tova, recently married about couple of years ago and she hopes to build there. She's going to the university right now.

Mike Sehestedt: With regard to your father and your mother, what are their plans?

Niki Sardot: They sold out of Montana about five years ago and they'd like to come back. They're in their seventies and be close to us because we'll probably be taking care of them.

Mike Sehestedt: And your husband's plans with regard to the parcel he's receiving?

Niki Sardot: I hope he builds me a house.

Mike Sehestedt: None of the children obviously are minors?

Niki Sardot: No, 27 and 37. Oh, I'm sorry, 35.

Mike Sehestedt: There's no need to identify which daughter is which, we'll just let that pass. Have you talked to anyone at the County about going through subdivision review?

Niki Sardot: No.

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

Niki Sardot: I am not in Missoula County. In Ravalli County, I am a 25% partner in a piece of property.

Mike Sehestedt: Are you attempting to evade subdivision review?

Niki Sardot: No.

Mike Sehestedt: I can't remember if I asked this, have you talked to anyone in Missoula County about going through subdivision review?

Niki Sardot: No, I haven't.

Mike Sehestedt: Do you understand that should the Commissioners choose to approve this request, that the parcels are not being reviewed for adequate access in all weather for all vehicles, including emergency services?

Niki Sardot: Yeah.

Mike Sehestedt: Do you further understand that if the Commissioners approve the use of this exemption, it does not mean the property is approved for zoning compliance, building permit, floodplain, septic systems, or that there's any guarantee you'll be able to obtain water or get a permit?

Niki Sardot: Yeah I understand.

Mike Sehestedt: Thank you, I have no further questions.

Chair Curtiss: This is a public hearing, so I'll officially open the hearing. Are there questions for Ms. Sardot?

Commissioner Carey: I don't have any.

Chair Curtiss: I guess I always am curious when property is being given to your spouse or I assume your parents are still together.

Niki Sardot: Yes, they've been married a long time.

Chair Curtiss: But you're giving them each a piece rather I guess rather than giving them together one piece. Could you tell us why?

Niki Sardot: I don't have any reason why. I'll be 60 years old this summer. I have some health issues, major health issues, and I'm just doing estate planning and taking this time to give pieces to my family.

Chair Curtiss: Then you're keeping one for yourself and one for your husband, is that because you think you may need to sell one for money?

Niki Sardot: Eventually.

Chair Curtiss: At this time, you're transferring it all to family members and there's no intent to sell any.

Niki Sardot: Not at all.

Chair Curtiss: Are there further questions for Ms. Sardot?

Commissioner Anderson: No.

Chair Curtiss: Is there anyone in the public that would like to make comment? Seeing none, we'll close the hearing.

Commissioner Carey made a motion that the Board of County Commissioners approve request by Niki Sardot to create five (5) 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 3-0.

Chair Curtiss: Okay, you will receive a letter from our office saying this has been approved when our secretary gets back.

Hearing (Planning and Zoning Commission): Citizen Initiated Zoning District 12A Variance (Lot Area and Density Requirements - Langley)

Chair Curtiss recessed the meeting of the Board of County Commissioners and convened the meeting of the Planning and Zoning Commission and opened the hearing.

Jen Gress presented the staff report.

Before you is a request for variance, density, and lot area, within Zoning District 12A, which is going to require a recommended motion from the Planning and Zoning Commission and then a final action by the Board of County Commissioners. Jerod Langley is prospective owner of this parcel. They have applied to the Office of Planning and Grants for a four-lot subdivision and upon review, staff found that the acreage they're applying for will only yield three lots and the applicant was advised that they needed a variance in order to proceed with their subdivision. According to the State [inaudible] records, at one point there were five homes built on the property, all of them prior to building permits, which were required in 1980. One of those homes has subsequently been removed and the parcel is back to the four homes, which was the existing density prior to the establishment of the current Zoning District 12A.

State law requires that any variance request to a zoning district come before a public hearing, which is why there are here today. Zoning District 12A is an amendment of the original Zoning District 12, which was adopted in 1950. Zoning District 12 allowed a minimum lot area of 12,000 square feet per dwelling unit. Twelve A was originally adopted to this parcel in 1974 and permitted density of two dwelling unit and this amendment increased the lot area from 12,000 square feet to 21,780 square feet. The Health Department does have records of four onsite septic systems that are approved at this point. Lot 17 of [inaudible] Orchard Homes, which is the lot in question, was originally subdivided in 1925 with the northern half of this parcel being sold in 1958. Specifically, that's the lot the four homes are on. This parcel again has four existing homes on 1.92 acres. Allowing individual ownership of each dwelling is not going to change any existing physical condition to the parcel and Zoning District 12A was adopted and applied to this parcel after the density was already in place.

Authorizing this variance will not be contrary to the public interest, as the existing density will not be increased by permitting a subdivision with smaller lot areas. Although Zoning District 12A requires a minimum of one-half acre lot size, the existing legal non-conforming situation will not be increased by permitting two lots of the four lots to be just under half an acre. We sent out a total of 25 notifications to surrounding area residents. We received one comment back that was against the proposal and that letter is in your packets. Staff is recommending that the Planning and Zoning Commission recommend approval of the variances to the Board of County Commissioners.

Chair Curtiss: Thank you, Jen. Is there anyone here who would like to make comment?

Emily West: I'm Emily West with Eli & Associates and I'm here to represent Jerod Langley. I just need to clarify, Jerod's not the prospective owner of this property, he's just a liaison who's helping work with the property owners, Dustin and Catrina Delridge, just wanted to clarify that.

I just want to reiterate what Jen said, that we're not looking to increase density on the piece of land, this density already exists. In fact, the Delridges removed the home, so it's actually become less dense. Really, what we want to do is put each home on its own lot, maybe they can sell off one of the homes. It's really--we're not trying to change the character of the area, we just want to have each home on its own lot. I just encourage you to consider Jen's staff report and I ask you to approve these two variances.

Chair Curtiss: Anyone else who'd like to comment? Yes?

Ellen Schmidt: My name is Ellen Schmidt; I am directly affected by this because I live in the property that is just kitty-corner to that lot. My reason for not sending a letter and coming today is I was wondering why, if there were four homes already on the lot that it needed a variance. Well I understand now due to what has been read. My only concern would be that anything would be changed. So is it my understanding that this is to actually be divided into four lots and for the purpose of being able to sell it?

Chair Curtiss: Yes, the proposal would allow them to then go through subdivision and at that point, there could also be public comment, but it would allow them to put each of these houses on an individual lot so that they could be sold individual rather than now they are all on one lot and they are under one ownership.

Ellen Schmidt: Right, the other comment I would make was that the home that was removed, I have been at the lot nine and a half years and it was never inhabitable. So technically, it was just a dead building. My other concern would be, were it sold, would the street be handled going in there? I live at the dead-end of North Avenue, the property is just beyond that, and my concern would be that that street would be pushed further through and I don't want that. I have enough traffic by my house as it is being on the bus route, the street that everybody uses to get to Big Sky and to Community and to the DNRC, et cetera.

Chair Curtiss: The right-of-way exists, so during--so you're talking about North Avenue?

Ellen Schmidt: Correct, I live on North Avenue and my concern would be that it would be divided so that North Avenue would go through there, which I would object to.

Chair Curtiss: Have you seen the plat that was submitted?

Ellen Schmidt: No, no I did not see any--other than the letter that I received in the mail...

Chair Curtiss: Okay, we can make sure that you see it. It looks like, according to the plat, and we haven't had our surveyors out there to verify, but it looks like there would be a jog in North Avenue, but it's always in the public's interest to maintain right-of-ways and make connective roads. I would assume that during the process of looking at that as a subdivision, we would definitely want to open that road up.

Ellen Schmidt: Right and that's a concern for me, although it would be a jog. I don't think it would be a big deal to me other than--you know because I'm already getting the traffic that's going down Central. The issue for me would be increased traffic in the area. It's like a freeway going by my house as it is.

Chair Curtiss: On 27th?

Ellen Schmidt: On 27th and it's never patrolled, never. The other thing is that at another County Commissioners meeting I attended on a different issue, I was told by someone at the County Commissioners that on the east side of my property, there is a lot that was never platted, so is not in the public right-of-way? If you're familiar with the property, I'm talking about. It's not on this plat because it's further to the east. There's my home, there's Shirley Drive, which is a private street and then there's another residence, then the property belongs to the Thomas's [phonetic] stick out, oh, I think probably, 15 to 20 feet into the existing road away. I was told that that was never platted and therefore, the public has no right-of-way to widen that road, that would be a concern for me as well.

Chair Curtiss: Oh, okay, Mr. Sehestedt might be able to...

Mike Sehestedt: It appears without doing more research, from some of the exhibits we have, this is another section of North Avenue where there's a 30-foot rather than a 60-foot right-of-way immediately--well, you're on 17, then on Lot 18, and then immediately to the east of that, it appears that there's only a 30-foot right-of-way for North Avenue. There is a right-of-way there, but it is limited.

Ellen Schmidt: Right, but it cannot be widened, which I think might slow the traffic down a little bit, which would really be the main concern for me.

Mike Sehestedt: Certainly not without acquisition of additional right-of-way, which I don't--isn't before us now and I think doing anything to North Avenue would wind up being the subject of significant public hearings.

Ellen Schmidt: Okay, I guess my question would be then, do we anticipate these lots would be accessed from North Avenue? We've got Lot 4 here I see, unless this is a right-of-way here between Lots 2 and 3 for access to the property. Where's the access to that particular piece going to be from?

Chair Curtiss: It looks like there's a driveway easement going through Lot 3.

Ellen Schmidt: Okay, down here on the south side of it?

Chair Curtiss: Yes.

Ellen Schmidt: That's what exists right now.

Mike Sehestedt: I think we ought to be very clear, however, in responding to you that there is an existing 30-foot public right-of-way there and should the lot owner on Lot 1 or the developers choose to use North Avenue instead of the existing driveway across Lots 1 and 2, they would be legally able to do so.

Ellen Schmidt: Right and I understand that, but seeing the jog as we have it here, I don't see, you know, that it's a big problem as far as fast-moving traffic. I'm just concerned about the increase...

Chair Curtiss: So remember that this plat is a preliminary drawing that will go through subdivision process and those things, those decisions will be made. The only decision that we're going to make here today, and I'm glad you brought up the points though, is whether or not to give them a variance so that they could divide these lots where two--so there'd be four individual lots. Then they'll do that through the subdivision process.

Ellen Schmidt: A big concern for me is, you know, I don't want to see a variance written so that down the road they can subdivide it again.

Chair Curtiss: It is zoned, so they'd have to go through a bigger process to do that.

Mike Sehestedt: There would have to be a further variance. What you're going to act on today, one way or the other, is the request to grant a variance allowing the creation of two lots instead of being .5 acres or .46 and to grant basically the necessary setback variances so the existing houses are not in violation.

Ellen Schmidt: So it basically right now, its one lot.

Mike Sehestedt: Right.

Chair Curtiss: Right now its one lot with four houses that were built at a time when we didn't do--we didn't do building permits and a lot of things that may have made sure--like the one house on Lot 1 is right at the edge of the property. In fact, I think a half an inch maybe over the line.

Mike Sehestedt: It encroaches on the existing North Avenue right-of-way but some fairly small fraction. It does have an encroachment permit from the county, but that is conditional upon if we ever open North Avenue or need that right-of-way for public purposes, then the house has to be removed or at least addressed at that time.

Ellen Schmidt: So does that right-of-way then, the city's right-of-way, go clear to the other end of North Avenue where it goes around by Big Sky?

Chair Curtiss: Yes, its county right-of-way and we have right-of-way all the way through there. There's some encroachments in that right-of-way however.

Ellen Schmidt: Okay, thank you.

Mike Sehestedt: And a great deal of it is only 30 feet.

Chair Curtiss: It's not all 60 feet wide, which is what we prefer, some of its only 30 feet wide.

Ellen Schmidt: Okay, thank you.

Chair Curtiss: Did you have something you'd like to add just to clarify?

Emily West: Emily West again with Eli & Associates. I just wanted to help clarify for the neighbors because I understand; I would want to know the logistics as well. The plan is not to change the on-the-ground situation at all. In fact, we just would--to answer the access, we don't intend to use North Avenue. There's already two existing shared driveways and those would remain intact. There's the one at the north end of the lot and the one at the south end of the lot. Those two northern lots, Lot 1 and 2, will continue to use that shared driveway. Now, we have as a condition for going through subdivision review had to dedicate that additional 30 feet for public right-of-way for North Avenue, if it's ever developed as a road, but we don't intend to do that. As Commissioner Curtiss pointed out, there is a home that currently encroaches on that. Again, I just want to alleviate any concerns that you had that we don't intend to change its current condition.

Chair Curtiss: Remember, there's an invisible secretary here, so anything you say, you need to say on the record with your name, if you want it on the record. Thanks. Thank you, Emily. Is there someone else who'd like to comment? Yes, sir and we could bring you the microphone if it's easier.

Martin S. Bayner: Martin S. Bayner, I live at 2104 27th Avenue, right across the street from this piece of property. I object to the situation because I looked into it when I was going to buy it and it shows that couple houses are on the same well, I'm worried about the drawdown of more wells being put in. Also, the septic was a combination of septic. [Inaudible] Mr. Lambros when I looked into the property there. I feel that the situation is the way it is now, [inaudible] there be more wells, more septic being put in there and I object to the situation as it is now.

Chair Curtiss: So do you understand sir that the four houses that are there are the ones that are going to stay. They're going to use the same well, the same septic they've always used?

Martin S. Bayner: Yeah and that combination, you see, they're running over onto each other, so you're going to run into troubles and lawsuits and what have you I think unless something's done and I don't want to see more wells put in. I don't want to see more septic put in and nor do I want more traffic.

Chair Curtiss: Okay, thank you, sir.

Martin S. Bayner: So I object to it, I really do. I live across the street.

Chair Curtiss: Okay, thank you, sir.

Martin S. Bayner: I've got four grandchildren [inaudible].

Emily West: Emily West again. I just want to clarify; we're not planning on building any additional wells.

Chair Curtiss: Thank you, Emily. Any other public comment?

Ellen Schmidt: Ellen Schmidt again. I guess if that can become an issue, let's have it in writing.

Chair Curtiss: Thank you, Ms. Schmidt. Emily, I have a question for you. Emily, do you know how close the public sewer and water are to this?

Emily West: I believe sewer is about 900 feet away, so they're not in the immediately vicinity of sewer yet, but it's my understanding that eventually sewer will be in that area and that's something we're working out as we go through the subdivision process. City water, Jen, maybe you could help me with that, but it's not--I know it's adjacent in 27th Avenue and I think the plan is in the future, those homes will connect to Mountain Water, but right now they're all on a shared well, so there's no reason to change.

Chair Curtiss: Do all four houses share one well?

Emily West: Jerod, do you know? Jerod thinks there's two shared wells there.

Chair Curtiss: Two shared wells? Okay.

Emily West: Is that everything?

Unidentified Speaker: [Inaudible, spoke from audience.]

Chair Curtiss: Okay, I'll just summarize what you said so that we can make sure that she has it on the tape. The concern is that there could be a lack of water in our water basin. Any other comment? This is on whether or not to grant a variance to the size of the lots because the zoning in the area requires .5 acres and there's some on setbacks too, right? Yes, I see.

Lorraine Ryner: I'm Lorraine Ryner, [inaudible] and my husband Bill is here also. The letter you got was the letter that we sent, the only letter. Anyway, I was curious about--because you said you only sent out 24 of those and my next-door neighbor didn't even get a paper on it and I was just curious, how did you know to only send 24? Was there more like 50 letters you should have sent out to get more input from all of us other people who didn't get a letter?

Chair Curtiss: I think it was probably sent to the owners. Is your neighbor a...

Lorraine Ryner: My next-door neighbor is right next door to me, so I don't...

Chair Curtiss: Does she own or rent I meant.

Lorraine Ryner: He owns, he owns.

Chair Curtiss: So I suppose sometimes we miss. Dave, could you clarify what the standard is for mailing to folks, either you or Jen?

Jen Gress: We requested a radius of 300 feet from the property boundary and our GIS folks actually create those labels from a database that the county has so if they changed ownership at some point and the database wasn't updated, it's possible that they were missed. It's possible that they are outside the 300-foot radius.

Chair Curtiss: So we feed it into...

Lorraine Ryner: [Inaudible] out of it because he's right between two of us that we each got a letter and he didn't, so I was just curious about that because he's been there for a lot of years.

Mike Sehestedt: Which way from your house?

Lorraine Ryner: It was on the right side, or the left side, well, it depends which way you look at the house.

Mike Sehestedt: Okay, I'm standing on the cul-de-sac...

Lorraine Ryner: He's on the west side of our house.

Mike Sehestedt: ...looking at your house...

Lorraine Ryner: He's on the east side of our neighbor [inaudible].

Mike Sehestedt: David R. Pierce [phonetic]?

Lorraine Ryner: Yes.

Mike Sehestedt: He's on the mailing list, so I don't how.

Lorraine Ryner: No, he didn't get one. We made a copy and gave it to him. I think maybe your list isn't, maybe, up to date.

Chair Curtiss: Well, he is on the list.

Mike Sehestedt: He is on the list.

Chair Curtiss: So maybe the mailman ate it, I don't know.

Lorraine Ryner: Okay, you got my letter and I was kind of against it and I kind of still think I am against it, yeah.

Chair Curtiss: So could you tell me why you're against it, if it's not changing what's on the ground other than four people could own the houses rather than one?

Lorraine Ryner: Well, you see, it will probably go through probably that yes, you could have the four houses on it and everything and then they lowered the acreage, but then what happens when somebody comes along and this density, what I'm concerned about is that it's worded to where we citizens can't understand it unless somebody buys it and then puts density on it.

Chair Curtiss: This doesn't allow them to do that.

Lorraine Ryner: Oh.

Chair Curtiss: This area is zoned right now that you're supposed to have--you can have two houses on one acre.

Lorraine Ryner: Right.

Chair Curtiss: Well, they only have 1.92 acres. If they had two acres here, we wouldn't even be here today. They could divide it, but because there a little bit under, two of these lots are going to be just a smidge less than a half an acre. So that's what the variance is and the fact that some of them are probably a little too close to the--they don't have the setback that would be needed. Other than that, it would have to go through a whole other process to change the zoning. Jen, did you have something you wanted to add?

Jen Gress: I'm not sure where the conversation of setbacks are coming from, but it's my understanding that they are proposing to split this so that it meets all the setbacks of the zoning district.

Chair Curtiss: Except that one that's in the encroachment.

Jen Gress: Except for the encroachment, yes.

Chair Curtiss: Right, one house is stuck too close to the area. So it's just the size and it won't allow--when somebody else buys this lot, it will not allow them to divide it further unless the zoning in the whole area would change. Sir, would you like to come forward?

Robert Deaton: For the record, my name is Robert Deaton; I live 2710 Mulberry Lane, approximately half a block south of this area in question. I have a related question and that is there are miscellaneous pockets of quarter acres to two acres out in that area, kind of within the half-mile radius and what might the citizens out there do to take part in planning and particularly, you know that this is a fairly mild action. When something more substantial is done, how could we--what would be our first thing we should do to go find out about that and maybe do some planning ourselves as a neighbor.

Chair Curtiss: So currently, the Office of Planning and Grants is leading a process that we're calling the Urban Fringe Development area, so they have currently, and you can go to, if you have access to a computer or you can go over to the Office of Planning and Grants if you don't. They have put on maps things like the size of parcels, the restraints on the land that might be floodplain, it shows where wells are, it shows where septic are. We're looking at this whole area in the valley floor and then--so there just now getting ready to take that out to neighborhood meetings, community councils, neighborhood councils for more input. That's where we're going to make decisions to talk about that and then we'll be doing neighborhood plans and I know that Ms. Howe happens to be one that's leading the charge to do neighborhood plan in that Orchard Homes/Target Range area, so you should have the opportunity.

Robert Deaton: Thank you, that answers the question exactly.

Chair Curtiss: Okay, thank you.

Unidentified Speaker: [Inaudible, started speaking from audience] you could tell me exactly what...

Chair Curtiss: Sure, I'll Jen or Dave--you can go to the county's website, which is co.missoula.mt.us and then there's a department section there that you can find the department of Office of Planning and Grants.

Unidentified Speaker: Is there a direct website, something else I can go to without going through all these?

Chair Curtiss: You can just type in Missoula County in Google and it will come up that quick.

Unidentified Speaker: And it will come up?

Chair Curtiss: Then you...

Unidentified Speaker: Then do I look under department of planning or...

Unidentified Speaker: Office of Planning and Grants.

Unidentified Speaker: Office of Planning and Grants, that's what I want to know.

Chair Curtiss: It's in the directory of departments. Then there's probably a link right on there page that makes it easy. Is there further comment on this request for a variance to Zoning District 12A to allow an increase of density? The procedure then is for this body, the Planning and Zoning Commission, to make a motion that then is recommended to the County Commissioners.

Greg Robertson: I have just one question for you. Are we running afoul of state city/county health regulations regarding minimum lot size by legitimizing this practice? It's my understanding under--at least the limited knowledge that I have related to those rules, that if you have individual wells and [inaudible] it's minimum an acre size. If you have a community water system, which I don't believe these would qualify for or centralized sewer, you could reduce it to half acre.

Mike Sehestedt: No, weren't not running afoul of it. The old regulations under which this was developed basically allowed half acre for both. They're grandfathered parcels. Clearly, in the fullness of time, it would be better to get them on a community water system. Mountain Water's in the street, I would expect they will come to that sooner rather than later. I can't say for sure. Half acre for a septic system and drainfield probably is questionable under current standards, but again, you're not going to get in any trouble with the Health Department by allowing the division because you're not--there aren't going to be any more septic systems, there aren't going to be any more wells on this two acre piece, 2.96-acre piece than there were previously. If we were proposing to create brand new lots without either one, they would have an issue with the Health Department, but these are simply taking existing structures, so now an issue for you guys. Replacement drainfields, well issues may well be an issue that [inaudible] addressed by the Health Department in the future, but not a problem for this Board.

Chair Curtiss: I'm going to let Patty change the tape right now. Yes, Laura?

Laura Howe: I do have a comment to make that I'd like to recommend that we're not looking at a subdivision here, we're looking at zoning and no matter what the developer plans now, that could easily change between the zoning variance request and the actual subdivision. I mean they could replace the houses, they could request to do something totally different. In my experience and the work I've done in the neighborhood is that we have to look at the zoning separate from the subdivision because it could change. My question to Mike then is if these septic fail, they will be able to replace them, right?

Mike Sehestedt: That is my understanding given the distance I just heard recited from public sewer. It's far enough away that regulations don't mandate connection to public sewer at this time. As a grandfathered system, they would be allowed to either repair or replace the existing system.

Laura Howe: Has Eli looked at the proximity of the existing wells and septic to see if one failed, is there anyway to put a new drainfield?

Emily West: Emily West with Eli & Associates. I'm not our health guy, but I can tell you that they have looked, there is a spot, especially for that Lot 2 septic was one they've been talking about. I don't have any of the health drawings with me, I'm sorry, but I know that there is a spot on Lot 2 that they could put--that's the well--I mean,

excuse me, that septic may eventually need to be replaced, but there is a spot on there. I think the idea is we're so close to sewer and this whole area is developing quickly that, you know, it's not going to be very long before sewer is available out there.

Chair Curtiss: Thank you, Emily.

Unidentified Speaker: [Inaudible, spoke from audience.]

Unidentified Speaker: The septic could fail this summer for all we know. I mean, I've had it happen. So another question is for Office of Planning and Grants is there documentation that there were four houses legally on this parcel before the amendment 12A.

Jen Gress: Yes.

Unidentified Speaker: Okay and why is the owner not applying for this variance? I thought that an owner of a property has to apply for zoning changes?

Jen Gress: We simply need owner's signature to go through with the process and we do have their signatures.

Unidentified Speaker: Okay, then I have a question on the 30 feet of road on North Avenue, so there's 30 feet of right-of-way now, but what is the possible additional 30 feet because that would fully enclose that house.

Jen Gress: That's a subdivision question, that isn't something that would go into this process.

Unidentified Speaker: Then this zoning variance, will it refer to the lot sizes as we've been provided with information now so that they're only allowed to do that and not something different?

Jen Gress: Correct, the lot size would be solidified in this request.

Unidentified Speaker: Okay, that's it, thank you.

Chair Curtiss: Further questions or discussion?

Unidentified Speaker: Yeah, I was just--when she mentioned the additional...

Chair Curtiss: I need you to state your name.

Ellen Schmidt: I'm sorry, Ellen Schmidt, resident of the area. If the city decided to--let's say the city/county, whatever decided to put North Avenue through and assume that extra 30 feet then, that's going to significantly diminish the size of those two lots, 1 and 2.

Chair Curtiss: in the county, it would be an easement, it wouldn't be an ownership, so they still own.

Ellen Schmidt: So they basically they'd own part of the street.

Chair Curtiss: Uh, huh.

Mike Sehestedt: That's correct...

Chair Curtiss: The ownership is underlying.

Mike Sehestedt: ...you, for example, have fee ownership to the center of 27th Street. Your ownership, however, is subject to an easement for public right-of-way in all other related purposes. I suspect if you look at the drawing of your subdivision, it will actually show your lot lines extending to the center of the street.

Ellen Schmidt: Okay, you know and I have another question. When you were--when this--and I'm sorry, I don't remember this gentleman over here's name...

Chair Curtiss: Mr. Robertson.

Ellen Schmidt: ...was asking his question, you refereed to a lot size of 2.96 acres. Now where did that come from?

Mike Sehestedt: I'm sorry, if I said 2.96, I meant 1.96.

Ellen Schmidt: I just wanted...

Mike Sehestedt: But it....

Chair Curtiss: It's a little less than two acres.

Mike Sehestedt: Just under two acres, which is why we're here.

Ellen Schmidt: Okay, thank you.

Chair Curtiss: Is there further discussion? Further questions? Motions?

Commissioner Anderson made a motion that the Planning and Zoning Commission recommend to the Board of County Commissioners approval of the variance to Zoning District #12A to allow an increase of density and decrease of lot size on the north half of Lot 17, Cobban & Dinsmore's Orchard Homes #3; currently owned by Dustin and Katrina Delridge. Planning and Zoning Commission Member Greg Robertson seconded the motion. The motion carried on a vote of 5-0.

Mike Sehestedt: Let the record reflect that that was five affirmative votes on the 7-person board.

Chair Curtiss: So for those of you that came, I hope that you understand the process. Now it goes to the Commissioners, so we'll recess--do we just recess or just adjourn?

Mike Sehestedt: You can adjourn.

Chair Curtiss: Adjourn Planning and Zoning Commission and reconvene as the Board of County Commissioners. We have a recommended motion to us from the Planning and Zoning Commission to grant the variances as requested. Is there discussion on that?

Commissioner Carey made a motion that the Board of County Commissioners accept the recommendation of the Planning and Zoning Commission and approve a variance to Zoning District #12A to allow an increase of density and a decrease of lot size on the north half of Lot 17, Cobban & Dinsmore's Orchard Homes #3; currently owned by Dustin and Katrina Delridge. Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss: Thank you for your comments today, folks, and thank you, Laura.

Hearing: Application for Tax Incentive for New or Expanding Industry (CHS, Inc. Petroleum Shipment and Storage Facility)

Chair Curtiss opened the hearing.

Mike Sehestedt presented the staff report.

This is an application by CHS of Cenex. They're requesting tax incentives for the new tank farm located out off of old Grant Creek Road. The application is pursuant to a state statute that allows us to grant tax incentives for qualifying improvements. The basic standard is 50,000 and added value or 125,000 new construction. This is more than met by improvements in excess of \$10 million on the property. The only issue is whether or not this qualifies as new and expanding--legal issue [inaudible] policy issues for you guys, whether or not this is an industry as defined under the act, which is either engages in the chemical or mechanical transformation of products, transportation warehouse or distribution facility with 50% or more gross sales out of state, earns more than 50% of gross income from out of state customers. Didn't have the information to evaluate that, I'm sure the representatives of Cenex can fill us in. I did review their application and they have all of the required building

permits, health and environmental permits, and in fact, the facility has been largely constructed, at least to my untutored eye. With that, I would conclude the staff report.

Chair Curtiss: Thank you. This is a public hearing, so I'll open it officially and is there someone from CHS that would like to answer questions for us? Could you state your name for the record please?

Shelly Nomin: I'm Shelly Nomin and I am from Billings, Montana. I am the Energy Accounting Manager for CHS, the Laurel [phonetic] Operations Division. We are here today to ask you for approval for the new or expanded industry tax incentive for the Missoula Terminal located on Old Grant Creek Road. The piece of paper that I just gave you is an estimate that I have created using Department of Revenue life expectancy chart and their industry multiplier to calculate the market value of the Missoula Terminal. When I applied for the application, it was in the amount of something just slightly greater than \$10 million. At this time, the cost has increased and I've got an estimated value in here of \$12.562 million. Then I came up with the assessed value and then, using the current mills that I called Missoula County last week and received for that piece of property, those are the total mills. Now I understand that it's going to be something less than that because of the special mills that are associated with that piece of property, but I just used this as an example. The county will receive approximately \$1.2 million in revenue generated from this location during the 10 years that the incentive would be in place. The Department of Revenue does not totally deplete or depreciate an asset, so it's always going to have a 20% residual value. So over a 20-year life, the asset would generate for the county approximately \$2 million in 20 years for the county.

During the construction period, CHS has used local and state vendors to help construct that facility. As of last week, we have spent approximately \$3.3 million of dollars with local vendors and an additional \$1.5 million with state vendors generating revenue and positive impact in the community. CHS is going to hire three new employees to operate that terminal. There will be one manager and two hourly employees. The wages will be something greater than \$38.65 including benefits for those three employees. This year the Montana Petroleum Association asked Montana State University-Billings to conduct a survey through their Center for Applied Economic Research. The study asked what was the impact of one refinery worker job in a community, what kind of impact does it have? I called the Center up at MSUB and asked them if they had done anything specific to pipeline and terminals and they had not, but when I spoke with Ms. Adair [phonetic] at the Center, she said it would be something less, just slightly less than the impact of a refinery worker. That study showed that one refinery job creates 4.4 jobs in the community that it is located in. This would be jobs directly related to working at the facility to help service machinery, equipment, and it would also include non-related jobs, possibly government jobs, service jobs in the community. We will be bringing to the community, those positive impacts.

As you may know, CHS is a cooperative therefore, our revenue is returned back to our member/owners. Over the last three years, we have returned respectfully 42%, 31%, and 34% of our revenues back to our member/owners, which is a positive thing for the farmers and ranches that do own CHS. I thank you for your time and John Trager [phonetic], our Terminal Pipeline Manager, will [inaudible].

John Trager: John Trager with CHS. I'm responsible for the construction of this facility and for the ongoing operation once it's completed. Be more than glad to answer any specific questions you have. I was just going to make a general comment about this facility. This facility will be provided product into this facility gasoline, diesel, those types of products will be provided via pipeline from Yellowstone Pipeline, which is in place and has been in place for several years. CHS actually bought this piece of property that we're constructing on in 1954. It was bought with the intention of being next to that pipeline operation. Over the years, we've had access to pumping capacity on that pipeline, so that via what we refer to as an exchange agreement with Conoco/Phillips, customers of Cenex in the area have been able to go and pick up gasoline and diesel products at the Conoco/Phillips terminal. In exchange for that, Conoco/Phillips customers have come to our other terminals in other areas. Over the last couple years, the line capacity on the pipeline has become restricted. As a result of that, the pipeline is a common carrier, unless you treat all carriers equally, however, because we've been doing business on an exchange basis, Cenex has not been able to maintain their space on that pipeline. Putting facilities on here will allow us to become a shipper of record and will allow us to better serve and expand our markets for Cenex product in this area. I'd be glad to answer any specific questions about the facility or operation of the facility if you'd like.

Chair Curtiss: I think the questions that need to be clarified is what are you actually going to do there? We need to know either whether it's a transportation warehouse or distribution that has 50% of your sales out of state or if it's an industrial site, so do you do mixing?

John Trager: As I read those descriptions, we would be under the first one, the industrial site that does mixing and blending. The products coming down the pipeline are not finished products that can go directly to the market, additives, some testing, some blending of products, additives are injected so that they meet the regulations. We do distribute product and we do store it at the facility, but I don't think I'd be in a position to say that more than 50% of that goes out of state because I don't think that's correct.

Mike Sehestedt: I think as long as it is, in fact, and we kind of infer it from the nature of the improvements, this would be the case. If they're blending the converting raw materials, essentially additives and various distillate grades coming out of the pipeline, blending them and converting them to a finished product I think [inaudible] qualify as manufacturer.

John Trager: We will also blending ethanol, for example, ethanol into the gasoline stream as mandated in this area. We put in the ability to--we've designed it with the intent to, down the road, do biodiesel blending, although that equipment's not in there today, but the potential exists for that. That would be the area we'd fall under.

Chair Curtiss: Good, we just need to clarify that because it doesn't matter how good a project we think you have, if you don't meet that requirement, we can't do anything.

John Trager: Okay.

Commissioner Carey: Question for Mike. In your memo of December 21, Mike, you say to award tax incentives the following standards must be met, do you mean all of those?

Mike Sehestedt: No, any one of those will do it. They're listed in the alternative [inaudible] the statute started out as pure manufacturing as transportation, wholesaling, warehousing became bigger components of our economy, the legislature added those in as alternatives.

Commissioner Carey: So we can establish that they've met standards #1 and 2?

Mike Sehestedt: Yeah.

Chair Curtiss: One and 2A.

Commissioner Carey: Right, 2A. How much is the tax incentive we're talking about?

Chair Curtiss: That was the numbers that she tried to show here, but I have some questions, so you might want to clarify those.

Shelly Nomin: Shelly Nomin again. Excuse me. Based on my estimate, the incentive would be approximately \$700,000, so over the life of the incentive, you will receive approximately \$1.2 million dollars and it would be an incentive to us of approximately \$700,000. Like I said I used your total mills right now, I did not back off any special mills that would not apply to it, so it would probably be something less for CHS and the county would probably receive something more than what my estimate shows.

Chair Curtiss: Is this the 10 years, is that what we decided?

Mike Sehestedt: Yeah it is a 10 year.

Chair Curtiss: And your incentive?

Shelly Nomin: The first five years you receive, we receive a 50% benefit, so instead of being taxed at 3% it will be taxed at 1.5 to come up with the taxable value. Then for the remaining five years, it increases by 10% each year until on year 11, it's back up to 100% of its taxable value.

Mike Sehestedt: I am sorry I reviewed that over the noon hour and forgot to include it in my staff report.

Chair Curtiss: Thank you. We did request, just for the record, we did request comments from the school district and the fire department that serves this area and received no comments back. Is that correct?

Unidentified Speaker: [Inaudible].

Chair Curtiss: Because they would also be losing or not being paid the full...

Mike Sehestedt: They would suffer some impact and so we give notice to all affected tax jurisdictions and let them raise the issue.

Chair Curtiss: This is a public hearing, is there any other comment? Mr. Anderson?

Commissioner Anderson: There's no floor on how many jobs are created, we're just aware...

Mike Sehestedt: No, the statute doesn't even refer to it. We, in about 1985, adopted a policy, felt like it was useful information for the Commissioners to have in evaluating whether or not it was in the public interest.

Chair Curtiss: So it does, as was stated by Shelly and in the application, there would be three well-paid employees added to our economy here. They've met the other requirements that we have, looks like. Any other questions or comments before I close the hearing? Seeing none, I'll close the hearing.

Commissioner Carey made a motion that the Board of County Commissioners approve the application from CHS Inc. for tax benefits for an expanding industry as presented in the staff report. Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss: So do we send an official letter, Mike?

Mike Sehestedt: There is an actual DOR application. The last one I saw was on about 5-part NCR paper that needs to be filled out and submitted to them, but again we haven't done one of these in quite awhile, my recollection may be faulty. I think we should make sure we follow through with DOR.

Unidentified Speaker: [Inaudible, spoke from audience.]

Mike Sehestedt: We can handle the resolution. I just want to make sure DOR gets it in appropriate form.

Unidentified Speaker: [Inaudible, spoke from audience.]

Chair Curtiss: So it's the county's responsibility to notify DOR that we've granted it, right?

Mike Sehestedt: I think we should. I don't really care whose responsibility it is, I just want to make sure it happens; otherwise, we have all sorts of ugly [inaudible] ...

Chair Curtiss: Okay, I'll put this with the notes for the meeting, then.

Other Business

There being no further business to come before the Board, the Commissioners were in recess at 2:30 p.m.