

**PUBLIC MEETING – JANUARY 30, 2008**

The Public Meeting was called to order at 1:30 by 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, Office of Planning and Grants Senior Planner Mary McCrea, Office of Planning and Grants Planner Janet Rhoades, Office of Planning and Grants Planner Michele Reinhart, Office of Planning and Grants Planner Tim Worley, and Projects Coordinator Barb Martens.

**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 \$557,053.16. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Hearing: (Certificate of Survey): Braach 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 2A of Certificate of Survey #5992, Section 3, Township 14 North, Range 20 West. Robert M. and Dawn R. Braach have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 198 acres in size located near the Wye. Robert and Dawn propose to create approximately 20-acre parcel for transfer to Robert’s father, David D. Braach, for residential purposes and keep the remaining approximately 178-acre parcel for residential purposes as well.

The history of the parcel is as follows: Certificate of Survey #5895 was filed in 2007 for the purpose of creating tracts of land being 160 acres or larger in size. Certificate of Survey #5992 was filed in 2007 for the purpose of 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.

COS #5234	01/16/2002	Boundary Relocation	SW16-14-20
COS #5235	01/17/2002	Mortgage Release	NE 30-13-19
COS #5272	05/22/2002	GIFT	SW 16-14-20
COS #5354	12/19/2002	Boundary Relocation	SW 16-14-20
COS #5895	01/30/2007	Retracement 160	NE SE SW NW 3-14-20
COS #5992	11-16-2007	Boundary Relocation	NE SE SW NW 3-14-20

My recommendation to you is that you consider a request to create a family transfer parcel by dividing the parcel described as Tract 2A of Certificate of Survey #5992, Section 3, Township 14 North, Range 20 West. That concludes my report, Madam Chairman.

Chair Curtiss: Thank you, Mr. Sehestedt. Is there someone here from the Braach family? Could you come forward and identify yourself please? Probably you Robert, we need to ask you the questions. So we ask our Deputy County Attorney to ask questions on the record as evasion of subdivision review is a misdemeanor, so if you could identify yourself. You can tip that microphone up because you’re tall.

Robert Braach: Rob Braach, B-R-A-A-C-H.

Chair Curtiss: Thank you, Rob. And I assume this is...?

David Braach: I’m David Braach.

Mike Sehestedt: Mr. and Mr. Braach, I’m going to ask some kind of prying questions, purpose of the questioning is to determine whether or not this is a legitimate use of the family transfer exemption. The best way to get at it is

we wind up actually inquiring to some what would otherwise be private family business. With that background and my apologies in advance, approximately how long have you owned the property?

Robert Braach: I bought this property in October of 2006.

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

Robert Braach: No.

Mike Sehestedt: Do either you or your father intend to transfer the parcels you'd own if this transaction goes through within the next year? Do you intend to sell the remainder parcel within the next year?

Robert Braach: No, I intend on...the remainder parcel.

Mike Sehestedt: Does your father...

Robert Braach: ...I intend on building a house.

Mike Sehestedt: Does your father intend to sell the 20 he's going to receive within the next year?

David Braach: My intention is to build also.

Chair Curtiss: We need to speak pretty close to the mic so the tape picks it up.

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

Robert Braach: No.

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

Robert Braach: I'm not in the business of doing it, but I have--it's not my first rodeo, I guess. I have done some subdivisions when they've been appropriate. I've done some family transfers when they fit the specific purpose in mind, such as this one [inaudible].

Mike Sehestedt: Are you attempting to evade subdivision review?

Robert Braach: No.

Mike Sehestedt: Do you understand that should the Commissioners approve this use of the exemption, we're not reviewing either of the parcels for adequate access in all weather for all vehicles, including emergency services?

Robert Braach: I do understand that.

Mike Sehestedt: Do you understand that if the Commissioners approve the use of this exemption, it merely permits division of the property? It does not mean that the property is zoning compliant, building permits, floodplain approval, or it does not mean you're approved for a septic system?

Robert Braach: I understand that as well.

Mike Sehestedt: That concludes my questions, Madam Chairman.

Chair Curtiss: Just to clarify because I don't know if Cathie caught it, Mr. David Braach stated that he plans to build on the 20 acres, if approved. Did you have anything that you'd like to add?

Robert Braach: No, not really, its part of a 480-acre parcel that I bought that was already--I think there were five parcels that existed when I bought it and I did the--traded the 198 acres we're talking about was an exemption because it was over 160 acres. Its west of town, right off Highway 93 North, and intend on being able to keep roughly 300 acres of it in open space.

Chair Curtiss: Any questions for Mr. or Mr. Braach? Thank you. Is there anyone from the public who'd like to make comment on this proposed family transfer? Seeing no one come forward, I'll close the hearing.

Commissioner Carey made a motion that the Board of County Commissioners approve the request by Robert and Dawn Braach 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 3-0.

Chair Curtiss: Mr. Braach you will receive a letter from the Commission, but it's okay to have your surveyor begin work. We aren't sure what our secretary's workload is; she gets to type it. Thank you.

### **Hearing: Resolution to Create RSID 8489 - Wye Area Sewer**

Chair Curtiss opened the hearing.

Greg Robertson presented the staff report.

Before you for your consideration is a request to form Rural Special Improvement District #8489 to sewer the Wye area. For this afternoon, WGM Group, the consultant representing a number of the landowners has a short presentation to give you to more fully explain the project.

Last month after about three years worth of work at creating this district, you signed a resolution of intent to create this special improvement district. Notice went out to all affected property owners and for the record, there were 252 parcels of record included in this proposed district. The protest period concluded Monday evening. We received five protest letter and one comment letter, all of which are attached to your Request for Commission Action. They represent a protest of 2.35% of the total cost of the improvements. We would recommend, based on the inadequate protest that you form the district as the petition requests.

Chair Curtiss: Thank you. Jon, are you ready to--is that right, Jon?

Greg Robertson: Yeah.

Chair Curtiss: While he's doing that, Greg, do you have the list of what the assessments are for all the individual properties?

Greg Robertson: Yes, that's not included in the packet that was attached to the resolution of intent to create.

Chair Curtiss: Jon?

Jon Gass: Thank you, Board and Greg. For the record, my name is Jon Gass. I'm an engineer with WGM Group.

Chair Curtiss: Would you spell your name for Cathie, please?

Jon Gass: G-A-S-S. I want to take just a few moments and go through the history of the project. As Greg mentioned, this has been in the works for about the last three years or so and just to do kind of a broad overview of how we got where we are today with the resolution for RSID 8489.

Jon Gass presented PowerPoint slides, which can be found in the file.

Chair Curtiss: Thank you, Jon. And could you provide a copy of that PowerPoint for our secretary for our records? Thank you. This is hearing, is there anyone who would like to make comment on the formation of this RSID for the Wye Sewer Project? If you'd like to just come forward and state your name for the record please.

Ken Watt: Good afternoon, my name's Ken Watt, it's W-A-T-T. I'm the landowner or I should say I own a lot at 9778 Mallum Lane, which is Lot 1 at Mallum Meadows. I don't have a pointer or I'd show you. Basically it's along the Waldo Road and Mallum Lane in the first lot. Initially I wrote a letter yesterday or Monday stating that I have concerns that, first, I have the dubious privilege of the being the highest nitrate hit in that area of over 10. I have

two small children, two girls, and so I'm a proponent for the sewer and I'm glad it's coming out there, but the issue I have is if you notice the SID boundary is excluding the two subdivisions behind Jim and Mary's RV. The concentration of nitrates are the highest on my lot and so the area I figured--I assume the area behind or east of my house is a big source of the nitrates because if you go south and north of my lot, the nitrate levels get lower. There's some nitrates that are filtering from that area. I'm going to pay about \$9,000 to have this SID. My fear is that after I'm hooked up to the sewer, that the nitrates will not dissipate because [inaudible] huge source of the nitrates, so I would propose that you include that area in this RSID.

I don't think anybody's done a study on the cost to add it to the RSID, but I'd be willing to pay the additional two cents, one cent, whatever it is, so that my children don't have to drink that water. It's--and if you know, I propose also that, you know, we have a functioning lagoon system that does not contribute to the nitrates in that area and that we'd be excluded from the RSID until that area is included. That way we could be all together on one RSID in the future. That's my big concern and I just wanted to get that known on the record that by excluding those two subdivisions, that's going to be a major source of nitrates to the water.

Chair Curtiss: Thank you, Mr. Watt. We were briefed on this issue this morning, so I think a couple staff will address some of your concerns in that area. Anyone else that wants to make comment? Yes, ma'am, please come forward.

Jeanette Manly: Yes, my name's Jeanette Manly.

Chair Curtiss: Jeanette, can you pull that down closer to you, the whole thing just comes down.

Jeanette Manly: But it won't break on me, will it?

Chair Curtiss: It won't break. There you go, thank you.

Jeanette Manly: I also am a proponent of the sewer. I think it's an excellent idea out there, however my issues have to do with assessment. We have six and a half acres, well 6.55, it's a single-family home with a small business office on it and the assessment for our property is some \$70,000, which adds--I was told that the bond, that they'll be perhaps we'll get a three and a quarter interest on the bond. It adds \$412 a month to my family budget at the time this goes in and that will continue for 20 years. I fail to see the cost benefit. Mr. Gass brought up, and I did have a question, you said that 68% of the landowners out in the area...

Chair Curtiss: You need to talk into the mic...

Jeanette Manly: I'm sorry, that 68% of the landowners out in the area had approved that. I'd like to know which percentage of that land mass is commercial that approved that because by having a commercial operation, you have a chance of recapping your cost. On a single-family dwelling, you have no ability to recap costs. There again, I would like to know what percentage of that 68% who approved it, what percent of that 68% are commercial who can recap their costs?

Chair Curtiss: Okay, we can--we'll write that down and we'll have them answer it in a little bit. Did you have other questions?

Jeanette Manly: Also, I'm just backing up with what Mr. Watt had to say. I really believe that the subdivisions to the east of us [inaudible] also be in the RSID because I do agree that they are affecting our nitrate levels. That's it.

Chair Curtiss: Thank you. Other questions or comments?

Ron Ewart: Hi, my name is Ron Ewart with Eli & Associates. At this time, there are no water systems south of I90 and there are no plans for water systems. I think that it would be nice if we would start thinking about how we're going to provide a water system for this area. There's some different options. I spoken with a few people about it, but it doesn't seem like there's a whole lot of interest right now. Thank you.

Chair Curtiss: Thank you, Mr. Ewart. Mr. Carlson, did you want to address the Spring Meadows/Williams Addition questions?

Jim Carlson: Yeah, I'll be happy to do that when...

Chair Curtiss: I think you need to tip the mic up.

Jim Carlson: My name is Jim Carlson; I'm Director of Environmental Health at the City/County Health Department and Director of the Water Quality District. I'm very happy to see this project move forward. A little over 10 years ago, we identified some serious groundwater issues in this area and, as a result, working with the city and the county and the Health Department, the wastewater treatment plant service area was extended out to this area, primarily for the purpose of responding to these water quality issues that have been identified. As has been mentioned, in particular, the area in the northeast quadrant of Highway 93 and the interstate has a dozen or so wells that are above or between two parts per million to as high as in the past 9.9 parts per million in a public water supply. Normal sorts of background levels in Western Montana are down are .01, .02 parts per million. This is a very high elevation of groundwater nitrate and nitrate acts as a tracer for septic where other sorts of sources are not likely contributing as Jonathan has indicated. That means that many of these wells have between 10 and 20% septic effluent, essentially, filtered through 100 feet or so of soil in their water supplies. There are about 15 public water supplies in this area. One of them, as I mentioned, has been as high as 9.9. We would be required to discontinue the use at that business that has the public water supply if it were to get over 10. That notwithstanding, the groundwater standard for Class 3 waters in Montana is 10 parts per million and it's the responsibility of both state and local government to ensure that the use of groundwater is available at levels below the established standards for everyone to use. There's a sustainability issue here that we have responsibility for.

The DNRP was established nine years ago, which the city and the county and the Health Department are all signatories to and approved by EPA, which requires us to work together to connect half of the 7,000 septic systems in the designated area that were identified ten years ago. This project will help us towards that [inaudible] this water moves in a southwesterly fashion out towards Frenchtown and eventually reenters the Clark Fork River. The nitrates are conservation once they get out of the reach of plants and root zones, and that material ends up back in the river, which is causing or contributing to the violation of nutrient standards in the Clark Fork River. This is the basin problem that we have from Butte all the way down to the confluence of the Clark Fork with the Flathead River, which introduces enough dilution water to bring the river back into standards.

There's a number of businesses in the area that are not being allowed to expand their business with regard to their wastewater use, which will be positively affected by this change in that by connecting the sewer, they will no longer have an impact on the groundwater. It's also a very important public health concept to separate our water supplies from our wastewater discharge when we are usually septic systems, particularly in this [inaudible] aquifer. Essentially, we're using the same geologic structure that we get our drinking water from for our wastewater disposal. Unfortunately in this area, there's not adequate dilution water coming off of the foothills or the tertiary soils and the result is that we have too much sewage going into the ground for the dilution water supplied by groundwater to bring that water to acceptable levels. For all of these reasons, I strongly urge the Board to approve this SID and get this project going.

With regard to--would you like to ask a question?

Chair Curtiss: Sure, so one of the things that Mr. Watt brought up was the concern that possibly the Spring Meadows and I think it's called Williams Addition not being included in this that they're effluent could influence water on his side of the road. So could you talk a little bit about the water flow direction and what we believe we know?

Jim Carlson: Although not substantiated by a lot of subsurface work with regard to modeling, we are in agreement, we believe that this watershed, and these are tertiary soils up here that create the existence of any permanent streams in Western Montana and, in some cases, pre-date the existence of the Rocky Mountains which, you know, they're being pushed up into the air actually caused a lot of the precipitation, which gives us permanent streams in Western Montana and the climate change that went along with that. There are tilted beds in these very very old soils that we believe may be delivering effluent down into the area of the well that has violated standards. We agree that we need to look very seriously at getting this area sewered. I'm not real familiar with the history of the exclusion, but I do understand that this SID is an interceptor SID or a backbone SID and is not necessarily intended to serve every parcel in the SID and parcels that are eligible to connect outside the SID. It's important to note that this area here is south of this section line, which for the most part, except for this one piece here, is the boundary of the wastewater treatment plant service area. So they are in the service area. There is a community system at Jim and Mary's and Three Acre Wood and then another one that serves

the Williams Addition that's right about there on the map. Further east is all individual septic systems. We will be working diligently in the future certainly to get these community systems hooked up as quickly as possible. If they join the SID or we get mains extended in those areas to serve those, whether--of course, these two systems are already in the SID. This subdivision and this subdivision are not. They would be required to pay into the SID that defers the cost of the rest of the landowners that are already in the SID. That's part of the language that creates the project. Does answer the question?

Chair Curtiss: So we aren't really whether the water flow from those two areas--it could, but it might not, just depending on where it goes underground, affect the...

Jim Carlson: Yeah, we're not absolutely sure. That requires having a very good understanding of the three-dimensional aspects of the aquifer, as opposed to just the top of the saturated zone. These sorts of problems have been evidenced every time we start to encroach on these tertiary soils, be it Linda Vista, South Hills, out southwest of [inaudible] and in this area, we see similar behaviors. That could be one of these old tilted [inaudible] that was tilted as a result of the mountains being formed and the drop faulting that may have occurred in the area or it could be simply that there's an old buried streambed below this streambed that runs in the same direction that's essentially directing that affluent down into that area. We think it's highly likely. We can't paint that nitrate red and follow it over five or 10 years to get there, but that's our thesis at this point.

Chair Curtiss: Thank you, Mr. Carlson. Greg or Jon, did you want to address the reason why Spring Meadows and Williams Addition aren't in here, but we think they're going to be taken care of soon?

Greg Robertson: I can address part of it. As far as Williams Addition goes--let me back up just a minute, this project started several years ago. It was brought to you by petition. The boundaries at that time were reasonably established. They haven't changed a whole lot, although there have been some additions and some deletions based on discussions with property owners. This particular area was excluded primarily due to perceived resistance amongst some of the landowners that were proponents for developing this district. Since it was, more or less, a voluntary-type process, we weren't going to force them into it. I'm sure you can remember the experience we had with the Mullan Sewer Project where, that was not done by petition, that was done by a county-initiated creation and we sure stirred up a hornet's nest for a while. So, the approach that was taken was we weren't going to hold a bat over anyone's head. If they didn't want to be in it, they didn't have to be in it.

Williams Addition, the owner of the collection system and treatment plant, Dennis Williams, is going to connect that subdivision to it. I asked him to hold off because we were at the final stages of creation of this district, that we do a separate RSID which he has agreed to, so that will follow in due time to connect it up. I presume with Spring Meadows, that's a whole other conversation that needs to happen, mains will have to be installed, streets will have to be torn up, and I think we need to have more of a conversation with them. Also, know and fully understand that they are a contributor. Then a policy decision will have to be made by the Commissioners whether to initiate a district to address that particular area, but for this particular district, there was really no plan to force anybody to do it. It had pretty much broad-based support and that's evidenced by the minimal protest that was received by us. I don't know if I really answered your question or not, but that was basically the line of thinking when this thing started.

Chair Curtiss: The Williams Addition has its own central collection system, which makes it much easier to connect...

Greg Robertson: Very easy to connect.

Chair Curtiss: Spring Meadows, however, on individual septics, so therefore, there would have to be a lot of...

Greg Robertson: Yeah, it will be very similar, probably in terms of cost, to Country Crest, which was by far the highest subdistrict cost that we had. You may recall that all of the other subdivisions that we included for subdistricts had their collection systems in place, which made dismantling the sewage lagoons and restoring those and connecting them on to the centralized collection system pretty simple matter.

Chair Curtiss: Then to add onto what Mr. Carlson said, if a second RSID is formed for Williams Addition and possibility a third for Spring Meadows, they would be expected a proportionate share of the Phase 1 costs...

Greg Robertson: That's right.

Chair Curtiss: ...which would reduce...

Greg Robertson: ...everybody else's expenses. That's very similar with what was done with the Mullan Sewer RSID, where properties that developed inside, as well as extraterritorial that were outside the boundaries, if and when they petitioned to gain additional sewer capacity, they were required to pay equal assessments to buy down the costs of everyone else that contributed. The net result will be to allow the debt service to be retired earlier.

Chair Curtiss: Follow-up questions from the Commission on this one? Thanks. Mr. Gass, did you have the numbers available to talk about the question that Ms. Manly asked about what percentage of the owners are commercial operations?

Jon Gass: The numbers that I have with me indicate about 65% of the district is commercial. I don't have how those relate to those that signed the petition and not, but half or better than half of the district is what we would consider commercial [inaudible] of the project.

Chair Curtiss: Did you have anything else you'd like to add to the conversation about the Phase II kind of sections?

Jon Gass: I understand the concerns with the water quality and I think the Commissioners will want to look at that in the future. We've had discussions with Mr. Williams, as Greg mentioned, the owner of that district. I think the important things to keep in mind is that those areas were considered in the sizing of the district and that nothing with this district precludes them from coming on in the future. The interlocal agreement describes how those future districts would pay into the existing district. If we look at some of the other RSID projects that have been done for sewer, you know, there's rarely an overnight fix for these things. We look at the Mullan Road area and the subdistricts that went with Country Crest and some of these other areas, the East Reserve Street, the area of Missoula when that was seweraged through an SID, that was done in three phases and multiple SIDs in that one. So I think we're on the right path and taking the right first step to get that area on.

Chair Curtiss: Do you have any knowledge of any future potential public water systems or community water systems; I thought you said south of the freeway?

Jon Gass: You know there was interest when the SID was first brought forward and the petition was starting to circulate. I believe it started with a sewer and water SID. The water, there was found not to be the support for that. Although I can say in the conversations I've had with landowners out there and phone calls that I received, a typical question is what about water. So we've been in contact with a number of landowners and we'll be looking to see if there's energy to support that.

Chair Curtiss: Thank you. Did you have a question?

Commissioner Anderson: Yes, do you have a timeline on when these other RSIDs might be created, two or three years, or next year?

Jon Gass: I think two or three years is probably a good estimate. We'd like to get going on those as soon as we can if this district is created.

Chair Curtiss: Thank you, Mr. Gass. Other comments? Mr. Carlson?

Jim Carlson: One thing that I did fail to mention is that there are some varying degrees of language involved in Jim and Mary's and Three Acre Wood and the Williams Addition that we've required as either the result of subdivision or issuing new permits that make it easier for us to get them connected in that they've waived some ability to refuse connection. That doesn't exist for the single-family homes; that's a much older subdivision up there. The other thing I wanted to mention was that, you know, there will be financial issues I think involved in this and certainly the water quality district will consider some subsidies for extremely high connection costs in those areas where we have existing homes as opposed to new homes that may be wanting to connect to the system. Finally, I think it's important for the Commission and the public to understand that recently as a result of the [inaudible] lawsuit and the fact that this is being--although it's not a closed basin, the Department of Natural Resources is treating the lower Clark Fork now as a closed basin. Part of the problem in installing a large public water supply is that you have to buy water rights now essentially from somebody else in the basin in order to get

the water rights for large public wells. It's a real concern to us because it's essentially a disincentive for people to install public water supplies, which we consider to be an essential component to public health infrastructure, public water, public sewer, paved streets. It's going to be an increasing issue and problem in Western Montana in this basin above [inaudible] on the Clark Fork. Thank you.

Chair Curtiss: Thank you, Mr. Carlson. Any other comment on the formation of this RSID? Yes, please come forward.

Jeanette Manly: I'd like to know...

Chair Curtiss: State your name again, please.

Jeanette Manly: Oh, Jeanette Manly. I would like to know why--it seems like the cart's getting put before the horse here and again I go back to the Williams and the Spring Hill subdivisions. From my understanding of this gentleman's discussion with the type of soil and the age of the soil, there's a high probability that that is a major source into the groundwaters in that area. However that is being left out and the 10 to 11 homes that are on the west side of the Wye on over a hundred odd acres, the Mallum subdivision is all going to an affluent system that doesn't even get into the aquifer, which puts only four septic systems west of Highway 93 that are going into the aquifer at this time. We're addressing and assessing those properties, however, what we know in a high probability, because of soil samples, as a high-nitrate contributor on the east side of the Wye isn't even going into the system. The whole RSID development was to reduce nitrates at the Wye and a major probable, major contributor is being totally ignored. It seems like we've got the cart before the horse here, that the assessment around Waldo Road on the west side of the Wye should really those--that effort should be put on the east side of 93 and into those subdivisions. I guess when you tell me that people aren't going to like it and there's cost issues and we'll have to tear up roads and it'll be a lot more whining is not a good reason to me why we're polluting the Clark Fork and not addressing a major nitrate contributor...

Chair Curtiss: I think the different is that this is a petition or an RSID formed by petition of people who came to us. It could be that in the future we have to force somebody to do it because of nitrate levels, which is what happened in the Mullan area. It couldn't handle anymore and so the county is the one that started that process.

Jeanette Manly: Well we can't handle anymore on our side of the road because of what's going on east of us and yet that is not even being addressed.

Chair Curtiss: But this was petitioned by the people, so we're dealing with it and we may have to do it...

Jeanette Manly: [Inaudible, interrupted Chair Curtiss.] people [inaudible] comfortable if you say businesses in the area.

Cathie Cichosz: Excuse me, ma'am. When you interrupt, I can't hear either of you on the tape. Thank you.

Jeanette Manly: Okay and that's inappropriate, I'm sorry.

Chair Curtiss: Mr. Sehestedt?

Mike Sehestedt: I think something you need to point out is that this RSID creates an interceptor system, backbone of the system. We're going to address, in the very near future, the Williams Addition with an SID to connect because that's fairly easy to do and that'll get that out. The service in Spring Hill is going to require essentially development of a whole different level of RSID, one that will construct the actual pipes to which the homes connect. At the time we do that, they're going to get hit with all of the fees associated with connection, the city fees, a contribution to this SID, which will pay down the common cost for all of the other people and we're going to have to pay for the cost of construction. We can't do anything there until we have this interceptor backbone system in place. When we do that one, it will be a radically differently project than is being done in the rest of the neighborhood. I think from what Mr. Carlson has said and Mr. Robertson has said, those are clear future probability in the case of Williams. We'll get the community system at Jim and Mary's and Three Acre Wood almost immediately as well, then require a policy decision by the Commissioners, but then we will probably then also pursue actively to get another RSID subdistrict to pick up the Spring Hill. We've done this in the past. Linda Vista is an example of an area in which we forced sewerage because of water quality issues, but until we have something to connect that system to, which this RSID will provide, we couldn't really move forward on that. So it's

kind of one step at a time. I realize that for somebody that's paying assessments out there, it's kind of a giant stomp, but it's the first step. Once this is in place, we can take further action to address the other issues.

Jeanette Manly: Thank you.

Chair Curtiss: I think that's an important notation, Mike, I appreciate you making it, that this is creating the backbone to which we can connect other things in the future. It doesn't connect most folks, it just creates the backbone. Further comment from the public? Seeing no one come forward, do you have any questions?

Commissioner Carey: I have a question, were the folks in Spring Hill, did they have the opportunity to request to be included in this?

Greg Robertson: I believe at the time in 2004 when the petition was being circulated, they were given an opportunity. That's my understanding.

Commissioner Carey: And apparently, there weren't enough petitioners?

Greg Robertson: I don't think there was much interest.

Chair Curtiss: I'll close the public hearing.

Commissioner Anderson: I'd just like to state I'll abstain from this vote, since I have property in the RSID area.

Chair Curtiss: Thank you. Is there a motion?

Commissioner Carey: I believe Mr. Watt and Ms. Manly raised very important points and quite valid ones, however, it seems as though the folks in Spring Hill didn't act soon enough or with enough numbers to make it part of the project, but it will come--I hope it will come in the near future.

Commissioner Carey made a motion that the Board of County Commissioners approve the resolution to create RSID #8489 Wye Sewer Project as presented in the staff report. Chair Curtiss seconded the motion.

Chair Curtiss: Also, we've already stated on the record that there has been a protest time and there was a very small number that protested.

The motion carried on a vote of 2-0, with Commissioner Anderson abstaining.

**Consideration: Robertson Remount Estates (2 lots on 10.25 acres) - Remount Road, north of Ninemile House**

Chair Curtiss opened the consideration.

Janet Rhoades presented the staff report.

This subdivision is proposed by John Robertson, for Robertson Capital Corporation, represented by Ron Ewart of Eli & Associates. It is a 2-lot split of a 10.25-acre parcel on Remount Road in the lower Ninemile area, north of Huson, approximately  $\frac{3}{4}$  of a mile north of Ninemile House, where Remount Road intersects with Ninemile Road. Each lot will be five acres or more in size. The property is bordered by Ninemile Creek to the west and Remount Road to the east. The property contains a riparian area, which is shown in dark green on the plat behind me, a riparian buffer area, which is shown in light green, a floodplain area for Ninemile Creek, the FEMA boundary is shown as a dashed blue line on that plat, a low area shown in orange, and a steep bench, which is shown in red. There's a flat area above the bench, which is the buildable area for the two lots. Access is proposed from Remount Road, which is a public county road. Both lots are proposed to have separate driveways directly accessing Remount Road, so no easements have been established.

Condition #1 requires the subdivider to install a new driveway to the existing house on Lot 2 prior to final plat approval in order to ensure that Lot 2 does not continue using the driveway through Lot 1 without an easement. In order to provide adequate fire protection for the site, the standard conditions of approval have been included relating to driveways, interior residential fire sprinklers, and address signs. A condition relating to fuel mitigation

has also been included because this site is in a Wildlife Residential Interface area. Both lots will be served by individual on-site septic systems and individual wells.

According to the Floodplain Administrator, the FEMA floodplain boundary is unreliable in this area, and the topography of the site indicates that the floodplain could potentially be anywhere between the creek and the top of the bench. In lieu of hydrological floodplain studies, which would have been required, the subdivider has designated a no-build zone for residential structures/steep slope/low area, which is shown in orange and red on the plat behind me. This is designated in the development covenants and also in Condition #11 in order to protect the site from potential flood hazards. In addition, the Floodplain Administrator has recommended that a 15-foot building setback, which is shown as a dashed pink line on the plat behind me, be placed from the top of the bench because structures built close to the slope are vulnerable to flood hazards and may cause slumping of the bench during flood events. This is required also as Condition of Approval #12.

In order to protect the property's area of riparian resources, the riparian area has been designated as a riparian resource area/no-build/no-alteration zone, which is shown in dark green on the plat, which prohibits the construction of buildings and other structures, as well as other environmental restrictions described in development covenants and Condition #8. Because a riparian buffer area was not designated in the original submittal packet, Condition #9 requires that a 30-foot riparian buffer area/no-build/no-alteration zone, which is shown in light green be designated on the plat and in the covenants.

At Planning Status meeting last Monday, the developer's representative stated that the riparian resource area boundary as shown on the preliminary plat actually includes areas beyond those with riparian vegetation, especially on Lot 2. To address this, staff recommends that the riparian resource boundary be defined by the eastern edge of the riparian vegetation instead of the top of the lower bench. Staff would also recommend that the boundary of the riparian buffer area be a minimum of 80 feet from Ninemile Creek in order to protect the wildlife habitat and water quality of the creek. This is the approximate distance of the riparian and the buffer area at its narrowest point as it is shown on this plat at the boundary of Lots 1 and 2. If the Board of County Commissioners would like to incorporate this change, staff has prepared a memo with recommended condition of approval amendments. That concludes the staff report.

Chair Curtiss: Thank you, Janet. Is Ron ready, developer's representative? Janet, you didn't have a memo with a proposed change in the language though yet, right?

Janet Rhoades: Yeah, it should be going around. Did it not get to you yet?

Chair Curtiss: I have the one that you read from though. Mr. Ewart, are you ready to present?

Ron Ewart: Yes, good afternoon, my name is Ron Ewart with Eli & Associates. I'd like to thank OPG for all their work on this proposal. There's just a couple conditions that we'd like to talk about, which would be Condition #9 and 10, but quickly just to give you an overview of the property:

Ron Ewart presented PowerPoint slides, which can be found in the file.

We've prepared a little drawing here that sort of shows what we'd like to do. First of all, the green area is the area of riparian resource as is shown on the preliminary plat. I have a little red line that shows the existing fence. Now fortunately, whoever built the fence didn't allow the animals to go all the way to the creek. They did have a fence that kept them back from the creek, so we would like to come back with that fence to the top of this little bench. Then our thinking here was, we just sort of followed it out and then when it flattened out, we just hooked up with that existing fence, which it's hard to tell the difference between the no-build zone and the area of riparian resource. That was sort of our line of thinking. The staff report recommends a 30-foot setback from the edge of riparian resource. It states that we didn't have a buffer. Actually, all of this area in the no-build zone for residential structures, that is the buffer and the regulations require under 3.13.3, it says plan buffer to mitigate development adjacent to areas of riparian resources. That's what we did; we created this wide buffer area to separate the area of riparian resource from the development. So we followed the regulations, we made it through sufficiency review and element review and all of that. To create an additional buffer along the area of riparian resource, I think should take a little bit of consideration into what it is we're trying to protect. Again, we'd like to stay on top of the bench with the fence down here. What we'd like to propose basically, to make a long story short, would be on Condition #9, instead of requiring--okay, about halfway through it, it says on #7--anyway on the memo that was handed out, it says the boundary of the riparian buffer shall be shown as a minimum 30-foot wide

strip of land. If we could make that five-foot strip because that way we would be five-foot back from the edge of the bench in this area and five feet back from everything else. Then we're okay with the rest of that and at least 80 feet from the edge of Ninemile Creek. That's why this area here is a little bit wider. I think there is some merit to staying back from the creek this 80 feet, but I don't know if there's that much merit in staying back an entire 30 feet from what we showed as the edge of the riparian resource. Again, we were being conservative; we weren't trying to be close to it, knowing we would get another buffer because we felt that we met the regulations by having this very wide buffer area. Part of the reason for the rationale is our client who bought the property, you know, he doesn't want to lose too much of the property or not be able to keep animals on it. He'd just like to come to a compromise. I think that this is a good compromise and it does protect the creek and I think that it meets the goals of OPG as well as the goals that we set out to achieve as well.

The only other thing is that on the original staff report, Condition #10, livestock and fencing, no more than three livestock animals. He said that he would like to see if we could go with five livestock animals. Again, that would be on the original subdivision--the original staff report, Condition #10. Just those two very minor changes and change from 30 feet to five feet and then of course, we're okay with the 80 feet from the edge of the property line, and then just instead of three livestock animals, make it five and that's all.

Chair Curtiss: Mr. Ewart, what's the dark green area you've got marked there kind of in the center.

Ron Ewart: I have a five-foot strip all along the area of riparian resource and then this is wider because OPG would like to see more of a distance between the creek and the edge of the buffer. In this memo, we'd like to see 80 feet, so that's why that is wider...

Chair Curtiss: Okay, that equals...

Ron Ewart: ...[inaudible] widening in that area, but only by five-feet in the rest.

Chair Curtiss: Thank you. On Monday, you talked about four and now you're up to five livestock?

Ron Ewart: Well, that's [inaudible] I guess.

Chair Curtiss: Any other questions for Mr. Ewart at this time? Mary?

Mary McCrea: Mary McCrea, planner with the Office of Planning and Grants. I just wanted to clarify a little bit the language in the memo and I apologize that we didn't get you a copy sooner, Ron, that was the intention. We had a conversation but we didn't give him the hard copy. I think actually the language proposed in Condition of Approval #7 is a little more lenient than what Ron is suggesting. It's a little more in compliance with what the regulations require. Riparian resource areas are defined by the vegetation, so if you were to look at the--if the vegetation truly is here, then that would be the edge of the riparian resource area. Typically, the regulations also require a riparian buffer area, varying widths and the standard recommendation we received from Fish, Wildlife, & Parks and Rural Initiatives is 30 to 50 feet for creeks and streams. It can be larger if it's a river or larger water body. Then it would be an additional 30 feet from that edge of the vegetation, which would comply. In this case, if this is the edge of the vegetation or it's somewhere in here, we're just asking for another 30. It wouldn't necessarily be top of the bench; it would be defined sort of based on the regulations, which is the resource areas defined by the vegetation and a buffer between 30 and 50 feet. Then the minimum at the center point here, we're saying it has to be--the buffers either 30 feet or a minimum of 80 feet, the outer edge of it, from the creek, which is exactly what was proposed here and nothing more. We were trying to address his concerns that he'd originally drawn the riparian resource area buffer to include areas that were outside--that had areas outside of vegetation. I know that they'd originally proposed all of this area as a buffer, but they also proposed to have livestock in that area and generally, Fish, Wildlife, & Parks and Rural Initiatives, you know, the buffer area buffers riparian resource and the creek. If you allow livestock in and you don't fence them out, they're often going to eat the vegetation that you're trying to retain. Basically, because livestock were permitted in here, we needed to create a real buffer and didn't consider that the riparian buffer area.

Chair Curtiss: By what you've just said then, on the north edge because of the vegetation, the language proposed by staff where the 30 feet would move that fence line...

Mary McCrea: It depends upon whether this--these trees accurately depict that as the edge of vegetation. That's why I'm a little reluctant to recommend that we just define it at this location of five feet. You know the applicant said that the line here is based on a bench line and not the vegetation. We would prefer that the riparian resource area be defined per the regulations by the edge of the vegetation and then another 30 feet buffer.

Chair Curtiss: And that's what #7, this amended one...

Mary McCrea: Exactly. Let me read that. Essentially, we've added an area, a definition, of the riparian resource area to be the boundary of the riparian resource area shall be shown as the area from Ninemile Creek to the eastern edge of the riparian vegetation, subject to review and approval by Missoula County Rural Initiatives and OPG prior to final plat approval. The boundary of the riparian buffer area shall be shown as a minimum 30-foot wide strip of land extending east from the edge of the riparian resource area and at least 80 feet from the edge of Ninemile Creek. As you go into Condition of Approval #8, again we've incorporated that definition into the riparian resource area, no-build no-alteration zone to replace Section B of the riparian management plan in the development covenants. It would, instead of referring to the top of the lower bench that gets taken out, and it will state that it's from Ninemile Creek to the eastern edge of the riparian vegetation. Again, we've made the same changes in Condition of Approval #9 to alter the definition of the riparian buffer area. Again, it's a minimum 30-foot wide strip of land extending east from the edge of the riparian resource area, which starts at the vegetation and at least 80 feet from the edge of Ninemile Creek. We were trying to bring--once we were aware that the line that had been drawn on the map wasn't necessarily reflective of where the riparian vegetation was, we were trying to bring that more into line with what the regulations require. I think on the--certainly on Lot 2, it appears anyway from the--that it would actually--they'd have less land and buffer and riparian resource area rather than more. We also have a--Janet has added if you wanted to revise the number of livestock permitted on each lot, we had heard four as well and so that you would need to amend Condition of Approval #10 to change that number.

Chair Curtiss: Mr. Anderson, did you have a question? Oh, just a second, she needs to change the tape.

Commissioner Anderson: Mary, just looking at the pictures and where they propose the fence along the edge of the bench, doesn't that make more sense to have that there rather than allowing animals to get over that bank and drop down into that lower area where they would be creating more erosion of that bench area? In the lower lot...?

Mary McCrea: Yes, it would and there's nothing that would restrict them from putting fence at that location, it's just not requiring it. What we're requiring is sort of per the regulations for riparian resource and buffer, just that if you have livestock, you need to fence them out of that area and you may place a fence at the eastern edge of the riparian buffer area or anywhere within that lowland area. They could choose to put the fence at the top of [inaudible]. There's nothing in the conditions as proposed that would restrict that.

Chair Curtiss: Further questions? This is a public hearing, would you like to come--if you could use the microphone, it would be best for us. Thank you. If you need--we have a pointer or that microphone...

Unidentified Speaker: Yeah, I'd like to have a pointer if I could.

Chair Curtiss: Or you could take the thing with you.

Unidentified Speaker: Does this work okay?

Chair Curtiss: If you could state your name please.

Chuck Spoon: Chuck Spoon. I own a property to the north. I've lived there now for about 14 years. You addressed the riparian; I wanted to comment to that I guess. I guess there's going to be some more discussion of other issues associated with the development?

Chair Curtiss: Right or you could bring them up now if you'd like.

Chuck Spoon: Okay. You make a good point in keeping that line right where that thing breaks down into the riparian. I worked with Missoula County Conservation Department trying to stabilize my portion of the bank just north of right there and it's been a real problem. This line is shown by this dark green is a great riparian area. Once you come off onto this bank, Mother Nature doesn't want to regenerate that. That's been in the grass so

long that it's not going to be much effective for riparian unless the stream meanders and washes these cottonwoods out, which it has attempted to do on my property. I'm trying to stabilize it to keep the Ninemile drainage from washing these cottonwoods out by getting in behind them. Again, I saw with [inaudible] and Missoula County Conservation Department, we've been working pretty diligently trying to keep Ninemile Creek back in its channel and prevent that from happening. In 1997, it came within six inches of coming over an old dike on my place. If it would have come across there, it would have been--Ninemile Creek would have been in a different location, probably come right down through here and then cut back in to right about there. It's appropriate to keep the stock out of there. I heard the comment about 80 feet width from Ninemile Creek coming over onto the bank to be riparian buffer area. That's scary to me because again, there's a definite landform right there right along the edge of the green, which separates the area of riparian and the area of meadow. Again, this is not going to want to get regenerated, so to me, it's only natural to probably put the fence in there and graze that like I've been doing periodically. The idea of going from up to five animals is ludicrous. I assume that that's five animals per lot. That's ridiculous. I've grazed my place with stock and I can get about 12 AUMs out of that without overgrazing it, okay.

Chair Curtiss: We don't--that's a new term for us.

Chuck Spoon: Annual unit months, so if I have four animals on there one month, that's four AUMs, four animal unit months.

Cathie Cichosz: That's the camera right there and you're like right up against it.

Chuck Spoon: I'm sorry, okay. So I figure I can go ahead and put about three head for about two, possibly three months without overgrazing it. You know, if somebody's going to buy those lots, if they ever get it developed and put stock on, the best you're going to be able to do is to have a stock there on a temporary basis and you're going to overgraze it unless it's irrigated. I doubt serious if anybody's going to irrigate that, but they might. Again, my experience has been that the--I own seven and a half acres north of there and I figure I've got about five acres that's grazeable and I'm still not able to graze it very long before I go ahead and get it eaten out. Again, I just ask some consideration for that.

Chair Curtiss: Okay, any other issues you wanted to bring up, Mr. Spoon?

Chuck Spoon: There's a couple other comments, I guess, but I think I might wait for later on when some of the other issues get generated.

Chair Curtiss: Any other public comment on this subdivision? Yes sir?

Ty Brennan: My name is Ty Brennan. I just have a quick comment regarding the road. I had addressed it in a letter to the Planning and Grants Office and since that time, I have called Title Services Inc., who transferred title of our property, which is adjacent--were to the south of this proposed subdivision. I called Clint out there at Title Services and received a letter back from him, as there was some confusion as to who owns the road and whatnot. Can I pass this to you now and you can make copies? On that paperwork, it's obvious that the original Sleeman's Ranch was subdivided into five or six parcels. One of the parcels was G, Parcel G, which was considered Remount Road. At the time, it was a private road and the association of landowners would pay for the maintenance of that road. There is a common area that Ida had referenced in the covenants, which would pertain to that road, which gave all of the landowners, not just the adjacent property owners, but all of the landowners of the original Sleeman's Ranch the right to use it for use of vehicle use or recreation use. Basically for the enjoyment of all of the landowners. She later extended that privilege to the public and eventually it became a county-maintained road.

My concern is this, for about 26 years now, the landowners of the original Sleeman's Ranch, have considered that road a common area for all the landowners. It's still in title to Ida Sleeman's name; she still owns that as Clint had pointed out in his title research. When my wife and I purchased Lot D-1, there was no transfer of that property to us. It was just an irrevocable use of that road. If you look at the actual detail of that road, it's not 60 feet wide all the way down through it. It actually varies in size. It has a listed amount of acreage, which is a little over eight acres. My concern was two-fold when I sent that in, #1 I know John Robertson very well and he wants nothing more but to abide by the five-acre rule as far as subdivision goes for this. He's very sensitive to that; he understands the need to maintain a rural atmosphere on Remount Road and especially Ninemile quarter because the original vision area of this ranch project, Ida Sleemans, she demanded that. That was part of her dividing her

original ranch up was to maintain that rural setting so that the landowners can enjoy that part of Ninemile Creek. The first concern of mine was that the pins were being moved to the center of the road, which Robertson Capital Corporation did not have ownership to. I understand there's a law in Montana that if you're adjacent to a road, there's a possibility you can claim ownership of that, but there's also an exemption attached to that clause. I think this is one of instances where that exemption is pertinent and only for the simple reason that upon a title research, Parcel G of the original Sleeman's Ranch has a recorded owner and that is Ida Sleemans. From what I understand, Ida Sleemans has left us several years ago. I know she probably has some heirs or assigns. Irregardless, I think this needs to be addressed. At this time I had also requested a course of action to ensure that this subdivision, moving the pins to the middle of the road to get over the 10-acre minimum, was a legal act and there could be no liabilities attached to that from the various landowners that participate in the original Sleeman's Ranch or any liabilities that could be attached to Ida Sleemans heirs or assigns. I have a personal interest in that as well to ensure that these liabilities are not attached to this form of subdivision because I'm interested in purchasing possibly one of the lots from Mr. Robertson. I want to make sure that this is completely legal and up to snuff before we move forward with that, that encompasses my two concerns with this. Basically, to ensure that this subdivision meets the five-acre minimum and that the moving of the pins to the center of the road does not infringe on anybody's property rights. I thank you for your time and for listening to me.

Chair Curtiss: Thank you, sir. I note that on at least one of the documents in our packet, it does say Parcel G, COS 2656. Mike, would you like address any of the legal part of this.

Mike Sehestedt: I'll try; I don't have that piece in front of me.

Chair Curtiss: Its right here, right [inaudible].

Mike Sehestedt: Without doing a lot more title work, it appears that this is one of the old COS's where the road is shown as a separate parcel and there was apparently a subsequent dedication of right-of-way to Missoula County and acceptable thereof. The issue with fee title to the underlying property is that when the county accepts an interest in real property for road purposes, all we acquire is an easement or public right-of-way interest. Fee title remains vested in the property owner dedicating it. The presumption is that ownership basically goes to the center of the road to adjoining property owners if that's the manner in which the dedication--the ordinary [inaudible] presumption is once a public road is dedication that ownership runs to the center of the road. In this case an oddity because the parcel was created and then the road was dedicated. I think there might be some question as to whether or not that presumption is applicable. I would be inclined to think that on all of the facts, the court would find that by subsequent dedication of this Tract G to the public, the owner intended to relinquish all rights and that whatever interest she had would have reverted to the adjoining property owners 50-50, but I would need to do more looking than I've done on this issue. This is the first, in fact, I've heard of it before I could pass on that.

There's certainly been over the years, I think, public maintenance. The homeowners however, they've thought of this, haven't undertaken to construct it or maintain it themselves. It's been a publicly maintained and repaired road.

Chair Curtiss: Which gives it a prescriptive...

Mike Sehestedt: Well, we actually have a dedication so we've got our road right-of-way and the question is, is there the effect of first conveying the property out and then conveying the road right-of-way on this strip to Missoula County. Do the heirs and assigns, the original grantors, still have fees subject to our easement or is the legal affect to that dedication to say okay, the adjoining owners now own fee subject to the easement to the center of the road? If this had been done, for example, in the City of Missoula, the old town plats convey lots and dedicate the street to the public forever. With that dedication, the presumption is that the adjoining owners actually have fee to the center even though their lot description doesn't include it and even though the dedication may just be for a right-of-way interest. I don't want to make this more complicated than it is, but it's an interesting legal question and I really wouldn't want to give you an opinion, a firm opinion. My belief is the effect of all of these transactions means that whatever residual fee interest there might have been basically attached to the adjoining property owners, they own fee to the center of the road, subject to our 60-foot easement. I wouldn't want to represent that as my final legal word. You've asked me to guess here with very little information and that's my best guess.

Chair Curtiss: Another question would be is that piece of the road that would be to the center of the road included in the ten acres to get a five-acre minimum? There's lots of heads nodding. I guess, Mr. Ewart, you're the surveyor in this case, could you answer that question?

Ron Ewart: First of all, we didn't take this lightly. We didn't just say, well, let's just go to the middle of the road. John Robertson hired John Taborraci and John wrote--did extensive research and correspondence with the County Attorney's office and we forwarded his letter, along with Steve [inaudible], the real surveyor's letter, talking about it. We also retained First American Title to look into it and we felt fully confident in this. Now the pins wouldn't really go to the center of the road, we would have reference, monuments. Regarding Mrs. Sleeman's, when this Parcel D was originally created, it was over 15 acres in size, therefore, it was contemplated at that time when she subdivided the property apparently, that Parcel D could be divided into three tracts. Now, it was subdivided in 1997 or it was transferred by family transfer into Parcel D-2, which is five acres, which is owned by Ty and Debra. Then Parcel D-1 is shown at 10.11 acres. When John Robertson purchased Parcel D-1, he thought he was buying 10.11 acres. The original survey showed 15 acres for both parcels. It also showed the property line going to the center of Ninemile Creek per the underlying COS, however, Ninemile Creek is a navigable waterway, therefore, we want to do things right, we don't want to just follow with the underlying survey, so we went ahead and went along the low water mark of Ninemile Creek. It brought it down slightly under 10 acres, but again, it was contemplated from the beginning that this parcel could be divided into two lots, I believe. Mark Huber is with Eli & Associates and Mark has also done--he knows a lot more about the road situation than I do and perhaps he would like to say a word or two on this. Again, the five-acre thing is part of the covenants and I know that John has worked with both landowners. He came out, tested their wells, and tried to work with everybody. Thank you.

Mary McCrea: Just wanted to add that we had conversations with the County Surveyor's office about the eastern property boundary and Steve Smith had commented that it was their understanding that the property line went to the centerline of the traveled way within that 60-foot easement or not easement, 60-foot right-of-way.

Mike Sehestedt: Don't say traveled way because the call would be to the center of the easement. Traveled way may or may not be centered on the easement. I even have county roads where it misses entirely.

Ty Brenner: If I could just add one more scenario that might help in this decision. The original Parcel G that was subdivided from the original Sleeman's Ranch was wholly owned by the Sleeman's Ranch. The properties that are adjacent to the Sleeman's Ranch on the other side of Remount Road had no legal right to that land. It was not deeded to them. My question is this: if now the land is being decided on where to divvy it up, why then does the property adjacent on the other side of Remount Road all of a sudden receive land that never even belonged to it because if you say that--if you're adjacent to a road, you have legal right to the center of it. This is an extraordinary situation, that's why I asked for legal clarity. Those adjacent properties that are adjacent to the Parcel G on the other side never had any legal access to that. This was created solely by Ida Sleeman's and her original intent was for the use by the landowners of the Sleeman's Ranch Association. Now granted, she opened it up to the public so that everybody could have use, she was a visionary. The historic ranger station was right over the hill. She wanted people to have easy access to that. The only reason I'm here, you know aside from making sure this is legal is also this is a property rights issue here. What property rights does Ida Sleeman's had in this being that she's the recorded owner? What right do we have as citizens to divvy up her property without even giving consideration to her heirs or assigns or the common area use, which could be considered by any landowner in the area of the original Sleeman's Ranch? These things need to be considered. Just taking the fact of the adjacent property to the other side never had legal right to this land. I think that might help in your consideration of how to eventually rule on this.

Mike Sehestedt: It might raise the issue of, in fact, the ownership of the adjoining property out at the Sleeman's Ranch, fee title subject to easement goes to the far side, but again, you're providing me with information that's not necessarily of record or before me right now. I have no idea what the ownership of the remainder property was no record indication on the other side of Remount Road at the time it was dedicated. That issue--I simply can't resolve it without looking at materials that aren't present here. I do think still that the most probable effect of the dedication of this road to the public and that was Ida's last word on the subject, to dedicate the right-of-way basically described as Parcel G to the public. Probable effectively means that or presumptively that the ownership to the fee underlying it attaches, dependant on title history, either to the property on each side or if the title history in fact puts the Sleeman, Ida's ownership, to the east edge, perhaps presumptively they get the whole 60 feet added. I don't think we're taking anything from anybody. We're trying to look at the legal effect of actions that were taken many many years ago and determine what happened.

Chair Curtiss: Thank you, I think Mr. Anderson had a question first.

Commissioner Anderson: Would it be appropriate to recess the hearing and research this so before we proceed, we have all the information because it appears that it impacts the size of these parcels as well as the ownership of adjacent properties. I think before we render a final decision on this, I think it would be in the best interest to research and clarify it.

Mary McCrea: We could have a condition of approval that requires--I mean we ask the County Surveyor's Office that, do we need a condition of approval to clarify the eastern boundary? Steve Smith responded, no, that is something that they will do at final plat approval. If the concern then is about whether the lots are under five acres, it's unzoned land and yes, there are covenants, I think, from the Sleeman's Ranch that restrict it to five-acre parcels, but that's not something that we enforce in subdivision review. That's for you to consider.

Mike Sehestedt: In the ordinary course, covenants are not determinative of this process. Now mind you, if you approve a subdivision that violates the covenants, the property owners are still in a position to enforce the covenants against the property and appropriate action, which means even though the, in this case, it's a five-acre lot minimum and there's a five-acre per lot minimum and they only have nine acres. You could determine that it's appropriate under all of the legal standards of review to [inaudible] this. I suspect here we have a dispute as to the actual effect of the covenants. You can approve the subdivision. If the court determines the covenants prohibit lots that size, they can never be separately conveyed or built on. The only time we've ever based an action on a covenant was a really odd subdivision where we had a current judicial decision that said the covenants limit this property to one house. They wanted to put two on it and we said, you know, where the court says one house on this lot, it's almost contemptuous for us to step forward and we think two is fine. We denied that particular subdivision. It's being litigated and we're awaiting the appeal on the underlying court case involving the covenants. On this, we've got question of what was intended. I have no idea which way Ninemile Creek has moved or how. Looking at this, I see in the original survey, Parcel D started out at 15.105 acres, [inaudible] off five, and now we're down to something under that, I think 10.1.

Chair Curtiss: If you look at the photo with the lines on it that Mr. Ewart presented earlier, you can see where the old line was. It looks like the creek's kind of moved east. Well, it's meandered.

Mike Sehestedt: Well, then the question becomes has it meandered by accretion or has it meandered [inaudible] because that has an impact on how the property boundary and interest moves.

Chair Curtiss: Mr. Carey, do you have question?

Commissioner Carey: I don't think we're probably going to get to that. I was just going to follow-up on Commissioner Anderson's suggestion that perhaps it would be in the best interest to delay this--recess this for a week and see if we can straighten this out, but maybe that doesn't make...

Commissioner Anderson: Is approval of this time sensitive? Are we right up against the deadline or do we have time to clarify this? I would also like to get clarified the buffer and riparian area if what the staff is proposing is more or less restrictive than what the developer is proposing. I guess to clarify in my mind that--which would be the best for all and I would hope that our decision would clarify this and provide equality to everybody involved and not create more legal questions for folks to have this property tied up in court for legal questions. If there's a possibility that we could resolve that with recessing this for a week or so, I'd certainly make that recommendation.

Mary McCrea: The deadline is today. They'd need to grant an extension.

Chair Curtiss: There's another gentleman in the audience that was going to talk before you, Mr. Spoon, so--yes, sir, you.

Mark Huber: Mark Huber with Eli & Associates, H-U-B-E-R. Just a little more brief history on this, I'm the project coordinator for this project and when we first took on the project, obviously it was from the original COS and a couple factors happened. One that at that time they were not plotting the navigable waterways to low water mark. It was centerline of the creek, so once we brought that issue up to the client, he realized that he had lost some property. He didn't have the original 10 acres. Then we researched out and we found just like everyone else has mentioned that Parcel G and the other COSs didn't. So literally the project stopped for three or four months while

he worked with John Taborraci and I believe it's the--is it the Assistant County Attorney that's responded to the email that--I just saw a copy right here. We put a package together and sent to OPG on Friday that included that email where he got response from the County Attorney, John Taboracci did that he would be allowed to go to the centerline of the road. From then on, we proceeded with subdivision. Up until that point, we had advised John Robertson what the risk would be if he proceeded and he would possibly be in violation of the covenants. We gave him options also of going through the process of amending the covenants. He chose this process and he got the definitive answer that's included in that packet. It does seem we would be agreeable if to do a one week and revisit this and to be able to see how the buffer zones [inaudible]. Also--I'm rambling, that's it.

Chair Curtiss: Thank you, Mr. Huber.

Mike Sehestedt: If I could add one thing. I've had a chance to review an email from James McCubbin, who works in our office and deals specifically with road issues. Based on his examination of the documents I said I hadn't had time to look at, he concludes that ownership runs to the centerline. The only amendment I could see to that opinion would be if the dedication was--if the ownership of the person dedicating it was bounded by the right-of-way then there may be an argument that the ownership runs through the entire right-of-way. Certainly, based on what we have, the presumption is title runs to the--at least, the center of the roadway. So that issue I think is resolved in terms of acreage question.

Charles Spoon: I've lived in Missoula County for about 30 years.

Chair Curtiss: Charles Spoon.

Charles Spoon: Charles Spoon. Again, I'm the adjacent landowner to the north. I have not been involved in discussions about this subdivision until such time as the notice kind of appeared in front of the house and I'm not too such that some of my concerns, although they are few, have been addressed. Eli & Associates says that we've been involved because they took a water sample. Yes, they did take a water sample, but we have not been in discussion knowing what Robertson was proposing. Just like the number of animals on that meadow, this is the first time I've heard of that, although I read something in there about the number of animals being proposed. I'm really concerned about this whole issue. To me it's an issue that deals with the citizens of Missoula County that we have an out-of-state developer coming in to take a piece of land that, up to this point in time, have not been seen fit to be developed and broken into two lots. I talked to the last four or five owners of that piece of the land and they didn't believe they had the opportunity because there was less than 15 acres when that family split, five acres was made, which left them with less than 15 acres based on the owners of the property, knowing that they couldn't break it into two lots, once the 5-acre was taken from the 14 point something, and left them with nine some acres. They said they couldn't break it up based on the covenants. Now all of sudden we get the right person that can come in and make the right case to all of a sudden in a way betrayed the adjacent landowners to set a precedent where all of a sudden the landowner--the county right-of-way can be perceived to be part of the land.

Now, when I look at my plat for my ownership, I see pins that are established along the edge of the county right-of-way. I have a plat, which shows that my ownership excluded the county road. Now if we're going to make a decision all of a sudden it includes half of the right-of-way, all of the sudden I have a new premise for the number of acres, which I own. It's kind of--I guess addressing to the County Commissioners that it's one of those things that you ask yourself as a landowner, how many times are they going to try and find another loophole to find a way to subdivide? I think the presentation that Ida Sleemans had the county right-of-way put into a separate lot for the protection/enjoyment of all the people who purchased property from her, seems like that kind of make senses and that was probably the basis of the original survey, that's why the pins were put where they were. Now to think that we can go ahead and expand that to include the acres underneath the road, so a developer can find a few more tenths of an acre to give him two 5-acre parcels, to me is--it kind of makes the adjacent landowner wonder what's next.

I have the issue that also deals with the west line, where the original survey went to the center of the creek. I have reference pins that were put in there to identify where that center of the creek was, knowing that that creek would meander. As that creek meanders, if you want to find out where the line of your corners of your property is, you go to those reference pins that are still in place today. As that stream meanders, I can go ahead and get a surveyor myself and measure out from that reference point to find out where my original lot boundary on the west side is located. I have a concern now with a new COS is defining that line as being different. Instead of the original center of the stream, now that's it's meandered, we're defining it as the low water line. Am I to believe

that the--from both sides of the--on either side of the creek where you have the low water line, that that is somebody else's ownership? Is that the state of Montana's ownership? If it is, does that mean that all of a sudden, every time the stream meanders, my boundary changes? Does that mean that the basis for my taxes change as the number of acres which I own now changes so that there will be an update?

I don't know what the issue is along Ninemile Creek. I do know that it's going to meander all the time and I've got to hold to the position that the original survey that created my lot established the boundaries of my lot, I have reference points that I can go to to measure where that is and if the stream wants to meander over onto my parcel, it strikes me that I own that. It doesn't strike me that I go ahead and gain some or lose some every year just because of the whims of nature. I don't know what the legality is, where that west boundary is. All of a sudden now I find out that I don't even know where my east boundary is because now we don't know whether it goes half-way into the county right-of-way or if it stays with the pins that were established when the original survey that broke up the Sleeman's property were placed. It's just an area of confusion that it would sure be nice to clarify. Because this particular subdivision relies heavily on trying to find that additional land that gives them 10 acres, I'd like not to see that particular development rushed into. To me it ought to be researched out by the County Attorney and represent the interest of the citizens of Missoula County and make sure that if we're going to do this, that it's a valid thing to do because it's going to set a precedent both on the east side of that boundary as well as on the west side where the creek is. I just ask that we don't rush into this and meet some kind of a timeframe. Again, for me, I haven't had a lot of time to [inaudible] owner of water. I was not contacted originally when this thing was being proposed. It kind of came to me in an indirect way, so I guess I'd like to have a little bit more consideration for some of the concerns that have been raised.

Chair Curtiss: Thank you, Mr. Spoon. I think two questions, the legal requirements for notification and the other is--well, three, the other is the meandering stream and the middle of the road. Mary, if you want to talk about notice first.

Mary McCrea: Mary McCrea. Minor subdivisions require APO letters, that's letters sent to adjacent property owners to let them know when the public meetings will be held. Those were sent on January 11 and the property was posted with a poster on January 5 of this year. If you would like to discuss riparian resource, I have a possible amendment that might be a compromise. We have no problem if you'd like to have another week if the applicant's willing to grant an extension, but if you would like to hear a proposal, I could offer one.

Chair Curtiss: Thank you, Mary. Mike, would you like to talk about the navigable stream.

Mike Sehestedt: Or the use of boundary, stream as a boundary. First of all, the original description calling to the centerline of Ninemile Creek, Ida conveyed property that she didn't own. Ninemile Creek was established by DNRC as a navigable stream based on historic use, which probably, I haven't researched it beyond finding out what DNRC determined, but probably based on floating saw logs. Under what's called the equal footing doctrine, the original colonies under the English common law owned the beds of navigable streams, so when new state's joined the union, their ownership included the beds of navigable streams. Since 1895, which predates statehood based on the field code, which was widely adopted in the western United States, but was intended to represent a codification of the common law. It's currently codified 70.16.201, except where the grant, which the land is held, indicates a different intent, the owner of the land when it borders along a navigable lake or stream takes to the edge of the lake or stream at low water mark. When it's any other water, takes to the center of the stream. I would suspect that at the time Ida did this, there was a mistake of fact and Ninemile Creek was not recognized as a navigable stream. That means the property owners based on this description took to the low water mark with the state owning the bed between the low water marks. That's the first question.

The second question is does the boundary move with changes in the stream. It's pretty well established and it follows the old common law standards, [inaudible] court on how this happens. In *Harding versus Savoy* [phonetic], which is 2004 Montana Decision #280, that's a 2004 decision, citing *State Department of Lands versus Armstrong*, 251 Montana 235, 1992 decision, the court said avulsion occurs where a river suddenly changes its channel to form a new one. If avulsion moves a river away from a landowner's property, the property boundary does not change. That means if you have a sudden change, an avulsion change in the location of a stream channel, the boundary stays according to the old low water mark. The classic case of an avulsive change, one that everybody could recognize, is somewhere where you have property defined using the low water mark of a stream. You have an ice jam, a logjam, and the river cuts off and ox bow and suddenly you have a new channel established. That does not change the property owner's property. They still own that cutoff property within the old ox bow. The only situation in which change of a boundary can occur as a result of movement of a stream is

where the change occurs by accretion. That's where a river gradually and imperceptibly changes its course over a period of time, resulting in sedimentary deposits on one bank along the water line and corresponding erosion on the other. That sort of imperceptible change will move the property boundary back and forth over a long period of time. The question of whether or not a particular change is by avulsion or accretion is really a question of fact that, in the absence of agreement between the parties, a court would have to address. Some cases are extremely clear, other cases are not. I didn't research this real thoroughly. Did note one Montana case where movement over a quarter of a mile or about 12-1400 feet in the course of a hundred years was held to be an avulsive or perceptible change and the property boundaries stayed in that case. I didn't research the case in detail, so I don't know what the facts are, but it would be a question of fact in each case as to whether or not the boundary has moved. I do think to the extent the call was to the centerline rather than the low water mark, there was an attempt to convey property not--[tape ended]. I've got to go to a meeting and I need to pick up a county car and apparently, they think I'm going to be here past five.

Commissioner Carey: Well, the developer's representative has offered a week for us to work on this.

Commissioner Carey made a motion that the Board of County Commissioners recess the Robertson Remount Estates until a week from today.

Mike Sehestedt: Before you act on it today, I wanted to also respond to the road question. I have been taking the same position--I'll use a clear-cut case, Cobin [phonetic] and Dismore's Orchard Homes where the lots are described as the five-acre tracts. The roads are simply dedicated to the public on the face of the plat and we have consistently taken the position when we vacate one of those roads that title goes to the adjoining owners to the center. We have also consistently for purposes of area determination also counted as area their fee ownership subject to our easement to the center of the road. I've never had occasion to look at Remount Road before and I'm not clear here whether it just goes to the center or it goes all the way across, but I would--I'm applying the same rules I've consistently applied in other similar situations here. I would not object to having a week to look at it a little more.

Chair Curtiss: Before we--since your motion hasn't been seconded yet. Mary, you said that you might have, if we're going to take time to look at it, the riparian was another issue and you had a possible compromise in the riparian language description?

Mary McCrea: We could do that now or we could do that at Planning Status...

Chair Curtiss: Well, I think if we do it now, it gives everybody a chance to think about it.

Mary McCrea: Okay. I still believe that as per the memo, especially on the south property, Lot 2, it will give them less land encumbered by riparian resource area buffer the way this is written to define the riparian resource [inaudible] edge of the vegetation and then a minimum 30-foot buffer. I think our reluctance to the five-foot buffer is it can set a precedent on future projects that five feet is an adequate buffer. I don't think anyone would think five feet is an adequate buffer. On the other hand, I think setting the edge of the riparian buffer area at top of bank here for this southern property is certainly fine. I don't think staff would have any problem with that having looked at the photos and been out to the site. However, its winter and it's sometimes hard to determine all of the riparian vegetation. It's not just trees, its shrubs and grasses, and that sort of thing. I don't believe, since there's a distinctive bank here there would be difficulty setting it there, so you might define the riparian vegetation--or the riparian resource area as the edge of vegetation on Lot 1 and 2 and the riparian buffer area as shown on this exhibit is one way of doing it.

I think on the northern part of the property, I believe you would still need 30-foot buffer here because I believe the vegetation on this end is more accurate and a five-foot buffer wouldn't necessarily be adequate. The concern was that, expressed at Planning Status, was as we keep extending this out, it limited the amount of area on this lot that they could have livestock. I think that might be a compromise that would address some of the concerns.

Mark Huber: Just for clarification, if we went along the top of the bank and made--up it to the vegetation [inaudible] the buffer zone and then once we got closer, it would be at least 80 feet away from the creek with a 30-foot buffer, then 30 feet away from the vegetation. Is that correct?

Mary McCrea: Right. Should I just restate it? The riparian resource area along this whole boundary is defined as the edge of the vegetation. Then on Lot 2, the buffer area, the eastern edge of it is defined as on this exhibit and

it could be as on this exhibit to this point where, if this is the edge of the vegetation, we'd want the buffer area to be 30 feet away from that. So it would be somewhere in here.

Chair Curtiss: So just for the record, Mary's pointing to the Lot #1...

Mary McCrea: The northern part of Lot #1 having a 30-foot buffer different than what is shown on the...

Chair Curtiss: And Mr. Huber, can you remind we what your first name was? Mark Huber from Eli & Associates. Any further discussion?

Commissioner Anderson seconded the motion.

Chair Curtiss: Mr. Huber stated that you'd be okay with a one-week delay while you were out of the room, I think Ron. So it's been moved and seconded that we delay for one week to further clarify some questions, mostly in regard to the road issue.

The motion carried on a vote of 3-0.

Chair Curtiss: I would like to thank everyone for their time and their comments.

**Consideration: East Missoula Block 44 Subdivision Plat Adjustment (Iowa Avenue in East Missoula)**

Chair Curtiss opened the consideration.

Tim Worley presented the staff report.

This is a plat adjustment request from Pat Erickson, represented by Ron Ewart of Eli & Associates. The subdivision in question is East Missoula Block 44, which was a 7-lot subdivision on about 8/10ths of an acre approved on February 17, 2007. The subdivision is located on the south side of Iowa Avenue in East Missoula. Iowa Avenue does not connect through to Sommers Street to the east and therefore, a condition of approval originally required a turnaround within the subdivision. Though the idea of a cul-de-sac at the end of Iowa was featured at both the Planning Board and Board of County Commissioner hearings for this subdivision, securing the land for the cul-de-sac wasn't viable at the time or wasn't seen as viable at the time. As of this request, as of the date of the request, the land needed for a cul-de-sac is available and is planned to be used for a cul-de-sac at the end of Iowa. This request was forwarded to County Public Works and Missoula Rural Fire and the City/County Health Department for their formal review. Public Works responded by favoring the cul-de-sac design if sufficient right-of-way is available for the cul-de-sac. If the cul-de-sac is not installed prior to final plat approval, County Public Works will require an improvements agreement to secure the cul-de-sac's construction. Missoula Rural Fire commented on the need for a turnaround to meet uniform fire code. They favor the cul-de-sac design but will require a temporary turnaround in the event that any new dwellings are added to the four existing dwellings that are currently within the subdivision.

The applicant is working on a boundary line relocation that will create the parent parcel for this subdivision, as well as the adjacent proposed subdivision to the east, which is East Missoula #2 Subdivision. This is currently in element review in our office. The boundary line relocation will result in the parent parcel decreasing in size from 0.803 to 0.749 acre. This will amount to an increase in subdivision density from 8.71 dwellings per acre to 9.35 dwellings per acre, but I should note that this is unzoned land in East Missoula. Other changes that will be a consequence of the cul-de-sac design and associated boundary line relocation include removal of the emergency vehicle turnaround easement on Lot 5 and a reduction in the size of Lot 7 from 5,848 square feet to 3,542 square feet.

Staff recommends amendment of three conditions of approval to accomplish the recommendations of County Public Works and Missoula Rural Fire. First of all, Condition of Approval #3 has been amended to require review and approval of a cul-de-sac with adequate legal and physical access and right-of-way dimensions, subject to an improvements guarantee. Additional language requires a temporary turnaround in the event a new home is constructed within the subdivision prior to completion of the cul-de-sac. This requirement would be triggered by a building permit. Condition of Approval #1 was altered to include language about signage related to any required emergency vehicle turnaround triggered by home construction before cul-de-sac completion. Condition of Approval #5 was altered to eliminate references to an emergency vehicle turnaround on Lot 7, as this lot will now

be accessible by the cul-de-sac. A new condition, Condition #11, was added in order to require the filing of the proposed boundary line relocation prior to final plat approval.

The Missoula County Subdivision Regulations allow the governing body to approve a plat to reflect design improvements since the time of preliminary plat approval. Staff supports this request with the conditions outlined in your Request for Commission Action.

Chair Curtiss: Thank you, Tim. Is there someone from Eli & Associates that would like to present?

Ron Ewart: Good afternoon, Ron Ewart with Eli & Associates. I'm here with Sue and Pat Erickson, he was here, he's an imaginary friend, and also Don Caulder [phonetic]. Now Pat and Sue own this subdivision and Don owns the East Missoula Addition #2 that we're working on now. We [inaudible] are in agreement with the changes and the conditions as amended. I think it's going to obviously work out for the best for everybody. It's what we wanted to do all along, but because of the boundaries at that time and we sort of had to go with the old configuration, but I'm happy that we're able to work everything out. Thank you.

Chair Curtiss: Thank you, Mr. Ewart. Is there anyone else who would like to make comment on this subdivision or the changes in the approved subdivision, the plat adjustment?

Mike Sehestedt: Thank you for not commenting on my poor judgment for thinking there might be enough public interest to require doing this at the public meeting instead of Planning Status.

Chair Curtiss: No, I think it's good to do it in the public. This is a consideration, are there motions? Questions from the Commission?

Commissioner Carey made a motion that the Board of County Commissioners approve the modifications to the East Missoula Block 44 plat subject to the amended conditions contained in the Request for Commission Action. Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

### **East Missoula Block 44 Subdivision Plat Adjustment Amended and Additional Conditions of Approval**

1. A signage plan in conformance with the Manual on Uniform Traffic Control Devices, including provisions for temporary signage during construction, permanent signage, and cost of installation to be included in the security deposit, shall be reviewed and approved by County Public Works and the Missoula Rural Fire District prior to final plat approval. The plan shall include appropriate signage for an emergency vehicle turnaround (EVT) or turnaround in the event that a temporary EVT is required on a lot within the subdivision prior to required cul-de-sac construction at the end of Iowa Avenue as required to maintain emergency vehicle access. Article I, Section 15 of the covenants shall be amended (if necessary) to include information on the approved signage plan.
3. Plans for a cul-de-sac turnaround on Iowa Avenue providing legal and physical access to all lots and adequate right-of-way dimensions shall be reviewed and approved by County Public Works and Missoula Rural Fire District, subject to an improvements guarantee prior to final plat approval. The developer shall be required to provide adequate legal and physical access and construct a temporary Emergency Vehicle Turnaround prior to building permit approval for any new dwelling constructed prior to cul-de-sac completion, subject to review and approval of County Public Works and the Missoula Rural Fire District.
5. Plans for private driveways on the individual subdivision lots, including paving the driveway a minimum of 20 feet back from the roadway, and two off-street parking spaces per lot shall be reviewed and approved by the Missoula Rural Fire District prior to building permit approval for each lot.
11. A boundary line relocation creating the parcel proposed for the East Missoula Addition Block 44 adjusted plat shall be filed with the County Clerk and Recorder's Office prior to final plat approval. (*Subdivision Regulations Articles 3-1(1), 4-1(11)(C)(i) and OPG recommendation*)

**Hearing: Missoula Development Park Special Zoning District (MDPSZD) Amendment to Create Technology Sub-District (County Initiated Revisions to Section 6.07)**

**AND**

**Rezoning of Missoula Development Park Phase 5B, Lot 1, and Phase 5C, Lots 1-12, from MDPSZD "Community Commercial" Sub-District to MDPSZD "Technology" Sub-District**

Chair Curtiss opened the hearing.

Michele Reinhart presented the staff report.

We have two requests before you today relating to the Missoula Development Park. The first request is to amend the Missoula Development Park's Special Zoning District to add a new subdistrict, a technology district. The second request is to rezone a portion of the development park to the technology subdistrict. The amendment to the zoning district must be addressed first and approved before a rezoning could be considered. There are two separate considerations, two separate reports, and two separate motions.

Michele Reinhart presented PowerPoint slides, which can be found in the file.

Chair Curtiss: Thank you, Michele. Barb, would you like to make any comments?

Barb Martens: Barbara Martens, Special Projects Coordinator for the County. I'm in agreement with the amendments proposed by Planning Board. I don't see any problem with that. In addition, the Planning Board did recommend unanimously that these be approved. Unless you have questions?

Chair Curtiss: Any questions? Thank you, Barbara. This is a hearing, is there anyone else who would like to make comment? Seeing no one come to mic, I'll close the hearing. Ready for motions.

Commissioner Anderson made a motion that the Board of County Commissioners approve the amendment to Section 6.07, Missoula Development Park Special Zoning District (MDPSZD) regulations, to add a new "Technology" sub-district, under Part C, Permitted and Conditional Uses as amended by Planning Board, subject to the findings of fact and conclusions of law in the staff report and Planning Board Minutes from January 22, 2008. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss: Okay, we'll move on to a request to rezone a 35.71-acre parcel. Michele?

Michele Reinhart presented PowerPoint slides, which can be found in the file.

Chair Curtiss: This is a hearing, so I'll open it for comment. Barbara, would you like to make comment?

Barb Martens: Barbara Martens. I have no problem with the amendments out of Planning Board for this part as well, so unless you have questions.

Chair Curtiss: Thank you, Barbara. Is there any other public comment? Seeing none, I'll close the hearing. Any questions from the Commission?

Commissioner Anderson made a motion that the Board of County Commissioners approve the request to rezone MDP Phase 5B, Lot 1 and MDP Phase 5C, Lots 1-12 from Missoula Development Park Special Zoning District "Community Commercial" sub-district to Missoula Development Park Special Zoning District "Technology" sub-district subject to the findings of fact and conclusions of law in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

**Other Business**

There being no further business to come before the Board, the Commissioners were in recess at 4:11 p.m.