

PUBLIC MEETING – FEBRUARY 20, 2008

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Larry Anderson, Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Assistant Chief Deputy Clerk & Recorder Kim Cox, Office of Planning and Grants Principal Planner Denise Alexander, Office of Planning and Grants Senior Planner Mary McCrea, Office of Planning and Grants Planner Tim Worley, Office of Planning and Grants Planner Vlad Kryukov, and Office of Planning and Grants Planner Janet Rhoades.

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 \$410,365.07. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing: Annex Property into Missoula Rural Fire District (16205 Highway 12 West in Lolo - Harkin)

Chair Curtiss opened the hearing.

[A petition has been received by the Clerk & Recorder's Office to annex a parcel of land, located in Missoula County, into the Missoula Rural Fire District. The petition has been checked and verified. It contains signatures of more than 40% of the freeholders within the proposed district. The owners signing the petition represent 40% or more of the taxable value of the property to be annexed into the Missoula Rural Fire District. The owners signing the petition represent at least 40% of the acreage within the area to be annexed, thereby meeting the requirements of 7-33-2125 M.C.A. for annexation of adjacent territory.

The area to be annexed is described as follows: that particular parcel of land situate in the West ½ East ½ Southeast ¼ Southwest ¼ in Section 34, Township 12 North, Range 21 West, Plat A3-7, Principal Meridian, County of Missoula, State of Montana, more particularly described as 16205 Highway 12 West in Lolo, records of Missoula County.]

Kim Cox: I'm Kim Cox from the Clerk & Recorder's Office and they did meet requirements for the number of signatures that were required.

Chair Curtiss: Thank you, Kim. This petition has been verified. It contains the signatures of 40% of the freeholders. I see we have someone here from the Missoula Rural Fire, so if you could come forward and talk to us about the property and whether your board approves this.

Brent Christopherson: Good afternoon, Commissioners, nice sunny day. My name is Brent Christopherson; I'm the Deputy Chief of Missoula Rural Fire District. Our board has concluded that we would recommend to you annexing the park and property into our district. We did go out and visit this property as we have in all the other properties that want to come into the district. Did find that we would like to see a better addressing, a reflective address on the property. I've talked to the Harkin family and they are willing to do this and are in the process of doing it, so that will help us a great deal. Other than that, everything looked fine access-wise [inaudible].

Chair Curtiss: So from the photos that are attached to our report, it looks like some of the property is fairly densely wooded. Are you recommending some fuel mitigation?

Brent Christopherson: We certainly are going to be talking to them about that. They did do some work around closest to the property there and we always capitalize on the positives. Although in a lot of areas, there's certainly work to be done and we will be working with them on that and with our crews this spring and summer.

Chair Curtiss: Thank you. This is a public hearing, is there anyone else who would like to make any comments? Any questions from the Commission? I'll close the hearing.

Commissioner Carey made a motion that the Board of County Commissioners approve the petition to annex into the Missoula Rural Fire District that particular parcel of land situate in the West ½ East ½ Southeast ¼ Southwest ¼ in Section 34, Township 12 North, Range 21 West, Plat A3-7, Principal Meridian, County of Missoula, State of Montana, more particularly described as 16205 Highway 12 West in Lolo, records of Missoula County. Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss: Thank you.

Decision (from February 13, 2008): Petition to Abandon a Portion of Woodville Avenue in Clinton (250 feet south of previous abandonment)

Chair Curtiss opened the decision.

Commissioner Carey: I'll read the viewer's report into the record. It's regarding a petition to abandon a portion of Woodville Avenue in Clinton, Montana from Seventh Street 250 feet south. The report is dated Friday, February 15, 2008. On February 13, 2008, the Board of Missoula County Commissioners held a hearing upon the above referenced road petition, and appointed the undersigned as viewers to inspect the road, which is the subject of the petition. On Friday, February 15, 2008, the undersigned viewers personally examined that portion of Woodville Avenue described in the attached Exhibit "A." The viewers find that there is no reason to deny the proposed abandonment of this portion of the road because there is no anticipated future public use or need for this portion of the road. It's signed by myself and by Charles A. Wright, the Assistant Public Works Director/Surveyor.

Chair Curtiss: This is a reconvening...

Mike Sehestedt: We've reconvened the public hearing; we now have the additional information, the viewer's report, before us...

Chair Curtiss: And is there anyone that would like to make additional comments? Okay, seeing none, I can close the hearing and take a motion.

Commissioner Anderson made a motion that the Board of County Commissioners approve the petition to abandon that certain county road specifically described as Woodville Avenue located in Southeast ¼ Section 27, Township 12 North, Range 17 West, East Clinton from South R/W Seventh Street to 250 Feet South to Previous Abandonment and further described in the Road Book of the Missoula County Department of Public Works Surveying Division, as presented in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Robbins Family Transfer

Chair Curtiss opened the hearing.

Mike Sehestedt presented the staff report.

This is consideration of a request to create a family transfer parcel for that parcel described as Tract 1, Certificate of Survey #5197 Northeast ¼ Section 24, Township 13 North, Range 23 West. Gary E. and Joyce A. Robbins 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 16 plus acres in size located near Alberton. Gary and Joyce propose to create an approximately eight-acre parcel for transfer to Joyce's son, Jeffrey Paul Morrissey, for residential purposes and to keep the remaining approximately seven plus acre parcel for residential purposes as well.

The history of the parcel is as follows: Certificate of Survey 5197 was filed in September 2001 creating Tract 1 for the purpose of providing security for a construction mortgage, liens, or trust indentures. According to the records kept by the Missoula County Surveyor, this is the only exemption to the Subdivision and Platting Act that the applicants have used.

My recommendation to you is that you consider a request to create a family transfer parcel by dividing the parcel described as Tract 1, Certificate of Survey #5197 Northeast ¼ Section 24, Township 13 North, Range 23 West. That concludes my report.

Chair Curtiss: Thank you, Mike. Is someone from the Robbins family here? If one or both of you could come to the microphone please. If you could state your name for the record please.

Gary Robbins: Gary Robbins

Joyce Robbins: Joyce Robbins

Chair Curtiss: Thank you, Mr. and Mrs. Robbins. So we have a list of questions that we ask our Deputy County Attorney to ask you on the record to help us make our decision as to whether this a legal family transfer, as evading subdivision is a misdemeanor and we don't want people to do that. Mr. Sehestedt will ask you some questions.

Mike Sehestedt: Let me apologize in advance. I'll be asking what may seem to be kind of prying questions dealing with what would ordinarily be your private family business but the purpose is to ascertain whether or not this is a legitimate use of the family transfer exemption and not an evasion of the subdivision and platting act. So with my apologies, about how long have you owned the property?

Gary Robbins: [Inaudible] 86 or 87.

Joyce Robbins: Yeah, 87. [Inaudible]

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

Joyce Robbins: Well, we had to because we were [inaudible].

Chair Curtiss: Ma'am, we need to put that--that microphone tips. There you go, Cathie needs to have it on the tape. So you purchased it because this was created with a mortgage exemption. That was so that you could build a house?

Joyce Robbins: Correct.

Mike Sehestedt: Do you know what your son's plans are with regard to the parcel he's going to receive?

Joyce Robbins: Yes, he's going to build a house.

Mike Sehestedt: Do you currently reside on the property as well?

Joyce Robbins: Yes.

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

Joyce Robbins: Yes.

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

Gary Robbins: No.

Joyce Robbins: No.

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

Joyce Robbins: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Gary Robbins: No.

Joyce Robbins: No.

Mike Sehestedt: It's a tough question; it's kind of a legal conclusion rather than a question of fact.

Joyce Robbins: What is the evade?

Mike Sehestedt: Means you're not using the criteria--you're not using the exemption for the legitimate purpose of giving property to your son. Now you've already actually answered it. Do you understand that if the Commissioners approve this use of the exemption, we're not reviewing either parcel for adequate access in weather for all vehicles, including emergency services?

Joyce Robbins: Pardon?

Mike Sehestedt: If this use of this exemption is approved, the Commissioners are not looking to see whether or not access is adequate to either parcel. If you create a parcel that you can't get to by hook or by crook, it's your problem, not ours.

Gary Robbins: No, we got two roads. We've got [inaudible, spoke without mic].

Mike Sehestedt: Understand the Commissioners aren't saying those are adequate. That's up to you to determine. Again, it's not saying they're inadequate, it's just saying we're not looking at it. The other thing is do you understand that if the Commissioners approve this use of the exemption to divide the property, it does not mean that you've got approval for floodplain, septic, zoning, building permit? You'll have to get all those permits separately. Do you understand that?

Cathie Cichosz: Could you speak your answer please, instead of nodding your head?

Joyce Robbins: Yes.

Chair Curtiss: Thank you. Her tape recorder doesn't pick up head nodding for some reason.

Mike Sehestedt: I have no further questions Commissioners.

Chair Curtiss: I guess I have a question for you. Because this parcel was created by use of the mortgage exemption, do you own additional property then besides this?

Joyce Robbins: No, we...

Chair Curtiss: Your brothers or that was...

Joyce Robbins: My brother has his own, now that we have...

Chair Curtiss: Okay, all right. So there's no problem with this being created by a mortgage exemption?

Mike Sehestedt: No, this was done in 2001, when use of the mortgage exemption, if legitimate as this appears to have been, created a parcel that went on into the indefinite future. That situation was changed by the legislature and now it does not create an independent tract, but by way of past history, this is a bonafide legitimate tract.

Chair Curtiss: Any other questions for the family? Thank you. This is a public hearing; does anyone else want to make comment on this proposed family transfer? Seeing no one come to the microphone, I'll close the hearing.

Commissioner Carey made a motion that the Board of County Commissioners approve the request by Gary and Joyce Robbins 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: Thank you. You will receive a letter from our office in the next month, Cathie? You can also have a surveyor or somebody start that work if you'd like, but you'll get an official letter from us soon.

Mike Sehestedt: The only reason you need the letter is to file the survey at the end, so your surveyor can begin preparing it and we'll have a little race to see whether your surveyor's faster than our secretary.

Hearing (Certificate of Survey): Parker 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 Northwest ¼ of the Northwest ¼ in Section 32, Township 15 North, Range 20 West. Raymond D. and Marilyn F. Parker have submitted a request to create two additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 40 acres in size located near Frenchtown. Raymond and Marilyn propose to create two approximately 10-acre parcels for transfer to each of their daughters, Linda L. Parker and Diana R. Parker, for residential purposes and to keep the remaining approximately 20-acre parcel for residential purposes as well.

The history of the parcel is as follows: A Warranty Deed was filed by Alfred E. and Eva L. Deschamps in November 1975, deeding this 40-acre parcel of land to Raymond D. and Marilyn F. Parker. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act. That concludes my report.

Chair Curtiss: Thank you. Is someone here from the Parker family? If you could come to the microphone and state your names please?

Raymond Parker: Raymond D. Parker.

Marilyn Parker: Marilyn F. Parker.

Chair Curtiss: So Mr. and Mrs. Parker, you heard the previous family go through this process, but we'll have Mike Sehestedt ask you the same questions on the record.

Mike Sehestedt: Again, let me make the same disclaimer for the apparent prying nature of the questions, but we want to do this as quickly as possible. Was I correct when I stated you've owned this property since 1975?

Marilyn Parker: I looked it up and we've been paying property taxes since 1976.

Mike Sehestedt: So 75 would be a good purchase date then. Did you buy the property with the intent of dividing it?

Marilyn Parker: No.

Mike Sehestedt: If you had, you've been remarkably patient. Do either you or your daughters, should this be approved, plan to transfer the property within the next year?

Marilyn Parker: No.

Mike Sehestedt: I happen to know that you don't reside on the property and neither do your daughters. Do you know what their long-term plans are for the property?

Raymond Parker: I don't think they have long-term plans, other than short-term [inaudible, spoke without mic] 2,000 trees, 400 pounds of grass seed [inaudible].

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

Raymond Parker: No.

Marilyn Parker: No.

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

Marilyn Parker: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Marilyn Parker: No.

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

Raymond Parker: I didn't hear him.

Mike Sehestedt: The question was whether or not--whether you understand that the Commissioners aren't reviewing the access to these parcels?

Marilyn Parker: Yes, and you had advised us of that previously.

Mike Sehestedt: It's up to you to make sure that there's a way to get to each of the parcels.

Marilyn Parker: Its five miles up on top of a mountain.

Mike Sehestedt: I didn't say it would be easy. Do you also understand that while the Commissioners are approving--should the Commissioners approve the division of the property, that approval does not mean that the property is approved for zoning compliance, floodplain, septic systems, building permits?

Marilyn Parker: We understand.

Mike Sehestedt: You understand? Thank you, I have no further questions. The Commissioners may have some follow-up.

Chair Curtiss: Oh, you've got the up-to-date photo after the fire? Oh, my, sure, we'll look at that. So there were no buildings on the property currently right?

Marilyn Parker: Right.

Chair Curtiss: If there had been, they'd be gone.

Marilyn Parker: Storage shed.

Raymond Parker: This is just before the fire; we logged the fir off of it two years ago because of the disease. The [inaudible] disease--yeah, I want to say, probably...

Mike Sehestedt: Mistletoe.

Raymond Parker: Mistletoe, there we go. Then just in the last three weeks, we took the pine off that was killed from the fire. It's pretty [inaudible] piece of property right now.

Chair Curtiss: It's a good thing you have girls to help you plant.

Raymond Parker: Yeah, then a couple grandkids later on.

Chair Curtiss: Thank you. This is a public hearing, is there anyone else who would like to make comment? Seeing no one come forward, I'll close the hearing.

Commissioner Anderson made a motion that the Board of County Commissioners approve the request by Raymond and Marilyn Parker to create two additional parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss: You'll also receive a letter from our office soon. Thank you.

Hearing (Certificate of Survey): Hay 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 3 of Certificate of Survey #6008 in the Northwest ¼ of Section 35, the Southwest ¼ of Section 26 and in the Southeast ¼ of Section 27, all in Township 13 North, Range 18 West. Catherine O. Hay has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 171 acres in size located between Piltzville and Turah. Catherine proposes to create approximately a two-acre parcel for transfer to her daughter, Barbara Bennetts, for residential purposes and to keep the remaining 169 plus acre parcel for residential purposes as well.

The history of the parcel is as follows: Catherine O. Hay purchased this property in 1958. A Boundary Agreement was filed in September 1974 for the purpose of acknowledging the property boundary lines. Certificate of Survey #6008 was filed in 2008 for the purpose of relocation of common boundary lines. According to the records kept by the Missoula County Surveyor, the applicant has used the following exemptions to the Subdivision and Platting Act except as listed below:

Certificate of Survey #1631	10/05/1978	Occasional Sale	SW ¼	26 13 18
Certificate of Survey #1761	01/05/1979	Gift Remainder	SW ¼	26 13 18
Certificate of Survey #2268	02/13/1980	Gift	NW ¼	35 13 18
Certificate of Survey #2845	02/08/1983	Occasional Sale	SE SW	26 13 18
Certificate of Survey #2874	04/12/1983	Occasional Sale	NW	35 13 18
Certificate of Survey #1539	07/15/03	Boundary Relocation	NE NW	12 17 27
Certificate of Survey #6008	01/16/2008	Boundary Relocation	SW SE NW	35 13 18

My recommendation to you is that you consider a request to create a family transfer parcel by dividing the parcel described as Tract 3 of Certificate of Survey #6008 in the Northwest ¼ of Section 35, the Southwest ¼ of Section 26 and in the Southeast ¼ of Section 27, all in Township 13 North, Range 18 West.

Chair Curtiss: Thank you, Michael. Is Mrs. Hay here? Can she make it to the microphone? It's a moveable microphone; we can bring it to her.

Unidentified Speaker: [Inaudible, spoke from audience.]

Chair Curtiss: You may.

Mike Sehestedt: Certainly.

Chair Curtiss: That microphone moves up since you're tall.

Barbara Bennetts: My name's Barbara Bennetts and I'm the daughter of Catherine Hay.

Chair Curtiss: Okay, so Ms. Bennetts, we'll ask you to answer the questions as you've seen others do. Mike will ask the questions.

Mike Sehestedt: Again, my apologies for prying into family business. Was I correct when I indicated that your mother's owned this property since about 1958?

Barbara Bennetts: Yes.

Mike Sehestedt: Did you know if she bought the property with the intention of dividing it?

Barbara Bennetts: She did not.

Mike Sehestedt: I was going to say, if she had, she's waited a long time. Do you know what are your plans with regard to the parcel you'll receive if this is approved?

Barbara Bennetts: Well, I'm not sure. I just retired two weeks ago and just moved back to Montana. My intention was to build a little place there and be next door to my mother and dad. My dad died a couple years ago and now my mom's living in a senior communication. My idea of having a little house living next door to mom and dad is not valid anymore. The idea of selling it has never been among the considerations. I have two daughters and four grandchildren and we all talk about what would be our collective desire. Selling it is not one of the options.

Mike Sehestedt: Do you know does your mother intend to hold onto the remainder piece?

Barbara Bennetts: She doesn't have plans to do anything different with it now. I don't know, Mom, have you and Ron talked about doing anything other than holding onto the--you mean the larger piece?

Mike Sehestedt: The larger piece, yeah.

Barbara Bennetts: No, I don't think so.

Mike Sehestedt: Do you know has she talked to anyone at the County about going through subdivision review?

Barbara Bennetts: No, other than going and finding out what the rules are for what we're doing right now.

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

Barbara Bennetts: No.

Mike Sehestedt: Is your mother?

Barbara Bennetts: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Barbara Bennetts: No.

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

Barbara Bennetts: I understand that.

Mike Sehestedt: Do you also understand that if this is approved, it doesn't mean you're approved for septic, floodplain, zoning? All of the other permits still need to be obtained separately.

Barbara Bennetts: We understand that.

Mike Sehestedt: I need to ask a couple of questions. I see that your mother has given a couple of gifts previously. Were these to other family members?

Barbara Bennetts: Yes, and this is the equivalent of what my two brothers were given. On my 35th birthday, I got a little card that said this is a gift of land for your 35th birthday. Time has moved on. I was working out of state, so this is the piece that is similar to the ones my brother got.

Mike Sehestedt: Well I thank you very much. That concludes my questioning. The Commissioners may have some follow-up questions.

Chair Curtiss: Thank you; do you have questions for Ms. Bennetts? Thank you, Ms. Bennetts.

Barbara Bennetts: Thank you.

Chair Curtiss: This is a public hearing, is there anyone that would like to make comment? Seeing no one come forward, I will close the hearing.

Commissioner Carey made a motion that the Board of County Commissioners approve the request by Catherine O. Hay 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: You will receive a letter soon.

Hearing (Certificate of Survey): Vinal 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 72C of Certificate of Survey #2339 in the North ½ East ¼ of Section 16, Township 14 North, Range 20 West. Stephen G. Vinal has submitted a request to create four additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately ten acres in size located near the Wye. Stephen proposes to create the following parcels for transfer to family members for residential purposes and to keep the remaining approximately two plus acres parcel for residential purposes as well. The tracts proposed are as follows:

- Tract 72-C-1, 2.03 acres in size, to be transferred to Karen S. Vinal, wife of Stephen.
- Tract 72-C-2, 2.03 acres in size, will be transferred to Karissa A. Vinal, daughter of Stephen.
- Tract 72-C-3, 2.03 acres in size, will be transferred to Ryan S. Vinal, son of Stephen.
- Tract 72-C-5, 2.48 acres in size, will be transferred to Keith G. Vinal, father of Stephen.

The history of the parcel is as follows: Certificate of Survey #1925 was filed in 1979 for the purpose of creating 62 tracts in excess of 20 acres. Certificate of Survey #2339 was filed in 1982 for the purpose of gifting to the owners son, Stephen G. Vinal. 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:

05/10/1980 Amended Plat of Dinsmore's Orchard Homes Addition No. 5 Portion of Lot 29, Relocation of Common Boundary

06/10/1980 Certificate of Survey #2371 Mortgage Exemption Survey S24 13 20, which is not a parcel related to this tract.

I would note for the record, I believe this parcel is in the area commonly known as The Meadows of Barron O'Keefe. My recommendation to you is that you consider a request to create a family transfer parcels by dividing the parcel described as Tract 72C of Certificate of Survey #2339 in the North ½ Northeast ¼ of Section 16, Township 14 North, Range 20 West.

Chair Curtiss: Thank you, Mike. Mr. Vinal, if you'd like to come forward and state your name for the record please.

Steven Vinal: I'm Steven G. Vinal.

Chair Curtiss: You've heard what goes on here, so we'll just let Mike begin with the questions.

Mike Sehestedt: As always, I begin with an apology, but going forward. Approximately how long have you owned the property?

Steven Vinal: 29 years.

Mike Sehestedt: When you acquired the property, did you acquire it with the intention of dividing it?

Steven Vinal: No, I did not.

Mike Sehestedt: Can you tell us with regard to yourself and each of the people that would be receiving a transfer if this is approved, what their plans are with regard to the property?

Steven Vinal: Well, we're hoping to build homes on it eventually.

Mike Sehestedt: Are Karissa and Ryan both of legal age, over the age of 18 or...?

Steven Vinal: Karissa's going to be 18 in May; Ryan is 19.

Mike Sehestedt: Do you understand that if the transfer is made to a minor, it needs to go into trust? So if you were to complete this and file the certificate of survey prior to your daughter's 18th birthday, the deed would have to be to a trustee on her behalf.

Steven Vinal: I wasn't aware of that, but....

Mike Sehestedt: But you don't anticipate having the survey done by May, so...?

Steven Vinal: Well....

Mike Sehestedt: Hard to say.

Steven Vinal: Yes.

Mike Sehestedt: It is a requirement and we will require that [inaudible] condition of filing the certificate of survey. If you're going to do it before May, you need to develop a trust instrument and have a trustee appointed for your daughter, even though it's a short time.

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

Steven Vinal: No, I have not.

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

Steven Vinal: I've been a builder in the past, I'm retiring from it.

Mike Sehestedt: Are you attempting to evade subdivision review?

Steven Vinal: No, I'm not.

Mike Sehestedt: Do you understand that when the Commissioners look at a request such as this they do not review the property for adequate access in all weather for all vehicles?

Steven Vinal: Yes, I'm aware of that.

Mike Sehestedt: Obviously, don't review for the existence of a building site or anything else.

Steven Vinal: Yes.

Mike Sehestedt: Do you understand that the approval does not mean that the property's approved for zoning compliance, covenants, floodplain, septic systems, building permits; that all of those things need to be addressed separately?

Steven Vinal: Yes, I'm aware of that.

Mike Sehestedt: Thank you, that concludes my questions. The Commissioners may have further questions.

Chair Curtiss: Mr. Vinal, I noticed in your application that--so you originally received this property as a family transfer from your mother? Is that correct?

Steven Vinal: Yes.

Chair Curtiss: And now you're proposing to give a piece to your dad, your son, your daughter, and your wife?

Steven Vinal: Yes.

Chair Curtiss: As a common question for me at least, when we have people transferring to their spouse, is are you not going to live together?

Steven Vinal: Well, I'm hoping to.

Chair Curtiss: It just always seems odd to me to use a family transfer. In fact, I think it's odd that the law allows to transfer to your spouse. Why will you have two pieces of property, one in your name, one in hers?

Steven Vinal: Well, we've lived on larger parcels of land in the past and I was hoping at some point when I have grandchildren, that maybe I would be able to have a piece of ground for my grandchildren also.

Chair Curtiss: The law doesn't allow to transfer to grandchildren, only to your children, so this would provide you with that piece. Are there other questions for Mr. Vinal?

Commissioner Carey: I don't have any for Mr. Vinal; I have a question for our attorney. Michael, could you state the difference in law with this particular issue of the difference between intent and effect? In other words, can someone not have an intent, but end up with the effect in this case of a subdivision?

Mike Sehestedt: That's a difficult question. The key test is the purpose to evade subdivision review or not and the intent comes into it as to what the actual substantive effect of the transaction is. We and myself, we being Missoula County and myself, have always looked at it as a question of whether or not it's a real transaction. For example, in the case of either gift to the child, is the property going to the child as the economic benefit of the transaction inherent to the child or is it a sham. Before we did these examinations, you'll recall everybody with a brood of children bought 20 acres and divided it into six or seven pieces, nominally for gift to family members, but we discovered that, in fact, papa was selling the parcels and the money was not going into any kind of trust or direct benefit to the children. These were pretty clearly evasions. Now, we look and require that use of the family transfer exemptions, COS, come with a deed to the child. I suppose there are ways around that, but if we catch them, we prosecute them.

Commissioner Carey: Thank you.

Chair Curtiss: Mr. Vinal, do you still live in Loveland, Colorado then?

Steven Vinal: I do, yes.

Chair Curtiss: So do your children, your mother--or your dad?

Steven Vinal: My dad lives here.

Chair Curtiss: Your dad lives here? So he has a home now and he's thinking about moving out here?

Steven Vinal: He lives in an apartment.

Chair Curtiss: He lives in an apartment okay.

Steven Vinal: I was born and raised in Missoula and I'm hoping to move back when I retire. My wife's from Missoula. I moved to Colorado 26 years ago temporarily and I haven't made it back yet.

Chair Curtiss: You said that you plan to build on these, so you're thinking that as your children hopefully go to college and get jobs that pay money, which we all hope our children do....

Steven Vinal: I grew up in Missoula here and I lived in a block where all my relatives, I had three aunts and uncles, my grandmother, they all lived together. That's what I want to do. I want my family together [inaudible].

Chair Curtiss: Okay. Are there further questions for Mr. Vinal?

Commissioner Anderson: I guess my concern about this is that we're adding four more parcels here. We're in an area where downstream from this area; we've had a high concern about nitrates contaminating some wells down below this area. That raises some concerns about this not going through some sort of a review process to develop and build those houses. We've got a road that's accessing these tracts and I guess my feeling is I'd like to see some more investigation of this or some review given those impacts to the groundwater of those properties below it and also of the impact of another road and access going onto this major highway here.

Chair Curtiss: This process doesn't allow us to do that review, right?

Mike Sehestedt: It does not and that's probably one reason people use it or the reason the exemption exists is it is quicker and easier than looking at all of these issues. I would note that the groundwater questions are separately addressed by DEQ, Department of Environmental Quality, because each of these will have to have septic restrictions lifted before they can build or actually, before they can even file the survey.

Commissioner Anderson: If they don't go through a subdivision review, they would be viewed as individual applications over time rather than as one block going through?

Mike Sehestedt: That is correct. Although I think the non-degradation analysis is pretty much the same. They look at it, as I recall, lot by lot for these without common facilities, look at mixing zone, separation, well site, and replacement site. It's not to say that it necessarily is an adequate or wholly adequate of addressing the issue. There's also an area where we know full well people have experienced significant problems with wells, just in terms of capacity, but it's really random in this area as to where you have a problem and where you're hitting [inaudible] aquifer that provides water.

Chair Curtiss: Which is why we also always say we haven't looked at any of this for septic, water, building, floodplain, any of that.

Mike Sehestedt: Correct.

Chair Curtiss: Further questions or statements/

Commissioner Carey: Well, I concur with Commissioner Anderson. I think this amounts to a subdivision basically and it ought to be reviewed as such.

Commissioner Anderson made a motion that the Board of County Commissioners DENY the request by Stephen Vinal to create four additional parcels by use of the family transfer exemption based on the fact that there does appear to be an attempt to evade subdivision review. Commissioner Carey seconded the motion.

Chair Curtiss: Further discussion? I guess the hearing's still open, is there anyone else who wants to make comment, including you Mr. Vinal? You can make comment if you'd like before we vote.

Steven Vinal: I have nothing to say at this time.

Chair Curtiss: Okay, Mr. Martinson does apparently.

Greg Martinson: Greg Martinson. I'm a little surprised. The review that these go through with DEQ and the Health Department is exactly the same as they go through whether they're in subdivision review or in a family transfer. In the past, we've done family transfers exactly like this one. I'm a little shocked that we're departing from what we've allowed others to do. You essentially have no proof that he's trying to evade; you couldn't have

that proof until the parcels are transferred out of the family or something. There is no proof that he's trying to evade.

Chair Curtiss: Thank you, Mr. Martinson. Other comments? Pardon?

Greg Martinson: I know he's not.

Chair Curtiss: And you know he's not. Okay. Other comments before I close the hearing. I'll close the hearing. So it's been moved and seconded to deny the request for family transfer exemption.

The motion carried on a vote of 2-1, with Chair Curtiss opposed.

Chair Curtiss: I know that it looks like a subdivision, but I still think the law allows for it.

Consideration: Lexi Hills [Postponed from December 19, 2007] (5 lots on 160 acres) - Lund Drive, NE of Florence

POSTPONED TO MARCH 5, 2008

Chair Curtiss: Just in case there's some folks sitting in the audience for these two things, I should have mentioned it before, but it's stated on our agenda that the Lexi Hills that was to be heard today has been postponed until March 5 at the request of the developer. The same with the consideration on Canyon Creek Village Live/Work Units, those have both been postponed.

Consideration: Golden West Addition, Lot 20 (2 lots on 2.26 acres) - Marianne Drive

Chair Curtiss opened the consideration.

Vlad Kryukov presented the staff report.

Before you, you have a consideration for a two-lot minor subdivision called Golden West Addition #1, Lot 20. John and Jodi Monahan, represented by Deb Evison of Montana Northwest Company, propose Golden West Addition # Lot 20, a 2-lot subdivision. Access to the subdivision is via Marianne Drive. An individual well currently exists on Lot 20A with a new well planned for Lot 20B. Both homes will be served by City Public Sewer. The property is located east of Cote Lane about $\frac{3}{4}$ of a mile south of Mullan Road. The property is located on a relatively flat site within the UGA and the Air Stagnation Zone with slopes that vary from level to about eight percent. The area surrounding the residence is covered in grasses with no evidence of riparian resource, floodplain, or flood hazard area. Though this property may have been grazed at one time, it is not currently under agricultural production. The property is zoned C-RR1 and complies with the 2002 Missoula County Growth Policy and the applicable amendment, the 2005 Wye-Mullan West Plan Area, which designates this location as residential with a recommended density of one dwelling unit per acre. The applicant is proposing two lots on 2.26 acres for a residential density of one dwelling unit per 1.13 acres, so they definitely comply with the zoning regulations.

Staff recommends 14 conditions of approval. I will highlight seven of the conditions related to roads, access, pedestrian facilities, and fire. Condition of Approval #2 requires the subdivider to pave the driveway serving Lot 20B twenty feet back from the edge of the pavement of Marianne Drive or the right-of-way boundary, whichever is longer. Condition of Approval #4 requires the developer to contribute \$230 per new lot to the Mullan Road transportation system fund for signaling the Flynn/Mullan Road intersection and \$815 per new lot to the fund for improving the Reserve Street/Mullan Road intersection. Condition of Approval #5 requires the developer to provide a statement on the plat, waiving the right to protest a future RSID/SID for improvements including, but not limited to the installation of paving, drainage facilities, curbs and gutters, pedestrian walkways or bikeways to Marianne Drive, Council Way, Toby Way, and Cote Lane.

Pedestrian facilities, a 10-foot wide conditional pedestrian access easement was required across adjacent Lot 19 of the Golden West Addition subdivision. The intent of the pedestrian access easement is to provide an opportunity for a trail to connect Cote Lane to Marianne Drive in order to provide a safe and shorter route for kids to access the park at the intersection of Council Way and Marianne Drive. Condition of Approval #6 requires the developer to provide 10-foot wide conditional public pedestrian access easement on the plat extending from the

Marianne Drive right-of-way along the northern property boundary of Lot 20A to the western property boundary of Lot 20A prior to final plat approval. Condition of Approval #8 requires the subdivider to relocate a small shed shown on the preliminary plat encroaching on the proposed 10-foot wide conditional pedestrian access easement shown in orange on the preliminary plat. Condition of Approval #3 requires water supply for fire protection to be provided via a hydrant system and water storage or interior residential fire sprinklers in each new home. Condition of Approval #5 requires an RSID/SID waiver statement for a public water system for fire protection be placed on the face of the plat.

In addition to the recommended conditions of approval, the staff report also includes conditions of approval regarding address signage plan, weeds, and development covenants. Staff's recommended motions, approval of Golden West Addition #, Lot 20 subdivision subject to the recommended conditions of approval and findings of fact in the staff report. I also have a memo with amended conditions of approval that were discussed during the Planning Status meeting on February 19. I'm going to pass them out for the record.

Chair Curtiss: Vlad, have you already given one to the developer?

Vlad Kryukov: One was sent to Ken Jenkins with Montana Northwest via email.

Chair Curtiss: Thank you.

Vlad Kryukov: I also have a hard copy if you would like. As per our discussion on February 19, Condition of Approval #2, where it states the subdivider shall pave the driveway serving Lot 20B, the subdivider is stricken and owner--replaced with the word owner. Condition of Approval #7 stated that the easement shall be activated in the event of the future subdivision of parcels to the north and west of Golden West Addition #1, Lot 20 subdivision. The future subdivision of parcels to the north and west of Golden West Addition, Lot 20 subdivision is stricken and replaced with that a walkway is constructed from Cote Lane and Marianne Drive within the public pedestrian easement that would in turn activate the easement along Lot 20A and Lot 20A northern boundary line. If anyone has any additional questions, I would be more than willing to...

Commissioner Carey: I have a question, Vlad. Don't you need the easement in order to build the walkway?

Vlad Kryukov: This is a conditional easement. Lot 19 to the west of the property has dedicated 20 or 10-foot easement, which was filed as of last year and this easement would essentially give the rest of the walkway between Cote Lane and Marianne Drive, so it would be a contiguous 10-foot easement, which would permit either gravel or a paved walkway.

Chair Curtiss: I think Mike wanted to clarify maybe.

Mike Sehestedt: [Inaudible] hands off the microphone. What we have--what's being dedicated is a conditional easement and what we're specifying as the condition will make it available to the public is the construction of a public walkway utilizing the easement. What it means, if we just dedicate the easement now, it means the public, at least in theory, is free to wander up and down it? Deem that now a good situation until such time as an actual walkway is constructed. By making the construction of the walkway the trigger in the event, I think we address all of the concerns that everyone might have.

Chair Curtiss: Mary, did you have anything you wanted to add?

Commissioner Carey: Thank you. Is that the end of your report then, Vlad?

Vlad Kryukov: Yeah, that concludes my report.

Chair Curtiss: Okay. Is the developer's representative here?

Ken Jenkins: Good afternoon, for the record, Ken Jenkins with Montana Northwest Company. I'm not sure what I'm doing here with a subdivision on family transfer day, but we'll do it anyway. I'd like to thank Vlad and OPG for their review of this project and getting us to this point. I really don't have much to add. I think the recommended conditions all make a lot of sense and we're in agreement with that as amended by the memo with a possible exception. I think Commissioner Carey perhaps touched on a valid point as we work on the language in Condition #7. Missoula County Subdivision Regulations require an easement with 20 feet for pedestrian

easements. What we now have from Cote Lane to Marianne Drive, we've got 10 feet all the way through now including this easement. My concern would be that if we don't get the other half of the 20-foot easement, what you have is a pedestrian facility located much closer to these folks home than it would be if it was centered in a 20-foot easement. In other words, if future subdivisions create the north half of this 20-foot easement, the likely place for the pathway would be along the property line as it now exists between the properties. In the event that that does not happen, then you have potentially a trail in much closer proximity to the house. I like the change that was made to where the actual construction of the pedestrian facility is part of the activation of the easement, but it may well be that we should also have the other half of the easement as part of the equation, whether it's created by subdivision or by grant or it really wouldn't matter how it's created, but I think the other half of the easement is probably a valid activation trigger. I can certainly answer questions. Thank you.

Chair Curtiss: Thank you. Mary, I think we talked about this a little, but the county has different types of pedestrian facilities, including two-foot paths. Is that correct? If there's no further development to the north, it's possible we could have just a path mostly so children could get to Cote Lane easier.

Mary McCrea: Yes. For the record, Mary McCrea, Office of Planning and Grants. It's true that a 20-foot easement is the standard required that reflects the construction of an eight to 10-foot asphalt trail. Recently the regulations were changed to allow a variety of different types of low-impact trails from two feet to five feet. It's conceivable that within the 10-foot easement, a narrower gravel trail could be constructed or perhaps for public benefit there could be, without a subdivision to the north, they might want to grant five feet of easement so that a slightly wider path could be installed. Those are possibilities, so I think if we leave it on the construction of the trail, it's perhaps a better trigger.

Chair Curtiss: So that means that if in the future we see the need for pedestrian and built it that it would be open to the public. Otherwise, it's just conditional and it just sits there. Further questions for the developer or for Vlad? Is there anyone in the public who wanted to comment on this subdivision or any of the amendments? I guess we're ready for a motion.

Commissioner Carey made a motion that the Board of County Commissioners approve the Golden West Addition No. 1, Lot 20 Subdivision based upon findings of fact in the staff report and subject to the recommended conditions of approval, including the amended Conditions of Approval #2 and #7. Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss: Thank you.

Golden West Addition, Lot 20 Conditions of Approval

Roads and Driveways

1. Driveways in excess of 150 feet in length shall incorporate a turn around for fire apparatus at the terminus of the driveway and shall be approved by Missoula Rural Fire District prior to building permit approval.
2. The owner shall pave the driveway serving Lot 20B twenty feet back from the edge of the pavement of Marianne Drive or the right-of-way boundary, whichever is longer subject to review and approval of County Public Works prior to building permit approval.
3. The Driveway section of the Development Covenants shall be amended to require a minimum 13 feet 6 inches unobstructed vertical clearance and be engineered to support the weight of emergency equipment in all weather conditions subject to review and approval of OPG prior to final plat approval.
4. The developer shall contribute \$230 per new lot to the Mullan Road transportation system fund for signaling the Flynn/Mullan Road intersection and \$815 per new lot to the fund for improving the Reserve Street/Mullan Road intersection. Payment of this contribution shall be verified prior to final plat approval.
5. The following statement shall appear on the face of the plat prior to final plat approval and in each instrument of conveyance: "Acceptance of a deed for a lot within this subdivision constitutes assent of the lot owner to waive the right to protest a future RSID/SID for improvements including, but not limited to the installation of paving, drainage facilities, curbs and gutters, pedestrian walkways or bikeways to Marianne Drive, Council Way, Toby Way, and Cote Lane, based on benefit, and may be used in lieu of their signatures on an

RSID/SID petition. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land."

Pedestrian Facilities

6. A 10-foot wide conditional public pedestrian access easement extending from the Marianne Drive right-of-way along the northern property boundary of Lot 20A to the western property boundary of Lot 20A shall be shown on the plat prior to final plat approval.
7. The following statement shall appear on the face of plat and in the Development Covenants describing the public pedestrian access easement and shall be reviewed and approved by the Office of Planning and Grants prior to final plat approval:

"The owner of Lot 20A dedicates a 10-foot (PPE) Public Pedestrian Easement over and across Lot 20A of the Golden West Addition No.1, Lot 20 Subdivision as shown on the subdivision plat. This easement shall be activated in the event that a walkway is constructed from Cote Lane to Marianne Drive within the public pedestrian easement. No structures, permanent improvements, or above ground utilities shall be placed within the right-of-way so as to interfere with the right-of-way as a Pedestrian Easement".

8. The subdivider shall relocate a small shed shown on the preliminary plat encroaching on the proposed 10-foot wide Conditional Pedestrian Access Easement. The subdivider shall present evidence to verify the relocation of the shed outside of the easement area prior to final plat approval.

Fire

9. The following statement shall appear on the face of the plat: "Acceptance of a deed for a lot within this subdivision constitutes waiver of the right to protest a future RSID or SID for a public water system for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors, and assigns of the owners of the land."
10. The subdivider shall provide a water supply for fire protection via a hydrant system that produces 1000 GPM fire flow with minimum 2-hours of storage, approved by the Missoula Rural Fire District. In lieu of a water supply with hydrant, the subdivider shall request approval from the Missoula Rural Fire District to install interior residential fire sprinklers that meet NFPA 13D standards in each new home. Plans for a water supply and hydrant location shall be approved by the Missoula Rural Fire District prior to final plat approval. Plans for the installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to building permit approval and the Fire Sprinkler section of the development covenants shall be replaced with the following language prior to final plat approval:

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

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

11. Plans for address signage for each property shall be reviewed and approved by Missoula Rural Fire District prior to final plat approval. The approved address plan shall be included in the covenants.

Weeds

12. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval.
13. The subdivider shall add an Applicability section to the Development Covenants that includes the following:

- a. A statement that the Development Covenants are supplemental to the Golden West Addition No. 1 covenants;
- b. A statement that the Development Covenants apply to Lot 20A and Lot 20B of Golden West Addition No. 1, Lot 20 Subdivision; and
- c. A statement that the Development Covenants run with the land.

Development Covenants

14. The Development Covenants shall be amended as follows subject to review and approval by OPG prior to final plat approval:

- a. Add the following section:

Woodstoves:

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

- b. Section 17 Amendments shall be revised to include fire sprinklers, woodstoves, and public pedestrian access easement in the list of sections that may not be amended without Governing Body approval.

Consideration: Porter Subdivision for Lease or Rent (Add one dwelling unit on 12.28 acres) - 12225 Pulp Mill Road

Chair Curtiss opened the consideration.

Janet Rhoades presented the staff report.

Good afternoon, Commissioners. For the record, my name is Janet Rhoades, Planner with Office of Planning and Grants. I'm here today to present Porter Subdivision for Lease or Rent. Tom and LeeAnn Porter would like to add a second home to their 12.28-acre parcel. The property is bordered by Pulp Mill Road to the north and Western Farms Road to the west. It is mostly covered in sloped pasture and open space, with one existing home, a garage, and outbuildings. An existing trailer also occupies the site and is proposed to be removed. Siuya Lane, a private road, crosses the center of the property in a north-south direction, provides access to the south.

Access to the site is from Pulp Mill Road, which is a county public road. The existing home is accessed from Siuya Lane via a 14-foot gravel driveway. The proposed home will also be accessed from Siuya Lane via an existing 14-foot gravel driveway. Both driveways are existing even though one of the homes is proposed. Because there is no division of lots, no easements are required for any driveways or roads. In order to provide adequate fire protection for the site, the standard conditions of approval relating to driveways, interior residential fire sprinklers, fire service fees, and address signs have been included. Both homes will be served by individual on-site septic systems and individual wells.

There's been one variance requested that's for Siuya Lane. Subdivision regulations require Siuya Lane to be improved to an 18-foot surface width, with 2-foot gravel shoulders. Siuya Lane is currently between 12 and 16 feet wide. The property is covered by rolling hills, so parts of Siuya Lane are constructed on substantial fill in some places of it, so therefore, widening Siuya Lane might require additional fill in some locations. Frenchtown Rural Fire District did not express any concerns with approving the variance requested. County Public Works recommended conditional approval of the variance request to require Siuya Lane to be improved to an 18-foot width with 2-foot gravel shoulders just up to the intersection with the first driveway between Pulp Mill Road and the first driveway. That's only about a distance of 20 to 30 feet and it's actually about 16 feet already there. It's wider as you get closer to Pulp Mill Road. Staff recommends approval of the variance request.

Just a couple of conditions that I want to highlight, there's Condition of Approval #5 relates to building envelopes. Because the subject property is located on rolling hills, there might be some areas there that are 25% slope or greater. Because no survey was done, there's no slope category map. Slopes greater than 25% are considered

to be hazardous lands by subdivision regulations, so we want to make sure that the home site doesn't get placed on those areas. We're going to require either that they provide a slope category map or that the subdivider designate a building envelope around the site that has been proposed for the proposed home in order to prevent building on slopes greater than 25%. Condition of Approval #6 I also want to talk about. There's an existing trailer in the location of the proposed new home. According to the applicant, it is not hooked up and is being used for storage. Staff wants to make sure that a third home doesn't get added when they go for building permit, so staff's required that the existing trailer, even though it's not hooked up, be placed on the final plan [inaudible] as a flag when they go in for building permit to make sure that that existing trailer is removed before adding the second home.

Staff's recommendations: approval of the variance request and approval of the subdivision. This concludes the staff report.

Chair Curtiss: So Janet just to clarify, the Condition #1 or recommended motion #1, is the road already 18 feet wide up to that second driveway or did they need [inaudible, interrupted] ...

Janet Rhoades: No, it's about 16 feet; it might be 18 feet in some places. It's hard to measure because when I went out there, it was all under ice pack, but somewhere in that range.

Chair Curtiss: So is Public Works wanting that to be widened to 18 though?

Janet Rhoades: That's right, just to the intersection with the first driveway.

Chair Curtiss: And do we have--I didn't see that conditioned in here somewhere.

Janet Rhoades: Right because staff is recommending approval of the variance. Public Works recommended that it be [inaudible] up to the first driveway, but [inaudible, interrupted]...

Chair Curtiss: [Inaudible] not very far...

Janet Rhoades: ...[inaudible] not very far and it's already about 16 feet. So rather than partially approving parts of variances, we just said let's just recommend approval for the variance.

Chair Curtiss: Okay, that was my confusion. Thank you. Is the applicant here or someone representing them? Would you like us to bring the microphone to you so you don't have to wake the little one up? If you could just state your name for the record please.

LeeAnn Porter: LeeAnn Porter.

Chair Curtiss: LeeAnn, did you have anything that you'd like to add to the staff report? Are you okay with the conditions and stuff...

LeeAnn Porter: Yes, we are.

Chair Curtiss: So your plan is either to refurbish the current trailer or move it and put in something new?

LeeAnn Porter: Yes, it's just storage for our daughter's belongings and that's all it is. Then once they get a mobile home to put there, it's gone.

Chair Curtiss: Okay. Are there any questions for Mrs. Porter? Okay, thank you. This is a consideration, but we'll accept any other public comment. Does anyone else want to make comment on this proposed lease or rent?

Commissioner Carey: I have a question for Janet if I may. Janet...

Chair Curtiss: [Inaudible] we'll call on you in a second.

Commissioner Carey: Oh, I thought I heard you say, Janet, that a variance was conditionally approved in your report?

Janet Rhoades: I didn't mean to say that if I did. It's just flat out approval. We considered conditional approval, which is what Public Works recommended, but in the end, we're recommending just straight approval.

Commissioner Carey: Okay, thank you.

Cindy Crittenton: Commissioners, Cindy Crittenton for [inaudible]. I visited the site and it is a little hard to tell in that one area, but I don't see any issues with the driveway.

Chair Curtiss: So it should be fine for emergency vehicles.

Cindy Crittenton: [Nodded yes.]

Chair Curtiss: Thank you, Cindy. Any other comments?

Commissioner Anderson made a motion that the Board of County Commissioners approve the variance request from Article 3.2.2.6 (Table 1) requiring Siuya Lane to be improved to an 18-foot surface width to allow Siuya Lane to remain at its existing surface width of 12-16 feet. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Anderson made a motion that the Board of County Commissioners approve the Porter Subdivision for Lease or Rent based on the findings of fact in the staff report and subject to the recommended conditions of approval. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss: So you'll get a letter from us soon, Mrs. Porter.

Porter Subdivision for Lease or Rent Conditions of Approval

Roads and Access:

1. Driveways in excess of 150 feet in length must be approved by Frenchtown Rural Fire District prior to building permit approval. A turn around for fire apparatus must be incorporated at the terminus of the driveway. The driveway must provide 20 feet of unobstructed horizontal clearance and 13 feet 6 inches unobstructed vertical clearance the length of the drive. Driveways shall be constructed to support emergency vehicles in all weather conditions. This language shall be included in the development covenants prior to final plan approval and shall not be deleted or amended without governing body approval. (*Subdivision Regulations Article 3.2.2.2(4)(c) and Frenchtown Rural Fire District recommendation*)

Fire:

2. The subdivider shall provide a water supply for fire protection that produces 1000GPM with two hours storage and a hydrant or, in lieu of a water supply with hydrant, the subdivider shall install interior residential fire sprinklers that meet NFPA 13D standards in each new home. Plans for a water supply and hydrant location shall be approved by Frenchtown Rural Fire District prior to final plan approval. If water supply for fire protection is to be provided by interior residential fire sprinklers then the subdivider shall provide verification from Frenchtown Rural Fire District of approval to install interior residential fire sprinklers that meet NFPA 13D standards in each new home for the purposes of fire protection prior to final plan approval. Plans for the installation of interior residential fire sprinklers shall be approved by the Frenchtown Rural Fire District prior to building permit approval and the development covenants (Section 3 – Interior Residential Fire Sprinklers) shall include the following language, subject to review and approval by OPG prior to final plan approval:

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

This section of the covenants may not be changed or deleted without governing body approval. (*Subdivision Regulations Article 3.7(1) and Frenchtown Rural Fire District recommendation*)

3. The subdivider shall contribute a fire service fee of \$530.00 per new lot to the Frenchtown Rural Fire District for fire protection purposes. Payment of this contribution shall be verified by OPG prior to final plan approval. *(Subdivision Regulations Article 3.7(1) and Frenchtown Rural Fire District recommendation)*
4. All residences within this subdivision shall post address signs visible from Pulp Mill Road in all light conditions. Plans for visible addressing shall be reviewed and approved by the Frenchtown Rural Fire District and the approved language shall be included in the Development Covenants prior to final plan approval. *(Subdivision Regulations Article 3.1(1)(f) and Frenchtown Rural Fire District recommendation)*

Final Plan:

5. The subdivider shall designate areas with slopes greater than 25% a *Steep Slope/No Build Zone* or shall designate on the final plan a 2,000 square foot building envelope east of Siuya Lane for the new dwelling unit, to be reviewed and approved by OPG prior to final plan approval. The approved building envelope shall be clearly defined on-site by staking, subject to review and approval by OPG prior to final plan approval. An exhibit shall be included in the covenants showing the building envelope and explaining its purpose, to be reviewed and approved by OPG prior to final plan approval. The new dwelling unit and any structures accessory to the new dwelling unit shall be built within the building envelope area.
6. A maximum of two dwelling units in the form of stick built homes, modulars or trailers are permitted on the subject property. The existing trailer (in the proposed location for the proposed second home) shall be shown on the plan, subject to review and approval by OPG prior to final plan approval. The subdivider shall remove the existing trailer or the existing house from the subject property prior to building permit approval for constructing a new dwelling unit.

Development Covenants:

7. Development Covenants for Porter's Subdivision for Lease or Rent shall be filed with the Missoula County Clerk and Recorder, subject to review and approval by OPG and the County Attorney's Office prior to final plan approval. The following language shall be included in the Development Covenants:

“Section 1. Driveways. Driveways in excess of 150 feet in length shall have approved turnarounds for fire apparatus within 150 feet of the building and shall have an unobstructed width not less than 20 feet and an unobstructed vertical clearance of 13 feet 6 inches.” Final designs shall be approved by the Frenchtown Rural Fire District.

Section 2. Interior Residential Fire Sprinklers. Installation of interior residential fire sprinklers that meet NFPA 13D standards are required in each new home for the purpose of fire protection. Plans for installation of interior residential fire sprinklers shall be approved by the Frenchtown Rural Fire District prior to Building Permit approval. Failure to install residential fire sprinklers in any new home may subject the entire subdivision to the cost of installation of a shared water source for fire fighting purposes.

Section 3. Weed Control. Lot owners are required to maintain their property in compliance with the Montana Weed Control Act, the Missoula County Noxious Weed Management Plan and the revegetation plan approved by the Missoula County Weed District appended by reference to this Development Covenant. Landowners are also required to revegetate any ground disturbance with beneficial species at the first appropriate opportunity after the disturbance occurs.

Section 4. Living With Wildlife.

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, black bear, mountain lion, wolf, coyote, fox, skunk, raccoon, and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula for brochures that can help homeowners “live with wildlife.” Alternatively, see FWP's web site at www.fwp.mt.gov.

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

- a. There is high potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners must be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens**, fruit trees or orchards can attract wildlife such as bear and deer. Fruit bearing trees and shrubs are strongly discouraged in this subdivision because they are a major wildlife attractant and can regularly attract bears in the fall. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or organic material can attract bears, skunks, and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. The top rail should be made of something other than wire to prevent wildlife from entanglement. Netting over gardens can help deter birds from eating berries. To keep wildlife such as bears out of gardens and/or away from fruit trees, use properly constructed electric fences and maintain these constantly. (Contact FWP for information on "all-species electric fencing" designed to exclude wildlife from gardens, fruit trees/shrubs, and/or home areas.)
- c. If stored outdoors, **garbage** must be in secure bear-resistant containers; otherwise, it must be stored indoors prior to curbside pick-up or transport to a centralized garbage collection site, in order to avoid attracting wildlife such as bears and raccoon. If curbside garbage pick-up is available, garbage cans may not be set out until the morning of garbage pickup and must be brought in no later than that same evening. (Consult Montana Fish, Wildlife & Parks for information on purchasing or constructing bear-resistant trash containers or storage areas.)
- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
- e. **Birdseed** is an attractant to bears, and outdoor birdfeeders should not be used from April 1st through the end of November. If used, bird feeders must: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds. Keep any birdseed that does fall to the ground, cleaned up at all times.
- f. Bears can be attracted to food smells associated with outdoor food storage; therefore, **freezers and refrigerators** should not be placed outdoors on porches or in open garages or buildings. If a freezer/refrigerator must be located outdoors, attempt to secure it against potential bear entry by using a stout chain and padlock around the girth of the freezer.
- g. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current state law, it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124). Outdoor domestic pets could be at risk of injury or death from wolves and other predators) in the area. Thus, keeping pets confined or indoors also helps protect them from predatory wildlife.
- h. **Pet food and livestock feed** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such bears, mountain lions, skunks, raccoons, and other wildlife. **When feeding pets and/or livestock** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to /associate food with your home.

- i. **Barbecue grills** should be stored indoors, permanent outdoor barbecue grills are discouraged, and permanent barbecue pits are not permitted. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
- j. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.
- k. **Compost piles** can attract skunks and bears and should be avoided. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
- l. **Apiaries (beehives)** could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
- m. These “living with wildlife” covenants cannot be altered or eliminated without consent of the governing body (Missoula County Commissioners).

Section 5. Amendments. The following sections of the Development Covenants may not be amended without Governing Body approval: Living With Wildlife, Driveways, Address Signs, Interior Residential Fire Sprinklers, Weed Control, Steep Slope/No Build Zone, and Amendments.”

(Subdivision Regulations Article 3-1(1), 3-1(1)(B), 3-1(2), 3-1(10), and 3-2(10)(E), Frenchtown Rural Fire District, Montana Fish, Wildlife and Parks, and Weed District recommendation)

Consideration: Canyon Creek Village Live/Work Units (Request to Allow Non-Commercial Uses on Proposed Lots G1 through G18 in Phases 13 through 15)

POSTPONED TO MARCH 5, 2008

Other Business

There being no further business to come before the Board, the Commissioners were in recess at 2:40 p.m.