

PUBLIC MEETING – MARCH 26, 2008

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Bill Carey, Senior Civil Attorney Marnie McClain, Director of Public Works Greg Robertson, Assistant Public Works Director Charles Wright, Assistant Chief Deputy Clerk & Recorder Kim Cox, Office of Planning and Grants Planner Tim Worley, and Rural Initiatives Mel Waggy. Commissioner Larry Anderson was out of town.

Pledge of Allegiance

Public Comment

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the weekly claims list in the amount of \$531,541.50. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Bid Award (Human Resources): Salary Survey & Compensation Consulting Project

Withdrawn - referred to Administrative Meeting

Chair Curtiss: The bid award for the survey and compensation consulting project is withdrawn from here because it was referred to an Administrative Meeting.

Hearing (Certificate of Survey): Rausch Family Transfer

Chair Curtiss opened the hearing.

Is there anyone here from the Rausch family? I guess we'll delay a little in case they come.

Hearing: Petition to Abandon an Extension of Deschamps Lane - between Highway 10 & I-90, south of the Wye

Chair Curtiss opened the hearing.

Kim Cox: This is Kim Cox from the Clerk & Recorder's office and they do meet statutory requirements for the necessary signatures on the petition.

Chair Curtiss: Thank you, Kim. Charlie, are you going to give us a staff report?

Charles Wright presented the staff report.

Yes, this petition goes from Highway 10 to Interstate 90. It's where the [inaudible] and the track range is that goes right back up to the side. I don't think it's ever going to be necessary to use that right-of-way. I think this is a good thing to vacate.

Commissioner Curtiss: Is there anyone else who would like to make comment on this petition to abandon.

Unidentified Speaker: [Inaudible, spoke from audience.]

Commissioner Curtiss: Somebody has requested that we abandon an old right-of-way that's not used currently. Have you seen the map, Mr. Deschamps? Would you like to look at it?

Mr. Deschamps: [Inaudible, spoke from audience.]

Commissioner Curtiss: What we do today is we have a hearing and take testimony. Then by law, one Commissioner has to go out and look at the site, so we would put it back on the agenda to make the decision.

Mr. Deschamps: [Inaudible, spoke from audience.]

Chair Curtiss: Could you come up to the microphone because we have to have it on the tape recorder. Thank you.

Mr. Deschamps: I don't have any problem with abandoning the road, but 20 years from now if you need it, you've got to buy it back from those guys?

Commissioner Curtiss: That's what we--could you state your name for the tape?

Fred Deschamps: I'm Fred Deschamps.

Chair Curtiss: Thanks, Fred.

Fred Deschamps: I wanted to make sure you weren't ...

Commissioner Curtiss: That's why we have to go out and visit it to see if it might have some public use in the future. Sometimes, as Charlie said, they kind of drop off and aren't very useable, but we have to go out and look.

Fred Deschamps: Okay. I don't care if you do it. That was my only concern that some day you might have to buy it back and, you know, if I was to give it away, I'd say if we need it, we're going to take it away from you. That's all I got. Thank you.

Commissioner Curtiss: Thank you, Mr. Deschamps. Okay, this is a hearing, is there anyone else who wants to speak about the proposed abandonment? Seeing none, I'll recess the hearing and I think it's probably my turn to go. We'll have to set a time and I'll be out of town next week, so April 9th, we'll put it back on the agenda for the report.

Chuck Wright: It won't take very long to go out there and look at it.

Chair Curtiss: No.

Charles Wright: It's right straight opposite Deschamps Lane. It's not a problem at all to figure out where it's at, right along the [inaudible].

Chair Curtiss: Okay.

Hearing (Certificate of Survey): Rausch Family Transfer

Chair Curtiss: Are you Mr. Rausch?

Unidentified Speaker: [Inaudible, spoke from audience.]

Chair Curtiss: Okay, if you could come to the microphone and state your name for the record then.

Rob Patterson: Rob Patterson, Eli and Associates.

Chair Curtiss opened the hearing.

Marnie McClain presented the staff report.

This is a request for a family transfer. Lawrence H. and Arlene O. Rausch 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 120 plus acres in size located near Petty Creek. Lawrence and Arlene propose to create approximately one acre parcel for transfer to their son, Kevin Leroy Rausch, for residential purposes and keep the remaining approximately 119 plus acre parcel for residential purposes.

The history of the parcel is that in 1982 there was a certificate of survey filed to create a tract of land for an occasional sale. In 1989, there was a certificate of survey filed for the purpose to create a tract of land for transfer to an immediate family member.

Commissioner Carey: That would be 1998 wouldn't it?

Marnie McClain: Oh, sorry, yes.

Chair Curtiss: We may ask you some questions, but we may decide that we want visit with the Rausch family also. We have a list of questions that we normally ask. I'll have Marnie ask them. Do you know, however, the gift in 1998, if it went to their children or do you know who that one went to?

Rob Patterson: That family transfer went to their other son, one of their other sons. I don't know his name right off the top of my head.

Chair Curtiss: All right, Marnie, I'll let you ask the questions, then we'll decide if we want to talk to the Rauschs.

Marnie McClain: According to materials I've looked at, they've owned the property since 1974. Is that correct?

Rob Patterson: I believe so.

Marnie McClain: Do you know if they intend to transfer the property within the next year?

Rob Patterson: To Kevin and Lexi or...?

Marnie McClain: [Inaudible].

Rob Patterson: No, they plan to build a house on the one acre and move [inaudible]. They live in, I believe, it's out near Frenchtown, but they plan to move out to this location on Petty Creek.

Marnie McClain: So they're not minor children obviously?

Rob Patterson: No, they're actually retired. The older Rauschs are in their 70s and Lexi and Kevin are probably in their--I believe they're in their late 40s. Kevin is disabled and Lexi helps him with his disabilities.

Marnie McClain: Have you talked to anyone at the County about going through subdivision review?

Rob Patterson: No.

Marnie McClain: Are the Rauschs in the business of building or developing property?

Rob Patterson: No, they're not.

Marnie McClain: Are they attempting to evade subdivision review?

Rob Patterson: No.

Marnie McClain: Do you and they understand that this request is not being reviewed for adequate access in all weather for all vehicles, including emergency services?

Rob Patterson: And they understand that.

Marnie McClain: Do you and they understand that this approval does not mean that the property is approved for zoning compliance, floodplain, or septic systems?

Rob Patterson: That's correct.

Chair Curtiss: Do you have any questions for Mr. Patterson? I think that he answered all the questions so that we don't have to have the Rauschs come in. Thank you. This is a public hearing, is there anyone else who would like to speak? Seeing none, I'll close the hearing.

Commissioner Carey made a motion that the Board of County Commissioners approve the request by Lawrence H. and Arlene O. Rausch 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. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Chair Curtiss: Thank you and I can't remember whether you submitted this for them, but you or the Rauschs will get a letter from us soon.

Consideration (Continued from March 5, 2008): Lexi Hills (5 lots on 160 acres) - Lund Drive, northeast of Florence

Chair Curtiss opened the consideration continuation.

Tim Worley: I'm wondering if we could have five minutes because we don't have a developer or his representative here yet?

Chair Curtiss: And we're expecting them?

Tim Worley: Yes.

Chair Curtiss: Okay, that would be fine. I would imagine--okay, we'll recess for five minutes.

Tim Worley presented the staff report.

This is Lexi Hills Ranch, which was originally a proposal for five lots on 160 acres, located on Lund Drive near the Ravalli County line in southern Missoula County. During agency review, it was noted by resource agencies that the property includes important elk and mule deer winter range. Two of the five lots, Lots 4 and 5, as originally platted were determined to be problematic from an elk winter range standpoint. These lots and their potential building sites were determined by resource agencies to have maximum impact, considering the relatively large acreages involved.

At the previous consideration of Lexi Hills before the Board of County Commissioners, solutions were discussed that would place development south of the southern-most drainage channel. The number of lots was left undetermined at that time. Roughly, the northern two-thirds of the subdivision, which was recommended to become common area-open space, no-build/no-alteration zone, was considered for platting as a portion or portions of private lots instead of being designated common area.

The applicant and his representative were charged with drawing up a plat that was consistent with the solutions discussed before the Board of County Commissioners. A 13-lot plat was drawn up that contains residential development on roughly the southern third of the property and at least 200 feet south of the southern-most draw. Three of the 13 lots, Lots 5, 6 and 7, extend north beyond the southern-most drainage channel.

Staff has crafted revised conditions of approval contained in the green memo before you today. Modifications are in underline/strikeout. At this time, I'd like to go through the modifications and highlight how conditions are proposed to be amended, starting with Condition #1. This condition as amended requires lots to be reconfigured, but the total number of lots is left unprescribed. The condition also permits a limited number of lots to extend north of the southern-most drainage channel. This number is also not specified. Based on Commissioner concern about common area maintenance, references to common area and its relationship to the open space no-build, no-alteration zone have been stricken.

Moving on to Condition #2, this condition defines the open space no-build, no-alteration zone. This condition remains the same except for common area references, which have been stricken. New language has been added that permits private lot owners to have pedestrian and equestrian access to the open space no-build, no-alteration zone. This pertains to lots that are permitted to extend into the open space no-build, no-alteration zone.

Condition #4 is a riparian resource management plan condition where references to the five-lot configuration have been stricken. References to crossing the small drainage channel have also been eliminated. In Condition #5, you'll see the addition of language about a new proposed road: Lexi Court. This and Lexi Lane are required to serve the redesigned subdivision in its approved form. Condition #7 requires two-foot low-impact gravel

walkways along Lexi Lane and the newly-proposed Lexi Court. A reference to common area access from the end of Lexi Lane has been eliminated. Moving onto the last change, that's in Condition 14c. Originally, in the covenants it was noted that there was a reference to Garrett Drive. We originally recommended that that change to Lexi Lane, but since now we have a Lexi Court too, we're just recommending that Lexi Court be acknowledged in the covenants.

To sum up, staff recommends that the Board of County Commissioners determine the total lot numbers, which are appropriate for this subdivision, as well as the number of lots that may be platted north of the southern-most drainage channel. It appears that these are the most important issues and will determine the outcome of other condition amendments.

Commissioner Curtiss: Tim, did we receive any additional comment from Fish, Wildlife, & Parks or Rural Initiatives on this new design?

Tim Worley: They've seen the design, both Mel Waggy and John Vore have seen the design and they too are planning to be here--at least John Vore's planning to be here about two p.m., so running a little bit late. I assumed it would take a little bit longer. They both have seen it and I think they're generally feeling that the best thing to do is to contain development on that southern third of the property however big the scale of that development is.

Commissioner Curtiss: Mr. Sorenson, would you like to visit with us?

Gordon Sorenson: Thank you, my name is Gordon Sorenson. I'm an engineer/surveyor representing this developer of Lexi Hills Ranch. Yeah, Tim, I thought 2:00 was fine, too and I'm going to blame that on you.

Chair Curtiss: So you were early then.

Gordon Sorenson: Well, yeah. We've gone over this redesign with the developer. We first started out to work out a 10-lot design. He wasn't real satisfied with that. We come up with this 13 one. Josh is happy with this one if we can get this one approved. That's where we'd like to see it stay. In doing our redesign, we tried to wholeheartedly take into account all the comments that came up from Rural Initiatives and Fish and Game and your hearing of a couple weeks ago. I think we did a pretty fair job of that, at least we tried. With amended conditions, I don't think we have any problem with them, the way they are now written.

I would like to make a comment on the staff's recommendation of the variance. We would still like to see that variance approved. The low impact pedestrian trail out there really has little chance of connecting into anything. It's certainly not going to go north and connect to anything. Going south, there's no other trails in that area and the way things have progressed to date, I think it would be very difficult to continue them. I think the thing is really unreasonable and not needed. It would be a nuisance to the lots on the side of the road where it is; would be a little gravel path in front of their house they'd probably just as soon landscape and lawn right up to the road like you usually do. Then you've got this probably not-used gravel trail that would have vegetation creeping into it and it would become a nuisance I believe. Further to substantiate my feelings on that, in our letter from Missoula County Public Works, which I'm going to pass you a copy right now. When Missoula County Public Works reviewed this subdivision, they agreed with the variance and they supported the approval of the variance. Their reasons are basically what I just stated that they see very little need for it and thought it might be more or less unreasonable. With that, I really have no more comments. If we can get this thing through they way it is and without that variance, I'll have a happy client and I'll be happy and we can go on our way. So let's see where it goes. Thank you.

Commissioner Curtiss: I'm thinking that we should wait for Mr. Vore, so I guess this time we'll recess for about 10 minutes until he comes.

Tim Worley: I can probably give Mel Waggy a ring too, over in Rural.

Unidentified Speaker: [Inaudible, spoke from audience.]

Commissioner Curtiss: Okay, well we'll have a party then.

We can come back to order and take Mel's testimony, I guess. Mel, would you like to take since you've seen the second proposal for 13 lots, so if you can come up and tell us if that meets the concerns that you had addressed earlier.

Mel Waggy: My name is Mel Waggy; I'm from Missoula County Rural Initiatives. Let's see what we've got. This is the old proposal as opposed to the new proposal? Okay. I met with Gordon the other day in Rural Initiatives Office and he brought in their latest proposal for Lexi Hill. In our earlier testimony, in regards to his first proposal, we were concerned about the widely dispersed lots on that area and had recommended that all the development be limited to the lower third section, so that the upper two-thirds, both the drainages and the open area would be left for important habitat, especially elk winter range.

When he showed me his new proposal, I could see that he had done a lot of work and had clustered all the building areas in the southern portion even though some of the lots extended up into the northern region. He doesn't have building lots, which is a little bit of a concern, but as long as this upper two-thirds area is labeled as no-build, no-improvement zone. I hope that includes also motorized traffic. I don't know if that designation does. It does? Okay. This proposal is much more desirable than the first one, much more acceptable to us. It is quite a bit higher density and of course, we'd like to see density more similar to what's recommended by the Comp Plan, but all in all, this is a much better proposal and much closer to what we would hope for as far as mitigating for some of the without and ecological concerns we had for the area.

Commissioner Curtiss: Thank you, Mel. Kirby, did you have anything you wanted to add?

Kirby Christian: [Inaudible, spoke from audience.]

Chair Curtiss: Well, John might be late, just go ahead. You can speak twice if you need to.

Kirby Christian: I did want to thank Mel's office for meeting with Gordon and we are trying to work with both the developer's economic concerns as well as Rural Initiatives wildlife concerns in presenting you with the proposal that helps mitigate impact on wildlife. I guess two things, one is it is a little bit more dense than the Comp Plan, but it does meet a lot of the Comp Plan goals, which are the clustering of homes and items set forth in the Comp Plan. It also, by putting roughly two-thirds of the property in an open no-build, no-alteration zone allows the developer to recognize some of the economic benefits that he felt he was entitled to on the property as a whole. So we would I guess request that you support the plan as drafted and that the density that's being requested be approved. I think it's also consistent with numbers that have been approved in other subdivisions recently, so I don't think, matter of fact, it's less than some, so I think Gordon has done a good job in reducing the number somewhat to accommodate Rural Initiatives concerns in that regard as well.

The only other thing that I'd like to bring up is if you do vote to approve the variance request as requested by our client, Condition #7 would need to be deleted because that is the condition in the staff report that relates to that variance requirement. Based on the fact that there really would not be a public open space that would be accessed by all of the lots up above, I would encourage you to support that variance as well.

Commissioner Curtiss: Could you state your name for the tape recorder?

Kirby Christian: Yes, Kirby Christian, C-H-R-I-S-T-I-A-N.

Commissioner Carey: Kirby, while you're there, I'm curious, do you think a developer is entitled to a certain return on his or her investment in land?

Kirby Christian: I don't know that there's an economic entitlement, Commissioner Carey, that I would say that they're entitled to, but I do disagree to some extent with some of the positions that I hear espoused here, which is that absence regulation, a developer has no rights with regard to his property or less rights. My view has always been that individual property rights gives you the entire bundle of rights to developer your property in accordance with the law and until the county steps in and passes regulations that take those rights away, a developer does have the right to utilize all of their property. My position would be that they should be allowed to utilize all of their property unless there's concerns in those six criteria that we're trying to mitigate, in which case a reasonable reduction in the total bundle of rights may be warranted.

Commissioner Carey: Could a developer then utilize all of his or her rights if five lots were granted?

Kirby Christian: On the lower portion you're saying or...?

Commissioner Carey: Yeah, well sort of have them radiate out.

Kirby Christian: Well, I don't know how you can get to a density number absent regulation. I think that with unzoned land, they could put a factory there. They could put a motel there. They could put 30 lots there, so where we disagree is you're authority to reduce the number of units that my client might propose would have to do with somehow mitigating effects on the six criteria. I don't think the fact that the Comp Plan is out there affects my client's rights necessarily to develop their property fully. I think that starts at the client's level and then turns to you to tell us whether the proposal that we're presented is reasonable and fits within the six criteria.

Commissioner Curtiss: Thank you, Mr. Christian.

Tim Worley: There's a technicality that I just realized here this afternoon and that is, if the number of lots become six or more, the roadways in the subdivision need to be 24 feet wide. If you want to go in the direction of approving 18-foot wide roads, which was what was originally proposed, there will have to be a variance granted to Article 3.2.2.6, sub 10 and I do have some language written out for that that I just wrote. That's just something to keep in mind, if you do support greater than five lots; it puts it into a wider road category for both of the proposed roads.

Commissioner Curtiss: So the proposed roads are 18 and they--with two-foot shoulders?

Tim Worley: That's correct

Commissioner Curtiss: With this many lots, it should be 24?

Tim Worley: Yes.

Commissioner Curtiss: Greg, would you like to talk to us about--I'm kind of putting you on the spot, but serving this number of lots, kind of the length of the road.

Greg Robertson: Generally, the 18-foot standard is something that serves minor-type subdivisions, three to five lots in general. Anything more than that, you get into kind of a different level of service. I would think that the 24-foot standard for this number of lots is probably appropriate. At least it would be consistent with what we've done with other subdivisions with the same number of lots.

Commissioner Curtiss: Is that sometimes because they connect and they are going to get more traffic or just because of the number of houses?

Greg Robertson: Just because of the number of houses and the number of potential conflicts.

Chair Curtiss: Mr. Sorenson, would you or Kirby like to talk about that.

Gordon Sorenson: My name's Gordon Sorenson again. That's something I didn't think about when I--although when Tim mentioned it, it rang a bell, but having not talked to the developer about that, I don't think that would be a problem. I think he would...

Commissioner Curtiss: To go 24 feet?

Gordon Sorenson: I think he would agree to that, so I don't think that's an issue if he can get his number of lots.

Commissioner Curtiss: So is there some other spot, Tim, then if we were going to do that, because they didn't--if you don't give a variance, then they're just expected to do 24-foot?

Tim Worley: Right, I think what I would recommend if we go 24 foot, would be to amend Condition #5 and change all 18-foot references--I guess there's just one, change that to a 24-foot reference. Lexi Lane and Lexi Court shall be constructed to a minimum 24-foot surface width, et cetera.

Commissioner Curtiss: Mr. Vore, we've cooked right through our agenda way faster than we thought today, so we've just kind of been stalling around waiting for everybody. We'd like your comments on the proposed 13-lot subdivision with the upper area no-build, as we assume you've seen it.

John Vore: Well, thank you, yes, John Vore, Montana Fish, Wildlife, & Parks biologist for this area. I did see this; Tim sent it to me yesterday. I took a look at it and I sure appreciate the developer's efforts at preserving some elk and deer winter range there, the northern two-thirds of the property being conserved as an intact winter range there. One of the concerns that came up to me and I don't know, perhaps Tim can answer this or the developer can answer this, is that those portions of Lot 5, 6, and 7 that constitute that northern portion, the two-thirds there, can that be developed at some time in the future or is there some kind of protection on that so that it can't be developed in the future then?

Commissioner Curtiss: In this proposal, Tim can address, but we say that there would be no development other than livestock fences that are wildlife friendly.

John Vore: Sure, yeah, okay. Well, great, great.

Chair Curtiss: So for it to be developed in the future somebody would have to come in and go through another subdivision, but Mr. Sorenson looks like maybe he'd like to respond.

John Vore: Yeah, thank you.

Gordon Sorenson: I'd have to check, but I think I saw in the covenants where it states that there can be no further subdivision of any lot. I think that handles that.

John Vore: Is that--that's covenant or does that go into the plat then as well?

Commissioner Curtiss: That's just a covenant.

John Vore: That's a covenant, so it's not in the plat then. Okay.

Chair Curtiss: So folks can put conservation easements on their property, but if we require them to put a conservation easement, they don't get the tax benefit.

John Vore: Yes, I understand that. I guess we'd like to see some--if it were in the plat that way that it couldn't be developed, I think that provides a little bit more protection as I understand it. I think that that would go a long ways toward protecting that in the future.

Kirby Christian: If I could address that, what we've set up is no subdivision by private covenant, which is what this developer can do. Then by setting it aside as no-build, no-alteration for this subdivision purpose, I think that would protect it until somebody would be able to change the covenants and/or come before you again with a new plan. I would assume, given the process we're going through here with the increased density at the bottom, which would be a fairly arduous process to work their way back through that, at least in the near term. I don't know if that directly addresses your concern, but I think we've got it protected as much as we can given what we have going right now.

Commissioner Curtiss: They'd actually have to do both because--they'd have to change their covenants so that the neighbors didn't get mad at them and they'd have to still ask...

Kirby Christian: Permission from you as well. Thank you.

Commissioner Curtiss: Any other comments, Mr. Vore?

John Vore: Well, I see that it's 13 lots proposed here, which is quite a bit above the one per 40 that's suggested in the Lolo Regional Plan, although having them clustered there in the southern third goes a long way towards mitigating that. Of course, it's not as good as if it were just four housing units, but it's a lot better than having even four or five spread out over the entire property. I sure appreciate the developer's efforts in doing that. I think it goes a long ways toward mitigating it. I want to emphasize, however, that it does not totally--it does not 100% mitigate the effects on wildlife. There's still going to be an effect there with people there and dogs and whatnot.

Even at this, with the 13 lots, it you had fewer homes there, the four as suggested by the Lolo Regional Plan would reduce the amount of disturbance there [inaudible]. I think that's all I have. Thank you very much.

Commissioner Curtiss: Thank you. So on the green sheet that you handed out today, there's some blanks there that the Commission would need to fill in the blanks on a couple of them. Then we'd have the change of 24 feet. I think that it's, that while we may agree to approve the variance, we also need to remember that the comments from Public Works were on a five-lot subdivision with larger lots. When you talk about larger rural lots, these are now smaller rural lots, I guess you'd say. Any comments?

Commissioner Carey: No, I don't have any, but I'm ready to make some motions though.

Commissioner Curtiss: Okay, we have this as a consideration, but is there anyone else who'd like to comment?

Commissioner Carey: I am as well pleased that the developer went to work and found I think a way to make this happen and with a lot less disturbance to wildlife habitat.

Commissioner Carey made a motion that the Board of County Commissioners amend Condition #1 to read, "All subdivision lots shall be reconfigured and a maximum of 13 lots shall be permitted, with the defined northern limit of residential lot boundary lines being the intermittent drainage lying south of North Woodchuck Creek for all but three subdivision lots, subject to review and approval of OPG prior to final plat approval. Areas north of the drainage centerline shall be designated as Open Space No-Build/Alteration Zone (OSNBAZ). The covenants shall be amended to include an explanation of this area with an appropriate exhibit as an attachment. The plat shall be revised to show the entire area north of the drainage centerline as 'Open Space No-Build/Alteration Zone (OSNBAZ)--see covenants for more information.' A reduced-sized exhibit showing the OSNBAZ shall be attached to the development covenants." Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey made a motion that the Board of County Commissioners amend Condition #5 to read, "Lexi Lane and Lexi Court shall be constructed to a minimum 24-foot surface width with 2-foot gravel shoulders within an approved access easement as shown on the final plat, and shall be designed to serve the 13 reconfigured lots and be contained south of the intermittent drainage channel with adequate turnarounds for fire apparatus, to be reviewed and approved by OPG, County Public Works and Florence Rural Fire prior to final plat approval. Final plans for grading, drainage and erosion control of the revised roadway design shall be reviewed and approved by County Public Works prior to final plat approval." Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Chair Curtiss: Then depending on whether or not you want to do the trail, #7.

Commissioner Carey made a motion that the Board of County Commissioners **delete** Condition #7, which reads, "Plans for providing minimum two-foot wide low-impact pedestrian walkways along one side of Lexi Lane and Lexi Court shall be reviewed and approved by OPG and County Public Works prior to final plat approval. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey: I would move that the variance request from Article 3--did you have some new language, Tim?

Chair Curtiss: That was only if we...

Tim Worley: That was only if you...

Chair Curtiss: ...did the 18...

Tim Worley: ...18-foot wide road.

Commissioner Carey: Thank you.

Commissioner Carey made a motion that the Board of County Commissioners approve the variance request Article 3.2.3(3) of the Missoula County Subdivision Regulations requiring pedestrian facilities on one side of onsite roads and along any part of the perimeter of the subdivision that abuts a public road based on the findings of fact set forth in the staff report and subject to the recommended and amended conditions of approval. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Carey made a motion that the Board of County Commissioners approve the Lexi Hills Ranch subdivision based on the findings of fact in the staff report and as stated before the Board of County Commissioners and subject to the recommended amended conditions of approval. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Commissioner Curtiss: The decisions we made include all the strikeout and changes that were on the green sheet [inaudible].

Lexi Hills Subdivision Conditions of Approval

Subdivision Layout and Natural Resources

1. All subdivision lots shall be reconfigured and a maximum of 13 lots shall be permitted, with the defined northern limit of residential lot boundary lines being the intermittent drainage lying south of North Woodchuck Creek for all but three subdivision lots, subject to review and approval of OPG prior to final plat approval. Areas north of the drainage centerline shall be designated as Open Space No-Build/Alteration Zone (OSNBAZ). The covenants shall be amended to include an explanation of this area with an appropriate exhibit as an attachment. The plat shall be revised to show the entire area north of the drainage centerline as "Open Space No-Build/Alteration Zone (OSNBAZ)--see covenants for more information." A reduced-sized exhibit showing the OSNBAZ shall be attached to the development covenants. (*Subdivision Regulations Articles 3.1(4), 3.1(9), Fish, Wildlife and Parks, Rural Initiatives, and OPG recommendation*)
2. The following definition of Open Space No-Build/Alteration Zone (OSNBAZ) shall be included on the final plat and the required covenant exhibit:

"The No-Build/Alteration Zone shall include the prohibition of all buildings, structures, fences (except for wildlife friendly fencing), roads, motorized vehicle access (except for routine maintenance activities), parking, storage, landscaping, or any other development. It shall also prohibit any mining, cutting, burning, or removal of live or dead vegetation (except if needed for wildfire prevention, noxious weed control or conservation management), filling with substances such as gravel, soil, slash or other debris, or the planting of non-native vegetation such as lawn grasses. Pedestrian and equestrian access to the OSNBAZ for individual lot owners is permitted, and livestock grazing and watering may occur subject to restrictions in the Riparian Resource Management Plan." (*Subdivision Regulations Articles 3.1(4), 3.1(9), Fish, Wildlife and Parks, Rural Initiatives, and OPG recommendation*)
3. The final plat shall include a minimum 200-foot wide No-Build/Alteration Zone for residential and accessory structures south of the Area of Riparian Resource No Build/Alteration Zone boundary along the intermittent drainage channel, to be reviewed and approved by OPG prior to final plat approval. This No-Build/Alteration Zone will be subject to the same restrictions as the OSNBAZ and shall be cited on the final plat and in an exhibit in the covenants, but infrastructure related to wells, septic systems, and utilities is permitted within the area. (*Subdivision Regulations Articles 3.1(4), 3.1(9) and Fish, Wildlife and Parks recommendation*)
4. The Riparian Resource Management Plan shall be amended to acknowledge the required subdivision design and prohibit roadway crossings within any Areas of Riparian Resource in the subdivision, subject to review and approval of OPG prior to final plat approval. The revised Riparian Resource Management Plan shall include a reduced-sized map attached to the covenants. (*Subdivision Regulations Article 3.13, Fish, Wildlife and Parks, OPG, and Rural Initiatives recommendation*)

Roads, Drainage and Pedestrian Connections

5. Lexi Lane and Lexi Court shall be constructed to a minimum 24-foot surface width with 2-foot gravel shoulders within an approved access easement as shown on the final plat, and shall be designed to serve the 13 reconfigured lots and be contained south of the intermittent drainage channel with adequate turnarounds for fire apparatus, to be reviewed and approved by OPG, County Public Works and Florence Rural Fire prior

to final plat approval. Final plans for grading, drainage, and erosion control of the revised roadway design shall be reviewed and approved by County Public Works prior to final plat approval. (*Subdivision Regulations Articles 3.1(4), 3.1(9), Fish, Wildlife and Parks, Rural Initiatives, County Public Works, and OPG recommendation*)

6. Driveways in excess of 150 feet in length must be approved by Florence Rural Fire District and County Public Works 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. This language shall also be included in a development covenant prior to final plat approval and shall not be deleted or amended without governing body approval. (*Subdivision Regulations Article 3.1(1)(b) and Missoula Rural Fire District recommendation*)
7. A signage plan for permanent road signs as well as temporary (during construction) signs conforming to the Manual on Uniform Traffic Control Devices (MUTCD), current edition, shall be reviewed and approved by Missoula County Public Works prior to final plat approval. (*Subdivision Regulations Article 3.1(1)(F) and County Public Works recommendation*)

Fire

8. Proof of subdivision annexation into the Florence Rural Fire District shall be provided prior to final plat approval. (*Subdivision Regulations Article 3.7 and OPG recommendation*)
9. An address signage plan, including size and location, shall be reviewed and approved by the Florence Rural Fire District and the approved design shall be incorporated into the covenants prior to final plat approval. (*Subdivision Regulations Article 3.1(1)(F) and Missoula Rural Fire District recommendation*)
10. The developer shall install interior residential fire sprinklers that meet NFPA 13D standards in each new home. Plans for the installation of interior residential fire sprinklers shall be approved by Missoula Rural Fire District prior to building permit approval and the Fire Sprinkler Systems section in the proposed Development Covenants shall be replaced with the following prior to final plat approval:

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

(*Subdivision Regulations 3.7(1) and Missoula Rural Fire District recommendation*)

Easements

12. The proposed locations of the utility easements shall be approved in written form by the appropriate utility provider and Missoula County Public Works prior to final plat approval. (*County Public Works recommendation*)

Weeds

13. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed District prior to final plat approval. (*Subdivision Regulations Article 3.1(1)(F) and Missoula County Weed District recommendation*)

Development Covenants:

14. The Development Covenants shall be amended as follows, subject to review and approval by OPG, prior to final plat approval:
 - A. Revise covenants to reference subdivision design following lot reconfiguration. (*OPG recommendation*)
 - B. Revise Section 10 to include the following weed control information: “The lot owners shall maintain the property in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. The lot owners shall revegetate any ground disturbance with beneficial species at the first appropriate opportunity after the disturbance occurs.” (*Subdivision Regulations Article 3.1(1)(F) and County Weed District recommendation*)

- C. Correct Section 7 from Garrett Drive to Lexi Lane and Lexi Court. (*OPG Recommendation*)
- D. Living with Wildlife [replace existing section]

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, coyote, fox, skunk, and raccoon. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) 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.

- i. Homeowners must be aware of the potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- ii. **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.)
- iii. **Garbage** must be stored in secure bear-resistant containers or indoors to avoid attracting wildlife such as bears and raccoons. If stored indoors, garbage cans may not be set out until the morning of garbage pickup, and must be taken back indoors that day after garbage pickup.
- iv. **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 provide supplemental feed attractants if it results in a “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.
- v. **Birdseed** is an attractant to bears. 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.
- vi. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the immediate control of their owner(s), 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 hoofed game animals and the owner may also be held guilty (MCA 87-3-124). Keeping pets confined also helps protect them from predatory wildlife.
- vii. **Pet food and/or livestock feed** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as 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.

- viii. **Barbecue grills** should be stored indoors, and permanent, outdoor barbecues grills are discouraged in this subdivision. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc. can attract bears and other wildlife.
 - ix. 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 and/or elk becoming entangled in the fence or injuring themselves when trying to jump the fence.
 - x. **Compost piles** can attract skunks and bears and should be avoided in this subdivision. 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.)
 - xi. **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.)
 - xii. These “living with wildlife” covenants cannot be altered or eliminated without consent of the governing body (Missoula County Commissioners).
- E. Amend the Amendment section to the Development Covenants to include the following language:
- i. “No covenant or sections thereof relating to the Open Space No-Build/Alteration Zone (OSNBAZ) or Roads may be changed or deleted without prior written consent of the governing body.” (*OPG recommendation*)

Other Business

There being no further business to come before the Board, the Commissioners were in recess at 2:19 p.m.