

PUBLIC MEETING – APRIL 23, 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, Deputy County Attorney James McCubbin, Director of Public Works Greg Robertson, and Office of Planning & Grants Director Roger Millar, and Office of Planning and Grants Planner Jennie Dixon.

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 \$940,546.39. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Bid Award (Public Works) (Postponed from April 16, 2008): Grant Creek Flood Control and Environmental Restoration

LS Jensen	\$3,771,833.30	William Plumbing & Heating	\$4,935,766.06
Knife River	\$4,043,188.07	Nelcon	\$5,732,218.64
Pumco, Inc.	\$4,020,115.12		

Chair Curtiss opened the hearing.

Greg Robertson presented the staff report.

Before you is a consideration of a bid award to award work to LS Jensen Construction for the Grant Creek Flood Control and Environmental Restoration project. This project started in February 2003 and we're now nearing the finish line and the easy part, which is actually to build it. Over the last several months, we've been working with landowners as well as permitting agencies to resolve all outstanding issues. I can report to you today that I think we've accomplished that.

Missoula County solicited bids for the project earlier this year. We opened bids; the apparent low bidder was LS Jensen Construction in the amount of \$3,771,833.30. Attached for your information is the bid summary showing the breakdown of the five bidders that we received. We evaluated the bids for each of the submissions and found everything to be in order with the one mathematical correction that did not affect LS Jensen's bid. We found everything to be in order with their bid. It is our recommendation that you award the work to LS Jensen Construction in the amount of \$3,771,883.30 as presented

Commissioner Curtiss: Thank you, Greg, and I think the first time you did say 33, so we want to make sure...

Greg Robertson: My apologies...

Commissioner Curtiss: ...a \$50 raise for something [inaudible] bid.

Greg Robertson: Yep, I do have two, let me just check. It's 833. I was right the first time.

Commissioner Curtiss: We need to correct our paperwork. So in the amount of \$3,771.883.30.

Greg Robertson: 833.

Chair Curtiss: I said it wrong too. Is it 83 or 830?

Greg Robertson: 833.

Chair Curtiss: So the bottom one is the one that's wrong?

Greg Robertson: Correct.

Chair Curtiss: Is there any public comment on this bid proposal? Is there a motion?

Commissioner Anderson made a motion that the Board of County Commissioners award the bid to LS Jensen in the amount of \$3,771,833.30 for the Grant Creek Flood Control and Environmental Restoration Project.

Commissioner Carey: I would take this opportunity to thank Mr. Robertson for all the hard work he's done on this and for his perseverance he's given to this project. Thank you.

Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss: We did just before the meeting receive the Mullan Trail Homeowners Association's portion of the project, so that's good to note.

Hearing: TSEP Application for Lewis & Clark Subdivision Water System Replacement

Chair Curtiss opened the hearing.

Greg Robertson presented the staff report.

Missoula County has managed Lewis & Clark Subdivision water and wastewater system in Clinton, Montana since the early 90s. We took over the system from the developer and have been maintaining it since. It is now past the point of repair and in need of replacement. The problem with the system as was originally designed that the water main runs underneath each of the 41 homes, so gaining access to it is nearly impossible. We continue to fight leaks and do the band-aid repairs that we can, but the appropriate solution is to replace the main with new construction. One of the challenges that we've been faced with is finding a way to pay for it. The folks that live in this subdivision are of modest means and the cost for replacement is near half a million dollars, which would put it out of sight in terms of assessments if we were to take the conventional RSID approach. We've been looking for funding sources that we can apply to buy down the cost of the system. We attempted earlier or late last year to apply for a CDBG grant. The competition was fierce and, although I thought we had a good proposal, the folks that got it really were in need of it and it was a very limited supply of dollars available.

Before you is a request, two parts, one to take public comment in support or opposition to Missoula County applying for Treasure State Endowment Program applicant as well as DNRC Renewable Resource Grant and Loan Program. Both are available for just these types of projects. These are funded through the state of Montana and provide partial funding. Further, I would request that you direct staff, if you so desire, to submit the application on behalf of Missoula County, which is due May 2.

I'm here to answer any questions that you have. Additionally, John Manyon [phonetic] and Chris Kelly [phonetic] from HDR Engineering are in the audience to answer any technical questions regarding our application. The bulk of the work was previously done for the CDBG grant application. This is merely updating that and utilizing current numbers for the proposal.

Commissioner Curtiss: Greg, what is the amount of the DNRC grant that's available?

Greg Robertson: The DNRC grant is a maximum of \$100,000. Treasure State Endowment is, I believe, up to three-quarters of a million, however, their match is basically 50-50 type of proposal, so we would not qualify for that. We're going to ask for half of that, supplement the hundred thousand with DNRC hopefully and backfill the balance with a construction RSID.

Commissioner Curtiss: The DNRC grant application will be for a hundred thousand and the TSEP would be for a hundred thousand?

Greg Robertson: No, the TSEP would be for about a quarter million. They fund up to half of the cost of the improvement, not to exceed three-quarters of a million.

Commissioner Curtiss: So we'd have adequate match for these grants.

Greg Robertson: Right.

Commissioner Curtiss: This is a public hearing, is there anyone here that would like to make comments on this application on behalf the Lewis & Clark Subdivision for the water system? Yes if you could come to the microphone and state your name please. We do have a letter from Katherine Dougherty.

Greg Robertson: My apologies. Attached to your Commissioner Action form is a letter from Katherine Dougherty, resident of Lewis & Clark, in support of it. That will be--and any testimony received today will be included as part of our application.

Jennie Dixon: Yes, ma'am, if you could state your name.

Melissa Shupe: My name's Melissa Shupe and I've been a resident of the Lewis & Clark Subdivision for just over seven years and for the seven years that I have been there, the water system has been a continual problem. I'm here to support it 100% and to ask the committee to also support this application process and to thank Greg and also Tammy for the work they continue to do for us and to say that it's not by any means a misjudgment that it's a problem. Our water literally trickles out of our sinks and faucets and showerheads and it's really a nuisance. To have the water have to be continually band-aided becomes a continuing problem as well, because then our entire water system is shut off once a month or twice a month or whenever they can find the leaks. I am here to support it and to say please, take into consideration this and please help us get our system fixed. Thank you.

Commissioner Curtiss: Thank you, Ms. Shupe. Is there anyone else who would like to make comment? Yes, please.

Nikki Nelson: I'm Nikki Nelson. I've also owned properties in Lewis & Clark Addition for the last seven years. I own three different properties. I'd like to say the area is definitely of low-income sources, many disabled, many on Social Security and retired. Forty-four lots and families live there. Just to validate what Melissa said, the water barely trickles out and is often we've had exceptional workers, but there just doesn't happen to be a fix. I'd like to say I'm in full support of applying for the grant.

Commissioner Curtiss: Thank you, Ms. Nelson. Anyone else? Yes, sir.

Steve: I'm Steve with Grant Creek Excavating and Tammy from Missoula County asked me to come in this morning. We've done a bunch of repairs out there on that water system, just did one about a week ago. I'm sorry I didn't prepare for this meeting better, but we've been out there at least a half a dozen times and every time we're out there, you know, the bill on the repairs, thousand bucks or better. The lines only about three and a half feet deep, so inadequate depth, it's some oddball sizes. The method of construction, running it right down the centerline of those manufactured homes is totally improper. What they've done is they've taken a "T," put it right on the main line, run the three-quarter inch vertical feed line out of galvanized straight up. When you do that and you thread metal into a plastic fitting, it tends to want to rupture that fitting. There's no swing joint or relieve, and I don't want to get all scientific on you, but the bottom line is there's no give, that things running straight down, so any load on that thing, whether it's laterally or vertically, it's going to hammer that PVC fitting. Basically, honestly, you guys have been great in hiring us, but you're throwing good money after bad continually. Enough said, so I'm in support. I think you guys ought to fix this thing.

Commissioner Curtiss: Thank you. Other comments? If there's no other comments, then I'll close the hearing and accept a motion from the Commission.

Commissioner Anderson: Greg, if for some reason this application doesn't go through, would you look at phasing this project or doing something to try to address the issue?

Greg Robertson: I'm frankly at a loss of what our options are. We've talked about doing some creative internal financing if we're not able to do that, but the costs are still excessively high. It's going to be a difficult situation. The system is tenuous right now. The breaks that Grant Creek Excavating talked about are real and happen and are happening more frequently. He's right, we're throwing good money after bad, but when you have a main that runs underneath each residence, it's really hard to get at and when you shut them off, it's just problematic. What ends up happening is some people on the far end of it get a lot of sediment accumulation from just the breaks in the line that have been there traditionally. We can't get at them; we can't, without removing all of the structures. Our proposal is to just simply replace, abandon what's in place, and put in a proper system. This is [inaudible] from the beginning.

Commissioner Curtiss: This TSEP application has to be approved by the legislature, so we're talking a year from now anyway.

Greg Robertson: That's correct. The options that I have are limited. We're just going to live through the best we can and continue to make repairs as we do it and hope for some positive feedback from the state.

Commissioner Carey: Greg, did you say that the copy of the transcript for the testimony will accompany the application?

Greg Robertson: That's correct. This hearing is required as a part of the TSEP application submittal and will be included in the packet.

Commissioner Carey: This is an appalling situation.

Commissioner Carey made a motion that the Board of County Commissioners authorized staff to submit a TSEP application and the RRGL application to assist in buying down the cost of the system replacement. Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss: Thank you. We'll get that fixed.

Hearing (Certificate of Survey): Trenkle 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 the Southwest ¼ Section 21, Township 15 North, Range 22 West, Certificate of Survey #1066. Daniel J. Trenkle 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 20 plus acres in size located near the Ninemile area. Daniel proposes to create approximately a ten-acre parcel for transfer to his son, Daniel Trenkle, Jr. for residential purposes and to keep the remaining approximately ten plus acre parcel for residential purposes as well.

The history of the parcel is as follows: Ida V. Slemone filed Certificate of Survey #1066 in January 1977 for the purpose to give a metes and bounds description to a piece of property larger than 20 acres. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

My recommendation is that you consider a request to create a family transfer parcel by dividing the parcel described as the Southwest ¼ Section 21, Township 15 North, Range 22 West, Certificate of Survey #1066. That concludes my report.

Chair Curtiss: Thank you, Michael. Could someone from the family please come to the microphone? Could you state your name for the record please?

Dan Trenkle Jr.: Dan Trenkle Jr.

Commissioner Curtiss: You're the junior?

Dan Trenkle Jr.: Yes.

Chairman Curtiss: So we have a list of questions that we would normally ask your father, but we can ask you on his behalf.

Dan Trenkle Jr.: He's here too.

Chairman Curtiss: Okay, so we'll watch his head. We have a list of questions that we use to make sure that it's being used as the law intends. Mr. Sehestedt.

Mike Sehestedt: If these questions should seem unduly intrusive, let me apologize in advance, but we're trying to very quickly get to the facts and establish whether or not this is bonafide use of the exemption. About how long has your father owned this property?

Dan Trenkle Jr.: About 30 years.

Mike Sehestedt: Do you know if he bought the property with the intention of dividing it?

Dan Trenkle Jr.: No.

Mike Sehestedt: You're going to be the recipient; do you plan to transfer, should the Commissioners approve use of this exemption, the property you'll receive within the next year?

Dan Trenkle Jr.: No.

Mike Sehestedt: Do you know if your father intends to transfer the tract he'll retain within the next year?

Dan Trenkle Jr.: No.

Mike Sehestedt: What are your plans with regard to the property if the split is approved?

Dan Trenkle Jr.: To put a residence there.

Mike Sehestedt: Do you know if your father or yourself have talked to anyone at the County about going through subdivision review for this parcel?

Dan Trenkle Jr.: Yes.

Mike Sehestedt: What was the nature of that conversation, do you know?

Dan Trenkle Jr.: As far as?

Mike Sehestedt: Did you look at doing this as a subdivision originally or...?

Dan Trenkle Jr.: No, I don't think so.

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

Dan Trenkle Jr.: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Dan Trenkle Jr.: No.

Mike Sehestedt: Do you understand that if the Commissioners approve the use of this exemption, we're not reviewing access to either parcel. We don't know whether there's good access or bad; we're not representing that emergency vehicles would be able to get in or out in all weather?

Dan Trenkle Jr.: Okay, yes.

Mike Sehestedt: You understand it's not being reviewed for that?

Dan Trenkle Jr.: Yes.

Mike Sehestedt: Do you also understand that if the Commissioners approve the use of this exemption to divide the property, they're not giving you a septic permit or septic approval, they're not telling you there are utilities, they're not telling you you're not in the floodplain. They're just saying you can use this exemption to divide the property.

Dan Trenkle Jr.: Yes.

Mike Sehestedt: Thank you very much, I don't have any more questions, but you might want to stay at the microphone in case the Commissioners do.

Chair Curtiss: Thank you Michael. Are there questions for Mr. Trenkle at this time? Thank you, sir. This is a public hearing, I'll open it up for other public comment. Does anyone else care to make comment? Seeing no one come forward, I'll close the hearing for the Trenkle Family transfer.

Commissioner Carey made a motion that the Board of County Commissioners approve the request by Daniel J. Trenkle 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: So you'll receive a letter from our office in the next couple weeks, but you can have your surveyor go forward and do the surveying already. It's been approved. Thank you.

Hearing (Certificate of Survey): Teague Family Transfer (Postponed from April 2, 2008)

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 A-4, Certificate of Survey #5516, Section 22, Township 12 North, Range 17 West. John Teague 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 51 plus acres in size located near Clinton Montana. John proposes to create approximately a one-plus (1.04) acre parcel for transfer to his wife, Karen F. Teague, for residential purposes and to keep the remaining approximately 50 plus acre parcel for residential and agriculture use.

The history of the parcel is as follows: Certificate of Survey #443, a dependent resurvey, was filed in 1974. Certificate of Survey #4009 was filed in 1991 for the purpose of creating a tract of land greater than 20 acres. Certificate of Survey #5516 was filed in 2004 for the purpose of the survey was to show the relocation of common boundaries. According to the records kept by the Missoula County Surveyor, the only previously use of exemptions to the Subdivision and Platting Act was the boundary relocation survey 5516 that I referred to earlier.

My recommendation is that you consider a request to create a family transfer parcel by dividing the parcel described Tract A-4, Certificate of Survey #5516, Section 22, Township 12 North, Range 17 West.

Chair Curtiss: Thank you, Michael. Mr. Teague, if you would come forward. So you heard that we--could you state your name?

John Teague: John Teague.

Commissioner Curtiss: Thank you, John. We'll have Mr. Sehestedt ask you the same questions you heard him ask the previous family.

Mike Sehestedt: Mr. Teague, I'll make the same apology for prying into your family business that I made to the preceding applicant, but this is the best way to go. Approximately, how long have you owned the property?

John Teague: It's been in my family for over 60 years, but I've personally owned the property for 16 years.

Mike Sehestedt: Fairly obviously, you didn't acquire it with the intention of dividing?

John Teague: No.

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

John Teague: No.

Mike Sehestedt: If the Commissioners should approve the use of this exemption, what are your plans with regard to the one-acre parcel?

John Teague: Build a residence for, actually, for my mother-in-law.

Mike Sehestedt: So you're wife will use it to provide...

John Teague: Yes.

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

John Teague: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

John Teague: No.

Mike Sehestedt: Do you understand if the Commissioners approve this use of the exemption, they're not reviewing access to either of the parcels and there's no guarantee that they'll be good, bad, or indifferent access or that the access will be suitable for emergency vehicles in all kinds of weather?

John Teague: Yes.

Mike Sehestedt: Do you further understand that if the Commissioners approve this use of the exemption, they're not approving you for septic, for zoning compliance, for building permit, not representing utilities are available?

John Teague: Yes, I understand.

Mike Sehestedt: With that, Madam Chairman, I would conclude my questioning. If you could stay at the microphone, the Commissioners may have further questions for you.

Chair Curtiss: Are there any questions for Mr. Teague? Thank you, sir. I guess we don't have any questions. This is a public hearing and I'll open it up for questions from the public. Anyone else who would like to comment? Seeing no one come forward, I'll accept a motion, I'll close the hearing.

Commissioner Anderson made a motion that the Board of County Commissioners approve the request by John Teague 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss: You'll also receive a letter from us soon. We're not insulted if you decide you don't want to stay for the rest of the meeting.

Mike Sehestedt: It will not result in the revocation of the approval.

Reconsideration (Per City/OPG Request): Potential Sale of County Property located in the City (20-foot strip of land, east of Reserve, south of 3rd Street West, between Davis and Harriet Streets)

Chair Curtiss: The next item on our agenda was a reconsideration that we were asked to put on here by the City, but it's been withdrawn because we dealt with it earlier in the week in another method.

Hearing (Postponed from April 2, 2008): Linda Vista Acres Subdivision and Rezoning from "Miller Creek View PUD and C-A3" to "C-RR1" (33 lots on 67.3 acres) - Harlan Family Ranch on Lower Miller Creek Road

Chair Curtiss opened the hearing.

Mike Sehestedt: If I could suggest, I know Jennie's staff report probably is all of one piece, but as we come to consideration of this, I think probably it would be most productive if you considered the rezoning first and then proceeded to consider the subdivision in light of the decision on that.

Jennie Dixon presented the staff report.

Thanks, Mike, that's an excellent suggestion and your motions are actually structured that way on your Request for Commissioner Action and in the staff report. What I'd like to do this afternoon for this public hearing on the rezoning and subdivision for Linda Vista Acres is to give you a description of the project, along with a brief slide show about 10 to 15 slides. Then Roger Millar is going to follow and give you some bigger picture policy issues for your consideration on this request. Let me just proceed.

First off, I'd actually like to make corrections to the staff report for the record. On page 4, findings of fact # 8 and 9, it indicates that the property for rezoning contains 67.3 acres or 60.55 acres, excluding the Lower Miller Creek right-of-way. That number 60.55 is incorrect. It's actually only about five acres for the road, so the area of the property for rezoning, if you do exclude Lower Miller Creek right-of-way is about 62.55 acres. The next finding transposed the numbers. The gross density of the subdivision is approximately one dwelling unit per two acres instead of two dwelling unit per acre. On page 8 on finding of fact #2, under agriculture, it says, "A majority of the farmland soils of prime, state, or local importance are located on the southern portion of the property, where 23 of the 33 lots have been proposed." It also includes a portion of the eight lots that are on the north side of the Lower Miller Creek Road as Lower Miller Creek Road is being moved 150 feet to the south. Finally, the last correction I have is finding of fact #32 under roads and draining. It was a finding from a different project that you had several months ago, completely not applicable to this project and just delete it and that's on page 11.

[Jennie Dixon presented PowerPoint slides, which can be found in the file.]

As I mentioned, staff is recommending, and Planning Board is recommending, denial of rezoning, subdivision, and variances. We have not received any written public comment nor was their any public testimony at the Planning Board. At this point, I'd like to turn it over to Roger to continue with slide presentation.

Commissioner Curtiss: Could I just ask one question to clarify, the rezone would do the whole property then be one per one?

Jennie Dixon: Correct.

Chairman Curtiss: One house per one acre?

Jennie Dixon: Yes.

[Roger Millar presented PowerPoint slides, which can be found in the file.]

Commissioner Curtiss: So Roger just to clarify then, there are 1186 lots that have approved, but not yet platted. Was that the right number?

Roger Millar: There are 1,186 lots in the approved preliminary plats up there that have yet to go to final plat. Some of those approved preliminary plats are a part of the Miller Creek View Subdivision, which this Commission considered and approved in 1998. They have not been platted and when you look at--I don't know if we've got a good aerial photo, no, just the one at the bottom. There's a substantial area north of this proposed subdivision that has not been final platted that has preliminary plat on it before you get to where you've actually got houses on the ground and streets and the rest of it.

Commissioner Curtiss: Any other questions for Roger at this time?

Commissioner Anderson: Roger, if you take your final scenario there that you presented, put that 523 additional lots to achieve 80% build-out, is there a potential in the remaining undeveloped and unplatted land to achieve that goal?

Roger Millar: There are 1186 preliminary plats out there-- allotted preliminary plats out there today. If they took 523 from preliminary to final plat, they'd be done. They'd be at 80%.

Commissioner Anderson: Your definition of in the 80% build-out, do you consider those preliminary platted lots to be meeting the definition of...

Roger Millar: Back to the definition at the beginning, the equation is divide the approved platted lots by the total potential dwelling units. We've had a debate with the developer on what exactly approved platted lot means. In my experience as a planner and engineer over the last 25 years, the lots not platted until the final plat's recorded. You've got preliminary plats, but you don't have platted lots until you've got a final plat, so what we've done is we've looked at what's final platted, which is 2,130. What's the total out there, 3,316? That's where they're at 64%. If they took those additional phases of those subdivisions to final plat, you'd see investment in the road network, you'd see payment of mitigation fees, you'd see other things happening that haven't happened because those have remained in preliminary plat stage for all this time.

Commissioner Curtiss: Thank you, Roger. Is the developer or his representative here to present on the rezoning request?

Gilbert Larson: Hello, my name is Gilbert Larson, L-A-R-S-O-N. I'm with PCI and I'm here today on behalf of the Lloyd A. Twite Family Partnership. Lloyd and Scott are here also. I've got a couple of things that I should take care of first here that are just kind of more housekeeping things that may help to clarify portions of what we're talking about. When we first--this has been a frustrating process for me because it seems like every time we try to take a step forward, we end up taking two steps back, and we keep running into obstacles that are difficult to get around. One that I sense has been an issue here is how to deal with the northern half of this project versus the southern half. Those are desired to begin with to leave the northern half of this project completely out of it. We didn't want to create lots; we still don't want to create lots on the northern half. We wanted to leave it as a remainder. We used to be able to do, but we can't anymore. We have to deal with the entire tract; we have to show a use on it, we have to show a lot for Lots 32 and 33. We don't ever intend to build on them. We don't want to do anything up there at this time. I shouldn't say ever, we don't want to, as part of this plat. We want to just leave it vacant. It's going to be a gravel permit. That permit has now been approved, but we were stuck. So we included it. We showed it on here; we showed it as a lot. It does have access, but we didn't show the road improvements because we thought that would be handled later. To help maybe make that part of it easier, we don't have any problem with denying the variances. When we started into this and were thinking of leaving that for future, it's because we weren't contemplating doing anything there. In talking to Lloyd and working through this though, we don't have a problem with denial of any of the variances. To approve the adjacent road, we understand that someday that's going to have a value so there's no argument on any of the variances. That may help a little bit.

The other biggest obstacle that we've been hitting our head against walls about is whether it's the appropriate time to look at this reserved area or not. I'm not going to get into all the problems we've had of how to even measure 80%, but at least I'm satisfied that now with what Roger's told you, at least have the opportunity to consider it. What you've been told is that as the Plan defined 80%, it can never be reached, as the Plan defined it, and because of that, we can then start to say, well, if it can never be reached, is this an appropriate time to look at it for development? Should it never be looked at? What do we do? That's where we feel then that it's reasonable to look at it now. We can look at the rest of the reserve area, most of it is already developed. They've gone ahead with their plans because they could see that this couldn't be reached. This is an appropriate time; we're at the very low end of what would be allowed within the Plan. The Plan allows urban level one unit per acre up to six per acre. We're at the very bottom end of that at one unit per acre with what we're proposing. The key there is what Roger mentioned that is the intent of the Plan met as far as an orderly process of development? Since the Plan was done in 97, we've half South Point, we've had Miller Creek View approvals with about half of it built, we've had Teton Addition or the Maloney Ranch Development, we've had Fairway View, we had literally hundreds of lots built within this area. In the Comp Plan, and this is where I struggle because no one seems to be able to find what we were doing 10 years ago or how we ought to do it now. In the Plan on page 29, it talked about the same number of how many lots would someday be available in this Plan area. It talked about the zoning would allow up to 800 more units to someday be built within this Plan area. As you've already seen, we've already built more than that, but we redefined how to calculate it and that's where it's difficult for me.

First, the problem we've run into is that because of the 80%, we don't meet the Comp Plan, because of the Comp Plan, there's a recommendation of denial on the zoning because you can't approve the zoning. Then we have the subdivision problem. At least now we have an opportunity where you can look at the intent of the Plan, view that the 80%'s been satisfied, that we are in compliance, and that we can then move forward. With regards to the

zoning, we do not need what this Plan, the zoning for the one per acre on the north side. What we were looking at though was what should be the long-term purpose for that land? The county has your gravel permit right across the street. When they're reclaimed, they should be reclaimed for a higher use. This is resource land, that's part of what it's designated for in the Plan is resource. We already have two other permits for gravel right adjacent to it. What we're looking at is what should happen to the land after the resources are removed? To us it makes the most sense to come back with residential, reshape it, put the top soil back on, make it suitable for development, and that's what the zoning would allow for. We would still have to come back with subdivision; you're not approving any subdivision for that land at this time.

Another one that's been tough for us has been the soils. There is no irrigation available and I don't--no one has come up with a reasonable way to every have irrigation on this land, except for wells. What we looked at then, if we're going to have wells, the Health Department requires us to have half-acre minimum lots, which we've done. That will allow for orchards, for fruit trees, for home gardening. It allows for economical use of water out of wells. We've also looked at taking that bottom park, making it wider, trying to work with the community gardens. We have found it difficult to try to get that forward. There just isn't the money and the resources available. What we have proposed is the best way that those soils will ever get used for production and that's with individual wells and individual gardens and orchards. We've been unable to come up--no one's been able to come up with another way of watering, now that the irrigation ditch has been abandoned. We do have two people here that have farmed down there. Both of them can tell you that as far as being productive land, especially without irrigation, that the land cannot be productively farmed as it is today.

We are proposing the \$1800 per lot. We have already entered into agreement with MUTD to fund their three-year pilot program into this area. Lloyd has agreed, along with Teton Addition, to fund that 50-50. With regards to the park, we have no problem again, this is another housekeeping it, but the cash-in-lieu would be fine. We tried to do something that matched with Linda Vista Estates. Cash-in-lieu would be acceptable to the developer. We have no problem with that at all. The open space issue includes both private and public open space. It was rather unique in the Comp Plan in that it talked about that setbacks and other things could be done to create open space. This project does meet the open space requirement with the private and public lands in combination through the use of setbacks and through the large tracts at the top.

Two other things just for housekeeping, there will be no septic systems. There'll be a community system with a drainfield, but it will be an advanced system that gives secondary treatment. It's all been discharged into one subsurface disposal. It's also all designed with gravity collection so that later if city services become available to this area, it can be connected literally by making one connection at one manhole. No digging up of streets, no going back into people's yards, one connection, and we're done.

The last thing that I wanted to comment on that I believe may have been misspoken. If you look at this, there's--maybe I ought to--there was a comment made about the slopes and the no-build. Right here is a graphic that's a hatched area that talks about the no-build slope areas. That graphic for the hatching is applied to all of this upper area that's over 25% and the no-build is defined in the legend as being no-build with no structures. That is defined, we've already determined on our plat where the no-build zones are and those are shown on the plat for those areas of slopes over 25%.

In summary, it's been a long and arduous way to get here, but what we contend is that we see the pressures on development, we see what's happening adjacent to this, we even see what's happen in some of the other reserves areas and we're missing, in our opinion, an opportunity. The other reserve areas and the Maloney Ranch area and that are being developed at very low potentials. They're not utilizing what should have been granted there and we're missing it. This piece is very unique in that it is, as you say on the graphs, it is on the fringe; it's adjacent to what's proposed for city limits, it's adjacent to what the wastewater treatment plant has. This has the potential for connection, where those other lands don't. To us it makes sense that as the Commission, you have the ability to look at the intent of the plan and we believe that intent's been satisfied. If you can feel [inaudible] that we've met the intent for an orderly development, then we can go to the next step and say that the zoning is in compliance with the Comp Plan. It allows for the lower end of the urban development, it allows for the removal of resources, and then the reclamation of that land for a higher, better purpose. If you feel it meets the Comp Plan, then the zoning is approved, and then we can go ahead with the subdivision. To me it makes sense, hopefully it will to you. Thanks.

Commissioner Curtiss: Thank you, Gilbert. This is a public hearing, is there anyone who would like to make comment on the request to rezone? Yes, please, come to the microphone.

Karen Wagner: My name is Karen Wagner.

Chairman Curtiss: You might want to move the mic closer to you now. There you go.

Karen Wagner: I sent an email in, but I don't know if the Commissioners got it or not. Did you get my email?

Chairman Curtiss: Is that the one that's in our packets?

Karen Wagner: I sent it to Jennie Dixon. Anyway, basically, I'm totally against this. I'm a lifelong resident of Missoula. I've lived in Miller Creek since 1994. We built approximately are adjacent to the land where [inaudible] gives you an area on the main Lower Miller Creek Road. Since that time, the traffic in that area has, as everyone here knows, has become just atrocious. There's a plan in the works right now to alleviate some of that with roundabouts--a roundabout. The last meeting I attended, we were told that a single--a one-lane roundabout was to be put in. Right now, the traffic at peak periods will probably reaches a quarter of a mile on Lower Miller Creek Road to our driveway at the Wye, from the Wye to our house. My daughter lives up on Marias, which is just off of the crossing of Garret and Southpoint. That same time of day, it's backed up to that point also, at the present time, at peak traffic. This roundabout, I've seen it in different areas and roundabouts work well, they move traffic, but they also slow traffic. In order to approach and enter the roundabouts, traffic does have to slow down and by slowing down, it's going to create more of a traffic jam than what we're seeing now, especially with a one-lane. Now whether I'm correct in assuming that it's just going to be a one-land roundabout or a two-lane that as for the future, I don't now. At the present time, the traffic in the Miller Creek area is maxed out without building one single house more. You've already approved quite a number in the Maloney Ranch area. That's excluding this that's proposed right now.

When we built, we built our house there. The old Lower Miller Creek Road was rebuilt and, at present, we are still paying for that, which is fine. We're using that, but at the time it was not--there was no right-of-way or walkways or access for people to walk or to bike. One of my reasons for moving there was oh, boy, I can get some exercise. Well I'm telling you, it isn't safe to walk along that portion of Miller Creek Road. I'm 66 years old and I consider myself in pretty good shape, but I'm still not spry enough to out jump a car that's going 35 miles an hour if it's following the speed limit, which we all know they don't always. We were also told at the time that--and this was 14 years ago that the intersection of Lower Miller Creek Road and Miller Creek Road was going to be taken care of so the traffic would move. I still don't see it. They're doing the survey work and et cetera and I'm assuming that's gong forward right now although I read the paper and in one spot it says the money's gone; another spot says they've got money somewhere else. The people in Miller Creek when they've had meetings, the majority feel that this isn't the solution. The solution is still the bridge. The environmental impact statement negated that apparently, but personally, I don't believe that that's the total issue. The big issue is financial, federal funding, dried up. Any environmental issues can be mitigated in many ways. You can see it now in Highway 93 through the Flathead. It can be done; it's just the money's gone.

Right now, the traffic is such a big issue that for one group of people or whoever, the Twite Family Partnership, and they're fine people, don't get me wrong. They have a right to develop their land and make their money, but I don't think they have the right to do that at the expense of the community. By allowing this development, when it doesn't meet the master plan, the Comprehensive Plan, is putting the results of the congestion, inadequate roads, they're proposing narrower roads than the Comprehensive Plan is asking for. It's not providing bike lanes or walk lanes. From Upper Miller Creek--from that property up to the top of Miller Creek Road and on down through Miller Creek Road, it's not safe for people to walk or to bike. As a community, if we're planning for a community that's viable and everyone can be happy with, these things need to be taken care of before the development is made. Not put the development in and then worry about this other stuff later because it doesn't come. I don't have sidewalks along side my house. At the time, when we had the meetings, Lloyd Twite and the groups, Mr. Larson said that we're going to have a solution to the intersection; we're going to have sidewalks, we don't.

As far as the intent--what I'm looking at is the intent to build down where he is, where the trust is or the family partnership is, is exactly to circumvent providing proper sewer, water, and vehicular, pedestrian, bicycle traffic by going--what he's proposing is putting this little subdivision here. We're right here; he's going to put the subdivision down here. Instead of coming up Miller Creek Road with the sewer lines and the walkways and proper width, he plans to build down in here, lower the width of the roads, which of course gives him more property to develop, which means more money in his pocket. At whose expense? The communities' expense. Sewer, my understanding that the sewer line was to be dry-laid below the roundabout and up to Mockingbird Lane

and from Mockingbird Lane to the top, Mr. Twite and other developers were to put the sewer on up there, to connect there. I don't see where, if this happens, it's stopping right at the top. It should go down into this subdivision, if this is approved. It should go down to this area before a subdivision is approved in the area. Secondly, the matter of moving Miller Creek Road, you and I can't change the street or the road in front of our homes in order to make our property more valuable. The intent of this is absolutely to make it profitable for him to put in extra lots on that side of the road and I don't feel I--the community, if it isn't something that's done for the whole community, it should not be done [tape ended].

The big problem in Miller Creek is access in and out. There's only one access in and out and we all know that's a big problem. This is not helping at all. What it's going to do is it's going to bring all the traffic down through Lower Miller Creek Road, past the golf course, past my home, to the intersection at the Wye. With this roundabout and right now, the traffic's backing up to my driveway. You put that many more houses in back there, in addition to what's going in right now in the Maloney Ranch, I can't get out of my driveway. I think they're putting the cart in front of the horse here and parks, I have a real issue with parks, money in lieu of land for parks. Missoula has grown at an alarming rate since I was a child and will continue to grow. I acknowledge that and I accept that, but the more people that come in here and developing, of course, they're going to develop on the flat property because that is the most economical, that's what people want, but you're not providing parklands in areas that are safe for kids. A good example is the Marilyn Park on Linda Vista Boulevard. The city has come in and they've done a really good job of putting in a water facility and it's a beautiful park, but in my estimation as a grandmother, and if I had a child, is I don't think it's a safe park because Bonner Park you can park on the street and you can watch your child. Marilyn Park, you've got a hill like this and you cannot see what the kids are doing up there. You can in some areas, but not in all areas. Basically, what--instead of opening up this--a nice big parcel that's flat here that they want to put houses on, they want to give the county money. That means there's no parks for kids that live in the area or adults. Missoula prides itself on open space. This is not giving us open space; it's taking away from the character of the land. The area north of this Lower Miller Creek Road that he proposes to change, which I am absolutely against, is already in a development--I don't know how to explain this, how to state this, but there's been--it's already proposed to do something in that area. It doesn't make sense if something has gone through the planning that this piece of property is not filled in and developed to the purpose they first created and jumping off over here into a corner and not creating a connection between the City of Missoula, the current, and....

The issue of wells, I have a friend that lived in the Zumalt [phonetic] housing area, which would be south of this and little bit up Miller Creek Road. I don't know--people that are not--are familiar with the old rodeo grounds. Anyway, they have moved out of there because the water is not available. The wells are drying and when you're talking about this many more houses, you're talking about a heck of a lot of water. Creating this subdivision at this time, in my opinion is just wrong and I hope you'll deny it. Thank you.

Charlie Graham: I'm Charlie Graham; I live at 93--9830 Miller Creek Road.

Chairman Jean Curtiss: Could you spell your last name Charlie?

Charlie Graham: Graham, G-R-A-H-A-M.

Chairman Jean Curtiss: Okay, just like the graham cracker.

Charlie Graham: Graham cracker's the way to deal with it. We purchased up there in 62, got possession in early 63, I'm in the 46th year up there now. Now initially I want to say, I'm not really totally against this subdivision per se with 6.3 billion people on Planet Earth and we're headed toward eight, our biggest problem is overpopulation and we're going to have to simply keep building houses for them until we don't have any land left, I guess. But now onto my issue. Well, one, with all of these years driving up there, I've always watched most of the Twite Subdivision on gravelly hills, great place to build. Now, we're going into the bottom and there's no way Bill Harlan [phonetic] can make minimum wage by irrigating, haying, he puts in his whole summer season. If he makes \$2.00 an hour, I'd be surprised, so why not want to sell and get rid of it, take the money and run. It's got to be subdivided to make it work. My big issue is with water. We have had who knows how many dry wells on Miller Creek. One of the subdivisions originally planned up there was by Sunlight Development, a subsidiary of Montana Power. Sunlight Development drilled this well. I don't know the size of the casing, maybe 10 or 12 inches, got a ton of water. Maybe someone knows how much, DEQ would have it recorded, 250 gallons, maybe 350, a ton of water. Then one of the Maloney--first Maloney Subdivisions, they used this amount of water, they were damned blatant liars; they knew the water wasn't there, but they gave evidence that this water existed and

the water only existed when the Maloney Ranch turned the entire Miller Creek out into the Maloney Canal. That came down and charged the aquifer for this well. When the water was turned back into Miller Creek, of course, there was no water in the well, but they didn't mind using the evidence. It was there and never mentioned that part of the year it wasn't there. What are some of my other issues?

I always see open space becoming such a big issue and I think geez, can't they dwell on some other issues that are more important? Yes, I know we need open space, but a little bit here and a little bit there. I know of a piece from Cooney and Scott [phonetic] did some subdividing for their mother, Rose McCullough [phonetic] and I know where there's a piece that was set aside for park areas near as I know. I can't find anyone who knows where it is. I know where it is. I don't think the county knows where it is. It's set there forever, for what, since 1965, I think, so there's open space that certainly didn't amount to a good damn. So I think that's too big of an issue, but I believe in open space and we get these developments, it would be nice to give them a place to walk.

I better get to the main issue, which is 33 lots sucking water out of the ground where the aquifer simply is not adequate to produce for the wells that presently exist, never mind 33 more. It isn't there. How do I know it isn't there? I've had neighbors with dry wells. People up and down the creek, down in the Trails End area, I know some of them lost their water. I know that some of the new subdivision area couldn't get water and they drilled a general well maybe, I don't know how many homes they supplied. We dwell on 1186 pre-platted lots and we'll never fill it out. That might be so, I don't know, but as far as water wells go, I drilled a well in June of 1968, 135 feet deep. We went down to bedrock, endless water, pumped--we only pumped at the rate of 20 gallons per minute and didn't draw the well down an inch. There was a time when I had to pull a pump and we had 90 static feet of water in that well, 90 static feet. That's 90 pounds of pressure per square inch. Imagine that aquifer as a sealed pipe coming down a slope. I don't recall how many pounds of pressure or how much drop we would need to get 90 pounds, but it's probably close to three feet of drop in a given space until we get up close to 300 feet of drop to produce that kind of pressure. Last summer, we couldn't sprinkle more than 10 minutes and the well shut off. I have a system on that well, to shut it off when the first air shows up. We never sprinkled more than 10 minutes. I know part of that's because across the way someone irrigated their six acres of hay night and day endlessly and never shut it off and I know there is that they had to have been down 10 feet deep or deeper, but again that's neither there. The point is that my well became troublesome and in the early days, there weren't any wells up there. Even the original homes mostly had springs. The Maloney Ranch, the Harland Ranch [phonetic], the Holloman Ranch [phonetic], the [inaudible] Ranch, they all had springs instead of wells, so wells were new. So I drilled a well last year and we went into bedrock, which is supposed to give me a collection area. Well, I haven't put a pump in yet because I think I may have wasted my \$4500. Maybe I'm going to have to put in some kind of a huge collection tank. Then we sold a piece of property where we originally moved and purchased in 62 because the log home, which has been there a hundred years, set on two acres. To sell that I had to drill a well and then we built our own home on remaining acreage that we purchased in 62, same area. The description's NW ¼ SE ¼ 20, 12, 19 for both my wells. To sell that house in 68, did about the same amount of drilling, 135 feet deep, just like my first well, and what'd we have, 30 gallons per minute set at 1100 or 111 feet, pumped for two hours, didn't draw it down a speck, so water was there. I picture this aquifer and some of our land is higher and I picture--we're on the outer portions of the aquifer, so naturally we're in an area [inaudible] will go down sooner and eventually totally gone. Out in the middle, I think they can punch deeper for a while yet before they hit bedrock and they're at an end. There are wells above on Miller Creek that are down over 300 feet in order to find water. They're not in the main aquifer, water not worth a damn, so they haul they're drinking water in, but anyway, I maintain that the water isn't there and a lot of wells have gone dry. I have--oh, I didn't mention that this second well also went dry, had to be re-drilled, so I have personal evidence of two wells drilled and two wells gone dry as they kept pumping more wells. The aquifer only has so much water and I'm sure you can find a hydrologist somewhere who'll testify that there's a ton of it there. I haven't had any education or training in that field, but I've had an awful lot of observation and I'm about done. I've taken up enough of your time.

Anyway, that's my complaint. As far as the subdivision goes, we're going to have to have them. Where we have them, I don't know. One other issue, the people are probably not likely to reach this subdivision by going all the way around, but that's not an issue with me. I think they'll go up over the hill, down because it's a lot shorter, but that was mentioned earlier and it's not an issue with me. I don't like the traffic, but we're retired. We're not stuck in it at seven or eight a.m. every morning. We choose when we go to town usually, although I didn't get to choose this. Another issue and the reason it's there is because we don't have adequate altitude. We aren't high enough in the headwater of our drainage to produce enough snow and to retain that snow well into the season before it's totally gone, but then with global warming or whatever it is, this is becoming less and less of an issue to produce aquifers. So they're going to suffer other places too so that's where I stand now. I just--I don't keep up very well

and I just found out today you had this hearing and I apologize for not being prepared. I'll try to gather up my information and give a letter to you County Commissioners. Thanks for your time and putting up with me.

Paul Hubbard: My name's Paul Hubbard, I'm representing CFAC, the Community Food and Agriculture Coalition. I'll be pretty brief because Jennie Dixon told me that she covered some of my points that I'd just like to elaborate on though and then I'll be here for questions should they arise. CFAC's recommending that the request to be rezoned for it to be denied. That's based on the following three observations. First, our main concern is simply the loss of agricultural soil. Of the 67 acres, almost half is agricultural soil as designated by the NRCS, particularly the Big Arm gravelly loam, which is prime if irrigated and the Moese [phonetic] gravelly loam, which is considered of local importance. Essentially the proposal in front of you is proposing to irreversibly convert every acre of the agricultural soil. Additionally, the soils, which you have in the proposal in the soil section, it shows that the top soils run quite deep from 12 inches to 20 inches in depth. It's valuable soil and has the potential to support a variety of crops.

Our second observation is around the irrigation infrastructure. CFAC fully recognizes that water's an essential ingredient for these soils to reach their maximum productive capacity. We deeply regret that just last year, both the Maloney Ranch and the Twite Family Partnership abandoned the Baker Ditch, which runs right through the property, as well their water rights to the ditch. Still there's no illusion that water isn't important; we maintain that if irrigation were to be redeveloped that the agriculture productive capacity would be restored. I also learned recently in looking at this that soils that are considered prime if irrigated, without the irrigation default to soils of statewide importance and soils of local importance maintain their NRCS designation of soils of local importance. So the NRCS would still, without irrigation, value these soils as an agricultural--as a highly valuable resource, which, as you know, is limited and dwindling.

Third, our last point is simply that this is an inefficient use of agricultural land from a design perspective. If you look at four-fifths of an acre lot spread out evening over all the acreage, it's pretty hard to imagine a--there's clearly plenty of opportunity to cluster those and protect the better part of the agricultural land and that's an opportunity that hasn't been shown here. CFAC, just to close up, CFAC sees an exciting opportunity to accommodate growth, but while simultaneously protecting our agricultural land. Until we see a proposal that demonstrates a way to do that on this site, then we recommend that the request of rezoning be denied. Thank you very much.

Unidentified Speaker: Could I make--30 seconds?

Chairman Jean Curtiss: Sure Mr. Graham.

Charlie Graham: I forgot a point. We live five and a half miles from Wal-Mart. Approximately 10 miles up Miller Creek, there's a lot of open land. Plum Creek has recently logged, finished last year, golly, its prime land on a bench to subdivide. Who knows what they'll do. There's the [inaudible] place, several hundred acres, the original Bob Anderson land, which was Millhouse [phonetic] land. If you eventually face subdivided land up there and water wells, these people down below will find out what it is to not have water, like I did. That's it, thank you again.

Bill Harlan: My name is Bill Harlan.

Chairman Jean Curtiss: Bill, why don't you pull that microphone down closer to you, there you go. Thank you. Bill Harlan?

Bill Harlan: Yes.

Chairman Jean Curtiss: You're the one making two cents for running the hay field, two dollars and...

Bill Harlan: Yeah. Yeah, I grew up on the land there and it's the type of thing where you got to work out to make it go and then [inaudible] the work all the time too. I've got [inaudible] enough to where I can't do that all the time and the kids, they aren't interested in pursuing that kind of a lifestyle, so that's why it's going this way. The soil there is fair topsoil, but it has this fine rock in it. It takes a lot of water to bring a crop up. I do have an irrigating well that I'm putting on 90, 95 gallons a minute to get a pretty good hay crop every year. First cutting, the rain helps a lot. I still can't cover it all and still can't get enough water on it to get top production. Second crop, you know, you just kind of go with the whatever weather you have. I still irrigate part of it, I've had to cut back, you

know, the [inaudible] has taken up [inaudible] on the water. It just dries out too fast, it evaporates when you irrigate. I just, the--as you've heard before, the agriculture part is kind of tough for the small producer anymore. It's hard to keep the farm ground a going in these small packages. I know subdivisions aren't that great here, but at least they do--gives the people [inaudible] a little more space to live. They can have their garden and do a little other stuff on the land, but it requires a little work there too for them to keep that up. I would--I couldn't stand living in a tight subdivision, growing up in the country all the time and that's ideal for me to have a--at least some ground you can call your own and have room to move around in. I'm not a very talkative person, so that's probably about all I want to say [inaudible]. Thank you.

Chairman Jean Curtiss: Other comments? Mr. Larson?

Gilbert Larson: If that was the end of the comments, there might be a couple things there I should address. It--I can start by saying, I can truthfully say I really enjoyed hearing all three of the comments. They're very different, very entertaining. I sympathize. I can hear first--I'm also a resident of Missoula; I've grown up there and I can see the changes [inaudible] going through the community. I listened to Bill Harlan and it touches me deep that here we have someone that's farmed the land for decades and now needs to--is reaching the age where he can't farm it anymore, his kids aren't interested, his neighbors stepped forward to look at doing a subdivision. I can see where it puts them in a hard place. It's not viable anymore as a farm and yet here we're looking at is it even viable as a subdivision? I can see we're under a lot of changes.

I'd like to just address a couple things real quick before I [inaudible] philosophical here. First with regards to Mrs. Wagner's comments, I sympathize there too. I live in Linda Vista area, I drive those roads. For one of the few times I've ever seen, we actually have a developer coming forward, pledging monies before his development so that the roads can get built before the lots get developed. Lloyd and Maloney Ranch have each pledged \$550,000 or \$1.1 million so that this roundabout road can get built. They're doing that in return for future credits. Part of those future credits are proposed for this piece of land. We don't have another place to put them. They're going to go onto this Linda Vista Acres and this is about \$50,000 of those future credits are applied towards this land. So we do have a developer that's stepping forward to try to do this infrastructure ahead of the development. Whether it's going to solve all the problems or not, I know it won't, but it's at least the developer trying to solve the key piece and to do what he can to help the problem before it happens.

It is a mature master plan. I've been working with HDR and this property is within the master plan area for the wastewater treatment plant. It will be connected some day, but at this time, it's not within their wastewater treatment plant facility area. So it will happen but not right away. As far as relocating the road, that again is a first step. By moving the road to the south doesn't give us any more land, it moves where that land is, but it doesn't change what we have in terms of developable land. What it does is it allows as the properties to the east of us continue to develop, they can follow that route and that allow us then to come into that lower intersection at a ninety degree. Right now, that intersection is a real sharp angle, less than 30 degrees. The only way to get that fixed is to have the road come out into the field and then back in to intercept at 90 degrees. We're taking the first step. As Jennie said, we don't control those other lands, but this allows then that some day as those other lands to the east develop that can get fixed.

Also, Charlie what you were talking about with water; we're going to look into more. Some of what you said is exactly what we've done. We looked at Bill Harlan's well that he's been using to irrigate. It's about 95 gallons a minute, runs great. We looked at his house well; we looked at all the wells we have in the area. We believe that we're in the Miller Creek aquifer. We're in the bottom and in the lands where the water is plentiful. I am also aware that there are areas up on the benches and above this that don't have water. Everything that we show that the water is plentiful where we're at, but we're--I would enjoy getting your information and reviewing it to make sure. The last thing that we'd want is to be wrong and to have lots there that don't have sufficient water. All of our preliminary information and we've included in our packet, indicates that the water in this particular area at the bottom is in the Miller Creek aquifer and that it's plentiful.

With regards to the irrigation, after our last public hearing, I had a builder come up and tell me that he'd been working up above us in the Rodeo Road area. He's already built a house over this abandoned ditch, so the chance of this ditch ever coming back. It's not just Twite and Maloney; it's also the folks upstream. It's abandoned and there's a house. It's not going to come back. I don't see anyway, after hearing Bill and knowing what has happened with other developers, I don't see any way that this land can ever be used for agriculture in the future on a large scale. I do see a way it can be used on individual scale, but that's all I can see.

With that, again I do appreciate your comments. I think they were heartfelt. We are trying to do what we can to look at traffic. We're trying to do what we can to look at these problems even before they occur and I hope we're successful. A lot of it though comes back to the board, of whether someone like--I look at what Lloyd's doing. He's proposing to put up over a half million dollars to pay for that road. It's based on having an entitlement that someday he'll be able to recoup those future credits that he's paying in now. I know that's not why you make your decision, but I also know that if he doesn't have those credits, he can't make the payment in advance. Thanks.

Commissioner Curtiss: Gilbert, I have a question for you. Is Mountain Water not available or some other...?

Gilbert Larson: That's a really good question. Mountain Water currently is not available. They're about a half mile from this site. They will be available in about eight years. We are working right now, and for me at least, it's a rather unique partnership, where WGM and PCI are working together on the project. We've divided in into portions; we're each working on reservoirs for different portions of it. We're moving ahead with that plan in conjunction with Mountain Water. Before it would come down and we would have lines adjacent to this area is about eight years out.

Commissioner Curtiss: Thank you. Any other questions for Gilbert?

Commissioner Carey: Just wanted to know why it's that length of time? Why so long?

Gilbert Larson: I do know why. It's because the development in this area's progressing from north to south. We've got to develop the top of the hill, the old--what we call the Miller Creek View Addition. We'll then work down the hill into Linda Vista Estates. We don't reach the area adjacent to this, actually until, I do remember the phasing plan, and the year is 2017 before the piece adjacent to this gets developed. That would be the earliest that we would be bringing water lines down into this area. To do it now and to try to bring those lines down for this area just isn't economically feasible to bring that much water line for this number of lots. I could also, maybe this is a sideline, but the reason then that we're doing this now is that--and I've become more personally aware of this, one of the biggest problems with development is if you have a large carrying cost up front. We'd had the--Lloyd has had the ability with some of his other lands where those have been family lands or in ownership for a long time that those carrying costs haven't precluded us from using time. This piece, where he's going to be purchasing it outright at present values, we don't have the ability to wait for 10 years to develop it. The carrying costs would just eat it up. So we need to move ahead with this piece before the adjoining piece on Linda Vista Estates and it all has to do with when you purchase the land and at what price.

Commissioner Curtiss: Thank you. This is a public hearing, is there anyone else who'd like to speak before we close the hearing? I hope we didn't all just fall asleep; it is kind of warm in here. I'll close the public hearing. So our first question is on rezoning, to rezone the tract of land to one per acre, one house per acre, C-R...

James McCubbin: Madam Chair, before you actively enter your deliberations, I'd just like to make a couple of comments to supplement the staff report. On the zoning, there's some things said about compliance with the growth policy in terms of the Comp Plan and that that really being dispositive of your decision on zoning. It's not, unless if you find that the proposal is not consistent with the growth policy, then you cannot legally approve the zoning amendment. If you find that it is consistent and that bears on this build-out issue, if you find that that is satisfied, it's still a discretionary decision to decide whether or not you will approve the zoning amendment. The staff report, I think, does a thorough job of going through all the various criteria on that. You'll see that compliance with the growth policy is just one of those factors. It is dispositive if you find that it's not compliant, but if it is compliant with the growth policy, it's just one of many factors that you should consider.

If you--regardless of your decision on the zoning amendment, you should go ahead and process the subdivision request. Where zoning ties into the subdivision decision is under our subdivision regulations. That is also pointed out in the staff report and the staff report references Section 3.1, sub 1, b. This is page 7 of the staff report. In addition to that section, similar requirements that you consider compliance with applicable zoning regulations appears at Section 4.1.13, which lists the standards for your consideration. Three point one is direct requirements that the application comply with regulations and laws. Four point one point one three reiterates that requirement, including that and b, standards [inaudible] that you consider at your time of decision. That's just consistent with the staff report, but just another section that applies there. If you don't approve the zoning request, then this subdivision would not be compliant with zoning. I think it would be difficult for you to approve this subdivision at that point because it's an important factor. Technically, you might be able to approve it, but essentially these lots would be unbuildable at that point because they wouldn't be able to get zoning compliance,

they wouldn't be able to get building permits. But it is just one of the review criteria, again, it's an important one, but it's one of the review criteria, so you should still process the subdivision I think.

Finally, one more thing, the proposal and the subdivision application to change the location of Lower Miller Creek Road, they can certainly create a road on a subdivision plat, but you can't abandon a public road through subdivision process. As far as I'm aware, there hasn't been a petition to abandon or alter the location of Lower Miller Creek Road, so if you were to approve the subdivision, I'd recommend including a condition that prior to final plat that there be a relocation or abandonment of that, of the public road easement in Lower Miller Creek Road in it's current location. That would have to be subject to a separate public hearing process on a petition and you can't decide that today because we don't have that petition.

Commissioner Curtiss: Thank you, James.

Jennie Dixon: I just have a question, James, thank you for your elaboration, I really appreciate that. Do you also happen to know any section of state law that requires the substantial--besides the sections of the subdivision regulations?

James McCubbin: Not directly, no, I think we have authorization to include that in our subdivision regulations. We have done that, but there's nothing...

Jennie Dixon: And that has been past practice.

James McCubbin: ...express in state law. Right.

Jennie Dixon: Thank you.

James McCubbin: So that's why we have to consider the subdivision and apply our regulations.

Jennie Dixon: Thank you.

Commissioner Carey: Question to Jennie, do you know whether or not the Miller Creek Comp Plan is subsumed within the growth policy?

Jennie Dixon: Yes, they're all amendments. It's odd because the earlier documents are amendments to a later document.

Commissioner Curtiss: Is there discussion from the Commission?

Commissioner Anderson: Jennie, this is a question--yeah, thank you. I think Mr. Larson mentioned other areas of reserve area have been developed. Is that--where has that occurred in this and does that--is there that 80% threshold have to be reached before those other reserve areas can be built upon?

Jennie Dixon: This map up here shows you in that green down towards the bottom where it says residential reserve and that is the area that that applies to. I'm not aware of any subdivisions that are there other than possibly Maloney 8 and my understanding is that they traded density transfer rights to build there in exchange for not building elsewhere, though I don't have the details of that. I looked like maybe someone can, maybe Roger has some information to add to that.

Roger Millar: It's important to remember that the residential reserve has a one dwelling unit per five acre [inaudible] on it today and anyone including the Twites could develop that land at that density. If some of that land has developed, it's probably developed at the one per five acre. It's going to the higher density that hits that 80% threshold issue.

Jennie Dixon: So other than that kind of peripheral knowledge that I have about Maloney 8, I'm not aware of any other development in that residential reserve beyond...

Unidentified Speaker: [Inaudible].

Jennie Dixon: Right, which is part of that Maloney--as I understand it, they've traded some density.

Commissioner Curtiss: Gilbert said something about the Stillwater in the Maloney. So in regard to our first decision is in regard to zoning. We have a recommendation from staff and the Planning Board to deny that. Maybe you could borrow microphones so we don't have to play tag quite so much.

Commissioner Carey: Well, I too appreciate the public comment, but we have to be clear that what we're dealing with right now is whether to rezone the property. We're not dealing with the subdivision itself, we're dealing with rezoning perhaps, allowing higher densities. I found that staff's presentations very persuasive. I think that the current zoning of the property is in substantial compliance with the Miller Creek Plan and the Growth Policy. I don't believe the rezoning meets the--the rezoning proposal, meets the 12 criteria that we have to take a look at whether or not to rezone.

Commissioner Carey made a motion that the Board of County Commissioners deny the rezoning request for Tract 2 B 1 and all of Portion 'A', COS #5917 based on the findings of fact and conclusions of law.

Chairman Jean Curtiss: It's been moved to deny the request. Is there a second?

Commissioner Anderson: I would just like to say I've known Lloyd a long time and I appreciate in my time with the city that when he did start development out here, he was forward thinking and dry laid sewer line in anticipation of connecting to the sewer and this whole area has been developed with that in mind. However, I think that in this particular situation that threshold for creating a higher density has not been achieved.

Commissioner Anderson seconded the motion.

Commissioner Curtiss: I too appreciate all the work that the Twite family and others in the area have done in trying to get the infrastructure in. I just feel, as Roger pointed out today, I think it's just premature [inaudible] goal and the intent of the Miller Creek zoning was to provide for orderly development and as Gilbert just told us, it's going to be eight years for the water to get over the hill. Part of that is because that other development hasn't happened yet and it hasn't been platted, some if it, yet. I think that roads, public sewer, the Mountain Water, or some sort of public water needs to be in place before we consider rezoning this to a higher density. Unless you have something to add, I think we're ready to vote.

Commissioner Carey: I would just point out that this particular action in no way diminishes the work that this developer's done in this community over the years.

The motion carried on a vote of 3-0.

Commissioner Curtiss: Then we have the other items, which are the variance request and the subdivision in general.

Commissioner Carey: Do we need to deal with the variance request?

James McCubbin: Yeah, I think you probably should.

Chairman Jean Curtiss: Just go through the...

Chairman Jean Curtiss: I heard them say that they were willing to withdraw the variance requests, so that's number two, three, four, and five that they withdrew, so we don't need, because they've withdrawn them, we don't need to vote on those. It would just be to the subdivision.

Commissioner Carey: James?

James McCubbin: I was just--I wanted to check and see if the staff report on the main subdivision issue is written--how is that written in relation to the variance requests?

Jennie Dixon: I was just looking at all four variance requests, it appears that the plat can be changed minimally and not require variances, so I'm making sure that by the withdrawal, the plat basically stays the same with very slight tweaking, and that the main motion for the subdivision be denied, it can be independent from the variances.

James McCubbin: So the analysis on the subdivision issue wasn't necessarily dependant upon which way the variances went?

Jennie Dixon: No.

Commissioner Carey: So then, can we make--can I make a motion citing 3.1 sub 1 b to deny the subdivision proposal in the absence of the rezoning?

James McCubbin: Yes, but I would recommend that before you make your decision on the entire subdivision that you also address the other review criteria. I would recommend that you...

Commissioner Carey: That was the 4.1...?

James McCubbin: Right, but I'd recommend that you also consider all the regular subdivision criteria that you generally do. In other words, this is one of your subdivision review criteria...

Jennie Dixon: And the staff report does consider all the review criteria with findings of fact and conclusions of law that provide a basis for the recommendation for denial, such as the result of loss of farmland [tape ended], traffic impacts, the distance to services, and that type of thing that are a part of--and impact the public health and safety that I addressed during the staff report as far as comments from the Health Department. I don't think you need to make any additional, unless James would advise...

James McCubbin: Yeah, if you're in agreement with the staff report in its entirety, you can make a motion similar to the one you made on zoning based upon the proposed findings and conclusions, that you adopt those in our motion and make a motion to deny based upon those.

Mike Sehestedt: That includes the zoning issue that you raised as a [inaudible].

James McCubbin: I think that would include my comments on Section 4.1.13 as being kind of an addendum to the staff report.

Commissioner Curtiss: So the motion would be as proposed here, based on findings of fact in the staff report.

James McCubbin: Yes.

Commissioner Carey made a motion that the Board of County Commissioners **deny** the Linda Vista Acres Subdivision based on the findings of fact and conclusions of law in the staff report.

Commissioner Carey: Do I have to specifically reference the rezoning denial?

James McCubbin: No, that's part of it.

Commissioner Curtiss: Should we add, "and the testimony heard today?"

James McCubbin: You certainly can. On the zoning, the staff report referenced their recommended decision on the zoning. Now in fact you have denied the zoning [inaudible].

Commissioner Curtiss: Okay, so it's been moved that the subdivision be denied based on the findings of fact in the staff report and testimony heard today. Is there a second?

Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss: I think this is a very thorough report, thank you, staff, all the way around.

Other Business

There being no further business to come before the Board, the Commissioners were in recess at 3:47 p.m.