

PUBLIC MEETING – MAY 7, 2008

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Larry Anderson, Deputy County Attorney Marnie McClain, Office of Planning and Grants Tim Worley, and Office of Planning and Grants Planner Vlad Kryukov. Commissioner Bill Carey was out of town.

Pledge of Allegiance

Public Comment

Cate Crue: My name is Cate Crue and I live 501 Calloway in Lolo, Montana.

Chairman Jean Curtiss: Cate, could you spell your last name please?

Cate Crue: C-R-U-E and Cate is with a C as well. I'll make it very short and very brief, but I have some things for you. If somebody could pass this down, wait, wait, [inaudible] there's a brief letter and some pictures. I live in the Lakeview Addition out in Lolo. I'm been there 34 years, built my home and I [inaudible] Bitterroot River. There's a small acreage [inaudible]. There are a couple of homes on it that isn't shown on here because they weren't there when I built it. There were three lots back by the river and there's now a lot more and they're being developed. Two of them, the people developed about five years after I built my home and one is a professor at the University, which I have worked with and the other one [inaudible] and they built their homes leaving some wildlife corridor in the back because of American bald eagles and a lot of deer. Recently, about two years ago, the third acre next to them in the corner was sold. It doesn't show on this map. Along with it was sold my neighbor's lot on Tyler Way. The people that built it planned on putting a home back there and then they wanted to put a road from that back acreage through my neighbor's lot and next to my fence line onto Tyler. I let them know that I did not appreciate that, I did not want a road and there already is an existing road of 30 years. You can see that on the map too, it's up the existing road, it's been there for a long time. The people then sold the property, the lot next to me and the acre in back to Al Zapita [phonetic], a developer and he wants his personal home back there. He's already started building it, but because the person before got permission from the head of the state--Missoula Transportation, do you have a fellow in charge?

Chair Curtiss: Public Works maybe?

Cate Crue: Public Works, that must be it. He had gotten permission to put a road in there. Now, I'd like to know, did you have knowledge of this or not because Lakeview Addition is a residential area, it's not meant for roads to go through it, especially when there's already pre-existing access. Attached is a brief letter and pictures. I don't know, I have trouble getting around and I have trouble taking pictures. I had to use my grandchildren's crayon to put some information on that first one. On the picture, this one that you can see, in black I put ink for the existing road and red is where he wants to put a new road for his four or five homes he wants developed back there.

Chair Curtiss: So he's not just putting a driveway for one house...?

Cate Crue: No, no, he's going to build four or five--he can build up to six homes, which I'm curious why no one in the neighborhood got letters? You guys are always really good about that and you let us know what's going on and we get letters when there's new development going on. Nobody has gotten anything on this and he has destroyed the wildlife corridor because all the other homes back there, four of them so far, are on an acre and they have all built to the west to allow for the wildlife corridor. Mr. Zapita [phonetic] built 50 feet or less from the river and has destroyed the wildlife corridor; it's no longer there. Now he wants to put a road through one residence next to my fence line onto Tyler Way. On the beginning of my letter, there's four reasons why I don't think that should happen and, most of all, it doesn't have to happen because there's already an existing road for 30 years. Okay?

Chair Curtiss: So this hasn't gone through subdivision, at least recently, so that's why we wouldn't have sent you a letter because we don't have any [inaudible] of it. So the picture that has a chain link fence and you can see the house at the end of it and a road and it says Zapita [phonetic] homes, is that the new road he's built?

Cate Crue: Yes and my home is right there by the chain link fence and there is another--you're talking about this one?

Chair Curtiss: Yes.

Cate Crue: That's right, that's right--just a hair off the 90-degree turn that you can see on this page here, there's a 90-degree turn there and the red mark is the property boundary. I'm in Lot 10; you can see that, I'm right on the 90-degree turn. He bought Lot 11 and 12 along with his acre back by the river. He just recently sold--he's building--he got an easement for the sewer and water, which is fine. He needs sewer and water back in his development, I guess. He tore off the garage, redid the home on Lot 11, and he's in the process of building a new home on 12.

Chair Curtiss: Which it looks like we can see in this picture that has the little dots on it, there's a new home there.

Cate Crue: Yes, you can see right there where--the first owner that built there bought two lots and put his home in the middle and that doesn't work for Mr. Zapita [phonetic] to put enough homes there, so he ripped the garage off and if you can see on--okay, you can't see. On this picture here, right over here is the other home and there's a--being built right now is a garage. Now, the other thing is, this can't be the road because it's not on the easement, it's going through the people's property next door. Along that chain link fence for 32 feet is the actual easement that is legalized with the property. So he will have to take down the chain link in back, put a 32-foot easement next to my fence and then jig-jag back 11 or, excuse me, he'll have to jig-jag back, but there's, right in the back there between--you can see this blue here and my chain link fence. There's already a road, which coincides with this here map, there's already a road. I'm just asking that you figure this mess out and not allow a road to go through a residential area set up 35, 40 years ago. There are--the two homes, the one next to me and the one across the street are brand new people in there and both of those people have small children. I have six grandchildren and two of them visit me regularly. I really don't want a road that shouldn't be there to be there and there's four other reasons.

Chair Curtiss: Thank you for your comment. I believe that we already have our Public Works Director coming to visit us about some other issues tomorrow, so we can follow-up. Is your number on here?

Cate Crue: You know, I don't think so, its 273-0345.

Chairman Jean Curtiss: Okay, thank you for your...

Cate Crue: I brought one of these for the other...

Chairman Jean Curtiss: Okay, you can just hand it to Tim right behind you and we'll give it to Mr. Carey. Thank you, Ms. Crue.

Cate Crue: And you will let me know?

Chairman Jean Curtiss: We'll follow-up, yes. Is there any other public comment on it's not on the agenda?

Routine Administrative Actions

Commissioner Anderson moved that the Board of County Commissioners approve the weekly claims list in the amount of \$1,680,134.02. Chair Curtiss seconded the motion. The motion carried on a vote of 2-0.

Proclamation: Missoula Volunteer Day and Missoula Youth Volunteer Day

Chairman Jean Curtiss: We have a proclamation today, it's Missoula Volunteer Day and Missoula Youth Volunteer Day, so we have two proclamations to read. I imagine that we can just read one and state the two names that have been appointed. This is from the Kiwanis.

Commissioner Anderson read the proclamations.

Whereas, Missoula citizens volunteer for many organizations to enrich the community's culture, education and well-being; and whereas, these volunteer efforts are invaluable to our community; and whereas, Irene Hornstein and Sara Anderson exemplify the spirit of volunteerism in Missoula; and whereas Sentinel Kiwanis wishes to recognize this spirit of volunteerism. Now therefore, we, the Mayor of the City of Missoula and the Board of County Commissioners, do hereby jointly proclaim May 1, 2008 as Irene Hornstein and Sara Anderson Missoula

Volunteer Day and invite all citizens to join in recognizing the value of volunteer work in promoting good citizenship and Irene's and Sara's efforts to promote a better Missoula community. Signed Missoula Board of County Commissioners.

Chairman Jean Curtiss: Thank you and they had the awards last week, but it was a secret who was going to win, so we couldn't read them until today.

Hearing (Certificate of Survey): Mary Inabnit Family Transfer

Chair Curtiss opened the hearing.

Marnie McClain presented the staff report.

The background on this request is that Mary Inabnit 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 ten plus acres in size located near Huson on the Six Mile Road. Mary proposes to create approximately one five acre parcel for transfer to her son Elijah L. Inabnit, age 18, for residential purposes and keep the remaining approximately five plus acre parcel for residential purposes as well.

The history of the parcel is as follows: Elk Meadows Ranchettes, Certificate of Survey #351 was filed in 1978 creating 55 parcels. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Chair Curtiss: If someone from the family could come, preferably Mary. Is Mary here?

Unidentified Speaker: She's not here.

Chairman Jean Curtiss: Okay, if you could come up. Could you state your name for the record please?

Steve Inabnit: Steve Inabnit.

Chairman Jean Curtiss: And you are?

Steve Inabnit: Mary's husband.

Chairman Jean Curtiss: Okay, we need those on the record even if we know. We have a list of questions that we'll ask the Deputy County Attorney to read, so that we can have all the things on the record.

Marnie McClain: How long has Mary owned the property?

Steven Inabnit: Since last October.

Marnie McLain: Was the property purchased with the intention of dividing it?

Steve Inabnit: Yes.

Marnie McLain: Does Mary or anyone she transfers it to intend to transfer the property again within the next year?

Steve Inabnit: Just the piece to our son.

Chairman Jean Curtiss: So he doesn't plan to sell his portion and she doesn't plan to sell hers?

Steve Inabnit: No, he doesn't plan on selling his, but the piece that she's retaining, we will sell it.

Marnie McLain: Will the property be developed?

Steve Inabnit: Eventually there will be a home on the five acres to my son.

Marnie McLain: Will the recipient of the property be residing on the property?

Steve Inabnit: Eventually.

Marnie McLain: Where does the recipient live now?

Steve Inabnit: With us.

Marnie McLain: Have you talked to anyone at the County about going through subdivision review for this particular piece of property?

Steve Inabnit: No.

Marnie McLain: Are you in the business of building or developing property?

Steve Inabnit: Yes.

Marnie McLain: For clarification, you're a surveyor?

Steve Inabnit: Right, correct.

Marnie McLain: Are you attempting to evade subdivision review?

Steve Inabnit: No.

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

Steve Inabnit: Yes.

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

Steve Inabnit: Understand.

Chair Curtiss: Is there a home on the property currently?

Steve Inabnit: Yes.

Chairman Jean Curtiss: But none of your family lives there?

Steve Inabnit: No.

Chairman Jean Curtiss: Are there any other questions. I guess I'm just questioning, the law allows this exemption and we also have to try to interpret whether this use is meeting what the law was intended for and that's why we ask the question about whether you plan to keep your piece of property and you son keep his. If he decided to sell his, the profits, of course, need to go to him, but it seems that since you're going to give him and piece and plan to sell the other piece, it's kind of like evading subdivision, so I don't know [inaudible].

Marnie McLain: I don't think that that is an evasion. I think that [inaudible] the other piece can be sold.

Chair Curtiss: It's always this foggy area in my mind. Take some more...

Commissioner Larry Anderson: Okay.

Chairman Jean Curtiss: Did you have anything you'd like to add, Mr. Inabnit.

Steve Inabnit: Well, I have subdivided other property and this is the first time I've ever used an exemption. I meet with clients on a fairly regular basis or potential clients and discuss options with the land. I only suggest family

transfers when they tell me that they are going to transfer it to their son or daughter. It's not something that I put out there as an easy way to divide.

Chair Curtiss: I appreciate that. I don't think we have any more questions for you. Thank you. This is a public hearing; I'll open it to other public comment. Is there anyone else who'd like to make comment? Seeing none, I'll close the hearing.

Commissioner Anderson made a motion that the Board of County Commissioners approve the request by Mary Inabnit 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: Since you work in this field, you know that we'll be sending a letter to your wife when Cathie gets to it, which will be, what, a couple weeks or something? You can do the surveying and that kind of thing [inaudible]. Thank you.

Consideration: Painted Sky Subdivision (4 lots on 32.18 acres) - Lamar Trail, 1-1/2 miles west of Old Highway 93

Chair Curtiss opened the consideration.

Vlad Kryukov presented the staff report.

As you have stated, this is a consideration for a four-lot minor subdivision between Lolo and Florence and its called Painted Sky. Deslie Dee Gianchetta, and Painted Sky, LLC, represented by Kristin Smith of WGM Group, propose Painted Sky Subdivision, a 4-lot minor subdivision. Access to the subdivision will be provided an existing off-site road called Lamar Trail. The Zoning and Comprehensive Plan, the property is unzoned. The applicable growth policy is the 2002 Lolo Regional Plan and it designates the property rural residential with one dwelling unit per ten acres and open and resource. The applicant is proposing four lots on roughly 32.18 acres, which is an approximately density of one dwelling unit per eight acres. The proposed subdivision is in elk and deer winter and spring range, and according to MFWP and Missoula Rural Fire includes some of the historically most important portion of that range and currently used by about 130 elk, plus mule and white-tailed deer. The proposal is for development at a density greater than the recommended land use density designation for the area however, by clustering the development, the proposal will preserve wildlife habitat and open space area.

Some of the characteristics, the property is mostly grassland with slopes ranging between 4 and 25 percent. Due to the applicant's proposed subdivision layout, MFWP stated that the development would cause usurpation of the elk and deer habitat, thus causing further displacement and harassment of elk and deer during the critical winter, spring, birthing and young-rearing times. Both FWP and RI formally commented that the proposed development will further encroach into the most important elk winter range on the west side of the Bitterroot Valley north of Hamilton. In addition to that, all four lots will be served by individual wells and septic systems.

Moving on to conditions of approval, I have handed out to the Commissioners a sheet, [inaudible] with the applicant's proposal and on the back with the OPG recommended layout based on our conditions of approval described in the final staff report. There are a total of 18 conditions of approval, however I will highlight six of the most important conditions addressing the new layout of the subdivision. Condition of Approval # 1 requires the subdivider to revise the plat to divide the proposed Lot 2 into two five-acre lots labeled Lots 2 and 3 that share a common lot boundary running approximately east-west. Lots 3 and 4 are required to be combined into one 20-acre lot labeled Lot 4 prior to final plat approval. A maximum of one-acre building envelope is required to be designated on the new Lot 4 within 150 feet of the existing Lamar Trail cul-de-sac bulb and east of elevation line 3490. All areas outside of the building envelope on Lot 4 are required to be designated as open space, no-build, no-alteration zone. Roads and Access, Condition of Approval #2 requires a 40-foot wide private access easement crossing the proposed Lot 2 for the benefit of Lot 1 to be shown in the approximate location indicated on the preliminary plat by the applicant. Condition of Approval # 3 requires lots 2, 3, and 4 to be accessed via a new on-site road within the location of the existing 40-foot private access and utility easement along the property boundary between Mackintosh Manor Lots 40A-1 and Lot 41A. The developer shall construct the new on-site road to an 18-foot width up to the point where it serves three lots, 14 feet up to the point where it services only two lots, and may require additional access easement for the--dedicated for the benefit of a most northern lot providing a new 12-foot driveway. An emergency vehicle turnaround shall be provided at the end of the new on-

site road. Condition of Approval #4 requires the developer to abandon the 40-foot private access and utility easement north of the existing Lamar Trail cul-de-sac bulb and replace it with an adequate private access easement for required to serve the new on-site road providing access to Lots 2, 3, and 4. Pedestrian facilities, Condition of Approval #10 requires the subdivider to construct a two-foot low impact trail along the new on-site road providing access to Lots 2, 3, and 4. Condition of Approval #13 requires water supply for fire protection to be provided via a hydrant system and water storage or interior residential fire sprinklers in each new home.

In addition to the conditions of approval that have already been mentioned, staff also recommends conditions of approval regarding standard requirements such as easements, weed control, and development covenants. Staff's recommended motions: approval of the Painted Sky subdivision subject to the recommended conditions of approval and findings of fact in the staff report. In addition, to my presentation, I will be showing a slide show, further clarifying the intent of our proposed clustering and surrounding area of the proposed subdivision.

[Vlad Kryukov presented PowerPoint slides, which can be found in the file.]

That concludes my presentation. If anyone has further questions, I would be more than willing to answer them.

Chair Curtiss: Thank you, Vlad. Any questions at this time? Would the developer's representative like to present?

Kristin Smith: Thank you, good afternoon; my name is Kristin Smith, is this on? I'm a land use planner with WGM group and I'm representing Painted Sky and the Gianchettas in the Painted Sky subdivision today. I want to thank staff very much for trying to work towards an objective solution to some of the comments that were received. I also want to have a discussion about some of that today and, because we did not receive the adjacent property owners comments until Monday morning and we received Fish, Wildlife, & Parks comments four months after they were solicited and I was out of town for a couple of weeks, I'd like to possibly extend the final decision on this for another week until we've had a chance to really look at it because there's some other things that have to be considered, such as the location of the septic systems and proposed wells, and some of those other things. I also have a few slides; many of them are actually similar to Vlad's, to talk about relative to the elk population. We understand that this general area is very important for elk habitat. This particular site is on the edge of that range. One thing that I think is really important to note that spatial data that shows a line that's created by Fish, Wildlife, & Parks, when you actually look at the spatial data notes, it's not recommended that that be used at a scale less than one to 250,000. It's a general guideline for general movements and I understand that the adjacent property owners and the folks in the area know that elk [inaudible] inhabit this area, so in this case it's fairly representative. I think my understanding is the most important corridor is north of this particular site, traveling along the Mormon Ridge area and then across Highway 93 over to Davis Creek and they use that area kind of toward the tree line for their movement. We also understand this particular area is not calving area [inaudible] Fish, Wildlife, & Parks [inaudible] identify it as an important calving area, but just generally part of the range.

I think the most important thing I want to look at and I know Vlad talked a little bit about how other parcels in the area did not get subdivision review, but regardless that's the pattern that's already established. Are we up?

[Kristin Smith presented PowerPoint slides, which can be found in the file.]

Chair Curtiss: So in looking at these, I'd like to throw out one more idea and I think that probably postponing is a good idea. I understand that the two parent parcels are owned by different owners.

Kristin Smith: Correct.

Chair Curtiss: So I'm sure they'd both like to be able to have two lots to sell. Mike, there'll also be a consideration that, rather than Lots 3 and 4 as you have shown them on your proposal today, that you divide those lots--I have to get my directions right--east and west rather than north and south and then cluster the two home sites to that elevation line that staff was talking about. As you go out and took for your well septic ideas and maybe even what it looks like on the ground, it seems like that might accomplish kind of what the developers would like, but also addresses that clustering idea that staff and agencies have proposed.

Kristin Smith: Right and I think that's totally valid. We can look at that. When our first response to the staff's recommended elevation line, if you could go back a couple of slides--maybe one more, because it's two different owners, they came forward with the proposal together first for efficiency's sake. So the easternmost parcel, the

shape of it, it's not desired to be changed, so yes, you're right, two parcels and two parcels. Trying to perhaps is as a way to accommodate two parcels on the westernmost lot, considering sort of the development again immediately to the north and immediately to the south, I don't know if it would--it would be farther, higher in elevation than what staff initially proposed, but there's certainly an option that we could look at.

Chair Curtiss: So pulling those two building sites closer to that curved existing line, existing easement is what I was thinking.

Kristin Smith: Uh, huh, dividing the lots the other way?

Chair Curtiss: Uh, huh. Is there anyone else who'd like to make comment on this proposed subdivision? Yes, sir.

Dan Dickey: Dan Dickey...

Chairman Jean Curtiss: Dan, you're taller so, [inaudible].

Dan Dickey: Adjoining landowner of Lot 40, Mackintosh Manor Subdivision. I'd just like to start; I've lived in the subdivision for 15 years and so very intimate with the elk movement and how they interplay in and amongst Mackintosh Manor. Can I ask you [inaudible]--let's go back to cadastral density sites?

Chairman Jean Curtiss: Do Dan, you're going to have to...

Cathie Cichosz: You have to use the microphone.

Chairman Jean Curtiss: We have a pointer.

Dan Dickey: First time, first time. Anyways, I live right here and so I just want to start off by saying as we look at these models right here, we look at the subdivision and we have this established pattern. We're trying to, everybody's trying to hold this pattern and hang onto it and make it a continuation. As I stated previously in our last meeting, essentially these old models are failing us. We can't really head in that direction anymore and we need to start embracing a model that's going to be sustainable. That's going to allow for [inaudible] enjoyment on the land base, even though we have these patterns all through here, from this point where my residence is, all the way through in here. The elk don't have to jump a fence until they get right to there and so we've kept that model in there, all this time because we know the elk, even though they want to come out the top of the ridge, about 80% of their movement in the wintertime is actually cycling through. They actually cycle through the entire subdivision itself and come back on up. They're doing that all the time and a part of it is that Tom has essential pivot down here with alfalfa and we have other large grazing [inaudible] just have a sense of security when it gets really cold and so forth.

I just wanted to make it clear that the way that we've been heading historically in the Bitterroot Valley, the way that we're trying to move this proposed development, it's just a reflection of the same failed models that we just really got to start trying to change. Mackintosh was planned in 1913 and we've got--that was exempt from subdivision review because there was nothing around at that time. The existing sites outside were created by a COS family transfer. Tom did boundary relo right through here and so this is the first time where we're looking our first minor subdivision or first subdivision we're addressing with bigger implications of what's going to happen with the Bitterroot Resort and is this footprint going to be able to be used to leverage off of. We have this beautiful vast landscape and we're not looking at how we can sustain open spaces, wildlife movement, which is so crucial, and get rid of this congestion that we need to start working away from. That's the new model that we've been trying to philosophically embrace for a long, long time. We do a lot of research about it, we talk about it, we want to present that as an option to developers, but this is a good time to say, okay, here's a really valuable landscape that offers so much and I think it's time that we start moving in that direction.

FWP's recommendation is very valid. Actually, where this line crosses right through here, this whole area right through here [inaudible] is actually they're going to bed down there when it hits about minus 10 in February. They just want to hang, that's what they want to do. They come right on out and they'll stay even in through these benches through here, you'll see elk bedding out all through the daytime because that hits [inaudible] all through these different areas. We have the homes in there, we provide a passage for them to come in and out, and they know it.

With respect to fencing, the history of wildlife fencing, I think, came about as a recent update, there was a lady, Jackie Corday through--your open space program's manager [inaudible] that definition [inaudible] because of the problems that we had in the past. Tom Maclay's existing covenants for new landowners or acquirers of land are requiring [inaudible], elk don't--they're not going to go over jackleg fence. That is not Seeley Lake friendly. You may have underpasses, but its wildlife friendly. The other thing that the wildlife friendly fencing factor forgets about is the frequency of fencing. It's the frequency of how many times they have to actually go over fencing. It's not the fact that we're [inaudible] a lot here and a lot here and a lot here and a lot here. If we have enticement for late winter season grazing on lawns or whatever it may be, the amount of time and energy it spends just going over these continual fences is really hard on them.

I guess the crucial thing is I would like us to see that when we start taking dialogues and [inaudible] this is an existing pattern, this is what's here; this is what we've been doing, so therefore we're going to continue this same pattern on the other side. We just can't do that anymore. It's just not a win-win situation and so I'm hoping that we can take FWPs recommendations and I appreciate OPGs recommendations and we come up with a creative clustering design that's a win-win for the developer, a win-win for wildlife, and also it's a sustainable footprint model that can be used [inaudible] off of in the future. I urge you to take a close look at this because this is the first time that [inaudible] really getting scrutiny in this area since 1913, so it's a real big deal. That's why I'm here today because this is it, it starts right here. Thank you.

Chair Curtiss: Thank you, Mr. Dickey. I hope that's none of you guys car because I'm getting tired of it. Is there anyone else who'd like to make comment?

Mel Waggy: Mel Waggy from Rural Initiatives. Is the developer going to be allowed to present next week?

Chairman Jean Curtiss: Oh, yeah.

Mel Waggy: Then I'll save my comments until then.

Chair Curtiss: I guess I would ask you Mel, would the idea that I just threw out to divide the lines the other way and cluster those houses closer to that curved line get closer to meeting the goals of protecting the wildlife?

Mel Waggy: Closer than the original proposal, not as close to what we recommended, but definitely closer, especially with building envelopes.

Vlad Kryukov: If I may add, I had sent out an email with attachments with an existing proposal with staff recommended proposal and with potential proposal that WGM has discussed during the Planning Status meeting to both Mel and FWP last Monday, so they can review that. Essentially, it shows the two building envelopes as you have mentioned close to the curve boundary line. I don't know if they will be able to fit the two one-acre parcels to the east of elevation 3490, but that's something that may need to be looked at.

Chair Curtiss: Thank you, Vlad. So you basically sent them these two attachments?

Vlad Kryukov: Those two and there's an additional one that I believe and RI has received--I know I sent one to Kristin this morning, depicting what you have mentioned showing the two one-acre parcels and essentially showing the Lot 4 split into east and west direction. I'm sure that WGM will have something for next week to show that.

Chair Curtiss: Kristin, did you have something you wanted to add?

Kristin Smith: Thank you, Madam Chair. If I could just rebut a couple points, I think that what this project does differently from the established pattern is actually establishes those building envelopes and says that the project must have wildlife friendly fencing, so that it doesn't continue the disruptive pattern. I think another point to consider too is how much do we encourage the elk to habituate to the residential development and that would be a question for Fish, Wildlife, & Parks. Without the fencing, they become accustomed to going into the residential areas and not as leery of humans. I think that's another consideration. Thank you.

Chairman Jean Curtiss: Mr. Dickey? I had a question for you too before I forget. Are you part of the homeowner's association?

Dan Dickey: Yes.

Chair Curtiss: Has the homeowner's association considered amending to take jack leg fences out of your--I know that you said...

Dan Dickey: We don't have any jackleg fencing, except for one site.

Chair Curtiss: But it's in your covenants I understand.

Dan Dickey: Yes, yes.

Chair Curtiss: That's what I meant, to remove that from your covenants, so you're homeowners are considering doing that?

Dan Dickey: Yes, yes. In fact, what we were going to work on is actually getting a reciprocal agreement to make sure that this corridor crossing stays open all the way through. Fences don't exist. The only fence that exists is a marginal residual amount on my side, which would be the Section 15 line and then Helena's property line. Helena is already--has no--when you look at that continuation of that development that goes [inaudible], there's no fencing except for two crossing points and they're working on--they've been taking down the square fencing that was causing problems for [inaudible] and [inaudible] fawns trying to get--when the mother jumps over, the other one can't get over, so they're working on that right now.

As far as the rebuttal of do we want to keep elk out of the way, do we want to keep wildlife out of way? We are in the midst of this ecosystem, we're in the midst of this [inaudible] and this is part of the enjoyment of being there and its part of the enjoyment of experiences and our developments can creatively work this out. It takes a responsible creative design and we can sustain this and we can enjoy it and we can do it. If you reduce down a small building envelope, but you're enhancing the enjoyment of this real special place, being an appraiser, it's not a devaluation, it's quite the opposite. If we're going to design something and if FW--if he comes in and says this is a good design, this is what we want, let's respect it, and let's work with it. Thank you.

Chair Curtiss: Is there anyone else who would like to make comment?

Gene Mosted: My name is Gene Mosted; I'm one of the property owners of Painted Sky. One of the comments I'd like to make after listening to some of the comments is it seems to be fairly apparent in the subdivision to the north that the elk habitat has been able to cohabitate with the residential neighborhood the way that it is. I commend the residents in some of them have taken down fences if they want to make it easier for the elk to go through there. That has become fairly evident all around the Missoula Valley that the deer and the elk seem to like to cohabitate with residential developments. I can respect Mr. Dickey's comments about the fencing. I think that if he wants no fencing on this property maybe he would like to take the first initiative and make sure that no fencing can be put on his property because he could at least start there.

I know that we still have to have some more comments on this, but I still haven't been given the right kind of information that would tell me that this particular elevation line on this property is a magical line to keep as a no-build zone. As you look at the rest of the development to the north and that development's pattern to the west, they obviously got a much higher elevation lines than we're talking about here. If we're going to start to draw elevation lines just a hundred feet or so, 150 feet on an elevation line within 20 acres to me doesn't seem like it's going disrupt a lot of elk flow because it's already cohabitating very well with the neighborhood to the north. I guess I would need better information to why this one certain line is so important and why it can't be up a little bit more. In the original proposal that we have in our building sites, it actually leaves the northern portion of our whole development more open, so the elk could come down and go right behind the houses and right into Mr. Dickey's property and flow into there. If you take the [inaudible] and bring it down and cluster them down there farther, I mean, is there any evidence that's really showing that that's such a huge deal to drop the line down? I don't see it unless someone wants to point it out to me. As Mr. Dickey said, there's elk cohabitating around all those houses up there so why does one line on this piece of property make such a big difference?

I do agree with the fact that building envelopes do help and I've been in the development for a--business for a long time and any time that we have done building envelope, it does indicate to buyers that we are taking further action to ensure the quality of the subdivision because we're looking at it's strengths and stuff there. We did that

when we picked those building envelopes, they were done for a reason. So they do enhance property values when you use building envelopes and it's never been done around there. I feel that is a big help. Thank you.

Chair Curtiss: Thank you, Mr. Mosted. Vlad?

Vlad Kryukov: If I may I'd like to answer Gene's question, how OPG has the right to the elevation line 3490. Well, first of all, FWP and RI have both concluded that this entire parcel shall be designated as open and resource, the entire parcel. Now, OPG has reviewed both of their comments and we have concluded that if we were to recommend this entire parcel be designated as open resource, we would be denying them full use of that parcel. We have chosen to compromise between applicant's proposal and FWP and RI's recommendation to allow for a building envelope to exist to the eastern--on the eastern side of the elevation 3490. The reason for that evaluation, the reason why we chose that elevation, was because it allowed for a one-acre parcel to exist to the east side of that elevation line and to the west side of the curvature line. Other than that, it is clearly stated in both RI's and FWP's recommendation that this entire parcel should be designated as open and resource, no-build no-alteration zone based on the wildlife habitat in the area. Hopefully that kind of answers the question that was raised by the developer and in essence gives them an understanding why we have chosen, and we have chosen to compromise and allow them to have a building envelope, rather than prohibiting any development on that site. Thank you.

Chair Curtiss: Thank you, Vlad. Are we against any deadlines or anything if we delay the decision until next week? Do you remember are we at the 30 day or however many days?

Vlad Kryukov: I believe the deadline was this week, end of this week, however, Kristin Smith has requested formally an extension, so I don't think there would be any issue if we were to...

Chairman Jean Curtiss: No, I just wanted to know if we needed permission or needed a formal request.

Vlad Kryukov: We do have a formal request from Kristin, so I don't know if that's an issue.

Kristin Smith: You need one and I grant you one.

Chair Curtiss: Okay, so the developer's representative has requested that we delay a decision until next week to give them a little more time to address issues that were brought to them later. Do you have a problem with that?

Commissioner Anderson: No, I don't have a problem with that. I guess because of the critical concerns about wildlife use in this area, I guess I would like to have and see if we could get a representative from Fish, Wildlife, & Parks here to explain a little bit more of their concerns about this moving or this clustering of these houses in this one location. It seems like, and I haven't had a chance to review that, but the spacing of these houses seems to allow a continuous movement that's already been established by the pattern of houses to the north of this, so I'm not quite sure why clustering would be an advantage. I'd like some more information on that. I would hope that FWP would have somebody here so we can get their comments on it.

Tim Worley: For the record, Tim Worley with OPG. I believe Vickie Edwards and Mike Thompson both from FWP are aware of this consideration today, they just couldn't make it. They're doing fieldwork, but we'll do our best to see if we can get them here next time around.

Chair Curtiss: Okay. So if there's no other comment--Mr. Dickey. I need you to talk to the mic just because it doesn't pick up.

Dan Dickey: We keep coming back to--we're coming back to there appears to be flow and so forth. We have to remember that when we put that cadastral grid up, we're seeing boundaries and boundaries and boundaries, but within that cadastral grid, in that whole span, we have no fences. What's happening here is we're going to be having an increased density of fences around this development. There's going to be perimeter fencing, even on the open space, no-build zone, there will be fencing so we're actually taking away from what we already have. That's the crucial factor right there is we don't have it now. Now with this development going in, we're talking about how do we cluster, what do we do here, but you're adding into the environment what we don't have already. That's what we need to look at is that what we really need is no fences period except for building envelopes and we have that through the corridor and Mackintosh Manor. Essentially we have our homes, there's no fences through the entire swathe except for my little residual amount that I couldn't take out because Bruce Maclay was

about ready to drive me over when I attempted to do it way back. We have that essence of building envelopes by volunteer. They're doing it right now, so now you're proposing something that's adding into the equation what we don't have. Thank you.

Chair Curtiss: I think just to clarify the thing that they're adding into the equation is, even though they'd be part of your homeowner's association, they're going to additional things to their homeowner's association such as wildlife friendly fencing. Just because you already have--you can put up a fence too, so can all your neighbors. So let's not say they're going to put up fences, they'll have the ability, just like you do.

Dan Dickey: That's correct, that's correct. Thank you.

Chair Curtiss: Any other comments? Then we will delay decision until next week, we'll add this to our agenda next week. We have another one on next week too.

Other Business

There being no further business to come before the Board, the Commissioners were in recess at 2:35 p.m.