

The Board of County Commissioners approved the format of their meeting minutes as summary minutes. While in the process of moving to audio/summary minutes with time stamps, the Commissioners' Office will provide summary minutes and a Windows Media Player audio file online. **The time stamps noted on the document will not work.** However, the time stamps can serve as an approximate counter for the Windows Media Player file.



**PUBLIC MEETING**  
**MISSOULA BOARD OF COUNTY COMMISSIONERS**

**WEDNESDAY, OCTOBER 6, 2010 – 1:30 P.M.**

**ROOM 201 – COURTHOUSE ANNEX**

**MINUTES**



**1. CALL TO ORDER**

[1:31:08 PM](#) Chair Michele Landquist called the meeting to order at 1:30 p.m.

Commissioners Present: Chair Michele Landquist and Commissioner Jean Curtiss. Absent: Commissioner Bill Carey.

Staff Present: Assistant Chief Deputy Clerk & Recorder Kim Cox, Special Projects Barbara Martens, Deputy County Attorney James McCubbin, Office of Planning & Grants Planner Janet Rhoades, Office of Planning & Grants Planner Jamie Erbacher (arrived at 3:21 p.m.), and Public Works Examining Land Surveyor Steve Smith.

**2. [1:31:23 PM](#) PLEDGE OF ALLEGIANCE**

**3. [1:31:46 PM](#) PUBLIC COMMENT**

[1:32:03 PM](#) Peggie Morrison

**4. ROUTINE ADMINISTRATIVE ACTIONS AND PUBLIC ANNOUNCEMENTS**

a. Weekly Claims List - \$855,096.80

[1:33:12 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners approve the weekly claims list in the amount of \$855,096.80. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

b. [1:33:37 PM](#) Public Announcements

**5. PROCLAMATION**

a. Relationship Violence Awareness Month

[1:33:51 PM](#) Chair Michele Landquist opened the hearing.

[1:34:03 PM](#) Commissioner Jean Curtiss read the [proclamation](#).

**6. RECONSIDERATION**

a. Massey Boundary Line Relocation ([staff report](#), [original staff report](#) from [August 18, 2010](#); [additional information](#) from August 18, 2010)

[1:35:37 PM](#) Chair Michele Landquist opened the hearing.

[1:36:04 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners reconsider their decision from August 18, 2010. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

[1:36:46 PM](#) Commissioner Jean Curtiss comment

[1:38:26 PM](#) Public Comment

[1:38:38 PM](#) Kurt Luebke, DJ&A

[1:39:26 PM](#) Chair Michele Landquist comment  
[1:40:42 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners approve the boundary relocation exemption that has been requested by the Massey family. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0. [1:40:56 PM](#) Commissioner Jean Curtiss request to send out letter quickly and note on the letter that it supersedes previous letter.  
[1:41:23 PM](#) Kurt Luebke comment

## 7. CONSIDERATION

- a. Diamond Bar 3 Subdivision (3 lots on 80 acres) - West Carlton Creek Road, Florence ([verbatim transcription](#))

[1:42:15 PM](#) Chair Michele Landquist opened the hearing.  
[1:46:01 PM](#) Janet Rhoades presented the [staff report](#), [PowerPoint](#), [additional information](#).  
[1:57:45 PM](#) Developer's representative presentation, John Kellogg ([additional information](#))  
[2:19:26 PM](#) Staff comment, James McCubbin  
[2:21:47 PM](#) Public Comment  
[2:22:11 PM](#) Questions from Commission  
[2:26:50 PM](#) John Kellogg  
[2:27:17 PM](#) Questions from Commission  
[2:28:32 PM](#) Public Comment  
[2:28:56 PM](#) Correction of Page 8, Staff Report, #28, 3.3.1  
[2:29:40 PM](#) Commissioner and staff comments, questions, and language review  
[2:50:01 PM](#) Public Comment  
[2:50:12 PM](#) Staff comment, James McCubbin  
[2:50:23 PM](#) John Kellogg comment  
[2:51:15 PM](#) Executive Session  
[2:51:26 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners approve the request to vary from Subdivision Regulations Article 3.3.1(3)(b), which prohibits lots from being divided by a road, to permit Heart Bench Lane to divide Lots 2 & 3. Chair Michele Landquist seconded the motion. [2:52:32 PM](#) **Motion tabled.**  
  
[2:52:37 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners **delete** Condition #6 that refers to the moving of the boundaries of Lots 2 and 3 [The eastern boundaries of Lots 2 and 3 and the western boundary of Lot 1 shall be relocated to the eastern edge of the Heart Bench Lane private access easement, subject to review and approval by OPG prior to final plat approval.] Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.  
  
[2:53:04 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners amend Finding #25. [2:53:19 PM](#) Staff comment, James McCubbin. **Motion died for lack of a second.**  
  
[2:53:50 PM](#) Discussion of process  
  
[2:56:07 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners **adopt** the variance request #1 finding as presented by PCI in John Kellogg's memo [dated October 6, 2010], "This property is unique in that it includes an important agricultural asset, the ranch, along with a large riparian area that the owners wish to protect and maintain." Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

[2:56:47 PM](#) #C, Variance Findings for Request #1, [2:57:16 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners **combine** the recommendations from PCI and Janet's memo. [2:57:26 PM](#) Discussion. [2:58:02 PM](#) Commissioner Jean Curtiss clarified her motion, to combine both PCI's recommendation [from John Kellogg's memo dated October 6, 2010] and Janet's recommendation for c [as presented in her memo dated October 6, 2010]. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

[2:58:36 PM](#) #E, Commissioner Jean Curtiss made a motion that the Board of County Commissioners **add** the underlined statement in Janet's memo [dated October 6, 2010] to say, "Heart Bench Lane is a private road." Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

[2:59:12 PM](#) #f, [2:59:20 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners, on #F [Variance findings, #1F], **combine** Janet's underlined section [from her memo dated October 6, 2010] with PCI's [language from John Kellogg's memo dated October 6, 2010]. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

[2:59:52 PM](#) Variance motion, [2:59:58 PM](#) Commissioner Jean Curtiss pulled the variance motion tabled above off the table. [3:00:07 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners **approve** the variance request #1 [to vary from Subdivision Regulations Article 3.3.1(3)(b), which prohibits lots from being divided by a road, to permit Heart Bench Lane to divide Lots 2 & 3]. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

[3:00:20 PM](#) Finding #25 for subdivision, page 2 of Janet Rhoades memo [dated October 6, 2010]. [3:00:42 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners **amend the finding** on page 2 of Janet's memo dated today to strike #25 and 26 as in our packet and replace it with the new #25 shown in underline today [to read "The Commissioners approved the variance due to the fact that the road is in the location of an existing private access easement, thereby consolidating road construction in the area of the prior access route, and because decreasing the size of the lots would create a hardship."] [3:01:05 PM](#) Janet Rhoades comment. [3:01:25 PM](#) Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

[3:01:50 PM](#) Fencing, Janet's memo dated October 6, 2010, bottom of page 3, Condition #14, [3:02:03 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners **change** the language [in Condition #14] in the third line of the underlined area to strike buffer two times in that sentence and to strike the next sentence, so the underlined portion would read, "Any livestock such as horses, cows, etc. kept on the subject property (even for short periods of time) shall be rotated out of the Riparian Area to minimize impact to the Riparian....," added vegetation, and then strike that next sentence. Then at the end of the underlined area, #14, add [sentence not finished]. [3:02:59 PM](#) Discussion. [The motion would read, "The Riparian Management Plan shall be amended as follows, subject to review and approval by OPG prior to final plat approval: The statement 'Livestock grazing and watering within the Riparian Buffer Area will be permitted' in Section E shall be replaced with the following language: Any livestock such as horses, cows, etc. kept on the subject property (even for short time periods) shall be rotated out of the Riparian Area to minimize impact to the Riparian vegetation. Provide off-stream watering facilities (e.g., water troughs) for livestock and avoid livestock overuse by managing grazing intensity, varying the season and length of use, and providing non-use periods to allow plant regrowth." [3:03:11 PM](#) Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

3:03:16 PM End of underlined section; add language from Sara Richey's memo. 3:03:26 PM Staff comment, Janet Rhoades. 3:03:56 PM Commissioner Jean Curtiss made a motion that the Board of County Commissioners **add** a new condition and let staff number it appropriately to add to the management plan references for the conservation districts riparian mini-grant program and the cost-share program as referred to in Sara Richey's memo [dated September 28, 2010]. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

3:04:31 PM Commissioner Jean Curtiss made a motion that the Board of County Commissioners **amend** the Findings 9 and 10 [under Riparian Area Fencing, page 4 of Janet Rhoades memo dated October 6, 2010] as presented by Janet, only striking the word buffer in #10 [to read, 9. "A 25'-wide riparian buffer area would provide adequate protection of the riparian area if it is managed carefully as a buffer, with minimal disturbance and removal of natural vegetation, avoiding mowing, and careful management of livestock grazing. 10. In order to provide adequate protection of the riparian area while also preserving the adjacent agricultural use, a condition of approval requires language to be added to the covenants regarding management of livestock grazing within the Riparian Area, but does not require the 25'-wide riparian area to be expanded."] Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

3:05:08 PM Staff comments, Janet Rhoades and James McCubbin

3:06:04 PM Commissioner Jean Curtiss made a motion that the Board of County Commissioners **delete** Conditions #15 and 16 as presented in our packet and replace it with a new #16, as reflected in Janet's memo [dated October 6, 2010, to read, "The Development Covenants shall be amended to include the following language in the Building Permit Requirements section of the development covenants, subject to review and approval by OPG prior to final plat approval: "Accessory Structures & Lawns. In order to contain development and facilitate wildlife movement throughout the subdivision, no accessory structures or lawns are permitted to be more than 150' from the residence on each lot."]. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

3:06:48 PM Commissioner Jean Curtiss made a motion that the Board of County Commissioners **amend** the new Condition #16 to insert in the very last sentence, "outer foundation," so it would read.... 3:06:58 PM Discussion. 3:07:08 PM James McCubbin, language recommendation. [Condition 16, last sentence to read, "In order to contain development and facilitate wildlife movement throughout the subdivision, no accessory structures or lawns are permitted to be more than 150' from the residence on each lot, as measured from the outer foundation of the residence."] 3:07:19 PM Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

3:07:29 PM Commissioner Jean Curtiss made a motion that the Board of County Commissioners **give** staff the leeway to add references as needed throughout. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

3:07:51 PM #17, as presented on PCI's memo [dated October 6, 2010]. 3:08:11 PM Commissioner Jean Curtiss made a motion that the Board of County Commissioners **accept** it as written, except for inserting in the very first sentence "new" between all and fencing, [to read, "17. All new fencing (except for privacy fencing near the house and kennel areas for dogs), including lot boundary and livestock fencing, shall be wildlife friendly fencing, constructed in accordance with the FWP specifications included in 'A Landowner's Guide to Wildlife Friendly Fences.' The existing fencing along the portion of the west boundary of Lot 1 that runs through the Riparian Area that does not meet these FWP specifications shall be

modified so that does meet the FWP specifications for wildlife friendly fencing, subject to review and approval by OPG and FWP prior to final plat approval. 3:08:21 PM Discussion. 3:09:17 PM Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

3:09:21 PM Page 14 of staff report, #24. 3:09:48 PM Janet Rhoades, recommended language.

3:10:34 PM Commissioner Jean Curtiss made a motion that the Board of County Commissioners **amend** Finding of Fact #24, "Staff observed fences not constructed to Fish, Wildlife, & Parks wildlife friendly fencing specifications on the property while conducting a site visit in April 2009. A condition of approval requires existing fencing along the portion of the west boundary of Lot 1 that runs through the riparian area that does not meet Fish, Wildlife, & Parks wildlife friendly fencing specifications to be replaced with fencing that does. New fencing shall be required to meet Fish, Wildlife, & Parks wildlife friendly fencing specifications." Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

3:10:44 PM Discussion

3:11:50 PM Commissioner Jean Curtiss made a motion that the Board of County Commissioners **conditionally approve** the request to vary from Subdivision Regulations Article 3.2.3(3), which requires installation of a pedestrian walkway on West Carlton Creek Road adjacent to the subdivision to not require a pedestrian walkway on West Carlton Creek Road, subject to a condition requiring dedication of an additional 10' of public right-of-way easement. 3:12:15 PM Discussion. 3:12:47 PM Commissioner Jean Curtiss **amended** her motion to include the approval of the findings and conclusions in the staff report. 3:12:52 PM Discussion, based on the findings of fact in the staff report. 3:13:01 PM Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

3:13:11 PM Commissioner Jean Curtiss made a motion that the Board of County Commissioners **approve** the request to vary from Subdivision Regulations Article 3.2.3(3), which requires installation of a pedestrian walkway on one side of the onsite road (Heart Bench Lane) to not require a pedestrian walkway to be constructed on Heart Bench Lane, based on findings of fact in the staff report. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

3:13:38 PM Commissioner Jean Curtiss made a motion that the Board of County Commissioners **conditionally approve** the request to vary from Subdivision Regulations Article 3.2.2.2(3), which requires the maximum grade of all access roads to be limited to 10% to permit West Carlton Creek Road to remain at its existing grade, subject to a condition requiring dedication of an additional 10 feet of public right-of-way easement, based on the findings of fact in the staff report. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

3:14:35 PM Commissioner Jean Curtiss made a motion that the Board of County Commissioners **approve** the Diamond Bar 3 Subdivision based on the findings of fact in the staff report, public comment and subject to the recommended conditions as amended in the staff report. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

## 8. HEARINGS

- a. Petition to Abandon a Portion of O'Brien Creek Road  
[3:15:25 PM](#) Chair Michele Landquist opened the hearing.  
[3:15:57 PM](#) Kim Cox verified the petition.  
[3:16:25 PM](#) Steve Smith presented the [staff report](#).  
[3:17:19 PM](#) Public Comment  
[3:17:30 PM](#) Staff comment, James McCubbin  
[3:18:21 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners adopt the comments that are reflected in the record into this hearing and note that the Commissioners have those comments in the record]. Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.  
Public Comment  
[3:18:30 PM](#) Paul Matter, Lolo National Forest  
[3:23:24 PM](#) Bonnie Pickering  
[3:25:02 PM](#) Discussion  
[3:28:29 PM](#) Set site visit, Commissioner Jean Curtiss, October 7 at 8:30 a.m. with Steve Niday  
[3:33:10 PM](#) Hearing continued to October 13, 2010.
- b. Missoula Development Park Special Zoning District Amendment (Minor Revisions) - West of Reserve along Expressway  
[3:34:04 PM](#) Chair Michele Landquist opened the hearing.  
[3:34:49 PM](#) Janet Rhoades presented the [staff report](#), [PowerPoint](#).  
[3:41:02 PM](#) Questions from Commission  
[3:45:57 PM](#) Continuation of staff report with Janet Rhoades  
[3:48:02 PM](#) Correction on staff report, page 5  
[3:48:40 PM](#) Continuation of staff report with Janet Rhoades  
[3:51:32 PM](#) Staff comment, Barb Martens  
[3:52:17 PM](#) Barb Martens, comment from Eve Abramson  
[3:52:47 PM](#) Public Comment  
[3:53:16 PM](#) Staff comment, Janet Rhoades, recommended motion  
[3:53:40 PM](#) Questions from Commission  
[3:59:25 PM](#) Public Comment  
[3:59:33 PM](#) Executive Session  
[3:59:43 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners amend the Missoula Development Park Special Zoning District as shown in Attachment C be approved, subject to the conditions of approval in the Planning Board Recommendations in Attachment #1 of the Request for Commission Action and the OPG memo dated 10-01-10. [4:00:03 PM](#) Discussion. **Motion died for lack of a second.**  
  
[4:00:31 PM](#) Commissioner Jean Curtiss made a motion that the Board of County Commissioners approve the request to amend the Missoula Development Park Special Zoning District as shown in Attachment C be approved, subject to the conditions of approval in the Planning Board Recommendations and the OPG memo dated 10-06-10. [4:00:49 PM](#) Staff comment, Janet Rhoades, clarification of motion. [4:01:05 PM](#) Chair Michele Landquist seconded the motion. The motion carried on a vote of 2-0.

## 9. [4:01:11 PM](#) OTHER BUSINESS

## 10. [4:01:15 PM](#) RECESS

There being no further business to come before the Board, the meeting was recessed at 4:01 p.m.