

## NOTICE OF PUBLIC MEETING

December 16, 2003

Commissioner Murray: Good Morning, my name is Mike Murray, to my left is Carole Byrnes our executive secretary, to my right is Commissioner Tinsley, to his right is Sharon Haugen our Chief of Planning, to her right is Lindsay Morgan a new planner started with us yesterday and walking in late but looking dapper as ever is Ron Alles our Chief Administrative Officer. Commissioner Varone is on leave out of state and will not be with us this morning.

Others attending all or part of the meeting: Joe F. Jurenka, Joe D. Jurenka, Danielle Jurenka, Judy Jurenka, Julie Shewman, Dennis Lay, Angela Feser-Tappe, Brian Holling, Jason Mohr, and Will Selser.

### Pledge of Allegiance.

### Nomination to the National Register of Historic Places.

The Commissioners will consider waiving the 30-day comment period and approve the Montana Veterans and Pioneers Memorial Building (Montana Historical Society Museum) nomination to the National Register of Historic Place.

Sharon Haugen: Mr. Murray, Mr. Tinsley, Mr. Putz is out of town today so I'll be taking care of this. As you are aware the Montana Veterans and Pioneers Memorial Building has been nominated and the State has asked for comments. Normally the local jurisdiction gets 60 days and can take up to 60 days to review the request and make recommendation. It's staffs' recommendation that we waive that comment period and do recommend that the Veterans and Pioneers Memorial Building be nominated and that we send a letter to that effect to the State Historic Preservation Office. I'd be happy to answer any questions that I can.

Commissioner Murray: Commissioner Tinsley?

Commissioner Tinsley: Mr. Chairman. Sharon, this is the building with the steers head in front of it on 6<sup>th</sup> and Roberts, is that correct?

Sharon Haugen: Yes that would be correct.

Commissioner Tinsley: Okay. Mr. Chairman I make a motion that we approve the action request to the Commission, there's a waiver of a 30-day comment period and approve the Montana Veterans and Pioneers Memorial Building to be nominated to the National Register of Historic places and support that nomination and authorize the chair to sign.

Commissioner Murray: Second. All those in favor of the motion, signify by saying 'I'

Commissioners: 'I'

Commissioner Murray: Ms. Haugen, now that we've taken the action, why did you want to waive public comment on this.

Sharon Haugen: Mr. Murray, Mr. Tinsley, we our staff recommended we waive comment because we felt that we didn't need the thirty days and you actually have to take action to waive the thirty days. We are familiar with the property and we think this is an appropriate designation for the property and the Historic Preservation Commission for the City and the County also recommended that the County make this recommendation.

Commissioner Murray: Thank you.

**Proposed Major Subdivision, Preliminary Plat to be Known as Emerald Ridge Major.** (Applicants, Joe Jurenka & Floyd Hoff) (Planner, Michael McHugh)

The Commissioners will consider creating 67 lots on approximately 90 acres, each for one single-family dwelling. The subject property is located in the SW1/4 of Section 32, T11N, R2W; generally located 1 mile north of York Road and east of and adjacent to Lake Helena Drive.

Commissioner Murray: Mr. Jurenka, if I could get you to come to the microphone please. Have you received a copy of the County's work on your property?

Joe Jurenka: Yes

Commissioner Murray: and you've had an opportunity to review it?

Joe Jurenka: Yes

Commissioner Murray: and are prepared to go forward this morning with the public hearing?

Joe Jurenka: Yes we are

Commissioner Murray: Thank you. We'll start with Mr. McHugh and then give you your opportunity.

Joe Jurenka: Okay, thanks.

Commissioner Murray: Good Morning Michael.

Michael McHugh: Good Morning. The proposal before us this morning is to create a 67 lot major subdivision that's located on approximately 90 acres. It's located East of Lake Helena Drive and approximately one-mile North of York Road. Other subdivisions in the area include the Fox Ridge golf course, Fox View Estates, and then there's been some minor subdivisions located to the North of the subject property. The applicants are proposing that each of the residences that would be developed within the subdivision would be served by an individual well, individual onsite wastewater treatment system. Access to the lots would be via internal roads that would be paved and the applicants are also proposing to dedicate approximately a 6.3-acre parcel for parkland dedication. The applicants are also proposing to develop this park with restroom facilities, a jogging path, picnic tables and other amenities. As far as the adjacent land uses, I alluded to before our Fox View Major Subdivision is located directly East and adjacent to Lake Helena Drive. This is a single-family major subdivision that was approved approximately five years ago, the lot sizes average approximately 1.75 acres in size. Located to the Southwest is a new storage facility, then located to the East and Northeast of the property is the Helena Valley Landfill. Property to the South is basically agricultural field that has been utilized in the past for dry land farming. As far as zoning, there's no zoning on this property as far as covenants, there's currently no covenants affecting the use of the property the applicants are proposing an extensive way of covenants that would establish a home owners association and some architectural controls. A copy of his draft covenants is attached to the staff report. As far as public notice, we did place signs on the property, notified immediately adjacent property owners via certified mail and placed ads in the Independent Record. Prior to the planning board hearing, we did receive several phone calls, the concerns that were expressed dealt mainly with the proposed size of the lots and also the impact of traffic on Lake Helena Drive and the surrounding area. As far as the review criteria there were four mapping units that were identified on the subject property, none of the mapping units were identified or classified as being prime or of statewide importance. Back in 1998 when the subdivision of this parcel began, a lease of evaluation was conducted on the original 238 parcels, or 238 acres. The site received a lease of evaluation score of 152.40 out of 300 points and based on that scoring system which sites or areas that have scores in excess of 220 are deserve or preservation for agricultural uses. Other agricultural uses in this area is quite limited, they limit it to livestock grazing and limited dry land grain production. As far as impacts on local services, the applicants are proposing to utilize individual wastewater treatment systems and individual wells. They for the EA they did conduct a preliminary nitrate analysis, the analysis indicated that at the end of the mixing zones at build up that nitrate

concentrations would range between 1.2 and 2.3 milligrams per liter. As far as the wells, or the water supply in this area, individual wells would be utilized this is an area that has an alluding that overlays a fractured bedrock aquifer. The availability of water, there is quite a bit, but well depths range from 140 to 300 feet and yields range from 4 gallons per minute to 25 gallons per minute. As far as solid waste as I mentioned before, the Lewis and Clark County Landfill is located directly to the East and Northeast of the subject property. At this time the landfill is operating at approximately forty thousand tons per year there could be some adverse impacts to the subdivision associated with noise, lights, burning trash and also animals would utilize the landfill site as a foraging site. The staff has recommended that all future property owners be notified in writing via the covenants. One of the comments that we did receive from the landfill manager was instead of accepting the 6.3 acre parkland dedication that a cash payment should be made in lieu of the parkland dedication and that these monies should be utilized to build a fence to separate the subdivision and the landfill. But due to restrictions and State statutes the monies could only be utilized for the development and acquisition of parkland and parkland improvements and so the managers recommendation cannot be utilized. As far as utilities, all necessary utilities are located adjacent to the subdivision. As far as access, the access is via Lake Helena Drive through a network or internal roads. There's one access located in the central park of subdivision that will go around and connect to an existing road network in that area. Existing roads are have a driving surface of approximately 30 to 32 feet, County Subdivision Regulations only require a driving surface of 24 feet. Due to the number of trips generated by this proposal and the existing number of trips, the applicant would be required to hard surface all of the internal road network. They will be able to do this in phases; it appears on preliminary estimates that this would be done during phase two of the proposed development and proposed subdivision. The staff does have several concerns about the existing layout of the property. The central cul-de-sac here terminates at the South end of lot 11. The property located to the North of the subject property has potential for additional development and speaking to the property owners' consultant Mr. Lay earlier this week he's indicated that the applicant is willing to put a restriction on that property that there could be no further subdivision of that property however, due to the fact that this property is not within the subdivision it's been reviewed the County has no jurisdiction on enforcing that covenant so some mechanism would need to be developed that would give the County some authority or something like a agricultural easement could be placed on a portion of the property to prohibit future development. It's staffs original recommendation to accommodate future subdivision development on this property was to extend this terminus to the Northern boundary of the subject property and this way allow additional access to the parkland and also allow for an integrated road network if the property to the North was ever subdivided. The other concerns staff had was access to properties located to the South, there's approximately 80 acres that's unsubdivided currently in agricultural production. Staff is recommending that at least one of the more South streets be extended have an easement all the way to the Southern boundary of the property. The problem, the most logical place for the extension is located between lots 57 and 67 however, any one of these streets could be extended to the South and provide for an integrated road network in the future. As far as impacts on school, it's estimated that between 67 and 100 additional students would be generated by this proposal. Warren school which is the attendance area for this subdivision is currently experiencing capacity constraints in several grades so students may have to be bussed, there aren't capacity constraints at the middle school and high school level, all the students would require bussing at the general taxpayers expense due to the distance from the subdivision. As far as fire protection, the property is located within the Lakeside Fire Service Area. The nearest fire hall is approximately 6 miles away. As far as water supply, currently the closest water supply is located to the Southwest within the Fox Ridge Subdivision, currently the capacity there is 250 gallons per minute. The applicants and the fire district have met and have come to an agreement that improvements will be installed in phases on the site with a final build out capacity of the system to be 750 gallons per minute for two hours and have a 30,000 gallon underground storage facility. There's several potential sites located within the subdivision, one of them is within the park area in this Southwestern portion at the entrance of this cul-de-sac. The applicants and the fire district will negotiate the placement of the other well site within the subdivision. As far as impacts on natural environment, there's no surface water in the area. There's no contamination from nitrate in the area. There are several areas on the property that do have infestation of knapp weed and the property would be required to have a five year weed management plan at development. These are just some pictures of the site here. One other concerns in this area is that the site does have several locations that have large metal storage tanks located on them and there's also several piles of tires located throughout the site, these would need to be removed. They do present attractive nuisance for small children and some measures should be taken to prevent access to these sites. As far as impacts on

wildlife, there's numerous (unknown) species that utilize the property for grazing and also for travel corridors from the dry lying areas to the East and the North to the wet areas located down around Lake Helena. So there is potential fragmentation of wildlife habitat in this area. As far as radon potential, in the EIS it was prepared for the Lewis and Clark County landfill back in 1994, it was identified that this area had been investigated as a possible radon or uranium source because of the geology in the area. Due to the low concentrations of radioactive materials in this area the site was never mined. However, recently since the fall of this year, two radon samples have been collected. One was for an indoor radon in an existing home there, the existing EPA level for radon is 4 pica per liter, the 72 hour test indoor radon test indicated a level of 13.2 pica per liter and that individual homeowner was required to retrofit with radon abatement technology prior to selling that home. Groundwater sample was collected in October of this year and the sample indicated that the groundwater had in excess of 4,550 pica per liter. Currently there's no EPA or DEQ regulations governing radon in individual wells or for public water supply. However, back in the 1990's the EPA did start to promenade a rule and establish drinking water standards, those drinking water standards if they had been adopted would have been at 15 pica per liter, the reason that the EPA rule was not adopted was because of the cost of implementing that rule. Staff has recommended that there should be notification, written notification both for indoor radon, radon in sewers and also radon in the ground water. Staff also recommended that all homes be constructed with radon abatement technology for indoor radon and staff did recommend that radon abatement techniques be incorporated in any water system. At the planning board hearing there was a long discussion about the cost of implementing radon abatement in water supply systems and it was the planning boards recommendation to delete the staff recommendation for radon abatement within the water supply system. As far as seismic activity, there's several seismic fault lines located near the property, there's one Spokane bench fault that's located approximately  $\frac{1}{4}$  mile to the West of the subject property and staff does recommend notification of seismic activity and that construction techniques be utilized to reduce the risk of injury and damage. As far as cultural resources, none were found in the area and there's a very low probability that any would be found. As far as parkland the applicants are proposing to dedicate approximately 6.35 acre area located to the North and to the East of the subject property. The property does have several gullies or coulees that run through it, but most of the site is flat enough that recreational facilities could be developed on the site. The applicants consultant has prepared a preliminary site plan for this in the preliminary plan they've indicated they'd like to do a parking area there that would take approximately  $\frac{3}{4}$  acre of the park area for a turnaround and a parking area. I don't know if you can read this, but there showing a hundred foot radius in the County Subdivision Regulations only require a fifty foot radius for cul-de-sacs in this area. Also, if you look at the original site plan the cul-de-sac was originally split between the lots that were South of the proposed parkland and into the park, the park board did meet on October 3<sup>rd</sup> of this year, their recommendation was to relocate the turn around area and also reduce the radius of that cul-de-sac in that area. As I mentioned before the proposed well for fire protection would be located in this area here, by relocating this cul-de-sac to the South it would give approximate access to that well area and other recommendations by the park board was that the applicants be required to establish and RID for the maintenance of this park and I believe that that's been noticed and transmittal went out from the planning board. They want to establish some type of standard of care and standard of development for this park and if there is not a mechanism to maintain this park the park board would recommend that a cash payment in lieu of be accepted. It should be noted for the record that the actual requirement for parkland dedication is only 4.5 acres; this park would be 6.35 acres in size. As far as compliance with the (unknown) of the subject property is located within an area designated as rural it does recognize the use of individual onsite wastewater treatment systems and wells as a mechanism to provide service to these areas. As far as traffic, it's estimated that between 536 and 670 additional trips per day would be generated by this proposal. Currently along Lake Helena Drive there's in excess of 2000 trips per day and the additional trip generation would increase the average daily trips by approximately 24%. It's estimated that most of the traffic, approximately 80% would be utilizing Lake Helena Drive to the South and than most of it would be heading to East and South on Lake Helena Drive and on York Road. As far as supplies for Subdivision Regulations the site plan and the proposal does comply with all the submittal and design criteria of the Subdivision Regulations. Based on those findings, staff did recommend to the planning board approval of the subdivision with eighteen conditions. The Planning Board Hearing was conducted on Tuesday November 18<sup>th</sup>, at that time planning board did have some questions about extension of the proposed roadway network. Again, they did have some questions about the requirement for notification and the installation of abatement technology within the water supply system and the cost of doing that. Other things that they were concerned about were the size compared to the existing development

in that area. Staff did point out that while these are marginally smaller than Fox View Estates, they're well within the range there. At that time the applicant and their consultants did get up and speak, the applicants were in compliance with most of the suggested recommendations however, they did have some concerns about several of the notification and abatement technology requirements and condition number 15. They did submit some suggested language changes; those are attached to transmittal memo. After a fairly long discussion on radon, public hearing was held, most of the people again were not opposed to the subdivision or the property, however they were concerned about the size of the proposed parcels and others were concerned about the cost of implementing abatement technology in the water supply. The board did make a motion to approve the subdivision and then they did amend several of the staffs recommended conditions. These amendments were for condition number eight, which dealt with the extension of the road network, which would also require the extension of the road to the South. The other amendments were 15A, 15B and 15C, the planning board did accept the applicants' consultants' language for notification and it did require installation of abatement technology for indoor radon, however, they deleted the requirement for the water supplies having abatement technology. There was further discussion, there was some discussion about definitions and (unknown) dealing with seismic zone. The applicants consultant indicated that seismic zone three was no longer acceptable that a category 'D' designation should be inserted into the language there, however, staff has contacted Montana Department of Commerce Building Code Division, City of Helena Building Division and Disaster Services Coordinator and the US Geological Service. Basically if it's a seismic zone three it's a geological term where the deed to the (unknown) is a building engineering architectural (unknown) so it's up to the Commission as far as the language that they want to include in the notification language. Attached to the transmittal memo are all the handouts that were provided by the applicants' consultants and based on that the planning board did recommend approval with the amendments of the proposed subdivision of four to one. Are there any questions?

Commissioner Murray: Commissioner Tinsley?

Commissioner Tinsley: Mr. Chairman, I have a couple of questions here. How would we go about, because in my opinion that's the worlds largest cul-de-sac in that parkland I think and my guess is it's probably just an error on the part of the person who prepared it because of the County requirements are only fifty feet, I don't know what the reason is, but how do we go about formally reducing and relocating that without messing up their plans?

Michael McHugh: Basically, the radius was enlarged based on some discussion with the fire district, I've had subsequent conversation with the fire district and they say they could utilize the normal fifty foot radius cul-de-sac in that area. As far as relocating it, you can place a condition of approval on their relocating the cul-de-sac back to the original location, if you can see it on this overhead where half the cul-de-sac is located within the parkland dedication and the rest of it is located within the adjacent lots.

Commissioner Tinsley: Mr. Chairman, Mr. McHugh. Regarding the proposal by the applicant to retain the land north of the property in an ag easement or whatever but keep it from being subdivided, how do we go about doing that? You indicated that because this action is a separate action, the land in question is not included in this, it's not enforceable, how can we make it enforceable?

Michael McHugh: We had discussions with the Deputy County Attorney yesterday and the only mechanism he identified was that some type easement be placed on it that did not allow. If there is a covenant placed on the property prohibiting future division, there's normally also some stipulations that you can modify or revoke covenants and again since the County is not, cannot be a party to that covenant, future property owners, I mean we're not you know assuming that the current property owner would retain that but if the property was ever transferred, this area has seen quite a bit of subdivisions, the subdivision have created lots that range from one-acre lots to two and a half, five-acre lots so it's quite possible that this property could be divided in the future.

Commissioner Tinsley: Mr. Chairman, if I may continue. This is a question that I had once before in this general area, I recall as a matter of fact if you pulled up the original map that you started with, the original plat that showed the general location, no even farther back, there you go. I could of swore about a year ago we did one called the Emerald Ridge Loop and I thought it was right in the middle of where we are talking about now, but

apparently it's not can you point where that was.

Michael McHugh: There's been several subdivisions, this property here has recently been divided into two and a half acre lots

Commissioner Tinsley: That's the one I was thinking about, okay.

Michael McHugh: Yeah.

Commissioner Tinsley: Alright. I believe I asked this question once before but I don't recall what the answer was and this is something that I would like to have before we do the final, take the final action on this. What precludes us as a County from implementing a waiver of right to protest, the expansion of the landfill as we would for a RID or as we would for a sewer district, or whatever. Why can't we do that for the expansion of landfills as long as long as we're talking about expansion on County owned land?

Michael McHugh: If you look at recommended condition of approval number 15F, there's a notification of the operation of Lewis and Clark County Landfill to the East of the subject property. Future expansion of said landfill and there might be noise, lighting, odor, debris and burning associated with the operation.

Commissioner Tinsley: Mr. McHugh, Mr. Chairman. That's just a notification, I want to know why, if we can't, why can't, or if we can, why can't we put a waiver of right to protest like we would for a RID or future

Michael McHugh: When we establish an RID, you're required to have a certain percentage of people voting in favor of it. The landfill can be expanded you know according to the permits issued by DEQ. There is a master plan that has been established, it's published, it's out there, showing the expansion of it so people that purchase property in this area should recognize that the landfill will expand in the future. But again, a waiver of right to protest is (unknown) right to vote in the affirmative, and since there's no vote associated with the expansion of the landfill, unless there's some type of indebtedness that would be incurred, I don't know maybe Mr. Alles has a better.

Commissioner Tinsley: I understand what you just said, that does make sense in that sense.

Sharon Haugen: Mr. Murray, Mr. Tinsley. We have discussed this matter with the Deputy County Attorney. Since the extension of the landfill is separate act of the Board of County Commissioners not involved in the subdivision process, we can't mix the two things. That was the advice of the Deputy County Attorney and just as a point of clarification to make sure the Commission is sure, Deputy County Attorney said we cannot place any easements on any property that aren't considered part of the subdivision under consideration.

Commissioner Tinsley: I just have one more question Mr. Chairman. Looking at the West side, go to this map, looking at the West side of those four lots there, that does not, I mean I'm assuming you would have got this, but those are not considered double fronted because we have the cul-de-sac on one side and then we have Lake Helena on the other?

Michael McHugh: No, it's based on the, those are not double fronted lots and one of the conditions of approval is that there is no direct access to Lake Helena Drive.

Commissioner Murray: Further questions? As one of the conditions, can we require the applicant to fence off or put up a visual barrier between the landfill and the proposed subdivision?

Michael McHugh: You can require screening requirements as long as it's associated with public health and safety issues.

Commissioner Murray: Thank you. Further questions?

Commissioner Tinsley: Mike as far as, or Mr. Chairman, Mr. McHugh, as far as the removal of the storage tanks and the tires and any other attractive nuisances, could that be handled in a condition of approval, I'm assuming

it would go under 15?

Michael McHugh: What you could do is require immediate removal or you could require that the applicant install adequate fencing around those sites that would not provide access by children. You know for this property to develop, I mean they're going to have to be removed, I mean their not going to be building a high end home next to these tanks and everything.

Commissioner Tinsley: Mr. Chairman, Mr. McHugh, would you be so kind as to prepare a condition of approval for removal for the Board before we take final action?

Michael McHugh: Certainly

Commissioner Tinsley: Thank you.

Commissioner Murray: Mr. McHugh, one last thing. What is the statutory deadline of this proposal?

Michael McHugh: The original statutory deadline was on November 28<sup>th</sup>, but the applicant did request and extension to provide additional information, so we're no longer dealing with the

Commissioner Murray: So there is no end date?

Michael McHugh: No

Commissioner Murray: Thank you.

Sharon Haugen: Mr. Chairman, Commissioner Tinsley, we cannot have a date so I think we extended it for thirty days, so if the original was November 28<sup>th</sup>, then it would be, what would thirty days from November 28<sup>th</sup> would be, December, around December 28<sup>th</sup> or 27<sup>th</sup> give or take a day. Unless the applicants would be willing to extend it further.

Commissioner Murray: Mr. Alles.

Ron Alles: Mr. Chairman, Commissioners. I'd like Mr. McHugh to point out that on that larger map, the area map, could you point out the access to, point out where the landfill actually is, which is the County landfill property and than is there access to that southern portion of the County's property there?

Michael McHugh: The landfill is located within this area here. As far as the access, the landfill manager is here and he can address the access.

Ron Alles: I know we have the North access but when you look at the southern portion of that, I don't believe there's any access and I would think forward looking we may want access to that lower portion, just thought for the Commissioners.

Commissioner Murray: Thank you. Mr. Jurenka, now is your opportunity to comment on the staffs suggestions or

Joe Jurenka: Mr. Chairman. Thank you Michael. I'd like to introduce myself first. I'm Joe Jurenka and my mailing address is 3225 Harness Loop here in Helena. I'd like to introduce the rest of our group. My wife Judy, my son Joe Jr. and his wife Danielle, and we all live in Helena here. Scott and Sue Stave are my brother-in-law and sister-in-law and they are also part of the real group that's making application. Our purpose this morning of course is to seek approval of the Emerald Ridge Major Subdivision. Our goal all along has been to put together a quality high-end subdivision, we wanted to do things up front, we wanted to do things right again from the beginning we relied on reputable sources. Morrison-Maerle Inc has been hired to do the surveying and engineering work and we're very proud of that relationship. Angela Fesser-Tappe is here and she's the landscape designer and she can visit with you about some of your thoughts and our thoughts on the six plus acre County park that we are excited about as part of our subdivision. We've also relied on information from

the Department of Natural Resources and Conservation service, specifically we asked them for advice and services to wildlife friendly type bushes, trees and shrubs to put on the boundary between us and the County landfill and they have done that and we feel real good about the varieties that they've suggested that we use. That, those trees and when they grow will provide a boundary and provide a haven for the various wildlife that use the area. I'd like to also mention that when we first started this project we felt that it is important to communicate with our possible neighbors in the future, so we wrote letters to the people that live up in that area and told them what our thoughts were and what our ideas were for Emerald Ridge and we asked them to attend a public meeting at the Fox Ridge Golf Course and many of them did. We went over our ideas and our proposals and then we asked for their input and they gave it to us and we feel real good about doing that up front. Another thought that I had before I turn this over to Dennis Lay from Morrison-Maerle is that we, when we worked with Floyd Hoff on the purchasing the property, one of the thoughts that we had and things that Floyd has agreed to do is to remove all the culverts and all of those kind of things that Michael referred to so that's part of our agreement with him, all that has to be removed before we proceed. So, with that, I'll turn it over to Dennis Lay from Morrison-Maerle.

Dennis Lay: Commissioner Tinsley, Commissioner Murray and staff we appreciate the opportunity to address you this morning. Staff has been very cooperative with us and we have discussed a lot of these proposals back and forth and we appreciate their help. As the conditions are outlined and modified with the planning board recommendations, we don't have any problems with most of them, they seem very reasonable. The one that seems to be an issue here that we are concerned with is condition number 8 that the proposed cul-de-sac at Ruby Court be extended to the North. I don't know if we have properly addressed this, we have tried to and if I may come forward and present you some material here. These are covenants that (steps away from microphone) we have placed on the land. These are covenants which we have placed on this land to the North, number one there states no further subdivision will be allowed and number five states only one residence will be allowed on the property and number six that these covenants will be binding on all heirs, successors and assigns and then we have on the plat outlined the area so we would request that the requirement to extend Ruby Court be eliminated. We don't feel that it's necessary and we are, the client is willing to, the developer is willing to amend this if we need to to your satisfaction so that you can concur with us that there will be no further subdivision there. Please excuse my voice this morning, I have got a bad cold. Number twelve, I think really don't need to address this much, the agreement has been made with the fire department and I think that all of those kinds of things have been handled. The only question, the main question we have is on item number 15M which is concerned with the dedication of parkland. It states that the dedication parkland improvement shall be maintained and replaced by the Emerald Ridge Homeowners Association. This is of concern to the developers, but they're certainly willing to work with you on that. Generally speaking, I don't think that the homeowners are required to maintain land that is developed as parkland once it's, because it is dedicated to the County and so that is a concern but again, you have a developer here that's flexible and willing to work with you in that regard. Unless you have any questions of me at this time, I will turn the time over to Julie Shewman.

Commissioner Murray: Questions of Mr. Lay? Mr. Lay we're going to take a 5-minute break. I do have the flu like you do. Excuse us. So if we can take a 5-minute break, we'll reconvene at five to ten.

Commissioner Murray: Julie, I had a thought if I could get you to continue for a second. The County doesn't necessarily accept parkland, hopefully you're aware of that, but many of the majors that we have now retain the ownership of parkland and form an RID to provide for ongoing maintenance of that parkland. Would that be agreeable in this case or is that something you folks have thought of?

Dennis Lay: Yeah, Mr. McHugh informed me of that during the break and the client would be willing to sign a waiver of protest against an RID if and RID were to be developed for the parkland use.

Commissioner Murray: With your agreement than, I think I'd ask Mr. McHugh to develop, since he's developing one other proposed condition, to develop a waiver of right to protest parkland RID and we'll get that to you prior to rendering a final decision so that you folks have an opportunity to see it also.

Dennis Lay: I think that would be acceptable.

Commissioner Murray: Thanks.

Dennis Lay: I think that's all I have, I think Julie Shewman, engineer from Morrison-Maerle would like to speak to us for just a moment.

Commissioner Murray: Thanks. Welcome Ms. Shewman.

Julie Shewman: Good Morning. I just wanted to touch a little on the radon issue, I don't know if there's any questions right off the top but I'd like to maybe talk about the radon just for a few minutes. The reason this came up in the planning board, if you'll look on your report, items 15A through D dealt with radon both in the soils and in the water and that issue had come up and to date these type of restrictive radon covenants have not been placed before on a subdivision within Lewis and Clark County. The issue of radon is fairly new and it is one that the County is going to wrestle with not just with this subdivision but I think you're going to be seeing that more and more and as a result I think a brief discussion on radon might be helpful. I'd just like to draw your attention at the back of Mr. McHugh's report starting, there's a map of the United States and I don't know if the folks out here have that, but I didn't bring my handouts this time, I just wanted to touch on some highlights here and I just point you to that just as a starting point. There was, as Mr. McHugh stated, some radon testing that's been done out in the area in August of this year a home was for sale out in the area and the indoor air level was 13.2 pica per liter, that was a concern they were asked to retrofit with an abatement system in order to extract the air radon and that remove that from the home before sale of the home. Further more a test well for non-degradation was drilled out on the Emerald Ridge property and a water sample from that test well yielded a radon level of 4,550 pica per liter and I'd like to discuss that just a little bit. As you are aware, radon is a gas, it comes from a natural breakdown of uranium in the soil, it's not an issue that's limited to Emerald Ridge and that's why brought this map, this is off the United States EPA website just to show that there are, it's broken down by counties and radon potential, it deals with indoor air levels of radon. Zone 1 is the darkest zone there, those are counties which are predicted to have an average indoor radon of higher than 4 pica per liter, Zone 2 is the next lighter shade, Zone 2 counties are predicted to have an average indoor radon level of between 2 and 4 pica per liter, and than Zone 3 the lightest their predicted to have 2 pica per liter or less indoor air radon. However, it's important to know that this map is a generalization, those low areas may also have high radon levels by the same token, areas that are in Zone 1 may have pockets that you have indoor air that's less than 4 pica per liter. As a baseline, the national outdoor level of radon is estimated to be 0.4 pica per liter, the national indoor level averages 1.3 pica per liter, so those give you some baselines to go with. The second hand out there is just something you can take a look at, this is also off the EPA website, it gives you some radon risks if you're a non-smoker, for instance 4 pica per liter out of a thousand people approximately two people could get lung cancer and that's approximately equal to the risk of drowning so that just gives you an example. The EPA recommends that if you have a indoor air level, if you go home and test your radon in your home if you have a level above 4 pica per liter, they recommend that you do fix your home using radon retrofitting techniques in order to address the radon problem in your home. So that just gives you some baseline information on radon as an issue. Radon can be, radon exposure can be obtained through two main sources. The first being the air you breathe and the second being the water you drink. Breathing radon is the primary public health risk and it contributes to approximately 20,000 lung cancer deaths per year in the United States. Most of radon that's in indoor air in a home comes from the soil underneath your home, as uranium breaks down the radon gas seeps up into the home and is trapped. Radon therefore can build up to high levels in the air within a home. However, radon can also enter your home through drinking water if you're water is from a ground water source as will be out at Emerald Ridge however only one to two percent of radon in the air comes from radon in the drinking water. As some radon is transferred from the water to the air as you shower and you cook and you do other uses with the water for indoor purposes that radon is then available to be breathed in. Both the US EPA and the National Academy of Sciences estimate that 1/10,000 of the radon in water contributes to indoor air radon therefore in the case sample from Emerald Ridge it will be estimated that approximately 0.45 pica per liter are radon in the indoor air would be contributed from that ground water and even smaller risk from radon in the drinking water comes from ingesting the radon, this presents a small risk for stomach cancer, just as some statistics from the National Academy of Science reports to the EPA estimates that radon in drinking water causes approximately 168 deaths per year, 150 of those are from lung cancer, 18 from stomach cancer and again that compares to

20,000 lung cancer deaths from radon in the air. Currently regarding Federal Regulations, there's no Federal Regulation for radon in indoor air. The EPA recommends as I said that you do take action to reduce radon in your home if the air level is above 4 pica per liter. In most homes, radon levels can be reduced to 2 pica per liter. New homes should all be built if they're in a high radon level area, they should be built radon resistant. It's much better to build, during the construction process to build in radon resistant technologies rather than try to retrofit a home later. Similarly there's no Federal or State water standard for radon. I'd like to clarify a little bit of confusion, there is a Montana Numeric Water Quality Standard presented in WQB7(?), the radon 222 standard is 15 pica per liter based on an EPA Health Advisory. This standard is an ambient water quality standard. These are limits that water can be damaged to due to manmade activities. These are not drinking water standards. For example, at the smoke detector it was discharging water with radon and it entered the surface water subsequently it raising the level of radon in that surface water above 15 pica per liter, DEQ would get involved and restrict discharges from further impairing the water, that's where that 15 pica per liter limit comes from Montana. In the case of a naturally occurring contaminant if the radon is naturally occurring in surface water than DEQ does not have any way to regulate that however, DEQ might suggest some precautions for those people using the water. As an example, well water in Three Forks is high in arsenic and that comes from Yellowstone Park, there's nothing that DEQ can do about that, but they do recommend that if the people don't want to use the water that they filter their water by drinking water. As already indicated, there is no drinking water standard for radon. The EPA has proposed a rule for radon for community water supply system with radon in the water but the EPA does not regulate private wells at any time and right now there is no drinking water standard for radon for community supplies either. The proposed radon rule, just for your information, the proposed radon rule right now for EPA requires a community water system to either treat to less than 300 pica per liter or to develop what's called a local multi-media mitigation plan an MMM plan and to address, excuse me, to treat to below 4000 pica per liter. MDEQ would likely go to the same regulatory levels as EPA if the rule is eventually promulgated. The question comes up thought, why such a difference between allowable levels? Both the EPA and the MDEQ recognize that the greatest radon risk is in the air. Most of the radon that you breathe comes from soil under the house; the flexibility in the proposed rule allows states and community water systems to focus on the greatest problem by encouraging the public to fix radon in the air and to build homes that keep radon from entering. I guess that covers the radon, as just a background of the radon issue and kind of the discussion we had at the planning board hearing. I don't know if there's any questions. We did discuss several of the items 15A through D, talked a little bit about the wording, we suggested some wording that made things maybe a little bit clearer and also recommended eliminating the requirement that the homeowners must put a radon abatement system on their water system and the planning board did agree to that, so that kind of gets you to where we're at today on the radon issue. Is there anything that I can, any questions that I can answer?

Commissioner Murray: The one thing that we didn't enter into the record is your educational background or your ability to speak with expertise about radon.

Julie Shewman: I'm sorry. I have a Bachelors degree from Carroll College and a Masters degree in Civil Engineering from Montana State University. I've been working, I'm a registered professional engineer in Montana and Oregon, I've been working for Morrison-Maerle for the past 8½ years. Does that answer your question?

Commissioner Murray: Somewhat, it doesn't explain your expertise in radon.

Julie Shewman: Most of the information, I've been doing some research on the radon issue, there's a lot of information both on the United States EPA website had several discussions with personnel over at MDEQ both in the numerical water quality standards, Mike Supply at Water Quality Standards, also with (unknown) and drinking water we've discussed the EPA regulations and proposals. There's also reports available from the National Academy of Sciences dealing with the radon issue and they work in an advisory capacity to the EPA on this issue. I would certainly recommend as this issue comes up, US EPA website has a lot of information and a lot of good links for information not just for radon in drinking water, but also radon in the air.

Commissioner Murray: Thank you and if your report is typed, we'd like to enter it into the record if you'll leave a copy with Mrs. Byrnes please.

Julie Shewman: Certainly

Commissioner Murray: Commissioner Tinsley did you have

Commissioner Tinsley: I think it's actually attached to the transmittal document.

Julie Shewman: There is an outline of the report, I'd be happy to leave you the full text or I can fax over, I marked up copy but I can fax you a clean copy if you'd prefer that it's whatever's best for you.

Commissioner Murray: Since you presented it, it would be nice to enter it into the record and I think it would be satisfactory to have a fax copy.

Commissioner Tinsley: I'm just astounded that given what we know, people pay good money to go sit in the bottom of mines and breathe in

Julie Shewman: I think there are some reported health benefits from radon, as you mentioned the Widow Maker Mine I believe down by basin, it's not something I would probably choose to do, but. Thank you very much.

Commissioner Murray: Thank you for your testimony. Mr. Lay, you're next.

Dennis Lay: I don't have anything further at this time.

Commissioner Murray: Is there anything the applicant wishes to present further?

Dennis Lay: Yes, excuse me. The landscape architect is here and she will discuss the parkland a little bit.

Commissioner Murray: Thank you.

Angela Feser-Tappe: My name is Angela Feser-Tappe. I'm an official landscape designer. I have a Masters in Landscape Architecture and currently working on my professional license. As you can see up on the overhead it's a conceptual park design that I've worked with the developers and have been in discussion with Michael McHugh about components of the park. We've included elements to design this as a community park for use as besides residents of the development itself, there are recreational amenities for all age groups from a tot lot playground all the way up to a walking path there that's a half mile in length. Picnic areas, a lawn activity area and then also the structures of the well house and restrooms and water available for use. We've been discussing the cul-de-sac size and I understand that we will reduce it down to 50 foot radius and but still include some parking for off site access. We'd also like to include that we'll have some ADA accessible picnic areas and restrooms and parking on site as well. So are there any further questions about the park design, the park board has reviewed this as well.

Commissioner Murray: Ms. Tappe, I was curious in the application it says your providing public restrooms on your parkland and that's at the developers expense and then to be maintained by the homeowners association, is that as proposed?

Angela Feser-Tappe: Correct, yeah that's included in the amenities of the park, so restrooms for use of the park patrons, maintenance also to be included in the maintenance plan of the entire park site.

Commissioner Murray: Thank you. Commissioner Tinsley. It's a well-designed park. Thank you.

Angela Feser-Tappe: Thank you

Commissioner Murray: Does the applicant wish to present any additional testimony at this time? And you will have the right to close.

Joe Jurenka: No.

Commissioner Murray: Thank you. This is a public hearing, anyone wishing to speak in favor of and opposition to or speak in general on the proposed application, now is your opportunity. For the second. For the third time. This closes the public hearing on the proposed application. It's your opportunity to close now Joe. One of the things I want to establish in closing is the review period end date, as you folks understand it so that we're in compliance with the thirty-day extension.

Dennis Lay: Commissioners, if I can just make a brief statement in closing. We've worked very closely with Jurenka's and the Staves in developing this. We feel that it will fit well into the area. There's the Fox Ridge Golf Course and that, the phases of that East Bench subdivision. There's also I believe it's called Fox View just across the road there. This will fit in with those; this would be a high-end development with (end of tape) ... and Thank you for your time.

Commissioner Murray: Thank you Mr. Lay. We still need to establish a you're understanding of the review period end date. Hopefully it's December 31<sup>st</sup>.

Dennis Lay: The developers would be acceptable to extending the extension to December 31<sup>st</sup>.

Commissioner Murray: and Mr. Lay we're not asking you to extend it. In the extension that you had with the planning board we need to establish a date, it's not on our forms. Thirty days was the date that it was extended from November 28<sup>th</sup> and I want to be sure that we're all in agreement on what your understanding of that extension of that deadline date is so that we can render a final decision. Mr. McHugh.

Michael McHugh: Mr. Murray, the request for extension was to extend the review from the original assigned public hearing for the planning board to the next planning board which is essentially thirty days. So if it was the 28<sup>th</sup> of November, it should be approximately the 28<sup>th</sup> of this month. If so Mr. Lays requesting an extension to the 31<sup>st</sup>.

Commissioner Murray: Thank you. Commissioner Tinsley?

Commissioner Tinsley: Mr. Chairman, given the fact the Mr. Lay graciously offered to extend it to December 31<sup>st</sup>, I'd like to make a motion that we render a final decision on the Emerald Ridge Major proposed subdivision preliminary plat on Tuesday, make the final decision on Tuesday December 30<sup>th</sup> in this room at this time.

Commissioner Murray: and accept the applicants' request to extend the deadline to the 31<sup>st</sup>.

Commissioner Tinsley: Yes Sir.

Commissioner Murray: Second. Ms. Byrnes, are we good with the motion? Thank you. All in favor of the motion, signify by saying 'I'

Commissioners: 'I'

Commissioner Murray: Motion carries. The Commission will render a final decision on December 30<sup>th</sup>, in this room at 9:00 am in the morning. You're welcome to be present for that decision, it's not necessary that you be here, but you're certainly welcome to be present and I would ask that the decision be the first item on the agenda after the pledge and the formality stuff so that we don't hold the applicants up. If this item could be second on the agenda, we have one other final decision that we're rendering on the 30<sup>th</sup> also. So this will be probably the third item on the agenda after the pledge.

Commissioner Murray: If anyone present this morning participating in County Government receives a ticket on your car, if you'll bring it to our office we'll see, we'll take care of the ticket so you're not responsible. The fact that you're participating in County Government we don't want you to experience or have to pay for a ticket being present. Thank you for coming this morning.

### Montana Arts Council Cultural Trust Grant Application

Sharon Haugen: Mr. Murray, Mr. Tinsley. What you have before you is a grant agreement from Montana Arts Council on behalf of the Myrna Loy Center. Under this program the County always has to be a sponsoring agent for these grants for the Arts Council. There's no expenses occurred by the County and no processing of money we just sign off on the grant and once they've completed their activities we review their records and confirm that they indeed have complied with all the grant requirements and that's something that this department does on a routine basis. Having given that brief introduction, staff has reviewed the contract and recommends that the County sign the agreement for the Myrna Loy for the Arts Council Grant in the amount of \$16,000. I'd be happy to answer any questions that the Commission may have.

Commissioner Murray: Questions of staff? Is there a motion?

Commissioner Tinsley: As a budding ballet star I whole heartedly support the cultural arts in this community and am glad to make a motion to approve Montana Arts Council Cultural Trust Agreement to support the Myrna Loy and authorize the chair to sign.

Commissioner Murray: Second. And since you brought it up, I'm curious where you find a size 15 ballet slippers.

Commissioner Tinsley: We had our full dress rehearsal last night and I get to where my size 15 wing tips.

Commissioner Murray: Okay. All in favor of the motion to approve the Arts Council Grant Application and authorize the chair to sign, signify by saying 'I'

Commissioners: 'I'

Commissioner Murray: Motion carries. Mr. Alles

Ron Alles: Mr. Chairman, not included in your packet but associated with the Myrna Loy, Mr. Noonan the director of the Myrna Loy Center asked that the County sign a letter of support and it's on behalf of the Myrna Loy to the Lewis and Clark Bicentennial Grant panel. The purpose of that letter and that grant is to assist the Myrna Loy in sponsoring certain events for the Lewis and Clark Bicentennial put on performances and he just wants our letter of support and although you don't have a copy of the letter which I have right here, I would ask that you at least consider signing this letter.

Commissioner Murray: Without objection we'll enter into the record that it's our intent to sign the letter. We also need to enter in that we signed a letter yesterday in support of an application for historical signs at the Deerborn rest stops I believe.

### ~~Lewis and Clark County Detention Center Consultant Contract.~~ (Ron Alles)

~~The Commissioners will consider the contract with Helena Physicians' Clinic to commence January 1, 2004.~~

### Public comments on matters within the Commission's jurisdiction.

Commissioner Murray: Jason, do you have business that you wish to put on the public record for this meeting since you are the public representative. He is shaking his head No and with that we are adjourned.

### Adjourn.