

PUBLIC MEETING MINUTES

December 30, 2003

Chair Varone called the meeting to order at 9:00 a.m. Commissioner Murray and Commissioner Tinsley were in attendance. Others attending all or a portion of the meeting were Carole Byrnes, Ron Alles, Michael McHugh, Mike Noble, Kay Hansen, Rick Richetti, Dennis Lay and Kory Hofland.

Pledge of Allegiance. Everyone recited the pledge.

Chair Varone: Normally we have public comments at the end of our meetings, but I'm going to move the public comment area up into the first item of attention. Does anyone in the audience have any public comment they would like to make before we continue with the rest of our meeting? If so, for the record would you state your name and address,

Kay Hansen: My name is Kay Hansen. I live at 322 Howie, which is about two blocks behind this building up the street. A newspaper article, the December 18th issue, peaked my curiosity about this concern about radon in your new subdivision that's being considered for approval. I first started to look into radon a couple of years ago I was doing some research on a national nuclear power plant in Idaho. I ran into an article on radon and it peaked my curiosity and I have been looking into it ever since and I am astounded at the lack of consistent and misleading information that has come out about radon testing and people's health since that time. It is one of the most successful fear campaigns I have ever seen. Fear is what drives it. The EPA started with projecting fear rising the numbers of people that would have lung cancer if exposed to certain levels of radon and at that time in the 70's it was based on studies of minors. Now, if you were a heavy smoker - very important - a miner in an underground uranium mine with probably inadequate safety features, including ventilation for a long time, numbers of years, you would very likely be getting radon or be a candidate for it in the radon in that mine after long exposure would cause lung cancer. But they are basing all of their fear tactics on the miners for a long time. There were many contradictions in the studies that were being done. I thought why are scientists so eager to tell the frightening things about radon that are being proposed. It is because it gets better headlines if it says, "Radon causes cancer". Tomatoes cause cancer. You're sure it's going to be in the newspaper, your work will be recognized and your ability to get grants to do more work of that type is almost assured. There is not much news in somebody saying, "radon doesn't cause lung cancer" in these levels. Now according to the newspaper and I wasn't at this meeting, the testing that's been done out in this area where the subdivision is under consideration showed levels three times the recommended level by EPA. If that's the case it is 12. Twelve is nothing. Four piko curies is what the EPA would like you to get your radon down to. The outdoor air is little less than four piko curies most of the time. I've decided that I would test my own basement. I live in an apartment house built in the 1880's, brick with stone foundations. It's an ideal property to test for radon and I got three different types of canisters. This one is from the city. It is free. They have eight left. They've had them for a long time. The test is free. The test in my basement was 8.5 piko curies, which is double. The next one that I used is from the American Lung Association. It cost \$14. I had two of these. I put one on my first level, where I live. That test was .4. And I put one in the basement. That test was 15.1. Now I had to pay \$14 to get these two. That's \$28. The third one I got and I don't have a sample here was from the Energy Laboratories in Helena, is located out in the Valley (**T. Smith starts transcribing**) and that one was free, but I had to promise to bring it back to be tested in their laboratory and it was \$20. The test said my basement, where I never go, very seldom and no one lives down there and there's no stuff down there that people are coming in and out to get, the basement measured 16.7. I understand that you're considering a subdivision mandate to require radon gas prevention or abatement features and potentially in 67 homes, is that right? You're considering that?

Chair Varone: Mam, that will be one of the decisions that we'll make today.

Kay Hanson: Okay. I just said considering. Early indications, okay, the radon health mines around the globe are registering thousands of pico curies for the people that come to use their facilities. For instance, Montana is the only State in the union where private business is allowed to charge people admission to come in and sit in elevated levels of radon. The radon mines in Basin and Boulder are the ones I'm talking about, they're unique. The free enterprise mine in Boulder keeps their radon level for their clients at 1700 pico curies, if it gets

higher than that they vent it. In Japan at this time they're building a hospital that will use radon gas to help improve many of the health problems of their patients. In the last legislative session, House Bill 351 was introduced by representative Michael Lang, he's a republican, he's a realtor from Billings, he asked his fellow legislatures to allow the level of radon in a home that's acceptable to be raised from 4 pico curies to 8. His closing argument urging passage of this bill was and I paraphrase this, please vote in favor of this bill so more young couples can afford to buy homes. In other words, his issue in this case was clearly economic, it was not health. I urge you not to establish a precedent today if you are considering that in the issue of radon abatement construction. There's still too many unanswered and incomplete questions on the issue. I think you may be doing this thinking you're doing the new homeowners a favor. Low levels of radon consistently most of the studies believe and the EPA are not harmful. There's a lot of money to be made in radon. The people that will directly benefit other than the homeowners are contractors, home builders, people who inspect for radon, radon inspectors, the labs that do the tests and you're going to be bombarded with radon information next month because it's National Radon Month and this particular subject has spawned a lot of business in America. For instance, this is available from the City, again fear, 'is your family at risk', the poor guy that reads that thinks oh my God, what should I do, maybe they are. Or a woman. I used to have one that on the back it said, read the radon test on my back so everybody in the elevator could get a dose of scary information such as does radon cause cancer? And the answer is yes. Refrigerator stickers, this one glows in the dark, I love it, it makes me think of radon. This is my favorite, it says test your home today, the five top reasons to test for radon. The first top reason is you're selling a house. The second top reason is you're buying a house. The third is you have children. The fourth is it's one carcinogen and it's easy to avoid and the five lung cancer is something you can do without. Here's another one, National Radon Test. You're going to hear about these next month. There are videos that you can view on the radon scare. There are tons of written material on what to do, how to build things into your home so you can vent it. I just talked to a woman who bought a home in Clancy, the man she bought the home from was a do-it-yourselfer, he put in a fan, he put in a pipe on the floor and he vented it out the side of the building so the pipe comes up right outside the window that's the head of her bed. That's a little alarming. Radon and the real estate professional and all the books and other pamphlets that say consumers guide, home buyers and sellers guide and so forth. The information is still coming out for instance, on December 22nd this year Forbes magazine carried an article by one of their staff writers and it was entitled 'Forbes a pinch of poison' I'd like to leave a copy of it with you if I may, you want it?

Chair Varone: Certainly. If you have just one copy give it to Carole and she'll make sure we get a copy. Thank you.

Kay Hanson: I'm almost done. In this article, Ms. Lambert, asks this question. Radiation is good for you? Some spas and a few scientists insist that in small doses it is. Okay. I want you to please reconsider any mandate, which would set a precedent for future subdivisions concerning the inclusion of radon abatement construction.

Chair Varone: Thank you Ms. Hanson. I believe Commissioner Murray has a question.

Kay Hanson: Yes.

Commissioner Murray: Ms. Hanson, are you coming before us this morning and saying there's no risk in radon?

Kay Hanson: No. Not at all.

Commissioner Murray: Because at the last meeting the information presented to us by Julie Shewman at Master Degree level engineer with Morrison-Maerle, reflects in 1999 the National Academy of Science identified 20,000 radon deaths in the United States that 11% of these deaths were due to stomach cancer caused by radon in the water. This Commission has long put warnings for radon levels on subdivisions we approve. Now what you read in the paper and what this Commission is proposing to do our not related Kay. Your response should be to the article in the newspaper. This Commission is not considering establishing a County wide standard. As a County we have radon risks. In many subdivisions we approve we notify the people that are building homes that there is a radon level and we do this based on the scientific information that we receive not articles in Forbes magazine.

Kay Hanson: May I respond?

Commissioner Murray: Please.

Kay Hanson: This number of how many people die of lung cancer from radon has been all over the map. It started out at 200,000; it was listed as the second cause of lung cancer in America. The jury is still out on this, you made another point and I've forgotten what it was.

Commissioner Murray: The two points I made was

Kay Hanson: Oh, I know what I

Commissioner Murray: The County has long put warnings of the radon levels in our County because we're a uranium rich County.

Kay Hanson: Yes. As far as radon causing cancer, in the studies that the EPA did early on, this has been going on for what thirty years, they used the information from miners and then they theoretically passed that on to the general population, they had not done a lot of studies on households and the whole United States. There has since been a study by Bernard, hold on I have Bernard right here somewhere, this is a new one, Bernard Cohen who is professor of physics and epidemiology at the University of Pittsburgh and he, they did 100,000 test across the Country on 1700 Counties across the Country and they learned to their great surprise that high radon concentrations were measurably reduced, no hold on a minute, lung cancer in high radon concentrations were measurably reduced, there's another scientist for you.

Commissioner Murray: Kay, what I quoted was not a government agency, not EPA but the National Academy of Science which is a private non-profit organization of scientists that are the ones, we were presented the information from on radon.

Kay Hanson: and I repeat my comment that scare and fear get more headlines than good news. Scientists get more grants.

Chair Varone: Kay, I appreciate your information. If you have anything else you'd like to leave with Carole or copies for us I'd appreciate it.

Kay Hanson: No, I don't. I appreciate the time. Thank you much for listening.

Chair Varone: Thank you Ms. Hanson

(T. Smith quit transcribing)

Proposed Minor Subdivision, Preliminary Plat to be Known as the Wes Johnson Tract 8 Minor. (Applicant, Rick & Sharon Richetti) (Planner, Michael McHugh) (cont. from 12/9/03)

Chair Varone: The applicants are Rick and Sharon Richetti. The Commissioners will consider creating three lots, each for a single-family dwelling. The proposed subdivision is located in the SE1/4 of Section 15, T11N, R3W; generally located west of and adjacent to Ferry Drive and south of and adjacent to the Helena Valley irrigation canal. Commissioners.

Commissioner Tinsley: Madam Chair, just for the record I want to state that I wasn't at the original meeting, but I do have a verbatim transcript which staff provided and I have read it and gone through the packet. I feel comfortable enough to be able to participate in this decision.

Commissioner Murray: Madam Chair, I would move approval of the proposed minor subdivision to be known as the Wes Johnson Tract 8 Minor Subdivision subject to 11 conditions as proposed by staff.

Commissioner Tinsley: Second.

Chair Varone: It has been moved and seconded, discussion. Commissioner, if you would consider adding

Commissioner Murray: Excuse me, Madam Chair - it is 12 conditions as proposed by staff.

Chair Varone: Thank you. If you would turn to page 9 on the information, condition of approval "8i" if we could add a condition that provides for prohibition of keeping of large livestock. I would appreciate that motion.

Commissioner Murray: Madam Chair, I would be more comfortable if you would limit the number of large livestock. On ten acres it may be appropriate to have one lama.

Chair Varone: I'm fine with that.

Commissioner Tinsley: Madam Chair, Commissioner Murray, given the fact that these are multiacreage parcels or lots, and from the discussion that occurred earlier this month, it appears Mr. Richetti does keep a couple of horses and he does it very responsibly. I don't have a problem with that on something like this. What I would suggest is that maybe we have staff contact the Department of Agriculture and find out what the limit or the minimum, I know there a animal unit per month per acre standard, but I don't know what that is. This is not a dense subdivision. I don't have a problem with the residence keeping a couple of horses as long as, as you stated in the record they don't allow them to graze down a bed of dirt.

Chair Varone: And I'm agreeable with a couple as well in this instance because they are ten acre lots. My concern is not for the people that are there now. My concern is for the people that may purchase the property or come after the Richetti's and trying to keep the neighborhood as prestene as we possibly can. There needs to be some language, I agree with Commissioner Murray that we can put a limitation on it, but I believe it still needs to be in here for the protection of the people in the future. So, Commissioner Murray, if you would make that modification and the motion, I would appreciate it.

Commissioner Murray: Madam Chair, I would move we add a condition "j" limiting it to two large animals. I believe Mr. Richetti said from time to time he has up to four animals on his lot or his property. The other concern I have with the motion I'm stumbling over is how the county would enforce it also.

Chair Varone: Commissioner, I've asked that question about a variety of things over the last three years and the Commission doesn't seem to be too concerned about enforcing it until we get a complaint and that's when we step in as long as we have the requirement there, then we have the authority that when a complaint is received it can be enforced. That seems reasonable to me.

Commissioner Murray: Fine then. Since we have a precedence of Mr. Richetti keeping four large animals, I move that we add a condition "j" limiting the livestock to four large animals.

Chair Varone: I don't have a problem with that either, because

Commissioner Tinsley: There is not a second yet, Madam Chair. Second.

Chair Varone: I have a question, discussion, it's moved and seconded. Is there any language that we could include in here that the current owner can keep up to four, but then once that owner leaves, it might be 50 years or whatever, that the prohibition then be two animals?

Ron Alles: Madam Chair, Commissioners, first of all, I don't believe we've ever put that type of a condition on here and I would need to seek legal counsel, but I don't think we can do that unless there is some historic or grandfather clause, but I don't know that that necessarily works.

Chair Varone: Okay, thank you and I want to be agreeable.

Mr. Richetti: I'm not positive, but I believe when you drill a domestic water well, its addressed in your water well of how much livestock you can water out of that domestic water well. I don't know if you are aware of that or not. In that, some people might water their stock out of irrigation, but it is addressed in your water rights on your domestic water wells of how many animals. What it is, I don't know of the top of my head, it's not a lot. It'll always be within keeping of what the area is. If that helps at all.

Chair Varone: It does, thank you. We appreciate it. If it's agreeable with the Commission and if Commissioner Tinsley would agree to the four animal limit, I would be agreeable to that, but I also would like staff to contact the Department of Agriculture and that we just adopt whatever the formula they've come up with.

Commissioner Tinsley: Madam Chair, Commissioner Murray, let me say this real quick, Michael. I seconded the motion, but I don't think this is very, I just don't think it is something we can hang our hats on. I don't know first of all to arbitrarily pick a number "four" based on the fact that the current owner has four horses and then designate it as large animals - I don't know what constitutes a large animal and we're not - I just don't think it's a very clear definition. I think Mr. Richetti pointed out that there are certain standards regarding domestic water wells and I know for a fact that DNRC/State Lands has operates on a animal unit per month per acre standard that is set down by, and I don't know if it's the State Ag Department or the USDA, but there are actual definable standards and I don't know how we can hang our hats on something as vague as four large animals. I just wanted to point that out.

Chair Varone: Thank you, Commissioner. Michael,

Michael McHugh: Commissioners, for the record when a water right is issued, water right is issued for domestic use irrigation and livestock watering. There is no set number of animals associated with that water right, they just receive "x" number of acre feet for irrigation and livestock watering. As far as Commissioner Tinsley's comments about DNRC's or Department of State Land's animal unit per acre - that is determined by the vegetation there - the productivity of the vegetation, it's just not an arbitrary number that is established statewide. It's based on the unique situation of the property. As mentioned in the staff report, this property is a highly productive grass hay, alfalfa area and it probably could support more animal units than say 100 acres in the North Hills. I would urge caution in trying to establish a number of animal units on these properties.

Chair Varone: Thank you for that information, Michael. I don't disagree with you. My concern is and has been for quite some time as we travel out in the valley especially as it becomes more and more populated that neighbors more and more often are coming against other land owners who don't frankly take care of their large animals and there seems to be our responsibility to come up with something. The time to do that is when there's a subdivision and just how do you do that so that so that is it fair for everyone I think is the question. I think we need to have some language in here that the Commission can agree on. Rather than to do nothing at all I think we need to have something in there that is fair. If four is fair, then I'm agreeable with that. If six is fair, I'm agreeable with that, but I think we need to come up something. I also think we need to address it in the future in our subdivision regulations as we move forward and I believe that staff already is. Commissioner Murray, Commissioner Tinsley, what is your recommendation?

Commissioner Tinsley: Madam Chair, as I said earlier, Commissioner Murray, I seconded the motion so we could get the discussion going, but I'm not going to support this vague number. I'm more comfortable in this particular case of, I'd rather put nothing on there than four large animals and then try to attempt to defend that in some kind of legal situation. I don't think we could. I don't disagree with you that we do need to address it in particular situations, this however is still a rural part of the Valley. We're talking about ten acre and almost ten acre lots in a highly productive, where the cropland is highly productive and its still a good area that can sustain a larger number of animals. I just don't feel comfortable attempting to do this band aide approach, so I'm not going to support this.

Chair Varone: Commissioner Tinsley, Commissioner Murray, what if we modify the language to simply say that the keeping of large livestock on an acre on this parcel must follow the established guidelines the Department of Agriculture set for what the soil can hold. I don't know how, do you see what I'm getting at?

Commissioner Tinsley: Madam Chair, Commissioner Murray, I do and I wouldn't have a problem with that at all. I think we need to be, here's a case where I think we do need to be a little bit vague, because I'm not sure exactly who has the standards, but if we just say any standards that are in place in the state, whatever those standards are, this property must... I don't have a problem with that at all.

Chair Varone: I think that keeps us safe from putting a number in, but is also then is incumbent upon the land owner then to get that information and keep stock accordingly.

Commissioner Murray: Madam Chair, Commissioner Tinsley, the problem in this unique case is Mr. Richetti and his testimony indicated he brought hay in. He's feeding his animals with hay purchased and brought in, so the animal grazing units doesn't apply in his case. Animal grazing units are established to predict what an acre can sustain as far as large animals and for a certain period of time so I think we're better off throwing the motion out and working on this in the future. Both of you seem agreeable with Mr. Richetti isn't going to abuse the large animal restrictions that nature is going to put on his property.

Chair Varone: Commissioner, I am withdrawing your motion.

Commissioner Murray: I made the motion at your request, Commissioner, so I can either withdraw it or vote against it. Either one works for me.

Chair Varone: As it states it's a prohibition of keeping of large livestock and I think I would be more comfortable if the motion were just withdrawn. Ron, Michael, could we ask that staff conduct a little investigation rather than waiting for the subdivision regulation, because that is going to be a process that is going to take into next year, to do some investigating for us and come up with some language that would legally work and so we can start addressing this issue.

Commissioner Murray: Madam Chair, I believe that within the last 18 months we had Mr. Hoffman do this research. I don't recall the research right off, but I know it is available through the County Extension.

Chair Varone: Michael,

Michael McHugh: Typically when there is a prohibition or a limitation on the number of animal units or things like that it's more typically handled through zoning regulations than it is subdivision regulations. Just to point that out for the record.

Chair Varone: Okay, I appreciate that.

Michael McHugh: And as noted in the staff report, this is in an area that there is a possibility of zoning. The draft intent statement was to preserve the agricultural nature and activities that are part of this area. Just for the record.

Chair Varone: Ron, since you're in this, could you work on that? It has been moved and seconded to approve the proposed minor subdivision preliminary plat to be known as the Wes Johnson Tract 8 Minor including staff recommendations and conditions of approval. All those in favor, signify by saying I.

All: I

Chair Varone: Motion carries. Mr. Richetti, I apologize for that long discussion, but if you will work with staff on whatever needs to be done to complete the process, I would appreciate it.

(T. Smith begins transcription)

Rick Richetti: Can I ask, at the last meeting we had a question on the fire, I thought that was part of the reason we backed it up, there was a question of the \$500 or \$200 per lot to the West Valley Fire Department.

Chair Varone: The question was the \$500 or the capability of installing a tank. It's my understanding that they have increased but we have the authority to decrease it from \$500 to a lower amount and Commissioners do you have any consideration for lowering that? So that's going to stay the same.

Rick Richetti: Okay, that was my question. Thank you.

Chair Varone: Thank you.

Proposed Major Subdivision, Preliminary Plat to be Known as Emerald Ridge Major. (Applicants, Joe Jurenka & Floyd Hoff) (Planner, Michael McHugh) (cont. from 12/16/03) 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.

Chair Varone: Commissioners, in addition to the presentation that was conducted on December 12th, I have a copy from Julie Shewman from Morrison-Maerle that was submitted. Commissioners, what is your pleasure?

Commissioner Tinsley: Madam Chair, I make a motion that we approve the proposed major subdivision preliminary plat to be known as Emerald Ridge Major subject to the eighteen conditions as indicated in the staff report and authorize the chair to sign.

Commissioner Murray: Second. Madam Chair, Commissioner Tinsley. I believe the eighteen conditions were proposed by the planning board.

Chair Varone: And as amended by the planning board.

Commissioner Tinsley: That's what I meant.

Chair Varone: and that's been seconded.

Commissioner Tinsley: Madam Chair.

Chair Varone: Commissioner.

Commissioner Tinsley: I'd like to make a motion that we, I'd like to amend the conditions of approval to add a condition, make sure I got this right, I'd like to amend condition 15N if it's appropriate, if it's deemed appropriate by staff and by you folks, to amend condition of approval number 15N to also add a sentence that is a waiver of right to protest a parkland RID in order to provide a sustainable source of money to keep the parkland up and the applicant did say at the last meeting that he would sign a waiver of right to protest for that parkland RID.

Chair Varone: Do I hear a second?

Commissioner Murray: Second, discussion. Madam Chair, it's my understanding that condition M is a covenant put on the property providing that homeowners, there will be an established homeowners association and that the homeowners association will tax themselves to provide for the maintenance and improvements of their parkland, so I think the motion we have before us may be moot, I'm trying to get McHugh's eye back there, Mr. McHugh, but I, we need some staff guidance I believe on this.

Michael McHugh: The proposed covenant as written it would be the responsibility of the homeowners association to set up and operate maintenance for the parkland dedication. If there was an RID established it would formalize it and the monies would be collected through the tax bill rather than the homeowners association trying to collect it. In the past there has been a waiver of the right to form an RID for the field stone subdivision that's located East of the interstate, there was a requirement, not just a waive of right, but

actually to go ahead and form the RID for park maintenance, so it's up to the Commissioners.

Chair Varone: Commissioner Tinsley?

Commissioner Tinsley: Madam Chair, Commissioner Murray, I think by adding that language we're not actually imposing an RID we're just requiring it, I think it is a good safety valve in the event that the first part of the condition isn't met, then it gives us the ability to start the process, to formalize it, so I don't know.

Chair Varone: I have a question and a remark after this. The County is in the process now of trying to sell it's small pieces of land that we have here or there that are basically weed patches, I don't say that, but they're not improved parklands and my concern here is that we have it as a requirement, what I'd rather see and I don't think we can do it so this is for comment only, what I would rather see is that when subdivisions are proposed that the plan would be to provide a certain amount of money and then their money can be put in a pot and (unknown) land purchased for a reasonable sized park that can be maintained for the whole County residency to use rather than a piece here and a piece there. We must have 500 pieces of land that are dedicated for parks. Commissioner Tinsley.

Commissioner Tinsley: Madam Chair, Commissioner Murray. This particular park is not going to be a weed patch though they've actually got a drawing and a plan to improve it themselves from the beginning and it's going to be a rather nice addition, they're actually incorporating it into their business model, business plan for selling the lots so it's a good selling point and it's going to be a good community park in a place that really needs a good community park.

Chair Varone: I understand that and that's why I was making it just as a generalized comment so I do know that.

Commissioner Tinsley: I see, okay. So it's been moved and seconded to add language to condition of approval 16N that includes a waiver of a right to protest an RID, all those in favor signify by saying 'I'

Commissioners: 'I'

Chair Varone: Motion carries.

Commissioner Tinsley: Madam Chair, Commissioner Murray. In our last discussion there was some discussion regarding the park and the cul-de-sac that gives access to the park and there was talk about reducing the cul-de-sac and relocating it from it's current proposed location which is wholly within the park and also it's double the size of the standard that the County now has, Madam Chair I'd like to make a motion that we reduce the size of the cul-de-sac to a 50-foot radius and relocated the park to it's original, or I'm sorry relocate the cul-de-sac to it's original location which basically straddles the border of the park and lots 4 and 5, basically put 50% of the cul-de-sac into the park and 50% into lot (tape ended)

(tape begins)

Michael McHugh: Mr. Lay has just pointed out to me that the fire department has requested 60-foot radius.

Commissioner Tinsley: Madam Chair, Commissioner Murray. I'm assuming that's okay with the applicant.

Chair Varone: Mr. Lay would you come forward and respond to the recommendation by Commissioner Tinsley since this is new information.

Dennis Lay: Commissioner Varone and Commissioner Murray and Tinsley. We have no problem with pulling it back to the lot line and splitting it 50% each way, the fire department has requested that it be a minimum of a 60% radius which is a little larger and that is okay with the applicant also.

Commissioner Murray: Madam Chair the motion maker wishes to change to 60 feet instead of 50 feet, I'm not disagreeable

Commissioner Tinsley: We don't even have to second it; I'll just do my own amendment to my own motion

Chair Varone: Thank you. All those in favor signify by saying 'I'

Commissioners: 'I'

Chair Varone: Motion carries.

Commissioner Tinsley: Madam Chair, Commissioner Murray. I just have one more that I wanted to bring up and I guess what I will do is toss it out in front of a motion and then if we don't need to do it, we don't need to do it. Perhaps Mr. Lay might want to comment on this one as well and I'm trying to figure out exactly where to put it but I'd like to make a motion that we add a condition of approval making it mandatory of the removal of storage tanks, the tires, and any other attractive nuisances that are currently on the property and it may have already been cleaned up by now to, I don't know. But if not I'd like to see if that's something that we need to add into the conditions.

Chair Varone: Mr. McHugh do you have any comments.

Michael McHugh: as pointed out at the last public hearing, as condition of sales contract, the original property owner is required to remove those, you can add that if you want to formalize it but it's already in their contract.

Commissioner Tinsley: I'll withdraw my motion Madam Chair.

Chair Varone: Thank you. It's been moved and seconded to approve the proposed major subdivision preliminary plat to be known as Emerald Ridge Major including the I believe nineteen conditions since we reduced the size of the radius and as it can be included in another one as amended by

Commissioner Tinsley: Madam Chair before we go through this I think we need to talk about one more thing and it just struck me and that's regarding the North-South access that was required in the conditions of approval. In the current conditions of approval it requires that the cul-de-sac extends all the way to the Northern boundary but it looks like we've gotten information that shows that no further subdivision of tract G2A, which is the northern boundary is going to occur, so I don't know that we need to necessarily include that, that part of the condition that requires it all the way to the northern boundary and perhaps Mr. McHugh can talk to us about that.

Chair Varone: What condition is it?

Michael McHugh: Condition number eight.

Chair Varone: okay. Mr. McHugh.

Michael McHugh: The condition requires an extension of the access easements to the north end and the southern boundary. The applicant and Mr. Lay presented a covenant that's been placed on the property to the North that would preclude any further subdivision. The County is not a party to those covenants so we cannot enforce that. But if you were going to amend the condition, you would need to remove extend the proposed cul-de-sac to the northern boundary of proposed lot eleven and you would just delete that section. They would still be required to extend at least one of the North-South access roads to the South to provide access to the undeveloped property to the South.

Chair Varone: So how would it read again?

Michael McHugh: The applicant shall extend one of the North-South right a ways to the southern boundary of the property extending the right a way, the extended right a way shall be constructed to County Road

Standards prior to the final platting.

Chair Varone: Okay, so we take out the northern boundary of lot eleven.

Michael McHugh: You would remove proposed cul-de-sac Ruby Court to northern boundary of proposed lot eleven, that would be deleted.

Chair Varone: Commissioners?

Commissioner Murray: I think it makes good sense to leave condition eight in

Commissioner Tinsley: In its entirety?

Commissioner Murray: In its entirety.

Chair Varone: I'm comfortable with staff recommendation.

Commissioner Tinsley: Okay, it's fine with me.

Chair Varone: Are you fine with staff recommendation, is that a motion?

Commissioner Tinsley: I want to be clear on this. We're talking about the current recommendation from that's in our plan book packet or are you talking about what Michael just said?

Chair Varone: I'm talking about what Michael just said.

Commissioner Tinsley: Michael, I'd like to get a better comfort level from you, what is your recommendation, I know your recommendation for if we were to decide to amend it, what is your recommendation regarding amending it.

Michael McHugh: Staff would recommend removal of the first part of that referring to Ruby Court and just having the access to the South.

Commissioner Tinsley: So moved

Chair Varone: Do I hear a second Commissioner Murray? I'll second it. All those in favor

Commissioner Murray: Hold it, hold it, hold it.

Chair Varone: Discussion

Commissioner Murray: In your discussion, I want to point out to you that this also was a concern of the applicant that they presented in testimony and again you may request Mr. Lay that if Mr. Lay wants to present his concerns that he presented in testimony on this condition.

Chair Varone: Mr. Lay. As recommended what we're considering now is the condition would read 'The applicant shall extend one of the North-South right a ways to the southern property boundary and extended right a ways should be constructed to County Road Standards prior to final platting' and what would be removed would be the language that includes proposed cul-de-sac Ruby Court to the northern boundary of the proposed lot.

Dennis Lay: This is what the applicant would prefer is just in that manner; remove the extension to the northern boundary, the extension of Ruby Court.

Chair Varone: Thank you Sir. Any further discussion. All those in favor of amending condition of approval number eight as previously stated and recommendation of staff please respond by saying 'I'

Commissioner Tinsley: 'I'

Chair Varone: 'I', opposed?

Commissioner Murray: 'I'

Chair Varone: One opposed. Motion carries. Commissioners? Any other discussion before we vote? All those in favor of the motion with proposed amendments please signify by saying 'I'

Commissioners: 'I'

Chair Varone: Motion carries. Mr. Lay if you'll work with staff we'd appreciate it if you have any questions. Thank you very much.

Commissioner Murray: Both applicants are here also

Chair Varone: Oh, I didn't see that, I didn't see you folks and I apologize. Thank you very much.

Resolution Ordering a Refund of Taxes/Fees/Assessments Paid. (cont. from 12/18/03) (Cheryl Green)

- Western Hills Homeowners' Association in the amount of \$1,267.45.
- James and Jessica Lewis, \$381.69.

Kory Hofland: Kory Hofland, Montana Department of Revenue, Area Manager for region 4 east. And we just got the two tracts that we're requesting for, the Western Hills Homeowners Association and the James and Jessica Lewis. The Lewis one

Chair Varone: We need to take them separately, and if we can address the Western Hills one's first if you'd just give us some additional explanation.

Kory Hofland: You bet. It is a common area within the subdivision, common areas are treated as public property and we value them at zero. This parcel, because of a name change I believe, we had gone back and reassessed it and put a value on it and it's actually just a common area and it should have been a zero flat value on that parcel. So we're requesting a refund on that one.

Chair Varone: Thank you Kory. Any questions Commissioners? What's your pleasure?

Commissioner Tinsley: Madam Chair, I make a motion we approve the resolution for ordering a refund of taxes/fees/assessments paid to the Western Hills Homeowners Association in the amount of \$1,267.45 and authorize the chair to sign.

Commissioner Murray: Second.

Chair Varone: All those in favor, signify by saying 'I'

Commissioners: 'I'

Chair Varone: Motion carries. Okay now we'll move on to James and Jessica Lewis, the refund is in the amount of \$381.69.

Kory Hofland: Yeah, and that one the Department considers an erroneous assessment. It was a classification issue, I believe there was a name change on the parcel, the parcel came out of agricultural classification, it's still contiguous, it's still an ag operations and we have verified that it should have been left as ag classification and that's where we came in with the \$381.69 refund for that one.

Chair Varone: Thank you. Any questions? Commissioners?

Commissioner Murray: Madam Chair, I move that we authorize a refund for James D and Jessica R Lewis due to an erroneous assessment in the amount of \$381.69 and authorize the chair to sign.

Commissioner Tinsley: Second

Chair Varone: All those in favor

Commissioners: 'I'

Chair Varone: Motion carries

Elect New Chair and Vice-Chair for Calendar Year 2004.

Public comments.

Adjourn.