

## NOTICE OF PUBLIC MEETING

August 10, 2004

Others attending all or part of the meeting: R. Hudnall, Shawn Bryant, Chuck Schmitch, Kristin McDondald, Mike and Lorri Earley, Stan Kaleczyc, Cheryl Liedle, Willard Robinson, Jeff Norman, Judith Johnston, Conrad McHale, Cheryl Hale, Kelly Williams, Leatrice Lily, and Michael Fasbender.

**Pledge of Allegiance.** (Everyone recited the pledge)

Commissioner Tinsley: Welcome to the regularly scheduled Tuesday morning meeting. We haven't had one in a couple of weeks so you can see our packets are a little hefty. Commissioner Murray is out of town on a previously scheduled vacation and believe me we all need them up here, I can guarantee you that to my last two years up here. To my left is Commissioner Anita Varone, welcome back. To her left is our executive secretary Carole Byrnes. To my right is Sharon Haugen our Planning Director, to her right is Ron Alles our Chief Administrative Officer and to his right is K. Paul Stahl our Deputy County Attorney.

**Minutes.** January 6, 8, 22, February 5, June 15, June 24, Lincoln June 4, 2004.

Commissioner Tinsley: We need a motion to approve the minutes for January 6, January 8 and 22, February 5, June 15, June 24, Lincoln June 4, 2004. Is there a motion?

Commissioner Varone: So moved and authorize Vice Chair to sign.

Commissioner Tinsley: Second. All in favor signify by saying Aye.

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Motion passes.

**Radio Project/Motorola Change Order 001/Contract #03-13266-MCD.** (Sheriff Liedle)

The Commissioners will consider the change order contract.

Cheryl Liedle: Good Morning Commissioners. This request is for a change order to the Motorola contract for the concept demonstration project here in Lewis & Clark County. The change order will decrease the contract by \$195,249 due to savings in the project itself. We'll be modifying the initial payment for the preliminary design completion to \$451,019. Also the additional, the final design completion payment will be than approximately \$480,306. These figures are subject to change depending on where we end up with equipment orders. We've been very successful in saving money as we're going along with this project, which than can be utilized for additional subscriber units such as portables and I'm asking the Commissions approval of the contract change order at this time.

Commissioner Tinsley: Thank you Sheriff. Questions?

Commissioner Varone: Mr. Chair, If I may I plan on making a motion to approve this but before I do I just want to commend Sheriff Liedle and her staff for essentially saving the County money and having the ability to take that additional \$195,000 and put it elsewhere in the project where we know its sorely needed so Good Job, well done.

Cheryl Liedle: Thank you, I have to give a lot of credit to Mark Adams also who does an excellent job, but thank you.

Commissioner Varone: Mr. Chair I move approval of the radio project, Motorola change order 001 contract #03-13266-MCD with a savings amount of \$195,249 and authorize Vice chair to sign.

Commissioner Tinsley: Second. Discussion. I just want to say the same thing; good job and good job to Leo Dutton our Undersheriff as well for helping direct this project

Cheryl Liedle: He's put a ton of work into this

Commissioner Tinsley: He has. Any other discussion? All in favor say Aye.

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Opposed \_\_\_\_\_. Motion passes. Sheriff would you like me to sign this, do you want to take it with you?

Cheryl Liedle: Yes, because of the short time frame that we're working under that would be perfect.

Commissioner Varone: Mr. Chair if you'd just make sure that Carole gets a copy of the signed page.

Commissioner Tinsley: I think Mandi can help you with that

Cheryl Liedle: I'll go right to Mandi after this.

**ASARCO Bond Documents.** (K. Paul Stahl/Stan Kaleczyk)

- a. Environmental Revenue Refund Bonds. (1) Certificate for Resolution; (2) Resolution Authorizing the Amendment of Loan Agreement Between the Lewis and Clark County and ASARCO Concerning the County's Environmental Revenue Refunding Bonds Series 1998; and (3) First Amendment to Loan Agreement.
- b. Environmental Facilities Revenue Bonds. (1) Certificate for Resolution; (2) Resolution Authorizing the Amendment of Loan Agreement Between the Lewis and Clark County and ASARCO Concerning the County's Environmental Facilities Revenue Bonds Series 1998; and (3) First Amendment to Loan Agreement.

Stan Kaleczyk: Thank you and Good Morning Commissioners. For the record my name is Stan Kaleczyk with the law firm of Browning, Kaleczyk, Berry and Hoven and I represent Asarco this morning. In 1998 the Lewis & Clark County issued two sets of bonds. One in January 1 of 1998 for \$33,160,000 and those were environmental revenue funding bonds and then in October 1 of 1998 a second set of bonds were issued which were environmental facilities revenue bonds. Both of those sets of bonds were to fund projects and environmental pollution control equipment at the Asarco plant in East Helena. In both instances they are revenue bonds which means there is no obligation on the part of the County in the event that there should ever be a default and the bonds are not in default. The bond documents in each case were virtually identical as far as the County was concerned, the loan agreement to which the County is necessary a party along with the bond trustee and Asarco provided that Asarco could assign it's obligation to pay on those revenue bonds to another corporation. Asarco currently is in the process of a reorganization from a corporate firm to a limited liability company. Now under Montana Law and the law to my knowledge of every State in the United States, technically a limited liability company is not a corporation and therefore we're appearing before the Commission today to ask you to pass two resolutions. One related to each bond issuance which would agree to an amendment of the loan documents so that the reorganization could be completed at Asarco by providing a change in the loan agreements to say that Asarco can assign it's obligation to pay on the bonds to either a corporation or a limited liability company. It's a technical requirement but it is a requirement nonetheless in order for Asarco to complete the reorganization into a limited liability company. Also in each of the resolutions there are six conditions before you, assuming your ascent and your passage of the resolutions, there are six conditions before the resolutions and the change in the loan agreement become fully effective from the Commission standpoint and those six conditions are set forth in section two of each of the resolutions and very briefly they are that the County receive an opinion of counsel acceptable to the County that the first amendment to the loan agreement can be executed and delivered in accordance with the provisions of the loan

agreement and the 1998 loan indentures. The second is that the County receive an acceptable opinion from Asarco's counsel that the first amendment will not prejudice, act as a prejudice to either the trustee or the owner's of the bonds. The third requirement is the receipt by you of an opinion that's acceptable to the County that the amendment to the loan agreements will not in and of itself adversely affect the tax-free status of the bonds and you'll be receiving that opinion from bond counsel. The fourth requirement that you receive a written consent from the bond trustee also agreeing to the loan agreement, to the amendment to the loan documents. The fifth is that you receive documents again satisfactory to you evidencing compliance by Asarco with all of the requirements for assumption and assignment of the debt and basically what that boils down to and it's reflected in paragraph 5.07 of the loan agreement, the limited liability company which would be the successor to Asarco Corporation must unequivocally and completely accept the obligation to pay the bonds. The sixth requirement is that Asarco pay any legal or administrative costs associated with your passage of the resolution. As I said, Commissioner Tinsley and Commissioner Varone there are really two sets of resolutions that we're asking you to act on, one for each of the bond issues. They are identical in content except for the reference to each of those bond issues. We'd appreciate if the Commission would act favorably upon that resolution with the conditions stated there within.

Commissioner Tinsley: Thank you Mr. Kaleczyk. Are there questions for Mr. Kaleczyk?

Commissioner Varone: Mr. Chair, Mr. Kaleczyk if I may, you indicated that one of the requirements was to have this reviewed by our counsel which in this case is Paul Stahl and if I could kindly ask Paul if he's had an opportunity to read the documents and what his recommendations are?

Paul Stahl: I have read the documents and reread them and let me just tell the Commission that this is not my area of expertise and there are bond counsels in New York City that are counsel that are, work on these kind of things that do nothing but this, I can assure you that the holders of the bonds would not be approving this if there was a concern for it. I have reviewed all the documents to the best of my ability and knowledge; everything is as it should be. I know the Commission is a little, maybe not the Commission but staff has indicated some concern that maybe this is a way for Asarco to get out of it's obligation. I don't think that is what is occurring here, I know that is not what is occurring because bond counsel would not allow that, I mean these bonds are already out there and people have them and they're not going to, people with lots and lots of money are, \$33,000,000 worth of them are not going to let something like this happen that isn't, doesn't follow the discussions in fact discussions over two words has taken over a month, two words has taken over a month to get agreement on the form, on these resolutions so it has been gone over with very meticulously and I don't have any problem at all recommending that the Commission approve.

Commissioner Tinsley: Further questions?

Stan Kaleczyk: If I might just add Commissioners that as the resolution indicates there are other documents that will be forthcoming before the Chair finally approves the and executes the loan agreement and those are all documents that will be reviewed by Mr. Stahl as well.

Commissioner Tinsley: Thank you.

Commissioner Varone: Mr. Chair I just have one other question and it's probably mute but I believe it needs to be asked. The question is what risks are there if the County does or does not approve in either case what risks do we have.

Stan Kaleczyk: There is no risk to the County Commissioner Varone in approving this because as I indicated earlier in the presentation these are revenue bonds so they are not in any way backed by the full faith in credit or the taxing power of the County so in a worst case scenario, if Asarco were to default on the bonds, whether or not you approve this amendment, there would be no financial risk to the County so there is no financial risk to the County in approving this change and this is a change to accommodate a corporate restructuring of Asarco, it's not a liquidation, Asarco is not going to go away, Asarco is going to change it's name from Asarco Incorporated to Asarco Limited Liability Company.

Commissioner Tinsley: Thank you Mr. Kaleczyk. Mr. Alles do you have any comments.

Ron Alles: Just a quick question for Mr. Kaleczyk than can we expect an opinion from bond counsel relating to this whole issue.

Stan Kaleczyk: Mr. Chairman, Mr. Alles, yes and I think that's the fourth requirement is the one that talks about that it will not adversely affect the deductibility of the bonds, that is the bond counsel opinion, I believe that opinion will be coming from the law firm of McCullen Parkhurst which is a Texas law firm and they were bond counsel on the original January 1998 issue, refunding issue, they will be issuing the bond counsels opinion. You'll also receive an opinion from the corporate counsel and opinion I believe from counsel for the bonds trustee as well as a statement from the bond trustee itself that they are in agreement with the execution of this amendment. So you'll be getting a lot of paper.

Ron Alles: Okay, and than one final question, one opinion we will not be receiving is from the bond holders and their counsel right, I mean this transaction can take place without consent of the bond holders or their counsel correct?

Stan Kaleczyk: Consent of the bond holders is not required if bond counsel who really stands in the shoes and is the lawyer for the bond holders makes a determination that the tax exempt status of the bonds will not be adversely affected and you will also be receiving a separate opinion that this transaction will not, let me quote the words so I get them right because there's some of the words that Mr. Stahl referred to that there's been a lot of discussion over that they will not prejudice the trustee or the owners of the 1998 bonds.

Ron Alles: Thanks.

Commissioner Tinsley: All right. Is there a motion?

Commissioner Varone: Mr. Chair,

Commissioner Tinsley: I'm sorry Commissioner Varone, we have two items that we need to deal with here so I think we need to take them separately.

Commissioner Varone: Mr. Chair, I move to approve the Environmental Revenue Refund Bonds #1 Certificate for Resolution, #2 Resolution authorizing the amendment of loan agreement between Lewis & Clark County and Asarco concerning the County's Environmental Revenue Refunding Bonds Series 1998 and #3 First Amendment to Loan Agreement and I'm going to put a caveat on that, that motion is pending bond counsel and bond trustee favorable opinion and authorize Vice Chair to sign.

Commissioner Tinsley: Second. Discussion. I'm anticipating discussion from the Deputy County Attorney.

Commissioner Varone: I do have discussion, we have a very long agenda today and I would like to get it through it as quickly as we can but I think this is really an important issue because the last couple years Asarco has been late two years in a row on their taxes and I'm assuming moving from a corporation to a limited liability will hopefully put them in a position to pay their taxes on time rather than late and provide the funding that the County if rightfully owned so they can spend money on the roads etcetera, etcetera.

Commissioner Tinsley: That's a good point, let's hope so Commissioner. Further discussion? Seeing none, all in favor of the first motion signify by saying Aye.

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Opposed \_\_\_\_\_. Motion passes.

Commissioner Varone: Mr. Chair I move to approve Environmental Facilities Revenue Bonds. #1 Certificate for Resolution; #2 Resolution Authorizing the Amendment of Loan Agreement Between the Lewis and Clark County and ASARCO Concerning the County's Environmental Facilities Revenue Bonds Series 1998; and #3 First

Amendment to Loan Agreement pending bond counsel and bond trustee favorable opinions and authorize Vice Chair to sign.

Commissioner Tinsley: *Second. Discussion? All in favor, signify by saying aye*

Commissioner Varone: *Aye*

Commissioner Tinsley: *Aye. Opposed \_\_\_\_.* Motion passes. Mr. Kaleczyk there's a number of documents that I need to sign here so it will probably be after the meeting. Mrs. Byrnes will have those documents available for you. Thank you very much for coming this morning.

**Bid Award.** (Darrel Folkvord)

The Commissioners will consider awarding bids for two tandem axle dump trucks with 15-yard dump bodies. (Bids were opened 8/5/04)

Commissioner Tinsley: *Item #4 is not ready for this morning's meeting so do we need a motion to table Carole or would you like to just reschedule it.*

Carole Byrnes: *No, I will check with Mandi and see if we can track him down if he hasn't left and we can do this Thursday.*

Commissioner Tinsley: *Okay.*

**Resolution Ordering a Refund of Taxes/Fees/Assessments Paid.** (Cheryl Green)

The Commissioners will consider a refund to Jeff and Kim Koehnke in the amount of \$62.64.

Rocky Haralson: *Yes Mr. Chairman, Rocky Haralson with Department of Revenue. This is a refund that was in the process of working ownership we discovered there was a square footage incorrectly entered on a parcel. The parcel was corrected up and they were in fact over assessed for a period of two years by 500 square feet. Staff would recommend that it be approved.*

Commissioner Tinsley: *And Rocky, the total amount for the refund is \$62.64 correct?*

Rocky Haralson: *Yes.*

Commissioner Tinsley: *Is there discussion or questions?*

Commissioner Varone: *Mr. Chair I move approval of the resolution ordering a refund of taxes/fees/assessments paid refund to Jeff and Kim Koehnke in the amount of \$62.64 and authorize Vice Chair to sign.*

Commissioner Tinsley: *Second. Discussion. Seeing none, all in favor signify by saying Aye.*

Commissioner Varone: *Aye*

Commissioner Tinsley: *Aye. Opposed \_\_\_\_.* Motion passes. Thanks Rocky.

**Proposed Minor Subdivision, Preliminary Plat to be known as Norman Minor Subdivision.** (Applicant, Michael Ries) (Planner, Michael McHugh)

The Commissioners will consider creating one (1) additional lot for a single-family residential dwelling. The subject property is located in the NW1/4 of Section 19, T10N, R2W; generally located north of and

adjacent to Morello Road and east of Valley Drive.

Commissioner Tinsley: Is the applicant present? Mr. Ries? What's your name Sir, and would you give your address to Mr. Norman.

Jeffrey Norman: I live at 3535 Canyon Ferry Road.

Commissioner Tinsley: Have you had a chance to read the staff report?

Jeffrey Norman: No I have not.

Commissioner Tinsley: Have you provided him with copy of the

Michael McHugh: Staff report was sent out last week.

Commissioner Tinsley: It's this document here.

Jeffrey Norman: I don't believe I have seen it. The only reason I knew the meeting was here today was because I talked to \_\_\_\_\_ and told me \_\_\_\_\_

Commissioner Tinsley: Mr. Norman it's up to you. Would you like to take some time to read this and we can come back to you today or would you like to reschedule this for future date. It looks like your review period ended on July 20<sup>th</sup> and it's already been extended. Would you like to have time to read this or do you feel comfortable going forward this morning.

Jeffrey Norman: I feel comfortable going forward this morning

Commissioner Tinsley: Michael do you have another copy for yourself there? Mr. Norman why don't you go ahead and peruse through the document as we're going through, we'll go through the document right now with Mr. McHugh and then if you have any questions or concerns we can talk about them, is that alright? Okay, lets go forward.

Michael McHugh: Commissioners the first proposal before us this morning is to create a two lot subdivision on a 3.01 acre lot that's located south of Canyon Ferry Road just west of Valley Drive. Currently the property is under development with a house under construction. This overhead shows the partialization of the surrounding land uses in the area. The surrounding land uses is predominantly single-family residential development with various types of construction including modulars, mobile homes and conventional construction. The subject property is not located within a zoning area and currently there are no covenants that affect the use of the subject property. This is an aerial photo showing the proximity to Canyon Ferry Road also to the south you'll notice that there is a 60 foot platted right of way that is undeveloped that will access the property. What the applicant is proposing to do is to create these two parcels, one that will be approximately 2 acres in size and then a smaller one that would be a little over 1 acre in size. The applicant's are proposing to use individual onsite wastewater treatment systems onsite, the City-County Health Department has already done site evaluations on the site and has identified a minimum of three locations that accommodate the development. There was an existing septic system that was located north of the house, the old house that was destroyed during a fire that septic system will be abandoned during the development of this property. The applicants are proposing to utilize a shared well to provide domestic water to the sites, the water is received from the Helena Valley Alluvial aquifer, the wells are very adequate in that area, this area does have a very high hydraulic conductivity. As far as requirements for DEQ, all the easements and shared users agreement would need to be filed with Department of Environmental Quality prior to the final plat. One of our main concerns about this proposed subdivision is the proximity to Canyon Ferry Road as you may be aware that the Department of Transportation is preparing to do some improvements to that, they're also trying to reduce the number of individual access points on to the road. The Department of Transportation has acquired a 30-foot easement where there's a no build zone that will be utilized for the expansion for the Canyon Ferry Roadway. In conversations with both the Department of Public Works and the Transportation coordinator, they have

asked that all the access be provided off of Morello Road. To provide the access off Morello Road the access could either be from Valley Drive to the west or to a road located to the east there. The proposed conditions of approval permits the applicants to do the construction from either of these roads but they would be required to bring it up to a 20 foot improved surface width within the 60 foot easement and have the bar ditches there. As far as other issues, the nitrate concentrations in this area are less than 1 milligram per liter so that's a very high quality water in that area. The only public health and safety issue again is the access onto Canyon Ferry Road and the staff is recommending the abandonment of the existing access there and limiting all the access to the Morello Road access site. As far as compliance with subdivision regulations, this proposal does comply with all the submittal and design requirements of the County Subdivision Regulations and based on these findings staff does recommend approval of this subdivision with the eleven conditions.

Commissioner Tinsley: Questions of Mr. McHugh?

Commissioner Varone: Mr. Chair, Michael, I just have a couple of questions that as I was reading through this information. On page 6, item #4 I understand the condition of approval and the need to have that improvement on Morello Road and by the applicant. My question is, is there an RID in that area at all?

Michael McHugh: No Mam there is not a current RID. One of the proposed conditions of approval is a waiver of protest.

Commissioner Varone: Yeah, and I read that too but I wondered if there was one nearby that we could expand and put that road in because at some time Morello Road is going to have to be completed. So just a question, Thank you. Also as I was reading condition of approval #8b, it says a requirement that all dwelling units within the subdivision be constructed to specifications which meet or exceed equivalent provisions of applicable building codes and that's been some general language that we've had in there for quite a while but the language also included verbiage that said for this seismic zone.

Michael McHugh: That's a typographical error

Commissioner Varone: Is that a typo? That's kind of what I thought so when this motion is made if it's approved I'll just ask for that language to be added.

Commissioner Tinsley: I do have one question, Mr. McHugh if Mr. and Mrs. Norman decide, well not if they decided because they've applied for this, if they build the road off of Applebee Court from the East do they only have to build it up to their property line?

Michael McHugh: They would have to build it to their western property line. The staff is giving them the option of developing the way they want to. There are some construction constraints to the east if you can look at the overhead you can see the remains of an old irrigation ditch that has some differences in elevation and that may present a construction constraint. Coming from Valley Drive it's flat, the easement is fenced off there, and you can't see it on the screen here, but that's looking to the west there from their property so it could be constructed in that area. The extreme western portions of this to the south is being utilized as an access for two structures there. The road would have to be relocated within the property easement and everything.

Commissioner Varone: Mr. Chair, I just have one more question. Mr. Norman indicated that he didn't have a copy of this so I'll ask him the same question I'll ask you. I'm assuming and I just want affirmation that he's been made aware throughout the process either by you or by Mr. Ries of the conditions of approval.

Michael McHugh: We did discuss all these issues about the abandonment of access onto Canyon Ferry and the need to construct the road and that would be the major condition. Mr. Norman has already complied with several of the conditions ie Health department requirements and stuff like that.

Commissioner Tinsley: Now we get to the point in the meeting, I'm going from memory to see how we do this process so if I skip something point it out in a gentle manner to me. Don't yell at me. Mr. Norman I believe this

is your opportunity to get up and address any of the issues in the staff report and address any questions or comments that you might have to the Commission.

Jeffrey Norman: Okay. One is this access approach permit on Morello Road. Would that be to each individual home along Morello Road would have to purchase an access permit? Or is it a one shot deal on my part to come off of Valley Drive onto Morello Road?

Commissioner Tinsley: Are you talking about for your neighbors?

Jeffrey Norman: Yeah, the neighbors

Michael McHugh: The applicant would only be required to obtain approach permits for his property so he would have two approach permits.

Commissioner Tinsley: So his neighbors would have to than have to go and apply if they wanted to use

Michael McHugh: This isn't to ensure proper drainage and if there's a need for culverts to identify all that, but he's only responsible for his property.

Commissioner Tinsley: Does that answer your question Mr. Norman?

Jeffrey Norman: Yes

Commissioner Tinsley: Okay any other questions or concerns?

Jeffrey Norman: I do. As far as Morello Road goes if I'm required to have to improve that road from say my western boundary, or my eastern boundary to Valley Drive, that's quite a stretch there,

Commissioner Tinsley: I don't think that is what he said, I believe because I asked the question, you only have to go from, if you're coming from Applebee to your western property boundary, not all the way across.

Jeffrey Norman: Right, it was my understanding that I could go either direction

Commissioner Tinsley: Right, I just picked that one because it was the shorter of the two but go ahead, I'm sorry.

Jeffrey Norman: If I so choose to go from the eastern section westward to Valley Drive, I would have to improve that whole section but the neighbors I do not believe that they're portion now meets County requirements as far as runoff and stuff so I would have to foot the bill for that improvement also along their frontage along the road.

Commissioner Tinsley: Mr. McHugh?

Michael McHugh: He's correct. He would have to improve the road segment from Valley Drive to the western property boundary. Currently there is not any way that he could receive compensation unless an RID was set up. Most of the property is to the north according to MDOT are going to be losing their accesses onto Canyon Ferry Road and at some point they will be needing to install accesses from Morello.

Commissioner Varone: Mr. Chair, that is why I asked the question about the RID because my assumption is that they will be losing access to Canyon Ferry Road and isn't this an opportune time to have all of the folks establish an RID and that way than Mr. Norman would be responsible only for the road across his property.

Michael McHugh: The property is to the east are part of the subdivision and they're already using Applebee Court have already waived the right to protest a formation of an RID. If the county wanted to initiate that include the properties to the east I mean that can be something that can be researched that would probably take six months to complete all that.

Commissioner Tinsley: I guess the question would be Commissioner and Michael and anybody else, we're hearing this today and we have to make a determination on this not today but whenever we decide to schedule this in the next week or two, that doesn't help him with regards to the RID process.

Commissioner Varone: Mr. Chair, I absolutely agree, I guess what I'd like to see happen is I guess, I'm prepared to make a motion today and I'd like to see this approved but I would like to ask staff to take a look at putting together an RID and by the time the applicant gets ready to build perhaps that RID could be in the works and rather than having the applicant complete it maybe he could wait until the RID was established but at least at this point get it approved and he can begin his other work.

Commissioner Tinsley: Madam Chair on your first point just for your edification we've been advised by the County Attorney to not take these, hear them on the same day and or not to pass them on the same day that we're hearing them. We need a period of reflection to go over some of these questions so we've been advised so probably since you've been gone we've ceased to doing them on the same day like we did before on the smaller ones. I agree with him on that, I think it is good for us to have a period of reflection for the simple reason for questions like we're talking about today. So I wanted to let you know that I probably would, I would personally be willing to entertain a motion to wait until at least Thursday.

Commissioner Varone: Thank you for that information for those of you in the audience, I've been gone for quite a while and have been ill and than had a family reunion and that was the good part of being gone and so I wasn't aware of that and Commissioner Tinsley was the individual who instituted approving these minor subdivisions at the very same day and I personally like that because it allowed people to know on the same day whether or not it was going to be approved, the larger ones we do need reflection but if that was the advice of the Deputy County Attorney I certainly will take that under advisement.

Commissioner Tinsley: and I will take issue with your comment, I am not the one that started that, they were doing that before I got here.

Commissioner Varone: No they weren't because I tried to do it and nobody would let me and so I liked it.

Commissioner Tinsley: Further concerns or questions for you Mr. Norman? You understand what we're talking about with regards to your neighbors, with regards to your responsibility at this point in time for this particular application?

Jeffrey Norman: Correct.

Commissioner Tinsley: Okay

Jeffrey Norman: The only other thing is I keep hearing your going to limit access onto Canyon Ferry Road, does that mean that if I subdivide this three acres to a two acre and a one acre that both the one acre and the two acre have to go to Morello Road or do we still have access onto Canyon Ferry?

Commissioner Tinsley: Well according to what Mr. McHugh was saying it sounded like they were going to start limiting access off of Canyon Ferry which means that at some point in the future everybody along that stretch is going to have to start using Morello Road, is what it sounded like to me but I'll let him

Michael McHugh: The condition of approval, recommended condition of approval states that all access will be from Morello Road that there will be a no access restriction placed on that northern boundary. So until the time of final plat they can continue to utilize the existing access but once they file the final plat they will have to cease using the access onto Canyon Ferry Road.

Commissioner Tinsley: And that's for your existing lot and the new one.

Jeffrey Norman: Here's another thing I was thinking about that could happen in this situation. Instead of

putting an RID in place for all these homeowners to use Morello Road and pay the taxes, pay the RID off, is there a chance that the State and the County can get together, take that 30 feet of property that they're going to take off of Canyon Ferry Road and widen the road and just roll that money over to a point that the road can be improved at the same time that they do the highway project?

Michael McHugh: That discussion hasn't occurred with MDOT, so I don't know.

Commissioner Varone: I might be able to respond to that just a little bit, MDOT spends their money the way they want and the plans have been set in stone for at least a year and my I guess educated guess from working with MDOT on this project for quite a long time at least being involved in the meetings and being kept informed is they would not entertain that kind of a situation, their engineering has all been done and it's ready to go.

Jeffrey Norman. Okay. I guess I have no further questions.

Commissioner Tinsley: Mr. Norman I'm going to give you this opportunity since you did not have the staff report prior to the meeting to continue with the public hearing or we can table it until Thursday morning if you want some more time to reflect on it. It's up to you, I 'm going to give you that option.

Jeffrey Norman: I have no problem with using Morello Road or anything that has been discussed here today so I would ask the commission to make an assessment at this time.

Commissioner Tinsley: What I will do now in the process is I will open it up for public comment, depending on how much we have or if we have none and than we'll close it and then we'll entertain a motion to make a final determination at a later date, most probably Thursday but I don't know we'll see what the motion is.

Jeffrey Norman: That would be fine.

Commissioner Tinsley: Okay. Thank you Mr. Norman for your time and your questions. We're now in a public hearing, public comment period for this proposed minor subdivision to be known as the Norman Minor. Does anybody wish to comment? For the first time, I'm going to ask three times, for the second time? For the third time, seeing none this closes the public hearing. Mr. Norman you now have the right to close. Do you have anything you'd like to say in closing? Thank you for your time this morning. The chair will entertain a motion for this application.

Commissioner Varone: Mr. Chair based on recommendation from counsel I move to take this under advisement and make a final decision on the preliminary plat to be known as Norman Minor on this Thursday which I believe is the 12<sup>th</sup>.

Commissioner Tinsley: Second. Discussion. Seeing none, all in favor signify by saying aye.

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Opposed \_\_\_\_\_. Mr. Norman we'll make a final decision on Thursday morning at 9:00 am in this room. In the meantime you may see us out there, do us a favor and don't come up and talk to us because we're under ex parte rules where we can't talk to you outside the public hearing process but we may come out there and take a look at it on our own so if you see us putting around at there we're not trespassing we're just looking around.

Commissioner Tinsley: If you receive a parking ticket while participating in your County Government please bring it back upstairs, we will make sure that you are not required to pay for that ticket, you are more than entitled to park out there and we can arrange it so you don't have to pay for that ticket, only in this instance, don't bring any of your other tickets. Thank you very much.

**Proposed Minor Subdivision, Preliminary Plat to be known as Johns, Lot 1 Minor Subdivision.** (Applicant,

John & Lori Early) (Planner, Michael McHugh)

The Commissioners will consider creating three lots for single-family residences. The subject property is located in the SE1/4 of Section 6, T10N, R3W; generally located north and adjacent to Mill Road and east and adjacent to McHugh Drive.

Commissioner Tinsley: Are the applicant's present today? Why don't you come forward and let me ask you a quick question. State your name and address for the record please.

Mike Early: My name is Mike Early, I go by Mike, it's John.

Commissioner Tinsley: Mr. Early are you and your wife prepared, have you had a chance to look at the staff report?

Mike Early: Yes.

Commissioner Tinsley: Are you prepared to go forward this morning?

Mike Early: Yes we are.

Commissioner Tinsley: Okay, we're going to go ahead and do the same process you saw just before so just bare with us. Mr. McHugh.

Michael McHugh: Commissioners this proposal includes a 4.6 acre parcel that's located northeast of the intersection of McHugh Drive will Mill Road. What the applicants are proposing to do is to create a 3-lot subdivision. These lots would range in size from 1.2 to 2.1 acres. The proposed accesses would all be from Mill Road. The land uses in this area are predominantly single family residential ranging from developed lots approximately  $\frac{3}{4}$  acre in size to a little over 6 acres in size. The subject property is located within a special zoning district; it's in the CR1 designation of the special zoning district #13. This zoning designation permits single-family residential uses with conventional modular homes on it on permanent foundations. It requires a minimum lot width of 100 feet and not, the lots cannot be less than 10,000 square feet in size. It does establish setbacks of 20 feet from all property boundaries and roadways. There are existing covenants on this property, these covenants were placed on the property both by the County as part of the minor subdivision that occurred back in the 1990's and there is also private covenants. These covenants include notification about the property being in the 500 year flood plain, notifications about radon potentials and the private covenants due allow for operation of business or commercial activities during daylight or normal business hours however the County's approval does not allow business activity there, they would have to modify the conditions of approval if any of these lots were to be utilized for commercial activity. At the time that staff report was prepared we had not received any public comment, but I believe you received a letter dated last Friday from an individual that expressed concern about the flood plain issues in the area and some other issues. As far as impacts on local services, the applicants are proposing to utilize individual onsite wastewater treatment systems. The soils in this area have poor filtering capacity but the depth to groundwater is greater than 8 feet. The applicants would be required to obtain approval both from City-County Health Department and the Department of Environmental Quality. As far as water supply, the applicants are proposing to utilize individual groundwater wells, again this area is served by the Helena Valley Alluvial Aquifer and the yields in this area range from 15-35 gallons per minute. Again, the applicant is proposing to have all the accesses from Mill Road, this shows the proposed partialization of the property, the tract 3 is an irregular shaped lot that is using a area of a channel flow, a depression in that area as a boundary. This is the existing development on the property as you can see that there has been some extensive landscaping placement of various species of trees on to the property. Again, this shows you the depression located in the southwestern portion of the property. As far as fire protection, the West Valley Fire Department did not send in a comment on this but typically they require a \$500 per new lot fee to be paid to the district prior to final plat. Again, as far as impacts on the natural environment, we do have some \_\_\_ water associated with flooding in this area, there are some very shallow depths to groundwater in this area and because of porosity of soil and the shallow depths this area is very susceptible to groundwater contamination either from poorly functioning onsite wastewater treatment

systems or improper disposal of chemicals. Our main concern about public health and safety deals with the 500 year flood plain, the County currently does not administer a 500 year flood plain ordinance but the County Flood Plain Coordinator is recommended that the natural drainages on the property not be disturbed and the areas of channel flow that basements be prohibited and that all construction of the ground floors be a minimum of 2 feet above flood level. As far as earthquake activity, there is a segment of the scratch gravel hills fault that's located about a mile and a half northeast of the subject property and a risk for damage and injury could be reduced by compliance with applicable building codes. The proposed subdivision does comply with all county submittal and design regulations and therefore staff is recommending approval of this subdivision with eleven conditions.

Commissioner Tinsley: Thank you Mr. McHugh. Questions of Michael?

Commissioner Varone: Commissioner Chair thank you. Michael before we make our decision I know this had to be an oversight on the fire department would you just give them a call and have them submit a letter

Michael McHugh: We have called them, I left a message with Chief Shepherd and I'm expecting some response.

Commissioner Varone: Super. I do have a question in the letter that was received from Charles and Merle Schmith who live adjacent to or near the applicant and of particular concern was a sentence that says one of the problems that create a lot of the flooding in this area is a lack of a culvert at McHugh Lane and Mill Road. (tape ended)

Michael McHugh: (tape begins)... I'd have to, we received that letter but as you can tell from this overhead if you look down to the southeast on here you can see that there's a very heavy area where channel flow occurred in that and with development those natural drainage patterns have been destroyed and it's causing in fact offside but that whole area used to have these drainage channels running through it. A culvert probably would be required there, it's not required as a condition of approval by the applicant.

Commissioner Varone: to just go on and that being a little bit longer the question than is I would like to see our staff go out there and take a look at that. If it's determined that a culvert needs to be out there, whether or not we approve this, is that the obligation of the folks that live on Mill Road or is that the obligation of the County to install that culvert?

Ron Alles: Madam Chair, either or. Actually the County Commissioners could require that staff allocate the resources and budget necessary to do so. Typically though as it relates to subdivisions and the developments in those subdivision it's been a part of either an RID and the improvements on the road to do so, but it would be the Commission's choice.

Commissioner Varone: If I may continue. Is there an RID on Mill Road right now?

Michael McHugh: No

Commissioner Tinsley: Mr. McHugh I have a question. Keep this slide up. Would you indicate to me where the flow, the direction of flow, the normal direction of flow given the gradient of that lot from this particular, it's called the no-build zone but it's that depression that we were talking about in this south

Michael McHugh: The direction of flow is predominantly to the northeast, at that particular channel the runoff comes from the road and it follows, it curves back to the eastern property boundary.

Commissioner Tinsley: Mr. McHugh, it would appear to me that in the water that enters that property than probably comes more than likely down Mill Road and down McHugh to the north and Mill Road traveling east is that correct? Coming out of this southwest

Michael McHugh: There are bar ditches along both McHugh and Mill Road directing the water parallel to the

roadways. There is an awful lot of channel flow across the property associated with those existing natural drainages.

Commissioner Tinsley: Okay, Thank you. Further questions for Mr. McHugh? Seeing none, Mr. Early or Mrs. Early or both this is your opportunity to get up and address the commission with any questions or concerns that you might have before we enter the public comment period. If you wouldn't mind, come to the podium, we're on TV and we also are creating a record of the meeting.

Mike Early: Just that when we made this subdivision, we tried to take advantage of what we've known for the last seven years as far as how this land lies and where flooding goes. For the most part, in the depression going around the parcel on the southeast corner, we've seen water in there twice, it never really goes anywhere because that particular depression starts at Mill Road and ends just after it goes outside of our property so there is no depression outside of what's on our property there. When it does flood it tends to go west of McHugh about 2 or 3 houses down and flows down through that subdivision and then goes to the north of us through a depression where there is a natural, where the water flows most of the time. For the most part we haven't seen any flooding on that property but I know when there gets to be a great deal of water in the valley there's a possibility you could get water. But the parcel to the west has the highest ground of all of the ground on that property, the parcel to the southeast could easily especially with the requirement of raising the structure 2 feet on either end of that smaller piece I think would be more than adequate even if there was a great deal of water out there. So I think we've tried to take into consideration how the land lies, how we think water would come across that property and I think that they would be good residential areas and I think that the access off Mill Road would not be real intrusive or not disruptive. I think it's a good plan myself.

Commissioner Tinsley: Do you have any further questions or concerns for the commission.

Mike Early: No I don't.

Commissioner Tinsley: Okay. At this time we're going to open the public hearing on the proposed minor subdivision preliminary plat to be known as Johns lot 1 minor. Please come to the podium and state your name and address for the record.

Chuck Schmith: Chuck Schmith and I'm the one that submitted the letter. I'm in favor to put tract 1 and 2 in but tract #3 that sits right across from where I live on Mill Road if you look at the property line that runs here the neighbor that used to be there worked for the Highway Department. That piece of ground is \_\_\_ so that the water can't alleviate off of that so when the water comes down and goes into this piece on tract 3 that's where it pails off and goes down and out onto Kerr lane. If they raise this and raise that up and build there all that's going to do is push that water right back into me and between the four neighbors of us that all live on Mill Road on the south side of that which we get from off of Moffit and all the rest that comes down off of McHugh that thing is just going to be a total damn for us to hold the water to us and no place to go but to keep going down east on Mill Road to just that much more. My neighbors to the east of me have already put in a concrete wall to divert some of that to go down Kerr and of course if you go down Kerr now and see how bad it's washed out from years past it's just a dirt road anymore and for it to keep flooding like that I can't see that putting one in and the possibility of where he puts the road to going in on for this lot, this #3 the power company has got a power, a big service box there that sits down there and I don't know what's all in it. Now whether that's going to get involved in this or not if they build there and the water comes in that's another big problem with it.

Commissioner Tinsley: Just a minute Mr. Schmith would you go back to that other slide that you had. Mr. Schmith would you have Michael who is sitting next to you point to, is that his house?

Michael McHugh: Is that it?

Commissioner Tinsley: Where that arrow is? Do you see the arrow?

Chuck Schmith: No, I'm on, just go a little further, there, right there.

Commissioner Tinsley: Okay I just wanted to get it in my mind where your house was. Thank you very much. Thank you for your time this morning. Any questions for him? Further questions or public comment. Please state your name and title and address for the record Chief.

Jerry Shepherd: Hi, I'm Jerry Shepherd, Fire Chief from the West Valley Fire Department, 4345 Cougar Drive. I just wanted to let you know I'm sorry for the oversight, you will get the letter today, it is done, I thought I sent it, he must not have got it in the email, but I will make sure that Michael gets it and you'll have it today and what he said is correct, it will be \$500 a lot. Thank you.

Commissioner Tinsley: Thank you Chief. Further public comment? Further public comment, going once, twice, three times. This closes the public hearing. Mr. Early you have an opportunity to respond and or close. This is your time. Please.

Mike Early: First of all I'd like to say that I really do appreciate Chuck's comments, he has lived there a long time in the Valley and I think he is well aware of where water goes and what happens but I don't think that on that particular parcel I mean if we raised it up for a dwelling I don't think it would act like a dam. The neighbors to our east have built a sort of a wall or a dike but even that there would have to be a tremendous amount of water in there, I mean that land would have to covered with water I think so I don't think we would, that building of a structure or even raising the structure on that acre parcel would dam the water up and back it up over the road.

Commissioner Tinsley: Okay, do you have anything else.

Mike Early: No, I think it's a good idea.

Commissioner Tinsley: Alright, Thank you very much Mr. Early. I believe I already closed the public hearing Madam Chair so I'll entertain a motion for this application.

Commissioner Varone: Mr. Chair, I move to make a determination on the proposed minor subdivision preliminary plat to be known as Johns Lot 1 Minor Subdivision this Thursday the 12<sup>th</sup>

Commissioner Tinsley: at 9:00 am in this room. Second.

Commissioner Varone: Discussion. Ron if we could get Eric Griffin from the road department or Wayne to go out and take a look at that road, I know both Commissioner Tinsley and I'll go out independently and take a look but those folks are experts and I'd like their opinion on if there were three houses built there, their opinion if a culvert were installed if it would help mitigate it and than on Thursday be prepared to just give us that information.

Ron Alles: certainly

Commissioner Varone: Thank you.

Michael McHugh: Commissioners just for the record, all those driveway approaches would be required to have culverts placed in them as part of the conditions of approval.

Commissioner Varone: Thank you, that's good to know.

Commissioner Tinsley: I'm sorry Mr. Early did you have, please come up, not normally but I'll allow it.

Mike Early: \_\_\_\_\_culverts, I asked that question early on, the road Mill is actually above the level of the land that we're on so I'm somewhat, I have a question as to why you would want a culvert?

Michael McHugh: That's part of the requirement for the approach permits, the County road staff will go out there and assess the need and the size of any culvert that needs to be installed.

Mike Early: But there's no burrow \_\_\_\_ is the problem. Along McHugh there is definitely a burrow pit, but not along Mill and especially along where we live.

Michael McHugh: Well that will be determined by the County road staff what improvements are needed there.

Commissioner Tinsley: We have a motion and a second before us, no further discussion, all in favor signify by saying Aye.

Commissioner Varone: Aye.

Commissioner Tinsley: Aye. Opposed \_\_\_\_\_. Motion passes. Mr. Early what's going to happen is you'll probably one or the two of us at different times, Michael would you move just for a minute, at different times at your property, we're just going to be looking around. Please do us a favor and don't come out and talk to us because we need to make these decisions and view this independently and it's out of the public venue so we have to do it on our own and Thursday morning we'll make a final decision in this room at 9:00 am. Thank you very much for coming this morning.

**Request for a One-Year Extension of Preliminary Plat Approval for the Griffin-Davis Lot 22 Minor Subdivision.** (Applicant, Debra Crider) (Planner, Michael McHugh)

The Commissioners will consider a one-year extension to July 28, 2005.

Michael McHugh: Commissioners this letter was received within the one year time period, it's just been delayed because of absence of quorum. This was a subdivision that was approved in July of last year, it was to create another space for rent, lease or other conveyance on a single property located in the Griffin Davis Subdivision. I believe you have a copy of the letter from Ms. Crider, she has indicated that she has had some medical issues and hasn't been able to attend to all of the conditions. She is requesting extension until July of next year.

Commissioner Tinsley: Is Mrs. Crider present this morning? Of Ms. Crider? No. Questions of Michael?

Commissioner Varone: Mr. Chair I move approval of a request for a one year extension of preliminary plat approval for the Griffin Davis Lot 11 Minor Subdivision applicants Debra Crider, a one year extension would conclude on July 28, 2005.

Commissioner Tinsley: Second. Discussion? Seeing none, all in favor signify by saying Aye

Commissioner Varone: Aye.

Commissioner Tinsley: Aye. Opposed \_\_\_\_\_. Motion passes.

**Proposed Major Subdivision, Preliminary Plat to be known as Lakeside Village on Hauser Major Subdivision.** (Applicant, Conrad & Sheryl Hale) (Planner, Frank Rives)

The Commissioners will consider creating three (3) lots from an existing 8.8-acre tract, known as Tract C of COS 265049. One lot is for 12 condominium units; another for the existing bar/restaurant and marina; and a third lot for a common recreational area. The subject property is located in the SE1/4 of Section 27, T11N, R2W; generally located on the west side of Hauser Lake and east of York Road, approximately 10 miles from Helena.

Commissioner Tinsley: Are the applicants present? Good Morning Mr. Hale, how are you doing?

Conrad Hale: Good thanks.

Commissioner Tinsley; Have you received the staff report?

Conrad Hale: Yes we have.

Commissioner Tinsley: You've had the opportunity to go through it and you have any questions or problems with it.

Conrad Hale: No, not at this time.

Commissioner Tinsley; Okay. I'm going to have Frank give the presentation and ask you to come back up and give your presentation if you have one and then we'll do the public hearing as we did before.

Conrad Hale: Okay and actually Sean Bryant from Stahly Engineering will make our presentation and represent us.

Commissioner Tinsley; Thank you very much Mr. Hale.

Frank Rives: This first slide is a vicinity map of the proposed subdivision, it's an attractive land that's probably familiar to everyone it's the Lakeside Bar and Restaurant and RV park which is located to the North of it. And this is a aerial photograph of the proposed site. This is the site plan for the proposed subdivision. What the applicant's are proposing to do is divide this 8-acre, actually it's a little more than 8 acres parcel into 3 tracts. The first tract which is most southerly I might just note that you can tell by the site plan that the North arrow actually points to the right here rather than traditionally north south so the west is actually to the top and the east is to the bottom and so on. The most southerly lot, that is to the left, would be where the bar and restaurant and marina operation is currently located. Than to the most western tract which would be lot 2A where the proposed condominium units is currently used as an RV park and a there are several mobile homes there and than the tract to the east kind of like a dog legs sort of lot will be dedicated to, it will be a culminary for recreation to be used by both the folks that live in the condominiums as well as perhaps the people utilizing the marina and the bar for special occasions or what not. The next series of photographs are just photographs showing the site, this is York Road and to the east here is the proposed subdivision with the mobile homes and the trailer parks. This is proposed condo lot as well as York Road and this grassy area is also where the onsite wastewater treatment would be located that is a public wastewater treatment system for the use of the condominium units. This tract, this photograph is taken from what would be lot 3 the common recreation lot and looking westward toward the condominium lot and than in the background you can see the lakeside store. This is of course the lakeside restaurant. The marina and the proposed condominium would share an existing access, the green arrow indicates where that access is located. Existing uses, the property is currently used as a bar and restaurant also a marina which has boat launching facilities and you can also get your gas and bait there. There's also 12 trailer spaces and 7 recreational vehicle spaces in the northern portion of the lot. The property currently has three existing drainfields, which serve the restaurant and bar as well as the RV park. There is currently a public water system that serves the property, the property has in the past been vegetated with native and introduced grasses there's also some small or medium size trees on the property and one or two trees that are pretty good size. One thing to note is there is a drainage culvert which drains the burrow ditch on the west side of York Road, it passes under York Road continues underground throughout most of the property and empties into the marina and into the Hauser Lake. There's several of these drain culverts located in this general area along York Road, of course to the west are uplands and the York Road sort of is a dike between the upland drainage and then heading down into York Road so it was necessary during the construction of York Road to place some of these culverts every  $\frac{1}{2}$  mile or so. As I mentioned with the applicants is proposing is to create three lots from an existing 8.8 acre tract, which is known as Tract C of COS 255049. One lot would have 12 condominium units, the other would have the existing bar and marina and the other would be a recreational area. Creation of a condominium unit does require the filing of a declaration with the County Clerk and Records as required under the unit ownership act that is section 7023102 through 703 of Montana Code Annotated. The proposed subdivision would have no adverse affects on agricultural uses of the property. The property is adjacent to Hauser Lake in an area, which is dominated by residential and recreational uses. There are some horses that are pastured on land to the west of York Road up in the uplands and aerial photographs also identified an irrigated farm tract which is about

1/3 of a mile to the west of the property. The applicants do have an existing community onsite wastewater treatment system and there's a separate community onsite wastewater treatment for the condominium, the proposed condominium units. Currently there is no plans to develop lot 3A for residential or commercial purposes and so would not require sanitation facilities. The proposed public wastewater treatment system would utilize six septic tanks, each would be shared by two residents and then they would receive secondary treatment from an intermittent sand filter and then would receive final treatment disposal into an approved drain field. It's anticipated that \_\_\_\_\_ build out the wastewater generated would be approximately 3000 gallons per day. The proposed community wastewater treatment system for the condominiums would have to go through review by DEQ and would have to be designed by a professional engineer and the existing systems for the bar and restaurant would also be reviewed by DEQ for compliance. This site plan shows the location of the drainfield. The proposed drainfields for the proposed condominium unit would be approximately right here. Due to constraints on the property due to the fact that it's a very wide but not very deep lot, the proposed drainfields would have to be constructed to be very long and narrow and the site constraints are also the reason why the applicants are requesting a variance on the road construction standards and the right of way width for the internal access road. It's a little more than 100 feet between the water and the, rather the condominium units to the road and they feel they need a little more room to fit everything in there comfortably. There are two existing drainfields that serve the RV Park and these would be abandoned and replaced with a drainfield located on the western boundary of proposed lot 2A, which serves the condominium units. The soil-mapping units identified on the subject property are kragle gravelly loam and this has moderate limitations for the placement of onsite wastewater treatment systems primarily due to the slow percolation capacities for that type of soil. The, because there are two, there already are existing drainfields and onsite wastewater treatment systems for this property it's not anticipated that there will be any problem locating and permitting these new systems. The preliminary engineering study has indicated that the proposed condominium use will likely less intensive than in the present RV and Trailer use due to the reduction of the permitted units from 18 which is currently permitted to 12 condominium units. Two public wastewater treatment systems are, two public water systems are proposed for the new development, the existing system would continue to serve the bar and restaurant and then a separate public water system would be installed to serve the condominium units. Water availability appears to be adequate for domestic purposes, wells in the vicinity are 38-220 feet in depth and the average depth is about 119 feet. The existing well on the property is 40 feet in depth. Wells in this vicinity of the southeast quarter of section 27 yield 3-98 gallons per minute, average yield is 29 gallons per minute. The existing well on the property yields 30 gallons per minute so it's right in that average. The applicant is proposing to construct an internal access road and is requesting that this right of way be reduced to 30 feet and that the improved road surface be 20 feet. The existing, or rather the proposed internal access road which would serve the condominium units would utilize two existing access points, the approach in the west central portion of the property is preexisting and will be used by the condominium and marina while the approach to the northwest would be jointly used by the condominium and the common area and that is also an existing site access point rather. County standards require that approaches onto York Road have a hard surface apron, which would extend a minimum of 30 feet eastward from York Road, York Road's paved surface. This is a photograph showing the most northern access of the property, which would be utilized by the condominium and \_\_, served by the traffic traveling to the recreational lot. The, as I mentioned the applicants are requesting a variance from the road design and construction standards to permit a right of way of 30 feet and an improved surface of 20 feet and this road would be built to typical section #3 peccia which is our gravel road standard. There is an existing dry hydrant located on the property as you can see it is located at the marina. The proposed subdivision is in Lakeside Fire Service Area. The applicant and Lakeside Fire Service has a condition of application had a meeting prior to application and they came up with an agreement as to fire service and what the fire service area is requesting that either a water supply consisting of two hydrants with a total yield of 1500 gallons per minute be installed or that the existing dry hydrant have a yield of 1000 gallons per minute to remain as it is and the each newly constructed condominium unit would be built with interior sprinkler systems designed to meet the standards of the Lakeside Fire Department. The second alternative would be if possible with the approval of MDOT to construct a pull out off of York Road that would be within the right of way of York Road and this would be constructed in such a way that the Fire Vehicles could utilize it while fighting fires without blocking traffic on York Road or risking their trucks by getting in too close and the property does have legal and physical access. As I've mentioned there is some, there are some limitation for the placement of onsite wastewater treatment systems due to the slow percolation rates, one other concern as far as impact on natural environments is that the property is west of and adjacent

to Hauser Lake and there is a drainage culvert which empties into the inlet of the marina which handles runoff from the west side of York Road. Soil Mapping Units identified on the property does have the risk of erosion unless close growing plant cover is maintained so it would be paramount in the construction of the condominium units that steps be taken to prevent soil disturbance as much as possible and perhaps put up barriers during construction to keep runoff from running into the lake directly. Residential activities associated with the condominium units could adversely affect water surface quantity which in turn negatively affect fish and wildlife. And as required for all subdivisions implementation of five-year weed management plan would be required. The habitat for the property would be good because of the close proximity to Lake Hauser and upland habitats however the viability of this habitat is somewhat diminished by the close proximity of the major \_\_\_\_ road that is York Road which is a dangerous barrier between Lake Hauser and the Upland habitats. Additionally, the property has been developed for many years for commercial and residential uses in this area for example the restaurant, RV park as well as condominium units to the south, there's existing condominium units to the south. Additionally the parcel is being increasingly developed with residential parcels. I would just note that as far as impacts on public health and safety there are of course potentials for groundwater contamination, there's also some risk due to the fact that there is a boat dock area which is located directly east of the condominium units, there's a steep bank that's, steep bank here and steps should be taken by the developers to protect residents particularly small children from the hazards of an open body of water and this could perhaps be mitigated through limiting accessibility to the water through the use of fencing and gates. The Valley Fault is located about  $\frac{1}{4}$  mile north of lakeside and the Spokane Hills Fault is about  $\frac{1}{2}$  mile south. This is a photograph, which shows the culvert that I've been talking about. The photograph to the left here where it's real grassy, that's where the culvert is at the west side of York Road and the outlet is the photograph to the right which empties into the inlet right there where the marina is. As I mentioned in my initial remarks, the condominium units would be required to meet the unit ownership act, which would include the filing of a declaration with Lewis & Clark County Clerk and Records Office. Additionally the County Subdivision Regulations have setbacks for condominium developments, they would need to be located at least 25, that is dwellings would have to be located at least 25 feet from the site boundary adjoining the right of way of any road or highway and additionally buildings would need to be set back a minimum of 15 feet from any other boundary in the development site. The proposed three-lot subdivision with 12 condominium units does meet the requirements of the County Subdivision Regulations this includes section 3 which is the major subdivision section, the section 9 which is the condominiums and townhouse requirements and than section 10, which is our general design, and improvement standard section. Staff is recommending approval of the proposed subdivision, approval would be for three lots, one commercial, one residential and one for community recreational use. Staff is recommending this approval be subject to the findings and conditions contained in the staff report, there are eighteen conditions. I'll just briefly go through the planning board meeting. The Planning board did meet on this proposal on July 20<sup>th</sup> of 2004 and they discussed the proposed subdivision. I think some of the issues that were discussed were was there adequate spacing for the installation for the public wastewater treatment system between the condominium units and the York Road right of way. Mr. Bryant who is present can probably elaborate on that but basically the discussion when he answered the planning boards question was they did find there was adequate spacing, that it was a little tight because of the constraints of the lot, the lot configuration, but that he could get the units, the sand filter in as well as the primary drainfield and then the replacement field. Additionally there was some concern or question rather that the building footprints for the condominium units had been moved very close to the water and the question was this done in order to accommodate the limited developability of that tract due to the site constraints and Mr. Bryants response was that yes that was one of the considerations and that was also one of the reasons they were requesting the variance for the road standard to give them a little more room to place their systems, their wastewater treatment system. Finally, the major question that the planning board had of these three questions, primary questions was Lakeside Fire Department in agreement with the variance to improve, or reduce the improved surface of to 20 feet and in the applicant responded, that is Mr. Bryant responded that yes in their discussions with Lakeside Fire District they had discussed this and had come to the agreement that the variance was not a problem because the Fire Department did not want to fight a fire from the internal access road it's a little too close in there for them to do so safely and that there preference would be to fight the fire farther off if there was a fire and that was one of the reasons they were requesting or exploring the possibility of putting a pull out onto York Road so that they could have some more defendable, some better defendable space in case of a fire. As I've pretty much gone through here, I'll just briefly mention some of the things that Mr. Bryant discussed in his response. He had been questioned whether

or not the public wastewater treatment system could be used by others outside of the subdivision, Mr. Bryant that question came from a letter that we got from one of the neighbors and Mr. Bryant responded that due to the site constraints this was not possible and he further went on that there are two existing drainfields and septic tanks which serve the RV Park, he explained that these would be retired and that a new onsite wastewater treatment system would be installed to serve the condominiums, he elaborated on the nature of the new system which he said would be a level 2 treatment with sand filter he further stated that the capital inflows for the condominium using state regulations would probably be less than, would be less than what is currently permitted and at the same time the wastewater would receive twice as much treatment and he believed that this would lessen impacts both on the lot and the groundwater. In addressing the variance, Mr. Bryant said that the road was being constructed between the unit, the condominium units and the proposed drainfield was approximately 100 feet to York Road that as I mentioned the fire department was fine with the proposed variance and had been discussed with them. As I mentioned a moment ago it was the preference of the Fire Chief to see a pull out for York Road in the event that they could fight a fire at a safe distance but this pull out would require the cooperation of MDOT. Mr. Chairman \_\_\_ asked if the operation of the marina would be continued and would the boat slips be used exclusively for the condominium unit or would they also be available to the public, Mr. Bryant responded that the boat ramp and bait shop would remain in public use that the boat slips immediately in front of the condominium would be for their exclusive use and that the boat slips to the east could possibly be rented by the public or might be used for public to \_\_\_ their boats while they utilized the restaurant bar. Mr. Bryant said it was their anticipation that some of the condominium units might receive year round land use but that most might be second homes and would not be occupied year round. He believed, he also stated that they believe that water degradation on the property would likely decrease because less people would be using the property with the new use and that he also noted that the landowners have done a lot already to increase the impacts on the property by removing the gravel which in the past dominated that area and they put in grass and landscaping and such. He also noted that a storm water plan would be required and that this storm water plan per DEQ regulations would have a detention area, which would allow runoff to settle out and than would release water into the lake at a lesser amount, less than the historic runoff. Mr. Mandeville asked Mr. Bryant if he or the applicants, that is the Hale's, had any conditions that they didn't agree with or would like to see changed and Mr. Bryant responded that they did not. Then the board made their motion to approve the variance request or recommend approval of the variance request that approval would be for a 20 foot improved surface and a 20-foot right of way, the motion was passed 6-1.

Commissioner Tinsley: I believe it was 6-0

Frank Rives: You're right; I'm sorry 6-0, yes. Board member Wallace made a comment that the proposal was an improvement overall, she liked seeing there was some stability of ownership out there and there would be permanent structures, she did have some concerns about the closeness of the condominiums to the water. These responses were echoed by board member Peterson. The planning board did recommend approval both of the variance and of the proposed subdivision subject to the recommended conditions of approval and I will conclude this portion of my presentation.

Commissioner Tinsley: Thank you Mr. Rives. Questions of Mr. Rives.

Commissioner Varone: Mr. Chair. Thank you. Frank in reading the information that you provided us, there was a cover sheet from Brian Hollings who's are transportation coordinator and it said see attached and I couldn't find it in the document and it's probably, I looked several times, would you just get me a copy of that attached so I can read it before I make my decision

Frank Rives: Sure, sorry about that

Commissioner Varone: I'd appreciate that. No, there's a lot of stuff here and I keep thinking I missed it.

Frank Rives: There is probably more attachments on this one than I can recall on any other subdivision.

Commissioner Varone; One reason I was particularly interested in looking at Brian's comments had to do with the fire departments okay with the 20 foot wide pavement and in particular I was wondering, I understand

that what they're asking for the easement, but my question would be to Brian it says here the developer requests a variance to allow for a 20 foot wide improved surface with a 30 foot wide easement, I'm wondering if it wouldn't be better for the cars to say the developer requests a variance to allow for a 24 foot wide improved surface which is the required surface for other roads with a 26 foot wide easement and what would be the plusses and minuses of doing that rather than the request and hopefully he addressed that and if he didn't I'd like that question answered. Am I making sense?

Frank Rives: Yes Mam.

Commissioner Varone: In other words have the easement be shorter on each side and then have the improved surface be the 24 foot surface rather than the 20 foot.

Frank Rives: That's certainly something to consider and a possibility, speaking as a planner professionally I wouldn't want the right of way to be reduced any more than 30 feet, I think 30 feet is pretty tight in there to get your utilities and what not in there but

Commissioner Varone: I'm not the expert so

Frank Rives: You know a good wide surface or wider surface is also improved surface is a good thing.

Commissioner Varone: Thank you.

Commissioner Tinsley: More questions for Mr. Rives?

Commissioner Varone: Just one last one and this probably is a question for Paul. Paul on page 9 of the report condition of approval #5 has to do with the Lakeside Fire Service Area, they are asking that one of the alternatives be an interior designed, sprinkler system designed to meet the Lakeside Fire Department Standards. The County has adopted no fire standards and I know that the State Fire Marshall is required to adopt fire standards and I believe it's a Uniform Fire Code, I don't know what addition it is, but would it not be safer to instead of saying the Lakeside Fire Department standards put in there the Uniform Fire Code Standards which also have the standards for sprinkler systems and until the subdivision regulations which we're working on right now also include standards, I'm just thinking about what kind of liability we may have if we use just the Lakeside Fire Standards which may or may not be the Uniform Fire Code but just replace the language with Uniform Fire Code condition # blah blah as adopted by the State Fire Marshall.

Paul Stahl: I can't do that off the top of my head, I'm sorry.

Commissioner Varone: That's fine, I'd appreciate if you'd look into it. I just want to make sure that we're covered here that some standards are used but I think the State standards would be what we're looking at. That's all I have. Thank you.

Commissioner Tinsley: Thank you Commissioner. Thank you Mr. Rives. Mr. Hale, Mr. Bryant now is your opportunity to give your presentation to the County Commission. Thanks for being here.

Shawn Bryant: Mr. Chair, Commissioner Varone I'm Shawn Bryant with Stahly Engineering, I'm representing the owners Mr. and Mrs. Conrad Hale. First of all and I don't know if you guys go out there a lot or not but since these owner's have purchased this property, they have put a lot of hard work and a lot of energy into building this place up, before it was actually, they had enough trailers on there that they were exceeding their permits for wastewater and water and a lot of RV units, a lot of trailers they've gotten rid of all those, they've worked with DEQ to get into compliance with their permit, they are currently permitted for 12 full time trailer uses and 7 RV units plus their bar and restaurant. In addition, they've upgraded their wastewater system for their bar and restaurant with a new pump vault and septic tank. They've had installed an RV dump station across the street at the store to serve the devils elbow that was kind of in conjunction with PPL. They took all the gravel that's between where the proposed condominiums and the highway, that was all gravel drive and parking area and they've taken all of that and placed top soil and grass out there so they got rid of the

dust and the dirt and the sediment going down to the lake. Of course now there in the next stage of their project here and they want to get rid of all of those RV trailers out there and make it more of a, if you may a upscale development out there. We want to point out that to the left or south is condominium development, looks very nice, very well accepted as far as to my knowledge we haven't received any protests on this, we've got overwhelming support of the people in the area. Now I think I'll just go down the list of the stuff to try to clarify a few things on the technical stuff. One thing that we wanted to point out and we kind of, the planning board was concerned about us having the condominiums real close to the waters edge. We just wanted to point out that this is a man made marina I guess, so it's a man made inlet so in reality if you get technical the Holter Lake or Hauser Lake I'm sorry is really several hundred feet away. The marina area itself is not a wildlife habitat, it's a boat docking area and launching area so there's going to be like almost no impact on wildlife as from the change from being RV units sitting there versus condominium use. Probably the one and the biggest change and improvement to this area is going to be the wastewater systems. Currently the wastewater systems are marginal, they're just a standard drainfield, one is a pressure dosed, actually I think they are both gravity dosed, one is pressure dosed up to a distribution system and what we're proposing to do is actually put all these on a community wastewater system, we're planning on providing level 2 treatment and which is effectively going to double the treatment of the wastewater and the wastewater quantity is not going to increase because we're still, actually we're decreasing because it's permitted for 12 full time residences and 7 RV's parks now we're going to permit for 12 full time residences period. So I think that's going to be a big improvement for the environment out there. Again, the other big improvement of course is that all of these, it's going to be totally landscaped with the grass and trees and gravel road and so it's just going to cut down on the dust and the sediment in the lake. Currently they have a public water system that serves the bar and restaurant and actually it also serves the RV units and trailers. We're proposing to actually split that in to two separate systems, one system will serve the bar and the restaurant the other system will be a community water system for the RV units and there will likely be a service which I should point out that there will likely be a service for that little peninsula lot for the water and wastewater and that's for a couple of reasons, first is the County typically requires us to make sure that sanitary restrictions are lifted from all of the lots that we create and so that would fulfill that and the other is that it's possible that this area is going to be used as a open area/community recreational area for the condominium units and it's possible that they may at some point want to put some sort of a restroom type facility down in the corner down here, that's just kind of a vision that might happen in the future so we want to plan for that if in the case that might happen. There is no intention of putting any kind of living units on that lot. Currently there is spaces for RV units out on that peninsula and they've been removed, I believe they've been removed and they won't be there anymore because they've had a lot of feedback from people that are interested in buying this property, you know the condo's and one big plus for this is having that peninsula and having the ability to have lawn and horseshoes and volleyball and what not out there. The variance, you were wondering why we wouldn't go with a 24 foot driving surface and I think it's got a lot to do with the storm drainage, we've got to have enough room to be able to get ditches in there and be able to control our storm water and utilities, we have to be able to get utilities in there without tearing up the road all the time and we have had several conversations with the Fire Department, Mr. Bob Drake, and we have presented him with a preliminary layout of a pull out off the York Road and he's tentatively approved it and said that it looks great to him and we're now going to forward that on to MDOT and see what they think about it. When we were in conversation with them you know they especially if you have a two story structure they need to be set back a certain distance so that they, if something falls you know some embers fall it doesn't hit their trucks and catch them on fire so they wouldn't use that road for fighting fires anyways, they'd use York Road, it's all flat out there and the distance is really short I mean we're talking 100-150 feet to York Road. We are extremely limited on space and so that's why we got them condominiums right up there next to the marina and the bay and we anticipate decks coming out that have stairs right down to their boat slips. Then we also needed to make room for the drainfield. We've calculated very conservatively this area that we need for drainfield and it does fit into this area that's showing on the plat right there. We really anticipate the area to be a little bit less, you know shorter. The other comment that hasn't been brought up yet and maybe I should just keep it quiet but Eric Griffin actually made a comment about lining up our accesses, across the street to the store and the reason that the accesses are where they're at is because that's where they're at. They exist there today and we decided to use what was there. We don't, we actually anticipate less impact, traffic impact now than what is happening right now. I guess just in closing, I guess I think we have an opportunity to improve a situation that's fairly marginal right now, I think the Hale's have worked very hard in improving that area and it would help a lot if we could continue on. I'm here

for questions.

Commissioner Tinsley: Questions for Mr. Bryant?

Commissioner Varone: I think you did a great job; I usually have at least one.

Commissioner Tinsley: I'm quite surprised. Mr. Hale do you have anything to add or Mrs. Hale? Alright. Thank you very much Mr. Bryant. I'm now going to open the public hearing,

Commissioner Varone: Mr. Chair before you do that, one thing I think we need to do is include the letters of support that were provided on the record and I counted them and there were 26 letters of support.

Commissioner Tinsley: We did get 26 letters of comment on this application and they were all positive as far as I know so we will include those in the public record including any documents or public testimony that we get today. Public comment, anybody that would like to comment on this proposal please come forward and state your name and address. For the first time? For the second time? One more chance, for the third time. This closes the public hearing. Mr. Bryant or Mr. Hale would you like to close? Thank you. You folks out there, I'm not winking at you, I scratched my cornea this week so if it looks like I'm winking at somebody I'm not really doing it.

Commissioner Varone: Don't believe him.

Commissioner Tinsley: It's starting to act up a little bit. Okay we've closed the public hearing, do you have any other questions of anybody or of staff.

Ron Alles; Mr. Chairman I might add the public hearing and comments included the variance request.

Commissioner Tinsley: Absolutely, I just assumed that was known.

Commissioner Varone: Do we have to hold a public hearing for that too or can we just include it.

Paul Stahl: Just as long as everyone understood that the variance was included, you should ask if there is anybody that wanted to speak on the variance just to make sure

Commissioner Tinsley: I will do that. There is a variance request included in here, I assumed everybody could read my mind and was knew that I was talking both of them is there any public comment on the variance request. For the first time, the second time, the third time. Seeing none that closes the variance request public hearing as well. I'll now entertain a motion.

Commissioner Varone: Mr. Chair I make a motion to make a decision on the proposed major subdivision preliminary plat to be known as Lakeside Village on Hauser Major Subdivision on Thursday the 12<sup>th</sup>.

Commissioner Tinsley: Second. Discussion. All in favor say Aye.

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Opposed \_\_\_\_\_. Motion carries. Mr. Hale, Mr. Bryant, Mrs. Hale we will do the same thing, you sat through the other two that's exactly what's going to happen we're going to come out and take a look at it, try not to talk to us if you can, we're just going to go out and look at it and than we'll make our decision on Thursday. If you guys get a ticket, if anybody has a ticket please bring it up to Carole and she will make sure that you're not responsible for them, only this time though.

**Proposed Major Subdivision, Preliminary Plat to be known as Southridge Estates Major Subdivision.**  
(Applicant, Southridge Properties/Dick Weschenfelder)(Planner, Lindsay Morgan)

The Commissioners will consider creating thirty-two (32) lots. Thirty-one (31) lots will each be used for one single-family dwelling and one lot will be used for commercial storage units. The subject property lies in the SE1/4 of Section 10 and the SW1/4 of Section 11, T10N, R3W; generally located on the east of and adjacent to York Road.

Lindsay Morgan: Good morning Commissioners. We received a letter from Mike Fasbender with Southridge Properties LLC and he has requested that the review period for Southridge Estates Major Subdivision be extended until August 31<sup>st</sup>, 2004 and that the public hearing in front of the commission be rescheduled to August 24<sup>th</sup>, 2004 that way all three commission members can be in attendance.

Commissioner Varone: We do this by consensus?

Commissioner Tinsley: That's, by consensus that's fine with me.

Paul Stahl: Yes (tape ended)

Sharon Haugen: (tape begins)... the extended review period because it does require a motion and not a consensus, just to have an accurate \_\_\_\_.

Commissioner Tinsley: We have before us a proposed major subdivision preliminary plat to be known as the Southridge Estates Major Subdivision. It's been asked by the applicant to postpone it until August 24<sup>th</sup> which we will grant in a moment but since it was a published meeting, and this was noticed as a meeting is there anybody in the audience who would like to speak to this particular subdivision, I will open the public hearing now and we will continue it on through August 24<sup>th</sup> and than close it at that time, which is when our next meeting date is for this. I guess we can determine at that time if we want to keep it open. Is anybody present would like to speak on the proposed major subdivision known as the Southridge Estates Major Subdivision. Seeing none, we will continue the public hearing until August 24<sup>th</sup>. Is there a motion to table or to move this, table it until the 24<sup>th</sup>?

Commissioner Varone: So moved.

Commissioner Tinsley: Second. Any discussion? All in favor say Aye

Commissioner Varone: Aye

Paul Stahl: You are continuing the hearing until 9:00 am, time and place specific in this room

Commissioner Tinsley: Right. All in favor say Aye.

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Motion passes.

**Proposed Road Abandonment for a Portion of Hahn Road.** (Principal Petitioners, Judith Johnston & Ralph Holmes)(Planner, Lindsay Morgan)

The Commissioners will consider abandoning a portion of Hahn Road. The right-of-way is approximately 460 feet long and 60 feet wide. The property is located in the NE1/4 of Section 7, T10N, R3W. The petitioners have requested that the center section of Hahn Road be abandoned to preserve the future

Lindsay Morgan: A petition has been received to abandon a portion of Hahn Road. The right of way is approximately 460 feet long and 60 feet wide. I have a vicinity map up on the screen for you to view. The principal petitioners are Judith Johnston and Ralph Holmes. However, other \_\_\_\_ holders have signed the petition as well. All petitioners have requested that the center section of Hahn Road be abandoned. Ms. Johnson has previously stated that the main reason for the abandonment is to preserve the future safety of

children in the area. As of July 30, 2004 the Planning and Development has received one public comment in opposition to the proposed road abandonment. The proposed right of way abandonment is located between Michelle Drive and Kristine Drive, Hahn Road has never been constructed between these two streets. The right of way lies on a relatively, on a relatively flat portion of ground. Currently there is a horse pasture located within the proposed road abandonment along with a few encroaching fences. I have a site plan up on the screen for you as well. The total area of the proposed right of way abandonment is approximately 27,600 square feet or .634 acres. Hahn Road is located between North Montana Avenue and McHugh Drive. It runs east-west. Area residents who utilize Hahn Road for access to their lots must either access off of North Montana for those properties located on the east end of Hahn Road or off of McHugh Drive for those properties lying on the west end of Hahn Road. Comments were solicited from service providers, the subject property is located within the West Helena Valley Fire District. Jerry Shepherd the Fire Chief for the area has stated that there are difficulties with closing off that portion of road. He goes on to say that if an emergency vehicle enters the wrong side of Hahn Road they must drive approximately 1.4 miles in order to reach the other side of Hahn Road. He requests that if the road is permanently closed that one side of the road, Hahn Road be renamed. The City-County transportation coordinator has stated that the proposed right of way abandonment may impact the future transportation network. The County is currently looking for east-west corridors for vehicular traffic and therefore the abandonment of an east-west right of way currently owned by the County would not consistent with the County's current transportation goals. It's my understanding from the transportation coordinator that the County Road and Bridge Department agrees with what the transportation coordinator has stated in their letter to the planning office. We've also received a letter from Commissioner Tinsley with regard to the proposed road abandonment. Based upon the issues identified in the staff report, staff concludes that there is a need for retaining this segment of right of way for Hahn Road between Michelle Drive and Kristine Drive as a public right of way and therefore recommends denial of the request to abandon that section of Hahn Road. I do have some pictures for you. I have an aerial photo of the proposed road abandonment. This is a view to the west. A view to the northwest. A southwest. Here is a view from the opposite side and it's a view to the east. This is showing a portion of the eastern half of Hahn Road that has been constructed. Here's the western portion of Hahn Road that's also been constructed. Do you have any questions for me?

Commissioner Tinsley: No. I do have a question if you don't mind holding for a minute for Paul Stahl or Sharon. So should I just open this up for public hearing or should I ask the principal petitioners to come up and see if they have any questions or just go ahead and open the public hearing?

Sharon Haugen: Mr. Vice Chairman, go ahead and open up the public hearing, the petitioners will have the opportunity to address the issue.

Commissioner Tinsley: Before I do, are there questions for Ms. Morgan? Okay at this time I'd like to open the public hearing on the proposed road abandonment for a portion of Hahn Road as indicated in the application and by staff. Are there any public comments on this proposal? Please come forward and state your name and address for the record.

Kevin McDonald: Good Morning, Kevin McDonald 4610 Victoria Drive, my wife and I reside there. I am the party that wrote the letter in opposition to this abandonment, I did not have this information, would you put this back up please at the time that I wrote the letter. In regards to my statements as far as my disagreement in abandoning that portion of Hahn Road due to the fact that we live in a flood hazard area and a secondary access, I don't have any opposition to that now. As this proposal stands because if this goes than we will have the secondary access and I don't have a problem with that. Some things I am still concerned about is that this subdivision does meet the new requirements for Lewis & Clark County, the Road Improvement if this happens, we need to have this road built up because as you can see from the picture, could you put that up please, for the east end of Hahn Road. That road is narrow and any development in that area would significantly impact those of us that live right there on the road. And than in such that at that time something be formed to make sure that that road is maintained, whether it's a homeowners association, an RID whatever, that needs to be addressed and than the fourth thing and maybe somebody here can answer this question, the utility corridor that is this portion of Hahn Road that's being proposed to be abandoned, is that a current utility corridor that services those of us on the east end of Hahn Road?

Commissioner Tinsley: Ms. Morgan, I'm not sure, do you understand what he is asking if there are current utilities in that right of way or easement.

Lindsay Morgan: Right now there were no utilities observed within the right of way and no utility companies responded to the proposal, so it's my assumption that the utilities are on either side, I know they're along North Montana and they're along McHugh.

Commissioner Tinsley: So it doesn't appear at this time that there are

Kevin McDonald: and I have no objection to that part of it either, I'm just concerned if that was a utility corridor that be maintained. That's it. Thank you for your time.

Commissioner Tinsley: Thank you very much for coming this morning and sitting through this entire meeting. Mr. Stahl?

Paul Stahl: Mr. Chairman, just for discussion purposes I guess, I think this is one of those real gray areas but when there is a public road, there is a utility easement and even if there aren't any utilities in it, when you, if you abandon a road, there is still a utility easement the right, and I don't know what happens if there isn't anything in there but I don't think once this becomes public than the utility easement is there whether there is anything in it or not and they don't abandon that I don't think.

Commissioner Tinsley: What you're saying Mr. Stahl is we cannot abandon the utility easement if we decide to abandon the road, correct?

Paul Stahl: Correct.

Commissioner Tinsley: Ms. Morgan

Lindsay Morgan: If the proposed road abandonment is approved, the County surveyor requirements will require that the County planning office would require that ten foot wide utility easements be established along all internal property boundaries but as it sits right now there should be a public access and utility easement.

Commissioner Tinsley: Thank you. Further public comment? Chief Shepherd from the West Valley Fire Department.

Jerry Shepherd: Jerry Shepherd Fire Chief for West Valley Fire Department. I just want more or less want to answer any questions on my letter that I sent you, I can explain it better in person obviously. It is now currently a real problem for us that has happened to us before, that we've been paged to an address on Hahn Road only to end up, actually we ended up here at this address and we needed to be on the other side and it's 1.4 miles, I drove it, if it's medical, obviously fire is a little easier to find but medicals are tough to find. It can cause a real problem so I guess what I would ask is I did not also know that there was a subdivision attached to this, I just knew they wanted to abandon the road, that we rename it that way we know which direction to go that was my idea is so that we, if you're going to Johnson Road you know that's off Montana and Hahn is off of McHugh or vice versa, I really don't care it was just a way for us to find it faster and I guess I would let you know it's real frustrating because I didn't even know that Hahn Road was a public, that it is blocked off, when I first started the Fire Department 13 years ago you could get through there, it wasn't a good road but if we needed to get through we could. Currently we cannot get through, we have to go around and it actually causes problems but I just wanted to answer, to be able to answer any questions that you might have on my letter.

Commissioner Tinsley: Questions of Chief Shepherd?

Commissioner Varone: Thank you Mr. Chair, I do have a question. I guess and I'm not sure if you can answer it Chief or if Paul needs to answer it, if this is supposed to be a public road and it's on a plat to be a public road

and it is, not an improved road that portion, but indeed it has been fenced off, is that not illegal because if the Fire Department needs to get through even if it's a rough go and they need to get through but they can't because it's blocked off.

Paul Stahl: I won't go as far as to say it's illegal, but as Commissioner Varone and Commissioner Tinsley as you know there are times when the Commissioners close roads rather than abandon them and let the neighbors run their horses on them and I don't know if that happens to be one of these that some of your predecessors might have in the past agreed to this closure rather than abandonment letting some, because nobody ever drove on it and why can't I run my horses there and you've heard this and so I don't know how this happened, and I would say one other thing, sometimes when I first began here and when Jerry first began here, this was really out in the sticks, right and you really didn't care and now as the population keeps going up than these things become more pressing and so it may be something we have to look into and it may in fact be something that we want to remove.

Jerry Shepherd: I'm glad you brought that up, now that this isn't a public and I agree with Paul before it wasn't a problem, it's becoming a problem now that it's up I would like to fix it whether it become a road or renamed or closed but I'm glad that it's being brought up also to get fixed.

Ron Alles; Mr. Chairman, Commissioners I might add to that in order for a fence or anything else to be put on the public road or right of way an encroachment agreement is necessary. If we don't have one on file, there should be one or the people that are pasturing their horses should have an encroachment agreement. If the commission is going to allow that.

Commissioner Tinsley: I think I'm speaking on behalf of the commission when I say, I would like to ask staff to go check and see if there are any agreements and if not we need to begin the process of getting this gate removed regardless of what we do in the long term. Short term we need to get this taken care of. If that's alright with my fellow Commissioner. Further public comment? Yes Mam, please come forward and state your name and address for the record.

Judy Johnston: My name is Judy Johnston 4579 Kristine Drive and I'm the petitioner and to, I'll start by addressing the horse pasture in the middle of the road. I think it was 15 or 18 years ago my husband came to the County and asked if we could in fact close the road and the County said that would be fine because they were not maintaining it and it was a liability issue for the County that they were concerned about. People were crossing but there was no developed road it was a big mud pit and kids were out there partying and so on and so forth. So they agreed, the County agreed to it and the County posted Dead End signs on either side of Hahn Road. That's all I know about that so at that point we, I fenced it off and put my riding arena in there. As to the reasons we want to abandon the road there are several but I'd like to also address the fact that there would be a through street as you saw from the subdivision, if you could show that again, so there would be access from North Montana and access from McHugh so the road is not really cut off it's just going not a straight shot through and what we are concerned about and all the neighbors are concerned about for a straight shot, already this would be a fairly high density subdivision and to add to that public transportation, or public use on Hahn Road in addition to the folks who live there would create a lot of hazards. Yes I did suggest the safety of children and pets in the future but also just the number of people on the road. In addition, there are two roads north of Hahn Road, Motsiff and Mill Road that already channel traffic to North Montana from Green Meadow and from McHugh. If you add a third road in this area, we create, we feel we're creating a dangerous situation and a bottleneck on North Montana because it's right here where ten mile creek crosses North Montana that the road narrows again. So we're channeling in three main cross arteries if you will into an area where the road decreases in size and channels across the bridge and bottlenecks and so it's already difficult even with the third lanes it's still difficult in the mornings and evening to get on and off North Montana. To add more traffic to that other than what this subdivision would be adding I think causes a dangerous situation. In addition, for us trying to do this development, this is our retirement money, we feel that if you have the road going straight through for us we feel it would decrease the property values of our neighbors as well as of the subdivision itself so we have some concerns about that. I think that's basically the points we want to make it's for the people that live there, we would be the ones that would developing the road and it's my understanding that we need to bring it up to County standards which is fine and any roads that we

put in we would be bringing up to County standards so the road would be brought up now as to the point brought up about maintaining the road, my understanding is that I thought the County was supposed to maintain the road but the County has never maintained that road, they've never been out there and graded or done anything to it except with one exception which I think was two summers ago, the west side of Hahn Road, the County went out and graded that and I don't know but I think they added some road mix to that west side of Hahn Road, they've never done anything to the east side of Hahn Road at all and every time we've talked to the County about doing that, the County has just said that they weren't sure who owned the road and how is responsible for it but the County was not taking any liability for the road and not doing anything to maintain the road. So the Hahn Road issue has been an issue around for a long time and so we would also along with the Fire Department like to get it solved and resolved and we have no problem changing the name of Hahn Road and neither would Jim Farriter have any problem with changing the name or doing anything we can to help the safety issue but as far as access safety access for fire and for police it does go all the way through it just makes a jog to come channel traffic and slow it down a little bit.

Commissioner Tinsley: Thank you Ms. Johnston we appreciate your comments. Any further public comment? For the second? For the final time. Seeing none, this closes the public comment. Is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to deny the proposed road abandonment for a portion of Hahn Road and authorize Vice Chair to sign.

Commissioner Tinsley: Second. Discussion.

Commissioner Varone: Discussion. I do this with mixed emotion because I understand the desire of the folks that live out in that are to want to protect their kids and have a safe place and that kind of thing. One thing that we did two or three years ago and maybe it was done before I was elected I don't know but staff was directed to take a look at the transportation corridor east-west for a variety of reasons. One because of the growth in the area and the need for people to have more than just a couple ways to get back and forth to work and for a variety of reasons, the second has to do with safety and when Chief Shepherd and came up and talked about that it really peaked my interest because if I lived on the west end of Hahn Road and my husband had a heart attach and Chief Shepherd couldn't get through there and my husband died, that would be tough and to allow this road to be abandoned I think it's a huge safety factor for our community and we need to keep track of that and make sure that any availability that the fire department requires we need to address it and take a closer look at it and so for that reason, that's why I'm making my motion and why I'm going to be voting no.

Commissioner Tinsley: Thank you very much. I explained my reasons for denial essentially we try to maintain east-west corridors for future growth and development and we cannot give up these vital east-west corridors. I understand, Ms. Johnston, I understand your point of view and I appreciate it but it's critical that we have this east-west grid and we need to have it for safety reasons and for access reasons for other parts of the valley so that's my reason for doing it and with that I'll call \_\_\_ discussion. All in favor signify by saying Aye.

Commissioner Varone: Aye.

Commissioner Tinsley: Aye. Opposed \_\_\_\_\_. Motion carries.

Commissioner Varone: Mr. Chair if I could just ask that Chief Shepherd work with our transportation folks in maybe coming up with a solution and maybe Paul to the Hahn Road problem and than at a later date come forward and give us your recommendations.

Commissioner Tinsley: Thank you Commissioner Varone. We have two items that have been moved, the bid award for the two tandem axle dump trucks for the public works department, that's going to be moved to Thursday and we also have a major subdivision that has been postponed until August 24<sup>th</sup> at the regularly scheduled meeting.

**Heath Department Contracts w/DPHHS.** (Mike Henderson)

Maternal Child Health Block Grant. \$63,857  
Breast & Cervical Health Program. \$47,930

Michael Henderson: Thank you and good morning. We have contract renewals, between Department of Public Health and Human Services at the State of Montana and Lewis & Clark County. The first one on the agenda is the Maternal Child Health Block Grant, which provides for public health home visiting and fetal and child infant death review for the maternal and child population of the County. We have nurses and social workers that are visiting high-risk families in their home and it's a renewal of a contract that we've had for many years and I would request approval.

Commissioner Tinsley: The amount of the contract Mr. Henderson is \$63,857?

Michael Henderson: that is correct.

Commissioner Tinsley: Are there questions for Mr. Henderson?

Commissioner Varone: Mr. Chair I move approval of the Maternal Child Health Block Grant in the amount of \$63,857 and authorize Vice Chair to sign.

Commissioner Tinsley: Second. All in favor say Aye

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Motion passes.

Michael Henderson: The second grant is for the Breast and Cervical Health Program, which is a comprehensive cancer-screening program. It's as I mentioned a cooperative agreement with the Center of Disease Control and Department of Public Health and Human Services. The Lewis & Clark County site serves Moore, Broadwater and Jefferson County, last year we did 225 offered screening counseling services to 225 uninsured women with incomes under 200% of the Federal poverty level. The amount of this contract \$47,930.

Commissioner Tinsley: Questions for Mr. Henderson?

Commissioner Varone: Mr. Chair I move approval of the Health Department contract for the Breast and Cervical Health Program in the amount of \$47,930 and authorize the chair to sign.

Commissioner Tinsley: Second. All in favor say Aye.

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Opposed \_\_\_\_\_. Motion passes. Thank you Mr. Henderson, have a good day. We'll get these to you, there's a lot of signatures here as well and I'll wait until after the meeting and we'll get them back to you. Thank you very much.

**MSU Extension Agent Salary.** (Nancy Everson)

The Commissioners will consider the budget form.

Ron Alles: Mr. Chairman if you'd like the Larry Hoffman the Extension Agent, his issue I can deal with if you'd like, he had to go to Augusta. Mr. Chairman this is just the extension services agreement between MSU and Lewis & Clark County. We do this every year, essentially what it indicates is that Lewis & Clark County by agreement pays a portion of our extension agents' salaries, it certifies the amount that we have within our payroll for administrative staff within the extension service. The extension agent salaries, two of them we pay based upon a percentage of our elected officials salaries, that's the purpose of this agreement. Staff does

recommend approval, the Chief Finance Officer's looked through this, the Personnel Director and as well as myself so staff recommends approval.

Commissioner Tinsley: Are there questions of Mr. Alles? Is there a motion?

Commissioner Varone: Mr. Chair I move to approve the Extension Services agreement between MSU Extension Service and Lewis & Clark County and authorize Vice Chair to sign.

Commissioner Tinsley: Second. All in favor say Aye.

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Opposed \_\_\_\_\_. Motion passes. Thank you Mr. Alles.

**Federal Annual Certification Report.** (Ron Alles)

The Commissioners will consider the report for the Missouri River Drug Task Force.

Ron Alles: Mr. Chairman our County Attorney, Leo Gallagher, this is one of the federal annual certification forms that we need to do to operate the Missouri River Drug Task Force. There are essentially three programs, this is one of them and this is the equitable sharing grant. Essentially what happens is if our drug task force officers take on a case and it gets turned over to the federal authorities any of the assets that end up being sold are the proceeds from those assets are turned over to the Missouri River Drug Task Force. We account for those revenues and certify to them the receipt and expenditure of those. What this report reflects is that activity for this past year and staff does recommend approval, the County Attorney's office has been through it as well as financial staff.

Commissioner Tinsley: and I believe you just said, but I'll state it again that the County Attorney has been through it and he has approved this on August 4<sup>th</sup>, are there any questions?

Commissioner Varone: Mr. Chair I was involved with this program when I worked for Department of Justice and it's a program that for years has been instrumental in catching criminals in our community and the group works very well, always has worked well together and they maximize the funds they have available to them. A very worthwhile program. I move approval of the Federal Annual Certification Report and authorize the Vice Chair to sign for the Missouri River Drug Task Force.

Commissioner Tinsley: Second. Discussion? Seeing none, all in favor say Aye.

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Opposed \_\_\_\_\_. Motion passes. Thank you Ron.

**Resolution Declaring County Property Surplus Property.** (Ron Alles)

The Commissioners will consider the resolution to surplus a 2000 Caterpillar Landfill Compactor with a value more than \$2,500.

Ron Alles: Mr. Chairman this resolution declares surplus our 2000 Caterpillar it's the landfill compactor. As you recall we purchased a new compactor within the last 3 or 4 months. Our intent initially was to trade that in but we felt we could get more by actually selling it. We have received bids, prior to actually disposing of the property the Commission needs to take official action of declaring it surplus. Staff does recommend approval.

Commissioner Tinsley: Questions for Mr. Alles?

Commissioner Varone: Mr. Chair I move approval of a resolution declaring County property surplus property for

the 2000 caterpillar landfill compactor with a value of more than \$2500 and authorize the Vice Chair to sign.

Commissioner Tinsley: Second. Questions? Seeing none, those in favor say Aye

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Opposed \_\_\_\_\_. Motion passes.

**Resolution Ordering a Refund of Taxes/Fees/Assessments Paid.** (Ron Alles)

The Commissioners will consider the resolution to refund Applegate RID property owner Michael Hossfeld in the amount of \$37.86.

Ron Alles: Mr. Chairman, Commissioner Varone, as you recall many of these have come up over the last couple years, this is one more, we're almost there to completing that. It's a refund to Applegate RID owners for charges that have been overcharged over the last few years. This is a refund of \$37.86 to Mr. Michael Hossfeld. Staff recommends approval.

Commissioner Tinsley: Are there questions of Mr. Alles? I have one if you don't mind. Mr. Alles, we're getting pretty close to the end of this correct?

Ron Alles: Yes, I say that every time but we are, we're down to the last couple.

Commissioner Tinsley: Okay, I'll take your word for that. Is there a motion?

Commissioner Varone: So moved and authorize Vice Chair to sign.

Commissioner Tinsley: Second. All in favor say Aye

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Opposed \_\_\_\_\_. Motion passes.

**Nunc Pro Tunc Actions:**

- a. BLM Assistance Agreement. Task Orders 2 and 3 for Fire Education and Fuels Reduction. [Commissioner Tinsley signed 8/4/04]
- b. Montana Arts Council Grant Agreements:
  - Council for the Arts, Inc./Lincoln [Comm. Murray signed 7/28/04]
  - Grandstreet Theatre [Comm. Murray signed 7/28/04]
  - Holter Museum of Art [Comm. Tinsley signed 8/2/04]
  - Myrna Loy Center [Comm. Tinsley signed 8/2/04]
- c. Independent Contractor Contract w/Helena Sand & Gravel. Lime Kiln/South Hills RID \$5,400 [Comm. Tinsley signed 8/5/04]

Commissioner Tinsley: These are items that we could take care of, we generally assume that there would be no controversies so we can go ahead and approve them and then we'll formally approve them at this meeting and basically it was to meet some deadlines for grant requests. It looks like almost all of those are the case. Ron do you want to comment on any of these?

Ron Alles: Other than do you want to take each of these individually or just take them as a whole?

Commissioner Tinsley: I believe we can take them as a whole unless Commissioner Varone or Deputy County Attorney Stahl believes we need to separate any of them out.

Ron Alles: I'll just briefly mention that under item b there are four Montana Arts Council Grants, the County

has historically supported that program and tried to assist those non-profit organizations in submission of there grants, we help them account for that money, those grants were to the Council for the Arts Inc in Lincoln, there was the GrandStreet Theater, Holter Museum of Art and the Myrna Loy. Item 'a' was a BLM assistance grant, it was essentially task orders two and three for fire education and fuels reduction and lastly there was an Independent Contract with Helena Sand and Gravel, it was for work on the Lime Kiln South Hills RID in the amount of \$5400. Staff recommends approval of these grants and contracts.

Commissioner Tinsley: Commissioner?

Commissioner Varone: So moved and authorize Vice Chair to sign.

Commissioner Tinsley: Second. Any discussion? All in favor signify by saying Aye

Commissioner Varone: Aye

Commissioner Tinsley: Aye. Opposed\_\_\_\_\_. Motion passes.

**Public Comments.**

Commissioner Tinsley: Is there any public comment? Any public comment. Seeing none, we are adjourned.

**Adjourn.**