

PUBLIC MEETING
June 28, 2005

Chairman Ed Tinsley called the meeting to order at 9:00 a.m. Commissioners Varone and Murray are present. Others attending all or portion of the meeting included Ron Alles, Frank Rives, Michael McHugh, Art Pembroke, Marni Bentley, Carol Hanel, Greg Chadwick, Ruth Swenson, Mikel Kellner, Mark Lambrecht, Jim Martin, Christian Grover, Rich Meyering, and Carole Byrnes.

Start of Tape

I move on the passage of a memo of understanding between the City of Helena and the Rocky Mountain Development Council and authorize the chair to sign. Commissioner Varone seconds the motion. Motion passes.

5. Resolution to Increase The Lakeside Fire Service Area Rates. Marni Bentley (cont. from 6/21/05): I have no further information to add at this time. I believe the Commission needs to make a decision. Questions for staff? Commissioner Varone: I Received yesterday an Attorney General's opinion and a letter of concern from Andy Skinner regarding how this is done, and I just want to make sure that everything we are doing passes legal muster and I ask we table until Thursday to allow Paul Stahl to take look to provide direction. Commissioner Varone, Commissioner Murray seconds the motion. Commissioner Murray faxed a copy and am waiting to hear from Mr. Stahl, this is the only reason why he is seconded the motion. Ms Bentley has not seen the letter from Mr. Skinner, but will work with Mr. Stahl. Mr. Chairman: It is my understanding the County Attorney is aware of every Attorney Generals opinion that has come down the pike and if it in anyway affected this particular decision, I'm sure we would have heard about it by now, that is why I will vote against the motion to table. Andy Skinner is not the keeper of the Attorney Generals opinions, the AG is and our County Attorney is very well read and I am very certain that both he and the Deputy are made very aware of this opinion. Commissioner Murray will still vote in favor of the motion to ensure they have adequate time to again take a look at the opinion. Motion to table until Thursday, June 30, 2005 at 9:00 a.m. Motion passes 2 to 1.

6. Resolution to Create Rural Improvement District No. 2005-4 For Raven Road and Black Mountain Drive. Marni Bentley: On 5/17/05 the board passed a resolution of intent to create the Raven Road and Black Mountain Drive RID based on a petition from the landowners in that area. After the resolution was passed by the board, letters were sent to all owners of property in the proposed district and legal ads were published in the paper in accordance with the statutes. As of June 23, 2005, no comments or inquiries had been received by the planning department. I received a request for a copy of the petition and I provided a copy to that individual. The protest period ended June 21, 2005 and one letter was received and a copy is attached to the memo. The protest did not meet the statutory requirement for a valid protest as it was not signed by all the owners of the property and it was not counted in the protest calculations. Draft resolution to create the Raven Road and Black Mountain Drive RID is attached to your memo and it outlines the cost of the maintenance. Staff recommends approval to create the Raven Road and Black Mountain Drive RID. Commissioner Murray moves the resolution to

create the rural improvement of District No 2005-4 for Raven Road and Black Mountain Drive & authorize the chair to sign. Commissioner Varone seconds the motion. Both Marni Bentley and the Chairman interjected stating we might want to have a Public Hearing and requests both Commissions to hold the motions and the second. Will have a Public Hearing on the proposed RID for Raven Road and Black Mountain Drive. Proponent: Mr. Wallace Smith, 6720 Gun Track Road (?), which is off of Raven Road, and President of the Raven Road Association and would like to say the road is about 28 years old or older, and is worn down in places as much as a foot, and we have tried to maintain this road for a long time with people donating funds to the association, and that hasn't worked. We only have about 28% of the people who donate and it has been a real struggle, and we definitely need to get this RID approved if at all possible.

Proponent: Marilyn Smith, 6720 Gun Track Road and I am definitely for this.

Proponent: Marilee Coleman, 6610 Raven Road, and I am absolutely for improving the road.

Proponent: Maurice Hardy, for the Hardy Ranch, 5845 Birdseye Road, and we are just here to support this and we are 100% in favor of.

Proponent: Mike O'Neal, Gun Track Road (?), over the years I have supplied a great number of equipment to maintain the road and it has been a struggle through winter, spring and summer to keep it in condition for travel. It's kind of keeping up a cow trail in a tornado, so I support this idea to get some help with the road.

Opponent: Ray Dagen, 6335 Raven Road, I wrote a letter of protest, if that is the one that was referred to, I don't know, whether it was legal or not I don't know but I did write a letter of protest. Mr. Chairman indicated to Mr. Dagen that we have the letter here and when Mr. Dagen is done with his comments he will have Ms. Bentley get up and answer to see if that was the letter in question and she can give the reasons why it was considered. Mr. Dagen counted the parcels involved there is 58 of them, and there 31 signatures and equates to 53% which is less than 60% that I was led to be believed that was required. Another thing that needs to be address is some mechanism for governing this road association. My suggestion would be elected trustees similar to the Birdseye Fire Department where there are like 3 trustees that are elected and they have the responsibility of governing what happens to this road. The way it's been in the past, the only people that could vote were the ones that could pay these road association dues which was probably less than 20% of the people that own property on the road, so you had this small minority basically controlling the road association and some of the governing that has been going on is basically the squeaky wheel syndrome, the people that were the most vocal that's where the action took place. And I think we need people that were elected by all anybody that is on that road that is a property owner, should have a chance to vote on whoever is governing this road.

Mr. Chairman requested further opponents and there were none.

No General testimony.

This closes the Public Hearing.

Mr. Chairman asked Ms. Bentley to get up and answer Mr. Dagen's questions since he wants to know if his letter that was received. Ms. Bentley: it was his letter that was received and it wasn't signed by all owners of property that is required by statute. If we do count that as a protest it would be 2.4% protest and it is not enough to bar proceedings. With regard to the petition, first of all a petition is not required by statute. A petition is just a County policy requirement so that we can determine if there is enough interest to go forward. On my count I have 59 parcels in the district and I have 36 signatures signing my petition so that is where I got my 61%. With regard to the road committee, Carol Hanel will be setting up a road committee and she does work closely with the committee on needed maintenance and repair and Mr. Dagen is probably welcome to be on that committee.

Carol Hanel, Public Works Coordinator for Lewis and Clark County. Ms Bentley is correct and before the proceedings this morning I visited briefly with the representatives here from Raven Road and we do set up a committee in each of our RIDs and it's a committee that represents the whole area and not just a section of the road and that would be my request to them that they submit 3 or 4 names of people that we can work with and that is at their discretion and my suggestion to be that they spread it equally not just one section so every one is represented and that can change at any time, and I would stay in contact with them and we don't do any work on the road without their approval and they send their recommendations to me and any work done on the road there would be a contract and no monies will be paid out of their RID funds without their approval. Any invoices that come out as a result of work done on the road has to be signed by them before we pay the invoices.

7. Resolution Levying And Assessing A Tax Upon All Benefited Property Within The Raven Road rural Improvement District No. 2005-4.

Commissioner Murray: this morning we have a 2-part process; 1 a resolution to approve the RID and the 2nd is to levy the fee on the RID.

Mr. Chairman: Commissioners we had a motion prior to the Public Hearing and I allowed for the motion inadvertently, is the pleasure of the Commission still with the motion, would they like to delay the vote until Thursday.

Commissioner Murray: the motion maker moves to continue his motion.

Chairman: The motion stands.

The second stands.

No further discussion. All in favor of the motion to approve the proposed RID for Raven Road and Black Mountain Drive signify by saying Aye. The motion passes.

Commissioner Murray: Mr. Chairman I would move a resolution levying and assessing the tax upon all benefiting property within the Raven Road and Black Mountain Drive Rural Improvement District No. 2005-4 I come forward and authorize the chair to sign. Commissioner Varone seconds the motion. Motion passes.

Mr. Krause?: Mr. Chair can we back up a second, I think we need a hearing on the rates as well.

Chairman: We need a Public Hearing on the 2nd motion which is the resolution levying and assessing the tax upon all benefiting property with the Raven Road and Black Mountain Drive rural Improvement District No. 2005-4. Does the Commission agree to rescind the previous motion until we have a public hearing? Commissioner Murray and Commissioner Varone agree to table the motion. All agree to table the motion.

This is a Public Hearing on the 2nd motion for a resolution levying and assessing the tax upon all benefiting property with the Raven Road and Black Mountain Drive rural Improvement District No. 2005-4.

Any Proponents? We can incorporate any previous testimony into this particular item if nobody wants to get up again.

No Proponents.

No Opponents.

Commissioner Murray: Moves to incorporate the previous testimony on establishing the RID into the permanent record for the assessment resolution assessing the tax for the RID.

We have a motion and second to incorporate the testimony into this agenda item.

All say aye.

Motion passes.

8. Proposed Minor Subdivision, Preliminary Plat to be known as Grover Estates.

Planner, Michael McHugh, the proposal is to create a 2 lot minor subdivision on an 83 plus acre parcel that is located north of York Road and east of Herron Drive, access to the proposal is from Halbrook Road it's the southern boundary of the property is approximately ½ mile north of York Road. Currently the subject property has development located in the northwestern portion of the property. Development includes a single-family residence in this area here, and several agricultural out buildings. Showing residential home, barns that were previously constructed. Several of the buildings on the property were constructed between 1900 and 1904. The applicants are proposing to do is to create 2 lots one of 30 acres in size and one lot 50 plus acres in size. The southern lot is not proposed for development. The applicants have indicated to staff it would remain in agricultural use. Again this is showing some of the development on the property. This is the home. The majority of the home was constructed in 1900's and there was an addition placed on the south side of the home in 1994, I believe. As far as public comments: we did receive numerous public comments, there was objection to the proposed subdivision. Most of the objections dealt with the increased traffic on Helberg Drive and the associated dust, and people did comment about the potential loss of viable agriculture grounds in this area and the potential for increase in development. Currently the property is not located within the zoning district and there are no covenants that affect the use of the property. As far as the review criteria, numerous soil types are identified, on the subject property. Two of them are identified as soils of the statewide importance or local importance. The darker green areas on the slide are the areas of soils of state wide or local importance. As far as irrigation improvements located on the

property there is an irrigation ditch located on the south boundary of the property and then on the west side of Helberg there is a large irrigation ditch. There is a flood irrigation canal located through this portion of the property. Again the applicant has indicated the southern portion of this property will remain in agricultural use in the near term. They have not placed any covenants or deed restrictions that would prevent further subdivision or development on that property. As far as impacts on local services, the existing waste water treatment system located on the northwestern portion of the property would be required to be re-reviewed by the City County Health Department. Because of the size of the parcels, it is exempt from review by the Department of Environmental Quality. The applicants can place an exemption on the Southern parcel, if it is going to remain an irrigation activity that would prevent any structures requiring a pipe water or waste- water treatment system. At any time that a system would be required to be developed on the site, it would require ground water monitoring to occur during peak and ground water periods. As far as water supply the applicants are proposing to utilize the existing wells on the property, the water quality in that area is very good. Because of the soil constraints in this area, it does have a high susceptibility for contamination both from improperly maintained wastewater treatment systems and misapplication of agricultural and household chemicals. One of our main concerns about this is the subject property is located greater than 700 feet north of York road. The southern boundary is approx $\frac{1}{2}$ to $\frac{3}{4}$ of a mile and the northern boundary is approximately 1 mile. Helberg Drive is a dead end road. It is prevented from being extended because of the wetlands and the location of Lake Helena to the north. In the future depending on what the development activity is, both to the east and the west, there is a possibility of extending the road network to either Sierra Drive to Flower Drive, Wiley Drive or Valley Drive. Currently the Helberg drive is maintained by Lewis & Clark County Road Department, however, it does not meet the new road standards. The applicant has requested a variance from having to construct the road to the new county road standards, which would require additional gravel material to be added to the road. And they are also requesting a variance to be on a dead end road in excess of 700 feet. The existing access to the development is approximately 5000 feet from the intersection of York Road and Helberg Drive. As far as fire protection, the subject property is located within the East Valley Fire District. The Fire Department in concurrence with the new subdivision regulations is requiring a \$1000.00 per new lot fee to be paid. And again the fire department did request the new road meet the current county standards. As far as water quality, again the existing water quality in this area is very good, has low nitrates, but it is susceptible to contamination. There was a light infestation of Canadian Thistle particularly in the southern portions of the property and a 5-year weed management program would be required. As far as the impacts on wildlife, the area surrounding the subject property does provide a unique habitat for numerous species of animals both for forging habitat, caving habitat, and travel corridors. Additional residential development would continue to fragment the habitat values in this area. As far as cultural resources, again numerous structures are located on the subject property were constructed between 1900 and 1904. Staff has recommended conditions of approval asked for a reconnaissance cultural resource survey which is merely taking pictures of the existing buildings and having a person trained in cultural resource preservation review. All those to see if there is a need for preservation. Staff has recommended approval of this subdivision with 11 conditions. Depending on what the boards actions with the variance request, it could require that condition 3.b be amended or condition 8.i 1 & 2 be amended. Again staff does recommend approval of this. The action that needs to be taken today or Thursday would be a review of the variance applications and then a decision on the subdivision proposal.

Commissioner Murray: Mr. Chair, Commissioner Varone, in the reading for the 2 requests for the variances the first one refers you to the letter from Fire Chief Wagner, where Mr. Wagner states that the Hammerhead turn around is not needed because of the one on Helberg Drive, but the Fire Chief also says that in the future if Mr. Grover puts a road into the subdivision, it will be to Lewis and Clark County standards as required. In the 2nd request for a variance, the applicant, states that the variance requested is not to build Helberg Drive to County design standards. Talk me through that please.

Mr. McHugh: The applicants were misinformed that they needed to put a Hammerhead turn in to their private driveway which is not part of the county subdivision regulations. The 2nd variance request is not to construct the road to county standards. This photograph shows the current condition of Helberg Drive, looking southward towards York Road. Helberg Drive does meet all county standards as far as right-of-way with surface with in would have been in compliance with the previous subdivision regulations but the new subdivision regulations requiring additional gravel layer on here.

Applicant Mr. Christian Grover, 7585 York Rd: I would like to explain my primary reasons for doing this, has nothing to do with development, because I know what I know, but I also know I do not have a desire to go through development procedures after I just saw what I saw with this. But I would like to say that the main reason for doing this was primarily financial, the land values have gone up so fast and so quick in the last few years, I had thought which I do already, I've already moved to York and I am presently renting a house, the outbuildings to a young couple who are involved in agriculture, and have been all of their life, but they have indicated that they would not be able to afford the entire 83 acres. It's just isn't within their financial means. But they said they might be able to do that 5, 6, 7 years down the road when they have accumulated some money after the purchase of this house and 30 acres. So my idea was to and they would like to in the meantime, cash lent the 53 acres that I have right now. They too have intentions of keeping the entire 83 acres into agriculture for as long as they are there, but I wanted to make this affordable to this couple because they are young and they have a couple of kids, and they're really involved in helping change water and run the tractors, that sort of thing, as the parents did when they were kids. So, in order to make it affordable to them, I've decided, in all honesty, even if someone were to buy the whole property, I don't want, at this present time, to have the income from selling the entire property, so this allows me to put off the possible sale, in the future, of the 53 acres to the same couple because in 5-6 years, who knows, at our age we could be retired and we could use the income, so, that is my thinking behind doing this, primarily.

Mr. Chair: Questions for the applicant? Commissioner Varone, Mr. Grover, if I look at the map correctly, I just want verification from you. It looks like if you're successful in the separation of this property and do 2 subdivided parts, it's not inconsistent with the rest of the land around it. There are several other parcels in close proximity that are about the same size or smaller and some that are bigger, but it's not inconsistent, is it?

Mr. Grover: No, as a matter of fact, the property right across the road from me is, I believe 8 different parcels and they are in the process of selling those off individually, and I, so those could be smaller parcels and those ones south of me, are bigger, or somewhere in the middle.

Further questions for the applicants?

Commissioner Murray: Mr. Chair I move we render a final decision on June 30th, Commissioner Varone seconds the motion. All in favor signify by saying aye. Both say Aye, the motion passes.

We will render our decision on Thursday morning.

9. Proposed Fishing Ban at Duck Pond at the County Fairgrounds. The Commissioners will accept public comment on whether to ban fishing at the fairground's duck pond. Mr. Alles: approximately a year ago a proposal was brought forward to band fishing at the duck pond or the fishing pond. That issue was taken up with the fair board. I know several individuals and groups got together for a period of time and were trying to work out mediation and trying to make that work, and apparently that wasn't working out so the proposal was brought forward again to the fair board. Approximately a month ago the fair board took action. Their action was to recommend to the Board of County Commissioners that the fishing be eliminated at the pond located at the Fair Grounds. That's where we are at today. It is ultimately the responsibility of the Board of County Commissioners to make that decision, that's the fair board recommendation. We are here today, we noticed this was a Public Hearing, there are some individuals in the audience that wish to comment on the proposal and you can chose to make a decision today or postpone it, whatever your pleasure is.

Mr. Chairman: Mr. Alles we received one e-mail, commenting on this, and in the e-mail it is alleged that there already is a No Fishing sign up. Is that correct?

Mr. Alles: I don't know that. I can find out, I can make a quick phone call to find out. I don't know that there is a No Fishing sign up. I did receive an e-mail this morning from a member of the public wanted to incorporate it in.

Mr. Chairman: Same one then.

Mr. Chairman: What we are going to do is we are going to have a Public Hearing on this one to ban fishing at the Duck Pond or Fish Pond, however you wish to refer to it. Mr. Alles has indicated the Fairgrounds Board has forwarded a motion recommendation to the Commission to ban fishing at the duck pond. What I would like to do now is ask for any Proponents to come forward, any proponents come forward. State your name and address for the record.

Greg Chadwick, 2010 E Custer Ave; I'm here to support this. I'm a free labor at the duck pond, that's how the trees and shrubbery got to the duck pond. I planted those trees as a memorial to my sister about 9 years ago and I've continued that process, planting trees there, that is what I like to do. There has been other groups also plant trees there, Growing Friends, and Prickly Pear Land Trust, but it does say it's the Ballard Duck Pond out there. I'm for duck ponds, we don't have one in Helena, I've visited a lot of duck ponds throughout the state and throughout the country, seeing things that I could do to improve the pond we have out there. It's very unique. It's something that I pointed out at one of the meetings that I was at, is there is fishing access all round us, within miles of us and to take this small area and turn it into some type of fishing area is not feasible. The only way to do that would be to get rid of the ducks and I'm not for that. But I'm hear just to say that I wanted this to continue to be a duck pond. All the labor that I've put in

the pond is all free. The improvements that I'd like to make in the future are all free. I donate that through my business. If you have any questions of me on the pond, I'd be happy to ask them, on what I do there and how I do it, but I'm for turning this into an official duck pond for future generations, thank you.

Ruth Swenson, 11 Willow, and Willow is a good 3 iron from the duck pond. I live just east of the duck pond. I'm a member of the Growing Friends of Helena and that's a volunteer group of plants, trees and public places, the duck pond being one of them. I belong to the Montana Audubon Society and I served on the Board of the Open Space, Helena, which passed that \$5,000,000. Open Space bond. I've been working with Mikel Kellner to help maintain the duck pond for more years than I want to share with you now. I've pulled up map weed, I've picked up trash, I've fed ducks and geese and I've helped plant trees. I walk by the duck pond almost daily. My observational data is most of the people that use the duck pond, little kids and families' older people and bird watchers. I am a fisher person. I grew up fishing. I used to fish every day in the summer, I took my cane pole down to the pond with my worms and my liver and fish for cap fish and channel cap. I've taken children out to the duck pond to fish and it's an exercise in frustration. I've spent most of my time trying to untangle lines from trees, retrieve lures, or fish hooks from trees, bushes and fencing, and when you go to the duck pond, the ducks are expecting to be fed and so when you're out fishing, all of the ducks come over to check out what your fishing about, so in my mind, I went there once, and decided it wasn't a place compatible with fishing. Since the passage of the plans for the fairgrounds, I've been working with Mikel Kellner to research the purchase of some property contiguous to the duck pond and contiguous to the Charles VanHook Wetlands area, to try to consolidate this riparian area for some of the incredible bird life that exists around there. I've written an owner that lives out of the state about possible purchases and Michael and I have been talking with an owner that lives in town who is interested in the conservation easement around the area. Some of the wonderful species that exist because of the duck pond and because of the riparian area are the red sided turtles, great horned owl, great blue heron, sand hill cranes, song sparrow, occasionally I'll hear rain neck pheasants out there, chucker birds, osprey, cormorants, wood ducks, mallards, western tanagers, black hawk chickadees, and of course our numerous domestic species. So I would like to stand here and support a banning of the fishing at the duck pond. I think there is fishing at a lot of other places, Spring Meadow Lake, is maybe, I don't know, a half mile away, and this little area doesn't seem to be able to, in my experience, doesn't seem to be able to accommodate both uses.

Mr. Chairman: Thank you Miss Swenson for your testimony.

Good Morning Commission Tinsley and Murray and Commissioner Varone. My name is Mikel Kellner, I live at 1015 University, and you have certainly heard from me before, so I'm just going to as a proponent, state 4 important points that I believe banning fishing is necessary. 1) Friends of the Duck Pond have worked for over 20 years to make the pond a more inviting a safer environment for both people and animals, and today many people enjoy visiting on a daily basis a park that used to be a gravel pit. 2) Over the years most problems and conflicts have occurred because of fishing and fishing equipment hurting other wildlife, especially the birds. We've tried 2 different sets of signs, limiting age and what they can fish with and the parents must accompany them, but for the most part the rules are ignore and people are becoming more belligerent and there are more birds, so more birds are being hurt or killed. Much debris is left behind, I've shown you this large lure that was found in a seagull last year, but this is what I have

found on a daily basis, these small, smaller hooks. They're everywhere. I've probably picked up 500 over the last 20 years. And these are the ones the birds ingest, they are all over the shoreline, and I found a dead baby muskrat the other day, very likely if something is attached to these. But these are everywhere and I'm not sure why they are left behind, just maybe kids are forgetful. But they do cause a lot of injury and death. Rock throwing of course they keep the birds away, also causes injuries. So in the end I think after having tried to combine these activities for 20 years we've realized what Woodland Park in Kalispell have found, who have a much larger pond, that the two activities just don't mix, so they stopped fishing and separated the activities and I believe we should do. 3) Without fishing the duck pond still remains a multi-use area. So many parents, children, grand parents, grand children, visit the pond daily to feed the ducks and geese. Many preschoolers and teachers go daily, the elderly, handicapped, buses go out with the handicapped, we're thanked often by the caregivers for providing such a nice place for them. Many photographers, bird watchers, walkers and sightseers, and it's even become a destination place for visitors. So with benches and other improvements, perhaps the fountain we talked about, the pond will become a more peaceful relaxing environment for the people with all of the advantages of a true urban wildlife park. And I just want to refer you back to this article I sent you each a copy of, in this latest Natural Wildlife that talks about the health benefits of urban wildlife parks. And I just want to read you one small paragraph, "That a study show that these parks are a fundamental health resource particularly in terms of a disease prevention. The report cited evidence of nature's solitary effects on blood pressure, cholesterol, outlook on life, and stress levels. It recommended a major public investment in parks that would engage and inspire people to spend time in nature." And that is what the duck pond does. 4) There are many areas in and around Helena, for fishing, especially Spring Meadow, but there is no other urban wildlife park in a wetland area. Duck pond truly is a gem, and we are very fortunate to have such a unique habitat and there is such a great variety of birds that Ruth just mentioned, and we need to preserve and care for it. In closing I would just like to urge you, not only to ban fishing, but to also provide other protections. The first and foremost is to put up barriers to prevent cars from speeding through that and hitting the birds. This rodeo weekend was pretty bad for cars speeding through there, I didn't see any dead birds, but with all of the people, they pretty much stayed off of the parking lot. We do need a buffer for the run off of all the rains into the pond, and there needs to be some sort of supervision from someone who works at the fairgrounds to prevent vandalism, rock throwing and other harassment of wildlife. Right now there just isn't anybody that oversees what's going on out there. So I would like to thank you for your consideration and I would also like to suggest in the future a naming contest for the large green area. The duck pond should always stay the Bud Ballard Duck Pond, but you could have a naming contest to come up with something like, Woodland Park or I would like to suggest that it be named after a man who has helped and rehabilitate animals for most of his life including many injured animals at the duck pond. He brought the problems at the duck pond to light and I don't believe anything has been named after him. I think the entire green area should be Yanen Park, named after Vince Yanen. And that's just a suggestion. I want to tell you what is going on right now. Tom Herring is working with Helena Sand and Gravel, and is working with Stahly Engineering, so that they'll put the proper water line. They'll work with Keith also. Greg Chadwick is looking for a solar or wind powered fountain to aerate the pond. Jim Wilbur, who is here, has planted more plantings in the shoreline this year and they are doing very well because of the rain, and hopefully they going to prevent more shoreline erosion. Ruth Swenson and Janet Ellis from Montana Audubon are actively pursuing (sic) adjacent land. And then I want to answer the e-mail about the No Fishing sign. It was my understanding that after I

talked with Mr. Tinsley, that everyone was in agreement that there wouldn't be anymore fishing, and I didn't know there was going to be a public hearing until I received a call from Ron. I had put some tape on where it restricts children fishing with adults and so on. So all it left was the No Fishing. It is tape, and it's a duct tape and after Ron's call I thought if I tore it off, it would also tear off the lettering, so I am guilty of doing that. But I did think the decision had been made and so I'm sorry. Mr. Chairman: It's OK. And I do have a letter to leave that some woman wrote.

Mr. Chairman: I would like to point out that when we met I tacitly agreed with your proposal in the sense that if it was done for a time period not for permanent. I've re-thought my position on that, and I haven't had a chance to talk with you, and I'm still where I was prior to that, and I understand and appreciate your comments, and if I in any way led you to believe that you could put the sign up, it's probably my fault, and I apologize for that.

Mikel Kellner: I just thought it was just unanimous.

Mr. Chairman: No, it wasn't and we have to do a Public Hearing to bring it to the Public forum.

Further Proponents: None

Any Opponents:

Mr. Mark Lambrecht, 1082 Crestwood Lane, Helena. I'm here today to speak in opposition to this proposal. This is the only opportunity for kids in the area to catch a fish without competition from adults. I understand that Spring Meadow Lake is nearby, but it's a lot more difficult for kids to catch a fish there than it is at the pond. I have 2 young sons 7 and 4 that I have been taking down to the fairgrounds pond to fish for any number of years, at least 5 years. It's always been an easy place for them to catch a fish, and you wouldn't believe the look on my little 4 years olds eyes when he hauls in a 2 lb, what he calls a "lunker", off of there. It's a lot of fun for them. We go fishing a lot of different places, but when we have an hour to kill, this is a great opportunity for us to go and wet a line. Now I've met grandparents, single mothers, and other kids, who have even ridden their bikes to the fairgrounds, I've taught other kids to fish that don't have a dad to teach them to fish. They've been really excited about it and enthusiastic about learning to fish. I have not witnessed kids abusing ducks and geese and I have spent countless hours down there, and I know my own children are taught to be respectful, of other animals. I have seen a lot of liter down there. I think that is something you are going to see just about anywhere. You also see that at Spring Meadow Lake. My children and I try to clean up as much liter as we possibly can when we are there. I think it is important to remember that this is no wildlife preserve. These water fowl and gulls are domesticated animals. They are fed on a daily basis by the Animal Foundation, other people and children. They've come to depend on that. I think that takes away from their wild nature. I believe they represent a nuisance more than they do a wild population and quite frankly have created a foul nest. Their waste fouls the pond shores and also degrades water quality. In conclusion I think we should keep the fairgrounds pond open for fishing for kids. We should be providing for kids with an opportunity for something fun to do, not taking that opportunity away. Thank you

Mr. Chairman: Any opponents, further opponents.

Good Morning, Commissioner Tinsley, Murray, Varone. I didn't come in here to be an opponent against this resolution to close the fishing, however, long time ago.
Commissioner Varone: You're name sir?

I'm Jim Martin, 6062 Lakeview Rd, Helena, I live out in the country now, but I did live out at 1112 Hudson, near this fishing pond. And I must say it would be a real detriment to the little people. Chadwick talks about the fishing access. They're not going to ride out to the fishing access on their bike, the folks won't let them. But they could ride down there to do fishing. This is a great activity and you're not going to see me fishing down there, but when I was at a young age my folks put a pole in my hand and it was something that kept, through the years, all of us people from little guys to teenagers, out of trouble, and I commend this man for what he is doing with his children. I think the Fish and Game stocks this and as a long time commercial fisherman on Lake Helena, I can tell you there is a symbiotic relationship between the ducks and the geese and the carp that we took out of the lake. So fishing doesn't hurt the wildlife or the birds, and we worked with the Audubon Society as a commercial fisherman to prove to them that taking carp out of Lake Helena didn't hurt the duck habitat. Anyway, I'm here in support of the little people, I hope they don't ban fishing down there.

Mr. Chairman: Thank you Mr. Martin for your comments.

Further opponents for the second, third and final time.

Any general testimony or informational testimony?

Mr. Jim Wilbur, I'm the Watershed Coordinator with the Lewis and Clark County Water Quality Protection District. As Ron mentioned there was a group that got together to discuss planning and coordination for the duck ponds future. I was involved with that process and I just wanted to relate some additional information to what was discussed here. The question of fishing versus no fishing was a central one to that group. We had a couple of meetings and there was quite a round of discussion about whether these two activities are compatible. Many of that group felt they were, but some did not and have proposed the ban. The current status is of course this is a children's fishing location and as Mikel Kellner has mentioned the rule requires a parent to be present for this activity at present. The Fish Wildlife and Parks has stocked this pond on a regular basis, twice a year with trout and has continued that for I believe for over a decade, and they were in support of continuing that activity and helping with the improvements on the pond itself. Wall Eyes Unlimited, I believe is the name of the group, which is a large membership organization here that advocates fishing, was interested in providing angler education for the children at the duck pond, and have their membership adopt this pond as a place for community service. These discussions ended with the proposed ban and we will see how this result of your decision where those go in the future. It's obvious that the duck pond is a great resource, there are lots of ducks, some of them domesticated which is a problem of over population, water quality and other issues that are being looked at, however, it is a resource for the community and I hope you folks take that into consideration.

Mr. Chairman: Any further general testimony. Seeing none or hearing none, what is the pleasure of the Commissioners?

Commissioner Varone: Mr. Chair, Commissioner Murray, I'm a non-voting member on the Fair Board and there has been considerable discussion over the last year, year and a half, and maybe longer than a year and a half, about what needs to be done down there. First came to light to me personally from a staff at the Fairgrounds and their concern was almost on a daily basis, they would come out and they would see, animals, not only ducks, but other animals, and sometimes children with fish hooks somewhere on their body. They would find dead animals with fish hooks, as a result of fishhooks. They would find dead animals as a result of fish line. They also occasionally found animals that were strung up on the wire by delinquent children. They called the Law Enforcement several times, we made arrangements for Law Enforcement to come down during the school hours, when school was first out in the afternoon to somehow police what was happening down there. It became obvious it was an issue. It was a safety issue for the people down there. It was a safety issue for the animals down there. That combined with the possibility of adding more estuary land and the new plans for park land down there, it became obvious to me and to the rest of the Fair Board that we needed to take some sort of action that would be the best solution for the majority of the people. That's not to say that responsible parents like Mr. Lambrecht does not take his children down there and do the right thing, and I really commend him for doing that. Unfortunately it seems, that as the years pass that isn't generally what happens any longer down there. So it has come to us to make the decision and the Fair Board made the decision that the best thing to do was to develop the park land, to develop the duck pond in the estuary part and allow wild birds and wild animals to really be a place where folks that bring their families down can have an opportunity to look at what is really happening from a wild life perspective. And they also talked considerably about Green Meadow Lake and that is in close proximity and kids can ride their bikes down there or walk down there, so they still have the opportunity available to them anytime they want to go down there.

Mr. Chairman: Any further discussion? We need a motion for something.

Commissioner Varone: Mr. Chair I make a motion to approve the fishing ban at the duck pond at the County Fairgrounds and authorize Chair to sign. Commissioner Murray seconds the motion.

Discussion: Commissioner Murray: Commissioner Varone, Mr. Chair, I have enjoyed fishing as a child in the Helena area all of my life and I'm starting to get to the tail end of middle age, as apposed to old, Commissioner Tinsley. Fishing in the Helena area as supported by residents and merchants of our community, began at Coxis Lake. Coxis Lake is at the end of Davis Gulch. It's now kind of a frog pond. From Coxis Lake, fishing moved to the fish and wildlife park holes, where the fish and wildlife park on Custer are now located. From there it moved to the fairgrounds and continued quite successfully, I think, at the fairgrounds. The vandalism, the disregard of the wildlife at the fairgrounds in the last few years, and it only has been the last few years, I've found upsetting to me and to residence of Lewis & Clark County. Spring Meadow Lake is now a free access lake for anyone who lives in the city of Helena. By purchasing, allowing the fee when you purchase your license plates, you're guaranteed access into Spring Meadow Lake to fish. I support fishing. I enjoy fishing. I also am a duck hunter, yet I enjoy seeing the birds at Woodland Park when I am at Flathead County, or at Gibson Park, when I'm in Cascade County. During the year, if duck hunting is slow, I go to the duck pond, and like to watch the wild mallards, starting their migration, happen to be at the duck ponds, at the fairgrounds. So there are a mixture of both wild and domesticated ducks and geese

that rely on the Mikel Kellner Foundation, and others in our community to come feed them. It's been a pleasure for me and will continue to be a pleasure, as my grandchildren are in town to take them to the duck pond to feed the ducks, and to allow them to learn that if you get too close to them you can get a little nip either on the fingers or on the tail end. But that's a good lesson for all children to learn. I enjoy the duck pond and will continue to enjoy it. I will work vigorously to ask Fish and Game to give the fish that they previously put in the fairgrounds pond to Spring Meadow to see when Mr. Lambrecht takes his children to Spring Meadow Lake, and hopefully he will, that there are ample fish there for youngsters to catch. And I believe that is the future of fishing in the Helena community. And for that reason I don't like the term banning fishing. I'm trying to advocate wild birds and birds, at the fairgrounds, but the way the resolution is written I will vote to ban fishing at the duck pond at the fairgrounds.

Mr. Chairman: No one can doubt that there probably is a problem out here. There is a problem that's come to a point where groups have come forward with potential solutions for the problem and the problem is cruelty and abuse to the animals. I do not believe the proper response is to ban a legal sport, simply to try and stop something that is already against the law. The proper response, I believe is to enforce the law. How we go about doing that at the fairgrounds is something we need to work on. But I don't believe the proper response is to ban fishing. I equate this to banning a gun because somebody uses this in an armed robbery. We shouldn't ban weapons for that because it's a legal thing to own. And we shouldn't ban a sport that is legal because of a few bad apples decide they want to go out and abuse animals. It doesn't mean fishing is bad, it means people who abuse animals are bad. I don't think this is a proper response. I think there is a historical use out here at the fairgrounds for children fishing and I'm adamantly opposed to this, it's quite apparent that I'm not going to be successful in this argument this morning, but I want my comments on the record. This is not the proper response and I don't think we should be going about it this way.

Commissioner Murray: Commissioner Tinsley, since you so eloquently put it, I do support Second Amendment Rights. As a duck hunter, and a hunter, I believe in the right to bare arms. Since you are associating banning guns with prohibiting fishing and I have a valid, as does my wife have a current fishing license with the State of Montana, so I am a fisherman.

Mr. Chairman: Pleasure of the commission? Would you like to hear a question?

Commissioner Murray: I would like to hear a question.

Mr. Mark Lambrecht: Excuse me for my ignorance, but I was just curious after your vote today, which is apparent which way it is going to go. Is there any other recourse for those in opposition to this?

Mr. Chairman: I believe there is always a recourse through the courts. There is no really, except for the first Tuesday in June or November, any recourse against us.

Mr. Alles: Yes, I alluded to it earlier; it is the responsibility of the Commissioners to run and manage the assets of the fairgrounds. The pond is one of those assets, and it's County property, and you as the elected officials of the public, is responsible for managing that.

Mr. Chairman: So it would be my understanding that possible recourses of Mr. Lambrecht or anyone else wants to go to the courts, they can file an injunction. But I don't even know that's the case. This is pretty much the end of the road here at the county level though. Further discussion?

Commissioner Murray: Question.

Mr. Chairman: Question has been called. All in favor of the motion to ban fishing at the duck pond at the fairgrounds, signify by saying Aye. Commissioner Murray: Aye. Chairman: Oppose same, Aye. Motion passes 2-1.

10. Public Comments on matters not mentioned above. None.

11. Adjourn: Mr. Chairman: adjourned 10:16 a.m.