

## **PUBLIC MEETING**

August 16, 2005

Chairman Ed Tinsley called the meeting to order at 9:00 a.m. Commissioners Varone and Murray are present. Ron Alles is absent. Filling in for Ron is Nancy Everson. Others attending all or portion of the meeting included Jerry Grebenc, Marni Bentley, Lindsay Morgan, Ron Solberg, Patricia Herrin, Charlotte Allison, Jerry Kercher, Larry Marshall, Fred Phillips, Dean Retz, Tony Prothro, Rodetta Sloan, Bill Gallaher, Virgil Allison, Pat Faber, Dennis Clancy, Robie Culver, Carol Hanel, Doug Peterson, Joe (sic), Ken Ogle, Jerry (sic), and Maria Penna.

**Pledge of Allegiance.** Everyone recited the Pledge.

**Consent Items.** Nancy Everson reported on the consent items.

- a. Legislative Audit Division Procedures Contract. This is a contract with Anderson to provide agreed upon procedures for the Public Defender Department. As part of legislation in the last session, 6 urban counties are required to have an audit of the Public Defender services provided for District Court and Justice Court. This contract covers the 6 years that were required per that legislation, for a total cost shared between the state of \$14,166.67 this is paid half by the State and half by the County.
- b. Final Plat Approval for the Sun Crest Minor Subdivision. Applicant, Roque Wardell, Planner, Lindsay Morgan.

Chairman Tinsley: Did the Commissioners wish to remove any of the items from the Consent Items agenda?

Commissioner Murray: I move approval for the consent agenda.

Chairman Tinsley: We have a motion to second. Any discussion? All in favor of the motion signify by saying Aye, Aye. Motion passes 3-0

Before we get too far along, there is a sign in sheet up front, in front of the banister there. There's also a schedule of the agenda today, if anybody would like one. Please sign in if you haven't had a chance to already. If the meeting goes on a little long and you receive a parking ticket while participating in this meeting, just bring it up and Maria, bring it up to the 3<sup>rd</sup> floor and Maria or Carole will take care of it for you, and you won't have to pay for that while participating in County government.

### **Weed District Resolutions:**

Chairman Tinsley: The next item on the agenda is the Weed District Resolutions. And I believe we've had a request from the County Attorney to table this until Next Thursday?

The Commissioners will consider the following resolutions:

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- a. Establish Subdivision Performance Bond Requirements
- b. Establish Subdivision/Timber Harvest Penalty
- c. Support a Management Plan Program and Certification for Hazard Reduction Agreement Permits
- d. Establish The Agricultural Advisory Group

Commissioner Murray: Mr. Chair, I move we table this until a week from today, to give the County Attorney adequate time to finish reviewing the Weed District Resolutions.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion to second to table until a week from today, which will be the 23rd. All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0

**Public Hearing. Proposed Rural Improvement District for the Woodlawn Park Addition**

Chairman Tinsley: Next item on the agenda is a Public Hearing on the proposed Rural Improvement District for the Woodlawn Park Addition. Marni Bentley is the Staff person. Commissioners will consider the resolution to create RID No. 2005-3.

Marni Bentley: Good Morning Commissioners. On July 7<sup>th</sup>, the Board passed the resolution of intention to create the Woodlawn Park RID to fund wastewater and water improvements in that area. Pursuant to statute, all owners of property were sent letters; the legal ads were published in the Independent Record. As of August 9<sup>th</sup>, several inquiries had been received by the Planning Department. The callers expressed support, or wanted to just verify their assessments. The protest period ended August 8<sup>th</sup>, and 3 letters of protest were received. I did attach copies to your memo. The protest was 5.7% of the cost of the work, and that's not sufficient to bar proceedings today. A draft resolution to create the Woodlawn Park RID is attached to your memo and it outlines the cost for the improvements and maintenance. Staff recommends approval of that attached resolution. We will hold a rate hearing at a later date to set the rates to get them on the tax bills for next year. Those rates would be \$7.23 per year per 25' lot within the RID, and that would be to pay off the state revolving fund loan. \$87.68 per year per hook-up and that would be to pay back a loan from Lewis and Clark County.

Chairman Tinsley: Are there questions for Staff? Ms. Bentley we are going to have a Public Hearing, is that correct?

Marni Bentley: That's correct.

Chairman Tinsley: Ok. All right, I'm going to open the Public Hearing on the proposed rural improvement district for the Woodlawn Park addition. Are there any proponents? Any proponents at this time? Please come forward and give your name and address for the record.

Good Morning. I'm Patricia Herrin, live at 76 Dunbar Avenue and I am for the creation of the district. I think everybody who has had a drain field replaced is aware that you have to have two drain fields on your property. I don't think every property has that. It's just a good thing. The grants are in place. It'll never be cheaper to do this than to do it now. And we are very much in favor.

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Chairman Tinsley: Thank you very much for your time this morning, Miss Herrin, I appreciate it. Further proponents. Further proponents, for the second time? For the third time? Are there any opponents? Any opponents. Yes Ma'am, please come forward and give your name and address for the record.

I've already sent in a complaint against the RID. Can I still say something?

Chairman Tinsley: You bet please. And you have anything you would like to submit for the record you can give it to our assistant and she can put it in the record as well. We need your name and address too.

My name is Charlotte Allison and I live at 3216 Mitchell Avenue. I'm against this Woodlawn addition. There's too many unanswered questions. And the amount of money that it's going to cost, in the long run has not been established. It seems like you started out at \$81.00 a lot, then at the next meeting you were at \$7.00, then \$23.00 a lot. To me there is something wrong with this picture. You have upset our neighborhood, and there's a lot of elderly people down there that have no idea what is going on. So I am against this. Thank you.

Chairman Tinsley: Thank you Ma'am, for your time this morning. Further opponents? Further opponents? Mr. Solberg please. You need to come to the microphone Mr. Solberg. You've been to this rodeo before. We need your name and address please.

My name is Ron Solberg; I live at 125 Horseshoe Bend Road. I'm not opposed to the sewer project, but I have some questions that I would like to have answered, if I may please.

Chairman Tinsley: This is not a forum where we are going to do that. What are your questions in regards too? Is it the same questions we went through the other day? The last time you were here?

Ron Solberg: Somewhat but not all, no.

Chairman Tinsley: Ok well, what I'll let you do is go ahead and make your statement and if you want to form your questions in the form of a statement, that's fine.

Ron Solberg: Ok. I would like to have all of the possible out-fall routes identified, and what procedure or review process is in place to, for public review and comment period, after and out-fall route has been determined.

Chairman Tinsley: Anything else?

Ron Solberg: Those won't be answered today?

Chairman Tinsley: Not this morning, no Sir.

Ron Solberg: When could I expect an answer to?

Chairman Tinsley: What we can do is take these questions to our engineer and to the Staff that is working on it and see if we can get an answer back to you. I can't give you one this morning.

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Ron Solberg: We don't know how many possible out-fall routes are being considered at this point.

Chairman Tinsley: I don't. I cannot answer that question for you and I don't believe the other Commissioners here could either. And Ron Alles, our Staff person who is normally here, is at a conference this morning, making a presentation for the County.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone

Commissioner Varone: Mr. Chair, Commissioner Murray, if I may. When a Public Hearing takes place, it's a comment time for the public, and normally not a question time. We appreciate the questions that you have, but unless you submitted to us ahead of time, this still isn't the forum for that to happen. So if you submit your questions, then the answers will be supplied.

Ron Solberg: So I need to submit my questions.

Chairman Tinsley: Which you've done verbally, and if you would like to do it in writing, that's more than fine. You can hand them to Maria over here and she could take them for you.

Ron Solberg: Even though these have been asked before.

Chairman Tinsley: Even though these have been asked before, yes Sir.

Ron Solberg: I will go through the process again.

Chairman Tinsley: Go through the process again.

Ron Solberg: All right. Thank you.

Chairman Tinsley: Thank you, for coming again. It's always good to see you before us. Further opponents? Further opponents, in the matter of the Woodlawn Park propose rural improvement district addition? Yes sir, please. Good morning. Welcome.

Good Morning. My name is Jerry Kercher, and I live at 121 Dunbar Avenue. And I think the project is probably a worthwhile project. I'm just protesting it because I would like to be able to still live in the County and I don't understand why the water and the sewer and a few of the other things have got to be this expensive. And that's about all I've got for right now.

Chairman Tinsley: Thank you Mr. Kercher for your time this morning.

Jerry Kercher: Thank you.

Chairman Tinsley: Further opponents? Further opponents? For the final time. Is there any general testimony or informational witnesses that like to come forward? All right, seeing none this closes the Public Hearing. On the advice of council we don't make a decision at the same meeting where we have Public Hearings, so I'm going to ask the Commissioners for is a; there's

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no time limit on this is there Marni? I'm going to ask the Commissioners for a date, at a future meeting, to, so we can contemplate the testimony that has come in, possibly get the answers for Mr. Solberg, if we can, and, if you would like to submit your questions specifically in writing, I would suggest that you do that. I took notes while you were talking but, so we can get them verbatim, please get them to Miss Penna. And then what we will do is, I'll ask for a motion from one of the Commissioners.

Commissioner Varone: Mr. Chair, I make a motion to render a decision on the proposed rural improvement district for the Woodlawn Park Addition this Thursday.

Chairman Tinsley: And that would be August 18<sup>th</sup>. My daughter's birthday, August 18th. We've got a motion to render a final.

Commissioner Murray: Second.

Chairman Tinsley: And a second on August 18<sup>th</sup>, at the 9:00 meeting. Any discussion? All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0.

Commissioner Murray: Mr. Chair, the meeting on the 18<sup>th</sup> will be at 10:00 a.m. we have the County radio show.

Chairman Tinsley: I stand corrected. 10:00 a.m. I thought a hand go up, yes ma'am. Please come forward, we're on television and we need you to talk into the microphone.

Patricia Herrin, from 76 Dunbar Avenue. I didn't really come prepared to speak this morning. I thought my husband was coming and he wasn't able to. But, do you want things in writing from proponents too?

Chairman Tinsley: If you would like to submit them, absolutely. And we will, I think, we didn't set a, well, I guess we didn't,

Commissioner Murray: We closed the Public Hearing.

Chairman Tinsley: Well we did close the Public Hearing so if you don't have anything with you know, well, I guess, what I'm guessing is probably. I'll tell you what I'll do, I'll bend the rules a little bit, if you would like to write out something right now, we can provide pen and paper for you, you can go ahead and do that, because I've offered Mr. Solberg the opportunity to give us some questions this morning. But what I would suggest is that you do it, while you are sitting here and submit them this morning. Because we've already closed the Public Hearing. But since you're here...

Patricia Herrin: Well I was just talking about Thursday. If you were going to be accepting anything.

Chairman Tinsley: No Thursday is the final decision and that's when we will just come in and make a decision.

Patricia Herrin: Ok.

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**Rate Hearing for the Oro Fino Rural Improvement District.**

Chairman Tinsley: All right, thank you. Ok, so Thursday, August 18, 2005, at 10:00 a.m. in this room is when we will render our final decision on that. Next item on the agenda is the rate hearing for the Oro Fino Rural Improvement District. The Staff person is Marni Bentley. The Commissioners will consider the resolution to assess \$92.12 per year per lot for improvements for a period of 10 years and \$86.50 per year per lot in perpetuity for maintenance within the boundaries of RID No. 1994-5. Ms. Bentley?

Marni Bentley: Good Morning Commissioners. This rate hearing is scheduled to decrease the assessment. Earlier this year we set the rates for this project. Now we have established a lower construction cost, and so the amount of our loans is less, so we are decreasing the assessments. The on-going maintenance stays the same. I did notify all landowners of this rate hearing, I published legal ads in the Independent Record. I didn't get any comment from anyone.

Chairman Tinsley: Marni, bring the microphone down to you, if you would.

Marni Bentley: You have to hear me then...laughter. As of last week I didn't receive any inquiries, and so Staff does recommend approval of the resolution, setting the assessment for the Oro Fino RID at \$92.12 per lot, per year, for 10 years and \$86.50 per lot per year, in perpetuity, for maintenance.

Chairman Tinsley: Thank you Marni. Questions for Miss Bentley?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Marni, reading through this I didn't read or I missed it, what it was and it decreased to. So what was it formerly?

Marni Bentley: I have that information in the file, just a second.

Chairman Tinsley: While we are waiting on Ms. Bentley, are there any persons who wish to testify in support or opposition to or in general on this particular rate hearing? Any hands? OK. Miss Bentley?

Marni Bentley: The last resolution we set the improvement rate at \$166.46, that's per year.

Commissioner Varone: Thank You.

Chairman Tinsley: Further questions? Ok, I'm going to open up a rate hearing, even though I didn't see any hands and we'll see if anybody has changed their mind. I'm going to open up this rate hearing for the Oro Fino RID. Any proponents? Any proponents for the second time? Any proponents for the third and final time? Any opponents? Any opponents for the second time? Opponents for the third and final time? Are there any general witnesses or testimony? This closes the Public Hearing and the rate hearing on the Oro Fino RID. What's the pleasure of the

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Commissioner?

Commissioner Varone: Mr. Chair, I make a motion that we render a final decision this Thursday the 18<sup>th</sup>.

Commissioner Murray: Second.

Chairman Tinsley: We have a motion and a second to render a final on August 18<sup>th</sup> at 10:00 a.m. in this room. All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0.

**Public Hearing. Text Amendments to Special Zoning District #33 (Town View Estates)**

Next item on the agenda is a Public Hearing on text Amendments to Special Zoning District #33 Town View Estates. The Applicant is Larry Marshall, the Planner, Lindsay Morgan. This is continued from July 7<sup>th</sup> of '05. The public record has been kept open. I'm assuming after this Public Hearing we will close it, is that correct Miss Morgan?

Lindsay Morgan: That's correct.

Chairman Tinsley: The Commissioners will consider the text amendments. Miss Morgan.

Lindsay Morgan: Good Morning Commissioners. Again this is a continuation from last month. I have two additional comments and this is specifically regarding criteria for the mini storage units. Originally I had requested, under section 8b, a rear yard setback of 15 feet. Staff is recommending that that be reduced to 10 feet. And then with regard to section 8e, the second sentence that states "these lanes shall be at least 26 feet wide when the storage units open to one side of the lane only, and at least 30 feet wide when the storage units open onto both sides of the lane. I request that that sentence be removed and I don't have anything formally drawn up, but changing it to maybe adequate traffic circulation that will allow for emergency vehicles to, I guess either maneuver through the site or access the site. In talking with the City it seems there is more standards that may or may not be required when reviewing conditional use permit for a storage unit. And so, I guess the driving lanes could be determined on a case-by-case bases when the property is actually reviewed under the conditional use permit process.

Commissioner Varone: I have a questions Mr. Chair.

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Would you tell us what page that's on. You spoke up so quickly I couldn't catch up.

Lindsay Morgan: It is page number 7 and it's section 8e. It's about 3/4ths of the way down the page.

Commissioner Varone: And what do you want moved again?

Lindsay Morgan: The second sentence.

Chairman Tinsley: Would you give us a cite for the first change as well?

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Lindsay Morgan: 8b. It's about a third of the way down.

Chairman Tinsley: 8b?

Lindsay Morgan: Yeah

Chairman Tinsley: The change was rear yard 15 to 10?

Lindsay Morgan: That's what Staff is requesting. And they would also still have to build outside of the easements. But these set backs are specifically from the property line.

Chairman Tinsley: Questions for Staff? Ms. Morgan, we need to have a Public Hearing on this, this morning?

Lindsay Morgan: It's continued.

Chairman Tinsley: So the Public Hearing has remained opened, we're just going to continue it?

Lindsay Morgan: That's correct.

Chairman Tinsley: And then it will close this morning, correct?

Lindsay Morgan: Correct.

Chairman Tinsley: Any other questions for Staff. All right. Folks the Public Hearing is still opened. I'll accept any testimony or comments from proponents. Any proponents in the matter of the special zoning district #33 in the Town View Estates? Morning Mr. Marshal.

Larry Marshall, 3176 Backendale Drive, Helena, Montana. Commissioner Tinsley, Commissioner Murray, Commissioner Varone. I appreciate the Staff's work with us. We've had this open for a month now, and came up with some good conclusions, and the comments that we received, we've addressed the issues, and I appreciate Staff's help and their recommendations and I support the new wording. Thank you.

Chairman Tinsley: Thank you Mr. Marshall. Any further proponents. Further proponents. Further proponents for the second time. Any opponents? Any opponents for the second time? Opponents for the third and final time? Any general witnesses or testimony? Seeing none, this closes the Public Hearing. What is the pleasure of the Commission?

Commissioner Murray: Mr. Chair, I move we render a final decision on this Thursday, the 18<sup>th</sup>.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion to second to render a final on August 18<sup>th</sup> at 10:00 a.m. All those in favor of the motion signify by saying Aye. Aye. Motion passes 3-0.

**Proposed Subdivision to be known as the Foothills Major Subdivision.**

Next item on the agenda is a proposed Subdivision to be known as the Foothills Major

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Subdivision. The Applicants are, Ken and Dayna Ogle. The Planner is Michael McHugh. This was postponed from August 9th so we could have a full commission present. Are the applicants or their representative present? And are you prepared, you have all of the documents and you are prepared to go before us this morning? Thank you. Mr. McHugh.

Michael McHugh: Commissioners, the proposal before you this morning is to create a major subdivision that would involve 36 lots on a 162 acre parcel. It's located approximately 1 mile north of Lincoln Road east. It's bordered on the west by Glass Drive, and on the east, by Collins Drive. The proposed lot sizes would range from approximately 2.3 to a little over 5 acres in size. This overhead shows a proximity of the other subdivision that we will be discussing today. Currently the subject property, the western portion of the subject property, has been utilized as irrigated hay fields. The eastern portion has been used for livestock grazing and also keeping some dilapidated farm machinery and some other things. The land uses surrounding the subject property they range from approximately ½ acre parcels located to the west of the subject property, to 2 to 20 acre parcels to the north. Some large 160 and 20-acre parcels to the east and lots ranging from 2 to 160 acres to the south. As far as zoning, the subject property is not located within a special zoning district at this time, but the neighborhood has petitioned the Board of County Commissioners to do a neighborhood plan, and also to create a special zoning district in that area. As far as covenants, there's currently no covenants on the subject property. The applicants have proposed several covenants that would limit use to single-family residential uses, and it would also allow to keeping large animals on the subject property. In the Staff's recommendation there is a recommended prohibition because of the lot sizes ranging from 2 to 5 acres in size. The applicant, at the Planning Board hearing suggested some modification of that, but the Planning Board did agree with Staff in the prohibition of large animals. As far as public notice, a notice was placed on the property and was placed in the Independent Record, and notices were sent to all of the immediate adjacent property owners. We did receive numerous letters in opposition to this proposal. Most of them dealt with the traffic issues, particularly on Glass Drive and Lincoln Road, and also issues with water. As far as the review criteria, there were two or three soil-mapping units identified on the subject property. None of them have been identified as prime or statewide important. As far as irrigation facilities, in the southeastern portion of the subject property, the Helena Valley Main Irrigation canal does transect the southeastern portion of the property and there are irrigation facilities located to the west, which consist of irrigated pivot lines. So there has been expense associated with irrigation improvements in this area. Currently there's no irrigation easements, excuse me, conservation easements or agricultural easements on the subject property. As far as impacts on local services, the applicants are proposing to utilize individual on-site drain fields. Test holes have been conducted on all of the sites. I apologize for the way this slide is, but power point doesn't do mixed groups. But, site evaluations have been conducted on each of the proposed 36 lots and they have been approved by the Health Department. As far as water supply, the applicants are proposing to utilize individual ground wells. It's assumed that the ground water source in this area is a bedrock aquifer. The Department of Environmental Quality did issue a letter dated June 30<sup>th</sup> of this year, indicating that the results of a 24 hour pump test that were conducted on the property indicated that there was credible and substantial evidence that adequate ground water is available on the property. During those 24-hour pump tests, the pump, the wells were pumped at 30 gallons a minute, which would be in excess of the normal individual residential use. There was some drawdown associated with it. The drawdown was between 39 and 44 feet. The Water Quality Protection District indicated that this was a slow to moderate; however, it could be rapid in a more fractured bedrock aquifer. The

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level of protracted withdraw could have impacts on the groundwater levels in this area. The subject property is located within the North Hills Temporary Ground Control area and all new wells would be required to obtain permits prior to development activity. A necessary utilities are available both along Glass and Collins Drive. As far as streets and access, the applicants are proposing to utilize internal access road that would extend from Glass Drive on the west all the way over to Collins Drive on the east. This internal access road in the cul-de-sac, that's located in the center of the property, would be constructed to the gravel standards. Because Glass Drive does exceed the 400 trip per day threshold, and we're adding additional trips on it, the applicant would be required to pave Glass Drive, from the northern boundary of their property all the way down to the intersection with Lincoln Road. That's approximately 1 mile of improvements. On Collins Drive, because with the added trip generation, they would not exceed the 400 trip per day thresholds, so Collins Drive would be required to be constructed to the County gravel standard. As far as schools, the subject property is located within the CR Anderson attendance district. There's several classes within that school that exceed the State and District levels and those students would need to be bused. All the other middle school students and the high school students wouldn't need to be bused at general taxpayers expense. As far as fire protection, the subject property is located within the West Valley Fire District. The nearest fire station is approximately 3 ½ miles away, located on North Montana Avenue. The West Valley Fire District is requesting that a fire protection water supply system be installed with a minimum flow of 500 gallons per minute for 2 hours, at a 20-psi. The applicant's family does own a well that's located very close to the subject property, and the fire department is indicated that that is a suitable source to provide fire protection to the subject property. As far as impacts on the natural environment, we do have the seasonal surface water associated with the irrigation district and with ground water, as I've already mentioned, the subject property is located within the temporary ground control area, and that, all wells would be subject to permits. As far as impacts on wildlife, there are numerous species identified on the subject property. This species here, we haven't figured out exactly what it is. (Laughter). It's probably an endangered species. But the subject property does provide travel corridors and forging habitat for elk and prong horned antelope and also numerous predatory species. There are some drainages within the property particularly on the eastern portion of the property that could provide travel corridors, but because of the small sizes of these lots, it is not probable that a wildlife would utilize this as habitat in the future, when developed. As far as ground water contamination, the nitrate concentrations within this area range from 1.1 mg to 2.43 mg per liter and with the additional development they are not projected to exceed the drinking water standards. As far as access the, as I mentioned before, the internal access road and Collins Drive would be constructed to County gravel standards, and Glass Drive would be improved to the asphalt mat standard. The LOS, the level of service in this area would not be diminished in this area with the additional trip generation, so there's not going to be major impacts at intersections within this area. As far as parkland, this proposal is subject to parkland requirements. The estimated area would be 1.04 acres. The applicant has indicated a preference to do a cash in lieu of parkland dedication. So as a condition of approval Staff has recommended that they have an appraisal done on the property. County Parks Board did review this proposal and did accept the applicants' preference for parkland dedication. As Staff did make a recommendation for approval for this subdivision with 23 conditions. Earlier in July 19<sup>th</sup> of this year, this proposal was taken before the Consolidated Planning Board. The recommendation was for approval, 6-0. There were some numerous conversations that were held. The main concern in the area was about the potential re-subdivision of the 5-acre lots. This was brought up by a member of the public. It was discussed at length. The Planning

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Board did make a recommendation to add an additional covenant and I believe that's covenant 19q that prohibits further subdivision of this property. One of the other recommendations that the Planning Board did make was to extend this cul-de-sac, where it would meet with Lucky Strike Drive which is located to the south of the subject property. Lucky Strike Drive is located here, it dead-ends in a cul-de-sac. This is the area. Currently the cul-de-sac extends pretty much directly south. Lots would have to be reconfigured to allow for an adequate approach to go across here. There's also some issues with the irrigation canal and we'd like this pond (or with Lucktins Pond) the property owner to the west, to allow for further connection. As I mentioned before, there were several people present at the Public Hearing. There were several people in support of the subdivision. They spoke mainly about the ability to use private property. Other people opposed the subdivision because of the potential for further subdivision of those 5-acre lots and also concerns about water supply in the area. Again, the Planning Board did make a recommendation to approve this subdivision with 23 conditions and they did modify condition 11c, which required that extension of the cul-de-sac, and 19q, which placed prohibition on further subdivision of the property.

Chairman Tinsley: Questions for Staff?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. I have two questions, Michael, if you would move back to the photographs, in the lower left hand corner, what is all that?

Michael McHugh: It's old farm debris, old tractor parts, some barrels, old tractors, old cattle truck.

Commissioner Varone: Is any of that still being used, or is that community decay?

Michael McHugh: It would be removed.

Chairman Tinsley: I don't you can call it community decay because it's part of an AG operation.

Michael McHugh: Yeah.

Commissioner Varone: Just a question. I haven't been out there yet and when I saw that photograph, I see all of the barrels and the stuff.

Michael McHugh: I will caution you, that when you do go out there, there's some old wood debris, I don't know if you can tell but these are all bees and they're aggressive.

Commissioner Varone: All right, thank you. (Laughter) My second and probably most pertinent question has to do with the Glass Drive and the requirement of the sub-divider to pave it. A few years ago, there was another subdivision where the sub-divider was required on the other side of Glass Drive to pave it as well. Is this just like, whoever develops the subdivision first, is required to pave it? Or is there some sort of re-numeration if one does it before the other?

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Michael McHugh: Hopefully, there would be a compensation. It would be based on a proportional methodology.

Commissioner Varone: If that's the case does that have to be added or included in the conditions of approval here, to make sure that if it ever happens that in fact, that does take place?

Michael McHugh: You could add a covenant saying that the applicant has the ability to be compensated for. If that other subdivision does go through, because of a trip generation and a traffic distribution patterns, they will probably be utilizing the internal access road to go over to Collins Drive, because of the requirement for two approach routes instead of taking, what was originally proposed going up Sleeping Giant View and back. And so that applicant may be required at that time to actually pave the internal access road, because he would be exceeding the 400 trip per day generation rate. So, I mean there's...

Chairman Tinsley: I guess what I'm hearing, and the point would be if and when the other subdivision goes through, I can't see how we could be a covenant that would say they could accept any re-numeration from the other developer. That's not going to make sense. I mean, what is the prerogative?

Michael McHugh: The County currently has no formalized policy to collect a rebate, for a lack of a better term.

Chairman Tinsley: Since the other one has already been preliminary approved you can't go back and say, "Oh, by the way, you need to pay these people back for what they did".

Michael McHugh: That's a discussion for the County Attorney. The County, its Staff's recommendation that the County adopt some kind of formalized mechanism that recognizes previous development and the added impact.

Commissioner Varone: Mr. Chair, the reason for my question is there has been language in the past, that I've read, that the cost can be shared, or would be shared in certain instances, but it's been on a case by case bases. Maybe my question that should go to Jerry for some direction for the commission.

Jerry Grebenc: Mr. Chairman, Commissioners, I think what Michael is saying is that the Board has the ability to place a condition or a covenant on this subdivision that they be required to reimburse Fieldstone Estates, the developers, because that's the subdivision we are talking about, if those developers put in their hard surface road from just below the canal all the way to Lincoln Road, this subdivision you could put a condition on saying you don't have to put a pro-rata share. But Michael's point, that currently Fieldstone Estates has a condition of approval that they have to build a second route all the way around the north side and down Collins, this subdivision would relieve them of that requirement, so how you figure out who gets reimbursed for what, is a difficult proposition. So did that make sense? I mean there's, there will be a give and take from both subdivisions if they both occur.

Commissioner Varone: May I respond to that, maybe ask another question, Mr. Chair?

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Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Thank you. My point was that both of the conditions of approval for Fieldstone and this one require them to complete Glass Drive. And so, is it a flip of the coin since there are no additional conditions that say, if we do approve Foothills and they start movement before Fieldstone does, then Fieldstone comes in, is there any kind of cost share since both of them are required to do it? And since there is no language in here that addresses that at all, how, in the future, should we have some language in here, is my question. If we do, how should it read? If we don't, then, what do we do in the future?

Chairman Tinsley: And that's where, if you would allow me Commissioner, that's where Michael brought up the point that we need to have some kind of mechanism that allows us to do that. Some kind of stand alone mechanism.

Michael McHugh: Whether that's included in the subdivision regulations or as adopted as a separate policy. The proportional cost of the additional trip generation, should be distributed over a broader area.

Chairman Tinsley: Because it's too late to add into Fieldstones. We cannot do that.

Michael McHugh: That's correct.

Commissioner Varone: I understand that Commissioner Chair. What I'm going to ask for is that Staff come up with some language that would be reasonable so in the future, if it happens, and it doesn't have to be necessarily Fieldstone, but it looks like we are going to be looking at another subdivision as well, that is in that same area, that maybe we can consider, and then also maybe added to our subdivision regulations so that we don't need to have these kinds of up-in-the-air questions. If that's a reasonable request.

Chairman Tinsley: Are there any further questions for Staff? Further questions for staff? Mr. Retz or the Applicant if you're prepared come on up and we will hear from you.

Thank you Chairman Tinsley, Commissioners Murray and Varone. My name is Dean Retz, I reside at 1430 Shirley Road. I've been retained by Ogle Enterprises, LLC to present this application. Phil and Mark Ogle are present, in the audience, and what I'd like to do before I start my presentation is answer some questions. First: the old stuff and the bee stuff, belongs to Phil and Geraldine Olsen, the parents of the Ogles. All that will be removed. A lot of the stuff has been removed. These are things that belong to the Ogles and they will be removed. The reimbursement thing, the Engineers are going to mention, but this same conversation, and I appreciate your astute questions there, Commissioner Varone, were brought up at the Pine Board Hearing and again Mr. Grebenc answered some of those questions. We think that is important. But I would like to maybe test Mr. Grebenc memory. Remember when on Wiley Drive, we had Uhaus Tracks that we came up with some language of reimbursement and it did work, so what was mentioned there is we can do what we can, but there might be a timeframe where we might forget this, but. And lastly, I don't like to embarrass Mr. McHugh, but that animal on the picture belongs to the neighbors across the road on Collins Drive, and they sell those from miniatures on up. So, is not on the subject property. (laughter) And again I like to thank you for rescheduling this hearing. We always like to have three Commissioners present.

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Within my presentation will be Tony Prothro, P.E. of Intermountain Consulting, who prepared the traffic impact study and he will address the road issue as well as the reimbursement; Patrick Faber, Hydro geologist, of Aquabonic Consulting, who conducted the 2 required 24 hour pump tests. And I might mention here with the new subdivision regulations, which I always bring my book, on my proposal presentation has changed somewhat, mainly because of the deemed complete application and the substantial credible evidence, and I take pride in my application, and I know when I bring up 5 books to the County, 3 of them go to the Commissioners, and I'm sure they are read. In order to provide substantial and credible evidence, this was the first major subdivision that I was involved in. One of the first with individual water and septic that we followed to the letter the substantial and credible evidence. The Ogles paid the \$200 per lot for the site evaluations. Test bits were done, City and County Health Departments came out there and reviewed all 36-test bits. In your packet, you saw a copy of the memo from Frank Prescott of the Health Department, stating that "The Applicant has provided substantial and credible evidence, that the proposed individual water and waste water treatments systems will comply with the current requirements. Then the next step, we did receive a letter from the DEQ stating that we needed two 24 hour pump tests on 2 separate wells. This requirement was done by Mr. Faber. And lastly, after the 2 pump tests were done, the results were given to DEQ and again we complied with the Planning Departments requirement. We did not submit the application until we received the letter from DEQ analyzing the pump test results. Therefore, if you took a look at the application you saw that probably this application was dated April 30<sup>th</sup> of 05. And here we are, August 16<sup>th</sup>. Just a couple of quick comments, questions, on the recommended conditions of approval. Now, there's no pages on the transmittal memo, so I can't refer to the pages, but number 10 & 11, referring to roads, Mr. Prothro will mention that. Just to kind of enumerate a little bit on 11c, where they added this requirement. Excuse me while I find that. "The Applicant shall extend the right-of-way easement of the cul-de-sac to western or southern property boundary to permit the possible extension of the road to connect to Lucky Strike Road." Presently, Lucky Strike Road, according to the Department of Revenue, only serves six households, and it could be, to provide an easement to lots 25 and 26, this could require some alteration or elimination of 2 lots. We propose language be inserted in 11-c, we would like the first two words to read "if feasible, the applicant shall extend the right-of-way-easement." Chris Reese of Reese Surveying was going to be here to mention that, but we appreciate what the Planning Board is trying to do connecting the roads, but in this case, we don't think it will work. And, the other condition of approval I'd like to talk about is 19o, and this is what Mr. McHugh addressed as far as large animals. In the restrictive covenants, we have the information, the language as far as the 4-H projects. We also had no more than one horse and one cow or combination thereof, per acre, shall be kept on any or all of the 5-acre lots. There will be a limit of 2 on all other lots. Mr. McHugh and I have agreed and disagreed in these over the past few subdivisions. I might mention that the Greenfield Tracks, Gable Estates, quite a few of them have one large animal per acre. We propose a compromise. Right now there are 28 lots of the 36 approximately 5 acres, we would like the compromise read, that we would agree to have no more that 2 large animals per lot. This cuts it down from basically 3 to 2. We also would like, we agree that the remaining 8 lots, ranging from 2.3 to 3.0 acres would contain the same language that is now in 19o, "Prohibition unless it is for valid 4-H projects." It seems kind of funny I'm up here talking more about animals than our water or sewer, but I guess my concern is, when you go up to look at this subdivision, I hope you go up Glass Drive and also Collins Drive, you will see there is a lot of horse properties up there. We think this would enhance the re-sale. Not too long ago I sold property up on Wooten Road, 4 acres, that the gentleman bought it, mainly because he could do horses. I guess I'm concerned about establishing a

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precedent of no large animals that could create a negative impact that we're now, maybe, against horses.

Chairman Tinsley: Mr. Retz, would you do me a favor and put together some language and give it to Michael? You're, the language of what you're suggesting. I tried writing as fast as I could. I know the bases of what you want, but I didn't get all of the lots.

Dean Retz: I certainly would. Now, it's my understanding I was going to present that but I wasn't sure I could do that in writing or not. At this point.

Chairman Tinsley: I think it's OK, to give it to Michael and he can give it to us, since you've already talked about it.

Dean Retz: Ok. And then if there are no more questions, I will have Mr. Prothro speak, and then he will be followed by Mr. Faber.

Chairman Tinsley: Questions for Mr. Retz? Thank you Mr. Retz.

Dean Retz: Thank you

Chairman Tinsley: Mr. Prothro.

My name is Tony Prothro and I reside at 3264 Harness Loop, and I am with Intermountain Consulting Engineers, and I guess the reason. Mr. McHugh really did address everything but, it needs to be addressed from an impact portion. Realistically there's not much traffic impact. With the exception of the fact that the additional trips on Collins Drive generated by the subdivision, would require Collins Drive to be, excuse me Glass Drive, to be paved. And I guess perhaps the reason I'm speaking is, I would like to understand possibly how this. I heard some talk about some proportionate expenses of paving Glass Drive. Which is going to be substantial. It's more than like going to be in excess of, more than likely over \$100,000.00 to pave Glass Drive and it's my understanding that Fieldstone Estates has, if they were to move forward with their project they'd be required to pave that entire portion, that we are also required to pave. And I guess, just for the sack of fairness, and so that I understand how this, how that would happen. Maybe, I'm just asking questions that would be the. We would like to understand how the reimbursement might occur. Because if Fieldstone goes first, obviously they would have to pave it, but that was our requirement as well, so I assumed.

Chairman Tinsley: Mr. Prothro, it's a difficult thing to try and analyze for you because as I said the record for Fieldstone is closed and the County Commissioners cannot impose any new sanctions or requirements upon that. Assuming you folks go first, because it looks like that probably would be the case, if this passes, given the recent decision of the DEQ for Fieldstone, you folks will be going first, if this passes, I'm not saying, just talking in the future if possible. You know, situations have been brought up by the Development Director of the, our Development Director, and by Mr. McHugh, that say, obviously if, at some point in the future, you folks build out, if this passes, and Fieldstone begins construction, they would probably come into negotiations with you to try and utilize portions of your road going east to west, which would save them a lot of money. We're in a difficult spot here. I can't say that, yeah we can guarantee if you folks pave Glass Drive that you're going to get reimbursed. I can't say that. But there's a lot of "what ifs" out there. Now for the future, what we can do, and what we're

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talking about doing is putting some kind of mechanism in place that will alleviate this. Mr. Retz also brought up a previous situation that I cannot recall, right off the top of my head, that we will look into as well, but I can't sit here and tell you this is how it's going to be or this is your, I mean, obviously you folks are in private business and there's a lot of things you can do, negotiating with your competitors, or negotiating with your colleagues that may change your situation. There's a certain limited number of things we can do as a regulating body, and there's a lot of things we can't do.

Tony Prothro: Perhaps, maybe, the best thing would be to try and have the two developers work together.

Chairman Tinsley: We can't mandate that, I would totally suggest that.

Tony Prothro: Right, I know you couldn't, but outside of what your actual powers are.

Chairman Tinsley: We would behoove both of you to work together, because what your saying makes sense.

Tony Prothro: Ok. I guess that's really I have to talk about. Do you have any questions?

Chairman Tinsley: Questions for Mr. Prothro? Thank you. Good Morning Mr. Faber.

Good Morning Commissioners. My name is Patrick Faber. My office is at 25 South Ewing. I just like to make 2 general comments about the public comments with the written or testimony at the Planning Board rather than to address each one individually. The first one regarding water quality. There seems to be a lot of doubt about whether or not the Lewis and Clark Sanitarians are capable of adequately addressing on-site sewage, and I work with the Sanitarians in the Tri-County Area here, plus other counties such as Powell, Granite, Deer Lodge, Gallatin, and I think that what the criticism is would be more towards the process, and the only way the process can be changed is by changing the law and going before the legislature or by changing the rules, which requires a change by DEQ-4. The last time DEQ-4 was changed was November, 2002. Both of them were lengthy processes. But unless that happens, the Sanitarians are bound to administer the law and the rules that DEQ has adapted, to try to address the law. I don't have any doubts this subdivision would be any different than any other one that the Lewis and Clark County Sanitarians approve. With regard to water quantity, this subdivision is way over and above the DEQ requirements of 4 gallons per minute for 4 hours for domestic well. If you multiply those numbers out you come out with about 1,000 gallons a day. We pumped 2 wells at 30 gallons a minute for 24 hours, so each one of those wells was pumped for 43,000 gallons, so we are way over and above the 1,000 gallon a day minimum for a well. I don't know whether this argument has ever been put forth. You Commissioners may have heard it before, but in the many years I have been coming before you, I've never heard the argument, and that is this, that the DEQ simply requires there be adequate water and if there isn't adequate water, either from a well or connecting up to city water system, you can always go to cisterns and there's major subdivision after major subdivision in the Billings area that are approved with cisterns. This subdivision has plenty of water and the test wells demonstrated that. Any questions?

Chairman Tinsley: Questions for Mr. Faber? Thank you

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Patrick Faber: Thank you.

Chairman Tinsley: Are there any further questions for any of the Applicants, their representatives or Staff? Commissioners, what's your pleasure.

Commissioner Varone: Mr. Chair, I make a motion to render a final decision on the subdivision to known as the Foothills Major Subdivision on August 25.

Commissioner Murray: Second.

Chairman Tinsley: We have a motion to render a final on August 25<sup>th</sup> in this room. Any discussion? All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0.

Ok, what we're going to do, for the sake of the HCTV folks is take a break, a short, we will come back at 10 after the hour. Take a short break, and then we've got one more major subdivision and another item, and then we will. Is anybody here for item 9, from Fish, Wildlife and Parks? Ok, we'll go ahead and, we'll sustain the order, and come back at 10 after the hour.

Recess at 10:00 a.m. until 10:10 a.m.

**Proposed North Star PUD Phase 2-6 Major Subdivision.**

The next item on the agenda is item number 8: proposed North Star PUD Phase 2-6 Major Subdivision. The applicants are, North Star Development, the Planner, is Michael McHugh, and this is postponed from August 9<sup>th</sup>, 05, so we could have a full Commission present.

The Commissioners will consider creating 245 lots, 235 for one single-family dwelling, 8 for commercial use, 1 for school/park site and 1 for wetlands/park. The subject property is located in the southeast quarter of Section 7, Township 11North, Range 3 West; generally located west and adjacent to North Montana Avenue. The Planner is Michael McHugh. Mr. McHugh; Good Morning.

Michael McHugh: The applicants were here, and they're consultants.

Chairman Tinsley: Let me ask, I know one of the applicants representatives are present. Is the applicant prepared to move forward this morning? Thank you

Mr. McHugh: Commissioner, this proposal is to create 245 lots, 235 would be for single family residential units, and 8 would be for commercial and one would be for a future school park site, and one would be for wetlands. The subject property is located north of Lincoln road, immediately west and adjacent to Montana Avenue. Land uses in the area consist of Sky View and Town View subdivisions, located to the north of the subject property. This is where Northwestern Major subdivision has been approved. Phase One of North Star subdivision is located to the south and the west of the subject property. Other land uses in the area include mainly single-family residential units on 2 ½ to quarter acre lots. The West Valley Fire Station Number 2 is located here at the of North Montana Avenue and Valley View Drive. This subdivision originally received preliminary approval back in, I believe it was in 2002. That was for the first phase. The first phase has mainly been totally constructed. These consist of multi-family units located down in the southeastern portion and there is single-family residential units

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here. This proposed subdivision is proposed to utilize community water, and waste water treatment system. There's currently a pump house with the existing water system, located in the central portion. The property does have 2 existing single-family homes and some agricultural out buildings that were left over from the previous agricultural land uses in the area. This is the preliminary site plan. Again, the park schools site is located in the central portion of it. You'll have boulevard roadways with bicycle paths running here. As far as zoning, there is no zoning for subject property. The Sky View and Town View subdivisions are located within special zoning district number 33, which does permit some commercial activity, but its primarily single family residential lots on lot sizes ranging from 7,000 to 8,000 square feet in size. As far as covenants, there are covenants proposed by the applicant. These would be similar to the covenants that were placed on Phase one. Those would also include any Phase one covenants Board of County Commissioners placed on them at the time of the original subdivision approval. As far as notice, we did place signs on the property, ads in the Independent Record, and notified all of the immediately adjacent property owners. We did receive several letters, which are attached to your packet. Their main concern dealt with water issues and also the traffic impacts on North Montana Avenue, particularly the intersection of North Montana and Lincoln Road. As far as the review criteria, impacts on the agricultural uses; there's two soil-mapping units identified on the subject property. Neither of these soil-mapping units are identified as being prime or statewide importance. There are no irrigation facilities located on the property. The property, as I mentioned before, has historically been utilized for grazing of livestock, mainly horses in this area. Impacts on local services, I mentioned before that the applicants are proposing to utilize a community wastewater treatment system. The system would consist of an aerated treatment pond that would be located on a property located to the southwest of the subject property. There would be a collection system that would bring the effluent down here. There would be a wetlands treatment area here, and then the effluent would be conducted and cross. The wastewater lagoons would be located in this area. The lagoon itself, would be approximately one acre in size. Approximately 30 acres would be irrigated with the treated effluent. The system, again, would consist of an oxygenated aeration pond which would then train air, and have a mechanical blowers to diffuse the air into the effluent treated waste water would then me stored in the storage lagoon and then irrigated during from May until approximately October. The rate of application for the effluent is controlled by the State of Montana Department of Environmental Quality. It's based on soil types, evapo trap transportation. The type of crop that would be planted on the property, and also the nitrogen loading of the effluent. The regulations do prevent any increase of the nitrate concentrations of the soils, and do prohibit any run-off off the property. The entire property would be fenced with a field fence to preclude trespass either by pets or by people in this area. As far as the soil mapping units, for individual systems in this area, there are some constraints, but because of the requirements for DEQ for this community system, this would be a non-discharging system to ground water. We don't see very many systems like this in the area, so this would be new. As far as the sludge collection, the sludge will settle into the bottom of these treatment lagoons. It will would probably take 20 years before they are sufficient sludge accumulation to require sludge removal. All sludge removal, whether it's either disposed of at the landfill or applied to agricultural properties, is governed by EPA regulations, and would be monitored by the Department of Environmental Quality. As far as the water supply system, the applicants are proposing to utilize the community water supply system. There is an existing water supply system on site right now. There is an error in the Staff report on the last paragraph of page 4, where it says it's only a 40,000-gallon storage facility. There's two existing 60,000-gallon storage facilities already on site. The water supply system would need to provide with the fire

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protection supply 224 gallons per minute, and this would require a storage capacity of approximately 200,000 gallons of water, so additional improvements would need to be made on site. There's potential for additional wells that would need to be accommodated on site. With the school site and at build-out, it's been estimated at in excess of 500,000 per day would be needed to provide fire protection and all the necessary domestic water supply. The distribution system would consist of 6" and 8" PVC mains. There would be fire hydrants approximately 600 to 800 feet separation. There is a letter attached to your packet from the Department of Environmental Quality indicating that a 72-hour pump test has been conducted on site. That was conducted in April of this year and that there is sufficient evidence to add to this water system. This property is located within the North Hills Temporary Ground Control area and all new wells would be subject to those restrictions. Also, with the increase of water volume, the Applicant would have to request a modification of the beneficial water right use permit, both for the increased volumes and also the change in the location of the discharge. All necessary utilities are located adjacent to the subject property and will be installed at the developer's expense. As far as roads in this area, this road network does provide a very nice integration system with the existing subdivision north and possible connections to the south. As I mentioned before, there will be boulevards located on the main entrances. Valley View Drive, under the recommended conditions of approval, would have to be improved from an asphalt, to an asphalt standard from the intersection of North Montana westward to the west boundary of the property. All the roads within the subdivision would be asphalt met and again these larger lanes in here would have bicycle lanes and shoulders in this area. During the Planning Board Commission, there was some expressed concern about the changing in the width going from a 60' standard to approximately 80' standards for the right-of-way here. At that time, Staff pointed out that the driving lanes will all be 12' wide. It's just that there will be those shoulders to accommodate pedestrian and bicyclists in this area. One of the recommendations that Staff had was that there needs to be left turn lanes for all of the approaches onto and out of North Montana. This would require improvements down here at Valley View Drive; I believe this is Star Road here and I believe Guthrie Road up to the north. The Applicant has indicated a willingness to do that. As far as schools, again this subject property is located within the Jim Darcey Elementary attendance area. Numerous students need to be bused to other schools due to capacity constraints. They would be either sent to Roster Four Georgians or Broadwater School. As far as Middle and High School students, there is necessary classroom capacity, unless you include Sierra Anderson. And all students, middle and high school students, would need to be transported at the general taxpayers expense. As far as fire protection, this property is located within the West Valley Fire District. The fire district is requesting a minimum flow of 1,000 gallons per minute for 2 hours, at 20 PSI, not 120 PSI, there's an error in the staff report; that hydrants be located within 1,000 feet of all structures, and that multi-family and commercial structures, larger than 6,000 feet be equipped with sprinkler systems. As far as impacts on the natural environment, as mentioned before the subject property is located within the North Hills ground water control area. There has been the 72-hour pump test that has been conducted. Nitrate concentrations vary in this area. To the southwest of the property there are some nitrate concentrations that are in excess of 17 mg per liter. Because of the public water supply, periodic testing will need to be conducted and be conducted by a licensed public water supply operator. As far as, as mentioned before, one of the major concerns with the neighbors and Staff have is the additional traffic generation on North Montana Avenue. Prior to the Planning Board hearing North Montana was in a very substandard condition with potholes. The County has gone out there and done some improvements and chip sealed within the last week, which does add for some betterment of the traffic flow in that area. Right now the traffic flows on North

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Montana are in excess of 3500 per day. It's estimated in the draft travel plan that there would be an increase in excess of 4800 trips per day on North Montana, north of Lincoln, in 2015. Currently, the levels of services standards indicates that at peak hour, there is level service c, I believe it is, and that there would be a decrease to level service f, even without this subdivision proposal by 2015, if improvements are not made. In the EA the applicants engineer indicated that left turn lanes at the intersection would help minimize it, except for the PM peak hour time, going north of Lincoln Road. In the Staff report we do have some crash data for the intersections. The intersection of North Montana and Lincoln Road, I believe, ranked 14<sup>th</sup> out of 51 intersections that were studied during the travel plan. The intersection would not require signalization until the crash data was in excess of 5 in the frequency of crashes. Again, there needs to be a major infrastructure improvements on North Montana Avenue; chip seal doesn't last very long. The Applicant has indicated a willingness to join a RID with the other subdivisions in that area, to do all of the improvements on North Montana at one time. MDOT has indicated that there would possibly be some safety improvements at that intersection when the interchange is reconfigured in a couple of years from now. As far as parkland dedication, the applicants are required to dedicate 14.49 acres of parkland for this subdivision. What they are proposing to do at the school site and also this wetlands site here, exceeds that also with the bicycle paths. The Applicant and their EA indicated that the school site would not be dedicated until the completion of Phase 6, but because of the state requirements for parkland dedication, there needs to be either a incremental dedication of school parkland site to the county prior to that, or he would have to bond for the proportional school site or park site, up to this point. Based on the findings, Staff did recommend approval of this subdivision with 21 conditions and again the Planning Board did have a public hearing on July 19<sup>th</sup>. They did vote 5-0 to approve this subdivision. There were concerns, some clarification that the Planning Board requested, about the type of operation of the wastewater treatment system and that was addressed by the applicant's engineer. There was some discussion about the incremental dedication of the school sites in this area and the impacts on North Montana Avenue. There was a recommendation made by one of the Planning Board Members that the applicants and future property owners waive their right to protest for a RID to do improvements for sidewalks and bicycle paths within the subdivision. That was approved by the Planning Board, 5-0. And that is reflected in the revised conditions of approval, 19-i. Again, there were some long discussions about impacts on schools, roadways, and the planning board made another amendment to the Staffs recommendations to add 19-j, which is a restrictive covenant, that binds future property owners, and indemnifies the County for all decisions regarding the use of the park, school park site, and block 5, water quality/quantity issue, roads and access response time for emergency service provider. Issues dealing with school attendance, transportation and the location of the subject property within temporary ground water control area. Again, the planning board did recommend approval of the subdivision with the 21 conditions as amended 5-0.

Chairman Tinsley: Mr. McHugh, I have a question. The houses along Montana Avenue, the lots, I mean, how did we avoid double fronted lots there?

Michael McHugh: The subdivision regulations don't require a variance if it's along a major collectors or arterials. It's only for the internal and local roads.

Chairman Tinsley: Ok. Something like Benton Ave. Questions for Mr. McHugh? Commissioner Murray.

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Commissioner Murray: Mr. McHugh. Our migratory birds going to be at risk for this sewage treatment system?

Michael McHugh: Not that I'm aware of.

Commissioner Murray: I assume the applicant will respond to that. Is the engineering study, Mr. McHugh, complete, that's taking place on North Montana Avenue and Lincoln Road?

Michael McHugh: Are you referring to the North Hills infrastructure plan? It's been complete. We're making some minor revisions to the draft, and hopefully, that draft will be available for review by the beginning of next month.

Commissioner Murray: Is the information contained in that report contained in this major subdivision? I guess this is where I'm trying to go with this.

Michael McHugh: In the report, we utilize the information that's in the transportation plan, and also the North Hills. Both plans address the insufficient capacity on North Montana, and the need to improve it. Based on just the threshold levels on North Montana Avenue, would probably need to be reconstructed to a three lane width. There's some issues there associated with the drainage on North, because it's currently accumulating in the borrow ditches, there would probably have to be some type of piped storm water plan to accommodate any widening there.

Commissioner Murray: Mr. McHugh, I thought I heard you say that the asphalt (sic) would be required from Lincoln Road to the north edge of the subdivision on Montana. Is that correct?

Michael McHugh: Right now the proposed conditions of approval only require turning lanes on North Montana to be installed at Valley View Drive, Star and Guthrie Road. The extension of the asphalt mat would be on Valley View Drive, which is located on the southern boundary of the property. To do that is going to require re-alignment of the existing roadbed and also relocation of utility lines, because where the platted easement is and physical road are, they are different.

Commissioner Murray: Thank you.

Chairman Tinsley: Further questions for Staff? Thank you Mr. McHugh. Mr. Retz, or the applicant, or any of the other representatives, please.

Thank you Chairman Tinsley, Commissioner Murray and Varone. My name is Dean Retz, I reside at 1430 Shirley Road, and I've been retained by North Star Development for this subdivision. Just a couple of minor things. First off, on the 9<sup>th</sup>, last week, when we asked for the delay, and I appreciate waiting for all three commissioners, the name of Larry Marshall was mentioned and in the paper it mentioned Larry Marshall, North Star Development, LLC. Mr. Marshall is not a part of that.

Chairman Tinsley: That was my mistake. I watched the re-broadcast, and realized I did that. I don't know why I said that, and I apologize.

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Dean Retz: I want to give you a little history of North Star, quickly, because there is some continuity. There is no; County approval is December 27<sup>th</sup> of 01, the DEQ approval August, 2002, and as Mr. McHugh stated we final platted Phase One in 2002. This concept we like numerous times, a planning staff, Mr. McHugh said they liked the concept. What had happened was, we could not go forward with the North Star development as it was, now we have some new people; Doug Peterson, who was a member of the first North Star, his partner now, Joe Scanlon, he owns 50% and then Dan Kodnak, he is representing the other 50% of North Star Development. So we are going with the same concept. Phase One consists of 15 residential lots. They are all built occupied. Consists of 11 commercial/multifamily lots. There are 9 existing multifamily lots that are fully built. One is being built now and then there is only one vacant lot there that has been sold. So it's basically full developed. Phase two through six, the same exact concept. Phase one was community water/individual septic as was stated, phase two will be community water and community septic all the way through. And within my presentation, what we are going to do because of the changes in the subdivision regulation and because of the expertise involved in getting to our substantial credit of evidence, Mr. Fred Phillips Engineer with Great West Engineering will address you, and he will try to answer the questions that Mr. Murray brought up. He'll be followed by Tony Prothro, who did the traffic impact study on North Montana to give you a little information on that. I am glad that Mr. McHugh mentioned the fact that there's been improvements and chip sealing on North Montana Avenue. And then they will be followed by Mr. Patrick Faber, Hydro Geologist who did two 24-hour pump tests and one 72-hour pump tests on Phase One of North Star Development. I just have a comment, more than a concern, with the Consolidated Planning Board action and I'm referring to 19j the new, they added 1 through 6. Of course, there's no pages on this but it's the same, like Mr. McHugh mentioned. As the vote was 5-0 I'm assuming their intent is correct. And another thing I might mention, the reason it was 5-0 and the one after that was 6-0, but one of the members of the Planning Board came in late, did in fact, listen to this presentation but was not able to vote, so it was unanimous. I guess my concern is, I'm referring to the restrictive covenants that is binding landowners heirs and successors, talking about all decisions regarding use of schools/park parcel on block 5, water quality and quantity, roads, access and maintenance to the roads, response times and access for emergency service providers, waste water treatments and disposals, school attendance, districts, and transportation to and from public schools and expense associated with such transportation and lastly, #6, the location within temporary ground water control area. Most of this is being addressed someplace else. I don't know if it's going to do any good or not to talk about this in Board of County Commissioners covenants that are alterable or revocable only by this body. I'm just wondering if we are establishing a precedent and next time we hit the button these are going to come again. That's just a comment more than a concern. And if there's no questions, again Mr. Phillips will address you followed by Mr. Prothro and then by Mr. Faber.

Chairman Tinsley: Thank you Mr. Retz. Any questions for Mr. Retz? Thank you

Dean Retz: Thank you

Chairman Tinsley: Mr. Phillips.

Commissioner Tinsley, Commissioner Murray and Varone. My name is Fred Phillips. I reside in Whitehall, Montana, and my professional residence when I'm working, is at 2030 11<sup>th</sup> Avenue,

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with Great West Engineering. We were the engineers that did the preliminary study and developed the preliminary engineer reports for the water, the sewer and the drainage system, and Michael's description was pretty much right down the line. The drainage system will culminate in a retention/detention area in the wetlands park area, and then continue the controlled discharge in accordance with the DEQ and subdivision standards. The water distribution system will be constructed in accordance with DEQ standards to meet the fire flow requirements and the proposed sewer system also will be constructed within the existing DEQ requirements and would consist of a one acre aerated cell of approximately 8 acres of storage which is presumed to be constructed in two phases rather than one big cell at once, and approximately 30 acres of irrigation which would be a hay crop. These systems are common throughout Montana. They are the standard rules for DEQ under the DEQ2 bulletin. And the one question from Commissioner Murray: "will the migratory birds use these water bodies?" The answer is yes they will. We do see seagulls and lots of kinds of ducks using wastewater treatment and storage ponds everywhere. There's any questions, fire away, please.

Chairman Tinsley: Any questions for Mr. Phillips? None, Thank you Mr. Phillips. Thanks for coming. Mr. Prothro.

Once again I'm Tony Prothro with Intermountain Consulting Engineers, and I reside at 3264 Harness Loop, here in Helena. I completed the traffic impact study for this project and once again, Mr. McHugh's descriptions of the components of the traffic impact study and our proposed mitigation are pretty sufficient. I'll just spend a couple of seconds. There's a lot of traffic that we are going to have to deal with on this project, and there is some substantial impacts to North Montana Avenue, primarily during PM Peak hour conditions. To mitigate those impacts we are proposing left turn lanes at all of those intersections. As Mr. McHugh said there's Valley View, Starr and Guthrie. And we all know that Montana Avenue wasn't in the best shape. So, realistically we feel the best thing that can happen at this point is to go ahead and do the left turn lanes, and then, when there's a regional improvement proposed in the form of a Rural Improvement District, then we would gladly inter into the rural improvement district. There's going to be impacts to the intersection of Lincoln and Montana, however, MBT has also indicated that they are going to include much of the improvements that are already going to be done in their reconfiguration of the Lincoln Road Interchange. So I guess, I'll conclude my presentation at that and if you guys have any questions?

Chairman Tinsley: Questions for Mr. Prothro? Thank you. Mr. Faber, welcome again.

My name's Patrick Faber. My office is at 25 S. Ewing, Helena. One very minor clarification. Mr. Retz stated that I connected both 24-hour tests. Actually, the first one was done by Jim Taylor the original project engineer. The only changes in the past 4 years since I came before this Commission for Phase One, is that we did do a 72 hour test, and the results have been included, reviewed, by DNRC and then second, the original phase has been operating under an interim permit by DNRC for a couple of years. It is my understanding that the official DNRC permit has been issued. I've heard that but I haven't seen it in writing. That would be for the phases that we're proposing now. Any questions?

Chairman Tinsley: Questions for Mr. Faber? None. Thank you. Are there any further questions for the Applicant or any of his representatives or the Staff?

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Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray, thank you. Just one question of Jerry, if I may, or Michael, whomever. I was interested in Mr. Retz's remark about 19j and the planning board adding the restrictive covenant. In your opinion, is this something that's necessary? Has Paul Stahl taken a look at this? Just maybe some direction.

Michael McHugh: Staff did not think it was necessary when they wrote the initial report. There are members of the planning board that want to indemnify the County for everything, and if you noticed in the previous subdivision, the only thing that was indemnifying the project for, was proximate to the irrigation canal, because it was an attractive nuisance, and also, location in the North Hills ground water control area. These two subdivisions are very similar in character. I mean there are some differences in lot sizes, but they are in the same area. They are having the same impacts so I believe it's up to the discretion of the Commission.

Commissioner Varone: Thank you.

Chairman Tinsley: Further questions?

Commissioner Murray: Mr. Chair, Commissioner Varone?

Chairman Tinsley: Commissioner Murray:

Commissioner Murray: I believe in Larry Marshall's subdivision there is also dedicated land for schools. In this particular subdivision there is a dedication to schools. Obviously, two school buildings won't be built.

Michael McHugh: In the Sky View subdivision there was initially approved, the applicant volunteered to pay for a portable building to be located on Jim Darcy, because of the size constraints of Jim Darcy School, it cannot accommodate an additional portable building, so that applicant made a cash payment to the school district. And that was a voluntary condition that he agreed to. Under state statute we cannot require mitigation for impacts on schools. But there is no school site located in Sky View or North West subdivision.

Commissioner Murray: Thank you

Chairman Tinsley: If there are no further questions, what is the pleasure of the Commission.

Commissioner Murray: Mr. Chair, I move we render a decision on the 25<sup>th</sup> of August.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion to second to render a final on August 25th. Any discussion? All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0

Thank you very much for your time this morning.

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### **Agreement with Department of Fish, Wildlife & Parks**

Next item on the agenda is an agreement with the Department of Fish, Wildlife and Parks. The Commissioners will consider the agreement implementing the "Land and Water Conservation Fund Act of 1965" for the purpose of installing ADA bathroom and campsites, an irrigation system, and make site improvements at the Lewis and Clark County Fairgrounds.

Jerry Grebenc: Mr. Chairman Tinsley, Commissioners, I'm handling this for Ron. The funds that would be allocated for this would come down from the Department of Interior and be administrated by Fish, Wildlife and Parks. Any work that the County was going to do with these funds would need to be completed by December 31<sup>st</sup> of 2009, and the total federal share that would be provided for this project could not exceed \$75,000. Staff does recommend approval of the agreement and signature by the Chair.

Chairman Tinsley: Are there any questions of Staff?

Commissioner Murray: Mr. Chair, Commissioner Varone, Mr. Grebenc. If we take this money then does it prohibit or preclude us from accepting other money perhaps for the "duck pond" on the fairground.

Jerry Grebenc: Mr. Chairman, Commissioners. I don't know that specifically but I doubt it because land and water conservation funds are typically used from anything from the Blackfoot Challenge project, part of that was land and water conservation funds put together with other project moneys, from the Nature Conservancy, official Wildlife and Parks, the Out (sic) Foundation, so I don't think it would preclude the use of other grants or funds from anywhere else.

Chairman Tinsley: Further questions? Is there a motion?

Commissioner Murray: Chair, I would move we enter into an agreement with Fish, Wildlife and Parks for the receipt of Land and Water Conservation moneys from the Federal Agency, and authorize the Chair to sign.

Commissioner Varone: Second.

Chairman Tinsley: You're so articulate this morning Commissioner. (laughter) We have a motion and a second. Any discussion? All those in favor of the motion signify by saying Aye. Aye. Motion passes 3-0.

### **Public comments on matters not mentioned above.**

We are now at the point in the meeting where we will take any public comment on any items not mentioned above previously, in our agenda. Yes, Ma'am, please. And for the record state your name and address if you would.

My name is Rodetta Sloan, 7801 York Road. I'd spoken to Commissioner Murray on the phone a few days ago and he said, oh I was speaking to him about the possible repair to York Road, and he said road issues would be considered at the public meeting this Tuesday. I didn't see it on the agenda but I came in hopes that I could talk to you about it.

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Chairman Tinsley: You can talk to us about it now. It wasn't on the agenda and it is probably my fault. He did ask me at one point, but we're glad we didn't put it on the Agenda because we've got a little bit more homework to do before we just put it on the Agenda. We want to make sure we notify all of the residences that are impacted and get some input before we just go and make a decision like that. But please, why don't you go ahead with any statements you have and we can follow up with any questions with you, possibly. And, we're talking about the portion of York Road that's beyond York that extends into the Forest Service?

Rodetta Sloan: Right from the York Bridge, actually two portions. York Bridge to York Bar, and then York Bar to the Forest Service. And last year, they used a portion of York Road, from York Bridge to York Bar for an experimental base, and at the end, they put down some kind of concrete and tar, I'm not sure what it was. It held up very nicely over the winter, by the way. But they did not finish it. They did not do the chip sealing on top of it. Well, we were, I have to say that everything I heard was by grapevine so I don't know how much of this is fact. But, I heard before they finished it, that when they finished the base part of it they would come back and chip seal it and continue on the rest of the portion of York Road toward the Forest Service with the chip seal portion of it. And for some reason, they did not do the chip seal last year, so they came back this year to do the chip seal. They just came back and did it last week, at least they started it last week, they haven't completed it yet. But I heard again, through the grapevine, that when they did that portion of it this year, they would continue on and do the rest of York Road. And there is no indication that they are going to continue it and York Road beyond York Bar is in terrible, terrible shape. The County does send out a patching crew every spring or summer. They do a portion of the road. They do the first mile, mile and a half, two miles with the amount that's in the truck. They run out, the truck goes back into town they don't come back with another road. So the first part of that portion of York Road it's patched, and re-patched and re-patched. Beyond that has not been patched in years. And we were certainly hoping that the chip seal would occur this year and would cure the problems on York Road. It's gotten to the point where you cannot even avoid them. You've swerved around one this way, and you've hit another one. There's just no way to avoid potholes on the farthest paved portion of York Road. My particular concern right now, the urgency of my concern is I am the Chairman of a charity event that benefits the York Volunteer Fire Department. This is our second year. It is a mountain bike ride, and a portion of York Road is used for the bike ride. Last year the bikers came down and they were calling York Road a pothole slalom or something, very difficult for them to maneuver. And because we had heard that it was supposed to be repaired, we put in our website that we'd been promised the road would be better next year. Well, this ride is coming up on the 27<sup>th</sup> of this month, and it doesn't look like the road is going to be any better, and in fact, it's considerably worse than it was last year. Our event is August 27<sup>th</sup>, so I was hoping I could persuade someone to do something with that road. It is a road project but it is a small project as far as road projects go. We're talking 2 to 3 miles perhaps of, if we could just even get it patched, we would love to have it chip sealed, but if we could only have it patched between August 27<sup>th</sup> it would mean a great deal to us.

Chairman Tinsley: Let's, if you don't mind, let me settle a couple of things right up front with you, so we can draw the line and know where we are. I don't know who told you that it was going to be chip sealed but those were two separate and distinct areas that York Bar, or York Bridge to York Bar is totally separate, the funding mechanism was separate and everything, from what would be our responsibility as a County from York Bar on into the Forest Service. We've got a critical decision as a County to make regarding that road from York Bar on in, that

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involves the number of people who live on that road, the small number of people that live on that road versus what is the most cost effective solution for those people and the rest of the County residents. What is our fiduciary responsibility is to do the best we can with the least capital as possible and make it as fair as possible for everybody. And I know that sounds pretty broad in general. I can tell you right now, more than likely, chip seal is not in the cards. What we are going to have to decide now, is whether or not we may want to pulverize that road and turn it into gravel, make it a gravel road again. Regarding the short-term problem of the potholes, I agree with you whole-heartedly and I think what we need to do is talk with our Public Works. The problem is we are in the short part of our season now, where everybody is prepping for winter and we are trying to get everything done prior to the snow flying. If, I will tell you as one Commissioner, if at all possible we will see what we can do to make your event a safe event. I think we do need to go out and at least do something to try and figure out a way to make it safe. I can't promise you that right now, but we will talk and I will get in contact with you as Chair of the Commission, sometime before this weekend. With some kind of information. But as far as chip sealing that road, that has not been our plan, and we have never publicly stated that, that I know of. Given what I know about the road and our budget, we wouldn't do that. But I know how conversations go and I know how rumors fly and it happens and that's unfortunate. I apologize if you were misled that way. I don't know if Commissioner Murray or Commissioner Varone would have anything they like to add.

Commissioner Varone: Mr. Chair, Commissioner Murray. I would like to see the event made safe, and one possibility that we might consider, since pulverizing seems to be one of the reasonable solutions that wouldn't be done by the end of the month, is maybe to at least fill the pot holes in a portion that's wide enough for the bikers to use and then mark it off with a line of paint so that they'll know that that's where they need to travel, to not hit any of the pot holes. It's not a solution but it might be a solution for the event, a safety solution for the event.

Commissioner Murray: So Ms. Sloane, Monday at our calendar meeting we asked our Public Works Director to respond to the condition, and this was discussed. I had requested it be placed on the agenda, and as Commissioner Tinsley mentioned, it didn't get placed on today's agenda. It was discussed at our calendar meeting with our Public Works Director. There was some hope and expectation that there would be chips left over from the York Bridge to the York Bar, and they measured it exactly and there wasn't a single chip left over, so the hope of the Public Works department wasn't fulfilled as far as the chips go. I too, would ask, I did ask, and will ask again, if we can make the road safe for the race on the 27<sup>th</sup>.

Rodetta Sloane: Thank you

Chairman Tinsley: One way or another we will have an answer for you before this weekend. I will let you know when and how it's going to happen. The safety stuff that we are talking about. But the bigger deal we have to deal with and we are going to have to deal with it and we are going to have to contact all of you folks who live up there are impacted, is the future of that road, and how we want to go about maintaining it. And I'll tell you, quite frankly, at this point, our best option is to probably go in and pulverize that road and return it to gravel and maintain it as a gravel road, which would probably considerably better than it is right now. I know the best option, or the most hopeful option, would probably be to repair that road and bring it back to a non-asphalt hard paved road, but I can't see that happen. Given with our budget constraints and the number of people who live up there.

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Rodetta Sloane: I understand.

Chairman Tinsley: Ok. Thank you for coming in this morning.

Rodetta Sloane: Thank you for hearing me.

Chairman Tinsley: Do me a favor and stay and we'll get your phone number so I can contact you. Any further comment? Any further comment? Hearing none, we stand adjourned.

**Adjourn.** 11:04 a.m.

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