

PUBLIC MEETING
October 4, 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, Jerry Grebenc, Christal Ness, Dennis Clancy, Eric Lindberg, Audra Zacherl, Lindsay Morgan, Mike Henderson, Michael McHugh, Ron Solberg, Jim Wilbur, Ellen Gauthier, Ed Knor, Linda Susor, Shirley Bogger, Glenda Hanna, Colleen Hansen, and Maria Penna.

Pledge of Allegiance. Everyone recited the Pledge.

Chairman Tinsley: Good Morning and welcome to our regularly scheduled Tuesday morning meeting. There's a sign-up sheet at the front, right in front of Mr. Henderson. If you haven't had a chance to sign in, please do. Also, if you receive a parking ticket while participating in your County Government, just bring it up to the 3rd floor and Miss Byrnes or Miss Penna over here, will take care of it for you. I'm Commissioner Tinsley. To my left is Commissioner Varone. To her left is Maria Penna, one of our Executive Assistants. To my right is Commissioner Murray, to his right is Ron Alles, our Chief Administrative Officer and to his right is Jerry Grebenc our Director of Community Development and Planning.

The first item on the agenda this morning is the Consent Action Items. Mr. Alles.

Consent Items.

Ron Alles: Thank you Commissioners. You have 5 consent items, though Item B has 4 contracts in it, they are DPHHS contracts.

- a. Health Department Contract with DEQ. Review water supply systems in compliance with Sanitation in Subdivision Act. Those fees are established by Administrative Rules Montana and it is a renewal.
- b. Health Department Contracts with DPHHS:
 - (1) Public Health Emergency Preparedness and Response Program, \$108,934.00.
 - (2) School Nursing Services. Wolf Creek School District 13, \$1,150.00.
 - (3) School Nursing Services. Lincoln Public School District 38, \$774.00.
 - (4) Suicide Prevention Coalition for High School Students. \$10,000.00. This was a joint effort by I believe it's a non-profit organization. We applied for that grant on behalf of the organization and it's to help to prevent suicides within our schools.
- c. Final Plat Approval for the Crabtree Minor Subdivision. The Applicant is George Crabtree, and the Planner is Lindsay Morgan.
- d. Memorandum of Agreement. This is between Lewis and Clark County HOME Program and Montana State Historic Preservation Office. This is a piece of that Friendship Center Construction Project and includes the removal of that facility that's currently located there.
- e. Agreement with the Montana Department of Transportation. It's to allow improvements on Highway 435, which is south of Augusta. It's the Bean Lake Road.

Staff does recommend approval of these consent items, unless you would like to pull any and ask specific questions.

Chairman Tinsley: Would the Commission like to pull any of the items and consider them separately? Is there a motion?

Commissioner Varone: Mr. Chair. I would like to make a motion to approve the Consent Items and authorize the Chair to sign any and all documents associated with the Consent Items.

Commissioner Murray: Second.

Chairman Tinsley: We have a motion and a second. Any further discussion? All in favor of the motion signify by saying Aye.

Commissioner Varone and Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion Passes 3-0

Commissioner Murray: Mr. Chair. For the record I want to note the, one of the health contracts, number one. The contract was written August 31st, received by our Health Department on September 19th, it's now October. It's poor business to have these contracts sitting around for 6 weeks when we're performing the service and we don't have the legal recourse to recover the money. I just want that noted, please.

Chairman Tinsley: So noted. Further discussion on any of the consent items that we just passed?

Chairman Tinsley: Next item on the agenda is an Encroachment Agreement. Christal Ness, the Permit Coordinator is not here.

Encroachment Agreement

Jerry Grebenc: Mr. Chairman, Commissioners. Christal is out due to medical appointments but you should have a memo with photographs, a draft Encroachment Agreement, and comments from the Public Works department. Generally we don't do presentations. I would just simply state that in Christal's brief memo Public Works has recommended denial of this agreement and I'll try to answer any questions you may have.

Chairman Tinsley: Mr. Grebenc, do we need to have a Public Hearing on this or?

Jerry Grebenc: It's just an administrative action. It's entirely up to you.

Chairman Tinsley: Is anybody here on behalf of this particular proposal? One gentleman. Is there anybody else? Are you the Applicant? What is the pleasure of the Commission, let him come on up to address the Commission? Come on up Sir and give us your name and address for the record.

My name is Patrick Pacheco: 6940 Green Meadow Drive, Helena, MT. Good morning. I bought the property 3 years ago from a friend of mine. I knew about the easement. He's actually the gentleman that subdivided the whole place. It's been there. The fence has already been there. All I'm doing is replacing the posts. That's all I'm doing. And then we had a County Commissioner or a guy come out and say that we needed now to move the fence back. I have mature trees, as the pictures will show. By moving the fence all the way back, there's 2 entrances into this subdivision. I have no complaints from anybody and I don't know why it's here. So I have to move sprinklers back now, roadway, not only do I lose lawn, mature lawn, pasture and everything.

Chairman Tinsley: Thank you for your presentation. Are there questions for the Applicant? Ok. Thank you. Discussion from the Board?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. I'd like to an opportunity to go out and look at this property before making a decision. I'm familiar with the general area but not this particular piece of property.

Chairman Tinsley: Jerry, I don't believe we have a time limit on this do we?

Jerry Grebenc: No.

Chairman Tinsley: Is that OK with you Commissioner Murray?

Commissioner Murray: It certainly is. Commissioner, I would ask that since I'll be gone Thursday on MACo business, I would ask that it be tabled until the 11th if that's agreeable with you?

Chairman Tinsley: We have a motion to table until October 11th. Is there a second?

Commissioner Varone: Second.

Chairman Tinsley: We have a motion and a second. Any discussion? All in favor of the motion signify by saying Aye.

Commissioner Varone and Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0. This is not an exparte situation so we can go out there and take a look at it. Mr. Pacheco, we're going to head out there, probably individually, maybe together, but we'll go out there and take a look at your property and see what you've got going, OK, and render a final decision on October 11th.

Patrick Pacheco: OK.

Chairman Tinsley: Thank you.

Next item on the agenda is the proposed abandonment of Alexander Street. The Petitioner is Dennis Clancy and the Planner is Michael McHugh. Is the petitioner present? Good Morning Mr. Clancy. You've read all of the documents and you're ready to go forward this morning? And that's an affirmative? I have an affirmative from him. Mr. McHugh.

Proposed Abandonment of Alexander Street.

Michael McHugh: Commissioners we have a petition that was received to abandon a roadway and alleyway. It's located south of Silsbee Avenue and just east of the Fairgrounds. The surrounding land uses in this area include the property outlined in the yellow, which is actually a City park. It's commonly referred to as the Charles Van Hook Wetlands. To the west of the subject property is the fairgrounds, the duck pond and the other facilities are located there. This is just a closer view of it. The area that is petitioned to be vacated is an area approximately 133 ½ feet long and 30 feet wide and that includes the road way right-of-way for Alexander Street and then the section of alley way is approximately 35 feet in length and 16 feet wide. The entire length of Alexander Street from Custer to Silsbee Avenue was petitioned to be vacated back in 1995 but because of protest by the adjoining property owner to the south that petition was denied. That property has subsequently been given to the City for parkland dedication. In November of 2002 the Board of County Commissioners did grant the Applicant an encroachment agreement for the barn, mobile home and other things that are located within that right-of-way. Since that time the Applicant has petitioned the Board to vacate that right-of-way.

He was granted approval for this but he failed to follow through on it and that is the reason we're having this meeting here. Development on the property includes the mobile home that's shown here. There's other things within the alleyway. The separation distances from the fence to the fairgrounds varies approximately 12 ½ feet to 8 ½ feet for this shed that you can just see a small portion of. Access to the subject property is via Silsbee Street. Silsbee Street is platted at a 60-foot right-of-way. Currently it only has a driving surface of approximately 18 feet. This is the secondary access to the fairgrounds. And as you can see from this lower left hand picture numerous vehicles and other things are encroaching within that right-of-way. There are no utilities located within the areas that have been petitioned to be vacated. The Lewis and Clark Fairgrounds and Dunbar Study that was recently completed indicated that sewer lines and water lines would be run to the fairground and the surrounding areas and these would be accommodated within the right-of-way at Silsbee Street and the existing platted right-of-way for Alexander Street would not be needed for the installation of utilities. According to State Statute and County Regulation one Commissioner and the Road Foreman did go out there. The Road Foreman indicated that since these roadways have never been constructed or utilized as a public right-of-ways that it would not impact any of their service delivery. The Board of County Commissioner member recommended that we try to keep the northern part of the right-of-way in case needed improvements were going to be to the fairground. According to State Statute, however, because the addition that this property is located in, the right-of-way is totally in that addition and the fairgrounds was not part of that addition, the County does not have any right to retain any of that, IF the Board of County Commissioners elect to abandon and vacate this street. However, one of the complicating issues is that the City of Helena does own the property to the south, and because it is in the original subdivision they do have right to approximately half of the alley right-of-way. And currently you can see that the barn located to the south is encroaching about 9 ½ feet into that right-of-way. The Applicant would either have to obtain an encroachment agreement with the City of Helena if this area was vacated here, or reach an agreement where the Applicant could receive the entire width of that right-of-way. Staff, based on its findings, does recommend abandonment and vacation of these right-of-ways. There are 5 conditions attached and I'm sure you noticed there was a numbering mistake on the conditions and that can be corrected. If the Board of County Commissioners does elect to abandon this, the Applicant would have to complete these conditions and then a resolution officially abandoning these right-of-ways would have to be signed and the Quick Claim Deeds prepared by the Applicant.

Chairman Tinsley: Questions for Staff.

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone, Mr. McHugh. Condition number 1 doesn't seem like a realistic condition that you expect the Applicant to remove the barn. Am I reading it correctly?

Michael McHugh: Well, he is encroaching as I indicated in the presentation and in the Staff report. Unless the City relinquishes their right to that right-of-way, he'll have to do it because he will be in trespass. The barn is encroaching into the right-of-way and again if the Applicant is able to receive the entire width then he would not be required to do it. But, it's the Applicants responsibility to enter into these contractual agreements with the City of Helena, since they are the adjacent property owner.

Michael McHugh: Originally, Mr. And Mrs. Clancy came to us to request an encroachment agreement for the barn specifically. Doesn't this go against what we granted them several years ago?

Michael McHugh: I don't understand. You did grant them a temporary right of encroachment into those right-of-ways. In all encroachment agreements with the County there's a stipulation that upon 60 days notice they could be required to remove any of the encroaching structures or things like that. This way if the Applicant is able to obtain an agreement with the City of Helena he would own the entire right-of-way there and would no longer be encroaching in anything and the original encroachment would then not be valid.

Commissioner Murray: And if we change Condition number 1 to remove the barn that takes away his obligation and then it continues our agreement, is that correct?

Michael McHugh: Unless the Applicant obtains an agreement with the City of Helena the City of Helena has the right to 8 feet there and he would be encroaching on, to technically, private property and that's something that we don't, you know. So he has the option there to either obtain an encroachment permit from the City of Helena or obtain the entire width 16-foot right-of-way.

Commissioner Murray: I'm still unclear in my own mind, Mr. McHugh on whether the County is driving this wagon or the City driving the wagon since the City now owns 6 or 7 feet of this right-of-way.

Michael McHugh: No. Currently the County owns all of the platted right-of-way there. If we vacated under State law, each of the adjoining property owners is entitled to ½ of the right-of-way if it's within the originally platted subdivision and so if we vacate that, technically, the City of Helena receives 8 feet of that alley way right-of-way width. The Applicant has the option to enter into an agreement with the City of Helena either to have them relinquish their right to that right-of-way and he obtains everything down to the southern boundary of that red line there, or, if they choose to retain their 8 feet he would have to enter into an encroachment agreement with the City of Helena and it's totally up to the Applicant to obtain those agreements. And the alley way and right-of-way for Alexander Street will not be abandoned officially until those agreements are in hand and he's able to document that he's achieved that agreement with the City of Helena.

Commissioner Murray: Thank you Mr. Chair. I finally have grasped it. Thank you.

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Thank you Mr. Chair, Commissioner Murray. Michael, on page 4 the condition number 1 reads "the landowner shall remove all structures, vehicles, materials and encroachments located within the platted right-of-way for Silsbee Avenue and on the map there in the northwest corner there's a large something or other, and then in the northeast corner there's a large something or other. Are those vehicles or are those buildings?"

Michael McHugh: These are sheds. They appear to be on skids that could be removed, or moved back, and I must caution you that these boundary lines here aren't entirely accurate but they give you a generalized. But there is a 60-foot right-of-way here. There is a barbed wire fence on the northern boundary of Silsbee Avenue and the mobile home here is about 58 feet from there. The Applicant's surveyor is here and he could probably give us a more detailed description on what possible encroachments may be within that Silsbee Street right-of-way.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, I would really like that individual when the time comes, because I really would like to know how far back that right-of-way is and if we do in fact approve

this, I want some certainty that all of that stuff, for a lack of a better word; I've been out there and it looks pretty trashy, I know it's a business, but I want some sort of assurance that all of that will be removed.

Chairman Tinsley: Ok. Mr. Alles had a comment.

Ron Alles: Thank you Mr. Chairman. I guess, as I understand it Michael, the County either has to abandon all of this or none of it? The reason I ask that is I know the Commissioners and the Fair Board did approve a plan that calls for the improvements to the Silsbee Street entrance and by abandoning all of this it may inhibit some of the improvements to the Silsbee Street entrance.

Michael McHugh: Well, again, Silsbee Street has a 60-foot wide right-of-way and that would not impact any of the abandonment of Alexander.

Ron Alles: My thought is, because I don't know what that entrance is going to look like. It hasn't been designed so where you've got your arrow now, a portion of that may be needed to improve that entrance.

Michael McHugh: Well again, there's already 60 feet that's reserved for the right-of-way, that's the normal right-of-way. That's the current right-of-way for the main entrance into the fair grounds, I believe. But the options here are to leave this, Alexander Street, as a public right-of-way and the County retain fee title to it or to abandon the segment from here up to the Silsbee Street right-of-way and it's, instead of, it's been the Counties policy to vacate and abandon entire segments of road and not just partial sections because it becomes a problem later, particularly with the Department of Revenue and things like that.

Ron Alles: The reason I ask I don't know what the entrance is going to look like. 60 feet, and when you put a gate or whatever there, I don't know if 60 feet is wide enough. I just don't know that answer, so it just seems prudent until that entrance is designed we may want the little triangle portion of that north section there.

Michael McHugh: Well, again, the Board has the option to elect not to abandon it and to keep their options opened and have that and then to continue the existing encroachment agreement with the Applicant and Lewis and Clark County until that time and then at that time the Applicant would be required to come back in and petition again.

Chairman Tinsley: Ok. Further questions for Staff? What I'm going to do now is allow Mr. Clancy to get up and his representative and then we're going to go into a public hearing. How many people are here in behalf of this abandonment? Ok, just the Applicant and their representative. OK. Mr. Clancy please come up and state your name and address for the record and you can introduce Mr. Reese and give us a presentation and then we will have to go into a Public Hearing.

Good Morning. My name is Dennis Clancy, and I own the subject property, I guess. This piece of property, as I understood it, this deal, from my understanding was done back in 1995 and then there's been constraints since that time that I've tried to rectify. I've dealt with and completed all of the requirements, as I knew them to be at that time. The only matter that was left undone was that my attorney did not submit the paperwork within the prescribed time frame. He was provided with all of the necessary materials, and actually, I'm quite disappointed this morning that he isn't in our presence. At any rate.

Chairman Tinsley: Who is he for the record?

Dennis Clancy: John Schantz. At any rate, the land as I understood it now, because of the acquisition by the City, and the fact that the wetlands area will not be developed, that the City's

intention or the City/County's intention at that time, was to abandon that portion of the alley way subject or adjacent to my property in the rear, the south side of my property. As far as the western 30 feet of half of a roadway, and I say half of a roadway because it's referred to as Alexander Avenue, this is not a avenue this is half of a avenue, the other 30 feet was never dedicated from the fair grounds side, as you have said and so upon abandonment the 30 feet goes back to the property from which it was taken. That land again, does not encroach onto Silsbee Avenue it's adjacent to the property from Silsbee Avenue, the west end, as I say, being the fair grounds. They determined at one of our earlier meetings they wanted to retain the 30 feet on the south end of the property for use as a bike pathway or something of that nature. Now, I'm not sure what the follow-up has been on that, I was never clear on that, but as I said my understanding was since the utility easement would not be used as an alleyway it was the intention of the County to transfer ownership to my parcel of property so that we could get this matter resolved. And I'm just asking that they go on that basis since everything has been done by me in good faith that we go along with the original agreement and just continue forward. My land surveyor is here and he I'm sure he can answer some questions if you have any questions regarding that.

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone, Mr. Clancy. If I can, you read the Conditions of Approval and you want to take your chances with the City of Helena. Are you prepared to go forward?

Dennis Clancy: As I say, I'm a little confused this morning. I don't know if my attorney is ill or what his reason is for not being here at this time, but I would like to refer this to him before I make any agreements.

Commissioner Murray: Thank you.

Chairman, Commissioner Varone, Commissioner Murray: I'm Lance Reese. I'm a land surveyor and I reside at 6850 Green Meadow Drive. I would like to present, I don't know if Mike McHugh has given you a copy of the inspection exhibit? They do have a copy of this? If you refer to the inspection exhibit that I prepared it clearly shows the house and the shed how it's going to relay in relationship to the boundary lines. It also notes that there is a power line on the northerly side of this which also raises question to Ron Alles' comments regarding the, whether or not they would probably need a little more right-of-way in there. I think you would have some issues with that utility as well. But, the main thing is, that if you look back through all the paperwork that we submitted several years ago, it clearly shows on what we're trying to do there. It was approved by your Commission at that time. And at that time, as you are all aware of, the City did not acquire this property. Subsequently, about a year after we had done the work, the Nature Conservancy, I believe, purchased this property for the City. And now obviously makes them the vested interest, or vest owner within that interest of the right-of-way. But I do want to make note if it's currently owned by you, it is my opinion that you do have a little more say on who is to require this for obviously public needs safety and so forth. So, please take that into consideration here. Obviously the City does have to relinquish their interest but you are the main driving force behind this so do you have any questions?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray, Mr. Reese. Using the diagram that's in front of us, from the middle of Silsbee Street south, how far does that line go on to the

property? I'm concerned about where the house is and just can't get a grasp on how far. If we, and I anticipate we are going to be expanding and using the full 60-foot width at some point, and I what I want to know is where the 30 feet to this is?

Lance Reese: If you look at the house structure the property line is actually, the way it is drawn on that map there it needs to go farther south about 10 feet, OK? It's actually distorted there and the width of that line is distorted. And I don't know if there's a scaling issue there or not. If you look at my exhibit it clearly shows it's only about, the house is 14 feet. If you go 14 feet north of that house and that house mind you at that north end there is 12 feet wide, so that kind of gives you an idea where that vehicle is being parked or parked currently on that map, is where the line would be and so it actually does in fact acquire that area, so you're talking probably 10 more feet is what you would acquire. Is that what you're looking for?

Commissioner Varone: It is but would you show with the arrow where the 30-foot is from the centerline, south.

Lance Reese: Right there; so it comes across like this.

Commissioner Varone: Thank you

Commissioner Varone: Mr. Chair, if I may follow-up?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. The reason I ask is if we deny this Applicant how much further south can we go in order to utilize the space we need, if in fact, it looked like we're going to need more space for a gate or whatever? If we're only looking at 14 feet.

Michael McHugh: Any improvements could be made within the 60-foot platted right-of-way of Silsbee Avenue. If additional property was needed then it would either have to be acquired or gone through various processes for acquisition. But we have 60 feet and again I did point out that these lines aren't exact, it's just a generalization.

Commissioner Varone: Right. That's why I wanted to ask Mr. Reese. But my point is right now that is a designated roadway that the County owns so we in fact wouldn't have to acquire anything. My concern is if in fact we denied it and the need is there for a wider gate and we need to encroach on Alexander Road, what kind of impact would it have on the homeowner and their home?

Lance Reese: Well, it would bring the road closer to his house to his house, there's no question about that.

Chairman Tinsley: Further questions? Thank you Mr. Reese. I'm going to open up a Public Hearing and I seem to get from the Applicant that he's interested in us tabling this until he can reach his attorney, so we can extend the Public Hearing after I open it. I believe that's correct, Mr. Grebenc or Mr. McHugh. So, we're going to open the Public Hearing, leave it open, we'll figure out a date in the future in the next week or two and in the meantime you can contact your attorney and do what you need to do. Is that all right Mr. Clancy? All right. And I'll consider your testimony as proponent testimony. You don't have to do it again if you don't want to. This is a Public Hearing in the matter of the abandonment request for Alexander Avenue. Any proponents? Any proponents wish to come forward and speak in favor? Please state your name and address for the record.

My name is Mrs. Alec Hansen, Colleen Hansen. My address is 241 Anderson Blvd. I do not

live in this area, I'm close to this area, but I do not live in this area. My brother bought this land. That barn has been on this land since the late 1800's. That's the portion that's questionable. My brother has worked very hard to keep this property. At the time he bought it, it was not considered a desirable area. He has tried to conduct his business as carefully as possible. He did proceed. My husband, my sister, we've all been to these hearings and everything was supposed to have been filed so this has been a very big surprised. I would like to recommend that this road, this whole question has been impossible for him to live with, so I would recommend that what you have done in the past be recommended again, I guess. I'm surprised that you would have to go back legally so many times. But if this is his Attorney's error, so be it, but I do recommend that because he bought the land in good faith, because he has proceeded in good faith, that this road be abandoned. Thank you.

Chairman Tinsley: Thank you Mrs. Hansen. Further public comment? Any opponents? Any opponents? Any general testimony? Ok. I'm going to extend the Public Hearing, and we will extend it to a date certain, at which point one of the Commissioners will make a motion that the hearing will be extended to that date.

Commissioner Varone: Mr. Chair, I make a motion to table and extend the Public Hearing to next Tuesday, the 11th.

Commissioner Murray: Second.

Chairman Tinsley: We have a motion and a second. Any discussion? All in favor of the motion signify by saying Aye.

Commissioner Varone, Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0. Mr. Clancy, Mrs. Hansen on the 11th when we hear this the Public Hearing will be opened, I'll ask if there's any further public comment, your attorney will be able to make a presentation on your behalf, and then we will close the Public Hearing.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: If I could just ask if the Deputy County Attorney be asked a question and that is, is it possible to vacate all but a portion of Alexander street in the event that the County may need it for additional space for entrance into the fair grounds?

Chairman Tinsley: So noted. Thank you. All right, thank you folks. Yes, Mr. Clancy? Please approach.

Dennis Clancy: Early on in the matter that had renegotiated that portion of the Alexander Avenue that was going to be abandoned which was only that portion that is adjacent to my piece of property. The other portion going up to Custer was not going to be abandoned. So if that was the question you were asking. I'm not sure is that the question you were asking which portion that they were going to abandon?

Chairman Tinsley: No she's asking the portion from Silsbee down. The question was she wants to know from our County Attorney if it's possible for this Commission to only abandon a portion of that and retain an easement on a portion of it. It appears from our Staff recommendation we may not be able to do that. She wants us to check with the County Attorney just to verify that. That's the question. It has nothing to do with the southern part.

Dennis Clancy: It was my understanding was that they had addressed that at one time, the 30 feet adjacent to my property was the only portion of the Alexander half of the roadway that was going to be abandoned.

Chairman Tinsley: And that's what we're talking about. We're talking about that northern portion of that 30-foot easement and that's what we're going to have our County Attorney ask. We'll have an answer publicly for everybody.

Dennis Clancy: Thank you.

Ron Alles: Mr. Chairman?

Chairman Tinsley: Mr. Alles.

Ron Alles: If I might the answer to that question is yes, it is possible. It just problematic to end up combining pieces of parcels, etc., the measurements for the Department of Revenue, Records, etc., would have to be measured out and split. It's just a little more problematic doing that. It's not impossible to do that.

Chairman Tinsley: Thank you Mr. Alles.

Commissioner Varone: Thank you.

Chairman Tinsley: Mr. Reese.

Lance Reese: Just to remind you for the record. We are preparing an amended plat on this so that the dimensions, if it's irregular, we can clearly describe it on the certificate of survey on the amended plat, so the deeds would refer to our survey which in turn the DOR and everybody would refer to those and the limits would be clearly defined. Thank you.

Chairman Tinsley: Thank you. Ok, the next item on the agenda is a resolution to vacate and abandon a segment of an alley right-of-way located in the Bradford Addition, Block 188. The Planner is Mr. McHugh. The Commissioners will consider the resolution and quit claim deeds to vacate and abandon a segment 16 feet wide and 102 feet long. Mr. McHugh.

Resolution to Vacate and Abandon a Segment of an Alley Right-of-Way Located in the Bradford Addition, Block 188.

Michael McHugh: Essentially, you've covered everything. This we did have the Public Hearing on June 7th, and the Board of County Commissioners did agree to abandon this segment of alley way contingent upon completion of certain conditions and those conditions have been met.

Chairman Tinsley: Questions for Staff?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, maybe I'm just losing it, but I don't recall once we agreed to the abandonment I don't recall resolutions? Have we been doing it this way all along?

Michael McHugh: That's the correct way to do it. The property is not officially abandoned and vacated until all the conditions have been met and so you cannot sign the resolution prior to them completing the abandonment. And as in the previous case the Applicant was required to meet certain conditions. He failed to do that so the right-of-way is still open to the public. I

know that there's been different practices in the past but legally and technically the road right-of-way is not abandoned until everything has been done; the property has been resurveyed and the County actually conveys the property to the adjacent property owners. That's when it becomes official.

Commissioner Varone: Thank you. Just to follow-up. When I read this yesterday, and maybe it's happened in the last 5 years, I just don't recall when we abandon property that we've had a resolution come in front of us. I guess I think it's important that we do that because it closes that part of the chapter.

Michael McHugh: It's required on your surveying requirements that you show when it was and what the official document is.

Commissioner Varone: Thank you.

Chairman Tinsley: Further questions?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: For the record, this is the 3rd time I have attempted to abandon this and give it to the Applicants, so having said that, unless you need a public hearing, I move.

Michael McHugh: No, this is just administrative. The Public Hearing was held. This is just administrative, like signing a plat.

Commissioner Murray: I would move approval resolution to vacate and abandon a segment of an alley right-of-way located in the Bradford Addition, Block 188, Lewis and Clark County, Montana, and authorize the Chair to sign.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion and a second. Any discussion? All in favor of the motion signify by saying Aye.

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0. Thank you Mr. McHugh.

Next item on the agenda is a resolution to remove an agricultural covenant from Canyon Vista Estates, Tract 65A-2. The Planner is Michael McHugh. The Commissioners will consider removing the agricultural covenant

Resolution to Remove an Agricultural Covenant from Canyon Vista Estates Tract 65A-2.

Michael McHugh: Again, this is a similar process where you held a Public Hearing on February 24th of this year. The Applicant was required to complete certain conditions, resurveying the property and other things and all of those conditions have been met.

Commissioner Varone: Mr. Chair, I make a motion to approve a resolution to remove an agricultural covenant from Canyon Vista Estates, Tract 65A-2, and authorize Chair to sign.

Commissioner Murray: Second.

Chairman Tinsley: We have a motion and a second. Any discussion? All in favor of the motion signify by saying Aye.

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion Passes 3-0.

Next item on the agenda is a proposed subdivision to be known as Ring Side Minor Subdivision. The Applicant is Eric Lindberg and the Planner is Michael McHugh. Is the Applicant present?

Michael McHugh: The Applicant is not present but I believe he does have a representative.

Chairman Tinsley: Applicant's representative is present. Are you prepared to go forward this morning? Ok. Thank you. I'll call on you in a moment. Mr. McHugh.

Proposed Subdivision to be known as Ring Side Minor Subdivision.

Michael McHugh: The proposal before us this morning is to create a tourist home which is a structure for rent, lease or other conveyance and it does fall within the purview of the subdivision platting act. What the Applicant is proposing to do is taking an existing barn/studio structure and converting that structure into a tourist home that would consist of no more than 5 bedrooms and 2 baths and then some conference room and a laundry facility. The subject property is a 34 plus acre parcel that's located approximately 2 ½ miles northwest of the town site of Augusta. It's border on the south and west by Sun Canyon Road. Uses in the area are predominately agricultural uses and consisting of some irrigated farmland, some dry land farming and predominantly livestock grazing. The subject property is not located within a zoned area and does not have any covenants that affect the use of the subject property. We did send notice to adjacent property owners and place an ad in the newspaper. We did receive several written comments. I did provide you with an additional written comment prior to the meeting. That's not included in your Staff report. Most of the comments dealt with the change and character of the area. The wish not to establish any commercial uses in the area. It should be noted that this proposed tourist home would not be utilized on a full time basis. It would be used on an intermittent basis. This is an aerial photo of the subject property. The property is developed with a single family residence in this area here, it's a converted railroad depot, and then the barn which would be converted to the tourist home is located here. Access is provided by a private driveway that's recently been re-graveled. Other structures on the property include horse training facility here, and numerous agricultural out buildings and stalls that are located there. As far as the review criteria, impacts on agricultural use, there are 3 soil mapping units found on the property. None of these soil-mapping units were classified as being prime or statewide importance. There is an irrigation canal that does run north of the property and would not be impacted by the conversion of the existing structure there. As far as impacts on local services, the existing home, which is located up here, served by an individual well and septic tanks that are located northwest of the structure. New facilities would need to be developed to provide sanitary facilities to the tourist home, and those would be governed by the Department of Environmental Quality. The Applicant would be required to obtain a license from the Department of Environment Quality. They would be required to obtain building permits and comply with building codes both for public buildings and also for fire codes. As far as the water supply the area is located in an area that has a sandstone/shale bedrock aquifer. The well logs are varied; because of the lack of development in here we don't have a consistent data source. They will be required to comply with the DEQ regulations for the public accommodations and providing that. As far as solid waste, the property is located within the August Solid Waste District. Currently single-family residences are assessed a fee of \$70.00 per year. The conversion of this barn/studio structure would probably place it in the commercial category and those new fees could range from \$125.00 to \$900.00 per year. As far as utility, all of the necessary utilities are provided to the existing structure. There would probably have to be some upgrade to comply with the electrical standard codes. As far as impacts on schools, since this

will not be a full time residential use, there would not be any additional students generated by the conversion. Some of our major concerns with this proposal is the distance both from law enforcement and fire protection services. The subject property is located within the Lewis and Clark County Fire Service area that would require vehicles and personnel to be sent from the Helena area up there. There are some inter-local agreements amongst the Wolf Creek, Craig, Augusta and the Department of Natural Resources and Conservation to address fires in those areas. As I mentioned before the conversion would be required to comply with all of the standards for public accommodations. Currently, those standards do not require any in-structure fire protection technology. They are required to have fire alarms in each of the rooms within the structure. As far as impacts on natural environment, we didn't find any. Our main concern in the area is the high erode ability potential of the soils in the area. Impacts of wildlife, there's a large number of species that migrate and utilize this area for forging habitat. Essentially we're not looking at any additional structures on the property there would be minimum impact. As far as public health and safety there are no flood planes or steep or unstable slopes. There's always potential for radon in this area and the subject property is located within seismic zone #2. There's no identified fault lines within this area. Impacts on traffic because it's going to be intermittent use there wouldn't be any cumulative impacts on the traffic flow in that area. Traffic volumes are extremely low and it would not alter the level of service by having the intermittent use on the subject property. Based on the Staff's findings the Staff does recommend approval to allow the conversion of the existing barn/studio structure into a tourist home that would consist of no more than 5 bedrooms and 2 baths with necessary laundry facilities and such.

Chairman Tinsley: Mr. McHugh, I have a question. This appears to be the first time we've ever done one since I've been a Commissioner like this, and there is no division of land, there's simply a conversion of use in the property itself. Why wouldn't this, and I'm asking this basically because I don't know the answer, I'm not asking to make a statement, but, why wouldn't this be considered like a home business and why couldn't they just make the change?

Michael McHugh: Because the Statute says whenever you create a space for rent, lease or other conveyance, in this conversion you're creating a space within the structure that would be rented or leased.

Chairman Tinsley: And that's the portion of it that brings this under this regulation.

Michael McHugh: And that's what brings it into this. There's no actual physical division of land, but you are creating a space for rent and so we have to review for the impacts of public health and safety and make sure there's adequate sanitary facilities and water facilities to accommodate the conversion there.

Chairman Tinsley: Ok.

Michael McHugh: If it was in a zoned area that permitted this type of use we wouldn't be here.

Chairman Tinsley: It would just go ahead and happen according to the zoning regulations then.

Michael McHugh: Yes.

Chairman Tinsley: All right.

Commissioner Murray: Mr. Chair, Commissioner Varone, Mr. McHugh. I'm curious why this hearing is being held in Helena, denying the residents of Augusta the right to participate in the hearing.

Michael McHugh: It was the Applicants request to have it held here. It's the Board's

prerogative to schedule the public hearings within the individual communities such as Lincoln, Augusta, those places.

Jerry Grebenc: Mr. Chairman, Commissioners. If I might add, there are no public hearings on minor subdivisions under the current subdivision regulations.

Chairman Tinsley: And that is true but I would agree with Commissioner Murray that the residents of Augusta should be afforded the opportunity to hear this proceeding. We had the same request come down from a gentleman from Lincoln and it was brought up last night at the Lincoln Community Council Meeting and there was some interest in there being even though there's not an opportunity for Public Hearing there was interest in people in being able to attend and hear the proceedings. Looking at the review period it looks like it ends on October 7th. Our next meeting in Augusta is not until the 14th, I believe. But it's a good question, I think and I think it's one we need to consider in the future. I don't recall a seeing a recommendation or request on this one. I do recall seeing one for the Lincoln one. That was a political commentary or statement as opposed to my question. Further questions or comments? Further questions or comments? Will the Applicants representative please come up and you can give your presentation. Please state your name and address for the record.

Ron Alles: Mr. Chairman, if I might I can just add real quickly if the Applicant would be agreeable you can extend the review period so you could do this again in Augusta.

Chairman Tinsley: And I was planning on asking this, so thank you.

I'm Ellen Gauthier. My address is 307 Main, Augusta.

Chairman Tinsley: You're going to have to spell your last name.

Ellen Gauthier: G a u t h i e r.

Chairman Tinsley: Thank you.

Ellen Gauthier: All I'm prepared to say at this time, we are ready to proceed. Eric asked me to be here and represent him. He intends fully to comply with all requirements and this would be an occasional use facility. And also, I would like to bring to your attention there are several Augusta residents here who may like to speak at this meeting today. Any questions?

Chairman Tinsley: Well, we don't have a Public Hearing on these. The Public Hearing occurs, for minors this doesn't occur. There is one for majors and it's at the Planning Board. Questions for Miss Gauthier?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Miss Gauthier would you consider us rendering a final decision in Augusta on the 14th of October?

Ellen Gauthier: Yes.

Chairman Tinsley: It would entail you requesting the review period dead line to October 14th. Are you willing to do that?

Ellen Gauthier: Well, sure. I think that Eric would want the local folks to have an opportunity to at least state their points of view about what he's planning to do.

Chairman Tinsley: Again, they don't get an opportunity to speak, but they have an opportunity to listen to the hearing.

Commissioner Murray: Mr. Chair, if I might. What it saves us trying to explain to the Augusta community at our Government day on the 14th why we rendered a final decision in Helena for a property affecting Augusta. It's nice for us to be able to do it in your community even though the residents don't get to speak; we render the final decision there.

Ellen Gauthier: And I think Eric would appreciate that as well.

Chairman Tinsley: We appreciate you're, on behalf of him, allowing us extend this. Let the record reflect the review deadline has now been extended at the Applicants request to October 14th. Further questions of the Applicant's representative. Mr. McHugh?

Michael McHugh: Mr. Chairman, are we going to leave the record open to accept addition written comments up to the date of the hearing in Augusta?

Chairman Tinsley: It's up to the Commission.

Commissioner Murray: It's not a concern of mine. My concern was solely to render the decision in Augusta.

Commissioner Varone: I'm willing to leave it open.

Chairman Tinsley: I'm willing to leave it open too, that's fine. Mr. McHugh, I would also like to point out, well, we'll talk, but I don't think it would be necessary for you to come and give a power point in Augusta, but we'll talk about it, depending on your schedule. I understand that this would be an added burden on you, but.

Michael McHugh: It depends on the weather. (Laughter) A nice slow trip down the High Bridge Road. It's nice this time of year.

Chairman Tinsley: That's right. Further questions for the Applicant's representative? Thank you very much Ma'am for your participation this morning.

Ellen Gauthier: Thank you.

Chairman Tinsley: What is the pleasure of the Commission?

Commissioner Murray: Mr. Chair, I would move the record be kept open until the 14th of October and that we render a final decision at our Government Day Meeting on October 14th.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion and a second. Any discussion? All in favor of the motion signify by saying Aye.

Commissioner Varone and Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion Passes 3-0. Folks, thank you very much for coming down this morning. Again, if you receive any traffic ticket, or parking ticket while participating just bring it up to the 3rd floor and we'll take care of it.

Commissioner Murray: Mr. Chair, you might explain where and when Government day is.

Chairman Tinsley: Government Day is the 2nd Friday of every month. We hold it at the Senior Citizens Center, it begins at 11:00 a.m. and you're all welcome to be there. And if you stay long enough they have a very good chicken dinner. It's one of the main reasons we go up there. (Laughter.) Thank you very much.

Public comments on matters not mentioned above.

Is there any public comment on matters not mentioned above? Hearing none, we stand adjourned.

Adjourn. 10:00 a.m.