

PUBLIC MEETING
July 8, 2003

Chair Anita Varone called the meeting to order at 9:00 a.m.

Commissioners Murray and Tinsley were present. Others attending all or a portion of the meeting included Janet Pallister, Jim Wilbur, Jerry Grebenc, Michael McHugh, W. J. Truscott, Jason Mohr, Dean Retz, Sean Bryant, Byron Stahly, Archie Taylor, Bruce Suernam, Robert Hudnall, Robert Cummins, and Carole Byrnes.

Pledge of Allegiance. Everyone recited the pledge.

Minutes. Commissioner Tinsley moved to approve the minutes of February 6, 11, 13, 18, April 8, 2003. Commissioner Murray seconded the motion and it carried unanimously.

WQPD/USGS Contract. Jim Wilbur reported the contract is to complete a stream flow study within the lower Tenmile Creek watershed in the amount of \$4,800 from a grant from DEQ. Commissioner Tinsley moved to approve the contract and authorize the chair to sign. Commissioner Murray seconded the motion and it carried unanimously.

Public Hearing Notice to Decrease the Scratch Gravel Solid Waste Assessment Rate. Janet Pallister reported the Scratch Gravel Board and Public Works staff recommend a decrease in the annual assessment rate from \$86 to \$81.

Hearing no public comments, the public hearing is closed. Commissioner Tinsley moved to approve the resolution and authorize the chair to sign. Commissioner Murray seconded the motion and it carried unanimously.

Public Hearing Notice to Increase the Marysville Solid Waste Subservice Area Assessment Rate. The Commissioners will consider the resolution to increase the rate from \$42 to \$47.

Janet Pallister: Madam Chair, Commissioner Murray, Commissioner Tinsley. On June 3rd, the Board of County Commissioners passed a resolution of intention to increase the Marysville Solid Waste rate and to set a public hearing date for today. Unfortunately, the legal ads that were sent to the Independent Record were not published on the dates that we requested for this public hearing and so attached to your memo you will find a second resolution of intention which rescinds the resolution passed on June 3rd and sets a new public hearing date for August 5th of 2003. The Scratch Gravel Board and the Public Works staff are recommending the rate increase for the Marysville Solid Waste Site because it's needed to fund the capital reserve account. At this time I would recommend that the Board of County Commissioners pass the second resolution of intention and set the public hearing date for August 5th. I'd be happy to answer any of your questions.

Commissioner Murray: Madam Chair, I move passage of a resolution decreasing,

increasing the solid waste fee on the Marysville transfer station and authorize the chair to sign. Essentially resetting the public hearing to August 1st.

Commissioner Tinsley: I think it's August 5th Commissioner. Second.

Chair Varone: It is August 5th Commissioner. All those in favor signify by saying 'I'

Commissioners: 'I'

Chair Varone: Motion carries.

Commissioner Murray: Madam Chair, if there are members of the public that showed today that are not going to be available to be present on August 5th, you may want to receive their testimony and incorporate it into the record that we could move forward to August 5th.

Chair Varone: Thank you Commissioner. Is anyone in the audience today, show of hands, like to comment. Seeing none, we'll move backwards to item 4.

Proposed Major Subdivision, Preliminary Plat to be known as Rosemary Acres, Lot A1 Amended. (Applicant, W. J. Truscott) (Planner, Michael McHugh) The Commissioners will consider creating forty (40) lots, each for one single-family dwelling. The subject property is located in the SE1/4 of Section 24, T11N, R4W; generally located east of Green Meadow Drive and North of John G Mine Road.

Chair Varone: Is Mr. Truscott in the audience today? Sir would you please come forward.

W.J. Truscott: Good Morning.

Chair Varone: Good Morning. Mr. Truscott have you had an opportunity to review the information that we've been provided by staff?

W.J. Truscott: Yes

Chair Varone: Do you have any comments before we begin?

W.J. Truscott: No. No, we'll just begin.

Chair Varone: Alright. Thank you Sir. You'll have an opportunity before the public hearing and after at the close of the public hearing to comment if you would like to or your representative Mr. Retz.

W.J. Truscott: Okay, thanks.

Chair Varone: Thank you. Michael.

Michael McHugh: The proposal before you this morning is to create 40 lots, most of the lots would be in excess of one acre in size. Currently the access is via two internal access roads, which is Rosemary Dr. and Sage Dr. here. The applicant is proposing an internal road network. The original proposal does show you numerous cul-de-sacs. The second approach route is via a platted access easement in the Applegate Village subdivision that was platted back in 1996. Presently the land use is vacant. Adjacent land uses include Applegate Village over here, Rosemary Subdivision over here, the previous phases of the Rosemary Acre Subdivision which included two phases; the first phase included 4 lots neatly adjacent to John G Mine Rd. and then a later phase included a 10 lot major subdivision located in this area here. To the West, most of the property is either scatteredly developed or undeveloped property the lots range from 38 acres here to 10 and 20 acre parcels located to the farther west. To the North of the subject property is the Griffin Davis Subdivision this is a subdivision that was platted back in the 1970's. The lots sizes vary from 2½ acres and approximately 1 acre in size. As far as zoning, there is no zoning in this area and there are no proposed zoning regulations for it. There are existing covenants that do affect the use of the property these are covenants that were placed on the property by the original sub divider when he did the previous two phases and also covenants were placed on the property by the Board of County Commissioners dealing with Public Health and Safety as conditions of approval for the previous phases. As far as notice, notice was placed on the property in the form of signs, notice was mailed to all the immediately adjacent property owners and notice was placed in the Independent Record. As of June 11th, we did receive one letter of protest from the previous sub divider of the Applegate Village Subdivision who indicated that he would not allow the use of the platted public access easement through Applegate Village and shown in this overhead by the red line there. There's also a phone call party expressed the same opinion. As far as the review criteria, there is once soil-mapping unit identified on the subject property, it's not identified as being prime or statewide importance. There are no irrigation facilities, water rights associated with the property, so impacts on the agricultural would be at minimal. There are some small scale livestock grazing in the adjacent area of the subject property. As far as water and sewer the applicant is proposing to utilize individual onsite wastewater treatment systems. The soils in this area do have severe constraints for drain fields, but this could be mitigated by the use of sand line filters. The applicant is proposing to utilize individual ground water wells in this area. There is a wide range of units in this area but this particular area the wells located to the South average between 15 and 20 gallons a minute. One of our major concerns with this proposed subdivision was the access to the proposal. Currently there are access roads coming from the South John G Mine Rd actually the road is located over here now and then the use of this platted access easement that was created back in the 1990's as condition of approval for the Applegate Village Subdivision. The right of way for the streets within the Applegate Village are only 50-foot right of way width and this access easement is also 50-foot access right of way width. The connection would be made right here, there would have to be a narrowing going onto the property over here. This was made a condition of approval, it was anticipated because for future growth to the West of the property it was a condition of approval, it is a platted public access easement and so the applicant does

have the right to utilize this access easement. He will be responsible to construct the access easement from his property boundary to the Best Place looped road right here. As I laid before you there has been objection to this but this is a platted access easement and it's essential to creating integrated road network within this area. One of staffs' recommendations is that there are numerous cul-de-sacs proposed for this subdivision and the applicant has proposed that there would be an extension of the right of way in this area up on the Northwest portion of property and the cul-de-sac would only be constructed approximately 80 feet from the end of the property. Staff has recommended that all these cul-de-sacs be extended to the property line. If you go back and look at the original overhead you can see that there is a lot of vacant property to the east and west and you can't notice it very well over here but the access from Applegate Rd to this property here is limited by the irrigation canal that again what staff is recommending is trying to get a road network through this area here. All the roads within the proposed subdivision are proposed to be 60 feet, have a 60 foot right of way and will be constructed to the asphalt maps as standard, but the staff recommendation is to extend and require the applicant to construct the road all of the way to the end of the property boundaries to include and future problems that we're having over here with the Applegate Village proposal and to provide for an integrated road network. One of the comments that was received by the County Public Works department it that they would like the applicant to pave 1400 feet of John G Mine Rd extending westward to Green Meadow Rd and the other recommendation was that there would be a limit of construction traffic, just to utilize John G Mine road and the western segment of, or use Green Meadow Rd and the western segment of John G Mine Rd. As was noted at the public hearing before the planning board there are lights posted on John G Mine Rd. Currently John G Mine Rd does meet the current chip seal standard of the County it is in fairly good repair and restrictions that aren't based on public health and safety issues are according to the Deputy County Attorney are constraint of trade, interstate commerce trade and the County does not have the authority to limit the access routes as long as their properly licensed and do need to do posted weight limits on those roads. As far as any effects on schools, it's estimated that approximately 48 – 60 students we be generated by this proposal. The attendance areas for elementary school include Jim Darcy School; currently 60 students are being bussed out of that area to other schools to accommodate them to comply with state standards. As far as middle school, there are some capacity constraints in that area. As far as high school, there are no capacity constraints and the dodge report indicates that there is going to be a decrease at the high school level over the next two years. Because of distances from the subject property to the various schools, all students would be required to be bussed at the general taxpayers expense and according to the transportation director of the Helena school district it costs \$2.90 per mile per student per day per bus to transport these students in this area. As far as fire protection, the applicant did contact the West Valley Fire Department prior to submittal of the application they came up with two mitigation measures, one of them required that all the residential structures be sprinklered with and meet the requirements of the National Fire Protection Association and a certified license engineer or to make a payment of \$200.00 per newly created lots. Because of administration of the and inspection of the sprinkler system, staff is recommending the \$200.00 per lot be paid. Currently this county does not have a

building department and does not have the capability or the expertise to inspect sprinkler systems. Currently there are two water supplies available to the fire department in close proximity to the subject property. One of them is located at the Southeast corner of Applegate Dr. and Norris Rd. This is about 1 mile South of subject property and it has a generation capacity approximately 755 gallons per minute. Then the other water supply source is located in Applegate Village in this area here which is less than a quarter of a mile, it's right there. Again, staff is recommending the \$200.00 per fee or per lot fee for each of the new lots. As far as impacts on the natural environment, there's no surface water on the property. A segment of silver creek is located to the South of the subject property in the first phase of the Rosemary Acres Subdivision. There are no ground water issues identified in this area. There were weeds identified on the subject property and the applicant would be required to extend the 5 Year Weed Management Plan. As far as impacts on Public Health and Safety, I've already noted that there is a flood plain area located to the Southeast of the subject property and could have some negative impacts during storm events that would preclude the use of John G Mine Rd as an access route out of the proposed subdivision. As far as ground water contamination, water quality protection district reports that the nitrate levels range from 1.7 milligrams to in excess of 20 milligrams per acre. The 20-milligram readings it was mostly located with the Griffin Davis Subdivision where people are keeping livestock on small lot sizes in close proximity to the ground water well. As far as seismic activity, Scratch Gravel hill fault is located approximately ½ mile west of the subject property and then the Northwest Valley fault is located approximately 2 miles Northeast of the subject property. As far as the growth policy, the subject property is located within an area designated as rural. Each of the developed properties should be able to supply their own water and sewer and pay for the costs of essential services as it's developed. As far as Lewis and Clark County Subdivision regulations, it was noted before that the road network within the Applegate Village subdivision only has a 50-foot right of way; County subdivision regulations require that all access routes to a subdivision are required to have a 60-foot right of way easement. When Applegate Village was approved in 1996 the Board of County Commissioners at that time did grant a variance to the 50-foot right of way easement. It does require action by the Board to allow this subdivision to utilize that 50 foot right of way and it does require a variance to be granted or it requires the applicant to go out and acquire an additional 10 feet of right of way within the Applegate Village Subdivision. As far as park land and dedication the applicant is required to either dedicate 5% of the land that's being subdivided as park land or do a cash donation in lieu of park land dedication. The application has indicated that he wishes to make a cash payment in lieu of park land dedication. The cash payment would be equal to the market value of approximately 2.2495 acres in size. These monies would be designated as to the Northwest Valley park designation area and currently those monies are being utilized to do improvements at Sierra Park which is located next to Rossiter School. Staff did make a recommendation of approval with 16 conditions that were attached to the staff report. On June 17th the consolidated planning board did have a public hearing. During that time the same issues were presented by staff. The planning board had numerous questions as to the need for the variance request, staff reiterated that County subdivision regulations required 60 foot right of way access easement for the entire

access route and explained that a number of times. There were some questions about the onsite wastewater systems, staff did indicate that the soils in this area are somewhat variable and some systems may require sand line trenches and others won't, they'll just go with the standard wastewater treatment system. There was some discussion about adding an additional condition of approval requiring a designated and construction route and again staff reiterated that the roads are posted for weights in that area and that the county does not have the authority unless it's based on public health and safety issue to designate truck routes in that area. At that time the applicant and his representative did get up and speak but did have several issues that they had wished to address. They were not, they do not like the idea about requiring the applicant to extend these cul-de-sacs to the end of the property and required that the construction be done at the time of final plat. That was their main concern, there was some discussion about the phasing of the proposed unit, I believe the Board of County Commissioners did receive a alternate site plan that designates the phasing as the applicant wishes to do it which is essentially based on developing these lots here. This would not comply with County Subdivision regulations because there would not be that 2nd access route for a major subdivision. The only access routes would be to the South onto John G Mine Rd. Again, the applicant did question the need why the need to construct the roads to the end of the property boundaries, again staff has recommended this to preclude any future problems with people placing structures within platted right of ways that haven't been developed yet. After the applicant spoke there were people that are adjacent property owners from Applegate Village. One lady indicated that on her house which is located to the South of the platted right of way that there'd been some misplacement of pens in that area and that if the easement was developed that she would probably have to remove the deck that's on the North side of her house. Another lady mentioned that her, who owns the property on lot 11 here, that her septic tank is located within the platted right of way. Other people spoke, they were mainly opposed to the use of the Best Place road and access there where expressed concerns about it disrupting the quiet neighborhood that had been developed in that area. There were also some concerns expressed by property owners in this area about the designation of the park land fees. People indicated that they would like the fees to be used to develop a park in the Applegate Village, staff indicated that this is not a County park that is being utilized as a drain field and pump house sites for the community water and wastewater treatment system there and so it's the policy of the County park board not to accept properties that have other uses on them that would hinder the development of any parks in that area. Based on that, the planning board did make a recommendation of approval for both the variance utilizing the existing 50-foot access right of way easement through Applegate Village. There was some little changes made to the condition of approval and then staff recommended an amendment to a condition number 4 to specify that the \$200.00 per lot fee would go specifically to the West Valley Fire District. Another motion was made to include a condition that would restrict the access routes, that motion died for lack of second. The planning board voted unanimously 7 to 0 to accept the 16 conditions as amended by staff and the board.

Chair Varone: Thank you Mr. McHugh. Good job. I'm going to ask you to go back and explain to the Commission the phasing in that the applicant is interested in but before I

do that if by the time we make our decision on this application, I'm going to be asking for a 17th, number 17 condition of approval that provides a prohibition against livestock and during the interim would you provide some language for us to take a look at because I know there's some standard developed.

Michael McHugh: The applicant already has in his covenants a prohibition, but we can

Chair Varone: I would like to include it in ours also. I do understand that, but I think if we have it on the record it would probably behoove us to do that.

Michael McHugh: It's probably better seen on this hand out that was provided to the Commissioners the way that the applicant wishes to phase his proposal. He's proposing to do approximately I believe it's 21 lots that's located in the central location here so it would be from this cross road here to this point here do that phasing and then these rectangular lots would be the final phase of the subdivision because County Subdivision Regulations do require that there's two approach routes. Staff is recommending that the phasing be done in an east-west manner requiring that this area over here be developed and then this area here be developed. The applicant has expressed some reservations about that because he, potential conflicts with the use of the platted easement through Applegate Village and he's concerned that may slow down the development in that area.

Chair Varone: Thank you Mr. McHugh. Any questions of Mr. McHugh? Commissioner Tinsley.

Commissioner Tinsley: Madam Chair, Commissioner Murray. Mr. McHugh, could you explain the reason for the granting of the variance in 1996 for the smaller easement, 50 foot instead of 60-foot requirement.

Michael McHugh: I went back on through the file for that subdivision and there's no explanation. It was proposed by the sub divider that they only had 50 foot right of ways, they granted it; there wasn't a discussion by the Board of County Commissioners at that time. This is a good example where you grant a variance and it comes back to haunt you later and everything.

Commissioner Tinsley: Madam Chair, Commissioner Murray. Mr. McHugh, is there a, in the packet is there an actual like we have in this packet variance request from the applicant of that particular.

Michael McHugh: There was one it just said that it would be more conducive to their site design and that it wouldn't have impacts on public health and safety and it wouldn't cost the County anything to maintain it because it was going to be maintained by the homeowners association.

Commissioner Tinsley: If I might Madam Chair, Commissioner Murray. Mr. McHugh would you get us get us a copy, the Commission a copy of that variance request before

the, before we make final decision.

Michael McHugh: Sure

Commissioner Tinsley: Thank you.

Chair Varone: Any further questions of Mr. McHugh? Mr. McHugh, I have one that sort of associated to this Commissioner Murray and I even before Commissioner Tinsley was elected were real interested in having a committee that was established to begin the cross hatching design of the Valley for future road development. I'm assuming you'd like your confirmation, if not so then let me know what's going on, one of the reasons that you're asking for the cul-de-sac to not be cul-de-sacs is the beginning of that plan. Is that correct or not?

Michael McHugh: Yes, I mean there's a lot of undeveloped properties there. In the applicants revised proposal he's just proposing to have the access up here at the Northwest and having the road come directly across and staffs recommending that the other cul-de-sac comes through here because if we just have the limited access here, we're creating just kind of a pocket. It is one of the Counties desires and it was mentioned in with the discussion with the citizens advisory group to meet to establish east-west road connections in this area. Now there is a possibility that the road could be extended, this subdivision here which is the Clink Subdivision the, well that doesn't show it very well, but the easement was extended all the way to the end of the property hoping that there would be some more South. But, I mean the general grid of the area is east-west and again in this area here we're limited in further extension of east-west but we do need to, this is Barraugh Rd, I believe that's the way you pronounce it Commissioner Murray, but this could be extended to connect with roads in this area here, but it is essential each property here are somewhat land locked the two cul-de-sacs are located right in this area here and right in this area here. It is true that a bridge could be constructed across the canal but again we need to have that connectivity in neighborhoods and connectivity of roads in this area, in all areas.

Chair Varone: Thank you Mr. McHugh. Before we begin the public hearing, Mr. Truscott and Mr. Retz do either or both of you have any comments?

Dean Retz: Thank you Chairman Varone, Commissioners Murray and Tinsley. My name is Dean Retz, I reside at 1430 Shirley Rd. I'm a licensed real estate broker in the State of Montana and I have been in the subdivision process since 1995 and was a project manager for both Rosemary Acres Minor, the other Rosemary Acres Major and this one. Mr. Truscott is here and after my presentation he would like to also address you and we're assuming after the public testimony we both have the right to come back up, both of us is that correct?

Chair Varone: That's correct.

Dean Retz: Thank you. My procedure would be as usual I would like to answer any

questions, comments that the Commissions brought up which I think I can do in my presentation. Talk about the pre-app conference, talk about the staff report, and review the recommended conditions of approval. I want to stress as far as the pre-app conference you heard before I think this is an excellent idea I just want to state that Mr. Truscott concurred with all the recommendations from the planner and sanitary and at the pre-app conference. Our original application was for 21 lots at the pre-app Mr. McHugh recommended 40 lots we concurred with that. Regarding fire protection we did meet with West Valley Fire Chief prior to submitting application regarding the DNRC and ground water controlled area. We did have Mr. Patrick Favor, Hydro geologist meet with the DEQ and in the application and in the environmental assessment is the recommendation procedure that has been agreed upon and regarding the recommendation to do a nondegredation analysis, Jim Taylor engineer was hired and we have completed a preliminary nondegredation of all 40 lots and that report is also in the application. Staff report I have mentioned before and I would like to thank Michael every time we do, I see a staff report it looks like it's getting constantly upgraded and improved in the report namely three areas I have not seen before the expansion on the fire protection, the expansion on the school information, and then the expansion on the park land dedication that is information that most of us weren't privy to and know I can see how that helps. On the adjacent land to the South, I did mention the fact and so did Michael that we have our first was a minor 4 lot fully developed, second phase was a major 10 lot when you go out to do your onsite inspection you will see that it is basically fully developed with houses under construction or inhabited. As far as the covenantss, these mirror the previous two subdivisions. All have separate road maintenance agreements. They do address the large animal restrictions and I believe Chairman Varone when we get to that, that would not be a second set of condition 17 it would be added to the Board of County Commissioners covenantss so. I want to stress a little bit on the integration of the road network, which we've talked about before. If you want to follow along, it's on page 4 but just to highlight on the pre-app on my information I put the proposal is for 21 lots all over 1 acre. Access would be via an extension of existing internal access road, Sagebrush Dr and an extension of Rosemary Dr. In the application and in the environmental assessment we talked about streets and roads. Access to all 4 lots would be on to an extension of existing road networks, Sagebrush Dr and Rosemary Dr as well as four cul-de-sacs that would meet County subdivision regulations with regards to radius turnarounds. The new road network would be approximately 4235 feet. We did at the pre-app, which was attended by Mr. Truscott, Chris Reeves and myself we did discuss the 21 lots versus 40 lots all along we were aware that eventually we would have to go to Best Place Rd. It was our understanding and maybe this was a misconception that we could go up to 21 additional lots and use an extension of an existing road network. I need to stop right here and stress that everything I am saying I have talked to Mr. McHugh about and basically we have agreed to disagree. It is not my style nor will I ever come up here and say something that I haven't talked to staff about. We're well aware of a need for an RID, we understand that, we're well aware of a need for east-west connection with Best Place Rd, puzzled when Michael talks about we should be going east to west and not North South it's kind of hard to do that when you have to go, we are going east west and Mr. Truscott will point out when he comes up here why we think it's desirable to go east

west North on that other 21 lots. Just for my own information and I realize, I thank God I'm not an attorney, but we do have Sagebrush Dr, constructed to County standards patch number 3, we have Rosemary Dr which is partially chip sealed, partially gravel surface. According to the subdivision regulations it says 'each major subdivision shall provide at least two different ingress egress routes.' I want to point out that actually at the as far as the cul-de-sacs and the extension. Chris Reeves the surveyor and myself were informed by Michael that he would be recommending the extension of all cul-de-sacs to go to be constructed to the property boundaries but he recommends this at a pre-app conference on another subdivision, which was a Big Valley Lot 17 Minor on May 13th. His rationale was that people are building within the setback easements and he wanted to make sure that this doesn't happen on this subdivision. I would like to point out that on Big Valley Lot 17 Minor, this condition was not placed on the subdivision so there is not a consistency between planning. The revised plat shows the extension of the cul-de-sac on the Northwest corner all the way and here again this was brought up to you by memo June 30th, it's my understanding you don't have a copy of this. It's all showing, it is also showing that the on the North, Southeast corner we have a 60 foot public access utility easement for future public development so we have two of those four lots going all the way to the end of the property line and Mr. Truscott will again talk about that. We contend that if we go all four of these cul-de-sacs to the end of property line that we're basically destroying maybe un-needed ground. What happens if the adjacent lands are not developed? We contend there is no legal regulation to impose this road extension and this is evident by the approval of Big Valley Lot Minor just two weeks ago. Lastly, as far as the extension of the four cul-de-sacs, the covenantss do address a 20-foot building setback and the engineer who's laid out the preliminary well septic drain field replacement also has the proper setbacks. As far as Best Place Rd we do agree that eventually we do need a east-west road network. In your packet we have made a recommendation to changing the language of that. The reason we'd like to discuss that is it was brought out at the consolidated planning board meeting on Tuesday the 17th. They received their packets on Saturday the 14th. Mr. Truscott received his on the 14th; I did get mine on the 13th. If we can talk about now about the recommended condition of approval, just wanted to mention as I did previously on another subdivision as far as the number for fire protection, I concur with this, I'm all in favor of us meeting with the appropriate fire districts and agree on a definitive recommendation rather than language I've seen that says negotiate. Both Michael and myself were involved in one that was final platted with the improvements agreement March 15th of I believe 2002 we're still negotiating. But on a side note, I'm just curious as to if this is going to be a recommendation for all major subdivisions, all minor subdivisions, because under this one we were told we could not formally submit the application and get the clock started until we had something in writing from the fire district. I'm going to talk a little bit about number 6 and I when I talked to Mike yesterday he said that this is kind of ambiguous as far as 'prior to final plat the applicant shall improve all internal access road to the specifications required by the County Subdivision Regulations Section #2 from intersection of internal access road to John G Mine Rd and the connection of Best Place Loop'. Now at the pre-app in the application we have talked about at least two phases maybe three with phase one being hopefully 21 new lots. The interpretation of this language would mean that we would have to finish all

internal access roads even though we're not doing the other 19 lots until hopefully within the four-year period. This is why in my memo that you received June 26th we're proposing alternate language to number 6 and the proposal is that language would read 'from intersection of internal access road, Sagebrush Dr and Rosemary Dr with John G Mine Rd, encompassing 21 additional lots that would be completed under phase 1. The remaining 19 lots that would be completed under phase 2 and/or phase 3 from intersection of internal access roads with John G Mine Rd and a connection with Best Place Rd Loop'. We're also recommending that within number 6, we propose that only the improvement of cul-de-sacs on lot A1-21 and A1-40 should extend to the property boundary. That is the Northwestern up there that we would extend all the way through. One of our reasoning's for this not only is the confusion and the implication that we could continue on this another phase without going all the way up is a legal issue, what would happen if there was some sort of a legal problem, what happens to Mr. Truscott's subdivision if it gets approved, if it's delayed who does he turn to? What's his recourse? So, in our view to give us time to make sure this is all worked out we would think the phase one of the extension extending the existing internal access roads and waiting for the east-west network until we complete the final phase of this would be more beneficial to everybody. Lastly on the last condition of course the four years, at the pre-app the reason we originally went 21 lots, Mr. Truscott at that time was not even certain if he could complete this within the four-year period. But we did concur with that and we did go with the recommended 40 lots. That concludes my remarks until after the public testimony, any questions from Commissioners?

Chair Varone: Any questions of Mr. Retz? Thank you Mr. Retz.

Dean Retz: Mr. Truscott will now

Chair Varone: Before we do have Mr. Truscott come forward, I do have a question of Michael if I may. And Mr. Retz you may want to stand up there in case you have anything to add to it. Regarding the proposed change, the applicant is requesting to allow them to phase in and complete the roads in a phased in manner, I know in the past we have done that and I do support phasing in when appropriate, but we've come up against at least in the short 2½ years that I've been here, is that in some instances, not in all instances, but in some instances where there's a phase in the road, the second phase is never completed and then the purchasers of the property and the road and the completion of the road is substandard. What kind of guarantee, or what do we have to do as a County if we do allow the phase in approach, how do we manage that?

Michael McHugh: Under current subdivision regulations, phasing is permitted. The County Subdivision Regulations say that for all major subdivisions, and you've already had one occur, you had a minor subdivision where you have a total of 14 lots with the additional 21 lots, you are going to need the second approach route. This, Mr. Retz was incorrect when he stated that it would require him to build the entire road network. What it would require him to do is to complete the connection to Best Place Loop Rd. He wouldn't necessarily have to construct all the roads over here in this area, but we would

need to have a second connection going from Rosemary Dr, Sage Dr over to here. County Subdivision Regulations do not required that the hard surfacing be applied until the subdivision generates 400 plus trips per day. If he was to phase this in, he would be required to extend the road out here to a gravel standard, a gravel standard all the way to the connection with Best Place Loop Rd. He would be required to do asphalt aprons whether that's economically reasonable to do, I mean that's what Mr. Truscott and Mr. Retz will have to figure out, but he's allowed to phase it in, it's just staffs recommendation that it would be a little more economical to build all the roads over here and then do a phase later and Mr. Retz indicated that it was staffs insistence that he do the 40 lot subdivision, it was staffs recommendation because since the inception of subdivision it's been indicated to staff that this would be a fully developed thing and it was, I think it better serves the County and the neighbors and everybody else to note that the full development the potential is rather than just coming in and doing it in piecemeal manner to have an overall development plan and that's what staff recommended was the overall development plan. Whether the applicant wanted to do 21 lots now and the remainder later that's up to him but it saves both staffs time, the applicants' money and the Commissions time to look at an overall development plan rather than have these things submitted in a piecemeal manner.

Chair Varone: Thank you Michael.

Dean Retz: May I respond to that?

Chair Varone: Yes, if you would Mr. Retz

Dean Retz: Briefly, Madam Chairman. I don't know if I'm, I guess I'm partially incorrect, but I'm also partially correct but I would like to add a question here, if for instance we decide to phase six lots and you're talking just the bottom row there, then under the proposed condition of approval that road network would still have to go all the way up North turn east and go out Best Place Rd.

Commissioner Murray: That's correct. Major subdivisions do require two approach routes and so, currently you have 14 lots there and it's really not in compliance with County Subdivision Regulations.

Dean Retz: So, when we did the Rosemary Acres Major 10 lot, without a variance how did we get by with that?

Commissioner Murray: No comment.

Dean Retz: Okay. Mr. Truscott, Thank you.

Chair Varone: Thank you Mr. Retz. Mr. Truscott, do you have anything to say now is your time.

W.J. Truscott: Good Morning board. Mr. Retz did a real good explanation of the whole

road network ideas and that's basically what I'm going to elaborate on a little bit more. I don't have a problem at all with an overall plan as we've submitted here, but my intent from the very onset of the subdivision was to do it piecemeal as money could afford and as lots sold we could pay for all the developments within the system. Which is what we've been doing, we as Michael McHugh pointed out we've done a 4 lot minor that was accessed with a horseshoe type loop which I understand is very typical for subdivisions to enter and exit there's a horseshoe type of affair for roads. We added on to that with the second phase with a 10 lot addition and simply extended our horseshoe loop which is Sagebrush Dr there on your map and it loops on over and hits Rosemary Dr. The concept was to continue in that vein by biting off this next 21 acre section and to stop construction of any further roads at the boundary there, I think if you look on your map there, I can't remember which lots they are, I'll use the laser, thanks. This boundary right here to the South of this property lines here and this area is where we plan to develop at this time. So these roads would terminate right here and right here at this time. I have no objection at all to continue this road network as we jump into the following second phase. I'd like to point out to, that I realize it would be a dead end road extending from here to there and also to the cul-de-sac the same thing would apply over here, it's a dead end road, but it's well under current County regulations of 1000 feet maximum. We are approximately 2, 4, 6 approximately 600 feet from this area to here. Each lot has approximately 200-foot frontage on the road. So I believe we're well in compliance with current regulations and we do, I'd like to just talk about the two access routes. We've utilized the horseshoe loop system up to date and it's simply an extension of that in a matter of speaking except that we would have a dead end road at these two spots. As far as the east-west connections go, staff would like us to extend this road here, this road here, and this road here. In my view, it becomes quite a hub for adjacent properties and I believe that the adjacent properties have some responsibility to develop their additional egress and ingress to their properties. Well if we take this road here for example, we agree we're going to hook on to this here and continue it west bound to the Harris property which is located here. We have no problem with granting an easement through here and I believe it's up to the Harris property to find alternate routes to extend to the North or what have you, I don't understand why we have to provide an access to this Harris property through this cul-de-sac which we have proposed. That would create a horseshoe for the Harris property. Making this subdivision a thoroughfare for anything that happened in here. I just somehow it just doesn't seem quite right. The same thing occurs over here on this side of the property to the east, I'm willing, I understand land locked or quasi-landlocked properties and the Counties planning on have east and west road networks and I understand that and I'm willing to grant easement through here to access this chunk of land here which fronts Applegate road over here to the east and again with this gentlemen's property I believe he has a responsibility to find his way out this way onto Applegate. We'll gladly provide a spot through here to get through but again I don't understand why we need to provide two access routes for this property here again all the traffic makes a very simple development for this individual to simply come through here, loop around his place and come back through this subdivision. I think it's again, I just believe that one is sufficient and this man should either develop this property needs to get over the canal here which is not unusual it's done all the time and get on to Applegate Rd over here. That would

give this piece of property two access routes, one onto Applegate, one through our proposed project and he could come down this way and out onto John G or swing around and loop out through here through Applegate. I guess, I'd just further like to state that there is no regulations currently on extending cul-de-sacs to the boundaries of the roads we would just assume keep them where they are, I believe that there's many people in the world that actually like to live on a cul-de-sac, we've tried to put a few of them in there, makes for a little quiet neighborhood. I believe really that is the crux of what I wanted to say was this road network is my deal and I agree with everything else. I'd be glad to answer any questions if you'd like.

Chair Varone: Thank you Mr. Truscott. Any questions of Mr. Truscott. Commissioners? Before I open this to a public hearing, we will need to take about a 5-minute recess. Thank you.

Chair Varone: For those of you in the audience who are parked in our parking lots, when you leave today if you find a parking ticket, please bring them up to our offices and we'll make sure you're not obligated to pay those, okay. This is a public hearing, anyone wishing to speak in support of and opposition to or in general please come forward now on Rosemary Acres Lot A-1 Amended Major and for the record state your name and address.

Lawrence Alheim Jr.: Madam Chair, Honorable Commissioners. My name is Lawrence Alheim Jr. I reside at 312 Best Place Rd. Thank you for giving me this opportunity to express my opinion. I understand pretty much what's been discussed and my main issue is with the easement to Best Place Rd. I understand the Counties broad view picture for east-west accesses, I understand the staffs point maintaining east-west accesses and trying to open up access to different area, that makes perfect sense to me. I spend 20 years in the military so I understand contingency plans, I understand worst-case scenario developments, I understand all those things. But I think as part of the planning and as part of the development in the big picture you have to also consider the cost benefit so to speak the benefit of the east-west accesses versus the impact to the other residents that are there, the impact to the surrounding communities, I think that's important to consider. I know there's an easement there, it's a legal easement there's no question about that. Some things I'd like to point out though is there are a lot of other subdivisions in the area that have horseshoe loops that have are fairly new subdivisions for instance, the Greenfield Loop off of Norris Rd, the Cyprus Rd which accesses Applegate just to our east is actually a one road access to a large circle so to speak with a great number of houses in there. That only has one access road to Applegate. Our horseshoe loop, Best Place Rd has two accesses to Applegate. The developers is going to have two accesses to John G Mine so it would be a fairly large loop system also and then there's the older subdivisions that have been around for a while. There's Ranch View which is very large which has access only to Montana, Treasure States, Ten-Mile, Belair I believe the name of it is so there is a precedent has been set of a lot of subdivisions with access to a single road or two roads to a single road. Some other issues, our subdivision is approximately $\frac{1}{4}$ mile North of John G Mile Mine which is a major east-west access or approximately $\frac{1}{2}$ mile South of Lincoln Rd which is also a incredible east-west access so there are east-west accesses very near

to our subdivision. Hope Rd and I cannot pronounce what road it goes into I think its Barraugh is also an east-west access but it's not, it's a dirt road so it's not as developed as John G Mine or Lincoln. So there are east-west routes very near our subdivision. Some other issues the our subdivision is a loop system where it has two sharp 90 degree corners at the ends of the horseshoe and than this road would be a 'T' off of that end of the horseshoe which would make that a very sharp system of corners there. Fire trucks, ambulances, it would not be an easy transition to make those corners. Some other issues that we have is that it's we have a 50 foot easement on our road which makes it a narrow road, the additional traffic from the subdivision, I noticed that the developer mentioned that his property would become a major through route, if any development to the west was to occur that's what's occurring to our subdivision. The homeowners that are adjacent to the access unfortunately, not their fault, the developer and the builders built their houses in the middle of what they believed were the lot lines, however, the pins were in the wrong area as staff has mentioned and now those houses sit very close to that easement. It is, the easement is there as I said it's a legal easement, the homeowners will now have to somehow go back to the developer to get either the septic tank and in the case of Betsy's house moved or realigned so its not in the easement. Blaine's has the deck very very close to the easement, some modifications will have to occur to that. We're a very small subdivision, relatively speaking I guess. The extra traffic will affect the quality of life within our subdivision and in kind of summary I think that I understand the concept of needing these east-west accesses but I think you have to look at the overall picture, other subdivisions that have single accesses so we have a precedent there, the additional traffic will affect our quality of life. The, we have major east-west routes just South and slightly North of us, the sharp corners are probably a poor design for a thorough route for access to another subdivision and basically all of these reasons I would like you to take them into consideration and look at the big picture as the small east-west route into that subdivision as oppose to two exits to the South necessary giving all the potential impacts that I've mentioned. Thank you.

Chair Varone: Thank you Sir. Anyone else wishing to speak in support of and opposition to or in general please come forward and for the record state your name and address please Sir.

Blaine Gilbert: My name is Blaine Gilbert; I reside at 344 Best Place Rd. Madam Chair, Honorable Commissioners. I own the property that's known as lot 21, I believe, on Best Place Rd which is adjacent to the planned easement and I, what I wanted to say was there is a currently a 50 foot easement I was aware of that when I purchased the land, what I was not aware of was the County standards for a 60 feet easement. If you do apply the 60-foot easement rule, it becomes part of my deck so to speak. It actually it will impinge on my deck structure about three feet. Also I heard earlier from Mr. Truscott that or maybe it was from staff I don't remember but they're talking about putting in a road system and they don't have to make it asphalt until those properties are completed in phase 2 I believe and it would be a further impact to my house and to my family if you put a dirt road in there instead of making that an asphalt road right off the bat. That's basically all I have to say. If you have any questions.

Chair Varone: Thank you Sir.

Blaine Gilbert: Thank you.

Chair Varone: Anyone else wishing to speak in support of and opposition to or in general please come forward. For the second time. The third time. This closes the public hearing. Mr. Retz, do you or Mr. Truscott have anything to say.

Dean Retz: Thank you again Madam Chair, Commissioners Murray and Tinsley. I guess it's very rare when the developer and his project manager agree with the people basically protesting but just a couple of things, on this variance issue, Commissioner Tinsley brought it up and I do have the variance with me, yes we did do it properly, yes we did pay the fee. It was after the fact and we always questioned why we needed the variance when all of the road networks on Rosemary Acres are all 60 feet with the roads being 24 feet, but we did concur with that. But in the same vein, way way back when and Mike will remember this, the first time and I was not privy to that, that the first time the surveyor and Mr. Truscott met with planning they had an overall plan and even then they were aware we're told and concurred that eventually Best Place Rd may have to be utilized. At the planning board meeting they talked about a crash gate this is something we talked about also was told it would not be feasible but I think in listening to everything there's a couple options we do have that were not discussed. We could put a condition maybe on so many lots than you'd have to have, you know have to have that access. We could maybe as far as a compromise with the cul-de-sacs we could maybe do a roughed-in maybe a dirt thing, maybe have the surveyor mark it but we discussed with planning staff we did not do we talked about maybe doing a variance if it's needed a variance that says we'd like to have a variance that we could go up to the 21 lots using the existing road network. The reason we did not do that that here again the implication was we could go as far as that without having that and because we did need a variance on 10 lot major, we didn't do that. But other than that, like I said we agree with all the recommendations other than the internal road network and the cul-de-sacs so. Thank you.

Chair Varone: Thank you Mr. Retz. Mr. Truscott do you have any closing words. Commissioners, what's your pleasure?

Commissioner Murray: Madam Chair, I move we render a final decision at our regularly scheduled meeting on July 24th.

Commissioner Tinsley: Second. Sorry about that.

Chair Varone: It's been moved and second, all those in favor signify by saying 'I'

Commissioners: 'I'

Chair Varone: Motion carries. For the record we meet in 309 at 9:00.

PUBLIC MEETING
July 8, 2003
VERBATIM TRANSCRIPT

Modification of Conditions of Approval for the South Boundary Acres II Major Subdivision. The proposal is located adjacent to and South of Boundary Street, approximately ¼ mile east of Lake Helena Drive. (Applicant, Archie Taylor) (Planner, Jerry Grebenc) The Commissioners will consider modifying condition of approval #6 (implementing or installing a fire protection water supply).

Jerry Grebenc: Madam Chair. Mr. Taylor and his representative's are in the audience and Mr. Suenram is here representing Eastgate Fire Department. Commissioners may know that Chief Mergenthaler is still in the hospital or is he out.,

The applicants are requesting a modification of the conditions of approval for South Boundary Acres II it's a Major Subdivision located adjacent to boundary street just Northeast of East Helena. Here's a location map that indicates the property. Eastgate Village is located adjacent to the west and here's a little more of a close up photo, this photo is almost three years old and since then the applicants have put in the internal access roads and what not so the property is considerably different then the aerial photos that we have. The subdivision was granted permanent plat approval on November 16th of 1999 that was for 19 single family lots, lots range in size from .67 acres to 1.75 acres and the approval was subject to 17 conditions of approval. Just as a note, the 4th year of preliminary plat approval does expire this coming November so the Commissioners are aware of that. The applicants are requesting to modify condition of approval number 6, number 6 does deal with fire protection requirements. That condition currently requires that one of the following be implemented in order to provide a fire protection water supply. The first option was that the applicant shall have the proposed subdivision annexed into the Eastgate Sewer and Water District or the applicant shall enter into some financial arrangement with Eastgate Sewer and Water for supplying fire protection water supplies or the applicants could install an onsite fire protection supply. The applicant is requesting that that condition of approval be modified to require simply a payment of \$500.00 per lot to the fire department for the provision of water supplies. A little bit of digression on options A & B, these recommendations did come from the Eastgate Fire Department. The applicants did approach the Eastgate Water and Sewer District to request either they enter into a written, enter into some type of agreement or that they annex the property. Eastgate Water and Sewer District did indicate in writing that while they could appreciate the developers' situation due to liability concerns and other issues they did not wish to enter into agreement nor annex the property. Additionally, the district they indicated that it was their legal counsel's opinion that the Fire Department had the means to utilize the water within the district regardless of a annexation or agreement. As staff has indicated in the past, the recommendations that the subdivision, any subdivision be annexed into the Eastgate Water and Sewer District or enter into an agreement has been problematic due to the fact that Eastgate does not wish to annex any further property and as you may or may not know a lot of that's due to the fact that any additional annexation would bring their

existing water and sewer facilities under further scrutiny and would entail additionally probably construction and costs. Likewise, they do not wish to enter into any financial or written agreements, apparently their legal counsel does not the Water and Sewer District to have any liability hence, they do not wish to enter into any written agreements. Staff at the time the memo was completed recommended that condition of approval be amended so that the requirements involving the Eastgate Water and Sewer District be removed and what staff had recommended in the memo is that the applicant either install an onsite fire protection water supply or contribute \$500.00 per lot to the Fire Department. At the time the memo was completed, staff had not received any comments from Eastgate Fire Department it was after the memo was completed that we learned that Chief Mergenthaler was unavailable due to medical issues. Staff did speak to Mr. Suenram who is the consultant for Eastgate Fire Department and he did submit in writing Eastgates comments on the proposed modification which are simply that the applicant should provide onsite water. Going back, this is kind of an unusual situation as the board is, as you looked at the memo, when staff reviewed the subdivision almost 4 years ago it was with the understanding that the internal road network would be constructed to County standards. The developers application proposed constructing the roads to that standard and it appears that the roads have indeed been brought to that standard but as a bit of housekeeping staff would recommend that condition of approval requiring that those roads meet internal roads meet County standards and part of any modification that the board reviews and with that staff would recommend a condition of approval number 18 that the applicant construct all the internal access roads to County standards, typical section #3 which is a gravel standard and does include cul-de-sacs. With that staff would entertain any questions you might have.

Chair Varone: Thank you Jerry, are there any questions of Jerry? Commissioner Tinsley.

Commissioner Tinsley: Madam Chair, Commissioner Murray. Mr. Grebanc, you went into quite extensive detail as to why there were three original options available to the developer when it was approved in 1999, four years ago. You went into some pretty good detail about why the first two wouldn't or couldn't be met and very good explanation, I don't see anything else he could have done. Was condition number 6E ever pursued and to your knowledge and if so, why wasn't it met in the last four years.

Jerry Grebanc: Madam Chair, Commissioner Tinsley what the applicant has indicated to us is the cost of the well is such that he prefers not to do that. That's how it's been explained to staff, simply it's a financial matter, I may be incorrect and I'm certain they will address that when they make their presentation, but it's simply a matter that putting in that type of storage and well is extremely expensive but I can't speak for the applicant any more than that so. If that answers your question.

Chair Varone: Any other questions of staff? Jerry, I do have a question. If you'd put the map back up again. Where are water access points, water availability around I think the map that includes Eastgate is what I'm looking for.

Jerry Grebenc: Madam Chair, it's staff understanding that there's a water supply point indicated right there, right there. There's a water supply point that's part of the Eastgate Water and Sewer District and I can point to that again if.

Chair Varone: Thank you.

Jerry Grebenc: They said I probably had too many coffee, too much coffee.

Chair Varone: Thank you. Mr. Taylor or Shawn Bryant either of you in the audience would you like to come forward please.

Byron Staley(?): Thank you Madam Chair, Commissioners. My name is Byron Staley representing the Taylor's as their engineer. Just a couple things to add and then maybe give Commissioner Tinsley a little information on option 3. Regarding the, we assumed all along that the option, some arrangement with Eastgate could be made. We were getting that feedback back from actually Bruce can verify that Ken Mergenthaler actually was apologetic he's in Eastgate he was the one that kind of thought no big deal we can get this done, well for some reason or another we couldn't and the reasons which I'll just read and this is a letter from Eastgate to actually Mr. Frank Welch who's doing a major subdivision back at the same time and had the exact same conditions that the Taylor's had and very important here is Mr. Welsh negotiated \$500.00 per lot, exact same conditions only Mr. Welsh negotiated the exact same \$500.00 per lot so it's strictly from a fairness issue we are wanting that to be considered but more importantly is the public health and safety issue and do we have the water there to fight fires in this subdivision and we absolutely do. I think that's the key issue in this consideration of this. But this letter that was written to, actually it was to Mr. Rasmussen from Eastgate and references Mr. Frank Welsh's proposed development. I'll just read a couple sentences. The one that says the Directors and residents of Eastgate generally decided to cooperate with their neighbors, the RFD and the County. However, the County's requirements for written agreement under which Eastgate would specifically commit to undertake and provide such water has raised thorny concerns of contract liability insurance and compensation not to mention that the designated uses of Eastgate's water rights that are specified in its DNRC water use permit do not include fire suppression. However, the important thing is they go on further to say moreover we need to point out that rural fire district already has authority to use Eastgate water for fire suppression. That is critical because right there at the corner you couldn't where we were talking about putting it on the other end this water supply is the closest to the development as it would be on the other end of the property right there to fight fires. So from the developers stand point of saying okay this third option. Number one, the water that has been developed to supply domestic to this South Boundary Acres is ruger water years ago was turned over to rugers water association so they don't even have the authority, the Taylor's, to use this water for this purpose. Number two it is cost and I know probably Commissioners get tired of hearing cost issues, but with cost it's this fairness issue and to me each lot has an impact as far as fire safety, each lot. And I don't think it's fair that one development says well okay \$500.00 a lot will work for you but no, for you it won't so you put in this system and the systems we're talking about

there like \$4,000.00 to \$5,000.00 per lot and from a fairness issue I have an appreciation for the developer saying we want to be treated like everybody else. Why should we have to provide that when somebody else doesn't? I know this development of course is much closer to the Eastgates water than the Welsh property was, so again from the safety issue, we have the water there adjacent to fight fire and I think that's the most important thing when considering this this request. We did, just to add, we did meet with the fire department and Mr. Suenram numerous times trying to work this out and we just couldn't come, why we're back here is we just couldn't come to an agreement as to what we thought was fair and reasonable for the developer so that's why we're back in front of you asking for this changed condition. On a second note, the roads were built to County Standards so we have no problem with that condition being added. Thank you for your attention and I'll answer any questions if there are any.

Chair Varone: Any questions of Mr. Staley. Thank you Mr. Staley. Mr. Taylor in the audience. Mr. Taylor have you had an opportunity to read all the information that was handed out.

Archie Taylor: Yes I have Madam Chairman.

Chair Varone: Before we begin the public hearing, do you have any comments?

Archie Taylor: I'm relaying to what Mr. Tinsley said about why 6E wasn't done, to me it was a crapshoot. There's no guarantee that that much water is available in our view in that aquifer down there. I'm sorry I can't, as far as your question about why 6E, we felt it was a crapshoot and I don't know there's that much water available. The wells that are in there now are like 120 when they were drilled gallons per minute when they were tested, stand-alone. So, I don't know where you're going to get 500 out of those kind of wells at all in that area. That's why we didn't try to pursue that. That's your question right?

Commissioner Tinsley: That was my question.

Archie Taylor: Yeah, that's why we didn't do that. I just wanted to clarify that. The wells were drilled in 1997 by Lindsey and they were tested then. They were provided the reason for the wells to begin with because there was a requirement when you get over so many residences in a subdivision you need two wells and at that time there were two wells that were drilled, I knew that I was going to develop the other 20 acres, but wasn't questioned here. The other 20 acres I developed are East of that and they have a well for them also so the two wells are for the two subdivisions at that time, that's why that was done. You understand that?

Commissioner Tinsley: Yeah, I have a question for you if you're willing to let me ask it.

Archie Taylor: Go ahead.

Commissioner Tinsley: If it's alright with Madam Chair, Commissioner Murray. So from

what you just said right now it appears at least to me that you didn't have any intention at all in 1999 of pursuing option 6E.

Archie Taylor: No, I didn't.

Commissioner Tinsley: At all? Okay.

Archie Taylor: Because of the fact that we already knew, but there is no wells.

Commissioner Tinsley: Did you make, Madam Chair, Commissioner Murray, did you include that in your testimony in 1999 when this was going before the County Commission?

Archie Taylor: I can't remember. There's a record, I know if somebody does remember behind me that's fine, I don't remember because it's been too long ago for me.

Chair Varone: I believe Mr. Bryant can respond to that.

Commissioner Tinsley: Madam Chair, Commissioner Murray, I have one more question. If it was not your intent to pursue 6E at all in 1999 why did you agree to it as a final condition, as a condition of approval, why did you not ask to have it removed?

Archie Taylor: Because of the fact that we thought 6B was going to be our option, that was the understanding in 1999. Because we meet with Eastgate and they said they would consider it before we continued and that's why we thought it was a done deal. That's the whole reason I didn't even think about it.

Commissioner Tinsley: Thank you.

Archie Taylor: Okay.

Chair Varone: Thank you Mr. Taylor. Mr. Bryant could you fill us, fill in the holes.

Sean Bryant: Madam Chair, Commissioners. I'm Sean Bryant, Staley Engineering 2687 Airport Rd. Just to elaborate on that a little bit, is the reason, well we actually did express concern over that condition 6E, I actually wrote a letter or we wrote a letter for the Taylor's that wanted to modify that some so that it would leave room for negotiation because we knew that it would be extremely difficult and extremely expensive to meet that condition, but all along we were led to believe by the fire department and planning even for that matter that 6B was pretty likely, you know I mean it wasn't a difficult thing and even with meetings with the Water and Sewer District they voiced, they said they had no problem with us using their water and they even and they wanted time to actually talk with their legal counsel to make sure there were no problems with it and that's when all of a sudden the road blocks started coming in and saying, the guy saying, their saying oh wait a minute you know we just don't, we're not sure we want to put our necks out on the chopping block, we don't want to be responsible or liable for supplying that water. You're welcome to use it if it's available, it's there, it's yours in an

emergency situation, but we don't want to be responsible and that's where the road block, that's where we started running into log jams. So, the conditions were placed on there really under, I don't know if you'd call it under protest, but you know we certainly didn't agree to them.

Chair Varone: Thank you Mr. Bryant.

Sean Bryant: Thank you.

Chair Varone: This is a public hearing, anyone wishing to speak in support of and opposition to or in general please come forward and for the record state your name and address.

Bruce Suenram: Madam Chair, Bruce Suenram with fire logistics at 54 Meadowlark Ln in Clancy representing Eastgate Fire. Chief Mergenthaler couldn't be here today he has some prior activity that he has to attend to so. I guess I would like to dispute some of the information that's been provided to you. If the developer and their representatives had no intent of complying with 6E then I would question the meetings we had in January, late January and the fire district subsequent revision of the condition of approval to reflect 500 gallons a minute for 60 minutes instead of 120 minutes which is a 30,000 gallon tank. At that time, is that the water supply point down in the corner there; is that the well house Jerry? For the adjacent subdivision. Bottom right. It was my understanding at that time and the diagrams that we were looking at is this water supply point was going to go next to the well house for the prior subdivision, that there was no requirement for an additional well that you would just have to put the tank in and put the wet hydrant in. Now, where all this additional stuff is coming from is even new to me as of this point. The fire districts concern about just automatically saying that this subdivision can use somebody else's water, those people in that Eastgate subdivision pay substantial taxes for the development maintenance and use of their own facilities and it is the developer wants to talk about equitable that's the height of being inequitable. It's totally unfair. The application of \$500.00 a lot on a minor subdivision for the Welsh Minor is completely different than a major subdivision with 19 homes that are going to require a water supply. The ISO for this kind of facility subdivision would be looking for Eastgate to be able to deliver 500 gallons a minute for 2 hours. So our change of conditions in February back to 500 gallons a minute for 1 hour even degraded the districts ability to meet that fire flow requirement. The fact that there's a hydrant, we in our meetings with the developer and their representative in January talked about five inch hose, how do we make this work, we considered almost every option that we could consider including the \$500.00 and Chief Mergenthaler backed up to 500 gallons a minute for 1 hour and he does not want to be in the business of putting in their own water supplies, the district is a fire department they don't want to be in the water management business. I'll be glad to try to answer any questions.

Chair Varone: Any questions of Mr. Suenram?

Commissioner Tinsley: Madam Chair, Commissioner Murray. Say your last name again.

Bruce Suenram: Suenram, like 'Sinrum'.

Commissioner Tinsley: Okay, I've been saying it wrong. Mr. Suenram, you indicated that you met with the Taylor's and their representatives early this year to try to hammer out some kind of agreement and the fire department was agreeable to moving back to 500 gallons for 60 minutes instead of 120, is that correct?

Bruce Suenram: That's correct. We met in either Late January, early February. My letter to Jerry is dated February 5th where we actually changed the condition 6E.

Commissioner Tinsley: Thank you.

Chair Varone: Mr. Suenram, I do have one question. With the discussions with the fire department with you and the applicants, was there any discussion about sprinklering the houses?

Bruce Suenram: Madam Chairman, Members of the Commission, that is one topic that did not come up and in spite of previous staff members concern about enforcing sprinkler requirements, I think sprinklering is a good valid option that we would probably, I haven't even asked Mr. Mergenthaler, Chief Mergenthaler about sprinklering. But, I would suspect that he would consider that as an option. We can bring you some language developed in Gallatin County where they require the systems to be designed by a certified engineer so that it gets out of that plan review component. The fire department actually does the inspecting which is relatively simple for home sprinkler system in that it just requires verification of a pressure test and the fire flow alarm. I would suspect that he would consider it.

Chair Varone: And if I could ask you to provide us that language, I'd appreciate it and I believe statutorily its required that a certified engineer design the systems.

Bruce Suenram: Well, as you well know Madam Chair a homeowner can actually put a system in themselves. I think if we cover the language with a certified engineer for a residential sprinkler system we got our basis covered.

Chair Varone: I agree. This is a public hearing, anyone wishing to speak in support of and opposition to or in general please come forward. Byron, did you have something? Can this be handled in the closing?

Byron Staley: Madam Chair, I was just wondering if the applicant, the owner was going to have the opportunity to talk again and if not, I was going

Chair Varone: Absolutely

Byron Staley: Okay, Thanks.

Chair Varone: For the second time. The third time. This closes the public hearing. Mr.

Taylor would you like to say anything or would your representatives like to say anything upon closing. Okay, now's your time Byron.

Byron Staley: Thank you Madam Chair, Commissioners. Just a couple things, yeah Bruce is right we did meet in January. The Taylor's called that meeting; we actually met back in November, and Taylor's again calling the meeting. The meeting in January was to try to get the fire department to agree to the \$500.00 per lot. They would not, so we said okay what is the minimum that you will and so that is what they came back with. It was nothing that the Taylor's agreed to it was again, we tried to negotiate and it didn't happen so that meeting was called to try and get a cash in lieu done and it didn't. Regarding, I keep hearing major vs. minors. Each lot out there has an impact. I don't care if it's a minor or if it's a major you don't know how many minor subdivisions you see, you see 4 minor subdivisions and you have the same impact as that 20 acre major so again it's, number one where's the water coming from I mean I'll stand here and suggest that this major is better protected than any minor that's further out there because of it's location to that water system, we have a letter from Eastgate that says you can use our water. Bruce made it sound like we didn't or that was a question, no they acknowledge that that can be used for fire fighting purposes. As far as equity, I might even suggest that's what we're trying to do is give Eastgate some equity and then again it got tied up in this well if we take money are we then liable. I would suggest that if we give Eastgate \$500.00 per lot if the owner does as this developed there'd be no reason they couldn't in turn pass on a portion of that to Eastgate for that fact that they'd be using that system. So I think, again, I think this is as far as Public Health and Safety not an issue; I think what the change in condition that we're asking for is well supported and documented and appreciate your consideration. Thank you.

Chair Varone: Thank you.

Bob Cummins: My name is Bob Cummins and I represent the Taylor's in this matter. Madam Chairman, Commissioners Tinsley and Murray. Specifically with regard to the question that Mr. Tinsley asked. It hasn't been brought to the attention but I think it's very important here. Mr. Taylor tried to explain the aspects of the availability of water at this particular subdivision. The two wells that are there produce at a maximum 120 gallons per minute. They are not in such a position where they can be manifolded and a bigger and further more difficult problem is in getting more water. In 1997, Eastgate in the proceedings for the application for the South Boundary Acres I, filed an objection with DNRC where in it they said that to grant that quantity or quality of water that may be necessary that we're talking about today would in fact be detrimental to their water system. So that there is a question of whether or not you can even get the water even if the water was there. So regarding this matter, I don't believe that there's any evidence that the water is there and it may have been imprudent on their part to concede to accept the three conditions that were set forth in paragraph 6A, B, and C, relying upon the fact that they believed that 6B would be their way of getting out and their way of having availability. As Mr. Staley has stated and the record is involved in this I believe with regard to Mr. Welsh who at the time there is also a copy of that letter went to Mr. Taylor and we feel that's applicable to this Taylor property from the Eastgate water

users they quite correctly quote the State Law that says that the Fire Chief for Eastgate Fire has the authority to hook up and get that water at any and all times under the regulations. I question the soundness of their attorneys' decision, but being an attorney myself I can understand how they don't want to go out on a limb and that's why 6B was not involved. It seems to be the question about whose talking about fairness here. As I sat through the previous preceding and public hearing I was shocked to hear that you were being asked to say that for 41 lots they pay \$200.00, but for these 19 lots where they're willing to accept and pay \$500.00 that there's an objection and I think that the Commission has a duty and a deep responsibility and should have very great concern that at some point in time some correlation between these matters other than just dollars and cents being thrown around is to how much you should pay for a particular lot is involved, I believe that a condition that staff has worked on I just got involved in this with Jerry and Mr. Stahl at the time when we had a difference in legal interpretation of paragraph 6B and as a result of that this decision was made to come before you and ask that the developer be able to provide \$500.00 a lot and I would urge you to adopt that position. Thank you.

Chair Varone: Thank you Mr. Cummins. Just maybe for a little bit of explanation one of the reasons that there's a \$200.00 difference between a \$500.00 difference is the availability of water at hand in the Valley. I understand and happen to agree to that \$500.00 in this instance is more than fair. Mr. Suenram?

Bruce Suenram: Madam Chair, have you closed the public hearing?

Chair Varone: Yes, I did.

Bruce Suenram: Can I just clarify this 500 gallons a minute.

Chair Varone: Absolutely, I think it begs a response.

Bruce Suenram: Madam Chair, our requirement is not that the well produce 500 gallons, but that 500 gallons a minute be available out of a tank at a wet hydrant. That does not require a well to produce 500 gallons a minute or anything close to that it just requires that there be a well to keep that tank full.

Chair Varone: Thank you for the clarification, that's what I was trying to get at, the difference between \$200.00 and \$500.00 and availability of water in the Valley. A lot of that has to do with water that's in holding tanks.

Tom Calvert: May I speak for a minute. My name is Tom Howard. I live at 4080 Boundary Street.

Chair Varone: Sir, I just have to stop you for a second. We did close the public hearing, but if I could ask for the, sir just a second, if I could ask for the Commissions approval to hear this individual. Thank you Sir, they've agreed to listen to you so please come forward.

Tom Calvert: After listening,

Chair Varone: and your name Sir

Tom Calvert: Tom Calvert, 4080 Boundary St. I live just near the Taylor's proposed development. I'd like to ask the question just for consideration what happens if these people can't come to an agreement between you, Eastgate and the Taylors. (Unknown). And if for some reason there can't be a consensus, God will tell you (unknown) the fire departments ability to serve those properties beyond. I mean the road is terrible and if we had an impasse that road is going to get worse. It's already a public safety issue in my opinion so I think although that has nothing to do with 500 gallons or 100 gallons it has to do with people who live beyond Mr. Taylor's proposed development and I think every serious person here should give time and effort to resolving this issue.

Chair Varone: Thank you Mr. Calvert. What's the Commissions pleasure?

Commissioner Tinsley: Madam Chair, I'd like to make a motion that we render final decision on this request on Thursday, July 24th I believe is the date, yeah, July 24th.

Commissioner Murray: Second.

Chair Varone: It's been moved and seconded to render a final decision on July 24th. If I could ask staff to work with Mr. Suenram in developing the language that has to do with sprinklering each house and also if I could ask for staff to provide us a letter from Eastgate that the applicant spoke about, we'd appreciate that. And then also, since there's been discussion in the past about 500 gallons per minute for 60 minutes if you'd also put some language together that reflects that for us to consider I would appreciate it. And also, I'm going to be asking if they applicant is still required to deliver the 500 gallons, I'm going to be asking that the fire protection supply and all equipment shall be maintained by the Eastgate Fire Department so if you would put language together that's attached to the requirement for the 500 gallons per minute for us to consider I would appreciate that. Is there anything else that staff should be doing for our consideration? All too often, we require all of this all the gallons per minute and the water supply and then it's left up to the applicant to maintain it and they have no knowledge on how to do it, so.

Commissioner Tinsley: Madam Chair, if staff is willing between now and the 24th to leave the door open to facilitate a meeting of the minds between the applicant and the fire department, if they could resolve this on their own prior to the 24th that would probably be best for everybody.

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

Commissioners: 'I'

Chair Varone: Motion carries.

Public comments on matters within the Commission's jurisdiction.

Fire Chief, Jerry Shepherd: Jerry Shepherd, Fire Chief West Valley Volunteer Fire Department. The only comment I would like to make and I know we're working that way and I'm glad we're going that way, but these last two subdivisions just proved we need to get the fire regs done. I know we're working that way, but just wanted to just if we all know up front there's not a difference between the fire departments, it would really help. Thank you.

Chair Varone: Thank you Sir, I agree. We are adjourned.

Adjourn.