

**PUBLIC MEETING**  
**March 15, 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, Karen Hruska, Cheryl Green, Nancy Haslet, Michael McHugh, Dean Retz, Beverly D'Amato, and Carole Byrnes.

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

**Bid Opening:** Lewis & Clark County solicited bids for an IBM iSeries i5 9406-520 computer system, including hardware and operating system with a 5-year maintenance agreement on both. The machine will replace current AS/400.

Karen Hruska: One bid was received from Pacific Software, Spokane, WA. The required bid bond is attached. Total amount of the bid is \$11,054.75. The total bit quote is \$103,762.56. The bid will be returned to staff for review and give a recommendation to the Commission at a future public meeting.

**Resolution Ordering a Refund of Taxes/Fees/Assessments Paid.** (Cheryl Green)  
The Commissioners will consider a refund to Thomas and Susan Jackson in the amount of \$310.52 for an erroneous assessment.

Nancy Haslet, Department of Revenue: I'm in here in response of a petition that was filed by the Jacksons for a refund. This property was involved in a land split where part of it went with the house, a little bit of the land and a couple of buildings and then went exempt. Somehow in our muddle of paperwork, the house was not taken off the original parcel, off the tax rolls for the original parcel and that's what happened and I would ask that you refund them \$310.52.

Commissioner Tinsley: Questions of Nancy?

Commissioner Murray: Mr. Chair, I would move we authorize a resolution ordering the refund of taxes, fees and assessments paid to Thomas and Sue Jackson in the amount of \$310.52 due to an erroneous assessment and authorize the Chair to sign.

Commissioner Varone: Second.

Commissioner Tinsley: We have a motion and a second. Any discussion? We have a motion and a second, all those in favor say "aye". Motion passes 3-0.

**Proposed Minor Subdivision, Preliminary Plat to be known as the Hidden Bay Estates Minor.** (Applicant, Ann Pierce) (Planner, Michael McHugh) (cont. from 3/1/05)The Commissioners will consider creating 5 lots, each for single family residences. The proposed subdivision lies within the NE1/4 of Section 9, T11N, R2W; generally located west of Favorite Gulch Road, approx. 7 miles south of the intersection of Favorite Gulch Road with Nelson Road.

Michael McHugh: Commissioners, the public presentation's already occurred on this. What is before the board today is a decision. There are 3 variance requests on dealing with the length of dead end road, on public access easement transecting a lot and the applicant is requesting not to construct the road from his property to the intersection of Nelson Road with Favorite Gulch Road. You'll need to consider those variance requests first. I believe that you did get a memo from Mr. Dean Retz addressing some of these variance requests and I also believe that he proposed some amended language for Condition #10 that dealt with the fire protection requirement.

Commissioner Tinsley: Mr. McHugh, I have a note here on my paperwork and often times when I make this notes I don't make it completely and I want to verify exactly what I was referring to. It says applicant is willing to bring road up to county standards where easements are allowed. Do you recall that conversation?

Michael McHugh: Yes

Commissioner Tinsley: Could you expound on that further?

Michael McHugh: There's somewhere between 6 1/2 and 7 miles of road that needs constructed to county standards. This road in some section probably is not located within the platted easement because other property owners up in Eldorado Heights have placed fencing and other improvements in that area. The applicant and he or his representative may want to speak to this further, don't want to be responsible for removing all of those improvements within the right of way. It's staff recommendation that the road is improved to the county standards. It does go through an area that has a very high fire risk and there's some very steep slopes, radius' on curves that don't come anywhere close to county standards and again the staff does recommend that the road be constructed to county standards.

Commissioner Tinsley: This other variance request, this third variance request, just to make sure. The second variance request in our packet, it's requested as there appears to be no other access to proposed 5 new lots, land owners/developers are requesting a variance. Access to Nelson Road as via Favorite Gulch Road, which is approximately 5 1/2 miles and all the road is not in conformance with Subdivision road standards. They're asking for a variance from that condition?

Michael McHugh: Yes, they're asking for 3 variances.

Commissioner Tinsley: But from that condition we're specifically speaking about?

Michael McHugh: Yes

Commissioner Tinsley: Okay, thank you.

Commissioner Varone: Mr. Chair

Commissioner Tinsley: Commissioner Varone

Commissioner Varone: May I ask a follow-up to that discussion on that variance?

Commissioner Tinsley: Please

Commissioner Varone: With that variance request, does that also include that they are, if we grant this variance request, will that include the areas that they are willing, the curves that they are willing to improve? Or does that prohibit them from or keep them from doing those curves as they suggested they would do?

Michael McHugh: In Mr. Retz's memo, I believe it's dated March 9<sup>th</sup> of this year, he's outlined various areas from Curve #1, Curve #3. He's also talking about slopes in excess of 11% and county subdivision regulations require that there be no slopes greater than 11% for length of 500. The total slopes in some of those areas range from 12-17%. If you grant a variance not requiring him to construct that section of the road, you also have to grant another variance for the slope of the road that has not been requested at this time.

Commissioner Tinsley: Further questions of staff?

Commissioner Tinsley: Okay, commissioners, we have before us, first of all we have to handle the variance requests. We have a variance request and I will read the actual request and it says, "As there appears to be no other access to the proposed 5 new lots, landowner/developers requesting a variance. Propose new internal access road from the end of Favorite Gulch Road to the edge of the proposed lot #5, goes to the remainder acreage as well as a small portion of the road and proposed cul-de-sac." Essentially this is a variance from the section of law that says no single lot shall be divided by a public street, road, alley or right of way. Is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to approve the request.

Commissioner Murray: Second

Commissioner Varone: We have a motion and a second. Any discussion? All in favor, say aye. Motion passes 3-0.

Commissioner Tinsley: The next variance request we have is a variance from the section of law that deals with local street design standards, essentially the county road standards. "As there appears to be no other access to the proposed 5 new lots, landowner/developers requesting a variance. Access to Nelson Road as via Favorite Gulch Road, approximately 5 1/2 miles long and all the road is not in conformance with county subdivision road standards. Per County Planning estimates there would only be 40-50 trips per day on this road." Is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to approve this variance request if I receive a second, I would like to make a modification to it.

Commissioner Tinsley: We have a motion. Is there a second?

Commissioner Murray: Second

Commissioner Tinsley: Commissioner Varone

Commissioner Varone: Mr. Chair, 5 1/2 miles: having to improve that entire amount I think is relatively onerous on the applicant. I do like the idea of the curves because that's the most dangerous and I would like to modify the variance to require the 8 curves to be improved, but I also would like to add that the 12 %, the 17 % is not something the county would approve, it'd have to be less, it'd have to fall within the guidelines.

Commissioner Tinsley: Mr. McHugh, in Commissioner Varone's explanation of her motion, does she need to amend her motion to specifically state that for the variance or do we need to go with other conditions of approval?

Michael McHugh: You need to do another motion

Commissioner Tinsley: After this motion is taken care of? Commissioner Varone, is that alright with you?

Commissioner Varone: Correct

Commissioner Tinsley: We have a motion and a second on the variance from county road standards. Is there any discussion?

Michael McHugh: Commissioners, there probably needs to be some language in there about minimum road widths, whether it's going to be 20, 18 or 12 feet. I think those issues need to be addressed in any motion that you undue dealing with this variance. You need to have some type of minimum road width that's suitable for emergency vehicles and staff would like to make that recommendation.

Commissioner Varone: Mr. Chair, with the recommendation of staff, I'd like to include that language, but I don't know exactly how to word it.

Michael McHugh: What you could do is, you could amend the condition to read that the applicant shall improve Favorite Gulch Road to have a minimum driving surface width of "X" number of feet. Staff would recommend a minimum of 20 feet. The applicant would also be required to make all slopes less than 11% for grades greater than 500 feet and all curves shall comply with the minimum radius standards of the county subdivision regulations.

Commissioner Varone: Mr. Chair, I'll accept that language with regard to the 8 locations that the applicant is referring to.

Commissioner Tinsley: Okay, I'm a little confused here. Don't we need to make, did you not advise us to make the slope recommendations in a separate motion?

Michael McHugh: You can either amend the condition of approval that requires the road to be brought up to county standards and I believe that's Condition #6 and that would reflect the language I have you, you'd still have to give, grant a variance from the county road improvement standards so there's 2 motions that are here; first you grant the variance then you modify the condition of approval.

Commissioner Tinsley: That's what I was thinking. I'm back on the page.

Michael McHugh: I'm sorry.

Commissioner Murray: Mr. Chair

Commissioner Tinsley: Commissioner Murray

Commissioner Murray: Mr. Chair, commissioner Varone, Mr. McHugh, at what point to we point do we put a 20 foot minimum per road width? The next motion or this motion?

Michael McHugh: Well, first you have to address the variance request and that is not to construct the road to county standards, then you can go back to Condition #6 and establish what your minimum criteria would be now for those sections. So act on the motion for variance, act on the next variance request, then when you make a motion to approve or deny the subdivision, you will modify Condition #6 to reflect the variance.

Commissioner Tinsley: Is everybody clear?

Commissioner Murray: Mr. Chair, one more question.

Commissioner Tinsley: Commissioner Murray

Commissioner Murray: Commissioner Varone, Mr. McHugh, at what point for an emergency exit out of the subdivision do we add Huotari Lane to the mix?

Michael McHugh: Huotari Lane is not in the subdivision. It's not proximal to the subdivision because the remainder parcel is greater than 160 acres. The board has no authority to require any improvements to that based on this subdivision. If the applicant is willing to do so, we welcome that, but it's not something within the board's purview to do under the review of this subdivision.

Commissioner Murray: In the third from the final paragraph of Mr. Retz's letter "for an emergency exit from a subdivision", Mr. Retz makes the agreement that they're willing to use, if Huotari Lane is a public access road, that they're willing to use that as an emergency out of the subdivision in case of wildfire. At what point do we include that. In this motion, in a second motion, in a third motion?

Commissioner Tinsley: Commissioner Murray, Commissioner Varone, Mr. McHugh, I would probably recommend we do that in the conditions of approval.

Michael McHugh: You can modify the conditions of approval, again it's staff's opinion and we will have to talk to the deputy county attorney because the road is not in the subdivision, does not directly serve the subdivision except, I mean there's no connection between the proposed internal access road. Maybe Mr. Alles or Mr. Grebenc could speak to it, but I don't think again that it's in the purview of staff or the board to make it a requirement. Again if the applicant wishes to do that of his own free will that's fine, but to make it a condition I think it exceeds our authority.

Commissioner Tinsley: Thank you Mr. McHugh, further questions of Mr. McHugh? You have before you a motion to improve the variance and a second. Any further discussion? All in favor of the motion signify by saying aye. Opposed? No. Motion passes 2-0 (Commissioner Tinsley denied, Commissioner's Murray and Varone approved)

Commissioner Tinsley: We have one more variance. This variance deals with the section of law regarding dead end streets and a temporary cul-de-sac that ends the variance to exceed the 1000 feet that's currently in law, is that correct Mr. McHugh?

Michael McHugh: Yes, and the cul-de-sac will not be temporary. It will have to be constructed to allow movement for emergency vehicles.

Commissioner Tinsley: That is what our variance request is, is there a motion?

Commissioner Varone: Mr. Chair, I move that we approve this variance request. If I receive a second to this I'll explain why I make a motion to approve.

Commissioner Tinsley: We have a motion, is there a second? We have a motion is there a second?

Commissioner Murray: Not I.

Commissioner Tinsley: Seeing none, the motion dies for lack of second.

Commissioner Varone: Mr. Chair?

Commissioner Tinsley: Commissioner Varone

Commissioner Varone: Even though it died I'd like to explain the reason that I think this needs to be approved is that there was considerable discussion about the water source availability that the applicant is willing to construct and the fire chief got up and said that he worked with the

applicant and he was comfortable with the water source and what the applicant is willing to do to meet their approval and that's why I was agreeing to the longer than 100 foot. I think it's something that we need to do.

Commissioner Tinsley: Thank you Commissioner Varone. Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone, I believe the exit on Huotari negates the need for this dead end variance, that it's a way out, that it's no longer a dead end.

Commissioner Varone: Thank you Commissioner Murray. Further discussion? Seeing none all in favor of the motion, oh there is no motion, we're going to move right to the

Michael McHugh: Commissioner's if you don't grant this variance, you cannot approve the subdivision.

Commissioner Varone: Mr. Chair

Commissioner Tinsley: Commissioner Varone

Commissioner Varone: Commissioner Murray, that's why I wanted this seconded because we can make the appropriate changes that we need to in the conditions of approval if we grant this variance.

Commissioner Murray: Mr. McHugh has stated that we cannot. I'm prepared to second a motion to approve the subdivision, I'm not prepared to approve a variance greater than 1000 feet, but I think the applicant has solved that problem with the solution that they're proposing.

Jerry Grebenc: Mr. Chairman, Commissioners, I think the fact that the applicants have proposed a second route to Huotari. I think if it was the county imposing this upon the applicant I would agree completely with Mr. McHugh, but the applicants apparently have in writing, it's probably in my packet, but if it's in writing they basically consented to doing that.

Commissioner Tinsley: Mr. Grebenc, I'm going to go out of the norm here and ask the applicant's representative to approach if he would. I'm going to ask him a question regarding the statement that was made in writing. Mr. Retz, would you mind approaching? Mr. Retz as you can see there's an unwillingness on the part of this board to grant this third variance, however you have in writing and I'll read it verbatim, "Also, the applicant has volunteered that Huotari Lane would be deemed a public access road and they would construct an internal access road from the property to Huotari Lane. Does the applicant agree with that statement?"

Dean Retz: Mr. Chairman, Commissioner's Murray and Varone, the situation the remainder land does abutt Huotari Lane. You'll remember on the March 1st hearing both myself and Mr. Reese, the surveyor, said Huotari Lane is private. In talking to the applicant I want to quote something from Mr. K. Paul Stahl and this is a generic statement: "If the road serves more than one home we presume it is public. If someone disagrees, the burden of proof is on them to show that road is private. If that private designation is not on a plat or on a deed, the presumption is that the road is public." What we're stating is, because they would like another access into their ranch property, if this is deemed public, yes they would construct Huotari Road and that would take care of what Commissioner Murray said, that would do away with the 1000 foot variance. The problem is if the homeowners say it is private, and quite honestly one of the gentlemen I believe said that it was deeded, on the deed as private, then I agree with Mr. McHugh, that this subdivision is dead.

Commissioner Tinsley: Mr. Retz, it's also come to my attention that if you, you do agree with the Huotari Road statement that you made, correct?

Mr. Retz: Yes

Commissioner Tinsley: It's also come to my understanding that that road would have to meet county standards and if you weren't willing to make it meet county standards there would have to make another variance requested.

Mr. Retz: Yes, but keep in mind, Chairman Tinsley, I put "applicant has volunteered that if Huotari Lane would be deemed a public access road then they would construct additional internal access road". I did not put in there "under county standards" but this family has constructed roads and if you put that in, we would concur with that.

Commissioner Tinsley: To construct to standard?

Mr. Retz: To County standards

Commissioner Tinsley: Is that okay, does that satisfy your concern, Mr. Grebenc?

Jerry Grebenc: I would ask Michael to weigh in, if the board is going to put this condition of approval, typically if you're not going to permit a dead end road it's got to meet county standards and to what extent, what distance, where does it. I know the board granted a variance for Favorite Gulch road so the question becomes what section of road needs to meet county standards and what doesn't.

Mr. Retz: May I suggest maybe a compromise, that we could put in there that if this road is deemed public, we will do it, if not we would try to go the 1000 foot variance. One other thing before I, maybe I'm mixing my metaphors here, but in the memo we did state that we would, that the only slope that Mr. Reis, surveyor said, was over the 11% that we put in here that we would construct that slope down to county standards, which as Mr. McHugh says, 11%.

Commissioner Tinsley: Mr. McHugh, please jump in here.

Commissioner Murray: Excuse me, Mr. Chair, before we lose Mr. Retz, could I ask a one question? Explain what "deemed public" means. Who's the deemor or the deemeer?

Mr. Retz: I am using that language from an email that I was given by the permit coordinator. This is Mr. Stahl's language; "the burden of proof is on the private, the homeowner to deem it private", but keep in mind that Mr. Reis feels that when Huotari Lane was constructed, that road has a COS number. If that's the case, then according to Mr. Stahl then it's deemed private.

Commissioner Varone: Mr. Chair, can I ask a question of either Ron or Jerry? What if we require the applicant to complete their section of the road to Huotari Road and it be deemed a public road. In the event that there were an emergency, then the fire department would use that road as an access road. Is there anything wrong with that? Part of it be private, part of it be public?

Ron Alles: If I understand your question, you mean if it was deemed private and if emergency services used that road. I think the issue then would be we can't provide access to that as if it was a public road if it's been deemed private. So we wouldn't want to allow a subdivision to go through utilizing a private road when we know it's private. For our purposes today, this is a public road as determined by the County Attorney's office and no one has shown us otherwise.

Commissioner Varone: So then are you saying that we can make that as a condition of approval to improve the road to Huotari Road?

Michael McHugh: As Mr. Retz has indicated on all COS's and all the deeds and everything it's clearly recorded as a private road. What you might consider doing is placing a condition of approval saying that the applicant might provide documentation that Huotari Road is a public access easement which would permit connection to it. If the applicant failed to provide that documentation to the County Attorney and staff then he would either have to come back and request a modification of conditions of approval then deal with the variance or he would have to drop the subdivision. And again the ownness is on the applicant in providing the documentation that is a public road or he could work with the property owners up there and reach some mutual agreement establishing it as a public road. That would require modification of all deeds and COS's that are currently recorded.

Commissioner Varone: Would it be possible for the applicant, if we put language in there that's similar to that, could we also add language that if it's still deemed to be a private road that the applicant receives emergency access only. Would that work?

Michael McHugh: Again, if its' a private road, the Board of county Commissioners have no authority to place any conditions or use or stipulations on that road.

Jerry Grebenc: And if I might add, Commissioners, with a private road the people that live at the end of it could put up a massive steel gate, lock it and not have to necessarily provide access to anybody and that's just the reality with a private access easement and a road.

Commissioner Murray: I'm comfortable putting the ownness on the applicant today and if all else fails having them come back and ask for a modification. We wouldn't be setting a precedent that we haven't followed by allowing a modification. It's nice to have both of you with me wrapped around the axel than just me by myself wrapped around it.

Commissioner Tinsley: I'm only Chairing the meeting Commissioner, I haven't wrapped myself around anything yet. The opportunity is quite there and I realize that. We are at the point where we have not approved the third variance. There's an indication from at least one commissioner, possibly two that they're willing to go forward with a positive motion for the approval of the subdivision, however, which seems out of the norm, they have to get conditions of approval to justify their motion so the Chair will entertain a motion at this point.

Commissioner Varone: Mr. Chair, I make a motion to approve the proposed minor subdivision preliminary plat to be known as the Hidden Bay Estates Minor and authorize chair to sign including the conditions.

Commissioner Tinsley: We have a motion, is there a second?

Commissioner Murray: Second.

Commissioner Tinsley: We have a motion and a second. Commissioner Murray? Are you ready Commissioner Murray, if not I can move to Commissioner Varone.

Commissioner Varone: Lets start with Condition of approval #6. Michael you provided some language that talked about improving Favorite Gulch road and I'd like to change the language and I don't know exactly how to word it to talk about improving the 8 curves as stated in the documents that were provided to us, including the slope of the road cannot exceed 11%. I think we maybe need to start there and Commissioner Murray can add the condition regarding the improvement to Huotari Lane.

Commissioner Tinsley: Mr. McHugh, this is not a majority, would you translate that?

Michael McHugh: I think what the commissioner is asking for is language that, something similar to "the applicant shall improve Favorite Gulch road to a minimum driving width of at least X number of feet". That's up to the commission to decide.

Commissioner Murray: Twenty

Michael McHugh: Okay, twenty feet. All grades on the road shall be less than 11% and then all radius shall be improved to minimum county radius standards.

Commissioner Varone: In the 8 areas.

Michael McHugh: In the 8 areas and you probably, for legal reasons, want to note that it's in the memo dated March 9, 2005.

Commissioner Tinsley: We have a motion

Commissioner Murray: Second

Commissioner Tinsley: We have a motion and a second, the motion lays out the minimum driving width of the roads of 20 feet, the grades at 11%, all the radius will meet minimum requirements. This pertains to the memo from Dean Retz dated March 9, 2005 wherein he identifies 8 curves on the road of what they're willing to fix. Is that correct Mr. McHugh?

Michael McHugh: That would be correct.

Commissioner Tinsley: We will allow you to wordsmith that after we're done with this so it meets the commissioner's intent. Is there a discussion to amend #6. Seeing none, all in favor say "aye". Motion passes (3-0).

Commissioner Varone: Mr. Chair, there's a recommendation by the applicant to modify the condition of approval #10 that I'd like the commissioners to take a look at. It's more restrictive and requires more than our original does and it reads, "Install a tank and wet hydrant capable of delivering 500 gallons per minute for 30 minutes, equipped with a well to ensure the tank is full at all times or the applicant shall submit to your volunteer fire department a fire protection plan. The plan will include an onsite fire source capable of delivering 500 gallons a minute for 30 minutes and be a year round source. The applicant must submit to the York Volunteer Fire Department a final plan including design of the road and access to the water source." I would like to make a motion to add that as a replacement, but also, the last sentence currently reads, "The applicant must submit to the York Volunteer Fire Department a final plan". I'd like to add that the volunteer fire department must approve the final plan.

Commissioner Tinsley: We have a motion to amend Item #10. Is there a second?

Commissioner Murray: Second

Commissioner Tinsley: There is a motion and a second. Any discussion? All in favor of the motion signify by saying "aye". Motion passes 3-0.

Commissioner Varone: Mr. Chair, there's a just a final condition of approval #11T and #11V. They had some language inserted in there that shouldn't have been. Item T said "Notification that all property owners are required to receive an approach prohibition". I believe that is should say, "Notification that there's prohibition of raising, keeping or confinement of livestock." I believe that's the way that should read.

Commissioner Tinsley: And after your motion, commissioner, I'd ask for a friendly amendment, that you include "excepting 4-H Projects".

Commissioner Varone: That's fine.

Commissioner Tinsley: Is there a second? Second. We have a motion and a second. Any discussion? And we're eliminating the words "receive" and "approach".

Commissioner Varone: Correct

Commissioner Murray: That was mistakenly put in there? Bring the phrase "Except 4-H Projects". Is there any discussion.

Michael McHugh: Commissioner. I believe what staff was wishing to do was indicate that there was a notification to future property owners, that they are required to get approach permits for their individual driveways and in addition to that there would be an additional covenant.

Commissioner Varone: I believe that's Item #V

Commissioner Tinsley: Yes, there was some additional language that was mixed into T on accident.

Michael McHugh: Okay, sure just so we get it in there.

Commissioner Tinsley: Right. All in favor of the motion say "aye". (Commissioner's Tinsley and Varone supported 2-0) Opposed?

Commissioner Murray: Aye

Commissioner Tinsley: Motion passes 2-1

Commissioner Varone: I believe Item #V is okay. Let me read it to Michael. It says, "Notification that each property owner shall obtain an approach permit from the county road department prior to construction of the driveway approach." I believe that's what it says.

Michael McHugh: That is correct.

Commissioner Tinsley: Commissioner Murray

Commissioner Murray: In the same condition #11

Commissioner Tinsley: Commissioner Murray, I just noticed something. There are 2 number #11's on page 10.

Commissioner Murray: Okay, in the second #11

Commissioner Tinsley: We need to correct this as well.

Commissioner Murray: Condition #U, I'm not sure if it was the applicant or myself that has a problem with the ambiguous "at a minimal height." I sure do. What's a minimal height? How can the applicant be in compliance if minimal is not defined?

Commissioner Tinsley: Mr. McHugh

Michael McHugh: No comment.

Commissioner Tinsley: Would you like to set a minimal height commissioner or would you like to strike any portion of that?

Commissioner Murray: Well, I'd ask Mr. McHugh to give me some help in defining minimal.

Michael McHugh: A lot of this is addressed in the conservation plan. If you establish minimal height, you're trying to establish habitat for Upland game birds and other wildlife species. It's going to be a different height than what it would be around the building. What you could say is "less than 3 feet in height around all permanent structures" or something like that because we're dealing with several different topographic and vegetative areas on this property.

Commissioner Varone: Mr. Chair, I think we might get to where we need to go to by just striking that last sentence. If we simply say, "each lot shall be maintained in clean, attractive and weed-free manor. Obnoxious weeds must be pulled, sprayed or cut." That might get us where we want to go. If not, it'd put us in a position to having to put in a height.

Commissioner Tinsley: Mr. McHugh, if we did, as Commissioner Varone suggested, and sited the sections of law, would that be sufficient?

Michael McHugh: Yes and your proposal for Condition #10, there's suppose to be a vegetation management plan developed in conjunction with the fire department.

Commissioner Tinsley: Right. We came up with some language a couple of months ago that we wanted to insert in here if we can and I think at some point we should try to make that a standard if we can, I think it was very good language.

Commissioner Murray: Second to Commissioner Varone's motion

Commissioner Tinsley: So we have a motion to strike the last sentence and in #12U. There's a motion and a second, all in favor say "aye". Motion passes. (3-0)

Commissioner Murray: Mr. Chair

Commissioner Tinsley: Commissioner Murray

Commissioner Murray: I would move the commission add a 16<sup>th</sup> condition stating, "on condition of approval, the applicant shall provide documentation that Huotari Road is a public road."

Commissioner Tinsley: We have a motion, is there a second?

Commissioner Varone: Second. Discussion. Do we need to include language that requires the applicant to improve?

Michael McHugh: Commissioners, that would be covered under a modification of Condition #7 where it addresses the internal access road. You could add Huotari Lane.

Commissioner Murray: Thank you. It's Huotari Lane. The motion should read Lane rather than road.

Commissioner Tinsley: So lets deal with motion #16 and then we need to come back to #7 and add Huotari Lane after that. We have a motion for Condition #16 and a second, any discussion?

All in favor say "aye". Motion passes (3-0) Commissioner Murray, I assume you have a motion to add Huotari lane to Item #7? Is there a second?  
Commissioner Varone: Second

Commissioner Tinsley: We have a motion and a second, any discussion? All in favor of the motion signify by saying "aye". Motion passes (3-0)

Jerry Grebenc: With Mr. McHugh's indulgence, it would seem to me that you need to have a condition of approval that requires that the internal access road that is currently proposed connects to Huotari Lane. Right now there's no language that requires that.

Michael McHugh: We could include that in a modification of Condition #7 requiring the improvement and connection of Huotari Lane and the internal access road.

Commissioner Tinsley: Which commissioner would like that one?

Commissioner Murray: I think we could do it by concurrence. If you want a motion, I so move.

Commissioner Varone: Let's formalize it, second.

Commissioner Tinsley: We have a motion and a second to adopt the language Mr. McHugh just explained for Item #7. All those in favor of the motion say "aye". Motion passes (3-0) Thank you Jerry. Good catch. Further discussion on the conditions of approval? I have renumbered on page ten. We had 2 #11's. I changed the second #11 to #12 and I renumbered the entire document. We now have 6 conditions of approval. Are there any further amendments? Hearing none, all in favor of the Proposed Minor Subdivision preliminary plat to be known as Hidden Bay Estates Minor with 16 Conditions of approval as amended signify by saying "aye". Motion passes (3-0) Thank you Mr. McHugh for bearing with us this morning. We appreciate it. Thank you Mr. Retz and the applicants. Appreciate it.

**Proposed Minor Subdivision, Preliminary Plat to be Known as the O'Reilly Minor.** (The applicant, Kathleen Mary O'Reilly, on behalf of the O'Reilly Family Trust.) (Planner, Michael McHugh)

Commissioner Tinsley: Mr. McHugh, first let me ask the applicants if they're present. Mrs. O'Reilly have you received all the documentation and are you prepared to go forward this morning? The applicant is signifying by saying "aye". Thank you very much.

Michael McHugh: Hopefully and briefly, what the applicants are proposing to do is to create a 5 lot minor subdivision out of 175 acre parcel, it will be created through a boundary line relocation. Subject property is located west and adjacent to Glass Drive. Most of the land uses in the area consist of ranchette development to the east and to the south. We do have a fairly high dense subdivision located along Wooten and Honey Drive where these lots are approximately one acre in size. The proposal is to have all the access off of Glass Drive, which will be done through individual approaches between the various lots. There is a remainder parcel that's in excess of 160 acres that's located through the west. What the applicants are proposing to do is to provide 60- foot access easements between lots 1 and 2 and lots 4 and 5 to allow for potential redevelopment or development of that property. The existing access, the gravel driveway, is located pretty much on the boundary line of proposed lots 2 and 3. Vegetation in this area includes mainly sagebrush, bunch grasses and some infestation of noxious weeds. As far as notice, we did place notice in the IR (Independent Record Newspaper) and signs on the property. We did receive at least 3 letters, which are attached to the packet. In the packet there's concern, particularly from property owners located to the south of this property about the availability of water in this area and we did receive some comments about an over-abundance of at least one wildlife species in the area. As far as covenants, the applicants are proposing

covenants. There are currently no covenants on the property. The proposed covenants would restrict the use to only single-family residential uses with homes of a minimum of 1200 square feet. It does allow for grazing of animals. It sets a limit of large animals; 2 per 10 acres and it does establish some setback requirements. As far as review criteria, the soil mapping units in this area are not identified as being prime or of statewide importance. The individuals are proposing to utilize individual on-site waste water treatment systems. There are some slight to moderate constraints to on-site waste water treatment systems due to slow percolation rates and large stones in it and as one moves farther north up on the subject property the usable soils become shallower in depth. As far as water supplies, the applicants are proposing to utilize individual ground water wells. The water source in this area is from a fractured bedrock aquifer. Wells range from 10 to 535 feet. The well located at the original homestead is currently 120 feet and has a yield of 15 gallons per minute, while the yields from wells around there range from 6-100 gallons per minute. The Water Quality Protection District (WQPD) did indicate that through their monitoring efforts they have seen an overall decline of the static water levels in this area. As far as utilities, all the necessary utilities are provided adjacent to Glass Drive and the developer will need to extend those utilities to provide service to the individual lots. As far as access, Glass Drive is located on the west. Again, the proposed improvements via proposed access through individual driveways. Glass Drive north of No Creek Road does not meet county standards. Staff has placed a proposed condition of approval that the applicant will be required to extend Glass Drive to county standards from the intersection of No Creek Drive to the northern boundary of the property. As far as schools, the attendance areas for elementary and middle schools do have capacity constraints and may require additional bussing. Currently, the bus system cost \$2.75 per mile for the standard 82-passenger bus the district is utilizing right now. As far as fire protection, the subject property is located within the West Valley Fire District who is either requesting that onsite water improvements be made. These improvements at a minimum would deliver 500 gallons per minute for 30 minutes or the district would accept a \$500 per lot fee to reimburse them for additional water sources in the area. As far as impacts in the natural environment, the subject property is located in the Department of Natural Resource Council (DNRC) Temporary groundwater control area. All wells would be required to be permitted by the department prior to drilling and there may be some additional pump tests that would be needed in conjunction with the development of these wells. Again, the WQPD has indicated that they've seen a continuous decrease in the static water levels over the last 10 years and the decrease is approximately 10 feet. There are noxious weeds located on the property. The applicant would be required to do a five-year weed management plan and maintain the property in a weed free manor. As far as wildlife and habitat, Montana Department of Fish, Wildlife and Parks describes subject area as being the last strong hold for Prong Horn Antelope in this area. They also noted that this is one of the few remaining Prairie Dog towns located within the Helena Valley. Looking at this overhead, all these little white dots are prairie dog burrows. As far as ground water, the current ground water background; nitrate concentrations range from 1.1 to 2.43 milligrams per liter. The well located west of the subject property has a nitrate concentration of 1.19 milligrams per liter and the preliminary analysis indicates that nitrates would increase to approximately 1.94 milligrams per liter. If the road is constructed to county standards, there's no

### **Tape #1, Side A stopped here**

Short, unnamed seismic faults located near the property. Staff recommends approval of the proposal subject to 13 conditions as contained in the staff report.

Commissioner Varone. Asked for clarification of pro rata reimbursement of road network. Cond 9.i.

Dean Retz. This proposal is under the old subdivision regulations. This proposal started in 1993.

The applicant concurs with all conditions of approval including fence and road requirement.

Vance Skillman, Birdseye Road. The homes are not single-family dwellings. Well going dry.

Larry Sickerson. Fencing issues of FWP—full support of the fencing stipulations and are adequate enough for wildlife.

Lonnie Brookshire, 5624 Brookshire. Has a drain gulch and runs through Wooten Subdivision.

Julie Dowlen, 80 Alfalfa Road. Remainder portion along interstate is where antelope tend to congregate.

Larry Sickerson. Antelope know no boundaries and will range throughout the area.

Hearing no comments, the public hearing is closed.

Dean Retz. Estimate from hydrogeologist and the application will voluntarily conduct 24 hour pump test.

Commissioner Murray moved to render a final decision Thursday March 17, 2005 at 10:00 a.m. Commissioner Varone seconded the motion and it carried unanimously.

The Commissioner took a five minute recess.

**Proposed Minor Subdivision, Preliminary Plat to be Known as Wild Wind Minor Subdivision.** (Robert Martin, applicant) (Planner, Jerry Grebenc)

Commissioner Tinsley: Is the applicant present? Mr. Martin, have you received the packet and are you prepared to go forward this morning? He's nodding in the affirmative.

Jerry Grebenc: The subject property is located west of North Montana, adjacent to Wild Wind road. This is approximately 2.5 miles north of Lincoln Road. Here's an aerial photo of the subject property outlined in yellow. The applicant is proposing to create 3 lots. It's actually 2 additional lots, there's obviously one existing lot. The applicant wants to create 2 additional lots, each for one single-family dwelling. The lots would be approximately one acre in size. Currently the property's developed with a single family home, outbuildings, corrals and fencing. It was used for keeping horses in the past. This is pretty much what the preliminary plat would look like if granted approval. This would be the lot's lines, lots 1,2 and 3. This is a photo of the existing home on the property; conventionally built single-family home. This is looking north past the fence along the subject property, the home. Looking west toward Bartmus Drive you can see Great Divide in the background. Adjacent land uses to the north, you can see Polaris major subdivision that was granted preliminary plat approval for 16 lots. To the south is the Hooper Minor with single-family homes, to the east is a single-family home on North Montana Avenue, to the west Bartmus Drive and single-family homes. This is a view looking on the west end of the property directly at Bartmus Drive, now looking north towards where the Polaris Major Subdivision and further north is the Lone Wolf Subdivision. With regards to sanitary sewer, individual onsite systems are proposed. Soils do have severe constraints and DEQ and Health Officials approvals would be required. Individual wells are proposed also. Wells depths in this area range from 93-130 feet, yields of anywhere from 20-45 gallons a minute. The property is located in the ground water control area and pump tests for wells may be required. With regards to streets and access, the legal and physical access would be Wild Wind Road via North Montana. Wild Wind Road would need to be constructed to a 24-foot wide gravel standard under county road standards. Currently the road does not meet that construction standard for construction the crown or width. Additionally, the asphalt apron that currently exists at the intersection of Wild wind and north Montana Avenue would need to be widened to meet county standards. Another issue is there are a number of potential encroachments within the public

access easement for wild wind road. The applicants would need to address any encroachments on their property and the county would need to address deal with those and the remainder of the easement. Additionally, staff is recommending a 30-foot wide extension of easement for Wild Wind Road across to Bartmus Drive to facilitate any future connection. Staff is not requiring construction of that road at this time. Here's a photo of the condition of Wild Wind Road approximately a month and a half ago. As you can see it's pretty pot-holed and there is no crown. Right now at the end of where Wild Wind road intersects with North Montana Avenue, it's approximately 24 foot wide. Down towards the west end where Wild Wind road starts to take a turn south, the road is approximately 22 feet wide. This is a photo of the existing asphalt apron; it's approximately 18 feet wide. The standard is 24 feet wide, with a turning radius out to 25 feet wide to abut North Montana Avenue. The asphalt apron would need to be widened. This is a photo looking down the applicant's fence line. It appears that there are a number of fences and whatnot that do encroach within the public access easement. That easement is 60 feet wide and at most places, if you just look at the distance between fences, it's anywhere from 40-44 feet. This is down at the west end of Wild Wind road where it starts to turn south. It's approximately 44 feet between those fences so somebody's fence is located within the easement and that will have to be addressed either by the applicant or by the county depending on the location. In regards to the easement that staff is proposing, if you look at the outline in yellow, that's the subject property and the one thing I would caution everybody looking at this, the lot lines that you see are not accurate, they're from the BLM and their surveying work is dubious at best. We use these lot-lines as general locations only so don't be alarmed if you see that the lot lines are not where they probably are. The red line would be the extension of the easement for Wild Wind road along the southern lot line, proposed lot 3, would need to be 30 feet wide. In regards the fire protection, the properties in the West Helena Valley Fire Department. It's approximately a third of a mile to the nearest station. The fire department is requesting the installation of a tank or wet hydrant capable of delivering 500 gallons per minute for 30 minutes or reimbursement of \$500 per newly created lot and that would be 2 additional lots. In regards to the natural environment, there are potential negative impacts to ground water from on-site waste-water treatment systems due to soil constraints, also knapweed has been identified along Wild Wind Road. The applicants would need to do a 5-year weed management plan. That would need to be submitted to the weed management district and the property would need to be certified as weed free. The proposed subdivision would have minor visual impacts. That's primarily due to the fact that between approved and existing residential development, it would minor impact. Partial mitigation could include external lighting, restrictions on external lighting, under ground installation of utilities, architectural controls. In regards to health and safety, as mentioned before there are some constraints for waste water treatment systems. The Helena valley is noted for elevated levels of radon gas and there are earthquake faults located 2.5 miles to the north and 3.5 miles to the west. With that, staff does recommend approval of subject preliminary plat and that does include 16 conditions. I'd be happy to answer any questions.

Commissioner Tinsley: Thank you, Jerry. Any questions for Jerry? Jerry, I have one question if we could come back to that long shot photo of Wild Wind road; 60 feet from the center line of that is going to put it in both of those living rooms, isn't it, or pretty close?

Jerry Grebenc: Actually it would appear that if that fence, if you stood in the middle of the road and you went 35 (feet) either side it would probably take up approximately 5 to 10 feet inside the existing fence lines. What would need to be done, in the case of Mr. Martin, he would hire a surveyor to locate the exact location of the pins. He could contact staff, we could go out and look at the pins and say, your fence is fine or your fence is 5 feet within the easement, you need to move it. The issue becomes for staff, that there's a number of fences along the south and back to the east where Mr. Martin's property could likely be within the easement and those are encroachments and the county would need to address those. If they won't impede the construction of a road and installation of drainage, if they apply for an encroachment permit, it's likely they would be granted that, but that way it's one the record, the county's granted

permission for those encroachments. It really depends on whether it impacts road construction or drainage.

Commissioner Tinsley: Thank you, further questions for Mr. Grebenc? Does the applicant wish to make a statement at this point?

Mr. Martin: I think I'll wait for the comments.

Commissioner Tinsley: What we're going to do then, Mr. Martin, just so you know, we're going to go straight to public hearing, take any comments and I'll let you reserve the right to close and you can get up and address anything at that point. This is a public hearing regarding the proposed minor subdivision preliminary plat to be known as Wild Wind Minor Subdivision. Any proponents, opponents or general testimony, please come forward and state your name and address for the record. Mr. Sickerson.

Larry Sickerson, 1000 Wild Wind Road: I have prepared written comments and I believe they have been handed out and given to you. For the record, I'm largely in support of this subdivision. It is a better use of that property than the horse pasture that was currently there in its place. The last time I checked, horse couldn't eat stone, but they were certainly trying to do that. The county's recommendations for approval, the 16 stipulations, I think it's worth noting that the Hooper Minor Subdivision has a restriction on access as a condition of its improvement to Bartmus Drive. The county is recommending a 30-foot easement connection over to Bartmus Drive. I'm not sure why they are requiring that for future development, but at least for us, we're prohibited from accessing Bartmus Drive from our subdivision, which is the Hooper Minor Subdivision. Probably one of the largest concerns that I have is the road. As you can see from the picture there, it's in a very bad state of maintenance with very large potholes, in particular, that asphalt apron to North Montana has got some huge holes on either side of it where people turn into and out of the subdivision. If you fall out of one of those holes, it's very easy to get hung up on the framing of a low-slung car. Storm water runoff from Wild Wind road is non-existent. There is no crown and there is an existing snow drifting problem whenever we get a decent amount of snow out there in that country and that is a problem that I think will continue after the fact and after those 2 lots are developed further. I think something needs to be done to address that either through the covenants of their subdivision requiring that the area be properly maintained to maintain access for emergency vehicles. As it sits right now, with only a minimal amount of development, Wild Wind road once it snowdrifts in can be down to one single 10 or 12 foot lane of traffic. That's only going to get worse when they put landscaping in trees, fences garages and stuff along that road so that's going to become a problem. Again for the record, there's another issue, (end of tape. Last sentence not recorded)

Commissioner Tinsley: Any further public comment? Seeing none, this closes the public hearing. Mr. Martin, do you care to close?

Robert Martin: Jerry was just explaining to me that there was a 60 foot road there that has no ownership and it's something I was a little unclear on before. There are some issues, particularly on this picture as you can see that we may have some trouble getting ditches and stuff on a county road, but I think the road does need improvement. We live on it too and we do need it to be improved. So I think all of the conditions are probably pretty reasonable that the planning board has in front of us. As far as drifting, if the road is put up to county standards, I'm sure that will have a big improvement because there'll be some ditches in there to help catch the snow. I think that's all I have to say unless you have some questions of me.

Commissioner Tinsley: Questions of Mr. Martin? There are none, thank you very much, we appreciate it. Commissioners, what is your pleasure?

Commissioner Varone: Mr. Chair, I make a motion to render a final decision on the proposed

minor subdivision preliminary plat to be known as Wild Wind Minor this Thursday March 17 at 10am in this room.

Commissioner Murray: Second.

Commissioner Tinsley: We have a motion and a second to render a final on March 17<sup>th</sup>, all in favor say "aye". Motion passes (3-0). Mr. Martin, you can still go to Butte if you'd like to. You don't have to be here for the meeting, but you can if you want to. Thank you.

**Request for Modification of Conditions of Approval for the Bryant No. 3 Major Subdivision to allow one access to utilize Motsiff Road.** (The applicant, Robert Bryant) (Planner, Frank Rives)

Frank Rives: This first slide is a vicinity map showing the subject property (above). The lines indicate where the proposed internal access road would be as in the original proposal. This is an aerial photograph. You might also note that there are a series of wide red lines. I put these in to outline where the existing approaches are to North Montana are located in the vicinity of the subject property. This is a site plan of the Bryant #3 subdivision as originally proposed. One of the concerns that staff had was that for the proposed access in the original proposal where they would access Motsiff Road, that it was the determination of MDOT that it was these two proposed commercial lots needed to access the internal access road. This is a proposed replacement drain field and there was some concern with putting a road across a replacement drain field because 1) it would reduce the size of the drain field and thus it would be required to be re-engineered and plus 2) you really don't want cars driving in the close vicinity of the drain fields. The proposal that is before you, the applicants are requesting a modification of conditions of approval; specifically to #5 and #5A. Condition #5 requires that the subdivision directly access North Montana and the modifications of condition of approval if modified would allow the Bryant #3 to access Motsiff Road instead of North Montana. Condition #5A requires an approach permit from MDOT for the North Montana approach and approval of the modification request would require the applicant receive an approach permit from the county for the approach on Motsiff Road, which is a county road. As I mentioned in the original submittal, the applicants proposed to have the subdivision access McHugh Lane and Motsiff Road for their 2 required accesses for a major subdivision. In the public hearing before the consolidated planning board and the Board of county Commissioners, numerous residents whose property accessed Motsiff road objected to the proposed access onto Motsiff for this subdivision and it was one of the conditions of approval that the subdivision directly access North Montana and McHugh. MDOT was contacted by the applicants in relation to the systems analysis that was required and Dan Martin from MDOT met with planning staff on November 15, 2004 to discuss issues related to direct access onto North Montana. As a result of that meeting, Mr. Martin drafted a letter which you should have in your packet that stated it was MDOT's position that they should not have a direct access onto North Montana, that the access needs, and that was their words "needs" to be on Motsiff and then from Motsiff to access North Montana from an established access onto North Montana. They also mention that there was also several approaches on the east side of North Montana which might cause issues and that an additional approach on the west side of North Montana could further degrade safety and operation of that roadway. As I mentioned, this is just another aerial photo showing the existing approaches. This photograph I took on the property is approximately where the road would be proposed initially onto Motsiff road and this is what the approximate position to where staff would recommend the approach be, which is opposite that alleyway. I did contact the applicant and they are in concurrence and you'll see on your desk that they have come up with an alternate location of road. This would solve 2 problems; it would solve the problem of crossing the drain field, they could relocate the drain field and also it's just a better approach opposite an alleyway, rather than opposite a residence. It is the conclusion of staff that the access directly onto North Montana will probably not be approved by MDOT. They were rather adamant in their discussions with us, that they did not want access directly onto North Montana and they

preferred the Motsiff approach. As in all things, it's not concretely absolute, but I'm pretty sure they do not want an access onto Motsiff, they were pretty adamant about that. My second point is that there is a concern of the approach as proposed, that it was a little too far to the west and the new approach should be a little more to the east opposite that alleyway where it would not conflict with existing residents as much and it's just a better location for the commercial lots. It is staff's recommendation to approve the request for modification of conditions of approval subject to the amended conditions that staff has placed in the staff report in a memo dated November 6, 2004. That concludes my report and I'm available for questions.

Commissioner Tinsley: Questions for Mr. Rives?

Commissioner Murray: Mr. Chair, commissioner Varone, Mr. Rives, explain to me how MDOT adamantly said they didn't want the access onto Montana.

Frank Rives: We had a meeting with the members of MDOT, Mr. Martin and another member of MDOT whose names escapes me at this moment, with I and Sharon Haugen. During that conversation they were very insistent that's where they wanted the road and the letter marked November 15<sup>th</sup>, I think, the language says "needs to be" so I think that's pretty adamant that's what they wanted and just a side note, these clients and their representative did come before the commission once before requesting a modification of conditions of approval and the request was denied as far as going through the whole modification process and at that point I got in contact with Mr. Garberg, the representative, and he asked me "what was the problem" and I said "in my opinion Mr. Martin's letter wasn't strong enough so they got back to Mr. Martin and he drafted this letter that you have now dated in November that's a little more stronger in their recommendation.

Commissioner Murray: Mr. Rives, I was just curious if there's a mannerism we need to adopt to show how adamant we are that we didn't want it on Motsiff Road having denied it twice.

Frank Rives: I follow your question. As I'm hearing, the question, is that a question or is that a statement, I'm not sure.

Commissioner Murray: I'll suffice it and let it be a statement.

Frank Rives: And that's how I took it, yes.

Commissioner Tinsley: Any more questions of staff? Please Mr. Garberg, please come forward and state your name and address for the record.

Eric Garberg, Schwarz Architecture and Engineering, Kalispell, MT: I don't live, but work at 100 Financial Drive, Kalispell, Montana. I'm here representing Mr. Bryant on behalf of this issue. To speak real quickly to Commissioner's Murray's first statement, the document sent back to us from MDOT, their verbiage for where the access should be, was basically, we agree with option #1 and the TIS (Traffic Impact Statement), that is access to the subdivision will be from Motsiff Road. That was the direction we were given from MDOT. I guess what I'd really like to do is expound on the TIS process because I think that would help at least understand that we're not just battling between the opinion of 2 agencies, but there's a technical process which we go through, the traffic impact statement process, that process is designed to make sure that any impact created by the development on state owned roads is basically required to go through this process and indicate what those impacts are and address the best way to mitigate those impacts or a way to least impact the traffic system negatively. We went through that process and MDOT feels, as well as Schwarz Architecture and Engineering and your staff, that to do the least amount of negative impact to the system is to access Motsiff Road and the reason for that primarily is Montana is designed to function as an artery, to get people from one place to another as quickly as possible. In order to facilitate that function, we want to control and

minimize the number of accesses to that. You want to keep your major trip generators to as few as possible, located as close together as possible at least in one approach is I'm trying to say, in order to facilitate the function of an artery being in this case, Montana Avenue. So we've gone through this technical process and this isn't just our personal opinion, it's basically an opinion based on the technical merit of the TIS submitted to MDOT and their review. So the issue isn't a personal one, it's a technical one, or a political one I guess is what I'm grasping for there. Also, at one point, Commissioner Tinsley, you asked us if we'd be willing to look at other options. We have tried to work with the veterinary clinic and they are at this time are not interested in granting us an easement. Also, I'm not sure we could get a full 60-foot easement across there.

There's a well and some existing structures that may lie in the path of that easement. It would also require us to go through the systems impact process and once again create another major traffic generator rather than isolate that to one area which I think is better for the facility and I believe with MDOT's comments, they state that they concur with that assessment so all I'm really trying to say is we have looked at this and we honestly believe that this is the best technical answer to this problem, so does your staff and so does the state of Montana so aside from other issues those are the best technical ones we can represent at this time. I will remain available for any other questions you have. Thank you very much for your time.

Commissioner Murray: How many feet are you proposing to use of Motsiff Drive?

Mr. Garberg: We would propose moving it 120 feet to the east. We are now going to line it up with that existing alley, so now you have a current, your new easement will line up with an existing easement. I'm going to say probably 200 feet-250 feet, but that's a rough guess.

Commissioner Murray: Thank you

Commissioner Tinsley: Mr. Garberg, in your discussions with MDOT, did they indicate to you any remorse on their part for their failure in the past to adequately plan this stretch of Montana Avenue. It appears to me they're pointing out to you and using as a reasons to deny your request access points they've already granted too many in too many places and too close together. I know this sounds more like a rhetorical question and maybe even a little facetious, but my point is, they are the ones that granted it, not us and have they pointed that out to you, have they made any explanation to you?

Mr. Garberg: No, not in specific. In general, the system impact process is designed to create a mechanism to avoid continuing to do that so I think what they've done is acknowledge, yes, they have these issues, they're a real rural area and we've seen rapid expansion and that's generally changing these roads from rural arteries to urban arteries, to urban streets even, which changes their functionality and their modeling and I think that's why MDOT has created this process, the systems impact process, is to try and prevent that in the acknowledgement that yes, there may be issues and we no longer want to exacerbate or continue to expound on those issues so you're going to go through this process for any access we have and demonstrate to us that this is the least or minimal amount of impact or best possible solution given the reasonable scenario in front of us. One thing I would also like to point out is that the approach to Motsiff and Montana Avenue will continue to function at a level of service which is the second highest level of service possible so the additional traffic won't greatly impact the functionality of that intersection. It should continue to still function at an extremely high and acceptable level of service.

Commissioner Tinsley: Any further questions? Seeing none. Thank you, Mr. Garber. The Chair will now accept a motion if anybody has one.

Commissioner Varone: Mr. Chair, I make a motion to approve the request for modification for conditions of approval for the Bryant #3 Major Subdivision to allow one access to utilize Motsiff Road.

Ron Alles: Mr. Chairman, Commissioners, if I might, I believe we need a public hearing?

Commissioner Tinsley: We do need a public hearing here. Hold on to your motion, Commissioner Varone, my mistake. This is a public hearing on the proposed Motsiff approach for the Bryant #3 major subdivision. This is a modification of conditions. Is there anyone present who would like to make comments in the affirmative, in opposition to or in general. First one up to the mic, state your name and address for the record.

Richard Michalski, lot 1141 Motsiff Road: I'm obviously opposed to this access road coming out to Motsiff Road since my dwelling and lot are adjacent to the road that would come out to Motsiff road. I think the argument that the MDOT would not like to have the access road for this huge development come out to Montana 58 lots is feeble because of the following reason. If anybody goes out to that area you will find that there is access to Montana at many locations right near that Motsiff Road/Montana Avenue intersection. In fact, if you look at it closely, there are many accesses that are within 50 feet of each other and in fact, one home has a circular driveway that has 2 accesses to Montana Avenue within about 30 feet of each other. Obviously, the MDOT didn't plan Montana Avenue properly in order to keep these Montana accesses down to a minimum. However, that's what the situation is right now and adding one more access to Montana Avenue straight out from the development will not impact Montana Avenue anymore than it is now. Montana Avenue has been designed with a left turn lane, which Motsiff Road has not been designed. It is designed for these numerous access along that area, that's why they put the left turn lane in there. It could easily accommodate direct access to Montana Avenue. Another thing that should be considered is that I have, in the northeast corner of my lot, 4 large spruce trees that would block the view of any access road that came out to Motsiff Road. They're large Spruce trees and I see no reason why I should be forced to cut those trees down because of another development that's coming into that area. If you have a road that comes out to Motsiff Road, whether it's closer to Montana Avenue or not, those trees where they're located, are going to block the view of cars coming down from the west to Montana Avenue and also cars coming out to this proposed access road to Motsiff Road, looking west on Motsiff Road. Another problem would be the excessive traffic, noise and pollution from an access road coming out to Motsiff Road. All in all, I think the Commissioners should reject this request and I might add that nothing was said about a road coming across to Montana Avenue, across one of the commercial lots that owned by this same developer. It seems to me that it's obvious that this developer wants to keep the 60 foot road easement off of the business lot in order to make it more saleable, but hey come on now, this is a development that's owned by the same individual, both for the business lots and for the residential lots, and it only makes common sense to have the road come out directly to Montana Avenue, thank you, very much.

Commissioner Tinsley: Mr. Michalski, I will agree with your assessment, it does make common sense. I do want to point out I believe the developer did attempt to cross his commercial property at the southern boundary of that commercial lot and it was initially rejected my MDOT as well, that was his first request, is that correct, Frank?

Frank Rives: Yes, they did not want direct access for the commercial lots onto North Montana. It was their request that an internal access road be used for purposes of public health and safety.

Commissioner Tinsley: Mr. Michalski did ask or pointed out why didn't the developer have this access point come out onto Montana that would service the subdivision, correct?

Mr. Michalski: Yes

Commissioner Tinsley: They did ask that is that correct or not for the subdivision, not for the commercial lot, but for the subdivision?

Frank Rives: Yes, they went through the systems analysis process with MDOT and it was stated

in that November letter that they do not want direct access onto North Montana.

Commissioner Tinsley: Thank you very much, we appreciate it. Thank you Mr. Michalski for your comments, we appreciate it. Further comments, please approach and state your name and address for the record.

Pete Strizich, 1140 Motsiff Road: A moment ago you saw a photo of a blue house with a brick tiered fence around it, that's where I live. I probably would be the most impacted of any of the residents on Montana Avenue if it's insistent that we have a Motsiff Access to this subdivision. I'm not, per se', against the subdivision. I think in my opinion, the approach that's been made so far has been done on the cheap. I say that because I think they're taking the most economical approach to developing these roads and then they're deferring their problems onto you folks. There's such a thing as due process, if we wants to battle the MDOT he should do that. He shouldn't simply sit there and say "no, they said no and therefore we're going to dump it on the county commissioners and make them use their road for the access". He hasn't done much that I can see to get that access onto Montana if he really wanted to. As Richard mentioned a few minutes ago, if he did that, of course he's going to have to use up part of those commercial lots he has out there on Montana. Second thing in that train of thought is that 2-3 years ago, you have to realize that all of that ground, even the ground that the veterinary clinic were all owned by the same family. Part of the family sold off the ground for the veterinary clinic and now have the rest of the other side of the family wanting to put in their side of the division when they should have gotten together several years ago and done it and then it wouldn't have had that problem. I have the additional unfortunate position of having been placed by fate next to a place called, "The Valley Knife and Gun Club, actually the Valley Hub" and a moment ago you saw a photo of they referred to an alley and an easement. All it is is another one of Myron's crazy roads. There's a rode behind me. That road and now I'm going to have a road coming in front of me. I think I should just burn my property down and let them build roads all over and everyone out there would be happy. I don't mean to take anymore of your time, but I certainly think that the county commissioners would not be doing the best possible job they can for the citizens in this county if they roll over at this point and time and let the development go through without due process and by that I mean, Mr. Bryant has not gone as far as he can to get Montana access and besides who said god made MDOT in charge of everything. They work for us and we don't work for them. Simply because they sit up there and they think they don't want to have another access, doesn't make it so. Someone can go in and change that and I think it's Mr. Bryant's position to do that. That's all I have to say.

Commissioner Tinsley: Thank you very much for your comments, Mr. Strizich, we appreciate it. Further public comment? Further public comment, here we go.

Vern Evans, 705 Motsiff road: I'm here to complain I guess about the engineers or the owner's approach at using Motsiff Road as a access to the subdivision. I firmly believe that the more appropriate entrance or the access to Montana Avenue would be where the existing veterinary clinic actually has their approach. That approach could be developed in such a way that would accommodate both the veterinary and the original Kat Bryant residence and access into the subdivision. I know that the owner's representative said that they've looked at that veterinary clinic as not interested in granting an easement, but it looks to me like the most convenient to also the residents of the future subdivision and the access there would be best if approached off Montana Avenue at the approximate location of where the veterinary clinic now has their access. That's all.

Commissioner Tinsley: Thank you Mr. Evans for you comment. Further public comment?

Pat Robert Johnson: My concerns about access off of Motsiff Road are as I stated at our

meeting with you on October 21, 2003. (Read from minutes 11/25/03). At the public meeting November 25, 2003, Commissioner Tinsley moved to create a new condition #5 to read, "Applicant shall reconfigure or redesign the subdivision to allow for eastern access point to be on Montana Avenue and eliminate Motsiff Road point." Commissioner Murray seconded, Commissioner Varone said "aye" The motion carries. You commissioners then allotted a considerable amount of time to further discuss the Motsiff Road point. One of commissioner Murray's comments was that he was not willing to have this subdivision disrupt a well-established neighborhood that functions and maintained its roads. Commissioner Murray went on to say, "For that reason, I want to keep traffic off Motsiff and them (the developers) access onto Montana and I think it is up to the developer to go to the Highway Department and take care of this problem". Bryan Holling, county transportation manager stated that it seemed inappropriate to have the access on Motsiff due to the amount of traffic, which wasn't designed as a collector, it was designed as a local street. I find no mention in the transcript of the public meeting on November 25, 2003 where there was a motion or even any discussion that stated if the developer couldn't get access from the state then it once again would become a problem for we, the Motsiff road residents. Please keep in mind that approximately half of the Motsiff Road residents have lived, worked and paid taxes in Lewis & Clark County for 30-some years and many of us have had families that have lived in Lewis & Clark County for generations. We're proud of our neighborhood and having to add a minimum of 507 more vehicles on our street would be devastating to the whole of Motsiff Road. The state has installed a walk/bike path on the east side of North Montana, from 10-mile Creek to Sierra Road and is now in the process of extending the path all the way south to Target and the ShopKo area. For our children and grandchildren to access this path, they must first navigate past the traffic coming and going from the Hub Bar on the north side of Motsiff, then try to access the busy North Montana highway. This in itself is a dangerous place for our children and grandchildren, now add to this danger 507 plus cars coming out of the south side of Motsiff, now Bryant #3 subdivision, and I'm sure you can imagine the great danger our children would be in trying to access the walk/bike path. Motsiff road is a local residence street. There are no sidewalks, street signs or stoplights. Please work to make this corner more safe for our children and our families and not more dangerous. Thank you.

Pat Johnson: Thank you, Mrs. Johnson, for your comments. Further public comment?

Dee Strizich, 1140 Motsiff Road: I just want to do a grandma thing with you for a minute here. That's not an alley, that's not an access that is his land. It goes right up to our fence so that's not anything you'll ever be able to use. With all of these new subdivisions, I'm hoping there'll be new families with little kids. It's going to happen and do you want them getting off the school bus by the local bar? That's the logical place at that end where all those kids are going to come and that bar's open at like 7:00 in the morning. They have coffee and donuts if you want to go in. We worry so much about kids riding their bicycles through that alley, let alone little kids trying to get over to the convenience store trying to get a coke or a candy bar. You're really going to build up that traffic and they're going to go right down behind that bar. I just wanted you to realize though that that is not an actual alley, because we already went through that with Noxious weeds and stuff and whose property it was. All of the other access roads that were highlighted in red on this picture are one single-family roads. They go to one house. You're talking about creating a road with somebody said 500 cars coming onto the road facing my house. I think the MDOT would be better served to figure those 500 cars than to the 5-10 that are accessing Montana Avenue right now. They've got the perfect spot to do it. They already got the veterinary clinic there. There's a commercial lane to do it and I think it could be worked out. The other thing, on the line back into the vets, that's almost, the veterinary hospital is way back from that red line, that access line goes almost to where the new subdivision would be so it looked real short in the picture. That's all I have to say. If you'd like to come out and have a cup of coffee and look it over, I'd make you a cup. That's all I have to say. Just think about the little kids and the bar.

Commissioner Tinsley: Is there any further public comment? Further public comment. For the

last time, any further public comment. Seeing none, this closes the public comment on the request for modification of conditions of approval for the Bryant #3 Major subdivision to allow one access to utilize Motsiff Road. I would like to invite the applicant, Mr. Garberg, to come forward and close.

Eric Garberg: Thank you, I appreciate the opportunity. I'd just like to make a couple brief points. I too serve on an elected board, the city council in Whitefish and we grapple with many of these issues and I understand the difficulties of the people who live along Motsiff road and their concerns. I'd just like to go through a couple of points. The reason we go through the systems impact process is to mitigate those concerns. The intersection will function at almost the highest level of service possible as predicted in the quantitative analysis so I'm not sure exactly sure what dramatic concern there will be to the traffic flow that will cause or create a situation where it is no longer functioning at an acceptable level of service. We did propose to approach on the commercial property. The developer's not trying to do this on the cheap. There's really not that much difference to going north to access Motsiff and to heading east and seeing Montana avenue directly. What I'm trying to convey is that I understand their concerns. That's why we go through the process we did. The mention of due process, we did go through a process, we did evaluate the impacts on the traffic system and tried to mitigate those as best we could. The reason we keep bringing up MDOT is not necessarily my opinion because I want to say MDOT is saying this, but that MDOT is concurring as a third independent party and saying this is the best way to solve this problem. And I would ask you, you have constituents who aren't out in the audience today that are going to drive by there and never know this happened, but they're going to want that system to function at the highest level of service possible and that's what we're trying to do with this. That's the technical merit of the argument, politics and policy aside. I appreciate your consideration and thank you for your time.

### **Tape #2/Side A**

Commissioner Murray: If I wanted to enter a sleepy neighborhood and wanted to access their road, I think I'd want to meet with the neighborhood and perhaps suggest a asphalt map that ran 300 feet on Motsiff Road is that's the approximate length you want to use. Suggest that your access road onto Motsiff require all traffic in the subdivision turn right through the use of a barrier or something like that where you're meeting or offering the neighborhood something that has as we heard in testimony today, 30 or 35 years of raising their family using Motsiff Road, maintaining their road and now they're using it for their grandchildren and you're proposing to run 500 cars up and down it.

Eric Garberg: First of all, MDOT has looked at the approach and said verbatim, " An additional right turn approach turning bay is not necessarily there to facilitate the function. The developer would be willing to improve Motsiff road back to their approach, the issue is I believe it's at county standards, but I don't think that that if we can show a direct impact and I think you probably could with the intersection from Motsiff to Montana, I believe the road is at county standards now. The other issue is, our only other legitimate option would be putting both approached onto McHugh, which there's a couple of negative things, 1) it places both of your accesses very close together, it will also probably generate a short circuit of the transportation system with people trying to get back to that artery, which is Montana Avenue, they'll come out and then you'll see the trips in front of these ladies and gentleman's houses, which is not what we're trying to do. The effects of this development by moving it further east, should be kept as far away as possible, they should not see additional trips, or very few additional trips because the vehicles will access Motsiff far before they access their neighborhood. While I understand their concerns and the one about children and where they go for those of you those have kids, it's a substantial issue, but it's not something within the developer's ability to control here. The candy store is where it is, the alley is where it is and kids are going to find the path of least resistance between themselves and candy. As far as improving Motsiff, if there is a direct

correlation then this will impact it and there's a consistency that this road is not up to county standards, that's something that I can see as technical merit and understand that and we can definitely take that back and move in that direction so, but MDOT hasn't felt that was necessary to date and neither have we given the high level of function predicted that you'll see. I don't think you'll see 507 cars, but when we do our trip generation studies there's a very defined methodology. Right now when we did the trip counts, I believe there are 30 residents along Motsiff road, well by trip generation standards, I should have seen 300 trips when I went out there and I'm doing my counts and I didn't see anywhere near 300 trips, but given the worst case you may see that many trips, so that's what we're forced to design to.

Commissioner Murray: Thank you and I'm not going to give you the speech that I represent each of those 30 residences.

Eric Garberg: And I understand that, but you also represent the residents who want to see that overall system function as best as possible too and they're not here today because they have no idea this is going on.

Commissioner Tinsley: Questions? Alright, we'll take a motion.

Commissioner Varone: Mr. Chair, I made a previous motion that I'd like to rescind. What I'd like to do is based on the testimony from everyone, I'd like another opportunity, I've gone out there several times, but I really want to take a look at where the new proposal is and I'd love to have coffee with the Stizich's since Dee and I worked together for years, but that's not possible, but it's ex-parte' communication, maybe after. I'd really like to for myself take another look and walk around and that being said, I'd like to make a motion to render a final decision this Thursday, the 17<sup>th</sup> at 10:00.

Commissioner Murray: Second

Commissioner Tinsley: We have a motion and a second to render a final decision on the request for modification of conditions for the Bryant #3 subdivision to March 17. Any discussion. All in favor say "aye". Motion passes (3-0) Folks thank you very much for coming out this morning. Again, if you have any problems with tickets on your cars, please bring them up to the 3<sup>rd</sup> floor, Ms. Byrnes will take care of them for you or you can give them to the secretary. Thank you very much.

**Proposed Minor Subdivision, Preliminary Plat to be known as Guettler Tract A Minor Subdivision.** (The applicant, Northwest Bank of Montana & Brownlee Trust) (Bev D'Amato, planner).

Beverly D'Amato: This is the proposed minor subdivision for the amended plat of trac A, Guettler Minor subdivision located off of Lincoln road on the east said of Applegate Drive. The proposal is for 4 lots, 2 for single-family residence and 2 for commercial purposes, specifically for storage units. The 2 front lots on Lincoln road would be the commercial lots and the 2 back lots would be the residential lots. The lots will be serviced by on site sewer and water. Because of the nature of commercial use being storage units, no office is associated with it, there would be no need for on site sewer or water for either one of those 2 lots. Because this is a minor subdivision, no parkland dedication will be required and access to the proposed development will be off of Lincoln road via an internal access road. There's an aerial photo for you to show you the location of the property. The present land use is vacant land with on site vegetation consisting of native grasses and sagebrush and a light to moderate infestation of knapweed and thistle. Adjacent land uses, to the north there's pasture land, to the east pasture and some agricultural uses, the south pasture lands and rural residential and to the west an abandoned building and Applegate Drive. The proposal is not within any present zoning designation and therefore no zoning regulations govern the use of the land. The property has current covenants

in place. Those covenants essentially prohibit the use and placement of mobile homes, junkyards and other nuisances. All structures have to be set back 50 feet from the northern boundary line off of Lincoln road and notification of the controlled access onto Lincoln road west and specifically back in the 90's when they upgraded Lincoln road there was some discussion that there'd be some additional restrictions onto Lincoln road west. Agricultural uses, again this is vacant, the soil types are the scarvroe gravely-type 0 to 2% with excessive permeability in lime content. There are no water-rights on site and currently it's pasture land. Again, regarding sanitary sewer, it'll be individual on-site water treatment for single-family dwellings. Storage units are proposed for the 2 commercial lots so no sanitary sewers required for lots 1 and 2, again those are in the northern section of the plat. Severe soil constraints due to poor filtration and at the time of inspection by Department of Environmental Health, adequate lateral and vertical separations will be determined at that time. Water supply is the bedrock overlay with shallow alluvial deposits and it appears to be available, availability adequate for domestic use. The well depths average around 91 feet with the yields about 27 gallons per minute. Recharge for the wells completed in the area most likely are influenced by precipitation in a recharge from the Helena Valley alluvial aquifer. A hydrograph with several months of data that was provided by Kathy Moore and part of your staff report as well, suggest that there's a distinct seasonal variation in water supply here or water levels. The area is within the North hills controlled ground water study area so no wells will be able to be drilled without obtaining a license form DNRC. Services, solid waste will be at the Scratch Gravel landfill site. There are essential utilities located along Lincoln road west. I'm not sure about cable, but electricity, natural gas and telephone certainly are. There are existing easements along Lincoln road at Lincoln road west and easements along the access road will need to be delineated with the final plat and all new placement of utilities will have to be placed under ground. There's adequate legal and physical access. There will be an internal road accessing off of Lincoln road west that will need to meet county standards. A waiver of right to protest the creation or annexation into an RID will be required. The name for the internal access road will need to be approved through the county address coordinator. A stop sign will be required, I'll show you a picture in a little bit, there is a walkway that runs across Lincoln road and so a stop sign will be required at the junction of the proposed internal access road and the south side of that path so that there's adequate stopping distance before a car crosses, before it goes over the pedestrian walk onto Lincoln road and since the reconstruction of Lincoln road west in the 1990's will be a little more restrictive and the applicant will be required to get an approach permit from the MDOT for that approach onto Lincoln Road west. That would prior to final subdivision. Emergency services; fire protection is provided by the West Helena Valley Fire District. They have requested a fee of \$500 per newly created lot or the installation of a tank and a wet hydrant capable of delivering 500 gallons per minute for 30 minutes, to be equipped with a well to insure that the tank is kept full at all times. Also, they have requested that all commercial structures over 6000 square feet in size or larger, be equipped with a fire sprinkler system meeting the current standards of the national fire protection association and further that the developer should develop and maintain a fuel modification plan, which will be approved by the West Helena Valley Fire District prior to final plat approval. With regards to natural environment, there was no surface water found on site or seen on site. Overall ground water availability is good, although there is some correlation between the high levels of nitrates in the ground water in the higher density and septic systems in the area and this has been documented by WQPD. That's also stated in their letters and that's part of your packet. A 5-year weed management plan will also be required. Wildlife and habitat; there is occurrences of mule deer and prairie dog and the location of the property and the nearby residential development and Lincoln road it's itself, and Applegate discourages for the use of the site is a wildlife habitat, therefore no significant effects on wildlife and habitat shall result from the development of this subdivision. Subdivision regulations; the proposal meets all the subdivision regulations at this time. Effects on public health and safety; there's no flood plan identified ad no steep slopes are identified. Ground water contamination; water quality may be a concern in this area and these are some quotes taken from comments provided by Kathy Moore of the WQPD, "the area immediate to the west of the proposed subdivision, in Griffith-Davis proposed subdivision, has demonstrated high nitrates concentration. The higher sample

concentrations from these areas are due to the higher septic system densities and several sites in the area actually exceeded the EPA drinking standards of 10 milligrams per liter of nitrates. Cultural resources, none have been identified on the property, Traffic; the average daily traffic count, we're only really able to estimate around 16-20 per day based on the 2 residential units which is essentially 8-10 a day. However, the trip generation manual estimates 2.33 average trips per thousand feet of storage on a Saturday for a storage unit, because we don't actually have the square footage, the commercial uses were not quite sure how many that will entail so we're suggesting 19-20 might be a fair guess. Again, park land dedication is not required because it being a minor subdivision so staff recommends conditional approval of the proposed preliminary plat known as amended Guettler tract A minor subdivision subject to 19 conditions of approval.

Ed Tinsley: Thank you, Ms. D'Amato. In my haste, I forgot to ask if the applicant or the representative was present and they said no, somebody from Morrison-Majerle and there's another gentleman here present. First let's ask, is there any questions for staff. Would the applicant's representatives or representative, please come forward.

Tim Berry, Morrison-Majerle: I'm representing the applicant. I'd like to thank you for this opportunity. I have generally looked over the conditions of approval that have been set forth and basically agree with those conditions. The water issue, I've read different things in here that they said it was an issue, and then the current presentation that the ground water is generally good, which is to be believed the case out there giving static water level yields wells. The one other thing, Beverly was going to show a diagram with the stop signs. Do you have that?

Bev D'Amato: Well, it wouldn't be the stop sign necessarily, but this is the front of the property and the sidewalk, I'm anticipating and don't know exactly where the approach would be onto the property.

Tim Berry: That approach would be roughly about where the 3<sup>rd</sup> pole is in the distance.

Bev D'Amato: The idea really is to make sure that once the approach is put in that the stop sign would be on the south side of the path to make sure that there's proper stopping prior to going over the pedestrian path.

Tim Berry: Okay, the only comment I guess I would like to do is I would rather personally see a crosswalk signs put there on both sides of that. A stop sign doesn't really address the incoming traffic onto that to alert them of a crosswalk of potential because the kids do use that going to the school to the east and there's not very much stopping distance as you can see in that median between that and the road so I would like to say that would probably be a better solution possibly to have the yellow crosswalk signs possibly even just painted there or something, most likely yellow cautionary crosswalk signs. I'm a little bit behind because I just got this report this morning so I apologize for that.

Commissioner Tinsley: Take your time, you're alright.

Tim Berry: Applicant agrees to pay the \$500 per lot. There has been in the preliminary plat submittal in section #3, there has been a preliminary grading plan for that site and we will obviously as understand that we'd get approved for the commercial lots and then obviously can size drainage ponds accordingly for that area and the impermeability surface that is created to do those buildings. The other thing that was slightly confusing, I've read through reports, other reports, not even to this subdivision, and it talked about poor filtration and when I read that I read that the water will not permeate into the surface well. I've since then had, the 9<sup>th</sup> of March, had the on site evaluation during our brief stint of summer there we were able to do that and actually Frank Priscar suggested that they would have to be sand line trenches which would indicate they would have to be fast filtration trying to slow down infiltration into the soils so that

is a point of contention I guess is to surely understand which stance they are taking on that and again I do read filtration problems as being slow as stated in the presentation previously.

Jerry Grebenc: Mr. Chair, commissioners, if I might step in here. Typically staff will use the Helena Valley Soil Survey, the general map when we do our staff reports, but it's always advisable that those are general survey and that's why the Health Department does their own on site evaluations because it's not uncommon to find complete differences between what the soil survey done by the SCS back in the 50's and what's on the ground so typically you'll see what staff has in their staff report is what's in the survey and then when people go out to do their site evaluations they can be completely different.

Commissioner Tinsley: Thank you, Mr. Grebenc.

Tim Berry: Thank you for that clarification and we will assume then that we will make our designs and go through DEQ based on the on site evaluation. That's all I have thank you.

Commissioner Tinsley: Thank you, very much. Questions for the applicant? Will the other representative like to speak? Seeing no questions we are going to go to public hearing. This is a public hearing on the proposed minor subdivision preliminary plat known as the Guettler tract A minor subdivision. Are there any proponents, opponents or general testimony for this subdivision? If so, please come forward and state your name and address for the record.

Tom Bickler, 7425 Applegate: My only concern is the lack of rain and the water that we have out there. Over this last summer a number of wells have gone dry and people have had to re-drill wells. If we go back into a normal rainy season and so forth I would have no problems about 2 more homes out there and that's all I have for you sir.

Commissioner Tinsley: Thank you Mr. Bickler, I appreciate it. Any public comments? For the second time, for the third and final time? This closes the public hearing, Mr. Berry, would you like to close?

Tim Berry: I appreciate the concern of the ground water, that's obviously a concern that we all have in this especially during the time of drought, but none of us can control the weather obviously and without knowing the specifics of those wells and wells are very expensive to drill in general and often times people will hold shy of more acceptable depth to get into a decent aquifer. Yields out there in that valley, in that area, static water levels within 50 foot of groundwater, yields of upwards of 20 to 30 gallons per minute seems like there should be plenty of water there where an average household uses around 8-12 gallons per minute. Thank you.

Commissioner Tinsley: Thank you very much. Is there a motion from the commission?

Commissioner Murray: Mr. Chair, I move to render a final decision at 10:00am in this room on the 17<sup>th</sup> of March.

Commissioner Varone: Second.

Commissioner Tinsley: We have a motion and a second. Any discussion? All those in favor say "aye". Motion passes (3-0) Okay we're at the point in the meeting where we have public comment for items not on the agenda. Is there any public comment? We have one public comment? Would you do me the favor of removing your hat for us and state your name and address please?

Jim Martin, 3642 Rimini Road: Some of my neighbors and I worried about access up the Rimini road during the proposed construction of the water and sewer lines for the Rimini county water and sewer district. As you know, EPA is planning to build a system as part of the superfund

clean up in a 10-mile creek drainage. We have been told construction will begin on June 1st. Apparently, the plan is to lay the lines in the existing roadbed. How is travel up and down the road going to continue during that period? We want to be sure emergency vehicles have normal and unlimited access up the draw. Fire danger this summer is going to be very severe. We want to make sure fire-fighting equipment can get where it needs to go. If the road is dug up how is this going to be possible? The same goes for ambulance access. We have been told about various alternatives such as digging 10 feet at a time for a section of pipe or only disturbing one lane of the road. As you are all aware in many places through the town of Rimini, there's barely one lane for traffic at this time. These alternatives seem very inadequate and impractical. In the interest of public safety, we hope you make the EPA come up with a clear specific and realistic plan to make sure we do not get cut off from emergency services during the construction of the proposed water and sewer system. This is a very serious issue especially in the time of this drought. Homes, lives and the city of Helena's water supply are at stake here. Please address this situation with the EPA. Make them assure you with more than just promises that the public safety of your county residents will not be compromised during this project. I look forward to hearing from you, thank you.

Commissioner Tinsley: Thank you Mr. Martin, for your comments. I will assure you at this point we will not allow public safety to be compromised at any point during any activity up there. It's a number #1 priority of this commission and as a matter of fact, it's a number #1 priority of most and all elected officials of this county to assure that public health and safety of our citizens and I can assure you we're not going to allow it to be compromised, no matter what activity is going on up there. Thank you for your comments this morning, we appreciate it.

Mr. Martin: I hope your word goes through.

Commissioner Tinsley: When I raised my hand to take my oath, that was my words and that's my word today. Thank you very much. Any further public comment? Seeing none, we are adjourned.

The meeting adjourned at 11:52 a.m.