

DRAFT – NOT APPROVED BY BOCC

PUBLIC MEETING
November 22, 2005

Chairman Ed Tinsley called the meeting to order at 9:00 a.m. Commissioner Murray and Commissioner Varone are present. Others attending all or portion of the meeting included Ron Alles, Jerry Grebenc, Dr. Marsha Davis, Russ Van Hook, Pat McKelvey, Marni Bentley, James Frisbee, Michael McHugh, John Herrin, Bonnie Hoge, Lindsay Morgan, Becky Voight, Greg McNally, Dean Retz, Eric Griffin, Archie Taylor, Fire Chief Bob Drake, Bob Church with Great West Engineering, Jeremy Fadness, Judy Hart, and Maria Penna.

Pledge of Allegiance. Everyone recited the pledge.

Chairman Tinsley: Good morning everybody and welcome to the regularly scheduled Tuesday morning public meeting. I'm Commissioner Tinsley. To my left is Commissioner Varone. To her left is Maria Penna our Executive Assistant. To my right is Commissioner Murray. To his right is Ron Alles our Chief Administrative Officer. To his right is Jerry Grebenc our Director of Community Development and Planning. There is a sign in sheet at the front and if you haven't had a chance to, please sign in for our public records. The first item on the agenda is Consent Items and it looks like we don't have any this morning.

Consent Items.

Ron Alles: None

Chairman Tinsley: What I'd like to do before I call up Dr. Marsha Davis is move the last agenda item which is the proposed Minor Subdivision, Preliminary Plat to be known as Bowhunter. The Applicants are Owen and Becky Voight. The Planner is Lindsay Morgan. I'd like to move this one up to the top because they've asked to extend the deadline and hear it at a future meeting. Miss Morgan.

Proposed Minor Subdivision, Preliminary Plat to be Known as Bowhunter.

Lindsay Morgan: Applicants requesting the extend deadline to the next meeting where there will be all 3 Commissioners present. Next Tuesday is fine with them and also December 6th.

Chairman Tinsley: Is Mr. & Mrs. Voight here? And are you fine with doing that Mrs. Voight? Ok fine. For the record she affirmed that they would like to move it to next Tuesday.

Applicant affirmed to move to next Tuesday, 11/29/05.

Chairman Tinsley: Is there a motion?

Commissioner Varone: So moved.

Chairman Tinsley: Is there a second?

Commissioner Murray: Second.

Chairman Tinsley: We have a motion and a second. Any discussion? All in favor of the motion to reschedule the proposed minor subdivision known as Bowhunter to next Tuesday's meeting November 29th, signify by saying Aye.

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0. Thank you for coming in this morning. We'll see you Tuesday.

Chairman Tinsley: Next item on the agenda is a proclamation by Dr. Marsha Davis our Superintendent of Schools. The Commissioners will consider presenting a proclamation to Bryant Elementary School for receiving the No Child Left Behind—Blue Ribbon School Award for 2005. Principal Russ Van Hook is present to accept the proclamation. Good Morning Principal Van Hook. This is the first time I've been able to call a Principal up in front of me. (Laughter) Good Morning Dr. Davis.

Proclamation

Dr. Marsha Davis: Good Morning Chairman Tinsley and Commissioners. I'm very honored to stand in front of you today and ask you to accept and present this proclamation to Bryant Elementary School. Bryant Elementary School is a school that I've known for quite some time, dating back to my days with OPS Public Instruction. The school was first identified in 1996 as a school in need of improvement because student performance was rather poor. They are a poor school. Besides having poor performance they also have a high disadvantaged children. They have 70% Free Introduced Lunch Children at Bryant Elementary School. So from their path in 1996 as being a school identified for improvement they are now being recognized as a Blue Ribbon School for excellence in the progress that they've made toward improving student achievement at their school. So I'll read the proclamation:

“Whereas, Bryant Elementary School is one of three schools in the state receiving the No Child Left Behind – Blue Ribbon School Award for 2005; and

“Whereas, Bryant Elementary School was nominated by Superintendent Linda McCulloch; and

“Whereas, the Blue Ribbon Schools Program honors public and private K-12 schools that are either academically superior in their state or that demonstrate dramatic gains in student achievement; and

“Whereas, Bryant Elementary School has more than 40% of their students from disadvantaged backgrounds and has dramatically improved student performance in accordance with the state assessment system; and

“Whereas, Bryant Elementary School students performance was in the top 10% of Montana schools with at least 40% of students from disadvantaged backgrounds.

“Now, therefore, be it resolved that the Lewis and Clark County Board of Commissioners congratulates Bryant Elementary School for this prestigious achievement. Dated this 22nd day of November, 2005.”

Applause.

Chairman Tinsley: Would you like to please address the Commission and the audience participating here this morning?

Principal Van Hook: I'd like to thank Dr. Marsha Davis for nominating us for this award. It's been a lot of hard work by the Staff that we have at our school. We've finally started focusing on the achievement part of it. We have so many other social things that we deal with on a regular basis that sometimes the achievement part gets put on the back burner, but we have a very dedicated Staff, we have great Parents, kids that come to school every day. I'm just lucky to be there and I thank you for the honor.

Chairman Tinsley: Would you please step forward? I would like to honor you with a Lewis and Clark County lapel pin.

Chairman Tinsley: Pins Principal Van Hook.

Commissioner Varone: Mr. Chair, I believe we need a motion to approve the Proclamation, so moved, and authorize all Commissioners to sign.

Commissioner Murray: Second.

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

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0.

Challenge Cost-Share Agreement.

The Commissioners will consider the agreement the Helena National Forest to cooperate in sharing costs associated with fuels management/defensible space projects on National Forest System lands.

Pat McKelvey: Mr. Chairman, members of the Commission. As you know, we've been working fuel modification projects and defensible space projects on private ground throughout this whole area around the 3 county area, Jefferson, Broadwater and Lewis and Clark. One of the things that keeps coming up, particularly down in the South Hills area and down in the Clancy/Unionville area, where we have congruity with Forest Service Grounds and we have a project situation where the home is built extremely close to that forest boundary, we can't get the 150 feet that we like to do in our defensible space projects. For a couple of years the forest has been very amenable to saying they will bring their crews up and if we have a project on private ground and they'll continue the project out, well, they, with their fuels budget or their priorities or however they do that, haven't gotten around to it. So in working with the forest we decided to try a contractual arrangement that would allow us, the County, and our contracted crews to extend those projects out in to the Forest Service ground. It's a leap of faith for the forest, I want to say, and there isn't anybody from here from the forest today, Dave Larsen would have been here but he had to be in Billings this morning, to allow us to do that. There are some constraints that we have to follow. We have to be doing the project on the contiguous private ground. In other words they're not going to assign us nor would we want to do general projects on forest service ground. We have to allow them to come in prior to our identification of the project to look for threatened and endangered species, historical artifacts, those kinds of things that have to traditionally be done. They will do that. And then the other thing that's a little unique on the forest for us rather than on the private ground, we won't be chipping the material that we cut. We'll be "bunny piling", we call it "hack and stack", cut the stuff, put it in piles, and then part of their match is that they'll come in with their crews and burn those piles. So that takes that burning responsibility away from us as well and it's on their ground. We'll continue to chip on the private if that's the way the prescription is written. So it's sounds like a pretty simple thing but it's been a couple of years in coming really to get to this point and I want to thank the Helena National Forest for being able to participate with us. I do think as other forests go this is kind of a leap of faith to say OK McKelvey, take your people out there and start to do these things. The other constraint that we do have and it's kind of a important one for me financially, I also have money that we get from the BLM through our Community Assistance Agreements. I can't use BLM money on Forest Service ground. They're coming through two separate budget processes. The BLM money does not loose that identification so I can use it either to match other federal dollars nor can I use it on another federal agencies land program so I can use the Woolly, the Wildlander Interface Grant money that I get through DNRC because that is starts out as forest service money anyway. And I can use other sources such as the FEMA HMGP, those kinds of things, so just knowing that that other constraint is there I can't use BLM monies. Any questions?

Chairman Tinsley: Thank you Mr. McKelvey. Questions for Pat? Is there a motion?

Commissioner Murray: Mr. Chair, I move that Lewis and Clark County enter into a mutual agreement with the US Forest Service, Northern Region, Helena National Forest Helena Ranger District and authorize the Chair to sign.

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

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion Passes 3-0. Thank you Pat and thanks for the good work you're doing. We appreciate it.

Pat McKelvey: Thank you.

Chairman Tinsley: Next item on the agenda is the Rural Improvement District for Maintenance of the South Hills Drive. The Staff person is Marni Bentley. Sufficient protest has been received to bar the proceeding on this but it should appear on the agenda. Miss Bentley would like to go ahead and talk about it?

Rural Improvement District for Maintenance of South Hills Drive.

Marni Bentley: Good Morning Commissioners. Yes I would. We did legally advertise this meeting in the newspaper so we do need to have it on the agenda; however, I received 100% protest from the landowners of the Lewis and Clark County portion of this RID. That is sufficient protest to bar the County Commissioners from proceeding.

Chairman Tinsley: Sounds like a mandate to me. (Laughter) Any questions for Staff? All right. I don't think we have to act on anything do we?

Marni Bentley: No.

Chairman Tinsley: Should I see if there is public comment since it was on the agenda?

Marni Bentley: I don't think so. I don't think you can since you can't take any action on it.

Chairman Tinsley: OK. Fair enough. Thank you Miss Bentley. We appreciate it.

Chairman Tinsley: Next item on the agenda is a resolution of intention to create Rural Improvement District No. 2005-8 for Rosendale Road. Again Miss Bentley is the Staff person. The Commissioners will consider the resolution. Miss Bentley.

Resolution of Intention to Create Rural Improvement District No. 2005-8 for Rosendale Road.

Marni Bentley: A petition was received from the landowners in the Rosendale Road area which is off Spokane Creek Road out near Canyon Ferry. We did receive 72% of property owners signing a petition requesting the County create a maintenance district. I did attach a draft resolution to your memo. The annual cost for the maintenance would be \$300.00 for developed property and \$50.00 for undeveloped property. And once this resolution of intention is approved then the public notification and hearing process will begin. I'll notify all of the landowners and we'll schedule a public hearing. Staff recommends approval of the resolution of intention to create the Rosendale Road Rural Improvement District No. 2005-8.

Chairman Tinsley: Miss Bentley, we don't have to do a public hearing at this time we can do it at a future meeting, correct?

Marni Bentley: Correct.

Chairman Tinsley: All right. Questions for Staff? Is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to approve a resolution of intention to create Rural Improvement District No. 2005-8 for Rosendale Road and authorize Chair to sign.

Commissioner Murray: Second.

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

Commissioner Varone: Aye.

Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0. Thank you Ms. Bentley.

Chairman Tinsley: Next item on the agenda is a proposed major subdivision, preliminary plat to be known as Mountain View Estates Major Subdivision. The Applicants are FM Properties LLC and James Frisbee. The Planner is Michael McHugh and this has been continued from November 8th, 2005. Today is decision day. Mr. McHugh do you have anything to add?

Proposed Major Subdivision, Preliminary Plat to be known as Mountain View Estates Major Subdivision.

Michael McHugh: Commissioners this was heard, it was the Planning Boards recommendation to approve the subdivision I believe with 24 conditions as amended by the Planning Board. There is one variance request before you and that's to permit Snowdrift Lane to be a dead-end road in excess of 700 feet. It was Staff's recommendation and the Planning Boards recommendation that Snowdrift Drive be extended to connect with the internal access road that traverses the property. So you need to act on that variance request first if you approve it that variance request you'll need to delete proposed Condition of Approval No. 8, if you deny that variance request Condition #8 will remain in the Conditions of Approval. In addition to that the applicant would be required to obtain and 3rd approach permit for the intersection of Snowdrift Lane and the internal access road.

Chairman Tinsley: Mr. McHugh, the other variance request that we're not going to consider this morning that's unnecessary is that addressed in the Conditions?

Michael McHugh: Yes Sir it is. It was one of the Conditions and I don't know exactly which one it is right now. I believe it's Condition #19-F where it requires the property boundaries to be located on the center line of the internal access road.

Chairman Tinsley: Ok. Questions for Staff? All right Commissioners, we need to start with the variance request. The only variance request we have before us this morning is a request on the cul-de-sac length of Snowdrift Lane, it exceeds 700 feet. Staff has indicated they would like to see that connected to the internal road. This is a request to vary from those regulations. Is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to deny the requested variance.

Commissioner Murray: Second.

Chairman Tinsley: We have a motion to deny and a second. Discussion. Commissioner Varone.

Commissioner Varone: Mr. Chair, typically when there's a request for a variance I really try to take a look at the pluses and minuses and the safety issues and in this instance that subdivision, that part of the subdivision, is clearly in a Wildland urban interface and I believe not only is it a safety issue I also think it will make for a better flow of traffic ultimately.

Chairman Tinsley: Thank you Commissioner. Any further discussion? Hearing none. We have before us a motion to deny the single requested variance this morning. All in favor of the motion signify by saying Aye.

Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0. Commissioners you now have before you the proposed major subdivision known as Mountain View Estates with 24 Conditions of Approval as amended by the Planning Board. Any discussion or amendments?

Commissioner Varone: Mr. Chair I think you need a motion.

Chairman Tinsley: Oh, yeah, lets do that first. That might help.

Commissioner Murray: Mr. Chair, I would move to approve the Mountain View Estates Major Subdivision subject to 24 Conditions as recommended by the Planning Board.

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

Commissioner Varone: Second.

Chairman Tinsley: Motion and a second. Any discussion or amendments to the conditions? Any discussion or amendments to the conditions? Commissioners you now have before you the Mountain View Estates Major Subdivision with 24 conditions of approval as amended by Staff or the Planning Board. All in favor of the motion signify by saying Aye.

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Opposed same sign. Motion passes 3-0. Mr. Frisbee please work with Staff and they'll walk you through the process of where you go from here. Thank you.

Chairman Tinsley: Next item on the agenda is the proposed Major Subdivision, Preliminary Plat to be known as South Boundary Acres II. The Planning Director, Jerry Grebenc has been working on this as well as Greg McNally, one of our Planners. Greg is going to present this morning. This was continued from November 15th and today is decision day. Mr. McNally.

Proposed Major Subdivision, Preliminary Plat to be Known as South Boundary Acres II.

Greg McNally: Good Morning Commissioners. On Tuesday October 25th the Helena and Lewis and Clark Consolidated Planning Board recommended approval of the proposed South Boundary Acres II major subdivision. There was 3 variance requests by the applicant. The Planning Board recommended denial of 2 of those variance requests regarding the internal access roads and the cul-de-sacs and recommended the approval of the variance to allow the double-fronted lot. The Planning Board also recommended changes to the Conditions of

Approval. Condition 9A added an “or” condition regarding if a boundary at Remington Street RID is created the applicant would provide a pro-rata share for the cost of improving Boundary Street adjacent to his subdivision. Conditions 13-I-1 and 13-I-2 were removed and the remaining conditions were re-numbered. Those conditions regarded the variance requests. And Condition 13-M was added which would prohibit the raising, confinement and/or keeping of livestock. Do you have any questions for Staff?

Chairman Tinsley: Mr. McNally, I spoke with our Public Works Director yesterday because this is unique situation in this subdivision in that it was approved under the prior regulations, the roads were constructed under the prior regulations and then because of other extenuating circumstances not related to the roads the subdivision never went through final plat. Since then Mr. Taylor has come forward and requested this new, made a new application since the new subdivision regulations have passed, he’s fixed his other problem regarding the, what extenuating circumstances from the previous subdivision, however, the road regulations have changed as well. He has requested a variance from that since he built them from the old regulations. I asked Mr. Griffin to take a look and I’d like to ask him to come forward and share with the Commission his thoughts if you wouldn’t mind. Particularly since none of us are real road experts.

Eric Griffin: Good Morning Mr. Chairman, Commissioners. I have, I went out yesterday and also just came from out there again with Wayne Effertz our Road Foreman, and I guess when I reviewed this, in my opinion, when I read the variances, it says “existing roads are in good condition and serve only local traffic. The sub-grade appears to have been constructed in accordance with the County Standards at the time of reconstruction and is solid.” Then it also says, “existing road base is adequate for local traffic.” In our Peccia 1983 Standards our total road section was about 6” thick and in our new section we have about a 6” sub-base section and then 3” on top, so when we looked at this and reviewed this I see no reason why these roads need to be reconstructed. But I would recommend, it would be my opinion, that the drainages, the drainage are plumb full of stuff out there, weeds, vegetation, people have been dumping grass and this type of stuff out there, the drainages need to be cleaned up and then a big difference between our ’83 Standards and our new Standards is the percentage of grade, the slope on the roads. So I would recommend that the 3” top coarse be installed on these roads to achieve our 5%.

Chairman Tinsley: 3” top coarse of gravel?

Eric Griffin: Yes. To achieve the 5%.

Chairman Tinsley: So in essence, and we don’t normally request, I guess recommendations on variance requests, but this is a unique situation, to achieve what you’re talking about we would have to, we would approve the variance request and add a condition of approval regarding the adding the 3” on top coarse of crush gravel and the mitigating factors for the drainages and weeds, correct?

Eric Griffin: That would be my opinion Mr. Chairman.

Chairman Tinsley: Mr. McNally, Mr. Grebenc. Is that alright for us? We can request that without having to make him rip up the roads, we can go through this, do it this way?

Eric Griffin: Yeah, there’s no reason to do that, I’d put the 3” on top.

Chairman Tinsley: All right. Questions for Staff from the Commission?

Jerry Grebenc: Mr. Chair, Commissioners. The only thing that I would is to make sure that the 3” is compacted and everything else. I mean, that’s inherent for us, but just to make sure that

that's understood that's part of the conditions not just dumping 3" of top coarse.

Chairman Tinsley: Mr. Griffin would you be comfortable if somebody made a motion with this language that also indicated having Staff, having Public Works take a look at what they're doing to make sure that they're doing it right?

Eric Griffin: Sure, if I might Mr. Chairman, Commissioners. It's also outlined in our Road Standards on how to deal with the gravel. So it is there in accordance with the Montana Public Works Standards and outlined in Appendix K also.

Chairman Tinsley: Commissioner Murray, you had a question?

Commissioner Murray: Mr. Chair, I was going to ask that you allow Mr. Taylor the opportunity to comment on the proposed addition or changes.

Chairman Tinsley: Thank you. I was going to do that. Commissioner Varone do you have any questions or concerns? Mr. Taylor, please.

Archie Taylor: 1465 Valley Forge, Helena. I am not a road expert as you probably know and there is a representative here from my engineering, WWC Engineering, if you would like to speak to him about the particulars. I don't know about 3" and all that kind of stuff that Mr. Griffin talking about but I appreciate it. I mean that will save a lot of tearing up the road and everything.

Chairman Tinsley: Who's you're engineer?

Archie Taylor: He's right here.

Chairman Tinsley: We'll invite him up and ask him some questions.

Archie Taylor: Yeah, I really appreciate that, what you're doing. I know that you understand the situation. It's a low traveled road out there.

Chairman Tinsley: Thank you Mr. Taylor. What's your engineer's name?

Archie Taylor: Well, it's WWC Engineering, Shawn, but I don't remember this fella's name.

Chairman Tinsley: Oh, all right. Well, fella, come on up and give us your name.

Jeremy Fadness: With WWC Engineering. I was speaking with another client, so I didn't quite catch the question.

Chairman Tinsley: Essentially, what we're doing is, are you familiar with Mr. Taylor's proposed application?

Jeremy Fadness: Yes.

Chairman Tinsley: The fact that the roads were constructed under the old subdivision regulations. He's requested a variance from our new subdivision regulations to bring them up to that standard which would require basically destroying the roads and rebuilding them. Instead of doing that I had our Public Works Director go out and look at the roads. He suggested passing the variance as requested then requiring a condition of approval for Mr. Taylor to add 3" of top coarse crushed gravel compacted on the road which would bring it up to our 9" level of what we have in our new standards. It's not exactly like our new standards but what he is saying, he thinks those roads would be able to live up in this particular case to that standard. Do you have any comments or questions on that?

Jeremy Fadness: The only thing I know is.

Chairman Tinsley: Keep in mind Mr. Taylor said he doesn't have a problem with this either.

Jeremy Fadness: Right. The old standard, the road width is 30' wide, the new standard it's supposed to be 24' wide, so it's quite a bit wider and there is, we don't have a problem with that either. We agree that that would probably be a good idea.

Chairman Tinsley: Ok. Well, thank you very much. We appreciate it. Thank you very much. Further questions for Staff? If not, would any body like to make a motion on this particular variance?

Commissioner Varone: Mr. Chairman, if that's the case can we consider all of these variances at one time and then make the Conditions of Approval or do we need to do them individually?

Chairman Tinsley: I'm not sure, what you're talking about.

Commissioner Varone: Well, there are 3 variances.

Ron Alles: It would be cleaner if you would just address them separately.

Chairman Tinsley: I think we should, yeah, do them individually.

Commissioner Varone: Mr. Chair, in reference to the variance requested "to allow interior local roads for South Boundary Acres II to adhere to Lewis and Clark County specifications for County Roads from January 1983, Appendix Typical Section No. 3". I make a motion to approve the variance.

Commissioner Murray: Second.

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

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion passes 3-0.

Commissioner Varone: Mr. Chair, I make the motion to approve the variance that reads "It is requested that Lots 1, 3, 10 & 16 be allowed to have double frontage."

Commissioner Murray: Second.

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

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0.

Commissioner Varone: The 3rd one Mr. Chair, "To allow the cul-de-sacs on Camrose Circle & Laramie Drive to remain as constructed with radii of 38 and 35 feet respectively."

Chairman Tinsley: We have a motion. Is there a second? Is there a second? I want to second for discussion purposes because I have a question. Mr. Grebenc, Mr. McNally. Do you know

what the current standards are on the cul-de-sacs? Do you have those with you?

Greg McNally: Current standards are 50' radius.

Chairman Tinsley: And the two that we're talking about now have a 38 & 35 correct?

Greg McNally: That is correct.

Commissioner Varone: Mr. Chair, if we could ask Eric to come and speak to this radius since it seems to have also complied with the regulations that were in place at the time.

Chairman Tinsley: Mr. Griffin? I don't know if you had a chance to look at the cul-de-sacs but would you mind coming up anyway? The previous cul-de-sacs were built to the old subdivision regulations and I don't know why, what was the previous regulations? Was it 30'? or 35'?

Jerry Grebenc: 45' radius.

Chairman Tinsley: Why were they built below that before? Was there a variance at that time?

Jerry Grebenc: No. I think what happened was before Archie could complete the final plat, Staff never went out and officially...

Chairman Tinsley: I see, all right. Did you have a chance to look at the cul-de-sacs Mr. Griffin?

Eric Griffin: Mr. Chairman, Commissioners. I drove around the cul-de-sacs but I wasn't focused on the width of them, but as I recall as we went through our new subdivisions the additional radius on the cul-de-sacs was for fire, was discussed with the fire people.

Chairman Tinsley: I'd like to talk, put Chief Drake on spot if he doesn't mind and have him come up to speak on the reasons for the regulations we have on cul-de-sacs, if you would mind Chief Drake.

Bob Drake: 2940 Spokane Creek Road. I'm the Fire Chief with Tri-Lakes Volunteer Fire Department.

Chairman Tinsley: Mr. Drake, what do you think about, what are your thoughts on cul-de-sacs and given your experience with the fire equipment and the regulations that we have?

Bob Drake: The purpose behind make the cul-de-sacs as big as they are in the current regulations was to be able to turn the fire trucks around in those cul-de-sacs. And of course cul-de-sacs are there because it's a dead end road and there's really no other way to turn them around. I haven't seen the plan or anything so I don't know exactly how long these roads are before we get to the cul-de-sac. And the other issues, well when we were trying to do it was to make sure that we try to do one standard so we were trying to allow also for parking in those cul-de-sacs because we don't know if there's 5 houses at the end or 5 lots at the end of that cul-de-sac or two or whatever. It really is a matter of space and being able to turn those large trucks around especially if we're doing water-tanker shuttles, which are pretty indicative of the rural area.

Chairman Tinsley: Right. Questions for Chief Drake? And I apologize for putting you on the spot like that.

Bob Drake: No problem.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair. No questions but if I could respectfully withdraw my motion. I didn't realize that the cul-de-sacs had not been built even to the old standard.

Chairman Tinsley: Without objection I don't think that would be a problem. Thank you Chief Drake, for your time. We have before us Commissioners the requested variance to allow cul-de-sacs on Camrose Circle and Laramie Drive to remain as constructed. It appears the construction stopped because of what happened with regards to the previous subdivision. They were supposed to be built to 45 feet. The current regulation is 50 feet. Is there a motion?

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

Commissioner Murray: Second.

Chairman Tinsley: We have a motion to deny. Any discussion?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: I appreciate the withdrawal of the motion. This is a safety standard that the County has adopted and I'm happy to second it and although I'd like to help Mr. Taylor out here, we just can't do it.

Chairman Tinsley: Commissioner, I would like to thank you for withdrawing that. We all found out some new information in walking through that so it's good that we had that conversation. Any further discussion? Hearing none, all in favor of the motion to deny the requested variance on the cul-de-sacs signify by saying Aye.

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0 to deny.

Jerry Grebenc: Mr. Chairman, if I could just get something on the record. On the variance for the double fronted lots the only lot that was actually double fronted was Lot #1. The Applicant included a list of lots but the only lot that was truly double fronted was number 1, and it was on the record before.

Chairman Tinsley: I thought it was but I just apparently didn't mark that off, but thank you for correcting that. Let the record reflect that the variance request is only for Lot #1 because in fact it is the only double fronted lot. Thank you Miss Penna.

Chairman Tinsley: Ok. Commissioners.

Commissioner Murray: Mr. Chair, I would move approval of the proposed major subdivision, preliminary plat to be known as South Boundary Acres II major subdivision subject to 19 conditions of approval as proposed by the Planning Board.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion and a second. Any discussion? Any discussion?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, I believe we need to add a condition of approval and if it's appropriate ask Staff to help craft the effective language that talks about adding a 3" top coarse and that it be installed with crushed gravel and compacted including cleaning the drainage.

Jerry Grebenc: Mr. Chairman, Commissioners, I think we can craft a condition of approval from that exact language. That would be acceptable to everybody.

Chairman Tinsley: Great.

Commissioner Murray: Second.

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

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Opposed same sign?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: It appears that we need to do some work on 13-I 1 & 2.

Chairman Tinsley: Mr. McNally?

Greg McNally: Mr. Chair, Commissioner Murray & Commissioner Varone. You would have to strike 13-I #2 and renumber the remaining conditions.

Commissioner Murray: So moved.

Chairman Tinsley: So it would be I-1 & 2 would need to be struck correct? So I-2 would be the one to be struck is that correct?

Greg McNally: Yes, I-2.

Chairman Tinsley: So we have a motion to remove Condition of Approval 13-I #2. Is there a second?

Commissioner Varone: Yes.

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

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0.

Commissioner Murray: Mr. Chair, a new condition is 13-M, and I believe that since the motion reflects adopting the Planning Boards conditions that's included and doesn't need to be changed.

Chairman Tinsley: Mr. McNally, on 13-M it's regarding the drainages and, I mean confinement of livestock.

Greg McNally: The Commission approved the subdivision with the 19 conditions as recommended by the Planning Board, this is one of the recommended conditions by the Planning Board.

Chairman Tinsley: Ok, one more question. The drainage and crushed gravel conditions that we added would be #20 is that correct? Or should we put it in somewhere else?

Greg McNally: We can amend Condition 8B.

Chairman Tinsley: Would the Commissioner who made the recommendation be willing to, is that the intent of where you wanted to put it?

Commissioner Varone: Mr. Chair, Commissioner Murray, wherever it's appropriate.

Chairman Tinsley: Commissioner Murray are you all right with that?

Commissioner Murray: Yes, I was hoping it would be.

Chairman Tinsley: (Laughter) I knew those paintings would have a calming affect on you Commissioner Murray. (Laughter). Let the record reflect that the first Condition of Approval that was added would be reflected in Condition of Approval #8-B when you folks put that together if you would. That was the intent of the Commission. Any further amendments or discussion? Any further amendments or discussion? If not, All in favor of the motion to approve the Major Subdivision, Preliminary Plat to be known as South Boundary Acres II with 19 Conditions of Approval as amended by Planning Board and Commissioners signify by saying Aye.

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion passes 3-0.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. I would like to thank you for taking the initiative and the interest to ask Eric to go out to take a look at those roads. Issues like this that really make it difficult for me personally as a Commissioner and so I appreciate his expertise and you asking him to do that.

Chairman Tinsley: Thank you very much. Mr. Taylor please work with Mr. McNally. He'll walk you through the process where you need to go from here. Thank you.

Chairman Tinsley: Next item on the agenda is a request to schedule a Public Hearing to modify Conditions of Approval. The Applicant is John Herrin. The Planning Director is Jerry Grebenc. Mr. Grebenc.

Request to Schedule A Public Hearing to Modify Conditions of Approval.

Jerry Grebenc: Mr. Chairman, Commissioners. Mr. Herrin has preliminary plat approval for the Hoff Lot 3 Amended Major Subdivision. Condition of Approval 10-B of that approval requires a section of Emerald Ridge Loop Road to be paved to an asphalt standard from the northwest corner of the subdivision down to Topaz Court. Mr. Herrin is asking that the Commissioners

remove that Condition of Approval. Our process is the modification of condition of approval and if the Commissioners chose to follow that process the Applicant has submitted documentation to you asking that that Condition of Approval be removed. It is up to you to determine whether that is sufficient evidence, if it is you would direct staff to schedule a public meeting to do a brief review that would allow for Staff to give you a recommendation and also eventually for Mr. Herrin to make his case before you. And Mr. Herrin is in the audience if you have questions for him.

Chairman Tinsley: So in layman's terms essentially what we're doing right now is either approving or denying a request to have a future public hearing on this to talk about it. We're not taking any action on the request itself.

Jerry Grebenc: Correct.

Chairman Tinsley: Any questions of Staff? If not, Mr. Herrin, would you like to come forward and talk about this?

John Herrin: Chairman Tinsley and Commissioners. I live at 1229 Leslie Avenue here in Helena. I'm the developer of a 12 lot subdivision which has gone through 2 phases of review and this is the 2nd time through the final plat approval condition that I pave 2140' of Emerald Ridge Loop Road which is an existing gravel road in the area that abuts my property. The condition requiring the paving was based I guess on the premise of the Staff that there was a conjoining of impacts from the approved Emerald Ridge Subdivision, which has 67 lots at the beginning of Emerald Ridge Loop Road, and my subdivision is in the middle section. The north and the middle section of that road do not have a combining effect with the Emerald Ridge Loop or Emerald Ridge Subdivision. I paid legal attorneys and I've paid 3 engineers to review the technical inputs which are attached as attachments to this request and the basics of it is they substantiated my presentation to the Planning Board and to the Commissioners that there was no way we were triggering 400 vehicle trips. 230 vehicle trips using 11 existing lots, 12 that I'm creating, creates 23 lots. If you multiply times the highest multiplier, which is 10 that comes to 230 so it does not trigger the 400 vehicle trips. And 3 engineers basically, it's not new information, it's merely supports what I presented to you and somehow the Staff just missed it when they made the recommendations. I also will underscore that when I worked with Beverly DeMato for 9 months that the condition of paving was never raised and that only when I got Jerry at the very end that somehow this got thrown at me and I guess even further I think there's a basic problem with the County having statutory authority. I've read your rules backwards and forwards and I think the only legal basis you have requiring, I guess assessments to a developer outside a development is through an RID process. I can't find any place in your rules and regulations that allow you to make a developer solely responsible for paving. And I guess in that regard when we go either through this process or if we can have another meeting, I would request that the County look at corrective actions or create a through the MCA2-2-4 144 that the enforcement of local regulations concerning alleged violations on the part of the local governments that one of the solutions is to create a 3 member board to investigate, and I think the problem with the old subdivision regulations and the new subdivision regulations is one it says you will create a body of evidence that proves how you regulate and then you have to create a body of evidence that substantiates your decision for requiring paving off site you have to go through a very I think detailed, technical and I think health/safety whatever your basis is, provide those documentation that say why you require paving and then I think it also, the issue of fair, pro-rata that was just, I just heard the word pro-rata for requiring on this subdivision that that is the basis for being fair and equitable and an RID is a mechanism for doing that. By taking one person and making them totally responsible for paving and I guess this speaks to Glass Drive I just heard a 32 lot subdivision having to pave 2.5 miles which basically buries them economically when an RID is the way to go, I think that there's a pattern here that the County is saying we have the authority and we have the strength to force a developer to pay for off site impacts and that's not right. This was a classic example in my case where there was no

reason for it even coming up and then the County perpetuated that approach and it underscores the fact that in my opinion this is a pattern that the County has come up the idea well these sub-dividers are making too much money then we need to extract as much as we can.

Chairman Tinsley: You know, Mr. Herrin, I don't appreciate you putting thoughts or words into at least my mouth and I'm not going to let you stand up here and do that. You can sit there and conjecture all you want about why we do what we do but I'm not going to sit here and let you use this forum to put words into my mouth, I'll tell you that right now.

John Herrin: Ok well then let me explain.

Chairman Tinsley: Let me finish. I'm in control of this meeting. All right? First of all this is not request these are demands that you've made. Now, that being said, I'm willing to listen to those and I'm willing to vote to schedule a hearing. But, when you come into our chambers use a little bit of respect. You don't come and sit there and put words into our mouth and slam our Staff. Staff does a good job and I don't need to hear you talking about what our Staff does and doesn't do or should or shouldn't do. That's not right. Use some respect in here.

John Herrin: Ok well.

Chairman Tinsley: We respect you and you respect us.

John Herrin: Ok, well you respect me.

Chairman Tinsley: I will show respect to you when you start showing respect to everybody else. So lets just settle down a little bit.

John Herrin: Ok.

Chairman Tinsley: Thank you.

John Herrin: I'm just stating the facts.

Chairman Tinsley: I know what you're saying, I can hear every word you're saying. Now are you done with your information?

John Herrin: No.

Chairman Tinsley: Please continue.

John Herrin: Based on the facts on this case that the County does lack the authority to do off-site and what they've been doing for, I'd say 10 years, I don't know how long it goes back but the County doesn't have the right, in looking at the rules and regulations, on the old regulations and the new regulations, to require developers, at the cost of probably millions of dollars, to undergo paving and upgrades. I just don't believe that the County has got the legal authority the way it's written.

Chairman Tinsley: Thank you. I appreciate you framing it like that. That's better.

John Herrin: Ok.

Chairman Tinsley: I have one question for you Mr. Herrin. Where do you work? What's your occupation?

John Herrin: I work for the Department of Environmental Quality and Subdivision Review.

Chairman Tinsley: Do you review subdivisions in Lewis and Clark County?

John Herrin: Yes I do.

Chairman Tinsley: You do? And you don't find any kind of conflict of interest in that?

John Herrin: No I don't.

Chairman Tinsley: You don't? Do your bosses?

John Herrin: No.

Chairman Tinsley: They don't?

John Herrin: No.

Chairman Tinsley: All right. I just wanted to see if we could get that on the record. Thank you.

John Herrin: You bet.

Chairman Tinsley: Mr. Grebenc do you have anything to ad?

John Herrin: May I make a address that issue?

Chairman Tinsley: Please if you would like to. I'd love to hear you address that.

John Herrin: I'd say that gives me a benefit in the fact, I guess I could see, and this might sound biased, but when I see good governments and bad governments.

Chairman Tinsley: Are you saying that Lewis and Clark County is a bad government?

John Herrin: I'm saying that the actions that you're taking need to be based on rules and regulations and that so far what I've seen, especially in road requirements as far as the design and the construction, off site in particular, don't have the legal basis.

Chairman Tinsley: Do you think those regulations should include the developer following those regulations all the way through?

John Herrin: Sure.

Chairman Tinsley: Well, didn't you have a problem with that in the past? Regarding utilities?

John Herrin: No, they were done.

Chairman Tinsley: They were done? Then why did you charge one of you're customers who purchased a lot for electricity that wasn't even run yet?

John Herrin: Again. Again, you did the same thing to me.

Chairman Tinsley: I'm asking you. It's on the record.

John Herrin: I know. You did this to me the last time and it's inappropriate.

Chairman Tinsley: It's not inappropriate.

John Herrin: It was solved between he and I.

Chairman Tinsley: I know it is, but he had to come to us to get it solved.

John Herrin: Right.

Chairman Tinsley: Right.

John Herrin: And you voted against my subdivision.

Chairman Tinsley: But not for that reason.

John Herrin: Why did you?

Chairman Tinsley: I'd have to go back and look at it.

John Herrin: Please, and I would like a written explanation for why you did your actions.

Chairman Tinsley: Send me a written request.

Commissioner Varone: Mr. Chair?

Commissioner Murray: Mr. Chair.

Commissioner Varone: Mr. Chair, I believe we need to kind of stop this right now.

Chairman Tinsley: Commissioner Varone we are going to move on and I'm going to ask Mr. Grebenc to see if he has any questions or anything to add for the record.

Jerry Grebenc: Nothing to add Mr. Chairman, the record speaks for itself.

Chairman Tinsley: Thank you. Commissioners we have a request to modify the Conditions of Approval for the Hoff Lot 3 Amended Major. Mr. Herrin is requesting that we reconsider the conditions that were granted under his preliminary plat and I don't have the date right here, is there a motion?

Commissioner Varone: Mr. Chair, before I make a motion I plan on making a motion to.

Chairman Tinsley: Lets do a discussion after we make a motion.

Commissioner Varone: Mr. Chair, I make a motion to approve Mr. Herrin's reconsideration.

Chairman Tinsley: We have a motion. Is there a second? I'll second it.

Commissioner Varone: Discussion?

Chairman Tinsley: Discussion. Please Commissioner Varone.

Commissioner Varone: Mr. Chair, in the letter from Jerry to the Board of County Commissioners dated November 16th, the last paragraph reads: "Mr. Herrin's letter and documentation are attached and it appears that Mr. Herrin's documentation may warrant your re-consideration. If you have any questions, please contact me." I'd like Jerry to provide us, or give us, or have the opportunity to discuss what he meant by that.

Chairman Tinsley: Mr. Grebenc.

Jerry Grebenc: Mr. Chairman, Commissioners. Anytime you have 3 professional engineers submit information, considering we don't have a PE on Staff, that in itself would tell me you would at least need to reconsider the conditions of approval. If we had a Professional Engineer on Staff that could look at that information and provide us with an opposite view point, that would be one thing, but when 3 PE's give you information that's enough to reconsider, in my opinion, but in the end, the Commissioners make that decision.

Chairman Tinsley: Thank you Jerry.

Commissioner Varone: Thank you Mr. Chair.

Chairman Tinsley: You bet. We have a motion and a second. Any further discussion?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone. Giving the wild assertions of Mr. Herrin this morning I think this ought to be resolved in court. I'm going to vote no.

Chairman Tinsley: Any further discussion? You know, I, as a Commissioner, have to rule on things with my head, not with my heart or gut, and my heart or gut says exactly the same thing Commissioner Murray says, but I'm willing to give Mr. Herrin the benefit of the doubt and have another hearing to talk about this. So I'm going to go ahead and support this motion. Any further discussion? All in favor of the motion to schedule a reconsideration of the Conditions of Approval, signify by saying Aye.

Commissioner Varone: Aye.

Chairman Tinsley: Aye. Opposed same sign.

Commissioner Murray: Aye.

Chairman Tinsley: Motion passes 2-1. Mr. Herrin, please work with Mr. Grebenc. He's going to schedule this for a future County Commission meeting and we'll get this resolved.

Chairman Tinsley: Next item on the agenda is a proposed minor subdivision, preliminary plat to be known as the North Hoge Valley. The Applicants are Delano and Bonnie Hoge. The Planner is Michael McHugh. The Commissioners will consider creating 4 lots; 3 for single-family dwellings and 1 for effluent lagoon and irrigation system for the North Star PUD. The subject property is located in the NW1/4 of Section 18, T11N, R3W; generally located south of Valley View Road and east of the Hoge Subdivision. Mr. McHugh.

Proposed Minor Subdivision, Preliminary Plat to be Known as North Hoge Valley.

Michael McHugh: Commissioners, it's about 10:00 and we normally take a break.

Chairman Tinsley: Let me ask, if the Commissioners wouldn't mind would we take a break.

Commissioner Murray: Please.

Chairman Tinsley: Ok. Folks, we'll be back about 5 after 10:00. Gives you about a 10-minute recess. We have 2 more agenda items after that and when we come back we start with the North Hoge Valley.

*******Break*******

10:05 hearing begins.

Chairman Tinsley: Ok. Are the Applicants, Delano and Bonnie Hoge here? Good morning. I assume you are Mrs. Hoge? And have you received the packet of information and are you ready to go forward this morning? Ok. Thank you. Mr. McHugh.

Michael McHugh: Commissioners the proposal before you this morning is to create 3 residential lots and one lot for a wastewater treatment system that's associated with the North Star Subdivision. The subject property shown on this overhead, outlined in red, is located south of Valley View Drive and about 665 west of the western boundary of the North Star PUD. The Applicant is proposing to develop 3 lots for single-family residential lots. These would range in size between 1.57 and 5 acres in size. The remaining portion of the property would be utilized for the sewage lagoon and a irrigation spray system. I apologize this is actually north up here, but because of modern technology we couldn't rotate that, but we do have approximately an 8 acre lagoon that would be located down in the southeastern portion of the property. We would be creating a new lot that would be approximately 2.1 acres in size down at the southwestern portion of the property. We would be creating another lot up to the northeast and then one kind of located in this central area there.

Currently the subject property is not developed. It's primarily vegetative with native grasses, prickly pear and a fairly moderate infestation of noxious weeds. The surrounding land uses in this area, this is an overhead, we do have some fairly dense development located to the east, well immediately east of the property we have some undeveloped 30+ acre lots and a 10 acre lot and then fairly dense development to the northeast and the southeast. To the west we have the Hoge Subdivision, this was a subdivision that was reviewed back in the 1970's and most of the parcels in here are a little over 1 acre in size. Immediately to the north of the boundary to this property are some single-family residential units of mixed development styles. They average a little over 1 acre in size.

Presently there is no zoning on the subject property and currently there are no covenants affecting the use of the subject property. The Applicants are proposing to add covenants to the property that would be placed on lots 2, 3 & 4, which would restrict their uses to single family residential. It does allow for manufactured and modular homes of newer than 1994 if they're placed on permanent foundations. There's also in the Applicants proposed covenants a prohibition on large animals, junk vehicles and noxious weeds.

As far as notice: We did receive numerous phone calls inquiring about the use of the subject property. We did receive 1 written comment, which I believe is attached to your Staff packet. In that the author of that written communication was somewhat unhappy of the notice procedure and the lack of being able to make public comment at this meeting today. He also congratulated the County Planning Staff and the developers on "their cleverness on getting this scheme through" as he put it.

As far as the review criteria: There are 3 soil-mapping units identified on the subject property. None of them are identified as being prime or soils of statewide importance. They do have some limitations of cultivation in this area. There's no irrigation water rights currently associated with the subject property.

As far as the impacts on local services: The Applicants are proposing to develop these 3 lots. The individual lots would have individual on-site wastewater treatment systems and then the majority of the lot would be utilized in conjunction with the wastewater treatment facility that would be located in the southwestern portion of North Star. There would be a gravity piping system that would go down and the effluent would be stored in this area here, the southeastern portion of the property, during the winter months, and then during the spring, summer and

autumn the effluent would be discharged through a _____ irrigation system that would be located in this area here.

The Department of Environmental Quality does have standards on the use of treated effluent for irrigation of crops. They require that the crop be harvested on a regular scale and that the harvest material be removed from the site. They also require that they monitor the amount of nitrate discharge to the soils in this area and they also do not allow for runoff from the subject property. When this effluent lagoon and irrigation system would be set up, the property would be fenced in to prevent access by kids and children and this was reviewed as a part of the North Star PUD Phase 2 through 6 and was considered during that review. This property now has one development right and could be utilized for either 1 single family lot or it could be used as a sewage lagoon or any other activity without any review of the Board of County Commissioners. There are some constraints for soils in this area for sewage lagoon. They do have susceptibility for seepage. The DEQ regulations do require that an impermeable liner be installed as part of the construction of these storage lagoons in this area.

This proposal does present somewhat of a irony because part of the property is being used for a community system and then individual lots are being proposed to utilize individual on-site wastewater treatment systems. Currently the propose wastewater treatment system has not been approved by the Department of Environmental Quality. The Department of Environmental Quality now requires connection to a community system if there is an approved system within 500 feet of the boundary line of the property and that there's capacity in the system and that the operators would allow connection to it, and that the connection costs would not exceed 3.5 times the cost of the installation of the individual system. Until this system is approved the DEQ cannot require the actual connection so if they do the residential development prior to the construction of the community system, there's no requirement to connect to the system. One of the new things that we do have is the draft North Hills Infrastructure study. The subject property is located within this area. The draft plan does not indicate that it's economically feasible to water and sewer the whole area but it does indicate that there's a feasibility of (placing) sewer (in the) sub-areas around this. If in the future the properties to the west would have failed septic systems they may be required if there's capacity and willingness by the operator of this system to connect to it. Future subdivisions that are located to the east could also be required to be connected to it. It does present some engineering problems in that the raw effluent would have to be piped up through a lift station to a proposed plant that would be located in this area here.

As far as water supply: The Applicants are proposing to utilize individual wells. The source of groundwater in this area is North Hills Fractured Bedrock Aquifer. There have been well tests done to the north of this subject property and to the east and all of them have indicated that there is sufficient water for domestic use in this area. During the site visit the Staff did notice that there were 3 existing wells on the property. The Applicants have indicated that these wells will be abandoned and they would need to be abandoned in compliance with the Department of Environmental Quality regulations which requires removing a minimum of a 10' top portion of the casing and also placing either a betonite slurry or concrete into the well to cap those.

As far as access to the property: The Applicant is proposing a road that would connect to Valley View Drive at the north and would come down and run along the eastern portion of the property. From this overhead you can see that this would connect with Cactus Road and Sage Road here so there would be an interconnect to Applegate Drive to the east here. One of the Staff's recommendations is that there be an easement extended to the southern boundary of proposed lot 4. It's difficult to see on this but there are actually 4 homes located west of the subject property, they're accessed by an un-named road. Staff was not able to determine if there is a natural easement there and whether it's a public access easement but in the future it would provide for another connection through here if that ever became a public access easement or a County road.

As far as impacts on the natural environment: There's no surface water adjacent or on the subject property. And as I mentioned before the subject property is located within the temporary ground water control area. The background nitrates from this property range from .75 mg/l to a little over .81 mg/l. Based on the preliminary non-degradation calculation just for the individual on-site wastewater treatment systems it's estimated that the groundwater nitrate concentration would be increased to approximately 1.21 mg/l. And again as far as the groundwater contamination all discharges from the proposed effluent treatment system would be monitored by the Department of Environmental Quality.

If the roads are constructed to County standards there would not be any access limitations.

As far as drainage: The soils on the property are identified as being permeable and that there would be a slight increase in discharge. The Applicants are proposing to locate a retention area in the northeastern portions of lot 4 and then the northeastern portions of lot 2.

Based on Staff's findings, Staff does recommend approval of this proposed subdivision with 18 conditions.

Chairman Tinsley: Questions for Staff?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Michael. Just for informational purposes, I don't particularly understand effluent lagoons and irrigation system. When something like that is built does DEQ require odor minimization and that kind of thing?

Michael McHugh: Yes. Before the water is disposed of in the lagoon there will be some disinfectant added to it. The lagoon will also be aerated. Typically what has occurred in the past during certain periods of the year you get a stagnant layering of the effluent in it and then when you have a temperature change you have a changing of those layers that produce, the bacteria in it produce the smells but as designed this would meet all of the requirements both for odor and discharge. Also they require that there be at least a minimum of 100' separation of the lagoon and the irrigation spray system from any adjacent land uses.

Commissioner Varone: Thank you.

Chairman Tinsley: Mr. McHugh, you indicated that the lagoon has not been certified or approved by DEQ at this point correct?

Michael McHugh: That's correct.

Chairman Tinsley: What would be the consequences if they deny this?

Michael McHugh: If the Department of Environmental Quality would not issue a permit for this lagoon the Applicants of the North Star PUD would either have to go back to redesign the system which could include subsystem discharge or the subdivision would not be allowed to go further on.

Chairman Tinsley: Do you have any kind of timeline or indication of a timeline for when DEQ might make their decision?

Michael McHugh: The phases 2 through 6 of the North Star Subdivision were given preliminary plat approval in the spring of this year. It usually takes about 18 months, 1 year to 18 months to

get a community system of this size approved by the Department of Environmental Quality.

Chairman Tinsley: Ok. Thank you.

Michael McHugh: And the Applicants have been slow on doing the design because they were researching the possibilities of spending the money for the design and construction of this proposed system to connect to the potential valley lift station.

Chairman Tinsley: Further questions or discussion?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone, Mr. McHugh. The septic system is totally under State control. As well intentioned as us 3 politicians are we certainly don't have the knowledge but I want that assurance on the record please.

Michael McHugh: Yes and again this system the design and everything was reviewed as part of the North Star PUD application and it was discussed in some detail at those public hearings.

Commissioner Murray: Thank you.

Chairman Tinsley: Further questions for Staff? Thank you Michael, good presentation. Ms. Hoge or your representative, would you like to come forward?

Dean Retz: I reside at 155 All Sports Court. I've been in the subdivision review planning business for 10 years and have been retained by the Hoge's. The reason why I was asked to do this subdivision is because I was the project manager for the North Star Phase 1 and before we're done I'm going to answer all of the questions you people raised. Phase 1 was approved by this body December of '01, final platted in October 2002. On August 9th this body heard the North Star PUD Phase 2 through 6. It included in the presentation the effluent lagoon and irrigation system and on August 25th the Board of County Commissioners approved that project by a vote of 3-0. In both those presentations and with the _____ Planning Board this proposal was mentioned because it was brought up that we had to have some additional land for this effluent lagoon and I have a little problem saying that but I've got extras here that will go into detail with you and I would really like to thank Michael, he did a great job on this and he's got a great memory, but I have to give credit where credit is due, this whole thing was in the North Star PUD and Michael took the time to go through all this to do the Staff report. So, as a layman, this Staff report I think is excellently done. Within my presentation will be Bob Church. Bob is an engineer with Great West Engineering. He's going to briefly discuss this effluent lagoon and irrigation system. He's going to highlight 3 things: The current systems in place in Montana, the DEQ approval and monitoring process, and then the draft North Hills Infrastructure Study. Great West Engineering has been involved in Phase 2 through 6 as well as this study. I would like to read though on page 4 of the Staff report, just to clear up what was brought up: "The design of the North Star Community/public wastewater treatment system is currently being designed and has not received final approval from the Department of Environmental Quality." What Michael alluded to is the application is ready to do to DEQ, it has not been presented, we are waiting for the outcome of this minor but it is our intention to submit the DEQ Application in January of 2006. This proposed subdivision complies with the County Subdivision Regulations. I would like to point out a couple of things: The road length is 3586 feet. Now this is very, very, strange that a 3 lot minor would have a road length that much. The developers are aware of that and they will, if approved, do that road length per County regulation standards. If we could turn to page 9 on the recommended Conditions of Approval, Michael mentioned #7 about the easement along the western boundary of proposed Lot 4, there are 4 homes there,

acquaintance of mine lives there and I think that's a good plan because there is a house for sale there. Its address is Applegate Drive but it's a way from Applegate Drive. On page 10, Condition of Approval #8, I have a question on this and I hope Michael can answer this for me because he's saying here that "a 6' right-of-way easement along the western boundary of proposed Lot 2." And then he says "to the southern boundary and then eastward to the eastern property boundary." What I'm hoping, we've got on the eastern boundary, we've got this 100' irrigation buffer zone, so we already have an easement going towards the west and then down towards proposed Lot 4 for access but to extend an easement westward would end because there is no access there, it's existing homes. And then we can't really go, we've already got an access going eastward but we don't want to extend that downward because of the buffer zone, so I'm hoping that maybe you could clear that up.

Chairman Tinsley: Mr. McHugh, go ahead. If you don't mind Mr. Retz, we'll just see if we can fix this right now.

Dean Retz: Ok.

Michael McHugh: Actually that's a typographical error. What Staff wanted was a boundary along Lot 3, which is located here, and what we wanted was the road to extend down here. And remember this is north here, extend down here and then go to the east. You can see it a little bit better, the road would come down here and then extend to the east somewhere here because we have all of this undeveloped land here. And the way these things are platted with long narrowness if this was ever to become a major subdivision they would be very restricted on having 2 approaches in there so if a road came through here and was able to come through here we would have that inter-connective and the development in here could also exit out to Applegate Drive to the west and that's what Staff was recommending and again it should be proposed Lot 3 not Lot 2. I'm sorry for the mistake.

Dean Retz: I hope that clears up that Condition of Approval, if not I'll ask Mr. Church to address that also. As far as going through the Condition of Approval here again, I guess I'm alluding to the previous meeting, but as far as any type of a notification of this effluent lagoon, if you look at the Board of County Commissioners covenants, #14 on page, excuse me, #13 as far as the final plat, before I get to yours, on the final plat 13C on page 11, we are going to put easements for community wastewater treatment system facility and then when we get to the Board of County Commissioners covenants, if you look at 14, page 12-J, #1, is always there "water quantity and quality" and then ii "proximity of the North Star PUD effluent lagoon and irrigation system." So we feel that those are notification both on the final plat and the covenants. Prior to Mr. Church coming up and talking, I would like to read something from the Staff report on page 4. This is from the Draft Hills Infrastructure Study, the last sentence: "They also conclude the socio-economic and environmental impact analysis in the study indicate that the most favorable alternative for resolving the study area's wastewater needs is to implement an independent sewage system with collection, treatment, storage and land application." What does this mean? Mr. Church will expand on this with his presentation. So assuming we understand the easement boundaries concerning recommended Condition of Approval #8 on page 10, we concur with all 18 Conditions of Approval. Questions?

Chairman Tinsley: Questions for Mr. Retz? Any questions for Mr. Retz? No? Thank you Mr. Retz.

Dean Retz: Thank you and now Mr. Church will come up.

Chairman Tinsley: Good Morning.

Bob Church: Good morning Commissioners. I'm with Great West Engineering, 1981 Oro Fino Gulch. I think that Mr. McHugh and Mr. Retz have hit most of the points of the project design for

the wastewater facility. I will give you a real brief description of what we're doing again since there seem to be a few questions. There will be a small aerated cell that will be on the southwestern corner of the North Star property where we will get primary treatment of the effluent and we're going to use a lift station to pump the water to the storage lagoon on the southern part of the Hoge property where water will be stored during the winter months and then we can have that water during the spring, summer and fall to land apply, it actually pivots on the property. This type of technology is being widely used across the western United States and it's being used very extensively in Montana in the last 10 years. There's about a dozen of these in Montana and there's about another ½ dozen to a dozen that are in the planning and design stages. One of the significant advantages of this approach for wastewater treatment is the system is designed for the complete uptake of the nitrogen or the nutrients in the wastewater and so when in comparison to subsurface disposal systems drain fields we're not adding any nutrient load to the groundwater with this system and that's the reason why it is a coming technology not only in Montana but in the western U.S. If you've golfed anywhere in the Phoenix/Tucson area you've golfed on golf courses that have used wastewater, because most of those courses use wastewater for irrigation. I also understand as Dean mentioned that this approach is supported in the North Hills Draft Infrastructure Study and our company is involved in many of these projects as well. As far as the process, we're in the process of designing this. We're going to submit it to DEQ in January 2006. They have 60 days to respond and we're hoping to initiate construction on this project this summer. So, I guess I can field any questions you may have.

Chairman Tinsley: Questions for Mr. Church? Any questions for Mr. Church? Thank you Sir.

Bob Church: Thank you.

Chairman Tinsley: Staff have anything to add? Commissioners, the review period for this ends Friday, December 9th. We have I think 3 or 4 meetings between now and then when we can consider this. There's only 2 where all 3 Commissioners are present and that's the 29th or December 6th.

Commissioner Varone: Mr. Chair, I make a motion to render a final decision on the 29th.

Chairman Tinsley: We have a motion and a.....

Commissioner Murray: Second.

Chairman Tinsley: And a second. I'd like to know if we could possibly consider doing this on the 6th instead. I'd like to have a little bit more time.

Commissioner Varone: Absolutely.

Chairman Tinsley: Is that all right?

Commissioner Varone: Sure.

Chairman Tinsley: Would you be OK with that Commissioner Murray?

Commissioner Murray: Sure.

Chairman Tinsley: I just want to have a little bit more time so I can take a drive out there. All right, so Commissioner Varone has changed her motion to do a final decision on this December 6th and it's been seconded by Commissioner Murray. Any discussion? All in favor of the motion signify by saying Aye.

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0. We will consider, we will make a final determination on this on December 6th.

Chairman Tinsley: Next item on the agenda is the proposed minor subdivision, preliminary plat to be known as the Gruber Subdivision. The Applicant is Jerry Gruber. The Planner is Lindsay Morgan. The Commissioners will consider creating 2 lots, each for one single-family dwelling. It's located approximately 1 mile north of Austin Road, west of and adjacent to Birdseye Road. Miss Morgan.

Proposed Minor Subdivision, Preliminary Plat to be Known as Gruber Subdivision.

Lindsay Morgan: Good Morning Commissioners. Again the Applicant proposes to create 2 lots, each for one single-family dwelling. If approved the existing tract will be divided into one 4.5-acre lot and the other will be 15.60 acres in size. Both lots will be served by individual wells, individual on-site wastewater treatment systems and utilities. Access to the lots will be off of Birdseye Road via a proposed internal access road. Road construction will be required and because this is a minor subdivision no parkland dedication is required. The existing tract of land is approximately 20.10 acres in size. The site is relatively flat with some gently rolling hills on the western side of the property. There is an abandoned railroad embankment located on-site that actually bisects the property. It runs from north to south. No comments were received in favor of or opposition to the proposed development.

As far as affects on agriculture: According to the soil conservation services soils with the classifications identified on-site have severe to very severe limitations that either reduce the plants and/or require careful management of these plants or that make them unsuitable for cultivation and restrict their use to pasture, range, woodland or wildlife. Even if irrigated these soils still have very severe limitations. One thing to note is that over ½ the site has been identified as prime farmland of local importance however the size of the parcel and its topography are not likely sufficient for even minimal agricultural uses.

As far as streets and access: Both proposed lots shall access off of the proposed internal access road. Staff's recommended that a "no access restriction" be required along Birdseye Road with the exception of the access for the proposed internal access road. The Applicant will be required to construct that road to County Standards Typical Section No. 1, and an asphalt map apron should be required at the approach on to Birdseye Road. Staff also recommends that there be a 50-foot building setback from the right-of-way/easement for Birdseye Road. Adding an additional access on to Birdseye Road at this location may be hazardous. Upon inspection of the site it does appear that there is adequate site distance however Birdseye Road is a collector with speeds of up to 55 mph. Staff also recommends that a public access and underground utility easement be dedicated across the southern boundary of proposed Lot G1-A1 to facilitate an interconnected road network in case adjacent property to the west is further developed. And this is where the proposed easement would be if you follow on the screen.

As far as schools: The proposed development lies within School District #4. Due to the distance all middle and high school students generated by the proposed development will be bused at the general taxpayer's expense. Elementary students have the option of either riding the bus to a school within School District #1 or having their parents drive them to Trinity School within School District #4. According to the application for the property north there is an agreement between School District #1 and School District #4 stating that Trinity School Board of Trustees made a long-term commitment to continue paying district-to-district tuition for any student living more than 3 miles from Trinity School who chooses to attend a Helena School and then for all 7th and 8th grade students attending schools within School District #1. The School District has mentioned that students within the proposed development will likely be picked up at

the approach of the internal access road onto Birdseye Road. Birdseye Road will be upgraded and widened at some point in the future. The non-motorized section of the Transportation Plan discusses locating a pedestrian path along this road which will allow for students to access a designated bus stop rather than having the school bus stop at each access road off of Birdseye to pick up students.

As far as fire protection: The Applicants will be paying the \$1000.00 per additional lot created fee. Also a minimum 15' building setback will be required from all property lines.

As far as effects on public health and safety: There is a high-pressure gas line that lies adjacent to the proposed subdivision. You actually can't see it on this map right here but, the next photo you can kind of see it in this area over here. I just put a notification in the covenants.

As far as drainage: There is a drainage that runs through proposed Lot G1-A1. An easement shall be dedicated for this drainage as determined by the Applicant's engineer upon review and approval by County Planning Staff. There will also be a prohibition of any development, alteration or encroachment within this drainage easement. This prohibition shall exclude any development or encroachment within the easement for the future extension of the internal access road within the public access and underground utility easement. According to the application, storm water run-off will flow as seen on the drainage map and will be directed along the sides of the roadside ditches. Run-off will be directed to the detention ponds located on each individual lot. I've talked with the Applicants representative this morning and they may have some changes to their proposal and they will be speaking with regard to the drainage easement dedication in their presentation. Currently, the detention pond located on proposed Lot G1-A1 lies within that proposed public access and underground utility easement that Staff is recommending along the southern property boundary and therefore Staff's recommended that this pond be relocated to a site outside of this easement.

The proposal appears to comply with the minimum subdivision standards and therefore Staff has recommended approval of the preliminary plat subject to 16 conditions. ***Showing pictures of the site.**** Do you have questions for me?

Chairman Tinsley: Questions for Staff? Mr. Gruber, I apologize I should have asked if you folks are ready to go forward this morning. I normally do and it appears you are so come on up and we'll get going and say your name and address for the record.

Jeremy Fadness: WWC Engineering, 2840 Doormore Court. And yes, we're ready to go. I guess I would like to address first the one question that came up, the biggest one, would be that drainage easement. We, after looking at the Staff report, there is somewhat of a drainage there, but it is, there's no channelized flow. The aerial photo does not really depict that drainage very well. If you go out on-site the area is more like a swale. There's no defined channel. There's no geomorphic characteristics that define a stream channel. It collects a very insignificant amount of water. The drainage area itself is only 10.9 acres which is less than the proposed lot itself. So we basically would request that restriction be taken off there. We do in fact have a drainage plan and we're willing to modify that to hold any on-site drainage that is over historical values within detention ponds and move those accordingly. We agree with everything else that the Planning Staff has come up with. We did a preliminary non-degradation analysis for the two proposed lots. Both of them would increase the nitrate level by less than 1 mg/l. We did a phosphorous break-through analysis for the subject property. This would, the nearest surface water is 7 Mile Creek, which is quite a ways away, and we showed that there would be no phosphorous break-through for 788 years, so we met the DEQ requirements on that. As far as everything else the roads have been designed to County Standards, or the road, I guess, has been designed to County Standards. We have no problems with extending that access easement to the western property boundary and if there's any questions I'm here to answer them.

Chairman Tinsley: Questions for Mr. Fadness?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray, Mr. Fadness. The Condition of Approval that you are referring to is that Condition of Approval 12 E? If not could you please direct?

Jeremy Fadness: Yes, actually it's referred to several times in the, I'm sorry I guess I should have pointed them out. The first one is #2 it looks at the drainage plan and requires us to dedicate an easement to the full width of that drainage. That would be the first spot. I guess the other reason would be that since that drainage goes through the middle of that lot, we would be somewhat restricted in what, where people can build, put drain fields and things of that nature. And since this drainage is not a significant drainage we just don't feel it's necessary to do so. The next spot would be 11C and 11D. Both have a drainage restriction. And then 12 D & E, both of those.

Commissioner Varone: Thank you.

Chairman Tinsley: Further questions for Mr. Fadness.

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone, Mr. Fadness. While you're up if you'll remain, I would like to ask Miss Morgan to comment on your proposed changes there. We might as well flush it out now.

Chairman Tinsley: Pardon the pun. (Laughter).

Lindsay Morgan: No problem. What Staff has recommended, we always dedicate some sort of an easement for drainages on-site. If you look at the aerial photo you can see along the southern property boundary they're going to extend a 60' wide easement for the future extension of the road. If the drainage easement is something that we would work with the Applicant's engineer on to craft I guess some sort of a width that would meet Planning Staff's concerns. I've talked with Jerry with this and we feel there should be some sort of an easement dedicated there to protect that drainage. This is a larger lot, it's 15.6 acres and in looking at it, at least in my opinion, it doesn't look like it would affect somebody being able to build on-site.

Chairman Tinsley: Mr. Fadness, between now and the time we do our decision would you be willing to work with Staff on coming up with some kind of agreeable language?

Jeremy Fadness: Of course.

Chairman Tinsley: Is that all right with the other Commissioners?

Commissioner Varone: Absolutely.

Jeremy Fadness: I would also request if you guys have time that you go out on-site and look at that drainage and maybe determine for yourselves if that's significant. On the aerial photo it appears that there is a defined drainage there but when you go out on site and actually look at

the site there's no defined drainage there. It's a swale. It's all grass, there's no channels. If you have time.

Chairman Tinsley: Mr. Grebenc.

Jerry Grebenc: I just wanted to add not necessarily in relation to this subdivision but one of the biggest reasons that Staff tries to get drainage easements on, whether or not this one needs one, many of the subdivisions we deal with have a femoral drainage that do carry storm water and the issue that we're trying to look at is in the future if those lots are further subdivided as the Commissioners know, we've had complaints from subdivisions in the past where storm water drainage has been an issue because its never been dealt with, so not necessarily in relation to this proposal but that's the main reason that we try to do that. It's not so much in the short term it's what happens in the long term when these get filled in with dirt, grass, culverts, whatever else so I just wanted that on the record.

Chairman Tinsley: Great. Thank you Mr. Grebenc. Further questions of Mr. Fadness? Thank you.

Jeremy Fadness: Thank you.

Chairman Tinsley: Commissioners what is your pleasure?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, it appears that the review period ends December 5th and my question before I make a motion is to ask whether or not all 3 Commissioners are to be here that would either be this Thursday or be the 8th, if the Applicant would consider extending the deadline to the 9th and that would allow Staff time to work together to come up with some recommended language change if needed.

Chairman Tinsley: This Thursday wouldn't work, because we're going to be eating turkey.
(Laughter)

Commissioner Varone: No, I meant next Thursday, sorry.

Chairman Tinsley: The following Tuesday/Thursday or Tuesday.

Commissioner Varone: And since this is a long weekend I'm not sure Staff would have time to come up with alternative language and so if we're going to do this when all 3 Commissioners are here it looks like the 8th is the only time for that to happen.

Chairman Tinsley: Mr. Fadness, would your Applicant be willing to extend the deadline to the 9th which would give us an opportunity to make a final determination on December 8th?

Jeremy Fadness: We have no problem with that.

Chairman Tinsley: You're OK with that?

Jeremy Fadness: Yes.

Chairman Tinsley: Let the record reflect that the Applicant's representative has agreed to extend the deadline to December 9th, which is a Friday. Is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to render a final decision on December 8th.

Commissioner Murray: Second.

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

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0. Thank you Mr. Fadness and we appreciate your willingness to help with that.

Chairman Tinsley: Last item on the agenda is public comment on any matters not mentioned on the agenda this morning. Is there any public comment on matters not mentioned this morning? Chief Drake.

Public comments on matters not mentioned above.

Chief Drake: 2940 Spokane Creek Road. I'm not here in my official capacity as Fire Chief. I have to apologize I'm not sure exactly how the procedure works. This is in regards to Hauge Minor Subdivision which has been delay, a decision has been delayed and we have been working together, the neighbors have been working together trying to come up with an alternative that you guys have directed him to do and I have some public comments that we'd like to get put into the record if we could.

Chairman Tinsley: Hold on just a moment Chief Drake. Jerry?

Jerry Grebenc: Mr. Chairman, as the Commissioners know technically there's no public hearings. When the Commissioners adopted the subdivision regulations there's no public comment on minor subdivisions before or major subdivisions before the Board of County Commissioners, so I guess what I would advise if Bob wants to give us the information I can get it to Michael, but technically there is no public hearing. You get into the issue of equity and the applicant isn't here and Michael's not here and what-not and so I guess I would advise you if Bob has something we can take it up to Michael and talk about it since he is the case Planner.

Chairman Tinsley: Bob would you be willing to take your prepared text and give it to our Staff and let them give it to the Planner who is handling this?

Bob Drake: Yes.

Chairman Tinsley: We have an issue with exparte communications regarding this particular subdivision. It's before us and we have a decision before us and we have to do that in a public process with the applicant present, etc., if we do it. As Mr. Grebenc stated we don't do a public hearing on that though, however, I think if you gave the information to Mr. Grebenc and he gave it to Mr. McHugh he may be willing to share it with us. It's his call.

Bob Drake: Ok. Not a problem. I'm just, I'm usually on the other side of this so I'm not exactly sure what to do. I will provide it to Staff.

Chairman Tinsley: Thank you very much.

Bob Drake: Thank you.

Commissioner Murray: Mr. Chair, Commissioner Varone. I'd like to thank Mr. Drake for spending the morning with us and enjoying the meeting.

Bob Drake: I don't envy your jobs either. (laughter)

Chairman Tinsley: Any further public comment? Hearing none we are adjourned.

Adjourn. Adjourned 10:57 a.m.

Happy Thanksgiving, November 24