

**NOTICE OF SUBDIVISION MEETING**  
**September 22, 2005**

Chairman Ed Tinsley called the meeting to order at 10:00 a.m. Commissioners Varone and Murray are present. Others attending all or portion of the meeting included, Ron Alles, Audra Zacherl, Marni Bentley, Lindsay Morgan, Stephen Knapp, Dean Retz, Michael McHugh, Lois Fitzpatrick, Nancy Yager, Arthur E. Bolurquin, Anita Buchanan, L.A. Buchanan, Albert F. (Buzz) Rose, Ken Hohn, Susan Woods, Jim Dundas, Jerry Frolreich, Eileen Rose, Vern Evans, Shane Haux, Robin Lawrence, Pat Zurcher, Kevin Wall, Connie Cole, Mary Ellen Nettik, Ernest Nettik, C. H. Manson, Karen Marble, Barron Brown, William H. Strickland, Cora Helm, Scott Helm, Gerry Murphy, Aaron Kendle, Nick Pipinich, Frank Wiler, Don Gordon, Deanna Hause, Susan Swanberg, Mary Blake, Shayne Stewart, Cheryl Schmidt, and Maria Penna.

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

Chairman Tinsley: Good morning and welcome to our regularly scheduled Thursday morning meeting. I'm Commissioner Tinsley. To my left is Commissioner Varone. To her left and currently making more agenda copies, is Maria Penna, she will be back in the room in a minute, she's 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-up sheet up in front here, and if somebody wants to pass it around, if you haven't had a chance to sign it you can start getting it passed around. I want to remind everybody if you get a, please that's a good indication; turn off your cell phones if you wouldn't mind. If you get a parking ticket this morning while participating in your County Government, please bring it up to the third floor and Miss Penna or Miss Byrnes will insure you don't have to pay for it. Don't bring any of your other tickets up, just the one for this morning if you get one. Please. I think that's all the housekeeping matters. We're going to, I indicated the Special Zoning District #28 would be the first item on the agenda, actually we have the Consent Action Items that will go first which will only take a moment, then we will come back to that. The first item on the agenda are the Consent Action Items. Mr. Alles.

**Consent Action Items.**

Ron Alles: Thank you Commissioner. You have three consent items.

- a. Vendor Claims Report for the week of 9/19/05. Those are available in Audra's office if people wish to review those.
- b. Resolution Declaring County Property Surplus Property. There are 3 items. Two are from the Sheriff's office. They are a couple of TV's. And then there's a 1992 Chevy S10 P/U from Environmental Health that we did budget for the trade-in on that.
- c. Department of Agriculture Supplemental Agreement MDA 2002-603. The purpose of this agreement is to extend the terms of the agreement to May 14, 2006.

Staff recommends approval of the Consent Items.

Chairman Tinsley: I would like to let everybody know that we've recently started putting our vendor claims report on the Consent Action Item Agenda. Basically, it's where we pay our bills and if anybody would like to see those claims they're available on the 3<sup>rd</sup> floor here in Miss Zacherl's office and I'd also like to offer anybody an option at this point if they would like to comment on our claims. I don't think there will be any comment but if you want to comment you're more than welcome to. I don't think I see any so we are going to move ahead.

Would any of the Commissioners like to remove any of the items from the Consent Action Item

agenda? Is there a motion?

Commissioner Murray: I move approval of the Consent Action Items.

Commissioner Varone: Second.

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

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Motion passes 3-0. Next item on the agenda is a Public Hearing. This is a request for Zoning Text Amendment Special Zoning District #28. This is continued from September 20<sup>th</sup>, the evening of September 20<sup>th</sup>. The Petitioner is Stephen Knapp. Lindsay Morgan is the Staff person. This was recommended. What we have in front of us today is a recommendation from the Planning and Zoning Commission of which all three of us are members and actually constituted a majority the other night and it's kind of an interesting quirk of Montana law that we have to do it this way, but that that's the way the law says to do it and we raised our hand to follow the law so we are going to do it that way. Miss Morgan is here and I will let her go ahead before we start the Public Hearing. I would also like to, after Miss Morgan, allow Mr. Grebenc to make a statement.

Commissioner Murray: Mr. Chair, if I might before Miss Morgan starts?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: I would move that we move the record established at the Planning and Zoning Hearing forward and incorporated it into the County record.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion and a second to move the record from Tuesday night forward to this meeting. All in favor of the motion signify by saying Aye. Aye.

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Motion passes 3-0. Miss Morgan.

**Public Hearing. Request for Zoning Text Amendment-Special Zoning District #28.**

Lindsay Morgan: Good Morning Commissioners. I have attached to your packet a definition for a setback and a definition for building line. Do you have any other questions for me this morning?

Chairman Tinsley: Questions for Staff? If not, Mr. Grebenc, I would like to give you the floor if you would and make some explanations.

Jerry Grebenc: Mr. Chair, Commissioners, the audience. I just wanted to get on the record. This is a difficult situation and it's not that uncommon that we run into other issues, whether it's subdivision, zoning or whatnot, but the County doesn't have building permits, we don't have a development permit. The County has a hard time tracking what people are and aren't doing. The other thing is, is with zoning when you buy a home, you get title insurance. That's provided to the homeowner by the Title Companies, it's required by the banks, but that title insurance doesn't include zoning. Our Enforcement Officer and the County Attorney's office has had discussions with the title companies and they consider zoning an exception. They do not include

it in their title insurance, which is unfortunate, and we have asked them to do so. So I just wanted to put it on the record, if we had our way, when you get your title insurance it would say you are in Zoning District 23. It will tell you that there are covenants, there are right-of-ways, there are easements, but right now it doesn't tell you that there's zoning on your property, so I just wanted that on the record.

Chairman Tinsley: Thank you Mr. Grebenc. Questions from the Commission to Staff? Ok, I think we are ready to move forward on the Public Hearing. How many folks are here to speak on the petition for Mr. Knapp for Zoning District #28? Please raise your hand if you would. How many of those folks that raised their hands spoke the other night? Let me ask this, how many of those folks that raised their hand didn't speak the other night? OK. I'm going to allow those 2 to go first, and then the folks that spoke the other night; you're more than welcome to go. Please remember we have incorporated all of your comments into the record. We have not only heard them but read all of them, so there's not necessarily a reason to repeat since we were on the previous Commission as well. Mr. Retz, if you would like to come forward please? Please state your name and address for the record.

Dean Retz: Thank you Chairman Tinsley, Commissioners Murray and Varone. My name is Dean Retz; I used to reside at 1430 Shirley Road. I'm now in the process of residing at 155 All Sports Court off (sic) State Drive. There are 3 things I would like to mention, kind of piggybacking what Mr. Grebenc said. As Mr. Blake is well aware, when this item came about at the time being a licensed realtor, I was also on the Helena Realtor Board; we brought this to the attention of all of the realtors. In fact we had Mr. Blake come to one of our luncheons and talk about this zoning, and Mr. Grebenc is exactly right. We went to all 3-title companies that handle Lewis & Clark County. None of them would put this into their title insurance commitments, and so what we have done, you can purchase for \$15.00 from the County, all of the 28 zoning districts in the county as well as the maps, and I bet you not a week goes by I don't get a call from another realtor because of the fact they know I do development business and ask about the zoning. Now I'm moving out to Zoning 19, out on Green Meadow Drive and Lincoln Road. I love that zoning because it's 2-acre minimum, no commercial, it's all residential, it's perfect. But in 1992 when I bought my home, because I was out of state down helping my son in Florida during Hurricane Andrew, I hired an attorney to help my closing and he did not say anything about the zoning. So I think this would help with making your decision. And lastly, it was brought up about the Fire Department setbacks. With the new regulations effective first, which include fire regulations, every one of these regulations, no matter how many lots you have, is 15 foot setbacks, just for the record. Thank you.

Chairman Tinsley: Thank you Mr. Retz. Good Morning.

Good Morning. My name is Cora Helm and you did hear from my husband on the last meeting, but I'd like to speak for the record please. Mr. Chairman, and members of the Commission, my name is Cora Helm, and I live, I have lived at 1208 Hilmen Road for a little more than 10 years. At Tuesdays Planning Commission meeting my husband stated that our families full support of the proposed changes to the Zoning District 28. We were gratified by the unanimous recommendation of the Planning Commission to the County Commission to adopt the bulk of our community's proposal. Some concerns were raised after the public comment portion of the meeting that we would like to address.

One of the concerns coming out during our discussion of the grace period before enforcement would be pursued was while some residents chose to resolve violations under the current regulations many others did not. We believe we can speak to that reasoning now. We were told, at the first and only meeting of the County in August of 2004, that we had 3 options to resolve the issues of the zoning district.

- 1 – Fix or remove the violation
- 2 – Apply for a variance, which the Deputy County Attorney assured us, was not a guaranteed approval.
- 3 – Petition the Commission to amend the zoning regulations.

We were given one year within which we could pursue those options. In our case, and I believe in many others, we decided that removing or fixing the violation or applying for a variance was not the wisest course of action. This was due to on-going discussion within the community of working on the option of amending these regulations for the entire district. It did not make sense to us, or to others, to invest significant time or money with either the fix-it or variance options if there is a possibility that the regulations would be changing in a year's time. The community has come together to amend these regulations and has done so within the time frame set by the County. Also, in our case, we disagreed with the violation cited on our property. We have strong reservations about the methods of measurement used to delineate the property boundaries and to assess these violations. If violations are cited and fines assessed, I would hope it would be based on property lines firmly established by legal survey rather than by estimates and supposition.

Some obvious problems with communication have surfaced as we go through this process. Correspondence from the County affecting the zoning district, or those answering questions that would have been of interest to all the residents were not distributed at all. That is just the fact of our Community and us coming together for the first time on something. This lack of communication is a major factor that led to speculation, rumors and worry. I work at the Department of Transportation as an Environmental Scientist and in our project development process we have specific guidelines for public involvement in public meetings and benchmark correspondence. If similar guidelines were used in this process, resolutions may have been quicker and more painless.

Lastly, a concern was raised about the inclusion of the non-conforming uses clause, or it will be raised. It appears that this may not be in line with the Commissions thinking concerning zoning regulation in the County. Jim Dundas' idea, my neighbor, or he has an idea of voiding the existing setback and bringing everyone in the district into immediate compliance. This is compelling. We can stop right here and head down for a late breakfast, but as he said while this would take care of the problems under the existing and outdated regulations, it doesn't protect the character of our neighborhood or the value of our property. And this is the goal of the zoning in our district. In conclusion, I must say this has been an enlightening and excruciating process and experience. But my husband and I have been impressed and proud of how our community has come together and worked very hard and to reach a fair and reasonable agreement on the changes for our Special Zoning District 28. I would like to emphasize that we feel these are our regulations for the betterment of our community. Thank you very much for your attention.

Chairman Tinsley: Thank you very much Mrs. Helm for your comments. Would you like to incorporate your written comments into the record? You can give them to Miss Penna over here.

All right. Mr. Knapp, please.

Stephen Knapp: Mr. Chairman and members of the Commission. My name is Steve Knapp and I live at 1420 Hilmen Road. As you know many of my neighbors and I testified Tuesday night on a petition to change portions of Special Zoning District 28 regulations. And we will try not to be redundant but rather mention additional information or reemphasize particular issues of concern. I want to thank you for the recommendations that came forth from the Planning and Zoning Commission, especially the 1 foot setback for small structures which is very important to the neighborhood, and the 1 year time period to rectify violations after the County Commission

makes its decision on the petition. I would like to emphasize again, that a period of 1 year is the appropriate time period needed to rectify problems after the Commission makes it's decisions. The reason for this is that we live in Montana. Weather is a major factor for planning outdoor work. Another reason for the necessity of this time period is the work the County may have to do. On Tuesday, Lindsay Morgan mentioned that Kelly Blake would look at his data to determine who was still in violation. Now, in my own case, this may not really work, depending on the outcome of these hearings. Mr. Blake's measurement data are approximate which was sufficient data for the 25 foot setback violation, however, it may not be sufficient data for closer setbacks. More field work may be needed and this takes time. Commission Murray stated that we've had a year to mend our ways, and this is what we have done. Our petition dated August 30<sup>th</sup> of 2005, shows the neighborhoods good intentions. We have cooperated with the County to solve mutual problems. When a petition or variance process is begun, that process should not be hindered by obsolete deadlines, otherwise, we should have been informed of a due date for the petition and variance submittal. We thank you for the Planning and Zoning Commissions recommendation of a 1 year period to obtain compliance. There was also a remark about setbacks and fire protection. We looked at that issue. The County Planning Department report states the proposed setbacks provide for protection from fire and other dangers. At our neighborhood meeting volunteer firemen from the West Valley Fire Department did not see a problem with the proposed setbacks. Near the end of the meeting on Tuesday, Mr. Stahl introduced a letter to contradict my statement that he had not answered Mr. James Weaver's letter of September 24<sup>th</sup> of 04', and I was afraid that I had made a mistake, so I called Mr. Weaver that same evening and he was adamant that he had not received a reply to his letter. I mention this only to emphasize the importance of clear communication between the County and it's citizens, which has been lacking. Lack of communication is why the neighborhood has taken a slow, cautious approach, to responding to the County. We mentioned on Tuesday the fear and resentment generated by the enforcement process. And we appreciate Commissioner Tinsley's firm and sincere statement that intimidation by the County will not be tolerated, however, when we read the County Staff's proposed enforcement provision provided to two of us at, just before the Tuesday meeting, we became concerned. My understanding is that this provision removes violations from being misdemeanors and makes them a civil offense with no recourse to a court. And so, this was confusing. Where do we go to challenge such a charge? Why would the County recommend such a proposal? It seems like a 25 day, \$25.00 a day fine could quickly become the accumulative fine of \$750.00 a month. You know, and yet, the State Code, I believe is 76-2-211 calls for zoning violations to be a misdemeanor with a fine not exceeding \$500.00. It was clearly pointed out on Tuesday by Commissioner Varone that our special zoning district is a citizen's initiative. And so let us frame the discussion with this clearly in mind. This is why people with no zoning violations and with people who fixed their violations are still in favor of our petition. It is our petition to help our neighborhood. This is also why the non-conforming uses should be included and updated to 2005. Mr. Jim Dundas' statement on Tuesday night that this is a Special Zoning District with it's own special concerns is true. I understand the County's desire for uniformity in it's regulations, but uniformity should not overshadow good decision making that is needed to fit the diversity of communities in Lewis and Clark County. In other words, the land use regulations should fit the needs of the community and not the other way around. The 63% of the homeowners in Special Zoning District #28, who signed in support of the text amendment petition ask you to honor our request. Thank you.

Chairman Tinsley: Thank you Mr. Knapp. Further public comment? Good Morning Mr. Dundas.

Jim Dundas: Good Morning. Mr. Chairman and fellow Commissioners. My name is Jim Dundas and I live at 1206 Hilmen Road. I've been there since 1985. First of all, I just wanted to comment on the first 2 presentations. I think one of the things that we didn't really bring out in our discussions last Tuesday was the emphasis on the bad communication. Not necessarily being all one way, but I think that's something, on a bigger picture that the County needs to take a look at. Total communication from the top down. I didn't prepare that in my statements but I

think that is something that is, it really needs to be remedied. But getting back to my statement. I first want to thank each of you for your 100% agreement Tuesday night to almost our entire text amendment. But I especially want to thank you for adopting our wording on the setback regulations. I was one of the people, along with Steve Knapp that called our neighborhood together and held the meeting that led to our proposed text amendment. On Tuesday night, Chairman Tinsley, used the expression that sometimes it is like “watching sausage being made” in reference to the Zoning Meeting. Our meeting was more like watching grapes being turned into wine. There was some stomping around, but mostly there was a lot of squeezing as people compromise their individual needs to fit into a proposal that would suit the whole neighborhood. During our neighborhood meeting we came to unanimous consensus on all the items that eventually became the text amendment. As we read each one off we took a vote. When it was over we again polled everyone there to see which items were the most important to them. There were only 3 things that they considered non-negotiable. The 1 foot setback on the small sheds was one of them. The non-conforming uses was another. And the fact that they would have their day in court if they were found in violation was the third. Since you were all in agreement on the 1 foot setback on the sheds, I won't spend time on that, but very briefly, there are some things I want to talk about that I think are wrong about the County's enforcement proposal. It is a mistake to have the fines start when the citation is issued. This seems coercive in nature to a person that has few financial resources. Consider this: if a homeowner wants to contest a fine they must be willing to wait several weeks or possibly months after the citation to have their day in court. By having to wait, the fines are building and they run the risk of owing hundreds of dollars if they lose. This seems certainly coercive to me since a person of limited means would not dare have their day in court because of the potential severe penalties. Because it is so coercive it robs a citizen of their due process and should be illegal. I believe the fines should start when a person's convicted, and the County should outline to it's citizens exactly what the legal process is and what remedies are available to them if they're cited. In Tuesdays testimony there were several mentions about homeowners feeling afraid or intimidated. I can understand how someone could feel intimidated when they are told there will be fines that start with the citation but they are not told how long the process will take or who will be the judge or jury. So to fix this we need to have the fine start when they are convicted and we also need to inform everyone in any zoning district, what the legal process is and what appeals are available to them. To me this sounds just like good government. But on to the non-conforming uses clause. I feel the non-conforming uses clause should be adopted for the reasons I outlined Tuesday. I won't cover them all again because they were brought into the record. But primarily among them is the fact that the yards section of our current document is so poorly worded that it can be interpreted several ways. For brevity I will talk just about the definition of side yards in our document. It says “Every lot shall have two side yards extending from the house to the side property line of not less than 25 feet each.” It clearly states that the yard should be measured from the house to the side property line. One of the key words that I omitted on Tuesday was the word extending that's in this phrase. It says “extending from the house to the side property line”. Webster's Dictionary defines extending as “to reach as in a specified direction.” I think this proves the intent of the original wording. There are no other descriptions, definitions, or any other type of language in our document to contradict the phrase “extending from the house to the side property line.” I would again like to paraphrase Chairman Tinsley on something he said Tuesday night. He said that it was his job to apply the law as it is, not necessarily as he would like it to be. I know you would all agree on this. Well, we feel that this applies in our case too. The description of yards in our document should be read “as it is”, not as someone would wish it to be. It is what it is. Don't add meaning to it and don't try to put 21<sup>st</sup> century language on a 1970's document. Before this meeting we felt that all this imprecise language would justify our request for a non-conforming use clause, however, as Cora hinted before me, there might be another way to solve this whole issue. Tuesday night, Deputy County Attorney Stahl brought up the subject of eliminating our special zoning regulations all together and starting over. I wouldn't go this far, but I would propose that the setback section of our current document be declared unenforceable and void because of the imprecise language. This would invalidate that section of the document. It would also eliminate all of our current setback

violations. We then begin anew with the setback language that you approved Tuesday night. This compromise will answer all of the concerns of the homeowners and will also allow the County to be a partner in the solution without the use of grandfathering, non-conforming use clauses, or the risk of setting a precedent. Thank you for allowing me to speak.

Chairman Tinsley: Thank you Mr. Dundas. Further public comment?

Mr. Chairman and members of the Commission. My name is Lois Fitzpatrick and I reside at 1308 Shirley Road and I've lived there for 19 years at this time. I'm here today again to ask you pass the request for zoning changes that have been proposed by our neighborhood. I do want to thank the Planning Commission and all of you for the vote on Tuesday evening in support of the text changes requested by the Special Zoning District #28. I do hope that the County Commissioners will approve the recommendation today and hopefully with a few other amendments that you are hearing about today. Please accept the recommendation from the Planning Committee to have the fines begin 1 year from the date of the adoption of the special zoning rules. One point that I would like to point out and it has been brought up a couple of times already this morning is the lack of communication between the County and the homeowners. And I believe Jim said it's a 2 way street. Paul Stahl read into the record on Tuesday a letter that was sent to one of our neighbors. The letter began "Dear Don and Kathy". There are more people in the neighborhood than the Gordons. Everyone in the Special Zoning District #28 should have received that letter that Mr. Stahl referenced. Most of us didn't receive the letter so only a handful of people knew about the letter and the finings starting the day after the hearing. How can we follow the rules unless we know what these rules are? Tuesday evening I explained that on August 29<sup>th</sup> 2005, Jim Dundas, Don Gordon, Steve Knapp and myself met with Lindsay Morgan and Kelly Blake concerning the zoning requests. Again, I want to emphasize both Kelly and Lindsay were extremely helpful to us and extremely patient when we were asking many questions. Kelly stated that we should be having our neighbors request variances because the fines would begin on the 23<sup>rd</sup> of September and that the zoning requests were passed by the Commission and the Planning Commission, all the fees and fines would be returned to the people. I asked Kelly for that in writing. To date we have not received this letter, however, I do not believe that Kelly was misleading us. Apparently that letter was sitting on Paul Stahl's desk and that we would be getting it from the County. Again, we have not received that letter. We have asked for assistance for some assurance in communication that people put in for a variance and paid for those fees and things change that they would have that money returned. Again on Tuesday evening during the question period to the Staff, Paul Stahl stated that a letter had gone out, however, the letter he referenced was the letter to Don and Kathy Gordon. This is not the letter that I requested. I have attached that letter that Paul mentioned to my testimony so you can see that it is not even addressed what I have been asking for. I was very specific in my request to Kelly that I wanted a letter that what Kelly had stated in that meeting on the 29<sup>th</sup>. A letter that would state in black and white that if the proposed changes to Special District #28 were made and approved, that any fine money or fees attached to that variance request would be returned to the homeowners in full. We don't have that. I would appreciate, I would have even appreciated a letter that stated that Kelly miss-spoke but we did not even receive that. I am hoping that what Kelly stated to Jim, Don, Steve and myself is true and that the new special zoning district 28 ordinance request eliminate the need for those variances and the variance fee has been paid to the County and that these fees would be returned to the people who have paid them. We want to thank you for the recommendation that the fines do not begin until one year after the approval. We urge you to accept this recommendation that was made on Tuesday. And one other point that was made on Tuesday we heard many times from Mr. Stahl and from some of the County Commissioners was that we had 1 year notice and waited 11 months to do something. The County had 28 years to enforce the special zoning district and didn't do anything. I think we did pretty well in the 11 months with the amount of work that we did which did include a great deal of research, and re-writing and discussions and grape making, or wine making, as Jim said. What we are asking for should not be considered asking for a precedent, since we know that special zoning districts are made to represent the nature, feelings and needs of the people living in those districts. It is not a cookie

cutter for other zoning. It is a special zoning district. I have one other request. The County Planning Staff made a recommendation in the enforcement clause that the charge be a civil charge and not a misdemeanor. I request that you change that. Why do we want it to be a misdemeanor charge? For one, it's state law, but also we want a day in court. We do not want one person being able to say that we were out of compliance. We want proof. We want an impartial party to decide. I'm sure we could appeal to the County Commissioners but in this case you wouldn't be an impartial party. You set the policy. Please restore this section to the special district. Thank you.

Chairman Tinsley: Thank you Miss Fitzpatrick. Good Morning.

Good Morning. My name is Don Gordon and I live at 1420 Shirley Road. Mr. Chairman, Commissioners, I'd like to thank you for the good hearing we had on Tuesday. It was very interesting to watch our County government and how it works. For those of us that don't do it very frequently it can be intimidating sometimes. We made good progress and seem to agree on several proposals. We are close to a plan that should be acceptable to all. We need to remember that the changes we proposed, some of which you agreed with, are a consensus of the homeowners. We want a workable plan just as I'm sure you do. Since you seem to agree on most of the proposals including setbacks, we only have a couple more proposals to address. And some of this is redundant and I apologize for that, we didn't all coordinate our speeches, but the non-conforming uses is something that I strongly urge you to support on Tuesday because I said it made the most sense. The Statute of Limitations must certainly have run out since 27 years have passed. This is a Special Zoning District and I ask you to handle it as such. I've talked with the residence like Jim Dundas, and this has already been discussed briefly, who worked hard to offer the County a way to address their concerns over setting precedents. His idea of removing all the setbacks and may be just the inspired proposal we need to set things right in Special Zoning District 28. I recommend you look at his suggestion as I believe it appears very workable. I also ask you adopt the penalty language that includes some review, and again this is a little bit redundant, as such as our Court system, since this is what the people are asking for. People want their day in court and I believe you should allow them to have it. These are very good solutions that will settle the issue for the homeowners and the County. It is a logical and equitable manner leaving everybody with a comfortable feeling that they have accomplished something. Thank you for your patience in working with those of us who are not familiar with the County government.

Chairman Tinsley: Thank you Mr. Gordon. I appreciate your comments. Further public comment?

Mr. Chairman, members of the Commission. I am C.H. Manson. I live at 1309 Hilmen Road. The only comments I want to make are, it's already been said to you but I'd like to say it again. You gave us a very good hearing on Tuesday night, we appreciate it. We consider the recommendations made by our group and pretty much accepted by you as a Zoning Commission to be quite reasonable and adequate, and so I urge you to accept those as they were Tuesday night, and I thank you very much.

Chairman Tinsley: Thank you sir. Appreciate your comment. Further public comment? Folks, if you have comment, you want to your more than welcome to line up in the aisle so we can move it along. Good Morning.

Good Morning, Mr. Chairman, members of the Commission. My name is Nancy Yager. I live at 1423 Sorenson Road. I did testify on Tuesday night meeting as well. I'm not going to repeat what I said but I do want to make a couple of further comments. Some have already been touch based but again I would just like to reiterate my personal feelings. I spoke mainly about the fear, frustration and resentment that many of our neighbors feel, and I'm not even going to discuss the fear because Chairman Tinsley we thank you for addressing the fears. You

obviously took that seriously and we do appreciate the comment.

Chairman Tinsley: Thank you.

Nancy Yager: The next item was frustration. We're still a little frustrated, at least I am personally, I still didn't understand a whole lot of what happened, what was agreed upon or not, so now it's still the frustration of gosh what am I going to have to do with my accessory building, but now trying to understand the enforcement clause that was added. Apparently only 2 people were given what was added, so a lot of us didn't know that was done. Mr. Stahl also, the one thing I did understand was talk about offenses would be a civil offense and the way I understand we would lose our rights. And just as an example, most of the property stakes are no longer visible. My husband and I took an entire day trying to find any property stake that we could possibly see where our property really was, we couldn't find anything. So I know our front entry way is supposedly out, but there is no way to prove that because we can't find our property stakes. The thing that I fear is if that person says you are in violation but there is no proof what right do we have to even know where our property is. This is where the fear comes in. If we could have rectified the situation in the first place, we would have but a lot of these violations came with the properties as we bought them and again we were not informed. My third and last issue, I kind of reiterate, if this whole zoning was instigated by the original residents do not the residents that reside there now have the right to amend based on the now majority? Thank you.

Chairman Tinsley: Thank you Mrs. Yager. Further comments? Further public comments? Are there any further public comments? For the second. For the third. Come on up. Anybody else that has public comments, I'm going to ask three times after this gentlemen and then that will be it.

Good Morning. My name is Albert F. Buzzrose and we reside at 1202 Sorenson Road. Been there since 1980 and that is a special area because it's had a building that's been there since 1958. A big warehouse that's been there since the subdivision started. In 1995 I got a hold of some people that would build me a garage in the back yard to have a place where I could tinker and stuff and not use the big building, and in the rear yard section it said that each lot shall not will have a rear yard extend from the rear of the house to the rear property line not less than 25 feet, so we did not build in that area behind the house. From there to the property line there is nothing. We had to put the garage right behind the warehouse and I put it far enough away from the warehouse as I could which invariably put it a little close to the property line, but that was the only place where we could build it and that building was there since we owned the place and obviously long before we were there. The building was there so we had no other place to put that building except where it was. I checked with some people and they informed me they thought the building was right where it should be because I made sure we had a back yard extending from the house all the way to the property line. There's nothing there and that's why my building is now not in compliance because it's off to the side at the only place feasible to put that building was behind that warehouse that's been there since 1958, so I just wanted to let you know in our case we thought we were putting it in a place we thought would be safe and be in compliance with the County zoning rules, so I just wanted to make a note of that so that people would understand that, because there's been some problems 2 years ago, I had some problems and I was already told back then that they thought that building was in the wrong place and a County Commissioner came out and looked at it and they stated they thought it was just fine where it was and I just wanted to put that in a note, so thank you.

Chairman Tinsley: Thank you for your comments. Any further public comments? Any further public comments from somebody who hasn't spoken this morning?

Good Morning. My name is Deanna Hause and my husband and I live at 1206 Sorenson Road with our 2 children. I would just like to remind you of my testimony that I made and to please remember that this process and the zoning regulations as they are written if not changed, have

caused, I believe, harm and hardship to my neighbors. And fear for the health of some of them, and once again remind you that these documents, as was pointed out by Mr. Stahl, were citizen driven and we have shown you with the majority of our zoning district residents that these no longer fit our needs. And another thing that I would just like to point out, I haven't had chance to write it so forgive me if I stumble, for ever how it came about it was determined that the County has the obligation and the right to enforce these zoning regulations in the districts and I know all of us who are part of a democratic society and especially those who are public servants, know that with every right there are equal if not more pressing responsibilities. For instance if we are given the right to vote we are responsible for educating ourselves so that we can vote in a manner that helps our family, our communities and our government, depending upon what you're voting for. No where have I seen, I know Mr. Stahl mentioned, you know, that the responsibility was on the property owners/purchasers to find out this information that we even belonged to a zoning district. He mentioned we could find out from realtors. We could find out from title companies and he another one and I can't remember it. We were first time home buyers when we bought this property. We took first time home buyer class. We tried to educate ourselves on who we needed to ask, where we needed to go to ask the questions and we thought we did. We were not given any information from realtors, from title company that we were even part of a special zoning district. I know I have had neighbors throughout this almost 28 years who have said they even called the County and were given information and responses such as well ask your neighbors surrounding you and if it's OK with your neighbors it's OK with the County. I think somebody gave testimony that they were given the answer of 6 feet setback. I know that you've undertaken this right and the responsibility is inherent to enforce this and I just ask that, I mean, It's too late for our community because we were not given the information, must of us, and I do not know any neighbor who actually had in their hand or was given when they purchased their property papers that said they were part of a zoning district and what those entailed, and I could be wrong, but I have not heard of that. And I would just like to say that for future special zoning districts and constituents of our County that please somebody determine who is responsible for notification. We cannot, we're all good citizens who want to do well for our families and for our little community and I would just ask that somebody assign somebody the responsibility of notification, had we known we would not have put up sheds and garages in our setbacks and I just think for the future people need to know and somebody needs to be responsible for that notification. And I thank you again for listening to us on Tuesday and appreciate all of your comments and it really helped for me personally to take some of the anxiety and fear out of this County Government we have and really felt that you listened. Thank you.

Chairman Tinsley: Thank you Mrs. Hause. Further public comment? Some of us will argue at times that we're more afraid of you than you of us. (Laughter) Further public comment? Mr. Knapp you want to be the last one? If anybody else would like to go this is your opportunity. All right Mr. Knapp, go ahead and close, since you're the petitioner.

I am Steve Knapp of 1420 Hilmen Road. Some restatement Mr. Chairman and members of the Commission. Today you've heard emphasis on several of the issues mentioned on September 20<sup>th</sup>. In particular, the neighborhood wants to retain the non-conforming uses clause in the 2005 proposed regulation changes. We do not believe this is a precedent setting action by the County Commissioners. We believe this for two reasons. First, we are a Special Zoning District, therefore the request for the non-conforming uses clause is appropriated in order to fit our special situation as this particular Special Zoning District. And secondly, State law, MCA 76-2-208 specifically authorizes the Board of County Commissioners to allow continuation of non-conforming uses. Obviously, an important and prudent action or would have not been quotified that way in law. We did notice Mr. Dundas' alternative suggestion to non-conforming uses issue. And I think that maintaining the non-conforming uses seems to be the best approach, but his alternative suggestion seems to have merit. It is important to us that the enforcement provision defines violations as misdemeanors. This is our request. This is how zoning violations are defined in state code. Also, this new enforcement provision should only

apply to violations that occur after the enforcement provision is adopted. It should be forward looking. We thank you for your unanimous recommendations as members of the Planning and Zoning Commission to accept the following new regulations to our special zoning district:

The Home Occupations as defined in the proposal.

The minimum lot size of 26,000 square feet.

The neighborhoods proposed setbacks for principal buildings, accessory buildings and sheds.

The permitted encroachments into yards as defined in the proposal.

And a definition of setback.

With the hope for acceptance of these proposals, the neighborhood will have clear guidelines to live within. This has been quite an experience with neighbors coming together to help each other. We did not contemplate getting rid of the zoning provisions but instead making our Special Zoning District better. Thank you for your time.

Chairman Tinsley: Thank you Mr. Knapp, we appreciate your time. This closes the Public Hearing.

Commissioner Murray: Mr. Chair, I would ask for 10 minute recess to reflect testimony.

Chairman Tinsley: Good, because I have to go visit my other office. (Laughter). So I'll accept that. We'll be back just a little bit after 10:00 folks. There are facilities just across the hall, down the hall around the corner and of course on other floors if you feel the need. So thank you folks and we'll be back a little after 10:00.

Break – 9:55 a.m.

Returned to Subdivision Meeting at 10:05 a.m.

Commissioner Tinsley: Welcome back everybody. I hope all of your cells phones are turned off. I'd like to point out that some people came in after I made the statement. There's a sign in sheet up front and if you haven't had a chance to sign in please do so. Kelly please pass it around if you don't mind. And if you receive a parking ticket while participating in this meeting this morning, please bring it up to the 3<sup>rd</sup> floor and we'll take care of it. Again as I said, jokingly, but seriously, don't bring any other ones, just bring this one, if you get one. All right, Lindsay did you want to make a point or did you want to wait until we get into the discussion portion?

Lindsay Morgan: Discussion.

Chairman Tinsley: All right.

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: During the break I spoke to Mr. Stahl and I asked that Kelly Blake report on that conversation.

Chairman Tinsley: I spoke with him to so I can speak and I could if you would like, if it's all right with you.

Commissioner Murray: All right.

Chairman Tinsley: Our question was, and I recall this from the first special zoning district we

did. The argument regarding civil versus misdemeanor and I asked him what the purpose was for the County to keep it civil, but he gave us some very good reasons and I recalled why I supported that the last time and why I will support again this time. I'm going to share that with you. The current State Law is very vague as are a lot of the State Laws and they need to be update but this current provision for violations calls for \$500.00 fine and our 6 months imprisonment for a violation. Looking at the Flathead Valley, Flathead County penalties, they have the same violation except they go a step further; "Each day of continued violation after notification is separate additional violations. In other words in Flathead County its \$500.00 or 6 months in prison, per day. In our particular case, our particular civil attorney who is Deputy County Attorney Paul Stahl, believes and I think I believe as well, I can't speak for the other two Commissioners that an administrative violation should be handled civilly. We can go, we can do something other than what the law requires as long as we don't go beyond that. In our case we decided we would reduce the fine and we wouldn't ask for an imprisonment violation. That is why we are going civil, or that's why in the past we have gone civil and in this particular case we have as well, unless it is changed today. That basically, is the reason, we did it in the last one as well. Special Zoning District #25. That's the explanation I had and I will allow at this point any further discussion or commentary from my fellow Commissioners.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair I believe you also reported to me that Paul Stahl indicated that regardless of whether it's a civil offense or misdemeanor offense there is still litigation possibilities.

Chairman Tinsley: Good point. You can go, you can appeal either one, and you can appeal a civil violation through the District Court, so there's no loss of appeal just because it's a civil matter. Thank you for reminding me of that. Well, Commissioners, what is your pleasure?

Commissioner Murray: I thought Ms. Morgan was going to offer us some stage advice at the 11<sup>th</sup> hour?

Chairman Tinsley: Ms Morgan, please.

Lindsay Morgan: One that that I would like to point out, I talked with the Applicant during the break and he pointed out that they do actually have properties within the zoning district that are smaller than the 26,000 square foot recommendation that the Planning and Zoning Commission made for minimum lot size in the district. And one thing that the petition had requested that a section on non-conforming lots be removed. Staff had recommended that that clause not be removed in the Staff report just because there are some concerns that what if they overlooked something, they don't want to start removing clauses relating to non-conforming lots and non-conforming uses. And now we've actually found out that by removing that that would affect 2 lots that we know of right now. So I guess I'm just cautioning you on removing that clause. Either that or you can, I guess reduce the minimum lot size, but that again we could still be overlooking something.

Chairman Tinsley: And the clause as it stands now, makes an exception for the 2 that we have just stumbled upon currently?

Lindsay Morgan: Correct.

Chairman Tinsley: Ok. Thank you.

Lindsay Morgan: I can go through, I guess, do you want me to go over again what the Planning

and Zoning Commission decided and made recommendations for the Commission for today?

Chairman Tinsley: What's the pleasure of the Commission?

Commissioner Varone: Please.

Chairman Tinsley: Please.

Lindsay Morgan: Ok. You accepted the Staff recommendation with regard to the home occupation, and under Staff recommendation there is a definition for home occupation. As far as the minimum lot area Staff had recommended you either go with a ½ acre or more of a round number or not making a change from the original. You chose to go with the 26,000 feet or the Planning and Zoning Commission made that recommendation. As far as the setback requirements you went with the applicants request. You went with the Staff recommendation that the Accessory Buildings shall be located at or to the rear of the front line of the principal building, as a notation as opposed to a separate number. You went with the applicants request regarding accessory buildings of 256 square feet or less, that those buildings can be located as close to one foot to the rear property line. You went with the applicant's request regarding permitted encroachments into the yards. Staff actually went over in detail what they had requested and made some changes to that. In their request they are asking covered decks and covered terraces be allowed to encroach into the setbacks. In some cases no more than 5 feet. Staff went through that and made some amendments to that. You went with the applicant's request to remove that non-conforming lot section that I just went over a few minutes ago. And that would be the removal of that section. You went with the Staffs recommendation as far as non-conforming uses and that was just to correct a typo. You went with the Staff recommendation for a enforcement provision. And you went with the Applicants request regarding the definitions. One thing that Staff would like to point out is, with regard to the definition section you could add some of Staffs recommendations to that because there are some things that for example home occupations haven't been addressed under the Applicants requested definitions. Do you have questions for me?

Chairman Tinsley: I do. Perhaps, it's my getting on in years. (Laughter). Lindsay, going back to the Applicants request for non-conforming lots not non-conforming uses, but non-conforming lots, that's what we were speaking about a moment ago, is that correct?

Lindsay Morgan: That's correct.

Chairman Tinsley: So you're saying we will need to add that language back in order to cover the situation we just found this morning, or we're good now? Please just, it's got me, I'm around the axel on this one now.

Lindsay Morgan: I'm not sure if you want to ask that question of me. You may want to ask Mr. Alles or Mr. Grebenc, but I believe that you would probably start over right now and you would state what you, if you want to, accept the Planning and Zoning Commissions recommendations and then go forward that way, with a few exceptions and then state the non-conforming lots be added back in. I believe that's how you would do that.

Chairman Tinsley: Mr. Grebenc, do you have anything to add on that?

Jerry Grebenc: Mr. Chair, Commissioners, it just sounds like either you would need to add back in the non-conforming lots clause or you need to change the square footage on the lots, one or the other.

Chairman Tinsley: Right. That's what I was trying to get to. OK. We have a recommendation from the Planning and Zoning Commission. Commissioners?

Commissioner Murray: Mr. Chair, I move we adopt the recommendation from the Planning and Zoning Commission.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion and a second. Any discussion? Before we get that far, we have some amendments. Commissioner Murray.

Commissioner Murray: I would move that we add the non-conforming section back into the lot size requirement.

Commissioner Varone: Second.

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

Commissioner Varone and Commissioner Murray: Aye.

Chairman Tinsley: Motion passes 3-0. Further amendments?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, before the meeting this morning, Lindsay provided a couple more definitions for us as a possibility to add in the document and I don't know how many folks in the audience received that or not, but I'm going to make a motion to include those. Before I do I'd like to read those for the benefit of the audience if I may?

Chairman Tinsley: Please.

Commissioner Varone: The first one is a definition for setback and that reads: The minimum distance between the property line and/or street right-of-way, whichever lies closest to the building line) and the building line. The second definition is building line: That part of the building nearest the property line and/or street right-of-way. Mr. Chair, Commissioner, I make a motion to include that in the document.

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. I'm assuming that's going into the definition portion correct?

Commissioner Varone: Correct.

Chairman Tinsley: Motion passes 3-0.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: I make a motion to, I know that the grandfathering language was excluded in Tuesday nights meeting and I make a motion to include that back.

Chairman Tinsley: We have a motion to include the grandfathering language from Tuesday nights meeting. Is there a second? Is there a second? Motion dies for lack of a second.

Commissioner Varone: Discussion, if I may, before I move on?

Chairman Tinsley: On?

Commissioner Varone: On the grandfathering. First of all.

Chairman Tinsley: Commissioner, if you would for me wait until we get done with the amendments and we'll get to that portion because there was no amendment offered, there was no motion because it died, so we'll do that in the discussion portion, if you don't mind.

Commissioner Varone: That sounds find. Thank you.

Chairman Tinsley: Thank you. Further amendments?

Commissioner Varone: Mr. Chair?

Commissioner Varone: I would like to make the motion that if we need to I talked to Lindsay about this, this morning, if it's not necessary that's fine, that there is one year to comply. I think we already did this on Tuesday night, do we need to do it again?

Chairman Tinsley: It's already in the document.

Commissioner Murray: Mr. Chair is that in this document or is it outside as a separate motion?

Chairman Tinsley: Well, it was passed on Tuesday night wasn't it?

Commissioner Varone: It was passed on Tuesday night, but it wasn't included in the documentation that she provided us today.

Lindsay Morgan: That's correct. It wasn't a part of the text amendment. If you wanted that added in as a part of the text amendment, that's fine but I didn't go over it in the recommendations that you made, or the Planning and Zoning Commission made.

Chairman Tinsley: I don't believe we did that in the previous one either, did we? There was a reason why we didn't do that.

Commissioner Murray: Mr. Chair, it was a motion outside of the text amendment. I'm prepared to speak to it again, much to the dismay to the folks in the room.

Chairman Tinsley: I believe the last time we did this it was specifically kept out just like it was Tuesday night, because it's not part of the text amendments. It's a separate action that the County Commission is allowing outside of the zoning requirements, so that's why it's not in the documents Commissioner. But you can make a motion if you want.

Commissioner Varone: No, I'll wait.

Chairman Tinsley: All right. Further amendments? Are there any further amendments? Hearing none, is there any further discussion on the petition? Commissioner Varone.

Commissioner Varone: Thank you Mr. Chair, Commissioner Murray. I'm concerned about the way we're moving forward with the Special Zoning Districts, and I would just like an opportunity to maybe to vent myself. I think that the folks that are included in any zoning district are innocent victims. They're unintentional innocent victims and the way that the law works right now or doesn't work, doesn't provide the information that you as homeowners, or any of us as homeowners who live in special districts, the opportunity to know that we're in one. And even though this Special Zoning Districted was adopted 28 years ago, and the County hasn't enforced any of it, I have a real difficult time to even blame the County at this point, because it's impossible and has been impossible in the past, to keep track of all of the regulations that each special zoning district has, and that's why Kelly was hired, and that's why we're attempting to make some changes to help people out. I personally don't think that we're going to be successful unless legislation changes and unless it's going to be a requirement that the special zoning district information is provide and required on the plat or some other document when you're buying a house, so I think it's pretty futile of what we're doing here. That being said, you were told that you had 3 methods that you could utilize to be compliant. One would be to bring everything up to the zoning as it currently read; the second one was to ask for a variance, and the third one, which you chose as a community, was to re-write and amend the regulations of the zoning district from 28 years ago. That's what you, as a community, chose to do. And at least in my personal opinion, I believe the County has an obligation to listen to you to the extend that it possibly can. I don't think that we're doing that right now, relative to grandfathering, and I'm disheartened by it and I would like to see us change that policy. I know where headed toward zoning, towards County wide zoning or area wide zoning. I just don't think this is the method to begin it. Thank you.

Chairman Tinsley: Thank you Commissioner. Further discussion?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: The reason that after 30 years this Commission has elected to start enforcing zoning is the 3 Commissioners before you believe that if you as residents of Lewis and Clark County want your neighborhood zoned, or wanted it zoned 28 years ago was there are districts throughout the County that wanted zoned. We set aside the money to hire a Staff person in the County Attorney's office to start enforcing this zoning. Tuesday night someone spoke to the doctrine of laches and the fact that Commissions that have gone before us have not been willing to spend your tax dollars and our tax dollars to enforce what you've asked the County to enforce. This Commission has taken up the torch, and we see it as our obligation if you asked us to enforce something or give the Board of County Commissioners responsibility to do a job then we have an obligation to do it. That's why we budgeted the funding for the last 3 years in the County Attorney's office to hire an enforcement officer to go out and monitor these zoning districts. One by one by one, we're going through every zoning district in Lewis and Clark County and enforcing them. It's your zoning district. I too, believe that it's your district it's the way you want your neighborhood to look. You have the right to tell us how you want that zoning district to look. That's why I intend to vote for the recommendation today. The, I also agree with Commissioner Varone that eventually we need to have some general County wide zoning, so we will have an influence on how the greater Helena Valley and all of Lewis and Clark County is going to look. The residence of Lewis and Clark County, when we get to the point where we are willing to adopt some limited county wide zoning, we'll bring it before you in hearings to advise us whether we're on the right track or not. I have a little heartburn over the testimony coming up twice that "I heard from a neighbor that they called the County". The County consists of 450 employees. And to say they called "the County" leaves us without the ability to go back to that department, that County employee, should they still be employed, and straighten out the miss-information that you are getting. That's our obligation to advise if you're getting poor information from a County department, to advise the elected official that supervises

that department be it the Clerk and Recorder/Treasurer, be it the County Attorney, or if it's a department that we have authority over, to correct the error in our department. When you talk to your neighbors and they have called the County, you need to get more specific information. I'm not doubting that the person that told the two of you that testified that they called the County, that they got poor information, I'm not doubting your remarks at all, but the testimony that you've given us denies us the ability to correct that problem. I'm sure, after today's hearing, the three of us are going to go County wide to anyone that deals with information that's being given regarding zoning or other information on your plat, we're going to reinforce with the elected official or in the case of departments that we have authority over, to ensure that you get the correct information when you call. When it's all said and done, we work with you, and our contract with you comes up when we re-run for election and it's our job, as your representative in government, to see that you get proper information. So, I apologize for the miss-information you were given from Lewis and Clark County but I, you need to help us to correct the problem we have in government if we have a problem. In the future I want everyone that calls to receive proper information. Thank you Mr. Chair.

Chairman Tinsley: Thank you. Any further discussion?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: If I could back-track a little bit. I do have one more amendment, if I may. It's language added. On Tuesday I supported the language that the Staff recommended regarding the difference between civil charge and misdemeanor charge. I was prepared before the break and the discussion with Deputy Attorney Stahl to change my mind on that and vote for civil penalties. I remembered the discussion about civil remedies rather than misdemeanors now that it was brought to my attention. But I would like to, and I'm going to support, again, that language but I would like to add some language that I think might provide a little bit of comfort for the folks in Special Zoning District, and it will need to be constructed so it's more legally written, but what I would like to add is that a time of, I'm just going to throw out a number here, 90 days, and I don't know if the Commissioners would agree to that or not, that there will be 90 days for the offender, I guess that's the right word, to comply or submit a plan that's agreeable to the County Enforcement Officer for coming into compliance. What I think that will do is give a little bit of comfort to the folks that they're not going to be paying \$25.00 a day from the time they receive a letter. I don't know how that language should read and I don't know if 90 days is an appropriate amount or 60 days or whatever the Commissioners feel, or Kelly might feel reasonable. And that's a motion.

Chairman Tinsley: I'm just reading this very quickly. Give me a moment. Ok. We have a motion to add language to the enforcement penalty for violation portion. I'm assuming that's where you want it. Is there a second? Is there a second? Motion dies for lack of a second.

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Commissioner Varone, may I be allowed the privilege to speak on why I didn't second the motion?

Chairman Tinsley: Please.

Commissioner Murray: I too believe that we need to review with the County Attorney's office at our next meeting that once you're cited, once, not you folks, I know you won't be cited, but once someone is cited for a violation of the zoning regulation they have a period of time, maybe it's

90 days, maybe it's 30 days, to either apply for a variance, correct the citation or do something, but I want to review it at our next monthly meeting with the County Attorney and give you a commitment that we will review it with the County Attorney. The other reason I didn't second the motion is this exact verbiage now applies to 2 zoning districts or potentially applies to 2 zoning districts, yours and district 25 that we heard a year ago. In order to change it for 1 I think it should be changed for all and I believe a separate hearing needs to be held to change a period where you have a period of time once the violation is cited to apply for a variance or correct the violation, and I will support having a separate hearing on this once we meet with the County Attorney to come up with a period of time, be it 30 days, be it 90 days, for the person cited to take action. That's the reason I didn't second the motion. I agree in concept with Commissioner Varone on this item.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray, if you agree in concept, maybe offering an alternative motion would work. Using the same language but then adding language that says something like pending legal review and that if there's already in statute language that supports a specific time frame that would take precedence over this but if there isn't a specific time frame in statute that this would be adopted.

Chairman Tinsley: I hear a motion, is there a second?

Commissioner Murray: No.

Chairman Tinsley: Motion dies for lack of a second. Further discussion? I have one piece and then I'm ready to go for a vote if everybody else is. Lindsay, assuming this passes as amended and assuming item #2 listed on this sheet that you gave us which is the accessory buildings of 256 square feet or less portion stays intact, which it already has, then the next hearing for Mr. Retz would not need to occur, is that correct?

Lindsay Morgan: Mr. Retz would be in compliance with the new regulations.

Chairman Tinsley: OK. Thank you. Commissioners, hearing no further discussion, you have before you in the petition the text amendment for special zoning district #28, as amended, before you. 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. Retz, you're relieved from duty, where ever you are, from the next item.

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: I would move that fines be assessed until April 1<sup>st</sup> and the compliance date be March 31<sup>st</sup> to comply with the new Planning and Zoning regulations.

Chairman Tinsley: For Special Zoning District #28?

Commissioner Murray: Special Zoning District 28.

Commissioner Varone: That's 6 months?

Chairman Tinsley: We have a motion. Is there a second? Is there a second? Hearing none the Chair will second. Discussion? Commissioner Murray.

Commissioner Murray: There's nothing magic in my mind with 6 months versus a year from the non-precedent action we took with Zoning District 25, where we arbitrarily picked a year. On the 11<sup>th</sup> month everyone submitted their variance request. Granted in Lewis and Clark County, I probably am one of the worst procrastinators in the County. I'm not going to foster procrastination with getting this over. If winter is to happens to set in early and we don't have the Indian summer we normally have in the fall through November, if Mr. Knapp comes back and asks me to reconsider this motion, if the motion is successful and passes, I would reconsider. If we have the open winter at least the fall that we normally have, there's no reason for people to procrastinate and not either submit a variance request or take care of the problem at hand, as many of your neighbors have done. That's the reason I picked 6 months. There's nothing magic about it in my mind other than the last zoning district we heard everyone procrastinated and waited until the 11<sup>th</sup> month to file their variances.

Chairman Tinsley: Thank you Commissioner. Further discussion? Hearing none, you have before you a motion that fines will begin being assessed on April 1. The variance allowance period, for lack of a better term, will run through March 31<sup>st</sup>, 2006 essentially meaning any person in violation after the text amendments have passed this morning, has until March 31<sup>st</sup> to submit a variance request, no fines will begin being assessed until April 1<sup>st</sup>. If, and I'm assuming by your motion if somebody has applied for a variance request, that also puts a moratorium on any fines, until the variance request is heard?

Commissioner Murray: Yes.

Chairman Tinsley: All right. Any discussion?

Commissioner Varone: Mr. Chair?

Commissioner Varone: Mr. Chair, Commissioner Murray, I have some discussion. These folks had 3 opportunities, 3 ways that they could come to us, and they chose to amend the regulations. Seems to me that because it's their regulations from their special zoning district, not a County zoning district or an area zoning district, there was an expectation, and I believe a reasonable expectation that their request for their amendment would be granted. That the grandfathering was not granted was no fault of their own, and I can tell you that if I was in a special zoning district and I felt it was my special zoning district and I was writing the rules that I could be grandfathered and would be grandfathered in and even if I had the money I would make those changes until after the hearing was held. And a year in my opinion is not only reasonable but I think that we owe it to this community to allow that, so I will be voting no.

Chairman Tinsley: Thank you Commissioner. Further discussion? All in favor of the motion signify by saying Aye.

Chairman Tinsley and Commissioner Murray: Aye.

Chairman Tinsley: Opposed same sign.

Commissioner Varone: No.

Chairman Tinsley: Motion passes 2-1, for the record.

Thank you folks for your time this morning we appreciate your patience, we appreciate your clarity and your sincere testimony. Mr. Knapp I really appreciate your testimony, you were very

professional and I do appreciate it. Mr. Dundas, as well. I don't want to miss anybody. Everybody was good. Those two come to mind because they were first. (Laughter).

Commissioner Murray: Mr. Chair, can we get a 5 minute break to switch between here?

Chairman Tinsley: Folks, we're going to take a 5 minute break. I won't make any jokes about Senior Citizens on the Commission that need a 5 minute break so we'll be back in 5. (Laughter.)

**Public Hearing, Request for Zoning Variance-Special Zoning District #28 (Vanderbergh Village).**

Chairman Tinsley: Mr. Retz, your application is now null and void. I don't know if you wish to speak to it since it was noticed. You're more than welcome to, but it's null and void, there's no need to, so we're just going to move on to the next agenda item.

Chairman Tinsley: Folks, for the BLM portion, that are here, the road portion or trail portion, we're going to get to that in a minute. We have one more item to discuss, it's not going to take that long I don't believe, so hold on and we appreciate your patience.

**Public Hearing. Resolution Levying And Assessing A Tax Upon All Benefited Property Within Rural Improvement District 2003-1, Gable Estates Major Subdivision.**

Chairman Tinsley: Next item on the agenda is the Public Hearing Resolution levying and assessing a tax upon all benefited property within Rural Improvement District 2003-1, Gable Estates Major Subdivision. Marni, Miss Bentley.

Marni Bentley: Good Morning Commissioners. The purpose of the rate hearing today is to lower the assessments for the Gable Estates RID. I did give notice of the rate hearing to the public in the Independent Record and a letter to each property owner. We are decreasing the assessment. The old assessment was \$1364.69. We are decreasing that to \$859.84. We had a much lower construction cost. We saved about \$149,000.00 on this project and that's why we're lowering the rates today. The on-going maintenance amount will stay the same. I didn't receive any questions, inquiries or comments about this subject and I have attached a draft resolution to your memo with the assessment sheet attached. Staff does recommend approval of the resolution setting the assessments of the Gable Estates RID at \$859.84 per year per lot for road improvement activities and paying off the debt, and \$198.93 per year for road maintenance.

Chairman Tinsley: You mean you didn't have people beating down your door saying don't charge me this much? (Laughter.)

Marni Bentley: No, I did not.

Chairman Tinsley: Well thank you very much Miss Bentley. Questions for Staff? Is there a motion? Oh, first let's have a Public Hearing, how about that? This is a Public Hearing on the Gable Estates Rural Improvement District Rate Hearing. Do any members of the public wish to comment on this at this time? For the second time? For the third and final time? This closes the Public Hearing. What's the pleasure of the Commission?

Commissioner Murray: Mr. Chair, I move approval of the Resolution Levying And Assessing A Tax Upon All Benefiting Property Within Rural Improvement District 2003-1, Gable Estates Major Subdivision and authorize Chair to sign.

Commissioner Varone: Second.

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

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray

Commissioner Murray: Mr. Chair, Commissioner Varone, we need to reinforce to the public again everyone says your taxes never go down even though these are fees and not taxes. For the record we are all pleased that we're reducing them because we were able to save residents of this rural improvement district funding through our bidding process and lower construction costs. Thank you.

Chairman Tinsley: Thank you. And that's testament to our Public Works Staff and Marni, Miss Bentley. Any further discussion? All in favor of the motion signify by saying Aye. Aye.

Commissioner Murray and Commissioner Varone: Aye.

Chairman Tinsley: Motion passes 3-0. Next item on the agenda. Mr. McHugh the Staff person. This is the North Hills travel management plan. The Commissioners will consider the recommendation from the citizen working groups for travel management in the Bureau of Land Management's North Hills, Scratchgravel Hills and Marysville areas. Mr. McHugh.

### **North Hills Travel Management Plan.**

Michael McHugh: Commissioners in June of this year the Board of County Commissioners agreed to sponsor working groups to review possible travel management options for the Helena North Hills, Marysville area and the Scratchgravel Hills area. The people that sat on this working groups were selected because of their interests. They represented motorized and non-motorized recreationalist, open space persons and people that actually live in these various planning areas. At that time, when the Board of County Commissioners elected to sponsor these groups, they indicated that they would have a public hearing that would be open for public comment and that is the meeting that we're hear today for. Attached to the cover memo are the three letters that were written by the members of the working groups, forwarding their recommendations to the Board of County Commissioners. Essentially, up on the screen right now are the evaluation criteria that the working group members were charged to evaluate these travel routes. These are not all roads, these are travel routes, which have either been created through just ingress to the area by four wheelers, other motorized things, horse trails and things like that. The various criteria dealt with wildlife habitat, the aquatic and fisheries, soils, the resource access needs. This basically dealt with the need to access private property within the BLM lands either mining claims or properties that were held by deed. Also needs for Wildland fire and fire protection forestry management, mineral and energy development management and also public use based on the need for recreation, woodcutting and hunting in the area. The options that were available to the members of the working group members, was either to recommend that the trails/routes whatever you wish to call them, would be open year round to public access and administrative use or opened with restrictions which would be like seasonal restrictions, and restrictions like what type of vehicles that could access that. One of the other options was to close these routes. This would be closed to motorized vehicles and public access but would be permitted on a case by case basis with an application or permit issued by the Bureau of Land Management, and then the 4<sup>th</sup> option was to decommission trails in that area, mainly because they were repetitive trails or they had some type of environmental constraints because they were going up slopes or impacting wildlife habitat and these would be decommissioned. With the various options it would not limit public access for non-motorized use. People could still hike and take their horses and things on that. It's important to note that these are just recommendations to BLM, if the Commission wishes to forward them to the

Bureau of Land Management. These recommendations will be evaluated by the Bureau and incorporated in a much larger travel management plan. When the BLM prepares the overall travel management plan for this area they will take into consideration travel management plans for State Lands and Forest Service Lands if they're adjacent to it. They also take into consideration the cost of implementing these recommendations and the Bureau will develop several alternatives, which will be presented in the overall travel management plan.

The first area we're going to discuss is the North Hills Travel Planning Area. This is located east of Interstate 15. It consists of over 4700 acres. Currently there's 12.7 miles of road or routes in the area and currently there's no legal platted right-of-ways within this area. I don't know if you can see this very well. The different colors for the routes indicate the proposed uses of it. The green areas shown there would be open to the public all year round. The light green. Going east/west there, the original proposal was having restrictions, seasonal restrictions in that area unless it could show that a road could be constructed there and it wouldn't have environmental impacts and also could be maintained. Since the working group/work shops, BLM has gone out there with their engineers and have indicated that that east/west and then going up as it trends up to the north there could be constructed in a manner that all year access could be provided to that area. And so this will be probably a consideration that BLM will take into account when they prepare the final management plan. Directly to the east in that southern portion is a Department of State Lands area a section there. You can see from the illustration there, there is some access from the south, the blue line which is a public platted right-of-way, however, that does go through private property and the private property owner is not required to provide access. It's a route that people have used in the past but it is not a legally approved and the property owner there could prevent access to the state lands in the future. Some of the issues that came up in this discussion group dealt with public health and safety, non-enforcement of regulations had to deal with firearms, not adhering to the various trails in that area, and also there was discussion amongst the group about some federal regulations that would prevent vehicular access in excess of 300 feet of a trail. The group did achieve overall some consensus about closing these trails. There was some non-consensus on the enforcement of this 300 foot travel area. Other issues that were brought up were the potential spread of weeds and again what was described by the group as a flagrant disrespect of stated road use requirements and the potential for resource damage in there. The recommendation by the working group was to have the phased approach over the next two years and have this area evaluated and set up a working group and establish no shooting safety zones within that area. The next group our planning area that was reviewed was the Marysville Travel Planning Area.

Chairman Tinsley: Mr. McHugh?

Michael McHugh: Yes?

Chairman Tinsley: We have a question from one of the Commissioners if you wouldn't mind.

Commissioner Varone: Mr. Chair, Commissioner Murray, if you wouldn't mind if we could sort of take these individually with questions? I appreciate it.

Michael McHugh: Ok.

Commissioner Varone: Looking at the map again. The first question has to do with that blue area, and you're talking about the road that's there.

Michael McHugh: These are legally platted right-of-ways. I believe this is T-road here. Snowdrift. I apologize. This is Glass Drive, this is Collins Drive, and then we have access that was developed in conjunction with BLM to provide access across private property that the County contributed the gravel and some of the construction costs here approximately 4 years

ago I believe.

Commissioner Varone: Right and I remember that. But I'm talking about that blue area over there to the east.

Michael McHugh: Over here? It's Department of State Lands.

Commissioner Varone: Is that a road that's currently there right now?

Michael McHugh: The road does or the route does go up through here but there's private landowners in here, where there's no legally platted or agreed upon easement and they could preclude at their option, so technically the only access to this BLM property is via this route here and this route here.

Commissioner Varone: Ok. My next question, the road that's on BLM land and private land, how long has that road been there?

Michael McHugh: Are you talking about the road here, or the road here?

Commissioner Varone: The road up further.

Michael McHugh: Up here?

Commissioner Varone: That attaches up at the top. I have a reason for asking the question.

Michael McHugh: I just want to clarify that we're talking about this segment of road here.

Commissioner Varone: Correct.

Michael McHugh: That's been in existence, and I'd have to rely on the property owners in that area that are more familiar, but it's just a route that has been carved through there and again it transects private property and there's no inherent right of use unless a Court declares it as a prescribed easement.

Commissioner Varone: I seem to remember over in the western side of the County a couple of areas where people have just gone through private property and ultimately over a certain period of time it's now deemed a public road because they had been using it, and that's why I asked for the length.

Michael McHugh: Well, again, the public or an individual could have the right to petition the courts to describe it as a prescribed easement. At this time, no one has done that, and it would take an action by the district courts to establish an easement through there.

Commissioner Varone: Thank you. Now for the reason I'm asking all of these questions. I want to commend the group for working as hard as they did, but what screams out to me is there's only one way in and one way out and during times of fire that's a real issue and should be for every body and it just seems that the logical way for having a way out is through that state land down that way.

Michael McHugh: That's a possibility and that's what the Bureau of Land Management and their overall travel plans will be looking at that, but if that road was deemed as necessary for fire protection, Wildland fire stuff, it would be either opened with restrictions or require a permit. And again opened with restrictions, limited type of use, seasonal use, the needs use of it and that can be established through permit process.

Commissioner Varone: Thank you.

Commissioner Murray: I have a question please.

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: What's the significance of closing the east/west roads from Valentine's Day to April 18<sup>th</sup>?

Michael McHugh: This area during that period becomes very inundated with wet soils and everything and what's occurring there, they're developing motorized problems with vehicles going through there and again the BLM has sent their engineers out there and there is a way to develop that road that would mitigate the environmental impacts associated with the wetness of the soils and everything during that period. So why the working group reviewed this and made this recommendation, it was based on the current conditions. BLM will have to evaluate this and see if they have the necessary funding to go out and make the improvement there. And this will probably be an option, an additional option, than what's represented here in this letter in the future by the BLM.

Commissioner Varone: Mr. Chair, I just have one more question.

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: When you talked about you reached sort of a consensus, the majority of the people agreed to this and some of them didn't, what was the vote? There are 3, 6 or 9 people on this.

Michael McHugh: We didn't take votes. We agreed to agree or agreed to disagree. The routes as shown on here, a consensus was reached; the only disagreement was the enforcement on a federally mandated and Mr. Pat Zucker is here and he can explain this a lot better than I can. But one member of the group felt that there was too much opportunity to violate this and again wanted a higher level of enforcement on that.

Chairman Tinsley: Let's move along to the Marysville portion, if we can. Where you were starting I believe.

Michael McHugh: Again, Marysville Travel Planning Area that consist of the BLM land consist of over 12,000 acres. There's currently almost 54 miles of roads, trails pass in that area, and only 1.5 mile has a legal right-of-way. Again that legal right-of-way is only the portion of right-of-way that's located on BLM land. As this slide indicates, the blue line does show a legal right-of-way, much of it goes through forest, or, much of the right-of-way goes around the BLM property. There is much discussion in this area about the needs to the trails in the northern portion of the area. The BLM and Fish and Wildlife and Parks indicated that there are some wildlife habitat issues, some migratory corridors through that area, and did recommend closure of those trails. Those trails are shown in the red there. In discussions with several members of the public that attended these meetings, the Forest Service has established a snowmobile trail from Lincoln to the little Prickly Pear Road which is the road that's showing up in the northern portion of the property and now they need to establish a snowmobile route to the Marysville town site in the future. And again the BLM will take these things into consideration when they do the final management plan. In this area, again there were issues about enforcement. There were wildlife issues and there was a great concern about opening this area or leaving this area opened during snowmobile travel during the winter. Generally snowmobiler's go the path of least resistance in this area. BLM and the working group did try to establish some circular snowmobile routes in that area. Included within this area is the ski hill. There's some recommended seasonal closures in that area due to the operation of the ski hill in there. The

working group did achieve consensus on this proposed mapping and the recommendations. This working group had numerous members of the public there, and the Staff and BLM would like to thank the members of the public that took the time and effort to come to those meetings and provide their input. We actually went out on the site as a working group and traveled most of these trails and looked at them and came up with this recommendation. It's important to notice that the working group did achieve 100% consensus on this proposed recommendation and that's reflected in the letter. Are there any questions?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. I think all of us have received a tremendous number of e-mails regarding the Marysville situation and just a question. I don't know any of these folks on the committee. Do any of them live in the area?

Michael McHugh: Not everybody lives in the area. Mr. Clark, Mr. Strobe, Mr. Marble and I believe Mr. Bower either live in the area or have property in the area. When these working groups were established we were hoping to have a wide range of input. A lot of the other people in the area recreate in the area either through mountain biking, 4-wheeling, hiking, or whatever. Again the intent of the working group was to provide input from a wide range of various thought processes and things like that.

Commissioner Varone: Thank you

Chairman Tinsley: Are lands in question are within Lewis and Clark County, correct?

Michael McHugh: That's correct.

Chairman Tinsley: Members of this group are residents of Lewis and Clark County?

Michael McHugh: Yes they are.

Chairman Tinsley: All right. Thank you.

Michael McHugh: The final travel planning area that we looked at was Scratchgravel Hills. This area occupies approximately 5400 acres in 18 sections. There's currently in excess of 39 miles of road in that area and there's little over 5 miles of legally platted right-of-way. This is the area here, it includes the Scratchgravel Hills and also some areas over off Austin Road. This planning group did not achieve consensus on it. They looked at the various things, they looked at the various options about the possibility of having a motorized loop through the area. The Scratchgravel area does have some high environmental constraints dealing with soils and eroding in this area. Legal access is provided to this area, motorized legal access is provided to the area through Echo and then non-motorized access is supposed to be provided by Head Lane, John G Mine Road, and I forget what the other road is. But essentially a majority of the group indicated that they would like this area to be non-motorized totally. Again the consensus was not reached in this area. Issues that were discussed dealt mainly with enforceability about misuse of the property, discharge of fire arms in the area, trash and weeds in the area. But essentially these are the recommendations of the various working groups. As I mentioned before Mr. Pat Zucker from BLM is present and several members of the working group and members of the public are here. Staff would like to take this opportunity to thank the members of the working group and the public that did take time and we would also like to thank members of the staff at BLM and also the Fish and Wildlife and Parks that took the time and Daphne Degredokes and David Hyness from Maxim Engineering that facilitated and provided the mapping for this area. Again Mr. Zucker is here, I don't know if he's got any comments and as

agreed before the Commission did agree to take public comment at this public hearing.

Chairman Tinsley: I'd like to invite Mr. Zucker up to say hello and to see if he has anything to say, and then I'll ask the members of the working groups that are present, and then I'll ask any members of the public if they have any comments. Mr. Zucker, welcome.

Pat Zucker: Thank you. I'd like to express BLM's appreciation towards Lewis and Clark County Board of Commissioners for undertaking this collaborative working group process and especially express my thanks to Michael McHugh who worked on all of these working groups and all of the members of the working groups themselves and I believe this was a great opportunity for community members to participate and travel planning and I think it \*\*\*\*tape ended\*\*\*\*\*

Chairman Tinsley: Thank you very much Sir. Questions for Mr. Zucker? Thank you. Any members of the working group that would like to comment? Please come up.

Mr. Chairman, members of the Commission. My name is Connie Cole.

Chairman Tinsley: Connie, first, we need to ask how are you feeling? Have you recovered?

Connie Cole: Thank you. Feeling Great.

Chairman Tinsley: Good.

Connie Cole: I served on two of the travel planning groups, the North Hills and the Scratchgravel Hills. In each area, I want to really enforce, that we were not trying to simply to come up with recommendations, being a non-motorized person, we didn't try to come up with a recommendation that would simply delete the motorized use. I mean the groups really tried to come to consensus where you would have an equitable balance between motorized use, sustainable motorized use and then non-motorized use as well. We just couldn't get there on the Scratchgravel. The non-motorized group came up with a proposal that would have given a loop road for motorized use and actually the person who represented motorized users in the group couldn't come up with an agreement that, so we're, an unfortunate feeling there. That area is completely out of control. The BLM will tell you that enforcement is just a complete nightmare. I don't know how we will move past where we are today, it's just unfortunate. As far as the North Hills goes, please keep in mind that the North Hills has a historic use as part of a block management area for hunting, so not only do we have people that go up to recreate during non-hunting times of the year, but then it's also a very important area for hunters, and we tried to keep that in mind. To the west of the North Hills you have a block management area which is represented by the Seeben Ranch; to the east you have the State Lands, and so the, I just need to correct your perception as far as; coming off of Snow Drift, the area in green is the only public access to the North Hills and that was created as a collaborative effort with the BLM Fish and Wildlife and Parks in the County a couple of years ago. Prickly Pear land trust acted as a facilitator to that. If it wasn't for that route the public would not have public access to the North Hills. So you're concern Commissioner Varone about providing fire access, a secondary ingress and egress it would really have to be created because it does not exist today. So I would like to emphasize that the North Hills is a tinder box. Prickly Pear Land Trust had a public lands clean-up day in August where we removed 750 lbs of trash from the North Hills. A lot of this was fire works related. I mean it's absolutely, it just makes your toes curl to think about the potential of this area go up in flames. It's a very popular kegger area, for both the North Hills and the Scratchgravel. I need to emphasize that if we don't get law enforcement under control, anything that these working groups recommend is null and void because there's absolutely no way of enforcing what's going on. So we have fire danger, we have resource damage, there's a lot of use of this area for shooting. There's absolutely nothing wrong with folks going up and using public lands to shoot. It's just where they've located is not the right

area. They choose to shoot right at the junction where heavy line comes up and you have the “h” that goes east and west. There’s no way for other users to come around these folks because they are right in the junction of the road. And what we’re trying to ask the BLM to do, and Pat has agreed that this is a significant issue, is to somehow create a no shooting zone. I mean even the best intentions of people who are using their rifles, and if they are wearing hearing protection, they can’t hear people trying to call attention to the fact that there are other users in the area. I’m not trying to say that everybody that goes up to shoot is doing so thoughtlessly, it’s just that we need to move that use away. What else do I need to tell you? So, the fire danger, resource damage, enforcement, the use of this area historically is a block management area, we need to be able to let folks who are interested in hunting to continue to do so but in a safe manner. I think that’s all I had to say.

Chairman Tinsley: Thank you very much.

Connie Cole: Thank you

Chairman Tinsley: It’s good to see you up and about again. Further comment from the working group members? All right, any members of the public who would like to comment, please come forward and state your name and address for the record.

Commissioner Murray: Mr. Chair, before you do that I would like to move that the public comments we receive versus e-mail be incorporated into this record.

Chairman Tinsley: Absolutely. All of those that we received prior. Please, come forward and state your name and address for the record.

Good Morning. My name is Susan Swanburg and I live in the Helena Valley, and I’m a horse trainer and I use the North Hills and have ridden up there for many years, but it has become a traffic for high-powered rifles. And that’s my main concern, just the abuse that these people have created on the main road. They have destroyed trees by shooting them in half. They’re working on the power poles. They’ve destroyed so much property up there that and they leave their trash, they don’t pick up after themselves. But mostly I was up there this summer with a very good customer. He’s not someone who could ride well, and these people shot their guns off and his horse shied out from under him and knocked him out. So we’re really looking at a hazardous situation with high-powered rifles in the North Hills. And it’s really an area that needs to be serene. It’s a wonderful place to ride; it’s quiet, there’s wildlife. And I really object to these really renegade people coming up there and using it as their target range. And there are designated target ranges in the area. There’s one up there at McDonald Pass. But these people refuse to use them. They’re going to use the North Hills and make it a hazard. And the trail that I use is 50 yards from where they’re shooting directly at me. And it’s not safe. And I think there’s plenty of places where people could go target practice safely and not spoil the serene area with their gun fire which effects for miles around you can hear their gun fire. And the 4-wheelers also. They’re not allowed on Seeben Ranch land up there but I’ve encountered them many times trespassing. So it’s just time. We need to do something about the North Hills recreation area. Thank you.

Chairman Tinsley: Thank you for your comments. Further public comment. Good Morning and welcome. Give us your name and address for the record.

Good Morning Commissioners and Staff. I’m Karen Marble; 3504 Pondera Road in Helena. It sounds like the Marysville area is what I’d like to speak of and it doesn’t sound like we have the kind of problems that the other two groups had to address. Use of the Marysville/Great Divide area is a part of our local culture. This area is well suited for many recreational and residential activities. Most everything else in the greater Helena area if you look around is closed or very restricted for motorized access. We look around our county we think wow look at all this space

and land. Isn't it great here in Montana? But I think people would be shocked to realize just how much of our public lands are being closed down. In fact this morning, amazingly enough, if you've see the paper "Open and Closed – the Big Belts Travel Plan" and there it says that they've closed down half of the snowmobile roads in their plan. It speaks of a few openings and it speaks of mostly closures in the Big Belts area and they're, so they closed that area so the motorized people will be going somewhere else which there aren't a whole lot of places to go, so here they'll go to the Marysville area more likely if we have roads still open there by the time we get done here. Just in general, I'd like to mention that in Montana there are 9 million acres designated as Roadless, 9 million, 10% of our Montana is Roadless designation. 3.6 million acres are designated as wilderness and that means non-motorized use of travel on those areas and there are many more millions of acres pending and actions that are called wilderness actions and conservancy actions in Montana and that comes off the Montana Wilderness Association Internet site, if you're interested in looking there for more information. I've been going to Forest Service and BLM meetings since the year 2000, so I've been listening and learning for 5 years now about the closures in Montana in lots of different areas and it's been a lot about closures; close-close-close. In the Marysville area, it's a small area. It has roads that are over 100 years old. These roads have been proven to be sturdy bedrock roads. The Forest Service and the BLM studies of that area report very little if any, adverse effect on the wildlife and the genetic flow. Even the Forest Service Biologist in one meeting said well motorized travel will not stop the genetic flow of wildlife through the area. The wildlife will adapt, so we were glad to hear that at that meeting too. We believe that's happening in the Marysville area. The wildlife seem to have adapted go around almost everything. And if you would like more information on that, that came, that information comes right off the Highway Vehicle EIS by the Forest Service and the BLM in this nice book that they put out in 2001. That information came out of their information. Personally, at my age, vigorous hiking is no longer an option. My right hip says "no don't do that anymore". So I need motorized access to enjoy the mountains of Marysville. I use my 4-wheeler in that area and I do stay on the roads and I would like to see some more of the roads left open that are on this plan that you see before you. The working group has made a good recommendation. I would like to add in addition to their proposed travel plan, a couple of specifics, and I'll give this to you in writing too. But for year round use roads 63 and 64; 63 goes up here and this is green here and this makes a nice loop here, off of this public access road here. 63 goes northward this way; 65 goes north easterly this way and I would like to see that opened for year round use, because we need a north access. Mike spoke of the snowmobilers trying to come, make a route from Lincoln to Marysville and this seems to be from talking to people in the area that know it better than I, but I've been up this road myself too, that one or both would be good ways to do that access. And that's right now on the propose plan; it's proposed to be closed and the other specific recommendation, I know this is a lot to take in, but, down here; right in here but actually this doesn't show it very well; there is a route right down here and it's designated snowmobile only right in here; goes into Forest Service land and then dips back over in this loop here and it meets up with 506 I believe; so there's this loop. But if this is just snowmobile only, that closes it off for year-round use, and I would like to recommend that one be reopened, or whatever you call it at this point in time, for year round use to make this nice loop through this area here from this road that is open. And that is, for your information 050118 and 050118a and make that year round and that connects to 0504 and that makes a very nice 4-wheeler/snowmobile loop and people can still get to trail heads to hike and such too. And the other area I would like to add back is this one right here. It goes from Marysville up to the road to the ski hill, which also connects to the Ottawa Gulch, and this one is called/numbered 050123 and I'd like to have that designated as open year round for safe access to those two roads for 4 wheeling. And those are mine comments, and if you have any questions?

Chairman Tinsley: Thank you Miss Marble.

Karen Marble: And I would like to submit this in writing. I have copies for all of the Commissioners.

Chairman Tinsley: Absolutely. Thank you. Further public comment? Please give your name and address for the record.

Morning Mr. Chairman, Commissioners. Kevin Walt. 399 Church, Marysville. First of all lets keep them all open. I think that's the general feeling that most people around Marysville. I attended every meeting except the first one that the user group went too. Mr. McHugh was right. They did agree on something; they agreed not to agree. This area where Miss Marble was talking about is where the new snowmobile trail is coming from Lincoln. That road right there. Access to Marysville is to over the spot right there. The squiggly one there is where we go to paint the M on the hill above Marysville.

Commissioner Varone: Kevin, back up a minute because I'm trying to write this stuff down. Go back down by Marysville. Show me that.

Kevin Walt: Right there is the road that goes up the bald hill on the north end of Marysville that is the original Glauster Road and it's access is for us to get up to paint the M every 4<sup>th</sup> of July. The BLM wants to close that. It's going to be the access if the Forest Service gets their snowmobile trail into Marysville. The other option, and we know Mr. Murray doesn't like it, is right down the County road. It's the only way to get to Marysville on snowmobiles from that area. So that should be looked at real well. The group was pretty good on coming to an idea of which roads to open or keep open or which roads to close. Some probably hardly ever get used, some get used all of the time. It's a great area for hunting for elderly people. There's nothing else there except hunting and recreation. You walk out into an area that they want to close up here; all your going to see is trees. There's nothing to look at. It's a great hunting area, but other than that there's nothing else. I also pointed out to the BLM Biologist that this white area around this whole area is private land. Someday there's going to be houses there. Their big issue is wildlife and their corridor from Glacier to Yellowstone. The animals, as we well know in Helena, doesn't bother them. The other area where Miss Marble talked down in here there's a cabin down in this area; it's the only access to that cabin. There was a bridge that gave them access that washed out. It's on private property and the private property owner probably won't let them re-build the bridge; I don't know. But that is the only access to that cabin. The rest of the roads I think are pretty much the group agreed on to close and there is one other area; it seems how, I don't know, why they did it this way but the BLM gave them their own numbers. They're already numbered by the Forest Service so they confused everybody. None of the group really knew where these roads were. That's why we went on the tour, took them up to show them exactly what they were talking about. Everybody was confused. I mean there's a maps available to the public with numbers on them and the BLM has got to go and change the numbers on them so everybody's confused. I noticed they didn't put them on this map so we can't refer to them for you but we should keep most of them open. It's the last place where we can have motorized access around Helena. Thank you.

Chairman Tinsley: Thank you Mr. Walt. I appreciate your comments. Further public comment? Good Morning.

Hi. My name is Nick Pipinich. I live at 7285 Belmont Drive, Marysville. Just a general comment. Almost every road that is proposed to be closed predates BLM by at least 50 years. They've been in use since late 1800's. They were either wood roads or mining roads. And they haven't been maintained since and they're in fine shape, so there is no reason to think that it's going to cost a bunch of money to keep these roads opened because they've been opened since they've been used in the late 1800's. There's no other, like Kevin said, there's no other place around that you can really go and get around especially for older people like my Dad. So when you go.

Commissioner Varone: You mean like us?

Nick Pipinich: Right. My Dad is really broken down and he runs his 4-wheeler. And that should be what I hope I can do when I get that age. But if these roads that keep getting shut down, there's these huge areas that you won't be able to use. You know your supposed to walk. Well that's great I can walk now. What do I do in 30 years. I'd just stay home and watch football. So that's just my comments. A lot of these people want this stuff shut down. They say their going to hike it. Well I've never seen a guy hiking up there in my life. We've been up there for 30 years in the Marysville area. I've never seen people going on up there on a day hike. They're either hunting, broke down, or lost. And they want to ride on a motorized vehicle. The don't want to walk out so I mean this comments that are keep it free and open, that's bull. Especially here. Because if they're talking about keeping it pristine the minors ruined that 100 years ago. And it's fine now, so you got to take that with a grain of salt. That's all I have to tell you.

Chairman Tinsley: Thank you Mr. Pipinich. We appreciate your comments. Further public comment?

Shane Stewart; 8170 Diamond Springs. I pretty much grew up in the Marysville area. Riding, skiing at Great Divide and what not. A big part of my history. Like Nick Pipinich was saying a lot of these roads they, they're access for a lot of the older part of our community and that's. I have a lot of people that ride horses, dirt bikes, motorcycles, 4-wheelers and what-not. They need access you know. We need diversity, we need this stuff to be used for the people that want to go hiking, motorcycle riding, 4-wheeling. It all should be left how it is you know. People that want to ride their horses there or hike there, whatever. Just a wide range of uses. My dad like Nick's father too, he's 80 years old, avid hunter, fisherman, what-not. I still like to see him get out, he doesn't hike like he used to, he does pretty danged good but have him places where he can ride his 4-wheeler where he can get to, to hunt and fish and what-not. That means a lot to me and same thing, if I get to be his age, if I make it, and still active and able to do, I still want to be able to ride my 4-wheeler or a horse if I chose to these areas. My whole main concern is to keep it all open. It's been this way for 100 years. It's actually gotten better. If you spend you time at the historical society looking at what it looked like when the miners got out of here, cutting timber from the property, our natural resources. It's amazing. You see pictures of Great Divide before it was the Great Divide the ski hill, there was nothing there. This who idea of keeping it pristine and natural, it's better now than any of use here have ever seen it. It's not all old growth timber it's new timber especially with these we have going on Flesher Pass and Marysville country with the bug you know the spruce bug worm you know with timber sales and what not; nobody wants us to cut timber on this property because it's going to ruin, it doesn't look the same. So what are we going to do? Let the bugs kill it and then we can't, we have to cut it down so it don't all burn up. We just need to look at this, the whole thing a little more as far as access and taking care of it. Like I say I just want to be able to use it when I'm my Dad's age and not just look at it. Tell my kids oh remember we used to be able to go up there and now all we can do is go to the pool at the Y. That's my comment.

Chairman Tinsley: Thank you Mr. Stewart for you comments this morning. We appreciate it. Further public comment?

Good Morning. For the record my name is Mary Blake. I live at 677 Prairie Road. For the moment I'm a horse person. I may get to be a 4-wheeler person some day, I don't know. And I appreciate the opportunity to speak to this and that you folks had the courage to step up to the plate to partner up with BLM and provide staff to support this; the question and the answer and the work that people have done. I don't know, after listening to these guys maybe we should just open the Marysville and close the rest of them. It's the mix of uses that seems to be difficult. I don't hike, I walked a little bit but I can't do that hiking because of a couple of knees and a shoulder and things so I do horses and horses and motorized don't mix real well, and we sure don't mix with the guns. It's scary up there in the North Hills. So I'd like to talk about the whole enforcement of the motorized vehicle. To me, I guess, at least my understanding of

opened and closed it open means to motorized and to everybody and closed means closed to motorized and still opened to non-motorized. So it isn't like when we talk about closing we're excluding the public we're just closed to motorized vehicles. In the North Hills, if I could speak to that a bit, there's proposals for a couple of routes of motorized vehicles. The issue seems to be enforcement, and if BLM and our law enforcement people can be up there and enforce people not getting off the designated routes and destroying and keggering. The fireworks up there, the last time I was there the remains are all over and it scares us to death. I could not believe it. We had fires up on Prairie Road from people shooting off in a plowed field and I can't imagine who was thinking at all when they're up there shooting off fireworks. Somebody's got to be enforcing it; we need to have somebody to call or tell or something. The safety of the shooting we can have people up there shooting as long as BLM or somebody moves them way far away from the routes. As you heard earlier the place they've chosen is directly where the main routes cross and there we're stuck. There are destructive and they are shooting trees this big around in half and they're working on the power poles and they've been using it a long time and we can't just say well we get to use it and they don't get to use it. That's a big enough area I think that we can move the shooting range away from designated routes where people are. And then do enforcement on motorized vehicles and somehow control the 300 feet from designated routes to allow people to be way off in every direction. It almost allows them to use the whole place. And there's issues about the private land that we go on to on horse back and motorized vehicles have been there. What's happened to us we who, at least on horseback because I've never hiked a whole lot, has happened is the motorized vehicles have been up without enforcement have been the folks that have been responsible for closing down private lands to us. Happened in the North Hills on Chavelier land. It was the keggers and the running through the gates and the destroying of major big equipment that closed that down to all of our uses. And I'm afraid that's what's going to happen up there with Seebens. And, so on the Scratchgravel I used to live down on Alfalfa Road and I road up there all the time. Now I haul over to Echo Road and go up that way. The issues there seem to be that it's now so surrounded by residential that the combined, and you can see how congested all those roads are for the non-motorized use, it's difficult to be safe up there and pick a route to go where we can avoid the motorized folks. The information I've gotten from horse people that live near there, it's all just a noise pollution thing that they talk about. I don't live up there so I don't know about that part, but the safety part about being on a horse and I understand that we chose to be on these 1400 lb animals but it's real difficult for motorized vehicle people to be helpful to us in that safety issue without something happened like Susan Swanburg talked about the guy falling off and being unconscious for a while. So I guess I'm asking you to think about separating uses and getting the firing range far away and talking about enforcement on the motorized use and also the seasonal limitation allowing hunters up there and avoiding the resource damage that's going on in some of our public lands: mattresses, washers, dryers, refrigerators all of that stuff. So that's what I ask you to do is think about the resource damage, the fire part, the shooting and enforcement of motorized vehicles.

Chairman Tinsley: Thank you Miss Blake for your comments this morning. We appreciate it.

Mary Blake: Thank you

Chairman Tinsley: Further public comment? Further public comment? Hearing none this closes the public hearing. What's the pleasure of the Commission?

Commissioner Murray: Mr. Chair. I move we render a final decision either October 13<sup>th</sup> or October 20<sup>th</sup>.

Commissioner Varone: Mr. Chair, I'll second the October 20<sup>th</sup> with discussion.

Chairman Tinsley: We have a motion and a second to render a final decision on forwarding the recommendations to BLM on October 20<sup>th</sup>. Discussion Commissioner Varone.

Commissioner Varone: Mr. Chair. If possible I would like the Commission to have the opportunity to, especially in the Marysville area and considering the e-mails that we received. I don't recall receiving any of the e-mails from the other areas. Maybe I have and I just haven't gotten to that one, but in particular I'd like to take a tour of the Marysville roads to get an idea in my own mind. I'm familiar with the North Hills and the Scratchgravel, but I'm not familiar with the Marysville area and having the decision will allow us an opportunity to go up there and see what the folks are commenting about first hand.

Commissioner Murray: Commissioner Varone I suggest when you tour behind the Empire mine on Whipper Will ridge take your shotgun. It's pretty good grouse hunting. Mr. Wall has seen me up there.

Chairman Tinsley: Ok.

Commissioner Murray: One other thing Mr. Chair.

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: It's important to note the State Legislature has taken away the authority of the County Commissions to regulate shooting and shooting ranges. While I agree with the problem in the North Hills we have no statutory authority to prohibit shooting in spite of signs you may see throughout the County, "Closed by order of the County Commission"; or no shooting "By Order Of". We don't have the statutory authority and I believe we should have it too.

Chairman Tinsley: The BLM, however does, and it's their property and they can do that. All right. We have a motion before us to render a final on October 20<sup>th</sup>. All in favor of the motion signify by saying Aye.

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion Passes 3-0. All right folks, thank you for your patience this morning.

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray

Commissioner Murray: One last comment I want to point out to everyone that we received our copy of this yesterday, and that's another one of the reasons why we need time to go out and look at many of the roads. The copies were apparently available at our office but in the Commission packets we didn't get them until yesterday.

Chairman Tinsley: Again, thank you very much for coming out this morning. We appreciate it. Next item and the last item on the agenda is the Airport Board of Adjustments Appointments. Mr. Alles.

### **Airport Board of Adjustments Appointments.**

Ron Alles: Thank you Mr. Chairman. We have a request from the City to move forward in the appointment of an Airport Board of Adjustments Board. I've asked the City Attorney, Mr. David Neilson to attend and maybe explain the process part of it. We've actually have not had this Board before, but it is a requirement for some of the actions that are needed as it relates to the airport as a facility and it's area of zoning. So Mr. Neilson is here to speak to that.

Chairman Tinsley: Welcome, City Attorney David Neilson. It's a pleasure to have you before us.

City Attorney David Neilson: Thank you Mr. Chair and Commissioners. It's awkward, I've never stood at this podium before. It's a new experience for me. The City codes have a provision for an Airport Board of Adjustment and what they render decisions on are very similar to the Board of Adjustments we have in the City except that we have some zoning in relative to the airport and more specifically the issue that has come up is what is called a "noise influence area" and that area goes 10,000 feet off of the end of the runway and a mile on either side. In order to have certain land uses within that noise influence area, well some of them are prohibited, for an example I think, Nursing homes, and some of those types of uses and group homes are prohibited, but an Airport Adjustment Board could grant a variance and we've got a situation here in Helena in the Skelton Subdivision where it's right on the edge of that 10,000 foot distance from the airport. They want to put in a elderly living center and it's prohibited under our City Code except that the Airport Board of Adjustment could grant that variance. And the way the Airport Board of Adjustment is set up the County selects 3 members and the City selects 2. So it's our recommendation we use the membership of the current Helena's Board of Adjustment as the members for the Airport Board of Adjustment and what that would allow us to do is since under our City code, City Staff has to administer both boards they could simply have one as an agenda item on our regular Board of Adjustment and then that same group would change roads and become the Airport Board of Adjustment. As we're seeing a lot more growth and development in Helena to the north and especially around the airport, I think this Airport Board of Adjustment would be used more extensively than it has in the past. In fact, that's the problem, we never really got it going because they never had any business. I can see a lot more of that coming with some of these subdivisions we have north of the airport and west of the airport. So, that's the brief explanation of where we're at.

Chairman Tinsley: For the record, I forgot to do this up front, the 3 that you're proposing the 3 Commissioners appoint, are Susan Bjorki, Jason Davis and Mary Vandebosh. Is that correct?

City Attorney David Neilson: That's correct Commissioner.

Chairman Tinsley: Questions of Mr. Neilson?

Commissioner Murray: Mr. Chair, for a period of a year I would move that County Commission appoint the 3 members of the City Adjustment Board to represent Lewis and Clark County.

Commissioner Varone: Second.

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

Commissioner Varone & Commissioner Murray: Aye

Chairman Tinsley: Aye. Motion passes 3-0.

Anything else to come before the Board? Is there anybody else who wishes to comment on anything that did not appear on our agenda this morning? Any public comment on that? See know, we stand adjourned.

**Public comments on matters not mentioned above.** None

**Adjourn.** 11:50 a.m.