

SUBDIVISION MEETING
October 13, 2005

Chairman Ed Tinsley called the meeting to order at 9:00 a.m. Commissioners Varone and Commissioner Murray are present. Others attending all or portion of the meeting included, Ron Alles, Jerry Grebenc, Frank Rives, Lindsay Morgan, Mrs. Patrick Pacheco, Craig and Cheryl Riley, Ron Solberg, Bruce Spencer, Eric Griffin, J. J. Conner of DBEC, Inc., Mike Wagner of DBEC, Inc., Mark Lambrecht, and Maria Penna.

Pledge of Allegiance. Everyone recited the pledge.

Chairman Tinsley: Good Morning and welcome to our regularly scheduled Thursday morning meeting. There's a sign in sheet on this front table. If you haven't had an opportunity to sign in please do so. There should be some agendas there as well. My name is Commissioner Tinsley. To my left is Commissioner Varone. To her left is Maria Penna, our Executive Assistant. To my right is Commissioner Murray. To his right is Ron Alles, our Chief Administrative Officer and to his right is Jerry Grebenc, our Director of Community Development and Planning.

Before we begin, Commissioner Varone would like to make an announcement.

Commissioner Varone: I just heard from my sister who's a Sweet Adeline in Phoenix, who has been participating for many, many years, that she and her quartet won the world competition about a week ago, and I'm very proud of her, but I wanted to also make another announcement. She and her quartet, it's a comedy group, were scheduled to come here this summer, they take, they go on a retreat every year, some where around the world, and they chose Helena this year. There was a death in the family of my sisters, so it was cancelled, but they will be here next summer. And what they do on their retreat is they perform for free to a variety of different audiences and they'll be at Hometown Helena Pride and if anybody wants to contact me if you could remember, it's July sometime, it's going to be their schedule. They'll perform for free and what they like to do is perform and then ask the people what they think, what they liked and what they didn't like, and based on that they will change their performance. So, I'm proud of her and I just wanted to make that announcement.

Chairman Tinsley: Thank you very much Commissioner Varone. Would you like to give us a little rendition? (Laughter)

Commissioner Varone: They won't even let me sing in church. (Laughter)

Chairman Tinsley: All right. Normally we start off with the Consent Action Items. We have one on the agenda. It looks like I have a note here that says "Pull until further notice." It's a final plat approval for Lakeside Village on Hauser Lake Major Subdivision. The Planner is Frank Rives, so it's looks like it's been requested by the Applicant to be pulled, is that correct Mr. Rives?

Consent Action Items.

Frank Rives: Yes Sir.

- a. Final Plat Approval for Lakeside Village on Hauser Lake Major Subdivision. (Applicant, Conrad & Shirley Hale) (Planner, Frank Rives)

Pulled until further notice.

Chairman Tinsley: All right, so we will move on to our next agenda item. It's a proposed subdivision to be known as Glacier Point Major Subdivision. The Applicants are Craig and Cheryl Riley. The Planner is Lindsay Morgan. This was postponed from 10/11 at the Applicants' request.

Before we begin, Miss Morgan, Commissioner Murray has a conference call that he needs to take, it won't take very long, but at 10:00 he needs to take a conference call and we need a full Commission this morning, so we'll take a break if we get to 10:00 and we're not done yet. We'll take a short break so he can participate in the conference call. Lindsay, please. First, let me ask, are the Applicant's present? Have you had an opportunity to review the packet and are you prepared to go forward this morning? Ok. Wonderful.

Proposed Subdivision to be known as Glacier Point Major Subdivision.

The Commissioners will consider creating 87 lots, 84 of which will each be used for 1 single-family dwelling, 1 for commercial storage units, 1 for the public drain field, and 1 for the public water supply. The proposed development is in the SW1/4 of Section 5, T10N, R3W; generally located east of Montana Avenue and west of and adjacent to I-15.

Lindsay Morgan: Good Morning Commissioners. This is the proposed Glacier Point Major Subdivision. The site is located east of North Montana and west of and adjacent to I-15. I have a vicinity map up on the screen for you to see. The Applicant proposes to create 87 lots, 84 of which will each be used for 1 single-family dwelling, 1 to be utilized for commercial storage units, 1 to be used for a public drain field and 1 for the public water supply. If approved the tract will be divided into lots ranging in size from 7,000 square feet to 4.15 acres. The proposed lots will be served by public wells, public wastewater treatment system and utilities. Access to the lots will be off an extension of Forestvale and Valley Speedway Road via a series of internal access roads. A road construction will be required in order to provide standard physical access. The Applicant has expressed a preference to provide cash-in-lieu of parkland in order to fulfill the parkland requirement. The Applicant plans to develop the property in 4 phases. The existing tract of land is 24.92 acres in size. The site contains an old racetrack that was known as Valley Speedway that will be removed and flattened.

As far as agriculture: Soils with this classification have severe limitations that either make them unsuitable for cultivation and restrict their use to largely pasture, range or wildlife or reduce the choice of plants under required careful management of these plants. Even if irrigated these soils still have severe to very severe limitations.

As far as streets and access: The access will be North Montana via either the proposed extension of Forestvale Road, which would be east of North Montana Avenue or Valley Speedway Road and a series of proposed internal access roads. Prior to final plat approval, the extension of Forestvale Road should be upgraded to County Road Standards Typical Section No. 2 which is our asphalt standard and that's from the intersection with North Montana Avenue to the eastern edge of the approach to the development. All road improvements shall be certified as meeting County Road Standards by an engineer registered in the State of Montana with concurrence of the County Public Works Department. A minimum 60-foot public access and underground utility easement must also be dedicated for all of Forestvale Road lying east of North Montana. One thing we have noticed in talking with MDT it appears that public access easement is much larger than 60 feet. Due to the requested variance for a 30 to 40 foot public access and underground utility easement for Valley Speedway Road, it will need to be upgraded to County Road Standards, also Typical Section No. 2, but in this case it would actually be curb and gutter and that's from the intersection of North Montana Avenue to the western edge of the proposed development, as shown on the preliminary plat. If this 60-foot easement can be dedicated for the entire length of Valley Speedway Road, the road will have to brought up to the

specifications required by the County Subdivision Regulations, Typical Section No. 2 and that would not include curb and gutter. So in this case, if the variance is granted they would have to bring it up to the curb and gutter standard. If the variance is not granted they would have to come up with the 60 feet total for that entire length of road and then just bring it up to the regular asphalt standard without curb and gutter. All proposed internal access roads and the extension of Valley Speedway Road inside of the proposed development will be constructed just to the asphalt standard without curb and gutter. Prior to any road construction the applicants will have to submit a road construction plan to Public Works for review and approval. The proposed northern approach of the extension off the extension of Forestvale Road may interfere with the possible future interchange onto Interstate 15. Staff recommended and also placed in the Conditions of Approval which is condition number 10 with the Staff report, that the proposed approach that the applicants request be eliminated and that it be located between Lots 39 and 40 to avoid any future complications. The Planning Board actually removed that Condition of Approval, allowing them to place the approach where they proposed it, but in discussions with MDT they actually wouldn't be able to get an approach permit from MDT at that location so the applicants have decided to relocate it where Staff recommended. Staff has also recommended that an easement be extended to the south across proposed Lot 16 to facilitate an interconnected road network if the property to the south is ever developed. Currently, the Applicants have dedicated an easement to the south and also to the west in the southwestern corner of the proposed development. The Planning Board actually relocated the additional easement to the south from lot 16 to between lots 19 and 20.

As far as physical hazards: The Helena Track club is located to the north and is also adjacent to the proposed development. All shooting is directed north in the opposite direction of the proposed development. I have placed a notice in the County's Covenants.

As far as traffic: The total number of trips generated from the proposed development with the storage units is 970 trips per day.

As far as congestion: There are 2 proposed accesses to the development off of North Montana Avenue. There is a left-hand turn lane at both of these intersections, however, there are no right hand turn lanes at either location. According to the review of the Traffic Impact Study done by Peccia and Associates, a northbound right turn lane will not likely be required even with the full build-out of the development. With the exception of the requested variance, if all conditions of approval can be met the proposal appears to comply with the minimum subdivision standards. And again specifically id that Valley Speedway Road has a 30 to 40 foot easement in some locations, whereas we require the 60 feet for that entire road.

Staff does recommend approval of the proposed preliminary plat for the Glacier Point Major Subdivision and it's subject to Conditions of Approval. Do you have questions of me?

Chairman Tinsley: Thank you Miss Morgan. Are you going to run through the pictures?

Lindsay Morgan: This is a view to the south. Here's one to the southwest. Here's a view to the west that's showing where that Track Club is located. Here's one to the east, this is showing I-15. Here is a view of North Montana. Here's the existing Valley Speedway Road. Here's a view to the north showing the Track Club in the background. Do you have questions for me?

Chairman Tinsley: Questions for Miss Morgan?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone, Miss Morgan. The Gun Club is now

state property, is it not? Wasn't that purchased before the Forestvale interchange fiasco?

Lindsay Morgan: I think there may be portions of it that MDT purchased, but not, it would just be in that area where they're right-of-way for the possible interchange would be, just on that very southern end of the property but the rest of the property, I believe, would be private. I'm not sure on that though.

Commissioner Murray: Thank you.

Chairman Tinsley: Further questions for Staff?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray, Lindsay, would you do me a favor and go back to the map and with your pointer explain where the variance is and what the recommendation is?

Lindsay Morgan: It's easier to use the aerial photo. This is where Forestvale would come in and this entire area appears to be MDT right-of-way. You can't really see it on this map or on this aerial photo but this is all property that's owned by the Montana Department of Transportation. Valley Speedway is down here and it's this portion of Valley Speedway, it kind of curves north here, and then it goes this direction. This portion of Valley Speedway, I believe, it has a 40-foot easement. This portion has a 30-foot and then there is some discrepancies as to how large this area is. One of the Conditions of Approval is that they prove they have access all the way to this development here. And I guess, in talking with Public Works, they stated that with the 30 foot easement in some of these areas, that the only way to handle drainage issues and still be able to utilize an easement of that size, they would have to do curb and gutter.

Commissioner Varone: Thank you.

Chairman Tinsley: And so the curb and gutter is involved with the successful approval of the variance. If it was not approved then they it would just be brought up to normal asphalt standards.

Lindsay Morgan: Right and then they would have to come up with the additional right-of-way.

Chairman Tinsley: Ok. Further questions of Staff? Further questions of Staff? Would the Applicant or his or her representative like to make a statement or testify? Excuse me, not testify, make a presentation.

Good Morning Mr. Chair and Commissioners. My name is Bruce Spencer and I'm an attorney here in town. It's my pleasure to represent the Applicants in their quest to provide some more affordable housing for the City of Helena. My business address is 26 W. 6th Avenue, here in Helena. I'm just going to speak briefly to the variance that was described. You saw it on the map there. It's Valley Speedway Road. It takes a jog to the north and a jog again to the east and intersects with Valley Speedway. The road has been there since the 50's and in the 50's of course we didn't need a 60 foot public access easement, and so the road is about 30 feet wide at most points and that's why they're requesting the variance. They have no ability to get the 60 feet. They have tried to buy it from the neighbors and the neighbors, which is certainly within their rights, have chose not to sell it, so they've asked for that variance and it's vital of course that they get it because if they don't then they don't have a secondary access road to the subdivision and then the subdivision simply cannot be developed. We feel the variance is appropriate because frankly the Riley's are trying to provide affordable housing for the City of

Helena. They're proposing houses in the \$150 to \$175 range. We're not talking \$200, \$250, \$300,000 houses here. These are the type of houses the realtor's are saying we don't have and so we feel that that is one of the reasons the variance should be granted. Secondly, it's a physical characteristic in the property area that there simply isn't 60 feet available on that road. You can't get it. Now they're more than willing to curb and gutter that entire stretch of road to prevent erosion of water and any other types of problems. And the Uniform Code indicates that you need 20 feet for an emergency vehicle, they've got an additional 10 feet at 30 so there should be enough road there to do that. As I said, in a road that's been in existence since the 50's and we believe that the legal title shows that the roads in existence and that you can get access to Valley Speedway using that road. It is designed or meant to be a secondary access, it's contemplated that the prime access will be on Forestvale Road. The mail boxes will be on that side of the subdivision so if people coming in they want to get their mail, they're going to be doing it via Forestvale as opposed to the Valley Speedway entrance. The subdivision is designed to use Forestvale as the main ingress and egress and this truly would be a secondary access. They had initially opposed a crash gate, I know you will be hearing something a little later on about gates, so that is not a proposal here, so you don't have to be concerned about any gates or anything, but we need the variance, because if we can't get it obviously the subdivision can't go forward. We will have no secondary without that variance using an existing road Valley Speedway to provide those nice affordable homes for Helena. There are some Engineers that I know who has some comments to make on the subdivision. Thank you.

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

Good Morning Commissioners. My name is Mike Wagner. I'm an Engineer with DBEC representing the applicants, and my cohort in crime is J.J. Conner. We've had some recent correspondence from the Montana Department of Transportation on Forestvale Road which you are well aware of the developments over the last 10 years plus on that. We've recreated the alignment of Forestvale Road. We're told by MDT Rep's that they prefer to build the main line for the interchange not the on ramps, so what you see there is the proximate location of MDT main line, Forestvale main line alignment. And that terminates on the west end, east end, I'm sorry, here, and since discussion with MDT and per Lindsay's recommendation the Applicant is in agreement to move the approach over to here so that would eliminate all of this road. It would require approximately 1500 and some feet from Montana here to the north boundary here, of road construction to Typical Section No. 2, which would be paved without curb and gutter. We think this is a good development for the community. It takes property of low value and turns it into property of much more significant value for human habitat, who have lost the most. If you recall on some of the pictures of the existing condition of Valley Speedway, it's severely rutted and pot-holed so by improving the variance you would approve upgrading substantially the existing Valley Speedway Road with paving and curb and gutter which would eliminate County road grading and maintenance costs for the section of Valley Speedway. I could go on, but I think we need to get, so Mike can make his conference call. Do you have any questions?

Chairman Tinsley: I have one question, if the Commission will allow me. Does MDOT, Montana Department of Transportation, require any specific; do they have any say on how you construct Forestvale up to that point? To prepare them for the point of eventually, if possible, making an access road? Does it go beyond our standard?

Mike Wagner: Absolutely. Originally they said they didn't care if it would be gravel surface. The applicant would prefer to pave. So Typical Section No. 2 Paved is basically in excess of MDT requirements. There are 6 approaches that need to be perpetuated per MDT. The right-of-way width, deeded MDT right-of-way width at Montana is 120 feet and right here it starts diverging the lines for the on and off ramps, so by the time you get over here, this property over here is about 118 feet, the center line of Forestvale Road from our north boundary and over on this sides it's 144 feet, and this here line here is actually owned MDT right-of-way and MDT has

complete say because they own that ground and we're working mostly with a fellow named Ed Errith. He's a systems impact supervisor for MDT and he's kind of the front man, front-line coordinator, but everything we do it would be reviewed per MDT. Probably Butte District would be involved as well.

Chairman Tinsley: Thank you. Further questions? Mr. Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone. Have you considered or are there plans that if the County is successful in moving the pump station to the east side of the interstate that your subdivision would consider using that for sanitary systems?

Mike Wagner: Thank you Mike. That was discussed considerably at the Planning Board Meeting and all design internal to the subdivision will be everything drains from south to north so all of our sewer lines would drain into this area where we proposed to do central drain field, sub-surface drain fields and it would be no problem to abandon that drain field in the future if the substation or when the substation is constructed and I'm not sure, it may require a lift station to push it over if it's going to all be under Montana, but I think you guys are considering different alignments.

Chairman Tinsley: It's on the other side of the highway.

Mike Wagner: It's on the other side of the highway so then it would just gravity flow. Depending on the depth it might be a lift station required, but it would be, all of our design would be in accordance with DEQ, with minimum 8-inch diameter pipe called sewer pipe diameter, which is DEQ minimum for gravity, flow sewer system. So yes, we would be if this design facilitates connection to the future lift station.

Commissioner Murray: Thank you.

Chairman Tinsley: Further questions? Thank you very much.

Mike Wagner: Thank you.

Chairman Tinsley: Lindsay, did you need to cover anything else in the Planning Board hearing? Did you touch on all of the Planning Board recommendations? All right, thank you.

Commissioner Murray: Mr. Chair, I do have a question for Miss Morgan.

Chairman Tinsley: All right. Miss Morgan?

Commissioner Murray: Mr. Chairman Tinsley, Commissioner Varone. Miss Morgan, what is the statutory deadline on approval of this subdivision? It's been continued several times and I don't think it's in our packet.

Lindsay Morgan: You know I believe it's November at some point.

Chairman Tinsley: Didn't we make it for tomorrow or not?

Lindsay Morgan: It's been extended a couple of times so I can't remember off the top of my head.

Chairman Tinsley: I may have it confused with another one maybe it wasn't for tomorrow.

Commissioner Varone: Mr. Chair, I looked for it as well and the only one I found was July 28th.

Lindsay Morgan: I believe it's in November, but the Applicant's Attorney was here when we extended that deadline so he may remember the exact date.

Chairman Tinsley: Mr. Spencer, do you recall?

Bruce Spencer: I don't remember the exact date but I believe it is in November.

Chairman Tinsley: Ok. Thank you.

Commissioner Murray: Mr. Chair, Commissioner Varone. It would be my intent to ask to rule on this the 17th of November and I believe a full Commission is present, it is not?

Chairman Tinsley: I believe so. Mr. Spencer, before we go forward with this motion, if the deadline, if we find the deadline is before November 17th would you and the Applicant be willing to at least extend it to the 18th to give us an opportunity to make that decision on November 17th?

Bruce Spencer: I do have an exact date. It's November 4th.

Chairman Tinsley: It is November 4th?

Bruce Spencer: Yes, I have that in my file.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: I believe we will have a full Commission either on the 1st or on the 3rd of November.

Chairman Tinsley: Is that all right?

Commissioner Murray: That works.

Commissioner Varone: Mr. Chair I do have one more request of Lindsay, and maybe I missed it and if I do if you would repeat yourself, I'd really appreciate it.

Chairman Tinsley: Commissioner Murray do you withdraw your motion?

Commissioner Murray: Sure, but that wasn't a motion it was a question.

Chairman Tinsley: Oh, Ok. Please.

Commissioner Varone: Lindsay if you would just go over for me the discussion that the Planning Board had with the variance and what they're, I know that they approved it and I believe they approved it unanimously but would you please just discuss a little bit the dialog that they had and why they were approving it?

Lindsay Morgan: Sure. When the Planning Board first heard this, this was in June, they voted on it and they actually denied it 4-2. The second, when it was heard again in September, the Planning Board decided, with listening to the affordable housing with regard to the Growth Policy and the fact that the Applicants, I'm assuming, I don't know exactly what the Planning Board was thinking, but I'm assuming that it had to do with the fact that the Applicant's had tried to get that easement, they couldn't, and that they were going to be providing affordable housing for this development, they decided that they would be as complying with what they had wanted

in the Growth Policy with regard to affordable housing, so they decided to open it back up. They opened it up unanimously and they voted 5-0 in favor of approving the variance for Valley Speedway.

Commissioner Varone: Thank you.

Chairman Tinsley: Further questions? Commissioners, November 4th is the statutory deadline for this particular subdivision and it appears we will have a full Commission on either the 1st or the 3rd. What is the pleasure of the Commission?

Commissioner Murray: Mr. Chairman, I would move we render a final decision on November 1st.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion and a second to render a final on November 1st. Any discussion? All in favor of the motion signify by saying Aye.

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion Passes 3-0.

Thank you folks for your time this morning.

Mike Wagner: J. J. Conner was going to give a presentation.

Chairman Tinsley: Oh was he going to give a presentation?

J. J. Conner: Just a little recap of what was said.

Chairman Tinsley: Commissioners. I apologize, I didn't know that was what he was going do to. Would you like him to go on?

Commissioner Varone: Please.

Chairman Tinsley: Yes, please. Go ahead. We don't have to re-vote. We're going to have the final decision on November 1st but go ahead and I apologize. I didn't know you were going to do that.

Thank you. My name is J. J. Conner with the engineer at 1617 Euclid Avenue. What we're talking about is the subdivision and how it will provide in fill development within 2 miles and less is quite a bit of development and we fill that this subdivision will fit in very nicely with the surrounding area. It will afford affordable housing and job centers, transit. As the engineer stated earlier, at the client's cost Valley Speedway Road will be constructed at the actual Glacier Point LLC cost and it will provide an influx and the type of houses and development that will help the community. This is 84 houses, sounds like a lot, but this shows that there will be available space, the green does. The drain field will be used for foot traffic, even though it won't be qualified as park land it will be open space for residents of the subdivision to utilize with a walking track around the exterior of it and they can use the interior as well. This just shows that there's plenty of room on the Valley Speedway Road to fit the typical number 2 with curb and gutter inside the 30 foot or 40 foot easement along the road. And this is the proposed route which Lindsay was going over earlier, from North Montana up to the west side of Glacier Point subdivision along Valley Speedway Drive. This is our understanding of the available easements along that road, showing 30-40 foot from North Montana to where it turns north and then a minimum of 30 foot along the rest of the remainder of the existing road. And this is what Mr.

Wagner was going over earlier, moving the approach to the western side where it shows 118 foot showing there will be plenty of room between the proposed Forestvale Road and the subdivision. And this is just an idea of the type of houses. They're going to be quality houses, this is a representation of what we're looking for to going out there. Thank you.

Chairman Tinsley: Thank you and I apologize for going over your presentation. All right, are there any questions for the representatives of the Applicants or that presentation. All right. Folks November 3rd we will render that final decision. I'm sorry, November 1st we will render a final decision in this room. Sorry. Thank you.

Next item on the agenda is the gate at Norris Road and Applegate Drive. The Developer was David Brandon. The Planner was Frank Rives. This was continued from October 11, 2005. Mr. Rives.

Gate at Norris Road and Applegate Drive.

The Commissioners will consider whether or not gate should be removed.

Frank Rives: I do not have any statements to make, I was just going to be available if you had any questions.

Chairman Tinsley: Mr. Griffin, our Public Works Director is here. Mr. Griffin, do you have any statements at this time or would you like to add comments to the agenda item?

Eric Griffin: Mr. Chairman, Commissioners. Good Morning. Since Tuesday I have, and even just here this morning, looking through the Manual on Uniform Traffic Control Devices, and when I go through the manual on Uniform Traffic Control Devices, and you look at gates and they talk to gates in 2 different sections in this document. Not to say that it might be somewhere else in this document, but I'm just going off of the index in the back. They talk to gates on, signal gates, traffic controls at rail road crossings, where they have gates that come down, they talk to those gates in this document, and they also talk to gates as they control at different types of high speed intersections to allow traffic on and off. This is a unique situation out here. I think that the County, that we need to look closely at setting precedence here to allowing these type of features on our roads. The gate that is out there now is unacceptable. Myself, my Staff, we drive by this thing and I have a hard time believing this is even a function or a piece of traffic control device that the County, that we have allowed on this. So whatever the decision is made by the Board here, if it's decided to leave the gate, I think that we have to look at it very closely.

Somehow to incorporate a type 3 barricade that's outlined in the Manual of Uniform Traffic Devices and incorporate the gate into this type of barricade with proper signage so many feet ahead, etc. I believe that we have a great liability out there and/or another possibility might be is to just put the barricade up there and put a big cul-de-sac up there and just close the road up there. I want to make sure the Commission is aware of that we have identified in our updated transportation plan that this is a corridor that runs basically from Green Meadow to North Montana Avenue. This has been identified in the transportation plan as we go through in planning into the future a corridor is needed in this part of our community. So that's all I have to say. I'm available for questions.

Chairman Tinsley: Questions for Staff?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Griffin, what is the proper speed limit for a subdivision?

Eric Griffin: The proper speed limit for a subdivision depending on the definition of an urban area: the definition of an urban area the minimum amount would be 25 miles per hour. And I noticed I was out there this week there are 25 mile per hour speed limit signs posted out there and just how many number of houses and how far apart they are the 25 mile an hour speed limit is probably an improper speed limit. So a minimum would be 35 miles per hour.

Commissioner Murray: Thank you. I noticed the same sign and wasn't sure.

Eric Griffin: And the definition of urban is outlined in the statute they have to be so close together.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. Eric, when you talked about a barricade and a gate, would you explain what you mean by that.

Eric Griffin: When I review this and you look at this, when you close a road you put up a type 3 type barricade. And a type 3 type barricade as outlined in the MUTCD with 3 bars, it goes across the entire road with proper _____. There's no where that I've been able to find in MUTCD that where you close a road and also to at the same time have a gate involved in this type of barricade, where the manual refers to gates on public type road or at railroad crossings where the gates come down to keep people from going into the train and also to at unique intersections that stops traffic and kind of remote control and then allows traffic back on at complicated type intersections. This is, I personally, in my opinion is, if we allow this to happen it's a snow ball that's going to be about this big and it's going to pick up and grow and grow and we're going to have nothing but problems. That's my opinion.

Chairman Tinsley: Further questions for Staff? All right folks, we have before us the public testimony, input from Staff etc., what is the pleasure of the Commission?

Commissioner Murray: Mr. Chair, I move to reconsider the 3 additional conditions as proposed by Commissioner Varone at the October 15, 2002 meeting of the Board of County Commissioners, and I did vote in the affirmative at that meeting.

Chairman Tinsley: We have a motion to reconsider the conditions of approval from the October 2002, is that correct, meeting.

Commissioner Murray: Yes.

Chairman Tinsley: Is there a second? Is there a second? I will second the motion.
Commissioner Murray.

Commissioner Murray: Mr. Chair, in order to move forward, I believe that the first step that is necessary is to reconsider the motions from October 15th, some of which we lived up to and some of which we have not and cannot afford to do.

Chairman Tinsley: Further comment from the Commission? Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. The reason I didn't second it, and will be voting no on this, is because there's obviously an issue out there. Part of it has to do with speed, part of it has to do with traffic and while I personally support the east/west access on Norris, until Norris goes completely through to Montana Avenue, the folks that are in this subdivision, if we don't do the speed study or the traffic study, the folks that are going to be

negatively impacted live on those side streets and I think we owe it to them to either a) do a traffic study or just listening to what was said by Staff, at least closing that road until the Norris Road completely goes through. At that point, then at least the folks that live in the subdivision wouldn't be impacted, at least they would be impacted minimally rather than taking the brunt of that full traffic right now.

Chairman Tinsley: Thank you Commissioner. I'm going to be supporting this motion and the reason I am is because what Staff just outlined for our benefit this morning. Nowhere else in this County do we have this situation. We cannot allow this to become a precedence-setting move. We would have people asking for gates all over this County on all of our public easement or public roads or County roads and we just can't allow that. The neighbors who live in the affected area, probably have some very valid concerns with regards to safety. This is not an answer to protecting public safety. We have methods in place for protecting public safety; the first of which is traffic enforcement. If we have traffic problems in this neighborhood, it needs to be enforced by the County Sheriff and I believe the Highway patrol also has authority to, if they're in the area, coming back from Lincoln or whatever, heading towards the interstate, has authority, if necessary. But, I don't believe you address public safety concerns by putting up gates and barricades on public easements and public roads. And there's another sign there that really concerns me. There's a sign there that says "Closed to Through Traffic". That is a public access easement road. It is not closed to through traffic, it's open to through traffic. And there were statements made here the other day, I wrote it down here somewhere, that there's nothing public about this road. Everything about this road is public. It is a public access easement road, everything about it is public. If there are safety concerns, which I have no doubts there probably are, we need to address those in the proper manner. But we don't address them, I believe, by permanently installing a moveable gate. We need to have traffic enforcement out there. We need to have the County Attorney come forward and be able to follow up on those concerns out in that area and take care of them that way. So that's what I'm going to do. Thank you very much.

Further comment or questions. Hearing none, all in favor of the motion signify by saying Aye.

Commissioner Murray & Chairman Tinsley: Aye.

Chairman Tinsley: Opposed same sign.

Commissioner Varone: No.

Chairman Tinsley: Motion passes 2-1.

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: I would move that the gate currently in place be removed by December 1st, 2005.

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

Chairman Tinsley: Second.

Chairman Tinsley: Any discussion?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: There's nothing magic about December. If there's a reason that June 1st would suit the neighborhood better, I'm prepared to reconsider this motion. I voted to put the gate up. I think the gate has served a valid purpose. The purpose at the time was I believe youngsters, but some individuals from the greater Helena area were going off the road, turning "brodies" as they're called, or circles on the land out there. The developer in testimony, last Tuesday, indicated that the lots have been sold, although they are not yet built out. This wasn't a precedence-setting gate. The precedence gate for Lewis & Clark County was on Metcalf Road preventing people who were building on Oro Fino from their heavy trucks accessing through an RID road. As Oro Fino was built out and construction was near completion, we had that gate removed. It was never my intent, in voting for this gate that it would be a permanent gate. It was for the safety of the few residents that were in this subdivision and now that you're subdivision is building out, I believe the gate is no longer needed, be it December 1, be it June 1. Further, I'm, as a follow up to this motion, I'm going to move that on next Thursday's agenda, an item be listed making your roads County roads and having the County Commission establish a speed limit on your roads. It's my understanding, from review records, that the Justice of the Peace for Lewis and Clark County, through out one speeding citation that was issued on your roads, and with 2 days I didn't have adequate time to pursue that, but if the step is necessary to make your roads County roads rather than public roads as I believe they are at the moment, I'm prepared to take that step next week with the County Attorney's advice. The County Attorney needed additional time for his research on your roads. If we take the step making these County Roads that does not mean the County will maintain your roads. I want to make that clear from the get-go. It does make it possible for us to establish an RID. We had tried to, a couple of years ago at the request of the developer and the then landowners, in your subdivision, we abandoned the RID, but this will make it possible as you see the need and come forward to have an RID in your subdivision. Thank you Mr. Chair. A rather lengthy colloquy.

Chairman Tinsley: Commissioner Varone do you have anything to add?

Commissioner Varone: I do, if I may.

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. The road plan requires, or doesn't require, but indicates that Norris Road be an east/west access way from Green Meadow to Montana. That needs to happen, it's the right place for it to happen. But that only goes a short distance, puts the people that live in the subdivision in a very precarious situation. When the subdivision was planned and it was built it didn't need to be paved, but the developer wanted it to be paved, and he paved it not only the width that was required, he added some width to it to allow families to be able to walk on the side of the road, to be able to ride their bikes on the side of the road. When I went out there the other day, there was an adult with a little boy on the back of a little motor scooter and they were having a great time, and they waved as I went by and I anticipate that that's not going to be possible any more. The reason that I'm not be supporting this at this time is because I believe they built in good faith so that they could have the safety and the quietness that they intentionally designed, and until at such time that Norris Road goes all the way through, I personally believe that that road should be closed. And that's just my comment.

Chairman Tinsley: Thank you Commissioner Varone. I live on Broadway and I would not hesitate at all to want to argue to have a gate put up at the corner of Broadway at Sanders to limit traffic in front of my house, but that is not possible. And unfortunately I don't think it's possible in this case either.

We have a motion before us to remove the gate by December 1st, 2005. Is that correct Commissioner Murray?

Commissioner Murray: Yes.

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

Commissioner Murray & Chairman Tinsley: Aye.

Chairman Tinsley: Opposed same sign.

Commissioner Varone: Aye.

Chairman Tinsley: Motion passes 2-1.

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone. Is the motion necessary to ask that on next Thursday's agenda, October 20th, that an agenda item be listed making the roads in the Subdivision County roads and having the County Commission establish speed limits? This may be a moot request but if a motion is not needed, we have concurrence of the Commission, I'd like to have it there and then pulled if it works out to be moot.

Chairman Tinsley: Mr. Alles?

Ron Alles: Mr. Chair, Commissioners. You don't need a motion. If you want that agenda we will agenda that and try to do the necessary homework.

Chairman Tinsley: Let's add it to the agenda and by the time we decide it's not necessary, we'll remove it then.

Ron Alles: Thank you.

Commissioner Murray: Thank you.

Jerry Grebenc: And Mr. Chair, if I might add there is a statutory process that has to be followed to do that. It's not that it's impossible, it's just that there is a process that has to be followed.

Chairman Tinsley: If you would get that stuff together for us we would appreciate it. Thank you Mr. Grebenc. All right folks, thank you very much. We've got about 9 minutes before your call. Should we just go ahead & break and then come back and finish the agenda, or should we just go ahead and try going through it?

Commissioner Varone: I think we can go ahead and do the encroachment.

Chairman Tinsley: Ok. Next item on the agenda before us is an encroachment agreement with Patrick and Laurie Pacheco, and their address, they live on the corner of Hannah Lane at 6940 Green Meadow Drive, also know as lot B-2A of the Nelson Minor Subdivision.

Encroachment Agreement.

Chairman Tinsley: We had before us an encroachment agreement that was recommended by Staff to deny, based on the observations of our Public Works department. We've had an opportunity to go out and check out the road now. Normally, I don't make motions but if my fellow Commissioners would allow me, I'd like to make a motion. Hearing no objection I'll go

ahead and do that.

This was an administrative action so when I was out there I saw Mrs. Pacheco and her neighbor and I spoke with them a little bit and took a look at the area in question and I'm glad I got a chance to go out there. There is a substantial jog in the road and it's really evident when you stand on the west side looking east you can see the jog. I believe the Pacheco's are an injured party in this particular instance. I believe they purchased this property, what 2 years ago Mrs. Pacheco? She nodding in the affirmative. They purchased this property unaware of what exactly had happened and how the road had been placed and how the lot had been configured. I spoke with her before this meeting and told her that I think she needs to pursue that with her title company and I think she needs to pursue it with the previous owner, because I believe you were not made aware of this; unfortunately there is nothing the County can do in that aspect, but I think you can pursue this. What I want to do Mrs. Pacheco, and people in the audience, and Staff; I haven't even had a chance to sit down with Jerry and talk about this, but I would like to fashion an encroachment agreement that involves moving the, moving your fence and the irrigation pipes 10 feet to the north, which would still allow 20 feet of right-of-way in your yard. I don't think the County needs that 20 feet at this particular time and I'm willing to sign an encroachment agreement that would allow you to retain your yard, except for that 10 feet, and it would still provide adequate access for the road, for the people who live in the subdivision behind you. The probably biggest concern that I saw out there, not mentioning this, just the sheer minimum width of the road, was the line of sight particularly looking north at the access point to Green Meadow. We can't force you to do this but I would ask that there's a tree that's located at about the 7th or 8th post on Green Meadow that really needs to be trimmed. If you could trim off that tree because it's blocking traffic and I was sitting in a big truck and we still couldn't see all the way where we should have seen, and I imagine when it's icy it might be a little more precarious. But my motion, I'll make my motion now after I have given my big speech, which I should have waited for. I apologize. I would like to make a motion that we enter into an encroachment agreement with the Pacheco's that would allow them to retain approximately 20 feet from the pin to the center line from the north boundary of the right-of-way to the center line, 20 feet which would involve them moving their fence and their irrigation pipe 10 feet to the north, and authorize any appropriate documents to be signed. That's my motion.

Commissioner Varone: Second.

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

Commissioner Murray: Commissioner Tinsley and Commissioner Varone.

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: I'm going to vote in favor of the motion but I believe your motion needs to include that the Pacheco's need to pay the appropriate fee and get the encroachment agreement filed with the Public Works Department of Lewis and Clark County, which I believe they're more than willing to do.

Chairman Tinsley: They've already done that with this one and I my motion included in allowing that to stand. I should have indicated that, I apologize.

Commissioner Murray: Thank you.

Chairman Tinsley: Any further discussion? I do have a little bit more discussion. I don't normally get to do this because I sit up at the Chair. The mailboxes in question: At some point, they really need to be moved as well because they're kind of blocking the line of site, and they're probably in violation of the right-of-way for the State. I can't say that for you but I probably ask you to move those as well.

Laurie Pacheco: Mine is further down the road.

Chairman Tinsley: Oh is it? Ok. Well then, don't worry about it if they're not yours. One more thing: There is an illegal sign on this property that needs to come down. It say's "Private Drive". That is not a private drive; it's a public access easement. It's a County road, I believe.

Laurie Pacheco: I don't even know who put that there.

Chairman Tinsley: And it's been there since you moved in and I understand that, but what I'm asking when you move just go ahead and take that sign down as well.

Laurie Pacheco: Can I take it down today?

Chairman Tinsley: Please. Feel free. If you like to donate it to the County you're more than welcome to. And, I apologize. This isn't what you ultimately wanted but I think we were at a point where your neighbors are going to ask that we do something about this road, and if we entered into the original encroachment agreement, I don't think it would have stood very long. We would have had to ask you to move it anyway. This seems like a good compromise and I think you're neighbors would be able to live with it.

Chairman Tinsley: Any further discussion? All in favor of the motion signify by saying Aye.

Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0.

Chairman Tinsley: We have one more agenda item and this is Public comment on any matters not mentioned above. Are there any comments from the public? See none we stand adjourned.

Public comments on matters not mentioned above. None

Adjourn. Adjourned at 9:55 a.m.