

DRAFT – NOT APPROVED BY BOCC

PUBLIC MEETING
November 8, 2005

Chairman Ed Tinsley called the meeting to order at 9:00 a.m. Commissioner Murray and Commissioner Varone are present. Others attending all or portion of the meeting included Ron Alles, Jerry Grebenc, Sheldon Bartel, Deborah Hayden, Ernest & Mary Ellen Nettik, Lindsay Morgan, Arthur E Bourquin, John Huyg, Michael McHugh, James Frisbee, Greg McNally, Ron Solberg, Dean Retz, Mr. Mooney, Tony Prothero, Rob Creel, Anne MacIntyre, and Maria Penna.

Pledge of Allegiance. Everyone recited the pledge.

Chairman Tinsley: Good Morning and welcome to our regularly scheduled Tuesday morning public meeting. I'm Commissioner Tinsley. To my left is Commissioner Varone. To her left is Maria Penna, one of our Executive Assistants. To my right is Commissioner Murray, to his right is Jerry Grebenc our Director of Community Development and Planning. Our Chief Administrative Officer Ron Alles will be joining us shortly. What we'll do is move on to the 3rd item while we're waiting on Ron, unless Jerry, do you want to present the consent? Or do you know anything about them?

Jerry Grebenc: Mr. Chairman, Commissioners. The only item that I'm informed on is number A, the Encroachment Agreement, so it's really up to you.

Chairman Tinsley: Ok, why don't we go ahead and to the third item if that's OK and we'll wait for Ron to get here. Deb & Sheldon, are you ready to go forward? Ok.

Chairman Tinsley: This is the Gateway Economic Development Corporation. The Commissioners will consider a brief report on the Asarco Property in East Helena and consider a resolution designating Gateway as facilitator and agent for the fact finding and redevelopment of the Asarco properties. Good Morning.

Gateway Economic Development Corporation.

Deborah Hayden: Mr. Chairman, Commissioners. Mr. Grebenc and Staff. I'm here this morning to give you a brief update on the progress of the clean-up at the Asarco plant. I went to the meeting a week or so ago, that John Nichol and the EPA held in the East Helena, in which they gave the facts that I'm about to present to you. I didn't develop these, these are their facts, but I had asked Maria to pass around to you a list of what the accomplishments have been out there. I thought you'd like the update. And you can read these. Basically, they've cleaned up an awful lot of zinc oxide, lead, sodium and other hazardous chemicals from their lab. They also installed a "permeable reactive barrier" as a test item that's about 30' feet wide. It doesn't cover across the entire arsenic plume that is emitting from the plant but it was a test to see if this technology would work. And what it is, it's a pit, a trench, that's about 10 feet wide and 30 feet long across the arsenic plume, and it's filled with like sand bag sized containers of iron filings, and as the arsenic laden water goes through this barrier the arsenic adheres to the iron and is stopped there. They've tested the arsenic out-flow beyond the barrier and found vastly reduced arsenic, so the barrier is working and they will consider putting it across the entire plume. The way this work is you don't just have arsenic backing up on one side and not getting through to go to the other side. It actually adheres to the iron and after a certain number of years you remove that barrier and replace it with more iron so that it continually takes arsenic out of the water that's emitting from the plant. The problem is I'm sure you're aware that there is an arsenic plume that has been emitting from the plant for years and has been encroaching

towards the city of East Helena. I had hoped to have a picture of that for you today, but I hadn't obtained that yet from the Asarco people in East Helena so I don't have a picture for you but I'll try to describe it. It starts out in just about the center of the plant and there still is arsenic leeching into the ground water from that source. They're taking steps to ameliorate that so the arsenic will no longer emit into the ground water from the source. I think they've taken some steps in that direction already but it hadn't completely stopped. The plume then goes north from the plant in a fairly narrow flow toward the northwest portion of East Helena. It crosses over toward where the Town Pump is toward the west of town, it probably passes just to the east of that, and about 2 blocks beyond that into the town and is heading toward the Lamping property which is that large 200 acre piece of bare ground that is west, actually west of the town and not actually in the city limits and is still owned by Asarco. So, that's where it's going, it's not moving very fast. It's about 80 feet down and it's so far not contaminating anybody's wells in that area. And they have a number of test wells that they've put in that have given them an idea of the size and shape and length of the plume and they're putting 2 more in shortly in the next few months that will test whether it's gone farther than they thought before. So they'll get a picture of that. That's just to update you on their progress. They also have cleaned up 700-800 yards in East Helena, remediate them for lead and they've only got about 110 left to go and some of those have been people who didn't want their yards cleaned up but suddenly have discovered that as they want to sell their properties that it would increase their property value if they get their yard cleaned up. So they're coming around and getting them cleaned up. Mostly, that's about to be finished within the next year, the yard clean up. The lead levels in the children out there have gone down to levels that you would expect in a non-contaminated town. So, apropos of all this, there's a plant sitting out there that is idle and is a super-fund site and needs cleaning up and needs to be put into use so it can provide high-paying jobs for the community, and unless somebody does something about that nothing will happen. So I'm proposing that it be the job of Gateway Economic Development District, which is a designated economic development entity in the County to facilitate the process of turning that property into something productive. I've done some preliminary investigations and so far I have determined that there isn't any obstacle to putting a productive business out there. You don't have to clean it all up and get it all spick and span before something can happen as far as I can tell, but I would like to continue investigating that and getting the opinions of the EPA and the DEQ, Montana DEQ and I've already had discussions on those lines with EPA and DEQ people and have heard nothing negative from them about putting something productive out there as long as we don't pollute it anymore. And so, we would like to explore the feasibility of some kind of appropriate use for the plant. Right now the most productive avenues of investigation would be some kind of bio-fuels application, such as bio-diesel or ethanol or any other kind of power generation from say, crops. There's a project that's been proposed to grow Sudan grass in Broadwater County is apparently is a viable way of producing power. So, I've presented you with a resolution, a draft resolution. If you care to make and changes in this, they would be totally acceptable. It just to authorize us, not to speak on your behalf or to act on your behalf but to go around and get facts, explore feasibility, bring that information back to you with strategies and proposals for action. The City of East Helena has already signed a resolution similar to this in July and designated us as the facilitator. This will give us some kind of authority in terms of just your blessing, so to speak, to do this kind of feasibility investigation for turning that into a productive facility.

Chairman Tinsley: Thank you Miss Hayden. I have a question. I've been approached by a number of people who used to work out there at the plant and they've indicated to me that the slag-heaps contain various amounts of minerals and metals that are potentially recoverable. They also indicated to me that there have been core samples taken by the company and they know where those metals are located in the slag heaps. I also understand there's a process separating those metals from the slag and making them a viable product that are marketable. I also understand it's probably little costly to do that, however, the market determines how costly it is or how profitable it is. Has that been explored? Or will that be explored through this process?

Deborah Hayden: Definitely.

Chairman Tinsley: And I understand there's this company in Alberta that does that.

Deborah Hayden: It definitely will be explored. I don't now have any facts about the core samples. That's the kind of information I would like to go get and immediately undertake some kind of plan to deal with that slag heap that's out there. It certainly is the biggest eye-sore in the whole area and I've heard also that there's iron in there and can be used for various purposes.

Chairman Tinsley: Zinc?

Deborah Hayden: Zinc.

Chairman Tinsley: Some gold. Ok. Any other questions for Miss Hayden?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone. Miss Hayden, in the one handout that you gave us you indicate that Asarco has disposed of 2million pounds of hazardous waste since July 2004. Did that go in the landfill that Asarco built to the southwest of the site, do you know?

Deborah Hayden: I couldn't speak to that. This is a part of the presentation that Don Nichol gave. They did indicate at the meeting that the majority of what they had cleaned up that was very toxic heavy metals had gone into that repository for waste, but I couldn't say whether it was this 2million pounds or whether it was the, just the zinc oxide or whether some of the 2million pounds went somewhere else.

Commissioner Murray: Thank you. Mr. Chair, follow-up question, if I may? How will Gateway cooperate and compliment the lead abatement program that the County currently operates through our Health Department.

Deborah Hayden: You currently operate, my understanding is primarily an education program and those individuals were at the meeting and did explain what they have been doing. They do classes at the schools, and they do health screenings and we would be looking primarily at some kind of productive economic development use of the plant. We certainly would want to touch base with the Lead Abatement Staff to make sure, well of course we wouldn't be allowing any kind of use of the plant that would provide further contamination or pollution but we would want to put that information out to the Lead Abatement people so that they could, through their education process make sure that the community knew that we were prohibiting any further pollution or contamination.

Commissioner Murray: Thank you.

Chairman Tinsley: Further questions? Is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to approve a resolution designating Gateway Economic Development District as Facilitator and Agent for fact finding in the redevelopment of Asarco properties in the City of East Helena and Lewis and Clark County and authorize the Chair to sign.

Commissioner Murray: Second.

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

Commissioner Varone: Discussion?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. Deborah and Sheldon. There was a lot of forethought a couple of years ago to establish Gateway Economic Development District. This is a perfect example of what the district is kind of trying to do in the area of Helena and East Helena. It was thoughtful, it's timely, and I'm glad to see that you're on the forefront in helping East Helena and our County.

Chairman Tinsley: Further 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 Deborah. Thank you Mr. Bartel, we appreciate you coming.

Deborah Hayden: Thank you Commissioners.

Chairman Tinsley: Now we'll move back to Consent Items, item #2. Mr. Alles is here with us.

Consent Items.

Ron Alles: My apologies Commissioners.

- a. Contract and Encroachment Agreement for Jim Strainer. To install and maintain an approved water line connection from 190 Leonard Street, in the town of Craig.
- b. Woodlawn - Fairgrounds Engineering Contract between the County and Stahly Engineering. This is for final engineering on the Woodlawn Fairgrounds ATC Training Facility. It is to install the sewer lines. And I'd like to point out, within that contract, for some members of the public, that the contract includes looking at different alternatives for the routing of the sewer line. It includes the Gilmore property, Silsby Street and properties west of Mr. Solberg's property. So those items will be looked at in terms of gravity flow, etc. Staff recommends approval of these contracts.

Chairman Tinsley: Thank you. Is there any discussion or questions for Staff?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Not a question, but just a comment. I think that we might want to notify the public the amount of the contract is \$153,203.00, just to get it on the record.

Chairman Tinsley: Thank you Commissioner. Is there a motion?

Commissioner Murray: Mr. Chair, I move approval of the consent agenda.

Commissioner Varone: Second.

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

Commissioner Murray: Mr. Chair, for clarification that motion included the Chair's ability to sign

the appropriate contracts.

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

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion passes 3-0.

Chairman Tinsley: Next item on the agenda is a request for a zoning variance, Special Zoning District #28, Vandenberg Village Subdivision. The Applicants are Ernest and Mary Ellen Nettik. The Planner is Lindsay Morgan. This is continued from November 1, 2005. Miss Morgan, welcome.

Request for Zoning Variance, Special Zoning District #28, Vandenberg Village Subdivision

Lindsay Morgan: Good morning Commissioners. I guess do you have any questions for me regarding the variance?

Chairman Tinsley: This is decision day. We had the meeting at the Planning and Zoning Commission. The variance request passed unanimously and we are here to make a decision this morning, correct?

Lindsay Morgan: Correct.

Chairman Tinsley: Any questions for Staff? If not, is there a motion?

Commissioner Murray: Mr. Chair, the first motion is to adopt the public record of the Planning/Zoning Commission into the County Commission record.

Chairman Tinsley: Good point.

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.

Chairman Tinsley: Now is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to approve a request for a zoning variance, Special Zoning District #28, Vandenberg Village Subdivision. The Applicants are Ernest and Mary Ellen Nettik, and authorize Chair to sign.

Commissioner Murray: Second.

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

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion Passes 3-0.

Chairman Tinsley: Next item on the agenda is a request for zoning variance, Special Zoning District #28, Vandenberg Village Subdivision. The Applicant is Arthur E. Bourquin. The Planner is Lindsay Morgan. This is continued from November 1st of '05. Miss Morgan.

Request for Zoning Variance, Special Zoning District #28, Vandenberg Village Subdivision.

Lindsay Morgan: Good Morning Commissioners. Do you have any questions of me?

Chairman Tinsley: Any questions? Is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to approve a request for a zoning variance for Special Zoning District #28, Vandenberg Village Subdivision. The Applicant is Arthur E. Bourquin and authorize Chair to sign.

Commissioner Murray: Second.

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

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: I'm assuming that the incorporated record continues on to this item in our agenda. I also want to point out that in testimony several people indicate that they didn't know they were in a zoning district. In this particular case, I believe the Applicant was one of the signers of the petition to create the zoning district. I'm still going to vote in favor of the variance, but for those residents of Zoning District #28 that say no one seemed to know of it, this particular Applicant signed the application that I'll have available to the Commission if they wish after this meeting.

Chairman Tinsley: Thank you Commissioner. Any further comments or discussion? If not all of the motion to approve signify by saying Aye.

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion passes 3-0.

Chairman Tinsley: Mr. & Mrs. Nettik, Mr. Bourquin congratulations. Work with Lindsay, she'll let you know what else you need to do from here. That should be about the end of the process. Thank you.

Chairman Tinsley: I should point out to, by the way, and I usually do this at the front of the meeting. There's a sign-in sheet up here, if you haven't had a chance to sign in and if you're getting ready to leave, please sign in so we have a record of your attendance at the meeting. Next item on the agenda is a proposed Minor Subdivision, Preliminary Plat to be known as Huyg Minor Subdivision. The Applicant is John. And the Planner is Michael McHugh. I want to hear somebody else say it before I try it again. Mr. Huyg did you receive your packet of information and are you prepared to go forward this morning? Ok. And please accept my sincere apologies about massacring your name. Mr. McHugh, welcome.

Proposed Minor Subdivision, Preliminary Plat to be known as Huyg Minor Subdivision.

Michael McHugh: Commissioners, the proposal before you this morning is to create 5 lots....****pause in tape*****.

Chairman Tinsley: It was on just a moment ago wasn't it?

Michael McHugh: I know, but technology is wonderful isn't it. If the Commissioners wish to proceed. The proposal is to create a 5 lot minor subdivision on 11.7 acre parcel. It's located just west of Spokane Creek Road and south of what's known as Drake Road. Currently the development on the property consist of a single family residents with some out buildings consisting of a garage and some livestock corrals.

The existing development on the property is served by an individual on-site wastewater treatment system and individual ground water well. At the time of the site visit there was a recreational camper located in the southern portion of the property that was being occupied and also at the time of the site visit there was being an additional well being drilled on the subject property.

As far as vegetation on the property, it consists of landscaping, trees and grasses in the area around the existing development and then there was an additional native grasses, sheep grasses in the area.

As far as the surrounding land use: On your monitors you should be able see that the area, the subject property is surrounded by varying development densities that range from 5 to 20 acre parcels, and then to the west and then to the south of the subject property are some very large agriculture operations that consist of irrigated hay ground, dry land crop production and also some livestock.

Again, what the Applicant is proposing is to create 5 lots. These lots again would range in size from a little over 2 acres to approximately 2 ¾ acres in size. There's no zoning in this area. There currently are no covenants on the subject property. The Applicant is proposing covenants that would prohibit further division of the subject property; prohibit cow, sheep, goats, fowl, except for 1 4-H calf or steer. The Covenants would also allow for up to 4 horses per property on this. Staff has recommended in their proposals to prohibit the raising or confinement of the horses on the property but would allow for 4-H projects in this area.

As far as the notice: When Staff prepared the Staff report, we did not receive any public comments. Subsequent to that we did receive a letter and, I, hopefully that was attached to your proposal. The objection to it was primarily due to the location of Drake Road and the utilization of that road as a primary access into the property.

As far as the review criteria: There were 2 soil mapping units identified on the property. These mapping units do have constraints to cultivation due to lime and wind erosion. The area around the subject property does have some high productive agricultural land uses in this area. Additional residential density in this area would have impacts on it.

As far as the impacts on water users: There is a man-made well. It's located in this area here. The Applicant does have up to 17 gallon per minute right to utilize that. There's an existing underground irrigation line with risers on the property. The Applicant indicated that he was going to transfer all of those water rights from that man-made well to proposed lot #4 which is located in the southwestern portion of the property. Since this is not part of an irrigation district, the property owner does have the right to transfer that. Typically with the irrigation district there needs to be a productive use of the water right, 4 acre or 2 acre in size is typically not considered to be a productive use of irrigation water rights.

As far as impacts on local services: The Applicants proposing to utilize individual on-site wastewater treatment systems. There are some soil constraints due to slow percolation rates.

The City/County Health Department has conducted site visits on the subject property and has identified suitable sites. There will need to be additional review by the Department of Environment Quality and individual septic tank permits will be needed to be issued prior to development activity. Wells in this area are highly productive. It is located in an alluvial aquifer and there's not tremendous amount of draw-down and recharges very quick.

As far as streets and access: The Applicant is proposing to utilize Drake Road, which runs in an east/west direction, and then to construct a cul-de-sac- in this area. Because of the lengths from the intersection of Spokane Ranch Road to the bifurcation here, that is in excess of 700 feet. The Applicant has requested a variance from the County Subdivision regulations that prohibits dead-end roads in excess of 700 feet. The Applicant is also requesting a variance not to construct a cul-de-sac- in this area here. And then again, the Applicant is also requesting a variance because of the length from Spokane Ranch Road to the terminus of the cul-de-sac and again is in excess of 700 feet.

Chairman Tinsley: We don't have any of the variances.

Michael McHugh: I apologize for that. I assumed they were attached to the Staff report. Staff will get you copies of that.

As far as schools districts: The subject property is located in School District #1 for the high school district and then the East Helena School District for elementary and middle school students. None of those schools right now are experiencing capacity constraints.

As far as fire protection: The subject property is located in the tri-county or Tri-Lake Fire Service Area. The Fire Service Area is requesting a \$1,000.00 per new lot fee, to be paid in addition to the annual assessment of \$120.00 plus \$16.00 per additional \$1,000.00 taxable value.

As far as surface water: Again, there is the man-made pond that is located over in this area of the southwestern portion of the property. Because of the soil mapping unit classification, the soils are susceptible to sedimentation and erosion and again this is another reason to prohibit livestock grazing on the property.

As far as ground water contamination: There's not any identifiable ground water nitrate concentrations. The sample that was collected this year indicated that nitrate concentrations were .78 mg/l and at build-out they would increase to approximately 2.35mg/l, which is below the Department of Environmental Quality standards.

As far as other public health and safety issues: There's really not any as long as the roads are constructed to the County Roads Standards. There are some seismic faults located within one mile of the property and that can be mitigated by construction according to applicable standards in this area.

As far as drainage: The slope of the property is generally to the west and to accommodate the additional run-off the Applicant is proposing to develop some shallow storm water retention areas located along the western boundary of the subject property.

As far as impacts on traffic: It's estimated that between 32 and 40 additional trips per day would be generated by this proposal. Currently Spokane Creek Road has a traffic count in excess of 1,000 trips per day. It's currently operating at a level of service standard of "A" and the additional traffic on that will not degrade that level of service standard.

Again, as far as the Subdivision Regulations, the Applicant has requested 3 variances. Again that would be to allow a dead-end road that would consists of the segment from Spokane Creek

Road to the terminus here to be in excess of 700 feet. Additionally the Applicant is requesting not to be required to develop a cul-de-sac at this site and again they length of the cul-de-sac for the internal access road is in excess of 700 feet. Staff has recommended approval of this proposal with 19 conditions. Conditions that may be modified depending on the granting of the variance would deal with Condition No. 6, which would require the cul-de-sac to be created at the terminus of Drake Road to the west, along the western property boundary.

Chairman Tinsley: Questions for Staff?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone. Mr. McHugh in the covenants, proposed covenants on page 2, do we have any say over proposed covenants? My question or my concern is the Applicant appears to be limiting 4-H youngsters to a beef project rather than 1 sheep, 1 pig, chickens, rabbits.

Michael McHugh: Again, we don't have the right to control the species of a livestock _____ but we can control the number or prohibit the livestock on there because of Public Health and Safety issues associated with sedimentation and impacts on water and wastewater treatment.

Commissioner Murray: So the Applicant can limit it to 1 beef and that's the end of the story?

Michael McHugh: Yes.

Commissioner Murray: Thank you.

Chairman Tinsley: Further questions? Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. Michael, do you have any photographs?

Michael McHugh: I'm sorry I didn't have the opportunity to add to the presentation.

Commissioner Varone: I ask that because I drove out there yesterday to try and find the property and couldn't find it with the information that was given to me, so if it's OK if I ask a question? I didn't see a sign for Drake Road and all the maps that I have there wasn't a sign for Drake Road. Is there not a sign?

Michael McHugh: There's currently not a sign or a stop sign there. One of the Conditions of Approval requires that the Applicant place a street identification sign and also a traffic control sign that would consist of a stop sign at this location here.

Commissioner Varone: Ok. So help me out because I don't want to have to drive out there again. The property from the individual who said the road was very close to there. Is that a white house that has a porch that goes around it? Because that's the property I thought I was looking at.

Michael McHugh: The development that's located on the subject property consists of a log frame home that's located here. It's two stories, has a metal roof. There's a detached garage in this area here, and then there's a corral and a livestock shed in this area. The letter that you received was from this property owner here. They do have a house, it's approximately I would guess, 20 to 25 feet that they do have a porch that goes out there. It's Staff's recollection that I

believe it's a red house, or a red stained house. And then over in this area there's a mobile home that has been added on to and it's blue in color.

Commissioner Varone: This isn't the area that I was thinking that it was then. The very first map that you have that have some of the street signs that are on the, if you're going towards the lake, on the right hand side, the north side of the road could probably get us there. Could we get a copy of that map as well as the 3 variances?

Michael McHugh: Yes Ma'am.

Commissioner Varone: Thank you

Chairman Tinsley: Further questions for Staff? Ok. Mr. Huyg, John?

John Huyg: I don't. There are a couple of things that have come up in the course of this and I'm not quite sure how the process works. I don't do this for a living so if you can give me some direction that would be terrific. There's be some confusion both with myself and with the surrounding property owners on the Drake Drive designation and its designation as a Road. My research indicated that it was an easement, but I'm being told that there's some consideration to the number of residences at the end of that easement that turned it into some sort of public road which is why all of the people around that thought it was just a driveway, including myself. That's why there's no sign there, no stop sign currently, so that's causing some of the confusion and I know I had some concerns about it, and the surrounding property owners had some concerns about it. There is some issues that came up with relation to the land as it currently stands and mention of the sheep grass. That's actually an irrigated hay field, it's grass alfalfa mix. I ran 5 horses and 16 cows on it this summer, so the land is very productive. It is currently, or has been, an agriculture use and it would be changed over. My reasoning for asking about the horses was I'm generating on 8.5 acres about 40 tons of hay so my assumption was the carrying capacity would be more sufficient for a few animals. I didn't want to limit the property owners. It wasn't my intention to limit the 4-H's to by species. I was trying to stay in a general theme to what was going on in the area, so I was not intending to limit them in any way shape or form there. If you've, as I say, I'm not sure what the process is from here on out. I don't know if the Covenants that I proposed if they take precedence or sit behind what was in the Staff report, how the discrepancies there are resolved, because there are some differences. In some cases I was more restrictive than Staff and in other cases Staff came in more restrictive, so I'm not sure if any of that is still open for consideration. Additionally, if the road situation, we were still a little stunned to find out that was a public road. We were discussing that with the neighbors including the individual that submitted the letter and I work with Bob very closely, I'm with the Fire Department, so I know the Drakes use are on that as well. So, if there's anything I can do to help out or answer questions or clarify what I thought was happening that would be terrific. As far as finding the property the easiest way to do it is to go to Bucktail Lane which is on the east side of Spokane Creek Road. It's 3.4 miles down from the flashing yellow light, and the property would be immediately on the left from that point. I invite you, or if there's anything I can do to help or if you would like to come out and see it, please feel free to give me a call. I don't know if that's appropriate or not.

Chairman Tinsley: If we do come out there just stay in your house. We're not supposed to talk about it outside of this process.

John Huyg: Ok.

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

John Huyg: Thank you.

Chairman Tinsley: What is there, or are there any more questions for Staff? What is the pleasure of the Commission?

Commissioner Murray: Mr. Chair, Commissioner Varone. We received a letter from a Mr. Lange and a Miss McIntyre and I want to make sure that's incorporated into the public record please. We got it this morning.

Chairman Tinsley: Questions for Staff? We can include that into the public record?

Michael McHugh: That's correct.

Chairman Tinsley: Ok. It's included. Any further questions or comments? What's the pleasure of the Commission?

Commissioner Murray: Mr. Chair, I move we render a final decision on this Thursday, November 10th.

Commissioner Varone: Second.

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

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion Passes 3-0. Ok. November 10th Mr. Huyg.

Chairman Tinsley: Next item on the agenda is the proposed Major Subdivision, Preliminary Plat to be known as Mountain View Estates Major Subdivision. The Applicant is FM Proprietors LLC James Frisbee. The Planner is Michael McHugh. Mr. McHugh.

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

Michael McHugh: The Applicant and their consultant are present.

Chairman Tinsley: Mr. Retz and Mr. Frisbee are you, do you have your copy of the paperwork and are you prepared to go forward this morning? Ok. And it looks like the review period doesn't end until November 25th. So go ahead Mr. McHugh.

Michael McHugh: Commissioners, this proposal is to create a 39 lot subdivision. 38 of those lots would be for single family residential uses on a property that currently consists of 148 plus acres size. The residential lots that are being proposed for this subdivision would range between 2 acres and a little under 9.5 acres in size.

The subject property is located adjacent to Highway 200 south of Highway 200 approximately 3 miles east of the Lincoln town site. It's bordered on the eastern side of the property by what is referred to as the 4x4 Road along a portion of the southern boundary, a road that's referred to as Snow Drift Lane. Currently the subject property is not developed. It has been logged in the past, I believe in the last 3 years. Prominent features on the subject property include what is referred to as the Gross Field irrigation ditch that traverses the property generally in a east/west fashion. There is a portion of the ditch that runs more south in this area. The subject property would be accessed by an internal access road that would be developed. Currently there is already some construction activity that has occurred on the property.

Surrounding land uses in this area consist of 500 acre parcels located north of the Highway 200

and then the development immediately surrounding to the west, east and to the south of the property consist of predominately recreational/seasonal homes on little under 1 acre to 5 acre parcels. There's no zoning in this area.

There's currently no covenants on the subject property. The Applicant is proposing Covenants that would establish a Homeowners Association, would prohibit further subdivision, establish setbacks including a 200 foot setback from the right of way of Highway 200, would limit the number of domestic pets, dogs and cats, and then would also prohibit livestock except 1 horse per acre and again, because of environmental constraints on the property and the size of the proposed lots, Staff is recommending that there be a prohibition for confining or raising of large animals or livestock on the subject property.

As far as public notice: We did receive numerous written comments and phone calls dealing with this proposal. The comments consisted mainly of questions about the impact on ground water quality, wastewater treatment, also the number of animals that would be permitted, domestic animals that would be permitted on the subject property. Subsequent to the preparation of the Staff report and the public hearing that was held before the Consolidated Planning Board, there's been several additional comments about the use of Snowdrift Lane that's located to the southwest and Staff's recommendation that this roadway be extended to connect with the internal access road in this area.

As far as the review criteria: There are four soil mapping units identified on the subject property. None of these mapping units are classified as being prime or statewide importance and according to the SCS soil survey the soils are best suited for silviculture and wildlife habitat.

As far as the water right on the Grosfield Ditch we did receive additional information after the Staff report was prepared. The irrigation water rights are owned by the Grosfield Estates.

As far as impacts on local services: The Applicant is proposing to utilize individual on-site wastewater treatment systems in this area. There are some severe constraints, soil constraints due to slow percolation, severe wetness and shallow depth ground water. In the spring of 2005 the City/County Health Department did conduct ground water monitoring in this area and did conduct site evaluations and suitable sites have been identified on each of the proposed lots.

As far as water supply: The groundwater in this area is provided by the Blackfoot Valley alluvial aquifer water quality in this area is extremely high because of high transitivity in this area.

As far as utilities: All of the necessary utilities are located adjacent to the property either along Highway 200 or along the 4x4 Road and the Applicant would be required to extend all of these utilities to abut the lots at their own expense.

As far as roads and access: Some road construction activity has already occurred on the property as shown in the upper right corner and also the upper left corner and lower right corner. These road activities were done prior to obtaining the necessary permits for sedimentation, erosion control, weed management and also access permits, approach permits from the Department of Transportation for the proposed access on Highway 200, and also from the City/County Public Works Department on to the 4x4 Road. At the Planning Board hearing the Applicants did provide copies of the Weed Management plan and the Approach Permits for the Department of Transportation. There's a misunderstanding between the individual that prepared the EA as what was included in the EA as far the applications for the approach permit and the weed management plan. But, subsequent, Staff has received those and I believe those permits are attached to your Staff Report.

As far as impacts on school: It's the Lincoln School District. Currently none of the classes in the Lincoln School District are experiencing any capacity constraints and the school indicated

that they could accommodate up to 100 to 150 additional students.

As far as fire protection: The subject property is located within the Lincoln Fire District. Each lot would be assessed 14.62 mills for service provision. The Fire District is requiring that on-site fire protection water supply be provided at the developers' expense. And this delivery system should be able to accommodate 150 gallons per minute at 20 psi per 2 hours. One of our concerns in this area is that the subject property is located in extremely high risk Wildland fire area. These risks can be mitigated by using construction materials and also the implementation of vegetation management in this area.

As far as impacts on the natural environment: The background nitrates concentrations in this area are .06 mg/l and at the total build out it's estimated that the total nitrates would increase to 2.17mg/l. And the phosphorous breakthrough to the Blackfoot River that's located south of the property is a extremely long time period. The standard for phosphorous breakthrough is 50 years.

The Lincoln area does experience quite a bit of inversion during the winter months and vehicular travel and gravel roads and the use of wood burning heating devices would have a accumulative impact on the air quality in the area.

The soil mapping units again are susceptible to both wind and water erosion. The Applicant is required prior to development activity to submit a sedimentation/erosion control plan to the Conservation District, which has not been completed at this time. And again because of the susceptibility for erosion Staff is recommending prohibition of keeping livestock on the property.

There is a moderate to heavy infestation of knapweed and Canada thistle on the subject property and again the Applicant is required to do a weed management plan and to implement that.

As far as impacts on wildlife in this area: Because of the proximity to the Blackfoot River and just the overall development density this area does provide a habitat for a large number of species. There is a high potential that there will be increased wildlife/human conflicts in this area and the Department of Fish Wildlife and Parks has recommended numerous covenants to be placed on the proposed subdivision and Staff has included those in the proposed Conditions of Approval.

As far as impacts on Public Health and Safety: There are no flood plains or steep or unstable slopes in that area. There's no physical hazards or access hazards if the roads are done to County standards.

As far as drainage: Currently the drainage is accommodated by the Grosfield Ditch that's located on the property. Again, that runs north/south and is shown by this dashed arrow in this area. Staff is recommended conditions of approval that would prohibit any disruption or impacts to that and actually with the addition to the, the addition of the swales and culverts and everything that are being proposed for this property there actually would be a reduction of storm water runoff by approximately I believe it's less than a half acre foot per year.

As far as impacts on traffic: It's estimated that between and 304 to 380 additional trips per day would be generated if this were a full time residence, which this proposal does have the potential for, but looking at the existing development of property most of those are seasonal homes and it's safe to assume that some of these homes here would also be seasonal homes and would not have the total impact in the area. Even with full time residency in this area the level of service standard would not be impacted by the development of the proposal and it's assumed that 75% of the additional daily trips would be utilizing the 4x4 Road as the primary ingress/egress to the subdivision.

In the Staff's recommended Conditions of Approval, Staff has recommended that there be a improvement to the current County Standards of the segment of the 4x4 Road from the southern property line up to Highway 200. These improvements would also include a hard surface aprons extending a minimum of 30 feet back. In the Staff's recommendation for approval, currently Snow Drift Drive is there, it's not built to the current County standards either for construction or right-of-way width and it is in excess of 700 feet. Staff has recommended that there be some reconfiguration of some of these lots in this area and to have this road extended up to the internal access road in this area here. And again, there has been some comment by the existing property owners on there hoping that the improvements and development of that road would not occur.

In the original site plan, I don't know if you can see if very clearly here, but all the property lines are located along the southern boundary of these lots. Typically, the property lines are located in the center lines of the road and Staff in their proposed conditions of approval has recommended that these property lines be relocated to the center line of the road and that way physical and legal access will be provided to all of these lots. In discussions with the sub-divider and their consultants the Applicant has agreed to do that. The only variance request that the Applicant has submitted, and hopefully those were attached to the Staff report, is to have a dead-end road in excess of 700 feet located on Snowdrift. Again, Staff has indicated that there is a mitigation measure available with the reconfigurations of lots and the extension of Snowdrift Drive up to the internal access road.

As far as Parkland dedication: The lots that are greater than 5 acres in size are exempt from the parkland dedication requirements. Those lots that are less than 5 acres are subject to it and based on the statutory calculations Staff has estimated that approximately 3.387 acres would need to be dedicated for parkland dedication. The Applicant has indicated that it is their preference to make a cash donation instead of parkland dedication and the Park Board recently reviewed this proposal, indicated that they wish to accept the cash payment in lieu of parkland dedication and that those monies be dedicated either for Hooper Park or Lampkins Park within the Lincoln town site.

Based on Staff's original finding, Staff recommended approval of the subdivision with the 24 conditions.

A public hearing was conducted before the Consolidated Planning Board. That meeting was conducted on October 25th of this year. Staff again went over the proposals. Also reiterated the recommendation to ban large livestock except for 4-H animals on the subject property. Also reiterated the need to extend Snowdrift Drive to connect with the internal access road and therefore do away with the need for the variance request. There were some discussion by the Planning Board as whether the proposed road, Snowdrift Drive, was actually encroaching on existing wells in this area, and you can see, very vaguely, that there are some wells that are located adjacent and south of the road.

There was some extended conversation about the necessity and whether the Applicant had acquired the necessary permits prior to development activity there. Those permits were not included in this, the Applicant's original EA and their submittals some of those permits have been submitted to Staff subsequent to the Planning Board hearing and those do include the Weed Management Plan and also the approach permit from the Montana Department of Transportation.

There was also some discussion about storm water run-off and discussion about the incorporation of the Fish Wildlife and Parks recommendation within the Staff's recommended conditions of approval.

The Planning Board did elect to recommend approval of the subdivision 5-0. They did amend several of the conditions. One of the conditions was the requirement to prohibit the confinement of livestock except for 1 4-H animal and I believe that's reflected in the proposed covenants. I believe that's condition 20.

They did recommend the denial of the variance request and did request that the Applicant extend Snowdrift Drive to connect with the proposed internal access road. Based on their findings the Planning Board did recommend approval with amendments with 24 conditions attached.

Chairman Tinsley: Mr. McHugh, I have a few questions. What is the status of the DEQ permit that is required when you disturb an acre of ground or more?

Michael McHugh: The Applicants are required to get a discharge permit. A storm water discharge permit. We have not received copies of that and the Applicants engineer at the Planning Board hearing indicated that he was not aware of the necessity of that. The Applicant has been made aware of that. They indicated that there were some mitigating circumstances associated with the vegetation and the existing drainage that were on the property but the Applicants will be required to obtain that before final plat if approved.

Chairman Tinsley: Isn't that type of permit pretty common, commonly held and known requirement in building a community.

Michael McHugh: That's correct.

Chairman Tinsley: What is the status of the approach permit for 4x4 Road, which is a County road or public road?

Michael McHugh: To date, Staff has not received a copy of the approach permit. It hasn't been specifically addressed by Planning Staff and Staff is not aware of whether a permit request has been submitted to the Permit Coordinator.

Chairman Tinsley: But an approach has already been cut on the 4x4 Road, hasn't it?

Michael McHugh: That's correct and again the two pictures here the upper left and the lower right show the work has been done on the road. This picture here was just taken east of the 4x4 Road. There has been some extensive blading of the road, a removal of the top soils in that area. Again, upon review the Applicants may be required, possibly to relocate that approach if it doesn't meet County standards either for drainage or for distance or things like that.

Chairman Tinsley: Let's move on to weeds. I know weed application, an application was made by the Applicants in April of this year to get a weed plan correct?

Michael McHugh: That's correct.

Chairman Tinsley: You're not supposed to disturb the ground before the weed application has been approved, is that correct?

Michael McHugh: That's correct.

Chairman Tinsley: And it was approved when? I believe it was September of this year.

Michael McHugh: The Applicant received copies of it. I believe you have copies of the Weed Management Review, it's Management Plan #505-02 I believe. There appeared to have been

some lack of communication between the Applicant and because of some Staff changes in the Weed District. That is what was discussed at the Planning Board.

Chairman Tinsley: But it is pretty clear that when you apply for a permit you haven't been granted approval of that permit, by the very nature of the word permit, allows you to do something and until you receive that permit you shouldn't be allowed to do something, is that correct?

Michael McHugh: That's correct.

Chairman Tinsley: I recall seeing on that permit the approval date of September 9th of this year? Is that correct? In this plethora of paperwork that is consuming my desk here, I'm trying to find it.

Michael McHugh: I believe the original submittal date was April 13th and the Weed District did sign off

Chairman Tinsley: September 9th 2005 is the date it was approved. It appears to me from looking at this packet of information the only permit that was approved and received prior to anything occurring was the permit for, from the Department of Transportation, is that correct?

Michael McHugh: The permit that was issued by the Department of Transportation seems to have been issued by a Mr. Kelly on May 2nd of this year. That's correct.

Chairman Tinsley: Ok. I think that answers my questions. Questions for Staff?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, a clarification if I could. Michael, on the Staff report from the Planning Board, it lists the subdivision's name as Mountain View Meadows, but on your report it says Mountain View Estates. Just for clarification, which is correct?

Michael McHugh: It is Mountain View Estates. Staff apologizes.

Commissioner Varone: No, I just needed to know for sure. And secondly, when we make our decision if you would just do one thing. The Planning Board recommended adding under "20-W a prohibition of the raising, confinement and/or keeping of livestock". You have it in your report but in the conditions of approval you didn't add except the 1 4-H animal per year. Would you just do that for us so we don't have to add it next time.

Michael McHugh: 20-W? Again, Staff apologizes for that oversight.

Commissioner Varone: I know you are just very overwhelmed with work, so apologies aren't required. And Mr. Chair, Commissioner Murray, if I could just make a little bit of a statement, I get a sense from you, Mr. Chair, that you're a little bit concerned about the Applicant moving a little ahead of this proposal before any permits were received and I just want to for the record share your concern about that. If in fact I'm correct on what I seem to be hearing. As was the Planning Board concern that this Applicant, who by the way, I believe, is a not only a real estate agent but has subdivided acreage in the past, I'm concerned that this individual went in and cut roads before anything was done and I have a tremendous amount of concern that people in the area have been suffering as a result of the arrogance of this individual going in and cutting roads and disturbing the property before any kind of permits were acquired and I just for the record wanted to state that publicly. I have a tremendous amount of issue, I have no idea when

the Applicant hired the Consultant and Surveyor but I do know the ground was disturbed before any kind of information was provided to us and the permits acquired.

Chairman Tinsley: Further discussion? Thank you Mr. McHugh. Mr. Frisbee or your Applicant, are you prepared to go forward? Good morning Dean.

Dean Retz: Thank you Chairman. Chairman Tinsley, Commissioners Murray and Varone. My name is Dean Retz. I reside at 155 All Sports Court. I've been retained by the Applicants on this project. I've been in the subdivision business now for 10 years. I'm fairly familiar with the situation. Mr. Frisbee and Mr. Mooney the principals of FM Properties are here. They prefer only to answer questions if need be. Following me will be Tony Prothero the Engineer of Intermountain Consulting Engineers. He will discuss the Montana Department of Transportation approach permit and he also has copies of the storm water drainage permit to hand out. Couple of things before I start, just to answer questions. I'm going to be kind of out of order here but I find a little "fopah" in the new regulations, I know you're going to be looking at regulations. What had happened was, we started in March 29th, we had our pre-app. We were prepared to go forward with this and then we found out we had to do ground water monitoring and of course then we knew we were going to be late with the application in late summer, early fall so we went ahead and paid the \$200.00 per site evaluation. At that time on April 8th, when I brought that check up, I had talked to the City/County Health Department and I said the Applicants would like to begin work on the road, knowing that the application may not be presented until later on, even into the fall. The answer was you get an approach permit and you can begin construction. On April 9th I brought up the money for the approach permit, excuse me, for the weed plan, I remember very well this is the first weed plan I did because it's a new weed plan. The first one I did in years was not on the computer. What happened was if you read this weed plan, it was approved April 13th. A gentlemen by the name of Al, went up there, and Al's been up there 4 times. I talked to Larry Hoffman twice, just in October like Mr. McHugh said. Al's not there because they only do their weeds in the springtime and some lady left, so they found the weed plan. If you look at, it was approved April 13th. Subsequently they went out there on the 13th, July 12th, August 3rd and September 9th and that's what this _____ so I just want to clarify September 9th, Chairman Tinsley. That's the last time he went out there. It was approved on April 13th. And I have to admit that another problem, and I'll take the blame for this, the new regulations, you're probably aware that when you have a pre-app, and I endorse this, they give you a check-off list that both applicant and the planner signs off on. Nothing on the new check-off list talks about weed plan or erosion/sediment control. The old prior to February 1st check-off had weed plan and those proposed urban activity. In my applications I put on there that they will be done later, so as you go forward and looking at the regulations, I think that you should maybe change that, because what I'm going to do effective immediately, I'm going to start doing that, and those are proposed urban activity because that's easy to do and there's no fee involved. And as far as the Department of Transportation permit, yes, it was issued May 2nd. What happened, Mr. Grebenc, Mr. Prothero and myself, had a second kind of mini-pre-app on this. We were talking about a couple of things, Mr. McHugh wasn't there. It was determined yes, we do need to have an access on to the highway so right away Mr. Prothero applied for that, it was issued May 2nd. September 2nd was when I submitted the application. I distinctly remember putting those in there and I was kind of shocked, Mr. McHugh remembers that, October 25th because he said it wasn't there and I tore the application apart looking for it. Of course we had a copy but I do need to find the original because that needs to be signed off on this. So I want to clear up those 2 points. So as far as disturbance, I have been told by the developers that no disturbance on that road has been done until Al came up there on April 13th. The approach permit on Montana Department of Transportation does require a culvert that was done. You cannot apply for an approach permit under County regulations until you receive preliminary plat approval.

Chairman Tinsley: So why was the road cut then? On to 4x4 Road.

Dean Retz: The road was started after April 13th.

Chairman Tinsley: You cannot receive a permit until it's already gone through.

Dean Retz: An approach permit, Chairman Tinsley, if you look at, and maybe Mr. McHugh can.

Chairman Tinsley: No, Mr. Retz, I'm not trying to be rude here, I just have a simple question. Why was the road cut onto our road, onto 4x4 Road prior to even applying for or receiving any kind of indication a permit was going to be granted. What kind of hubris allows for that to happen?

Dean Retz: I can only answer that by using like Stonewall, which is also in Lincoln. Stonewall was the internal access road was done, we got the approval from the engineer that it was done satisfactory, then in the final plat process was when we ordered the approach permits, so if that road has been cut in from 4x4 Road, then that is in violation of the regulation, you're correct.

Chairman Tinsley: Thank you.

Dean Retz: Ok. Let me continue if I could. Like I say, you all have a copy of the weed plan. Also, when you look forward, I'm kind of going off the Staff report now, before I get into the variance, as Mr. McHugh said, what the applicant wanted actually makes sense. He wanted to make sure the road was on, a complete road on the lot versus neighbors lot, so to kind of explain this, lets say Commissioner Murray had 2 acres, Chairman Tinsley had 2 acres, and then that road would be you have 30 acres of access easement on yours, 30 on yours, and right between there would be the road. So when you went to get a septic permit you'd have to go to the middle of the road, and so of course those are already buried so then somebody has to come out and find them. The rationale there was, "well OK, we're going to put the whole access on Chairman Tinsley's road so his 2 acres would all of a sudden be maybe 1.9 acres, he knows that. Commissioner Murray's would be over 2 acres and he still has access to it. So it kind of makes sense but the regulations don't require that, so when you look at the regulations you might look at that because they would still have access to the road. Because otherwise, the way it is now, if you want to put a fence up and both of you would have to put a fence up, close to the, you know, because you've got 30 feet there so you put a fence up and it's actually encroaching on the public access easement road. If that makes any sense. As far as the other variance we realize we're over 1,014 feet, we're over the 700 feet. We also realize that this may be looked at, but I do recall in Jefferson County, I believe the road length is 750 feet. There are presently 3 landowners on Snowdrift Lane, and as Mr. McHugh said, we have letters from two of them and also phone calls. Just briefly, one lady, Dorothy Evans, 80 years old, she's been there since 1976, "I have no problems with the proposed development, but would like to voice an objection to propose to open the dead-end road Snowdrift Lane to the proposed loop with road within the development. This has been a dead-end since we purchased our property in the early 1970's." She is not opposed to the development, she would like to keep Snowdrift a loop as it is. Another gentleman, another person, Cliff Walter, "I'm in favor of the request for a variance. I do not want Snowdrift Lane to become a through street. It has very limited traffic now because of the dead-end. This is one of the major reasons we purchased in this area. Our neighbor John Hansen drives his golf cart over to see us because of poor eyesight prevents him from driving a car. Even with the new development, the most houses that would be on this street would be 7." And that is correct, you would only have 7 on there. We realize that this is not a deal breaker but we do want to mention that Lincoln is kind of unique that they would like to have, they would like to keep that a dead-end road. I agree with what Mr. McHugh is trying to do; Planning of course would like to look at it at being a through street. Quickly on the schools, this is the second one I've done in Lincoln, and a letter from Mr. Youngquist, "basically Lincoln, students are declining, there's no such thing as a ten year teacher in Lincoln now." Presently they've got about 200 students in K through 12 and they would love to have another 100 enrolled students. So their school handles 300 easily, they have less than 200 students there.

And again you have a copy of the Montana Department of Transportation permit which was issued May 2nd 2005. As far as proposed covenants and Commissioner Varone you're correct, on page 4 they did recommend that 20-W which is the recommended Board of County Commissioners covenants add, except for 1 4-H animal per year per lot that has to be added to 20-W. The original covenants we talked about, 1 large animal, actually 1 horse per acre on any lot, not to exceed 5 horses. When they put in that recommending on 4-H the vote was 4-1. The negative vote was because the Planning Board gentleman thought because Lincoln is unique area most of the people are seasonal, he thought that it would be permissible to keep large animals up there and there are 8 lots over 5 acres, and I'm not going to stress this too much because as Mr. McHugh knows and this Board knows, I lost the battle with Stonewall. I just wanted to point out that most residents up there are seasonal and I guess we will concur with the 1 4-H animal per lot, but the other subdivision that Commissioner Murray just talked about, you know, what do you do with smaller animals, but then to expand on that, what if you've got 3 children in 4-H. Do they share one animal? So I just wanted to bring that up. And that concludes my remarks. Do you have any questions?

Chairman Tinsley: Questions for Mr. Retz? Questions for Mr. Retz? Thank you Mr. Retz.

Dean Retz: Thank you. Ok, Mr. Prothero now.

Tony Prothero: Commissioners. I'm Tony Prothero with Intermountain Consulting Engineers. I reside at 3264 Harness Loop. With regard to the Storm water pollution plan, I, the requirements for the storm water pollution plan have changed fairly recently and I was unaware of some of the new changes that had come about. The old regulations required that if your disturbance exceeded, I believe it was 5 acres, and we knew that we were pretty close, we thought we were going to be pretty close to the 5 acre threshold, that, but we also figured we were going to be below that. Anyhow, let me explain the older requirements; and you had to be within a certain distance of the river, or a perennial water body. If you were outside of that distance and your area of disturbance was less than 5 acres you did not have to do a storm water pollution prevention plan and apply directly with DEQ, so it was brought to my attention that has since changed and to where if your area of disturbance exceeds 1 acre no matter where you are you have to apply for the storm water pollution prevention plan. We went ahead and evaluated the site for storm water pollution sediment discharge issues regardless and we felt that there were a lot of factors about this site that were, made this a low hazard for actually discharging sediment. In spite of the fact that the soils are classified as erodeable and one of these, I'll just kind of outline them, one of them happens to be that the surface gradient of this area are extremely flat, I believe it's less than 1%, secondly the terrain is very erratic and very, I don't know it's, it's, it's almost very difficult to explain other than it's erratic. And also is covered with a fairly dense layer of surface vegetation and thirdly basically the areas of disturbance were in danger of possibly, which could possibly contribute to a sediment discharge we're pretty far away from anything other than the Grosfield Ditch. And again the Grosfield Ditch, again is very, very flat. It's much flatter than the actual surface grade of the area. To make a long story short though, we, a complaint was made by Eric Griffin to DEQ and it was brought to my attention and so I went and discussed everything with DEQ and we have since went and applied for the storm water pollution prevention plan. I explained to them my rationale behind, you know, as far as our methodologies and what we did to prevent the storm water pollution and they did grant us a permit. I brought copies of this, for each of you. Do I just bring it to you?

Chairman Tinsley: You can bring it to Miss Penna that would be fine.

Tony Prothero: Ok. So in that respect I guess, and we're obviously much more aware of the requirements now as they stand and this will never happen again for anything that I do. So anyhow there's that. As far as, I completed, on the Preliminary Plat Application I completed the traffic impact study. I completed the preliminary grading and drainage plan which kind of goes along with the storm water pollution prevention plan and I also completed the Preliminary Non-

degradation Analysis, which is the substantially credible evidence, and I guess, I don't know. That's really all I have to say, I can answer questions. I'm happy to answer any questions that you may have about the application.

Chairman Tinsley: Mr. Prothero, I have a couple of questions. Just for future reference, because you've been before us before and I've never once seen a problem with your work and I'm not calling it into question because I think if there had been a problem we would have known it. I guess my question is, when did this change? When did the law change that you're talking about the regulation?

Tony Prothero: I'm honestly not aware. The last type of storm water pollution prevention plan that I had to do, that was, that I really had to do, has been a while ago.

Chairman Tinsley: Well, let me ask a couple more questions. Do you belong to a professional organization for engineers or something like that?

Tony Prothero: Well, I am a professional engineer.

Chairman Tinsley: I understand that, but what I mean is there like a formal organization where you can get, I guess what I'm trying to say is when these regulations change you need to be aware of.

Tony Prothero: That's true, you're absolutely correct.

Chairman Tinsley: And what is the mechanism of process for you to become aware of them other than _____ like this?

Tony Prothero: What normally happens is DEQ will send out notices to various employers of engineers and then at that point it should be distributed out to all of their people who are involved in that type of work. And I guess, and my personal situation, I was employed with a couple of different firms when this apparently all changed, and I just didn't get the information, and it's my fault. I should have known better, I should have asked questions but I just didn't, I just took it for granted.

Chairman Tinsley: No need for me there's no need for further explanation. I just wanted to find out. The reason I was asking lawyers belong to an organization that has on-going continuing education, insurance agents have the same thing, and I was just wondering if the engineers have something like that.

Tony Prothero: We have the American Society of Civil Engineers.

Chairman Tinsley: Where they provide on-going, continuing education?

Tony Prothero: Continuing ed, yeah. A lot of times that covers, it's questionable as to whether they actually can, will address the State specific regulations.

Chairman Tinsley: No problem. Further questions for Mr. Prothero?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray, Mr. Prothero. A question, I just need to verify some time lines. Did Mr. Frisbee contract for your services before or after he put the road in.

Tony Prothero: I'll tell you, I have had some involvement with this for a long time and we were just kind of under the impression that, when I first started, I was at the original pre-application conferences, no I take that back, I was at the second pre-application conference we had two of them, and I was there and we were just kind of under the impression that the construction of the road was going to be basically undertaken at the risk of Mr. Frisbee. We had done the, we felt like we had done like we had to do with the weed control plan. I would have done this one ahead of time if I would have known better. As far as how, I haven't actually designed the roads per se, like I haven't produced plans and specifications for these roads. What I have done though is that I've basically helped them to understand the County road specifications so that when they're all done with this thing that we wind up with a County road and we don't have to go back and tear up. And so I have helped out with the alignments, how much gravel needs to go in, what the drainage ditches have to look like, where the culverts have to go, things such as that nature, but as far as, that's really been the extent of my involvement. I've been out to the site and I've witnessed the approach on to 4x4 Road of which I guess I have no, I cannot defend that, it's there, I don't know what to say about that, it's there. I'm mean obviously I tried to recommend to my clients we don't do too much ahead of time, just in case, well for certain situations like this but, you know, we felt like we had done due diligence and I understand why Mr. Frisbee did what he did as far as wanting to get this constructed, because winter is upon us in the Lincoln area and there's no time to be building.

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, it still didn't get my question answered so let me be a little bit more clear. You said you attended the 2nd pre-application conference. Were the roads in by then?

Tony Prothero: No.

Chairman Tinsley: Mr. Prothero, I want to ask you one other question. I noticed last time I was up there the approach on to 200, looks like it had just been punched right through to the highway and there was no culvert, has that been taken care of?

Tony Prothero: I believe they have complied with.

Chairman Tinsley: Because it's a pretty big culvert there.

Tony Prothero: Yeah the approach permit from MDT required an 18" culvert and it's there.

Chairman Tinsley: It's been put in now?

Tony Prothero: Yeah.

Chairman Tinsley: Last time I was there, not this last time I went to Lincoln, but the time before that it wasn't there and that concerned me a little bit.

Tony Prothero: And likewise and MDT was also likewise, concerned about it so I believe they ended up having basically to geometrically reconfigure the roadway because there's quite a few different regulations and when MDT issues the approach on to their highway they're actually stated on the permit that were in violation of, so they reconfigured everything. I believe MDT has accepted the approach.

Chairman Tinsley: Thank you. Further questions? Commissioner Varone.

Commissioner Varone: Mr. Chair, just one more question. After the 2nd pre-app conference or

anytime after that conference, did you caution the Applicant, Mr. Frisbee to not put the roads in until after the permits were received until after we were a little bit further on in the process?

Tony Prothero: Well I cautioned him that anything that he did was definitely at his own risk. And as far as the, like I said the Weed Plan permit, we felt like we did that much. And I honestly, since I'm here, I really don't get to see what happens on a day to day basis as far as construction goes up there, but as far as them extending the road onto 4x4 Road, that was, and I assume that if Mr. Frisbee had probably known that he could not extend his road into the right-of-way and connect on to your road....what? I don't know what this means, do you want to come and talk about it? Well, anyhow, I, like I said I can't defend that.

Chairman Tinsley: Thank you Mr. Prothero. Are there any other questions for Mr. Prothero? Thank you. Mr. Frisbee, I have question if you don't mind. Please identify yourself for the record if you wouldn't mind.

Jim Frisbee, Lincoln Montana.

Chairman Tinsley: Mr. Frisbee, my only question to you, why did you cut the road onto 4x4 Road if you didn't have an approach permit? The access point.

Jim Frisbee: I wasn't really aware that we had to actually get the approach permit before we actually went into that right-of-way, I guess, there. We knew that we couldn't apply for an approach permit by our developers that said you can't apply until after you get the preliminary plat approval. We applied for the DOT all those other things. We went to the preliminary process, we tried to find out all, everything we needed to do along all of these lines, you know, prior to doing them, and tried to conform with all of that type of stuff, so we didn't make any fopah's I guess along the line of that. That's why I hired, basically, an engineer and a planner. I've never done a major subdivision, I've been involved in several minor ones, like a one lot division and that type of stuff. That's why I retain people to give me all that advice. We went to the preliminary app process to see what we could do what we couldn't do, the steps we needed to jump through to do all of this, and we tried to do everything and any thing that was brought up to us I think we conformed to it. As far as the approach to the 4x4 we never utilized that until right at the last. We connected it just probably the last month and a half, I guess. We always used the existing approach that is just south of that one, on to there that has been there forever that was our access for equipment and all that stuff. We really didn't know there was a problem in doing that.

Chairman Tinsley: Did your professional engineer indicate to you that you were doing it at your own risk if you did it?

Jim Frisbee: He indicated and I knew, not necessarily the approach, but any expenses that we incurred in this subdivision process in doing all of the roads was done at our own risk _____expense and stuff as far as that. As far as risk going on to the 4x4 I don't know how to answer that one.

Chairman Tinsley: All right. Thank you. Further questions for Mr. Frisbee? Thank you Mr. Frisbee. Commissioners, the review period on this particular subdivision does not run until November 25th, which I believe, is Thanksgiving day, or the Friday after Thanksgiving. We have a meeting on the 22nd, that's the meeting prior to this running. I don't know what the pleasure of the Commission is, but I guess we will soon find out.

Commissioner Murray: Mr. Chair, I move we render a final decision on the 22nd of November at our regularly scheduled Public Meeting.

Commissioner Varone: Second.

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

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: I don't know if this is the appropriate time or not, and it's just been eating away at me so if you could give me a second to ask Staff a question. Relative to the permitting and the advice from professional folks that they act at their own jeopardy, when these roads are put in. Is there any fines that are available to us, for the Applicant moving ahead without the appropriate permits?

Michael McHugh: Under State statute and I can't quote which MCA it is, violation of the subdivision and platting act is a civil offense and it can be subject to up to a \$500.00 per day fine.

Commissioner Varone: Thank you.

Chairman Tinsley: Further discussion?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray

Commissioner Murray: Mr. Chair, Commissioner Varone. I don't believe this is the appropriate body that can levy the fine though. Would you comment on that Mr. McHugh.

Michael McHugh: It requires that a case be filed with District Court and the District Court would be the body that would assess any fines or penalties associated with them, any violations.

Commissioner Varone: Mr. Chair, Commissioner Murray.

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Could that request come from this body?

Michael McHugh: I'm going to defer that to Mr. Alles or Mr. Grebenc on that one.

Jerry Grebenc: I guess the first thing that would have to be determined is whether or not the permits not being obtained is a violation of the subdivision and platting act or is it simply not getting the approach permit that's required on any public access easement or County road, so I think that has to be figured out before you can proceed with any type of action like that. Michael or Ron could do that.

Commissioner Varone: Mr. Chair, Commissioner Murray?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Would it be appropriate to ask Staff to look into that and have that information be available to us by the 22nd? Thank you.

Chairman Tinsley: Further discussion or comment? Hearing none you have a motion before you to issue a final decision on this subdivision on November 22nd at 9:00 a.m. in this room. All in favor of the motion signify by saying Aye.

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0.

Chairman Tinsley: Commissioners we have before us one last item I believe. Are there any public comments on matters not mentioned above?

Public comments on matters not mentioned above. None

Adjourn. 10:10 a.m.