

DRAFT – NOT APPROVED BY BOCC

PUBLIC MEETING
December 27, 2005

Chairman Ed Tinsley called the meeting to order at 9:00 a.m. Commissioner Murray is present. Commissioner Varone is absent. Others attending all or portion of the meeting included, Jerry Grebenc, John Herrin, Robert Bryant, Frank Rives, County Attorney K. Paul Stahl, Dean Retz, Ron Solberg, Mike Larum, and Maria Penna

Pledge of Allegiance. Everyone recited the pledge.

Chairman Tinsley: Good morning and welcome to the regularly scheduled Tuesday morning public meeting. I'm Commissioner Tinsley. Commissioner Varone is away vacation this week. To my left is Maria Penna our Executive Assistant. To my right is Commissioner Murray. To his right is Paul Stahl our Deputy County Attorney, and to his right is Jerry Grebenc our Director of Community Development and Planning.

Consent Items.

Jerry Grebenc:

- a. MDT Highway Traffic Safety Office Contract #2006-12-07-08, not to exceed \$27,200 to purchase equipment for the patrol units for the Sheriff's Department.

Chairman Tinsley: Questions for Staff? Hearing none, is there a motion?

Commissioner Murray: Mr. Chair, for discussion just so you understand I represent the County on the DUI Task force and this is a recommendation from them in awarding the funds to the Sheriff's office. I would move approval of the consent agenda and authorize the Chair to sign.

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

Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 2-0.

Chairman Tinsley: Next item on the agenda is a request for modification of Preliminary Plat Approval, Hoff Lot 3 Amended Major. The Applicant is John Herrin. The Planning Director is Jerry Grebenc. The Commissioners will consider whether there is sufficient evidence to schedule a public hearing to remove Condition of Approval 10.b. to improve Emerald Ridge Loop Road to the specifications required by the County Subdivision Regulations (Typical Road Section #2) from the NW corner of the subdivision to the beginning of the asphalt mat installed by the developers of the Emerald Ridge Major Subdivision at Topaz Ct.

Request for Modification of Preliminary Plat Approval – Hoff Lot 3 Amended Major.

Jerry Grebenc: Mr. Chairman. The Applicant, Mr. Herrin, has requested that the Condition of Approval 10-B for the Major Subdivision Hoff Lot 3 Major be modified to remove the Condition of Approval to hard surface a section of Emerald Ridge Loop. This is an aerial photo to give the Commissioners and the audience an idea of where the property is located. Lake Helena Drive runs north/south, Emerald Ridge Loop to the east, and this is the subject property here. Here is the preliminary plat; this is Emerald Ridge Loop that runs along the western boundary and then along the southwest corner and then southward. The section of road in question that currently the preliminary plat approval requires paving is outlined in red. The Applicant did submit

detailed analysis from 3 engineers to support his request that the Condition of Approval for paving be removed. Based upon the engineering analysis the ADT's along the loop from the subject subdivision are not sufficient to require hard surfacing of the road. That said Emerald Ridge Loop was built to the previous gravel standard that was Peccia No. 3. The new Standard is Typical Section No. 1, which basically requires more gravel for a base course and for top course gravel. And roads accessing subdivisions do need to meet the minimum County Road Standards which is Typical Section No. 1. So, what Staff would recommend is that Condition of Approval 10-B to be specific, be modified to remove the requirement for paving that was Typical Section No. 2 and to change that to state that it should be Typical Section No. 1, that's the gravel, from the northwest corner of the subdivision to the beginning of the asphalt mat installed by the Developers of the Emerald Ridge Major Subdivision. And just so the Commission is aware of it, which I'm sure you are, from Topaz Court southward all the way out to Lake Helena Drive, that's scheduled to be hard surfaced by the developers of the Emerald Ridge Major. With that I would be happy to answer any questions you might have.

Chairman Tinsley: Mr. Grebenc, thank you for the presentation this morning. The agenda item says, "Commissioners will consider whether there is sufficient evidence to schedule a public hearing."

Jerry Grebenc: Actually you did that earlier. You did that approximately a month ago and because of scheduling conflicts this was postponed from last week to this week. So you've already done that part of it. You're actually considering the actual request and all of the evidence that's been submitted.

Chairman Tinsley: Commissioner Murray has indicated that Commissioner Varone would like to participate in this, and I'll let him speak to this if he would, on this particular agenda item.

Commissioner Murray: My intent this morning since this is an advertised public hearing is to have the hearing this morning and I'm going to make a motion to reserve the decision until January 12th which will give Commissioner Varone ample time to listen to the tape of the hearing testimony and then she can decide if she has heard enough to make a decision in the matter or not.

Chairman Tinsley: So what I need to do at this point should I ask Mr. Herrin if he has any comments and then go to the public hearing after that?

Jerry Grebenc: Correct.

Chairman Tinsley: Thank you Jerry. Mr. Herrin, welcome. Go ahead and give your presentation and then I'll open it up for a public hearing once you are completed with that.

John Herrin: Chairman Tinsley, Commissioner Murray, and Commissioner Varone on abstentia. My name is John Herrin and I live at 1229 Leslie Avenue in Helena. I am the developer of a 12-lot subdivision known as Hoff Minor 3 and it is also called, in my terminology, Emerald Park Subdivision. This is hopefully the final stage in what's taken about 16 months to go through the planning process. I started this process in September of 2004. What I'm asking the Commissioners to do is to delete the requirements for paving of Emerald Ridge Loop or graveling of Emerald Ridge Loop Road, a small local access road and to refresh your memory we went over this before.

Basically, there's 11 existing lots that would feed off of this area. There's 4 in the north part, there is these cluster in through here and then there's the 12 that I would be creating, so we have a 23 lots total. If you use the highest multiplier, by the way these ones here all feed off of this, yet as to be paved section of Emerald Ridge Loop, and this cul-de-sac here. Using the 10 multiplier anywhere from 8 to 10 is a County Standard you get 230 vehicle trips. I present this

same information to the County Commissioners and the Planning Board and Jerry was able to convince them that somehow this 63-lot subdivision down in the end tied into these.

Since that time I've had to pay attorney's fees to look at the County Regulations and also I hired 3 engineers to evaluate the traffic in this area, and they came to the same conclusion that I had that the vehicle trips would never go above 400 average daily trips, which is potentially a trigger for maybe paving. So since we're below the 400 vehicle trips for paving requirements, it seems to be a moot point. It seems the Planning Board is willing to forgo that requirement, finally. That was going to cost about \$82,000 to \$100,000 for a 2140' of Emerald Ridge Loop Road. I just found out last week that they were adding, or Jerry was recommending that they add the gravel 1 to typical. This existing gravel road was created probably in the late 90's and it was, as Jerry mentioned, to the existing gravel road standard at the time. In fact, this road is way wider and probably extremely stout material and I've got pictures of that in the booklet that you've got before you.

What I've assembled for you is the packet that Jerry put together and then I've also included the photographs and then I followed that up with a summary of what I'm going to give here as part of the discussions and then I follow that with the rules and regulations. Unfortunately, I only had 1 packet for you but that's the green one there for the Planning Staff. In essence what I'm asking is not only delete Condition 10-B but that we delete all references to Emerald Ridge Loop Road as a Condition of Approval, and I'll detail why I believe that is an appropriate action. And in fact this should never have gone through a variance process at all. It should have never triggered a requirement for me to pay \$150.00 and waste all of this time going through an analysis on this road.

The photographs here you can see the first picture it shows Emerald Ridge Loop Road looking west and the existing houses that are up there and you can see how this wide profile road is probably at least 30-35' in that area and what the minimum standard is 24' it's wider than normal. It also does not have ditches along either side of the road. I think that is an important point to keep in mind when we go forward here. The next picture is looking north on Emerald Ridge Loop and basically that's looking down this section of road right here. You can see again how wide this road is, it's extremely well built, a very good gravel road, a lot of people would love to have this kind of road into their property. Then this next picture is basically looking down the main road from this section right in here looking up the section that will be paved and again you can see how wide and fine this road is. It's basically almost highway standard road.

So the purpose of this hearing is to basically look at this issue of requiring an off-site road improvements and in my December 8th letter to you, I basically said we are supposed to exhaust all means to avoid time-consuming public litigation. This is my attempt to do that. I will present clear and compelling evidence that Lewis and Clark County has undertaken arbitrary and capricious action by forcing one person to foot the entire bill for improvements on Emerald Ridge Loop Road.

Jerry Grebenc, the head of the Planning Department at the Planning Board and the Commissioners presented seriously flawed traffic and administrative analysis stating that the Commissioners should require paving of 2,140' or 4/10ths of a mile of Emerald Ridge Loop Road.

This is outlined in the December 26th titled the section here. I have expended thousands of dollars hiring lawyers and engineers to prove that Lewis and Clark County Planning Staff was wrong and that my assessment of the vehicle traffic was correct. If you remember we had a 2-1 vote that the Commissioners decided to accept Jerry Grebenc's flawed assessment even though I presented careful and thoughtful analysis and I will go in why I believe I'm qualified to make the assessments required for this. Relative to this issue I'll address some of the personal accusations by Lewis and Clark County Personnel and briefly outline my professional

background relative to this case.

I have over 30 years of experience in environmental regulation in Montana. Of those 30 years I have 16 years of environmental permitting and compliance background with the State of Montana. I have managed multi-million dollar environmental assessments for coalmines. For 4 years I worked for Montana writing geology, hydrology, mine alternative and erosion plans for major hard rock mines in Montana which includes Montana Tunnels, Anaconda-Butte, the future superfund complex, Stillwater mine and a total of 16 environmental impact statements. From 87' to 90' I worked in the Rural Planning section of the highway department conducting traffic analysis for over a year. I think that's an important point on what we're talking about, all of these traffic issues and then I transferred to the geotechnical section where I specialized in road problem assessment and mitigation design. For the last 6 years I have worked for the Montana Department of Environmental Quality, 2 years as a permit writer for wastewater, construction, storm water and for the last 4 years for the subdivision review section for the State of Montana.

I am probably one of the most qualified and the most well rounded professionals to give testimony on all aspects of subdivision development in this County. I normally would underplay my resume but the County Planning Staff and many of the Planning Board members have even Commissioners, have discounted my statements and have chosen a course of action which I believe is inappropriate given the adopted County Subdivision Regulations.

But I will be the first to admit, that until these series of setbacks forced me to carefully read the new Lewis and Clark County regulations, I did not fully understand the complexity of the planning process. Hindsight is 20-20 but I know now that I would have made every effort to stop this access road variance request process in June. I should never have submitted the variance request in the first place and Jerry Grebenc told me that when he took over this project in May that he would, that I had to apply for a variance and if I did not agree with him the existing "well built" road must be paved.

Truthfully I feel I was blind sighted by the County and through self-education and talking with other professional developers have I come to understand the scope and depth of problems this County has relative to subdivisions.

Chairman Tinsley: Mr. Herrin, can I ask you a question? If you don't mind me interrupting you. I see you're reading pretty much straight out of this and I appreciate your wanting to do that. I would like to respectfully ask you if you would just summarize because we've been given this book and we can read all that. If you would make or summarize and make your points I would appreciate it. You don't have to read the entire thing. I can't tell you, you can't, if you want to do that, that's fine, but we can read this as well, and we're going to continue this hearing for another meeting.

John Herrin: Sure and I appreciate your time, but it's taken me a lot of time and effort putting this together, so I would like to respectfully request that I be allowed to continue, because it allows me the flow of my thoughts.

Chairman Tinsley: Go ahead.

John Herrin: I just have one more statement before I move on, the real legal and technical issues. During the hearing discussion on November 22nd, the preliminary hearings to consider this matter, the Commissioners insinuated that I had a conflict of interest in my 9 to 5 job reviewing subdivisions for the State of Montana and in some cases for Lewis and Clark County, and then my second side job is basically helping create lots that people can afford to buy. The bad term that people like to throw around and say that you're a bad developer but I'm a native Montanan, I've spent all my life here and I respect the land and I try to do my very best and I'm also very compliant with the rules and regulations. It might come across as a bit self-serving to

say that I would comply with the rules and regulations that seem to fit the situation. I'm just having trouble paying \$80,000 when it doesn't seem to be required.

Montana is one of the highest 2 job households in part because we are very hard working people, plus we have areas of relatively low wages and therefore a lot of us have to seek 2nd employment opportunities. Many of you probably have outside interests and ambitions.

In addition, in this matter I feel I have to set the record straight relative to the Health Department side of this subdivision review. Frank Preskar with the Lewis and Clark Health Department completed the septic, well and storm water reviews and developed the formal Subdivision Approval Statement for this 12-lot subdivision. I never requested any special favors of the County Staff nor were any special considerations given. If anything, Frank Preskar was very careful in making sure all aspects were adequately covered on this subdivision. When this subdivision came into our office for the required 10-day cursory review, I did not know the status until I received the formal approval so I never felt a conflict personally with my own subdivision relative to my work.

I treat all developers, engineers, citizens and officials the same. If a subdivision meets all regulations you receive a subdivision approval regardless if I know you or not. Period, that's the end of that story. And I felt like that was required because of some of the insinuations made in the last hearing that we had here.

Ok, back to the real issues that were in front of us regarding the off-site improvements in this subdivision. Should we end up in court I will be able evidence collaborated by witnesses and testimony that will clearly show the County has been consistent and inconsistent in some regards relative to off-site road improvements. Some subdivision developers had to bear the entire costs of off-site improvements while other developers have had gotten off without having to pay for improvements. I contend that the road construction uncertainty is even more costly in potentially unknown variable way beyond the costs and issues involved in the litigated fire protection First District Court case pending against the County.

Specific to this case I herein present evidence relative to the off-site road improvements for this Emerald Ridge Loop Road section. And again we're talking about now; hopefully we're just talking about graveling this section of road and not paving it.

The Planning Staff inconsistencies: Basically when I started this process as you remember Beverly D'Amato was my Planner. She was here 6 months reviewing the process before she went back to Minnesota. Never once did she mention anything about paving outside the subdivision, it's a very important point. We had 2 pre-applications on this project. If you remember the original plan was 2 cul-de-sacs, 1 cul-de-sac up this way, the 2nd cul-de-sac broke off and went up this way. The way that it ended up Commissioners voted up and said they wanted to force a second access issue and basically I ended up building a second road that really shows no purpose other than complying with the 2-access requirement. In that preliminary plat, all the way through that whole process in that first go-around, Beverly never mentioned once about paving or improving this road. And in fact, Beverly was still on Staff when I came in for the pre-application for the second go-around that did have the Loop Road involved, and again she never mentioned it once. It wasn't until June Staff report that Jerry Grebenc basically said I had to pave that 2100 feet. I hope I don't repeat myself but basically I felt like I was blind sided by that because I had no clue that that was going to be required until it came up in Staff Report and I really don't know how you change the process once it starts. Subsequently I have had to hire legal and professional expertise to basically prove that the written testimony and the testimony I gave before you and the Planning Board was correct and that it did not justify the paving of Emerald Ridge Loop Road. The County Commissioners, on July 26th in the hearing directed the County Staff to create an RID. Now this is probably the most important Achilles heel for the department if we move forward in litigation, in that it says

basically, and I got that from Jerry just the other day, is that basically the County Staff will not pursue an RID on Emerald Ridge Loop Road, because, and I'm kind of paraphrasing, basically the variable conditions of Emerald Ridge Loop Road make it hard to figure out for Staff and that was including the engineering staff, to figure out how you're going to treat this road, given again that we're looking at a segment of road that here is going to be paved, we've got the old gravel standard road constructed to here and where do you apply new standards, where do you not apply new standards and what standards are you going to create for this road and what parts do you create? Because they don't have, there isn't a major drainage ditch system that meets current County standards. The road is extremely wide again as the pictures document but it does not have ditch sways like the current standard. So, what I gathered from his statement was that the issue of an RID is dead as far as the County is concerned. My question then is how can the County justify requiring me to improve a local road, and a local road is defined as something that is less than 1500 vehicle trips, when the County Staff is unwilling to expend the effort to create a fair and equitable means of off-site improvements via Rural Improvement District. And in fact, I think that is the only defensible off-site management tool that the County really has. Therefore, the County cannot use the health/safety concerns as a justification for requiring development of off site improvements on this little used and well-built road. If there is a clear and present danger to the traveling public on this old rural standards then the Planning Staff should have been able to justify creating an RID. I contend that they are safe roads. Lewis and Clark County regulations do not specify that developments must pay for road improvements outside a subdivision. According to Mr. Grebenc it is a long standing policy, and I want to underscore the word policy here, of the Planning Staff to recommend access roads to a development meet County Standards for health and safety general clause criteria. And when you look through the rules and regulations, specifically as I have trying to find where you've got the meat to do that, I just don't find it. That's what the next paragraph says, basically I've looked through them all and the general design indicates that the County Commission may require road access improvements for collector roads within the subdivision if the vehicle trips trigger 1500, that's way, way above what we're dealing with here. According to Mr. Grebenc, the Lewis and Clark County Commission are left to decide what off-site improvements will be added to a subdivision as a Condition of Approval. In other words the Planning Staff basically has got a standing order to say, "Improve all roads to County standards regardless of costs, regardless of consequences, regardless of a lot of other issues." That's just the standard message. And that the Commissioners are then supposed to try and ferret through which parts, where they're going to land and that's a very hard position because basically you're not given a lot of the ammunition that I think you need to make your decisions. I want to emphasize this point, the Planning Staff's position is that all roads lead into a subdivision must meet new County Standards and that's the current policy, there again it just reiterates that I can't find it specifically in the regulations, is a little hard for me to understand why past developers, engineers and lawyers operating under the new or old County regulations did not realize the County lacked the legal authority to force off-site impacts without rigorous cost benefit analysis. And I'm going to use that word quite a few times here but I think that's a very important issue. However, I would assume that many of them chose to concede to get they're project approved in a shorter time and I'm probably a classic example of if you do not, basically, you stand up and ask to have things corrected it takes you a lot longer. My simple 12-lot subdivision was submitted again in September and it has drug on for 16 months. Unfortunately, the County officials, my background allows me to carefully read and interpret the rules and regulations in my profession, personally do not allow me my personality traits do not allow me to roll-over and especially when the County, in my opinion, is so far off out of line. Should I prevail in court the county taxpayers are the ones who will be penalized for paying the, pony up the cost, for the County officials mistakes. Strongly worded but I believe is well founded. And then the final point that I think is important to consider when you're looking at all of these issues is that the cost benefit analysis, I think it's written into your County regulations actually fairly well and I was surprised how well it does, it's saying that you have to consider what's fair and equitable, you have to consider the costs of the developer and then the benefit to the County or the public in large. So it's a cost benefit analysis. It says here's the cost and here's the safety that we're

gaining for that. If the County is to consider tagging one party over for all off-site improvements then Lewis and Clark County appears to mandate that the County equitably consider the improvements, the cost relative to carefully define good, public good criteria. I have never seen Lewis and Clark County do this type of analysis on detailed, which basically leads the conclusion that you're doing the cost benefit analysis and I'm convinced that if you are going to do variances and road improvement requirements then you need to step to that level, you need to do a cost benefit analysis. One final statement before I look at the actual reg's, should the County Commissioners, after the information provided, determine that Condition 'B' be removed, then I respectfully request the entire Condition 10 be deleted. Basically, it says an engineer with check the work and those types of things if the roads not improved then there's no requirements for those other, kind of hanging issues. In closing and this part of it as a strong and legally defensible position, the County may again direct the County Staff to create a Rural Improvement District for Emerald Ridge Loop if you really want to force the improvements on less than 25 homeowners in this area to improve that road. This is the only legally defensible course of action whereby the County Commissioners can demonstrate that they have met the Chapter 1, General Provision Criteria that state "to insure County Regulations are effective and warrant the high degree of public trust and confidence, regulations must be equitable, reasonable, easy to understand and responsibly administered."

The next part of this, and it won't take very long to go through the rules and regulations because quite frankly there's not very much meat in these, is the Procedures for Major Subdivisions, Chapter 3. In the section that we're dealing with right now, we're dealing with Item 10, Modifying the Conditions of Approval for a Subdivision Preliminary Plat, and basically as we talked about, we have met the first two criteria and we're in the _____ part, what circumstances have changed. My statement and my stance is that nothing has changed. It's a matter of perception and in my opinion a wrong perception by the County Staff. The second part is "how will the Applicant will benefit from the changes?" Basically, it will be, I _____ agreement to create a Rural Improvement District, I am willing to pay all of my fair share and in fact I am willing to support and champion impact fees to the tune of \$1,000 or \$2,000 a lot to help the infrastructure in the County. Unfortunately this County has yet to implement the impact fees. And "what is the negative impact to the neighbors?" Basically, if you remove the condition of paving the road *****start of tape***** _____ improve the road themselves or wait for the County to come with the RID or create an RID themselves. Under the General Provisions section, if we look at the charter again, "to ensure the County Regulations, and this is under "C", regulations are effective and I think I've highlighted this, effective and warrant a high degree of public trust and confidence, regulations must be equitable, reasonable, easy to understand and responsibly administered." "The purpose of these regulations are to promote public health, safety and general welfare." There's other places that your regulations also talk about pro-rata, equitable and things like that and I'll get into that in a second. So under the general design criteria if you look at, under Section 11, it says under the introduction it says "The general design and improvement standards listed below are intended to help protect the health, safety and welfare of the County, residents, conserve natural, on and on, so under the street improvements, if you looked at the actual street improvements section under "H" it says Streets and Roads, notice it starts off "roads *in* subdivisions shall meet County Standard Design, standard Appendix K. It says "in", the operative word is "in" not outside. The only place I can see where it talks very much in the road design criteria about roads off-site is in Section 7 which talks about collectors, arterial highways, which collectors is more than 1500 vehicle trips. I wish I could find, if there is some reference to something more specific that says the County has the authority to require improvements to the feeder roads, I'd like to find it, but I can't. The next part is under the Enforcement, Violation and Penalties section and basically it says, and this is reiterated in several places in this document about denial and conditions of imposition, again to reiterate what I think this speaks to it says you need to do a very detailed analysis and that means if the County Commissioners in particular or the Planning Board for that matter, because I think the Staff does their reports and writes up, but I don't see a report or documentation of how the Commissioners came to their conclusions and how that goes back to

the rules and regulations that they're governing. In particular, well, I don't want to go into specifics, maybe we can just let that go and keep that in mind, that that is, I guess, I read the rules and regulations as it gives the mandate that I know how you came to your conclusions. And then finally you don't have it, because I didn't bother to photocopy it, is Appendix K and in your reading Appendix K, almost all of this verbiage relates to roads inside the subdivision. It doesn't talk about roads outside the subdivision. It does talk about Rural Improvement Districts in the very end of it. It says, "Roads constructed at the approval of standards may be maintained through a Rural Improvement District". That is I guess the main avenue the County Commissioners have in improving roads in an area where they deem it safety issues are a major concern and that way everybody barely pays equitably their fair share and no one person ends up with a \$80 to ½ million dollar bill. The hard part of it is, as a developer, and I'm certainly on the small scale here, but it's hard for a person to go into a project and know when they get to the end of it, what their costs are going to be when you've got a variable out there that's large and as ominous as is building a road to an unknown standard. Again I really have trouble and I hope to not go off subject here, but I don't like the way the roads ended up in here.

There are huge 2' ditches, it's a mess, it looks like a war zone went through there. And if you look at the way these roads are constructed with road profile on top of the existing, and he hauled in a tremendous amount of material, this is a much better road in my opinion than the roads built to the new County Road Standard. You've got a 2' moat for everybody that wants to walk out of their property to cross. Kids have got to cross the moat and that is just a barrier. It also does not give you a bike pathways and easy access for people to get in and out. So the bottom line is, is if the new County Standard is enforced on this road, it will end up with ditches and make it more difficult for people to get around again and I see no need for it because really to tell you the truth there's no drainage that we have to deal with on my property because the landfill is right here. It's got an uphill run off. I am dealing with a 16-acre tract of land that generates almost no runoff because it's basically arid. You can see there's cactus all over in this area in through here. Instead, I've got these huge roads and I have a gigantic pond on the corner there for storm water that will never ever be there. The question is, again on these existing roads, how far do you go and again I say, in my opinion this is a great road. It just needs to be re-profiled capped with gravel as suggested. My objection is I don't feel I should have to pay that whole bill. I'm sure willing to pay my fair share and I thank you for your time.

Chairman Tinsley: Thank you Mr. Herrin.

John Herrin: Is there any further questions?

Chairman Tinsley: Any questions for Mr. Herrin? Thank you very much. Mr. Grebenc, we're going to open a public hearing, take comment today and then close the public hearing and then there's going to be a motion as it appears to be tabled until Commissioner Varone gets back. You have something to say?

Jerry Grebenc: Yeah, Mr. Chairman. I have a couple of comments. 1) I disagree with much of Mr. Herrin's points but I'm going to limit my comments to the Subdivision Regulations and the RID discussion. If you look in the Subdivision Regulations that you don't have before you, Chapter 11 Section F says "LOTS" is the heading. It states, "Each lot shall abut and have legal and physical access to a public street or road." That's found also in 76-3-608 Subsection 3-D of the Montana Code Annotated. It's been the County Attorney's opinion; the Commissions opinion in that physical access means roads that meet County Standards. Section H, Streets and Roads, which Mr. Herrin alluded to does state "roads in Subdivisions shall meet appropriate design specifications" and Appendix K, which is our Road Standards, Section I, which is Improvements, it states "all roadway improvements required by the governing body which is the County Commissioners, including pavement, curb, gutters, sidewalks...shall be constructed in accordance with the specifications and standards prescribed in these regulations, Appendix K." Furthermore, Appendix K is the section 2.3 the Design Criteria, it states "Lewis and Clark County Roadway Design criteria are set out in Table A, such criteria is applicable to roads

located within and adjacent to a development.” I won’t read the rest, so that’s my comments on the Subdivision Regulations. One other thing that I would note, if you followed Mr. Herrin’s interpretation of the Subdivision Regulations, you could have Emerald Ridge Loop be a dirt, two track road and then the subdivision roads in his subdivision could meet a asphalt standard. I highly disagree that that’s the intent of the subdivision regulations. With regards to the RID, the Commission may recall that Staff that included myself, Eric Griffin, Marni Bentley and Carol Hanel, sat down to discuss at length, trying to create an RID for this area. We sent a memo to the Board, and I’ll just paraphrase some of the discussion: “The results of our discussion was that it appears a creation of an equitable RID for improvements in this area will be difficult. At a minimum, there will be 4 types of road construction in the area. In this situation it’s very difficult and unpopular to determine 1) What standard of the road should be constructed to, because our RID requirements require the County, if they’re going to do improvements, to bring them up to County Standard, 2) Which properties will benefit from which road upgrades, and 3) What fee the property should pay depending upon the benefit received.” Quite frankly, and this is quotes from the letter “the road construction situation out there is a mess. We have multiple road standards which makes improving the roads with an RID difficult.” With that I would be happy to answer any questions the Board might have.

Chairman Tinsley: Thank you Jerry. Are there questions for Staff? I’m going to open the public hearing on a request for modification of Preliminary Plat Approval, Hoff Lot 3 Amended Major. The Applicant is John Herrin. The Commissioners will consider whether there is sufficient evidence to schedule a public hearing to remove Condition of Approval 10.b. to improve Emerald Ridge Loop Road to the specifications required by the County Subdivision Regulations (Typical Road Section #2) from the NW corner of the subdivision to the beginning of the asphalt mat installed by the developers of the Emerald Ridge Major Subdivision at Topaz Ct. The public hearing is now opened. I would like to introduce into the record, we have received, I’ll just read the names of people we received comments from: Sue Campbell, 3900 Topaz Court, Morris Campbell, 3900 Topaz Court, Lynn Lutz and Sandra Shepherd, 3942 Topaz Court, and Michael J. Fasbender, P.O. Box 651, Helena. Those are into the public record and Maria if you don’t have a copy I’ll give you a copy of those. They were on my desk when I came in this morning.

The public hearing is now open. Is there any public comment? Any public comment, for the first time, for the second time, for the third and final time? This closes the public hearing in this matter. What is the pleasure of the Commission?

Commissioner Murray: Mr. Chair, I move we render a final decision on January 12th at our regularly scheduled public meeting.

Chairman Tinsley: We have a motion and I will second it. Discussion? Miss Penna, I would ask that you make available all of the information that was received this morning to Commissioner Varone when she returns. She can listen to the tape, I don’t know that we necessarily need to transcribe at this point because a lot of it is in this document. Any further discussion? All in favor of the motion to continue this to January 12th signify by saying Aye.

Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 2-0. Thank you Mr. Herrin for your time this morning.

Chairman Tinsley: Do we know where Mr. Stahl is?

Jerry Grebenc: Mr. Chair, he had to leave. He had a meeting that was scheduled so he had to depart. That is what he indicated to me.

Chairman Tinsley: Can we go forward this morning?

Jerry Grebenc: Yes, that's correct.

Chairman Tinsley: All right. Next item on the agenda is a request for modification of Preliminary Plat Approval, Bryant No. 3 Major Subdivision. The Applicant is Robert Bryant. The Planner is Frank Rives. The Commissioners will consider holding a public hearing on modifications to the following conditions of approval:

Condition 5. Requires the subdivision access North Montana Avenue.

Condition 5.a. Requires an approach permit on North Montana Avenue from MDOT.

Condition 8. Requires all internal access roads be constructed to Typical Section No. 1, Peccia.

Condition 18. Requires the subdivision be completed within four years of approval.

Chairman Tinsley: Mr. Rives. First let me ask is the Applicant or his or her representative here this morning? Ok. Thank you. Are you prepared to go forward this morning? Ok, thank you. Mr. Rives.

Request for Modification of Preliminary Plat Approval – Bryant No. 3 Major Subdivision.

Frank Rives: Good Morning Commissioners. As you mentioned this is a request to modify the Conditions of Approval. Condition 5 required that required that subdivision access be on Montana Avenue. Condition 5a required a approach permit on to North Montana. Condition 8 required that all access roads be constructed to Typical Section No. 1, which is a paved standard that requires curb and gutter. I should mention these are all under the old subdivision regulations. And Condition 18 was a condition which required the subdivision be completed within 4 years of its preliminary plat approval. The Applicant requested a modification of Conditions of Approval in January of this year, and it went before the Commissioners and that request was denied on March 21, 2005. Legal action was taken and the County Planning Department, the County Attorney, the Applicant and his representatives met as part of the legal settlement and this settlement was brought forth before the Commissioners on the 29th of November and was accepted. So that's basically where we are today. I suppose there's no need to go on any further unless you have any questions for me.

Chairman Tinsley: Questions for Staff? Thank you Mr. Rives. I'm going to open the public hearing for this request for modifications of approval of the Bryant No. 3 Major Subdivision. For the first time, for the second time, for the third and final time. This closes the public hearing on the request for modifications of Conditions of Approval for Bryant No. 3 Major Subdivision. What is the pleasure of the Commission?

Commissioner Murray: Mr. Chair, I have questions for Mr. Rives.

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: What is the new evidence for Condition No. 8?

Frank Rives: During the legal settlement discussion there was some question by their engineer, Mr. Pittman, as to why that standard was required, and it was my recollection that the previous engineer of the project had proposed a higher standard than we would have required, so that was the discussion was whether or not that was a requirement of Planning Staff and it was not necessarily a requirement of Planning Staff, we just believed that this was what the Applicant, at least through his engineer, had intended to build so we added that into the Conditions of Approval. I guess there were no, as far as new evidence, I suppose there wasn't any new evidence except as part of the legal discussion of the new settlement.

Commissioner Murray: Condition No. 8 is part of the legal settlement?

Frank Rives: Yes.

Chairman Tinsley: Further questions?

Commissioner Murray: Is that the same for Condition No. 18?

Frank Rives: Yes Sir. There was some concern that the time that had passed while working this out, they weren't going to make their 4 years of Preliminary Plat Approval so that became part of the legal settlement.

Chairman Tinsley: Further questions for Staff?

Commissioner Murray: Thank you. Mr. Chair, I have a question I guess for Mr. Grebenc. Can we dispense with this by motion this morning or are, we're considering today whether there's sufficient evidence.

Jerry Grebenc: I believe today, and Frank can correct me if I'm wrong. You're actually considering the evidence you earlier deemed, you earlier set up this hearing and you're now considering the evidence before you and you can make a motion to approve the modification or whatever other action you're going to take. But, I guess I would have to check with Frank.

Frank Rives: Yes, in discussion with the County Attorney he had said essentially what we're doing here is revisiting the previous decision of the Commissioners to deny the original modification request.

Chairman Tinsley: Normally, after we do a public hearing, wait until the next meeting to consider, so since there was nothing offered that we didn't already know we could probably go ahead and vote this morning.

Jerry Grebenc: You could. I would imagine you could take your normal 48 hours too.

Chairman Tinsley: Ok. Thank you.

Commissioner Murray: Mr. Chair, I move to agree with the modifications of Condition 5, Condition 5-a, Condition 8, Condition 18, as recommended by the County Attorney's office.

Chairman Tinsley: Second. Discussion?

Commissioner Murray: Mr. Chair, discussion. In my dealings as a County Commissioner there are times when I respect the advice I'm given and I hold my nose and follow the advice. This is one of these examples. It is still my belief that this isn't the right action for the neighborhood that the subdivision applies to but I'm voting for it based on the legal advice I've been given.

Chairman Tinsley: Thank you Commissioner, well said. Any further discussion? All in favor of the motion to approve modifying the 4 conditions as outlined, signify by saying Aye.

Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 2-0. Mr. Larum, just work with Mr. Grebenc and Mr. Rives and they will let you know where your Applicants need to go from this point on.

Mike Larum: Thank you.

Chairman Tinsley: Anything else to come before the Board this morning? We have open for public comments on anything not mentioned on the agenda this morning. Any public

comments? Seeing none we stand adjourned. Thank you for your time.

Public comments on matters not mentioned above. None

Adjourn. Adjourned 9:55 a.m.