
MONDAY, OCTOBER 20, 2008

The Board of County Commissioners met in continued session at 8:00 o'clock A.M. Chairman Hall, Commissioners Brenneman and Lauman, and Clerk Robinson were present.

Chairman Hall opened public comment on matters within the Commissions' Jurisdiction, no one present to speak, Chairman Hall closed the public comment period.

MONTHLY MEETING W/ JIM ATKINSON, AOA

[9:04:31 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman

Others present:

Assistant Mike Pence, AOA Director Jim Atkinson, Clerk Kile

Atkinson reported Dave Polansky has been hired as the new Public Transportation Director for Eagle Transit. He then noted meetings are still ongoing in regards to a new AOA site. Also reported was independent living services are continuing to rise. Discussion was held relative to lease and warranty changes for Glacier Park buses.

MONTHLY MEETING W/ JEFF HARRIS, PLANNING & ZONING OFFICE

[9:30:07 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman

Others present:

Assistant Mike Pence, Planning & Zoning Director Jeff Harris, Clerk Kile

Harris presented a quarterly report from the Planning & Zoning Office that shows a drop in their quarterly fees; yet not a drop in actual applications with no decrease in their work load. Also presented was a billboard description report where all billboards within Flathead County were inventoried. Discussion was held relative to a map of the Whitefish City-County Interlocal agreement area.

PUBLIC HEARING: FETVEIT ZONE CHANGE/ HWY 93 NORTH ZONING DISTRICT

[10:04:29 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman

Others present:

Planning & Zoning Director Jeff Harris, Planner Andrew Hagemeyer, Deputy County Attorney Jonathan Smith, Olaf Ervin, Bill Spurzen, Clerk Kile

Planner Hagemeyer presented Staff Report FZC 08-07; an application submitted by Samantha Fetveit, Kevin and Austina Veyna, Hal and Rebecca Bauer and John W. Anderson with technical assistance from Montana Mapping to change zoning from AG-40 to SAG-5 within the Highway 93 North Zoning District. The properties are located at 43 Prairie View Way, 124 Prairie View Way, 76 Prairie View Way and 162 Prairie View Way respectively and contain 82.40 acres. He then noted the reasons for denial include the condition of Prairie View Way, the county landfill as well as the growth policy and neighborhood plans. Hagemeyer noted that after the meeting with the Planning Board he received a phone call from the Olaf Ervin with Montana Mapping who suggested two of the 40 acre parcels remain AG-40 or go to AG-20 and the others parcels go to SAG-10 instead of the proposed SAG-5.

Chairman Hall opening the public hearing to anyone wishing to speak in favor or opposition of the zone change.

Olaf Ervin, representing the applicant stated the application was put together prior to the Riverdale Neighborhood Plan and for various reasons wasn't submitted until after the Riverdale Neighborhood Plan was in place; so what had been in conformance with the growth policy was no longer in compliance with the neighborhood plan. He then stated they would be able to live with the southern properties (Fetveit and Bauer) rezoned to SAG-10 and the northern properties (Veyna and Anderson) would remain classified as AG-40.

Hagemeyer noted this proposal was not presented to the Planning Board and they did not review the request. He then read Section 2.08.020 of the Flathead County Zoning Regulations which reads: Based on the results of the hearing other public input in the staff report and findings of fact from the Planning Board the Flathead County Board of Commissioners shall render a decision to grant, amend or deny to request an amendment.

Smith explained if this was to be approved the findings would have to be amended.

No one else rising to speak, Chairman Hall closed the public hearing.

Discussion was held relative to spot zoning and adding an additional finding.

Harris suggested adding a finding of fact 15 that stated: The amended request to deny the zone change within the landfill transition area and approve a zone change to the southern 2 parcels to SAG-10 is appropriate and consistent with the Riverdale Neighborhood Plan and would not substantially impact public services or facilities.

Discussion was then held relative to changing all the findings or just adding an additional finding.

Finding of fact 15 will be added to state: The amended proposed zone change would designate SAG 10 on the two southern parcels (40 acres) and maintain the existing zoning on the northern two parcels (40 acres). This amended zone change would be in compliance with the Riverdale Neighborhood Plan, growth policy and would not impact services or facilities.

Commissioner Brenneman made a **motion** to amend the findings as stated. Commissioner Lauman **seconded** the motion. **Aye** - Hall, Brenneman and Lauman. Motion carried unanimously.

Commissioner Brenneman made a **motion** to approve Resolution 837BQ pending review thereof and authorized the chairman to sign the Notice of Passage of Resolution of Intent. Commissioner Lauman **seconded** the motion. **Aye** - Hall, Brenneman and Lauman. Motion carried unanimously.

RESOLUTION NO. 837 BQ

WHEREAS, the Board of Commissioners of Flathead County, Montana, held a public hearing on the 20th day of October, 2008, concerning a proposal by Samantha Fetveit, Kevin & Austina Veyna, Hal & Rebecca Bauer and John W. Anderson to change the zoning designation in a portion of the Highway 93 North Zoning District from AG-40 (Agricultural) to SAG-5 (Suburban Agricultural);

WHEREAS, notice of that hearing was published pursuant to Section 76-2-205(1), M.C.A., on October 7 and October 14, 2008;

WHEREAS, the Board of Commissioners did hear public comment on the proposed zoning change at said hearing;

WHEREAS, the Board of Commissioners reviewed the recommendation of the Flathead County Planning Board regarding the proposed change in the Highway 93 North Zoning District; and

WHEREAS, in light of the findings adopted by the Planning Board and its recommendation for denial, the Planning Staff and the applicants proposed that the two northerly parcels involved in the proposal remain classified as AG-40 and that the two southerly parcels be changed from the AG-40 classification to SAG-10 (Suburban Agricultural).

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of Flathead County, Montana, hereby adopts findings of fact as to the statutory criteria as adopted by the Flathead County Planning Board, and as amended by this Board, and in accordance with Section 76-2-205(4), M.C.A., adopts this resolution of intention to change the zoning designation in a portion of the Highway 93 North Zoning District from AG-40 to SAG-10, the boundaries of said area are described on the attached Exhibit A.

BE IT FURTHER RESOLVED that notice of the passage of this resolution, stating the boundaries of the portion of the Highway 93 North Zoning District to be changed, the general character of the proposed designation for the area to be changed, that the regulations for said district are on file in the Clerk and Recorder's Office, and that for thirty (30) days after the first publication of thereof, the Board will receive written protests to the change to the Highway 93 North Zoning District, shall be published once a week for two weeks.

BE IT FURTHER RESOLVED, that written protests will be received from persons owning real property within the Highway 93 North Zoning District for a period of thirty (30) days after first publication of that notice, provided that, in order that only valid signatures are counted, the freeholders who file protests are either registered to vote in Flathead County or execute and acknowledge their protests before a notary public.

BE IT FURTHER RESOLVED that if forty per cent (40%) of the freeholders within the Highway 93 North Zoning District protest the proposed change in said district, then the change will not be adopted.

DATED this 20th day of October, 2008.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By/s/Gary D. Hall
Gary D. Hall, Chairman

By/s/Dale W. Lauman
Dale W. Lauman, Member

By/s/Joseph D. Brenneman
Joseph D. Brenneman, Member

ATTEST:
Paula Robinson, Clerk

By/s/Diana Kile
Deputy

Exhibit "A"

The properties can legally be described as follows:

Fetveit: A tract of land located in the North Half of the Northwest Quarter of Section 12, Township 29 North, Range 22 West, P.M.M., Flathead County, Montana. (Shown as Tract 1 of Certificate of Survey No. 12697)

Bauer: A tract of land located in the North Half of the Northwest Quarter of Section 12, Township 29 North, Range 22 West, P.M.M., Flathead County, Montana. (Shown as Tract 2 on Certificate of Survey No. 12697)

NOTICE OF PASSAGE OF RESOLUTION OF INTENTION
HIGHWAY 93 NORTH AREA ZONING DISTRICT

The Board of Commissioners of Flathead County, Montana, hereby gives notice pursuant to Section 76-2-205(5), M.C.A., that it passed a resolution of intention (Resolution No. 837 BQ) on October 20, 2008, to change the zoning designation in a portion of the Highway 93 North Zoning District from AG-40 (Agricultural) to SAG-10 (Suburban Agricultural).

The boundaries of the area proposed to be amended from AG-40 to SAG-10 are set forth on Exhibit A.

The proposed change would generally change the character of the zoning regulations applicable to the property from those intended to protect and preserve agricultural land for the performance of a wide range of agricultural functions, intended to control the scattered intrusion of uses not compatible with an agricultural environment, including, but not limited to, residential development, to regulations intended to protect and preserve smaller agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging concentration of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development. The AG-40 classification has a minimum lot size of 40 acres; a change to SAG-10 would result in a minimum lot size of 10 acres.

The Flathead County Zoning Regulations defining the AG-40 and SAG-10 Zones are on file for public inspection at the Office of the Clerk and Recorder, Courthouse, 800 South Main, Kalispell, Montana, at the Flathead County Planning and Zoning Office, 1035 1st Avenue West, Kalispell, Montana and on the Flathead County Planning and Zoning Office's website, at: http://flathead.mt.gov/planning_zoning/downloads.php. Documents related to the proposed amendment in the Highway 93 North Zoning District are also on file for public inspection at the Office of the County Clerk and Recorder and the Flathead County Planning and Zoning Office.

For thirty (30) days after the first publication of this notice, the Board of Commissioners will receive written protests to the change proposed for a portion of the Highway 93 North Zoning District from persons owning real property within the Highway 93 North Zoning District whose names appear on the last completed assessment roll of Flathead County and who either are registered voters in Flathead County or execute and acknowledge their protests before a notary public.

DATED this 20th day of October, 2008.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

ATTEST:
Paula Robinson, Clerk

By/s/Gary D. Hall
Gary D. Hall, Chairman

By/s/Diana Kile
Diana Kile, Deputy

Publish on October 23 and October 30, 2008.

Exhibit "A"

The properties can legally be described as follows:

Fetveit: A tract of land located in the North Half of the Northwest Quarter of Section 12, Township 29 North, Range 22 West, P.M.M., Flathead County, Montana. (Shown as Tract 1 of Certificate of Survey No. 12697)

Bauer: A tract of land located in the North Half of the Northwest Quarter of Section 12, Township 29 North, Range 22 West, P.M.M., Flathead County, Montana. (Shown as Tract 2 on Certificate of Survey No. 12697)

CONSIDERATION OF ADOPTION OF FINAL RESOLUTION: WHITEFISH INTERLOCAL/ GROWTH POLICY (MASTER PLAN) AMENDMENT

11:00:19 AM

Members present:

Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman

Others present:

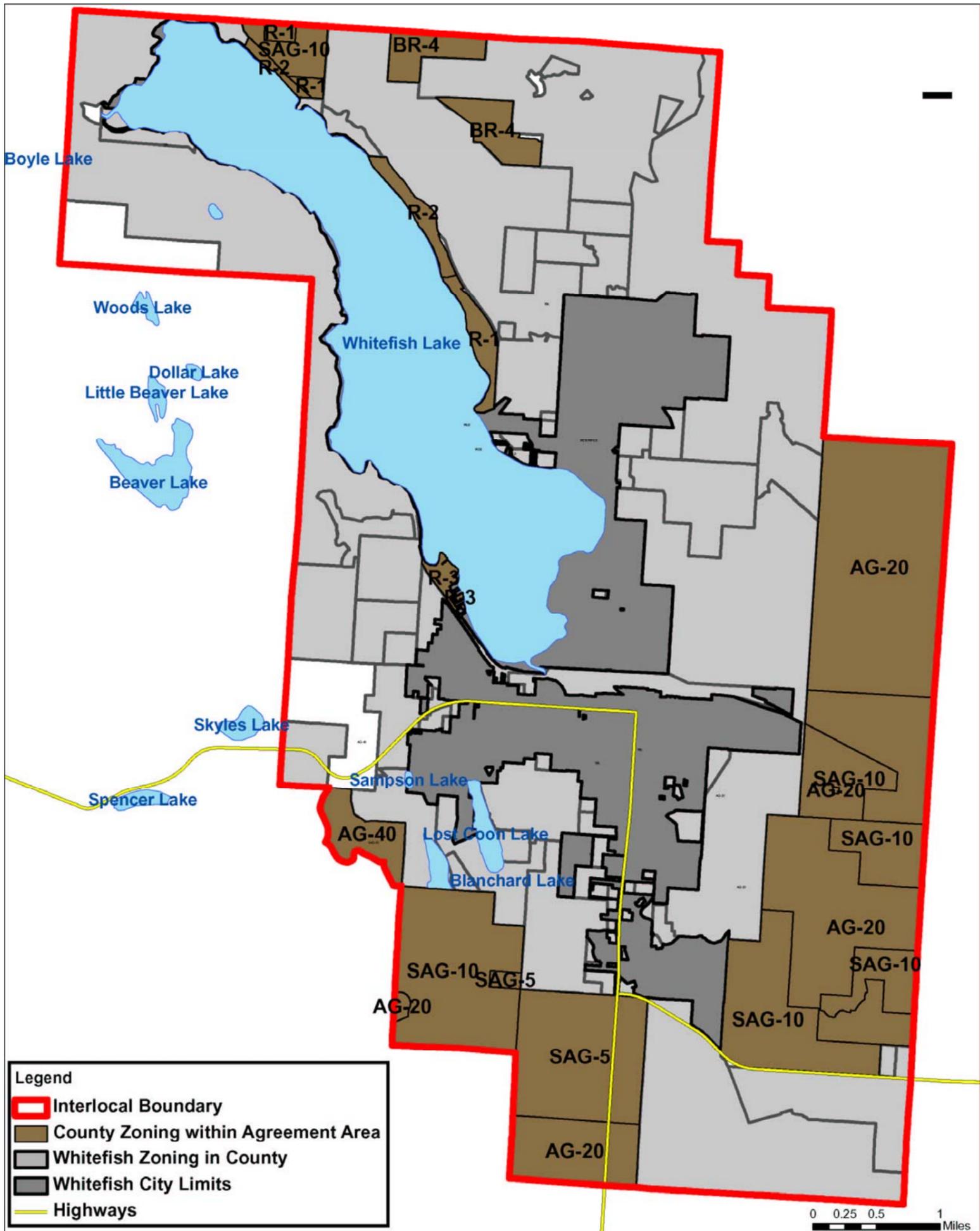
Planning & Zoning Director Jeff Harris, Deputy County Attorney Jonathan Smith, Clerk Kile

Harris reviewed the events leading up to today which included a public hearing held by the Flathead County Planning Board on July 16, 2008, at which time public comment was taken on the proposed amendments to the growth policy. On August 14, 2008 a resolution was passed by the commission that states it intends to adopt the proposed amendments to the growth policy in order that it will apply in the expanded portion of the jurisdictional area, by removing references within the growth policy to the February 1, 2006 Interlocal Agreement with the City of Whitefish. A public hearing was then held by the commission on September 15, 2008. Prior to the public hearing the Planning & Zoning Office received eight written comments supporting the existing Whitefish Growth Policy and urging the commission to not adopt the proposed amendments. During the public hearing held by the commission 10 members of the public spoke about the proposed amendments with six comments overall expressing varying degrees of opposition to the proposed amendment with three speaking on the topic of future land use desires for their properties or property owners they represent and one member speaking about concerns that the City of Whitefish not involving the public in the process. After the public hearing was closed five additional comments were received by the Planning and Zoning Office with four of them in support of retaining the Interlocal Agreement and attempting to work out an agreement with the City of Whitefish and one comment supporting the amendments.

Smith explained that the resolution says the growth policy will from this day forward apply in the area around the City of Whitefish; as of today we will begin enforcing subdivision and zoning regulations only within the county zoned areas. The city zoned areas will be left alone until they are re-zoned. He then added that the transition team determined they do not want to keep the lakeshore/ floodplain so they will be done within the whole area.

Harris then explained a map that was presented in regards to zoning areas.

WHITEFISH CITY-COUNTY INTERLOCAL AGREEMENT AREA



Chairman Hall asked if Whitefish Lake would be included.

Harris stated that they annexed the lake bottom and would control it up to the ordinary high water mark. He then noted if an applicant applies for a lakeshore permit that Whitefish would deal with the issue in regards to lakeshore protection. If an issue comes into a floodplain situation they may have to work jointly together with Whitefish; the county will maintain control over floodplain issues outside city boundaries. Harris then noted the Lakeshore Protection Committee has updated their regulations and they are different than the counties and will take some work.

Smith noted the City of Whitefish asked the Supreme Court for a decision before the end of the year. He then added they were granted a motion to expedite the current decision before them, which is whether or not the district court erred in not granting a preliminary junction.

Harris then reviewed a request received from Narda Wilson in regards to a group of landowners that have been actively working with the City of Whitefish to develop a new land use area. He then added they are well on their way through the Whitefish process.

Commissioner Lauman made a **motion** to approve Resolution 2015H. Chairman Hall **seconded** the motion.

Commissioner Brenneman said that he could not support the mentality that they are better off served by any district court to regulate boundary and land use issues; rather than working with the entities involved.

Aye - Hall and Lauman. **Opposed** – Brenneman. Motion carried by quorum.

RESOLUTION NO. 2015 H

WHEREAS, the Board of Commissioners adopted the Flathead County Growth Policy by the adoption of Resolution No. 2015 A on March 19, 2007;

WHEREAS, after adoption of the Growth Policy the Board of Commissioners adopted Resolution No. 2027 A to expand the jurisdictional area of the Flathead County Planning Board to include the area immediately adjacent to the City of Whitefish;

WHEREAS, the Board of Commissioners requested that the Flathead County Planning Board prepare and recommend amendments to the Flathead County Growth Policy in order that that Growth policy will apply in the expanded jurisdictional area;

WHEREAS, the Flathead County Planning Board held a public hearing pursuant to the provisions of Section 76-1-602, M.C.A., considered the public comment that was received and recommended amendments to the Growth Policy in order that it will apply in the expanded portion of the jurisdictional area, by removing references within the Growth Policy to the February 1, 2005, Interlocal Agreement with the City of Whitefish;

WHEREAS, the Board of Commissioners determined that the proposed amendments to the Growth Policy should be formally considered for adoption by the Board of Commissioners and scheduled a public hearing for September 15, 2008, to hear public comment concerning the proposed changes; and

WHEREAS, the Board of Commissioners conducted the public hearing, summarized the comments presented at that hearing and the written comments received, and has considered those comments.

NOW, THEREFORE, IT IS HEREBY RESOLVED, by the Board of Commissioners of Flathead County, pursuant to Section 76-1-604, M.C.A., that it hereby adopts the proposed amendments to the Flathead County Growth Policy in order that that Growth Policy will apply in the expanded portion of the jurisdictional area, by removing references within the Growth Policy to the February 1, 2005, Interlocal Agreement with the City of Whitefish.

BE IT FURTHER RESOLVED that commencing on this date, the County shall be responsible for zoning and subdivision regulation only in those areas within two miles of the limits of the City of Whitefish which were previously zoned by Flathead County and not zoned by the City of Whitefish. The Flathead County Zoning Regulations and the Flathead County Subdivision Regulations shall now apply in those districts.

BE IT FURTHER RESOLVED that commencing on this date the County shall be responsible for lakeshore and floodplain regulation in the entire area within two miles of the City of Whitefish and the Flathead County Floodplain Regulations shall now apply in that area and the Whitefish and Lost Coon Lake and Lakeshore Regulations and the Flathead County Lake and Lakeshore Regulations shall apply, as applicable prior to the City of Whitefish assumption of lake and lakeshore regulation in the area.

Dated this 20th day of October, 2008.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By/s/Gary D. Hall
Gary D. Hall, Chairman

ATTEST:
Paula Robinson, Clerk

By _____
Joseph D. Brenneman, Member

By/s/Diana Kile
Diana Kile, Deputy

By/s/Dale W. Lauman
Dale W. Lauman, Member

MEETING W/ RAEANN CAMPBELL, HUMAN RESOURCE OFFICE RE: LIBERTY NORTHWEST RENEWAL

11:21:19 AM

Members present:

Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman

Others present:

Assistant Mike Pence, HR Director Raeann Campbell, Public Works Director David Prunty, Robin Boon, Kim Thomas, Bob Luceno, Brad Salonen, Clerk Kile

Robin Boon reported last year when they entered into their renewal there was a 1.11 Mod. She then said Liberty Northwest went back to NCCI and got that changed to 1.08 for a 3% reduction that was applied retro-actively to last year, and now because of some reductions it has further been reduced to 1.01 which will be applied all the way back to 2007. This year with a 4% cost of living increase on all payrolls the renewal will be 7.3% less than last year with increased payroll. Also reported was \$400,000.00 is scheduled for next spring in retro returns along with \$45,000.00 from the Drug & Alcohol Policy. Boon then stated early reporting of claims is their goal for this year.

Bob Luceno then presented a Stewardship Report in regards to accomplishments this year and spoke about the renewal for next year.

Commissioner Lauman made a **motion** to renew the retro plan with Liberty Northwest. Commissioner Brenneman **seconded** the motion. **Aye** - Hall, Brenneman and Lauman. Motion carried unanimously.

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on October 21, 2008.

TUESDAY, OCTOBER 21, 2008

The Board of County Commissioners met in continued session at 8:00 o'clock A.M. Chairman Hall, Commissioners Brenneman and Lauman, and Clerk Robinson were present.

Chairman Hall opened public comment on matters within the Commissions' Jurisdiction, no one present to speak, Chairman Hall closed the public comment period.

PUBLIC HEARING: OGRIN ZONE CHANGE/ BIGFORK ZONING DISTRICT

[9:30:48 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Dale W. Lauman

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Planner Andrew Hagemeyer, Erica Wirtala, Kirk Ogrin, Margo Hunter, Clerk Kile

Hagemeyer entered into record Staff Report FZC 08-08; a zoning map amendment application submitted by Margret Hunter and Kirk Ogrin with technical assistance from Sands Surveying. The request is to change 10 acres on Fern Lane from SAG 10 to SAG 5 within the Bigfork Zoning District. The proposed zone change is consistent with the Bigfork Area Land Use Plan and conforms to the Flathead County Growth Policy Designated Use Map, 2006.

Chairman Hall opened the public hearing to anyone wishing to speak in favor or opposition of the zone change.

Erica Wirtala, 2 Village Loop representing Margo Hunter and Kirk Ogrin explained the existing private road will provide access should the applicant decide to split the property in the future. She then summarized the support for the request that is in compliance with the Bigfork Neighborhood Plan.

Margo Hunter, 214 Fern Lane stated the reason they would like to do the zone change is in order for her daughter to build a home on the property.

No one else rising to speak, Chairman Hall closed the public hearing.

Commissioner Lauman made a **motion** to adopt the findings of fact as presented. Chairman Hall **seconded** the motion. **Aye** - Hall and Lauman. Motion carried by quorum.

Commissioner Lauman made a **motion** to adopt Resolution 956CL and authorized the publication of the Notice of Passage of Resolution of Intent. Chairman Hall **seconded** the motion. **Aye** - Hall and Lauman. Motion carried by quorum.

RESOLUTION NO. 956 CL

WHEREAS, the Board of Commissioners of Flathead County, Montana, held a public hearing on the 21st day of October, 2008, concerning a proposal by Margaret Hunter and Kirk Ogrin, to change the zoning designation in a portion of the Bigfork Area Zoning District from SAG-10 (Suburban Agricultural) to SAG-5 (Suburban Agricultural);

WHEREAS, notice of that hearing was published pursuant to Section 76-2-205(1), M.C.A., on October 7 and October 14, 2008;

WHEREAS, the Board of Commissioners did hear public comment on the proposed zoning change at said hearing; and

WHEREAS, the Board of Commissioners reviewed the recommendation of the Flathead County Planning Board regarding the proposed change in the Bigfork Area Zoning District.

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of Flathead County, Montana, hereby adopts findings of fact as to the statutory criteria as adopted by the Flathead County Planning Board, and, in accordance with Section 76-2-205(4), M.C.A., adopts this resolution of intention to change the zoning designation in a portion of the Bigfork Area Zoning District from SAG-10 to SAG-5, the boundaries of said area being the boundaries of Tract 3 in Section 34, Township 27 North, Range 19 West, P.M.M., Flathead County, Montana, located just west of where Highway 209 crosses the Swan River at 214 Fern Lane, Bigfork, Montana, containing 10 acres.

BE IT FURTHER RESOLVED that notice of the passage of this resolution, stating the boundaries of the portion of the Bigfork Area Zoning District to be changed, the general character of the proposed designation for the area to be changed, that the regulations for said district are on file in the Clerk and Recorder's Office, and that for thirty (30) days after the first publication of thereof, the Board will receive written protests to the change to the Bigfork Area Zoning District, shall be published once a week for two weeks.

BE IT FURTHER RESOLVED, that written protests will be received from persons owning real property within the Bigfork Area Zoning District for a period of thirty (30) days after first publication of that notice, provided that, in order that only valid signatures are counted, the freeholders who file protests are either registered to vote in Flathead County or execute and acknowledge their protests before a notary public.

BE IT FURTHER RESOLVED that if forty per cent (40%) of the freeholders within the Bigfork Area Zoning District protest the proposed change in said district, then the change will not be adopted.

DATED this 21st day of October, 2008.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By/s/Gary D. Hall
Gary D. Hall, Chairman

ATTEST:
Paula Robinson, Clerk

By/s/Dale W. Lauman
Dale W. Lauman, Member

By: _____
Joseph D. Brenneman, Member

By/s/Diana Kile
Diana Kile, Deputy

NOTICE OF PASSAGE OF RESOLUTION OF INTENTION
BIGFORK AREA ZONING DISTRICT

The Board of Commissioners of Flathead County, Montana, hereby gives notice pursuant to Section 76-2-205(5), M.C.A., that it passed a resolution of intention (Resolution No. 956CL) on October 21, 2008, to change the zoning designation in a portion of the Bigfork Area Zoning District from SAG-10 (Suburban Agricultural) to SAG-5 (Suburban Agricultural).

The boundaries of the area proposed to be amended from SAG-10 to SAG-5 are the boundaries of Tract 3 in Section 34, Township 27 North, Range 19 West, P.M.M., Flathead County, Montana, located just west of where Highway 209 crosses the Swan River at 214 Fern Lane, Bigfork, Montana, containing 10 acres.

The proposed change would not change the character of the zoning regulations applicable to the property which, in both SAG-10 and SAG-5 districts, are intended to protect and preserve agricultural land for the performance of limited agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging concentration of such uses in areas where potential friction of uses will be minimized, and providing for estate type residential development, but the minimum lot size would be reduced from 10 acres to five acres.

The Flathead County Zoning Regulations defining the SAG-10 and SAG-5 Zones are on file for public inspection at the Office of the Clerk and Recorder, Courthouse, 800 South Main, Kalispell, Montana, and at the Flathead County Planning and Zoning Office, 1035 1st Avenue West, Kalispell, Montana. Documents related to the proposed amendment in the Bigfork Area Zoning District are also on file for public inspection at the Office of the County Clerk and Recorder and the Flathead County Planning and Zoning Office.

For thirty (30) days after the first publication of this notice, the Board of Commissioners will receive written protests to the change proposed for a portion of the Bigfork Area Zoning District from persons owning real property within the Bigfork Area Zoning District whose names appear on the last completed assessment roll of Flathead County and who either are registered voters in Flathead County or execute and acknowledge their protests before a notary public.

DATED this 21st day of October, 2008.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

ATTEST:
Paula Robinson, Clerk

By/s/Gary D. Hall
Gary D. Hall, Chairman

By/s/Diana Kile
Diana Kile, Deputy

Publish on October 25 and November 1, 2008.

DOCUMENT FOR SIGNATURE: ANNUAL AGREEMENT/ OFFICE OF PUBLIC ASSISTANCE

[9:45:37 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Dale W. Lauman

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Lauman made a **motion** to approve the annual Office of Public Assistance agreement. Chairman Hall **seconded** the motion. **Aye** - Hall and Lauman. Motion carried by quorum.

CONSIDERATION OF RELEASE OF COLLATERAL: RIVER VISTA

[9:48:36 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Dale W. Lauman

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Lauman made a **motion** to approve release of collateral for River Vista. Chairman Hall **seconded** the motion. **Aye** - Hall and Lauman. Motion carried by quorum.

CONSIDERATION OF HR TRANSMITTAL: LEAD CRIMINAL DEPUTY COUNTY ATTORNEY/ COUNTY ATTORNEY'S OFFICE

[9:49:39 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Dale W. Lauman

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, County Attorney Ed Corrigan, Office Administrator Vicki Eggum, Clerk Kile

Commissioner Lauman made a **motion** to approve the HR Transmittal form for a Lead Criminal Deputy County Attorney for the County Attorney's Office and authorized the chairman to sign. Chairman Hall **seconded** the motion. **Aye** - Hall and Lauman. Motion carried by quorum.

QUARTERLY MEETING W/ MIKE MEEHAN, SHERIFF

[10:00:53 AM](#)

Members present:

Chairman Gary D. Hall

Commissioner Dale W. Lauman

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Sheriff Mike Meehan, Clerk Kile

Meehan reported a Jail Nurse will be hired to alleviate ER runs and provide more medical coverage. He then spoke about a homeland security grant that is available to purchase equipment to place a buffer zone around Hungry Horse Dam for additional protection. Also reported was a repeater was put on Desert Mountain for added coverage. Meehan added that he and Joe Russell are putting together a program to assign the Animal Warden to the Animal Shelter during their overlap time to help alleviate some of the manpower issues.

TAX REFUND: BANCORP EQUIPMENT FINANCE GROUP

[10:30:38 AM](#)

Members present:

Chairman Gary D. Hall

Commissioner Dale W. Lauman

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Clerk Kile

Pence noted Bancorp was double taxed and are due a \$5,542.44 refund.

Commissioner Lauman made a **motion** to approve the tax refund for Bancorp Equipment. Chairman Hall **seconded** the motion. **Aye** - Hall and Lauman. Motion carried by quorum.

CONSIDERATION OF EXTENSION: HEART OF THE VALLEY

[10:32:02 AM](#)

Members present:

Chairman Gary D. Hall

Commissioner Dale W. Lauman

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Erica Wirtala, Clerk Kile

Chairman Hall stated a one year extension has been requested by Sands Surveying for Heart of the Valley.

Commissioner Lauman made a **motion** to approve the extension to Heart of the Valley to December 8, 2009. Chairman Hall **seconded** the motion. **Aye** - Hall and Lauman. Motion carried by quorum.

DOCUMENT FOR SIGNATURE: HEALTH PROMOTION CONTRACT REWRITE/ AOA

[10:33:18 AM](#)

Members present:

Chairman Gary D. Hall

Commissioner Dale W. Lauman

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Lauman made a **motion** to approve the Health Promotion Contract Rewrite for AOA and authorized the chairman to sign. Chairman Hall **seconded** the motion. **Aye** - Hall and Lauman. Motion carried by quorum.

DOCUMENTS FOR SIGNATURE: QUITCLAIM DEED & EASEMENT/ OLSON FAMILY TRUST

[10:33:58 AM](#)

Members present:

Chairman Gary D. Hall

Commissioner Dale W. Lauman

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Deputy County Attorney Peter Steele, Clerk Kile

Steele explained the QCD is for a portion of new road for Resthaven RSID where an easement has been signed to the county in exchange for a small parcel.

Commissioner Lauman made a **motion** to approve the quitclaim deed and easement for the Olson Family Trust. Chairman Hall **seconded** the motion. **Aye** - Hall and Lauman. Motion carried by quorum.

DOCUMENT FOR SIGNATURE: KF&G LEASE/ SYSCO FOOD SERVICES

[10:47:27 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Dale W. Lauman

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Deputy County Attorney Jonathan Smith, Clerk Kile

Commissioner Lauman made a **motion** to approve the lease agreement with Sysco Food Services and authorized the chairman to sign. Chairman Hall **seconded** the motion. **Aye** - Hall and Lauman. Motion carried by quorum.

DOCUMENT FOR SIGNATURE: MEDICAID CONTRACT/ AOA

[10:50:15 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Dale W. Lauman

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Lauman made a **motion** to approve the Medicaid Contract for AOA and authorized the chairman to sign. Chairman Hall **seconded** the motion. **Aye** - Hall and Lauman. Motion carried by quorum.

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on October 22, 2008.

WEDNESDAY, OCTOBER 22, 2008

The Board of County Commissioners met in continued session at 8:00 o'clock A.M. Chairman Hall, Commissioners Brenneman and Lauman, and Clerk Robinson were present.

- 9:00 a.m. Commissioner Brenneman: Flathead Basin Commission meeting at Tribal Council Chambers in Pablo**
- 9:00 a.m. Commissioner Lauman: Prerelease Center meeting in Helena**
- 11:00 a.m. County Attorney meeting @ Co. Atty's Office**

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on October 23, 2008.

THURSDAY, OCTOBER 23, 2008

The Board of County Commissioners met in continued session at 8:00 o'clock A.M. Chairman Hall, Commissioners Brenneman and Lauman, and Clerk Robinson were present.

Chairman Hall opened public comment on matters within the Commissions' Jurisdiction.

Russell Crowder, 2868 Lower Lost Prairie Road, representing American Dream Montana presented a letter to the commission in which he is asking that an investigation concerning recent activities of the Flathead County Planning and Zoning Director be investigated in a timely manner, so that American Dream Montana is not put into the position of having to seek an outside investigation. He then referred to illegal mailing lists being distributed and unadvertised public meetings.

No one else rising to speak, Chairman Hall closed the public comment period.

COS REVIEW: LORENTZEN

[9:00:27 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman

Others present:

Planner Dianna Broadie, Archie Lorentzen, Richard Goacher, Clerk Kile

Broadie reviewed the request submitted by Archie T. Lorentzen with technical assistance from Goacher & Associates to split off a 1.092 acre tract from a parcel slightly over 100 acres in size. The parcel is located on the east side of Lake Blaine on the north end of Blaine Lakeshore Drive.

General discussion was held relative to the reason for the transfer in which Mr. Lorentzen said he was requesting the transfer to give his wife some financial security; in order for her to remain on the property if anything was to happen to him.

Richard Goacher explained that Mr. Lorentzen's wife's name currently is not on the 100 plus acre parcel.

Commissioner Brenneman made a **motion** to approve the family transfer. Commissioner Lauman **seconded** the motion. **Aye** - Hall, Brenneman and Lauman. Motion carried unanimously.

MONTHLY MEETING W/ MONICA EISENZIMER, ELECTION DEPT.

[9:17:47 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman

Others present:

Assistant Mike Pence, Recording & Election Manager Monica Eisenzimer, Clerk Kile

Eisenzimer reported the Election Department is very busy having issued over 14,000 absentee ballot so far with 60 of them e-mailed to out of country voters. She then added 27 employees are lined up to open and process absentee ballots on Election Day along with over 300 Election Judges that will be staffing the precincts within the county. She then reported the Flathead County webpage has been a great tool for voters to get information and also allow people to log in and find out where their polling place is.

MEETING W/ MONTANA WEST ECONOMIC DEVELOPMENT RE: UPDATE

[9:30:08 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman

Others present:

Assistant Mike Pence, Don Bennett, Kim Morisaki, Lyle Phillips, Clerk Kile

Lyle Phillips presented a power point presentation that gave a summary of the accomplishments of the Flathead County Economic Development Authority (Port Authority), which was established in 1999 to provide funding for economic development activities and projects in Flathead County. Some of the accomplishments included:

- Played an instrumental role in bringing the Stream Call Center to Kalispell
- Purchased 63,000 sq ft of Gateway West Mall, now the location of Tele Tech who employs 500 people.
- Partnered with the City of Kalispell to purchase and pave a large parking area adjacent to Gateway West Mall
- Obtained a grant for an economic viability study for using biomass as fuel for a co-generation power plant at Stoltz Lumber
- Provided the necessary guarantee in order for Montana West Economic Development to administer the US Dept of Ag Intermediary Relending Program (IRP)
- Cooperated with Glacier Park International Airport by providing \$50K in order for them to qualify for a \$450K grant for bringing United Airlines to Flathead County
- Provided a \$40,000 guarantee for the required paving necessary for Resource Label (Total Label USA) to locate to Flathead County
- Retained R.W. Beck Co. in response to the County's concern for the economic viability of the CFAC smelter. Beck performed an analysis using their knowledge of the current power situation to provide information and insight from CFAC, the Port and Flathead Electric Co-op
- Provided the necessary support to Montana West Economic Development in order to obtain an option to purchase the Columbia Falls Industrial Park's 110 acre industrial site. This transaction has not yet been completed as there has been a challenge of the option from two of the lease holders of the park.

CONSIDERATION OF ADOPTION OF FINAL RESOLUTION: CUFFE ZONE CHANGE/ S.E. RURAL WHITEFISH ZONING DISTRICT

[10:12:30 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman

Others present:

Clerk Kile

Commissioner Lauman made a **motion** to adopt final resolution 1201G for the Cuffe Zone Change/ S.E. Rural Whitefish Zoning District. Commissioner Brenneman **seconded** the motion. **Aye** - Hall, Brenneman and Lauman. Motion carried unanimously.

RESOLUTION NO. 1201G

WHEREAS, the Board of Commissioners of Flathead County, Montana, held a public hearing, following publication of legal notice, on the 17th day of September, 2008, concerning a proposal to change the zoning designation in a portion of the Southeast Rural Whitefish Zoning District from AG-20 (Agricultural) to SAG-5 (Suburban Agricultural);

WHEREAS, the Board of Commissioners did hear public comment on the proposed zoning change at that hearing;

WHEREAS, the Board of Commissioners reviewed the recommendation of the Flathead County Planning Board regarding the proposed change in the Southeast Rural Whitefish Zoning District;

WHEREAS, based upon that recommendation and the public testimony, the Board of Commissioners of Flathead County, Montana, in accordance with Section 76-2-205, M.C.A., adopted a resolution of intention (Resolution No. 1201F, dated September 17th, 2008) to change the zoning designation from AG-20 to SAG-5, that area being described as the Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) of Section 10, Township 30 North, Range 21 West, P.M.M., Flathead County, Montana. (Shown as Parcel A of Certificate of Survey No. 13440); and

WHEREAS, notice of passage of that Resolution was published once a week for two weeks, on September 22 and September 29, 2008, and the Board of Commissioners did not receive written protests to the change from forty per cent (40%) of the freeholders in the Southeast Rural Whitefish Zoning District.

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of Flathead County, Montana, in accordance with Section 76-2-205(6), M.C.A., hereby amends the Southeast Rural Whitefish Zoning District to change the zoning designation in a portion of the Southeast Rural Whitefish Zoning District from AG-20 (Agricultural) to SAG-5 (Suburban Agricultural), that property being described as the Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) of Section 10, Township 30 North, Range 21 West, P.M.M., Flathead County, Montana. (Shown as Parcel A of Certificate of Survey No. 13440).

DATED this 23rd day of October, 2008.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By/s/Gary D. Hall
Gary D. Hall, Chairman

By/s/Dale W. Lauman
Dale W. Lauman, Member

By/s/Joseph D. Brenneman
Joseph D. Brenneman, Member

ATTEST:
Paula Robinson, Clerk

By/s/Diana Kile
Diana Kile, Deputy

DOCUMENT FOR SIGNATURE: MOTOR VEHICLE RECYCLING & DISPOSAL PROGRAM BUDGET FORM/ SOLID WASTE DISTRICT

[10:13:44 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Brenneman made a **motion** to approve the annual motor vehicle recycling disposal document and authorized the chairman to sign. Commissioner Lauman **seconded** the motion. **Aye** - Hall, Brenneman and Lauman. Motion carried unanimously.

CONSIDERATION OF PRINTING BIDS: COUNTY ATTORNEY'S OFFICE

[10:14:30 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Brenneman made a **motion** to approve the print bid from Thomas Printing for 500 business cards for \$25.00. Commissioner Lauman **seconded** the motion. **Aye** - Hall, Brenneman and Lauman. Motion carried unanimously.

MEETING W/ DAVID PRUNTY/ PUBLIC WORKS DIRECTOR RE: RESPONSE TO BULLET POINTS FROM ROAD ADVISORY COMMITTEE

[10:17:24 AM](#)

Members present:

Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman

Others present:

Assistant Mike Pence, Public Works Director David Prunty, Operations Manager Road & Bridge Department Guy Foy, Road Department Office Administrator Patti Vernarsky, Clerk Kile

Prunty reported on the recommendations made to the commission from the Flathead County Road Advisory Committee in regards to gravel roads, paved roads, dust abatement, a quality program, internal auditing system, budget, pit operations, revisions of the road standards book and legislative issues.

FINAL PLAT: STAGE RIDGE VILLAGE, PHASE 1

[11:20:29 AM](#)

Members present:

Chairman Gary D. Hall

Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman
Others present:
Assistant Mike Pence, Planner Bailey Iott, Erica Wirtala, Clerk Kile

Iott presented final plat FFP 08-48 for Stage Ridge Village Phase 1; a subdivision creating 4 commercial lots on the east side of Hwy 35 north of Grand Drive in Bigfork. Preliminary plat approval was granted on March 13, 2007, subject to 19 conditions. Iott noted for the record that the lot line was moved during preliminary plat approval on lots 3 and 4, 50 feet to the north to accommodate a 40 x 40 foot building pad.

Commissioner Lauman made a **motion** to approve final plat of Stage Ridge Village, Phase 1. Commissioner Brenneman **seconded** the motion. **Aye** - Hall, Brenneman and Lauman. Motion carried unanimously.

CONSIDERATION OF HR TRANSMITTALS: ADMINISTRATIVE ASSISTANT-VOLUNTEER COORDINATOR/ ANIMAL CONTROL AND NURSE/ SHERIFF'S OFFICE

11:32:25 AM

Members present:
Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman
Others present:
Assistant Mike Pence, HR Director Raeann Campbell, Clerk Kile

Campbell noted the position for an Administrative Assistant Coordinator at the Animal Shelter has been approved by the Board of Health who will fund half of the position, with the other half coming from Animal Shelter monies through 2009.

Commissioner Brenneman made a **motion** to approve the job classification for an Administrative Assistant/ Volunteer Coordinator at the Animal Shelter. Commissioner Lauman **seconded** the motion. **Aye** - Hall, Brenneman and Lauman. Motion carried unanimously.

Commissioner Brenneman made a **motion** to approve the HR Transmittal form for an Administrative Assistant/ Volunteer Coordinator at the Animal Shelter. Commissioner Lauman **seconded** the motion. **Aye** - Hall, Brenneman and Lauman. Motion carried unanimously.

Commissioner Lauman made a **motion** to approve the job description for a Nurse at the Sheriff's Office. Commissioner Brenneman **seconded** the motion. **Aye** - Hall, Brenneman and Lauman. Motion carried unanimously.

PUBLIC HEARING: SUBDIVISION REGULATIONS AMENDMENTS @ FVCC ARTS & TECHNOLOGY BLDG, RM., 139

6:00:19 PM

Members present:
Chairman Gary D. Hall
Commissioner Joseph D. Brenneman
Commissioner Dale W. Lauman
Others present:
Assistant Mike Pence, Deputy County Attorney Peter Steel, Planning & Zoning Director Jeff Harris, Karen Reeves, Loyal Chubb, Doug Morehouse, George Culpepper, Loren Kreck, Patrick Conlin, Wade Fredenberg, Mike Graham, Fran Tabor, Rick Breckenridge, Jim Dupont, Frank Noble, Matt Nerdig, Bruce Tutvedt, Ben Cavin, Ryan Busse, Mary Person, Ed Prach, John Dorfo, Bill Lundgren, Brent Mitchell, Larry Brosten, Judy Brosten, B.D. Chowning, A. V. Salyer, Dick Mohrenweiser, Dick Zellner, Barry Ultican, Gary Krueger, Donna Thorton, Dennis Thorton, Alan Taylor, Deana Taylor, Lois A. Smith, Larry D. Smith, Russell Olsen, Richard Siderius, Shelby Nash-Hunter, Charles Lapp, Bradley J. Hall, Geraldine Hall, Russ Crowder, Dave Skinner, Steve Rosso, Jeff Larsen, Lew Klein, John Stang, Paul McKenzie, Dennis Bain, Judy Chamberlain, Mike Chamberlain, Raymond J. Shupert, Joseph E. Shupert, Olaf Ervin, Mayre Flowers, Dave Brant, Kit Hunter, Carry Miske, Kelly Harris, Mark Delray, Shawn Bailey, David Bailey, Richard Kuhl, Rhonda McDowell-Rowen, Dan Manning, Newton Conklin, Helen S. Gould, Jerry R. Gould, Michael Benedetti, Clerk Kile

Chairman Hall then the following prepared letter:

Good evening and thank you for participating in this public hearing. Tonight the County Commission is holding a public hearing on proposed amendments to the Flathead County Subdivision Regulations. This public hearing was noticed in the local newspaper on October 9 and October 16, 2008. The proposed changes have been posted on the Planning and Zoning Office web site since September 20, 2008 and copies have also been available at the Planning and Zoning Office. When the subdivision regulations were initially adopted in July, 2007 the Commission referred certain sections back to the Planning Board for additional consideration and review.

These proposed amendments have been extensively considered and reconsidered by the Planning Board over the last 16 months. Since July 2007 the Planning Board has spent over 100 hours in public workshops meeting every two weeks to consider and make recommendations on specific sections. Additionally, the Planning Board held two public input sessions, dedicated to solicit more public input and suggestions. At the same time staff has had an opportunity to use the regulations for a year and have suggested amendments to clarify and simplify parts of the regulations. Both of these efforts are included in the proposed amendments under consideration at this time.

Please understand that this public hearing only considers the subdivision regulations. These regulations apply only when to proposed subdivisions of land. They do not apply to any other development situation. This is extremely important due to all the misinformation being circulated. If you have a lot or parcel and want to develop it these regulations do not apply.

Before we begin and open the public hearing I'll explain the procedures of the hearing:

Identify the relevant section before making your comments; since there are numerous recommended changes to the regulations, I am requesting that each person providing testimony tonight identify the specific section they are addressing before making any comments. This will allow the commissioners to refer to the appropriate section and organize notes.

Each person will have five minutes to make or provide comments.

This public hearing will include two nights. Tonight the Commission will open the public hearing and it will be continued to October 30, 2008 here in this same room. The public is encouraged to provide oral and written comments, but there is no need to speak on both nights.

Any written materials provided tonight or to the Planning and Zoning Office will be made part of the public hearing record. We will accept written material until the close of the public hearing on October 30. Once the public hearing closes no additional information will be accepted or considered.

No decision will be made on October 30, 2008. Any decision regarding the proposed amendments will be made after the commissioners have had an opportunity to fully review and consider all of the information submitted.

Chairman Hall opened the public hearing to anyone wishing to speak in favor or opposition of the zone change.

David Bailey, 922 Woodland Avenue spoke on Section 4.7.10, Floodplain Revisions in regards to additional setbacks. He said that as you float from Columbia Falls to Kalispell you drift back in time through wild unspoiled vistas with clean water, rainbow and cutthroat, deer and waterfowl; it's a beautiful place and I love it. He then stated in spite of the growth seen in the last 10 years with millionaires lusting for river fronts to build on the river banks the Flathead River has not changed, because it is already protected. He then added the existing regulations are working and our clean water and scenery are already protected by a lot of agencies including the Flathead Conservation District, Flathead Floodplain Administrator, Montana Department of Fish Wildlife and Parks, US Army Corp of Engineers, DEQ, Department of Natural Resources and FEMA. Bailey then said you can fill up the river banks with grazing livestock and they don't need fenced out of the river. He then said "treat me like a pig", and explained that he owns 116 acres with ½ mile of Flathead River frontage and has developed two building sites that are 400 feet from the river bank, and out of the flood plain with preliminary septic approval from Flathead County that he would like to be able to divide and sell a parcel; if the additional setbacks pass he won't be allowed to plan for his retirement this way. He further said I guess I can put in a hog farm; but I am not asking that. Bailey then stated that he hoped the new regulations would be voted down as they are arbitrary and unnecessary.

Richard Mohrenweiser, 611 Lower Valley Road presented a packet to the commission with photos of his house and property. He then said he came this evening out of concern for the next person who wants to build a home on the river. That the proposed setbacks would have forced him to build on the back half of his property and that would have put his back door near a county road; his view would then be blocked of the sites they so dearly love. Further south on Foy's Bend there are homes valued at over one million dollars with each of them being closer than 150 feet and the tax revenues have a great impact on Flathead County. He then said that while working in his yard or fishing off his dock boaters stop to tell him what a nice home and beautiful setting that he has; that they enjoy seeing homes along the river. He then spoke about those that he has helped with boat problems that he would not have seen if his home was setback 250 feet, and stated that stream bank damage is caused because people don't live close enough to the water; if they did they would take care of the banks. Mohrenweiser then said before you jump into this wrongful control of private property, please check and see how much river and stream property is available for development currently, and how much would be available under any new regulations, as well as how much could not be developed at all.

Ed Prach, 110 Goat Trail spoke about the reversal of degradation of Lake Tahoe's water quality with the use of best management practices; a procedure that emphasized detailed case by case analysis, combined with education, enforcement and cooperation by all concerned as well as buffers for their stream and environment zones. We need to be equally successful here in maintaining the water quality in Whitefish Lake, Flathead Lake and elsewhere. In an effort to learn more about setbacks he contacted Montana Audubon who responded with booklets covering the subject that he would be glad to share with anyone interested. He then said he was surprised at how much science was involved in the studies of the setbacks needed for maintaining water quality, protecting aquatic life and wildlife. The setbacks varied from a minimum of 100 feet to 1,000 feet in the case of wildlife. He then read a quote from the water quality habitat: The average stream buffer width needed to filter approximately 80% of pollutants is 132 feet, which illustrates the challenge involved and should be emphasized that setbacks require suitable vegetative buffers, not including lawns. Prach said with so many variables involved that he finds it difficult to pin it down to precise figures rather than on a case by case basis as with Lake Tahoe. Basing it on the size of the body of water is better than nothing; after all streams and their contents usually end up in a larger body of water. Angle of slope would probably require some suitably engineered barrier to help retain and absorb water as well as a vegetative buffer. He then closed with saying that steps to protect water quality work to the advantage of all concerned and enhance the value of everyone's property.

Charles Lapps, 3230 Columbia Falls Stage Road noted he is the Director for Governor of Affairs for Flathead Builders Association and the local representative for Montana Building and Industry Association. He then stated that the theme of where the subdivision regulations are going is spelt out in Section 4.0.5 - Local Regulations More Stringent than State Regulations. When 76.3.511 was deleted from the regulations (where it said the county had to have justified reasons for making their regulations more stringent than state law). It was mentioned that these regulations are only going to apply to land that is being subdivided. On page 4-41 Section 4.7.7 (n):

No remainder lots or parcels are permitted on tracts of land less than 160 acres. A remainder is defined as a parcel created by the segregation of a subdivision from a larger original tract. A "remainder" less than 160 acres in size, contiguous to a proposed subdivision shall be considered a lot in that subdivision.

Lapp continued with this means if someone has 160 acres and they create a one acre lot on their property for whatever reason the remaining 159 acres becomes a lot in that subdivision; these regulations would apply in totality to the 159 acre lot. By removing the remainder clause it will affect anyone that wants to subdivide their land. He then added that he feels the regulations were created to make the process more difficult rather than easier with the justification being if taken more seriously they will make a better product.

Loren Kreck a property owner in Columbia Falls stated his property has 400 feet of river frontage with approximately two acres, with his home setback about 140 feet. He then said the wild rivers ended the confluence at Hungry Horse where the South Fork leads up to the North Fork with that being good protection. From there on down all the way to Flathead Lake there is nothing quite like the protection that it offers as far as building along the river. It is amazing the river still has the lack of development for the people that utilize it with boats floating by about every 15 minutes, and feels it is important to keep the river in the relatively original state for future generations with it being one of the greatest assets we have. He then said those that float the river don't want to look into his front room; they want to have an experience of a natural appearance along the river. Kreck closed with saying that he feels the 150 foot setback is a good idea.

Ryan Busse, 197 Riverview Drive speaking on behalf of Montana Conservation Voters stated that he moved his business here because of what is commonly referred to in business as a unique selling proposition. He then said the unique selling proposition of the Flathead Valley is to plain to see in my estimation with the clean water, mountains and activities based around open spaces. To the degree to which we can preserve our unique selling proposition here he feels it is not only smart and the right thing to do, but that it would be a good business decision for the valley. Busse then said there is no other Flathead Valley or Flathead River, and I urge you on behalf of the Conservation Voters to approve the setbacks.

Richard Siderius, 395 Auction Road stated that he is a property owner along Ashley Creek Road and has no plans of developing his 120 acres. He then said it would not bother him to be forced to set homes away from it. He then stated he was representing the Flathead Lakers who have over the last 17 months submitted letters to the Planning Office and have also testified that they feel you are on the right track; he then complimented staff for working through this the past 17 months. Siderius then added that all of us are going to have to sacrifice a little bit to protect our environment and clean water as Flathead Lake is gradually deteriorating.

Rick Breckenridge, 1405 Hwy 2 West, read from MCA Title 1, Chapter 2, Section 101 says:

When a judge is ascertaining or construing a legislative intent of the law he is not to insert what has been omitted or to omit what has been inserted.

Breckenridge continued with in the Stoke decision Judge Curtis told Peter Steele and obviously he hasn't told you; if you don't follow your own rules you are (inaudible). You have rules you have to follow and in the MCA Title 9, Section 1, Paragraph 3; you don't have the authority to implement any stream setbacks. You have the authority to do lake setbacks but you do not have the authority to go in and do a massive land (inaudible) of over 79 square miles of private land. You struck through a portion of statute that apparently you don't like and whether you like it or not you have to follow it. He then said Rick, Joe and Gary each have a house on a piece of property that will be affected by the streamside setbacks. He then said his water source is a spring that he maintains. In 1988 Joe built a house on a bluff with a day light basement that looks out over the river that is 78 feet away from the river; you used your stream in front of your house the way you seem fit and none of us have come in and told you that you had to give something up. In 2008 Gary you built your house about 13 feet away from the top of the bluff; if you were to impose these regulations on your place you would have 5 feet at the very edge of your property to build your home, with the (inaudible) of zoning setbacks so you couldn't have built it. These stream side setbacks affect all of us, so if you want to give something up as the gentlemen from Columbia Falls said we need to do then lets make this retro active and all give something up.

David Brant, Hwy 2 stated his ranch is long and narrow and runs along the highway at the west end of Smith Valley on Ashley Creek. He then said he has approximately 2 ¾ miles of Ashley Creek running through the property with part of the frontage in a wetland conservation easement that was put on the property in the 90's. When the property was purchased over 40 years ago none of Ashley Creek was fenced and at the time he had problems with cows getting into the creek and not getting out. He since has worked diligently with Montana Fish Wildlife and Parks in fencing a portion of the property to keep cattle out of the creek. When you start talking about a setback I look at it as condemnation without compensation and if you want to put this setback regulation in place then you should be compensating those whose properties are affected with fair market value. Brant then closed by saying he feels this should be left in the hands of those taking care of conservation issues within the valley.

Russ Crowder, 2868 Lower Lost Prairie Road representing American Dream Montana addressed Section 4.7.10. He then read MCA 76.3.504:

76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

Crowder then read Section 4.7.10.

- Land located in the floodplain of 100 year frequency as defined by Title 76, chapter 5, MCA etc.

Under state law you are required to prevent building in the floodway. What is the difference in one word? The difference in one word is in Flathead County". Instead of having 18 square miles of private property prohibited from building a home on, by changing the word from "plain" to "way" you increased it to 79 square miles and have done it illegally. He then said they have examples waiting on their attorney's desk waiting to see what other legal regulations are adopted so that the lawsuit can be amended.

Wade Fredenberg, Montana Fish & Wildlife Services stated they have participated in the lengthy process and have written a letter in full support of the proposed subdivision regulations. He then added that he is amazed that science takes a major beating when someone disagrees with the conclusions that science presents. Fredenberg then said the proposed regulations are based on good sound science and after having participated for the full extent that the regulations also represent what is good public policy with a lot of give and take with discussions and work having gone into it. What now would be a tragedy is to be intimidated by the few folks who threaten legal action and urged that it be adopted as written.

Jeff Larsen, 128 Tamarack Woods, owner of Larsen Engineering and Surveying stated he is a Registered Professional Engineer in the states of Washington, California and Montana as well as being the Vice President of Montana Environmental Consultants Associations. He then added he has been doing civil engineering work for 26 years now with his first 6 years working for the Montana Department of Fish Wildlife and Parks and has also done civil engineering work all across the State of Montana, mostly in riparian areas where he has a lot of experience. He then said if we took the proposed setbacks and applied them to the sites that he worked on that they wouldn't have been able to provide the roads and accesses that he developed. He feels the one size fits all is arbitrary and not based on science. What has been done is you have come up with a procedure where the owner can disprove the arbitrary setback with it being an arduous procedure that would take several scientists to disprove it. Larsen stated that he is not against setbacks and that he agrees with them for septic systems and other things, but that they need to be based on science. We hear that there is all this science but they don't bring it. He then spoke about studies that are available and read an article from Civil Engineering News in regards to stormwater pollution with the conclusion being that pollution is caused from pesticides from agriculture use. He then read testimony given by Garth Hoagland from Beaverhead County and read an article about removal of nitrogen also. Larsen then added these arbitrary setbacks are an excuse to steal property without paying for it and stated I can show you all kinds of advanced wastewater treatment systems and EPA studies that show that decentralized systems can treat systems good or better than centralized

treatment systems; there is absolutely no reason why we can't identify what the problem is and treat it without stealing peoples property. One of the major things we have forgotten about in this study is if anyone cares about clean water we need to look at point source pollution, with an example being dairy farms near water bodies as well as others.

Bruce Tutvedt, 2235 West Valley Drive said he was enjoying hearing everyone talking about who is giving and who is taking with him being on the end of the given with him giving up approximately 40 acres of 250 which seems excessive. He then said he feels you need to sit down with the landowners when the National Association of Wheat Growers science says 100 feet takes away 95% of all the chemicals and agriculture they keep talking about. He then added that he feels this is a taking.

George Culpepper, Director of Northwest Montana Association of Realtors, Inc. said the board of directors passed a statement on streamside setbacks that has have revised during the course of the process. The statement says: We believe and stand behind the Flathead Builders Association and Montana Builders and Industry Association. Realtors believe that private property rights are fundamental to our free market system and are a cornerstone upon which this nation was founded. The United States and Montana Constitution recognizes and protects the right to own property. A strong economy depends upon preserving the right to freely own, use and transfer real property. We believe in preserving our environment. Furthermore we recognize the importance of parks, open space and the environment to our quality of life. In order to protect the environment we believe government must accommodate quality commercial, industrial and residential growth using innovative planning techniques and incentives, while recognizing the importance of local decision making, private property rights, the value of a healthy economic sector and attainable home ownership opportunities. We understand that local governments often use the subdivision review process not only to regulate the actual division of land, but also to control and regulate the development and use of land itself. This is an inefficient and inappropriate use of subdivision law. We support local governments using the subdivision review process to regulate only the actual division of land. This division centered subdivision review process would prohibit the use of land use regulations, building regulations or fire regulations in local government subdivision regulations. Instead, subdivision regulations would concentrate on survey, easements, monumentation and access issues. Other uses of land are governed elsewhere in regulations. Stream setback requirements are an example of local governments using the subdivision review process to regulate private property rights. This is not the appropriate regulation for this concern. Culpepper said their members take an oath to preserve and protect private property rights. He then made the following suggestions:

- NMAR understands that clean water is a key element for a health environment. We support establishing standards and criteria aimed at protecting our health and safety as long as they are based on scientific evidence. We believe water quality laws and regulations provide a high standard of protection for our steams and water bodies. We believe the private property owners and potential social and economic impacts must be taken into account.
- NMAR believes environmental restrictions to include stream setbacks on the use of land and water should be based on both verifiable scientific and economic considerations.
- NMAR supports the rights of private property owners to use conservation easements to include stream setbacks.
- NMAR believes private property owners should be offered incentives to use stream setbacks.
- NMAR would only support stream setbacks on a case by case study of the necessity based on scientific and equal review procedures and by the appropriate regulatory body.
- NMAR believes any setback more than 50 feet may be an infringement upon the private property owners' right to use their real property if there is no scientific review of the specific property.
- NMAR supports solid, sensible, environmentally friendly regulations while recognizing the rights of the private property owner.
- NMAR believes all governments in the Flathead should adhere to the same policies set forth for private property owners.

Culpepper closed with saying that they have asked for specific data from the Army Corp of Engineers and have not heard from them.

Mark Delray, Montana Fish Wildlife and Parks stated they have participated in the subdivision review process from the beginning. He then complimented the Planning Board for the tremendous amount of work associated with the setback issues and re-submitted a letter of comment from the department with documents attached from DEQ that speaks to the setbacks. Delray then spoke about the many studies that have been done in regards to looking at riparian buffers and submitted copies of the study to the commission.

Brent Mitchell, 298 Red Fox Run commended the work done on the subdivision regulations and stated that he supported the proposed setbacks that were arrived at with a lot of internal struggle and based on to a larger extent if not exclusively on the scientific data that was presented and should not be blown off. He then said as soon as you get people to put their home within the floodplain next to the river the next thing they want is to riprap the river which leaves you a pipeline made of rock that speeds up the flow of the river, and contains it allowing the height to go higher and the velocity to go faster. He then pointed out engineers have worked with the Army Corp of Engineers for years and decades on the Mississippi River in containing it, and if they were so good at what they do you would never see a flood on the Mississippi River and the City of New Orleans wouldn't be in any trouble at all when a storm comes in.

Gary Krueger, 805 Church Drive spoke in regards to stormwater review and said what is being talked about is mainly clean water from 250 feet. He then added all that needs to be done is the 250 feet needs to be included in the calculations for the stormwater discharge from a subdivision and accounted for. If you are a subdivision away from the river you would treat your water through retention ponds or whatever and then it flows by a pipeline to the river; they don't have to have a 250 foot setback. All we need to do is calculate what the water is and have some language in there that talks about the riparian area next to it that takes care of the stormwater from the subdivision, and that should be enough to take care of the water issue. The question is what is the issue of a 250 foot setback; is it to keep a corridor on the river so that somebody doesn't have to be imposed by looking at his home or his neighbor's home or is it really clean water.

Dave Skinner, 1125 Trumble Creek Road, questioned the intent in regards to the 2,000 foot elevation in Section 4.7.10. He then said if it is not yet delineated then the historic floodway patterns are not an issue, and therefore that is why it has not been analyzed. Section 4.7.11 he stated he had a problem with setbacks along the Upper Fisher and Pleasant Valley with it not being uniform throughout the county. He then questioned the need for a 100 foot high bank when the bank is stable. Section 4.7.11 (d) he commented that it seems you would have to do a full EIS to do a subdivision. Section 4.7.28 in regards to a second access he feels is not necessary and a subdivision should not be denied for this reason. Skinner then said he has seen both sides of the fence in regards to wildfires with some thinking wildfires are great and others thinking the opposite, in that you can prove almost anything you want, as long as you have your scientific papers and the right ones for your cause.

Karen Reeves, 230 Missy Lane stated she has been involved in the process and said the Planning Board has done a fabulous job. She then added it was interesting to listen to the property owner along Ashley Creek whose property floods regularly and can't build right on the edge of the creek, and that is somehow ruining his property rights. She then said Lake Tahoe had to put a moratorium on building for two years because of the degradation that happened when they didn't do something early enough; it is much easier to do something now instead of trying to fix Flathead Lake when it's gone.

Dick Stoner, 1365 Voorman Road commented he used to be in the city but it appears now he may be in the county and under the counties regulations. He then added back in 1981 he was zoned one mile outside the city limits and no one was screaming about property rights then. He then said he was in favor of whatever can be done to ensure the water in the rivers and lakes stay clean. Stoner then spoke about water quality in California.

Olaf Ervin, 1658 North Fork Road spoke in regards to Section 4.7.10. He then said he deals a lot with flood plain management and flood plain studies and is concerned about the proposed amendments to the subdivision regulations, because of statute cited in MCA 76-5 where floodway is being altered to floodplain; that it is a significant change and not the same thing with ramifications that he hopes everyone is aware of. Specifically it is the purpose of parts 1-4 to distinguish between the land use regulations applied to designated floodplains and those applied to that portion of the designated floodplain not contained within the designated floodway, and applied more restrictive land use regulations within the designated floodway. Also in the same title it says permits must be granted for the following uses within that portion of the floodplain not contained within the designated floodway. Structures including but not limited to residential, commercial and industrial structures. These statutes are in the current Flathead County Floodplain Regulations that were updated in January of last year, as well as a statement that says one of the purposes for the Floodplain Regulations within Flathead County is to: Ensure that those who occupy the 100 year floodplains assume responsibility for their actions. So what is being talked about is preventing anyone from having the opportunity in the first place.

Dan Manning, 3269 Hwy 93 stated that it seems like we are trying to do blanket regulations to all property with one size fitting all and that isn't the case. That it would be fairer to look at each application on a case by case basis.

Carry Miske, Flathead Basin Commission thanked the Flathead County Planning Board and the commission for taking the time to do such a thorough job and allowing them all to participate in the process. She noted on October 30 that written comment would be submitted along with an overview presented by Flathead Lake Biological Station for some of the science behind the facts. Also noted was a legal opinion will be presented by an attorney that will be a review of the setback regulations and provide some input into the legality of the regulations. Miske then explained the mission of the Basin Commission is to protect water quality as well as promoting sustainable economic development with this being a reasonable approach.

Dennis Thorton said a problem he sees with the regulations is that a lot of what is being done doesn't meet state law. He then said a set of law books need to be read.

A. Salyer commented that if you collectively take what is being said tonight that the reality is if it isn't in state law you don't have the right; I don't care about the science. He then said you are putting the burden on the individual to have to prove you wrong and go against the regulations in order to be able to exercise their right to free property. It is the individual under the constitution that is protected not the collective. If you give up your individual rights you end up with socialism; we don't want it here. I don't want County Commissioners coming in and telling me what I can and cannot do on 250 feet of my property when there is already enough science given that says 95% of the nitrates are taken out within 3 feet. When we have 150 feet already why do we need to take another 18 to 79 acres of peoples land for no reason? This is an individual right and you are trying to turn it into a social collectivism. He then said there are other ways to do this without trampling on the rights of people.

Mayre Flowers, 3545 4th Street W, Citizens for a Better Flathead stated they participated in the process and feel the compromise reached by the Planning Board is a workable solution and supports the recommendation, and asked that the commission also consider it. She then asked that the setback of 60 feet be looked at as they feel it should be 100 feet with studies showing a minimum of 100 feet is needed to protect water quality. There are an incredible number of individuals within the valley that are good stewards of the land that we are blessed with to protect our water quality; yet despite those best efforts however, the water quality in our valley continues to decline. There are quite a number of statutes that address issues of water quality in state and local law; however, these regulations do not address these specific areas of stream side setbacks. In the packet presented to the commission there is an analysis of state law and the conclusion drawn from it is that stream side setbacks are needed. She then pointed out two DVD's were also presented in the packet in regards to a presentation from US Fish & Wildlife and Montana Fish & Wildlife at the Planning Board; the other DVD being a copy of panel discussion by the Flathead Basin Commission. Part of the compromise reached by the Planning Board is that they aren't looking at setbacks for existing properties that the setbacks are only for properties that would be subdivided and developed. Studies show that when developments are made and setbacks are put in place economic values of those properties are enhanced. Flowers then stated there is strong support for the 100 foot setbacks and strongly encouraged the commission to move forward with the recommendations.

No one else rising to speak, Chairman Hall closed the public hearing.

12:00 p.m. Commissioner Brenneman: Rotary @ Hilton Garden Inn
1:00 p.m. Commissioner Brenneman: LEPC meeting @ OES Office

At 8:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on October 24, 2008.

FRIDAY, OCTOBER 24, 2008

The Board of County Commissioners met in continued session at 8:00 o'clock A.M. Chairman Hall, Commissioners Brenneman and Lauman, and Clerk Robinson were present.

NO MEETINGS SCHEDULED

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on October 27, 2008.
