
MONDAY, JANUARY 11, 2010

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

9:00 a.m. Commissioner Brenneman: Interoperability Montana Finance Committee meeting in Helena
9:30 a.m. Commissioner Dupont: Water Compact NMAR Office
1:00 p.m. Commissioner Brenneman: Interoperability Montana Governance Committee meeting in Helena

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on January 12, 2010.

TUESDAY, JANUARY 12, 2010

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

9:00 a.m. Commissioner Brenneman: Interoperability Montana Project Director's meeting in Helena
1:00 p.m. Commissioner Brenneman: MACo Urban Counties meeting @ MACo Office in Helena

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on January 13, 2010.

WEDNESDAY, JANUARY 13, 2010

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

Commissioner Lauman PT opened public comment on matters within the Commissions' Jurisdiction, no one present to speak, Commissioner Lauman PT closed the public comment period.

MEETING W/ JEFF HARRIS, PLANNING & ZONING OFFICE RE: PROCESS FOR INITIATING A NEW NEIGHBORHOOD PLAN

[10:30:34 AM](#)

Members present:

Commissioner Dale W. Lauman PT
Commissioner James R. Dupont

Members absent:

Chairman Joseph D. Brenneman

Others present:

Deputy County Attorney Peter Steele, Planning & Zoning Director Jeff Harris, Planner Allison Mouch, Clerk Kile

Harris presented a revised proposal to the commission for initiating new neighborhood plans in Flathead County. He explained members of the community interested in developing a neighborhood plan can approach the Planning & Zoning Office with questions about the process and they will provide general guidance and information. Harris stated planning staff will direct members of the community to contact the commissioners to formally request assistance with a neighborhood planning process. The proposed four step process is:

1. Community members approach the Commissioners to request the Planning Offices' assistance informing the community about neighborhood plans, the planning process and what is involved in the creation of a new neighborhood plan.
2. If the Commissioners approve the community members' request, the Planning Office will provide information to the community through a series of educational meetings on neighborhood plans and the planning process. Over the course of these meetings planning staff will gauge the level of support for the creation of a new neighborhood plan based on written comments, surveys, verbal feedback and other forms of information gathering.
3. If there is adequate interest in beginning the neighborhood planning process and the Planning Office has sufficient resources and personnel to devote to the effort, planning staff will approach the Commissioners to request further resources be devoted to assisting the community in developing a neighborhood plan. The Planning Office will develop a work plan specific to the community's request with the support and approval of the Commissioners. The approved work plan will include periodic updates to the Commissioners to ensure transparency in the process, and keep the governing body abreast of any developments as the neighborhood planning effort progresses.
4. The neighborhood planning process moves forward following the six steps outlined in Chapter 10 of the Flathead County Growth Policy.

Following discussion the commission agreed to take the proposed process to the Planning Board.

Commissioner Dupont made a **motion** to approve the process for initiating a new neighborhood planning process. Commissioner Lauman PT **seconded** the motion. **Aye** – Lauman and Dupont. Motion carried by quorum.

WEDNESDAY, JANUARY 13, 2010
(Continued)

9:00 a.m. Commissioner Brenneman: Interoperability Montana Governmental Affairs Committee meeting in Helena (till noon)
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 January 14, 2010.

THURSDAY, JANUARY 14, 2010

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

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

MONTHLY MEETING W/ JEFF HARRIS, PLANNING & ZONING OFFICE

9:00:00 AM

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

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

Harris presented a quarterly activity report from the Planning and Zoning Office which shows revenue down approximately \$30,000. He then reviewed the types of applications they are seeing in the office and the income they generate and noted they are seeing an increase in conservation easements. He then reported the county exceeded DEQ's requirements this year and presented the 2009 Annual Environmental Report to the commission. Discussion was then held relative to the Transportation Plan and the remaining work the consultants are still addressing. A draft copy of the "Peer Review Action Plan" was then reviewed in which Harris stated he is seeking commissioner consideration before the final copy is created. He then presented a list of the FCPZ Office violations.

DOCUMENT FOR SIGNATURE: USDA FOREST SERVICE HOLDER-INITIATED REVOCATION OF EXISTING AUTHORIZATION REQUEST FOR SPECIAL USE PERMIT, LEASE OR TERM SPECIAL-USE PERMIT/ DESERT MOUNTAIN COMMUNICATIONS SITE

9:36:40 AM

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

Assistant Mike Pence, OES Director Mark Peck, Clerk Kile

Commissioner Dupont made a **motion** to authorize the chairman to sign the documents for signature for the communications site permit/lease on Desert Mountain. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

DOCUMENT FOR SIGNATURE: DPHHS CONTRACT #10-07-5-21-038-0

9:38:59 AM

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Lauman made a **motion** to approve DPHHS Contract #10-07-5-21-038-0 and authorized the chairman to sign. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

CONSIDERATION OF FINANCIAL TECH/ SUPT OF SCHOOLS

9:39:47 AM

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Superintendent of Schools Marcia Sheffels, HR Director Raeann Campbell, Clerk Kile

Pence said the request would allow the position to be posted and a decision needs to be made in regards to moving forward with the position or keeping it on hold.

THURSDAY JANUARY 14, 2010
(Continued)

Commissioner Dupont stated he has read the letter presented by Marcia Sheffels and explained the position is in her approved FY09-10 budget.

Commissioner Dupont made a **motion** to approve the HR Transmittal.

Chairman Brenneman asked Marcia Sheffels if someone currently is classified as a Financial Tech in her office.

Marcia Sheffels stated the recent re-classification took both supervisor positions to Financial Tech positions.

General discussion continued in regards to Financial Techs salaries and qualifications needed to fill the position in her office.

Chairman Brenneman asked if the position was approved and they continued to move forward with the idea of creating a Finance Department under the County Commissioners if she would be amenable to moving the functions of the office into the Finance Department.

Marcia Sheffels said I certainly would be amenable to part of the discussions, but I think there has to be a discussion.

Commissioner Lauman stated I have high respect for Marcia Sheffels and her office. He said I realize the position Marcia is in yet for the last two years we have basically held and frozen hiring for all the departments in Flathead County. He stated I know it causes changes and people to cross train and look outside the box, which I think departments have done well in reducing employees and enabled us to operate as a financially sound county. Lauman noted we are not in the position some counties are that didn't recognize this type of situation and they are in trouble. He stated I don't know what the impact of the 7,000 plus protest taxes are going to be, and I would like to hold off hiring at this point of time.

Commissioner Dupont said the position was approved in the FY09-10 budget and it isn't a new position; it's a replacement position that an elected official says she needs. He stated she is responsible for the money in her budget.

Aye - Dupont. **Opposed** - Brenneman and Lauman.

Chairman Brenneman said pending discussion how this can be done in our Finance Department. He stated he isn't necessarily against it all together but feels we need to have a discussion on how to fix the situation before a decision is made.

Motion carried by quorum.

Marcia Sheffels stated she has spoken to Clerk & Recorder Paula Robinson and Treasurer Adele Krantz who are in support of the position. She then asked if they had someone to send over to do the work that needs done now.

Following discussion in regards to who would be able to fill the position Chairman Brenneman clarified that the motion was not to deny; the motion was not to approve the position for now.

BOARD APPOINTMENT: SOMERS RURAL FIRE DISTRICT

[9:50:29 AM](#)

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Lauman made a **motion** to appoint Fran Van Rinsum to the Somers Rural Fire District. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

AUTHORIZE MARK PECK AS SIGNATORY ON SPACE LEASE/ MEADOW PEAK ELECTRONIC SITE

[9:50:54 AM](#)

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

Assistant Mike Pence, OES Director Mark Peck

Commissioner Lauman made a **motion** to authorize Mark Peck to sign the document for signature for the Meadow Peak electronic site. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

THURSDAY JANUARY 14, 2010
(Continued)

BI-MONTHLY MEETING W/ KIM CROWLEY, LIBRARY

[9:52:13 AM](#)

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Library Director Kim Crowley, Clerk Kile

Crowley presented a year to date statistical report which shows a 12 percent system wide usage increase over the year and a 46 percent system wide increase over the past five years. She then reported North Valley Hospital committed \$150,000 to the Columbia Falls Library project over a three year period. Crowley then reported a survey for a new Main Library site is still moving forward. Other items discussed were employee salaries and the work being done to create a core value statement by library staff.

MONTHLY MEETING W/ JOE GARZA, FINANCE DEPT.

[10:02:10 AM](#)

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Clerk & Recorder Paula Robinson, Finance Comptroller Joe Garza, Clerk Kile

Discussion was held relative to a plan the Audit Committee put into place for tracking mileage in county owned vehicles. Garza then gave an update on the new claims program which was recently purchased from CSA. He then said he would be meeting soon with Mike Pence to set up the FY2011 budget preparation schedule. It was stated FY09 was officially closed with the Treasurers' Office and reports are available. Garza then reported the December 31, 2009 deadline was met with A2Z Auditing.

TAX REFUND: GRAHAM

[10:15:05 AM](#)

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Clerk Kile

Chairman Brenneman noted the refund request is for a basement that was incorrectly assessed.

Commissioner Lauman made a **motion** to approve the tax refund request for Graham. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

BUDGET AMENDMENT: ANIMAL SHELTER

[10:15:36 AM](#)

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Dupont made a **motion** to approve Budget Amendment Resolution # 2242. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

**THURSDAY JANUARY 14, 2010
(Continued)**

BUDGET AMENDMENT RESOLUTION # 2242

WHEREAS, the Board of Commissioners has determined, and various department heads have requested and verified, that budget revisions between line items for Fiscal Year 2009-2010, are required, and;

WHEREAS, Section 7-6-4031, M.C.A. and Budget Resolution No. 1689, allow budget transfers to be made between items in the same fund.

NOW, THEREFORE, BE IT RESOLVED, that the attached list of transfers and revisions shall be made in the budget for Flathead County for Fiscal Year 2009-2010; and

BE IT FURTHER RESOLVED, that this Resolution and the attached list of transfers and revisions shall be entered into the minutes of the Board of Commissioners.

Dated this 14th day of January 2010.

BOARD OF COUNTY COMMISSIONERS

Flathead County, Montana

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

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

By/s/James R. Dupont
James R. Dupont, Member

ATTEST:
Paula Robinson, Clerk

By/s/Diana Kile
Diana Kile, Deputy

DATE OF ISSUE:	12/30/2009	<i>BUDGET ENTRY</i>		VOUCHER NO.:		
DATE OF RECORD:				Entered by:		
	RESOLUTION #	RESOLUTION #2242				
Fund	Dept	ACTIVITY	OBJECT	ACCT DESC	DEBIT	CREDIT
1000	0217	365000		<i>Donations</i>		20,000.00
1000	0217	440600	900	<i>Capital Outlay</i>	20,000.00	
Explanation					20,000.00	20,000.00
Establish CIP expenditure line item and increase donations to reflect dollars raised by Flathead Shelter Friends for Animal Shelter remodel.						

PUBLIC HEARING: KRUEGER TEXT AMENDMENT/ FLATHEAD COUNTY ZONING REGULATIONS

10:30:15 AM

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

Deputy County Attorney Jonathan Smith, Planning & Zoning Director Jeff Harris, Planner Alex Hogle, Gary Krueger, Jessica Krueger, Tammi Fisher, Ginny Coyle, Scott Wheeler, Geoff Wheeler, Bill Breen, Chris Stinauer, Clara LaChappell, Sharon DeMeester, Lacy Galpin, Russ Crowder, Vonnie Koenig, Herb Koenig, Steven Kelly, Dick Walker, Dwight Lamm, Dan Elwell, Jason Elwell, Jeff Larsen, Ardis Larsen, Charles Lapp, Bruce Tutvedt, Linda Tutvedt, Emily Tutvedt, Jim Olson, Todd Kitch, Tom Clark, Jerry Nix, Clerk Kile

Hogle entered into record Staff Report FZTA 09-02, a zoning text amendment application submitted by Gary Krueger that will create a definition for the term gravel extraction located in Section 7.08.025 of the Flathead County Zoning Regulations under Definitions "G". It was stated gravel extraction currently exists as a conditional use within the West Valley Zoning District, which is the only implementation of the term as a conditional use at the current time. Hogle stated currently there is not a definition in the regulations for the term gravel extraction. It was noted there is a term for extractive industries. He then spoke about legal contention regarding the topic of gravel pit operations and associated activities in the West Valley Zoning District area. He explained the requested amendment is utilizing terms derived from the definition section of the Montana Open Cut Mining Act which is contained in MCA. Staff is favorable towards creating a definition for gravel extraction, however, two of the provisions of the proposed definition do not appear to comply with the intent of the West Valley Neighborhood Plan for which the term gravel extraction is inherently pertinent, and therefore, are recommending denial of the text amendment based upon findings of fact associated with valuation criteria for zoning amendments. Hogle noted the staff report does offer a recommendation in order to clarify the provisions that are allowed within gravel extraction to have a limited definition that essentially encompasses all the provisions proposed by the applicant with the exception of asphalt and cement processing.

Chairman Brenneman opened the public hearing to anyone wishing to speak in favor or opposition of the text amendment.

Letters/e-mails received in **opposition** of the text amendment were received from: Terry & Joyce Schutt, Bill Breen, Catherine Haug, Allison McCarthy, Kevin Coyle, Marion Gerrish, Margaret Wolfe, Tom Gilfillan, Mark Schwager, Julia & Peter Byrnes, Stephanie Weaver, Dan & Jeanne Olson, Susan Waldron, Jonathan Lippincott, Linda DeKort, Alan & Pam Butler, Jeffrey Funk, Kathleen Garza, Joseph & Anne Biby, Domenic Garefino, Brett Thuma, Mary Critchlow, Neil Overby, Henry Roy, Laura Negin, Hank Galpin, Lacy Galpin, Herb Koenig, Vonnie Koenig.

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(Continued)

Letters received in favor of the text amendment were received from: Knife River, Montana Contractors Association and Gary Krueger.

Gary Krueger the applicant for the text amendment stated this is not a land use issue that staff has portrayed it to be in the staff report, this is a policy issue. Flathead County does not have a definition of gravel extraction in its policies. The lack of a definition for gravel extraction has led to costly legal battles and the Supreme Court stated, "We do not know what is meant by *gravel extraction* as used in the regulations." This created confusion for the Board of Adjustments and led to members of that board to ask for a definition in policy. This policy addition must be made at the commissioner level not with the Board of Adjustments or as some have suggested through the courts. I have petitioned to Flathead County to place in the Flathead County Zoning Regulations this definition:

- 7.08.25 Gravel Extraction – the following activities, if they are conducted for the primary purpose of sale or utilization of materials:
1. Removing the overburden and mining directly from the exposed natural deposits or mining directly from natural deposits of materials;
 2. Mine site preparation, including access;
 3. Processing of materials within the area that is to be mined or contiguous to the area that is to be mined or the access road;
 4. Processing materials within the area that is to be mined through crushing, screening, asphalt, wash and concrete plants, and utilizing other equipment used in processing opencut materials;
 5. Transportation of materials on areas referred to in subsections 1 through 3;
 6. Storing or stockpiling of materials on areas referred to in subsections 1 through 3;
 7. Reclamation of affected land; and
 8. Any other associated surface or subsurface activity conducted on areas referred to in subsections 1 through 3.

This definition is consistent with MCA 82-4-401 and 403 of the Opencut Mining Act. It is compliant with Flathead County Zoning Regulations 4.10 for issuance of a CUP. It is compliant with MCA 76-2-209 which refers to sand and gravel resources and processing within residential zones. It mirrors a Missoula District Court finding that processing occurs at the site of *gravel extraction* because the cost of transporting the material elsewhere for processing would render the mining economically infeasible, and that gravel processing on site includes washing, crushing, screening, and concrete and asphalt batching, and that these activities are part of the recovery of gravel resources. The gravel resource industry has shown its approval of this definition and with extraction and processing at one site this definition may reduce this industries overall impact from hauling to and processing at a second site. Most importantly this amendment makes no changes to the Board of Adjustments gravel permitting process, or their authority to approve condition or deny a request. Krueger stated I sincerely believe this definition is good for Flathead County and asked that the text amendment be adopted as presented.

Tammi Fisher, representing the applicant stated the definition before you is a county wide definition, not a West Valley definition. She said the reason it is a county wide definition for gravel extraction is because the Supreme Court and District Court has asked for that; we need a county wide definition. This doesn't do anything to limit the checks and balances we have set up in our system of government. The Board of Adjustments continues to have conditional authority. With this definition you are not limiting their authority; what this definition does is complies with state statue. In addition if you were to adopt the proposed definition by planning staff that would be violation of Montana law. Montana law requires that no local authority can limit the full recovery process of gravel; you can't limit the full recovery process of gravel from your zoning regulations, however, the Board of Adjustments still has the authority to condition any impacts. Therefore, the Board of Adjustments continues to have authority especially in residential zones to say you can't have asphalt or concrete batching here. What this does for the entire Flathead County is provides a county wide definition that has been requested and mandated by the Montana Supreme Court. It will also provide clarity and complies with state statue; it does all these things without limiting any powers. This is not something that ever limits the Board of Adjustments in providing conditons or a Conditional Use Permit application presented to it; it provides guidance to Flathead County as a whole.

Scott Wheeler, 1110 Bald Rock Road stated the text amendment to the Flathead Valley Zoning Regulations 7.08.025 proposed by Mr. Gary Krueger would directly undercut and undermine the West Valley Neighborhood Plan zoning guidelines by allowing the establishment of extractive industries in an area zoned for residential and agricultural uses predominantly. If this amendment were approved it would unfairly infringe on the property rights of the vast majority of West Valley residents for the benefit of a few landowners. This amendment would also potentially threaten county ground and surface waters with contamination from petroleum based materials, and would degrade the air quality for residents of West Valley and the county. On November 4, 2009 the Planning Board voted 5 to 3 to recommend to the commission the proposed text amendment be denied. In their "Summary of Findings of Fact" the Planning Board concluded the following and other conclusions listed in the Planning Boards report to the commission.

1. Gravel extraction and extractive industries conditional uses are not synonymous.
2. The West Valley Neighborhood Plan provides the foundation of the West Valley Zoning District Regulations.
3. Gravel extraction is an existing Conditional Use within the West Valley Zoning District only.
4. Gravel extraction includes site preparation, physical extraction of gravel and sand, and may include on-site crushing and screening as long as the crushed and screened material is an "end product" to avoid multiple transport trips. "Extractive Industries" may include gravel extraction, but also include asphalt and concrete plants on the site of extraction.
5. The requested zoning amendment does not comply with the applicable Master Plan (West Valley Neighborhood Plan), because industrial asphalt and concrete processing activities are part of the proposed definition and are not permitted uses within the West Valley Neighborhood Plan area as they are not accessory to agriculture and normal farming operations.
6. The proposed amendment may contribute to an increase in traffic congestion and impact area roads because opencut operations permitting industrial asphalt and concrete processing are associated with more additional vehicle trips on area roads than opencut operations permitting only gravel extraction.
7. The requested amendment does not give reasonable consideration of the character of the district because the proposed definition includes industrial asphalt and concrete processing, which conflicts with the guidance of the plan because those uses are not accessory to agriculture and normal farm operations.

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8. The requested amendment would not promote health and general welfare of the public and residents living within the West Valley Zoning District and would introduce additional noise, odor and offsite impacts to area roads and residences which are difficult or impossible to reasonably mitigate through conditions of use.
9. The proposed definition for gravel extraction which includes industrial asphalt and concrete processing would adversely impact the quality of light and air important to the public and area residents, because industrial asphalt and concrete processing results in increased on-site and off-site dust, noise and odor impacts which are difficult or impossible to mitigate through reasonable conditions, and these impacts are not compatible with adjacent or nearby residential uses.
10. Owners of residential properties within the West Valley Zoning District derive little or no benefit from area open-cut operations, and are likely to have considered the agricultural and residential character of the district as an attractor when making investment decisions and may have considered the West Valley Neighborhood Plan and West Valley Zoning District regulations as protecting the value of their investments. The requested amendment may result in an adverse impact to area residential property values, because the proposed definition includes industrial activities which are not compatible with residential uses.

Wheeler noted Judge Stadler ruled in a court case that West Valley is in fact a residential area.

He then stated the Findings of Fact omit several other points that are relevant to the requested text amendment:

1. The amendment would allow industrial activities in the West Valley that potentially would have major adverse impacts on the two aquifers in the West Valley. These aquifers of the West Valley aquifer fan run under the current active gravel pits in West Valley and would be very susceptible to any leakage of petroleum base products from the proposed industrial asphalt and concrete plants if the text amendment is approved.
2. The Krueger gravel pit is less than one mile from the Stillwater River and any leakage or seepage of petroleum materials would potentially threaten the river and the water quality of all nearby wells. This danger must be assessed due to its impact on the entire population of Flathead County.
3. The county has approved several large housing developments within several miles or less of the Krueger gravel pit that would be adversely affected by increased dust, odors and potential seepage of petroleum materials that are highly likely with industrial operations. Therefore, the County Commissioners would potentially be lessening the property values of the large number of people who have or will buy homes in nearby residential developments.
4. The precedent of approving a back-door method of undermining the intent and language of the West Valley Plan and Zoning Regulations would affect the entire county.
5. The West Valley is now home to over 8,000 people and is clearly a residential area. This fact is not adequately assessed by the petitioner or the Planning Board.
6. Finally, in any such dispute the Commissioners should take into account the protection of our common rights to clean safe water and clean air.

Dick Walker read the following letters from Knife River and Montana Contractors' Association:

Knife River is in support of the proposed definition. This definition has been given to me by Mr. Gary Kruger. Knife River supports this definition (7.08.025) which would allow a gravel resource operation to fully process the material at the original source. By doing so the site would have a much better chance of being economically viable and this may also reduce the number of active gravel pits in Flathead County. This has been the accepted definition by the Montana Open Cut Mining laws for several decades. Alrick Hale, Vice President, Knife River

I am writing on behalf of Montana Contractors' Association Board of Directors and our gravel producing member companies to urge you to adopt the following definition of "gravel extraction" which has been approved by the Montana Legislature, and has been proposed by several residents of Flathead County. We strongly believe it is in the best interest of local communities, taxpayers and the economy to encourage the location of processing facilities such as concrete batch plants and asphalt production plants adjacent to the gravel source in most cases. Wear and tear on local roads is minimized, environmental impacts are reduced, traffic problems are minimized and costs to end users of the product are kept affordable. If companies are forced to mine gravel in one location and haul material to another site, typically in a populated area where it has been located for decades local communities will experience more truck traffic than is necessary, more air pollution from diesel emissions, excessive maintenance costs for haul roads, traffic conflicts and the unquestionable escalation in the cost of concrete and asphalt. Thank you for your commitment during the past several years to resolve these gravel related issues in a constructive pro-active manner. Cary Hegreberg, Executive Director

Clara LaChappell, 3580 Farm to Market Road said gravel extraction is taking gravel out of the ground. She then stated the industry part is the applicant is making money on and questioned why no one could understand that. She said she agreed 100 percent with what Mr. Wheeler said previously. She stated her aquifer was at 52 points for nitrates which a human could not even drink and asked what they would be given if an asphalt and concrete plant was put out there. It is not fair to us; not only did the District Court deem them a residential area, the Supreme Court backed it up. Clara then asked why they would not listen to the little person. One year ago she stated two complaints were filed against Schellinger/ Tutvedt Gravel Pit which is 3/10th of a mile from her home and to this day nothing has been done; it is now in the hands of Tammi Fisher, which she feels now there is a conflict of interest with the city being mixed up with the county. She stated the Tutvedt's and Krueger's are causing problems for all the other people that live in the area that don't want this and asked if they would please listen to them for a change.

Dwight Lamm stated he hauls gravel for a living and supports the proposed text amendment set forth by Krueger. He then said when you do a gravel pit you want to look into the future as to how you will reclaim it and part of the reclamation generally turns out into something better for the environment. Lamm said working in Alaska now he is spending taxpayer's dollars unwisely because he is hauling 300,000 yards of gravel from one site to a gravel pit, crushing it and then returning it.

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Dan Elwell, 1126 McCaffrey Road said he lives less than one mile from a gravel pit and has worked every aspect of gravel. He then stated if you actually walked into a gravel crushing operation vs concrete and asphalt at the end of the week you would have a wheel barrow left over of powder and gravel that was cleaned up from the whole batch plant. Elwell also said he is a father of four and stated if he felt there was any risk of his family getting contaminated by the well water by the pit he would be sitting on the other side right now. He then stated the gravel industry is needed right now as they are a limp horse in the industry struggling.

Sharon DeMeester, 415 Chestnut Drive said the gravel issue has almost been beat to death around here. She stated she sat in on many Riverdale meetings at which time Gary Krueger never indicated he intended to do a gravel pit on his land; he was in agreement with the plan up until the very last meeting at which time it came up that he may not be able to make a new gravel pit on his land if he was part of the plan. Another issue to be considered is will this set precedence for a gravel pit at West Glacier. We have a lot of court documentation that supports the fact that West Valley is a residential area. DeMeester questioned what kind of effect a gravel pit would have on property values.

Tom Clark said when the West Valley plan was put together in 1996 the term extractive industries was already being used by the county. He stated if you talked to anyone on the steering committee you would get all kinds of different reasons why the term gravel extraction was used. They are two mutually exclusive terms; if you do what Mr. Krueger is asking they will be the same term. Clark said his personal belief was that it was to prevent asphalt and concrete plants. Currently in West Valley you are allowed to have a gravel pit, excavate it, crush it, screen it and haul it. The only thing excluded is asphalt and concrete. As a parent that lives within ¼ mile of the Tutvedt's pit, I have concerns because of the carcinogenic aspect of it with formaldehyde, benzene, silicates and many other types of carcinogens that are in the air. Just the dust from crushing he said we can live with, but I would notice an asphalt plant ¼ mile from my home and would probably sell and have to take an incredible loss because of it as would a lot of others. Clark said this is not a county wide issue; gravel extraction is only a term used in the West Valley Neighborhood Plan and welcomed Mr. Krueger and Mr. Tutvedt to come back to the table and re-work the neighborhood plan with the residences in West Valley.

Bill Breen, 335 Mountain Meadow Road spoke in opposition to the proposed text amendment. He said staff as well as the Planning Board made a comprehensive report on the differences between extractive industries and gravel extraction with their conclusion being gravel extraction is a conditional use in West Valley. An extractive industry is neither a permitted use nor a conditional use in West Valley, and it not only does not comply with state law but it defies common sense. Gravel and asphalt manufacturing plants are notorious for toxic emissions which endanger the public with nitrous oxide, sulfuric oxide and carbon monoxide as well as a substantial increase in road traffic that would endanger the public in a school zone. Breen questioned the need for more asphalt plants in the valley and recommended that it be done on a site specific basis.

Emily Tutvedt, 2335 West Valley Drive said five years ago she attended her first gravel meeting where everyone argued about what extractive industries actually means. She stated ever since then the ambiguity has caused all kinds of hardship and conflict among neighbors that didn't need to happen; it was completely unnecessary. The ambiguity leaves everyone in the neighborhood feeling that they need a definition. Tutvedt asked that they vote in favor of the text amendment.

Ginny Coyle stated she submitted earlier comments for the record via e-mails. She then said she believes an impartial person should be the one that submits a definition for the text amendment not someone involved in the gravel industry. Coyle further said she is opposed to the gravel pit and that other factors should be considered such as the increased pollution from truck traffic and the change of character it will bring to the valley.

Charles Lapp, 3230 Columbia Falls Stage said he has been following the gravel situation for over three years now. He then stated when discussions were held at the Planning Board level in regards to exactly what term was to be put into the growth policy; how it came out was a whole bunch of different terms: sand and gravel resources, mineral resource deposits, gravel extraction operations, mineral resource extraction, sand and gravel operations, mineral extraction operations, gravel pits and gravel extractive industries are all now referred to in the growth policy. The neighborhood plans are full of all different terms. He then stated he feels it is important to get the definition as proposed by Mr. Krueger to define what as I will call a gravel pit "what a gravel pit is". If we call it gravel extraction that's fine, but lets define it and when all the neighborhood plans come together they can use a term that is defined in the county. As for now everyone is just using whatever term they want to, and then when they start putting it into the zoning part of the policy a fight begins as to what exactly was meant. In West Valley there is no application and if there was it would have to go through a conditional use permit, which then could be conditioned or denied. Lapp further said the definition Mr. Krueger has come up with is an accepted definition used around the state.

Jerry Nix, 43 Sunrise Drive said he was part of the counties Gravel Pit Advisory Committee several years ago when they fought hard to try to sort out some of these issues. He said a fundamental issue in the community is we live in a community and need to figure out a question of balance in regards to issues that affect us all. Obviously the gravel issues are very polarizing on one side with the industry/operators and the other side the general citizens. He stated he has always argued for a question of balance that allows the county to establish rules, regulations and policies that address our living in a community and balances everyone's interests. Nix said that he and Mike Jopek along with a group of citizens went to the state legislature and argued very hard to allow the counties to make the decision as to what was appropriate for gravel pit locations and extractive industry locations which he still feels is the best policy. Gravel pits don't necessarily belong everywhere and asphalt and concrete plants being industrial uses do not fit in everywhere within our community. I don't believe that you should mandate that these are automatically allowable; I believe that the dialogue needs to be continued in these public discussion forums with review by staff, Planning Board and the Commissioners to figure out what is appropriate for these industrial operations, where they are located and how they will affect the adjacent neighbors and neighborhoods. It was further stated that I would advise you to keep what you have with the system working well and keeping a balance within the community.

THURSDAY JANUARY 14, 2010
(Continued)

Bruce Tutvedt, 2335 West Valley Drive said this is basically a simple policy issue for the Commissioners that should be decided here. He then stated to use the definition that is in Montana Code as defined is a very good place to start; it is also defined as "american asphalt". All of these other definitions that have been fumbled around with have no basis in code and don't exist. What is being proposed does exist and brings clarity. The Supreme Court has asked for it as well as the District Court and Board of Adjustments. Tutvedt said he feels Mr. Nix is right in that we do have a process through the Board of Adjustments. In these zoned areas if you allow this and they are residential the Board of Adjustments has the right to fully condition or deny. What they don't have now is a definition of what is allowed, so they don't know if that is allowed or not. It was stated when the West Valley Land Use Committee brought forth Silverstone which was a small gravel pit that had asphalt and concrete in it that it was permitted three months after West Valley was done; to say that it isn't allowed is an exaggeration. He questioned why it was omitted by staff in the report. A copy of the permit granted to Arthur and Dorothy Hanson in 1997 was presented that has gravel extraction, gravel pit and extractive industries use

Mayre Flowers, Citizens for a Better Flathead stated they support staff's recommendation for denial of the zone text amendment and share the concerns of many that the proposed text change would ultimately allow the operation of asphalt and or concrete plants anywhere in the county, and would negate some of the important limitations currently provided for in zoning and adopted neighborhood plans, as to where these plants should more appropriately be located. She said they believe it is important to note as the Planning Board did that this proposed change can potentially impact any neighborhood in the county; not just West Valley which is what the staff report focuses on to review this issue. On the other hand we feel that while the staff report focused on impacts in the West Valley Neighborhood Plan area, concerns it raised by focusing on West Valley can be generalized to the county at large. Flowers asked that the proposed text amendment be denied and that they continue to seek better solutions for where gravel mining and operations of asphalt/concrete plants can occur in the county.

Jeff Larsen commented that several speakers have commented they would like to see this evaluated on a case by case basis. He then stated he feels the proposed definition does exactly just that; it will be evaluated by the Board of Adjustments which is exactly where it should be evaluated. He said if you look at the situation we have with West Valley having a lot of acreage in it and if they are eliminated then it will push it somewhere else in Flathead County, and those citizens will have to deal with it. If there is an appropriate place in an area for a concrete/asphalt plant the Board of Adjustments needs to have the option; this definition will not blanketedly allow that. He then pointed out that checks and balances are in place with the Board of Adjustments and we need to rely on the appointed boards and not just blanketedly eliminate uses that we need for our economy.

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

Commissioner Lauman said four plus years ago gravel pits were a hot issue and he was told by someone serving in the legislature that the issue would soon be solved; low and behold, here we are and it isn't resolved after it has been back and forth from the Supreme Court. He then stated he feels it is time we attempt to resolve the issue. After reading the report he said he feels we need to define the use and said lets try using Mr. Krueger's definition and move forward one step at a time. He noted it isn't perfect, yet it can be changed. If down the road we need a committee to work on glitches then I would support that whole heartedly. Right now we need a definition to work from.

Chairman Brenneman asked if the definition was adopted how it would be applied throughout the county.

Jeff Harris said the argument has been made that this is a county wide definition and that isn't the issue. The application with this definition is to West Valley and only West Valley.

Chairman Brenneman said it seems there is a fairly short jump from gravel extraction to gravel uses; removal in general throughout any area in Flathead County that is zoned, and therefore the next logical understanding is anything having to do with gravel being removed includes the possibility and certainly the permission in our regulations to allow for processing to whatever degree.

Jeff Harris stated there is a definition in the regulations called "extractive industry" that meets MCA and ARM definition of extraction gravel operations. It meets for all intended purposes everything that Mr. Krueger is proposing. They also have a situation where they have a planning document that provides the foundation for zoning that essentially says you shouldn't have industrial uses; that commercial uses should be limited.

Chairman Brenneman asked if he was referring to the West Valley Plan.

Jeff Harris stated that he was; that it provides the foundation for the uses and permitted uses within that specific zoning use district.

Chairman Brenneman explained his concerns are more of what the effects would be on the Canyon, East Valley or Bigfork.

Harris said there would be no effect, unless there is a definitional use to the conditional permitted uses in any other of the districts. He stated there are zoning use districts that have identified extracted industries, including the North Fork Zoning District which is unique much like West Valley and LaBrant Lindsey that have extractive industries defined as a conditional use. When those plans were developed they gave consideration to the definition of extractive industries so there are distinctions within the county. He said if the text amendment is approved and the definition is put into the regulations and someone proposes a permitted or conditional use for any of these districts for gravel extraction; at that time it would be given consideration.

Smith said he would agree that unless gravel extraction is a conditional or permitted use in some other district – it's not - and it apparently is not; I have not done the research myself, but if they have looked and it isn't there then it only applies to West Valley. West Valley used gravel extraction not extractive industries for some reason and I assume it was because it was to be different than extractive industries. In my view legally this amendment would make them the same thing.

Chairman Brenneman said in reviewing events this applicant made an application to the Board of Adjustments for permission to do an asphalt and cement plant and was denied.

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Jeff Harris clarified it was a concrete plant.

Chairman Brenneman said it was an application from an existing pit that is currently taking out sand and gravel and he requested that cement be added.

Jeff Harris stated that was correct. He then said his staff report focused on the inability to review the application because that use wasn't allowed in West Valley in the first place. They didn't come in and ask for a sand and gravel pit. Harris stated what they came in for wasn't an allowable use within that zoning district.

Chairman Brenneman said if I understand correctly the Board of Adjustments analysis and subsequent decision was based at least partially on the fact that there appears to be a difference between gravel extraction and extractive industries.

Jeff Harris said the Board of Adjustments was asked to define gravel extraction and they did define it as: removal, crushing, screening and washing.

Chairman Brenneman said the proposed change then would in fact in potential future subsequent hearings before the Board of Adjustments change the findings that they would refer to.

Jeff Harris stated absolutely; if this definition were in their regulations and they had an application for a concrete/asphalt combination gravel pit batch plant they would process it.

Chairman Brenneman asked if it would also affect anyone that has 10 acres and they want to take out gravel that exceeds the 10,000 yard limit of just sand and gravel; with no interest of anything else. Under review it would have to be considered as permitting them to use asphalt processing facilities as well.

Jeff Harris said I don't believe so, that it would be up to the individual to make an application. If they only wanted to do sand and gravel that portion of an extracted industries conditional use they can make an application just for that part. They would not be required to make an application for both parts.

Chairman Brenneman said it is pretty clear to him that whether they like the West Valley Plan it is in fact in effect and it is under that law that they try very hard to be people of the law, so it is underneath that framework with which the decision needs to be looked at. He noted we have 18 findings as approved by the Planning Board with 11 of which are clearly against this, and we also have in state law MCA 76-2-209 (2) it refers to and makes very clear to me that there are two different types of operations. One that mines sand and gravel or an operation that mixes concrete or batches asphalt, so certainly I can't understand how anyone could read that other than anyone who also looks at extractive industries and gravel extraction and can come up with the same definition is contrary to common sense. In light of that while I do agree that we probably do need to have a definition, I would disagree that the proposed definition is the one that we need.

Tammi Fisher said when you refer to the West Valley Plan as being the only document that uses the term gravel extraction, that isn't true. LaBrant Lindsey, Bigfork, Riverdale, Canyon and the North Fork use it so the term is used all over the county; if the definition is adopted provided by Planning Staff that would mean in Flathead County no concrete or asphalt plants are allowed. The idea that extractive industries covers gravel in particular that's not true. When an application goes before the Board of Adjustments it can be conditioned however they deem appropriate. If you are in a residential zone you can condition and exclude the opportunity for any kind of asphalt or batch plant; that is consistent with state statute and doesn't change. In West Valley we have a judicial determination that it is a residential zone, so in West Valley you can't have an asphalt and concrete batch plant. This definition doesn't change that period. Nor does it change the current operations that are going on there. All it does is provide clarity which is what the Supreme Court asked them to do. In addition you cannot limit the full recovery and use of any gravel; this will put a basis in the zoning regulations. A definition from which every application is going to say this definition is in the zoning regulations and the Board of Adjustments can condition this how you deem appropriate. It doesn't take away authority and doesn't make it wide open. Gravel extraction has been defined in case law and this particular definition provided by the Planning Staff is found nowhere in case law or state statute.

Gary Krueger added the court case in Missoula versus American Asphalt defined gravel extraction before the West Valley Plan was adopted and there it was determined: The District Court found that processing occurs at the site of gravel extraction and the District Court also found that gravel processing on site includes washing, crushing, screening and concrete and asphalt batching, and that these activities are a part of the recovery gravel resources act. At the time the West Valley Plan was adopted this was the case upheld by the Supreme Court which would give the definition for gravel extraction at the time the West Valley Plan and West Valley Zoning was adopted.

Commissioner Dupont asked Jeff Harris if the definition was changed to what is being proposed by Mr. Krueger if he would still have to go through the Board of Adjustments to put in a batch plant.

Jeff Harris stated he would.

Jonathan Smith said gravel extraction is defined by that case and has nothing to do with the way it is being defined in the counties regulations. Gravel extraction as defined by the judge was based upon testimony in that court case and it wasn't a definition of zoning regulations as to what is gravel extraction. Smith said you can define it differently than what the court in Missoula did 10 years ago.

Commissioner Dupont asked if the definition proposed by Mr. Krueger is accepted if he would have to go through the Board of Adjustments to put in a batch plant.

Jeff Harris stated he would; only in West Valley.

Commissioner Dupont asked if the Spoklie Pit in West Glacier would be allowed to put in a batch plant if he came in and wanted to.

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(Continued)

Jeff Harris said he would be reviewed under CALURS which is a land use permitting process, and he would not go through the Board of Adjustments. They would need to go back and evaluate his proposal against an entirely different set of regulations.

Chairman Brenneman said Ms. Fisher has demonstrated far better than he was able to in fact what the attorneys will try to do with the definition if anybody wants to do anything in Flathead County; while technically it applies to just West Valley the point was demonstrated very well here that is what will be used to try to justify exactly what you have referred to. This says look Flathead County you've said that in your mind there is no difference between gravel extraction and everything you want to do in processing of the gravel or minerals. If that is the position the county wants to take I have two fears. One being if someone who wants to do just a small pit and take out just gravel and sand anybody who is opposed to that or has concerns has to have in the back of their mind under Flathead Counties mindset they are also very close to being able to put in a gravel processing facility, and we know that sometimes land is owned by people who do things exactly right and we can trust them, and sometimes it is purchased by people who don't have that same set of values.

Commissioner Dupont said I personally have an issue in telling any land owner what he can and can't do with his land; I have a big problem with that. I have a problem with gravel pits being able to extract gravel and not be able to do anything with it and have to truck it across the county or some other location. Now we have two locations that are in desperate need of something, not just one. I have heard people say we need to decide where we are going to have gravel pits, yet the gravel decides where we are going to have gravel pits. I see a lot of conflict here. People in this room are screaming for affordable housing and all this is going to do is jack housing costs up if we transport gravel from one end of the county to the other. Dupont stated he is a little clearer now that we are defining gravel extraction as submitted by Mr. Krueger.

Commissioner Dupont made a **motion** to approve Resolution 955HD. Commissioner Lauman **seconded** the motion.

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

RESOLUTION NO. 955 HD

WHEREAS, the Board of Commissioners of Flathead County, Montana, held a public hearing on the 14th day of January, 2010, to consider a change to the text of the Flathead County Zoning Regulations proposed by Gary Krueger by adding a new Section 7.08.025 to the definitions chapter of the Regulations to define "Gravel Extraction" in the Regulations to include mining of gravel and, *inter alia*, the processing of gravel through crushing, screening, asphalt, wash and concrete plants, and transportation and stockpiling of materials on gravel mining sites;

WHEREAS, notice of that hearing was published pursuant to Section 76-2-205, M.C.A., on December 31, 2009 and January 7, 2010;

WHEREAS, the Board of Commissioners heard public comment on the proposed amendment to the Flathead County Zoning Regulations at that hearing; and

WHEREAS, the Board of Commissioners has reviewed the recommendation of the Flathead County Planning Board regarding the proposed amendment.

NOW THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Flathead County, Montana, in accordance with Section 76-2-205(4), M.C.A., hereby adopts the findings of fact as to the statutory criteria as adopted by the Flathead County Planning Board, and adopts this resolution of intention to amend the Flathead County Zoning Regulations to add a Section 7.08.025 to the definitions chapter of the Regulations to define "Gravel Extraction" in the Regulations to include mining of gravel and, *inter alia*, the processing of gravel through crushing, screening, asphalt, wash and concrete plants, and transportation and stockpiling of materials on gravel mining sites.

BE IT FURTHER RESOLVED, that notice of the passage of this resolution, stating the general character of the proposed change to the Flathead County Zoning Regulations, that said proposed change and those regulations are on file in the Clerk and Recorder's Office, and that for thirty (30) days after the first publication thereof, the Board will receive written protests to the adoption of the proposed change, shall be published once a week for two weeks.

BE IT FURTHER RESOLVED, that written protests to the adoption of the proposed change will be received from persons owning real property within any zoning district heretofore created by Flathead County, for a period of thirty (30) days after the first publication of that notice, provided that, in order that only valid signatures are counted, the owners of real property 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 percent of the owners of real property of the property zoned by Flathead County under Section 76-2-201, *et seq.*, M.C.A., protest the adoption of the proposed change, the change will not be adopted.

DATED this 14th day of January, 2010.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By/s/Opposed
Joseph D. Brenneman, Chairman

ATTEST:
Paula Robinson, Clerk

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

By/s/Diana Kile
Deputy

By/s/James R. Dupont
James R. Dupont, Member

Commissioner Dupont made a **motion** to authorize the publication of the Notice of Passage of Resolution of Intent and authorized the chairman to sign. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

THURSDAY JANUARY 14, 2010
(Continued)

NOTICE OF PASSAGE OF RESOLUTION OF INTENTION

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 intent (Resolution No. 955 HD) on January 14, 2010, to adopt a proposed amendment to the text of the Flathead County Zoning Regulations.

The proposed amendment would add a section to the definitions chapter of the Regulations to define "Gravel Extraction" in the Regulations. The proposed Section 7.08.025 would generally define Gravel Extraction to include mining of gravel and, *inter alia*, the processing of gravel through crushing, screening, asphalt, wash and concrete plants, and transportation and stockpiling of materials on gravel mining sites.

The Flathead County Zoning Regulations 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 to the text of the Flathead County Zoning Regulations 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 adoption of the proposed amendment to the Flathead County Zoning Regulations, from persons owning real property within any zoning district heretofore created by Flathead County whose names appear on the last completed assessment role of Flathead County and who either are registered voters in Flathead County or execute and acknowledge their protests before a notary public.

Dated this 14th day of January, 2010.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

ATTEST:
Paula Robinson, Clerk

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

By/s/Diana Kile
Diana Kile, Deputy

Publish on January 19 and January 26, 2010.

DOCUMENT FOR SIGNATURE: EMPLOYMENT CONTRACT ADDENDUM/ M. PECK

11:54:00 AM

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

Deputy County Attorney Jonathan Smith, Clerk Kile

Chairman Brenneman explained the document will extend Mark Peck's employment for up to 45 days.

Commissioner Lauman made a **motion** to approve the document for signature and authorized the chairman to sign. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

AUTHORIZATION TO PUBLISH CALL FOR BIDS: GAS & DIESEL, PROPANE, EMULSIFIED ASPHALT, LIQUID ASPHALT/ ROAD DEPT.

11:55:21 AM

Members present:

Chairman Joseph D. Brenneman
Commissioner Dale W. Lauman
Commissioner James R. Dupont

Others present:

Clerk Kile

Commissioner Dupont made a **motion** to authorize the publication of the call for bids and authorized the chairman to sign. Commissioner Lauman **seconded** the motion. **Aye** - Lauman, Brenneman and Dupont. Motion carried unanimously.

CALL FOR BIDS

Notice is hereby given that the Board of County Commissioners of Flathead County, Montana, will receive bids on the following:

GASOLINE AND DIESEL

Bidder will furnish in writing an affidavit that the bidder will be able to furnish all the materials (gasoline and diesel) that Flathead County will use in the next year, February 1, 2010 through January 31, 2011.

DIESEL	Estimated Usage	325,000 gallons
REGULAR NO LEAD	Estimated Usage	100,000 gallons

Bidder must be able to deliver materials to the following delivery points on a keep full basis.

Bid prices for all materials must be listed for each delivery point listed below, on the bid form.

Delivery/Shipping will be F.O.B. to the following destinations.

**THURSDAY JANUARY 14, 2010
(Continued)**

Delivery Points:

Martin City	Regular No Lead Gas and Red Dyed Low Sulfur Diesel
Columbia Falls	Regular No Lead Gas and Red Dyed Low Sulfur Diesel
Busch Pit	Regular No Lead Gas and Red Dyed Low Sulfur Diesel
Bigfork - Sullivan	Red Dyed Low Sulfur Diesel
Sheepherder Pit	Red Dyed Low Sulfur Diesel
County Shop, Road	Regular No Lead Gas and Red Dyed Ultra Low Sulfur Diesel
Mixing Plant	Red Dyed Low Sulfur Diesel Fuel
Solid Waste, Dump	Regular No Lead Gasoline and Red Dyed Ultra Low Sulfur Diesel

Diesel fuel to be blended a minimum of 30% in winter months, approximately from November 1 through March 31, at the discretion of the Flathead County Road Department, depending upon winter weather.

Bidder to furnish net state prices. At the time a price fluctuation occurs the term contract holding vendor shall be required to supply a written, dated notice, detailing the effect the price fluctuation will have on his "Base Price".

For fuel provided under the term contract, prices and meter readings or "stick" measurements must be on all invoices. Invoices must be signed at the delivery point or signed at the County Shop Office after each delivery.

Bidder to state brand of gasoline and/or diesel fuel being on the bid form.

Bidder to include the following taxes with their price breakdown per gallon per delivery point on the attached form:

Gasoline	include state tax	<u>no federal tax</u>
Diesel	include <u>no state tax</u>	<u>no federal tax</u>

Award of bid will be made only to a single vendor who can supply both gasoline and diesel fuel. If delivery points are not kept full Flathead County reserves the right to order fuel from another supplier to maintain operations.

All fuels provided and delivered under the terms of this contract shall meet or exceed Federal Fuel Commodity Specifications as referenced below:

Fuel Quality Requirements:

Gasoline - All gasoline provided shall meet or exceed Federal Specifications, VV-G-1690B.

Diesel Fuel - All diesel fuels provided shall meet or exceed Federal Specifications, VV-F-800B with reference to grades DF-#1 and DF-#2.

NOTE - If quality of fuels is questioned, the County reserves the right to have fuels tested and if found unsatisfactory to refuse delivery.

Each bidder must deposit with his bid, a bid security in the amount of two-thousand dollars (\$2,000.00), to secure the bidder's express covenant that if the bidder is awarded the contract, the bidder will, within ten (10) days, enter into a formal contract for the supply, purchase, and sale of said gasoline and diesel fuels. Bid security shall be payable to Flathead County and shall be in the form of lawful money of the United States; a cashier's check, certified check, bank money order, or bank draft issued by a Montana bank; or a bid bond executed by a surety corporation authorized to do business in Montana.

The form of contract and the bid form to be signed are on file and may be obtained at the Clerk and Recorder's Office in the Courthouse at Kalispell, Montana.

All sealed bids, **plainly marked as such**, must be in the hands of the Clerk and Recorder on or before 5:00 o'clock p.m. on February 5, 2010. Bids will be opened and read at 10:15 o'clock a.m. on February 9, 2010, in the Commissioners' Office in the West Annex of the Courthouse.

The Board of County Commissioners reserves the right to reject any and all bids and to accept the bid deemed to be in the best interests of Flathead County.

The award of a bid will be made solely by the issuance of a letter of award to the successful bidder by the Office of the Flathead County Clerk and Recorder.

Dated this 14th day of January, 2010.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

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

ATTEST:
Paula Robinson, Clerk

By/s/ Diana Kile
Diana Kile, Deputy

Publish on January 19 and January 26, 2010.

THURSDAY JANUARY 14, 2010
(Continued)

CALL FOR BIDS

Notice is hereby given that the Board of County Commissioners of Flathead County, Montana, will receive bids on the following:

Propane Fuel

Bidder will furnish in writing an affidavit that the bidder will be able to furnish all the materials (propane) that Flathead County will use in the next year February 1, 2010 through January 31, 2011.

PROPANE	Estimated Usage	200,000 gallons
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Vendor to provide the 11,000 gallon minimum porta-pac/tank, the pump and motors, all piping and pressure regulating valves and gauges and related equipment to the liquid propane manifold which will meet the burner specifications on both volume and pressure down to a temperature of 32 degrees Fahrenheit, see attached diagram with specifications. If rental agreements are applicable, pertinent information maybe listed at the appropriate space provided. This should include the delivery and removal of the tank and equipment upon job completion and or the termination of said contract, including any man-hours required for set up or removal.

Bidder will provide the equipment necessary for the hookup between the porta-pac and the liquid propane manifold. Flathead County agrees to purchase any items needed for the hookup that are specific to our particular plant.

Once the porta-pac has been moved to the site Flathead County will bear the costs of any further relocating.

Bidder must be able to deliver materials to the Old Steel Bridge Pit, 1333 Holt Stage Road, Kalispell, MT. 59901, or to another predetermined location within Flathead County, on a keep full basis. Alternate delivery locations will be given to the vendor one-week prior to the effective date of change.

Delivery/Shipping will be F.O.B. to the specified plant location.

Bidder to furnish propane at net state prices (laid in price, rack price). At the time a net state prices (laid in price, rack price) fluctuation occurs the term contract holding vendor shall be required to supply a written, dated notice, detailing the effect the price fluctuation will have on net state prices (laid in price, rack price) and the total cost per gallon delivered.

For fuel provided under the term contract, net state prices (laid in price, rack price), delivery prices, totals per gallon, invoice total and meter reading measurements before and after delivery must be on all invoices. Invoices must be signed at the delivery point or signed at the County Shop Office after each delivery.

Bidder to state brand of propane fuel on the bid form.

Bidder is to bid only the delivery cost per gallon over the net state prices (laid in price, rack price) on the attached bid form.

Award of bid will be made only to a single vendor who can supply propane fuel, porta-pac unit, and related items needed to hook up to the liquid propane manifold. If delivery points are not kept full Flathead County reserves the right to order fuel from another supplier to maintain operations.

All fuels provided and delivered shall meet or exceed Federal Fuel Commodity Specifications.

NOTE - If quality of fuel is questioned, the County reserves the right to have fuel tested and if found unsatisfactory to refuse delivery.

Each bidder must deposit with his bid, a bid security in the amount of two-thousand dollars (\$2,000.00), to secure the bidder's express covenant that if the bidder is awarded the contract, the bidder will, within ten (10) days, enter into a formal contract for the supply, purchase, and sale of said propane fuels. Bid security shall be payable to Flathead County and shall be in the form of lawful money of the United States; a cashier's check, certified check, bank money order, or bank draft issued by a Montana bank; or a bid bond executed by a surety corporation authorized to do business in Montana.

The form of contract and the bid form to be signed are on file and may be obtained at the Clerk and Recorder's Office in the Courthouse at Kalispell, Montana.

All sealed bids, **plainly marked as such**, must be in the hands of the Clerk and Recorder on or before 5:00 o'clock p.m. on February 5, 2010. Bids will be opened and read at 10:15 o'clock a.m. on February 9, 2010, in the Commissioners' Office in the West Annex of the Courthouse.

The Board of County Commissioners reserves the right to reject any and all bids and to accept the bid deemed to be in the best interests of Flathead County.

The award of a bid will be made solely by the issuance of a letter of award to the successful bidder by the Office of the Flathead County Clerk and Recorder.

Dated this 14th day of January, 2010.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

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

ATTEST:
Paula Robinson, Clerk

By/s/Diana Kile
Diana Kile, Deputy

Publish on January 19 and January 26, 2010.

THURSDAY JANUARY 14, 2010
(Continued)

CALL FOR BIDS

Notice is hereby given that the Board of County Commissioners of Flathead County, Montana, will receive bids on the following grades of **LIQUID ASPHALT**:

<u>Estimated Usage</u>		
Asphalt	PG64-22 & PG58-22	2,000 tons
Asphalt	SS 1 Tack Oil	30 tons

The award of bid will be made to a single vendor who will supply both types of liquid asphalt. The award of bid will be made on the basis of an overall low bid determined by use of the County's estimated usage for each type of liquid asphalt and the bidders' price for each type of liquid asphalt. The estimated usage figures are to be used only for the purpose of determining an overall low bid; actual usage of each type of asphalt for 2010 asphalt season may vary from those estimates.

All pricing is to be by the ton F.O.B. to the Flathead County Asphalt Plant in Kalispell and/or to the Flathead County Shop in Kalispell.

All orders will be placed with the successful bidder by 4:00 p.m. on the day prior to delivery, at which time the contractor will be told the type of oil to deliver. All orders to be delivered at 7:00 a.m. the next morning. All trucks shall have pumps to unload in overhead tanks. Asphalt will be 290 degrees Fahrenheit at time of delivery. Emulsified asphalt will be 140 degrees Fahrenheit when delivered. Tanks to be equipped with factory mounted visual thermometers. Supplier shall have oil sample test results on hand and available upon request to Flathead County.

Bid to be from February 1, 2010 through January 31, 2011, or until the County Commissioners call for new bids, with the right to go to the next supplier if asphalt is not available or if the asphalt does not meet MDOT specifications from the successful bidder.

Each bidder must deposit with his bid, a bid security in the amount of three-thousand dollars (\$3,000.00), to secure the bidder's express covenant that if the bidder is awarded the contract the bidder will, within ten (10) days, enter into a formal contract; or otherwise the bidder will pay to Flathead County the difference between the amount of his bid and the amount for which Flathead County contracts with another party to complete the contract; **bid security shall be payable to Flathead County and shall be in the form of lawful money of the United States; a cashier's check, certified check, bank money order or bank draft issued by a Montana bank; or a bid bond executed by a surety corporation authorized to do business in Montana.**

All sealed bids must be plainly marked "**LIQUID ASPHALT BID**" and must be in the hands of the County Clerk and Recorder, 800 South Main, Kalispell, Montana, 59901, on or before 5:00 o'clock p.m. on February 5, 2010. Bids will be opened and read at 10:15 o'clock a.m. on February 9, 2010 in the Commissioners' Office in the West Annex of the Courthouse.

The form of contract to be signed is on file and may be obtained at the Clerk and Recorder's Office in the Courthouse at Kalispell, Montana.

The Board of County Commissioners reserves the right to reject any and all bids and to accept the bid deemed to be in the best interest of Flathead County.

The award of a bid will be made solely by the issuance of a letter of award to the successful bidder by the Office of the Flathead County Clerk and Recorder.

Dated this 14th day of January, 2010.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

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

ATTEST:
Paula Robinson, Clerk

By/s/ Diana Kile
Diana Kile, Deputy

Publish on January 19 and January 26, 2010.

THURSDAY JANUARY 14, 2010
(Continued)

CALL FOR BIDS

Notice is hereby given that the Board of County Commissioners of Flathead County, Montana, will receive bids on the following grades of **LIQUID ASPHALT**:

Estimated Usage

Emulsified Asphalt	CRS 2	500 tons
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Bidding is to be by the ton F.O.B. to Flathead County and the specific site, which will be disclosed at the time the order is placed. Bid price is to also include appropriate placement of materials on County site by successful bidder. Distributor to be mounted with a Bear Cat computerized spray bar with a minimum 4,000 tank or equivalent. Supplier shall have oil sample test results on hand and available upon request of Flathead County. Bidder will be responsible for proper product, temperature, consistency, and application.

All orders will be placed with the successful bidder by 4:00 p.m. on the day prior to delivery. All orders to be delivered at 7:00 a.m. the next morning. Tanks to be equipped with factory mounted visual thermometers.

Bidder will be responsible to provide County with two (2) oil samples to be taken at the point of delivery, before application begins. Oil samples will be labeled and ready to be tested. Labels and attached documentation are to include date, type of material, temperature, and any other information needed for adequate testing.

Bid to be from February 1, 2010 through January 31, 2011, or until the County Commissioners call for new bids, with the right to go to the next supplier if asphalt is not available, or if the asphalt does not meet MDOT specifications from the successful bidder. Bid price is to include on site delivery within Flathead County and for materials to be placed on the road by the vendor.

Each bidder must deposit with his bid, a bid security in the amount of three-thousand dollars (\$3,000.00), to secure the bidder's express covenant that if the bidder is awarded the contract the bidder will, within ten (10) days, enter into a formal contract; or otherwise the bidder will pay to Flathead County the difference between the amount of his bid and the amount for which Flathead County contracts with another party to complete the contract; **bid security shall be payable to Flathead County and shall be in the form of lawful money of the United States; a cashier's check, certified check, bank money order or bank draft issued by a Montana bank; or a bid bond executed by a surety corporation authorized to do business in Montana.**

All **sealed bids** must be plainly marked "**LIQUID ASPHALT BID**" and must be in the hands of the County Clerk and Recorder, 800 South Main, Kalispell, Montana, 59901, on or before 5:00 o'clock p.m. on February 5, 2010.

Bids will be opened and read at 10:15 o'clock a.m. on February 9, 2010, in the Commissioners' Office in the West Annex of the Courthouse.

The form of contract to be signed is on file and may be obtained at the Clerk and Recorder's Office in the Courthouse at Kalispell, Montana.

The Board of County Commissioners reserves the right to reject any and all bids and to accept the bid deemed to be in the best interest of Flathead County.

The award of a bid will be made solely by the issuance of a letter of award to the successful bidder by the Office of the Flathead County Clerk and Recorder.

Dated this 14th day of January, 2010.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

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

ATTEST:
Paula Robinson, Clerk

By/s/ Diana Kile
Diana Kile, Deputy

Publish on January 19 and January 26, 2010.

12:00 p.m. Commissioner Brenneman: Bigfork Steering Committee Public Forum @ Bethany Lutheran
2:00 p.m. Commissioner Lauman: AOA Board meeting @ Kalispell Sr. Center
2:30 p.m. Commissioner Brenneman: MACo Executive, Energy, Public Lands & Agriculture Committees' conference call

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on January 15, 2010.

FRIDAY, JANUARY 15, 2010

The Board of County Commissioners met in continued session at 8:00 o'clock A.M. Chairman Brenneman, Commissioners Lauman and Dupont, 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 January 18, 2010.
