FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
DECEMBER 12, 2007

CALL TO ORDER

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Michael Mower, Randy Toavs, Gordon Cross, Gene Dziza, Kim Fleming, Frank DeKort and Don Hines. Barry Conger arrived late. Kathy Robertson had an excused absence.

George Smith, Alex Hogle, Andrew Hagemeier and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were approximately 8 people in the audience.

PUBLIC REVIEW

Gene Dziza reviewed the public hearing process.

APPROVAL OF MINUTES

Cross made a motion seconded by DeKort to approve the October 24, 2007 and the November 7, 2007 meeting minutes.

Cross stated the date at the top of the minutes for the November meeting had November 11, 2007. That needs to be changed to November 7, 2007. He also said on page 5, under board discussion, it does not state there had been a vote. He said there had been a vote and he thought it passed so please check that and add that section.

The motion carried by quorum.

PUBLIC COMMENT *(not related to agenda items)*

None.

FZC-07-07: JONES

A Zone Change request in the Evergreen Zoning District by Daniel and Virginia Jones, from R-1 (Suburban Residential), to B-1 (Neighborhood/Professional Business). The property is located at 60 West Reserve and contains approximately 4 acres.

STAFF REPORT

George Smith reviewed Staff Report FZC-07-07 for the Board.

APPLICANT PRESENTATION

Daniel Jones stated he was there if anybody had any questions, otherwise he didn't feel the need to take up everybody's time.

Mower asked what the process was the applicant had used to get to the zone he proposed.

Jones stated he had talked with staff and that's what their recommendation was.

PUBLIC COMMENT

None.

STAFF REBUTTAL

None

APPLICANT REBUTTAL

None.

MOTION
Findings of Fact

Cross made a motion seconded by DeKort to adopt Staff Report FZC-07-07 as findings-of-fact.

BOARD DISCUSSION

Hines stated this would be a good time to condition the traffic coming in and out of the area.

Toavs said the board couldn't do that for a zone change.

Hines said it should at least be in the record that it was considered and staff should start exploring the ability for the board to implement that because this would be a perfect location to have a right access in and out only.

ROLL CALL
Findings of Fact

On a roll call vote the motion passed unanimously.

MOTION
Approval

Fleming made a motion seconded by Cross to adopt Staff Report FZC-07-07 and recommended approval to the Board of County Commissioners.

ROLL CALL
Approval

On a roll call vote the motion passed unanimously.

FPP-07-31: EAGLES CREST VISTAS AMD LOT 3

A request by Lane Clack, for Preliminary Plat approval of the Amended Plat of Lot 3, Eagle's Crest Vista, a two lot single-family residential subdivision on 9.43 acres. Lots in the subdivision are proposed to have individual water and public sewer systems. The property is located at 150 Eagle's Crest.

STAFF REPORT Alex Hogle reviewed Staff Reports FPP-07-31 for the Board.

BOARD QUESTIONS Cross said he noticed the existing well that would be shared yields 16 gallons per minute and he thought the minimum for a shared well was 20 gallons per minute. He asked if DEQ would have to approve that to be shared; when does that happen in the process so we don't end up with 2 additional wells.

Hogle stated he believed review would be required by DEQ even though there is an existing well on site. There is a current existing DEQ approval and that addresses the existing shared well. Because this lot is under review again, it will be submitted for DEQ approval again and it would have to meet approval by DEQ prior to final plat. He stated he didn't know if the minimum requirement was 20 gallons per minute. Typically for a single family residence a guideline he was aware of was 10 gallons per minute so 16 gallons per minute would fall slightly shy of that requirement with 2 homes. This would be subject to DEQ approval.

Cross asked about the EA and stated that every question seemed to have something to do with the sewer and soil type etc…to be served by public sewer. Now that it's not going to be shared by public sewer, did staff get answers to those questions considering it's now going to have its own septic system. He couldn't find those answers anywhere.

Hogle stated it became clear before the sufficiency review period ended that the ability to connect to public sewer was questionable. The subdivision regulations require a will serve letter if somebody is proposing to connect to a public system. Such a letter had not been received when the report was written even though he had requested it in the completeness period. He received a will not serve letter. He also requested for sufficiency a new EA that would be appropriate. He did review that and felt it was sufficient. He stated there was a chance the board received the wrong EA in their packets. Something the board may have noticed, something unusual, is that there is a current existing DEQ approval for the parcel and that was made with the appropriate requirements for 76-3-622. The application is subject to DEQ approval again for individual sewer systems on both parcels. They will have to submit all required elements to DEQ for that purpose.

DeKort asked how many larger lots there are currently in Eagle's Crest subdivision that could be subject to the same re-subdivision.

Hogle said he didn't have the numbers; but looking at Eagle's Crest Vistas, which is lots 1-5, it appeared the majority are approximately 8 or more acres in size. He had not taken a count, certainly not for the phases that are outside of this proposal. He would imagine there are quite a few.

Hines stated the board had spoken with Trevor Shaeffer when he brought in the Eagle's Crest subdivision the last time and Schaeffer indicated there was only 1 lot in the original Eagle's Crest subdivision that could potentially be subdivided. Hines said he wasn't sure if this was the one, but he wanted the board to keep that in mind if any other subdivision should occur.

Fleming asked if the original subdivision had the water storage tank built yet. She commented that when the original subdivision occurred staff went and checked to see if the storage tank had been built and it had not. She wanted to know if it had been built yet because this proposal is outside of the fire district as she understood it. They were supposed to have built it with the first phase and she didn't know what they were waiting for.

APPLICANT PRESENTATION

Erica Wirtala, of Sands Surveying, represented the applicant. She stated this was originally created as Eagle's Crest Vista Subdivision, a 5 lot subdivision. It is one of the first subdivisions you come to right off of the highway. This subdivision was absorbed by the overall Eagle's Crest development. The 2 minor subdivisions known as Eagle's Crest Vistas I and Eagle's Crest Vistas II are included in the very extensive homeowners association and are subject to the very restrictive CC&R's. Within those covenants, it does reinforce very important issues regarding defensible space standards and building materials used. It also states if your lots are larger than 9 acres you are allowed to divide that lot. That is just through the homeowners association, that doesn't give you free rein through this process here. Everybody takes their chances in the same way as any other type of subdivision. If they meet the criteria and the state standards for non-degradation and storm-water drainage, and the homeowner or developers feel they have a good case and are willing to take the risk, they can put forth

the application. That's what Mr. Clack has done.
When he purchased the property he was under the impression he had been annexed into the Lakeside Water & Sewer District. She obtained a copy of the will serve letter for the 800 units Mr. Schaeffer had obtained for the entire parcel. It wasn't until Hogle and she had made some calls and talked to the director of the Lakeside Water & Sewer District they found out not only was this 5 lot subdivision not annexed into the district, but none of Mr. Schaeffer's project had been annexed. Mr. Heim was anxious they do connect to public sewer as he does not want to see additional septic systems in the subdivision. However, they could not try to annex just Mr. Clack's property as they would be an island. They have to wait for Mr. Schaeffer to come through and annex all of the surrounding areas and the road. The road would be Mr. Clack's connecting point. Mr. Clack has every intention of working towards annexation and hooking up to public water and sewer at some point. He will as soon as it is available. They are actively constructing the lift station and installing lines in the ground as they need to have the annexation as part of their process as well. This proposal has gone through DEQ and did get an approved site when it went through as a minor subdivision for a shared well and septic system on the property. It will have to go back through DEQ as they will look at and review the connections and main line for sewer, storm-water drainage and the possibility of a new well. The shared well serves lot 3 and 4 at the moment and that is tapped-out. They are not going to ask for 1 more home-site there, they will drill a new well for that portion of the property. All of that will have to go through the whole process again and she doesn't know the gallons per minute minimum that DEQ requires for a shared well. It may have changed over the last few years since the first DEQ approval was done. This does keep with the growth policy and the neighborhood plan and there is no zoning in the area. They feel with the 4 ½ acre lot sizes they are keeping a large lot rural residential setting. Wildlife was a concern for the Lakeside Community Council, but when she looked at the Fish, Wildlife & Parks map this was not noted as any critical wildlife winter range, it was just an overall distribution for a variety of animals commonly found in Western Montana. When lot 5 was subdivided, a wildlife biologist went out to the site and actually did some surveys. They noted there were bald eagles in the area and there could potentially be habitat for lynx. However, they did not find any on the property and after checking the letter and the map it does not seem this is

critical wildlife habitat. It may function like that from time to time, but it is not mapped that way.

BOARD QUESTIONS

Cross asked if they had a copy of the driveway profile.

Wirtala said it came out at about 6%.

He also wanted to know about the timing of the annexation. Is it likely they'll be building and septic systems being put in prior to the sewer issue being straightened out?

Wirtala said he wouldn't put septic systems in and then convert over. Her feeling was it would happen sooner rather than later. When she was on site, they were putting in a large lift station at the main entrance. She said they'd have to get that annexed real soon. It was her understanding the Mr. Schaeffer was working on that pretty diligently.

AGENCY COMMENTS

None.

PUBLIC COMMENT

Jim Clark, 128 Hill Dale, said this proposal sounds wonderful but is scary. We have 800 houses approved and going up at Eagle's Crest; there's nothing we can do about that. They may go up in 40 years; they may go up in 40 months all depending on how good the economy turns. Nobody has looked at traffic more than 10 feet in any direction away from the intersection. We're looking at 16,000 trips a day just out of Eagle's Crest, up through Lakeside and Somers, into Kalispell on a road that is basically overcrowded right now and there is no place to expand. He doesn't want to hurt this individual but this is the first of a bunch of these the board is going to see and until the state does something about the road, and something about transportation in and out of Eagle's Crest, put a stop to this and say enough is enough. Please recommend disapproval of this subdivision.

STAFF REBUTTAL

None.

APPLICANT REBUTTAL

None.

MOTION
Findings of Fact

Cross made a motion seconded by DeKort to adopt Staff Report FPP-07-31 as findings-of-fact.

MOTION
Amnd FOF #3

Fleming made a motion seconded by Hines to amend finding-of-fact #3 to read: Continued re-subdivision of lots will have an impact on wildlife and wildlife habitat.

BOARD DISCUSSION

Cross stated there was nothing in the report that supported the finding and you get to the summary of findings and this was there. To him this wasn't a consistent finding.

Fleming stated she was concerned about the wildlife and once all of those houses are built she doesn't know where the animals would go. She also spoke of her concern with the traffic and density. They are essentially doubling what they were approved for originally, this is not the end.

DeKort agreed with Fleming.

Hogle commented that writing an appropriate finding for this particular proposal was very different from interjecting his opinion on the potential overall phenomenon of multiple re-subdivisions. In looking at this proposal he based the findings the way he wrote this. He pointed out that the letter received regarding the wildlife and wildlife habitat was a copy of a prior letter written by Tim Litchfield who has since left the department. He received a letter from Gail Bissell who referred him to comments made in prior subdivisions in other phases up higher in the development of Eagle's Crest. He had to, as a reviewer, read between the lines and try to stay objective. That's the basis for these findings just looking at this specific proposal.

Dziza understood what Fleming was saying, but he also agreed with the finding.

Toavs agreed with both of them. He commented the finding was correct but Fleming's was also correct. He thought they should leave the finding in there and add her finding as a separate one.

DeKort stated he would like to add some findings as well.

Fleming said she didn't feel they could make this finding stand alone when he has come in many times with re-subdivisions.

ROLL CALL
Amnd FOF #3

On a roll call vote the motion failed 4-4 with Hines, Dziza, Toavs and DeKort dissenting.

MOTION
Add FOF #9

Toavs made a motion seconded by Fleming to add finding-of-fact #9 to read: The Lakeside Land Use Advisory Committee had recommended denial of re-subdividing this lot or any further lot(s) in Eagles Crest.

ROLL CALL
Add FOF #9

On a roll call vote the motion passed unanimously.

MOTION
Add FOF #10

DeKort made a motion seconded by Toavs to add finding-of-fact #10 to read: There will be substantial effects on public health and safety, wildlife and wildlife habitat, the natural environment and local services because of the cumulative effects of possible future re-subdivision.

ROLL CALL
Add FOF #10

On a roll call vote the motion passed unanimously.

MOTION
Amnd FOF #4

Cross made a motion seconded by DeKort to Amend finding-of-fact #4 to add a sentence: Testimony by the applicant at the public hearing indicated that it is likely the lots will be annexed into the Lakeside Sewer District prior to the commencement of construction.

BOARD DISCUSSION

Mower stated he didn't know if that would mean anything. If somebody said "it will be", that's one thing; but this doesn't mean anything.

Toavs said he was right but this is a finding not a condition. He felt it was important to put it here. As a finding they could put it here and use it to put a condition in later. It's a finding that took place here tonight as a fact.

ROLL CALL
Amnd FOF #4

On a roll call vote the motion passed 7-1 with Mower dissenting.

MOTION
Add FOF #11

Toavs made a motion seconded by Conger to add finding-of-fact #11 to read: Eagle's Crest developments have not been annexed into the Lakeside Sewer or Fire Districts at this time.

BOARD DISCUSSION

Fleming stated it was her understanding they had not been annexed into the fire district or the water and sewer district. She pointed out on page 4 in the findings of the staff report where it stated that fact.

Hogle stated that was accurate as far as he could tell.

Toavs added fire district as well.

ROLL CALL
Add FOF #11

On a roll call vote the motion passed unanimously.

ROLL CALL
Findings of Fact As Amended

On a roll call vote the motion passed unanimously.

MOTION
Denial

Fleming made a motion seconded by Hines to recommend **denial** to the Board of County Commissioners.

BOARD DISCUSSION

Toavs said there were a lot of things that need to be taken care of before any more subdividing should be able to take place.

Mower stated he supports the motion because the Lakeside Community Council voted to deny it and they are certainly closer to this than the board is.

Conger stated it's about precedence.

Dziza said he wanted to get a handle on how many of these lots there are.

Hogle said he started to do that but pulled himself of it because he felt it wasn't correct in terms of being focused on the subject property and the proposal at hand. That was a call he made as he felt it would be biased coming in to even go there.

Cross asked the other members of the board if they remember any of the other Eagle's Crest applications where the board asked for no further subdivision. He is really unclear as to how many there are that even have a notice on the plat about no further subdivision. He thought the 800 lot subdivision had that condition and the subdivision prior to that as well. He reiterated he was very unclear as to how many lots were created prior to that point that at least don't have a notice on the plat saying no further subdivision.

Fleming agreed and stated they also get to have a guest cabin as well so that would be 2 houses on every lot. It doesn't end with just 1 house on a lot.

Cross commented it is crazy to think they are going to put this sewer line in and then they have septic systems and it is kind of the cart before the horse. He hated to have it come down on the

Clack's but if they realize the reason they got turned down was because the person they bought the lot from didn't have his act together, they'll go and put some pressure on them to get their ducks in a row so the people that want to subdivide can do so.

Conger said he felt it's not just about Eagle's Crest. If the county approved a subdivision in 2005 or 2006 and we say this is okay, and then a year or two later we subdivide it again then why in the heck did we approve the subdivision that way in the first place. He doesn't get how it's okay to subdivide and then come back 6 months or a year later and subdivide it again. It seemed to him the board was setting precedence. That subdivision was approved considering all factors involved in the impacts of that particular subdivision and hopefully everybody did a really good job of being thorough and considered all the possibilities; and one of the possibilities was not to split all the lots in half again. At some point the board has to say they approved a subdivision for this many lots so we can't just go back a year later and decide to do something different. Ten or twenty years from now if things change then people can re-subdivide.

Hines commented that under new business, the board should ask staff to have Mr. Schaeffer come in and explain what is going on. He has stepped forward in the past when asked to.

Dziza agreed and stated it was a good idea to get a handle on this situation. He said the board is taking it out on the wrong guy.

Grieve stated staff would follow up on the issue of how many lots for all of the Eagle's Crest subdivisions and contact Mr. Schaeffer to have him come and talk with the board.

ROLL CALL
Denial

On a roll call vote the motion passed 7-1 with Dziza dissenting.

FZTA-07-01 ZONING TEXT AMD

A request by Flathead County for a Zoning Text Amendment to add an informational cross reference (third asterisk) to setback sections 3.04.040 (AG 80), 3.05.040 (AG 40), 3.06.040 (AG 20), 3.07.040 (SAG 10) and 3.08.040 (SAG 5), to notify of additional setback requirements of AG and SAG clustering provisions. This is only a cross reference between two sections of existing text to improve clarity of the Flathead County Zoning Regulations, and does not alter any existing setback requirements.

STAFF REPORT Andrew Hagemeir reviewed Staff Report FZTA-07-01 for the Board.

BOARD QUESTIONS Cross wanted to clarify that every one of the setbacks in the staff report is already in the regulations. All staff is doing is adding a cross-reference to try to clear up any confusion if someone would want to do a cluster subdivision.

Hagemeier said that is correct.

PUBLIC COMMENT None.

MOTION ***Findings of Fact*** Toavs made a motion seconded by Conger to adopt Staff Report FZTA-07-01 as findings-of-fact.

BOARD DISCUSSION Cross commented that on the staff recommendation he wanted to point out a typo for staff to correct to avoid any confusion.

ROLL CALL ***Findings of Fact*** On a roll call vote the motion passed unanimously.

MOTION ***Approval*** Toavs made a motion seconded by Conger to adopt Staff Report FZTA-07-01 and recommended approval to the Board of County Commissioners.

ROLL CALL ***Approval*** On a roll call vote the motion passed unanimously.

FZTA-07-02 ZONING TEXT AMD A request by Flathead County for a Zoning Text Amendment to sections 3.04.040 (AG-80), 3.05.040 (AG-40) and 3.06.040 (AG-20) to allow for creation of lots that are 99% of the minimum lot area. This is an implementation of Policy 2.3 of the Flathead County Growth Policy which promotes flexibility to minimum lot size requirements.

STAFF REPORT Andrew Hagemeir reviewed Staff Report FZTA-07-02 for the Board.

BOARD QUESTIONS Cross asked how staff had come up with the 99%.

Hagemeier stated that staff started really high of the original size of the lot and calculated out how much it would be for several different size parcels. Staff checked out several different percentages as well. They figured the lower the percentage, the more rapidly the size of the error increases. They are just looking at error because that is what the growth policy states.

Staff felt 99% was the best number that would account for error.

Grieve added that staff looked into the error factors from the early 1900's and due to conversions of longitudinal lines when surveyed, they did have percentages of error they calculated out; .01 per quarter mile. They had a variety of different ones in there. The error that is accounted for by those surveying mechanisms is actually well covered under the 99%. Because that was the policy, which was to account for GLO errors, staff stuck with the GLO error factor. The other thing he wanted to add was it was kind of a flag in the sand number, 99%. That is how staff derived it, but it is up to the board to choose if they want to modify that 99%.

Mower commented staff must have history on these things now.

Grieve said the next step, if staff were to look into it further, would be to look at existing original 40's, 80's and 160's, and see what the existing acreage is. The purpose of a public hearing and the board is to determine an appropriate number if they feel 99% is not that number.

The board and staff discussed the issue of how staff came up with the 99% and what their options were.

Jim Clark, 128 Hill Dale, thought this was a good idea but it didn't go far enough. As it's said, it leaves a bad taste. We've all seen too many times when politics got in; and you've opened up the road for politics now. They couldn't get what they wanted so we'll nickel and dime something until we supersede what was done. Make this 1% various on all zoning districts. Keep the properties that were 1 acre, ½ acre, 2 acres, 5 acres, 10 acres that was done with the old equipment. The equipment wasn't very good but the guys were good. Let's change it from AG 20, 40 and 80 to all zoning districts. Subdividing a piece of land would be allowed at 99% of minimum requirements in the district.

Donna Pridmore, 221 Capra Court, works for F&H Surveying as a hydrologist, wanted to add she agreed with Mr. Clark that the board is not going far enough. The board should state whether they are using the NAB1929 data or the NAB1988 data or are you going to rotate to the state plane coordinates. Basically, what it gets down to are you going to have a good surveyor or

bad surveyor. But if you are going to set standards, set standards that everybody rotates to the states plane coordinates.

Fred Hodgeboom, 1125 Whispering Pines, explained his written comments that had been handed to the board by staff. There is a lot more error in those original government surveys. It doesn't take a rocket scientist to figure out how much error is really out there. This is an existing problem for a lot of people in Flathead County. He spoke of going to the plat room and sampling township books. He looked at every section in the book and spoke of a neat little caption that tells the size of the government lots. He spoke about what he came up with just flipping through them and stated he had found only 2 lots in all those sections he looked at that were within 99%. This text amendment is not going to cover people who already have substandard lots. This is reality, this is already platted, these people own these lots, and people are going to be faced with being denied the proper use of their property. He spoke about other percentages that might work as well and said very few of those substandard sections are within 99%. All you have to do is look at the plats. There are hundreds of sections less than 640 acres. He recommended staff use the state of the art GIS system, query the database for these parameters of variance and quantify how many lots are already out there. If an owner wants to subdivide a 40 acre lot or an 80 acre lot under existing zoning regulations, if he doesn't have the full amount he is denied that subdivision. That's not right. Allowing people reasonable use of their property that meets the intent of the regulations should be permitted. He agreed with the other testimony that 99% is such a token amount it's not even worth doing. You're not going to benefit that many property owners in Flathead County. He urged the board to pursue more staff work on this and come up with a variance that makes sense based on what's out there.

BOARD DISCUSSION

Dziza asked staff if they were to re-work this and change it to whatever number they feel appropriate would we have to re-notice a public hearing.

Grieve said yes. This is a public hearing and the purpose of a public hearing is for the board to have the opportunity to modify the staff report as they feel is appropriate. If the board wanted to make a change to a different percentage that night they could. Or they could continue it and instruct staff to do whatever research the board wanted them to do to come back to the board

with the information they need to make a decision on what percentage would be better.

DeKort agreed with Mr. Hodgeboom and said he wouldn't go with the 99% that night.

Dziza felt he wasn't knowledgeable enough to make that call either.

Fleming stated what she would like for staff to consider is instead of just a blanket thing of people who have already divided off some and then they come in and can't divide now because they were zoned after the fact or have done a family transfer and are left with what was left. There needs to be a delineation. She thought along with changing the percentage, which may be justified because they are not going to capture the people who lost acreage due to bad surveying, would be to also consider what happens when you start getting down to people who have done transfers, they will have an advantage that other people do not.

Mower said as long as you use the error due to poor surveying and that's it. That's the intent, error due to poor surveying.

Toavs said if anybody had been surveyed recently they would have found this out if it was different than what they thought they had.

Grieve stated the smaller percentage you go the more opportunity there is for abuse and not going along with the spirit of this. The public brought up some good points and whatever information the board feels they need from staff to make a better decision will be provided. Keep in mind, if you give people the opportunity to abuse something, they will and will be lining up at the door to do it.

Mower stated all they were doing is correcting for surveying error. All they need to know is the time the majority of the surveys were, whenever they were. Seemed to him staff could go back and do some sampling.

Cross wanted to continue this until such time that staff had been able to do adequate research in terms of what is really out there and at the same time come up with language that definitely

ties it in to surveying errors.

The board and staff discussed tabling and continuing a proposal and spoke of having to set a specific date.

MOTION TO
Table Indefinitely

Toavs made a motion seconded by Hines to table Staff Report FZTA-07-02 indefinitely and have another public hearing on the new information.

ROLL CALL
Table Indefinitely

On a roll call vote the motion passed unanimously.

FPP-07-27/ DESERT MOUNTAIN VIEW

A request by Michael and Norma Clanton, for Preliminary Plat approval of Desert Mountain View, a three lot single-family residential subdivision on 20.46 acres. Lots in the subdivision are proposed to have individual water and septic systems. The property is located off Kuzmic Lane.

STAFF REPORT

Andrew Hagemeir reviewed Staff Report FPP-07-27 for the Board.

BOARD QUESTIONS

Conger pointed out finding-of-fact #2 and asked how can the fact that the lots are smaller than average be addressed by the imposition of conditions.

Hagemeier said by requiring there be no further subdivision of the lots. We can't change the fact they are still smaller than average unless they aggregate lots. There are lots that are 5 acres in size in the area.

DeKort asked for a little background of the Lazy Pine Tree subdivision.

Hagemeier stated he thought it was subdivided in July or August of 2006. It was a 2 lot subdivision; they took a 40 acre parcel and made two 20 acre parcels.

DeKort asked where the smaller lots were located.

Hagemeier pointed those out on the map.

Toavs asked if this property was in the Canyon Area Plan.

Hagemeier said yes, but not within the CALURS Zoning District.

APPLICANT PRESENTATION	Norma Clanton, 1040 Old Highway 2 East, gave some history of how she acquired the 20 acres. She stated the covenants said they could divide the parcel with 10 acres in the back and two 5 acre parcels in the front. She said she could do everything except the paving of the 976 feet. She spoke about the dust abatement and the distance between homes. She asked could there be another way such as oiling that section of the road instead. She also spoke about the bear study and the horse trails.
AGENCY COMMENT	None.
PUBLIC COMMENT	None.
APPLICANT REBUTTAL	None.
STAFF REBUTTAL	Hagemeier stated Mrs. Clanton was right, there are 5 acre parcels in that area and he wanted to make that clear.
MOTION ***Findings of Fact***	Cross made a motion seconded by Conger to adopt Staff Report FPP-07-27 as findings-of-fact.
MOTION	Fleming made a motion seconded by Conger to strike the last sentence 'this will be addressed by conditions', in the summary of findings numbers: 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 14, 15, and16.
BOARD DISCUSSION	Fleming said it seemed to her you base the findings and then you do the conditions to fix things that are in the report. By leaving it all this way, if a member of the board wanted to disagree with this, it would be very difficult if you didn't change all of the conditions first by having that wording at the end of every single sentence. She thought it would be better left off.
ROLL CALL	On a roll call vote the motion passed 7-1 with Toavs dissenting.
MOTION ***Amnd FOF #11***	Fleming made a motion seconded by Conger to amend condition #11 to read: Kuzmic Lane is a gravel road 6200 feet long with an average of 107 trips per day. This subdivision will add an additional 20 trips per day.
BOARD DISCUSSION	Fleming stated she had trouble understanding what the rest of the sentence was. She just wanted it to be more clear.

ROLL CALL
Amnd FOF #11

On a roll call vote the motion passed unanimously.

ROLL CALL
Findings of Fact

On a roll call vote the motion passed unanimously.

MOTION
Approval

DeKort made a motion seconded by Toavs to adopt Staff Report FPP-07-27 and recommended approval to the Board of County Commissioners.

SUBSIDIARY MOTION
Add Cond. #24

Fleming made a motion seconded by DeKort to add condition #24 to read: The applicant shall obtain a variance to FCSR Section 4.7.7. (c.) prior to final plat.

ROLL CALL
Add Cond. #24

On a roll call vote the motion passed 7-1 with Mower dissenting.

BOARD DISCUSSION

Cross stated he wanted to have a discussion on condition #20, the paving issue. He spoke about how staff has put the bar higher, raising the vehicle trips to 200 per day. He commented it seemed like an awful lot of paving for a 3 lot subdivision given where it is. As part of that he didn't see anything about a dust mitigation plan.

Hagemeier stated the dust mitigation plan requirement is in the regulations now but it's one of those things that slipped through the cracks as it didn't make it into the appendix of required material for preliminary plat. Staff missed it on this application but it is required. When the board passes all the adjustments to the subdivision regulations on to the commissioners that will become part of it and it won't get missed.

Cross said his feeling was there could be dust mitigation there instead of paving. It seemed to him they could do dust mitigation for 15 years for the same amount of money they would spend for paving.

Hagemeier said the dust mitigation plan only addresses on site improvements and not the road.

Cross stated he knew that but the board changed it at a workshop, it just hasn't been finalized.

Toavs commented the old subdivision regulations had a 50 foot per lot rule. The new subdivision regulations that are approved, with things pulled out for the board to review and change, has

this new formula. The board isn't really sure if this is going to hold up in the subdivision regulations. The idea is to keep this a rural area, that's why they are not putting internal roads in the subdivision. He agreed with Cross stating the applicant does not need to pave 976 feet of the road. A few dollars going toward dust mitigation would be a lot better in that area.

Mower said the reason they were asking for the variance is they can't put in internal roads. It would be much better to have an internal road with a cul-de-sac. That's a topography issue not a rural feeling issue. We have to get a hold of this dust problem. We are creating more and more problems dividing places that are on dirt roads. He didn't think the board should back off. It has nothing to do with the people doing the subdivision, to him it is a greater issue. The problem we have is a county one not necessarily a subdivision sitting a mile up the road.

Fleming agreed. She didn't mind going back to the 100 feet which is in the current regulations, 50 feet per lot. At least that is 100 more feet than there already is now and she was sure the road gets very dusty. She doesn't know where the board should start without saying everybody is going to do their part. Then the next subdivision down that road will have to do their part whether it's the 50 foot rule or the new formula in the new subdivision regulations. Pretty soon the road will get paved and all of the people will not be creating dust. It's a dust issue and the county has already gotten in trouble for it.

Conger brought up precedence saying he doesn't know how the board could say the regulations say this and the law says this but we are going to make an exception because they might change the law in the future. That is exactly what the board is saying whether they are talking about doing it now or it might happen 10 years from now. If we say these are the regulations except in this case, because we might decide to change them later, then who's to stop the next guy from saying they know those are the regulations but you changed them on this other subdivision. Nobody likes to tell nice folks who bought a piece of property and were told they could do a certain thing with it and now they can't do that. He didn't feel this was an appropriate subdivision for this area because of precedence. There are a few other lots out there probably because of family transfer and subdivision evasion. If this lot gets subdivided and gets approved what's going to stop every other person on that stretch

of road from splitting their lot in the same way. It doesn't make any sense in this area.

SUBSIDIARY MOTION
Amnd Cond. #20

Toavs made a motion seconded by Fleming to amend condition #20 to read: The applicant must pave 50 feet per lot of Kuzmic Lane.

BOARD DISCUSSION

The board discussed whether or not they applicant would have to pave 100 feet or 150 feet.

Grieve said that formula was in the old subdivision regulations.

Toavs said he was confused as to which formula the board was supposed to use.

Conger said the new formula is in the regulations the commissioners adopted even though they pulled this section out for the planning board to review.

Mower said the rules are the rules and they have to enforce the rules that are in place.

The board and staff discussed which formula was in place at this time and what would happen once those regulations are changed.

ROLL CALL
Amnd Cond. #20

On a roll call vote the motion failed 6-2 with Toavs and Dziza in favor.

BOARD DISCUSSION

Cross wanted to discuss having the applicant choose between paving and dust mitigation for a period of 15 years. He made a motion seconded by DeKort that read: The applicant must pave 976 feet or dust treat 1952 feet of Kuzmic Lane for a period of 15 years starting at the intersection of Highway 2 heading east.

Mower brought up the fact these property owners could sell all of the lots and since they don't have a road there would not be a road user's agreement. He thought it sounded good but he didn't know how practically it would work.

Cross said there would be a homeowner's association in a different type of subdivision but in this case there isn't one which is problematic.

Cross withdrew his motion.

ROLL CALL
Approval

On a roll call vote the motion failed 5-3 with Dziza, Cross and DeKort in favor.

GROWTH POLICY APPENDIX C

A public hearing on the adoption of Appendix C: Implementation Plan as part of the Flathead County Growth Policy. Chapter 9 of the Flathead County Growth Policy calls for an "initial amendment" to include an implementation plan. A public hearing to solicit comments on an initial amendment was held on October 24, 2007. The Planning Board has decided that no amendments to the Growth Policy are appropriate at this time, other than the adoption of an implementation plan. The Planning Board's draft version of Appendix C: Implementation Plan is available online at the Flathead County Planning and Zoning Office website. Paper copies are also available at our office (1035 First Avenue West, Kalispell, MT).

STAFF REPORT

BJ Grieve reviewed the Growth Policy Appendix C

PUBLIC COMMENT

None.

BOARD DISCUSSION

Cross stated he liked staff's language for the ODP applications. He thought it was better to leave it short and sweet. He asked would it be a county ordinance much like a zoning ordinance, something to that nature.

Grieve said no, the county is only authorized to pass ordinances by state law directly. Therefore, the county doesn't do ordinances other than things that are specifically authorized. The county is only authorized to pass resolutions. Overall Development Plans are considered a portion of the growth policy, not zoning. They must contain the elements required by the growth policy in order to allow for what the county would do for them afterwards, which is to utilize the ODP's to waive requirements for an environmental assessment because they have already been overall planned. If you use the ODP as an incentive to waive future criteria, the requirement under state law for waiving future criteria say you have to have a growth policy/neighborhood plan in place to do that. The ODP's are miniature neighborhood plans and have to contain all the elements required in the growth policy.

Cross asked at the point when staff develops the text amendment to append it to the growth policy would that be the appropriate time to bring in Mr. Greer's comments.

Grieve stated he anticipates the standards for ODP's would be very detailed because staff would want them to do waivers and things in the future. Staff would want those details to be up front. Once they were adopted they would be able to use it. Staff's goal would be to work with large land owners that would be likely to use those ODP incentives to develop those detailed standards. Mr. Greer would be included in that as a representative of Plum Creek. He said he had presented the ODP concept to a variety of other agencies such as Stoltze Land & Lumber and Plum Creek. He spoke with their boards not just 1 or 2 people there. They were thrilled with the idea. He also spoke with developers and large land owners who intend to develop.

Fleming asked if they generally understand this is meant to not really cycle what they want to do but to cut down on the misunderstanding of all of the neighbors.

Grieve said the developers want this. They see it as an entitlement process where they can get their overall development plan in place, get it hard zoned and now they know when they come before the planning board they have this entitlement and there is no debate on density and wildlife issues. Because the plan for that project has already been signed off on by the county. To do the work for an overall development plan versus the work to come in with a full blow subdivision is significantly less expensive for the developer and more beneficial to the county because we can deal with regional planning concepts during the ODP process. Once it is signed off they can spend the money to do a full blown traffic impact study because they know they can run the numbers because they have this entitlement. It reduces the risk to the developer and as a result they are more willing to provide more information up front. It would seem to solve a problem we have in Flathead County. It's an attempt to address it.

PUBLIC COMMENT

None.

MOTION
Adopt Resolution

Fleming made a motion seconded by DeKort to adopt the resolution adopting Appendix C.

ROLL CALL
Adopt Resolution

On a roll call vote the motion passed unanimously.

OLD BUSINESS

The next Subdivision Regulation workshop will be December 20th. Grieve handed out the Riverdale Resolution for the board to sign as there was a typo in the one they signed at that particular meeting.

NEW BUSINESS

Board appointments at the county commissioners will be Dec 17th at 10:30 am.

Grieve gave an update on impact fee advisory committee and how the public can participate. We are not required to hold public hearings but the planning staff would like to make sure in the future we have a public involvement plan up front.

Conger wanted to let everyone know he could no longer serve on the board. He handed staff a resignation letter and stated the commissioners would need to appoint a candidate to fill the remainder of his term.

The board thanked Hines for his time served on the board and BJ presented him with a plaque.

The board asked staff to set up a meeting with Trevor Schaeffer to discuss Eagle's Crest developments.

ADJOURNMENT

The meeting was adjourned at approximately 9:35 p.m. on a motion by Conger seconded by Cross. The next meeting will be held at 6:00 p.m. on December 19, 2007.

_____ _____

Gene Dziza, President Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 1/16/08