

SUNDAY, AUGUST 3, 2003

10:00 A.M. Commissioners Gipe and Hall are to attend a meeting with Senator Conrad Burns at the Hampton Inn

MONDAY, AUGUST 4, 2003

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

DOCUMENT FOR SIGNATURE: UNIFIED INCIDENT AGREEMENT

Present at the August 4, 2003 10:00 A.M. Meeting were Commissioners Gipe and Hall, Assistant Avery, and Clerk Eggum.

Commissioner Gipe reviewed the Unified Incident Agreement between Flathead National Forest, Their Incident Management Team and Flathead County to work together on the Robert Fire. The goal of the document is to outline the cooperation and coordination of strategies and tactics between the Incident Management Team and Flathead County Resources.

Commissioner Hall made a **motion** to approve the Unified Incident Agreement. Commissioner Gipe **seconded** the motion. **Aye** - Hall and Gipe. Motion carried by quorum.

DOCUMENT FOR SIGNATURE: SECTION 5311 CONTRACT/EAGLE TRANSIT

Present at the August 4, 2003 10:00 A.M. Meeting were Commissioners Gipe and Hall, Assistant Avery, and Clerk Eggum.

Chairman Watne reviewed a Section 5311 Capital Contract between the Montana Department of Transportation, Transportation Planning Division and Flathead County Area IX Agency on Aging for the purpose of providing assistance to the Agency on Aging for public transportation in non-urbanized areas.

Commissioner Hall made a **motion** to approve the Section 5311 Capital Contract and authorize the Chairman to sign. Commissioner Gipe **seconded** the motion. **Aye** - Hall and Gipe. Motion carried by quorum.

Chairman Watne was seated.

AUTHORIZATION TO PUBLISH NOTICE OF PUBLIC HEARING: MEHL MAJOR LAKESHORE VARIANCE

Present at the August 4, 2003 10:00 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Assistant Avery, and Clerk Eggum.

Commissioner Hall made a **motion** to authorize the publication of the Notice of Public Hearing and authorize the Chairman to sign. Commissioner Gipe **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

NOTICE OF PUBLIC HEARING

The Board of Commissioners of Flathead County, Montana, hereby gives notice, in accordance with Section 5.1.B.2.f of the Flathead County Lake and Lakeshore Protection Regulations, that the Board will hold a public hearing to consider a request by Marty Mehl for a variance to the Flathead County Lake and Lakeshore Protection Regulations.

The variance would allow the rehabilitation of an existing head gate/spillway/bridge structure located in the Lakeshore Protection Zone of Bootjack Lake, including the excavation of thirty (30) cubic-yards of embankment materials and the placement of twenty (20) cubic yards of fill, rip rapping of the embankment and possibly replacing a culvert. The stream section below the embankment will be rehabilitated and two abandoned beaver dams will be breached, which work will be located outside of the Lakeshore Protection Zone. The proposed work would take place on Tract 5AB of Government Lot 5 in Section 26, Township 31 North, Range 23 West, P.M.M., Flathead County, Montana. Further information is available at the Office of the Clerk and Recorder, Courthouse, 800 South Main, Kalispell, Montana, or at the Flathead County Planning and Zoning Office, 1035 1st Avenue West, Kalispell, Montana.

The public hearing will be held on the 25th day of August, 2003, at 9:30 o'clock, a.m., in the Office of the Board of Commissioners of Flathead County, Courthouse, West Annex, 800 South Main, Kalispell, Montana. At the hearing the Board of Commissioners will give members of the public an opportunity to be heard regarding the proposed variance to the Flathead County Lake and Lakeshore Protection Regulations.

Dated this 4th day of August, 2003.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By: /s/Robert W. Watne
Robert W. Watne, Chairman

ATTEST:
Paula Robinson, Clerk

By: /s/ Vickie M. Eggum
Vickie M. Eggum, Deputy

Publish on August 7, 2003.

DOCUMENT FOR SIGNATURE: MDA CONTRACT #03-30-003/WEED & PARKS DEPT.

Present at the August 4, 2003 10:00 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Assistant Avery, and Clerk Eggum.

Chairman Watne reviewed a Professional Services Contract between Montana Department of Agriculture and Flathead County Weed District to perform the duties and responsibilities as a noxious weed seed free forage field inspectors.

Commissioner Gipe made a **motion** to approve the MDA Contract #03-30-003 and authorize the Chairman to sign. Commissioner Hall **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

DOCUMENT FOR SIGNATURE: DPHHS CONTRACT #04-07-3-01-005-0

Present at the August 4, 2003 10:00 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Assistant Avery, and Clerk Eggum.

Chairman Watne reviewed a Certificate of Compliance with Certain Requirements for the Department of Public Hearing and Human Services Contractors (May 2003) and Task Order No. 04-07-3-01-005-0 to the Master Contract that Covers the Period of July 1, 1998 through June 30, 2005 to serve as an administrative site to implement a breast and cervical cancer screening and early detection program in the counties of Flathead, Lake, Lincoln and Sanders.

Commissioner Hall made a **motion** to approve the Certificate of Compliance and the Task Order No. 04-07-3-01-005-0 and authorize the Chairman to sign. Commissioner Gipe **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

CONSIDERATION OF LAKESHORE PERMIT: PEDERSEN

Present at the August 4, 2003 10:15 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Planner Tim Beck, and Clerk Eggum.

Beck reviewed Lake and Lakeshore Construction Permit filed by Gayle Pedersen on Flathead Lake to remove existing vegetation from shoreline/hillside and landscape with rocks and succulent and low-growing plants. General discussion was held.

Commissioner Gipe made a **motion** to approve Lakeshore Permit #FLP-03-68 as amended and authorize the Chairman to sign subject to 37 conditions. Commissioner Hall **seconded** the motion. **Aye** – Watne, Gipe and Hall. Motion carried unanimously.

PRELIMINARY PLAT: STAFFORD ESTATES

Present at the August 4, 2003 10:30 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Planner Melinda Riley, Dawn Marquardt and Debbie Shoemaker of Marquardt and Marquardt Surveying, Assistant Avery, and Clerk Eggum.

Riley reviewed the preliminary plat for Stafford Estates Subdivision filed by Jerry Stafford. The applicant proposes to create a two lot residential subdivision. The property is located along West Reserve Drive approximately five miles west of Kalispell in the West Valley area and contains 7.88 acres. The project is in general compliance with the Flathead County Subdivision Regulations and there have been no variances requested.

Commissioner Gipe made a **motion** to adopt Staff Report #FSR-03-26 as Findings of Fact. Commissioner Hall **seconded** the motion. **Aye** – Watne, Gipe and Hall. Motion carried unanimously.

Commissioner Hall made a **motion** to approve the Preliminary Plat of Stafford Estates subject to 14 conditions. Commissioner Gipe **seconded** the motion. **Aye** – Watne, Gipe and Hall. Motion carried unanimously.

AUTHORIZATION TO PUBLISH NOTICE OF SALE: 1038 SOUTH MAIN BUILDINGS

Present at the August 4, 2003 10:45 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Assistant Avery, and Clerk Eggum.

Commissioner Gipe made a **motion** to authorize the publication of Notice of Sale and authorize the Chairman to sign. Commissioner Hall **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

NOTICE OF SALE

The Board of Commissioners of Flathead County hereby gives notice that it will sell at public auction (pursuant to Section 7-8-2212, M.C.A.) the following surplus property:

The house located on Lots 9 and 10, Block 132, according to the map or plat thereof on file at the Office of the Clerk and Recorder, Flathead County, Montana, which is to be moved off of the property of the County. The property has a street address of 1038 South Main, Kalispell, MT.

The garage located on Lots 9 and 10, Block 132, according to the map or plat thereof on file at the Office of the Clerk and Recorder, Flathead County, Montana, which is to be moved off of the property of the County. The property has a street address of 1038 South Main, Kalispell, MT.

The successful bidder at auction must execute a contract requiring the buyer to remove the purchased building from County property by September 30, 2003. If the building is not removed by that date, the buyer will forfeit the building to the County, without return of the purchase price, and it will be razed and removed from County property. Trees may not be removed in order to remove the buildings without prior specific, written approval from the Board of Commissioners.

The auction of the described property will be held at the front door of the Flathead County Justice Center, 920 South Main, Kalispell, Montana, on the 20th day of August, 2003, at 2:00 o'clock, p.m. Bidding will start at 90% of the appraised values of the buildings which are as follows:

House - 1038 South Main –	Appraisal \$2000.00	Opening Bid \$1,800.00
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Garage - 1038 South Main – \$ 200.00 \$ 180.00

Interested parties may arrange to inspect the buildings prior to the sale, by contacting: Flathead County Board of Commissioners, 800 South Main, Kalispell, MT 59901. Telephone: (406) 758-5503. The contract form to be signed at the sale is available at the same address and phone number.

Terms of the sale will be cash at time of sale. The County is selling the property "as is", without any warranty or guarantee of any kind whatsoever.

DATED this 4th day of August, 2003.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By: /s/Robert W. Watne
Robert W. Watne, Chairman

ATTEST:
Paula Robinson, Clerk

By: /s/ Vickie M. Eggum
Vickie M. Eggum, Deputy

Publish on August 7, 2003 and August 14, 2003.

CONSIDERATION OF STAGE II RESTRICTIONS

Present at the August 4, 2003 10:45 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Martha Smith, Deputy County Attorney Jonathan Smith, Assistant Avery, and Clerk Eggum.

Discussion was held relative to amending the Stage II Fire Restriction Resolution.

CONSIDERATION OF DELEGATION OF AUTHORITY

Present at the August 4, 2003 10:45 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Martha Smith, Deputy County Attorney Jonathan Smith, Assistant Avery, and Clerk Eggum.

Martha Smith, a liaison with Wally Bennett's incident management team presented for review by the County Attorney's office a Delegation of Authority document. Smith has expertise in working with local government and local government issues. She reviewed the proposed Delegation of Authority document which had already been executed by the Northwest Area Command received from the Flathead National Forest, Glacier National Park and the Northwest Area Montana Department of Natural Resources. The document included signatures for Flathead County. She stressed that the document is not usurping or abdicating any duties the Commissioners have to running their county government and the people that elected them. She requested that the Commissioners review the document with the County Attorney's Office. The document tells the incident management teams and area commands that you want them to suppress this fire with points related to cost containment and fire fighter safety. She concluded that FEMA would be requesting the county to sign the document. She suggested that if the Commissioners were uneasy with the word delegation they could amend the document to delete the word delegation.

CONSIDERATION OF PUBLIC LAW 106-393 TITLE III/EXPEND FUNDS – FIRE FIGHTING

Present at the August 4, 2003 10:45 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Deputy County Attorney Jonathan Smith, Assistant Avery, and Clerk Eggum.

Avery presented the Commissioners with a memo relative to a federal law "Public Law 106-93 – October 30, 2000 (Secure Rural Schools and Community Self-Determination Act of 2000). Title III Section 302 (a) of this Act provides for the use of these funds after a 45-day public comment period. The county is required to publish a description of the proposed project and send the proposal to the Rural Advisory Committee. Under the provisions of Section 302(b)(1) the county may expend these monies on costs associated with search and rescue, fire fighting and other emergency services performed on federal lands and paid for by the county. Avery advised that there are three different levels of entitlement for which the county receives money. In the year 2001, the county elected to receive monies under Title III rather than Title II which they subsequently changed. The monies they received under Title III were approximately \$225,000.00. The county has until the year 2006 to spend that money. Avery prepared a brief proposal attached to the memo stating that the county would expend the monies on the Robert Fire and Wedge Fire.

General discussion was held. It was suggested that instead of identifying the fires it be left open ended in the event additional fires occur.

Commissioner Gipe made a **motion** to continue decision on the matter until the following day. Commissioner Hall **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

CONSIDERATION OF BUDGETING TWO MILL LEVIES

Present at the August 4, 2003 10:45 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Deputy County Attorney Jonathan Smith, Assistant Avery, and Clerk Eggum.

Avery wanted confirmation on whether to put in the budget the two mill levies. Commissioner Gipe stated that it is not a budgeted item. The Commissioners agreed that it was not included in the budget.

MEETING W/CHARLIE JOHNSON, ROAD DEPARTMENT

Present at the 2003 11:00 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Road Superintendent Charlie Johnson, Assistant Avery, and Clerk Eggum.

Chairman Watne excused himself.

Johnson advised that one of his employees broke her back. She has used all of her FMLA and was now requesting a three week leave of absence without pay.

Commissioner Gipe made a **motion** to approve a three week leave of absence without pay. Commissioner Hall **seconded** the motion. **Aye** - Hall and Gipe. Motion carried by quorum.

Johnson advised that due to the fire danger they were not doing any blading or new construction. They were still paving but restricting work adjacent to grass lands. It is anticipated that when the weather breaks they can get back to work but in the meantime all blading and new construction was on hold which would put them behind on their schedule.

Chairman Watne was seated

Chairman Watne expressed concern related to use of torches during paving. Johnson assured the commission that they are taking the necessary precautions. A water truck sits on the site that supplies the rollers with water. If they are in area where there are weeds they will do a cold take off. If they are in an area where they are confident they are not going to have a problem, they go ahead and heat the screed. Once the screed is heated, it stays heated all day. It is not a real issue.

Johnson addressed an e-mail received from Commissioner Hall regarding sealing cemetery roads. He advised that cemeteries are usually private but he would seal the roads if directed to do so.

Johnson advised that the County Attorney's Office is sending letters regarding fence posts on Woodland and Potter Lane and a fence on Blackmer. Johnson received a request from a resident on Sunny Lane in Columbia Falls, wanting gravel supplied to a private road. Johnson responded to her that the Road Department could not provide gravel to a private road.

Johnson advised that a group from the Shawnee Drive area is desirous of resolving the road ownership issues. They have been advised that a survey is needed. Once the survey is completed they will schedule a meeting before the Commissioners. A new subdivision is going in at that location. The group is not in opposition to the development but want the easements straightened out. Johnson noted this has been an ongoing concern. The County had to have access to a county park but there is a piece of the county right-of-way which is only half the width of the normal road.

Johnson advised that a subdivision was approved by the County Planning Office on Big Mountain, behind Kandahar Lodge on Winter Lane. They want to go in and do some widening of Winter Lane. That is a real sensitive area. Johnson is going to respond to Mike Collins and advise that he wants to see some surveys and engineered plans as he has received calls from several landowners who have said part of their yard is being taken out.

Johnson advised that he still has people from the Road Department up on the fire. He anticipates they will be released soon.

Johnson noted they finished chip sealing last week and will be strictly paving.

Chairman Watne sought information on Danielson. Johnson responded that a little more work needed to be done before it was ready to be paved. Johnson noted the Summit school had offered to pay for some of the road work but Johnson instructed them to simply build a portion of the road and the county would build a portion.

Johnson advised that Jellison has been paved with the help of the businesses in that area.

Chairman Watne noted that they had said they would get Managhan done in July and he has been receiving calls because it is not done. Johnson noted he was waiting for the fire restrictions to be lifted and then he would be working on it again adding that it would not take a whole lot to get it paved. He advised that they still have Garland and Haskill Basin to do as well.

Johnson noted that it is the County's policy to get jobs done in the most cost effective way.

CONTINUATION OF CONSIDERATION OF LAKESHORE PERMIT: LION MOUNTAIN HOMEOWNERS ASSOCIATION

Present at the August 4, 2003 11:30 A.M. Meeting were Chairman Watne, Commissioners Hall and Gipe, Planner Lindsay Morgan, Bryce R. Floch, Mark Kimmerer, Gary Decker, Joxi Luduiksen, Tim Grattan, Luther Campbell, Bruce Boody, Steve Cummings, and Clerk Eggum.

Morgan reviewed Lake and Lakeshore Construction Permit filed by Lion Mountain Homeowners Association on Whitefish Lake to remove existing BBQ pits and picnic tables from the Lakeshore Protection Zone and to revegetate the area with native plantings, construct five clean gravel paths to access the dock and swim area. Originally they had planned to relocate the existing dock and use it as a swim dock, however the regulations will only allow them to have a specific sized dock to be used as a swim dock. They will remove the existing dock and install a new swim dock that will meet the regulations criteria. They want to install nylon rope with floats to define the swimming area. All four of those requests went through the Lakeshore Protection Committee and have been addressed in the conditions of approval. Originally they requested two variances. This has already gone through the Lakeshore Protection Committee twice. The first time it went through, they requested a variance for the setbacks for the marina. The adjacent neighbor on the side where they would not meet the required setback has granted them permission. The Lakeshore Protection Committee didn't have a problem with the setback variance, but there are restrictions in the conditions of approval that they placed on that condition. The second variance was for dock length and the Lakeshore Protection Committee recommended denial basically based on economic hardship. Approximately two weeks ago Lion Mountain came back in with another drawing and this time it met all the criteria. They reduced the gangway and they reduced the number of slips. Gangways that are two feet or less in width don't count towards overall length and they have also added an additional dock to their proposal. That went through the Lakeshore Protection Committee and they approved that subject to the conditions listed in the report.

Boody presented the Commissioners with both proposals and a map showing the outlay of the lake. He noted the dock is tucked into a bay whereas most other private marinas and marinas on the lake are in very exposed locations. When we did this original request based on the two docks it wasn't just for financial hardship. We realized with three docks we could achieve the same thing. The difference is with these two docks being so tucked into the bay like it is it allows for a larger swim area, it is less visual impact along the lakeshore than the three and it keeps all of the boats further away from the homeowners on this point. The contentious issues were the variance for the property line which the committee approved based on conditions and we have now met those. The adjacent property owner owns over 1000 feet and he has no intention of ever doing any development on the lake. The easement allows us to be right adjacent to the property

line and then all of the issues we have conformed to all the lakeshore requirements for all the other things. We conformed to square footage, coverage for both the lake and the lakeshore. It is simply a question of configuration of the docks. The committee really felt they didn't want to be a precedence setter by granting a variance for the two docks versus the three, then they would have to do that for everybody else. But really because of the configuration of the lakeshore where the bay comes way in and also the fact that you will not see another development like Lion Mountain with 120+ lots piggybacked on top of a small lakeshore because that is not allowed in zoning any more. Our point of contention was are we really setting a precedent here or is this a very unique circumstance all to its own. That is why we were asking for the variance.

Campbell stated that he was the vice president of the Lion Mountain Homeowners Association and in charge of the beach committee. He provided a background of the plan. We have 127 property owners that have access to this common area. Bruce developed a plan and we sent out a questionnaire to all of the property owners and asked them what they would like to see down at the beach. Those questionnaires are very interesting and it became very clear that everyone is concerned about having boats and swimmers in the same area. Everyone wanted to have a more cleaned up picnic area. There was a real need for boating, kayaks, canoes and motor boats. The dockage became the economic engine that will allow us to have the money to do the other developments. We very much needed all 20 docks to be able to do that and Bruce came up with this drawing which we then took to the homeowners, the homeowners were very much in favor of this thing. We had over two-thirds of the homeowners that voted in favor of the project. We tried to do a design that we thought protected the swimmers, the surfs, non-powered boaters and the power boaters and that is the reason we requested the variance. We really wanted to try to stick to the original design. The design that has been approved extends 80 feet into the lake with three docks. The other design extends 90 feet into the lake with two docks. The difference as Lindsey pointed out is that this has only two foot gangways going out. You have to get about 20 feet into the lake before you escape the rocks so if you don't have that gangway, you would in essence lose the inner slips and if we lose those slips, we don't have the money to do the beach project. That is why we came back with this design. We have spoken with the people that build these docks. The two foot gangways will work. They are structurally very strong. They are supported with bracing, they are not what the dock company would recommend. They would recommend three or four foot gangways like we had in the original design. Obviously we would want your approval of the plan as recommended by the Lakeshore Committee but what we would really like to do is to either have the original plan approved as a variance or in the event that we want to go with this plan at least let us put three foot gangways in instead of two foot gangways. Either plan is acceptable to us. We prefer the original one just because of the further separation of the people out on the point and the swimmers.

Decker advised that he lives on Lion Mountain and can look right down on the beach. I will not be having a boat at the dock but I am very much in favor of the project and I guess my reason is over the last two or three years I have seen a lot more activity there. Quite frankly I would sleep a lot better at night with this project in place because the revenues that come from the boat slips would pay for somebody to monitor activities and make sure it stays cleaned up and make sure no one is building fires where they shouldn't be building fires. We have a lot more activity on the point and on our beach and we just think it would be prudent to have someone down there during the summer. I would feel better with somebody there at least policing the area because you go down there now and anybody from anywhere pulls in there and they might pull in with a lot of beer cans but they don't usually leave with them. I think it would make a much safer and a lot more secure place.

Grattan advised that he developed Lion Mountain Estates. I would have loved to have done a marina project 25 30 years ago when I started Lion Mountain. I couldn't afford to do it. At the tail end of a subdivision I started making a little bit of profit and we can now afford to subsidize and help fund this. Part of the funding we are talking about I would wind up being able to use some of the dock slips as a benefit to the remaining lots I have in the Lion Mountain Ranches. The Homeowners Association has really worked well and has spent an enormous amount of time putting this together and the original plan even though it extends out a little bit farther. The Lakeshore Regulations and the Protection Committee have written the regulations which are sometimes a little bit tight on some of their restrictions and totally unyielding to any kind of something that might make a little more sense even though it doesn't conform to the regulations. But the proposal makes an awful lot of sense and as the developer and participant in the funding of this I would really encourage you all to grant the homeowners' request.

Floch advised that he was an attorney in Kalispell and submitted a brief summary of some of the unresolved issues.

Floch stated he represents Steven Parish who is the owner of a 20-acre plot on Lion Mountain. He is one of the closest proximate landowners to this proposed development and in addition to himself there are approximately 27 other individuals out of the 94 that voted that have opposed this project. Some of the concerns that I have addressed both with the Homeowners' Association and their attorney, the second plan which was approved by the Lakeshore Protection Committee. The initial variance dealing with the setback, while I believe Mr. Goguen in good faith did say here I don't care if you build right up next to my property line that is not the purpose of the policy consideration behind the setback in the regulation. It is quite clear that it should be at least a 100 foot setback and that would be on the side. There is a provision in the regulation that allows for a variance and that variance goes down to 20 feet that is the minimum. That is what the regulations state. I don't think that Mr. Goguen's cooperation with Lion Mountain while it is beneficial to them, I don't think it is effective as far as the variances that are set forth or the setbacks that are set forth in the regulations.

Morgan noted that one of the conditions of approval call for a signed and recorded letter of approval from the adjacent property owner.

Floch continued that what I am asking for on behalf of my client and I believe on behalf of the other individuals who oppose this marina, the development of this marina as it is stated in both of these plans is for the Commission to table this matter until such time that ample information is provided not only to myself but to my client regarding the individuals who also oppose it. Even with my limited experience with Homeowners Associations I will commend the association on their request for input on this project. However, during the past month or three weeks, I think that level of request for input has diminished. My client simply asked who the other people that are opposed to it are. Can I sit down and talk to them to see if we have potential concerns that are similar and that we can bring to you guys in deciding this. I requested in writing and by telephone from the Homeowners Association copies of the beach questionnaires which they were provided, however the names of the individuals who opposed it were redacted. I have no idea who they are. My client has a good idea of who they are, and I have discussed it with several of the homeowners who are opposed. I think that if the Commission were to look at the policy considerations as set forth in Section 4 of the regulations and the variance requirements, they require undo hardship. They require no reasonable alternative and they require no adverse impacts with the policy considerations as set forth in Section 4. I don't see that here. The hardship that has been addressed here from the beginning and which was just stated by Mr. Campbell is in fact an economic hardship, a hardship which the Lakeshore Protection Committee said sorry, we can't grant you a variance on your dock length. It is economic. It doesn't constitute a variance under the regulations. Now the homeowners association is coming back and saying okay we will take Plan #2. There is a loophole admittedly in the regulations. If there is a two foot or smaller gangway it doesn't go to overall dock length so your dock could effectively extend out into the lake further. That two foot loophole brings with it some additional concerns. Not of my client. My client is not handicapped and no member of his family to my knowledge is handicapped but two foot gangplanks do potentially run some problems with the ADA. They would not allow wheelchair access. Furthermore, this development is arguably inaccessible in the first place to handicapped individuals. I don't know if there are any homeowners who are handicapped and mainly because I don't know the names of the individuals who are opposed to it.

Commissioner Hall confirmed that the gangplanks were two foot wide.

Floch continued that the ADA requires 36 inches. If you widen those to three feet, the regulations are very specific. That constitutes dock length. That is the same thing as having a dock. If it were 2'1" there would be 79 feet of dock length on the plan that was approved by the committee and that would not be acceptable under the Lakeshore Regulations for a 60' dock. If you use the two foot gangplank you run potential concerns with violations of the ADA. All of these issues boil down to a notice concern. 28 of the 94 that responded said we have some serious concerns. I am not sure that those concerns have been addressed sufficiently at this time. I can tell you that I don't believe any notice of the Lakeshore Protection Committee meetings which I believe there were two were provided to the homeowners to express concerns to work out a plan that works for everybody. I know if it weren't for my involvement in this matter, my client wouldn't have known that the homeowners association which he is a member of would have been here today asking for your approval. I would ask that the commission table this matter until September 30th until some of those issues regarding the variances for both the dock length and the setback requirements and just a recognition by the homeowners that individuals who have concerns that my client is entitled to their names and we are entitled to sit down and talk with 28 of them and ask what are the concerns and maybe come back to the board and say is there anything that we can do to address these concerns.

Campbell advised that they have gone to some pretty extraordinary lengths to try to seek input from the homeowners of this project. This project has been going on for over two years. At last years annual homeowners meeting Bruce Broody came and gave a presentation to all of the homeowners who were invited to attend. We presented the plan and laid out exactly the regulatory approvals that we would need. We talked about what we were going to do in terms of sending out a questionnaire to seek input which we did. We got all the questionnaires back. We took those questionnaires very seriously. We modified the plan to meet the homeowners' concerns. We compromised trying to get something that benefits 127 homeowners. Once we had a plan that we thought was very workable we went out to a vote. We had a very concerned homeowner who wrote a letter and with our help we provided him with a list of all 127 homeowners' names. He wrote a letter to the homeowners and asked them to give us input as to his serious concerns. We then helped him organize a meeting at Grouse Mountain Lodge and we invited all 127 homeowners to attend that meeting. We posted notices on the public mail boxes in Lion Mountain, advising of the meeting. He showed up at the meeting and two other people both of whom voted yes for the beach showed up. No one else showed up at that meeting nor did we get any input from anybody else. We felt like we had gone to extraordinary lengths to provide opportunity for input. I personally spoke with your client on two different occasions for quite a lengthy time to address their specific concerns so I felt like the board as a group had given ample opportunity to receive input. I would also like Steve to address the ADA issue.

Cummings advised that the ADA issue did come up in Bryce's correspondence to him. I looked at the law and I don't think it applies. It doesn't apply except to public accommodations. This is not going to be open to the public. It would be available only to the homeowners and I think that was Bruce's understanding if I am not mistaken in another project we were involved in.

Broody stated that we have done several of these for other private marinas however, in those cases, the homeowners' association actually has a rental and they rent units out and the minute you rent it out through an organization you are public. Lion Mountain has none of that. It is strictly individual property.

Floch stated that the covenants that govern the land use of Lion Mountain Homeowners Association contains a provision that if I own a tract of land in Lion Mountain, I have a right to use the common area which would include this marina. Also anyone in my family according to the specific language of the covenants could use the marina. It also says tenants

which contemplates the fact that someone might rent their property there as a vacation rental. In my opinion, the second that happens, it is a public accommodation and you need a 36 inch gangplank.

Cummings disagreed. Unless it is made available to the public on a regular basis it is not a public accommodation.

Campbell stated that the access to our land is down a road that dead ends into a railroad track so you have got to cross the railroad tracks to get down to the beach and it is pretty unlikely that you are going to be having wheelchair access across the railroad track down to the beach. We requested that you approve wider gangways. We would all love to have three or four foot gangways. It is just that the regs are written so narrowly if we go to that then all of a sudden instead of having 60' of dock we have 80' of dock but the dock is going to stick out into the lake 80 feet anyway.

Flock asked in summary: I am not asking you to ax this. I am just asking you to table this on behalf of my client and the other 27 individuals who are property owners up there until such time as we have had an opportunity to discuss it with them.

Morgan confirmed that the Lakeshore Committee approved that setback variance but it doesn't need the length variance. The setback variance is addressed in Condition #10.

Cummings advised that mechanically, the way that will work, we have an agreement with the neighboring landowner in writing and if need be we can get an easement from him that perpetually will allow us to use the 20' of his property for the setback area.

Flock questioned where that was contemplated in the documents. Cummings responded that is what we will do to meet the condition

Morgan stated that regular docks are required to meet a minimum of 20' for a setback but a marina is required to meet a minimum of 100' for a private marina setback.

Flock then questioned whether they would need a 100' easement. Morgan responded you could say that but the problem is that you can't place a dock on an easement so I don't think it really matters. I think what they are doing is just basically saying you can locate this right on the property line and as long as this person continues to allow you to do that you can do that but as soon as they don't move it over.

Commissioner Hall questioned whether the Commission could make as part of their motion a change to 3' gangway. Chairman Watne noted if they did it would make the dock over length. Morgan stated the big question was have they proven that there is an undue hardship. Commissioner Hall did not believe they had but thought that was not really the issue. It seems like when you are putting together a project like this it is better to have a wider one then a narrower one.

Flock stated that the Commission has adopted these regulations and the advisory opinions of the Lakeshore Committee. The regulations were written with specific intents in mind and policy considerations behind those intents for variances for dock length. Yes, because there was a dock built 20 years ago that is 180 feet out into the lake that is one thing but some well educated people obviously sat down and developed these regulations for concerns with the ongoing development on Whitefish Lake.

Cummings advised that the Homeowners Association is seeking a variance from the regulations and the Commission would have the power to allow a variance from the regulations.

Boody thought the question that the Lakeshore Committee had if they granted a variance in this length, is it a navigational hazard. I think because of the location of the project, it is truly not a navigational hazard. Are there any other overriding circumstances and one of them is the fact that there are 120 homeowners here. Again, you won't find that happening any more because zoning doesn't allow this. It is a historic use. It is like Tim said, if they could have afforded to put this marina in a long time ago they would have. The Lakeshore Committee also recognized that private marinas are limited to 60' whereas public marinas are limited to 100 feet. They said in the meeting that basically in a lot of places 60' marinas don't work because by the time you get out to water depth you end up with two or three slips. So you end up with your slips lined up across the lakeshore and that doesn't do any good visually. I think there are circumstances here that would allow you to consider that.

Campbell stated that from a visual standpoint, he couldn't imagine anyone seeing a difference of a two foot versus a three foot ramp.

Morgan stated that the reason for the two foot gangway is because on Whitefish Lake, once the water would go out people would put a little plank out there so they decided that anything less than two feet wouldn't count towards overall length. Now they are looking at it saying that is a loophole in the regulations and that may be something they will go back and change and include it in overall length but they are also looking at private marinas saying do these need to be longer and that is something that they are going to revisit and possibly they will propose a text amendment to the regulations.

Commissioner Gipe made a **motion** to approve Lakeshore Permit #WLV-03-01 and authorize the Chairman to sign subject to 37 conditions. Commissioner Hall **seconded** the motion. **Aye** – Hall and Gipe. **Nay** – Watne. Motion carried unanimously.

1:00 P.M. Commissioner Hall is to attend a meeting with George Stewart

7:00 P.M. Meeting w/Deborah LaRose re: West Valley Road Speed Limit

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on August 5, 2003.

TUESDAY, AUGUST 5, 2003

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

MONTHLY MEETING W/NORM CALVERT, COMPUTER SERVICES

Present at the August 5, 2003 9:15 A.M. Meeting were Chairman Watne, Commissioner Gipe, Computer Services Director Norm Calvert, Assistant Avery, and Clerk Eggum.

General discussion was held relative to needs of the Clerk and Recorder's Office; PC based application product to replace UNISYS.

PUBLIC LAW 106-393 – OCTOBER 30, 2000

Present at the August 5, 2003 10:15 A.M. Meeting were Chairman Watne, Commissioner Gipe, Assistant Avery, and Clerk Eggum.

Chairman Watne reviewed a Project Proposal Public Law 106-393-OCT. 30, 2000 proposing to expend funds received under this Act for cost recovery on search and rescue, fire fighting and other necessary emergency services provided by the County while engaged in any fires on Federal lands.

Commissioner Gipe made a **motion** to approve the Project Proposal Public Law 106-393-Oct 30, 2000 and authorize the Chairman to sign. Chairman Watne **seconded** the motion. **Aye** - Watne and Gipe. Motion carried by quorum.

CONSIDERATION OF LAKESHORE PERMIT: ERICKSON

Present at the August 5, 2003 9:30 A.M. Meeting were Chairman Watne, Commissioner Gipe, Planner Lindsay Morgan, Assistant Avery, and Clerk Eggum.

Morgan reviewed Lake and Lakeshore Construction Permit filed by Tyler Erickson, Lodge at Carver Bay, LLC on Whitefish Lake to install a new E -shaped EZ-dock, a trampoline and two shore stations with canopies. The Whitefish Lakeshore Protection Committee approved the permit. General discussion was held.

Commissioner Gipe made a **motion** to approve Lakeshore Permit #WLP-03-23 and authorize the Chairman to sign subject to 23 conditions. Chairman Watne **seconded** the motion. **Aye** – Watne and Gipe. Motion carried by quorum.

Commissioner Hall was seated.

AUTHORIZATION TO PUBLISH REQUEST FOR PROPOSALS: OPERATIONS OFFICE AND SEPTIC SYSTEM/EAGLE TRANSIT

Present at the August 5, 2003 9:45 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Assistant Avery, and Clerk Eggum.

Commissioner Hall made a **motion** to authorize the publication of the Request for Qualifications and authorize the Chairman to sign. Commissioner Gipe **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

REQUEST FOR QUALIFICATIONS

The Flathead County Board of Commissioners is requesting interested architects or firms to submit their qualifications for providing architectural services to Flathead County. Such qualification statements are to be submitted, in writing, to the Flathead County Board of Commissioners at 800 South Main, Kalispell, Montana 59901, and must be received no later than **5:00 p.m. on August 22, 2003**. All responses will be reviewed by Eagle Transit and the Board of Commissioners and those firms chosen for further discussions or more detailed submittals will be so notified by written letter from the Office of the Flathead County Board of Commissioners.

SCOPE OF WORK:

The person/firm selected will provide all architectural services necessary to design and construct office space for use by Eagle Transit of the Agency on Aging, to be built on County property located on Willow Glen Drive near the Flathead County Road Department grounds and either adjacent to or as add-on to the bus barn previously built at that location for the Agency on Aging.

CRITERIA OF SELECTION:

Selection of a person/firm for the provision of these services will be based upon the following criteria and each of the six criteria must be addressed within the qualifications response submitted in order to be eligible for consideration.

1. Qualifications of the proposed professional personnel who will be assigned to the project.
2. Capability to meet time and project budget requirements.
3. Location of the office of the person/firm.
4. Present and projected workloads of the person/firm.
5. Related experience on similar projects.
6. Recent and current work for Flathead County.
7. Familiarity with requirements of the Montana Department of Transportation and the Federal Transit Authority with regard to Federal Grant projects.

Dated this 5th day of August, 2003.

Flathead County, Montana

By: /s/Robert W. Watne
Robert W. Watne, Chairman

ATTEST:
Paula Robinson, Clerk

By: /s/ Vickie M. Eggum
Vickie M. Eggum, Deputy

Publish on August 9, 2003 and August 16, 2003

CONSIDERATION OF RELEASE OF COLLATERAL: FOY'S GRANDVIEW ESTATES

Present at the August 5, 2003 9:45 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Assistant Avery, and Clerk Eggum.

Chairman Watne reviewed a letter from Paul L. Wells of WMW Engineering, P.C. advising that the road has been constructed in conformance with the Flathead County Road Specifications.

Commissioner Gipe made a **motion** to authorize the release of collateral for Foy's Grandview Estates. Commissioner Hall **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

MONTHLY MEETING W/RAEANN CAMPBELL, HUMAN RESOURCE OFFICE

Present at the August 5, 2003 10:00 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Human Resource Officer Raeann Campbell, Assistant Avery, and Clerk Eggum.

General discussion was held relative to Summary Plan Description; HIPPA Privacy Rules; counties human resource officer meeting.

DOCUMENT FOR SIGNATURE: AOA HEALTH PROMOTION CONTRACT/KALISPELL SR. CENTER

Present at the August 5, 2003 10:15 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Assistant Avery, and Clerk Eggum.

Chairman Watne reviewed the Service Provider Agreement between Area IX Agency on Aging and Kalispell Senior Center for Provision of Health Promotion Services to the Elderly. The purpose of the agreement is to provide health promotion services to the elderly under Title III-F of the Older American Act, as amended, to assist in meeting the special health and social needs of persons aged sixty and older.

Commissioner Gipe made a **motion** to approve the Service Provider Agreement. Commissioner Hall **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

FINAL PLAT: HILLBILLY HOLLOW SUBDIVISION

Present at the August 5, 2003 10:30 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Planner Melinda Riley, Dawn Marquardt and Debbie Shoemaker of Marquardt and Marquardt Surveying, and Clerk Eggum.

Riley reviewed the final plat for Hillbilly Hollow Subdivision which is an application by Sharon and Matthew Wymer for approval of a two lot minor subdivision off of Evers Creek Road, approximately 17 miles northwest of Whitefish. The subject property is 5.68 acres in size. Preliminary plat was approved on February 3, 2003 subject to 12 conditions. All conditions have been met or otherwise addressed by the applicant. Staff recommends approval of the final plat.

Riley advised that MWM has submitted a letter of approval for the roads but requested that the Commissioners view the road.

Commissioner Gipe made a **motion** to approve Final Plat for Hillbilly Hollow Subdivision. Commissioner Hall **seconded** the motion. **Aye** – Watne, Gipe and Hall. Motion carried unanimously.

1:15 P.M. 911 Meeting at Justice Center

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on August 6, 2003.

WEDNESDAY, AUGUST 6, 2003

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

PUBLIC HEARING: WHITEFISH HILLS FOREST ZONE CHANGE/BLANCHARD LAKE ZONING DISTRICT

Present at the August 6, 2003 9:00 A.M. duly advertised public hearing were Chairman Watne, Commissioners Gipe and Hall, Planner Mark Crowley, Tom Sands and Erica Wirtala of Sands Surveying, Don Murray, Patrick M. Sullivan, Stu Swenson, Kenneth L. Weed, Patricia Lee Weed, Ed Madler, and Clerk Eggum.

Crowley advised that this was a request from Whitefish Hills Forest, LLC from AG-40 Agricultural with a minimum lot size of 40 acres to AG-20 Agricultural with a minimum lot size of 20 acres. The property contains 80 acres and is located south of Whitefish near Highway 93 and K.M. Ranch Road. Chairman Watne confirmed the surrounding area zones. Crowley continued that it complies with the Master Plan. It meets all of the statutory criteria.

Chairman Watne opened the public hearing to anyone wishing to speak in favor of the zone change request.

Wirtala advised of an unzone portion of the area. She referred to the map noting the property in question.

Swenson stated he was representing the K M Ranch Road Committee and they have been fighting dust out there forever and getting tired of it. We have more homes per mile I think than any road in the west valley and still we get no cooperation from the county as far as getting it paved. We did talk to the Whitefish Hills people and they are interested in going together with us and maybe creating an SID and we would pay a portion of it and they would pay a portion of it. But we feel due to the Whitefish Hills Development, we are going to see a lot of increased traffic on that road and so we have to figure out a way to get that road paved and it has got to be done. People are really sick of it and have been for a lot of years. I am asking for some suggestions from you guys as to what we can do or what direction we should take to accomplish this and get that road taken care of. Every time there is a new county commissioner, we are going to pave one mile at a time. Well it never happens then they are going to do this and it never happens. It is a mess out there. I have seen better roads on reservations than we've got on the K M Ranch Road. I just don't know why the county doesn't pay more attention to what is going on out there. We have a school bus that has to run out there every day. We have lots of traffic. I live on the lower end of it so we avoid driving on it all of the time and when Williams was the county commissioner he said well you don't have enough traffic count. Well the reason we don't have any traffic count everybody avoids driving it. We take the Lodgepole Road. We take a lot of other roads just to get around so we don't have to drive that terrible road. I am asking that we be allowed to go ahead with an SID or maybe county participation and then maybe also an SID with Whitefish Hills to get this road taken care of. It is long overdue and I don't know where we start with the SID or whether an SID is feasible or not but we would like to have something done because we are definitely going to see increased traffic.

No one else rising to speak, Chairman Watne asked for anyone wishing to speak in opposition to the zone change.

Madler stated that he did not want to speak in opposition. I think the potential of an excellent subdivision exists here. My concern is that with the zoning change, I think I wrote all of you letters, that we have the potential for 600 more trips down the K M Road even before any subdivision is approved. I am an anesthesiologist at the hospital. I am one of the 16 adults. All of the adults that live between the entrance here and where it is paved signed petitions. We sent them first to the Whitefish City-County Planning Board and then to each Commissioner. My concern is not those people that have already voiced their opinion but I am representing 10 other people in that area and that is the 10 children. In my job I don't take risks with children's health. I think there is no argument against the fact that 600 more trips a month is going to place their health and safety at risk. Our request to you with both of these petitions was to attach a condition to the zone change request like condition #7 of the subdivision preliminary plat approval.

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

The Commissioners agreed discussion relative to an RSID and the road would properly be addressed during the preliminary plat process.

Commissioner Gipe made a **motion** to adopt Staff Report FZC-03-25 as findings of fact. Commissioner Hall **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

Commissioner Gipe made a **motion** to adopt Resolution No. 966H. Commissioner Hall **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

RESOLUTION NO. 966H

WHEREAS, the Board of Commissioners of Flathead County, Montana, held a public hearing on the 6th day of August, 2003, concerning a proposal by Whitefish Hills Forest, LLC to change the zoning designation in a portion of the Blanchard Lake Area Zoning District from AG-40 (Agricultural) to AG-20 (Agricultural);

WHEREAS, notice of that hearing was published pursuant to Section 76-2-205(1), M.C.A., on July 22 and July 29, 2003;

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

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

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 this resolution of intention to change the zoning designation in a portion of the Blanchard Lake Area Zoning District from AG-40 (Agricultural) to AG-20 (Agricultural), that area being described on Exhibit "A" hereto.

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

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

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

DATED this 6th day of August, 2003.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By: /s/Robert W. Watne
Robert W. Watne, Chairman

By: /s/ Gary D. Hall
Gary D. Hall, Member

By: /s/Howard W. Gipe
Howard W. Gipe, Member

ATTEST:
Paula Robinson, Clerk

By: /s/ Vickie M. Eggum
Vickie M. Eggum, Deputy

**EXHIBIT A
WHITEFISH HILLS FOREST, LLC
WITHIN BLANCHARD LAKE ZONING DISTRICT
STAFF REPORT #FZC-03-25
JUNE 26, 2003**

Location and Legal Description of Property

The properties proposed for rezoning are located on the west side of Highway 93 North, northwest of Happy Valley. They total 80 acres.

The properties can be described as Tract 2 of Certificate of Survey No. 11725 and the SE1/4 of the SE1/4 of Section 22, Township 30 North, Range 22 West, P.M., Flathead County, Montana. Excepting therefrom the County Road as described in Deed recorded in Book 164, Page 201, records of Flathead County, Montana.

Commissioner Hall made a **motion** to authorize the publication of the Notice of Passage of Resolution of Intention Blanchard Lake Area Zoning District and authorize the Chairman to sign. Commissioner Gipe **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

**NOTICE OF PASSAGE OF RESOLUTION OF INTENTION
BLANCHARD LAKE AREA ZONING DISTRICT**

The Board of Commissioners of Flathead County, Montana, hereby gives notice pursuant to Section 76-2-205(5), M.C.A., that it passed a resolution of intention (Resolution No. 966H) on August 6, 2003, to change the zoning designation in a portion of the Blanchard Lake Area Zoning District from AG-40 (Agricultural) to AG-20 (Agricultural).

The boundaries of the area proposed to be changed from the AG-40 classification to the AG-20 classification are set forth on Exhibit "A" hereto.

The proposed change would change the minimum lot size allowed from 40 acres to 20 acres, while maintaining the character of the zoning regulations applicable to the property, which are intended to protect and preserve agricultural land for the performance of a wide range of agricultural functions and to control the scattered intrusion of uses not compatible with an agricultural environment, including but not limited to residential development. The change would allow splitting the property into 20 acre sites, instead of the minimum 40 acre sites now required, and for more intensive cluster development.

The regulations defining the AG-40 and AG-20 Zones are contained in the Flathead County Comprehensive Zoning Regulations, on file for public inspection at the Office of the County Clerk and Recorder, Courthouse, Kalispell, Montana, in Permanent File No. 93270 13500.

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

DATED this 6th day of August, 2003.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

ATTEST:
Paula Robinson, Clerk

By: /s/Robert W. Watne
Robert W. Watne, Chairman

By: /s/ Vickie M. Eggum
Vickie M. Eggum, Deputy

Publish on August 11, and August 18, 2003.

**EXHIBIT A
WHITEFISH HILLS FOREST, LLC
WITHIN BLANCHARD LAKE ZONING DISTRICT
STAFF REPORT #FZC-03-25
JUNE 26, 2003**

Location and Legal Description of Property

The properties proposed for rezoning are located on the west side of Highway 93 North, northwest of Happy Valley. They total 80 acres.

The properties can be described as Tract 2 of Certificate of Survey No. 11725 and the SE1/4 of the SE1/4 of Section 22, Township 30 North, Range 22 West, P.M., Flathead County, Montana. Excepting therefrom the County Road as described in Deed recorded in Book 164, Page 201, records of Flathead County, Montana.

PRELIMINARY PLAT: WHITEFISH HILLS FOREST

Present at the August 6, 2003 9:00 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Planner Mark Crowley, Tom Sands and Erica Wirtala of Sands Surveying, Don Murray, Patrick M. Sullivan, Stu Swenson, Kenneth L. Weed, Patricia Lee Weed, Ed Madler, and Clerk Eggum.

Crowley reviewed the preliminary plat for Whitefish Hills Forest Subdivision filed by Whitefish Hills Forest, LLC. The applicant proposes to create 28 residential lots on 80 acres. The lots have an average size in excess of 20 acres and all lots will be served by individual water and sewer facilities. The property is located south of Whitefish near Highway 93 and K M Ranch Road. Two variances were requested. One was for the length of a cul-de-sac and the other was for a lot being split by a road. Staff recommends approval of the Preliminary Plat. Public comment has been received relative to paving of K M Ranch Road and the dust issue. The subdivision is split by fire districts. Part of it is in Whitefish Fire and the southern 60 acres near K M Ranch Road is in the West Valley Fire District. A condition has been added to withdraw from West Valley and have the entire subdivision served by Whitefish Fire District.

Commissioner Gipe made a **motion** to adopt Staff Report #FFP-03-14 as Findings of Fact. Commissioner Hall **seconded** the motion. **Aye** – Watne, Gipe and Hall. Motion carried unanimously.

Commissioner Gipe made a **motion** to approve the variances as requested. Commissioner Gipe **seconded** the motion. **Aye** – Watne, Gipe and Hall. Motion carried unanimously.

Chairman Watne questioned whether there were any problems with the conditions.

Sands addressed condition #7. We realize the dust on K M Ranch Road has been a problem. It has been for a long time. We are about a mile and 6/10ths from the end of the pavement. Keep in mind the Whitefish Hills project is totally paved within the subdivision. We have paved all of these roads. There are six or seven miles existing that have been paved. There are another three and one-half miles that will be paved on this development all to county spec and that is part of keeping the dust down out there. We are doing our part to pave within the subdivision. The developer is willing to work with the county and work with the other property owners in the area and form an SID to get K M Ranch Road paved. In the meantime, we would like the opportunity to do a dust abatement program on there from the end of the pavement to a point 500 feet past this approach to take care of any traffic that might come up through here before the development is actually taken place and to mitigate some of the concerns of the landowners at least on this portion of the road. What we would like to do is join in and support the formation of an RSID for the improvement of paving K M Ranch Road and the developer is willing to waive the right to protest the RSID. The developer shall be responsible for a dust abatement program on K M Ranch Road from the end of the pavement near Spring Prairie Road to a point 500 feet beyond the northwest to the south entry of the development which is approximately 1.5 miles. The dust abatement will begin prior to the filing of the final plat and continue until the road is paved by the RSID or a maximum of three years. I think that is more than sufficient for the developer to do because he has taken responsibility to do a dust abatement to keep the dust down until the RSID is created. We are more than willing to work with the landowners out there. The concern we have is nobody knows how to get this RSID started. We have an attorney on staff with the Whitefish Hills project Don Murray and Don can find out how to get it started and maybe we can be the lead on this RSID or if the landowners want to be the lead on it, that can happen too. It is going to be a little bit of a lengthy process to get started. It is not going to get paved within the first year I don't think. There is going to be a lot of studying to do and maybe some work on some of those curves out there and some right-of-way issues to be resolved but it is something we can at least get started on. We do a dust abatement program for three years after the final plat is recorded, that should be enough time to get that thing done.

Commissioner Gipe was confident it could get it done before then.

Sands advised that they would be paving the interior road in the fall of next year or the spring of 2005. He anticipated final plat would be sometime in the spring of 2005.

Commissioner Hall commented on the positive approach this developer was taking toward the project. To have a developer perform dust abatement and offer to work with the neighborhood in establishing an RSID was something the Commissioners did not see often and expressed a desire to see more of these types of actions.

Swenson stated that one of their main concerns is during the construction period. There will be a lot of concrete trucks, lumber trucks and carpenters going back and forth and the K M Ranch Road is going to be just a mess. Even if you come from the other end a mile and one half you still have people traveling from the Twin Bridges Road. We would like to get on this SID as soon as possible.

Commissioner Gipe assured Swenson that they would work with their administrative assistant and should be able to get that going right away.

Swenson noted that it doesn't solve the problem down on the lower end. Sands added that we can make sure the contractor takes care of that dust abatement on K M Road if he is going to use that road. I am not sure what the shortest route for the gravel trucks is going to be. They like the shortest route. If they are going to use K M Road we can make sure it is taken care of. Sullivan requested that the Road Department participate in the dust abatement. Commissioner Hall assured Sullivan that it is county policy for the Road Department to grade county roads prior to them being oiled. The Commissioners noted that the county did not have an oil truck available for use.

Swenson urged the implementation of the SID as soon as possible. Commissioner Hall stated that it sounded like the developer was moving in that direction. We have had some issues with the normal procedure for an RSID. It was normally just for local subdivisions and developments instead of general county roads. Our administrator is also working on another SID option. We are working on it and we will work with your attorney.

Commissioner Gipe made a **motion** to amend Condition #7 to read as follows: "The developer agrees to join in and support the formation of an RSID for the improvement and paving of K M Ranch Road. The developer shall waive any right to protest said RSID. The developer shall be responsible for a dust abatement program on K M Ranch Road from the end of the pavement near Spring Prairie Road north to a point 500 feet beyond (northwest) of the south entry of the development. (Approximately 1.5 miles.) This dust abatement will begin prior to the filing of the final plat and continue until the road is paved by the RSID or a maximum of three years." Commissioner Hall **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

Madler advised that he had sent a letter advising where his home was located and what concerned him about the subdivision being made would be traffic that would go by his property and all of the gravel trucks. This road actually abuts my land and is very close to my house; maybe like 100 vertical feet above it. I was concerned that during the creation of the subdivision that could make my home a miserable place to live. I was hoping that we could advise the developers to put dust abatement there also.

Commissioner Gipe noted that it has been brought to their attention. I think they have been very cooperative in their approach to this. Commissioner Hall added that normally when they do a development and build a road like that they do dust abatement usually in the form of water and would assume they would keep that dust down for Madler.

Madler stated that we have been focusing on dust but it is actually more than dust. There are other times other conditions in the road where it becomes very difficult to travel, pot holes, ruts, things that we really haven't addressed and I think that is why paving is different than dust abatement. I guess one thing that the eight residences that live between the entrance and the asphalted K M Road desire for pavement is consistent with our current subdivision regulations. At the Whitefish City-County Planning Board, part of their recommendation was based on the fact that the developer said that this really is just an extension of the exemplary Whitefish Hills development and where we have probably 85 lots and following subdivision regulations they would be responsible for paving 50 feet for each lot. As I pointed out to you in letters, there are other places in our subdivision regulations where we can make this more restrictive and do exactly what the Whitefish City-County Planning Board suggested and have them pave the 1.6 miles and that would cover both angles of dust and safety and would really be their responsibility.

Tape ends

Madler continued that from the K M Road their entrance down to where it is asphalt there are only eight residences. It is such an extraordinary change that we think it is appropriate for them to pave this area just like the Whitefish City-County Planning Board said. The sale price of this yellow area is estimated to be about \$15 million. To pave this part of the K M Road is estimated to be \$150,000.00. That is just merely 1% of the final sale price. We think to represent the county effectively, really we don't have an endless source of funds and the idea is we would like to start something new where the developer does pay their fair share of the infrastructure. Commissioner Hall responded that the legislature took that out of the Commissioners' hands and have not allowed them to impose impact fees. We are not in disagreement with your proposal but at the same time you can't legally tell a developer he has to pave that road. Madler stated that it appears from the subdivision regulations part of the requirement would be 50 feet per lot. Commissioner Hall noted inside the subdivision. Crowley and Madler disagreed. Madler reviewed the subdivision regulations: 3. Primary Access Roads: b. If the public road is not paved: At the point where the proposed subdivision traffic and existing access road traffic reaches 200 vehicle trips per day the applicant may either (a) pave the access road at the rate of 50 feet per proposed lot and then beyond there on the next page it says what the alternative would be which would apply to the rest of Whitefish Hills the other 60 or so lots. It most clearly says in our subdivision regulations their paving requirement. Also repeatedly through here there are other suggestions that they should pave the whole road and also points that we should apply the most restrictive rule.

Sands stated if you keep reading it says paving will start either at the county/state/federal road back to the subdivision, or at the point of 200 vehicle trips start back towards the public road. That is within the subdivision. Madler responded no, it is not, absolutely not.

Crowley disagreed with Sands and also read from the subdivision regulations: Primary Access Roads: This is roads within the subdivision item 1 is definitions. 2 is roads within the subdivision, that would be Whitefish Hills Court, Whitefish Hills South whatever else they are called. Primary Access Road would be K M Ranch Road. Sands stated that primary access roads says if the subdivision accesses onto a paved public road. Crowley agreed and stated so we skip that. If the public road is not paved 1 and 2, I am just reading what has been adopted. Sands noted that he was here when those regulations were adopted.

Madler stated that he would like to follow the subdivision regulations that is why we have them and repeatedly throughout the zoning regulations and the subdivision regulations it states that these regulations are to promote health and safety and this is what we are talking about; our health and safety. This is very important to us. We have 10 children on the road. We have to take them to school in the morning. They have to breath the air.

Crowley again referred to the subdivision regulations where it says primary access road. If the public road is not paved that is this situation. 1. No paving required if vehicle trips from the proposed subdivision plus existing traffic does not reach 200 vehicle trips per day. There is no existing traffic within the subdivision now. It is clearly addressing the primary access road, K M Ranch Road, the public road.

Madler stated that the subdivider may be required to pay or guarantee payment for part or all of the cost of extending capital facilities related to public health and safety including but not limited to public roads. And then we also have a place where it says under general provisions the purpose of these regulations is to promote public health, safety and general welfare by providing for the improvement of roads. Then under jurisdiction, chapter 1.7 it says these subdivision regulations supplement other regulations and where they are in conflict with laws, regulations, ordinances or resolutions, the more restrictive requirements shall apply. The more restrictive requirement would be that they pay for all of it. This is why this is important. This is the health of our children. Yes, this could be a precedent. We are not antidevelopment. We think that this could be a great development. We know that the people representing Whitefish Hills represent their profit. The people I am representing I represent their health and safety and that is what the subdivision regulations address. It is health and safety.

Wirtala responded to Madler's and Crowley's interpretation of the subdivision regulations: If we take it that way, then the subdivision would be responsible for paving 1400 at 28 lots 50 feet so we could go a quarter of a mile outside the subdivision and pave that but that is not going to get anybody anywhere and that is what is specifically called out by the subdivision regulations to incorporate all of Whitefish Hills and all of the previous development you are looking at this preliminary plat of 28 lots in it and to take the whole thing as a total 85 lots and put that number in and incorporate that in your paving figure I think is making a mistake. Madler responded but your very words at the planning board is this is just an extension of Whitefish Hills. You said that. So in fact, I can follow this road, look it goes right to the K M Ranch Road so by our subdivision regulations, that

would be your responsibility. Really, 4500 feet it is still only a half of a percent of the sales price of those 28 lots. So it would really be quite a small expense.

Chairman Watne thanked Madler for his presentation.

Sands advised that the primary access to the subdivision is from the north and from the east on Stelle Lane, coming through the existing gates into the gated area subdivision. There is an existing gate at Stelle Lane that was constructed over the past year and one half. Another existing gate is at the north entry by the way of Highway 93 North that was constructed several years ago. The people that bought into this Whitefish Hills subdivision bought into it because it has security. Patrick is the security guard/caretaker. With the extension down through here we are going to be liable to a lot of owners here if we can't put a gate down here to keep it a gated community. I don't really think this is an obtrusive gate on that south entry down there. Anybody can come up there at any time of the day or night and hit the key pad and talk to Patrick and get onto the property. Patrick carries a cell phone that opens the gate and can talk to anybody within the subdivision if you have their number at the gate. It actually has an index at the gate of all the residences. The fire departments have their own codes to those gates so when the fire department rolls up they punch the code in and the gate opens. That has been working for the last two or three years. We really need to have the gate at the south entry. The purpose for putting the gate up there in the first place if you guys remember Bob and Howard, was to keep this Stelle Lane thing from being a bypass to Whitefish. We are keeping traffic from flowing through here and keeping traffic off of Stelle Lane by having that gate there and the same thing is going to happen here. It is going to keep the traffic from coming up K M Ranch Road and using this for a bypass on the rest of this.

Sullivan explained the process for someone visiting a resident in the subdivision: Every resident has their own personal code so they would provide that code to their visitors. Also there is an index for all the residents and I am listed on the index as caretaker. They can call that number which rings my cell phone or P. Sullivan rings my office phone. I even coach the contractors and all that to have multiple codes for their subs and some of the contractors have their name on the scroll through list and can ring their cell phone or their home phone and I also have my numbers up at the gate that says call for permission. There is a walk through gate at the south gate. People that have bigger events, I just go down and open the gate up and leave it open over night so that 20 guests don't have to deal with the gate issue.

Sands prepared Commissioner Gipe with a proposed Condition #11. The roads within the subdivision shall be open to the public with the permission of the developer and homeowners, however, the developer is allowed to erect and maintain a gate similar to the other two existing gates which are at the east and north accesses to the previously approved Whitefish Hills Subdivision. The emergency personnel shall have access to a code to open the gate, which will be the same as is currently being used on the existing gates.

Crowley stated that open to the public is nothing more than lip service if it is open to the public with your permission. Of course it is. All of their guests are always welcome. I would strike open to the public. To say it is open to the public with your permission. I don't see what it accomplishes. If they want to put up a gate, I don't have any real hardship with it. They didn't spell it out in their application and I assumed they didn't believe this would be a defacto by pass. Now they are saying their primary access is the Highway 93 North and Stelle Lane. Well when they were in for the previous plats they said Stelle Lane would be a secondary access so they didn't want gating there.

Sands reminded Crowley that the Commissioners wouldn't let them have that as a secondary access. It had to be improved. We improved Stelle Lane to county specs and rebuilt Stelle Lane as part of that condition of approval. That is why Stelle Lane ended up being a primary access.

Madler questioned whether if somebody was riding a bicycle on Whitefish Hills Drive were they breaking the law if they were not given permission. Sullivan responded that he hasn't chased anybody out of there. Chairman Watne noted that if it is open to the public it wouldn't be breaking the law. Commissioner Gipe noted that it has worked well on the other development and they have addressed the emergency vehicles issue.

Commissioner Gipe made a **motion** to amend Condition #11 to read as follows: The roads within the subdivision shall be open to the public with the permission of the developer and homeowners, however, the developer is allowed to erect and maintain a gate similar to the other two existing gates which are at the east and north accesses to the previously approved Whitefish Hills Subdivision. The emergency personnel shall have access to a code to open the gate, which will be the same as is currently being used on the existing gates. Commissioner Hall **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

Murray stated that the gate is a big philosophical hurdle in the valley. I think it is more significant as a symbolic issue than a practical issue. I think our gates have been up for the better part of a couple of years. I am not as familiar as Patrick but I don't think they have been a big problem and I don't think they exclude people that really want to go onto the property. I don't think anybody really wants to go into Whitefish Hills it is more the notion that maybe they can't rather than it is something they want to do and can't. When we decided to have them, this developer actually gave the county Stelle Lane. That was not a county road the east west segment of it. The north south was. The developer requested permission to build it to the north which it did and it also gave the county a right-of-way for the east-west portion which wasn't a county road. Now this is a county road through there and the developer is responsible for the maintenance. We recognized at the time that the county was stretched thin in terms of its ability to maintain its roads and so that is something the developer has undertaken and Patrick takes care of that county road. I guess I say that only to say that developers get criticized a lot. They take a lot of heat. They are viewed sometimes as a limitless source of money and they are not. It is a tough go sometimes and sometimes every penny does mean something and can make the difference between a successful development and one that ends up in the red. I think this by pass issue is an important issue. These are very nice roads with very little traffic and there will be a lot of temptation for people especially once K M Ranch Road is improved or paved to get on those roads and drive all the way through that subdivision. The people who live up and down Stelle Lane recognize that and you probably remember they supported the gate. At first they didn't like the concept of it because I think it just underscored the fact that this former Plum Creek land was no longer going to be the recreational land that a lot of people had enjoyed historically. Symbolically, I think it had an impact on them but they recognized that it was likely to increase the traffic on their road because of the by pass attractiveness component and they supported the gate. I think the K M Ranch residences, I don't know if they have given it a lot of thought but they might find if there was a gate, it would limit K M Ranch Road traffic because there wouldn't be the attraction of using the Whitefish Hills Roads to by pass the traffic in Whitefish. I guess gated communities has been something by in large we have not liked to see come here. It is something none of us really want to see happen in our area but at the same time, there are gates going up everywhere all the time and if we do it well and we do it right as I think we have demonstrated it really hasn't been much of an issue at all.

Sullivan confirmed that he has talked to Mr. Madler and his wife and has seen his wife up on the property with her dogs. I don't have a problem with it. I do allow some people in there to hunt. When I mark on the map I write on there is a house and dogs,

don't go to close to there. I have actual letters in my file from people on Stelle Lane little kids write me thank you letters because they have learned to ride their bicycle on the paved roads in Whitefish Hills. I am a neighbor and I am the poor guy living in the development. So if I can do anything to keep it open for the neighbors as long as I can, I try to do that. That is why my phone number is on all of our no trespassing signs on 2200 acres.

Kenneth L. Weed sought confirmation that the 20 acres plots would not be broken down any further. Sand responded that it is an AG-20 zone. If you bust it down to 10s or fives you have to go through another zone change and have the public hearings just like we had to go through to get to this stage and you have to go through another subdivision review to go through the public hearings with the City-County Planning Board in Whitefish again and you may have to have a growth policy amendment to go along with that so it would be very difficult. I am not saying it couldn't be done but it would be very difficult. Along with that though there are covenants on Whitefish Hills that preclude these things from being divided again. I would say you have 99% chance it will never be divided again. Anything can be happen but it is very unlikely. Weed speculated that 20 acres was a lot of timber ground; too much for one person to take care of so it is eventually going to be broken up.

Murray stated that he anticipated having a hand in writing the covenants for the Whitefish Hills Forest and speculated they would not allow any splitting. Chairman Watne reiterated the fact that the complete process would have to be gone through again to accomplish a split as the zoning does not allow it.

Crowley stated if you are going to amend Condition #7, page 4 of the staff report says should the applicant not be required to pave K M Ranch Road, they should be required to waive protest to creation of an RSID. They should also be required 1400 feet, 28 lots times 50 feet per lot of K M Ranch Road. They are your regulations, the county's regulations. If you are not going to enforce them then we shouldn't have them. Commissioner Gipe responded that it is within the agreement. They are going to pave all of the subdivision. The feet that you are talking about are within the subdivision. Crowley responded that this addresses the primary access road which is K M Ranch Road. Commissioner Gipe disagreed.

Commissioner Hall made a **motion** to approve the Preliminary Plat of Whitefish Hills Forest Subdivision subject to 19 conditions as amended. Commissioner Gipe **seconded** the motion. **Aye** – Watne, Gipe and Hall. Motion carried unanimously.

11:00 A.M. - County Attorney Meeting @ County Attorney's Office.

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on August 7, 2003.

THURSDAY, AUGUST 7, 2003

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

8:30 A.M. Commissioner Hall is to attend the AOA TAB Meeting at Brendan House Conference Room

PUBLIC HEARING: RESIDENTIAL & PUD MIXED USE TEXT AMENDMENT/FLATHEAD COUNTY ZONING

Present at the August 7, 2003 9:00 A.M. duly advertised public hearing were Chairman Watne, Commissioner Hall, Roger Fricke, P. C. Musgrove, Planning and Zoning Director Forrest Sanderson, Assistant Avery, and Clerk Eggum.

Sanderson advised that this was a request to modify the various use allocations and performance standards for residential and mixed use residential planned unit developments. This is one of the projects that has come back through for reaffirmation. It was a decision originally made in October November of 2001 dealing with planned unit developments. The staff report contains findings of fact and draft language for amendments to the Flathead County PUD section of the zoning regulations specifically Section 3.31. This went back to the Planning Board for Hearing and there was a split vote 4-2. The proposal initially was to take and substantially increase the amount of commercial activity in both the residential and the mixed use planned unit development sections of the Flathead County Zoning Regulations. At the time we went back through rehearing, the percentages were cut back. Initially in the residential PUD district the standard was taken from 10% to 30%. At the time of rehearing, the Planning Board determined that 30% was too much and they dropped it to 25% for districts that were over five acres in size. For those that were five and under, it went from 10 to 25 and they dropped it back down at rehearing to 20%. Then in part four of the residential PUD, no building use for commercial establishments initially it was set at a standard of 60%, they dropped it to 40% and at rehearing they upped that back to 51% and in the mixed use section, they dropped the maximum commercial use from 50% down to 35%. At the time the vote was taken, there was a lot of discussion about the residential PUD section in terms of the amount of allowed commercial activity. They all agreed that 30% was too much. They dropped it back to 25% but three of the seven members that voted on the issue still were disturbed that maybe 25% is too high. If you have a residential PUD 10 acres in size, 2.5 acres could be designated to commercial use in a residential PUD and they felt that was just a little too much. You correspond that to a mixed use PUD, you have to have 20 acres to initiate that mixed use but seven of those acres could be commercially driven. If we use the same 20 acres residential instead of seven it would be five. There is not that big of a disparity between a mixed use PUD and a residential. I talked to the board president this morning and he admitted he really didn't understand the complete issue and again echoed what the minority of the board and Mr. Larson had voted in the majority but maybe 25% is too much and what he asked me to convey to the board of commissioners is that before you just pass on this recognizing it was a split vote, think about in residential PUD districts if that acreage is too high given the corresponding reduction that happened in the mixed use and if you are so inclined I would think that maybe that number is 20% and 15% for those under five acres but it is certainly worthy of discussion to keep the residential nature.

Chairman Watne opened the public hearing to anyone wishing to speak in favor of the text amendment. No one rising to speak, Chairman Watne asked for anyone wishing to speak in opposition to the text amendment. No one rising to speak, Chairman Watne closed the public hearing.

Fricke stated that the amendment is fine but the old way was fine too.

Musgrove noted that the flexibility that both of those give are important. He added that he was really just here to listen.

Sanderson advised that under the old PUD rules before we changed them, in the first three years I worked here, there was one planned unit development turned in at Bigfork and it was never completed. In the last year, since we opened this up and said yes you may do planned unit developments, we have had four applications. Two of them are in Lakeside and they have their own specific performance standard. We had Mr. Fricke and we have Kelsey which is a straight residential PUD coming in. I

think what we have done by providing some additional flexibility, is we have restored the interest to the planned unit development. Something that just did not exist before because the rules were far too strict.

Commissioner Hall asked for an explanation of the reasoning for the changes in 2. Sanderson responded that limiting trade and service facilities, you are defeating the purpose of the planned unit development. You are artificially setting a standard that denies somebody who might have a plan that would function well with other types of commercial activities. These are not fixed to outlying areas. These are for all of Flathead County. Every plan that comes through a person could propose to have a Super One as a portion of their planned unit development. Maybe in Evergreen that is an appropriate location for that commercial use under a planned unit development, it might not be appropriate out in Creston. By taking language that is contained in 2 and throwing that out, we afforded the developer the flexibility to ask for a Super One as part of their planned unit development in Evergreen where it is appropriate. They still may ask in Creston but we can say no. That is not appropriate in the Creston area at this time. The language in section 2, artificially restricts or denies somebody the ability to even ask. By replacing it with this language, the person can ask and get it approved because a Super One is allowed in a B zone and it is appropriate in Evergreen or Lakeside.

Sanderson confirmed that this was not a major issue at the Planning Board. It was centered around the amount of land that could be set aside in these residential districts.

Referring to number 4 Sanderson advised that taking that to 51%, they recognized that it needed to go up. Again acknowledging that 40% was far too low but 60% was too high. They did lock it down to 51% of the residential units so at least over half would be built before the commercial ventures would be undertaken.

Addressing #6, Sanderson advised that we had the discussion with open space with clustering and again by doing the mandatory set aside it is a forever set aside. You create artificial rings around the cities. Again, the set aside of open space is driven through the subdivision laws of Montana. A person who proposes a PUD in an AG 20 district and it may not be AG 20 forever is going to set aside a lot of land that cannot be redeveloped and striking that language has to be done if we are going to continue the further design and redevelopment.

In responding the issues of the residential PUDs, Sanderson advised if we run the map on that lets say I own four acres of R-1 zoning property. On those four acres at 20%, I could propose 8/10ths of an acre dedicated to commercial uses. The feeling is that might be too much. You could end up with four acre subdivisions with a little convenience store on that 8/10ths of an acre. It would support the commercial use theoretically but again the issue is 8/10ths of four acres is too much in the eyes of many of the board.

Sanderson responded to taking #9 out advising that the reason that it was stricken is that architecturally harmonious and serve the needs of those in the immediate vicinity. That has been addressed in part by requiring that a mixed use PUD be approved by the Board of Commissioners before we even start through the process.

Sanderson recommended for number 1 a reduction from 25% to 20% and 20% to 15% and again that is 15% subject to negotiation with the Planning Board and Commissioners. Just because we allow it does not mean you get it. The 20% up top is an out and out you may. If you have five acres, one of those acres may be dedicated to commercial use. It doesn't mean it has to be approved but you can start the process knowing you can dedicate one of the five. In the bottom in the under five 15% is a negotiated max.

On a four acre piece if it went to a 15%, the lot size would be a negotiated max of about 6/10ths of an acre. What it is saying is for these small PUDs we are going to be looking at setting those in areas that have public water.

Tape ends

Sanderson noted that in five years he I has never seen a PUD that small. They are usually on much larger tracts than four acres in size.

Commissioner Hall made a **motion** to adopt Staff Report FZTA-03-05 as findings of fact as amended. Chairman Watne **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

Commissioner Hall made a **motion** to amend number 1 under Commercial Uses from 25% to 20% and from 20% to 15% and in E Mixed Use PUD to take out "commercial" and "industrial". Chairman Watne **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

Commissioner Hall made a **motion** to adopt Resolution No. 955FL. Chairman Watne **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

RESOLUTION NO. 955FL

WHEREAS, the Board of Commissioners of Flathead County, Montana, held a public hearing on the 7th day of August, 2003, to consider a change to the text of the Flathead County Zoning Regulations proposed by Flathead County Planning and Zoning Office amending Section 3.31.030 of the Standards For Planned Unit Development District by modifying the various use allocations and performance standards for residential and mixed use residential planned unit development, for example, by decreasing the percentage of commercial use in residential mixed use developments from 30 to 20 percent in developments over 5 acres in size, allowing for more commercial uses in such developments and eliminating open space requirements in such developments.

WHEREAS, notice of that hearing was published pursuant to Section 76-2-205, M.C.A., on July 22 and July 29, 2003;

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, M.C.A., hereby adopts this resolution of intention to amend Section

3.31.030 to modify the various use allocations and performance standards for residential and mixed use residential planned unit development allowing for more commercial uses in such developments and eliminating open space requirements in such developments, as set forth on Exhibit A hereto.

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 freeholders who file protests are either registered to vote in Flathead County or execute and acknowledge their protests before a notary public.

BE IT FURTHER RESOLVED, that if forty percent of the free-holders protest the adoption of the proposed change, the change will not be adopted.

DATED this 7th day of August, 2003.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By: /s/Robert W. Watne
Robert W. Watne, Chairman

ATTEST:
Paula Robinson, Clerk

By: _____
Howard W. Gipe, Member

By: /s/ Vickie M. Eggum
Vickie M. Eggum, Deputy

By: /s/ Gary D. Hall
Gary D. Hall, Member

Exhibit 'A'

Flathead County Planning Board
June 11, 2003

Section 3.31.030: Standards For Planned Unit Development District (PUD)

1. Location of PUD:

A PUD district shall be located in an area where public and private facilities and services are available or are to become available by the time development reaches the stage where they will be required.

2. Land Area Requirement:

The minimum land area required for a change to or designation as a PUD shall be two acres and shall be under single ownership. In determining whether minimum area requirements for a PUD district have been met, computations shall include the entire area within the boundaries of the district proposed, including the area of streets. Lands in such districts may be divided into streets, but shall be so located, dimensioned and arranged as to permit unified planning and development, to meet all requirements for PUD districts, and to provide adequate protection for uses within the district and in surrounding areas.

3. Establishment of PUD Districts:

The following locational criteria shall govern the type of planned unit developments that may be reviewed and approved by the County Commissioners

A. Residential PUD Districts:

Residential PUD districts can be established only in R-1 through R-5, RA-1, SAG-5, SAG-10 or AG-20 use districts, or in any area designated as "residential" in the Flathead County Master Plan.

B. Commercial PUD Districts:

A commercial PUD district may be established in B-2 through B-5 districts.

C. Industrial PUD Districts:

An industrial PUD may be established in I-1, **I-1H** and I-2 districts.

D. Marina PUD Districts:

A marina PUD district may be established in ~~the following districts:~~ R-4, R-5, RC-1, RA-1, B-2, B-3, CVR, I-1, I-1H, I-2, P and LS districts.

E. Mixed Use PUD Districts:

Based upon a site plan review, and after establishing compatibility with the adjoining land uses and determining that the adverse environmental impacts shall only be minimal, the County Commissioners may allow a Mixed Use PUD in any district which qualifies for a residential, Commercial, or Industrial PUD.

4. Use Regulations:

The following regulations shall apply to permitted uses and densities in various types of Planned Unit Developments.

A. Residential PUD District:

Within a Residential PUD District, the uses and structures permitted **or conditionally permitted** in the underlying R-1 through R-5 or RA-1 districts shall be allowed. Residential dwelling unit densities within a proposed Residential PUD District shall be as follows:

Residential PUD Created	Maximum Permissible Density
R-1 District	2 dwelling units/acre
R-2 District	3 dwelling units/acre
R-3 District	7 dwelling units/acre
R-4 District	15 dwelling units/acre
R-5 District	15 dwelling units/acre
RA-1 District	33 dwelling units/acre
SAG-5 District	2 dwelling units/5 acres
SAG-10 District	2 dwelling units/10 acres
AG-20 District	2 dwelling units/20 acres
LS District	15 dwelling units/acre

Commercial uses may be allowed in a Residential PUD District, provided:

1. Such establishments and their parking areas shall not occupy more than a maximum of ~~ten percent (10%)~~ **thirty percent (30%) twenty (20%)** of the land area of the planned unit development district with a gross area 5.0 acres or more. For those under 5.0 acres in area, the permissible gross commercial area shall be subject to negotiation (up to a maximum of ~~40%~~ **25% 15%** of the total area of the PUD) with the Planning Board and the County Commissioners;
2. ~~Such establishments shall be limited to trade and service facilities such as stores, coin-operated laundry and dry cleaning establishments, beauty shops and barber shops. However, service stations and repair garages shall not be permitted.~~ **Industrial and non-compatible commercial uses are not permitted. Commercial uses that may be permitted include all uses permitted in B, BR, CCC AND CVR districts (refer to Sections 3.16 to 3.26);**
3. Such establishments shall be so located, designed and operated as to serve ~~primarily~~ the needs of persons within the **immediate vicinity of the** district and ~~not persons residing elsewhere;~~
4. No building may be used for a convenience commercial establishment **may be opened until** ~~before sixty percent (60%)~~ **forty percent (40%) (fifty-one percent (51%))** of the dwelling units contemplated in the development plan have been constructed.
5. The acreage proposed for commercial use and its parking shall be excluded from the gross acreage when computing total allowable dwelling units.
6. ~~In SAG-5 and SAG-10 districts, open space shall equal at least 50% of the property included in the PUD; in AG-20 districts, open space shall equal at least 60% of the property included in the PUD.~~

B. Commercial PUD District:

The uses permitted in a Commercial PUD District shall be the same as those allowed as permitted or conditional uses in the district associated with the PUD created. For example, in a B-3 PUD all uses allowed a permitted or conditional uses in B-3 district shall be allowed.

C. Industrial PUD District:

The uses permitted in an Industrial PUD District shall be the same as those allowed as permitted or conditional uses in the district associated with the PUD district created. For example, in an I-1 PUD District, all uses allowed as permitted or conditional uses in an I-1 district, shall be allowed.

D. Marina PUD District.

The uses permitted in a Marina PUD district shall be the same as those allowed as permitted or conditional uses in the district associated with the PUD created. The underlying development standards in the district shall not be varied by the PUD process.

A Marina PUD will require the submittal of an environmental assessment and may be evaluated in accordance with the design guidelines of the Maryland Clean Marina Guide Book, 1998.

A marina development may be regulated by any or all of the following programs: Floodplain, Lakeshore Protection, US Army Corps of Engineers (404 program), and the Flathead County Conservation District (310 program).

E. Mixed Use PUD District:

Commercial/Industrial Mixed Use

A Mixed Use Commercial/Industrial PUD may be located in any district which qualifies for a Commercial or Industrial PUD.

The Uses appropriate to a ~~Commercial/Industrial~~ Mixed Use PUD located in any district which qualifies for a Commercial or Industrial PUD shall be determined by the County Commissioners on the basis of (a) their compatibility with the surrounding land uses, and (b) their compatibility with one another.

F. Residential Mixed Use

A Mixed Use PUD proposed in a residential district (refer to Section ~~3.30.030~~ **3.31.030(3)(A)**) may be permitted with both residential and commercial uses as per the following criteria:

<u>Residential Mixed Use PUD Zoning District</u>	<u>Maximum Permissible Density</u>
<u>R-1 District</u>	<u>2 dwelling units/acre</u>
<u>R-2 District</u>	<u>3 dwelling units/acre</u>
<u>R-3 District</u>	<u>7 dwelling units/acre</u>
<u>R-4 District</u>	<u>15 dwelling units/acre</u>
<u>R-5 District</u>	<u>15 dwelling units/acre</u>
<u>RA-1 District</u>	<u>33 dwelling units/acre</u>
<u>SAG-5 District</u>	<u>2 dwelling units/5 acres</u>
<u>SAG-10 District</u>	<u>2 dwelling units/10 acres</u>
<u>AG-20 District</u>	<u>2 dwelling units/20 acres</u>

1. The minimum land area for a Mixed use PUD in a residential district is twenty (20) acres;
2. The predominant land use character of the district must be residential;
3. The residential uses appropriate to a Mixed use PUD in a residential district ~~are as permitted~~ **shall be the same as those allowed as permitted or conditional uses** in a Residential PUD;
4. The maximum permissible building height is 35 feet;
5. Commercial uses shall not exceed ~~50%~~ **35%** of ~~the~~ gross floor area in the PUD;
6. The maximum permissible ground coverage including all roads, buildings and other areas of impervious coverage must be less than 70%;
7. Industrial and non-compatible commercial uses are not permitted. Commercial uses that may be permitted include all uses permitted in B, BR, CCC AND CVR districts (refer to Sections 3.16 to 3.26); ~~with the following exceptions, which will not be permitted: Automobile commercial parking enterprises; automobile sales; automobile rental agency offices; automobile service stations except those with pump services only; boat sales; care washing and waxing in conjunction with an automobile service station; food processing plant; motels and motor hotels; plumbing and heating materials; retail sales and service; wholesale and "jobbing" establishments.~~
8. Vehicular access to all uses and/or activities of the Mixed Use PUD shall be limited to the internal road system of the Mixed Use PUD. ~~Frontage of uses on a perimeter road/highway system shall be prohibited.~~
9. ~~Such commercial establishments shall be architecturally harmonious and compatible with the associated residential uses and primarily serve the needs of the persons residing in the district and those in the immediate vicinity; and;~~

Commissioner Hall made a **motion** to authorize the publication of the Notice of Passage of Resolution of Intention and authorize the Chairman to sign. Chairman Watne **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

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. 955FL) on August, 7 2003, to adopt a proposed amendment to the text of the Flathead County Zoning Regulations.

The proposed amendment would amend Section 3.31.030 of the Standards For Planned Unit Development District by modifying the various use allocations and performance standards for residential and mixed use residential planned unit development, for example, by decreasing the percentage of commercial use in residential mixed use developments from 30 to 20 percent in developments over 5 acres in size, allowing for more commercial uses in such developments and eliminating open space requirements in such developments.

The Flathead County Zoning Regulations are on file for public inspection at the Office of the Clerk and Recorder in Permanent File number 93270 13500. The proposed amendment is on file for public inspection at the Office of the County Clerk and Recorder, Courthouse, 800 South Main, Kalispell, Montana, and at the Flathead County Planning and Zoning Office, 1035 1st Avenue West, Kalispell, Montana.

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 change 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 7th day of August, 2003.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

ATTEST:
Paula Robinson, Clerk

By: /s/Robert W. Watne
Robert W. Watne, Chairman

By: /s/ Vickie M. Eggum
Vickie M. Eggum, Deputy

Publish on August 12, and August 19, 2003.

SECOND READING OF SPEED LIMIT ORDINANCE AMENDMENT

Present at the August 7, 2003 9:15 A.M. Meeting were Chairman Watne, Commissioner Hall, Jim Mohn, and Clerk Eggum.

General discussion was held. The meeting was continued to August 12, 2003.

CONSIDERATION OF ADOPTION OF FINAL RESOLUTION KALISPELL CITY-COUNTY MASTER PLAN AND MAP/FLATHEAD COUNTY MASTER PLAN

Present at the August 7, 2003 9:30 A.M. Meeting were Chairman Watne, Commissioners Gipe and Hall, Assistant Avery, and Clerk Eggum.

This meeting did not take place.

DOCUMENT FOR SIGNATURE: AOA HEALTH PROMOTION CONTRACT/NORTH VALLEY SR. CENTER AND NORTH VALLEY HOSPITAL

Present at the August 7, 2003 9:30 A.M. Meeting were Chairman Watne, Commissioner Hall, Assistant Avery, and Clerk Eggum.

Chairman Watne reviewed the Service Provider Agreement between Flathead County Area Agency on Aging and North Valley Senior Center and the one with North Valley Hospital to provide health promotion services to the elderly under Title III-F of the Older American Act, as amended, to assist in meeting the special health and social needs of persons aged sixty and older.

Commissioner Hall made a **motion** to approve the Service Provider Agreements and authorize the Chairman to sign. Chairman Watne **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

DOCUMENT FOR SIGNATURE: EAGLE TRANSIT AGREEMENT/SPECIAL FRIENDS ADVOCACY

Present at the August 7, 2003 9:30 A.M. Meeting were Chairman Watne, Commissioner Hall, Assistant Avery, and Clerk Eggum.

Chairman Watne reviewed the Agreement between Area IX Agency on Aging, Eagle Transit to provide Special Friends Advocacy transportation services through June 30, 2004 as requested by Special Friends Advocacy.

Commissioner Hall made a **motion** to approve the Agreement and authorize the Chairman to sign. Chairman Watne **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

MEETING W/BRET KULINA RE: NORTHERN LIGHTS DEVELOPMENT

Present at the August 7, 2003 10:00 A.M. Meeting were Chairman Watne, Commissioner Hall, Bret Kulina, Don Larsen, Jeff Larsen, Ardis Larsen, Assistant Avery, and Clerk Eggum.

Kulina expressed concerns that there was perhaps an overzealous amount of double-checking and borderline harassment from the Commissioners' Office via Assistant Avery being given to a subdivision he is creating. Kulina has previously brought projects through subdivision and never has there been such bickering behind the scenes. At certain times Kulina felt Assistant Avery crossed the line by slightly reminding Kulina of what position Assistant Avery held in the county government causing Kulina to feel threatened. The tone on Kulina's project has been everyone is on pins and needles, everyone is triple checking to the point where the project is costing more and going into more time simply because of comments being made behind the scenes. Larsen agreed with Kulina noting that he had also heard comments from various county offices relative to his workmanship and abilities. Larsen noted he has been surveying for 23 years and he knows how to shoot a grade. He suggested the Commissioners talk with their Department Heads and investigate the matter. He also recommended that if the Commissioners had any concerns relative to Larsen's abilities, they bring those concerns directly to him. Commissioner Hall stated that they were not concerned with his workmanship and now their concerns were of record. He hoped from this day forward their project would go smoothly.

CONSIDERATION OF CERTIFICATION OF PRECINCT BOUNDARY LINES FOR FLATHEAD COUNTY

Present at the August 7, 2003 10:00 A.M. Meeting were Chairman Watne, Commissioner Hall, Election Supervisor Dianne Murer, Assistant Avery, and Clerk Eggum.

Chairman Watne reviewed a memo from Dianne Murer, Election Supervisor advising that the statute requires the county governing body to change precinct boundaries to conform to the new legislative district lines. There were 41 precincts and 44 polls in Flathead County. Within the new districting, Murer has established 39 precincts and 41 polls.

Commissioner Hall made a **motion** to certify the lines for precinct boundaries as presented. Chairman Watne **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

DOCUMENT FOR SIGNATURE: CDBG CONTRACT #MT-CDBG-03PG-4

Present at the August 7, 2003 10:00 A.M. Meeting were Chairman Watne, Commissioner Hall, Assistant Avery, and Clerk Eggum.

Chairman Watne reviewed the Community Development Block Grant Contract Planning Grants Contract #MT between Flathead County and the Montana Department of Commerce, Helena, Montana. The purpose of this contract is to provide funding for project activities approved by the Department under the Montana Community Development Block Grant Program (CDBG) for FY 2003.

Commissioner Hall made a **motion** to approve CDBG Contract #MT-CDBG-03PG-4. Chairman Watne **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

CONSIDERATION OF LAKESHORE PERMIT: CARLSON

Present at the August 7, 2003 10:15 A.M. Meeting were Chairman Watne, Commissioner Hall, Planner Tim Beck, Assistant Avery, and Clerk Eggum.

Beck reviewed Lake and Lakeshore Construction Permit filed by Robert and Kaye Carlson on Lake Five to install a waterline, install floating dock and place one truckload of ¾ inch washed gravel along the shoreline for a beach area. General discussion was held.

Commissioner Hall made a **motion** to approve Lakeshore Permit #FLP-03-61 and authorize the Chairman to sign subject to 47 conditions. Chairman Watne **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on August 8, 2003.

FRIDAY, AUGUST 8, 2003

The Board of County Commissioners met in continued session at 8:00 o'clock A.M. Chairman Watne, Commissioners Gipe and Hall, 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 August 11, 2003.
