
MONDAY, APRIL 6, 2009

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

NO MEETINGS SCHEDULED

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on April 7, 2009.

TUESDAY, APRIL 7, 2009

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

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

Tamara Hutten, read the following letter from a friend Colleen Wade a resident at 848 Browns Meadow Road:

Thank you for allowing me the opportunity to comment on the Haskill Mountain Ranch Subdivision proposal. My name is Colleen Wade and I live at 848 Browns Meadow Road. My family operates a cow-calf ranching operation at this address. We also hold a 569 acre state grazing lease southwest of the proposed subdivision. Haskill Mountain Ranch is situated between our home property and grazing lease. I am writing in opposition of this proposal and am asking you to deny this subdivision because it negatively impacts my family's livelihood, violates my property rights, and poses a public health and safety concern to Flathead County residents.

I have filed a sworn affidavit with the District Court of Montana stating my claims that this proposal negatively impacts our ranching operation. In so much as the Board of County Commissioners was a party to the legal action, I feel sure you are familiar with my affidavit so I won't take up your time by reiterating the specifics.

I have also given public comment before this Board on two previous occasions regarding Haskill Mountain Ranch. These comments are a matter of public record. They primarily concern the inadequate environmental assessment submitted by the developer in the previous application. Previous comments also address the unsuitability of this proposal to the character of the surrounding area. At this time, I would like to add to any previous comments that are still relevant, by addressing concerns with the current proposal, specifically of a public health and safety nature.

After reading some of the statements describing this proposal in Subdivision Report #FPP-08-26, it seems surprising to me that I am needing to address the inappropriateness of this subdivision at all. I'm referring to statements in the staff report such as, "*The area should be discouraged from development at the proposed density because high water tables and steep slopes suggest that much of the site is not conducive to individual on-site sewage disposal systems.*" (P.28.2, p.7) However, regardless of the clear statements of inappropriateness contained in the staff report, this proposal has moved along in the process and now sits on your desks. I believe this seeming contradiction is at least partially due to a belief that, with regard to subdivision approval, "theoretically" anything can be "mitigated". I would like to challenge this belief by asking the following questions:

- How do you mitigate seventy families trapped in a subdivision during wildfire because the three emergency egress exits are blocked due to a bottleneck? This bottleneck essentially reduces three escape routes into one and makes the scenario of trapped families more of a likelihood than a possibility. In the words of my friend, Charles Meyer, you couldn't plan a disaster better than that. How do you mitigate even one family trapped in this situation? To further compound the problem and add to the danger to future residents, the fire suppression system has been located in a corner of the property on a dead end *cul-de-sac*. DNRC comments submitted for the proposal identify this system as inadequate.
- How do you mitigate a fatal accident due to the "significantly deficient" intersection identified in the applicant's Traffic Impact Study? [p.12, par.2] Kila Road approaches Highway 2 West at a 40 degree angle. The applicant's study correctly identifies the intersection as significantly deficient based on AASHTO guidelines which encourage a 90 degree angle for intersections and specifically discourage anything less than 60 degrees. The 40 degree intersection serving this subdivision proposal does not even meet the minimum standard. Once a hazardous condition such as this has been identified, doesn't the county owe it to its citizens to address the deficiency before extensive development is allowed? It is very likely that this condition has only been working thus far due to the fact that the current residents of Kila are rural people familiar with driving on rural substandard roads. The likely residents of this proposal have been described by the applicant as "seasonal". Probably these seasonal residents will come from urban areas where driving is done much differently. It would only take one impatient vacationer in 'city-mode', possibly distracted by a cell phone conversation, to cause a fatal accident on a substandard intersection such as this. I believe this is why the county has chosen to require traffic impact studies – ensuring that we have the opportunity to address critical limitations such as this before approving significant volume increases. It would be very sad to have another Costco-type scenario in Kila - two or three high profile, fatal crashes before the situation is addressed.
- How do you mitigate the injury of even one Kila school child due to a significant increase in traffic volume approved on a substandard county road? Kila Road is exactly 22 feet from edge of pavement to edge of pavement - not the current standard of 24 feet. To further compound the problem, there are no sidewalks and absolutely no shoulders. The road literally drops off the edge of the pavement – sometimes with a fairly substantial drop. In many places there is nowhere else for school children to walk or bike but on the road.

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- How do you mitigate the change in character to an area that this proposal will bring? The plat of Kila was filed in 1914 and is essentially unchanged with a whopping 43 lots, many of which are still vacant. Similarly, the Kila vicinity has had approximately 14 lots developed through subdivision review since the 1970's. In light of these numbers, this current proposal is ridiculous in proportion to the existing land use. Not to mention the inappropriateness due to the significant distance to services. Everything about it goes against responsible planning for rural areas, as outlined by our current Growth Policy. The contradictions are very clearly addressed in the Growth Policy section of the staff report beginning on page 6. This scenario in itself would be cause for concern if it were but only one isolated event. However, the even larger concern is what approval of this subdivision will mean with regard to further subdivision in the area. For example, what about the 2,180 acres of private land currently on the market which this proposal would provide paved access to? Or, the thousands of acres of Plum Creek land? I imagine the Plum Creek Land Company would be quite pleased by a development of this nature in Kila. They have already begun preparation for development of some of their many thousands of acres of land in the area. Opening this size door to development in Kila seems as ridiculous to me as opening Hoover Dam because you want a little irrigation water. It would be a shame to approve a precedent setting subdivision application such as this which is entirely out-of-character for the area.

- How do you mitigate the damage to pristine wet meadows when you place houses, people, pets, driveways, cars, garages and sewer systems on them? One glance at the applicant's piezometer monitoring map shows that this land is predominantly steep slope and wet meadow. Often the steep slope is even wet! The Flathead County Subdivision Regulations identify land with pervasive high ground water as unsuitable for development. The "mitigation" for this condition is community waste water treatment. Certainly, with the absence of a community system, these lands are unsuitable for development. Again I quote the staff report, "*The area should be discouraged from development at the proposed density because high water tables and steep slopes suggest that much of the site is not conducive to individual on-site sewage disposal systems.*" (P.28.2, p.7)

My belief is that I, and others like me, have a right to answers to these questions. When the concerns mentioned above are added to other critical limitations identified by the Planning Staff and concerned agencies such as Fish, Wildlife & Parks and DNRC, I don't believe that Flathead County can, in good conscience, approve this proposal. In fact, I can find no redeeming qualities for the county and it appears that the Planning Staff could find none either.

Of course, the one big carrot that was dangled to make this proposal more palatable was the paving of Browns Meadow Road. However, by the developer's own admission, their cost of paving 4 miles of the road was greater than the County Road Department's entire annual budget for paving. So the obvious question is - how will we pay for the upkeep of the paved road? It is common sense to leave lightly used mountain roads in gravel because the cost of running a grader is much less than the cost of resurfacing pavement. It's also common sense that mountainous roads are often high maintenance due to frost heave - which this road is already experiencing. If the County Road budget is so low, how will we pay for resurfacing of 4 miles of Browns Meadow Road now that it's paved? In hindsight, the applicant's "gift" seems more like a burden.

Another scenario that is different than it was in 2006 is the state of the economy in general. Lots in subdivisions like this one are sitting empty all over the valley. There is no longer a need for Flathead County to rush into potentially unsuitable development to meet a growing demand. Nor is there a need to further stretch already over-stretched budgets in county departments. The economy is in a slump and demand for lots of this type has dropped off significantly. We can now take a deep breath, slow down and make wise, well-considered decisions about our future growth.

I am a fourth generation Montanan. In less than two months I will witness the birth of my sixth generation Montanan grandson. My family has been here a long time and we plan on staying for a long time to come. I was raised with very conservative values. I believe in property rights - my own as well as those of others. Lately though, I seem to only hear about property rights when it comes to developers and development. What about the property rights of current residents? What about the property rights of longtime Montanans? Surely my property rights are as important as those of an out-of-state developer. As a matter of fact, the Montana Constitution says they are - and goes a step further. The preamble specifically states that the Constitution was established to protect the "people of Montana" for this and future generations. I don't see anything in the Constitution about protecting the rights of outside development interests. According to my interpretation, the Constitution gives my rights slightly more weight.

Another phrase I hear thrown around a lot is "shutting down development". Contrary to popular opinion, denial of this proposal will not "shut down development". It will only serve to bring before us, as a community and as a county, a proposal that we can be proud to support. As they say - third time's the charm. If interested, the developer has a fine model to look to for inspiration right near Kila. The Canyon Creek Ranch Subdivision on Rogers Lake Road is a very appropriate model of rural development. Everything about it is in character with the surrounding area. The lots are appropriately sized and even advertised as "improved ranch properties" keeping the rural flavor. And it's not just advertising. The lots are just what they claim to be. They have potential to bring gradual and appropriate growth to the area. Personally, I believe it is entirely possible to bring responsible development to the County, which will enhance and benefit all concerned - the developer, the community and future residents. Subdivisions like Canyon Creek Ranch prove it is possible.

The last time I came before you I commented on the inadequacy of the EA for Haskill Mountain Ranch. My comments were largely ignored. That unfortunate decision came at a cost to taxpayers. This time I am addressing issues of public health and safety. Ignoring my comments now may come at a cost of lives. I don't believe that anyone wants to see that happen, including the applicants of this proposal. Please make the responsible decision and deny this proposal.

Tamara Hutten, 1230 Truman Creek Road then commented she has lived in Kila for 33 years and has seen a lot of good and bad changes. She then stated she feels this is a proposal that is not fitting to the Kila area. Hutten spoke about the road washing out in 1997 and people being trapped and stated she knows what it is like when you are waiting for an ambulance and you're a long ways from town.

Valerie Kurtzhals, 665 Tranquil Valley Trail read the following letter and presented a map of the area.

Please consider my comments on the Haskill Mountain Ranch Subdivision proposal. This preliminary plat application suffers a multitude of critical problems, most of which cannot be effectively mitigated without revamping the entire application. These problems have been well documented in public comments. I would like to focus on density and how it relates to groundwater availability.

Those of us that live in Kila are alarmed about our groundwater situation and its continued availability to us as new wells are drilled. Because of the nature of our fractured bedrock aquifers, well interference is a likely probability. Home density and how it relates to water availability cannot be ignored. By adding 70 more homes to an existing density of 77 homes Haskill Mountain Ranch closely doubles the density in the Mount Creek Watershed.

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At the Planning Board hearing the applicants' representative, in defense of their high density proposal, presented a projected home density map of what the Mount Creek Watershed will look like in 20 years with the 6% annual growth the Kalispell area is experiencing.

It was an obvious acknowledgement of the precedent this subdivision will be setting for future development of Kila. This map and the projected density issue was not submitted with the application and warrants more in depth review by the Planning Department, as it raises the alarming possibility that Kila residents will experience a groundwater crises.

A group of Kila neighbors, who have been concerned about our wells looked closely at the groundwater history of the Mount Creek Watershed and wondered if it was similar to what we had learned from the well logs surrounding the proposed Greywolf Subdivision, also in Kila on Spring Hill Road. When the Planning Department learned that 40% of the wells in the vicinity of Greywolf were producing minimal yields (3 gpm or less) to protect neighboring wells, they appropriately required Greywolf Subdivision to use a public water system. You, the Commissioners, were in agreement that a public water system was indeed needed to protect area residents. This requirement must be mandated for the Haskill Mountain Ranch proposal as well.

In gathering well data for the vicinity surrounding Haskill Mountain Ranch, the applicant's experts gathered data on 29 wells. We choose to look at a more extensive area covering 11 sections and 60 wells, including the 29 wells the applicant reviewed. We categorized pertinent findings gathered from the well logs and established criteria, color coding these criteria on two separate maps. The criteria we looked at included:

1. A depth of 300 feet or deeper.
2. A yield of 5 gpm or less.
3. The ability of the well to meet Montana DEQ Rule IV for Non-public Water Supply Systems under Water Quantity and Dependability (ARM 17.36.33).

Because we looked at three different criteria, any one well could fall under one, two or three of the criteria. We presented our data on two different maps to display the data combinations. But the most important information we obtained was:

1. 58% (35) were 300' or deeper.
2. 43% (26) of the wells were minimal yields (5 gpm or less).
3. 62% (37) of the wells did not meet DEQ requirements.

We also learned that 8% (5) of the wells were known to be second wells, after the original wells went dry.

The applicant's groundwater availability report had somewhat similar conclusions based on 29 wells in that 48% did not comply with DEQ regulations. I would also like to point out that although the on-site well that was tested complied with DEQ requirements, the recovery was slow necessitating recommendations for water restrictions and water conservations measures for Haskill Mountain Ranch residents. This also raises the issue of groundwater availability for a 30,000 gallon tanker recharge facility that will need to be in a constant state of readiness with a continuous water supply without relying on surface water.

I think it is tremendously significant that 62% of the well logs reviewed failed to meet the requirements demonstrating water availability for single-family and shared water systems. Combined with the frequency of low yielding wells, the connectivity of fractures in bedrock and an unprecedented potential of increased home density, we have a very real problem with a high probability of worsening to a crises level. There are thousands of acres of Plum Creek land surrounding Kila that could be developed in the near future. *How do you "mitigate" the unavailability of clean abundant drinking water for an increasing population?*

What is required for Haskill Mountain Ranch will set precedent for future development of these vast forested areas. There should be no preliminary plats approved in Kila without the requirement of a public water system, which is the only way the impact on neighboring wells will be investigated ahead of time, therefore, protecting existing water right holders. This is fundamental to protecting the publics' health, safety and welfare.

In all fairness, I hope you will recognize this application should either be returned to the Planning Board for further review or preferably, denied.

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

QUARTERLY MEETING W/ MARCIA SHEFFELS, SUPT OF SCHOOLS

[9:02:19 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Superintendent of Schools Marcia Sheffels, Clerk Kile

Sheffels presented a quarterly review report and noted "March Madness" tests were just completed throughout all schools before spring break started. She then spoke about school district boundary line adjustments and the cumbersome procedures required by state law in changing a school district boundary line. Sheffels then reported a hearing is being held at the County Superintendent's level for a School Boards decision that is being appealed. Also noted was West Glacier School is considering a four day week. The quarterly report was then briefly reviewed for routine duties performed January through March.

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(Continued)

BI-MONTHLY MEETING W/ VICKI SAXBY, I.T.

[9:21:14 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, I.T. Director Vicki Saxby, Clerk Kile

Saxby reported she attended a MS-ISAC meeting in Phoenix on Cyber Security where top cyber security officers for the Department of Homeland Security, FEMA, FBI and the National Security Agency spoke and gave a lot of good information that she will be sharing with other counties. She then reviewed the following network and tech projects:

Work on a complete disaster recovery plan.
Work on the FTP server to change the way people access the site.
Work on researching and installing secure wireless access for the new Health Clinic.
Recycling of surplus computer equipment.
Worked with Centurytel to install equipment to allow the Whitefish PD's voice recordings to be recorded here.
Installed a new backup tape recording device.

Saxby then reported a programmer has given his notice and is finishing up some work on the payroll system; one of which is probably too big to complete before he leaves. Also noted was the e-Check option for paying taxes with an ACH is almost complete and work is being done to add an informational RSID page to the county website.

MEETING W/ DENNIS & DONNA THORTON RE: PUBLIC RECORDS ACCESS

[9:30:32 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Clerk & Recorder Paula Robinson, Recording Manager Monica Eisenzimer, I.T. Director Vicki Saxby, Assistant Deputy County Attorney Tara Fugina, Planning & Zoning Director Jeff Harris, Donna Thorton, Dennis Thorton, Russ Crowder, Clerk Kile

Donna Thorton presented a letter to the commission with the following attached documents: a copy of the Lakeside Neighborhood Plan events and meetings calendar, copies of MCA codes in regards to public meetings, copies of e-mails obtained from the County Attorney's Office, the LNP public meeting agenda for December 12, 2007 and June 23, 2008, a letter from the Planning & Zoning Office to the Lakeside Neighborhood Plan Committee and a copy of the Lakeside Neighborhood Plan 2008.

Donna Thorton then stated they have been trying to get a copy of the LNP since January 22, 2009, at which time a certified letter was sent to the commission with their request. On March 11, 2009, Dennis Thorton went to the Commissioners Office after still not having received a copy of the LNP. He took a copy of the letter sent to the commission to the Planning & Zoning Office to request a copy of the LNP from them. After stating his request the receptionist at Planning & Zoning asked him if he wanted a copy of the old file or new file. Andrew Hagemeyer came out and told Dennis Thorton he didn't have a file that he had only a few e-mails and some loose notes, which Dennis told him he wanted copies of. Andrew Hagemeyer then went into his office and came back out with Mr. Harris who told him they did not have a file on the LNP and that he could get it from the Lakeside Neighborhood Plan Committee. On March 16, 2009, they attended the LNP Committees' meeting and asked for a complete copy of their file which they were told would be given to them the first week of April, which they have yet to receive. On March 26, 2009, a disk was mailed out from Jonathan Smith which was two months after their request for the documents, which in their opinion is not acceptable for a document that should be readily available to the public. Thorton then said an individual they know of is allowed to come in with a scanner and scan files unsupervised, and there seems to be a huge disparity in how different members of the public are treated. She then stated she doesn't believe there isn't a file in the Planning & Zoning Office for the Lakeside Neighborhood Plan, and also spoke about attachments in the e-mails (1,300) of them. Thorton then added that with 1,300 files she doesn't believe for one minute there isn't a single paper in the office that couldn't have been provided to her husband the day it was requested. She then said what was received from the Commissioners Office were only seven e-mails and then asked that any resolution done for support of the village bill be added to the list of today's requests. Thorton questioned why documents copied (cc :) to the commissioners didn't show up in their e-mails. She then asked for clarification on what the counties policy on access to public records is and stated if there isn't one she would like one to be drafted. Thorton then continued to review the e-mails from the documents presented. She also spoke about the budget in the Planning and Zoning Department which she stated has gone from \$500,000.00 to well over a million with applications having dropped down about 50% from 2005. A verbal request was made also for the resumes of LNP Committee members and the approval of their appointments by the commission. Thorton then referenced a article printed in the Inter Lake written by Commissioner Brenneman that she felt was inappropriate and stated she should be able to have her own opinion and political views.

Dennis Thorton then asked if they would have any problems in accessing the information they were requesting.

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Jeff Harris commented the request from the Thornton's for the files and e-mails was compiled and sent to the County Attorney's Office as requested. He then added as difficult as it is to believe they do not open up a file until they get a "draft" document; once that is received it becomes their responsibility to make sure its on their website and is available for the public. He then stated he has explained this to Mr. Thornton. Harris noted there are internal "drafts" of the plan and that they are not writing the document, they are reviewing it. He received a first "draft" last Thursday, not ready for the public which he read over the weekend. Harris stated you should start the process with the best "draft" you can have and then change the "draft" depending upon public comment. He then noted under statue they are not allowed to give out mailing lists. Harris explained the planning committee was meeting in private residences, and when he found out about it they were told the meetings had to be open to the public, and that is when they were shifted to the Library. He pointed out the plan is being written by the committee and the community council. He then noted that he did meet with Alan Gilbertson and explained why they met on a holiday and explained that until the process started there was nothing to involve the public with. Harris stated when they get the Lakeside Neighborhood Plan it is their intention to mail out to everyone in the plan area a notice that they are going through a public process when they will start following administrative procedure.

Chairman Lauman explained the public information is run through the County Attorney's Office.

Dennis Thornton stated the statue is clear; that you can't screen it through the County Attorney.

Chairman Lauman stated it isn't screened, that it goes through their office.

Dennis Thornton stated he is going to make sure that he gets notice that it cannot happen. He further stated the statues are clear and that records are suppose to be open to the public during business hours and immediately available.

TAX REFUND: ALTENBURG

[10:17:10 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Clerk Kile

Pence reported the refund is due from duplication in billing.

Commissioner Dupont made a **motion** to refund \$1,239.48 to the Altenburg's. Chairman Lauman **seconded** the motion. **Aye** - Lauman and Dupont. Motion carried by quorum.

CONSIDERATION OF RELEASE OF COLLATERAL: WHISPER RIDGE

[10:18:09 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Assistant Planning & Zoning Director B J Grieve, Clerk Kile

Chairman Lauman read into the record a letter from WMW Engineering states the work has been completed and is in substantial compliance per the approved plans and specifications.

Commissioner Dupont made a **motion** to release collateral for Whisper Ridge. Chairman Lauman **seconded** the motion. **Aye** - Lauman and Dupont. Motion carried by quorum.

CONSIDERATION OF RELEASE OF COLLATERAL: BLUE CRESCENT ESTATES

[10:19:53 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Assistant Planning & Zoning Director B J Grieve, Clerk Kile

Chairman Lauman read into the record a letter from WMW Engineering states the work has been completed and is in substantial compliance per the approved plans and specifications.

Commissioner Dupont made a **motion** to approve the release of collateral for Blue Crescent Estates. Chairman Lauman **seconded** the motion. **Aye** - Lauman and Dupont. Motion carried by quorum.

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(Continued)

MEETING W/ MARK PECK RE: APPROVAL OF CONTRACTOR FOR 911 CENTER

[10:10:41 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, David Mitchell, Mike Sheppard, Clerk Kile

David Mitchell reported five bids were received and recommended the lowest bid from Swank Enterprises be accepted.

Commissioner Dupont made a **motion** to accept the low bid from Swank Enterprises for the Flathead County 911 Center. Chairman Lauman **seconded** the motion. **Aye** - Lauman and Dupont. Motion carried by quorum.

CONSIDERATION OF PRINTING BIDS: COUNTY ATTORNEY'S OFFICE

[10:21:08 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Dupont made a **motion** to approve the print bid from Masters Touch for envelopes for the County Attorney's Office for \$341.15. Chairman Lauman **seconded** the motion. **Aye** - Lauman and Dupont. Motion carried by quorum.

MEETING W/ LARRY ANDERSON/ DENNY REHBERG'S OFFICE RE: UPDATE

[10:30:31 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Larry Anderson, Clerk Kile

Anderson spoke about concerns in regards to alternative energy and issues with the timber industry. Discussion was held relative to Smurfit and stimulus money.

MEETING W/ DAVE PRUNTY & GUY FOY, ROAD DEPT.

[11:00:46 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Public Works Director Dave Prunty, Operations Manager Road & Bridge Dept. Guy Foy, Clerk Kile

Prunty presented a report with the names of the roads that submitted applications for the dust cost share program; with 15 miles that submitted for magnesium chloride and 9.5 miles for black oil. He estimated the expense to the county would be approximately \$50,000.00 using last year's prices. He then reported the Road Department will rebuild ¼ mile section of Grayling Hill Road to make the road functional, and effort is still being put forth in regards to finalizing right-of-way issues on McMannamy Draw. Prunty then noted the Road Department will generate a list of roads they feel need to have an overlay or be chip sealed and then take an engineer from Peccia & Associates out to look at the roads and get a professional opinion.

Discussion was then held relative to asphalt chips that were utilized on Holt Stage Road and the application of more of them this summer.

Foy noted operationally they are doing well and are cutting brush, winging back snow to prevent flooding, hand patching, taking off winter plows and getting the batch plant ready. He then noted problems with the hydraulics in the new Volvo Road Grader purchased last year.

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FINAL PLAT: SWEETGRASS RANCH

[11:30:00 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Assistant Mike Pence, Planner Dianna Broadie, Bryan Long, Paula Wunderlich, Michael Chesser,

Broadie entered into record FFP 09-10 for Sweetgrass Ranch: an application submitted by Erik Brandin with technical assistance from Glacier Surveying for a 39 lot residential subdivision located directly off Hwy 206, on the west side of the highway about a half mile north of Lake Blaine Road. Preliminary plat approval was granted on July 2, 2007, subject to 22 conditions.

Commissioner Dupont made a **motion** to approve final plat of Sweetgrass Ranch. Chairman Lauman **seconded** the motion. **Aye** - Lauman and Dupont. Motion carried by quorum.

DOCUMENT FOR SIGNATURE: MDOT SECTION 5311/5309 – AOA/ EAGLE TRANSIT

[11:45:47 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Clerk Kile

Commissioner Dupont made a **motion** to approve the purchase of a bus and authorized the chairman to sign. Chairman Lauman **seconded** the motion. **Aye** - Lauman and Dupont. Motion carried by quorum.

CONSIDERATION OF PRINTING BIDS: HEALTH DEPT.

[11:46:53 AM](#)

Members present:

Chairman Dale W. Lauman
Commissioner James R. Dupont

Members absent:

Commissioner Joseph D. Brenneman

Others present:

Clerk Kile

Commissioner Dupont made a **motion** to approve the print bid from North Star Printing for \$189.00 for 1,000 immunization post cards, 2 receipt books for sewage treatment permits and 1,000 dog license applications for the Health Department. Chairman Lauman **seconded** the motion. **Aye** - Lauman and Dupont. Motion carried by quorum.

Commissioner Dupont made a **motion** to approve the print bid from Insty Prints for \$91.38 for five prescription books for the Health Department. Chairman Lauman **seconded** the motion. **Aye** - Lauman and Dupont. Motion carried by quorum.

1:30 p.m. Commissioner Lauman: View Road Abandonment #473 (County ROW between Hwy 2 & Ashley Lake Road) w/ Jim Burton

4:00 p.m. Commissioner Dupont: RAC meeting @ Forest Service Office

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on April 8, 2009.

WEDNESDAY, APRIL 8, 2009

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

10:00 a.m. Commissioner Brenneman: Basin Committee Meeting in Polson

11:00 a.m. County Attorney meeting @ Co. Atty's Office

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on April 9, 2009.

THURSDAY, APRIL 9, 2009

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

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

Present for public comment included: Neal Nash, Ron Swaine, Rob Smith, Carlo Arendt, Dan'l Moore, Cristy Wells, John Ledyard, Tamara Hutten, Jeff Hutten, Charlie Meyer, Cathy Meyer, Craig Kiser, Jeff Raper, Erica Wirtala, Cindy Ercoline, Kurt Hafferman, Greg Carter, Rich DeJana, Valerie Kurtzhalts, Clerk Kile

Erica Wirtala, Sands Surveying commented Haskill Mountain Ranch has been through the process once before, but what is before you today is a totally new application with new applicants, new consultants, new Planning Board members as well as a different commission. The original application was approved by the Commission in October of 2006 and working under that approval work began on the roads, infrastructure and DEQ ground water monitoring. Preliminary plat was then overturned by Judge Lympus in August of 2008, so for one year work was done under a valid preliminary plat. Wirtala explained the scale of the project is one mile by one mile on 530 acres with 69 lots; the original proposal was for 70 lots, but one was dropped because of wetlands. A land use map was then shown that depicted the amount of wet lands, slopes in excess of 30%, garden, fencing and roads that comprise 7%, 105 acres of no-build zones, building and structure documents that limit the development of ½ acre of the property. The topographic lines and features on the property are good within six centimeters with the picture they have of the property being very accurate. A wildlife moose winter range map and white tailed deer winter range map was presented to show they addressed concerns by the Kila/Smith Lake Coalition that asked that they designate areas for wildlife to travel; the map was altered slightly and overlaid with a wildlife corridor for animals to move through. She noted comments were received from Fish, Wildlife and Parks who asked for fencing guidelines and to the best of their ability those have been met and mitigated. In 2006 FWP asked that the density be changed to show one unit per 20 acres as per the Master Plan Policy that was in effect at the time; that policy is no longer in effect and we now go by the Growth Policy that was adopted in 2007. FWP also asked that they cluster the project and for a variety of reasons they went to five acre lots instead of clustering. It was then stated HMR was recently annexed into the Smith Valley Fire District and they have proposed a tanker recharge site and either a well will be installed or a line from lot 3 will have a line going over to keep the cistern filled at all times. The chief has asked that a minimum of 15,000 gallons be kept in the cistern at all times and a system has been designed that will hold 30,000 gallons. Ground water monitoring data was then spoken about with approximately three to four years worth; with the data submitted that is applicable to the project. Wirtala then addressed issues in the staff report that asked that lot 9 be eliminated because of steep slope issues and then presented a map showing slopes in excess of 30%. She then spoke about emergency egresses, a fuels reduction project on 1,200 acres, lack of mail delivery, pavement of 4.5 miles of Browns Meadow Road and three variance requests. It was noted the Planning Board voted 4-3 in favor of HMR with recommendations to conditions and findings. Wirtala stated they are in agreements with the conditions that they found as amended.

Carlo Arendt with PBS&J stated he was hired by the applicant approximately one year ago to prepare the submittal to Montana Department of Environmental Quality. He then said their focus has been the drainfield sightings, non-degradation and water availability. Arendt stated it is important to note that all lots that are proposed in the subdivision have a monitored drainfield location with monitoring having been conducted from 2006 through 2008, and it will continue in 2009. All proposed drainfield sites meet the criteria of slope and depth to ground water for particular drainfield locations. He then added impacts from surface to ground water are evaluated through a non degradation determination; included with preliminary plat is a non degradation analysis that was conducted using site specific information including the drilling and monitoring wells, water levels, hydraulic connectivity tests to calculate the flow of water through the shallow system. The analysis including accumulative effects for a non deg indicate the ground water and surface water resources will not be degraded by drainfields on site. Arendt then said a water availability assessment has been completed for the site for preliminary plat utilizing data collected from nearby wells, and also site specific data collected during a 24 hour aquifer test on a well located on lot 64 that was pumped for 24 hours at a pumping rate of 9.5 gallons per minute. The aquifer testing exceeded the flow requirements for single family residences and the recovery data which is the most important aspect indicates the fractured rock aquifer in this area is dependable. He then stated the water availability and sanitation information supplied with the preliminary plat meets or exceeds the requirements of MCA 76-3-6.2.

Kurt Hafferman a licensed professional engineer with Billmayer and Hafferman Engineer and former manager of the DNRC Water Rights office said today the issue the Kila Coalition has asked him to speak about is ground water as it is related to water quality and water quantity. He then quoted Commissioner Brenneman from a Flathead Beacon article "to hold the Commissioners to a higher standard performance" and ask them to make a tough decision on this subdivision. He then asked that the application be sent back and have two conditions added for preliminary plat approval:

1. Require that Haskill Mountain Ranch Subdivision attain most importantly a DNRC Water Right Permit.
2. Require that Haskill Mountain Ranch Subdivision develop a community waste water treatment system and obtain a DEQ Waste Water Discharge Permit.

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Hafferman said he attended many of the meetings held by the Water Policy Interim Committee which has many distinguished members throughout the State. He further said current law when it comes to water rights do not require a permit for a well for appropriations of 35 GPM or less, that don't exceed 10 acre feet. They also don't require a permit for appropriations that are not combined even though they are from a single source; by administrative rule a combined appropriation is appropriation water from the same source in which they are physically manifolded at the surface. Because these 69 wells are not physically manifolded at the surface they get to avoid the water right permit system. The DNRC says they don't monitor wells that are exempt from the permit process to determine if they exceed the volume, and they don't have a system in place to look at the statutory limits on these exempt wells. They admit they have limited resources to investigate and look after illegal or adverse water use. The DNRC has the statutory authority but I know personally they rarely exercise it and they leave senior water right holders to protect themselves. It is interesting to note that DNRC has stated that ground water wells have been shown to have an effect on surface water flows. The agency says that exempt wells may have a significant impact on senior surface water users, and it would be yet the most difficult water right to enforce in a time of water shortage; essentially DNRC is saying with exempt wells there is no enforcement. The Water Policy Committee studied several issues related to exempt wells and related those also to septic systems, because when you have one density you have the other. They sought input from the development community as well as local governments, DEQ, DNRC and DFWP, and in the end clearly found that there is a need to address public health issues in areas where there is an increase in density of single wells and septic systems. They inevitably found that the local governing body should require public water systems or public sewer systems or both. In this case the use of individual wells in this subdivision is clearly from the same source, but by not physically manifolding the systems they avoid the permit process. The applicant has presented information about a 500 foot deep well and said it was pumped at 9.4 GPM and drew down to 350 feet. I don't think that really shows water availability in a single well for a whole subdivision. Full build out is represented in this exhibit of having a density that equals or exceeds nearly all the existing appropriations. It is the opinion of the Kila/ Smith Lake Community Development Coalition that without protection from the DNRC and without further involvement from Flathead County Commissioners and Flathead County Planning Board that the Kila/ Smith Lake residents will be forced to enforce water use on their own, and if it can't be done by DNRC I don't see how you can expect the Kila/ Smith Lake residents to do it on their own. The Kila/ Smith Lake Community Development Coalition ask that before this subdivision is approved that there must be proof of the amount of water that is physically and legally available without adverse effect. That is the criteria of the DNRC permit process and that is the only way to accomplish this. The Kila/ Smith Lake Community Development Coalition could accept water use if it was permitted prior to putting the water to a beneficial use, rather than putting the water to use and requiring the Kila/ Smith Lake residents to try to fruitlessly pursue DNRC enforcement on 69 individual wells. Hafferman then stated Flathead County Subdivision Regulation 4.7.12 clearly states: Any site where ground water development is four feet or less shall not be subdivided unless a properly engineered community wastewater treatment system is constructed. He then referred to a map that shows the number of wells and the number of test pits with depth to ground water with less than eight feet. The ground water monitoring revealed that 70% of the test holes had shallow ground water, so we hardly see where individual wastewater treatment systems are appropriate for the site. If it is assumed there are 69 individual single family residences that have at least three bedrooms there is an accumulative discharge of almost 25,000 gallons per day/ five times greater than the 5,000 gallons per day exemption allowed by the MPDES Permit. Again, it is an avoidance of a process that they feel should be followed. It is their interpretation that the intent of Flathead County Zoning Regulation 4.7.12 was to create community systems to avoid just these kinds of accumulative impacts. It is further our contention that the definition of the term community system is a centralized or series of centralized wastewater treatment systems permitted to discharge into the high quality waters of the state. Systems that are operated and maintained by a qualified licensed person will require DEQ review, and more than likely will not require secondary treatment through such processes as nutrient removal which would require a high degree of operation and maintenance, and require the monitoring necessary for the kind of cumulative impacts you are going to give permission for here today. Permitted, properly constructed, operated, maintained and monitored community wastewater treatment systems would be acceptable to the Kila/ Smith Lake Community Development Coalition. Therefore, we ask that the County Commissioners perform to that higher standard and as a condition of preliminary plat approval would ask for two things:

1. HMR be required to develop and have permitted either a community water supply system, or that you take a bold step out and require that the 69 individual wells be considered a combined appropriation; it hasn't been done in the state, but I think you can go to the higher standard today and require that they follow the DNRC permit process rather than the DNRC enforcement process.
2. HMR be required to develop and have permitted, operate and maintain a community wastewater treatment system that requires secondary treatment such as nutrient removal and as a bare minimum when it comes to wastewater treatment systems, we would request as a minimum that each individual wastewater treatment system be required to install secondary treatment systems.

Hafferman stated he was asked by the Kila/ Smith Lake Community Development Coalition to convince them that water is the new golden west; I don't think I have to convince you of that. Haskill Mountain Ranch wants it and the Kila/ Smith Lake Community Development Coalition wants to protect it. It's that simple. In this case we are asking for two protections prior to approval. We think it is worth protecting and think it requires the higher standard to accomplish.

Jeff Hutten, 1230 Truman Creek Road noted he was part of the group that has been watch dogging over this proposal over the past three years. He then stated he wanted to object to some break downs in the public process for this proposal with three that occurred at the public hearing before the Planning Board in March. He then said at the public hearing the applicant's consultant handed out a 15 page packet and had it entered into the public record. The packet contained three suggested changes to the findings of fact and six suggested changes to the conditions that were discussed and voted upon by the board. It also contained an agreement between the County Road Superintendent and the project engineer that appeared to contradict statements made by the engineer's representative at the public hearing. This was new information not a part of the public record before the hearing. Secondly the developer's consultant presented new information under direct question from the Planning Board regarding future well drilling as the consultant suggested to conclusively demonstrate to MDQ that there is adequate water quantity, and an ability to drill multiple wells in this aquifer without impacting other wells. This is data required to be submitted along with preliminary plat application and not sometime later when they feel like it. Then third the applicant's consultant displayed an altered version of a density map that was based on growth modeling done that was difficult for the public to see and the assumptions and methods of analysis were not available to anyone before hand. They made their point and no one had any basis to refute it; we were blind sighted for the third time. We have a fairly precise public process in place defined by the subdivision regulations that are not perfect, but this commission refines it on a regular basis. The reason we have this public process is so misrepresentations can be effectively countered by an interested an informed public. Today I ask that you please return this proposal to the Planning Board so that this new information can be adequately reviewed.

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Jeff Raper, 719 Kalispell Avenue commented he is a licensed realtor and 90 percent of his business has been in land sales verses residential product. He then said he wanted to applaud the applicants for bringing product forward that is consistent with what the market is asking for. Over the last 11 years the majority of phone calls, inquiries and requests he has had from people interested in owning real estate in Montana have been for a small tract of land outside of town, easily accessible, preferably over paved roads with electric and telephone. He then stated he is glad to see a land owner in the State of Montana willing to subject himself to the subdivision process, with it being long and arduous as they are painted as villains; really what they are doing is offering something that the greater public is asking for. Raper then spoke about tracts of land in the Kila area that have changed hands in the area over the years and the way they were divided and stated we need to play by the rules that are in place today.

Rob Smith with A2Z Engineering stated he was hired by the applicant to perform the Traffic Impact Study. He then presented to the commission the "National Standards for Hwy and Street Construction" document already in the public record. Smith then explained that based on traffic volume and speed that the 22 foot wide street being constructed in the subdivision is sufficient.

Valerie Kurtzhaltz, 665 Tranquil Valley Trail said this subdivision does not belong at this site and that it reeks with problems. She then said the neighbors have been writing letters and have submitted comments in a timely manner and that the letters are very lengthy because there are so many reasons why this subdivision needs to be denied; I don't know if you even have time to read all the letters we have written. Kurtzhaltz then stated she read very carefully through the staff report and there is so much language in there that raises red flags that she doesn't feel all the problems can be mitigated. The developers bought a lemon; they have problems and based their design on a substandard and inadequate environmental assessment that was proved in the courts. They have taken the same design which they can't change because they have already sold all the lots and now they are trying to make the environmental assessment fit into the design; they are trying to take a square peg and put it into a round hole. We want you to see that and deny this subdivision. She then added the developers did a subdivision in Pensacola, Florida and left 400 acres of open space; I don't know why they are not doing it in our neighborhood. We are paying the price for their mistake. Kurtzhaltz then read a quote from the Flathead County Corner, "The needs of the future take precedence over the demands of the present", and asked that the quote be taken seriously with them being fearful of the future of Kila if the subdivision goes through with it being a disaster waiting to happen.

Rich DeJana, Attorney representing the applicants commented you are here to evaluate the subdivision based upon the subdivision rules before us. The staff recommendation was positive, with very few disagreements from them. DeJana said he doesn't have a problem with Mr. Hafferman saying we have some policies we need to look at; I think we should, but you don't in an evaluation of a project create new policy. You don't work off intent or hopes for changes in the future; you work off the rules that are there and the rules have been met.

Charles Myers with the Kila/ Smith Lake Coalition explained on a map where his property is and stated he has within 100 feet two of the roads coming down bringing traffic into a bottleneck. He then said we may have cost share easements, but the Forest Service still manages the road and bringing it to county roads standards will require a full NEPA process that will take two years. Myers said they are fighting what is going on because it isn't right for the whole area; water and sewer problems. He then said were not arguing homes shouldn't be built there; we are saying you should set this aside today and allow things to be done right.

John Ledyard commented at the Planning Board meetings there was much said about fire and egress and how terrible the Forest Service Road is. He then said he hauled a 16 foot wide D8 up there on a 72 foot trail and if he could get in there with that it can't be that terrible. He then stated he is the Ski Patrol Director and Mountain Manager of Blacktail Mountain and has heard a lot of reasons why this shouldn't happen, He further stated 12 to 13 years ago the very same things came up for Blacktail Mountain and now it is a positive thing for the valley and employs 100 people. If all the comments had been listened to then as they are being presented now Blacktail wouldn't have happened; this too is also going to provide jobs.

Cindy Ercoline spoke about the traffic on Kila Road where there are two poor entrances. She then said as she understands it this subdivision is going to create 100 more vehicle trips per day; 700 vehicle trips per week going through a school zone. Ercoline then noted there would not be any off-site mail delivery and stated the Post Office is already maxed out. She then spoke about a school bond issue that is being proposed to the Kila residents with the Kindergarten Class already overcrowded, and it being a tax burden to the residents to support school facilities. Also noted was concern with new wells being drilled and jeopardizing the water of those living there.

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

MONTHLY MEETING W/ JEFF HARRIS, PLANNING & ZONING OFFICE

[9:21:45 AM](#)

Members present:

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

Others present:

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

Harris presented a quarterly report to the commission in which the Planning and Zoning Office is down approximately \$70,000 in revenue from last year. He then presented informational brochures prepared by the Planning and Zoning Office in regards to Lake & Lakeshore Permits, Growth Policy Amendments, Floodplain Development Permits, Zoning Map Amendments, How to Apply for a Conditional Use Permit (CUP) and Planned Unit Developments (PUD). An updated version of the Flathead County Transportation Plan, Phase II (Socioeconomic Analysis & Growth Projections Technical Memorandum) was also presented and reviewed.

Discussion was held relative to SIA's approved by the county and an EA for the Spoklie Gravel Pit.

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CONSIDERATION OF LAKESHORE PERMIT: AVERILL

[9:55:49 AM](#)

Members present:

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

Others present:

Planner George Smith, Clerk Kile

Smith reported Lakeshore Permit FLP 09-19 is a request to clear and redistribute clean gravel out of the outer bay area at 190 Flathead Lake Lodge.

Commissioner Brenneman made a **motion** to approve FLP 09-19. Commissioner Dupont **seconded** the motion. **Aye** - Brenneman, Lauman and Dupont. Motion carried unanimously.

CONSIDERATION OF LAKESHORE PERMIT: CUSKER

[9:57:16 AM](#)

Members present:

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

Others present:

Planner George Smith, Clerk Kile

Smith reported Lakeshore Permit FLP 08-30 is a request to clear and redistribute clean gravel.

Commissioner Dupont made a **motion** to approve FLP 08-30. Commissioner Brenneman **seconded** the motion. **Aye** - Brenneman, Lauman and Dupont. Motion carried unanimously.

BUDGET AMENDMENT: HEALTH DEPT.

[10:17:51 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Finance Comptroller Joe Garza, Clerk Kile

Garza explained the HIV awareness day has been held and the monies are being put into the budget.

Commissioner Brenneman made a **motion** to adopt Budget Resolution 2199. Commissioner Dupont **seconded** the motion. **Aye** - Brenneman, Lauman and Dupont. Motion carried unanimously.

BUDGET AMENDMENT
RESOLUTION # 2199

WHEREAS, the Board of Commissioners has determined, and various department heads have requested and verified, that budget revisions between line items for Fiscal Year 2008-2009, are required, and;

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

NOW, THEREFORE, BE IT RESOLVED, that the attached list of transfers and revisions shall be made in the budget for Flathead County for Fiscal Year 2008-2009; and

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

DATED this 9th day of April 2009.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

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

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

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

ATTEST:
Paula Robinson, Clerk

By/s/Diana Kile
Diana Kile, Deputy

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(Continued)

DATE OF ISSUE:		3/18/09				VOUCHER NO.:	
DATE OF RECORD:						Entered by:	
		BUDGET Resolution 2199					
Fund	Dept	ACTIVITY	OBJECT	ACCOUNT DESC	DEBIT	CREDIT	
2972	0190	334112		HIV Awareness Day Grant	2,175.00		
2972	0190	440118	228	Educational Supplies		55.00	
2972	0190	440118	337	Advertising (Ads, Radio, Posters)		1,470.00	
2972	0190	440118	380	Travel/Training (Speaker Costs)		650.00	
Explanation					2,175.00	2,175.00	

We received a grant for National Women & Girls HIV/Aids Awareness Day 2009. This was held on March 9th. As this will hopefully be a yearly event, I'd like to have it a separate budget.

BOARD APPOINTMENT: KALISPELL CITY PLANNING & ZONING COMMISSION

[10:21:42 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Brenneman made a **motion** to appoint C.M. Clark to the Kalispell City Planning & Zoning Commission. Commissioner Dupont **seconded** the motion. **Aye** - Brenneman, Lauman and Dupont. Motion carried unanimously.

DISCUSSION RE: ISSUANCE OF BONDS FOR 911 CENTER/ D.A. DAVIDSON

[10:22:15 AM](#)

Members present:

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

Others present:

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

Aaron Rudio, Financial Advisor with D. A. Davidson presented a financing schedule for the general obligation bonds for the 911 Center and explained the procedure the county needs to go through before purchasing the bonds. A verbal commitment was made by the commission to pursue a bond rating.

DISCUSSION RE: COPS HIRING GRANT

[10:35:02 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Sheriff Mike Meehan, Clerk Kile

Meehan reported the COPS hiring grant is for one additional position funded 100% for three years; however, at the end of the three year grant period they would need to sustain the individual for an additional 12 months at the counties expense. He then stated it is an opportunity to take advantage of federal monies.

Discussion was held relative to additional employees and funding of them.

CONSIDERATION OF NEW SIA & COLLATERAL AND RELEASE OF OLD COLLATERAL: CLARE SUBDIVISION

[10:44:35 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Assistant Planning & Zoning Director B J Grieve, Clerk Kile

Grieve explained Claire Subdivision had their original final plat approved on July 15, 2008. The original SIA expired March 7, 2009. We are currently in the 60 day window between which the SIA has expired but the letter of credit has not. The request from Clare Subdivision is for a new SIA to July 21, 2009 in which a letter of credit has been submitted.

Commissioner Brenneman made a **motion** to release the old collateral for Clare Subdivision and establish a new SIA. Commissioner Dupont **seconded** the motion. **Aye** - Brenneman, Lauman and Dupont. Motion carried unanimously.

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(Continued)

CONSIDERATION OF HR TRANSMITTALS: R.N. CLINICAL COORDINATOR AND DENTAL HYGIENIST/ HEALTH DEPT.

[10:48:02 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Dupont made a **motion** to approve the HR Transmittal for a R.N. Clinical Coordinator and Dental Hygienist. Commissioner Brenneman **seconded** the motion. **Aye** - Brenneman, Lauman and Dupont. Motion carried unanimously.

PRELIMINARY PLAT: HASKILL MOUNTAIN RANCH

[11:00:47 AM](#)

Members present:

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

Others present:

Planning & Zoning Director Jeff Harris, Planner Alex Hogle, Deputy County Attorney Jonathan Smith, Assistant Deputy County Attorney Tara Fugina, Erica Wirtala, Rich DeJana, Valerie Kurtzhaltz, Tamara Hutten, Jeff Hutten, Neal Nash, Ron Swaine, Craig Kizer, Cindy Ercoline, Carlo Arendt, Dan'l Moore, Cristy Wells, Ed Spotts, Tom Sands, Al Raddatz, Jeff Raper, Greg Carter, Rob Smith, Mayre Flowers, Clerk Kile

Hogle entered into record Staff Report FPP 08-26 Haskill Mountain Ranch Subdivision; an application submitted by Florida Flathead with technical assistance from Sands Surveying, A2Z Engineering, PBS&J and WMW Engineering for preliminary plat approval of a major subdivision that would create 70 single family residential lots approximately seven miles southwest of Kila. Lot sizes range from 5 acres to 24 acres from a 529 acre parcel. Lots would be served by individual wells and individual and shared septic systems. Access to all lots would be from proposed internal subdivision roads which would approach onto Browns Meadow Road. A similar proposal was previously reviewed and received preliminary plat approval in 2006; however, on August 28, 2008 a District Court order rendered preliminary plat approval void, due generally to application and information deficiencies. Hogle then reviewed the Planning Boards concerns and noted the late comer's agreement they were not comfortable with which they agreed to withdraw.

Hogle explained with the substantial public comment leading up to the preparation of the Staff Report and Planning Board hearing and comments received since the Planning Board hearing, that it is not appropriate to consider any new information that was not included in the public hearing.

Hogle then clarified a statement made by Erica Wirtala in regards a water storage tank requested by Smith Valley Fire and pointed out that he had no correspondence in his file from them. The only agency comment in this regard is from the DNRC; Smith Valley did not submit a comment.

Hogle then presented an imagery map from the National Agricultural Inventory Program that clearly shows the status of road development on the subject property in 2005, and what appears to be the most developed roads is the central main artery road that was used as an active road for the subject property and adjoining properties. He then noted the majority of the other roads don't appear to be roughed in, so the statements that the current configuration is based upon existing infrastructure he noted he believes is unfounded. The Planning Board did consider this as well.

The three variance requests were reviewed which included:

Variance request 1: Variance from Section 4.7.7 Lots (b) of the Flathead County Subdivision Regulations which states: "No lot shall be divided by a street, road, alley, right-of-way, or emergency access easement."
Staff supported this request.

Variance request 2: Variance from Section 4.7.18 of the Flathead County Subdivision Regulations which states: "All road improvements including approaches, gravel, pavement, curbs, gutters, sidewalks and drainage systems shall be constructed in accordance with the specifications and standards prescribed in the Flathead County Road and Bridge Departments' "Minimum Standards for Design and Construction Manual".
Staff recommends denial of this request.

Variance request 3: Variance from Section 4.7.17 (a) of the Flathead County Subdivision Regulations which states: "All roadway improvements including approaches, pavements, curbs, gutters, traffic control devices, and drainage systems shall be constructed in accordance with the Flathead County Road and Bridge Departments' "Minimum Standards for Design and Construction Manual" and these regulations.

(a) All construction drawings and plans, specifications and associated engineering reports for all roadways, whether public or private, shall be submitted to the Road and Bridge Department for review and approval prior to actual construction of any road.

Hogle explained when he reviewed variance request 3 he misinterpreted the request and thought it was aimed toward as built drawings that would be submitted after construction. He then noted Planning Staff as well as the Planning Board feel the road should be built to today's standards.

Chairman Lauman asked if the emergency exit in the corner of the development would go out onto Forest Service land.

Hogle explained that it would and then pointed out there are areas of the road that are only 12 feet wide which do not meet secondary access requirements.

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Commissioner Brenneman commented this subdivision has a number of interesting factors, not the least of which include a District Court judgment on the piece of property. As I understand this the property was sold to Florida Flathead who intervened in the case and proceeded apparently in the hope and belief that they had an application that would be valid. The judge decided that in fact there were a lot of problems and used the words glaring inadequacies, glaring admissions and deficiencies in the application specific to the environmental assessment in particular. Judge Lympus also made the interesting observation that the deferral of DEQ decisions regarding water and sub surface treatment systems is impermissible; so it is along those lines that I feel an obligation to pursue as best I am able, to determine whether or not there is in fact adequate water there and adequate sewage treatment ability. MCA 76-3-501 states:

The governing body shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the avoidance of subdivisions that would involve unnecessary environmental degradation and danger of injury to health, safety, or welfare by reason of natural hazard, including, but not limited to fire and wildland fire, or the lack of water, drainage, access, transportation, or other public services, or that would necessitate an excessive expenditure of public funds for the supply of the services.

Commissioner Brenneman then questioned whether there was an EA signed by Robert Swaine in which Hogle found he did have the original in his file signed by Erica Wirtala and Robert Swaine.

Commissioner Brenneman asked Robert Swaine for his opinion as to whether the property is a winter game range.

Robert Swaine said based on maps he has seen that some parts of the property are and some are not.

Commissioner Brenneman said we have letters from FWP that say it is all winter game range.

Erica Wirtala said it is winter game/ general range. When you look at their maps they don't differentiate between winter game range and general range.

Commissioner Brenneman asked if he felt it was winter game range.

Robert Swaine said for some specified species; white tailed deer which encompass 75% of the county and elk.

Commissioner Brenneman questioned the "Soils Report" page 2, where examples were used of where septic and drainfields should go, with the wettest ones not included, if on lot 32 - pit 1070 (The Summary of the Piezometer 2008) monitoring when on April 15, there was 2.22 feet and on April 24 it was dry; that seems odd.

Ed Spotts said he doesn't know what the precipitation record was on that particular date, but what happens things are tied into snow melt, and his guess is that this time of year when you have snow melt it basically acts like a sump because they are in and over soil that is looser compacted, and with snow melt you could have water filling it up with it being a slow perking system. To see it go from 2.2 that is rather unusual and you will see some fluctuation in some of the other holes. How that data was used is they didn't question any site that had water that was between four feet to ground surface; less than four feet below ground surface they tossed out.

Commissioner Brenneman asked if they were electronically read.

Ed Spotts said they were electronically read with a water level; that two prior consultants did it in 2006 and 2007. They went out and resurveyed all of them out of the 150 surveyed and measured them electronically.

Commissioner Brenneman said he was surprised in going through the report along those same lines for example on lot 51; there were a number of holes dug, six of them and three of them came up dry the whole time, and the others had the minimum ground water within two feet of the ground, and yet there was no sand mound proposed for the lot.

Ed Spotts said what happened when the holes were put in from the initial application that turned in 42 holes, 21 which failed. There was subsequent work done in 2007 and a lot more piezometers were put in and what happens when folks putting them in, you dig pits and look around for a suitable place. What's happening at this site in shallow areas especially when you have water moving through the soils relatively slowly, and its kind of a micro topography out there and it is variable over a short distance, so your places at a little bit higher tend not to accumulate the water and it can move through the soil at a rate that doesn't result in encroaching design. The other thing that happens on some of these if you look at them when they were installed they were not tamped down and preferential water gathers in the area.

Commissioner Brenneman then asked if the same rational would apply to lots 5, 14, 17 and 29; all of which had ground water some time within half a foot. He then acknowledged he is basing all of his questions and decisions on information the Planning Board saw, and noted he did not read the information that came in after that and is not taking into account this mornings presentation. He then questioned where test holes were dug and noted a map from PBS&J has in some cases depth to ground water less than eight feet and the proposed drainfield location goes right over the test holes.

Erica Wirtala said the map was not theirs.

Ed Spotts commented the map looks like it came from the original proposal and said he was working off a similar map that was larger.

Commissioner Brenneman said he used the information he had that did have the test holes and drainfields and tried to lay them over that, and it appears to him that he had the same problem that was revealed by the map.

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Ed Spotts asked for clarification and said the drainfields were all cited with the test hole and at no time over the three years of monitoring ever had water within four feet of the surface. If you compare the table in the "Soils Report" to the one that shows all the data, you will see that those sites were taken from there for that purpose. That is for the sighting of drainfields in accordance with DEQ guidelines. Regarding groundwater there are eight separate wells that were dug; eight shallow wells in consultation with MDEQ. They were going to do three and ended up doing eight to look at what was going on with the system. Those are monitoring wells that show the actual shallow water system that is somewhat different from the piezometers that show you the snow melt and seasonal water that is moving down slowly into what is more of an actual water table, wetting up from below; that is what was used to generate the data to do all the non-degradation analysis and to characterize the water table under the site.

Carlo Arendt said the well logs and water level information is in the "Non-Degradation Report" in Appendix A, where it shows all the ground water monitoring data that was collected in the shallow system. It is important to note that none of those show water above four feet below the ground and some of them are dry.

Ed Spotts said piezometers are basically done to see if something meets drainfield criteria suitable for drainfield and separation of groundwater or shallow seasonal groundwater.

Commissioner Brenneman said I understood that you dug 150 holes and put your piezometers in there. I thought I also heard you say that the test holes that were dug that showed high ground water the piezometer holes, that the drainfields wouldn't be in the areas where high water was evident.

Ed Spotts said that is right, that they were associated with the hole. There are two versions.

Commissioner Brenneman said if this map from PBS&J dated January 14, 2009, surveyed shallow piezometer locations with the drainfield showing innumerable; that there aren't even drainfields on a lot of the lots and the ones where there are there are a number where the shallow (inaudible).

Ed Spotts there are 27 proposed sand mounds and those are located on lots where ground water is greater than four feet, but less than 6 feet.

Commissioner Brenneman then said so you can build a sand mound over a site where there is a foot to ground water.

Ed Spotts said there are no drainfields. He then added the map that we should be using came in with the preliminary plat and shows the drainfields and soils data for it.

Hogle then said during the sufficiency review it was brought to the Planning and Zoning Offices attention that there had been other testing prior that was not included in the submittal. He then pointed out that what was sought to be submitted for approval is actually that which was presented in the book that you have. During the sufficiency review after becoming aware that there was additional information existing, I requested that we be provided with that information. The difference is and it is an important difference is that a large number of the sites that this map indicates were done by other consultants relative to the original review. PBS&J was brought on board and wasn't necessarily comfortable working with the product from other companies, so they have put together their own package that is intended to be for today's review, which would be submitted to DEQ. You also have a chart labeled "Soil Descriptions and Drainfield Monitoring" that is more selective as to what they would actually submit to DEQ.

Commissioner Brenneman said he found it interesting that of course you would use the information that indicated there wasn't much ground water. He then noted his concern was you drill all these holes and if you look at the three page report of every hole that was dug there is a lot of them that have water very close to the surface, and some of those lots then don't even have sand mounds. Brenneman asked if he had a map for all the test holes.

Hogle stated we had a map for the test holes that they plan to submit to DEQ.

Commissioner Brenneman said we don't know then if any of the test holes that were dug are in an area that is used for a drainfield, because the only ones that are being submitted to DEQ are the ones that came up dry.

Hogle then said it also shows the current proposed drainfields.

Commissioner Brenneman said I understand they would use the test holes that came up dry.

Hogle said to see how the proposed site relates to other areas that indicate shallow ground water.

Ed Spotts said maybe what you are getting at is if we put the other holes on a map, which there are maps available, will a proposed drainfield overlie that hole. That is the criteria that we used when we cited and provided the information; here is the soil pit that is attended with the drainfield. We also took information into account from the original application when Glen Gray and two other sanitarians went out to the site, and we tried to use as much of that information as they could in sighting the drainfields. That information was taken with what they had so they could put a drainfield on those sites and met the MDEQ criteria for having at least four feet of separation between surface and water or a sand mound six feet or greater.

Commissioner Brenneman questioned the soils report analysis.

Ed Spotts said that report was meant to be used on a semi regional scale that is based on soil mapping data for their soil series. The soil is 26G7 which is very common and all over in the Flathead and comprises a large portion of the soils out there. It is basically the soil that is developed in the glacier till all over in the country out there.

Commissioner Brenneman asked if he agreed with the analysis.

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Ed Spotts said he agreed with what is present as mapped. He then said these are mapped on air photos based on land forms with supplemental work; slow water movement that is based on the texture with it being a slow moving soil, drainfields in the soil that is fairly slow moving in general, and that is why we see the water table hanging up seasonally. The way we address that using DEQ criteria is we went with the worst case scenario and sized the drainfield using a pervoluation rate that is tied with the lowest permeability soil that is observed out there.

Commissioner Brenneman said they describe the soil as 90% rated (502 acres) as very limited; with limited being described as it indicates soil that has one or more features that are unfavorable for the specified use (in this case septic tanks). The limitations generally cannot be overcome without major soil reclamation, special design or expensive installation procedures. Poor performance and high maintenance can be expected.

Ed Spotts said in essence this is your starting ground; they are saying this is what this soil type is anywhere you go.

Commissioner Brenneman said your contention is that the limitations can in fact be overcome with special designs.

Ed Spotts said basically with a large – large drainfield. If you go out there and look at the soils there is a lot of secondary porosity (well developed soils) that is where a large majority of your percolation will work its way down which in essence is why we have change in sizing. At that dosing rate I would feel comfortable with it at the size we made them. Spotts stated the best way to look at this is the NRCS data is readable and used for general planning.

Commissioner Brenneman asked if soil was found that was inconsistent with what the general regional picture as presented by NRCS was.

Ed Spotts said the soils in the pits with the pictures drawn were the ones they did and the others were ones done by consultants two years ago. He then said he went out and dug 26 pits to verify and look at it and would say that what they are saying in terms of what type of soil it is that it is formed in till, it's a fine sandy clay loam to sandy loamy with good structure and peroxity that he would generally agree. Spotts stated we do have relative slow water movement out there and over a three year period they did not see water building up to the point greater than four feet to the surface.

Commissioner Brenneman then referred to the EA which Judge Lympus instructed them to look at carefully. He then read from page 3 of the EA that says: No surface water degradation from waste water is anticipated. Brenneman said you build these sand mounds on top of what you have described as not very porous material and asked where the water goes.

Ed Spotts said the sand mound is to build up your separation for ground water and it is still using the same soil matrix that it moves through. It's not like we have four feet of sand; the mound is constructed on top to give you separation, so you get initial filtering through the sand that distributes the water evenly and that moves down through the soil.

Commissioner Brenneman asked with the soil described if the water always goes straight down or does it move back and forth laterally seeking the course of least resistance.

Ed Spotts said if it is saturated and it's typically not going to be, an unsaturated flow will basically move downward and respond to gravity. I think this will be moving through small cracks in the soil predominately and will be more or less wicked in through suction or matrix potential, and you will have a front slowly moving through the soil similar to snow melting.

Commissioner Brenneman questioned the location of all the drainfields.

Ed Spotts said they all meet the slope requirements.

Commissioner Brenneman asked what the slope requirement was.

Ed Spotts explained it is 15% and a waiver can be obtained for 25%, if you can provide evidence that you don't think it would exit at the tub.

Commissioner Brenneman referred to a concern on page 6 of the EA in regards to the distance to bedrock. He then asked if all the pits were dug to eight feet.

Ed Spotts said the pit that hit bedrock at four feet didn't go to eight feet and that was up on the side of Haskill Mountain per say, where you have a big layer of till that lies in the flat with most of the site relatively flat and when you get to the slope break the soil type changes.

Commissioner Brenneman questioned if they were all dug to eight feet then, unless they hit bedrock. The one they were monitoring they hit bedrock at five feet. That involves four or five of the lots on the slope, the rest of it the soils are deep. They know that because they drilled eight wells and went to 30 feet on several holes.

Carlo Arendt said the well drilled on lot 64 did not hit bedrock until 380 feet.

Commissioner Brenneman then questioned a concern on page 8 of the EA in regards to evaluating the effects on wildlife. He then said we have conflicting reports as to whether this is a big game wintering range. Brenneman noted Erica Wirtala referred to a map that has almost the entire area as big game wintering range. We have an e-mail dated March 5, 2009 from John Vooray that says the problem is these maps do not show all the known elk winter range. The letter also said thank you for pointing out that the winter range on Haskill Mountain does not show up yet; we have consistently referenced the importance of the Haskill Mountain area as wildlife habitat for deer, elk and winter range.

Erica Wirtala explained the response from Mr. Vooray was in reference to an e-mail she sent to him. She stated when clients come in with plans for a development they pull out the maps generated from FWP and question if they are in elk range or not. Their maps clearly show they are not in elk winter range, which was included in the application. An August 2008 FWP generated map shows this is not mapped as such; as by Mr. Vooray's admission.

Commissioner Brenneman then said but he implied that it was a mistake, and they intend to update that, so it does include the area.

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Erica Wirtala noted the last time around their maps were in error as well.

Commissioner Brenneman said it is safe to say then that it does in fact have some winter habitat then. He then questioned how the seven recommendations from Mr. Vooray that are referenced on page 9 of the EA are met.

Erica Wirtala stated out of the seven they have met four. He asked that they approach a land owner that owns 1,200 acres and after the 1,200 acres were put into a conservation easement it simply wasn't possible, he asked that they reduce their density to 24 homes and that they cluster or leave corridors.

Commissioner Brenneman said what he asked was that they cluster home sites near infrastructure, reduce the number of home sites, no perimeter fencing, request the neighboring land owner to the west dedicate his land to a conservation easement, place bird feeder and pet food restrictions on new land owners and prohibit native plants and fruit trees.

Erica Wirtala stated they met most of them. They said there would be no perimeter fencing and they clustered the home sites along the infrastructure.

Commissioner Brenneman then questioned Carlo Arendt in regards to the wells.

Carlo Arendt stated they pulled 29 wells from the Ground Water Information Center from the Montana Bureau of Mines and basically summarized those wells in Appendix A of the report. Based on what was on the well logs they segregated them into different types of aquifers based on their list; one was alluvium (inaudible) and ones that did not have a designation they left as unknown, even though you could probably look at the well log and see that it is completed in rock. In order to segregate it based on the drillers logs because they obviously were not on site.

Commissioner Brenneman said there were some wells straight south 79963, 201402 and 799862; there wasn't anywhere that he could find which one of those wells that you looked at fit into the categories that you divided the wells into.

Carlo Arendt said if you go to Appendix A and open up the first page, you will see a table and all the wells are tabulated into different categories and they also give all the GWICK ID numbers and those correlate to how they are identified on the map.

Commissioner Brenneman asked if the well was the same kind of well drilled on proposed lot 64.

Carlo Arendt said there is a mix as you move down the valley. Up by the well they are fractured rock.

Commissioner Brenneman asked what air lifting was.

Carlo Arendt said most of the wells are put in by an air rotary drill rig, so it is a drill and drive mechanism with a casing. They use air instead of using a drilling fluid to bring the cuttings to the surface and evacuate out the hole. When they are drilling down they use high pressure air and blow it up through the casing and get rid of the soil, and once they hit the water they use the compressed air to basically raise the water out of the well.

Commissioner Brenneman asked about well number one referred to on lot 64 in the report, in which a test was done on April 2, 2008, where the 500 foot well was pumped for 24 hours. He then questioned where the head was in the well when pumping started.

Carlo Arendt stated it was at 43.69 feet.

Commissioner Brenneman said you pumped for 24 hours and it drew down 330 feet.

Carlo Arendt said the whole purpose in testing the well was to design it to pump so they got maximum draw down in the well. It is called stressing the aquifer so they could see how it would respond.

Commissioner Brenneman said if I understand it in 24 hours it still hadn't returned to 43 feet.

Carlo Arendt said that is correct.

Commissioner Brenneman said in your report you use the phrase discussing wells in the area in general being linked. Page 12 in the conclusion – Depths of the wells overlap and there is likely to be communication between units. Brenneman questioned what communication between units means.

Carlo Arendt explained that a lot of times it depends on the situation. That if you are in an alluvial aquifer there is alluvium and there is also out water. The alluvium its common that water will seep down through gravity; there are aquacludes involved that separate. An aquaclude basically is a layer of soil or material that has a higher vertical conductivity value than horizontal, so when water tries to migrate through it, it gets stuck and gets perched on top of it. These systems aren't impervious so overtime there is leakage into the bedrock aquifer, so there is likelihood of communication over time, it isn't instantaneous.

Commissioner Brenneman asked if bedrock wells also had communication.

Carlo Arendt said there can be, that it depends on how the fractures are orientated; you could have a fractured network that people are drilling into and you could have a well that is 30 feet away that doesn't communicate, or you could have a well 100 feet away that it could communicate with.

Commissioner Brenneman asked about the well on proposed lot 64 that was drilled at 500 feet with a proposal to drill 68 more wells. Well number one didn't meet by very much the minimum standards for DEQ.

Carlo Arendt said minimum standards are 4 GPM for four hours according to ARM 17-36-606 and the well was pumped at 9.4 GPM for 24 hours, and if you calculate that out it was 13,594 gallons of water that was pumped. If you are going to design this for a household you basically design around 100 gallons per day per capita, so if we assume a four person household they would use roughly 400 gallons a day, and what they pumped out of the well was enough water for 34 days for a family of four and obviously people aren't going to be pumping 9.5 GPM for 24 straight hours.

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Commissioner Brenneman asked Carlo Arendt if there were 69 more wells out there in his professional opinion if he felt it would affect well number one; with them all using 4 GPM the minimum DEQ standard.

Carlo Arendt asked how he was defining "affect". Are we talking in the components of water rights and adverse affects?

Commissioner Brenneman asked if they would have enough water.

Carlo Arendt replied with "yes", I feel that they will; that there is a high head in these wells. Forty-five feet below the ground is the static water level, and I believe well number one was perforated at 380 feet so there is basically 335 feet of available draw down in the well and with a six inch casing every foot of water is 1 ½ gallons of water in storage.

Commissioner Brenneman noted that PBS&J recommends that based upon their assessment that conservation measures should be imposed to limit the waste of water by restricting decorative ponds, streams or fountains that utilize ground water as the source.

Carlo Arendt stated that is his recommendation on just about everything; that he is not a big proponent of going into areas and pumping ground water and utilizing it for decorative ponds; I don't feel its a good use of water in Montana. The applicants have restrictions in their CC&R's also.

Commissioner Brenneman said the well tested okay for water quality except for what those of us who have lived here long enough know that in certain parts of the area there is a stinky water problem. The iron exceeded the secondary maximum contaminant level for iron. You observed that it may impart an undesirable taste to some people.

Carlo Arendt said possibly; that he knows people that live with it and don't even notice it. The SMCL's (Secondary Maximum Contaminant Levels) are not a drinking water standard. They were put in for esthetic reasons.

Commissioner Brenneman said under the CC&R's which the commission is not involved in enforcing Section 9.2. Article 9 the CC&R's can be amended at any time, unless there are 80% of the homeowners within 30 days that object to it. So if we were to approve this today, the CC&R's could be amended tomorrow.

Erica Wirtala said in the amended conditions by the Planning Board they asked that the commission be party to them.

Commissioner Brenneman said basically the CC&R's from their perspective are pretty meaningless, and anything they require to address issues that they might see as being relevant that they feel the CC&R's would take care of could be changed tomorrow.

Erica Wirtala said I think that is typical in any of the CC&R's.

Commissioner Brenneman said that's my point.

Erica Wirtala said you also have a condition in your subdivision regulations that say no conditions can be met by CC&R's and we are doing our best to ensure that none of this is on there. There is also a lot of duplicity between what statements are being put on the face of the final plat and repeated again in the CC&R's for additional coverage.

Commissioner Dupont asked what specific items in general were changed from the original application when it went to District Court to where we are today.

Smith explained the information that was required that wasn't there the first time was reviewed by staff and found to be here this time.

Commissioner Dupont asked if that was mainly in the EA.

Hogle said it was non degradation, ground water and fire review information.

Commissioner Dupont questioned the review of the findings of facts and conditions.

Hogle stated he made an effort in his review to maintain an objective view and treat it as a unique application as they do all. He noted he was not involved in the original review.

Commissioner Brenneman said it was his understanding that the judge looked at the application and said we didn't have enough information to make a decision. There was also a problem with dates; we were beyond the allowable time limit. He references the fact that the people that sued had a right to sue, and then he said there are two prongs to the standard initial review. One is that we have to follow subdivision law and subdivision regulations, and in this case we hadn't done that exactly right and the second prong is whether the actions were arbitrary or capricious. Which as he understands it means that the governing body failed to base its determination on necessary factors; that we didn't have enough information to establish the necessary factors. He managed to avoid saying whether or not the factors were such that it could be approved or denied.

Smith explained that is because judges don't second guess your decisions on the merits. If the information is there then the judge doesn't analyze it to determine whether or not the court would grant the subdivision approval or deny it. All he is saying is there isn't enough information here to make a good decision so it voids it. They don't engage in determining whether or not there is sufficient information or if it's a good idea.

Commissioner Dupont asked Carlo Arendt if there was any technology today that says how long an aquifer will produce water.

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Carlo Arendt said it is dependent on many variables such as precipitation and snowpack's. What I base my decisions on is we stressed the aquifer for 24 hours and that shows the sustainability for water availability and the recovery data for that test was then analyzed and you will see that in Appendix D (a graph that shows residual draw down vs t over t prime), which is basically the time since the pump began and shut off. It is well known in all hydro literature and probably most important "Ground Water & Wells" which is a common book used by every hydro geologist and most engineers. What I based my opinion on is that the water would be available from this fractured rock aquifer was that curve. It is where the recovery line comes back and intersects the Y axis going back to 0; it was adequate and it is exactly how the hydro geologists at the state will review it for water availability and it's what they look for. It is like any of these aquifers out here; they are dependent on people tracing snow pack, but for right now there is a lot of head in the aquifer and it looks like a viable source.

Chairman Lauman said he knows there are problems in the Kila area with fairly deep wells with low capacity and I see some of the well logs in here with 2 GPM with a 425 foot well. Having spent a lot of time out in the area in my younger years, I know some of the water problems out there. He then questioned if there was a subsidiary feeding aquifer there.

Carlo Arendt asked if he was talking about the deep aquifer or the deep alluvia aquifer that is associated with the valley or just talking about fractured bedrock where you might have to drill deep.

Chairman Lauman said he was talking about the deep water aquifer in the valley.

Carlo Arendt said according to Montana Bureau of Mines who have done a lot of geological mapping and well analysis in the area that the Smith Lake area shows that ground water is connected into the deep system from out there. Basically any well log that is produced now and all pumping tests all go to the Bureau of Mines where they are building a giant informational data base.

Chairman Lauman questioned how the system out there would recharge.

Carlo Arendt said it basically recharges from snowpack, snowmelt and precipitation in the mountains around it; as the snow melts is gradually percolates down into the system.

Chairman Lauman said you stated before that it takes approximately four gallons of water per minutes to supply an average household.

Carlo Arendt said over a year's period of time it is actually less than two gallons a minute; it is down around 1 ½ GPM and that includes irrigation for a domestic home; if you look at it over an entire 365 day per year of appropriation. The DEQ is the administrative rule when you look at water availability. The minimum requirement is a sustained yield of 4 GPM for four hours or 6 GPM for two hours, or 10 GPM for one hour.

Chairman Lauman said looking at your data it does test high in iron but as far as health wise I don't think it hurts anything.

Carlo Arendt said it is not a water quality issue that the secondary MCL's were put in for basically esthetic reasons. Some people who have never experienced that may find objections to the taste of the water, but it is no different than somebody who is getting lake water and someone who is getting ground water.

Chairman Lauman said people who haven't grown up with iron water will find that it has a repulsive taste as far as they are concerned. He then questioned the proposed sand mounds on lots 43 and 46 and questioned the reasoning.

Ed Spotts said there was no site that they deemed suitable so they are sharing it with the easement onto the other lot and are focusing on the area where they have the data to support sighting a drainfield for the DEQ guide.

Chairman Lauman asked if drilling a whole group of wells up there would affect the aquifer and if it would continue to supply the people on down Brown Meadows Road.

Carlo Arendt said if you look at the domestic use of water it is basically all returned to the system through the drainfields and right now the way the Department of Natural Resources looks at it, if you are going for a beneficial use permit they are basically saying 90% and I have heard up to 95% of your household water they give you credit for returning back to the ground water system. Our water will come in and go through the drains and back out other than what people take with them as they come into town or go on a trip.

Discussion was held relative to a late comer's agreement.

Hogle explained Findings of Fact 7 was drafted prior to the Planning Board hearing and they did not go back and revisit the finding. They did make considerable amendments to the condition in regards to late comers. The Planning Board felt the late comer's agreement was not appropriate and recommended striking the conditions that would have addressed late comers; they never went back and visited the findings regarding late comers. Hogle said you may want to amend the finding to state: In the Planning Board meeting the applicants volunteered to withdraw the request for a late comer's agreement.

Finding of Fact 7 was changed to state: In the Planning Board meeting the applicants volunteered to withdraw the request for a late comer's agreement.

Erica Wirtala noted proposed alternate language was submitted earlier this morning for findings 4, 8, 23 and 30 and because the variance requests are tied to the findings. Finding 4 addresses the road but it was also addressed in finding 23; so I took out both findings 4 and 30.

Commissioner Brenneman made a **motion** to adopt findings of fact with a change to finding 7. Commissioner Dupont **seconded** the motion. **Aye** - Brenneman, Lauman and Dupont. Motion carried unanimously.

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Commissioner Brenneman said you look at these proposals and you look at the findings the findings could be used to either approve or deny. When you weight all this information and try and decide if in fact we have crossed over some kind of a line where we are approving something that is an example of unnecessary environmental degradation according to MCA and in my mind this subdivision crosses over that line. I certainly understand that the applicant has done a very extensive job of trying to address all these issues, but I don't think the amount of conditions and information we are going to have to include in this to make it acceptable, so it is not an unnecessary environmental degradation, addresses the wildlife, effects on the natural environment, lack of water, drainage issues on 70 lots are just too many.

Commissioner Brenneman made a **motion** to deny preliminary plat of Haskill Mountain Ranch.

Motion died for lack of a **second**.

Hogle reviewed variance request 1: The subject property crosses over Browns Meadow Road. The request is really a technicality with the subdivision regulations saying that no lot shall be divided by an access easement. The hardship in this is just the nature of this parent tract and not the result of the actions of the applicant.

Commissioner Dupont made a motion to grant variance 1. Commissioner Brenneman **seconded** the motion. **Aye** - Brenneman, Lauman and Dupont. Motion carried unanimously.

Variance request 2 is in regards to the 22 foot road in which Commissioner Brenneman said he felt we needed to grant the road variance, because the applicant had a reasonable expectation after being given preliminary plat approval regardless of my opinion to the contrary two or three years ago. They had a logical expectation they could proceed.

Commissioner Dupont made a motion to grant variance 2. Commissioner Brenneman **seconded** the motion. **Aye** - Brenneman, Lauman and Dupont. Motion carried unanimously.

Variance request 3 is in regards to submitting road plans prior to construction. Hogle explained that he misunderstood the original request to submit as built drawings. With variance request 2 being granted it would be possible to submit plans before they are built.

Commissioner Brenneman made a motion to grant variance 3. Commissioner Dupont **seconded** the motion. **Aye** - Brenneman, Lauman and Dupont. Motion carried unanimously.

Hogle said with variance request 2 being granted that it is important to acknowledge that all the roads that are currently constructed are not up to 22 feet in width; specifically this portion that has been cut through bedrock which measures 15 to 18 feet.

Wirtala pointed out the roads are still under construction that they stopped working on them because preliminary plat was voided; they are still working on them and adding base. She stated they will be built to 22 foot.

Commissioner Brenneman said we need to address this as a condition and say either the roads will be 22 feet or we need to say they will meet the Road Standards under which the first application was approved. They not only have to be 22 feet wide but they have to meet the standards for material and compaction.

Harris noted the road standards in the old subdivision regulations require 50 feet of pavement per lot and it has been the policy of the board to require the pavement, so you might want to specify 22 feet of asphalt.

Wirtala said paving all internal subdivision roads is in finding 14.

Condition 6 was changed to state: All internal subdivision roads shall be certified by a licensed engineer and constructed and paved 22 feet in width in accordance with the Flathead County Minimum Standards for Design and Construction as conditions of October 2006 preliminary plat approval.

Chairman Lauman asked if they were good with the conditions.

Wirtala stated they were good with the conditions as amended by the Planning Board.

Commissioner Brenneman questioned condition 22.

Hogle said the condition has been met. That it is an unusual circumstance in that the paving occurred and then preliminary plat approval was voided.

Commissioner Dupont said he knows there is opposition but can't see anything that hasn't met the rules and regulations set down by Flathead County. He then stated I believe the developer has bent over backwards trying to accommodate those in the area. I understand this is a difficult situation for those living there but growth is a fact of life and is going to happen.

Commissioner Dupont made a motion to approve preliminary plat FPP 08-26 Haskill Mountain Ranch as amended. Chairman Lauman **seconded** the motion. **Aye** - Lauman and Dupont. **Opposed** - Brenneman. Motion carried by quorum.

1. The applicant shall receive physical addresses in accordance with Flathead County Resolution #1626. All road names shall appear on the final plat. Street addressing shall be assigned by the Address Coordinator. [Section 4.7.17(iv), Flathead County Subdivision Regulations (FCSR)]
2. The applicant shall show proof of a completed approach permits from the Flathead County Road and Bridge Department indicating the approaches have been built and received final inspection and final approval prior to final plat. [Section 4.7.17, FCSR]
3. A dust control plan shall be submitted that addresses measures to minimize construction dust and includes post-construction dust mitigation measures. [Section 4.7.14, FCSR]

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(Continued)

4. The applicant shall comply with reasonable fire suppression and access requirements of the applicable fire district. A letter from the fire chief stating that the plat meets the requirements of the fire district shall be submitted with the application for Final Plat. The tanker recharge facility must have a continuous water supply without relying on surface water. [Section 4.7.27, FCSR]
5. All areas disturbed during development of the subdivision shall be re-vegetated in accordance with an approved Weed Control Plan and a letter from the County Weed Supervisor stating that the Weed Control Plan has been approved shall be submitted with the final plat. [Section 4.7.26, FCSR]
6. All internal subdivision roads shall be certified by a licensed engineer and constructed and paved 22 feet in width in accordance with the Flathead County Minimum Standards for Design and Construction, per October 2006 preliminary plat approval. [Section 4.7.17, FCSR]
7. With the application for final plat, the applicant shall provide a Road Users' Agreement which requires each property owner to bear his or her pro-rata share for maintenance of the roads within the subdivision and those used for emergency egress to Browns Meadow Road. The Road Users' Agreement shall be amended to require consent of the Flathead County Commission in order to amend or nullify. [Section 4.7.16(e), FCSR]
8. New electrical and telephone utilities shall be extended underground to abut and be available to each lot, in accordance with a plan approved by the applicable utility providers. [Section 4.7.24, FCSR]
9. The proposed water, wastewater treatment and stormwater drainage systems for the subdivision shall be reviewed by the Flathead City-County Health Department and approved by the Montana Department of Environmental Quality prior to final plat. [Section 4.7.13, FCSR]
10. The mail delivery site shall be provided with the design and location approved by the local postmaster of USPS. A letter from the postmaster stating that the applicant has met their requirements shall be included with the application for final plat. [Section 4.7.29, FCSR]
11. The following statements shall be placed on the face of the final plat applicable to all lots:
 - a. Address numbers shall be posted at the commencement of construction and be clearly visible at all times thereafter. Numbers shall be placed in the driveway entrance and at any subsequent divergent points of access for shared driveways. All address numbers shall be displayed on a contrasting background using a minimum four-inch numeral height. [Section 4.7.27.c, FCSR]
 - b. All utilities shall be placed underground. [Section 4.7.24, FCSR]
 - c. Solid Waste removal for all lots shall be provided by a contracted solid waste hauler. [Section 4.7.23, FCSR]
 - d. Lot owners are bound by the Weed Control Plan to which the developer and the Flathead County Weed Department agreed. [4.7.26, FCSR]
 - e. The owners shall abide by the guidelines set forth in the approved Dust and Air Pollution Control and Mitigation Plan during and after site construction and development activities. [Section 4.7.14, FCSR]
 - f.

Waiver of Protest
Participation in Special Improvement District
[per County Resolution 503-M]

_____ (Owner) hereby waives any and all right to protest which it may have in regards to any attempt to be made by a local governmental entity, to initiate a Special Improvement District which includes _____ Subdivision, shown on the plat therefore, for any of the purposes related to roads, water facilities and systems, and sewer facilities and systems, set forth in Sections 7-12-2102 and 7-12-4102, M.C.A.; provided however that _____ understands that (he/she/it/they) retains the ability to object to the amount of assessment imposed as a result of the formation of a Special Improvement District, including the right to object on the basis that the property is not benefited by the Special Improvement District. _____ agrees that this covenant shall run to, with and be binding on the title of the real property described above and shall be binding on the heirs, assigns, successors in interest, purchasers, and any and all subsequent holders or owners of the real property shown on the subdivision plat for _____ Subdivision.
12. The final plat shall comply with state surveying requirements. [Section 76-3-608(b) (i), M.C.A.]
13. Where the aggregate total disturbed area of any infrastructure construction in the proposed subdivision as defined in A.R.M. 17.30.1102(28) is equal to, or greater than one acre; or where when combined with subsequent construction of structures such disturbed area will be equal to, or greater than one acre, a Montana State Department of Environmental Quality General Permit for Stormwater Discharges Associated with Construction Activity (General Permit) shall be obtained and provided to the Flathead County Planning & Zoning office prior to any site disturbance or construction. [17.30.1115 Administrative Rules of Montana (A.R.M.)]
14. All required improvements shall be completed in place or a Subdivision Improvement Agreement shall be provided by the subdivider prior to final approval by the County Commissioners. [Section 4.4.27, FCSR]
15. The final plat shall be in substantial compliance with the plat and plans submitted for preliminary plat review, except as modified by these conditions. [Section 4.4.22 FCSR]
16. Preliminary plat approval is valid for three years. The final plat shall be filed prior to the expiration of the three years. [Section 4.4.20 FCSR]
17. The applicant shall establish a compliant bus stop in a safe location and provide a letter of approval from the Flathead County Superintendent of Schools prior to final plat.
18. The garbage collection area shall be re-located away from the riverine habitat intended to be protected by the overlay of the proposed Wildlife Corridors. Additionally, the garbage collection area should be designed to be wildlife and bear proof, and not be an attractor to area wildlife.
19. Guest houses shall not be permitted. The following statement shall appear on the face of the final plat: "Each lot shall be limited to one single-family residence. Guest houses are not permitted on any lot."
20. All delineated wetlands shall have a 40 foot wide vegetative buffer applied and shall be shown on the face of the final plat as "No Build Zone".
21. All approved 'wildlife corridors' shall be shown on the face of the final plat as "No Build Zone".
22. Wetlands located on proposed Lots 2 and 4 shall be dedicated as "No Build Zones". Lot 4 shall be reconfigured and not be approved as a residential lot, and be incorporated as "Open Space".

**THURSDAY, APRIL 9, 2009
(Continued)**

23. Applicable permitting (i.e. 310 and 404) shall be obtained for driveway construction to residence sites on Lots 1 and 2 prior to lot development, and the following note shall appear on the face of the final plat: "Applicable permitting (i.e. 310 and 404) shall be obtained for driveway construction to residence sites on Lots 1 and 2 prior to lot development".
24. Driveways for Lots 7-11 require approval from the local Fire Marshal or Fire Chief as suitable access prior to the start of combustible construction, and the following note shall appear on the face of the final plat: "Lots 7-11 may be subject to steep terrain and require approval from the local Fire Marshal or Fire Chief as suitable access prior to the start of combustible construction". [FCSR 4.7.7(g)]
25. Written authorization from the U.S. Forest Service for the use, improvement, and firewise maintenance of USFS roads proposed for emergency egress purposes shall be submitted prior to final plat. The applicant shall provide evidence of emergency egress easements, containing no use restrictions, for a minimum of two routes in addition to the primary access points.
26. The emergency egress routes shall be improved in compliance with applicable regulations, including all applicable permitting, design and construction, firewise thinning, and installation of 'breakaway' gates located at the subdivision boundaries prior to final plat.
27. Letters from the DNRC Fire Supervisor Kalispell Unit, the Smith Valley Fire District Chief, and the Flathead County Road and Bridge Department stating that both emergency egresses and their routes meet applicable requirements of the respective agency/department shall be submitted prior to final plat.
28. Applicable to Lots 7-11, Engineer certified driveway profiles demonstrating that the driveways may be constructed to meet current subdivision regulation requirements shall be submitted prior to final plat.
29. There shall be no further subdivision of lots or Open Space until future zoning would allow, and the following note shall appear on the face of the final plat: "There shall be no further subdivision of lots or Open Space until future zoning would allow."
30. The following statement shall appear on the face of the final plat:
"Lot owners are alerted to the presence of sensitive and potentially dangerous wildlife in the area and are reminded that **feeding big game is illegal**. Lot owners are encouraged to contact the Montana Department of Fish, Wildlife, and Parks to obtain information on safely living near wildlife and minimizing habitat impact, including such things as bear proofing, pet control, and removing food sources."

12:00 p.m. Commissioner Brenneman: Bigfork Steering Committee Public Forum @ Bethany Lutheran
2:00 p.m. Commissioner Lauman: AOA Board meeting @ Kalispell Sr. Center
7:00 p.m. Road Advisory Committee meeting @ Solid Waste District Conference Room
7:30 p.m. Fair Board meeting @ Fair Office

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on April 10, 2009.

FRIDAY, APRIL 10, 2009

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

7:00 a.m. Commissioner Dupont: Road Standards Committee meeting @ Solid Waste District Conference Room
8:30 a.m. Mosquito Control Board meeting @ Earl Bennett Building

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on April 13, 2009.
