

MONDAY, MARCH 1, 2010

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

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

PUBLIC HEARING: SETTLEMENT AGREEMENT IN KLEINHANS FARMS ESTATES, LLC V. FLATHEAD COUNTY

[9:02:34 AM](#)

Members present:

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

Others present:

County Attorney Ed Corrigan, Deputy County Attorney Jonathan Smith, Deputy County Attorney Tara Fugina, Deputy County Attorney Peter Steele, Planning & Zoning Director Jeff Harris, Assistant Planning & Zoning Director B J Grieve, Attorney for Flathead County Alan McCormick, Tom Esch, Roger Sullivan, Tammi Fisher, Rich DeJana, Eric Hummel, Steve Thompson, Jeff Larsen, Jim Heim, Charles Lapp, Karen Reeves, Ardis Larsen, Rick Breckenridge, Don Schwennesen, Mark Schiltz, Ken Siderius, Roy Hutchen, Ryan Hunter, Brad Seaman, Marilyn Wood, Pauline Sjordal, LeAna Sacrison, Gordon Cross, Allison Young, Sue Sherman, Kathleen Sudan, Marvin Sudan, Adeline Gibson, Dennis Thorton, Donna Thorton, Eric Mulcahy, Jere A Jobe, Sharon DeMeester, Bill Jones, Edd Blackler, Harry Woll, Jan Boon, Kelly Harris, Ellie Allen, Russell Crowder, Jerry Brosten, David Murer, Pam Holmquist, Bambi Goodman, Loyal Chubb, Lynn Stanley, Marc Liechti, Elsa Putzier, William Smead, Ginny Wilson, Katherine Maxwell, Jennifer Rogge, Rick Blake, Bruce Young, Robin Skinkraus, Peter Strellinger, Tamara Hutten, Dawn Oehlerid, Tom Gorton, Margaret Casey, Carol Nelson, Roxanna Brothers, Marc Spratt, Susannah Casey, Tom Cowan, Lee Griswold, Brian Peck, Jim Clark, Dick Zellner, Mayre Flowers, Jan Petersen, Eugene Petersen, B. J. Carlson, Sean Averill, Katherine Berg, John Vore, Rod McKeever, Duff Garrish, Clerk Kile

Chairman Brenneman acknowledged the death of former County Commissioner Ken Krueger and extended condolences to the Krueger family.

Chairman Brenneman noted Allen McCormick is providing legal counsel to Flathead County regarding the settlement agreement with Kleinhans Farms Estates, LLC v. Flathead County.

Allen McCormick explained he is providing legal counsel to Flathead County through the MACo insurance pool. He said a settlement agreement was tentatively reached between Kleinhans Farms Estates and the County Commissioners on February 5, 2010. McCormick said he would explain the background and discuss what this is really all about; which is risk management. He stated the lawsuit presents quite a number of claims related to Title 76: MCA 3-6-25 which is an appeal statute where land owners or adjacent land owners can appeal a decision by the County Commissioners to approve or deny a subdivision and challenge findings of fact and conclusions. Kleinhans Farms Estates also presents claims related to 22 USC Section 1983 which are civil rights claims related to the process of potential violations related to unequal treatment or equal protection violations as well as takings claims; takings of private property without just compensation. It is their job to provide the defense to evaluate the merits of the case, and to assist in deciding from a legal strategy standpoint how you would like to handle the case. This case has been going on for a couple of years with a number of depositions taken and legal wrangling about documents, with it all resulting in parties agreeing to have a discussion about settling the case rather than continuing with litigation. That culminated with a settlement conference that was held on February 5, 2010 with Kleinhans Farm Estates representative's legal counsel with a mediator assisting in deciding whether or not the parties wished to settle the lawsuit. The reason we are in front of you today is because Montana Constitution requires that you provide the public with an opportunity to comment on all decisions that are of significant concern to the public. This agreement has not been approved yet; it has essentially been approved in principal with part of the approval being that you agreed to put this on the public agenda and take public comments, and then decide whether or not you are going to enter into a final agreement and submit it to the court in a form of a Consent Decree. The court is vested at broad discretion to enter into the relief they find appropriate. That is a case called Kiely Construction Case; in this case what we would do if you choose to enter into this settlement agreement is present it to Judge Lympus, who is presiding over the case, and the court can decide whether to enter this as an appropriate release. McCormick then spoke about the specifics of the settlement agreement and stated he would summarize the exhibits. Essentially what has been agreed to do is approve a revised preliminary plat with the concessions made by the developer at your request shown on Exhibit A: a significant reduction in the footprint of the subdivision and a significant increase in the amount of open space for the development in order to help reduce some of the impacts and concerns when the decision was made a couple of years ago. The improvements made with the reduction of the footprint and increased buffer between the subdivision and waterfowl production area were a significant concern to the commission during the hearing process. It increased the open space area by more than 100 acres. Part of the negotiation they did in discussing this with the developer is to secure a public access easement on approximately 150 acres which is shown on Exhibit A. For that the settlement agreement provides the county will pay \$600,000 to Kleinhans Farm Estates to secure the public access for 150 acres which does have a specific use. It does allow for public access where you can walk on it, bird watch, hike around on it, you cannot run vehicles on it and yet it cannot be developed. Some of the area is in the floodplain and the only vehicles allowed are for maintenance. There is a potential in the future to sell a portion of the 150 acres to an entity such as Bonneville Power, Fish Wildlife & Parks, Flathead Land Trust or a number of entities that choose to purchase the property. If one of the entities purchases the area for inclusion of the waterfowl production area or for mitigation of other environmental impacts and the entity is not quaint, that entity has the ability to remove the public access and Kleinhans Farms Estates remains on the hook to pay back to the county \$600,000 that was paid to them to secure the public access easement. Another provision of the settlement agreement has been misreported in regards to construction of the roads. The way it has been reported is the county is on the hook for constructing all the roads within the subdivision which is not correct. The reason it is not correct is confusing. There are two exhibits: Exhibit D is a subdivision plat that includes a much smaller footprint subdivision which is one of the things you were trying to secure and ultimately reached a conclusion on Exhibit A being the subdivision plat that would be approved.

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Exhibit D was a specific response to the request you made to reduce the footprint of the subdivision and you agreed to build the linear footage of roads calculated based on Exhibit D. Kleinhans Farms Estates was requesting construction of the roads as mitigation for settling the lawsuit. You agreed to do that in one part early on; one of the things put on the table was to build the roads shown on Exhibit D. When the developers asked to have a revised plat which is shown on Exhibit A you agreed that Exhibit A could be the revised preliminary plat that met some of the issues you were trying to secure with the increase in open space and decrease in footprint of the subdivision, but yet you rejected the idea that you would build the roads that were in Exhibit A. The compromise there is the County Commissioners would have an obligation, should you choose to enter into this agreement to build a certain linear footage of roadways, which is calculated based on Exhibit D which is a smaller amount of roads shown in Exhibit A. So you are not obligated to build all the roads shown on Exhibit A which would be the preliminary plat that would be approved; only the linear footage that would be equal to the amount in Exhibit D. Should you choose to enter this agreement and approve the preliminary plat it comes with two things: Exhibit B is a set of CC&R's and Exhibit C which is the standard conditions of approval as well as some site specific conditions of approval. These are the conditions that have been somewhat modified, but are generally the conditions imposed by the Planning Department when the process was going through the works with a few modifications to address the fact that Exhibit A has corrected some of the deficiencies of the original subdivision, and some of the original conditions are no longer necessary. In terms of consideration within 30 days of approval of the Consent Decree if you approve it today and it goes to court, the court will take whatever time the court needs to enter into a Consent Decree. If the court does enter into the Consent Decree you have 30 days to pay a lump sum payment of \$500,000 to Kleinhans Farms Estates that is followed by a payment of \$250,000 on or before February 1, 2011 and \$250,000 by February 1, 2012. You also have an obligation to construct two of the turnouts to MDOT specifications off the highway, and to construct up to a certain amount of linear footage shown on Exhibit D. You are not obligated to build the roads immediately; you are obligated to build the roads that correspond to the phase that is receiving final plat at the time. The road costs would be spread over a length of time with the phasing taking possibly 30 years for the subdivision to be built out. In return the county receives settlement of the lawsuit which is the risk management end of this; you have to decide whether it is worth entering a settlement agreement based on your potential exposure with findings in this case that could go to a jury. Equal protection claims generally survive summary judgment of court and make their way to a jury; obviously there are hundreds of thousands of dollars of extra legal costs along with time and effort in holding a trial. The mediator was fairly well convinced that the developer could put on the table damages in the amount of anywhere from \$8 - \$15 million dollars. That's not to say the mediator was suggesting they would get that from a jury, but the potential was there that they could show those kind of damages and a jury could enter a judgment against the county of a significant sum. The defense the county has is there are differences of opinion about the facts of the case and conclusions that were drawn from those; what the settlement agreement does is eliminates your risk and makes it final today. Subsequently you eliminate the possibility of getting a judgment against you for more. Another thing you get is public access for 150 acres of open space and we know from the process that this open space is important because it provides wildlife habitat and is immediately adjacent to the waterfowl production area which allows public access, walking and management for waterfowl production. The remaining portions of the settlement agreement are relatively straight forward with typical provisions and governing laws related to counter parts common to these types of settlement agreements.

Chairman Brenneman asked Mr. McCormick if he had been negotiating with Mr. Bill Kleinhans.

Allen McCormick stated he had not; his contact has been directly with the attorneys for Kleinhans Farms Estates, LLC.

Chairman Brenneman asked who was calling the shots with the negotiations.

Allen McCormick said he understands the person behind Kleinhans Farms Estates who has the authority to make decisions about the settlement agreement; not the trial litigation strategy is Keith Simon.

Chairman Brenneman asked if Mr. Simon lives in the area.

Allen McCormick said his understanding is Mr. Simon lives in the bay area of California.

Chairman Brenneman said around San Francisco.

Allen McCormick said correct.

Chairman Brenneman said you have had a great deal of experience with preliminary plats and the Subdivision and Platting Act. He said imagine a case where there are 60 findings of fact presented with 59 of them that can be mitigated and one that has a reasonable chance of impacting the water supply for town X; would that be reason enough to turn down a subdivision.

Allen McCormick said it would. He explained in this case Planning Staff put together an impressive and comprehensive report that evaluated an issue presented in this case better than any staff report he has seen. The application was also excellent and very well done. The application raised issues that have never before been raised in Flathead County, and it became very difficult for the County Commissioners to consider all the information because there were new things that had never come up such as liquefaction, potential seismic risks for homes and how to ensure foundations are constructed correctly and potential PPL flood easements on the property that in theory allowed the dam owner to raise the level of the lake through elevation that could flood the property. These were issues that had never come up before in regards to subdivisions and to the applicant's credit they highlighted those issues and raised them, and the staff report addressed them as well. The staff report did not make a recommendation of approval or denial. It takes out of the findings of fact that the Planning Staff put into the staff report as opposed findings of fact for you to consider and allow for or not. There were quite a number and those facts you take into consideration based upon the facts in the application materials, information in the staff report, public and agency opinion and you roll all that into a conclusion from those facts. That conclusion can be the subdivision should be approved or denied. It does only take one finding of fact that there is a potentially significant adverse impact that is incapable of mitigation in order to turn the subdivision down; I say those words carefully because that is the term straight from statute. Essentially significant adverse impacts are what you have an obligation to find to determine whether there are potential significant adverse impacts, and whether those adverse impacts can be mitigated. In this case the County Commissioners determined there were three that were not capable of appropriate mitigation.

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You drew a conclusion from the facts presented that lead you to believe those impacts could not be capably mitigated. It does only take one of those and sort of the standard review is whether the facts within the record are sufficient to support that conclusion, and reasonable minds in this case (obviously there are reasonable minds) you disagree on whether the facts support the conclusion you made. That's part of the issue in terms of whether you want to proceed with this settlement agreement or not; when you look back at the record whether you feel comfortable with the facts supporting the conclusions that were made.

Chairman Brenneman opened the public hearing to anyone wishing to speak in regards to the proposed settlement agreement.

Russ Crowder, representing American Dream Montana spoke about corruption concerns and property rights being denied. He said the public will recognize the fact that for \$3 million dollars or so getting an easement on 150 acres of swamp land is not a good deal and suggested the Commission figure out a way to recover the funds. He urged them to accept the agreement and stated they are requesting Commissioner Brenneman resign immediately. Crowder also noted a copy of Title 97 was previously submitted to the Commission regarding United States Civil Rights Act that states any public official that violated someone's individual rights would be held personally liable and responsible for the violations.

Rick Breckenridge, 285 1st Avenue E.N. commented after hearing Allen McCormick's explanation of the settlement agreement that there is a lot still being unsaid. He asked that the Commission make available to the public the information Mr. McCormick reviewed so it can be looked at to see if this is a fair and partial settlement.

Susannah Casey, 365 Breezy Point said someday all those opposed to planning in Flathead County will at some point see we have a good planning staff. She stated the research done by Commissioner Brenneman and Commissioner Hall to prove these findings of fact and deny the development were made in good faith. She agreed with Mr. Crowder that no one in Flathead County wants to see us pay our hard earned tax dollars to settle this lawsuit with the developer. Casey said full disclosure also means we need to find out what processes took place after Commissioner Brenneman and Commissioner Hall made their decision, what kind of financing was done, and the amount of money that came from the developer and his attorney's into Flathead County that perhaps affected the election and got rid of County Commissioner Hall. She said there needs to be full disclosure with what the developer has done as well as Flathead County. It was further stated you cannot put nearly 300 houses on 300 acres on top of the Somers water supply adjacent to the most valuable wildlife corridor we have left in Flathead County.

Neil Brown, 670 Wolf Creek Drive said there are a lot of disgruntled people across the nation because of transparency. He explained it doesn't matter if it's the Finance Committee making health care decisions or who it is. Brown said he personally is curious about individual campaign contributions from those involved in the subdivision and possible conflict of interest on the commission. He then presented statistics of campaign contributions received.

Chairman Brenneman asked Mr. Brown to keep his comments directed towards the settlement issue before them.

Neil Brown asked that Commissioner Dupont recuse himself from any further decisions on this issue.

Peggy Casey, 11th Street East said it seems to her that a public hearing should be held in the evening when a large percentage of the public doesn't have to be at work.

Karen Reeves, 230 Missy Lane said the argument that property rights have been violated is ridiculous. She stated to make an issue that whatever he wants to do is what must be done violates every planning document that has been done in Flathead County. Reeves further stated the right decision was made and we need to stand up to it and take it to trial.

Elsa Putzier, 2 Sunset Place said it is her understanding the constitution protects our natural assets. She stated she feels Commissioner Brenneman and Commissioner Hall made the right decision by turning the subdivision down, and said she believes the settlement should be turned down and asked that Commissioner Dupont recuse himself.

Katherine Berg asked what has changed environmentally in terms of wildlife since the decision was made to deny the subdivision. She feels there has been a lot of talk about economics and stated if every decision is an economic decision it is probably the wrong decision; we need to do what is in the best interest of the land. She stated if this goes through it will be a domino effect and the whole area will be one long strip from Bigfork to Whitefish. It has turned into show me the money and the land be damned and Montana is going to cease to be Montana.

Roger Sullivan then summarized the following letter that was presented:

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March 1, 2010

Presentation to:
Board of County Commissioners
Flathead County

Re: Public Hearing on Settlement of *Kleinhans Farms*
Estates, LLC v. Flathead County

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Dear Commissioners,

Through the years I have spoken to the Board of Commissioners on behalf of numerous clients. This morning I speak on my own behalf. Because of my concern that the public interest will suffer grievous harm if this unprecedented settlement proceeds as proposed, my sense of civic responsibility compels me to speak as a citizen.

Certainly what is at stake here are the potential impacts to Flathead Lake and its environs that were so thoroughly described during the subdivision review process which led your predecessor Board of Commissioners to deny the subdivision. But more fundamentally what is at stake is the trust of your constituents in the integrity of the process that has resulted in this proposed settlement. Notwithstanding the unheard of cost of the settlement in cash and construction of infrastructure, let alone the approval of a large and substantially changed subdivision along the north shore of Flathead Lake, it is difficult if not impossible for an interested member of the public to evaluate in an informed manner the proposed settlement **and** subdivision approval.

In stark contrast to the voluminous public record that was compiled during the subdivision review process, the public file on this lawsuit is scant and contains neither an evidentiary record nor substantive motions which articulate the facts and law in defense of the respective merits of either Flathead County or the LLC that has sued the county. Nor has Flathead County described the bases to the settlement prior to this morning's public hearing on what is apparently a "done deal." This is especially troubling since the settlement involves not only the expenditure of an enormous amount of taxpayers' money, but also approves, without the public participation and agency review that is required under the Subdivision and Platting Act, a large subdivision that will be constructed in an area of great concern along the north shore of Flathead Lake.

I respectfully submit that the public's trust in the integrity of this process can only be fulfilled by a transparent process which provides the public with a meaningful opportunity to participate in both commenting upon any proposed settlement of the litigation, and, more fundamentally, provides them with the information and public process contemplated by the Subdivision and Platting Act so that citizens can participate in the decision-making process as to whether or not to approve the revised subdivision that is before you this morning.¹ A more detailed statement of my concerns follows.

1. The record does not support the settlement.

Under Montana law, a developer has a statutory right to appeal the local governing body's denial of an application for a proposed subdivision. § 76-3-625, MCA. The standard of review that the district court uses in considering the appeal is whether the governing body acted "arbitrarily, capriciously, or unlawfully." *Madison River R.V. Ltd. v. Town of Ennis*, 2000 MT 15, ¶ 30. As the Montana Supreme Court has further explained:

When a district court or this Court reviews an action under the "arbitrary and capricious" standard, a **reversal** of the appealed ruling is **not permitted "merely because the record contains inconsistent evidence or evidence which might support a different result.** Rather, the decision being challenged must appear to be random, unreasonable, or seemingly unmotivated, **based on the existing record."**

Kiely Construction, LLC. v. City of Red Lodge, 2002 MT 241, ¶ 69, 312 Mont. 52, 57 P.3d 836 (citation omitted; emphasis added).

In this case, the Court has issued only one Order on a contested issue, in which it quashed the developer's attempt to subpoena records from three local nonprofit organizations which had opposed the Commissioners' approval of the proposed subdivision. In that Order, Judge Lympus took the opportunity to apprise the parties and the public of both the applicable standard of review, and his view on the merits of the case. As to the standard of review, Judge Lympus explained:

[I]t is axiomatic in administrative appeals that **review is limited to that material before the deciding body at the time of the decision.** The standard under which the Court reviews the Commissioners' decision is whether that decision is "arbitrary and capricious." Section 76-3-625 (1), M.C.A.

(Order of June 3, 2009, at p. 3; emphasis added.)

Significantly, as to the merits of the developer's lawsuit, Judge Lympus stated:

[E]ven a casual review of the Commissioners' Finding of Fact, filed by Flathead County at the request of the Court, **establish that a significant basis for denying the development request was, *inter alia*, information regarding the unmitigated impact of the proposal on wildlife and wildlife habitat, the fact that the development as proposed bordered and impacted a waterfowl protection area, the evidence of natural hazards and steep slopes, high water table, ability of soil types in the proposed area of development to provide "foundation bearing capacity", all derived from the Planning Staff Report, FPP-07-32, along with reports from Montana Fish, Wildlife & Parks and United States Fish and Wildlife Service. Further, the fact that PPL Montana owns a flood easement that includes lands within the proposed North Shore Ranch Subdivision, which has been judicially determined to provide PPL Montana, as the successor in interest to Rocky Mountain Power Company and Montana Power Company, the perpetual right to "flood, sub-irrigate, drain or otherwise affect with the waters of Flathead Lake and its tributaries all or any part" of properties burdened with the easement. See *Mattson, et al., v. Montana Power Company, et al.*, 11th Judicial District Court Cause No. DV-99-548A. Exhibit A to the letter to Kleinhans Farms, LLC, dated April 25, 2008, details the findings on which the Commissioners made their decision.**

(*Id.* at pp. 4-5; emphasis added.)

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This ruling was a veritable invitation to the Commissioners to file their Motion for Summary Judgment, which is standard practice in such proceedings. As aptly noted by Judge Lympus, there is indeed a compelling record which supports the Commissioners' decision to deny the Subdivision. Here, while the developer has argued that there is evidence that supports a different result, the legally significant fact is that there is evidence that supports the Commissioners' decision to deny the subdivision. This includes evidence of record submitted by the Montana Department of Fish Wildlife and Parks, the United States Fish and Wildlife Service, the technical memorandum prepared by Geomatrix Consultants on behalf of Citizens for a Better Flathead, the legal memorandum on north shore flood easements submitted by attorney Katherine Maxwell, and detailed comments submitted by numerous organizations and individuals including the Flathead Lakers and Citizens for a Better Flathead. As required by Section 76-3-620, M.C.A., the Commissioners sent a detailed statement of the reasons for their denial to the developer in a letter dated April 25, 2008, along with Findings of Fact dated April 23, 2008, which were filed in the lawsuit at the request of Judge Lympus, and which Judge Lympus determined "established that a significant bases for denying the development request" existed in this case.

Moreover, even if the Commissioners had not adequately articulated the bases to their decision to deny the proposed Subdivision,² then the appropriate remedy for the reviewing court would be to remand the matter back to the governing body to articulate the bases to its decision. See, e.g., *Heffernan, et al. v. Missoula City Council*, Cause No. DV-08-84, Order of August 10, 2009, remanding challenged subdivision back to City Council for issuance of findings of fact as mandated by § 76-3-608(2), MCA; and *Kiely Construction, supra*, ¶¶ 11-12, explaining that the District Court declined to grant relief in the form of a "deemed approval" of the subdivision application as sought by the developer, and instead ordered the governing body to complete the review of the subdivision application in conformance with the requirements of the Subdivision Act and Subdivision Regulations in effect at the time that the application was submitted.

The *Kiely* case is instructive on several other points as well. As a corollary of the rule that the legality of the governing body's decision to approve or disapprove a subdivision must be based upon the court's review of the **record**, the *Kiely* Court ruled:

Nor were the after-the-fact opinions of individual counsel members asked the reasons for the denial relevant. In an analogous situation, **courts will not consider post enactment statements of legislatures** because they are not part of the legislative history and accordingly, not part of the record.

Therefore, we conclude it was not error for the trial court to exclude testimony from the individual counsel members as to their reasons for denying *Kiely's* preliminary application, since such testimony would constitute "post-decision" statements which were **not properly part of the record**.

Kiley, ¶ 97 (citations omitted; emphasis added).

Also in *Kiely*, the Supreme Court affirmed the District Court's approval of the preliminary plat application that had been denied by the City of Red Lodge, **after** the subdivision application had been remanded by the District Court to the local governing body and the local governing body had **ignored** the remand instructions of the District Court. Thus, the Supreme Court held:

We conclude the District Court's remedy in this case-ordering conditional approval of *Kiely's* preliminary plat application subject to the original eighteen conditions recommended by the County Planning Board-was a proper remedy, and an **appropriate response to the unique factual situation with which the court was presented**. In fashioning this remedy, the **court noted that "the evidence was clear that [Kiely] was entitled to the approval,"** and recognized that, "[i]n view of the City Council's disregard of the laws of our state in acting upon [Kiely's] [preliminary plat] application, there is **no reason to expect that it would follow those laws if the court were to ... remand the matter back to the City Council.**"

Kiely, ¶ 76 (emphasis added; brackets in original).

Here, in contrast to *Kiely*, the District Court has already recognized that the record indicates that the developer is **not** entitled to the approval. Moreover, had Judge Lympus been presented with motions for substantive rulings as was done in the cases against the City of Missoula and the City of Red Lodge, and had the Court found that there were deficiencies in the review of the developer's application, then at that point the case would have appropriately been remanded to the Board of Commissioners to review the application under appropriate legal standards. However, this proposed settlement, reached in a settlement conference far removed from the public eye, short-circuits the legitimate judicial process that would not only have allowed the District Court to scrutinize the merits of the respective parties' positions, but would have enabled the public to scrutinize the process.

The *Kiely* decision is further instructive in the Supreme Court's **rejection** of the developer's claims brought against the local governing body for violation of 42 U.S.C. § 1983. As noted by the *Kiely* Court:

In order to state a viable § 1983 claim, the plaintiff must first establish it possesses a protected interest since the guarantees of the Fifth and Fourteenth Amendments "apply only when a constitutionally protected liberty interest or property interest is at stake."

Kiely, ¶ 23 (citations omitted).

The *Kiely* Court noted the legislative discretion that the governing body had: "Red Lodge had the discretionary power to reject/accept the recommendations of the County Planning Board, as the jurisdiction for ultimate approval of the proposed subdivision rested with Red Lodge." *Kiely*, ¶ 37.

After reviewing the statutory provisions in the Subdivision and Platting Act, the *Kiely* Court then held:

Thus, we conclude **Kiely did not have a protected property interest at the preliminary approval stage of his plat application process.**

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In the absence of a demonstrated protected property interest, **Kiely's § 1983 claims cannot stand.**

Kiely, ¶¶ 45, 47 (emphasis added).

In sum, what the **record** available to the public demonstrates is that the proposed settlement is factually unsupported and legally ill-advised.

2. The substantially modified preliminary plat must be reviewed under the provisions of the Subdivision Act.

The citizens of Flathead County in their capacity as taxpayers may justifiably be outraged at the Commissioners' decision to inflict on them the millions of dollars in costs that the ill-advised settlement calls for. But the proposed settlement also vitiates the rights of concerned citizens to participate in the review process of what is a **substantially modified** preliminary plat for the North Shore Ranch. The substantial changes are illustrated by a comparison of the proposed preliminary plat for the denied North Shore Ranch Subdivision, and the **two** preliminary plats of the North Shore Ranch that are attached to the proposed Settlement Agreement as Exhibits A and D. As previously proposed and denied, the subdivision called for **290 single family residential lots**. The subdivision proposed in Exhibit A to the Settlement Agreement calls for **78 single family residential lots, 149 condominium units, 60 assisted living units, and 2 commercial units**, for a total of 289 units. The preliminary plat attached as Exhibit D to the Settlement Agreement calls for **107 single family residential lots, 44 townhouse lots, and 139 condominium units**, for a total of 290 units.

Moreover, the conditions attached to the proposed subdivision at the time that the Commissioners previously reviewed and denied the subdivision were substantially different. Under the new conditions, the applicant is no longer required to provide a provisional water right permit approved by DNRC with the application for final plat. The applicant is no longer required to provide a waiver of protest participation in a special improvement district. The applicant is no longer required to provide a detailed analysis of soils on the property and a statement from an engineer or hydrologist licensed to certify soils, that the storm water management value of detention ponds will not be reduced by limitations in the soils. The applicant is no longer required to receive a flood plain development permit for any work conducted in the hundred year flood plain, or proof that a flood plain development permit is not required for work proposed. Lot owners are no longer required to abide by the policies set forth in the approved vegetation and wildlife management plan. And the provision that no lot shall be further subdivided has been removed from the conditions.

Such changes should require the initiation of a new review process for the substantially changed subdivision, including preparation of a new environmental assessment, and a new round of hearings before the County Planning Board and County Commissioners. At the very least, the substantial changes implicate the provisions of § 76-3-615, M.C.A., which require that the public has a reasonable opportunity to examine and comment on the new information that is being considered by the governing body. At this point it is not even clear **which version** of the new preliminary plat the Commissioners are reviewing and approving - - the preliminary plat set forth in Exhibit A or the preliminary plat set forth in Exhibit D. They are substantially different. Furthermore, the Settlement Agreement provides that the substantially revised preliminary plat set forth on Exhibit A "shall be further modified by KFE" to provide final detailed design layout to meet applicable requirements of the development code. However, after approval of the preliminary plat, the Commissioners' hands are tied in terms of imposing any further conditions to the preliminary plat, notwithstanding the further modifications made by the developer. See § 76-3-610(2), M.C.A. ("After the application and preliminary plat are approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval . . .")

In sum, the Commissioners are in effect writing two checks to the developers. One is in the amount of \$1 million plus the very real costs of specified improvements. The other is a blank check in the form of an approved preliminary plat which lacks the specificity required by our laws and demanded by common sense.

3. Conclusions.

I respectfully submit that the proposed settlement is contrary to the numerous legal standards that I have discussed above, is unsupportable by the compelling factual record regarding the subdivision at issue, and is in violation of the public trust that you are elected to uphold. Thank you for your consideration of these comments.

Sincerely,

/s/ Roger M. Sullivan
Roger M. Sullivan
745 South Main
Kalispell MT 59901
(406) 752-5566

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Rich DeJana stated he has represented citizens on both sides of these issues, but today is speaking about concerns he has in regards to what is being set forward. He said he doesn't think we should care whether the developer is from California and stated he certainly doesn't feel Commissioner Breneman should be attacked as an evil person or Commissioner Dupont, and that they need to consider the advice given by their able attorney's Mr. Jonathan Smith and Allen McCormick. DeJana said he agrees what they are doing is a significant change to the plat, and the subdivision regulations seem to him to require this to go back to the Planning Board for the changes. What concerns him most of all is that he specifically doesn't know after having read as much material as he could get, as to what specifically we think we did wrong. If what you decided was supported by substantial evidence in the record then at least it has some validity; by substantial evidence what that means is there is evidence on both sides. If we know the Commissioners didn't have any evidence to support what they did, then I feel we need a settlement; if there is substantial evidence then I think we need to look at it. I am concerned about spending this money for an easement that really isn't an easement, it's a license that's all, that we will pay you back and then take it back. I didn't get any requirement that the land be eventually sold to the trust or protected environmentally. If that is there then I can understand the way it is written; if it isn't there then you have accomplished nothing except giving a \$600,000 no interest loan. We need appropriate remedies as well as a level of consistency. We need to know what is the abuse. DeJana noted he spoke to property rights people who aren't always necessarily opposed, and what came through is we don't know what the measuring stick is. That has been the problem in this county for the last 10 -15 years. If you're going to second guess your decision while you may have to, we need to be clearly told what the standard is. I ask you to not jump into this even though you have very competent counsel advice; think about the long term ramifications. A person generally working on the developer's side would much rather know your standard right now than have to litigate with you. If we don't trust our standards then we really don't have rules in this county, and it's no wonder American Dream Montana and the Planning Department are at each others throats when you are not providing consistency. This is an opportunity to start re-looking at the standards so we know what the field is.

Charles Lapp, 3230 Columbia Falls Stage Road commented he agrees with a lot of what was said by Roger Sullivan. He stated the discourse of the settlement this morning by Mr. McCormick along with the questions afterward leave confusion when it was said the county had complete justification in denying it. He spoke about concerns related to where the funds will be coming from. Lapp said no matter who did what wrong or who said the wrong thing the Road Department wasn't involved in it or the building fund, and asked why the Commissioners would want to completely gut those funds. He added the settlement says the subdivision was reviewed according to the laws of Flathead County and stated he knows for a fact it was not reviewed by the Planning Board. If it's the same subdivision then yes it can be approved, but this is a completely and totally different subdivision that the Planning Board has not seen through the process, and the public has not been able to comment on it which is critical. Now we have a settlement and completely different subdivision with decisions being made arbitrarily behind the scene. Lapp asked that it be sent through the process.

Mayre Flowers, Executive Director for Citizens for a Better Flathead, 35 4th Street West commented they have participated in hearings throughout the entire process for the subdivision. She read the following letter from Sarah McMillan, Staff Attorney in Missoula for Western Environmental Law.

Good morning, my name is Sarah McMillan and I am a staff attorney in Missoula for Western Environmental Law Center, here today representing Citizens for a Better Flathead as well as the interests of the public in preserving the statutorily mandated review process for subdivisions, and not evading it through the settlement agreement.

I know there are many concerned citizens here today, and you will receive much comment on this settlement agreement with its proposed approval of a new subdivision, so I will tailor my comments to three specific areas: (1) Public policy issues raised where subdivisions are approved by litigation; (2) the absence of any inherent, vested right to subdivide property, and (3) the fact that the County has a duty to evaluate all proposed subdivisions to determine if they are appropriate in light of the impacts to the primary review criteria in 76-3-608.

PUBLIC POLICY

The Commissioners' actions here, allowing public comment on a settlement agreement that the parties have already signed, and with what appears to be every intention of approving a subdivision "reduced what should have been a genuine interchange into a mere formality," as the Supreme Court has warned must not occur. *Bryan v. Yellowstone County Elementary School Dist., 2002 Article II, Section 8*, provides:

Right of Participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of agencies prior to the final decision as may be provided by laws.

The Bill of Rights Committee explained the importance of this right:

The provision is in part a Constitutional sermon designed to serve notice to agencies of government that the citizens of the state will expect to participate in agency decisions prior to the time the agency makes up its mind. In part, it is also a commitment at the level of fundamental law to seek structures, rules and procedures that maximize the access of citizens to the decision-making institutions of state government. The committee believes that this is eminently proper and that it will have a salutary effect not only on the quality of the final decisions, but more important, on the deliberative and political capabilities of the citizenry.

Allowing public comment on a settlement agreement that the parties have already signed and agreed to "essentially relegate(s) the right of participation to paper tiger status."

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There are two different exhibits – A and D – and they are substantially different as presented a proposed preliminary plats. Section 2 (a) of the settlement agreement and 12 (a) of the Consent Decree note that the preliminary plat will be further modified. We do not know which plat – Exhibit A or D – the county has decided to approve, and do not know how it is going to be further modified, and therefore, cannot provide meaningful comment to assist the board's decision making process. Courts and commenter's alike have recognized that "to participate effectively and knowledgeably in the political process of a democracy, one must be fully apprised of what government is doing, has done and is proposing to do. Here where the proposed subdivision is unclear, it is essentially impossible to participate effectively and meaningfully.

NO VESTED RIGHT TO SUBDIVIDE

It is essential to look at development proposals in the proper context, which is that subdivision development is a privilege. Contrary to the developers repeated assertions, there is no vested right to subdivide, indeed the legislature has very clearly given the county the authority, in the subdivision and zoning statutes, to decide what kind of development will and will not be allowed and where it will be allowed. If that were so, the process would be complete upon the planning staff's determination of sufficiency. Instead the county has an obligation to review an application in light of the primary review criteria 76-3-608 (3) provides, "A subdivision proposal must undergo review for the following primary criteria." While a complete and sufficient application that complies with the application requirement is a pre-requisite for county review, contrary to the allegations made in the developers' complaint, it does not guarantee a developer that the application will be approved.

AUTHORITY TO DENY SUBDIVISION

As noted 76-3-608 (3)(a) provides that "a subdivision proposal must undergo review" for impacts to, among other things, public health and safety, wildlife, the natural environment and wildlife habitat. Recently the Supreme Court affirmed a district court's decision affirming Missoula County's denial of a subdivision due to its impacts to wildlife and wildlife habitat. This decision clarifies that a county has the authority to deny a subdivision proposal based on wildlife and wildlife habitat concerns alone. Please review the John Richards opinion from Missoula District Court, recently affirmed by the Supreme Court, both of which are submitted herewith. In the Richards case, the judge determined that where wildlife issues had been raised in the record by concerned citizens and agencies, including FISH, WILDLIFE and PARKS and Rural Initiatives, even if the developer's experts presented differing opinions, the county's denial of the development will be affirmed. The board possesses the discretion to weigh conflicting evidence and reach a decision. Where substantial credible evidence outlined in the board's findings of fact and conclusions of law, and included in the public record, supports the board's decision to deny a subdivision application, a court cannot substitute its judgment for the board's. *Richards v. Missoula County 2009*

In this North Shore Subdivision, not only the FISH, WILDLIFE and PARKS, but also the US Fish and Wildlife Services, and even the developer's own experts agreed that there would be significant impacts on wildlife and wildlife habitat - see findings of fact 32, 57 & 58. This criteria alone provides adequate basis for the county's denial of the proposal. But wildlife was not the only reason for denying the proposal here, there was additional concern that building on lands where the water table is as high as two feet is unsafe (finding of fact 43) that there is a potential for liquefaction in the event of seismic activity (finding of fact 45). Finally the county reasonably determined there were unacceptable impacts to public health and safety due to the fact that there is a flood easement covering the property that would allow PPL to flood this entire property (finding of fact 54).

CONCLUSION

In conclusion, while I do not know what happened behind closed doors in negotiating this settlement, I have reviewed the record, both administrative and judicial and find it astonishing that the county is settling this litigation without any substantive briefing. Only eight months ago in the only order from the Court presiding over this matter, that Court issued an order including the statement "even a casual review of the Commissioners' Findings of Fact establish that a significant basis for denying the development request was, inter alia, information regarding the unmitigated impact of the proposal on wildlife and wildlife habitat. The fact that the development as proposed bordered and impacted a waterfowl production area, the evidence of natural hazards and steep slopes, high water table, ability of soil types in the proposed area of development to provide "foundation bearing capacity" the fact that PPL Montana owns a flood easement that includes lands within the proposed North Shore Ranch Subdivision. How that court's conclusion did not prompt briefing and a request for summary judgment in the county's favor, but instead led to this settlement agreement, which approves a new subdivision, makes a multi-million dollar payout to the developer and waives the county's right and duty to zone any of the area until after ALL lots are sold, is an unsettling mystery.

Sarah McMillan

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Mayre Flowers then spoke about the comparison chart that was compiled for the denied preliminary plat of North Shore Ranch and the proposed revised preliminary plat of North Shore Ranch. She noted we are not seeing a reduction of the number of lots with the original application having 290 lots that was reduced by the Planning Board down to 286 and Exhibit A now showing 289 units. She explained the revised plat has townhouses, commercial units, condos and 7.5 acres devoted to storage. What has been reported is there will be opened space yet it isn't designated on Exhibit A, and if you overlay Exhibit A and Exhibit D there has to be significant changes to the plat to make them correspond. Also shown on the chart were substantial changes to conditions. She then said the fact you are not holding this developer to the same standards of future property owners to pay for impacts to roads with an RSID is of concern, as well as the fact a whole finding was dropped in regards to the applicant providing a detailed analysis of soils on the property. Over and over again there are protections not only to the environment, but for future litigation of other residents who may eventually purchase property within the development. You have removed notice that would alert potential buyers of the serious conditions and limitations of the area for development. Flowers asked that the settlement agreement be rejected and to move forward with a summary judgment request. She then submitted documents pertaining to Kleinhans Farm Estates preliminary plat for the official record. The table of contents included:

1. Citizens for a Better Flathead Comments
2. Release of Settlement Agreement
3. Maps of Proposed Settlement
4. Article from the Daily Inter Lake
5. Article from the Flathead Beacon
6. Notice of Public Hearing: North Shore Ranch Settlement
7. Preliminary Plat FCPZ Staff Report: North Shore Ranch
8. Flathead County's 4.25.2008 – Letter of Denial for North Shore Ranch Subdivision
9. Flathead County Planning & Zoning Subdivision Report #FPP 07-32 North Shore Ranch Subdivision 2.01.2008
10. Complaint and Demand for Jury Trial 5.21.2008
11. Order on Motions to Quash Subpoenas Duces Tecum and Rationales 6.8.2009
12. 2nd Amended Rule 16 Scheduling Order 8.20.2009
13. 3rd Amended Rule 16 Scheduling Order
14. Settlement Conference Report 2.11.2010
15. Citizens for a Better Flathead Comments on Proposed North Shore Ranch Subdivision 3.26.2008
16. Technical Memorandum: Review of Additional Information, Preliminary Plat Application, Proposed North Shore Ranch: Geomatrix Consultants, Inc.
17. Memorandum: North Shore Flood Easements, Katherine P. Maxwell, PLLC
18. Mattson vs. Montana Power Supreme Court Decision
19. Montana Fish, Wildlife and Parks Comments on Proposed North Shore Ranch Subdivision
20. Montana Fish, Wildlife and Parks 2nd Set of Comments on Proposed North Shore Ranch Subdivision
North Shore State Park/ WMA Land Acquisition Proposal, Draft Environmental Assessment, Montana Fish, Wildlife and Parks
21. Confederated Salish and Kootenai Tribes of the Flathead Reservation Comments on Proposed North Shore Ranch Subdivision
22. Confederated Salish and Kootenai Tribes of the Flathead Reservation Letter to the Flathead Lakers
23. US Fish and Wildlife Service Comments on Proposed North Shore Ranch Subdivision
24. Flathead Basin Commission Resolution: Support for Conserving the Natural and Cultural Heritage of the North Shore of Flathead Lake
25. Flathead Lakers Comments on Proposed North Shore Ranch Subdivision
26. Excerpts from Public Comment Submitted Regarding the Proposed North Shore Ranch Subdivision
27. Lakeside County Water and Sewer District "Water" Rules and Regulations
28. Lakeside Wastewater System: 2007 Preliminary Engineering Report
29. Lakeside County Water and Sewer District Comments on Proposed North Shore Ranch Subdivision
30. Wastewater Treatment Agreement: Kleinhans Farm Estates, LLC
31. Lakeside County Water and Sewer District, Montana Public Water Supply ID number 00266. 2006 Water Quality Report
32. Public Water Section, Kalispell Regional DEQ Office: Correspondence and Comments on Proposed North Shore Ranch Subdivision
33. Somers County Water and Sewer District Comments on Proposed North Shore Ranch Subdivision
34. Somers County Water and Sewer District: Rules and Regulations
35. US Dept. of the Interior: Water-Supply Paper 849-B: Effect Upon Ground-Water Levels of Proposed Surface Water Storage in Flathead Lake, Montana
36. Eagle's Crest Subdivision Comments Relevant to Proposed North Shore Ranch Subdivision

A CD with the following information was also included;

1. Hydrogeologic & Carrying Capacity of North Flathead (1,2 & 3)
2. Flood Planning Information/ Kalispell & Col. Falls
3. Urban Impacts on a Gravel Unconfirmed Aquifer
4. Ground Water Resources & Water Quality of the Unconfined Aquifer
5. Hydrogeologic Analysis of Septic Nutrient Attenuation
6. A Planning Guide for Protecting Montana's Wetlands and Ripar Dept. of Interior

Ken Siderius, former President of Flathead Land Trust referred to an article in the Daily Inter Lake on February 28, 2010 in which the President from Flathead Land Trust and Flathead Lakers proposed a solution to the settlement. He said they worked with Canada for 30 years before an agreement was reached. There with miners in Canada saying they could mine and would not pollute our waters and now subdividers are saying they can put a subdivision on the north end of the lake and it won't pollute our waters. Now all of a sudden we are going to make a settlement that will cost us a whole lot of money and we will still have a subdivision on the north end of the lake. With all the information that has been furnished at this hearing today shows there is a great deal of concern about polluting our waters; why wouldn't we take an entirely different approach. The commissioner's and those that were referred to in the letters need to get together and come up with something that makes everyone whole.

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Sharon DeMeester, 415 Chestnut Drive said she agrees and supports all the information that has been put before them. She then stated we need to review the process and go back and look at it. DeMeester said most of the people are here today because of the money, and asked where the money is going to come from. She asked how many jobs will be cut and how many things will Flathead County no longer be able to do without the money. She further stated we need transparency which we have not had, and the documents to review in order to understand what is going on.

Bill Jones stated he served in the Montana Legislature for two terms and is a candidate for office. He said he has been campaigning and reported that half of the citizens in the county are on the edge of poverty. Jones stated it is morally wrong to give \$1 - \$3 million dollars of taxpayer's money away, it is morally wrong to not protect the environment and it is morally wrong to surrender.

John Vore, Fish Wildlife Biologist read the following letter from regional Supervisor James Satterfield:

Region One
490 N. Meridian Rd.
Kalispell, MT. 59901
Jim: 406-751-4566
Fax: 406-257-0349
REF: JS038-10

March 1, 2010

Flathead County Commissioners
800 South Main Street
Kalispell, MT 59901

Dear Commissioners:

We are writing in response to the proposed settlement of a lawsuit between Kleinhans LLC and Flathead County Commissioners that you posted on the Flathead County Commissioners' website. As you know, our agency provided a significant amount of input to both the developers and the county with respect to the proposed North Shore Estates development due to its potential significant impacts on wildlife and wildlife habitat of this area. We understand that when the Flathead County Commissioners denied this proposed preliminary plat, you stated that one of the reasons for denial was the potential impact of the proposed development on wildlife and wildlife habitat.

We have reviewed the proposed settlement and believe that it does not adequately address the wildlife and wildlife habitat concerns that were raised through public comment and listed in your denial. Although the proposed settlement would potentially create a 150-acre open space buffer between the proposed development area and the adjoining Flathead Lake Waterfowl Production Area, this designated "open space" is not permanent. The settlement allows the owner/developer to sell the property and extinguish the county's easement at the landowner's discretion, as long as they pay Flathead County back its \$600,000. As written, there is no guarantee that this important open space will remain open space for any length of time.

To insure wildlife impacts are addressed, the buffer area must be permanent and not revocable or extinguishable. Because the development is permanent, the mitigation for the development should also be permanent. Under your proposed settlement, this 150 acres of land could be sold or transferred at any time to another developer or converted to any number of possible land uses that could be completely incompatible with the purposes of the Waterfowl Production Area or the protection of the wildlife and wildlife habitat of the north shore of Flathead Lake.

The settlement does not address any management of this potential open space area other than it would be closed to public use at the same time as the Waterfowl Production Area and no hunting would be allowed on those lands. As we mentioned in our public comments, these agricultural lands and wetlands are important to thousands of migratory birds and provide habitat for many other species such as wintering raptors and upland game birds. How they are managed is critical to maintaining wildlife habitat and other wildlife benefits. This settlement should require the landowner to develop a detailed habitat management plan for these lands that the public can comment on. This plan needs to clearly state that the overriding purpose of the open space should be wildlife, wildlife habitat, and possibly other mitigating, compatible public benefits.

Under this settlement as proposed, these open space lands could be managed for anything the landowner of record would like to do; that could be agricultural land, managed grazing lands or intensive public recreation. The public at this time has no idea of what will occur, if investments in habitat would be made, and if they would remain for any length of time. This is particularly disconcerting since the citizens of the county are paying for this open space.

From the settlement proposal, it is not clear who will manage the open space after the subdivision is completed. This could become the responsibility of the homeowners' association, and if so, the homeowners could alter the management to suit the homeowners' needs and desires, rather than the needs of wildlife. Neither the public nor the county would even have any say in the open space management once this is transferred to the homeowners' association.

The proposed settlement includes a number of covenants that are not the same as the originally proposed covenants for the development. In the original proposal, the developer included a stipulation that all domestic cats must be kept indoors to reduce the risk of domestic cat predation on birds and other wildlife. This restriction is absent from the covenants listed in the settlement. As we stated in our original comments, cats can have a significant negative effect on small mammal and bird communities.

Fish, Wildlife & Parks has worked for the last two years to bring funds from a myriad of sources to purchase the entire Kleinhans property. Last summer, we proposed to the property owners to buy the entire property in phases at fair market value. The landowner was not interested in selling the entire property. We attempted to work out a partial sale, but negotiations failed. We believe that given the importance of this area to the public, for wildlife and wildlife habitat, that high density development on the balance of their land could have a significant influence on the value and management options we would have for the lands we purchased. This is essentially the proposal that you have tentatively signed: to have high density development next to open space that will be difficult to manage for wildlife, wildlife habitat, or other public benefits.

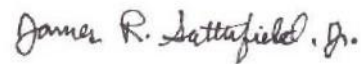
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We support permanent protection of a substantial buffer and open space between the development and the north shore of Flathead Lake. However, the density of development proposed on the balance of this property (210 acres) is still at a level that will have negative impacts on the values of the open space as well as the adjoining wildlife and wildlife habitat. For mitigation reasons, it is important that Flathead County retain or transfer to a third party the conservation easement and the public's interest in the open space lands.

Our agency recognizes the difficult job the counties in Montana have with implementing the Montana Subdivision and Platting Act and balancing competing interests. We encourage you to take more time to rework this settlement agreement so that open space/wildlife habitat is permanently protected, certainty over future management of the permanent open space is increased, housing density is reduced to decrease human impacts from this development on adjoining open space and wildlife habitat, and measures are included to effectively mitigate pet trespass issues. We would also support working with Flathead County and other entities to complete a fair market value purchase of the entire property should the property owner be willing.

Thank you for the opportunity to comment.

Sincerely,



James R. Satterfield Jr., Ph.D.
Regional Supervisor

John Vore added in addition to the letter read that the value of this area of wildlife has been known for a very long time with proposed mitigation since the beginning of 1938. Vore stated they are very concerned.

Rod McKeever, 975 Rose Crossing commented there seems to be a senior right to be able to flood the area that would pre-date the subdivision. It existed before the subdivision was proposed and has a senior right in time; if this is a bogus right then it should have been dealt with. It is now absurd for you to allow someone to build where another entity has the right to flood. An issue the subdivider should deal with if he feels he is being permitted from subdividing.

Donna Thorton, 151 Amatasia Lane commended B J Grieve for the staff report written on the subdivision, and stated if the commission had followed the advice in the staff report we wouldn't be here today. She spoke about concerns in regards to transparency with the Planning and Zoning Department. Thorton stated she feels Mr. Kleinhans rights were violated and added it is time to stop and do the right things for the citizens of Flathead County and have open, honest and fair government with integrity; if there was something done wrong by the commissioners that has forced this \$3 million dollar settlement and we truly are on the hook for \$8 - \$15 million dollars it needs to be settled. If there were meetings that took place behind closed doors with agencies, special interest groups and members of this commission which came out in depositions, we have a right as taxpayers to know.

Bruce Young thanked the commission for holding the hearing and stated he also is concerned about transparency. He doesn't understand how a settlement can be reached when the public doesn't even know what the costs are. Young encouraged the commission to move for a summary judgment and stated it is time right now to find out if the dog is wagging the tail or the tail is wagging the dog, and to also find out if they as elected officials have the right to protect the resources that belong to everyone or whether anything goes.

Roy Hutchens, 3393 Lower Valley Road said he drives Hwy 82 almost every day along with approximately 20,000 other vehicles that cross the road daily and enjoys seeing Flathead Lake. He stated the Commissioners had the decision right two years ago and supports it wholly. He said it's time to call the developers bluff and keep the area for the next generation.

Katherine Maxwell, 114 Pikes Peak said she agreed with the previous comments in that the settlement is not appropriate. She stated Mr. McCormick said this is about risk management, yet a review of the court record so far does not indicate that there was any likelihood of the county losing. The standard by which the Commissioners action of denying the development is whether their actions were arbitrary and capricious and it is a very high standard if there is reason; which the reason is supported by the record to deny the subdivision. Maxwell said you made the right decision in denying the subdivision and it is supported by the record.

Lynn Stanley spoke in support of previous speakers and said it is baffling to see the settlement is even happening. She stated the record is strong in favor of the decision made and asked that they stick with it.

Roxanne Brothers said it is her understanding that you cannot purchase flood insurance on any designated floodplain and asked why anyone would want to build there.

Carol Nelson, Wolf Creek Drive said from what she understands is FEMA has made an error and there is actually proper elevation for the developers which she finds shady. She stated she wonders where the documentation that the floodplain error was made and where is the new survey to justify that you can build on the floodplain. Nelson said if you can now build on a floodplain there is an awful lot of floodplain in the valley, and questioned if it would all be subject to development. She stated if anyone should be sued it should be FEMA.

Don Schwennesen said he also is concerned about the issue of transparency. He said on the other hand Judge Lympus has had an opportunity to review all the information and presumably the depositions, and we have heard what his thoughts are; I wouldn't say he is a liberal judge. He feels this preliminary agreement is premature and exceptionally generous to the developer and will set a bad precedence for future developments that will come back and haunt you.

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Edd Blackler thanked the Commission for holding the public hearing and for allowing them to share their ideas and thoughts. He noted as several before him that the issue of transparency is considerable and stated with this being the only time for public comment on the settlement issue that it is a problem for numerous individuals and taxpayers who would love to be here today, which should be taken into consideration. He stated his assessment of the situation is the decision to deny the subdivision initially was made on well founded good faith information by the Commission at the time and deserves to stand. Blackler said on the other hand he feels it would be important to think about alternatives so the area can be protected in perpetuity. That there are methods by which the property can be purchased at fair market value, with entities that have the intention of keeping it in the condition it is in to keep it from being impacted unfavorably by additional buildings.

Duff Garrish, 875 1st Avenue East said he would like to look at the process of risk management. He stated you have a judge who spoke in favor of the previous decision and it sounds like that is a pretty good basis to go on. I agree that from the developers point of view this is a win – win situation, and I feel you need to sit back and pick up more information and look at what the odds are and where it might go.

Letters and comments received via e-mail from: Doug Clark, Sue Roling, Edd Blackler, Mary Person, Bobbi Hall, David & Kay Owen, Tom Grenier, Michael Sullivan, Dee Blank, Charles & Laurie Cummings, Dave Amnotte, John S Waller, Lex Blood, Roger Sherman, Jeffrey Funk, Don Hauth, Corrine Stark, Johanna Bangeman, Gil & Kimberly Pinter, Margaret Sogard, Suzy Agarhia, L. Christensen, Marilyn Wood, Linda & John Winnie, Flathead Land Trust, Linda deKort, Sarah McMillan, Scott Mason, Don & Rebecca Bauder and McGregor Rhodes.

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

Chairman Brenneman asked Mr. McCormick to give an explanation to the conundrum they face as Commissioners regarding how this works as a court ordered preliminary plat. In addition he thanked those that came out today and stated comments were often very helpful and will be useful in deliberations.

Allen McCormick stated he would make comments to address some of the transparency issues that we are facing. Title 7 specifically says the County Commissioners have the power to direct lawsuits and how they are handled, and that includes of course the ability to settle. Whether you are the plaintiff or the defendant you are bound to follow the rules of civil procedures. You also have as all litigants have you enjoy attorney client privileges and can discuss things with me and the County Attorney's to weigh your relative merits of proceeding one way or another with any kind of a lawsuit. There are very specific rules pertaining to settlement conferences, which are almost always required by the court even in procedural trials. Those proceedings are obviously by the very nature of them very much involved in attorney client privileges, because you are consulting with me and the other County Attorney's as the other side is as well. The mediator is participating in those to help you raise relative merits and proceeding in any particular direction; whether that includes proceeding to trial, summary judgment or to settle the lawsuit. All the conversations with the mediator are protected by the rules and you like any litigant obviously need to be able to consult your issues and merits of the lawsuit behind closed doors so to speak, because that is the way to ensure that your legal theories, relative of merits and your considerations are not being handed over to the other side. That is a privilege that they don't get; you don't get to know their stuff – you don't get to know their ins and outs. When you hear of government you obviously have some very specific duties to provide for public participation and provide for transparency. This is the way that is handled and the results of those discussions that you had on February 5, 2010 in mediation are in print, they are on paper and that is what you are considering today. You allow the public to weigh in and the public to view it. It was of course put on your web-site and copies were made available at the office so the public can know what you are contemplating doing. It balances the rights that you have as a litigant (in this case the defendant and the attorney client privilege with the right of the public to participate and know). You can reveal what you wish of those discussions – you are not prohibited from doing so, obviously they put me in a bind if you release all of the thoughts and processes and my evaluation of the case, because you are handing that information over to the other side should you choose not to enter into the settlement. It is a very difficult spot to find yourself in. I will answer any particular questions and provide any information that you wish or not wish in the case. Another issue to address that seems to have a lot of traction put out is in regards to the effect of the order put out by Judge Lympus a number of months ago in this case. I believe the effect of the order has been grossly over stated this morning. The order addressed one issue and that was whether or not certain groups who were not party to the lawsuit, Flathead Lakers, Citizens for a Better Flathead and Flathead Land Trust had to turn over their own internal documents to Pete Simon and Kleinhans Farms Estates as part of the litigation. Those entities hired legal counsel who found motions to quash those subpoenas to turn over those records. Judge Lympus considered the motion to quash and as a part of that he looked at the findings of fact and conclusion of law to get an idea of what the lawsuit was about, and how those groups may have participated. He ruled one holding; he didn't find anything to do with the merits of the case. The holding found was that Kleinhans Farm Estates did not have the right to access the private documents of the private entities. That is the holding of the ruling and that is all it says. I understand people are pulling language out of it that talks about the court's interpretation under findings of fact. The court did not review the record and did not review anything but one document, and that was the written approval or denial letter that you sent to Kleinhans Farm Estates which had your findings of fact in it. The effect of it is not what it is appearing to be, so I don't want anyone to think that the judge has already ruled in your favor; to a certain extent I am arguing against myself here. I wish that I had shown that to the court already and believe that there certainly are facts in the record that would weigh heavily in your favor. The judge has not ruled that as a reflection of the merits in the case at this point.

Chairman Brenneman asked that he address the issue as to why this was not sent to the Planning Board and through the normal course of subdivision review.

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(Continued)

Allen McCormick said subdivision review is heavily regulated by Title 76 which specifies the process and procedures that you have to follow from the application stage to consideration stage when you are considering a subdivision application. All those processes have been done; they reached a conclusion and culminated a conclusion to deny the subdivision. From here on out we are under the rules of civil procedure and the rules of civil procedure take into consideration your ability to direct lawsuits; to settle a lawsuit as you see fit or to proceed to trial or summary judgment. In this case what we are looking at is we are following the provisions of Kiley Construction case which says, "The district court has vested with broad discretion to fashion whatever belief it feels appropriate in this kind of a case." That included the Kiley Construction Case which was a denial of a subdivision, and in that case the City of Red Lodge was found to be liable because they did not follow the proper rules and procedures in addressing the subdivision denial, and the court frankly said we don't trust you to get it right, so we are going to go ahead and approve the subdivision and came up with conditions the court felt were appropriate. The Supreme Court upheld that ruling from the District Court in saying that Title 76-26-25 (the appeals statute) doesn't have any limitations on a districts courts ability to devise the appropriate relief, so what you are essentially doing here is saying here is a settlement agreement. We may or may not enter into it; that is what you are doing here today, considering it, and if you do enter into it you are going to tell the court we think this is appropriate relief that you can enter on behalf of both sides, and the court can choose to do that or not and follow the Consent Decree.

Commissioner Lauman thanked those that came out today and for the comments given. He stated he would like some time to analyze the information presented today before a decision is made.

Commissioner Dupont also thanked those that came out and commented that he realizes it is sometimes difficult to come out during the week. He stated he is proud to see so many citizens that care. He further stated it is a difficult decision for anyone to make on what is going on as they know a lot are against certain developments, and aspects of takings of what they uphold to be the most beautiful place in the world probably and we don't want to ruin it, yet we don't want to violate personal property rights and stop growth. In this particular issue what we are looking at as a commission is trying to mediate something that is a legal issue to get resolved one way or another, and we obviously have a heavy burden to do that. It is easy to say let it go to court but when you are sitting in our position, and look at risk factors and how much that could cost you the taxpayer one way or another and the odds of a substantial loss if the case is lost. Dupont stated a lot of issues were brought out today that I certainly want to look at intensely over the next few days and need more time.

Chairman Brenneman said we had an obligation to bring forward to the public the very best settlement proposal we were able to come up with, and believe it or not after considerable amounts of work this is what we arrived at. We have brought this to the public and I certainly appreciate your comments. He stated we have agreement from legal counsel representing Kleinhans Farm Estates that it would be acceptable to take this under advisement.

Commissioner Lauman made a **motion** to take the matter under advisement for deliberation on March 8, 2010 at 10:00. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

DOCUMENT FOR SIGNATURE: APPROPRIATIONS LETTERS/ COLUMBIA FALLS BRANCH

[11:35:39 AM](#)

Members present:

Chairman Joseph D. Brenneman

Commissioner Dale W. Lauman

Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Lauman made a **motion** to sign the appropriations letter for the Columbia Falls Library. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

CONSIDERATION OF ADOPTION OF FINAL RESOLUTION: KRUEGER TEXT AMENDMENT/ FLATHEAD COUNTY ZONING REGULATIONS

[11:45:07 AM](#)

Members present:

Chairman Joseph D. Brenneman

Commissioner Dale W. Lauman

Commissioner James R. Dupont

Others present:

Deputy County Attorney Jonathan Smith, Planner Alex Hogle, Ken Krueger, Bruce Tutvedt, Mayre Flowers, Clerk Kile

Jonathan Smith noted a sufficient amount of protests were not received.

Commissioner Dupont made a **motion** to adopt Final Resolution 955HE. Commissioner Lauman **seconded** the motion.

**MONDAY, MARCH 1, 2010
(Continued)**

Chairman Brenneman stated he certainly today more than ever in light of the tremendous loss to the Krueger family wished he could support the amendment. He then added he knew Mr. Krueger would want him to vote his conscience and stated he cannot support a resolution that contains findings which did not contain a single one in support with 11 clearly against and 7 unrelated or ambiguous.

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

RESOLUTION NO. 955 HE

WHEREAS, the Board of Commissioners of Flathead County, Montana, held a public hearing, following publication of legal notice, on the 14th day of January, 2010, to consider an amendment to the text of the Flathead County Zoning Regulations to add a definition of Gravel Extraction;

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

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

WHEREAS, based upon that recommendation and the testimony of the public, the Board of Commissioners of Flathead County, Montana, in accordance with Section 76-2-205, M.C.A., adopted a resolution of intention (Resolution No. 955 HD dated January 14, 2010) to amend the Flathead County Zoning Regulations to add a Section 7.08.025 to the definitions chapter of the Regulations to define "Gravel Extraction" in the Regulations to include mining of gravel and, *inter alia*, the processing of gravel through crushing, screening, asphalt, wash and concrete plants, and transportation and stockpiling of materials on gravel mining sites; and

WHEREAS, notice of passage of that Resolution was published once a week for two weeks, on January 19 and January 26, 2010, and the Board of Commissioners did not receive written protests to the amendments from forty percent (40%) of the real property owners within County zoning districts.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Flathead County, Montana, in accordance with Section 76-2-205(6), M.C.A., hereby amends the Flathead County Zoning Regulations by adding Section 7.08.025 to the definitions chapter of the Regulations to define "Gravel Extraction" in the Regulations to include mining of gravel and, *inter alia*, the processing of gravel through crushing, screening, asphalt, wash and concrete plants, and transportation and stockpiling of materials on gravel mining sites, as set forth on Exhibit A hereto.

DATED this 1st day of March, 2010.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

By/s/Opposed
Joseph D. Brenneman, Chairman

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

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

ATTEST:
Paula Robinson, Clerk

By/s/Diana Kile
Diana Kile, Deputy

Exhibit A

Section 7.08.025 shall read as follows:

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

MONDAY, MARCH 1, 2010
(Continued)

CONSIDERATION OF PRINTING BIDS: TREASURER'S OFFICE

[11:46:23 AM](#)

Members present:

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

Others present:

Clerk Kile

Commissioner Lauman made a **motion** to approve the print bid from Cenveo for 2,000 #9 return envelopes; 20,000 #10 scan window envelopes with "203" identification and 25,000 #10 scan window envelopes with "309" identification for \$1,124.90. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

8:00 a.m. Weed & Parks Board meeting @ Weed & Parks Office

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on March 2, 2010.

TUESDAY, MARCH 2, 2010

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

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

Richard Hader a resident on Foothills Road spoke about concerns he has with increased accidents on a dangerous section of the road south of Mountain Brook School. He stated he has spoken to the Road Department and asked that guard rails be installed.

Gerry Banzet, 250 Coclet Lane said he has grave concern about the action taken at the Fairgrounds and feels a terrible miscarriage of justice has been done to the citizens and taxpayers of Flathead County. He stated it is confusing how the Fair Board works in that ultimately the responsibility falls back on the Commission with them being the ones that appoint the members to the Fair Board. Banzet further stated he has been involved in the Fair since 1981 and feels it is a venue that is unmatched, and it now seems ludicrous that we can have a new Fair Board member appointed for approximately one month who has been in the State of Montana for approximately four years that can move to fire our Fair Manager of 12-14 years. He continued with before this is all done he wants to know the reason behind this and wants to be shown some facts. He then questioned the qualifications of the Interim Manager.

Gordon Taylor, 157 Fairmont Road said his concerns are similar with Mr. Banzet's. He stated he has for the last six years been the chair for the Lion's horse raffle and the only person he has ever dealt with has been Jay Scott who took care of any concern he had instantly. If he couldn't he gave him a reason why and was always congenial, knowledgeable and he could find him 16 hours a day down there. Taylor said between Jay Scott and Nugget they made their raffle successful. He then commented he probably won't be there this year and spoke about concerns in regards to speeding near the new bridge.

Angie Olson, Horticulture Superintendent at the Fair for the past 20 years spoke in support of Jay Scott and the work he does at the Fairgrounds. She stated he is there before 6 a.m. and still there at 11 p.m. during Fair week and is always helpful. She spoke about the significant improvements at the Fairgrounds over the years and questioned why he was fired. Olson also spoke about the unprofessional attitude portrayed by new board member Joy Struble.

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

MONTHLY MEETING W/ RAEANN CAMPBELL, HUMAN RESOURCE OFFICE

[10:02:05 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, HR Director Raeann Campbell, Deputy County Attorney Tara Fugina, Clerk Kile

Campbell presented the February monthly transactions for approval.

Commissioner Lauman made a **motion** to approve the February personnel transactions. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

TUESDAY, MARCH 2, 2010
(Continued)

Campbell then reported the work comp expenses to date and noted things are still looking relatively well with the Health Department having the largest expense year to date. The health fund balance is at \$3.2 million and claims are down \$729,000. She reported we are at 10 injuries v. 8 last year. In other business it was reported air samples will be taken before cleaning of the duct work is done at the Justice Center, 911 negotiations are still ongoing and two candidates will be interviewed for the OES/ 911 Manager position. She noted that a non DOT drug and alcohol testing policy will come before them in the future.

TAKE ACTION: C & J CONDOMINIUMS

[10:15:04 AM](#)

Members present:

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

Others present:

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

Chairman Brenneman read into the minutes that C & J Condominiums is declared a dead file.

CONSIDERATION OF CLAIM FOR REFUND: FEDERAL TAXES CENTRAL PENSION FUND PAYMENTS

[10:18:01 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Deputy County Attorney Jonathan Smith, Deputy County Attorney Tara Fugina, Cindy Dooley, Clerk Kile

Dooley explained Flathead County was audited for the years 2004-2005 and the amounts paid to central pension were looked at. They were re-characterized as employee contributions and as a result the county had to pay an additional tax of approximately \$16,000 in 2004 and another \$16,000 in 2005. Since that time during negotiations with the labor union it became clear that this was a pension that was to only have employer contributions. A letter is being provided that clearly states that these were employer contributions so we are asking the IRS to re-characterize it as employer contributions and refund money to the county.

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

AUTHORIZATION TO PUBLISH NOTICE OF PUBLIC HEARING: BOARD OF ADJUSTMENT REVOCATION AUTHORITY TEXT AMENDMENT/ FLATHEAD COUNTY ZONING REGULATIONS

[10:15:16 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Deputy County Attorney Jonathan Smith, Deputy County Attorney Tara Fugina, Planning & Zoning Director Jeff Harris, Planner Andrew Hagemeyer, Clerk Kile

Smith explained the amendment was taken out of the prior text amendments that were approved. He then stated he would like to hold a public hearing for this amendment with the rules and regulations cited in regards to due process.

Commissioner Dupont stated he would like to see this go back to the Planning Board.

Commissioner Dupont made a **motion** to not proceed with a Public Hearing and to send this back to the Planning Board for modifications so they do understand it. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

AUTHORIZATION TO PUBLISH NOTICE OF PUBLIC HEARING: ROAD ABANDONMENT #478 (AN UNCONSTRUCTED PORTION OF THE HWY, LAKE PARK ADDITION, LOT 5, BLOCK 11

[10:19:53 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Dupont made a **motion** to authorize publication of the Notice of Public Hearing for Road Abandonment #478. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

TUESDAY, MARCH 2, 2010
(Continued)

**NOTICE OF DISCONTINUANCE
OF PUBLIC ROADWAY
NO. 478**

Notice is hereby given that the Board of Viewers have reported to the Board of Flathead County Commissioners on the discontinuance of that certain public roadway in Flathead County, Montana, described as follows:

A tract of land located in the Southeast Quarter of the Southeast Quarter of Section 27, T31N, R22W, PM,M, and being an unconstructed public highway located along the southern boundary of Lot 5 of Block 11 in the Lake Park Addition.

Notice is hereby given to the petitioners or landowners as disclosed by the last assessment roll of Flathead County, owning land abutting the roadway described above and being considered for abandonment.

The hearing on this petition for abandonment is set for **March 18, 2010 at 9:45 A.M.** in the County Commissioners' Office, West Annex, Courthouse, Kalispell, Montana.

DATED this 2nd day of March, 2010.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

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

PAULA ROBINSON,
CLERK AND RECORDER

By/s/Diana Kile
Diana Kile, Deputy

Publish on March 6 and March 13, 2010.

REVIEW OF OPERATIONS AUDIT REPORT: FAIRGROUNDS

[10:30:42 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Deputy County Attorney Jonathan Smith, Deputy County Attorney Tara Fugina, Deputy County Attorney Peter Steele, Finance Comptroller Joe Garza, Cindy Dooley, Jay Scott, Jacie Jung, Jeff Jung, Clerk Kile

Chairman Brenneman explained the purpose of the meeting is for them to ask questions about the report presented by the internal auditor.

It was noted for the record there were no questions.

CONSIDERATION OF ADOPTION OF RESOLUTION OF INTENT: CREATE RSID #149 (SWAN HORSESHOE ROAD)

[10:30:47 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Deputy County Attorney Tara Fugina, Jeff Goudreay, Dave Crow, Al Logan, Clerk Kile

Fugina reported the approximate cost to improve Swan Horseshoe Road is \$410,050 with 31 parcels/tracts that shall be assessed against each assessable lot, tract or parcel of land (as determined by the DOR) in the district equally.

General discussion was held relative to parcels/ tracts and the way they would be assessed.

Pence stated the County needs to know we are properly representing the assessment.

Commissioner Lauman made a **motion** to approve Resolution 2248 and authorized publication of the Notice of Passage of Resolution of Intent and authorized the chairman to sign. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

TUESDAY, MARCH 2, 2010
(Continued)

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the County of Flathead, Montana (the "County"), hereby certify that the attached resolution is a true copy of Resolution No. 2248, entitled: "RESOLUTION RELATING TO RURAL SPECIAL IMPROVEMENT DISTRICT NO. 149; DECLARING IT TO BE THE INTENTION OF THE BOARD OF COUNTY COMMISSIONERS TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF RURAL SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE COUNTY'S RURAL SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND" (the "Resolution"), on file in the original records of the County in my legal custody; that the Resolution was duly adopted by the Board of County Commissioners of the County at a meeting on March 2, 2010, and that the meeting was duly held by the Board of County Commissioners and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Commissioners voted in favor thereof: **Chairman Brenneman, Commissioner Lauman, Commissioner Dupont** ;voted against the same: _____; abstained from voting thereon _____; or were absent: _____.

WITNESS my hand officially 2nd day of March, 2010.



Paula Robinson, Clerk

By/s/Diana Kile
Deputy

RESOLUTION NO. 2248

RESOLUTION RELATING TO RURAL SPECIAL IMPROVEMENT DISTRICT NO. 149; DECLARING IT TO BE THE INTENTION OF THE BOARD OF COUNTY COMMISSIONERS TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF RURAL SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE COUNTY'S RURAL SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

BE IT RESOLVED by the Board of County Commissioners of the County of Flathead (the "County"), Montana, as follows:

Section 1. Proposed Improvements; Intention To Create District. The County proposes to undertake certain local improvements (the "Improvements") to benefit certain property located in the County. The Improvements consist of the making improvements to approximately 110427 square feet of Swan Horseshoe Road, as more particularly described in Section 5. The total estimated costs of the Improvements are \$410,050.00. The costs of the Improvements are to be paid from the rural special improvement district bonds hereinafter described. It is the intention of this Board to create and establish in the County under Montana Code Annotated, Title 7, Chapter 12, Part 21, as amended, a rural special improvement district (the "District") for the purpose of financing the costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and the security of rural special improvement district bonds drawn on the District (the "Bonds"), the creation and administration of the District, and the funding of a deposit to the County's Rural Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds are \$410,050.00. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefitted by the Improvements in an amount not less than \$410,050.00.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as Rural Special Improvement District No. 149, of the County of Flathead, Montana.

Section 3. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on Exhibit C hereto.

Section 4. Benefitted Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A and B are hereby declared to be the rural special improvement district and the territory which will benefit and be benefitted by the Improvements and will be assessed for the costs of the Improvements as described in Section 1. The property included within said limits and boundaries is hereby declared to be the property benefitted by the Improvements.

Section 5. General Character of the Improvements. The general character of the Improvements is the design, engineering and construction for paving a three-inch pavement layer on top of a four-inch crushed gravel sub-base, on approximately 110,427 square feet of Swan Horseshoe Road, with shoulder improvement and chip seal prime coat.

Section 6. Engineer and Estimated Cost. Apec Engineering shall be the engineer for the District. The Engineer has estimated that the cost of the Improvements, including all incidental costs, is \$410,050.00.

Section 7. Assessment Method - Equal Assessments. All properties in the District will be assessed for their proportionate share of the costs of the project. The total estimated cost of the project is \$410,050.00 and shall be assessed against each assessable lot, tract or parcel of land (as determined by the Department of Revenue) in the District equally, such that assessable each lot, tract or parcel in the District shall be assessed for the same amount of the cost of the project.

The costs of the project per lot, tract or parcel to be assessed shall be approximately \$13,227.00. The assessment for each lot, tract or parcel of land for the project will be 1/31 of the total and shall be approximately \$13,227.00.

TUESDAY, MARCH 2, 2010
(Continued)

Assessment Methodology Equitable and Consistent with Benefit. This Board hereby determines that the method of assessment and the assessment of costs of the specific Improvements against the properties benefitted thereby as prescribed in this Section 7 are equitable and in proportion to and not exceeding the special benefits derived from the respective Improvements by the lots, tracts and parcels to be assessed therefor within the District.

Section 8. Payment of Assessments. The special assessments for the costs of the Improvements shall be payable over a term not exceeding 20 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Board shall prescribe in the resolution authorizing the issuance of the Bonds. Property owners have the right to prepay assessments as provided by law.

Section 9. Method of Financing; Pledge of Revolving Fund; Findings and Determinations. The County will issue the Bonds in an aggregate principal amount not to exceed \$410,050.00, in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the District. This Board further finds it is in the public interest, and in the best interest of the County and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the County to enter into the undertakings and agreements authorized in Section 7-12-2185 in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Board has taken into consideration the following factors:

(a) Estimated Market Value of Parcels.

The Board reasonably expects that the market value of the lots, parcels or tracts in the District as of the date of adoption of this resolution, will increase by at least the amount of the special assessment to be levied under Section 7 against each lot, parcel or tract in the District, as a result of the construction of the Improvements.

(b) Diversity of Property Ownership.

Analysis of the number of property owners, business or family relationships, if any, between property owners, the comparative holdings of property by owners in the District indicated that of the 31 properties, there are 27 different owners. The substantial diversity in ownership makes it less likely that financial difficulties of one or related property owners will require the Revolving Fund to make a loan.

(c) Comparison of Special Assessments and Property Taxes and Market Value.

The amount of the estimated proposed assessments against each lot, parcel or tract in the District (\$13,227.00), compares favorably to the estimated market value of each lot, parcel, or tract, which range in value (land only, not including improvements) up to approximately \$281,400.00. The amount of security for any Revolving Fund loan is more than adequate. Since the estimated market value of each parcel compares favorably to the sum of special assessments any loan from the Revolving Fund loan would be adequately secured.

(d) Delinquencies.

There are no delinquencies in the payment of outstanding property taxes levied against property in the District. The lack of delinquent taxes suggests that the likelihood of financial difficulties is small, making the necessity for a Revolving Fund loan unlikely.

(e) The Public Benefit of the Improvements.

The public benefit to be derived from the Improvements is substantial. The Improvements meet an urgent and important need of the County to pave roads in rural areas of the County for public health and safety reasons.

(f) Newly Platted Subdivision.

The District is not a recently platted subdivision or proposed subdivision plat. The lots are not owned by a developer, but are owned by 27 different parties.

Section 10. Public Hearing; Protests. At any time within thirty (30) days from and after the date of the first publication of the notice of the passage and approval of this resolution (or the next business day thereafter), any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the County Clerk and Recorder until 5:00 p.m., M.S.T., on the expiration date of said 30-day period (or the next business day thereafter), written protest against the proposed Improvements, or against the creation of the District or both, and this Board will at its next regular meeting after the expiration of the thirty (30) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said regular meeting will be held on Tuesday, the 6th day of April, 2010, at 9:30 o'clock, a.m., in the Office of the Board of Commissioners of Flathead County, Courthouse, West Annex, 800 South Main, Kalispell, Montana.

Section 11. Notice of Passage of Resolution of Intention. The County Clerk and Recorder is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Daily Interlake, a newspaper of general circulation in the County on March 6 and March 13, 2010, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

TUESDAY, MARCH 2, 2010
(Continued)

PASSED AND ADOPTED by the Board of County Commissioners of the County of Flathead, Montana, this 2nd day of March, 2010.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

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

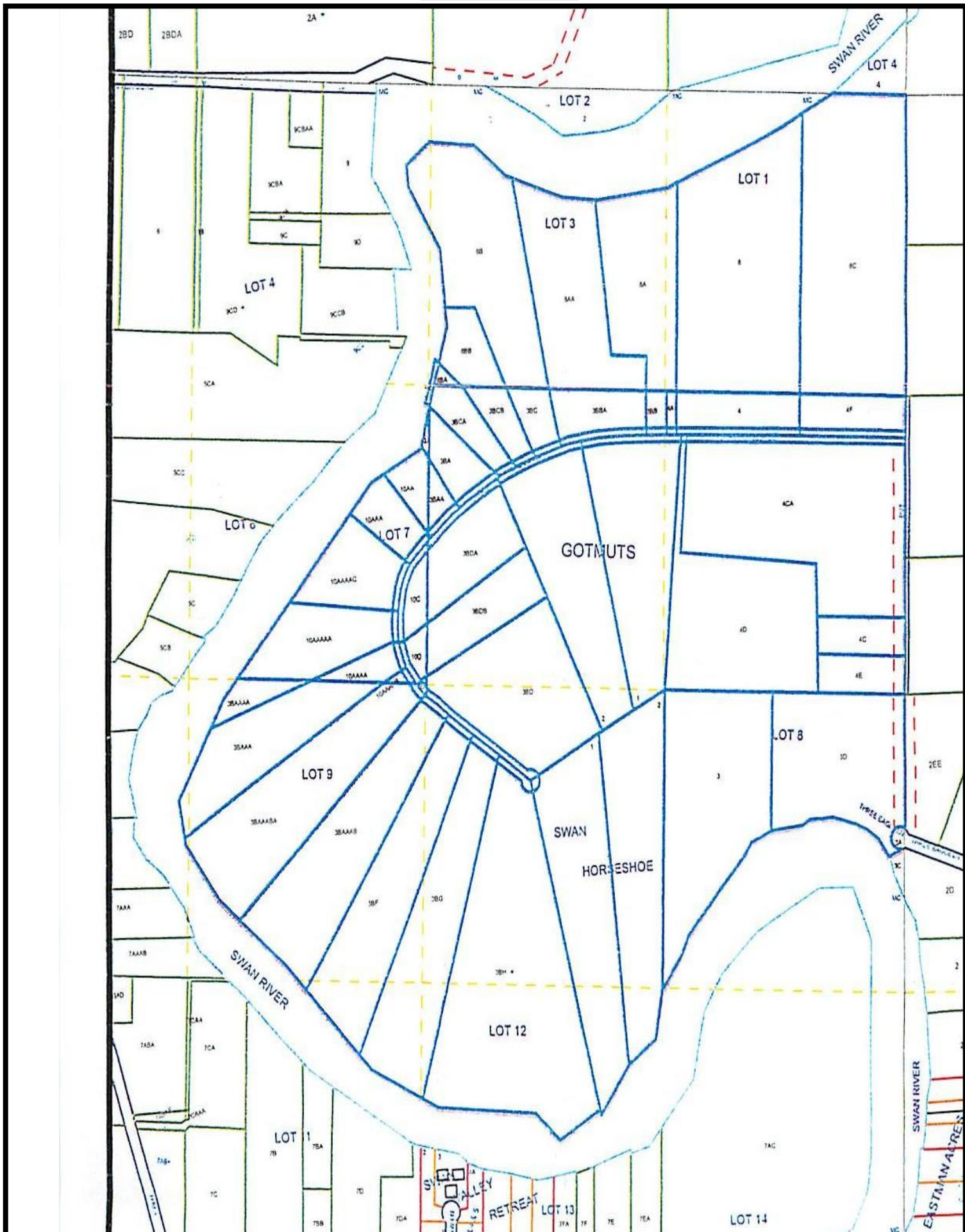
By/s/Dale W. Lauman
Dale W. Lauman, Member

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

ATTEST:
Paula Robinson, Clerk

By/s/Diana Kile
Diana Kile, Deputy

Exhibit "A"



TUESDAY, MARCH 2, 2010
(Continued)

Exhibit B

The description of the proposed boundary for Swan Horseshoe RSID #149 are the boundaries described as follows:

All properties included within Parcel 1 through 13 of Certificate of Survey 3958, whereby including multiple land divisions within said original parcels, and Parcels A and B of Certificate of Survey 11280, all lying within that portion of Section 28 Township 27 North Range 19 West, Flathead County, Montana.

Exhibit C

Section, Township, Range	Tract ID	Assessor No.
S28, T27N, R19W	2719X28-SWA-2	0979188
S28, T27N, R19W	2719X28-SWA-1	0122750
S28, T27N, R19W	2719X28-3BH	0974481
S28, T27N, R19W	2719X28-XXX-3BAAAA, 10AAAAA	0972026
S28, T27N, R19W	2719X28-XXX-10AAA	0122805
S28, T27N, R19W	2719X28-XXX-3BAA, 10AA	0122804
S28, T27N, R19W	2719X28-XXX-3BCB, 8BB	0981203
S28, T27N, R19W	2719X28-XXX-3BC, 8B	0122807
S28, T27N, R19W	2719X28-XXX-3BB, 8A, 4A	0122803
S28, T27N, R19W	2719X28-XXX-4E	0974482
S28, T27N, R19W	2719X28-XXX-4D	0974480
S28, T27N, R19W	2719X28-GOQ-1	0000035
S28, T27N, R19W	2719X28-GOQ-2	0975517
S28, T27N, R19W	2719X28-XXX-3BD, 10	0122799
S28, T27N, R19W	2719X28-XXX-3BDB, 10D	0009187
S28, T27N, R19W	2719X28-XXX-4CA	0981595
S28, T27N, R19W	2719X28-XXX-3BCA, 8BA, 10B	0975602
S28, T27N, R19W	2719X28-XXX-3BG	0972030
S28, T27N, R19W	2719X28-XXX-3BF	0972029
S28, T27N, R19W	2719X28-XXX-3BAAAB	0972140
S28, T27N, R19W	2719X28-XXX-10AAAAB, 3BAAABA	0974484
S28, T27N, R19W	2719X28-XXX-10AAAA, 3BAAA	0122806
S28, T27N, R19W	2719X28-XXX-10AAAAC	0974059
S28, T27N, R19W	2719X28-XXX-3BA, 10A	0122802
S28, T27N, R19W	2719X28-XXX-8AA, 3BBA	0971386
S28, T27N, R19W	2719X28-XXX-8C, 4F	0974485
S28, T27N, R19W	2719X28-XXX-4, 8	0122800
S28, T27N, R19W	2719X28-XXX-4CA	0970423
S28, T27N, R19W	2719X28-XXX-10C, 3BDA	0008349
S28, T27N, R19W	2719X28-XXX-3D	0003798
S28, T27N, R19W	2719X28-XXX-3	0122801

NOTICE OF PASSAGE OF RESOLUTION OF INTENTION TO CREATE RURAL SPECIAL IMPROVEMENT DISTRICT NO. 149 AND TO ISSUE RURAL SPECIAL IMPROVEMENT DISTRICT NO. 149 BONDS OF THE COUNTY IN THE AGGREGATE PRINCIPAL AMOUNT OF \$410,050.00, SECURED BY THE RURAL SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

FLATHEAD COUNTY, MONTANA

NOTICE IS HEREBY GIVEN that on March 2, 2010, the Board of County Commissioners of Flathead County, Montana (the "County"), adopted a Resolution of Intention to Create Rural Special Improvement District No. 149 (the "District") for the purpose of financing the costs of certain local improvements (the "Improvements") and paying costs incidental thereto, including costs associated with the sale and the security of rural special improvement district bonds of the County drawn on the District (the "Bonds"), the creation and administration of the District, and the funding of a deposit to the County's Rural Special Improvement District Revolving Fund (the "Revolving Fund"). The Improvements shall be constructed and installed pursuant to plans and specifications prepared by Apec Engineering.

**TUESDAY, MARCH 2, 2010
(Continued)**

A complete copy of the Resolution of Intention (the "Resolution") is on file with the County Clerk and Recorder which more specifically describes the nature of the Improvements, the boundaries and the area included in the District, the location of the Improvements and other matters pertaining thereto and further particulars. A map of the proposed District accompanies this notice.

The Improvements consist of the design, engineering and construction of paving on approximately 110,427 square feet of Swan Horseshoe Road, currently a gravel road.

The County would issue the Bonds in an aggregate principal amount not to exceed \$410,050.00, in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the property in the District in the aggregate principal amount of \$410,050.00 and such payment will be secured by the Revolving Fund. **Subject to the limitations of Montana Code Annotated, Section 7-12-4222, the general fund of the County may be used to provide loans to the Revolving Fund or a general tax levy may be imposed on all taxable property in the County to meet the financial requirements of the Revolving Fund.**

All properties in the District will be assessed for their proportionate share of the costs of the Paving Improvements. The total estimated cost of the Paving Improvements is approximately \$410,050.00, and shall be assessed against each assessable lot, tract or parcel of land (as determined by the Department of Revenue) in the District equally, such that each lot, tract or parcel in the District shall be assessed for the same/proportional amount of the cost of the Paving Improvements. There are 31 lots, tracts or parcels in the District. The estimated cost of the Paving Improvements per lot, tract or parcel to be assessed is \$13,227.00.

On April 6, 2010, at 9:30 o'clock, a.m., in the Office of the Board of Commissioners of Flathead County, Courthouse, West Annex, 800 South Main, Kalispell, Montana, the Board of County Commissioners will conduct a public hearing and pass upon all written protests against the creation of the District, or the making of Improvements, that may be filed in the period hereinafter described.

Written protests against the creation of the District and the making of the Improvements may be filed by an agent, person, firm or corporation owning real property within the proposed District whose property is liable to be assessed for the Improvements. For purposes of protest, the owner of a property created as a condominium is collectively the owners of all units having an undivided interest in the common elements. The protest must be filed by the president, vice president, secretary or treasurer of the condominium owners' association, and such protest must be in writing, identify the condominium property, include a declaration or other document that shows how votes of unit owners in the condominium are calculated and be signed by owners of units in the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration, as more particularly set forth in Section 7-12-2141, M.C.A. Such protests must be delivered to the County Clerk and Recorder at the Flathead County Courthouse, 800 South Main, Kalispell, Montana 59901, no later than 5:00 p.m., M.S.T., on April 5, 2010. As provided by law, such protests must be in writing, identify the property in the District owned by the protestor and be signed by all owners of the property. The protest must be delivered to the County Clerk and Recorder, who shall endorse thereon the date of its receipt by her.

Further information regarding the proposed District or the Bonds or other matters in respect thereof may be obtained from the Board of Commissioners at 800 South Main, Kalispell, Montana, or by telephone at 406/758-5503.

DATED this 2nd day of March, 2010.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

ATTEST:
Paula Robinson, Clerk

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

By/s/ Diana Kile
Diana Kile, Deputy

Publish on March 6 and March 13, 2010.

CONSIDERATION OF ADOPTION OF RESOLUTION: AMEND DUST CONTROL COST SHARE PROGRAM

[10:41:18 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Deputy County Attorney Peter Steele, Operations Manager Road & Bridge Dept. Guy Foy, Clerk Kile

Steele explained the amended resolution takes out the option of using black oil in the dust cost share program.

Commissioner Dupont made a **motion** to approve Resolution 2178A. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

**TUESDAY, MARCH 2, 2010
(Continued)**

RESOLUTION NO. 2178A

**A RESOLUTION
REPLACING RESOLUTION 2178
AMENDING THE POLICY
FOR THE ADMINISTRATION OF
THE DUST CONTROL COST SHARE PROGRAM**

WHEREAS, the Board of County Commissioners of Flathead County, Montana, adopted Resolution No. 2178 on the 2nd day of December, 2008, and now deems it necessary to amend Resolution No. 2178;

WHEREAS, Resolution No. 2178 is a policy for the administration of the Dust Control Cost Share Program;

WHEREAS, Flathead County has determined that it is in the best interests of the citizens of Flathead County to discontinue the use of petroleum based dust palliative, commonly known as black oil, from the program; and

NOW THEREFORE BE IT RESOLVED, by the Board of County Commissioners of Flathead County, Montana, that Resolution No. 2178 adopted on the 2nd day of December, 2008, is hereby discontinued and replaced with the following:

POLICY of the Flathead County, Montana Road & Bridge Department for the administration of The Dust Control Cost Share Program

STATEMENT

The Dust Control Cost Share Program is undertaken to allow residents of Flathead County, in areas outside incorporated cities and towns, to apply dust suppressant to County maintained gravel roads. The Board of County Commissioners wish to make available a method of financial assistance that does not require the formation of a rural special improvement district. The Board of County Commissioners recognize that Flathead County residents want an alternative method to pay for the application of dust suppressant which enables costs to be shared by the County. To this end, the Board of County Commissioners hereby adopts the following procedures and guidelines for the administration of a Dust Control Cost Share Program.

SECTION 1: DEFINITIONS

The following definitions and abbreviations are used throughout this policy in order to save space and avoid the need for continued defining of common terms.

BOARD shall mean the Board of County Commissioners of Flathead County.

COUNTY shall be used to refer to the political subdivision of the State of Montana known as Flathead County, its agents, and employees.

DUST CONTROL shall refer to the application of magnesium chloride to a gravel road for the purpose of mitigating airborne dust.

APPLICANT shall collectively refer to those residents and property owners near the certain County road identified in the application.

RESIDENCE shall refer to a building or portion thereof providing complete, independent and permanent living facilities for one family. A RESIDENT is one adult person who dwells at a residence.

SECTION 2: APPLICATION

It shall be the policy of the Board that the applicant is responsible for completing and submitting a Dust Control Cost Share Program Application ("application") by the application deadline. The application must be completed in its entirety by the deadline set forth by the Flathead County Road Department ("Road Department").

SECTION 3: ROADS CONSIDERED FOR THE DUST CONTROL COST SHARE PROGRAM

It shall be the policy of the Board to utilize the Dust Control Cost Share Program for County maintained gravel roads. Roads must be public roads maintained by the Road Department and shall not include any portion of any road within the boundaries of any city or incorporated town. Each section of proposed dust control on a road must be a minimum of 0.5 mile in length, or the entire length of the road, whichever is less. The County may require a proposed section of dust abatement on a road to adjoin existing or other proposed sections of dust abatement, pavement, or intersections with other roads, unless separated by a minimum of 1320 lineal feet.

The Road Department will rank each road considered for the Dust Control Cost Share Program utilizing existing average daily trips. Roads with the highest ranking will receive funding until funding for the Dust Control Cost Share Program is exhausted. The County may deny or delay dust control due to pending road improvements, availability of staff, or current road conditions. Roads considered for the Dust Control Cost Share Program must have a health and safety benefit to the residents, a road maintenance benefit to the County, and be considered in the best interests of the general traveling public.

SECTION 4: COUNTY SHARE

The County may share in the cost of dust control in an amount not to exceed fifty percent (50%) of the total costs of the improvements including labor, materials, money, contingencies or any combination thereof for magnesium chloride. The County's contribution shall not include costs associated with preparing the road for application of the dust suppressant. Dust suppressant will only be applied to a road or a section of any road through the Dust Control Cost Share Program once per calendar year.

TUESDAY, MARCH 2, 2010
(Continued)

SECTION 5: GUARANTEE OF PRIVATE CONTRIBUTIONS

Applicant must provide payment for the resident's portion of the cost share by the deadline established by the Flathead County Public Works Director, or his designee. Such payment shall be in the form of cash, cashier's check, money order or personal check.

SECTION 6: COUNTY RESPONSIBILITIES

The Road Department will have authority to create forms and procedures necessary to administer the Dust Control Cost Share Program. The Road Department will provide an application for the Dust Control Cost Share Program and will institute deadlines for application acceptance, payment by the applicant for the resident's portion of the cost share, and dust suppressant application. The Flathead County Road and Bridge Superintendent has authority to accept, evaluate, and authorize applications for the Dust Control Cost Share Program. The Road Department will prepare any necessary bid documents required to utilize a contractor for dust suppressant application. The Road Department will coordinate with the contractor to determine the exact schedule for application of dust suppressant.

After dust suppressant is applied, the County shall continue to maintain the road when necessary at the County's discretion.

SECTION 7: DISCLAIMER

The Road Department is not financially or otherwise responsible for the effectiveness of the dust suppressant.

SECTION 8: COMPLIANCE

It shall be the policy of the Board to insure that the requirements of this policy be followed. Failure of applicant to do so is grounds to deny further action on the inclusion in the Dust Control Cost Share Program. Exceptions to the procedures set forth in this policy will only be made by the Flathead County Public Works Director, or his designee, in instances where the provision of the policy cannot be met due to circumstances beyond the control of the petitioner or County.

ADOPTED this 3rd day of March, 2010.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

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

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

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

ATTEST:
Paula Robinson, Clerk

By/s/Diana Kile
Diana Kile, Deputy

QUARTERLY MEETING W/ KELLIE DANIELSON/ MWED RE: UPDATE

[11:00:45 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Kelli Danielson, Clerk Kile

Kelly Danielson met with the Commission and gave a report on QX56 recovery bonds, EDA grant applications, improving marketing projects, creation of a five year marketing plan and grant funding from Big Sky Trust.

BUDGET AMENDMENT: HEALTH DEPT/ WIC

[11:22:48 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Dupont made a **motion** to approve Budget Amendment Resolution 2249. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

**TUESDAY, MARCH 2, 2010
(Continued)**

BUDGET AMENDMENT
RESOLUTION # 2249

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

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

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

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

Dated this 2nd day of March 2010.

BOARD OF COUNTY COMMISSIONERS
Flathead County, Montana

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

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

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

ATTEST:
Paula Robinson, Clerk

By/s/Diana Kile
Diana Kile, Deputy

DATE OF ISSUE: 2/8/10		BUDGET ENTRY			VOUCHER NO.:	
DATE OF RECORD:					Entered by:	
RESOLUTION #2249						
FUND	DEPT	ACTIVITY	OBJECT	ACCOUNT DESCRIPTION	DEBIT	CREDIT
2971	0190	331158		WIC PEER COUNSELING		\$18,803
2971	0190	440178	110	SALARIES	\$1,972	
2971	0190	440178	141	UNEMPLOYMENT	\$5	
2971	0190	440178	142	INDUSTRIAL ACCIDENT	\$21	
2971	0190	440178	143	HEALTH INSURANCE	\$272	
2971	0190	440178	144	FICA	\$122	
2971	0190	440178	145	PERS	\$139	
2971	0190	440178	147	MEDICARE TAX	\$29	
2971	0190	440178	150	LIFE INSURANCE	\$5	
2971	0190	440178	210	OFFICE SUPPLIES	\$200	
2971	0190	440178	228	EDUCATIONAL SUPPLIES	\$1,211	
2971	0190	440178	311	POSTAGE	\$150	
2971	0190	440178	345	TELEPHONE	\$333	
2971	0190	440178	378	TRAVEL	\$594	
2971	0190	440178	380	TRAINING	\$2,500	
2971	0190	440178	398	CONTRACTED SERVICES	\$11,250	
Explanation					18,803.00	18,803.00
WIC received funding for Peer Counseling Program.						

BOARD APPOINTMENT: CRESTON RURAL FIRE DISTRICT

[11:23:58 AM](#)

Members present:

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

Others present:

- Assistant Mike Pence, Clerk Kile

Chairman Brenneman made a **motion** to appoint Don Vogel to the Creston Rural Fire District. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

TUESDAY, MARCH 2, 2010
(Continued)

AWARD BIDS: ASPHALT & PROPANE/ ROAD DEPT.

[11:25:23 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Dupont made a **motion** to award the CRS 2 asphalt bid to Montana Refining for \$506.50/ ton. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

Commissioner Lauman made a **motion** to award the PG64-22, PG58-22 and SS1 Tack Oil bid to Montana Refining for \$511.00/ ton. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

Commissioner Lauman made a **motion** to award the propane bid to City-Service Valcon for \$.045 per gallon. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

CONSIDERATION OF HR TRANSMITTALS: GATEWAY COMMUNITY FOOD COURT COOK I/ AOA

[11:27:02 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, HR Director Raeann Campbell, Clerk Kile

Discussion was held relative to the Gateway Food Court and reviewing the services in six month.

Commissioner Lauman made a **motion** to approve the HR Transmittal. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

Commissioner Dupont made a **motion** to approve the revised job classification. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

RECOMMENDATION FOR TPA FOR HEALTH INSURANCE PLAN

[11:34:40 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, HR Director Raeann Campbell, Clerk Kile

Campbell reported an RFP was sent out with two companies responding. A committee heard presentations from both groups and based on review of actuarial support, claims processing, stop loss, prescription drugs and provider networks their recommendation is to remain with Allegiance.

Commissioner Dupont made a **motion** to proceed with contract negotiations with Allegiance. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

9:30 a.m. Canvass Col. Falls Fire District Election @ Election Dept.

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on March 3, 2010.

WEDNESDAY, MARCH 3, 2010

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

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 March 4, 2010.

THURSDAY, MARCH 4, 2010

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

8:30 a.m. Commissioner Dupont: TAB meeting @ Eagle Transit
2:30 p.m. Board Members Training @ Earl Bennett Bldg., 2nd Floor Conference Room

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

FRIDAY, MARCH 5, 2010

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

NO MEETINGS SCHEDULED

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