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## MONDAY, MARCH 8, 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.**

Ron Thiebert, 3795 Hwy 2 West commented that he hoped when a new Fair Manager is being considered for the Fairgrounds that a equal and fair selection process will be done. He then said if Ted Dykstra is selected for the position it would leave another position open on the Fair Board, and if that is the case he would like to see a race horse representative appointed to the board from the applicants that applied earlier in the year.

Sharon DeMeester, 415 Chestnut Drive asked the Commission to not accept the settlement agreement with Kleinhans Farms. She said she feels it is necessary to go to summary judgment in order for citizens of Flathead County to understand what is taking place. DeMeester stated the court costs would be insignificant in comparison of what would be spent. She stated we also need to look at the fact there is an offer on the piece of property.

Jim Etzler, 1600 Whalebone Drive emphasized there needs to be some transparency. He said the public needs to have access to the depositions so they can see what has taken place, and then after there is full transparency there needs to be an evaluation.

Brian Peck, 615 Trap Road said when you look at the multiple grounds in which the Commissioners denied the subdivision what we are being told is anyone of them would have been sufficient to make the denial. He stated he suspects it seems pretty clear to the average citizen the Commissioners did the right thing. Peck said if the Commissioners know some compelling reason why this is not the case they need to share that with them. He urged them to not settle the case under the terms of the agreement, but to take it to trial, make the arguments, fill out the briefs and go to a summary judgment. Under no circumstances can this subdivision, which has been substantially altered, be a part of the settlement agreement, because it hasn't gone through the full public process; to do so would give the developer preferential treatment not available to others.

Mayre Flowers, Citizens for a Better Flathead read the following letter from Sarah McMillan with Western Environmental Law Center regarding: *Kleinhans Farms Estates, LLC v. Flathead* - 8th Judicial District Court DV-08-614(B)

Thank you again for the opportunity to comment on the proposed settlement agreement in the *Kleinhans Farms Estate, LLC v. Flathead* litigation.

My name is Sarah McMillan, I am a staff attorney in Missoula with Western Environmental Law Center and I am commenting again on behalf of Citizens for A Better Flathead. Following the March 1<sup>st</sup> public hearing addressing the proposed settlement agreement, I want to emphasize my concerns that this process of approving a subdivision through litigation is neither appropriate nor legal. It is my conclusion that subdivision by approval in a settlement runs contrary to the process for subdivision review set forth by statue, and that the strong factual record appears to readily support the Commissioners' denial of the subdivision.

As the Commissioners know, in reviewing the Commissioners' denial, the Court will not reverse "merely because the record contains inconsistent evidence or evidence that might support a different result," but will affirm unless the decision appears random or unreasonable. *Kiely Constr. v. City of Red Lodge*, 2002 MT 241, ¶69. Based on the extensive record built during the review and hearings on the subdivision, there appears to be well-supported bases for the Commissioners' denial. While a single supported reason can provide a valid basis for denial, here there were 3 strong, well-supported reasons for the denial. Montana precedent appears to support the Commissioners' denial of the subdivision and to provide a basis for summary judgment in favor of the County on the claims that are based in the subdivision laws.

Regarding Counts IV-X asserted in the Complaint (all based on 42 U.S.C. §1983), it appears there is little legal or factual support for these claims. The assertion that "the Plaintiff had a vested property right in the approval of its subdivision application" (see e.g. Complaint ¶ 108) is simply unsupported by Montana precedent. 42 U.S.C. §1983 claims cannot survive if the subdivision denial is affirmed by the Court. See *Kiely*, at ¶¶23, 45, 47 (there is no protected property interest at the preliminary plat stage; without a protected property interest, there can be no §1983 claims). Moreover, the assertion that a regulatory taking has occurred because the subdivision was denied evidences a misunderstanding of takings law. A taking has not occurred where value of property value has been diminished, or where a most profitable use has been refused. See e.g. *Kafka v. Montana Department of Fish, Wildlife & Parks*, 2008 MT 460. In *Kafka*, the Montana Supreme Court affirmed that government action that "eliminates the most profitable use" but does "not eliminate all uses" of the property does not constitute a taking.

*Kafka*, ¶7. *Kafka* confirms that the Commissioners' denial of one subdivision proposal does not mean, as the developer has alleged, that the developer "has been deprived of any and all reasonable, productive, or economically beneficial uses" of the property. See e.g. Complaint ¶ 144.

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The equal protection claims raised by the developer appear similarly weak. It appears to be based on the understanding that the County has approved subdivisions on other property with similar flood easements. However, it appears that those subdivision approvals occurred before the Commissioners were aware of the flood easement, and therefore issues about the flood easement went unconsidered in those approvals. When new information comes to light, it is not a violation of equal protection to rely on that new information in new decisions, even when earlier decisions were made without the information. Indeed, it is inconceivable that the Commissioners should ignore a newly discovered danger to the public health simply because, before the Commissioners had knowledge of the danger, they approved earlier subdivisions. Imagine for instance, a discovery that the soil was contaminated with asbestos- the fact that earlier developments had been approved in a dangerous place would not require the Commissioners to ignore new knowledge about dangers just to avoid violating equal protection. Such behavior would be in contravention of the Commissioners' duties to protect the public health, safety, and general welfare.

While the new subdivision proposed in the settlement *may* address some of the concerns that formed the basis of the Commissioners' earlier denial of the proposed subdivision, information submitted by my client, Citizens for a Better Flathead, and others at the March 1<sup>st</sup> public hearing demonstrate that the preliminary plat conditions now proposed as part of the proposed settlement agreement have been substantially changed and should be reviewed as a new proposal, with the requisite input, comment, and review by agencies, citizens and county personnel. Comments presented at the March 1<sup>st</sup> hearing present serious questions about whether the proposal will provide reasonable protection of the public health, safety and welfare. The March 1<sup>st</sup> public hearing also made clear that significant confusion exists over the final nature of new preliminary plat map proposal in the text of the proposed settlement agreement, which relies on two different exhibits (Exhibit A, and Exhibit D), and also references that the developer will further modify the plat.

Importantly, the proposed settlement will not encourage public trust in your work, in open government, and in the integrity of the County in complying with statutory procedures for land use decisions. In an attempt to better understand why the County is considering settlement of this litigation, on Friday March 5, I asked to review copies of the depositions in this litigation, but to date, I have not been provided with those documents.

In summary, the process for the approval of this new subdivision has not allowed the public to provide informed comment, nor has it allowed the Commissioners to gather all the relevant information from agencies, citizens, and personnel- information that should be used to ensure the Commissioners make an informed decision. Moreover, rather than this settlement expeditiously resolving the matter, where public sentiment is so strongly in opposition to this settlement agreement and the subdivision approval it includes, this settlement agreement, if approved, may simply lead to further litigation.

As recognized in the proposed settlement agreement and consent decree, the Court will need to perform its own evaluation to determine if this proposal is an appropriate resolution of the litigation, if it is "fair, reasonable, in the public interest and consistent with the goals of the Montana Subdivision and Platting Act." (Consent Decree, Section II, p.3) If you decide to enter into this agreement, I ask that you request that the Court hold a hearing to give citizens an opportunity to inform the Court of their position on this settlement agreement. I further ask that you provide public notice of the date and time of the Court's hearing on the proposed settlement. If you are unwilling to do this, I request that you inform me and the public immediately so that I, and/or others can ask the Court to hold such a hearing.

Sarah McMillan

Edd Blackler said you have been given plenty of reasons for not entering into this settlement agreement. He then stated he feels it would be wise for Commissioner Dupont to recuse himself from voting in light of the fact there would be an everlasting cloud over the issue, due to the fact there was a large percentage of money contributed to his campaign from family members of the developers. Blackler stated I strongly urge you to not enter into the settlement agreement and to be a part of a means to facilitate a way for the property to be purchased from other entities that have the intention of keeping it in its present state, and preserving it for the welfare and health of citizens in Flathead Valley.

Kitty Rich stated she has lived here for the past 35 years and feels if the subdivision is approved it would be detrimental to the esthetic view and legacy of what we have in Flathead Valley. She commented when you drive through Glacier Park you are spiritually lifted by the sight and the same when you drive from Somers to Bigfork. Rich said should this development go through we would be altering for the end of time what the valley looks like.

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

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**MONTHLY MEETING W/ TED DYKSTRA, JR. FAIRGROUNDS**

[9:12:12 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Interim Fair Manager Ted Dykstra, Jr., Finance Comptroller Joe Garza, Ron Thiebert,  
Clerk Kile

Dykstra summarized the report presented to the commission which contained the accomplishments of the month, tasks being worked on, meetings held and major plans for the rest of the month. Some of the items discussed included implementation of an online calendar for building rentals, standardizing contracts, addressing fire issues, creation of an office policy manual, tracking proceeds with online ticketing, a possible beer garden, procedures for a new master key system and OES evacuation procedures and policies. Dykstra stated a Fair Board workshop will be held on March 23 where discussion will be held regarding the feasibility of reducing or eluding gate fees.

**OPENS BIDS: TIRES/ ROAD DEPT.**

[9:23:50 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Operations Manager Road & Bridge Dept. Guy Foy, Clerk Kile

Bids received with bid bonds enclosed from: Tire Rama and Les Schwab Tire Center

**Tires New – Tire Rama**

10R22.5 Highway	12 Ply		\$ 226.34
11R22.5 Highway	16 Ply		\$ 241.00
11R22.5 Drive	16 Ply		\$ 284.31
11R24.5 Highway	16 Ply		\$ 283.37
11R24.5 Drive	16 Ply		\$ 304.29
LT235/75R15	6 Ply		\$ 83.00
LT235/85R16	10Ply		\$ 90.00
LT235/85R16	10 Ply		\$ 129.00
LT245/75R16	10 Ply		\$ 106.53
LT245/75R16	10 Ply	Studable	\$ 139.51
LT265/70R17	10 Ply		\$ 130.03
LT265/70R17	10 Ply	Studable	\$ 153.72
225/60R16	4 Ply		\$ 76.99
225/60R16	4 Ply	Studable	\$ 97.09
235/55R17	4 Ply		\$ 91.00
235/55R17	4 Ply		\$ 111.00
1400R24			\$ 799.00
20.5 X 25	20 Ply	Loader	\$1,810.00
23.5 X 25	20 Ply	Loader	\$2,375.00
12X16.5	10 Ply	Skid Steer	\$ 195.00
12X16.5	12 Ply		\$ 185.00

**Tires Retread – Tire Rama**

10R22.5 Gripper		\$ 128.00
11R22.5 Gripper		\$ 137.00
11R22.5 Spread Axle (Eclipse)		\$ 115.00
11R22.5 Spread Axle (RTP)		\$ 128.00
11R24.5 Gripper (Eclipse M&S)		\$ 147.00
11R24.5 Spread Axle (RTP)		\$ 129.50
11R24.5 High Speed		\$ 101.00

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**Tires New – Les Schwab**

10R22.5 Highway	12 Ply	\$ 249.00
11R22.5 Highway	16 Ply	\$ 282.91
11R22.5 Drive	16 Ply	\$ 304.12
11R24.5 Highway	16 Ply	\$ 294.12
11R24.5 Drive	16 Ply	\$ 320.32
LT235/75R15	6 Ply	\$ 91.00
LT235/85R16	10Ply	\$ 119.00
LT235/85R16	10 Ply	\$ 115.00
LT245/75R16	10 Ply	\$ 125.00
LT245/75R16	10 Ply	\$ 128.00
LT265/70R17	10 Ply	\$ 133.00
LT265/70R17	10 Ply	\$ 152.00
225/60R16		\$ 104.00
225/60R16		\$ 84.00
235/55ZR17		\$ 108.00
235/55R17		\$ 111.00
1400R24	Double Coin	\$ 688.73
20.5 X 25	G25 EDT L5	\$2,405.00
23.5 X 25	16 SDT LD L5	\$2,350.00
10X16.5	Solideal SKS	\$ 94.00

**Tires Retread - Les Schwab**

10 22.5 PC-7 Traction Retread	\$ 108.00
11-22.5 PC-7 Traction Retread	\$ 129.00
11-24.55 PC-7 Traction Retread	\$ 133.00

Commissioner Lauman made a **motion** to take the bids received under advisement. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

**MONTHLY MEETING W/ CINDY MULLANEY, OES & LINCOLN CHUTE, FIRE SERVICE AREA MANAGER**

9:30:37 AM

Members present:

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

Others present:

Assistant Mike Pence, Deputy Director OES Cindy Mullaney, Fire Services Area Manager Lincoln Chute, Clerk Kile

Chute reported the mutual aid agreement between Fire Departments will be updated in the near future and the Annual Operating Plan for wildland fires is also close to being completed. He explained DNRC held wildland fire training classes with 27 participating in the basic class and 20 in the advanced class. Also reported is the AFG Grant is being worked on with an RFP going out next week.

Mullaney reported a grant was submitted to the state for homeland security funds totaling \$250,000. She then spoke about the upcoming avalanche exercise to be held in Essex and a landslide that occurred in the Evergreen area.

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**CONSIDERATION OF SETTLEMENT AGREEMENT IN KLEINHANS FARMS ESTATES, LLC V. FLATHEAD COUNTY**

[10:00:47 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, Attorney Alan McCormick, Attorney Terance P. Perry, County Attorney Ed Corrigan, Deputy County Attorney Peter Steele, Deputy County Attorney Tara Fugina, Planning & Zoning Director Jeff Harris, Assistant Planning & Zoning Director B J Grieve, Sharon DeMeester, Beverly Etzler, Jim Etzler, Edd Blackler, Pauline Sjordal, Brian Peck, Kitty Rich, Donna Thorton, Alice Casey, Jere Jobe, Susannah Casey, Bambi Goodman, Sean Averill, Stacey Averill, Mark Schiltz, McGregor Rhodes, Jasmine Linabary, Jeff Hutten, Tammy Hutten, Jim Heim, Ellie Allen, Charles Lapp, Hale Ashcraft, Tom Cowan, Bill Jones, John Monroe, Ginny Wilson, Mike Noziska, Jim Clark, Eric Mulcahy, Katherine Maxwell, Larry Brosten, Roxanna Brothers, Linda Christensen, Brad Seaman, Ryan Hunter, Noah Bodman, Tammi Fisher, Ardis Larsen, Clerk Kile

Attorney, Allen McCormick gave an update of the latest proposal regarding the proposed settlement. He stated since the public hearing last Monday they have engaged in numerous discussions on an alternative to a resolution to the settlement agreement. What has culminated is a proposed amendment to the settlement agreement. The conversations have been held between himself and counsel for Kleinhans Farms Estates, as well as local conservation groups and other interested parties in creating a purchase/ sale agreement to purchase the entire property as an alternative to the settlement that the Commission has in front of them. There are a number of considerations that have to be worked out in order for that to actually take place. So what I have done is prepared an amendment to the settlement proposal that would allow for an additional 30 days for the County Commissioners to work with these entities to attempt to reach an acceptable purchase/ sale agreement that would hopefully eventually put the entire property into state ownership. It may have to first take a step where it is owned by a qualified 501-C3 conservation entity which they are working on. He then explained the details of how this might be accomplished. Obviously making any changes to the proposed settlement agreement is within your prerogative; that was specifically written into the settlement agreement based on public comment and information from the public you have the power to make amendments to this, and Kleinhans Farm Estates can accept the amendments or reject them. As part of the on going litigation I have had discussions directly with counsel from Kleinhans Farms Estates to work out some settlement agreement amendment that would be acceptable to Kleinhans Farms Estates, as well as potentially you. Therefore we have an amendment to the release and settlement agreement that would do a couple of things. Essentially the terms of the settlement agreement remain the same, but the timing of the payment and timing of the entry of the Consent Decree by the court would be amended. As you recall the current settlement agreement has the county agreeing to pay a lump sum of \$500,000 within 30 days of the entry of the courts Consent Decree. What they have done with the amendment is in a show of good faith to allow an additional 30 days to try to negotiate purchase of the property and \$175,000 of the \$500,000 would be paid within three days of you agreeing to do the settlement agreement and entering into this amendment. Another \$100,000 would be due within three days of filing the Consent Decree and the remaining \$225,000 would be paid within 30 days of entering into the Consent Decree. The Consent Decree in the current version of the settlement agreement is required to be filed with the court within 48 hours, and instead of being filed within 48 hours it would be delayed for up to 30 days, and then would have to be filed within a couple of days after the 30 days if the parties can't reach a mutually agreeable purchase/sale agreement. The total compensation or payment does not change, but the timing of when the payment is made changes and the Consent Decree is put off for 30 days while we continue to work with Kleinhans Farm Estates as well as the other entities to try to reach a final agreement on the purchase/ sale of the property as a whole. I recommend that if you are going to enter into the settlement agreement that you do enter into it with this amendment because that will provide me with the ability to continue these discussions, which so far have proved to be quite productive and encouraging that the property can be purchased as a whole under state ownership and not have any development at all.

Commissioner Lauman asked Mr. McCormick to explain where the one million dollars would go if they entered into this agreement.

Allen McCormick said the total payment of one million dollars for the settlement agreement is allocated towards the purchase of a tax SSU and some is for additional funds to the developer. Obviously there is the obligation to construct a certain linear footage of roads within the subdivision with turn outs. If we are successful in negotiating a purchase/ sale agreement the \$175,000 payment required within three days would be credited towards the purchase price. Obviously none of the rest of these payments would be required to be made. Now it is hope -- that has been requested -- that the million dollars the county is considering paying for the settlement of this lawsuit the Commissioners would consider applying that instead to the purchase price of the entire property, along with the other entities that are bringing money to the table to get the deal; that is not an obligation of the agreement at the present time. There are a number of alternatives and ideas on the table for purchasing the property which include purchasing it out right, purchasing a portion of it with the option to purchase the remaining portion of it. It is important to note no one here is making a promise to you that the purchase/sale agreement will be completed. If you enter into this settlement with the amendment you need to do so with the understanding that if those discussions fall apart and can't be completed then the settlement terms as you originally agreed would still be on the table. The \$175,000 that would be paid up front will either be credited towards the alternate settlement that you make or will be credited towards the purchase price of the property. It is not additional funds. There is nothing in the amendment requiring you to bring additional funds to the table to get anything done. It simply is changing the timing of when the payments will be made and hopefully changing how they are being applied rather than to direct settlement of a lawsuit they would be applied towards outright purchase of the property.

Commissioner Dupont asked Mr. McCormick if he would explain if they were to go to court over the settlement with what has been filed what the risk factors were, what it potentially could cost Flathead County, and what would happen with the subdivision. Dupont said as he understands it there are two issues with disapproval of it on face value and an equal protection issue that would ultimately go to a jury trial.

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Allen McCormick said there are a variety of claims that have been filed against the county which is typical for these kinds of subdivision actions. There is a direct appeal through Title 76, Chapter 3, Section 6-25 which is the appeals statute that allows neighbors and others who have specific injury, and of course the landowner who applied for the subdivision to bring a direct appeal against the county for damages caused by a decision they don't agree with; whether that is neighbors or outside groups or the land owner itself. Whether a subdivision is approved or denied the process is essentially the same and statute provides for appeal. They filed that appeal and the standard of review there is whether the records demonstrate there is sufficient evidence in the record to support the conclusion that the County Commissioners made in reaching the decision (in this case) to deny the subdivision. Certainly reasonable minds can disagree whether there is sufficient evidence in the record to support those and the basis for the decision. The other aspect is what is generally called civil rights claims that are filed under US Code Section 1983 that allows land owners to file actions for damages for property. In this case there have been a number of them filed subsequent to due process, regular due process, takings and equal protection claims. Case law seems very clear that the vast majority of those claims will not survive summary judgment, because you need a vested right in order to pursue a claim for takings or subsequent due process violations. Our research has shown as some discussed last week at the hearing that case law suggests that most of those claims have no validity, because there is no vested right to any particular subdivision application. The question here is equal protection. There is some case law that would suggest the equal protection claims will survive a summary judgment action and get to a jury; that's what happened with Whitefish in the Walton Case. In this case due to the nature and size of this project and the money at stake you are looking at damages in the worst case scenario that could be in the nature of \$10 to \$15 million dollars, maybe more maybe less. I'm not telling you that it is my belief there is no defense here or that a jury would award that amount. I'm telling you that those are some of the factors that have gone into this with the evidence on record and other information that has come out which has been taken into consideration. You can eliminate the possibility that you could have a jury award against you in the nature of \$5 - \$10 - \$15 million dollars. There are often cases where that is advisable to eliminate the risk even when the alternative entering into a settlement agreement such as this may not be very palatable either. I think this opportunity to explore purchasing the property is very encouraging at this stage. Obviously I can't provide any promises or guarantees but they certainly are encouraging from all the work we have put into this since the last meeting. Things are looking very positive and the amendment is necessary to provide you with the opportunity to continue with discussions.

Chairman Brenneman said any cold hearted pragmatic assessment of what we are proposing to do here today, I don't intend to be taken in any way to disparage what I think have been good faith efforts to resolve this issue through the purchase of the property. In reality if we choose to sign this amendment and the settlement today we are agreeing to provide to the developer \$1 million dollars, we are agreeing to pave the roads and we are agreeing to approve pending court approval the subdivision presented to us in the exhibit. Should we sign this at 10:30 today at 11:00 the price could be \$25 million for the piece of property, and we have no agreements other than good faith which I feel has good value, but in fact as far as anything on paper we don't have anything.

Allen McCormick stated that is correct; you need to feel comfortable that at the end of the 30 day negotiation period if things do not turn out to be encouraging as they are, you need to feel comfortable that the settlement is the right tact to take because you would be approving the plat on Exhibit A. We would be agreeing to build a certain linear footage of roads which turns out not to be all the roads within the subdivision as well as paying the \$1 million dollar compensation. You do get the public access on 150 acres as a result of some of the payment; you need to understand that is correct. I am very hesitant to be telling numbers now for what I have heard in terms of price for the property. Obviously I am counsel for the other side and have been talking specific numbers to make sure they are within the realm that might work for the parties; for the entities who are bringing money to the table to make this happen. There certainly is a cause of action for violating a duty of good faith and fair dealings should the purchase price and other terms they have discussed suddenly escalate as a result of you entering into this agreement. That would be something they would certainly pursue if that happened. I don't have any indication or belief that it would happen and believe that the parties understand that you can't do a gotcha here; that there are consequences for doing that. That said you are entirely correct that there is no paper I can hand you that has signatures on it that says we will buy it for this much and here are the terms. The terms would all be worked out amongst a variety of folks who are interested in making this happen.

Chairman Brenneman clarified that the number he suggested was never a number that he heard mentioned as a purchase price; only as an example of far beyond any possible funding they are aware of.

Allen McCormick said that is correct, he isn't suggesting the county is looking at millions of dollars of its own funds. The counsel is working with qualified organizations that have brought some money and interest to the table, and I honestly don't know if they want me to disclose who they are or not. They haven't ask me not to disclose them and being attorneys we tend to make it a practice of asking folks for permission, rather than assuming they have permission in these kinds of instances.

Chairman Brenneman asked if anything would have precluded the developer from saying things are going along fairly well now; let's give it 30 days and see if we can get this pulled together for a purchase. The developers instead said if you want anymore time its going to be \$175,000.

Allen McCormick stated that is essentially the situation here. The developer feels like he has had money in this fight and no one else has. That is how it has been positioned to them. The developer asked Kleinhans Farm Estates to ask that they not bring more money to the table, but that the payment be moved up that would either be credited towards the purchase price or towards the amount you agreed to settle the lawsuit for as a show of good faith that you are putting money out there to make this happen. It isn't additional funds they are asking for.

Chairman Brenneman said then a follow up should we respectfully decline this settlement offer is that nothing would preclude the developer from continuing talks with whomever might have money to purchase the property.

Allen McCormick said technically that is correct.

Chairman Brenneman said we have before us a settlement agreement and asked for a course of action.

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Commissioner Dupont said he reserved the right to listen to Commissioner Brenneman and Lauman since they were both involved in the decision making process. He said campaign contributions have been brought up here and stated he doesn't feel he can be bought off for a couple hundred bucks, and feels it's a ridiculous thing to even bring up. Dupont stated he certainly was not going to recuse himself from making a decision in this matter.

Commissioner Lauman said he spent all week thinking about this and this morning Mr. McCormick brought an amendment to the release and settlement agreement, which he feels has merit and gives another amount of time for the entities who are trying to raise money to purchase the property. That seems to be what people in their e-mails are saying that they would like to see happen. Lauman stated he feels that should be pursued as there may be a good chance the entities may raise the money and a purchase agreement can be made at the end of this time. If that were successful that would be to the greater satisfaction to most of the citizens in the county from the feedback he has received.

Chairman Brenneman stated he wanted to clarify that he does not have any adverse feelings towards developers from California and noted that in all cases that come before them that he regards the facts in the case regardless of where the developer is from or how much money they have. The reason the location of the developer is an issue in this one is because this particular developer has asked for Flathead County taxpayer dollars, and when we are talking about transferring money from taxpayers in Flathead County to another place then that issue becomes relevant. Brenneman then said he lives along a stream/ slough along Flathead River that stays open during the winter and duck hunters come there during the winter and for the first time this year, he heard the statement from one of them that "I have been duck hunting for a lot of years, and the place where I usually go has been sold and he asked for permission to hunt there". He stated they give them permission, but what struck him is we have this fantastic place here that we don't want to wreck yet neither do we want to preclude growth and construction that is appropriate in appropriate places. Montana State law makes it very clear that in fact there are subdivisions and pieces of property that should not be developed; that the impacts cannot be mitigated, so it becomes a question of whether or not mitigation is possible in any subdivision and usually it is.

Finding #48 that was adopted states: The potential of having to eliminate rifle hunting in public lands is a possibility.

I don't know what it is that makes people want to come to Montana and my family has been here for four generations and my kids are the fifth generation. We have never made much money here yet we have always stayed here and people want to move here. Sure we have natural beauty but I have traveled enough to know there is natural beauty all over the place, so we ask our self what it is about the Flathead Valley that makes it so unique. I have been thinking about that now for two weeks, and the best thing I have come up with is that it's the soul of the area. So one thing we cannot destroy is the soul of Flathead Valley and probably even Montana. In my opinion one of those things is our ability to hunt, fish and have clean water. At some point governing bodies need to say – here is as far as we can go and here is as much as we can allow to happen before we are in danger of losing the very thing that is in fact the Flathead Valleys soul. We don't know what the effects of the subdivision will be until there is a subdivision there, and then when instead of having just two or three people come by my place looking for a place to hunt there are 20 - 30 or 50, and in fact the water fowl production has dropped so there isn't even too much to hunt for, then we will say - oh man - I guess that's the subdivision that did it. Or this culmination is what did it. To some degree what we take as our findings and what we take from the applicant in particular is a promise that says don't worry I have addressed everything; everything is going to be okay, I have mitigated it. I think for those of us who have been here for awhile I can just say two words, mysis shrimp - we all know the implications of messing around with the natural environment. Where I live I use to see a dozen bald eagles feeding off the salmon and every once in a great while now I see a solitary lone eagle fly over and perch in one of the trees, but they never stay long because of course the salmon are no longer there. The question for me isn't whether the developer is a good or bad person, I assume he is a good person, and I can't believe he wants to ruin hunting in the Flathead Valley. We can talk about risk management, we can talk about dollars and cents, and we can talk about what's going to cut back on the amount we have to pay, but we can't measure how much risk there is to losing hunting in the Flathead Valley. When it comes down to it, I have got to say that despite the fact that it probably does make strictly monetary sense to agree to a settlement, I just can't do it. I think we need to take it to trial if that is where the developer wants to go; bear in mind the developer is free to sell this land at any point to any interested party, and I guess if in fact there is a jury in the Flathead Valley that thinks that we should spend one dollar of taxpayer dollars to an out of state developer from anywhere and risk what makes Montana so great then in fact we probably already lost our soul.

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**(Continued)**

Commissioner Dupont said he agreed with a lot of what Chairman Brenneman said yet there is a lot missing and one is individual rights in this county. We are not talking about public land we are talking about private land. We are talking about a farmer that farmed the property for most of his life that probably didn't invest in the stock market, and probably didn't invest in anything other than his land. He invested in his land for a purpose; to take care of his family and he gets to a point in his life that he can't or won't any longer farm the property, and probably didn't find any family members that wanted to farm the property. He knows he has a valuable investment in what he has and puts it on the open market. It's private property; he has a right to sell the property. Everyone had a right to look at it and buy it if they so desired. A developer purchased it; like it or not that's the way it is. He is now the property owner or the corporation is the property owner, and they enter into an agreement to do certain things and create a subdivision. That went back and forth as it progressed following the growth policy and subdivision rules, and was submitted to the Planning Office and through the Planning Board. One comment I did hear from the Planning Office is that it was the best put together subdivision plan they ever saw and the developer went through a lot of agony in order to get to that point. The Planning Board looked over the entire plan and gave it a due pass and it then came to the County Commissioners to look at; ultimately you know where we stand now. Two commissioners opposed it on two significant grounds, the soil and the floodplain easement that BPA has on the property. The floodplain easement seems to stretch all the way to Kalispell in some areas all over the valley and there are an awful lot of subdivisions that have gone through it. The soil compaction ironically is not addressed in either the subdivision rules or the growth policy, and was in fact brought to the attention of the Planning Board by the developer. Forgetting that there were not building permits in Flathead County, so he still brought it forward that any building that is done should be done in a way to minimize the impact of the soil conditions in the event of an earthquake. Ultimately it ended up in a lawsuit that was filed; the commission changes and we are faced with a significant decision on a lawsuit that we can't talk about because it's a lawsuit and there is no openness to the public. We don't/ won't release the information for fear that if it does go to court that it will all be used against us. It puts the Commission in a good pickle. Basically this is a significant risk to the taxpayer of Flathead County that we may lose this lawsuit; a significant risk. The risk goes from \$4 to \$15 million or more if we should lose. Not only that if we lose it you have the original subdivision that you have to contend with because it will be approved in the lawsuit. That adds a lot more to the risk overall. The attorneys have come up with factors that have been presented to us on how they can mitigate that and there are groups currently working that I have a pretty good feeling will come up with an agreement with the developer to purchase the property, and do exactly what the majority of the people in this room want to do. We are looking at a potential risk to all the taxpayers in Flathead County of a bond issue to pay off a lawsuit debit that we could probably avoid; a significant amount and a lot more than we have right now. I have to go with a gut feeling that this is the right thing to do and I think we will come to a resolution with it. The only addition to this amendment that I would make is that we release all the information that was given to the Flathead County Commissioners to make this decision to begin with. All the testimony and depositions that were taken and make them available to the entire public, so you can totally understand why we are in a dilemma here on what kind of a decision we can make.

Commissioner Dupont made a **motion** to adopt the amendment as presented from the attorney. Commissioner Lauman **seconded** the motion.

Chairman Brenneman clarified a motion has been made to sign the amendment to release the settlement agreement.

Chairman Brenneman asked if the decision to release information was entirely up to them to release at any point.

Alan McCormick replied that it was.

Chairman Brenneman said he agreed with a lot of what Commissioner Dupont has said however, the fact remains that when the clever attorneys get through trying to hopefully discern the truth, the truth remains we don't know what will happen, and we are placing at risk something in the Flathead Valley that we should hold sacred and we should fight for that.

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

Commissioner Dupont made a **motion** to release and make available to the public all the information provided in the case. Commissioner Lauman **seconded** the motion.

Alan McCormick said the court could choose not to enter into the Consent Decree and if they decide not to enter into the Consent Decree as a final resolution of the lawsuit then the lawsuit continues.

Chairman Brenneman said then your legal advice is that releasing everything might weaken our case; but we can weaken it if we so choose.

Alan McCormick said you can destroy your case if you like. He stated he doesn't know if there is any information that he has that they are talking about releasing that would cause him that kind of concern. Certainly it would be my advice as legal counsel as having primary duty of providing you with defense, that I would request that you delay releasing some information which is attorney client privileged information, until after the court enters into a Consent Decree. It is unlikely that those are not protected by any privilege or information that can be turned over now. The depositions are what they are and they are a matter of record at this point.

Chairman Brenneman said I don't feel like any of us feel like we have anything to hide, yet we don't want to release anything that might be detrimental to the case.

Commissioner Lauman suggested the information be released through Attorney Allen McCormick.

Commissioner Dupont noted it would put a big burden on Attorney Allen McCormick, and said I don't know how you define attorney client privilege. If someone you are deposing broke down and started talking about his mother I wouldn't assume you are going to release that; but anything pertinent to the decision that the commission had to make and the information presented to them to make the decision could be released.

MONDAY, MARCH 8, 2010  
(Continued)

Alan McCormick said in terms of the documents you have in your possession and the information that was presented to you in terms of helping you to make the decision anyone can read the depositions, and reach whatever conclusion they wish to reach from them. The depositions are not brilliant pieced together easy to read synopsis's of information that you can say is the reason for the decision. The depositions were taken over a number of days from four Fish, Wildlife and Parks employees, B. J. Grieve, Kirsten Holland and Commissioner Brenneman and Commissioner Hall. The only other document presented to form the basis of decision was in regards to a confidential settlement that both attorneys provide which are an explanation of the strengths and weaknesses of the case, and the mediator helps you to reach a conclusion based on the strengths and weaknesses of your case and that documentation is protected. The mediator cannot be subpoenaed to testify and cannot reveal anything that occurred during the meetings. The vast majority of the information presented in terms of helping you make your decision is oral and there is not a record of a lot of that information. McCormick stated I am cautioning you that there are not 10,000 pages of information out there that people can use.

Chairman Brenneman clarified the **motion** on the floor with a **second** is to release all information.

Alan McCormick said the settlement mediation process is always very difficult and the reason there is such a strong attorney client privilege placed on both the mediator as well as the settlement brochure is because there is a real strong need for people to be very candid in there review of information, and it reveals your thinking and strategy that is really applied in a lot of different cases and issues. There are significant protections associated with that and I would caution against releasing that sort of information. We don't want people attacking the mediator's role in this because the rules of civil procedure and statutory protection attached to those are very very strong.

Commissioner Dupont said we can talk about mediation but the public needs to know everything else that lead to the decision to begin with, and that certainly is what many that attended the public hearing were concerned about.

Chairman Brenneman suggested the motion be modified to state: except those deemed attorney client privileged by our counsel.

Alan McCormick said we have all the documentation that was requested during discovery which is in PDF format along with the deposition.

Commissioner Dupont modified his **motion** to state except for attorney client privileged information.

Alan McCormick said there is no fact that formed the basis of your opinion that is hidden by attorney client privileged information. All the facts that formed the basis of your decision are known and are in the public realm in one form or another with the possible exception of the depositions. What I am hearing is you have no trouble releasing that information, so certainly that could be added to the public record that we already have and all that can be fully disclosed.

Chairman Brenneman clarified the **motion** has been amended to state: The Commission wishes to release all information in this case except what may be deemed attorney client privileged. **Aye** –Brenneman, Lauman and Dupont. Motion carried unanimously.

**DOCUMENTS FOR SIGNATURE: EMPLOYMENT CONTRACTS/ R. CAMPBELL AND J. FISHER**

[10:49:19 AM](#)

Members present:

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

Others present:

Assistant Mike Pence, HR Director Raeann Campbell, Weed & Parks Director Jed Fisher, Clerk Kile

Commissioner Lauman made a **motion** to approve Jed Fisher's employment contract. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

Commissioner Dupont made a **motion** to approve Raeann Campbell's employment contract. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

**CONSIDERATION OF H.R. TRANSMITTAL: OA III FAIRGROUNDS**

[10:55:37 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

Commissioner Dupont made a **motion** to approve the HR Transmittal for a full time OA III at the Fairgrounds through September. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

MONDAY, MARCH 8, 2010  
(Continued)

**CONSIDERATION OF PRINTING BIDS: GIS AND TREASURER'S OFFICE**

[10:57:23 AM](#)

Members present:  
Chairman Joseph D. Brenneman  
Commissioner Dale W. Lauman  
Commissioner James R. Dupont  
Others present:  
Assistant Mike Pence, Clerk Kile

Commissioner Lauman made a **motion** to approve the print bid from North Star Printing for 1,000 #10 window envelopes for \$62.00 and 5,000 mobile home tax bills completed and mailed, 2,000 personal property tax bills completed and mailed and 58,000 real estate tax bills completed and mailed for \$13,995.00 plus postage and \$500.00 per form for programming cost from The Master's Touch. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

**CONSIDERATION OF EXTENSION REQUEST: SUBDIVISION NO. 274**

[10:57:53 AM](#)

Members present:  
Chairman Joseph D. Brenneman  
Commissioner Dale W. Lauman  
Commissioner James R. Dupont  
Others present:  
Assistant Mike Pence, Planning & Zoning Director Jeff Harris, Clerk Kile

Commissioner Lauman made a **motion** to grant an extension for Subdivision No. 274. Commissioner Dupont **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

**DOCUMENT FOR SIGNATURE: LEASE AGREEMENT/ MARTI PALMER**

[11:00:34 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 the lease agreement with Marti Palmer. Commissioner Lauman **seconded** the motion. **Aye** – Brenneman, Lauman and Dupont. Motion carried unanimously.

**1:30 p.m. Commissioner Brenneman: District 10 & 11 meeting @ Quinn's Hot Springs**

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on March 9, 2010.

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**TUESDAY, MARCH 9, 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.

**2:00 p.m. Commissioner Brenneman: District 10 & 11 meeting @ Quinn's Hot Springs  
Flathead Regional Wastewater Management Group meeting @ Earl Bennett Bldg.,  
Conference Room C**

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on March 10, 2010.

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**WEDNESDAY, MARCH 10, 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 11, 2010.

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## THURSDAY, MARCH 11, 2010

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

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

### CONSIDERATION OF EXTENSION: SIA/ WEST VALLEY VIEWS II

[9:00:04 AM](#)

Members present:

Chairman Joseph D. Brenneman  
Commissioner Dale W. Lauman

Members absent:

Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Planner Allison Mouch, Olaf Ervine, Clerk Kile

Commissioner Lauman made a **motion** to deposit the SIA check and grant the extension request. Chairman Brenneman **seconded** the motion. **Aye** – Brenneman and Lauman. Motion carried by quorum.

### DOCUMENT FOR SIGNATURE: COMMUNITY ACTION PARTNERSHIP & AOA

[9:04:59 AM](#)

Members present:

Chairman Joseph D. Brenneman  
Commissioner Dale W. Lauman

Members absent:

Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Lauman made a **motion** to approve the document and authorized the chairman to sign. Chairman Brenneman **seconded** the motion. **Aye** – Brenneman and Lauman. Motion carried by quorum.

### FINAL PLAT: RIVERSIDE GARDEN

[9:15:44 AM](#)

Members present:

Chairman Joseph D. Brenneman  
Commissioner Dale W. Lauman

Members absent:

Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Planner Bailey Iott, Dawn Marquardt, Clerk Kile

Iott entered into record Final Plat FFP 10-01; Riverside Garden a one lot residential subdivision located on 2.37 acres located at 435 Anderson Lane in Kalispell. Preliminary plat approval was granted on October 5, 2009 subject to 15 conditions which have been met. Staff recommends approval.

Commissioner Lauman made a **motion** to approve final plat of Riverside Gardens. Chairman Brenneman **seconded** the motion. **Aye** – Brenneman and Lauman. Motion carried by quorum.

### OPEN BIDS: BRIDGE GIRDERS/ ROAD DEPT.

[9:34:51 AM](#)

Members present:

Chairman Joseph D. Brenneman  
Commissioner Dale W. Lauman

Members absent:

Commissioner James R. Dupont

Others present:

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

Bids were received with bid bonds enclosed from Cretex Concrete Products and Central Pre-Mix Pre-Stress.

Cretex Concrete Products	\$79,110.80
Central Pre-Mix Pre-Stress	\$86,594.00

Commissioner Lauman made a **motion** to take the bids under advisement. Chairman Brenneman **seconded** the motion. **Aye** – Brenneman and Lauman. Motion carried by quorum.

THURSDAY, MARCH 11, 2010  
(Continued)

**CONSIDERATION OF HR TRANSMITTAL: SOCIAL WORKER/ HEALTH DEPT. & BUS DRIVER/ EAGLE TRANSIT**

[9:31:51 AM](#)

Members present:

Chairman Joseph D. Brenneman  
Commissioner Dale W. Lauman

Members absent:

Commissioner James R. Dupont

Others present:

Assistant Mike Pence, HR Director Raeann Campbell, Clerk Kile

Campbell recommended approval for the Social Worker position which is funded through this fiscal year and will end on June 30. She explained the individual has been working as an independent contractor.

Commissioner Lauman made a **motion** to approve the HR Transmittal for the Health Dept. Chairman Brenneman **seconded** the motion. **Aye** – Brenneman and Lauman. Motion carried by quorum.

Commissioner Lauman made a **motion** to approve the HR Transmittal for Eagle Transit. Chairman Brenneman **seconded** the motion. **Aye** – Brenneman and Lauman. Motion carried by quorum.

**AUTHORIZATION TO PUBLISH CALL FOR BIDS: CHEMICALS/ WEED DEPT.**

[9:38:07 AM](#)

Members present:

Chairman Joseph D. Brenneman  
Commissioner Dale W. Lauman

Members absent:

Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Clerk Kile

Commissioner Lauman made a **motion** to authorize publication of Call for Bids for chemicals and authorized the chairman to sign. Chairman Brenneman **seconded** the motion. **Aye** – Brenneman and Lauman. Motion carried by quorum.

CALL FOR BIDS

The Flathead County Weed/Parks/Recreation & Building Maintenance Board (heretofore known as the Flathead County Weed Department) will receive bids for the purchase of chemicals to be delivered FOB at the Flathead County Weed Department office, 309 FFA Drive, Kalispell MT 59901.

The chemicals to be purchased include Tordon 22K, or equivalent/generic (Picloram), Curtail or equivalent/generic (clopyralid + 2,4-D), Transline or equivalent/generic (clopyralid), 2, 4-D Aquatic or equivalent/generic, Milestone or equivalent/generic and a small amount of Lontrel, or equivalent/generic (to be purchased from the Building Maintenance budget). The instructions to bidders, specifications and amounts for the chemicals, and the forms of the bid sheet and contract to be signed, may be obtained from either the Flathead County Weed Department, 309 FFA Drive, Kalispell MT 59901 or the Flathead County Clerk and Recorder, 800 South Main, Kalispell MT 59901.

Each bidder must deposit with his bid, a bid security in the amount of ten percent (10%) of the bid to secure the contract, the bidder will, within ten (10) days, enter into a formal contract for the purchase of chemicals. Bid security shall be payable to Flathead County and shall be in the form of lawful money of the United States, a cashier's check, certified check, bank money order, or bank draft issued by a Montana bank, or bid bond executed by a surety corporation authorized to do business in Montana.

No bidder may withdraw a bid after the actual date of the opening thereof.

Sealed bids are to be marked "**Weed Control Bid**" and must be in the office of the County Clerk and Recorder, 800 South Main, Kalispell, Montana 59901, at or before 5:00 o'clock p.m., on March 30, 2010. Bids will be opened and read at 9:45 o'clock a.m., on April 6, 2010, in the Commissioners' Office at the Courthouse, West Annex, 800 South Main, Kalispell, Montana.

The Flathead County Weed Department reserves the right to reject any and all quotes and to accept the quotes deemed to be in the best interest of the County.

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

Dated this 11<sup>th</sup> 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 16 and March 23, 2010.

THURSDAY, MARCH 11, 2010  
(Continued)

**COS REVIEW: HESS**

[9:45:05 AM](#)

Members present:

Chairman Joseph D. Brenneman  
Commissioner Dale W. Lauman

Members absent:

Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Planner Dianna Broadie, Erica Wirtala, Clerk Kile

Broadie reviewed the request submitted by James Hess to divide a 6.673 acre parcel located between Flathead River and Riverside Road into:

Tract 1	1.416 acres to be transferred to Bonnie Hess, wife
Tract 2	5.257 acres to be retained by James Hess

Broadie noted this is a pattern that will create the 14<sup>th</sup> division and appears to be an evasion because of the recent deed transfers.

Wirtala presented background information for the COS and explained the request is for real estate management purposes.

Following discussion it was agreed the Commission would like to hear from the applicant.

Commissioner Lauman made a **motion** to delay action pending receipt of an email or letter from Sands Surveying requesting an extension with the understanding if that isn't forthcoming action will be taken. Chairman Brenneman **seconded** the motion. **Aye** – Brenneman and Lauman. Motion carried by quorum.

**MONTHLY MEETING W/ JOE GARZA, FINANCE DEPT.**

[10:00:52 AM](#)

Members present:

Chairman Joseph D. Brenneman  
Commissioner Dale W. Lauman

Members absent:

Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Finance Comptroller Joe Garza, Clerk Kile

Garza met with the commission and presented a budget review report through February 28, 2010. He then reported A2Z Auditing will have the FY09 audit complete by the end of the month, implementation of software from CSA is complete and work on the credit card policy is being finished up.

**OPEN BIDS: BUS BUILDING/ EAGLE TRANSIT**

[10:15:58 AM](#)

Members present:

Chairman Joseph D. Brenneman  
Commissioner Dale W. Lauman

Members absent:

Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Eagle Transit Director Dave Polansky, Louise Adamson, Scott Davidson, Josh Giffin, Roy Beekman, Mark Casalegno, Kirk Hammerquist, Steve Buenz, G. Nemoff, John Peterson, Kenneth Huff, Clerk Kile

Bids received with bid bonds enclosed from:

	BASE <u>BID #1</u>	BASE <u>BID #2</u>	ALTERNATIVE <u>BID #1</u>
Diamond Construction	\$846,000	\$65,800	\$40,600
Davidson Construction	\$833,280	\$67,416	\$35,850
Swank Enterprises	\$756,900	\$59,000	\$33,000
Hammerquist Casalegno	\$695,000	\$54,000	\$34,860
Meredith Construction Co.	\$757,000	\$58,000	\$38,000
Sirius Construction Co.	\$747,330	\$54,640	\$39,500
Martel Construction Co.	\$843,000	\$54,900	\$37,200

Commissioner Lauman made a **motion** to take the bids under advisement. Chairman Brenneman **seconded** the motion. **Aye** – Brenneman and Lauman. Motion carried by quorum.

THURSDAY, MARCH 11, 2010  
(Continued)

**COMPENSATION BOARD MEETING**

[10:32:07 AM](#)

Members present:

Chairman Joseph D. Brenneman  
Commissioner Dale W. Lauman

Members absent:

Commissioner James R. Dupont

Others present:

Assistant Mike Pence, Clerk & Recorder Paula Robinson, Treasurer Adele Krantz, County Attorney Ed Corrigan, Susan Nicosia, Anita Hoye, Deputy County Attorney Jonathan Smith, (seated) [10:37:51 AM](#)  
Deputy County Attorney Tara Fugina (seated) [10:37:51 AM](#), Clerk Kile

Pence reported potential COLA is based on CPI which is at a negative third of a percent. He explained longevity is required by law for some employees and required by contract for others. Pence noted they do hope to not increase the employee share of insurance premiums with a \$3 million dollar balance.

Following discussion it was unanimously agreed due to the economic times that they go forward with a zero percent COLA and stick with longevity and step increases.

Commissioner Lauman made a **motion** to consider cola to be zero for FY2011 and to continue with longevity. Susan Nicosia **seconded** the motion. **Aye** – Brenneman, Lauman, Robinson, Krantz, Corrigan, Nicosia, Hoye. Motion carried unanimously.

**2:00 p.m. Commissioner Lauman: AOA Board meeting @ Kalispell Sr. Center**  
**6:00 p.m. Fair Board meeting @ Fair Office**

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

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**FRIDAY, MARCH 12, 2010**

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

**8:30 a.m. Commissioner Brenneman: Mosquito Control Board meeting @ Earl Bennett Bldg.**

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

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