

**MONDAY, MAY 10, 2004**

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

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

**MONTHLY MEETING W/RAEANN CAMPBELL, HUMAN RESOURCES OFFICER**

Present at the May 10, 2004 9:15 A.M. Meeting were Chairman Gipe, Commissioner Hall, Human Resource Director Raeann Campbell, and Clerk Eisenzimer.

General discussion was held relative to trust fund balance; incident reports; reopening position for Administrative Officer and reviewed the job description.

Commissioner Hall made a motion to approve new job description for Administrative Officer. Chairman Gipe seconded the motion. Aye- Hall and Gipe. Motion carried by quorum.

**PUBLIC HEARING: WHITEFISH FIRE DIST. ANNEXATION/SHERWOOD, ET AL**

Present at the May 10, 2004 9:30 A.M. duly advertised public hearing were Chairman Gipe, Commissioner Hall, Pat Nelson, Mike Frost, Leroy Thoring, Elizabeth Sherwood, David Calabretta, Eric Schenck, Jonathan Alper, Robin Sherwood, Greg Kesper, Carl Rauthe, Darlene Jump-Rauthe, Ted Reed, Les Schlegel, Rodney Dresbach Chief West Valley Fire District, John Pacheco, Deputy County Attorney Jonathan Smith, and Clerk Eisenzimer.

**MONDAY, MAY 10, 2004  
(CONTINUED)**

Chairman Gipe opened the public hearing to anyone wishing to speak in favor of the annexation of Plantation Pines into Whitefish Fire District.

Robin Sherwood began basically the Whitefish Fire hall is something I can see from my house where West Valley is approximately six miles away. There's a couple of reasons why it should be switched over. One of them being is insurance reasons. We're all paying a penalty in some way shape or form of insurance. Some of them as little as a hundred or two hundred dollars some of them are fourteen or fifteen hundred dollars because of the distance between West Valley and Whitefish. The other is just response time, you have a fire hall you can see and one that's six miles away, it kind of makes common sense that you switch over to that fire hall. We had nobody in the subdivision against it. We didn't get all of the signatures only because we couldn't run some of the people down and not every lot is actually built on at this point. There are some absentee owners and such.

Jonathan Alper continued, I'm a resident at Plantation Pines and president of the Homeowner's Association and I just like to paint you a picture of our subdivision which is unique. It comprises 135 acres of which there are twenty individual lots for homes comprising about sixty acres. There are seventy acres of dedicated open space of that, approximately twenty-five acres is left over from an old Christmas tree farm and we do have a serious fire problem with the trees that have been growing out of control. We have just finished doing a property owner's assessment of \$15,000 to do the tree thinning but it's still a worrisome problem for us of all the dead wood and trees around. We feel that Whitefish with a fire house just across the street, even though it is unmanned could probably offer us a little more protection. I also would like to comment that we know that both the fire departments would like our tax money. I think it would be good if we could get some consideration for the homeowners who are paying the taxes and their desire to annex to the Whitefish Fire Department.

Greg Kasper added, I live out at Plantation Pines also and I kind of started this campaign in 1998 and tried to get enough people to sign and we were looking for a larger area to bring in but decided this is what we'd try and do. My issue's always been that when they built that fire station is that the proximity to us is so close it just makes more sense to me to just have us be in the Whitefish Fire Service area and they have been more than willing to take us in. That's been a big issue too and just last year this was kind of a driving force for me was the premium on my insurance was \$1483 and the insurance company started checking and I had had it on the whitefish Fire Service area because they would respond with West Valley but then they said they wanted to charge me as far as who would be the first responding fire unit. It was West Valley so my insurance went from \$1483 to \$2967 in a year so I would like to see a change just because of that. That's a huge difference for myself anyway.

Commissioner Hall questioned Mr. Kasper. It was my understanding that West Valley's premiums, ISO rating premiums would be less than the Whitefish.

Mr. Kasper responded that's what I'm not too sure of. I talked to Dave Sipe and he told me the ISO rating was down around 4 or 5, I can't clarify that.

Commissioner Hall continued, Whitefish is or West Valley.?

Kasper agreed that it was Whitefish.

Commissioner Hall added okay because Whitefish was an 8. Comment from audience indicated that the ISO insurance rating for a Fire Service Area without hydrants is an 8. Commissioner Hall agreed that there are no hydrants in this area. So what is it currently? Clarification was received that Whitefish Fire service area's ISO rating is 8 and West Valley's is 7.

Commissioner Hall had one other question. There's a subdivision right across from yours to the west of you with eight lots, they're a little south and to the west. Kasper asked if it's on Johnson Road. Commissioner Hall clarifying that it looks like a cul de sac road that goes in and there are other properties on it, but I mean they're just like a quarter mile from the fire department too. They're not interested at this time?

Kasper continued, the issue when I had called to, you know Rob and I had kind of got together on this and one of the problems was getting the amount of data that we're required to get for everything and the last time when I had talked to the County, we were looking to bring in all the way down to Tetrault Road was our first consideration. It's kind of making a rectangle; we thought was a halfway division. Half in between the two fire stations and I had talked to the county and talked to the plat room and all that and she said well in reality what you'll probably need to do is have the whole area surveyed which was just too much to try and do to get anybody to pay for that. To get it surveyed from Hodgeson Road down to Tetrault Road over to the Whitefish River and back up so I just looked at it as a huge expense so Robin and I decided that it was best to just look at our area at this point.

No one else rising to speak, Chairman Gipe asked for anyone wishing to speak in opposition to the annexation to Whitefish Fire Service Area.

Rodney Dresbach began I'm the Chief of West Valley Fire and Rescue. There's a couple of things I want to point out and I guess whether this happens or not, that's up to you guys. I don't necessarily favor it because of some of the confusion that it's going to create. If this changes and stuff what it's going to do is start creating an island within the West Valley area. We already have that problem to the south and now (tape ends.) We had signed an automatic mutual aid agreement with three surrounding departments, there was a test on one of those departments, they're being dropped down to an ISO 5 which is the same as the city of Kalispell. IF that goes through we will be reflected on that because we are part of that automatic aid. On some of the confusion that has been relevant to this petition that's come out and I think these are a few areas that the county needs to fix. One is like the map that Gary has in his hand, there needed to be something like that in that petition and the notification that was sent around. My telephone and my assistant chief's telephone have been ringing off the hook since a week ago Saturday when people received these because there was no description on exactly what area was being affected except for the legal descriptions. Everybody within the West Valley Fire District received one of those notifications; the only area affected is Plantation Pines. We've been receiving calls from people on Stillwater, Mountain Meadow, Rhode's Draw, McMannamy, Ponderosa Pines all of these areas that basically are not affected by this but they also got the same notification. The tax base that we'll lose, it's not that much I'll make that up within the new construction so I won't see a difference in my budget. The cost to the county is the other thing. I'm going to take off one hat and put on another one. I'm going to take off my fire chief hat and put on a taxpayer hat. You have a small group of people that have wanted to change the status quo. They came to you guys with a petition and the county has footed the bill on everything. Legal notices, the mailer and everything else; from Paula Robinson's office I was told that the cost of this was in excess of \$3500. There needs to be something of a

**MONDAY, MAY 10, 2004  
(CONTINUED)**

policy that if there's going to be this change, these homeowners need to pay for that change. Right now the county's paid that entire bill. The county needs to come up with some sort of a policy on that that these homeowners are going to pay for this legal notifications, the mailings and everything else because that's wrong for the county to be paying that bill. If a developer is going to be developing and the people notified around him, he's got to pay for all that notification and all the mailings and that and this is wrong that the county is paying that bill. I don't have the exact figures but I know that's what Paula had told me.

Commissioner Hall responded with I guess I don't have any questions and I'm glad to hear that it's not going to affect your tax base but you can understand why these folks would want to move.

Mr. Dresbach answered I understand the principle of it and the reason we did the letter is what we did on checking on stuff. I used the \$200,000 house on the average on that information letter and calling 5 different insurance companies telling them the distances and that those are the informations I got on insurances. From the tax wise and stuff on the fire service area versus the taxes from West Valley and stuff, that's facts. One of the things that a lot of people get confused on is when they see a nice shiny hall they think it's manned. I have the same problem with the halls I have. Response times and that, the majority of the people come from Whitefish. Right now they have one guy that I know of that responds to that hall, everybody else comes from Whitefish. We've had numerous motor vehicle accidents at that corner we've beat Whitefish to that corner; right in front of their own firehall.

Commissioner Hall questioned Mr. Dresbach as to what District is being proposed to be dropped to an ISO rating of 5?

Mr. Dresbach responded all four of the districts that have signed the automatic mutual aid. Smith Valley is the one that tested, and that will reflect also with West Valley, Evergreen, and South Kalispell on any of the rural areas. Whitefish is not involved in that.

Darlene Jump-Rauche continued my family owns land south of Tronstad road so what upset me is I didn't know what this letter involved and I'm not technical enough to read the description on the back. I agree with Mr. Dresbach in saying there should have been a map that clarified which area was being annexed and I guess that's all I got to say.

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

Commissioners Hall referred to Chairman Gipe for his comments.

Chairman Gipe added that there's several things here. One of them being the cost as been stated here that how many of these if there's more of these come in from that general area, if it's going to cost the taxpayers of Flathead County \$3500 everytime one of them comes in, those dollars are spent now, but I think we said the cost was \$3500 but I don't know if that quite covers it because I know there was something like \$3000 postage. Commissioner Hall posed the question to Jonathan then what is your opinion to what was just said.

Discussion continued regarding State Statute requiring the mailings and need for legislative change to save counties some of the costs incurred in such notifications.

Commissioner Hall made a **motion** to adopt Resolution No. 1711 allowing the annexation of Plantation Pines into the Whitefish Fire Service Area. Chairman Gipe **seconded** the motion. **Aye** - Hall and Gipe. Motion carried by quorum.

**RESOLUTION NO. 1711**

**WHEREAS**, the Board of Commissioners of Flathead County, Montana, received a petition, pursuant to Section 7-33-2126, M.C.A., requesting that certain property be allowed to withdraw from the West Valley Fire District and be annexed to the Whitefish Rural Fire District;

**WHEREAS**, the territory to be withdrawn and annexed is described on Exhibit A hereto;

**WHEREAS**, a Notice of Public Hearing was published on April 16 and May 3, 2004, and mailed to all property owners in both the West Valley Fire District and the Whitefish Rural Fire District, giving notice that the Commissioners would hear protests to the requested withdrawal and annexation;

**WHEREAS**, the Board of Commissioners conducted the public hearing as noticed and received input from the public on the requested withdrawal and annexation; and

**WHEREAS**, the Board of Commissioners has determined that the requested withdrawal and annexation would result in a more advantageous proximity to the firefighting facilities of the Whitefish Rural Fire District for the annexed property and more advantageous communications with the firefighting facilities of the Whitefish Rural Fire District for the annexed property.

**NOW, THEREFORE, IT IS HEREBY RESOLVED**, by the Board of Commissioners of Flathead County, that the petition is granted and the properties listed on Exhibit A are hereby withdrawn from the West Valley Fire District and annexed to the Whitefish Rural Fire District.

Dated this 10<sup>th</sup> day of May, 2004.

BOARD OF COUNTY COMMISSIONERS  
Flathead County, Montana

By /s/Howard W. Gipe  
Howard W. Gipe, Chairman

By \_\_\_\_\_  
Robert W. Watne, Member

MONDAY, MAY 10, 2004  
(CONTINUED)

ATTEST:  
Paula Robinson, Clerk

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

By /s/ Monica R. Eisenzimer  
Deputy

**Exhibit A**

A TRACT OF LAND, SITUATED, LYING AND BEING IN THE WEST HALF OF THE NORTHEAST QUARTER AND IN THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 30 NORTH, RANGE 21 WEST, P.M.M., FLATHEAD COUNTY, MONTANA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the Northwest corner of the Northwest Quarter of the Northeast Quarter of Section 28, Township 30 North, Range 21 West, P.M.M., Flathead County, Montana;  
Thence N89°50'00"E along the North boundary of said NW1/4 NE1/4 and along the centerline of a 60 foot declared County road known as Hodgson Road, a distance of 1321.48 feet to the Northeast corner thereof;  
Thence leaving said centerline S00°54'45"E and along the East boundary of said NW1/4 NE1/4 a distance of 1322.45 feet to a found iron pin and the Northeast corner of the SW1/4 NE1/4;  
Thence S00°53'53"E and along the East boundary of said SW1/4NE1/4 a distance of 1322.65 feet to a found iron pin and the Southeast corner thereof;  
Thence S89°51'10"W and along the South boundary of said SW1/4 NE1/4 a distance of 1321.51 feet to a found iron pin and the Southeast corner of said SE1/4 NW1/4;  
Thence S89°51'42"W and along the South boundary of said SEq/4 Nw1/4 a distance of 1023.76 feet to a found iron pin;  
Thence N01°13'35"W 734.96 feet to a found iron pipe;  
Thence S89°32'39"W 293.14 feet to the West boundary of said SE1/4Nw1/4, which is on the centerline of a 60 foot declared County road know as Whitefish Stage Road;  
Thence N00°52'50"W and along said West boundary and said centerline a distance of 589.73 feet to the Northwest corner thereof;  
Thence leaving said centerline N89°51'28"E and along the North boundary of said SE1/4 NW1/4 a distance of 660.40 feet to a set iron pin;  
Thence N00°53'33"W 1322.27 feet to appoint on the North boundary of said Section 28 and the centerline of said Hogdson Road;  
Thence N89°51'14"E and along said North boundary and said centerline a distance of 660.12 feet to the point of beginning and containing 135.401 acres; Subject to and together with (two) 60 foot declared County roads and together with all appurtenant easements of record.

**PRELIMINARY PLAT: HOMESTEAD HOMESITES**

Present at the May 10, 2004 9:45 A.M. Meeting were Chairman Gipe, Commissioner Hall, Planner BJ Grieve, Clifford Swallow, Dawn Marquardt of Marquardt & Marquardt Surveying and Clerk Eisenzimer.

Grieve reviewed the preliminary plat for Homestead Homesites filed by Clifford and Lois Swallow. Homestead Homesites creates a ten lot major subdivision on 62.85 acres. The property is located in the Evergreen area at the intersection of Helena Flats Road and East Evergreen Road. Staff recommends approval of the Preliminary Plat.

Commissioner Hall made a **motion** to adopt Staff Report #FPP-04-06 as Findings of Fact. Chairman Gipe **seconded** the motion. **Aye** – Hall and Gipe. Motion carried by quorum.

Commissioner Hall made a **motion** to approve the Preliminary Plat for Homestead Homesites subject to 16 conditions. Chairman Gipe **seconded** the motion. **Aye** – Hall and Gipe. Motion carried by quorum.

**PRELIMINARY PLAT: EAGLE DEVELOPMENT, PHASE III**

Present at the May 10, 2004 10:00 A.M. Meeting were Chairman Gipe, Commissioner Hall, Planner Johna Morrison, Trevor Schaefer, Dawn Marquardt of Marquardt & Marquardt Surveying and Clerk Eisenzimer.

Morrison reviewed the preliminary plat for Eagle Development, Phase III filed by Montana Eagle Development which creates a 43 lot residential subdivision containing approximately 241.3 acres. The property is located off Highway 93 approximately ½ mile South of Lakeside. Staff recommends approval of the Preliminary Plat.

Commissioner Hall made a **motion** to adopt Staff Report #FPP-04-10 as Findings of Fact including approving request for gated community. Chairman Gipe **seconded** the motion. **Aye** – Hall and Gipe. Motion carried unanimously.

Commissioner Hall made a **motion** to approve the Preliminary Plat for Eagle Development, Phase III subject to 13 conditions. Chairman Gipe **seconded** the motion. **Aye** – Hall and Gipe. Motion carried unanimously.

**PRELIMINARY PLAT: LAKESIDE ESTATES, PHASE 2, 3, 4 & 5**

Present at the May 10, 2004 10:00 A.M. Meeting were Chairman Gipe, Commissioner Hall, Planner Johna Morrison, Bret Birk, and Clerk Eisenzimer

Morrison reviewed the preliminary plat for Lakeside Estates Subdivision filed by Lakeside Land Development which creates a major subdivision creating 66 residential lots on 45.85 acres. The property is located in Lakeside off Bierney Creek Road

**MONDAY, MAY 10, 2004  
(CONTINUED)**

approximately ¼ of a mile west of the intersection of Highway 93 and Bierney Creek Road. Staff recommends approval of the Preliminary Plat.

Commissioner Hall made a **motion** to adopt Staff Report #FPP-04-07 as Findings of Fact. Chairman Gipe **seconded** the motion. **Aye** – Hall and Gipe. Motion carried by quorum.

Commissioner Hall made a **motion** to approve the Preliminary Plat for Lakeside Estates Subdivision subject to 14 conditions. Chairman Gipe **seconded** the motion. **Aye** – Hall and Gipe. Motion carried by quorum.

**CONSIDERATION OF EQUIVEST REQUEST: D. CONNORS**

Present at the May 10, 2004 10:15 A.M. Meeting were Chairman Gipe, Commissioners Hall and Watne, and Clerk Eisenzimer

Chairman Gipe reviewed a memo from Donald I Connors requesting withdrawal of funds from Equivest Contracts due to hardship needs.

Commissioner Hall made a **motion** to approve withdrawal of funds from EDC for hardship. Chairman Gipe **seconded** the motion. **Aye** - Hall and Gipe. Motion carried by quorum.

**10:30 a.m. Canvass Fire Districts at Election Department**

**MEETING W/CHARLIE JOHNSON, ROAD DEPT.**

Present at the May 10, 2004 11:00 A.M. Meeting were Chairman Gipe, Commissioner Hall, Road Superintendent Charlie Johnson, Franz Barthel, and Clerk Eisenzimer

Discussion was held relative to upcoming road projects in no order Lakeview Heights, Managhan, Haskill Basin, Truman Creek; dust oiling; request to revise subdivision regulations to require developers to pave portions of the road on which their subdivision is being built.

**HOFFMAN DRAW**

**THIS MEETING WAS NOT HELD**

**MEETING W/RAEANN CAMPBELL & GORDON BARTHEL RE: HEALTH INSURANCE COVERAGE**

Present at the May 10, 2004 11:30 A.M. Meeting were Chairman Gipe, Commissioner Hall, Human Resource Director Raeann Campbell, and Clerk Eisenzimer.

Discussion was held relative to Mr. Barthel not being aware of choosing Medicare Plan B before retiring due to disability and his request to have county be the primary carrier on his insurance coverage.

Commissioner Hall made a **motion** to table discussion until further review with Jonathan Smith. Chairman Gipe **seconded** the motion. **Aye** - Hall and Gipe. Motion carried by quorum.

**CONSIDERATION OF HR TRANSMITTAL FORMS: SR. FINANCIAL SUPERVISOR/BOOKKEEPING AND BLDG. MAINTENANCE WORKER II/MAINTENANCE DEPT.**

Present at the May 10, 2004 11:45 A.M. Meeting were Chairman Gipe, Commissioner Hall, Clerk & Recorder Paula Robinson, Human Resources Director Raeann Campbell, Weed, Parks and Maintenance Superintendent Jed Fisher, and Clerk Eisenzimer

Commissioner Hall made a **motion** to approve reclassification of Senior Financial Supervisor to reflect current job description. Chairman Gipe **seconded** the motion. **Aye** – Hall and Gipe. Motion carried by quorum.

Commissioner Hall made a **motion** to approve reclassification of Building Maintenance Worker to Building Maintenance Worker II. Chairman Gipe **seconded** the motion. **Aye** – Hall and Gipe. Motion carried by quorum.

Jed Fisher requested that the salary for the concession stand workers be raised to \$7.75.

Agreement was made to approve the adjusted salary in order to find qualified employees.

**MEETING W/PAULA ROBINSON & RAEANN CAMPBELL RE: VEHICLE EXEMPTION**

Present at the May 10, 2004 11:45 A.M. Meeting were Chairman Gipe, Commissioners Hall and Watne, Road Superintendent Charlie Johnson, Weed, Parks and Maintenance Superintendent Jed Fisher, Clerk & Recorder Paula Robinson, Human Resources Director Raeann Campbell, Deputy County Attorney Jonathan Smith, and Clerk Eisenzimer

Discussion was held relative to vehicle exemptions as determined through IRS regulations and the use of vehicles by various departments.

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on May 11, 2004.

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**TUESDAY, MAY 11, 2004**

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

TUESDAY, MAY 11, 2004  
(CONTINUED)

Chairman Gipe attended a Land Use Meeting in Helena.

**AUTHORIZATION TO PUBLISH NOTICE OF PUBLIC HEARING: OLSEN, KNUDSEN & JONES ZONE CHANGE/EVERGREEN & VICINITY ZONING DISTRICT**

Present at the May 11, 2004 9:15 A.M. Meeting were Commissioners Hall and Watne, and Clerk Eisenzimer.

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

**NOTICE OF PUBLIC HEARING**

The Board of Commissioners of Flathead County, Montana, hereby gives notice pursuant to Section 76-2-205(1), M.C.A., that it will hold a public hearing to consider a request by Christy Olsen, Bonnie Jones and Jerry and Elva Knudson to change the zoning designation on property located in the Evergreen and Vicinity Zoning District from R-2 (One Family Limited Residential) to R-5 (Two Family Residential).

The boundaries of the area proposed to be changed from R-2 to R-5 are set forth on Exhibit "A".

The proposed change would generally change the character of the zoning regulations applicable to the property from providing for large tract residential development in suburban areas, beyond sanitary sewer and/or water lines, to providing residential district with minimum lot areas, wherein development will require all public utilities and all community facilities, and in which two-family dwellings are permitted. Minimum lot size would decrease from 20,000 square feet in the R-2 zone to 5,400 square feet in the R-5 zone.

The regulations defining the R-2 and R-5 Zones are contained in the Flathead County Zoning Regulations on file for public inspection at the Office of the County Clerk and Recorder, Courthouse, Kalispell, Montana, in Permanent File No. 9327013500.

The public hearing will be held on the **25th day of May 2004, at 10:15 o'clock a.m.**, in the Office of the Board of Commissioners of Flathead County, Courthouse, West Annex, Kalispell, Montana. At the public hearing, the Board of Commissioners will give the public an opportunity to be heard regarding the proposed change in the regulations for the described portion of the Evergreen and Vicinity Zoning District.

DATED this 11th day of May, 2004.

BOARD OF COUNTY COMMISSIONERS  
Flathead County, Montana

By/s/ Gary D. Hall, P.T.  
Howard W. Gipe, Chairman

ATTEST:  
Paula Robinson, Clerk

By/s/ Kimberly Moser  
Deputy

Publish on May 14 and May 21, 2004

**EXHIBIT A  
CHRISTY OLSEN  
ZONE CHANGE FROM R-2 TO R-5**

The property is located in the Evergreen and Vicinity Zoning District on East Evergreen Drive, approximately one-half (1/2) mile east of the intersection of East Evergreen Drive and Highway 2. The subject properties may be described as Assessor's Tract 6EA and Lots 3A, 3 Ex A, and 4 of Block 2 Bernard's Park Subdivision in Section 3, Township 28 North, Rand 21 West, P.M.M, all in Flathead County, Montana

**AUTHORIZATION TO PUBLISH NOTICE OF PUBLIC HEARING: BRECKENRIDGE & MATHIASON ZONE CHANGE/WEST SIDE ZONING DISTRICT**

Present at the May 11, 2004 9:15 A.M. Meeting were Commissioners Hall and Watne, and Clerk Eisenzimer.

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

**NOTICE OF PUBLIC HEARING  
WEST SIDE ZONING DISTRICT**

The Board of Commissioners of Flathead County, Montana, hereby gives notice pursuant to Section 76-2-205(1), M.C.A., that it will hold a public hearing to consider a request by Rick Breckenridge and Peggy Mathiason to change the zoning designation in a portion of the West Side Zoning District from R-1 (Suburban Agricultural) to B-2 (General Business).

The boundaries of the area proposed to be amended from R-1 to B-2 are set forth on Exhibit "A" hereto.

The proposed change would change the general character of the zoning regulations applicable to the property from an area intended to provide estate type development normally located in rural areas away from

**TUESDAY, MAY 11, 2004  
(CONTINUED)**

concentrated urban development, or in areas where it is desirable to permit only low density development, e.g., extreme topography, areas adjacent to flood plains, airport runway alignment extension, etc., to an area

intended to provide for those retail sales and service functions and businesses whose operations are typically characterized by outdoor display, storage and/or sale of merchandise, by major repair of motor vehicles, by outdoor commercial amusement and recreational activities and by businesses serving the general needs of the tourist and traveler.

The regulations defining the R-1 and B-2 Zones are contained in the Flathead County Zoning Regulations, on file for public inspection at the Office of the County Clerk and Recorder, Courthouse, 800 South Main, Kalispell, Montana in Permanent File No. 93270 13500.

The public hearing will be held on the 25th day of May, 2004, at 10:30 o'clock a.m., in the Office of the Board of Commissioners of Flathead County, Courthouse, West Annex, Kalispell, Montana. At the public hearing, the Board of Commissioners will give the public an opportunity to be heard regarding the proposed change in the regulations for the described portion of the West Side Zoning District.

DATED this 11th day of May, 2004.

BOARD OF COUNTY COMMISSIONERS  
Flathead County, Montana

By /s/ Gary D. Hall, P.T.  
Howard W. Gipe, Chairman

ATTEST:  
Paula Robinson, Clerk

By /s/ Kimberly Moser  
Deputy

Publish on May 14 and May 21, 2004.

**EXHIBIT A  
DARREN BRECKENRIDGE & PEGGY MATHIASON  
REQUEST FOR ZONE CHANGE FROM R-1 TO B-2**

The Property proposed for rezoning is located on Highway 2 West North of Flathead Beverage Co. The Property can be described as Assessor's Tract 6HA in Section 12, Township 28 North, Range 22 West, P.M.M., Flathead County.

**AUTHORIZATION TO PUBLISH NOTICE OF PUBLIC HEARING: MINI STORAGE HEIGHT TEXT AMENDMENT/FLATHEAD COUNTY ZONING REGULATIONS**

Present at the May 11, 2004 9:15 A.M. Meeting were Commissioners Hall and Watne, and Clerk Eisenzimer.

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

**NOTICE OF PUBLIC HEARING**

The Board of Commissioners of Flathead County, Montana, hereby gives notice, pursuant to Section 76-2-205(1), M.C.A., that it will hold a public hearing to consider a change to the text of the Flathead County Zoning Regulations proposed by Mark and Pam Evert.

The proposed amendment would amend Section 4.13.040 to change the height limitation for mini-storage facilities from one story (18 feet at the peak) to two stories (35 feet at the peak).

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

The public hearing will be held on the 26th day of May, 2004, at 9:15 o'clock a.m., in the Office of the Board of Commissioners of Flathead County, Courthouse, West Annex, Kalispell, Montana. At the public hearing, the Board of Commissioners will give the public an opportunity to be heard regarding the proposed change to the text of the Flathead County Zoning Regulations.

DATED this 11th day of May, 2004.

BOARD OF COUNTY COMMISSIONERS  
Flathead County, Montana

By /s/ Gary D. Hall, P.T.  
Howard W. Gipe, Chairman

ATTEST:  
Paula Robinson, Clerk

By /s/ Kimberly Moser  
Deputy

Publish on May 14 and May 21, 2004.

**TUESDAY, MAY 11, 2004  
(CONTINUED)**

**AUTHORIZATION TO PUBLISH INVITATION TO BID: NORTH FORK ROAD/ROAD RELOCATION PROJECT/ROAD DEPT.**

Present at the May 11, 2004 9:15 A.M. Meeting were Commissioners Hall and Watne, and Clerk Eisenzimer.

Commissioner Watne made a **motion** to authorize the publication of the Invitation to Bid and authorize the Chairman to sign. Commissioner Hall PT **seconded** the motion. **Aye** - Watne, and Hall. Motion carried by quorum.

**INVITATION TO BID  
North Fork Road/Road Relocation Project**

Flathead County will receive sealed bids for the construction of the "North Fork Road/Road Relocation Project" at the office of the Flathead County Commissioners, 800 South Main, Kalispell, Montana 59901, **until 10:00 a.m. local time June 7, 2004**, and shortly thereafter they will be publicly opened and read aloud.

Generally, the work consists of excavation, filling, compaction, road surface and road shoulder preparation and finishing, erosion and drainage control, culverts, signage, bank stabilization, seeding, traffic control, utility protection, geotextiles, demolition, mailbox protection or relocation, together with all associated materials, labor and equipment to complete the project.

**The project is located up the North Fork Road, beginning 42.8 miles past the viaduct north of Columbia Falls, Montana. The road to the project location is for the most part gravel with short areas of paving.**

The contract documents consisting of drawings and specifications can be obtained from Jackola Engineering and Architecture, PC, 1830 3<sup>rd</sup> Avenue East, Suite 302, Kalispell, MT, after May 14, 2004 at the cost of \$50.00 per set which is refundable upon return of sets in good order within 10 days after bid date.

In addition, the drawings and specifications may be examined at the following locations:

Flathead Builders Exchange  
1440 Hwy 35 East  
Kalispell, MT 59901

Jackola E&A – Southfield Tower  
Clock Tower Building South of the Oulaw Inn  
1830 3<sup>rd</sup> Avenue East – Suite 302  
Kalispell, MT 59901

CONTRACTOR and any of the CONTRACTOR'S subcontractor's doing work on this project will be required to obtain registration with the Montana Department of Labor and Industry (DLI). Forms for registration are available from the Department of Labor and Industry, P.O. Box 8011, 1805 Prospect, Helena, Montana 59604-8011. Information on registration can be obtained by calling 1-800-556-6694. CONTRACTORS are required to have registered with the DLI prior to bidding on this project.

The CONTRACTOR must contract to pay prevailing wage rates, set by the Montana Department of Labor. The CONTRACTOR must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex or national origin. This project is subject to the Montana Contractors Gross Receipt Tax.

The CONTRACTOR must contract to give preference to the employment of bona fide residents of Montana in the performance of the work. A resident bidder will be allowed a preference against the bid of any nonresident bidder from any state or country that enforces a preference for resident bidders equal to the preference given in the other state or country.

Each bid or proposal must be accompanied by a certified check, cashier's check, or bid bond payable to Flathead County, in an amount not less than 10 percent (10%) of the total amount of the bid, to secure the bidder's express covenant that if the bidder is awarded the contract, the bidder will, within ten (10) days, enter into a formal contract for the completion of the project.

The successful BIDDER shall furnish an approved Performance Bond and a Labor and Materials Payment Bond, each in the amount of one hundred percent (100%) of the contract amount. Insurance as required shall be provided by the successful BIDDER and a certificate(s) of that insurance shall be provided.

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.

No bid may be withdrawn after the scheduled time for the opening of bids.

The right is reserved to reject any or all proposals received, to waive informalities, to postpone the award of the contract for a period of not to exceed sixty (60) days, and to accept the lowest responsive and responsible bid which is in the best interest of the OWNER.

OWNER CONTACT: NORTH FORK ROAD/ROAD RELOCATION PROJECT  
Flathead County, Montana  
Attn: Charlie Johnson  
Flathead County Road Department Superintendent  
Address: 1249 Willow Glen Drive  
Kalispell, MT 59901  
Phone: (406) 758-5790

BOARD OF COUNTY COMMISSIONERS  
Flathead County, Montana  
800 South Main  
Kalispell, MT 59901



**TUESDAY, MAY 11, 2004  
(CONTINUED)**

ATTEST:  
Paula Robinson, Clerk

BY: /s/ Gary D. Hall, P.T.  
Howard W. Gipe, Chairman

BY: /s/ Monica R. Eisenzimer  
Monica R. Eisenzimer, Deputy

Publish May 16<sup>th</sup>, and May 23<sup>rd</sup>, 2004.

**QUARTERLY MEETING JUVENILE DETENTION FACILITY**

Present at the May 11, 2004 9:30 A.M. Meeting were Commissioners Hall and Watne, Laurie Reebuck, Commander Kathy Frame and Clerk Eisenzimer.

Discussion was held relative to States plan of action on deficiencies, State rules regarding Juvenile detainee placement once they are adjudicated, and the progress of the new food program.

**PUBLIC HEARING: ROAD ABANDONMENT #412 (PORTION OF MONROE ST.)**

Present at the May 11, 2004 10:00 A.M. duly advertised public hearing were Commissioners Watne and Hall, James P Slack, Road Superintendent Charlie Johnson, Deputy County Attorney Peter Steele and Clerk Eisenzimer.

Commissioner Hall opened the public hearing to anyone wishing to speak in favor of the proposed road abandonment.

James Slack explained that he is the petitioner and since he maintains the proposed roadway, he would like to have the 10' portion abandoned so that he can maintain it and use it for his purposes.

No one else rising to speak, Commissioner Hall asked for anyone wishing to speak in opposition to the proposed road abandonment.

Deputy County Attorney Peter Steele restated that the County Attorney's office found that the proposed roadway is an improved roadway and therefore should not be abandoned in order to be prepared for future growth in the area.

Road Superintendent Charlie Johnson added that with county roads, they prefer to have 60' of right of way and whereas this road is already narrower than they need for snow plowing and easements, that portion of roadway should be maintained by the County in order to preserve said easements and possibility of expansion.

No one else rising to speak, Commissioner Hall closed the public hearing.

Commissioner Watne made a motion to deny Road Abandonment #412. Commissioner Hall PT seconded the motion. Aye - Watne, and Hall Motion carried unanimously.

**MONTHLY MEETING W/KIRSTEN HOLLAND, GRANT WRITER**

Present at the May 11, 2004 10:15 A.M. Meeting were Commissioners Hall and Watne, and Clerk Eisenzimer.

Discussion was held relative to Courthouse Preservation, 911 Wireless Phase 2, GIS Digital Imagery, Surplus parks land, and the Mosquito Control District.

**MEETING W/KELLY ROBINSON RE: CERTIFICIATE IN LIEU OF CONSTRUCTION/PLUM CREEK**

Present at the May 11, 2004 10:30 A.M. Meeting were Commissioners Hall and Watne, Kelly Robinson, Robert Hickey, Susan Nicosia, and Clerk Eisenzimer.

Discussion was held relative to the proposed Waste Water Treatment Plant and the purpose of the certificate in lieu of construction.

Commissioner Watne made a **motion** to approve the Certificate in Lieu of Construction and authorize the Chairman to sign. Commissioner Hall PT **seconded** the motion. **Aye** - Watne and Hall. Motion carried by quorum.

**MEETING W/PEGGY GOODRICH/PLANNING & ZONING OFFICE RE: LAKESIDE-SOMERS BIKE PATH & FARM TO MARKET BIKE PATH**

Present at the May 11, 2004 11:00 A.M. Meeting were Commissioners Hall and Watne, Planner Peggy Goodrich and Clerk Eisenzimer.

Commissioner Watne made a **motion** to approve request for CTEP Committee to assemble and review proposals for the Lakeside to Somers CTEP Project. Commissioner Hall PT **seconded** the motion. **Aye** - Watne, and Hall. Motion carried by quorum.

Commissioner Watne made a **motion** to approve encroachment permit for Farm to Market Bike Path and authorize the Chairman to sign. Commissioner Hall PT **seconded** the motion. **Aye** - Watne, and Hall. Motion carried by quorum.

**DOCUMENT FOR SIGNATURE: DPHHS CONTRACT #0407-4-31-015-0**

Present at the May 11, 2004 11:15 A.M. Meeting were Commissioners Hall and Watne, and Clerk Eisenzimer.

Commissioner Hall presented DPHHS Contract #0407-4-31-015-0 to contracting provide fiscal management for the immunization activities.

**TUESDAY, MAY 11, 2004  
(CONTINUED)**

Commissioner Watne made a **motion** to approve the signing of DPHHS Contract #0407-4-31-015-0. Commissioner Hall PT **seconded** the motion. **Aye** - Watne, and Hall. Motion carried by quorum.

**TAX REFUND REQUEST: MARINA CAY**

Present at the May 11, 2004 11:15 A.M. Meeting were Chairman Gipe, Commissioners Hall and Watne, and Clerk Eisenzimer.

Commissioner Watne made a **motion** to approve the tax refund request for \$48.00 and authorize the Chairman to sign. Commissioner Hall PT **seconded** the motion. **Aye** - Watne, and Hall. Motion carried by quorum.

**CONSIDERATION OF REQUEST TO VOID TAX #0702850/CLERK & RECORDER'S OFFICE**

Present at the May 11, 2004 11:15 A.M. Meeting were Commissioners Hall and Watne, and Clerk Eisenzimer.

Commissioner Watne made a **motion** to approve the request to void tax on parcel #0702850 Commissioner Hall PT **seconded** the motion. **Aye** - Watne and Hall. Motion carried by quorum.

**PRELIMINARY PLAT: ROSE CROSSING NO. 2**

Present at the May 11, 2004 11:30 A.M. Meeting were Commissioners Hall and Watne, Planner Tim Beck, Tom Sands of Sands Surveying, and Clerk Eisenzimer.

Beck reviewed the application submitted by Robin Street for preliminary plat approval of Rose Crossing No. 2, which will create six residential lots. The subdivision will be classified as a "cluster" subdivision, with lots ranging from 1 to 1.177 acres in size. The property is located north of Rose Crossing, east of Whitefish Stage, and is situated approximately 2 miles north of Kalispell and contains 24.65 acres.

Commissioner Watne made a **motion** to adopt Staff Report #FPP-04-08 as Findings of Fact with amended condition 7 which leaves an option of meeting park land dedication or placing agricultural restriction on open space. Commissioner Hall PT **seconded** the motion. **Aye**- Watne and Hall. Motion carried by quorum.

Commissioner Watne made a **motion** to approve the preliminary plat of Rose Crossing No. 2. Commissioner Hall PT **seconded** the motion. **Aye**- Watne and Hall. Motion carried by quorum.

**PRELIMINARY PLAT: TRUMBLE CREEK ESTATES**

Present at the May 11, 2004 11:30 A.M. Meeting were Chairman Gipe, Commissioners Hall and Watne, Planner Johna Morrison, Bill Boharski, and Clerk Eisenzimer.

Morrison reviewed the application submitted by Michael Boharski and Bill Boharski for preliminary plat approval of Trumble Creek Estates, a 13 lot residential subdivision containing approximately 21 acres. This property is located approximately 1.5 miles southwest of Costco in Kalispell. Morrison stated that the planning board approved preliminary plat for Trumble Creek Estates by adding F to Condition 10 stating that any work done along Trumble Creek may require a 310 permit.

Commissioner Watne made a **motion** to adopt Staff Report #FPP-04-09 as Findings of Fact. Commissioner Hall PT **seconded** the motion. **Aye**- Watne and Hall. Motion carried by quorum.

Commissioner Watne made a **motion** to approve the preliminary plat of Trumble Creek Estates. Commissioner Hall PT **seconded** the motion. **Aye**- Watne and Hall. Motion carried by quorum.

**DOCUMENT FOR SIGNATURE: PROFESSIONAL SERVICES/GIS**

Present at the May 11, 2004 11:45 A.M. Meeting were Commissioners Hall and Watne, and Clerk Eisenzimer.

Commissioner Watne made a **motion** to approve Professional Services Contract between GIS Department and Daisy Hebb. Commissioner Hall PT **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on May 12, 2004.

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**WEDNESDAY, MAY 12, 2004**

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

**CONSIDERATION OF ADOPTION OF RESOLUTION: HIRE SPECIAL PROSECUTOR**

Present at the May 12, 2004 8:30 A.M. Meeting were Chairman Gipe, Commissioner Hall, Deputy County Attorney Jonathan Smith, and Clerk Eisenzimer.

Jonathan Smith presented a resolution allowing Flathead County to hire a special prosecutor in State vs. Benjamin and State vs. Watne.

Commissioner Hall made a **motion** to adopt Resolution 1712. Chairman Gipe **seconded** the motion. **Aye**- Hall and Gipe. Motion carried by quorum.

**WEDNESDAY, MAY 12, 2004  
(CONTINUED)**

RESOLUTION NO. 1712

Whereas, the Flathead County Attorney has requested prosecutorial assistance in the cases of State v. Watne and State v. Benjamin because of the existence of a conflict interest involving the Flathead County Attorney's Office;

Whereas, it is desired and deemed appropriate that a special deputy county attorney be appointed to assist in the prosecution of the aforementioned cases;

Whereas, Mont. Code Ann. §44-4-111 authorizes the training coordinator for county attorneys to act as special counsel on request of the county attorney and upon the approval of the board of county commissioners and §2-15-501(5) authorizes the Attorney General to provide assistance to a county attorney in the discharge of his or her duties; and

Whereas, the bureau chief of the Prosecution Services Bureau of the department of Justice has informed the County Attorney that his bureau cannot assume the prosecution of State v. Watne and State v. Benjamin at this time and recommends that former Missoula County Attorney Robert L. Deschamps be engaged to undertake that prosecution.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Commissioners of Flathead County, Montana, that Robert L. Deschamps may be engaged by the Flathead County Attorney to assume the prosecution in the cases of State v. Watne and State v. Benjamin, and shall be paid \$50 per hour, plus reimbursement of his expenses in said case.

Dated this 12<sup>th</sup> day of May, 2004.

BOARD OF COUNTY COMMISSIONERS  
Flathead County, Montana

By /s/Howard W. Gipe  
Howard W. Gipe, Chairman

By \_\_\_\_\_  
Robert W. Watne, Member

ATTEST:  
Paula Robinson, Clerk

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

By /s/ Monica R. Eisenzimer  
Monica R. Eisenzimer, Deputy

**MEETING W/KAREN DELAMORE/USPS RE: OLNEY POST OFFICE**

Present at the May 12, 2004 8:30 A.M. Meeting were Chairman Gipe, Commissioners Hall and Watne, USPS Real Estate Specialist Karen Delamore and Clerk Eisenzimer.

Discussion was held relative to desire to build a new post office with modern facilities and a request for contact to aid with work on a site location.

- 9:00 A.M. On site viewing of roads w/Charlie Johnson (till noon)**
- 2:00 P.M. Commissioner Hall attended Public meeting at Olney Post Office**
- 4:00 P.M. Commissioner Hall attended Jobs Now Board meeting at 1<sup>st</sup> Interstate Bank**

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on May 13, 2004

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**THURSDAY, MAY 13, 2004**

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

**MONTHLY MEETING W/FORREST SANDERSON, PLANNING AND ZONING OFFICE**

Present at the May 13, 2004 9:00 A.M. Meeting were Commissioners Watne and Hall, Planning and Zoning Director Forrest Sanderson, and Clerk Eisenzimer.

General discussion was held relative to letter from Seattle District Army Corps of Engineers regarding flood damage reduction and environmental considerations; county vehicles policy; vacation plans for the last week of May; budget proposal.

THURSDAY, MAY 13, 2004  
(CONTINUED)

**PUBLIC HEARING: ROAD NAMING/EAGLES LANDING**

Present at the May 13, 2004 9:30 A.M. duly advertised public hearing were Commissioners Watne and Hall, and Clerk Eisenzimer.

Commissioner Watne opened the public hearing to anyone wishing to speak in favor of the naming of Eagles Landing

No one else rising to speak, Commissioner Watne asked for anyone wishing to speak in opposition to the naming of Eagles Landing

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

Commissioner Hall made a **motion** to adopt Resolution No. 1713 Commissioner Watne PT **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

**RESOLUTION NO. 1713**

**WHEREAS**, Flathead County has proposed to name a private road generally running **northerly off Blacktail Road and located in the East ½ of the Northwest ¼, Section 14, Township 26 North Range 21 West, P.M.M., Flathead County, Montana.**

**WHEREAS**, the Board of Commissioners of Flathead County, Montana, held a public hearing on May 13, 2004, concerning the proposal, after publication and mailing of notice thereof on May 2, 2004, and May 9, 2004; and

**WHEREAS**, the Board of Commissioners of Flathead County, Montana, has determined that the road should be named Eagles Landing.

**NOW, THEREFORE, IT IS HEREBY RESOLVED**, by the Board of Commissioners of Flathead County, that the private road generally running **northerly off Blacktail Road and located in the East ½ of the Northwest ¼, Section 14, Township 26 North Range 21 West, P.M.M., Flathead County, Montana**, should be, and it hereby is, named Eagles Landing.

**BE IT FURTHER RESOLVED** that the naming of Eagles Landing shall be effective on May 13, 2004.

Dated this 13<sup>th</sup> day of May, 2004.

BOARD OF COUNTY COMMISSIONERS  
Flathead County, Montana

By \_\_\_\_\_  
Howard W. Gipe, Chairman

By /s/Robert W. Watne  
Robert W. Watne, Member

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

ATTEST:  
Paula Robinson, Clerk

By /s/ Monica R. Eisenzimer  
Monica R. Eisenzimer, Deputy

**PRELIMINARY PLAT: QUARTER HORSE ESTATES**

Present at the May 13, 2004 9:45 A.M. Meeting were Commissioners Watne and Hall, Planner BJ Grieve, Rod Leese, Terry Smiley, Ardis Larsen of Larsen Engineering and Clerk Eisenzimer.

Grieve reviewed the application submitted by Johnson Living Trust with Technical Assistance by Larsen Engineering for preliminary plat approval of Quarter Horse Estates, a re-subdivision of 5 lots totaling 60 acres in an existing residential subdivision on 120 acres of land. The property is located off of Stillwater Road, approximately 2 miles northwest of the Kalispell Fairgrounds. The subject property is 4 10-acre properties and 1 20-acre property totaling 60 acres within the existing Quarter Orse Estates subdivision and can be described as lots 2, 3, 8, 9 and 10 in the S ½ of Section 2, Township 28 N, Range 22 West, P.M.M., Flathead County, Montana. General discussion was held. Staff recommends approval.

Commissioner Hall made a **motion** to adopt Staff Report #FPP-04-04 as Findings of Fact with amendment to Condition 6 to require developer to pave 300 feet instead of 550 feet. Commissioner Watne PT **seconded** the motion. **Aye**- Watne and Hall. Motion carried by quorum.

Commissioner Hall made a **motion** to approve the preliminary plat of Quarter Horse Estates with 10 conditions. Commissioner Watne PT **seconded** the motion. **Aye**- Watne and Hall. Motion carried by quorum.

**THURSDAY, MAY 13, 2004  
(CONTINUED)**

**MEETING W/INSURANCE COMMITTEE**

Present at the May 13, 2004 10:00 A.M. Meeting were Commissioners Watne and Hall, Human Resources Officer Raeann Campbell, Deputy County Attorney Jonathan Smith, Char Terry, Elizabeth Sherwood, Corey Pilsch, Jan Leddy, Jim Mohn, Susanne O'Connor, and Clerk Eisenzimer.

Discussion was held relative to maintaining prescription plan; request to increase limit that people can pay into flex plans; raise mammogram benefit; allow diabetic testing supplies to be paid for under co-pay plan; increase premium to county and employees in order to maintain insurance reserves; request to have a benefit fair in order to educate employees; request to have Flathead County provide for the employees at the same rate as the State of Montana.

Agreement was made to consult with budget advisor before adopting the insurance committee's recommendations.

**PRELIMINARY PLAT: SOMERS LANDING**

Present at the May 13, 2004 10:30 A.M. Meeting were Commissioners Watne and Hall, Planner Johna Morrison, Jean Johnson and Clerk Eisenzimer.

Morrison reviewed the application submitted by Westward Ho Development with Technical Assistance by Stokes and Associates and Sands Surveying for preliminary plat approval of Somers Landing, a 23 unit Condominium Subdivision in Somers. The property is located on the east side of Highway 93 in Somers, at the old Lee marine site. General discussion was held. Staff recommends approval.

Commissioner Hall made a **motion** to adopt Staff Report #FPP-04-05 as Findings of Fact. Commissioner Watne PT **seconded** the motion. **Aye-** Watne and Hall. Motion carried by quorum.

Commissioner Hall made a **motion** to approve the preliminary plat of Somers Landing with 15 conditions. Commissioner Watne PT **seconded** the motion. **Aye-** Watne and Hall. Motion carried by quorum.

**CONSIDERATION OF ADOPTION OF RESOLUTION: ENCROACHMENT BOND INCREASE /COUNTY ROAD WORK**

Present at the May 13, 2004 10:45 A.M. Meeting were Commissioners Hall and Watne, Deputy County Attorney Jonathan Smith, and Clerk Eisenzimer.

Jonathan Smith presented Resolution 982E, a request from the Flathead County Road Department to revise encroachment fees and require encroachment permits be applied for by the contractor.

Commissioner Hall made a **motion** to adopt Resolution 982E. Commissioner Watne PT **seconded** the motion. **Aye** – Watne and Hall. Motion carried unanimously.

**RESOLUTION NO. 982E**

**WHEREAS**, Section 7-14-2101, et seq., M.C.A., provides that the Board of County Commissioners may layout, maintain, control and manage County roads within the County and may in its discretion do whatever is necessary in the best interest of County roads, including providing for the removal of obstructions and encroachments;

**WHEREAS**, Section 7-14-2101(2) (a), M.C.A., provides that unless the context requires otherwise, the term county road means any public highway opened, established, constructed or maintained by a county;

**WHEREAS**, Sections 61-1-201 and 61-1-202, M.C.A., define public highway to include the entire width between the boundary lines of every publicly maintained way;

**WHEREAS**, the safety of the traveling public is being negatively impacted by increased population growth resulting in increased construction of approaches and utility encroachments onto county roads;

**WHEREAS**, it is necessary and appropriate to regulate and approve all encroachments on county roads and to assess an appropriate fee for the additional expense to the taxpayers of processing permit applications;

**WHEREAS**, the board approved the Flathead County Road Encroachment Policy on February 27, 1995; and

**WHEREAS**, the Board passed Resolution 982A on July 24, 1995, and Resolution 982B on May 28, 1996 and Resolution 982C on November 14, 1996, and Resolution 982D on May 11, 1998, now deems it necessary to amend Resolution 982D.

**NOW THEREFORE, IT IS HEREBY RESOLVED**, that the following encroachment permit fee schedule shall be in effect in Flathead County:

<u>Encroachment Type</u>	<u>Fee</u>
<u>Approach</u>	
<u>Agricultural</u> (Access to fields under agricultural use) – Non-refundable application fee	\$ 50.00
<u>Driveway</u> Non-refundable application fee	\$ 50.00
<u>Utility</u>	

In lieu of the fees listed herein, each utility company named under the "Utility Company Exemption" may pay a flat yearly fee in the amount of \$6,500.00 due and payable on July 1 of each year.

**THURSDAY, MAY 13, 2004  
(CONTINUED)**

<u>Ditchline encroachment</u>		
	Non-refundable application fee	\$ 50.00
	PLUS	
	Refundable bond held for two years to insure proper grading and reseeding	
(see note)	\$ 250.00	
<u>Gravel road encroachment</u>		
	Non-refundable application fee	\$ 50.00
	PLUS	
	Refundable bond held for two years to insure proper road repair (see note)	\$1000.00
<u>Paved road encroachment</u>		
	Non-refundable application fee	\$ 50.00
	PLUS	
	Refundable bond held for two years to insure proper road repair (see note)	\$2500.00
<u>Pushing of utility beneath roadway</u>		
	(No disturbance to road base or shoulder material)	\$ 50.00
	PLUS	
	Refundable bond held for two years to insure proper grading and reseeding (see note)	\$ 250.00

Definition of Encroachment

An encroachment is any activity within the designated road right-of-way, including but not limited to trenching, boring, pushing, placement of poles and repair of broken lines or replacement of power poles where any of the above is required.

Tree trimming within the right-of-way and repair of guy wires or repairs that do not require trenching, boring, pushing or other right-of-way disturbance are specifically exempt.

A major project, which extends a utility line down the side of a road with several crossings of the roadway, will require an encroachment permit for each crossing. There may be one permit application, however, there will be a fee for each crossing of the roadway.

In cases of emergency repair, such as during or following a storm, an after-the-fact permit may be applied for covering the incident without penalty.

An encroachment that in the opinion of the Road Superintendent will be more extensive than a regular vertical cut across a county road as described above,

shall require the posting of a bond in the amount of 125% of the estimated cost of repair to the county road.

NOTE: Bonds required hereunder shall be provided by the Contractor doing work on County right-of-way and shall be returned to the Contractor if the construction is performed to the required standards and is approved and, in the opinion of the Road Superintendent, performs adequately for a two year time period. Should the repair to the road not be approved **or fail within a two year time period**, the Contractor may correct the problems at their expense or, the County Road Department may cash the bond and correct the problems utilizing the bond monies.

UTILITY COMPANY EXEMPTION: The following regulated companies providing utility services in Flathead County are exempt from the bonding requirements listed above: AT&T, Bresnan Communications, Flathead Electric Co-operative, Lincoln Electric, Montana Power Company, and Northwestern Energy.

Unpermitted encroachments upon the right of way

**An amount twice the permit fee will be charged for** permits issued after the start and/or completion of construction. Unpermitted encroachments will be removed at the discretion of the Flathead County Road Department.

**BE IF FURTHER RESOLVED** that this Resolution is effective on approval.

DATED this 13<sup>th</sup> day of May, 2004.

BOARD OF COUNTY COMMISSIONERS  
Flathead County, Montana

By \_\_\_\_\_  
Howard W. Gipe, Chairman

By /s/Robert W. Watne  
Robert W. Watne, Member

**THURSDAY, MAY 13, 2004  
(CONTINUED)**

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

ATTEST:  
Paula Robinson, Clerk

By /s/ Monica R. Eisenzimer  
Deputy

**CONSIDERATION OF BUDGET TRANSFER; SOLID WASTE DIST.**

Present at the May 13, 2004 10:45 A.M. Meeting were Commissioners Hall and Watne, and Clerk Eisenzimer.

Commissioner Hall made a **motion** to approve budget transfer for Solid Waste to purchase well since they will not be purchasing land this year. Commissioner Watne PT **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

**AWARD BIDS: BEAMS/ROAD DEPT.**

Present at the May 13, 2004 10:45 A.M. Meeting were Commissioners Hall and Watne, and Clerk Eisenzimer.

Commissioner made a **motion** to approve on behalf of the Road Department, the bid submitted by Missoula Concrete for in the amount of \$. Commissioner **seconded** the motion. **Aye** - Watne, Hall and Gipe. Motion carried unanimously.

**CONSIDERATION OF PRINTING BIDS: ELECTION DEPT.**

Present at the May 13, 2004 10:45 A.M. Meeting were Commissioners Hall and Watne, and Clerk Eisenzimer.

Commissioner Hall made a **motion** to approve on behalf of the Election Department, the bid submitted by Kalispell Copy Center for 50 primary election cards and laminated precinct ID cards in the amount of \$72 and \$318.80. Commissioner Watne PT **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

**CONSIDERATION OF LAKESHORE PERMIT: RAFFEL**

Present at the May 13, 2004 11:00 A.M. Meeting were Commissioners Hall and Watne, Planner Tull and Clerk Eisenzimer.

Tull reviewed the After-The-Fact Lake and Lakeshore Construction Permit filed by Wes Raffel on Flathead Lake. Mr. Raffel has already installed a shore station on his L-shaped dock. No heavy equipment was used in connection with the project. General discussion was held Board recommends approval of permit as presented.

Commissioner Hall made a **motion** to approve After-The-Fact Lakeshore Permit #FLP-04-55 with 21 conditions and authorize Chairman to sign. Commissioner Watne PT **seconded** the motion. **Aye**- Watne and Hall. Motion carried by quorum.

**CONSIDERATION OF LAKESHORE PERMIT: FARRIS**

Present at the May 13, 2004 11:00 A.M. Meeting were Commissioners Hall and Watne, Planner Traci Tull, and Clerk Eisenzimer.

Tull reviewed Lake and Lakeshore Construction Permit filed by Betty Farris on Little Bitterroot Lake to replace old concrete boat ramp within the Lakeshore Protection Zone. Concrete pad will measure 10 by 45 feet. General discussion was held Board recommends approval of permit as presented.

Commissioner Hall made a **motion** to approve Lakeshore Permit #FLP-04-54 with 18 conditions and authorize Chairman to sign. Commissioner Watne PT **seconded** the motion. **Aye**- Watne and Hall. Motion carried by quorum.

**CONSIDERATION OF LAKESHORE PERMIT: HEALY & DAY**

Present at the May 13, 2004 11:00 A.M. Meeting were Commissioners Hall and Watne, Planner Traci Tull and Clerk Eisenzimer.

Tull reviewed Lake and Lakeshore Construction Permit filed by Kathleen Healy & Julian Day on Flathead Lake to remove existing gravel that has built up at the boat entrance of the dock and remove a small amount of rip-rap that was placed on the north end of the property. General discussion was held Board recommends approval of permit as presented.

Commissioner Hall made a **motion** to approve Lakeshore Permit #FLP-04-45 with 21 conditions and authorize Chairman to sign. Commissioner Watne PT **seconded** the motion. **Aye**- Watne and Hall. Motion carried by quorum.

**CONSIDERATION OF LAKESHORE PERMIT: HALL**

Present at the May 13, 2004 11:00 A.M. Meeting were Commissioners Hall and Watne, Planner Traci Tull and Clerk Eisenzimer.

Tull reviewed Lake and Lakeshore Construction Permit filed by Lloyd Hall on Flathead Lake to armor approximately 340 feet of shoreline with logs, stumps and other items that have washed up in and around their shoreline. The shoreline is eroding at an extraordinary rate. General discussion was held Board recommends approval of permit as presented.

Commissioner Hall made a **motion** to approve Lakeshore Permit #FLP-04-58 with 22 conditions and authorize Chairman to sign. Commissioner Watne PT **seconded** the motion. **Aye**- Watne and Hall. Motion carried by quorum.



THURSDAY, MAY 13, 2004  
(CONTINUED)

**MEETING W/FORREST SANDERSON/PLANNING & ZONING RE: ACTION ON SETTLE SERVICES & AWARD CONTRACTS/FARM TO MARKET BIKE PATH & HELENA FLATS BIKE PATH**

Present at the May 13, 2004 11:15 A.M. Meeting were Commissioners Watne and Hall, Planning and Zoning Director Forrest Sanderson, Planner Peggy Goodrich, Steve Settle of Settle Services, Greg Sandon of Sandon Construction, Deputy County Attorney Jonathan Smith, Kyle Schellinger and Clerk Eisenzimer.

Forrest Sanderson began with I spoke with CTEP this morning they will not issue a letter of concurrence until the Board of Commissioners has resolved this protest. They're ready to take action based upon whatever it is you do, but they will not authorize us to proceed or issue concurrence letters until you have dealt with this protest. That's all I know about at this time, Jon and I had spoken about it, that's the reason I asked that Jon be here to make sure nothing had changed on his end in terms of what your rights, privileges and obligations would be under the CTEP program.

Commissioner Hall questioned Forrest and your recommendation is?

Sanderson requested they deal with the protest, we need to move forward, we're rapidly closing in on the start of construction dates for both of these projects.

Commissioner Hall continued Bob, I think I'm ready to make a motion.

Steve Settle addressed the Board with I'd like to provide some input that I think is certainly viable.

Commissioner Hall responded I guess we could take that, I know that our study of the issues gives us as Commissioners the option of denying or approving your request. It's kind of like the onus is back on us so if you want to present something, Bob, you're the chairman today.

Commissioner Watne allowed Mr. Settle to speak.

Steve Settle began two or three arguments that I would make and points of issues I would bring forth is that and I'll share this with you. The first point is it comes off of the county's website and it depicts the part of the issue the commissioners' duty to secure services for the least amount of cost to the residents. That by my interpretation then the Board of Commissioners is duty bound to provide services for the residents and county at the least cost. Now, this rhubarb comes about number 2, the CTEP special provisions have you gentlemen reviewed these? I'd like to read into the record if I might please. This special provision which is a function of the CTEP lays out provisions by which a bid must be or will be rejected as non-responsive and provisions where one may be rejected. That's the owner's privilege to reject or accept and if this were a project that had a specific goal or quota for DBE participation, even if the contractor blatantly ignored those, this provision provides you with the opportunity to waive that as a condition and accept a bid that is in the best value for the county. That's what this gives you. The intention here is to utilize the system as best it can be. This is a 0-0 participation in it. It comes to the issue of the bidder's list, now, a minor technicality lies on the bidder's list. No argument apparently, our staff faxed you the empty list instead of the completed list. That's an error that does constitute an irregularity by definition and you folks can and have the authority to waive that irregularity and accept this bid. And in as much as that rejecting this bid on that minor technicality could cost the residents of the county nearly \$70,000 that's \$69,000 and change, it would hardly seem in best interests of the residents of this county to pay \$70,000 more for the job, you can buy a lot of bike trail for \$70,000; close to a mile. The money to get this is hard to come by to start with. Then we get into the issue of the bidder's list. The bidder's list was submitted within the right time as prescribed by the technical part of that. What the irregularity was is that you got one that was blank that didn't have the name of the bidder's on it. And, under the CTEP DBE requirements, paragraph 2 lines it out. It said the bidder's list will be used to gather information for use in determining appropriate DBE goals for upcoming fiscal years. It's a statistical gathering form, it's not a contractual document. It's not as if that one due diligence was ignored in its entirety. And then you get to looking at the bidder's list you read it and it says if my list is going to be deemed irregular and the bid rejected, then for consistency you read the bidder's list, it says it must include all the contractors, not may or one, it says it must include all the contractors that have provided the bidder with a quote or subquote for estimate information. I've obtained a copy of the two submitted, one from Schelling's and one from Sandon and there's an irregularity on both. Schellinger's fails to list Flathead County Electric as the provider for the relocation of the power pole. At what point in time, I mean if you're going to split hairs, what point in time if that's the case, you're going to have all the bids out and start all over; but that's not in the best interests of the taxpayers either. Mr. Smith is here, the County Attorney, he rendered an opinion at the last one and recommended that the county reject the bids and when I visited with Jonathan Smith after the fact, he stated and you can hear if this is incorrect. He did not consider the additional cost to the county in his opinion. The recommendation was not based upon that. I take exception to that, I would challenge that as the best advice to the county because that's not getting the best value for the residents. This whole rhubarb came about because one of the bidders or two of the bidders, the second place bidders were disappointed. This brings us to the next one, past practice. We've built three of these bike trails, the last one that we built documents are here, the originals are here, were project bid on the 21<sup>st</sup> of July, the project was sent forward to CTEP and they sent it back and said fill out the bidder's list, we need to have it. The document's right here for your review if you want to take a look at it. They sent it back, sticky note here on the bottom here from Steve Lorch on the 24<sup>th</sup> of August. Back to the point, this is a minor technicality here, this is not something to cost the residents of the county another \$70,000 for the same job. If one interprets the duties of the Board of Commissioners as per the website description to provide services for the least cost and when you have demonstrated here the ability to provide that service for a cost of nearly \$70,000 less. If the Board of Commissioners ignores that ability then that brings a whole new set of questions. With that I'll be glad to answer any questions that anyone may have. One final thing, we need to have consistency in application of rule. You did it one way two years ago; you probably ought to follow through with it.

Jonathan Smith added just that how important is the DBE to you. If it's clearly something that should be complied with and it's an irregularity and I don't know how to judge how important that is if it's important to some people. You might also ask if anyone else has anything to say as long as you listened to one of them. I don't have anything to add, I think it's an irregularity that the bidding documents allow you to waive if you find reason to waive. If you don't find reason to waive it, you don't have to.

Greg Sandon continued I agree, I mean it is a bid that ought to be filled out correctly and in the first place it shouldn't even have been opened up. I mean it should have been opened up and once you saw that the signatures and the bid documents weren't filled out correctly, they should have just set it off to the side. If I'm not mistaken, the last bicycle path I did bid on, one that we're working on now, if I'm not mistaken I believe Steve might not have signed that and they threw it off to the side.

Steve Settle responded, no that's not the case, it was read.

**THURSDAY, MAY 13, 2004  
(CONTINUED)**

Kyle Schellinger then added as far as importance, you can't judge the DBE, I mean that's on the bidder's list just as much as the bond is on your bid documentation so I mean, you can't they're all of equal importance. Why put them on there if they're not. A bond is for sure needed and if you opened it up and saw there's no bond it wouldn't even be a question and it would be thrown out immediately, it wouldn't even have been read. So, the DBE is third in line, right below the bid bond. It doesn't say contractor gets to pick and choose which one they want to comply with and not comply with.

Steve Settle explained I would offer some rebuttal. The representation that the DBE is in line with the bid bond. The contract documents were real specific about what the requirement is and what it isn't. There isn't any question that it was a minor oversight, it's a minor technicality. This particular issue is and this data here is a statistical gathering data for use at sometime in the future. What they do is they look on this list of bidders here to see if that DBE certified bidders were quoting on particular jobs. It's a statistical gathering data and to represent that this is a contractual requirement that is as important in this particular bid as is the bid bond is not accurate. The contract documents very clearly say that it's not.

Commissioner Hall added if other bid documents have been rejected for this same thing, it's like...

Steve Settle continued I don't know that other bids have been rejected for the same thing. In fact back to the point that I made a few minutes ago that we're talking about the bidder's list. You got a copy of it there, you can read it. And, if the bidder's list, this one has been interpreted by the County Attorney as being irregular, nor was it that. It is regular. I would argue if it's irregular because it didn't have that on it, it would be equally irregular to have a bidder that you did not put on it. In the one particular case, Flathead Electric Coop was a bidder, they're not the only provider, but they're a bidder and they are listed that they have to be the one used and it was omitted on the Schellinger bid. That's splitting hairs too fine as to whether list, but if you're going to get to that point, you know it gets to what's in the best interest of the residents of this county. Now if you folks feel that that list, if that minor technicality is worth \$70,000 and the hoopla that will come about as a result of that, so be it.

Commissioner Hall responded so you're basically threatening hoopla.

Settle answered no I'm just telling you that this has been discussed with a number of other folks and the action of the Board is going to be criticized either direction you go. The contractors that have bid this job are going to be madder than hell about it or every resident that finds that they spent \$70,000 for something they didn't have to is going to be equally angry.

Commissioner Hall explained we as a commission depend heavily upon our staff and our attorney's opinions so I guess, where does CTEP money...

Forrest Sanderson continued it's federal money part of the Transportation Act, provided at the federal level every year. The DBE is a federal requirement, I wasn't going to go there but I am. The reality of it is it's admittedly its an irregularity. It's not just statistical data, that data translates to direct DBE requirements on future projects instead of getting 0%, if we don't use the Disadvantaged Business and Enterprises our goals will be increased in the future. It has significance on future projects, it's not just data that's kept somewhere in a file cabinet. It translates to hard fast requirements that we have to meet in the future. I guess the last thing. I've hammered on this for three years; I refuse to be tied to some of the shenanigans that went on at the Flathead Regional Development Office. I wasn't on the committees that recommended whatever went on that Steve Lorch signed. Consistency, there's a new person doing the administration of the program. Tom and Steve did a fine job of building a lot of trails but they did things different than I personally would. I don't like chasing sheets of paper when things can be complete up front. Is it minor, is it major, are you going to waive it, that's your call. I won't tell you what to do there but it has implications on what happens in the future and what FRDO did, I don't care.

Commissioners Hall and Watne speaking together, that really isn't a part of this. Has CTEP given you an opinion on this?

Forrest Sanderson answered CTEP has not issued a letter of concurrence. They are waiting for you, the owners, to deal with this issue. Once you have dealt with the issue they will either concur or not. They reserve that right post you making a decision.

Steve Settle then continued I reviewed the bidders on both of these trails with the list of DBEs to respond to Forrest, and none of the listed bidders on any of the bids on any of the bidders list are qualified DBE's. None of them on the list that we completed that you didn't get are qualified DBE's. If you ignored some thing where you had folks that were for example if Schellinger Construction or Sandon Construction had qualified DBE's on their bidders list and Settle didn't have qualified DBE's on its bidders list, then what Forrest says would have merit regarding the implications of points in time in the future. But in as much as none of them were DBE's, this is a whole lot of hoopla about a whole lot of other issues.

Commissioner Hall responded well, I don't agree with that. I mean you're telling us why we're doing what we're doing. What we're doing is trying to follow the process to the letter. That's our mandate also and if you haven't followed that then I mean my feeling is to readvertise but that puts our projects behind and we can't do that. I mean it's you're the one that put us into this position by not filling out the paper work the way that you were asked to and you've done enough of these to where you should have known that and now you're putting it back on us that if we don't we're going to have a big community uproar and I don't appreciate that. There's a way to fill these things out and as a professional contractor you should know to do that.

Peggy Goodrich added we're also going to have a big community uproar if we don't build that Farm to Market trail this summer.

Steve Settle finished his comments with it's not a matter that it wasn't filled out, everybody makes errors, this was a staff member who picked up the wrong form and put it on the fax, to the commissioners and the engineer and to the planning office. That was an error, its not that something was ignored. It wasn't something that people didn't do and they tried to eliminate it. It was an error, no question about that. That's why you folks have the broad enough authority that you have to look at that and make a valued determination. None of us here are going to agree on what that determination should be.

Commissioner Hall continued well we also again as I stated earlier, we strongly rely upon the recommendation of our attorneys and our staff and our staff and attorneys recommendation was to get on with the project and turn down this bid because it wasn't completed according to, Bob, how do you feel about it?

Commissioner Watne agreed well, I feel the same way. I need a motion one way or another.

**THURSDAY, MAY 13, 2004  
(CONTINUED)**

Commissioner Watne made a **motion** to deny the protest and award the bids to Sandon and Schellinger on the respective projects. Commissioner Hall **seconded** the motion. **Aye** – Watne and Hall. Motion carried by quorum.

**11:45 A.M. Commissioner Hall attended meeting w/Wally Massey & Ken Kramer**  
**7:30 P.M. Fair Board meeting at Fair Office**

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on May 14, 2004.

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**FRIDAY, MAY 14, 2004**

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

**12:00 P.M. Commissioner Hall attended Federal Retirees Speech at Buffalo Hills Terrace**  
**4:00 P.M. Commissioner Hall attended RAC meeting at Commissioners Meeting Room.**

At 5:00 o'clock P.M., the Board continued the session until 8:00 o'clock A.M. on May 17, 2004