



MISSOULA COUNTY ZONING BOARD OF ADJUSTMENT

Meeting Minutes

Missoula County
Planning, Development & Sustainability
(406) 258-4657

Date:	December 17, 2025, 6:00 pm
Location:	Missoula County Courthouse, Sophie Moiese Room (in person) or TEAMS (virtually)
Members in Attendance:	Babak Rastgoufard, Andy Mefford, Rick Hall
Members Absent:	Jennifer Schultz

- I. **CALL TO ORDER [Time stamp – 00:00:23]**
Chair, Babak Rastgoufard (Babak) called the meeting to order at 6:00 p.m.
- II. **ROLL CALL [Time stamp – 00:00:28]**
Jill Johnson called roll. Three regular members were present at the time of roll call. A quorum was met.
- III. **APPROVAL OF MINUTES [Time stamp – 00:01:13]**
Andy Mefford (Andy) moved, and Rick Hall (Rick) seconded the approval of the November 19, 2025, meeting minutes as written. The motion passed unanimously.
- IV. **PUBLIC COMMENT ON NON-AGENDA ITEMS [Time stamp – 00:02:35]**
There was no public comment on non-agenda items.
- V. **STAFF ANNOUNCEMENTS [Time stamp – 00:03:28]**
Staff informed the Board that member, Ben Yawakie resigned from the Board.
- VI. **PUBLIC HEARINGS [Time stamp – 00:04:07]**
 - a. **Kathleen Arthur, Planner II, Missoula County – 3614 Highway 200 E. – Special Exception [Time stamp – 00:04:11]**

STAFF PRESENTATION [Time stamp – 00:04:33]

Kathleen Arthur (Kathleen), Planner II with Missoula County, Planning, Development & Sustainability (PDS), presented a Special Exception request from Michael Morgan, managing member of Sunsup, LLC (Applicant). The Applicant desires to incorporate slopes greater than 25% into a development on a parcel of property located at 3614 Highway 200 in East Missoula (Highway 200 Property).

Kathleen presented the project background and provided a map of the location of the Highway 200 Property along with a Site Plan showing the layout of the proposed development across six lots. The Applicant proposed a mixed-use development combining multiple household dwellings with small business commercial space. The Highway 200 Property is zoned Neighborhood Center (NC) where the primary intent of that zoning district is to provide convenient access to goods and services within

walking distance to and from adjacent neighborhoods and to support a horizontal and vertical mix of residential and commercial uses.

Section 7.1, Hillside and Ridgeline Development Standards of the Missoula County Zoning Regulations effective July 1, 2022 and revised September 14, 2023 (Zoning Regulations) applies to all property and developments located on slopes greater than 10%. The Highway 200 Property contains slopes greater than 25%. Additionally, and pursuant to Section 7.1.C.2 of Zoning Regulations, development on slopes greater than 25% may only be permitted by Special Exception approval from the Missoula County Zoning Board of Adjustment (Board). Kathleen noted that the only area impacted by slopes greater than 25% is limited to Lot 6 of the proposed development, located towards the rear portion of the Highway 200 Property triggering the Special Exception requirement. Kathleen confirmed that the entire proposed development would be subject to all remaining zoning requirements of the NC zoning district at the time of permitting.

Kathleen provided images of the existing conditions and explained that a former owner previously excavated the site, creating the cutbank area at the foot of the steep slope, positioned to accommodate both a foundation and a retaining wall. The Applicant's proposal involves no on-ground development on slopes greater than 10%, with the only impact to slopes exceeding 25% being a retaining wall and foundation in the northwestern corner of the site, constituting the only proposed construction on slopes over 25%.

Kathleen outlined the review criteria established in Section 11.6.D.2 of the Zoning Regulations which must be met to approve a Special Exception request:

- 1. The proposed use or development will be compatible with and will not substantially injure the value of adjoining property.** Kathleen explained that the proposed development will include residential multi-family housing and commercial buildings, consistent with surrounding land uses that include high density housing, a trailer park and commercial uses. The neighboring property to the west is a townhome community that shares the same back slope as the proposed development. The Applicant provided a copy of a 2017 Geotechnical Report completed by Todd Lorenzen, P.E. of Lorenzen Soil Mechanics, Inc. for the adjacent property known as East Village Townhomes (Lorenzen Geotechnical Report), along with a letter from Todd Lorenzen confirming that analysis would be applicable to the Highway 200 Property. The Lorenzen Geotechnical Report showed stable slopes and provided recommendations for safe construction. Applicant confirmed that the engineer would be present on-site during construction to verify slope materials and orientation and that the stormwater and drainage plans would be reviewed and approved by Missoula County Public Works (Public Works) prior to construction. Staff found that the proposed development would be compatible with and not injure the adjoining properties.
- 2. The proposed use preserves the character of the district, and the property is suitable for the use proposed.** Kathleen reiterated that the Highway 200 Property is suitable for the uses proposed and that the proposed development would preserve the character of and would align well with the NC zoning district as it is designed to supply neighborhood scale commercial uses as well as multi-family housing, meeting all requirements of the Zoning Regulations and the regulatory requirements of planning, public health and public works.
- 3. Substitute or additional design standards will preserve and protect the area's architectural and aesthetic qualities.** The building on Lot 6 will be

stepped back into the hillside in accordance with Section 7.1.D.9 of the Zoning Regulations, to better fit the natural topography of the slope and maintain the aesthetic qualities of the Highway 200 Property. A pedestrian friendly trail and resting space would be integrated into the natural landscape of native grasses and trees on the undeveloped hillside behind the proposed development and be available for use by the residents.

4. **Section 11.6.D.1.a through m. of the Zoning Regulations shall have been considered prior to granting a Special Exception.** Kathleen evaluated the proposed development and confirmed that it was in compliance with all of the criteria set forth in Section 11.6.D.1.a. through m., pointing to the Staff Report for details associated with comprehensive evaluation.

The fifth criterion, requiring the proposed development to support a Tax Increment Financing (TIF) Special District is not applicable to the proposed project as the Highway 200 Property is not located within a Target Economic Development District, required for TIF Special Districts.

Next, Kathleen outlined additional conditions under Section 7.1.C.2 of the Zoning Regulations pertaining to hillside and ridgeline development on slopes over 25%, which also must be met to approve a Special Exception request, as follows:

- a. **The activity will not result in accelerated erosion or create hazardous conditions on the site or on adjacent property, as demonstrated by an erosion and sediment control plan and supporting evidence.** Kathleen acknowledged that the cutbank has created a potential hazard on the Highway 200 Property. However, the proposed retaining wall would mitigate those hazardous conditions by reducing erosion and maintaining slope integrity above the retaining wall. Stormwater drainage has been incorporated into the design of the retaining wall to manage runoff and slow erosion. Kathleen reiterated that all stormwater plans are required to be reviewed and approved by Public Works as a condition to the issuance of a permit. As previously noted, the Lorenzen Geotechnical Report concluded that due to the close proximity of the proposed development to the East Village Townhomes, the slopes behind the proposed development are expected to be stable if constructed in accordance with the grading plan's geometry. Staff concluded that this satisfied the requirement.
- b. **The applicant considered and evaluated alternative locations for all development (including structures, buildings, retaining walls, roads, driveways, parking areas, and other infrastructure) on non-steep slopes (those less than 10% percent) and can demonstrate these locations are either inappropriate or infeasible.** The portion of the development affected by slopes greater than 25% is limited to the corner of Lot 6. Kathleen noted that the Applicant explored alternative site design concepts before selecting the proposed approach as the alternative to avoid development of the cutbank area would result in unmanaged stormwater runoff and create a more hazardous condition. Refilling the cutbank would require a significant amount of fill and large disturbance to area including neighboring properties. The majority of the proposed development would occur on slopes of 10% or less. Staff determined that development of the cutbank would minimize the overall site disturbance and resolve the potential hazard associated with unmanaged runoff.
- c. **Surface runoff will not create unstable conditions, and appropriate stormwater management facilities will be constructed as necessary.** The civil engineer for the proposed development designed a stormwater drainage

system for purposes of managing runoff and mitigating erosion issues. The stormwater plan is required to be reviewed and approved by Public Works prior to permitting.

Kathleen concluded that the proposed development satisfied all applicable review criteria and hillside development requirements established in the Zoning Regulations.

Staff reported receiving comments from relevant agencies with the most notable comments from the (i) Missoula County Office of Emergency Management which expressed concerns about the potential for avalanche activity to occur on the east slope in the area of Lot 6. Although there has been no recorded avalanches in that particular area, there is a history of avalanches on both the east and west sides of Mount Jumbo and under the right conditions, a destructive avalanche could occur in the area of Lot 6 and (ii) Missoula County Parks, Trails and Recreation Department which noted the avalanche risk, but also raised safety concerns associated with the public trail above Lot 6 and recommended implementation of various safety measures, including fencing above the retaining wall, to prevent accidental injury.

Kathleen recommended approval of the Special Exception subject to 3 conditions of approval which included:

1. That all other necessary permits administered by agencies other than Planning, Development, and Sustainability shall be obtained by the property owner or designated representative which permits may include, but are not limited to, building, zoning compliance, electrical, mechanical, approach, and sanitation permits.
2. Pursuant to the geotechnical analysis, Todd Lorenzen, or an equally qualified engineer, shall be present prior to and during the slope flattening to verify the slope materials and orientation.
3. Final construction shall incorporate recommendations from the Lorenzen Geotechnical Report and notations of where the Report's recommendations are being applied should be shown on the building permit application plan set. These recommendations are found in Sections: 3.3 Foundations, 3.4 Foundation Walls, 3.5 Slabs-on-Grade, 3.6 Exterior Flatwork, 3.7 Fresh Concrete, 3.8 Underground Utilities, 3.9 Groundwater Table and Surface Water, 3.10 Seismic Considerations, 3.11 Shrink/Swell Characteristics, 3.12 Typical Section, 3.13 Compaction and Fresh Concrete Testing Frequency of the Lorenzen Geotechnical Report.

See PowerPoint presentation slides.

BOARD DISCUSSION [Time stamp – 00:15:39]

The Board did not have questions initial questions for staff.

APPLICANT PRESENTATION [Time stamp – 00:16:10]

The civil engineer, Matt Hammerstein of Woith Engineering, attended in person, while the Applicant and project architect and managing member of Applicant, Michael Morgan (Mike) of Hoffman Morgan & Associates, participated online. Mike explained that the proposed development would not be on the hillside, but rather up to the toe of the hillside and that no development would occur on slopes greater than 10%, Mike noted that the previous owner excavated that area approximately 50 years ago. The soil consists of decomposed granite that is similar to concrete mix and despite it having been excavated 50 years ago, the area shows no significant signs of erosion

confirming the stable conditions referenced in the Lorenzen Geotechnical Report. Although the soil is stable, Mike acknowledged the inherent potential hazards associated with a cutbank and steep slopes. To mitigate the hazard potential, Mike stated the proposed solution to construct a retaining wall is “textbook” for this type of terrain and explained that the building on Lot 6 will be constructed within that retaining wall to create a safe and elegant solution.

Mike explained that, in his experience, the retaining wall and stormwater control measures are straightforward and will effectively control erosion, ensuring the proposed development meets all requirements for a Special Exception associated with hillside construction. Regarding avalanche concerns, it was noted that while avalanches have occurred in the area, they were farther up the canyon on larger, exposed slopes. Having worked in avalanche-prone areas, Mike did not believe this location was at risk, citing historical data that supported this conclusion.

BOARD DISCUSSION [Time stamp – 00:21:03]

Rick asked whether it is common to extrapolate findings from the Lorenzen Geotechnical Report to adjacent areas. Matt explained that such decisions are typically made by the geotechnical engineer who conducted the analysis. In this case, test pits were dug near the proposed development on the property to the south, and Todd Lorenzen determined, based on professional judgment and supported by the letter provided to the Applicant, that the recommendations in the Lorenzen Geotechnical Report were appropriate. Following those recommendations, Todd Lorenzen will be present during excavation to verify the soils and as well as supervise backfilling after construction of the retaining wall.

Rick raised a question regarding the site and grading plan asking for clarification on which structures were apartments versus commercial uses. In response, Mike explained that the development follows a traditional approach where the portion of the project facing Highway 200 is intended to be commercial and will likely be developed in phases to allow time for future highway improvements. The remainder of the development will consist of multi-family residential buildings toward the rear of the site. Buildings closer to the highway will be mixed-use, featuring commercial space on the ground floor with residential units above. Construction will begin at the rear of the site and move forward, with infrastructure installed in the same sequence.

Mike further noted that the existing commercial building, previously served as a service center for Anchor Marine, will be re-purposed for continued commercial use.

PUBLIC COMMENT [Time stamp – 00:26:54]

There was no public comment.

BOARD DISCUSSION [Time stamp – 00:27:44]

Andy believed the Application was appropriate noting that existing regulations already allow certain facilities, such as roads and other amenities, to be constructed slopes that are 25% and that this request was not unprecedented. Andy further pointed out that the proposed development would ultimately eliminate the 25% slopes on the site, making it a good fit for approval of the Special Exception.

Rick recently visited the Highway 200 Property and supported the proposed development as it would significantly improve the existing conditions while remaining consistent with the character of the surrounding area. Rick as was also in support of inclusion of commercial uses along the front of the site, noting that it would align with what East Missoula residents have been requesting.

RECOMMENDED MOTION [Time stamp – 00:30:41]

Andy made the following motion, and Rick seconded the motion:

THAT the Board of Adjustment approve the Special Exception Request from Mike Morgan to deviate from Chapter 7.1.C of the Missoula County Zoning Regulations, as presented in the application, SUBJECT to the recommended conditions.

BOARD DELIBERATION

There was no additional deliberation by the Board.

VOTE

With no further discussion, the Board voted by roll call, and the motion passed unanimously.

AYES - (3): Rick Hall, Andy Mefford, Babak Rastgoufard

NAYS - (0): None

b. Kevin Dantic, Planner I, Missoula County – 20843 Gilman Creek Road – Appeal of Administrative Decision [Time stamp – 00:31:46]**STAFF PRESENTATION [Time stamp – 00:32:16]**

Kevin Dantic (Kevin), Planner I with Missoula County, Planning, Development & Sustainability (PDS), presented a request for an appeal of an administrative decision submitted by Jesse Kodadek (Jesse) of Parsons, Behle & Latimer, P.C. attorney for Arrowleaf Gulch, LLC (Arrowleaf) and Cameron Schmitz (Cameron) and Faith Schmitz (Faith) (collectively, the Appellants) on October 29, 2025. The request for appeal was submitted by the Appellants pursuant to Section 11.6.B of the Zoning Regulations and in accordance Montana Code Annotated (MCA), 76-2-226.

Kevin explained the appeal is associated with the issuance of a Land Use and Zoning Compliance Permit LZ25059311 issued on July 11, 2025 to Kee Holdings, LLC (Land Use Permit) in connection with existing and proposed uses and structures on 20843 Gilman Creek Road (Gilman Creek Property). Kee Holdings, LLC (Kee Holdings) is the owner of the Gilman Creek Property and was represented by its member, Brad Isbell (Brad).

Kevin provided a map showing the Gilman Creek Property, located 4.2 miles west-southwest of the Clark Fork River and Harpers Bridge and accessed via Deep Creek Road. The property is in a rural, narrow valley with open land, no residential structures, and steep forested hillsides. The Gilman Creek Property is zoned Agricultural Working (AGW 40), however, is not primarily used for agricultural activities due to most of the parcel containing extensive slopes that are greater than 25%.

Next, Kevin walked through the process associated with the issuance of the Land Use Permit which began in early 2025. In February 2025, the Missoula Family YMCA (YMCA) proposed entering into a use agreement with Kee Holdings to use the Gilman Creek Property for its summer youth program known as Camp Ponderosa. The proposal provided that the youth program would transport day campers to the Gilman Creek Property on weekdays between July 14, 2025 and August 22, 2025, from approximately 9:00 a.m. to 4:00 p.m. for activities such as survival training, outdoor recreation, nature hikes, and disc golf. The YMCA proposed that Kee Holdings construct certain facilities, more particularly described in the staff report. On May 22, 2025, PDS received a request for investigation from Appellant, Cameron

Schmitz, owner of the neighboring property located at 20811 Gilman Creek Road. The complaint alleged that Kee Holdings installed and operated a disc golf course, hosted Boy Scout programs, was scheduled to host YMCA youth camps, and was considering additional public uses, all of which were believed to be prohibited commercial activities.

Staff conducted a site visit and investigation on June 2, 2025, and encouraged Kee Holdings to submit an application for a land use and zoning compliance permit for both the existing and proposed uses and accessory structures. The permit application was submitted on July 3, 2025 and the Land Use Permit was issued on July 11, 2025, which authorized two 10-foot by-20-foot shelters, a modified disc golf course layout, a CONEX box near the road and portable toilets, a parking area, gaga pits, an amphitheater gathering area, a BB gun range, and an archery range.

Section 2.3.C of the Zoning Regulations provides that the purpose of AGW zoning districts is to “conserve the integrity and quality of the rural character” and authorize certain uses consistent with that purpose. The Table of Uses in Section 2.4.G, Table 5, of the Zoning Regulations sets forth various permitted uses for AGW zoning districts, which includes campgrounds, guest ranches, open space, parks, active or passive recreation, and developed outdoor uses.

In its review of the permit application, staff determined that the disc golf course, summer camp, and outdoor retreat uses, as well as the associated accessory structures, met the definition of “Recreation, Developed Outdoor” uses, defined in Chapter 13 of the Zoning Regulations. The main purpose of “Recreation, Developed Outdoor” uses is to provide the public with outdoor recreational opportunities requiring varying levels of developed facilities and where tickets are sold or fees are collected for the recreational activity and which may include examples such as skiing facilities, mountain bike parks, zip lines and shooting ranges.

Furthermore, staff determined that the proposed uses were dependent on the rural location of the Gilman Creek Property and capitalized on the natural landscape, consistent with the definition of “Recreation, Developed Outdoor” uses. In the appeal filed on October 29, 2025, Appellants claimed the Land Use Permit improperly authorized uses which Appellants believed were prohibited under the Zoning Regulations as the Appellants considered the uses on the Gilman Creek Property to be commercial in nature, asserting a more appropriate use classification to be Recreation, Commercial Outdoor and Entertainment Venue, both of which would have been prohibited in an AGW zoning district. The Appellants also claimed staff improperly permitted a parking structure.

Kevin pointed out that pursuant to Section 11.2.A.14 of the Zoning Regulations, the Zoning Officer has the authority to interpret the meaning and intent of the Zoning Regulations and in accordance with Section 1.14.A.2 of the Zoning Regulations, such interpretations should be made in favor of property owners’ rights whenever possible.

When reviewing the permit application, staff determined that the scale and level of land disturbance associated with disc golf and youth camps on the Gilman Creek Property were not comparable to the uses associated with Recreation, Commercial Outdoor, defined as commercial businesses offering amusement or entertainment activities, such as batting cages, miniature golf, water slides, or amusement rides, all of which typically require significant permanent infrastructure. Additionally, staff determined that the amphitheater, consisting of log seating integrated into the natural landscape, did not meet the definition of an Entertainment Venue, which is defined in the Zoning Regulations as spaces dedicated to spectator events, such as theaters,

stadiums, fairgrounds, or racetracks. Finally, staff noted that parking structures are not specifically defined in the Zoning Regulations. At the time of issuing the Land Use Permit staff acknowledged that while signage and fencing existed, it was an undeveloped area which did not constitute a parking structure.

Under MCA, 76-2-226, Appeals to Board of Adjustment, the filing of an appeal stays activities authorized by the permit, though existing structures may remain unless the structures would cause imminent peril to life or property.

The Gilman Creek Property is subject to a conservation easement held by Missoula County and administered by Five Valleys Land Trust (FVLT). The conservation easement was not adopted as part of the Zoning Regulations, however, Missoula County's Open Lands Manager and PDS staff reviewed the Zoning Regulations and the Land Use Permit for consistency with the conservation easement. The Open Lands Manager concluded that the existing and proposed uses on the Gilman Creek Property did not violate or conflict with the conservation easement. It was noted that relocating permanent structures closer to the creek could constitute a violation, as it may impact fisheries and conflict with the primary purpose of the conservation easement. The YMCA was made aware of this, and FVLT reinforced these issues with landowners during its annual monitoring visit.

Staff reported receiving comments through the Missoula County Voice page expressing: (i) general support for the landowner's efforts to share land with the community and protect green spaces; (ii) support for making private lands available for youth and recreational programs; and (iii) the belief that the Gilman Creek Property is an exceptional, family-friendly place for recreation.

Kevin stated that pursuant to MCA, 76-2-223(1)(a), Powers of the Board of Adjustment, the Board, in its quasi-judicial capacity, has the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Regulations.

Kevin recommended denial of the request to appeal the administrative decision and recommended that the Board affirm staff's evaluation of the Zoning Regulations and final approval of the Land Use Permit.

Kevin further recommended that the Board recognize that at the time the Land Use Permit was issued staff, in its capacity as Zoning Officer under Section 11.2.A.14 of the Zoning Regulations:

- (i) correctly interpreted the allowable land uses for an AGW 40 zoning district and appropriately identified the uses including a disc golf course, summer camp and outdoor retreat, along with the supporting accessory structures, as meeting the definition of Recreation, Developed Outdoor; and,
- (ii) (ii) correctly interpreted and applied the Zoning Regulations in favor of the property owner's rights.

Additionally, Kevin noted that the Board did not have the authority to decide the appeal in connection with the applicability of land uses under the conservation easement, as the conservation easement was not adopted through the Zoning Regulations.

See PowerPoint presentation slides.

BOARD DISCUSSION [Time stamp – 00:48:54]

Babak acknowledged the complexity of the appeal as it related to the Board's authority and scope and held its initial questions for staff. With regard to the conservation easement, Missoula County Open Lands Manager, Jenny Zaso (Jenny) agreed with the information presented by Kevin and had no additional comments.

APPELLANTS PRESENTATION [Time stamp – 00:51:02]

Jesse appeared with Appellants and stated that the conservation easement is not independent of County authority because Missoula County, as the holder of the conservation easement, is required under Montana law to enforce its provisions. Jesse referenced Section 1.8 of the Zoning Regulations, which provides that the County has no administrative responsibility to enforce deed restrictions or covenants *unless* it is a party in interest. Jesse argued that, because the County is a party to the conservation easement, it has both the authority and the obligation to consider whether uses permitted under the Land Use Permit are consistent with the purposes of the conservation easement.

The Appellants alleged that the conservation easement prohibits commercial uses of the type authorized by the Land Use Permit and that the conservation easement only allows only one residential use per parcel, and that residential use must comply with the Zoning Regulations. Jesse argued that the conservation easement does not allow high-intensity commercial activities, such organized disc golf tournaments on the Gilman Creek Property, and that by allowing such uses would render the conservation easement meaningless.

Jesse disagreed with staff's interpretation of the law and the position that the Board lacks authority to consider whether the conservation easement prohibits the permitted uses, citing the powers of the Board in MCA, 76-2-223, which provide the Board with the power to hear and decide appeals where it is alleged there was an error in any decision or determination made by an administrative official in the enforcement of the Zoning Regulations and that the Board may make any decision or determination, as ought to be made and shall have all the powers of the officer from whom the appeal is taken.

Jesse contended that staff was required to consider the conservation easement prior to issuing the Land Use Permit and that the Board is likewise required to determine whether the Land Use Permit is consistent with the conservation easement when hearing the appeal. Jesse requested that the Board conclude that the conservation easement prohibits commercial use and rescind the Land Use Permit, asserting that Land Use Permit authorized fee-based commercial activities that violate the terms of the conservation easement.

Next, Christine Kirchner (Christine), a member of the appellant party Arrowleaf, explained that Arrowleaf acquired 158 acres of property near the Gilman Creek Property with the understanding that a conservation easement encumbered not only the Gilman Creek Property but also a portion of the property being purchased by Arrowleaf. Christine believed the conservation easement would permanently protect the property's quiet character, wildlife habitat, and natural resources, and that no commercial development could occur.

While staying on the property in July 2025, Christine observed a significant increase in vehicle traffic, dust, and activity within the area. Christine learned that organized disc golf tournaments and related commercial activities were being conducted on the Gilman Creek Property, raising concerns about whether the use was permitted and consistent with the intent of the conservation easement.

Christine expressed a desire to be good neighbors and long-term members of the Montana community and requested that the Board revoke the Land Use Permit, asserting that the authorized activities are commercial and inconsistent with the spirit and written word of the conservation easement.

Appellant, Cameron Schmitz relocated to the Deep Creek area three and a half years ago and like Christine, purchased adjacent property with the same understanding that there was a conservation easement on the property purchased by the Schmitzs' as well as on the Gilman Creek Property. Cameron understood the conservation easement to limit uses to agriculture, a single-family residence and a guest dwelling for non-paying guests.

Cameron stated that approximately 18 months ago, conditions in the area changed due to increased traffic, construction activity, and the installation of a disc golf course, including large tournaments that generated over 200 vehicles and significant camper traffic through neighboring properties.

Cameron discussed concerns with Brad regarding speeding, safety, dust, fire risk, and overall impacts to daily life, noting that additional uses were planned, including camping, weddings, and youth camps.

Cameron questioned the permitted uses and was of the opinion that the activities occurring on the Gilman Creek Property constituted commercial uses and uses similar to that of a daycare, which would correspond to the uses defined in the Zoning Regulations as Recreation, Commercial Outdoor and Event Venues, neither of which are permitted in AGW 40 zoning districts. Cameron expressed frustration that the Land Use Permit was approved despite the restrictions set forth in the conservation easement and in the Zoning Regulations, noting that the changes had permanently altered the character of the area. Cameron requested that the Board fully review the conservation easement and zoning designation and revoke the Land Use Permit.

BOARD DISCUSSION [Time stamp – 01:07:38]

Acknowledging that Jesse primarily spoke to the claims surrounding the conservation easement, Babak questioned whether the Appellants continued to challenge the permitted land uses specifically associated with the Zoning Regulations. Jesse confirmed Appellants were maintaining the claims related to zoning compliance determinations and the relationship of those permitted uses to the conservation easement.

LANDOWNER PRESENTATION [Time stamp – 01:09:16]

Brad, a member of Kee Holdings, LLC, has owned and managed private forestland in the area for nearly 40 years. Considering himself a steward of the land, Brad explained that the vision for the Gilman Creek Property was to open private land for public enjoyment by providing educational and recreational opportunities for youth. Brad has completed extensive training through the MSU Extension Service in forestry, riparian and stream management, wildlife habitat management, wildfire mitigation, and forest road construction. Brad has also obtained grants through the U.S. Department of Agriculture to implement and maintain natural resource management plans and wildlife enhancement practices on the Gilman Creek Property for more than 20 years.

Highlighting a partnership with Five Valleys Land Trust to establish several other conservation easements within Missoula County, Brad noted a long-term commitment to preserving land for future generations. Brad opened the Gilman

Creek Property to youth and community organizations, including Scouts of America, churches, schools, universities, the YMCA, and the disc golf community with the intent of providing a safe, managed forest where people can learn, recreate, and experience Western Montana, responsibly.

Brad addressed the claims regarding commercial use and the conservation easement stating that the Gilman Creek Property has not been operated for commercial uses and that the Appellants may not fully understand the area's history. Brad referenced the December 12, 2025 letter attached to the agenda, explaining that the only commercial activity occurred at the Deep Creek Retreat, which had operated as a commercial use for approximately 20 years on a parcel owned by the appellants, Cameron and Faith Schmitz. Brad noted that this was the only property within the conservation easement that had previously hosted wedding venues and stated that no weddings had occurred on the Gilman Creek Property. Brad further explained that the original owner who placed the conservation easement on the Deep Creek parcels constructed several miles of road, commercially logged millions of board feet of timber, and bulldozed what remained of the historic town of Gilman, ultimately violating the conservation easement and eliminating its historical features.

Brad indicated that Arrowleaf never reached out to inquire how the Gilman Creek Property had been used over the past 25 years and was meeting Jesse for first time at the hearing on the appeal. Brad asked that the Board dismiss the appeal and indicated that it may be more useful to initiate a conversation regarding how to help private landowners work within the Zoning Regulations to provide public benefit.

BOARD DISCUSSION [Time stamp – 01:16:19]

The Board held initial questions for the owner of the Gilman Creek Property.

PUBLIC COMMENT [Time stamp – 1:16:52]

- Eli Catton, Senior Director of Youth Programs for the YMCA explained that the YMCA partnered with Brad to host summer camps at Gilman Creek Property. During discussions, Brad stressed the importance of land stewardship and respect for the conservation easement. Eli indicated that the YMCA camps focus on experiencing Montana's beauty with outdoor education, including Leave No Trace principles and wildlife awareness, aiming to cultivate the next generation of land stewards. Eli shared program statistics associated with the YMCA program and reported that over the final four weeks at the Gilman Creek Property, there were 10 visits with 140 campers equating to 312 camper-days, where 20.7% received financial assistance to attend. Eli pointed out that the Gilman Creek Property helped to provide many children with the opportunity to learn to positively interact with the natural world.
- Shirley Walker, a neighbor, expressed concern about increased traffic, dust, road damage, and commercial events, including tournaments advertised online. Shirley has lived in the area for over 20 years and chose the area due to the remote protected nature and specifically the proximity to the conservation easement. Shirley stated that the land would not have been purchased if a commercial venture had been planned in such close proximity. Shirley believed that the activities on the Gilman Creek Property conflict with those of a conservation easement and asked Board to revoke the permit for commercial uses.

- Tyler Pike, a member of the disc golf community, spoke in support of Brad's 25-year history of allowing access for youth groups and the disc golf community. For over 10 years, Tyler has been a volunteer with several local disc golf clubs including the Garden City Flyers and the Electric City Disc Golf Club and has been involved in trail conservation, event management and youth programming. Tyler challenged the claim that disc golf has a large physical footprint, pointing out that disc golf uses the existing natural features which create a low-impact activity comparable to hiking. Tyler was of the opinion that the activities on the Gilman Creek Property align with the AGW 40 zoning designation and have a significantly positive impact in the community, especially as it relates to youth programming with Scouts of America.
- Cody Davis has known Brad for over a year and described Brad as welcoming, kind and generous. Cody disputed the claims made by Cameron and reported instances of harassment and intimidation, including aggressive driving and interference with access. Cody appreciated Brad providing disc golf facilities and has participated in tournaments at the Gilman Creek Property which tournaments were on the scale of approximately 42 people, rather than the estimated 200 previously noted. Cody emphasized the community value of the Gilman Creek Property and the benefits of having proper amenities to reduce environmental impact.
- Tyler Callsen uses the Gilman Creek Property for disc golf and supported Brad. Tyler described disc golf as a simple, healthy, low-impact, non-commercial activity and stated that the claims about large events, speeding, and disturbances are exaggerated and believed those comments represented "Not in My Backyard" (NIMBY) behavior. Tyler indicated that the only disturbance experienced was neighbors discharging firearms to intimidate disc golfers. Tyler provided additional public comment and noted that other heavy vehicles, including garbage trucks, already travel the road, so buses associated with summer camps would not necessarily be an unusual or unique impact. Tyler asked the Board to uphold staff's original determination.
- Bruce Ammons, a long-time resident of the Deep Creek area and owner of Section 18 on Deep Creek Road, placed a strict conservation easement on that Section for purposes of protecting the wildness of the area. Bruce emphasized the importance of protecting the quiet, wild character of the land and stated that the new activities that brought increased traffic should involve proactive communication with neighbors. Bruce expressed concern that disc golf courses damage the land and indicated that many of the trees had bark knocked off from falling discs. Bruce also raised safety concerns regarding the deteriorating access road falling into the river and that higher traffic increases trespassing, poaching, and wildfire risks. Bruce provided additional public comment, clarifying that prior comments were intended to raise concerns rather than to be accusatory. Bruce acknowledged Brad's wildfire mitigation efforts but expressed ongoing concern about the risk of overnight fires becoming uncontrolled and questioned whether the road is safe for heavy vehicles, such as buses transporting children.

LANDOWNER RESPONSE [Time stamp – 1:49:32]

Brad indicated that community activities had been conducted on the Gilman Creek Property for 25 years and that the disc golf course is limited to supervised, permission-based events. Brad believed the new residents should have inquired about historical activities, rather than expect outreach from existing landowners.

Brad has completed approximately 20 years of fire hazard reduction work on the Gilman Creek Property and has been the only property owner in the drainage to undertake wildfire mitigation. On behalf of the Montana Forest Owners Association, Brad will be testifying in Helena on wildfire and habitat issues and was offended by claims that activities on the Gilman Creek Property create fire hazards.

Brad noted that traffic generated by occasional community events is minimal compared to daily residential traffic on the county road and pointed out that a nearby shooting range operates as a commercial venture, often hosting tournaments. Brad believed the concerns about impacts from uses on the Gilman Creek Property have been overstated, given the community benefits provided.

APPELLANTS RESPONSE [Time stamp – 01:52:56]

Jesse acknowledged that the Gilman Creek Property provides benefit to the community, however, the central issue was compliance with the conservation easement. Jesse emphasized that any use that violated the terms of the easement should not be allowed, regardless of intent or perceived public benefit.

BOARD DISCUSSION [Time stamp – 01:56:17]

Babak referenced MCA, 76-2-223, stating that the Board had discretion when deciding an appeal which is not limited to an all-or-nothing decision and explained that the statute allows the Board to affirm, reverse, or modify the decision, with broad authority in considering the matter.

Rick requested legal clarification from Deputy County Attorney John Hart (John) regarding why the Board should not consider the conservation easement and asked whether it was treated similarly to private covenants. John noted that staff reviewed the conservation easement, consulted with Five Valleys Land Trust, and independently determined that the proposed uses did not violate the easement, and that it was outside the scope of applying the Zoning Regulations to the permitted uses in the AGW 40 zoning district.

Acknowledging differing legal interpretations of the Board's authority to interpret and enforce the conservation easement, John was of the opinion, under MCA, 76-2-223, the Board's authority is limited to hearing appeals alleging error in decisions made in the enforcement of this "part", which is defined in its entirety as MCA, Title 76, Chapter 2, Part 2 and entitled *County Zoning* (Part 2).

John further explained that the zoning regulations applicable to the AGW 40 zoning district were also adopted pursuant to the statutory authority provided in Part 2 and that the Board's review was therefore limited to determining whether the permitted uses were within allowable uses of an AGW 40 zoning district as set forth in the Zoning Regulations, but it did not grant the Board the authority to make a separate determination that the permitted uses violate the conservation easement.

John indicated that the Board's decision could be appealed to District Court, where Montana law provides a District Court judge wide discretion in zoning determinations and further noted that the Court would *only* reverse the Board's decision if it found that the Board abused its discretionary powers and that the information upon which the Board based its decision was lacking *substantial* factual foundation. With that in mind, John noted that if the Board made a decision on both the interpretation of the permitted uses related to the zoning designation and the conservation easement, an appeal to District Court would not afford the Board the same deference it would receive if the decision were based solely on an interpretation of the Zoning Regulations.

Rick asked Brad to clarify how traffic was mitigated for events, including whether buses or carpooling were utilized, and requested confirmation of the number of parking spaces after counting approximately 42 vehicles in recent photos. Brad stated that groups such as the Scouts of America typically carpool extensively to minimize the number of vehicles traveling to the site and although carpooling is commonly practiced, it may vary on a case-by-case basis.

Brad noted that while traffic levels may appear high on one or two weekends per year, the overall vehicle use associated with hosted activities represents a small fraction of total roadway use when compared to regular traffic on the road, including travel to the shooting range, recreational driving, and access by area residents.

Andy noted that the primary issue is whether the Zoning Officer correctly determined that the uses on the Gilman Creek Property comply with the criteria for the AGW-40 zoning designation, or whether a different zoning designation would be more appropriate and in making the determination, did the Zoning Officer also consider the conservation easement.

Prior to the County's rezoning in 1994, the Gilman Creek Property was zoned CA-1 and then reclassified to the AGW 40 zoning district. Andy discussed whether the permitted uses qualify as "Recreation, Developed Outdoor," which is permitted in an AGW 40 zoning district, or instead constitute "Recreation, Commercial Outdoor," which is not permitted in the AGW 40 zoning district. The Board then carefully reviewed the permitted and prohibited uses for AGW 40 zoning districts set forth in the Table of Uses shown in Table 5 of Section 2.4.G of the Zoning Regulations and correlated the uses to the definitions set forth in Chapter 13 of the Zoning Regulations. The Board noted that the Zoning Regulations do not clearly define the terms "commercial" or "developed".

Additional discussion focused on the scale of construction of a disc golf course compared to that of a miniature golf course, the physical disturbance to the land, the frequency of events, and associated traffic, many of which Jesse considered high intensity activities not permitted by the conservation easement and which more closely resemble the uses described in the definition of Recreation, Commercial Outdoor.

After the Board's review of the definitions of Recreation, Developed Outdoor and Recreation, Commercial Outdoor, Babak argued that uses defined in Recreation, Developed Outdoor, permitted in an AGW 40 zoning district, such as mountain bike parks, ski areas, or shooting ranges can also involve physical land disturbance, suggesting that disc golf may reasonably fall within that definition.

Andy agreed with staff's original determination that the activities on the Gilman Creek Property appropriately aligned with the definition of Recreation, Developed Outdoor uses and noted that conservation easement did not explicitly prohibit commercial activity, but allowed uses such as guest ranches and guest houses, agricultural activities, and single-family residences. Andy believed it would be difficult for the Board to grant the request for the appeal based solely on an evaluation of the conservation easement, as the conservation easement does not explicitly prohibit certain activities such as commercial activities.

Jesse acknowledged the historical uses but reiterated concern that conservation easement violations remain enforceable in perpetuity. Jesse then stated that the conservation easement instead specifically defines allowed uses, with the purpose of limiting intensity of use and preserving the land's character, noting that the restriction

to one residence per parcel implies a prohibition on commercial use, high-traffic and event-based activities where fees are collected. Jesse argued that if the omission of uses in the conservation easement did not operate as a restriction, then the conservation easement would not have a purpose.

Acknowledging that the Board's decision was not "all or nothing", Babak summarized as (i) the role of the conservation easement in determining the allowable uses under the Land Use Permit and (ii) whether the permitted uses were correctly classified as Recreation, Developed Outdoor uses, permitted in an AGW 40 zoning district or whether the permitted uses were incorrectly evaluated and should have been classified under the definition of Recreation, Commercial Outdoor uses, not permitted in an AGW 40 zoning district. The Appellant also contested whether the permitted accessory structures, such as the pavilion, gaga pits and parking area or parking structure, support the allowable uses in the Land Use Permit.

Kevin responded to both issues by explaining that:

- (i) with regard to the conservation easement, the Board's role was to determine whether the Land Use Permit was issued correctly and whether due diligence was performed. Kevin pointed to Section 1.8 of the Zoning Regulations, which provide that Zoning Officer may, require such instruments such as covenants and deed restrictions, be submitted for review to ensure the provisions in such documents do not conflict with the Zoning Regulations. Kevin confirmed that staff completed its due diligence by consulting with appropriate agencies to confirm that the permitted uses did not conflict with the conservation easement; and,
- (ii) with regard to zoning, the Table of Uses set forth in Table 5 of Section 2.4.G of the Zoning Regulations shows that Recreation, Developed Outdoor uses are permitted outright in AGW 40 zoning district, while Recreation, Commercial Outdoor uses are not allowed. It was clarified that features such as the pavilion, gaga pits, parking areas, and similar improvements were considered a "right" associated with the permitted uses as those structures specifically supported the permitted activities. At the time of permitting, the Applicant submitted a site plan depicting the accessory structures, all of which staff reviewed for compliance with riparian protections, slope requirements, and other applicable standards.

Staff stated that Zoning Regulations did not specifically define the term "parking structure" nor do the Zoning Regulations provide definitions for the terms "commercial" or "developed." In accordance with Section 13.2.8 of the Zoning Regulations, where such terms are not expressly defined, the latest edition of Merriam-Webster's Unabridged Dictionary should be used.

APPELLANTS REBUTTAL [Time stamp – 02:59:04]

Christine interpreted the conservation easement as intended to preserve wildlife and the natural landscape, noting that it constitutes a burden on the 48 acres owned by Arrowleaf. Prior to purchasing the property, Christine conducted extensive research to better understand the landowner's options and limits, explaining that the conservation easement was like a pie, where the landowner only receives a slice of what is allowed, and that anything not specified as an allowable use, was excluded. Christine urged the Board to consider the purpose of the conservation easement and that if commercial development, such as pouring concrete for disc golf bases, were to be allowed, it would render a conservation easement meaningless.

Christine indicated that Brad does not reside on the Gilman Creek Property year-round like some neighbors, questioning whether a guest house for entertaining non-

paying guests is appropriate if it was not a primary residence. Christine was of the opinion that the activities on the Gilman Creek Property constituted a commercial enterprise and violated the conservation easement, asking the Board to revoke the Land Use Permit.

Christine then asked what would happen if the Land Use Permit were not revoked, questioning whether a cocoa stand, ski rental, or fee-based cross-country course could be built on the 48-acre portion of the property owned by Arrowleaf that is subject to the conservation easement.

Next, Cameron stated that the Zoning Regulations specifically prohibit certain uses in AGW 40 zoning districts, including Entertainment Venues and Daycare Centers. Based on the definition of Daycare in the Zoning Regulations, Cameron was of the opinion that the activities occurring on the Gilman Creek Property resemble a Daycare Center. Cameron urged the Board to consider both the Zoning Regulations and the purpose of the conservation easement to conserve the land in its natural state.

LANDOWNER REBUTTAL [Time stamp – 03:03:32]

Brad pointed out that the conservation easement specifically states that agricultural use of the Gilman Creek Property is not restricted. Brad stated that the Gilman Creek Property had been used to grow wheat both before and after the easement was placed and argued that large agricultural equipment would not violate the easement, whereas the current small-scale activities have minimal impact. Brad denied the claims about pouring concrete pads, stating that there was no concrete, but rather dirt adorned with a few logs for aesthetic purposes and small disc golf baskets comparable in size to fence posts. Brad intentionally avoided building a residence to minimize impact and provide safe access for youth organizations, and did not believe the activities violate the conservation easement or the Zoning Regulations.

BOARD DELIBERATION [Time stamp – 03:07:24]

Babak questioned the extent of the Board's review, posing it as potentially a two-step process by first, evaluating whether the conservation easement was relevant to the Zoning Officer's review in issuing the Land Use Permit and second, evaluating whether the conservation easement was interpreted correctly as it related to the proposed uses on the Gilman Creek Property. Babak believed that because the County holds the easement, it was appropriate for the Zoning Officer to review the document at the time the Land Use Permit was issued.

Babak was of the opinion that Board should only intervene if the conservation easement clearly applied to the permitting process and was *clearly* misinterpreted at the time of permitting, for example, if a prohibited activity had been approved by staff. However, Babak was not comfortable interpreting ambiguous easement language or determining impacts on wildlife or erosion, as doing so would require a fact-intensive analysis beyond the Board's authority.

Andy agreed that the Board's role was to review the Zoning Officer's determination and the application submitted in connection with the Land Use Permit along with the ancillary documents. Andy agreed that staff conducted reasonable due diligence, consulted legal counsel, and reasonably applied the conservation easement as an ancillary document where the permitted uses corresponded to those activities disclosed in the application and met the scope of activities defined in Recreation, Developed Outdoor which are allowable in an AGW 40 zoning district.

Rick agreed with Babak's rationale, that the landowner was forthcoming and truthful about the proposed activities on the Gilman Creek Property, which activities were appropriate for the AGW 40 zoning district and was in support of the Zoning Officer's decision in issuing the Land Use Permit. Rick pointed to the value Montanans place on property rights and recreational use of the land and its natural resources, which are supported by the conservation easement.

The Board acknowledged that other remedies exist, noting that alleged conservation easement violations are typically the responsibility of the easement holder and are often more appropriately addressed in court rather than through a zoning appeal.

The Board found that activities on the Gilman Creek Property align with the definition of "Recreation, Developed Outdoor" rather than "Recreation, Commercial Outdoor". Andy questioned Section 1.14.A.2, which directs the Zoning Officer to resolve ambiguities in favor of the landowner, noting that this could apply to either party in a dispute. Ultimately, the Board upheld the Zoning Officer's issuance of the Land Use Permit.

RECOMMENDED MOTION [Time stamp – 03:21:30]

Rick made the following motion, and Andy seconded the motion:

THAT the Board approve and adopt the recommended findings of fact and conclusions of law in the staff report and that the Board make the following decisions:

1. Affirm the Missoula County Planning, Development, and Sustainability staff decision that the uses approved in Land Use and Zoning Compliance Permit LZ25059311 fall under Agriculture, Working 40 (AGW 40) under the definition of Recreation, Developed Outdoor.
2. The appeal is denied.

BOARD DELIBERATION

There was no additional deliberation by the Board.

VOTE

With no further discussion, the Board voted by roll call, and the motion passed unanimously.

AYES - (3): Rick Hall, Andy Mefford, Babak Rastgoufard

NAYS - (0): None

VII. COMMUNICATIONS & SPECIAL PRESENTATIONS [Time stamp – 03:23:44]

There were no communications or special presentations.

VIII. COMMITTEE REPORTS [Time stamp – 03:23:44]

There were no committee reports.

IX. OLD BUSINESS [Time stamp – 03:23:44]

There was no old business.

X. NEW BUSINESS [Time stamp – 03:23:44]

There was no new business.

IX. COMMENTS FROM BOARD MEMBERS *[Time stamp - 03:24:01]*

The upcoming meeting schedule was discussed. There were no items on the January 2026 agenda, but staff noted the transition to a Consolidated Land Use Board and would be contact Board members in the coming weeks. Members expressed appreciation for the opportunity to serve.

X. ADJOURNMENT *[Time stamp – 03:26:22]*

The meeting was adjourned at 9:26 p.m. Missoula County Zoning Board of Adjustment December 17, 2025 – Transcription. This transcription was produced by transcription software. There may be discrepancies between this transcription and meeting dialogue. You can view the recording of the meeting at this link: <https://missoulacomt.portal.civicclerk.com/event/9749/media>.

Missoula County

Zoning Board of Adjustment

December 17, 2025 – Meeting Recording

JJ **Jill Johnson** 29:13
Good evening everyone.

Good evening everyone.

This is the Missoula County Board of Adjustment meeting Wednesday, December 17th, 2025.

It is 6:00 PM and I'd like to call this meeting to order and the 1st order item on our agenda is a roll call.

Roll call Rick Hall.

I see recall on the teams.

But hopefully you get acknowledged that he's here and can hear us.

Rick, are you there?

RH **Richard Hall** 29:52
Can you hear me?

JJ **Jill Johnson** 29:55
Yes.
Rick is present Jennifer Schultz.
Jennifer is absent. Andy mefford here.
Babek raskevard. Mr. Chair, there are three regular regular members present and quorum has been met.
Thank you.
The next item on the agenda is the approval of minutes from the December 19, 2025 meeting are there.
Any edits or corrections or would anyone like to move that they be adopted as submitted?
I did not see any edits or corrections I would offer, so I would offer a motion to approve the Minutes of November 19th 2025 as submitted.

RH **Richard Hall** 30:43
I'll second it.

JJ **Jill Johnson** 30:45
OK.
Any opposed to approving the minutes?
All right, the Minutes have been adopted.
The next item on the agenda is public comment on any non agenda items. So if anyone is here in the room physically or public, do you mind just going back on the minutes and doing a quick up down just so we get some eyes in?
We're going to go back to the minutes and I guess all those in favor of approving the motion say aye.

RH **Richard Hall** 31:14
Hi.

JJ **Jill Johnson** 31:15
Aye, aye.
Any opposed?

Thank you. The Minutes have been adopted.
I was trying to shortcut that and just seeing if there's any objections, but staff requested that we affirmatively adopt the Minutes, so went back and did that.
The next item on the agenda is any public comment on non agenda items.
So if anyone is here physically in the room or attending virtually and wishes to provide comment to the board on anything other than the two items on tonight's agenda, their two public hearings.
And I'll identify those two hearings in a second.
Now would be the time to do so.
So again, if if you if you're here to offer comment on anything other than the 3614 highway 200 E special exemption or.
The 20843 Gilman Creek Rd.
Appeal of administrative decision. Again, if it's. If you're here anything other than those two items, now is the time to provide comment.
Is there anyone online who wishes to provide public comment on a non agenda item?
OK.
We'll move on to staff announcements.
Do we have any staff announcements?
We just have one staff announcement that member Beniwaki recently resigned from the board.
Thank you for that. And before we move to the public hearing portion of the agenda.
Speaking about members and so forth, there are there are three of us here tonight.
We have a quorum.
I just want to confirm that if we wish to pass or adopt anything, we need not a majority.
Of voters. But we need all we need a minimum of three votes in affirmative. Is that correct?
That's correct. OK. All right.
With that out of the way, we will move to the public hearing portion of the meeting and the first item on the agenda is 3614 Highway 200 E special exemption and we have a staff report.
All right.
Good evening. Board of adjustment members.
My name's Kathleen.
I work with Missoula County planning, development and sustainability.
This evening I'm presenting a proposal from Mike Morgan of Hoffman Morgan Associates for a special exception on a property located at 3614 Highway 200.
The applicant is proposing a mixed-use development on the property.
The site includes slopes that are greater than 10%, which requires compliance with the Missoula County, Hillside and Ridgeline Development Regulations. Constructions on slopes greater than 25% require a special exception to be approved by the Board of Adjustment. A small portion of this proposed development includ.
Construction on steep slopes.
Over 25%.
So a special exception is required.
The subject property is zoned neighborhood center. The primary intent of this zoning district is to provide convenient access to goods and services within a walking distance to and from adjacent neighborhoods, supporting a horizontal and vertical mix of residential and commercial uses.
The development should be designed such that it considers the style, scale and intensity of existing development as well as the natural environment.
There is a residential density requirement of eight homes per acre, and buildings may be four stories in height.
The applicant is proposing a mixed-use development combining multiple household dwellings with small business commercial spaces.
The area impacted by slopes greater than 25% is limited to lot 6, which is located in the rear portion of the property.

Lot 6 is located at the rear portion of the property and is the only portion on the site impacted by the steep slope.

Special exception requirement.

The proposed development will be required to meet all the other zoning requirements of the district.

At the time of permitting.

The site has been excavated by a previous owner, leaving a Cut Bank area at the foot of the slope, which is shown here in the picture.

The existing Cut Bank is positioned to accommodate a foundation and retaining wall at the toe of the slope.

The proposal creates no on ground development on any slopes greater than 10. The only impact to slopes greater than 25 will be that retaining wall and foundation at the Cut Bank.

And lot 6.

The retaining wall location is shown here within the circle and is located on the backside of the northwesternmost building.

This is the only construction that will occur on slopes greater than 25%.

I will now highlight and discuss staff findings for the special exception criteria that are relevant to this proposal.

The full criteria review can be found in the staff report.

Number one, the development will include multi family housing and commercial space.

The surrounding uses include high density housing, a trailer park and commercial uses. The neighboring property to the West of the town home community, which shares the same back slope as the proposed.

The proposed development the applicant has provided a geotechnical analysis that was conducted for the neighboring development along with a letter from the engineer and author of that analysis stating that the analysis is also good to apply to the development being proposed at 3614 Highway 2.

100 the analysis results reported a stable slope.

And had many recommendations for safe construction of the site.

Following these recommendations will be a condition for approval of the special exception is approved.

The engineer will be on site to monitor grading activity during construction, the stormwater and drainage plans for the development will be reviewed and approved by Missoula County Public Works.

#2 the proposed development aligns well with the neighborhood center zoning district.

It is designed to supply neighborhood scale commercial uses with multi family housing.

The proposed development will meet all the zoning regulations and regulatory requirements for planning public health and public works.

The site is suitable for the uses proposed.

#3 the building on lot 6 that sits at the toe of the steep slope will be in compliance with the building wall step back requirements.

Outlined in the Missoula County Zoning Regulations section, 7.9.

This will ensure that the building will step back into the slope to better fit the natural topography of the slope, maintaining good aesthetics.

There will also be a trail and resting space on the undeveloped hillside behind the development for residents to use.

#4.

All criteria outlined in Missoula County zoning regulations.

Section 11.6, point D, point 1A through M have all been reviewed and the proposal has been found to be in compliance with all of those criteria.

The full details of this review can be found in the staff report.

There are special review criteria listed in section 7.1, Point C, .2 of the Missoula County Zoning Regulations.

These criteria are required for reviewing special exception requests to develop on slopes greater than 25%. These criteria have been evaluated by staff and I would like to highlight

some important findings criteria a the Cut Bank has created a potential hazard on the site. The retaining wall would mitigate hazardous conditions by reducing erosion and maintaining slope integrity above the wall.

Stormwater drainage is incorporated into the wall design to manage runoff and further slow erosion.

These will be evaluated by Missoula County Public Works before a permit is issued. The applicant has supplied a geotechnical analysis report, signed and stamped by an engineer. The report is for the neighboring development.

East Village townhomes. We requested a letter from that engineer stating that the analysis could be applied to this development proposal.

The applicant submitted the letter from the engineer and it states based on the close proximity to East Village Townhomes, I believe the proposed slopes behind your project will be stable if constructed to the grading plans geometry.

I do ask that I be present prior to and during the slope flattening.

To verify the slope material.

And their orientation, we concluded that this is sufficient.

Criteria B, the portion of the development that is impacted by the slopes greater than 25%, is limited to the corner of Lot 6. The developer had explored alternative site design concepts before selecting this approach, avoiding development of the Cut Bank area would result in unmanaged storm.

Runoff and a hazardous area on site.

To refill the cut with Earth would entail a large disturbance area that would impact the neighboring property to the north. The bulk of the development occurs on slopes 10% or less.

We agree that development of the Cut Bank minimizes overall disturbance on site and also resolves the potential hazard of the cupping.

Criteria C, The project civil engineer, has designed a stormwater drainage system.

That will manage runoff. This design will be reviewed by Missoula County Public Works during permitting.

Re requested comments from relevant agencies as part of our review, agencies had notable items to consider for the applicant and are noted here.

The first is from the Missoula Office of Emergency Management regarding potential avalanche activity on the East Slope.

There are no recorded avalanches on the slope. However, an avalanche could occur, the second one being from Missoula Parks and Recreation stating that the trail up slope from the development should safety measures such as fencing to prevent accidental injury.

They also noted the avalanche danger on Mount Jumbo.

Staff recommends approval for this special exception based on the findings of fact and conclusions of law presented in the Staff Report, subject to three conditions of approval.

The three recommended conditions of approval are as follows.

Number one.

The applicant must obtain all Missoula County and state agency permits for the proposed development.

#2 as recommended in the Geotechnical engineering report, Todd Lorensen, or an equally qualified engineer must be present prior to and during the slope flattening to verify the slope materials and their orientation.

And #3 final construction shall incorporate and follow all of the recommendations outlined in the 2017 Geotechnical report, and these should be noted in the application plan set.

And with that, I have a motion.

I moved the Board of adjustment to approve the special exception request from Mike Morgan to deviate from chapter 7.1 Point C of the Missoula County Zoning Regulations as presented in the application, subject to the recommended conditions as presented.

Thank you, Kathleen.

Do members of the board have any questions at this time for Kathleen?

Is the applicant or applicant representative present and if so?

When you.
Reach the podium. If you could identify yourself. If there's anything you wish to add.
Or clarify this is your opportunity to do so.
Looks like Mike Morgan online has raised his hand.
So we'll go with the the individual who's here physically in the room, and then we'll go to you, Mr. Morgan.
So we'll start with the individual in the room.
Yeah. My name is Matt Hammerstein.
I'm the.
Good now.
Got it.
Oh, perfect.
There we go.
Yeah. So my name is Matt Hammerstein.
I am with Voith engineering here in Missoula.
I'm the civil engineer referenced in the staff report in the presentation like we've noticed Mike Morgan is online. The applicant and the architect. But I don't have anything to add, just wanted to introduce myself.
Thank Kathleen for her thorough report and presentation and we're here for questions. If anything comes up.
Thank you, Mr. Morgan.



Mike Morgan 46:03

Good evening.
Yes, this is Mike Morgan, architect at Hoffman Morgan Associates and the applicant in this case.



Jill Johnson 46:08

I'm going to interrupt.
I apologize for for doing so.
We can hear you, but it's very faint, so I don't know if got the wrong mic activated or can just try and speak either louder or closer to whatever microphone. Again, we could hear you, but it's very faint.
Thank you.



Mike Morgan 46:32

One moment here.
I don't know how to adjust the microphone louder, so I'll just talk loud, OK.



Jill Johnson 46:42

Sounds good.



Mike Morgan 46:44

Yes, Mike, Morgan architect and the applicant. I just want to thank Kathleen.
I think she did a really good presentation and really covered the bullet points.
I I just think I'll just add comment that.
This is a really a textbook solution that I'm excited about developing.
This property why it's textbook is?
It's just using our traditional practice of when when you're working within a hillside and in this case, we're not working on a hillside, we're working to up to the toe of a hillside, and that is where that cuck bank is that Kathleen mentioned and she showed on the.
Site plan and with photographs that that excavation occurs around 50 years ago by a previous owner.
It demonstrates some good stuff that the soil there, as the geotechnical analysis has.

Previously concluded on as well as on neighboring projects, by the way we we were involved.

We were the architect on some of the neighboring projects to between this property and the freeway, there's a couple of them there and we were involved.

We were designers on those.

The soil is just is as ideal as you can get. It's decomposed granite.

It's it's like concrete mix almost.

It's really stable and that hillside demonstrates it's been sitting there for 50 years and.

There's really no sign of erosion.

Which is.

Which is great, but it's still it's a Cut Bank and it's it is hazardous. If we were to develop on this property and not do something about it. If children got up on the top of that bank and were to fall, they could be injured.

So our solution to that is like I say, textbook will put a retaining wall.

We'll build a building within that retaining wall and that Cut Bank essentially goes away.

So it's a graceful solution and.

And as Matt has can answer any questions on with the civil engineering, it's it's straightforward for stormwater control and you know there won't be any erosion anymore because we're getting rid of that issue by having a retaining wall.

So yeah, we're just building up to this to this toe of the slope, not we're not. We're not applying to build.

On slopes, more than 10%, like Kathleen mentioned.

So we kind of fill in the.

In the cracks of what intent of I think the hillside special exception is really, but that's OK.

We're here and we're here to answer any questions.

I might mention the Avalanche topic that somebody had mentioned, one of the officials.

There's no history of avalanche in this area. It's further up Canyon where there's larger. Exposed faces.

I've worked in avalanche areas many times over my career and this isn't an area of avalanche concern.

So and history shows that.

So no issue there.

That's really all I have to say.

I'm here to answer any questions.

Thank you very much.



Jill Johnson 49:55

And thank you. And we we fixed the audio issue. I think it might have been on our end having the speaker volume low at at this point.

Do.

Members of the board have any initial questions for the applicant or applicant representative. Rick.



Richard Hall 50:20

Is it common when?

There, there's already been a slope stability evaluation on a previous project to just extend that.

Those characteristics to the rest of the slope.



Mike Morgan 50:46

Is that a question to me, Sir?



Richard Hall 50:47

To whoever whoever can answer it, because we're actually looking at A at the previous projects report on the hillside.

- JJ Jill Johnson 50:49**
Yeah, I can take it, Mike.
- MM Mike Morgan 50:50**
OK.
OK.
- RH Richard Hall 50:57**
Not not this projects.
So I'm just curious if if you can, if that is common as an engineer to extrapolate the findings of that to the Jason part of the hill.
- JJ Jill Johnson 51:10**
And the applicant's representative is is gonna address that.
Yeah, Rick, I would say so.
The caveat being that I'm a civil engineer that's referenced in the staff report, but not the geotechnical engineer who prepared the geotechnical analysis.
- RH Richard Hall 51:17**
Classic.
- JJ Jill Johnson 51:26**
But typically, in our practice that would be up to his discretion.
He did the test pits for the property to the South, which is very, very close.
To this development and so.
It's really up to his discretion of if he is comfortable with applying those recommendations within this distance to the testing that he's done previously.
And in this case, he was.
And that's why we reached out and got the letter from him and brought him on board to this new project.
Hopefully that answers your question.
- RH Richard Hall 51:59**
And have and having the engineer present kind of during the excavation kind of assures that. Is that correct?
- JJ Jill Johnson 52:09**
Yes. So he'll essentially he'll be there and as it's excavated, he will verify that the soils do in fact match what he found on the property to the South.
And then as they are back filled after the retaining wall is constructed, he will be supervising that. It's done correctly and in accordance with his recommendations.
- RH Richard Hall 52:33**
Got it.
And I have one more question if I might.
This is just because I'm I'm in the Bonner Milltown area and I interact with people in East Missoula a lot.
It doesn't have any bearing on the project so much, but I'd kind of like to know in the side plan.
They're just all identified as floor.
So I think I've got an idea what's an apartment.
Man and what's a commercial structure?
Could you be specific about that for me?



Mike Morgan 53:12

I should probably answer that one, yeah.



Richard Hall 53:13

I'm looking at the.

I'm looking at the overall site and grading plans so.



Mike Morgan 53:19

Sure. I'll start there.

And Matt, if you want to comment, you certainly can.

So yes, again, real traditional approach.

Here I'm excited about the future of Hwy. 200, which has been experienced a little bit of delay with the grant that we all know is we didn't didn't end up coming through for the highway improvements, but it's we know it's coming.

We know that E Missoula, as well as the rest of Missoula will grow.

And I live in East Missoula as well.

I love E Missoula.

I'm excited about its development future.

And the part of this project that will be commercial is the part that faces the highway.

And that is intended to be the latter phases of the development, just to give that highway time.

And we'll start at the rear and work forward.

Also bring in infrastructure to the rear and work our way forward.

Same reason.

Also, there's an existing commercial building on the site now it's a it's a shop that used to be the service Center for Anchor Marine.

It was there for decades, and we'll repurpose that into another commercial use to whatever fits that use at that time.

I don't have a specific use in mind yet.

It's being.

Currently used as a commercial use, there's a a general contractor in that in that space now, and he has a shop in there.

So it's it's functioning as we speak and it'll remain commercial.

The rest development will be multi family.

As you work to the rear of course, and the the buildings in the front will have, they'll be mixed-use. They'll be commercial on the ground level and then residential above those ground level stories.



Richard Hall 55:02

OK.

Yeah, that anchor Marines.

My old boat repair place so.



Mike Morgan 55:19

Yes, I know Tony well, a great, great guy.

I really enjoy him.



Richard Hall 55:23

I remember what he said.

He was moving out 'cause. Something was happening to the property. So thank you.



Mike Morgan 55:28

Yes, yes.

Thank you.

JJ

Jill Johnson 55:37

Tim, did you have anything you wanted to add or?

Put my glasses back on. OK. Are there any other questions from initial questions from board members for the applicant or applicant representative?

At this point, I'll ask if there's any public comment on this special exemption request.

We'll start with anyone physically in the room. If anyone here physically tonight wishes to provide public comment.

Please come to the podium and introduce yourself or identify yourself.

For those.

Here, virtually on the teams call, I'll just let you know that there's quite a few here in attendance physically, but I suspect they're here for the second item.

We're not quite standing room only, but.

In any event, anyone here on teams attending virtually who wishes to provide public comment on the special exemption request?

OK. I will then open up for discussion the special exemption request or if there's any.

Questions for staff or the applicant open that up to the members of the board discussion or follow up questions.

I don't really have any specific questions or anything, but I think it's a fitting application for this and I believe there's instances in the regulations where other facilities such as roads or other amenities may be constructed on 25% slopes.

So this is totally not an entirely new kind of uncharted water.

The other thing I guess in reality what we're doing is eliminating 25% slopes at the end of the day.

So I think it's probably a good fit for the application and bidding to move forward with the special exception as presented.

Rick.

RH

Richard Hall 57:40

Yeah, I would, I would agree.

I went and took a look at the property I I couldn't quite place where it was and.

It is absolutely a vast improvement upon what is there now.

It's an underused parcel of land.

The entire back part is unused.

It has old buildings on it.

And.

It certainly fits the character of what's there next door.

And.

I'm kind of thrilled that there's some opportunity for commercial in the front.

That is exactly what E Missoula is asking for. I know as residents.

So yeah, I think it's. I'm excited about it as well.

So I drive past this area all the time.

JJ

Jill Johnson 58:39

Thanks and I I agree with what the other board members have said. So at this point in time, I guess I would ask if anyone has a motion and and before I I get to that, I'm going to look at Jill or other staff members here and and.

Ask if if anyone wishes to make a motion.

You want them to read out the special conditions or just reference them if a preference.

The special conditions do not need to be read, they just need to be referenced.

OK.

Can we have that motion back up on the screen then?

Thank you.

All right.

I'll take a stab at it.

I move the Board of Adjustment approved the special exemption request for Michael Morgan

to deviate from chapter 7.1 C of the Missoula County Zoning Regulations as presented in the application, subject to the recommended conditions.

Is there a second?

RH **Richard Hall** 1:00:12
I'll second it.

JJ **Jill Johnson** 1:00:13
OK. Any additional discussion?
All right. Can we move to a vote please?
Roll call vote Rick Hall.

RH **Richard Hall** 1:00:24
Yes.

JJ **Jill Johnson** 1:00:25
Andy meford.
Fabric raskafarb.
Mr. Chair, the motion passes with the unanimous vote.
Thank you.
And you have your special exemption.
With that, we'll move to the next item on the agenda.

MM **Mike Morgan** 1:00:41
Thank you.

JJ **Jill Johnson** 1:00:45
Get the address. Sorry.
With that, we'll move on to the next item. The on the agenda which is 20843 Gilman Creek Rd.
Appeal of administrative decision and we'll start with our staff report.
Good evening to the board. For the record, my name is Kevin Dantic.
We are here for the Yeoman Creek appeal of administrative decision.
This has been brought forth by, excuse me, Jesse Kadadek of Parsons, Bell and Latimer, on behalf of Arrow, Leaf Gulch LLC and Cameron and Faith Schmitz.
The Key Holdings LLC parcel is at 208420843 Gilman Creek Rd. and its accessed by Deep Creek Rd.
The property lies approximately 4.2 miles West southwest of the Harpers Bridge area of the Clark Fork River.
The parcel consists of open land with no residential structures present.
Property occupies a narrow valley flanked by steep, forested hillsides.
Uses on the property have historically capitalized on the rural environment.
And no large scale infrastructure is present. Uses and structures for this in the neighboring properties are concentrated in the valley.
Staff has not identified historical agricultural uses.
Slopes vary from less than 5% in the valley to greater than 25% on the hills. Large portion of the parcel contains the latter 25%.
And there are no identified flood hazards present on the parcel.
A little bit of background here.
The Missoula County Department of Planning Development Sustainability PDS has received an appeal of administrative decision brought forth by Air Leaf Golf LLC and Cameron Faith Schmitz for the property located at 20843 Gillman Creek Rd.
In Missoula.
Key Holdings LLC Brad Isbell is the current owner of the property. Permiso County zoning regulations.

The property is zoned agricultural working, otherwise known as AGW 40. The issuance of land use and zoning.

Compliance permit LZ 25059311 allowed uses on the property consistent with the recreation developed outdoor classification as the uses were determined to capitalize on natural landscapes that are typically dependent on rural locations, the appellants claim the permit is authorized key holdings L.

To engage in uses that are prohibited under current zoning regulations.

Namely, that staff was in error and should have classified those uses as recreation commercial.

Outdoor and entertainment venues, small, medium and large. The appellants also claim staff permitted a parking structure which is not allowed under applicable zoning.

The appeals of an administrative decisions may be made by the agreed party to the Board of adjustment to hear and decide the appeals.

These are quasi quasi judicial decisions detailed in section 11.6, point B of the Missoula County Zoning Regulations, and in accordance with 76.2.

.226 Montana code annotated.

A little bit of history in February of 2025, the Missoula Family YMCA proposed to enter in an agreement to use the Gillman Creek property held by Key Holdings LLC for the YMCA Summer Camp Ponderosa Youth program.

The youth program would Transport Day campers to the property during weekdays and the tentative dates for the 2025 camp season were to include the weeks between July 14th and August 22nd, 2025.

From approximately 9:00 AM to 4:00 PM daily.

Special activities such as survival training, outdoor recreation, nature hikes and disc golf were to be considered for the property on a case by case basis.

The proposed facilities in the YMCA document can be found in the staff report.

In addition, details that were identified need to be addressed by the YMCA. Also included in the staff report.

On May 22nd, 2025, Missoula County PDS received a request for investigation from Cameron Schmitz, owner of the property located at 20811 Gilman Creek Rd. According to the request, throughout the day on May 10th, 17th and 18th, 2025, the Compl.

Witnessed the following quote. Neighbor has installed a frisbee golf course and has operated it as a business.

Quote neighbor is running youth handshake property with the Boy Scouts and is scheduled to YMCA.

Quote in addition, the complaint and note the property owner was considering other public uses on the property as well.

Staff conducted a site visit to the site on June 2nd of 2025.

And at that point, Key Holdings LLC. Brad Isbell was encouraged to submit a land use and zoning compliance permit for both the existing and proposed uses and structures on the property.

The land use and zoning compliance permit DLZ was submitted to Missoula County PDS on July 3rd, 2025 and it was approved on July 11th, 2025.

The permit proposed uses of recreation and education by youth and other social programs such as the YMCA.

Missoula County Zoning Regulations section 2.3 Point C.

Agw permits campgrounds, guest ranches, open space, public or private parks, and active developed outdoor and passive recreation.

Staff determined that the pros disc golf course and summer camp slash outdoor retreat uses and the accessory structures needed to support those uses are included within the recreation developed outdoor definition.

Its main purpose is to provide the general public with outdoor recreational opportunities, requiring varying levels of develop facilities where tickets are sold or fees are collected for the recreational activity.

The permit clarified the following structures.

To be permitted, including two 10 by 20 shelters, a disc off disc golf course with a layout changed slightly.

Con Xbox along the road next to the Porta Potties, a parking area.

The disc golf course, Gaga pits and amphitheater gathering area a BB gun range and an archery range.

Again, Missoula County PDS staff considered the proposed uses as recreation developed outdoor, which is defined as an establishment whose main purpose is to provide the general public with outdoor recreation opportunities requiring varying levels of developed facilities where tickets are sold or fees are collected for the recreational activ.

Develops were outdoor recreation activities.

Generally capitalized on natural landscapes and again are typically dependent on rural locations.

Examples include Alpine skiing, Nordic skiing, mountain bike parks, zip lines, shooting ranges.

The Gilman Creek YMCA program uses were also interpreted by staff as contained within that recreation developed outdoor definition and the issuance of LZ 25059311 permitted the accessory structures needed to support a disc golf course and a summer camp slash outdoor ret.

An appeal for the uses was received by the Missoula County PDS on October 29th, 2025.

The appellants contend that the uses on the property are commercial and are inconsistent with the AGW 40 zoning, namely that the uses should be classified as recreation, commercial, outdoor entertainment venues, and that the zoning classification prohibits parking structures.

Permits Zulu County zoning regulations, section 11.2, point 8.14.

The zoning officer has the authority to interpret the meaning and intent of zoning regulations.

Recreation Commercial outdoor is defined as a commercial business offering amusement, recreational or entertainment activities such as batting cages, miniature golf, Grand Prix, miniature race cars, water slide, Alpine slide and amusement rides were part of part or all of the activities are outdoors, the appeal states there's no leg.

Difference.

Between the batting cages or miniature golf.

Except that disc golf has a larger physical footprint and therefore a greater impact on the prohibited uses.

Staff has identified that the uses proposed on the key holdings permit are not contained within the definition of recreation, commercial outdoor as a level of development and subsequent disturbance to the land associated with the proposed activities cannot be reasonably compared to a water slide batting cage.

Pages or miniature golf, by virtue of those requiring more environmental disturbance and permanent non mobile infrastructure.

Missoula County zoning regulations to define entertainment venue as any building structure or outdoor space dedicated to events, typically involving spectators, such as auditoriums, theaters, cinemas, fairgrounds, stadiums and race tracks.

The permit application for the key for key holdings contemplated in Apothecar amphitheater. Gathering area.

Staff has concluded that the amphitheater proposed to be constructed of log seating and a natural landscape does not fall under the classification of entertainment venue.

And parking structures are not defined by Missoula County zoning regulations. Structures defined as anything constructed or erected that requires location on the ground or is attached to something. Having a location on the ground, including but not limited to, buildings.

Fences, walls, signs, poles and kios.

KS the appeal states.

When Key Holdings conduct its large events, there is a substantial area dedicated to parking that features signs and guidance about where attendees and participants should park, and those areas are delineated, at least in part, by fencing. Under this definition, key holdings is

also impermissibly utilizing prohibited structures to.

Hold the events that was per the appeal.

Permissoulo counties owning regulations section 11.2.

.8 point, 14 the zoning officer, has the authority to interpret the intent of the regulations while structures associated with the parking area, a fence and some signage are present.

Staff concluded that no reasonable interpretation would classify the undeveloped area used for the parking as a parking structure per common vernacular and establish understanding of the public.

Missoula County Zoning Regulations section 1.14 point 8.2 states that where interpretation of regulations is required, such interpretation should be made in favor of the property owner's rights whenever possible.

MCA 76 point 2.226 point three states an appeal stays all the proceedings and furtherance of the action appealed from unless the officer from whom the appeal is taken certifies the Board of adjustment after the notice of the appeal has been filed with the.

Officer that by reason of fax stated in the certificate of Stay would in the officers opinion cause imminent peril to life or property.

The appeal stays the activities related to those the issued.

Permit, but structures could remain.

The parcel on my key holdings is held in a conservation easement which is administered by 5 Valleys Land Trust and of which Missoula County is party to the appeal. References non compliance with the conservation easement. Missoula County Zoning Regulations section 1.8 states that the zoning officer.

May require the conservation easement be submitted for review to ensure its provisions do not conflict with zoning regulations.

Planning, development and sustainability and parks, trails and recreation staff examine the relationship between the zoning regulations and the applicable conservation easement. On June 27th, 2025, which included a site visit and investigation.

The Open lands manager concluded that nothing in the zoning compliance permit would be enforceable as a violation of the conservation easement as shown on the site plan.

However, anything permanently built, such as latrines, may be enforceable if they end up in change. Locations that are too close to.

The Creek and deemed impactful to fisheries.

This was communicated to the Missoula Family YMCA and was planned to be discussed with the landowner during the annual monitoring.

Visit with five valleys Land Trust the intent of the easement is wildlife habitat protection.

Again, the landowner was to consult with fish, wildlife and parks on best wildlife management practices regarding such things as bear smart trash receptacles and attractants, and to review the list of activities to review other important considerations in sharing the area with wildlife.

Staff concluded that approving the land use and zoning compliance permit did not cause a conflict with the conservation easement.

The Board of Adjustment has the power to hear and decide appeals where it is alleged there is any error, an error in any order, requirement, decision or determination made by an administrative official in the enforcement of this part or of any resolution adopted pursuant thereto.

That is MCA 76, point 2.223 point one point a. The applicable resolution adopted under state law is the Missoula County Zoning Regulations.

This conservation was not adopted as part of the zoning regulations.

We did receive public comment on the proposal. We did send out Jason Property owner letters.

None of those were returned.

We received three comments from the Missoula County Voice page.

One was in support of the landowner sharing the land with the community.

Green spaces are hard to come by, and those lands should be protected.

Another resident noted that we shouldn't take away the ability to share private.

That lands for youth and recreation programs.

A third comment said it was an amazing place to recreate and have a good family friendly time.

In conclusion, planning staff interpreted proposed land uses in accordance with the agricultural working AGW zoning and in accordance with our duty to provide the appropriate zoning interpretation.

Permissoula County Zoning Regulations section 11.2 point 8.14.

Planning staff interpreted that the proposed land uses were falling underneath that recreation developed outdoor definition.

Planning staff identified the uses proposed on land use and zoning compliance permit LZ 25059311, including a disk golf course and summer camp slash outdoor retreat, along with accessory structures to support those uses were compatible with the uses defined in recreation develop.

Outdoor.

Planning staff interpreted interpreted the regulations regarding the permitted uses in favor of the property owner's rights.

And lastly, planning staff concluded that neither they nor the Board of adjustment could act on an appeal about land uses under the conservation easement.

I do have a motion on the screen before you.

Thank you, Kevin.

Normally, after we hear from staff, we'll ask board members if there's any questions for staff before moving to hear from. I guess in this case not the applicant but the appellant. But before we go to questions that board members might have for staff, I understand that the part.

Of this appeal has to do with.

The zoning regulations themselves and then the other part has to do with the conservation easement.

And I know there's.

You just expressed or indicated you know what, what our scope, what the scope of authority that this board has and also zoning office has with regard to the the easement, but just because it's out there, I just didn't know if the my understanding is the county's open.

Lands manager's present tonight. That is correct.

I just her, him, her, her, her, her, her, her.

I just wanted to give her an opportunity to add if if she doesn't have anything to add, that's fine, but.

Just wanted to give her an opportunity to add anything to what you presented with regard to the conservation easement.

Kind of sandwich that was staffed reports is my intent here.

Jenny Zezo, open lands manager.

I think Kevin did a really great job of summarizing our communication throughout the process of the permitting. So I have nothing else to add.

OK.

Thank you.

Before we hear from the appellant, any initial questions and there'll be time for additional questions, but any excuse me, initial questions from board members for staff at this time.

I have a few, but I think I'll just wait. I'm sure we're gonna have plenty of time, so yeah. OK.

Likewise at this point in time.

Like to hear from the Palant or Palant representative.

And when you get to the podium, please introduce yourself.

Thanks. Yeah, good evening, Jesse Canadic on behalf of the appellants.

Arlie Gulch LLC and Cameron and Faith Schmitz and one of the members of the LLC, is here as our Cameron and Faith Schmitz.

I believe they would each like to briefly address the board after I am done.

I think one thing to keep in mind here, that's really important is that the conservation easement doesn't just exist out there.

Between different parties, the county is the holder of the conservation easement and under Montana law, public bodies holding conservation easements are required to enforce the provisions of those easements.

Section 1.8 of the zoning code requires the county to enforce covenants to which it is a party. Now. It doesn't say that in so many words, right?

What it says is that unless deed restrictions, covenants or other contracts directly involve the county as a party in interest.

The county has no administrative responsibility or duty for enforcing such such restrictions, covenants or contracts. But the corollary to that is where the county is a party to the contract. The county necessarily has the ability the the requirements to consider whether the zoning uses or the uses that.

Someone is applying for a permit for are consistent with.

The purposes of the conservation easement in this context.

Now it's our position that the conservation easement.

Prohibits commercial use of this type.

It specifically allows for one residential.

Property one residential use per parcel it talks about.

You know that it has to be compliant with zoning, but in doing so it refers back to allowing one residence per parcel.

And if you look at the conservation easement as a whole, if it doesn't prohibit.

Sort of high intensity commercial use, which happens when they're doing these Frisbee golf tournaments that have camping associated with them, then the conservation easement is essentially meaningless and.

The next thing I want to address is planning's position that this board can't consider.

Whether the conservation easement would prohibit the use that has been expressly allowed by this permit, with all due respect, I think that's incorrect and a misreading of the plain language of Montana law. The board's authority on this issue is set out in Montana Code 76 D.

2-223, which is titled powers of the Board of Adjustment.

The statute provides that when a board is hearing and deciding appeals where it is alleged there was an error in any decision or determination made by an administrative official in the enforcement of the zoning regulations that the board may make any decision or determination, as ought to be.

Made and to that end shall have all the powers of the officer from whom the appeal is taken. Now.

In our view, this statute means that planning was required to consider the conservation easement when they, prior to issuing the permit, and they say they did, and that's great.

But it's our position that the board tonight is also required to make a determination that the zoning permit that we're appealing is consistent with the conservation easement.

Nevertheless, the proposed collusions of law state that the board cannot act on an appeal quote about land use is under the conservation easement, but for the reasons stated above, we believe this is an incorrect interpretation of the law because in reviewing a permit, the board is obligated to.

Consider that everything everything planning is obligated to consider when issuing a permit. We would therefore request that the board conclude that the conservation easement prohibits commercial use.

And the board should rescind the permit because the permit was issued.

For commercial purposes, indeed the very uses that the planning found for issuing the permit specifically state that they're for commercial uses where fees are required.

And we think that's inconsistent with the terms of the conservation easement and we think the board is required to consider that before it can make a decision.

And that's all I have.

The parties would like to briefly address the board and I'm happy to answer any questions. Either now or later that the board might have.

Thank you.

Well, then we'll hear from.

The how many? Just I believe two. You OK? And then I'm assuming the.

Sort of party in interest that Key Holdings LLC that there's OK. So all right.

So we'll hear the two from the appellant.

Can you please identify yourself when you get to the podium?

Yes, good evening.

My name is Christine Kirshner, and I appreciate the opportunity being allowed to come tonight and present some comments.

First, I wanted to introduce myself.

I'm one of the members of Arrow Leaf Gulch LLC and what I wanted to address this evening to all of you as well as to Mr. Isbell, is in response to some of the comments that I've seen about why wire out of Staters or people coming into Mon.

Trying to mess with land use etcetera, so I thought it might be appropriate to put into context how we ended up here.

Tonight. So.

We are interested in having this conservation easement honored both in the spirit and the written word of the conservation easement.

So I think it's ironic.

Because what I've heard about people coming into Montana is they bring their big city values, they want to change things and we absolutely want something different.

I had the unfortunate situation of being raised in Houston, TX.

There's no natural beauty there.

There's chemical plants.

Petrochemical plants.

So that was a misfortune for me.

However, I had the good fortune of having a father who was an avid outdoorsman, raised in the mountains, and he brought me here for the last 50 years, and I had a lifelong dream to acquire property either in Idaho or Montana, and my husband, who unfortunately can't be.

Here this evening we were able to realize that after seven years of looking for properties and why is that important?

Because we ended up down in Deep Creek in this valley.

And after seven years last about approximately a year ago, we came out there for the first time and we thought, wow, it's our dream here and we currently have one foot in Texas where by no means we can endors only we have one foot in Texas as we.

Both retire and wrap up our business there.

We both have aging and elderly parents, which is what's prohibited me from moving here full time, we.

When I went out there with Julie Gardner, who was the realtor showing us the property.

We initially looked at a home on 110 acres that was for Sale by Doctor Ryan Huckabee and his wife Elisa, and in speaking to Julie Gardner, I was blown away by how pristine it was there, how quiet it was there.

We saw wildlife almost immediately in the process.

The conversation, Julie said.

You know, I think Doctor Huckabee would sell you the adjacent tract.

Of 48 acres, which is tract one in the conservation easement.

Easement and you can be part of a legacy of nurturing this wildlife habitat that can never be changed.

It runs in perpetuity with the property, and so we did that. We proceeded.

We bought 158 acres approximately a year ago.

I bought that property with the understanding that there would be no commercial development out there.

I read with great zeal the old document that I got a chuckle out of.

It was written 30-40 years ago.

It talks about the habitat of black bear.

Mountain Lion tracks has the Creek running through it. I read there about the Golden eagle

nesting habitat there as well, and I took very seriously. My husband and I took very seriously that we were acquiring something extremely special for folks being here in Montana your whole life maybe.

You've never been to Houston, TX and know what's happened in other parts of the country. That don't have much wildlife habitat left.

Or perhaps didn't have any natural beauty to start with.

So I was I had.

I was blessed.

Last year I was able to spend almost three months the first year out here, which was a challenge with taking care of my 8892 year old parents who are still down in Houston and cannot move at this time due to health problems. But I was.

Very disappointed and concerned when I woke up one day and and I was here in that time frame in July.

And I saw 3050 cars coming over the easement with the road easement.

That runs through the conservation easement and I saw dust clouds and I thought what is going on?

Well, I had seen a sign at the fork in the road coming onto the conservation easement of guilt and gauntlet, and when I Googled that I discovered there was a full blown website and it was a commercial enterprise and I thought what is going on? I didn't think.

That was possible in the conservation easement, given that Cameron and his wife and their baby live there full time.

I got in discussions with the Schmitz's.

Who are in track 2?

Immediately adjacent to track 3, which is where Key Holdings is operating, the disc golf championships and tournaments out there several weeks at a time.

And so that is what gave rise to our desire to see whether this was a valid permit, whether the activities that were going on out there was in within the spirit and intended the conservation easement.

And again, we are not here to cause trouble.

We're not here to be bad neighbors.

We have a sincere desire to know and to uphold the conservation easement that we thought we bought into.

We look forward to being productive members of the Montana community.

As I'm retiring, I'm applying for the law school faculty at the University of Montana. My son, I have two children, a 19 year old daughter who's still in school. My 22 year old son. I'm proud to say, has been a wildlands firefighter.

Since his senior year in high school and he's active in preventive burn control all over in Texas and Louisiana, he is graduating from the top forestry program at Stephen F Austin in the Southwest, and he'll be applying to the University of Montana, do his Masters in forestry so.

We look forward to being a Member of this community for a long time, but we are extremely concerned that the conservation easement is not being.

Honored and part of the track that we purchased approximately a year ago. And so for those reasons.

We would ask this board to revoke the permit.

Thank you very much.

Thank you.

Hi everyone.

My name is Kam Schmitz. My wife and my daughter are all here tonight.

We are the adjacent land owners to the proposed land here that was approved for zoning.

We moved up to Deep Creek about 3 1/2 years ago from Miller Creek. We lived in Miller Creek for a number of years.

My wife and I have both been Montana residents now for about eight years.

She originally came out here to support the Grizzlies on a full ride golf scholarship.

And I came out here for work and we absolutely love it here.

But when we originally went and visited the property up Deep Creek. We were just absolutely blown away by how beautiful it was and tranquil and quiet. It's, you know, one of the last. Truly one of the last, best places in the last, best place. And you know, as we kind of learned more about the property before purchasing it, you know, we were pleasantly surprised that, you know it was zoned. London that there were limitations on what could be done around us, but we were also very pleased to know and did a lot of research on the conservation easement before purchasing the property. So we could fully understand what its scope was and what it really meant. And you know, after delving in deep, really was apparent to us that the conservation easement limited the property owners for agricultural use, they could use it for agricultural purposes, for a single family residence. Guest dwelling and specifically after it specifies a guest dwelling that you can have. Non paying guests of the family at the house too. And so you know, with these, you know, facts in place. We bought the house. We loved living up there. Things started to change, though. About 18 months ago when we noticed a significant increase in traffic and construction being done. There being a Frisbee golf course put in. And then when we were out of town one weekend, we had heard that there was a a very large event with upwards of hundreds of cars that were passing through our property and our neighbors property. To get to this very large Frisbee golf tournament that we have fly. For and, I think they're in supporting documents. And so as time went on, you know, in the spring of this last year, we noticed again a significant increase in traffic increase in. People speeding through our property and through our neighbors property creating concern for safety. Dust mitigation, fire, danger, just all. All the things. And and so we had decided to, you know, I went over and talked to the neighbor and. Was. Displeased with how the conversation went because they were very dismissive about our concerns and basically just stated that there's absolutely nothing they can do to limit speeding down the road. Or mitigate what their guests do, because there's going to be so many guests coming and going because they're planning to do multiple. Upwards of five Frisbee golf tournaments that will have attendees and upward attendees, and upwards of 200 people that are going to be planning to camp and stay up there, and along with a number of other things that were proposed. Like what it being used as a wedding venue and the kids camps, etc. And so, you know obviously with all this in mind, it created a lot of concern for us. Uh, create a concern that a the you know, was this truly allowed in the zoning? But B, is this truly allowed in in the conservation easement if these lands are being used as a commercial enterprise, which is exactly what was happening. And so, you know, we as I. Dug through the the zoning documents, it was clear that recreational commercial outdoor is not permitted. It's clear that a daycare center is not permitted. It's clear that you know. Event event venues of any size are not permitted. So it became really frustrating that the county continued to, you know, push this through and approve it. And then along with the fact that there was a conservation easement in place, it's changed the way, you know, we view the area. It's our home. We plan to raise our kids there and you know, we have a 7 month old baby. And so it was just it was a.

It's been a real bummer to know that this this change is now permanent, when we understood that this was permanently supposed to be kept.

For the conservation easement, so hopefully that makes sense. We would ask that the board you know, strongly consider our case here and review the easement and like to its entirety and also reconsider the zoning that was approved as well because it causes an impact to our daily life.

So anyways, we ask that you guys reject the permit.

Thank you.

Thank you. Before we hear from the impacted landowner, are there any initial questions? From the board.

Again, initial questions will be time for.

Other questions, but any initial questions from member of the members of the board for the appellant or Appellant Representative.

I just have one initial question for appellant representative, Mr. Kodiak.

Hopefully I'm saying that correctly.

I know you.

You spoke about the conservation easement.

Staff in their report spoke about the easement and then also the zoning provisions.

Mr. Schmidt spoke a little bit about the.

Zoning provisions as well.

I just want to.

You don't have to present any argument on the zoning provisions, but I just.

I know in the written materials you were you were challenging those determinations. The commercial develop versus, excuse me, the developed recreational use versus the commercial recreational use.

I.

I'm assuming you're still pursuing those arguments.

Yeah, yes, certainly.

I just thought it was more important for our purposes to address the conservation easement because I know you guys deal with the zoning thing all the time and earlier with zoning regulations and how they work, but the conservation easement issue is something that doesn't come up very often.

Because I understand why the county does not get involved in the interpretation of private covenants when it's issuing zoning determinations.

OK.

Thank you.

I just wanted to to confirm and clarify.

So I guess at this point we'll hear from.

Key Holdings LLC or its representative.

Thank you.

My name is Brad Isbell, and thank you for having the opportunity to speak with you this evening.

My wife Stephanie, and I own key holdings.

My wife was born in Missoula and I moved here to attend the University of Montana, where I met her.

We were married 39 years ago in Deep Creek on her family's section 18, further up the valley.

I have managed and owned or private forested property in the Deep Creek and Gilman Creek drainages.

For almost 40 years.

I provided a written document which which you have which details concerning the permit of appeal.

So I think it is best for me now to explain the vision that has guided me as a landowner for the last 25 years when we purchased property in Gilman Creek, opening private land for youth to learn and enjoy is the core of this permit issue.

I consider.

I consider myself a steward of the land, not just a landowner. I have degrees in geology and geophysics, and I have taken many courses from MSU extension forestry in forestry, riparian management, stream management, forest road construction, wildlife habitat management and wildfire hazard reduction practices, just to name a few.

Few.

I have created forestry Stewardship management plans with the help of MSU extension.

Forestry I have applied for and completed equip grants for Silva culture and wildlife enhancement and have maintained those practices for 20 years on our Gilman Creek property.

I worked with five valleys Land Trust in 1999 to create a conservation easement on section 18 in Deep Creek and also created the 2016 Blue Heron Estate Conservation Easement in partnership with five valleys with Missoula County and the city of Missoula.

This has been my commitment to the land.

My commitment to the Community and future generations recognizes that our society is better served when old men plant trees, the shade of which they will never enjoy.

I've been planting trees for decades and many, many ways. I served as a scout master for many years and currently serve on the Montana Council Board.

During this time, we have opened our properties to youth.

And social organizations like the Scouts, Church groups, school and university groups, and most recently, the YMCA and the disc golf community represented here.

We understand that our properties offer a safe and managed forest environment where youth and adults can explore and learn how to recreate and enjoy the qualities of Western Montana.

I appreciate that the planning staff has done an admirable job in showing why this appeal should be dismissed.

I would like to suggest, however, that if changes to the current planning and zoning are needed to make it easier for private land owners.

To offer their properties to benefit our society then I would encourage that dialogue. Begin here.

K EE Holdings stands for the names of my children.

Clara, Eli and Eva.

I could easily lock my gate and shut out the youth groups like my out of state. Neighbors demand that I do.

But at my age, I prefer to continue my life's philosophy and 25 years of practice and plant trees for youth and our society, the shade of which I may not live to enjoy, but the knowledge of which comforts my soul.

Thank you for your time, but I'd also like to discuss some of the topics which were brought forth just a few minutes ago.

Let's talk about commercial use.

And let's talk about the conservation easement I detailed in my 8 page submittal for this.

A 40 year history of what's gone on in the Deep Creek Valley.

History, which I don't think is.

Understood or shared by the people who are filing this protest.

The only commercial activity which has happened in Deep Creek Ranch is that for 20 years, the Deep Creek retreat ran a commercial operation in the House that the Schmidt's now live in.

They also that property track two is also the only property in the conservation easement which has held wedding venues, both of which I'm being accused of, of having, and I've never done.

Gallagher when he put on the conservation easement and I detailed this in specificity in the document I provided, built several miles of Rd.

After placing the conservation easement, he also commercially logged millions of board feet off of the property.

He bulldozed the historical nature, the historical remaining town of Gilman, and smoothed it

all out.

He has violated the conservation easement from the day he put it in place.

There's lots of details concerning conservation easement that I'll refer to you in my document.

One note.

Arrow Leaf Gulch has had one year of opportunity to call me on the phone and ask me what my.

Uses of my properties have been for the last 25 years and they have never contacted me.

I met her only this evening.

That to me doesn't show a lot of concern for what is happening in the area when you don't even look to see what has gone on in the area for 25 years.

I would encourage you to take the advice of the staff and deny the appeal of this permit.

Thank you.

Thank you.

I'll again ask Members of the board if there are any initial questions for Mr.

Isabel.

OK I have.

I have several questions, but I think we'll move.

Well, I'll save them for later and and I'll open it up at this point for public comment.

We'll start with those individuals in the room.

I'll remind folks that this is public comment. If you have a question, you can state your question, but you cannot direct questions to any of the individuals in the room, whether they're members of the board.

Members of the county.

Members of the public or anything like that. Again, you could state your question and maybe later on when the board members have the opportunity to direct questions to staff county staff that is or the appellant or the impacted landowner, we might be curious about the answer to that.

Question as well but.

Just wanted to make clear because I see a number of people in the room and this is probably most individuals, first time at board of adjustment meeting.

And so and the other thing I'm gonna do, I'm looking at these wonderful hourglasses. Here is.

Because there are so many individuals here and I see at least two young children or maybe three children here.

I'm gonna limit individuals to to three minutes. I want to be fair.

So if if folks have something they want to say that takes more than 3 minutes.

You know, say your most important things in the 1st 3 minutes and then we can come back to you.

But I I want to make sure.

That everyone has at least an initial opportunity to provide whatever comments that they would like to provide.

So the format will be again those in the room.

Approach the podium.

State your name for the record and then I'll flip over the timer and hopefully you can see the sand as it falls through the.

I don't what you call the little narrow part of the hourglass, but as it falls through the hourglass and then we'll go to.

To those members of the public who?

Attending virtually or.

I guess let me ask.

Can't scroll here.

Other members of the public attending virtually, I might go back and forth.

There's a lot of other members of the public attending virtually who wish to provide comment.

Or they were just here.

To listen.

All right.

Well, we'll start with those in the room. If anyone on the team's meeting wishes to provide public comment, maybe I'll take back what I said and I'll we'll jump back and forth. But anyway.

Anyone like to present?

Yeah. Excuse me.

My name is Eli.

I work with the YMCA and the senior director of Youth programs.

And I oversee our summer camp programs this winter.

Got in contact with Brad about using or bringing our summer camps up to the Gilman Ranch property and right from the start he was very clear that he was a steward of the land. If if camp was coming to this space, it was to respect the land to.

Learn to use the land appropriately and very much in the spirit of the conservation.

Easement we bring camp up there largely for outdoor education, giving kids an opportunity to get out into our our beautiful.

Private lands. I was gonna say public spaces, but in this case private.

And absolutely, you know, every part of that is about giving kids that opportunity to experience Montana's beauty.

Learn to to be stewards of the space you know we we teach them, leak no trace principles.

We're very much including education about wildlife as we bring the kids out into these spaces and so absolutely in line with with the conservation easement in creating stewards, you know, the next generation of stewards that will be taking care of Montana.

Wanna just read a couple of quick facts at the end of the season, I sent this to to Brad just as a kind of a thank you and kind of a a way of sharing to him kind of the impact that that the Gilman Ranch had for us.

At the YMCA, so over the the second-half of the summer, we had a a delayed start as Brad went through the appropriate steps to to get the permits in place during our final four weeks of summer camp.

We had 10 visits to the Gilman Ranch.

Over the course of those four weeks, through those 10 visits, 140 individual YMCA campers made their way to Gilman Ranch 20.7% of those, one of five kids visiting Gilman Ranch received financial assistance through our YMCA programs.

So these are kids who are financially disadvantaged in our community and might not have opportunity at home to be visiting lands like these.

Just extending that reach to everyone in our community.

In total, 140 individuals over 10 visits, we had 312 camper days, so one visit by one camper spent at Gilman Ranch. Over the course of the second-half of this summer. And I just want to emphasize what an impact that is for.

All of these kids who are are having this opportunity to come up and see this beautiful space learn how to interact with the the natural world in a way that takes care of it.

They're not out there trampling things.

They're, you know, packing a lunch in, packing a lunch out.

They ride in on a bus. Everything that comes with them comes back out with them as they leave.

That's all.

Thank you.

Thank you. And if you have additional comments, like I said, I I just wanna give everyone a fair chance of at least providing an initial comment, but I also don't wanna cut people short.

Go ahead, identify yourself, and then I'll start the timer.

The light will turn green at the base once you hit the button.

Thank you.

I'm Shirley Walker.

I live adjacent to the conservation easement. I have lived out in Deep Creek for 20 years.

Now I'm originally from Billings.
 I came out here to work.
 I'm ACPA work full time. One of the reasons that I moved out to where I am is because there was a conservation easement.
 My realtor informed me of that and said that it's limited to five houses and.
 I believe that's what he said. And I go that's fine. Neighbors are great.
 Houses are great, but I wanted to live there because it is beautiful. It's remote.
 Trust me, if you ever drive, if you've driven out there, it is very remote.
 It's very peaceful.
 It's, I tell people it's like camping out only I've got all the modern conveniences. I would not have purchased that home if I knew there could be a commercial venture that close with the traffic.
 And the congestion that has happened this last summer with all the cars, I don't know how many of you have driven that road.
 It is a rough Rd.
 We have a lots of ruts in the summertime and the county is great when they can get out there, but the additional traffic has made it worse.
 The dust, when there was a big tournament up there and we're not talking the use for local. This is a tournament that's advertised over the Internet and.
 It looks like from what they advertise it is a. There's another entity that puts it on.
 So this was not what I envisioned when I moved out there.
 Again, I am from Montana.
 I know about conservation easements.
 I've being ACPA been involved in having them as contributions and this is not what I envision as a sorry as a conservation easement is late.
 But anyway, so I thank you for your time and I hope you will.
 Will revoke the permit for at least the commercial end of it. Thank you.
 Thank you.
 Hello, my name is Tyler Pike. I just want to start off with Montanans.
 We've always cherished access to land and we've always, whenever a private landowner, steps up and opens their gates. That's something we should be celebrating.
 So we know for 25 years this has worked with Brad's family and key holdings.
 He said yes to the scouts. He said yes to the YMCA and most recently he has said yes to. The local but vibrant disc golf community here in Missoula.
 I've I've volunteered with the Garden City Flyers.
 That's the local disc Golf Club here, along with the electric City Disc Golf Club in Great Falls.
 I've been volunteering with these groups for over a decade now and my roles have scoped from trail conservation, event management, and youth programming.
 I did want to challenge the claim that from the findings.
 On page 11, that states quote, there is no legitimate difference between disc golf and batting cages or miniature golf, except that disc golf has a larger physical footprint.
 End Quote disc golf at its best uses and features the natural.
 Environment that's already there.
 Trees, Rocks, hills, water, all of those are features that make a course unique and special.
 It's one of the least impactful outdoor recreation opportunities you can host outside.
 So I just want to say there's a very low impact. It's equivalent.
 Do hiking.
 So and I I really think that lines and it's with the spirit of the AGW 40 zoning. And then I want to say the real impact that we see out there does really come from the youth programming. I was privileged enough to serve as the disc golf subject.
 Matter expert for the Scouts of America. And we got kids out there to learn about the game of disc golf and earned their golf merit badge.
 And it was. It was incredible.
 There was a bunch of kids, no phones, they reconnected.
 With themselves, they learned how to be good sportsmen. Even when you're losing.

And they also learned a lifetime sport.
 I've bumped into parents and families around town and parents have once again thanked me for introducing their family as a new accessible medium to get outside.
 And I just want to say thank you to the Isabel family.
 They've created a better county in Missoula County, their land.
 And their opportunity that they've provided has allowed for growth and a cultivated community, and I hope that you guys recognize that this is a valued partnership because I know I certainly do.
 Thank you very much.
 Thank you.
 Are there other? What I'd like to do is, while this gentleman is approaching the podium, we'll hear from this individual and then from past experience I know that folks appreciate a break. So we'll we'll hear from one more public comment. We'll take a break.
 We'll figure out how long that break will be when we take the break and then we'll resume public comment if there's additional public comment. So thank you.
 Hi, my name is Cody Davis.
 I'm known Brad for the past year and a half now.
 And he's been nothing but a welcoming kind giving individual.
 And I would just like to refute some of the things I've heard from Cameron Schmitz about the white knight. He's trying to put himself out as multiple times this year. I've been up to the Gilman Creek property and he's tried to chase me down in his truck to.
 Have a word and bumper to bumper aggravated a driving multiple cases of that.
 During our tournament, which on record is 42 people.
 Not 200.
 We actually have physical proof of that.
 Just another fact, but while that was going on, he decided to have a shooting range go on less than 100 yards from participants on the Gilman Creek property.
 And blatantly downrange. He's done intimidation tactics, other things where he's closing the gate on people trying to use the easement, specifically trying to get people not on the property.
 And I would just say that everything they're trying to say about being nice people, they're doing quite the opposite and not allowing public use, private use, any sort of use of this. Super great opportunity that Brad Isabel is trying to give to the community and I myself had great times up there. My family's been up there.
 There's a lack of disc golf courses in the area in Montana in general, and this place has amenities such as Pitt toilets and bathrooms.
 Where other places you're not gonna get that. You're gonna go in the bathroom in the woods if you have to. I'd say that's better for the land, obviously. But he's doing everything he can in his right to make it a better place. And these people are just trying.
 To put up a fight.
 To put up a fight. Thank you.
 Thank you.
 So at this point, we'll we'll continue public comment in a few minutes, but at this point I want to afford board members myself, members of the public here, a little bit of a break and opportunity to stretch your legs and use the restroom I've got.
 A lot of people.
 Maybe 6710?
 Alright, we're gonna do a 10 minute break. So I've got 731 will resume at 741 or thereabouts.
 Thank you.
 Everyone's back and quiet.
 Pretty impressive 742. I guess I'll call the meeting back to order and we were in the middle of public comment and I I know there's at least one more individual who wanted to provide public comment.
 So you know the drill.
 Good evening. My name is Tyler Coulson.

I'm a recreator at 20843 Gilman Creek Rd. and I'm here tonight with my three children.
 We support the landowner on such a very large property.
 Disc golf is a simple low impact and healthy activity.
 It's not a commercial enterprise. It claims of huge events and speeding.
 Are grossly wrong and exaggerated.
 And this is just classic.
 NIMBY behavior.
 It's disappointing that the complainants told the board that they're from here, yet in the lobby they're discussing their flights into town today and how windy it was and how they might not have been able to get out of Denver.
 They mocked the local audience by insinuating we might not have ever traveled outside of Montana, yet they're the ones trying to restrict long standing Montana culture.
 The only real disturbance I've faced is the neighbors discharging firearms.
 In an attempt to intimidate us while we play disc golf.
 I support the staff's original determination and I ask the board to uphold it. Thank you.
 Thank you.
 Hello, my name is Bruce Almons.
 My family owns section 18 up at the head end of Deep Creek. Farther up from this land.
 Brad's married to my one of my sisters, so I've known Brad a long time.
 We put a a pretty strict conservation easement on all 480 acres that we owned.
 We'd been discussing in the family for a very long time, protecting the wildness of that area, because there are so few areas that are intact like that around.
 And.
 You know, I've been going up there since I was like 3 years old and and in the summer times and in the winter times and.
 We really appreciate it as lots of people.
 Said the peace and quiet up there, all the animals.
 Every kind of animal you can imagine.
 I'm disturbed tonight hearing people make disparaging remarks about one another and sort of try to one up one another. Because to me this is about being good neighbors.
 And if I were going to go up there and build some or start some new activity that involved a lot of cars, for example, given how quiet and wild it is up there.
 I would be the one to go talk with the neighbors who lived there rather than expecting them to call me because I would be the one making a big change in the nature of the area.
 To me, that's just logical.
 So I'm kind of with the people who wish that Brad and and company had had actually come and talked to them.
 I don't know the whole history of that.
 I can't say that I do, but.
 I I just sort of picked up the tenor of remarks here.
 I will say something just as a longtime montanan who loves the outdoors and been backpacking in Montana since I was four years old.
 It is not true, at least up at a Canyon, that falling courses don't do any damage in their like high.
 It's hiking. If you go up there, there's like huge pathways ground into the earth where there's no plants. Many of the trees have the bark knocked off of them from falling disc. I was appalled when I went up there after they had that course there.
 For a long time I didn't know it was even there.
 I walked around and looked at it and I couldn't believe the damage was done.
 Now I don't know. It sounds like there won't be that kind of traffic where Brad is, but but I don't know that and I don't know what that course looks like.
 I just want to raise that question, at least the other things that are of concern to me are the road in to Deep Creek along the river, which is the only access I know of because that that road is falling into the river.
 It is dangerous Rd.

It's got cracks in it and certainly just Slough in the river and I don't know again very much about what the county's doing about that or how safe it is.

I know they had signs up telling people to stay away from parts of it, but a lot more traffic on that road, like it's inviting a potential disaster and that would really not be a good thing.

It would be terrible.

The other thing I worry about is any amount of increased traffic up Deep Creek has for US- led to people tearing down all of our no trespassing signs on our land, on our family land.

It has led to people hunting up there once they discovered it was there and poaching animals off of our land and and actually when my brother and I tried to talk to a group of them, having ten guys pull rifles on us.

It's not good and I'm concerned about wildfire, so I I don't know.

Honestly, I don't know what Brad's done.

He's thoughtful about this kind of stuff usually, but what's the what's the plan for containing fires when people are staying there all night and have fires?

I don't know what's permitted there.

This is a big deal because we're at the head end and we've seen how fires go in the last few years. If a fire gets started there and gets in the timber on our side of it there.

It'll probably burn the whole down place up.

And that would not be good.

So I'm just, I don't the insurance and outs of all that.

I just want to raise those questions because they're very real questions for those of us that have lived up there and loved that land for. I mean, for me 68 years.

Thank you. And if you have additional comments, I'll, I'll come back to you. But since the timer has expired, I just want to give everyone. Like I said, at least I appreciate letting me talk that long.

That's OK. It seems like most.

I don't know.

I don't wanna speak, but I for the folks here. But is there anyone else who would like to provide public comment in the room?

Is there any come to you? One second.

Certainly. Give me one before Mr. Isabel.

Just one second.

Is there anyone?

Anyone attending virtually who would like to provide public comment?

Before we go to you, Mr. Isbell, the gentleman who's speaking before I I did cut you off. But like I said, I wanted.

I don't want to cut anyone short.

So, since everyone's at least had some opportunity to present public comment, do you is there more you'd like to say?

OK.

Thank you.

Sorry, I'm just thinking here 'cause. We've got couple moving parts we've got.

The the applicant and then the impacted landowner.

Sure. I guess, Mr. Isabel.

We'll we'll hear from you again and then if?

If the appellant wishes to add anything, then we'll we'll we'll hear from the appellant or appellant representative and then I have some other things. I'll I'll add at that point after that.

Thank you once again.

This is I'm Brad Isbell, to address a couple comments.

About being neighborly.

I've been doing these activities for 25 years on this property.

And I don't know that it was my responsibility.

To when somebody moves in a year ago for me to go running to them and saying hey, by the way, I'm about to do this because I've been doing this 25 years, it seems to me like they should have come to me and asked me if they.

Were interested.

What kind of activities have I historically been doing for our community on my property?

So I I disagree with the fact that I should have gone and run to every new neighbor that shows up.

It's their responsibility to find out what has been going on in the valley.

Wild or we talked about wildfires.

I am the only property owner who has done any fire mitigation in that entire drainage, and I've done quite a bit of it. As a matter of fact, I will be testifying.

Line next week and Helena, on behalf of the Montana Forest Owners Association of which I'm vice president on wildfire habitat and issues and have a whole discussion panel going on there.

So I'm quite aware and I've done 20 years worth of fire hazard mitigation on my land.

So I take a little offense when people are saying, hey, you know, you're creating a fire hazard when I'm the only one who's done anything.

To reduce fire hazard potential in that area.

As far as the County Road is concerned.

The number of cars that actually come up to any of the activities, any of the social events that I have, is a fraction of what shows up on a daily basis, driving up and down that road.

The people who live there, they go in and out 2/3.

Two times a day so.

It's it's disingenuous to suggest.

That an occasional event by our community to that property is creating an enormous traffic hazard.

There's a shooting range up there that has regular activity.

That's a commercial venture.

So a lot of these, these things have been blown out of proportion.

Considering what I'm trying to offer the community as far as using our property.

Thank you.

Thank you.

We'll hear from the.

The appellant and I see a gentleman in the room, wishes to provide additional public comment, but since I said the appellant would would have an opportunity to.

Add anything if if you want you don't you don't you know. Just give you that opportunity.

Thank you, Jesse Kadik one more time.

I just want to point out that key holdings in Mr. Isbel could be doing the most virtuous things possible on their property, and the board could find that those.

Are oh, great service to the community.

But the point is if it's contrary to the terms of the conservation easement, then it's not allowed.

It doesn't matter what is going on up there. If it's good, bad, indifferent. If it violates the conservation easement.

Shouldn't be allowed. Thank you.

Thank you.

Looked like there was a individual wanted to provide additional public comment.

May do so.

Bruce Almons again.

Brad, you said three things there that were actually.

Distortions of what I said.

I wasn't accusing you of anything.

I asked about Fire Protection and and it's great to hear that you've done that much mitigation and we're that thoughtful about it.

I wish everybody was, but we both know that if somebody is staying there overnight and a fire gets away in the grass or whatever, unless you're sitting right there and ready to go, it's gonna go.

And that's the thing that worries me, and I'm not criticizing anyone about that.

It's just a concern as far as the road goes.
 I was thinking about the comment from the fellow from the Y that they bring people kids up on a bus, a bunch of kids up on a bus because the bus is a lot heavier vehicle than any of the regular passenger cars that come up there so that.
 Would that was my real concern there and maybe it's not a concern.
 That's why I bring up the county.
 You know, with regard to county because.
 What do they have to say about that?
 Is that perfectly safe?
 If it is great, but I would feel remiss if I didn't say something about that.
 I don't remember what the first comment was, but I'm not attacking anybody. I just am asking questions about this. Thank you.
 Thank you.
 And we have another public commenter.
 Just once again, Tyler Carlson while we're on the subject of heavy vehicles on that road, the garbage truck also drives up there so.
 Thank you.
 Are there any additional?
 Public comments anyone physically in the room or attending virtually?
 OK, I'm gonna close the public comment portion of the meeting.
 It's a little unusual because we're hearing in a in an appeal of an administrative decision, so we have staff, the county representatives, that report.
 We also have the appellant.
 Who's put forth an argument and then the impacted landowner so.
 You know, at this juncture.
 You know, this is time for board members to address any questions they have.
 After any of those three parties, county the applicant.
 Excuse me, appellant slash applicant or the impacted landowner.
 But before I I ask, my fellow board members if they have any questions. I just wanted to point out two things.
 1st that.
 The one of the deputy county attorneys is present here today and he can answer any questions on the legal side.
 Mr. Hart, that is.
 And the the other thing I wanted to make sure that the board members were aware of is that I'm just gonna read from my phone here under MCA Montana Code Annotated. 76-2-223.
 I think it's Part 2, paragraph 2.
 I just want everyone to know that this is as we sit here. The board sits here.
 It is not an all or none decision that we have to make.
 We can reverse a firm, wholly or partially, or modify essentially the decision before us, so you know, the Statute provides us quite a bit of discretion and authority there.
 Uh, so again we can, you know.
 Say we agree with what staff has has done.
 In whole in part we could change certain things. Just just wanted to make sure that.
 Board members were aware and also the interested individuals who are here tonight, so.
 I have several questions, but I'll I'll defer to my fellow board members if they want to start.
 Go ahead, Rick.

Richard Hall 2:27:15

RH

I guess I had two questions.
 I I'm glad you said we have the County Attorney because I'd like further clarification on why.
 We should not consider the conservation easement.
 Is it similar to covenants?
 I I like little further clarification on that and for the owner, Mr. Isabel.

I it sounds like I was kind of interested in how you mitigated traffic.
Sounds like there are buses that come up for the Boy Scouts and I don't know if you encourage carpooling or anything like that for the disc golf or things like that.
I did count the parking lot and looks like there's 42 cars in there.
I can't tell for sure how many, but I'm trying to look over the top of car, so maybe you could clarify that for me as well so.

JJ

Jill Johnson 2:28:11

Why don't we start with the the first question and I'm looking over to to Mr. Hart here to address your question.

Hopefully, yeah.

Thank you, board members.

For the record, I'm John Hart.

I'm the deputy County Attorney and you know, you heard from Mr. Kadick.

He has a position as to why the board does have jurisdiction to interpret and enforce the. Conservation easement.

That's on this property.

You also heard that in making.

It not in, not in determining whether or not the proposed activities were within the AGW 40 zoning.

Definition, but as part of its review of everything county staff did look at that conservation easement and consulted.

Halted with five valleys Land Trust and determined that you know this was a this was a independent determination that they did not think that those proposed uses violated the conservation easement.

My opinion is different from Mr. Kadaddik's.

I wish that this question was clear. If it was Mr. Kadadek and I would probably agree. But as I read the statute that enables the Board of adjustment, it says.

That you have the power to hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this part. And it's that reference to this part.

And the statute?

Is in.

Part 2.

County zoning. And it's that.

It's that Part 2 county zoning that.

Develop the regulations that are the AG40 classification, and so the part of the decision that the county staff made that is within your purview, in my opinion, is whether or not the proposed uses fall under AG40. And it's not the decision that they made independently, but.

In conjunction that the.

Uses didn't violate the.

Conservation easement.

RH

Richard Hall 2:31:01

Got it.

Thank you very much.

JJ

Jill Johnson 2:31:02

People are people are probably tired of hearing me from me, but let me just say a little bit more about kind of how I analyze this.

And again, it's not easy.

You know, Mr. Kadaddik's, a very he has a very fine mind, probably a finer mind than mine, but we disagree on this. And one one thing I want to point out to the board is that the the decision you make tonight on.

The that that as to whether or not these uses fall within AG 40.

That decision can be appealed to District Court.
And it in Montana, a District Court judge will give this board.
Wide discretion in making its determination and will only reverse that determination if it if the judge finds that you have abused your discretion.
And the only way that the judge could find that you have abused your discretion is if.
The information upon which you based your decision is so lacking.
In fact, in foundation that it is clearly unreasonable.
That's that. I mean, you guys have a lot of of discretion and your decision is not going to be overturned unless it's just, you know, I mean, the word was not outrageous, but I I would use that term and that's the standard of review on your the Dec.
Pertaining to zoning, you could make a decision tonight about the interpretation.
Conservation ease. You're not going to get the same deference.
The District Court might not even consider the decision you made on that decision.
So that's a distinction.
That's another reason why.
I think the best interpretation of your authority is that it should be limited to the determination or the zillion regulations.
Thank you.

RH **Richard Hall** 2:33:15
Thank you.

JJ **Jill Johnson** 2:33:16
Thank you.
Then I guess.
Rick, the second part of your question, I think was to Mr. Isabel.
So I'll I'll ask if he's able to answer that.

RH **Richard Hall** 2:33:26
Correct.

JJ **Jill Johnson** 2:33:29
I think it had to do with.
I think it was ingress and egress and number of vehicles that sort of stuff.

RH **Richard Hall** 2:33:36
Yeah, mitigation of parking. Trying to limit.

JJ **Jill Johnson** 2:33:41
Can you shed some light on the?
Mr. Hall's question, yes, I mean it's a drive out there.
And anytime.
Any group like the scouts have come up. They carpool.
They carpool like mad.
Why? Because they don't want to drive. They don't want to drive so many vehicles up there.
And so, yes, carpooling is almost always done to my knowledge.
But if that's a case by case basis, I will.
Emphasize again that the number of cars we're talking about.
May look dramatic on one weekend.
Or two weekends a year.
Compared to the total number of days.
That that road is driven by people going to the shooting range by people just driving up and down for pleasure and for the residences and residents that live up there.
Is is fraction.
Come. You know the the use that I'm talking about in opening up our properties to.

Civic organizations is fractional compared to the standard use on that road.
Yes, it may seem like a lot on a single day. OK.

But.

For example, I heard some complaints about when we had a disc golf tournament in July.
Well, guess what? The shooting range also had.

A tournament on that same day and they had twice as many people as we did.

So I get, you know, our activities get blamed for all of the traffic and yet we are not responsible for it.

It's it's a misconception that is dropped on the activities up there just to make an argument, but it's a false argument.

RH

Richard Hall 2:35:37

No. Can you answer my question?

Thank you.

JJ

Jill Johnson 2:35:39

Thank you.

I can start with a few if you'd like.

So it seems like to me largely this comes to a question of does this zoning officer determination of this label of zoning most appropriately fit the property or is there another and in doing that there's consideration given to these ancillary documents such as the conservation easement? So I.

Guess my first thing I was going to focus on is the zoning.

The categories of zoning here, because there seems there's two discussion.

It appears that this property was prior.

Zoned prior to the rezoning of the county CA-1.

Correct in.

1994 OK, so the so it was not unzoned property before it was zoned property and then the zoning classification changed correct and labeled it as the.

Agw, 40, was put on the property.

I don't know if there's an opportunity to look at those list of kind of describe uses for AG40 and this definition of recreational, developed outdoor and recreational commercial outdoor.

Is it possible you could put a slide up showing those types of activities for those two different categories?

And I'm sorry, you probably don't have that.

I I tried to.

I thought I was gonna put that on my tablet last night, but I forgot to.

So that was a question I had to just the definition of.

Visually, I'm a visual person.

It would be nice to see those two categories in front of us, and I'm gonna.

I know it's your question, but I wanna piggyback on that and also.

Slightly different question, but it'd be helpful to see the allowed uses and prohibited uses in AG40I mean not just, you know, I know AG 40 allows.

Recreation developed as opposed to recreation commercial, but what else is allowed and and just trying to. Yeah, that's kinda what I was looking for.

So this list abuses and then I also would like to see if there's definitions for commercial.

And developed in the zoning code.

Absolutely. The only difference in these two labels is the term developed or commercial, and I'm curious if there's definitions in the zoning for those two terms that differentiate them by name.

First up, in just a moment, I'll bring up the Kevin, if you like. I do have a couple questions for the appellant if you want to take a moment, I can maybe shift to that. Absolutely. And then you could give you some time.

So you're not just on the spot?

We can keep things moving.

You got it all right.

A couple questions for the appellant and their applicant.

One, I was curious how long they've owned the property and then also curious if they were aware of any of these type of activities have occurred in the past or if this was.

I sort of.

It picked up through their conversation that I woke up one morning and it just came out of the blue. But I was just looking for a little more clarification.

On that.

How that developed and you mentioned the realtor and what they may have disclosed or not disclosed if there was anything more specific or if there was just generic conversation about there's a conservation.

Yeah, this is Cam Schmitz.

I think there was different folks that mentioned kind of their experience of buying the properties up there.

When we moved in, the only thing that we ever noticed or knew of going on on the property was the Boy Scouts would do some tree cutting in the winter.

So or before Christmas they had like a Christmas tree event.

And folks would go up there and cut some Christmas trees and leave.

It was a one day thing and then there was a an event in the spring where they had Boy Scouts up there.

Besides that, that was the only use on the property that was of any more than one or two cars, or just the neighbor going up there.

And then it was about 18 months ago, when, about 18 months ago when we first noticed the construction of the, you know, the Frisbee Golf course.

Course the chain, like the building of roads and clearing of trees, and I was mentioning earlier too, that there was even a day where there was such a large smoke pummel from a fire.

I had a neighbor call me and ask if my house was burning down because they were doing burning slash pile up there. So it was about 18 months ago when a big change happened.

And then this this last spring, it continued to increase and that's when there was multiple events over this summer.

And.

Of which we submitted pictures of the high number of cars, and I would also add that if you know if there is a lot of carpooling going on and there's 42 cars, that's a lot of people. And and when did you parked that?

Because there's also people that come and go too.

And when did you purchase the property?

Purchase it 3 1/2 years ago 3 1/2 years ago.

Yeah, we we were.

We purchased it in July of 22.

OK.

Yeah. Thank you.

Yeah, I I did also have one question for the owner of the.

Property with the in question.

And then I'm sorry if I cut you off 'cause.

I asked to that so we can come back to you as well, but.

This differentiation of the Boy Scouts that you Said's been going on for a long time.

I think you well, we've certainly talked about the YMCA.

How is that connected?

Or is there a connection between the Boy Scouts, the those, those organizations, the YMCA, and the disc off? Or is the disc off completely a separate? I assume the YMCA is not being a part of the disc golf.

While they might participate, they're not organized.

Nor is the Boy Scouts.

That's something you're doing yourself. Independent. Yes, that's correct.

OK.

So I've had lots and lots of different organizations up there, but boys and girls clubs have been up there.

University groups have been up there, especially from the the the foreign exchange students.

They come up.

A lot of school groups classes have gone up.

Groups church youth groups.

So we've had lots of these different activities and we have for a long time.

You know, it's always been known and out there as a matter of fact, the reason the YMCA got involved was because they approached the scouts and said, hey, do you know of an, do you know of a place we're losing our location that we've had for years for?

I don't know how many years, dozens of years.

Do you know of a place and they thought they thought of our place.

Why? Because we've been very open to allowing civic organizations youth groups to use our property.

So I mean if if Cam didn't notice the activities that were going on except for a couple of events, that's not my fault.

We've been having activities up there regularly.

The Scouts cut Christmas trees and they camp out for two nights. They're there all weekend.

They've done it for.

For over 20 years, OK, so.

As far as the difficult was concerned, it was recommended that the the property I played disc golf when I was in college and it was always a dream of mine to create a course and I finally got in touch with the disc golf community here, who said they.

Would assist in helping install a course.

The Scouts have a new merit badge.

Of disc golf.

And so it was a good opportunity.

Let's install the course the Scouts can use it later.

The YMCA came on and they have a a disc golf as part of their program as well.

Natural fit.

But I installed it at my own expense and for use to open it up.

It's not a public course.

I know there was talk about lots of erosion and at at Blue Mountain or Patty Canyon, yeah.

That's true.

Those are open courses 24/7 to the public.

That's never what I intended.

That's never what I intend.

I intend to allow groups, for example.

Having tournaments and that's what we've done a couple of Times Now is very difficult on public places because you have to reserve the site. They can say no.

It's very difficult to have that well.

On private property I can decide.

Oh yeah, this weekend is open. You guys can use it that.

The Scouts, I've, I've, they were they approached me and said, hey, we would like this spring to come up and have a tournament with just the scouts or other youth, OK?

These are the types of events that I'm talking about.

I'm talking about.

Having controlled and supervised groups coming up and using my property, I know too many people in the public.

I would never open my property to the public.

But these responsible groups like the Scouts and the YMCA, absolutely. I know their character.

I know how they respect and will honor the area that they're being allowed to use, so I've got

no problem allowing groups like that up to use our property, and I encourage it because it is such a good, safe environment for the youth.

Does that answer your question?

It did, and I guess I would like to go back to the appellant.

I think maybe it was another some dad, but if not.

We can go back to Kevin and his.

Spreadsheet.

Mr. Manford, I would just like to address that.

I understand where you're coming from with that question about historic use and like what went on in the past, but I think you've heard that from at least from the appellant's perspective that it's radically changed in the last year and a half. But setting that aside if.

20 property owners have private restrictive covenants that cover their 20 houses.

And those covenants say you can only have two car garage.

No three or four car garages allowed. If people start building 3 car garages.

And no one does anything for a period of years.

The covenants can be waived by a whole bunch of equitable principles like waiver and laches, and all these legal terms right.

That does not apply to a conservation easement.

Conservation easements run in perpetuity, and they need to be enforced in perpetuity. And just because someone violates a conservation easement for a couple years does not give rise to an inference or proof that the conservation easement is no longer enforceable.

Conservation reasons are very unique.

Creature of statute.

They have not existed that long, so there's very little law in Montana.

But if we end up getting to that point, I don't think the consideration of how long a use has gone on, if it violates the conservation easement, the fact that it's happened in the past is not a defense to that violation.

Thank you.

I'm gonna. It doesn't count that everything is proposed, doesn't violate the conservation easement.

I understand.

I'm saying that it does.

I understand, and I I appreciate, I know this is.

Hits home because it is your home and it is the the the appellant home. But.

The public comment period is closed. I know you're the the the applicant.

Excuse me, the the affected party.

What? What? I'll what I'll do in fairness is we'll. We'll go through questions if there's any closing comments or anything like that.

That you know, if there's questions directed to you, you can respond them.

Questions directed to the appellant. You know the appellant or appellant's representative can respond to them and then at the end, if there's anything that's said through questions, discussions from the board before we close all questions and we just move to deliberations from the board. I'll afford you.

And the appellant, Impellence representative, an opportunity to.

Provide essentially any closing remarks so.

Appreciate it.

So when I I I understand this is this is important and wanna be respectful not just of, you know, everything that that you feel and and and wish to say but just also the process as well and make it make it as as fair and equitable as Poss.

Kevin, Are you ready?

If not, I can I have some other questions? OK, wonderful.

Now you're gonna. I guess you'll tell us what you're gonna are you gonna show us the AG 40 or what? Are we gonna start with here?

Yes to the members of the board. I believe the first question that was asked was to see a table of uses per zoning districts.

Is that correct correct?

So here, there we are.

We are looking at Missoula County Zoning Regulations section 2.4 FI will preface the use table with this. As you can see, uses identified with a solid square are permitted by right in the subject district either by a principal use or accessory use and they must comp.

With all applicable design and development standards subject to the issuance of a zoning compliance permit.

The second one is the special exception, which is the square that is not filled in.

That, of course, would have to go through our special exception review procedures in Chapter 11 of the zoning regs, and in essence would come before the Board of adjustment for a special exception.

I'll move on to section 2.4 G, which lists our table of uses by zoning district.

And to the board, I would ask the question how I would.

How would you like to look at this?

Should I read them in order?

Or I'm personally comfortable just to look at them. But just for clarity, the category that we're concerned about is open land and agricultural, the classification of AGW.

That is correct.

So the classification that adds about developed and commercial.

There is a two different headings for that.

That developed commercial indoor and outdoor is how it's separated.

So the current zoning is AGW 40.

So that's the third column in that is correct.

Where is a, where is the residential commercial outdoor.

Which category is that?

I think recreation developed outdoor commercial outdoor commer.

Cial that will be in the definition section of Chapter 11 of the regulations.

And I think maybe this is your question.

I apologize jumping in here, but I think if if we were to Scroll down, we would see permitted use.

Is recreational developed and here we go.

Yeah. And then we have to go, I think like Kevin said, we have to go somewhere else to look for.

The definition of recreation developed outdoor recreation comma commercial. But this is where kind of two different things.

So yeah, so there, you're down, you're in the third column.

And you're down to recreation developed outdoor, which is a permitted use, which is how the zoning officer determined this property was in compliance with correct. And then in Chapter 11, I think is where the definition is.

Similarly, recreational, commercial outdoor what the APPELLATE'S claiming is explicitly not permitted.

I think I think that's the crux.

At least one one I that's found emilyn foundation here in my mind.

So then go to your definitions.

Hear the definitions for Missoula County Zoning regulations section 13.2 point A.

You're looking at 225 and 226.

And he said it was OK if I ask questions. I'd I'd like to present this question to the.

The applicant or his representative, probably to Mr. Kodiakople. I'm saying that correctly. I know in your written submission I'm going to paraphrase here.

You said something along the lines of a disc golf course is indistinguishable from.

Batting cages in mini golf.

And I, you know, aside from disc golf, having the word golf in miniature golf also having the word golf in it.

In my mind, and so correct me if I'm wrong here, if there's something I'm missing in my mind.

You know, miniature golf, there's a lot of infrastructure.

You know, bunch of plywood structures, little astroturf things.
 Typically you know.
 Know there's always got to be one with the windmill.
 So somebody electric, motorized thing.
 You know, disc golf.
 Seems to me very different and I know there's still.
 You know a disc golf course will have.
 Some man made items.
 You know the baskets, maybe a pad, but I would say the same would occur with the ZIP line or shooting range. You know it's gonna have target probably.
 You know some type of stall to shoot from.
 Maybe even a concrete stall. You know where you're and a little, you know, shade overhang type thing.
 So again, I saw you.
 Assert that that position that you know disc golf again, I can look it up for the exact language, but.
 Help me understand that because I I really I didn't get it.
 Something I'm missing there? I think I think as Mr. Ammons, who had a comment earlier, pointed out, if you go look around Patty Canyon Blue Mountain where the Frisbee golf courses are, they are quite, you know, trampled and I'm not opposed to, you know, Frisbee golf or other.
 Kinds of like high intensity outdoor use like.
 Happens at Marshall Mountain, you know, with like developed trails and things. But like, I'm not sure that this type of thing is consistent with.
 With.
 Recreation developed outdoor.
 I mean for one recreation developed outdoor says it's for public use.
 And Mr. Isbel says he's not, as a lot of the general public up there. I don't know what to make of all of it, but I do think it comes back to the conservation easement again. If you look at this in the context of the conservation easement does.
 The conservation easement.
 Allow relatively high intensity, even if for short periods of time. Use and the the. I'm sorry I didn't anything in the record, but the Gilman Gauntlet has pictures of like quite constructed like tea boxes and greens or I'm not sure what they're called in the fall world but.
 There's like big rock structures built up with platforms and you know, it's not like.
 A pole is planted out in the woods and you throw a frisbee at it and walk down a single trail.
 It's much more expansive than that.
 But again, we're focused on integrating the zoning with the conservation easement and is this consistent with the conservation easement in that context?
 I hope that answers your question.
 It does in part and I just just for your knowledge and and I'm sort of also thinking out loud for the other board members.
 You know, when I when I see this list, I hear what you're saying.
 You know, there's, you know, Alpine skiing, Nordic skiing, you know, mountain bike park, you know, certainly a mountain bike park is going to have some physical disturbance.
 There's to the land. There's probably not going to be vegetation growing.
 Where folks are riding their mountain bikes tends to be more disruptive to the physical lands.
 Escape. You know, Alpine scheme typically will have some sort of mechanical device to get people up.
 And not saying.
 What you're I don't mean to suggest that your argument is wrong or that it's correct. I'm just. I I just didn't quite.
 Quite understand how. Again, let me find the exact language, but you said it's it's indistinguishable.
 From miniature golf.

And I guess I would just say to you.
 And if you disagree, tell me you disagree.
 But you know, if you're gonna say disc golf.
 Is akin to miniature golf before XY and Z. It seems to me I could look at this.
 Definitely these two definitions and say certain elements of disc golf are akin to a mountain bike park where you have or shooting range.
 Or something like that.
 In other words, I don't think it's a black and white.
 Distinction before us and.
 Giving you the opportunity to to persuade me or other board members who might be thinking the same way otherwise.
 And let me I'll find the language that you that you submitted here in the written.
 I I don't.
 I'm not going to try and convince you that it's a black or white distinction.
 I don't think it's a bright line.
 OK.
 Well, when I find the language later, when we're deliberating, I'll, I'll, I'll. I guess I could add on to this and and I'm I'm. I've skipped over a point that you're you're reiterating and that was one of my points to get to and I just wasn't quite there.
 Yet, and I know maybe when I asked that historic use, maybe I was laying some track.
 You would think I was going down, but at first addressing this question of zoning in my mind.
 And when I look at this definition of recreation developed outdoor and what I hear.
 The properties being used for and I look at the one for commercial outdoor.
 I personally find that this application is more.
 In compliance with 226 than it is 225 outdoor.
 It even specifically says because I think part of this argument is commercial, and you go back to this conservation easement, but it explicitly even allows collection of fees in 226, which I think is that invitation or that door that wants to get open for a Commer.
 Business while they're collecting fees.
 Well, 226 recreation developed outdoor allows the collection of fees.
 I find the uses are very much in alignment with 226 as proposed.
 I'll go the step further.
 I have a hard time with in this whole looking at the whole package is the consideration of that conservation easement and I'm not an attorney.
 Don't don't even want to be one to have no implication. But when I look at this document.
 It was amended.
 I don't know what the original look like, but nonetheless, what's enforceable or what's important is the amended version. I believe it's also confusing to me.
 It was litigated. For some reason I don't understand, but I don't see the word commercial in that document.
 That it says you can't use it for commercial.
 It goes through list of uses.
 I didn't find the word commercial in there.
 It.
 It actually permits guest ranches.
 Which could be lots of things that could be guessed that could be horses. That could be a lot of things.
 So it permits a guest ranch.
 It permits a single family house and it permits a guest house.
 So I'm having a hard time understanding in the document that you're basing this on that we should look at it and deny it based on the conservation easement.
 I'm having a hard time finding documents in there even that well. It's not 100% clear.
 Maybe I'm having a hard time finding the the smoking gun in there.
 That tells me how this is out of compliance with the conservation easement as a layperson.
 I understand that and I think.

That.

In the same way, you have to read the the. It's similar to the zoning regulation that says the county doesn't normally consider private covenants, right. And the inverse is that when it's a party to them, it should. And when you look at the conservation easement, it it talks.

About the uses that are allowed and the allowed uses under conservation easement are one single family residence on each of the six parcels, including a guest house.

But not for paying guest and.

It, and it allows agricultural use and it other than that, it's designed to protect as far as I can tell, the land as it existed at the time.

No commercial logging, but thinning for fire purposes and so a person who's buying a property under the that's subject to the conservation easement or a zoning authority who's looking at whether proposed use is consistent with the conservation easement.

Has to consider the document and what the.

Intent of the parties was when they entered into that document and what it was supposed to do, and if it was going to allow.

Commercial use.

Which I believe recreation developed outdoor is necessarily commercial use cause it contemplates people paying.

Then what was the conservation easement designed to prohibit like?

Why is it there if it says residential use and if it says agricultural use, then the implication along with the language about not allowing paid rentals is that it prohibits.

Commercial use.

And I think that's consistent with the purposes and the recitals that are in the conservation easement and and I have a hard time with that for my Lay's perspective, because I would argue and I've seen a few of these documents, commercial's a pretty big word and.

If it was explicitly to eliminate commercial, it's odd that that document doesn't say you can't do commercial.

I mean, it gets into all the specific things you can do.

But it does not explicitly say no commercial, and if one has a guest ranch.

I don't know how one wouldn't think that wouldn't be commercial.

Well, I mean I I'm trying to not get involved with Mr. Isabel's comments too much, but I think it's worth pointing out that Mister Isabel's submission.

Basically says that all this prior use violated the terms of the conservation easement, and nobody ever tried to enforce it.

And he tried to enforce and it didn't work. And it's. I read his submission is basically conceding that if the conservation easement wasn't for.

About what he's doing might violate it, but it's not enforceable because no one's ever enforced it.

And the I think another thing that we have to keep in mind here is when we're talking about the use of the roads.

And again, I know that the the planning staff doesn't really get engaged with private covenants. As a general rule, but in this case, for context, you have to consider the fact that this road that goes to Mr. Isabel's parcel.

Gilman Creek Rd. crosses over both the properties of the appellant.

So we're not just talking about like what someone's doing on their neighboring property. All of these people who have you heard the complaints about the dust and the increased traffic that's on the appellant's property.

So when they bought a property that was subject to conservation easements, I don't think they would have had a reasonable basis to consider that their neighbor, who's also subject to the same conservation easement.

Would be able to allow this.

At least at times high intensity.

Use that to me seems inconsistent with the intent of a conservation easement.

In this context, that specifically allows one out, one parcel per residence.

I mean if it if it was gonna, if the conservation easement wasn't designed to limit use, why

did it specifically limit uses to one residence per parcel? If you're gonna buy a property that's subject to a covenant that says you can have one house per parcel on it.

I don't think you should reasonably expect that someone's gonna turn it into a campground.

I could comment back to that, but I think I don't.

I is my point clear.

I guess.

Or my understanding or my position whether it's right or wrong I? I mean I understand where you're coming from.

Sure. OK. I I mean 'cause.

I mean, well, we've had that conversation and access and other things.

I mean, there is a clause that says a guest ranch.

I mean, that's a very vague term too.

I mean, is that pause up?

It could be considered a guest ranch.

There was the Shetland Pony guest ranch.

Lolo, there's been a number of guest writers that could be probably far more intensive on these that access Rd. and other things that I don't think are explicitly prohibited from this conservation easement.

Yeah, it does say for non paying guests, but I believe that the guest ranch that phrase is like coming from the the non paying guests are tied to the guest house. I think the money it says if you you can't put it as a VRBO.

Can't build that guest house and have paying guest the people using the guest house need to be guest of the primary residence is what that document says I believe.

But again, I'm not an attorney, so I would agree with that.

Which implies to me that you can have a house and a secondary house that people come and stay at and you can share with your family. But again or friends. But that doesn't imply that you can have wholesale commercial use of the property.

I mean it's it's specific to.

Reserving the right to do single family residential development in on page at the bottom page three and out of page four. And I mean the grantor specifically reserved for itself and for successors the right to develop not more than six residential parcels according to the certificate of Surve.

So it's, I mean, it's specifically stating that like that's it one house and in in, in our view this kind of use is completely different than the traffic that's going to be allowed.

At a single family house, which would be however many car trips per day, and I know these guys can tell you exactly how many car trips per day can be expected from a single family house, but it's not 42 cars going to a Frisbee golf tournament it.

Not people.

Camping and it's not multiple school buses and what other things that result from that, such as like, you know the septic pumps that come up and pump the outhouses on a regular basis. These aren't the kind of things that people expect when they buy a property that's subject.

To covenants limiting to one single family house.

Get that and when?

Probably everyone would always do things different in Hindsight's 2020 and we could all make things better, but I still look at like paragraph 10.

I don't know what.

I guess that's page three that that brings up other things and there's no explicit limitation that says no commercial activities.

It just it doesn't.

I don't think it says it in this document and and that being said, that's sort of a sidebar where I'm looking at that document in consideration and not by any means ignoring this conservation ease, but well, when I look at the proposed uses as well, back to the.

Zoning officer's termination.

It seems like recreational, developed, outdoor.

Is a pretty good fit to what that property is, being how that property is being utilized today. And it seems like it is in compliance with the zoning, just like this parent document says. You can do these things.

And here's things you can do, but it also sort of references the basis of also what's permitted by zoning. And when that zoning changed from CA-1.

To agricultural, there was a period that one could have come in and contested that and made their points or other things, but nonetheless that doc, you know, that ship has sailed now.

And it's got this zoning classification that seems to be these uses are pretty fitting to and this document, you know, it does say residential. There are elements of it. Like you bring up. But I think there's also other elements that you could argue from the other side to.

That document, so I don't know. I am looking at it in the gravity of the whole situation.

I guess you know, just to understand that and.

I hear where you're coming from and I don't need mean to go back and forth all night with you.

I mean, we could talk about this a lot, but I think.

My read of this document.

As like when you're reading it holistically and trying to understand what it's talking about, the discussion about compliance with existing zoning and things like that, the way I read it is that the grant or you know the person who put the grant to the conservation easement to the. Missoula County was reserving the right to build a single family home on each of these parcels, regardless of what happened with future zoning.

So if it became more restrictive in the future, then they had reserved to put at least one parcel on each one 'cause. This involved a settlement litigated settlement, you know, and I don't know that I don't know the whole back story, but it involved access through some of.

These properties to get to, I believe some of the properties in section 18 and so when it when it's talking about consistent with zoning and you know like the framework around zoning, it means that they were protecting their right to put one single family residence on each lot.

And I don't think an expansion of use is allowed by zoning in or reduction would change that. But I also don't think that means that that single family residential use doesn't operate as a restriction.

It has to operate as a restriction or else the conservation easement doesn't do anything at all.

Thank you.

Rick, I know you have your hand up, but I'm just gonna jump in for a second.

I apologize and and ask.

I think I think it was Kevin's computer.

Can can we go back to the the other tab?

I mean, we'll probably come back to this tab in a minute if we're deliberating, but the the permitted and do you mind?

Just kind of.

Can you scroll through?

I guess maybe from the top and just wanna, you know, get a get a sense of what other activities are allowed. Now I know we're putting aside the conservation easement. Get to get to that after Rick's question.

But putting aside the conservation easement, just looking at the zoning.

Uses if you just scroll through it slowly, that would be, that'd be great.

And we're looking at the third column.

That is correct.

And again, this is a Missoula County Zoning Regulations section 2.4 point G.

Need to get you a charger.

And that is the end of the section. OK, Rick, you've been patiently waiting.

I'm just gonna do one other housekeeping issue.

I suspect we'll either be asking questions or deliberating when we get to the top of the hour,

we'll take another break.
We'll figure out then.

RH **Richard Hall** 3:13:13
Mine is a point of order, Mr. Chair, not a question.

JJ **Jill Johnson** 3:13:17
Oh, oh, go ahead. Sorry.

RH **Richard Hall** 3:13:19
Are we asking questions or are we deliberating because that was about a 20 minute long deliberation.
So I'm confused.

JJ **Jill Johnson** 3:13:29
It was intended to be for questions, but I.
I I agree with what you're getting at. At the same point in time, I think that.
At least I I feel like some people, myself included at times, can find it useful to sort of think out loud or deliberate and and inform questions.
Though I though I hate to make the comparison, I think of all the politicians in DC where they, you know, they, they, they ramble on for 9 minutes, 10 minutes and then they finally ask a question at the end.
End of their, you know, 12 minute allotted time. I don't think we're we're in that territory. But sometimes I think it's it's helpful.
But we can.
We can certainly try and keep it more Q&A focused.
I I hear what you're saying.
Do you have anything else that right now, Rick?

RH **Richard Hall** 3:14:35
Nope. I mean I I just want to get to the point where we're deliberating because.

JJ **Jill Johnson** 3:14:36
OK.

RH **Richard Hall** 3:14:43
I'm I mean, I'm new to the board and my understanding is what we're trying to determine is whether the determination to grant the permit.
Was correct or not?
That's pretty much it, correct.

JJ **Jill Johnson** 3:14:59
That's my understanding and let me I think that's a good segue. A question I had for for staff, I guess for Kevin.
And I guess potentially also for other members of the board, but I'm gonna direct this to Kevin and just, you know, as I'm looking at the the issue before us, it's really several different issues. And I just wanna make sure I'm tracking everything correctly.
Especially since you know we can.
It's not an all or none.
I think there's a question about.
The conservation easement, the extent to which I'm just gonna say conservation easement does hold list of sub questions.
But you know we I think you know we can.
For example, agree or disagree that it the extent to which we should that should be part of the zoning determination and then agree or disagree that it's consistent with the

conservation easement and all that conservation easement. I think the other.
Question is.

This recreational use.

Developed versus commercial and we saw the the you know one is got this solid box for AG 40 being developed in one not not allowed being the commercial.

So I see those as there's two issues and then I see two more and I want to make sure.

Staff agrees.

Or again, if board members agree as well, this is there's a question.

For staff, but I there's there's, there's this question about a pavilion and then.

Which I think.

Could you know describe various different ways by the different parties?

But I'm just gonna say pavilion think it was potentially a fire ring in some benches and whether that.

Falls within the allowable uses and then there was.

Parking structure is that, is that a fair assessment of, you know, sort of to to Rick's point about, you know, let's let's get to the.

What we need to decide would would that be a good in your opinion?

Way of.

Kind of looking at the the issues before us is there am I is there.

Am I missing one?

Am I separating things that should be combined combining so forth?

I believe or that that is a good start, alright.

To the board to answer your first question in regard to the conservation easement, the purview of the board is to affirm our decision that the land use and zoning compliance permit.

Was issued correctly. Due diligence was done and.

That you would deny the appeal.

Section 1.8 of the Missoula County Zoning regulations, per the conservation easement.

The zoning officer.

May require that such instruments such as covenants and deed restrictions be submitted for review to ensure their provisions do not conflict with these regulations. Staff completed due diligence by reaching out to appropriate agencies.

Agencies, to be sure that the the issuance of the land use and zoning compliance permit and their associated uses and activities did not run afoul of that conservation easement.

Second question I believe was the uses the use table which again is before you here.

Recreation developed outdoor is permitted outright.

Recreation Commercial outdoor is not allowed.

#3 the pavilion.

Those were accessory uses on the land use and zoning compliance permit LZ to 505-9311.

They were approved as structures in relation to the uses that were allowed on the property, such as a disc golf course, disc golf course and the summer camp and outdoor retreat center.

Those structures were permitted.

As a right with those uses in the district, if that makes sense.

I think it does and and I think.

Then you'd probably lump together.

I mean, we could parse it out if we want, but you would probably lump together.

The pavilion or however you want to describe it with the Gaga pits and the.

Parking area and so forth.

Those are all the the allowed structures that are permitted to support the allowable activities.

That is correct.

To support the uses that are outlined allowed. OK.

So I sort of said it as three I kind of.

I initially said it as four but it seems.

H3.

The conservation easement, the allowable uses, and then whatever structures are permitted, which could be, you know, a short list or a long list, but whatever structures are permitted. In support of that allowable use, assuming you know if the board determines that the use is disallowed, then presumably that would kind of get to the third, but that may be a better way of framing it correct.

And those structures would be approved in reviewed underneath the land use.

And zoning compliance from its per the site plan that was submitted by Key Holdings. Is that so?

That's the just to make sure I'm tracking correctly.

This is page two of the permit.

Looks like it's page 159 of the pack agenda. This would be the 210 by 20 shelters.

Conex box and so forth.

Is that that what we're talking about?

That is correct.

And the site plan, which would be page.

About five other permit.

The site plan does show the gazebo, which was reviewed for land use and zoning compliance.

To take into account the riparian resource protection area, slopes, etc.

I don't know if I have page five at least.

Maybe it's somewhere out of order?

JJ **Jill Johnson** 0:03

We need our recording to, OK, just wanted to make sure it's gonna be very lengthy minutes. You probably want want the recording and to the board. There was, I believe one more question that was asked of the parking structure.

Missoula County zoning relations do not define a parking structure.

Thanks.

Have a question for Mr. Isabel, but before I get to that, I'm just gonna turn to my fellow board members virtually and physically and and and ask, would you prefer that we push on through or should we take another break at the top of the hour?

I'm good to continue. I see.

An end.

But it's up to anyone else. I'm fine to take a break if people need it.

RH **Richard Hall** 1:00

I'm fine to keep going.

JJ **Jill Johnson** 1:02

OK. We'll we'll keep pushing and then we could assess obviously later.

I just wanted to clarify because this came up so Mr.

Mr. Isabel, you mentioned when you were.

Speaking something about a a conservation easement from 1999 and then you also mentioned it 2016 Blue Heron Conservation Easement, I think.

Or my handwriting might be wrong there.

I I'm assuming those are just other easements in the general vicinity that those aren't at play here.

I just want to clarify, is there some?

Play here. One of them was the section 18.

I was just emphasizing the fact that I have personal experience with conservation easements. I've written them.

I understand them and so.

I think my testimony on behalf of that is valid.

I would like to clarify the attorney misspoke, he said.

I violated the conservation easement with my statements of commercial.

For use of the properties and, that's not what I said.
 I said that track two where the Schmitz's now have their residence, was used as Deep Creek retreat, which was a commercial venture and both the main structure which was built for a retreat and the secondary house, have both been rented.
 To non related individuals in a commercial sense.
 That happened for 20 years.
 That's what I said.
 I didn't say I did that.
 I understand. And I'm gonna ask if you don't mind, just to hold that. And then I did promise both you and the applicant some closing comments, but.
 Just to kind of keep us, I got, you know, we had a point of order earlier in terms of you know kind of sticking to the the format here, but I but I appreciate it and I do want I do want to make sure that anything you want.
 To say gets on the record and and the board.
 Wants me to. I I I understand.
 I understand.
 Clarify that.
 So I I that you answered my questions about the the easements I which I appreciate OK that you had mentioned. Are there other questions that board members have for staff for the applicant slash appellant or from the impacted landowner?
 I only had one more. Kevin, do you have the definitions?
 I did ask about commercial and developed are those in the definitions?
 The zoning regs.
 Yep. Recreation commercial outdoor.
 No, just the term developed and commercial are those defined.

RH **Richard Hall** 3:45
 We saw those earlier, Dan, we.

JJ **Jill Johnson** 3:48
 Any questions?
 A little different.
 No, they're not defined.
 No definition, even for commercial.
 I could.
 Sort of get developed.
 Got skipped over but surprises me.
 There's no commercial definition.
 And we're ambiguity did arise.
 These definitions were pulled from.
 The following per 13 point 2.8 the following definitions apply to these regulations.
 The latest edition of Merriam-webster's Unabridged Dictionary should be used in any instance where a word or term has not been expressly defined.
 OK. Thanks.
 And and Rick, as I understood Andy's question, he was just asking, we have, yeah, OK, good.

RH **Richard Hall** 4:42
 Yeah. No, I I get it. Thanks.

JJ **Jill Johnson** 4:43
 All right.
 Board members.
 Any other questions?
 Alright, let's see.

So we had staff.
 I'm just trying to think who should who should be.
 I guess we'll go in the same order as we did.
 Before, so we had.
 I mean, I don't think staff needs any closing comments if unless there's anything that you've heard, I guess I'll do, I'll do the same for staff. If there's anything you heard in the Q&A that you think?
 Requires further clarification or think anything that we should consider.
 I guess this would be.
 Sorry I didn't didn't give you a heads up, but is there anything that you that you think has been said that that needs to be clarified?
 No, thank you.
 Mr. Hart, OK.
 So we'll just go in the same order.
 We'll hear from the appellant representative applicant. However you want to refer to the the party complaining about the zoning determination and then we'll hear from Mr. Isabel the Isbell.
 Excuse me, the affected land owner.
 And then we'll move to deliberation.
 And you can.
 You could waive the opportunity if you want.
 Just wanna make sure you have that opportunity.
 Thank you, Christine Kirchner again. Aarali Gulch and I actually was trying to respond earlier to Mr. Mefford's comment.
 I think you had a question that perhaps related back to something I said earlier in my statement about purchasing the property.
 What was stated about the conservation easement and the reason I was emphasizing both the spirit and the letter of the conservation easement is really when you read that entire document, if it's not there to preserve the wildlife.
 And the natural landscape.
 Then there's really no meaning to it at all.
 And it was in connection with that I did a little bit of research or quite a bit actually, because I was very concerned that if I purchased this property, which quite frankly is burdened, it's considered to be burdened by a conservation easement, meaning as an owner, I'm limited. On what I can do and the way I read it, it's like a pie.
 You only get a slice.
 It's what it tells you can do, and it was very clear to me that if one day my son the forestry. Student who's playing a move here that I have 48 acres.
 And the conservation easement, there's no structure on it right now.
 So if I'm going to let Joel move here and build, I wanted to be very clear.
 I get one house there and then if it's not specified, it's excluded.
 So, you know, at the end of the day, I would ask this board to consider what's the meaning of the conservation easement if you can do all the development commercial you can pour concrete bases for these golf Frisbee, you know, structures and so on. So you know it.
 Would it would render them meaningless?
 The the other thing that I wanted to say.
 In closing, is that the impact you ask how long it had changed?
 Obviously I'm not there 365 days a year like the Schmitz's are.
 And so, you know, Mr. Schmitz is in the best position to talk about when this activity really increased with the disc golf course, which was apparently last summer, right.
 Construction started 18 months ago.
 But what I would say is that Mister Isbell and somebody said this hits close to home. I want to clarify that, Miss Walker who who spoke?
 She has a home there.
 I have a home there. I spent 1/4 of the year here.

The Schmitz's are there every day. Mr. Isbell has no home there. He doesn't have a structure on track. His track three in the conservation easement. He does not live there, so he's coming out there from time to time during these tournaments or when the activities there. I I honestly don't know if he's there when the Y is there or when the camping is gone going. So it's a bit ironic. This activity is going on and that really strikes me as commercial. And Sir, to your point, Mr. Medford, about whether this is a guest ranch. How can it be a guest ranch when you don't live there when you don't have a primary home that you are entertaining your guests? It's a commercial enterprise and again I would reiterate and submit to revoke the permit because it flies in the face of the spirit and the letter of the conservation easement. And I would just ask, you know, what comes next? If this permit is not revoked, I have a 48 acre flat Meadow. Should I erect a a cocoa stand and a ski rental and put in a A4 pay commercial track for cross country? I mean, we're just going to gut the conservation easement. Going down this path. Thank you again for the opportunity to be heard. Anyone else from the appellant or appellant's representative? Go ahead. Yeah. Hi, this is Cam Schmitz. I I think there was a great number of good comments just made, but you know, I also think too that if we're looking at the zoning and we're looking at the allowed uses, it's really explicit that a, an Event Center is not permitted. Daycare center is not per. And if you look at the definition of a daycare center, it would define exactly what's been going on up there. So I I think those things should be considered too as well as. As well as like what was said, the spirit of the easement. You know what? What is the purpose of a conservation easement if it's not to conserve the land to its, you know, natural state? So anyways, thank you. Anyone else from the appellant applicant representative. OK, Mr. Isbell, the impacted landowner. Everybody keeps referring to the natural state, and yet the conservation easement specifically says that nothing in it is to limit the agricultural use of the property. This property had been pilled and growing wheat for I don't know how many years prior to and during when the conservation easement was placed. I could go out there tomorrow and till up the entire ground and plant it and harvest it and be on there with large agricultural equipment, if I so choose. And there's nothing in the conservation easement against that. We're talking about really small activities. They keep expanding. What for their own argument? What is going on? The concrete pads for the disc golf. There's no concrete. It's dirt. It's dirt, and it's been adorned with a couple of logs to make it look artistic, and it's done very classically, actually. And then you put a basket that's less than. That's one fence post, essentially. So much has been made about how much impact has been going on with this conservation property, which was completely logged off after the conservation easement was put in place. Commercially. In violation of the conservation easement.

I don't have a house there.

That's absolutely right.

We chose not to impact this land by placing another house on it.

Opposite to everyone else here who has put a house on, has put a guest house on, has graveled in roads, has big gravel parking areas, has horses 20 feet from the Creek that use it back and forth all the time, creating great impact.

Having.

Fences everywhere.

My impact is less than what the complaintants impacts are. I take offense that they try to saddle me with activities that they themselves are doing in abundance.

I'm just trying to open up land.

Private land in a safe environment for youth organizations to use.

Nothing I've done here is.

In violation of the conservation easement.

Despite what they claim, I've done, or even lying saying that I've had commercial camping on there. Nobody's ever camped on my property on the track. Three. Ever.

They camp on my Section 7 behind that.

Absolutely never. On track three like they keep saying I've done.

I'm not violating anything, but they're making claims that I have and I really take offense to that.

I'm just trying to allow.

An opportunity in a natural environment or underprivileged youth to use a property and I'm not in any violation of covenants or consternation, easements or zoning regulations. And I really don't like to be hassled like these folks are giving me a hard time. Thank you.

Thank you.

Andy, Rick, are you good?

Just checking in can keep rolling.

I'm good.

OK, Rick, you good?

RH

Richard Hall 14:16

I'm good, yeah.

JJ

Jill Johnson 14:18

Staff.

Great county.

I'm good, all right.

I guess we'll we'll move to the deliberations and I'll, I'll, I'll kick it off.

You know on the conservation easement.

I I see the arguments either way in terms of the extent to which that should be a part of our, you know, if you did sort of two step process, one is you know.

Because it play a role and then if so, you know, was it interpreted or applied correctly?

I'm willing to say that, you know, especially where the county is, is the holder of the easement.

That staff, the zoning officer, needs to look at that conservation easement and it looks like that was done.

And then you get to the next step. And I'm just speaking for myself. And you know, other board members feel differently.

You know, let's let's let's, let's talk about it.

You know, I get to the next step.

It's that's the harder question for me and I'm and and where I sort of landed is that I think it would be appropriate for us to say.

We're going to apply the easement if it was, you know, clearly applicable, so you know if if the easement said whatever it said and said no.

No discharge of firearms on the property.

And someone wants to put a part of the developed.
 Recreation comma developed, including the shooting range.
 Then I think, you know, I think this board would have a role to step in and say, OK.
 You know, they didn't even apply the easement.
 You know, it's just sort of this clear error type of thing.
 But you know, if it's, if it's, if it's a question of easement interpretation, I think that probably goes beyond in my opinion.
 Scope of what we're supposed to do.
 You know there's language in here that talks about.
 You know, there shall be careful and prudent control of activities or uses which result in surface erosion or which have detrimental effect upon Fish and Wildlife and their natural habitat, wildlife. You know, what's the natural habitat of wildlife and surface erosion we can.
 You know, I think the appellant probably has a compelling case that maybe.
 Maybe it is.
 You know I don't.
 Maybe the activities are or aren't, but I don't think that's something for us to decide because you know that's that's sort of a fact intensive inquiry.
 I also don't think that.
 You know, I I think that gets to interpreting the easement and you know, if we're going to do that, I would want to see the original easement, the the settlement agreement from the court and then we have this amendment, this amended deed. So all of which is a.
 A very long winded way.
 Saying I I don't really think.
 Given what we have before us, and given the ambiguities here.
 You know, like Andy, like you said, it allows for a guest ranch.
 What is a guest ranch? I mean, that's gonna disturb wildlife and their natural habitat.
 That's probably gonna involve surface erosion.
 You're probably, you know, as Mr. Isbell said, you know he can.
 You know, drive all sorts of agricultural equipment.
 Heavy machinery.
 So I.
 Don't again.
 Very long winded way of saying I I I'm disinclined to go into the nuances of this easement and to be honest.
 I think why the easement is before us is because let's hypothetically say the easement is being violated.
 I'm not saying it is.
 I'm not saying it isn't, but it seems to me that.
 The neighboring land owners maybe have a.
 Enforcement problem or if we're in federal court, a standing problem that you know.
 They're, you know, they're they're they're the owners of the Serbian estate. Not that the you know that they're they own the land that's burdened by the easement.
 So you know, normally you don't enforce, you know it's the other party, the the the holder of the easement that would go and enforce and say you're overburdening not overburdening.
 Excuse me, but you're violating the easement.
 But I think that, you know, they probably have.
 You know, my guess is I haven't looked into all the nuances, but my guess is they probably have a hard time framing that and and bringing it before you know the state, District Court judge, and they can go through discovery and do all the fact finding and you.
 Know interpret the law in that regard.
 So anyway, I'll stop there on the easement.
 There's things I can say about the other parts that, but I I just in terms of deliberation, I I I'm disinclined to go.
 Into the weeds of the.
 Easement and the only instance in which I would is if it was, you know, they clearly, if staff

clearly did not apply it like that example that I gave where it said no discharge of firearms and then they permitted the shooting range.

That's, you know, that sort of clear error, but I'll stop there.

I guess maybe I'll ask my, you know, Rick or Andy, do you?

I mean, do you think we should be looking at this at this easement and trying to interpret it?

If you if you want to. And I spoke for for a long time, so if you need time to to digest that, that's fine too.

RH **Richard Hall** 20:09

I would just say I agree with you and stop at that.

JJ **Jill Johnson** 20:16

Yeah, I I think our role is review of the zoning officer determination with consideration of these ancillary documents.

I think that was applied in this case.

I think there was reasonable.

Reasonable application of that by talking to five, Bally's and looking at the document itself.

I think there are again, like I said earlier, I think everything could go back in hindsight and be clear and be a stronger document.

I think we could all set in this room and say goodbye. Shoulda woulda, but that being said, even when I look at it, I personally cannot find such rigid violations of it that I would be comfortable to say that that somehow would have violated the issue of the.

Zoning, compliance. Zoning.

Appliance determination. I feel like that determination that they made is reasonable for the way the property was described and how it's being used.

And you know, I'm I'm comfortable to move down that road. Obviously if the appellant is dissatisfied with that, there are actions, I mean spelled out in this document.

There they can take a civil case and take it to a court, or they could appeal this decision to District Court. So there are remedies out there. If this is not the right decision, unfortunately. But given the kind of the framework we have to operate.

Again, I I feel reasonably comfortable that for me that's the right determination.

Unfortunately, you know, so that's where I'm at.

RH **Richard Hall** 21:39

And.

Can I have a chance?

JJ **Jill Johnson** 21:43

Yeah, go ahead, Rick.

Sorry, my mic was off.

RH **Richard Hall** 21:47

You know, I mean, I I agree.

I think that I'm looking at the application, the land use permit.

I'm looking at what was approved. Everything that was approved is no more than that was was done.

They were very open about what their intent uses were for.

I think they are recreation developed outdoor uses.

I think they are allowed.

I I agree that they took in.

They did do their due diligence.

I also, you know, feel that one of the overarching things about Montana is that.

We believe that people should be able to recreate and.

Hunt and fish and use the natural resources.

I think that's the whole purpose of.

A conservation easement that those lands don't get developed to a point where that can't be done.

And and then the last thing is.

You know, as was pointed out in the presentation.

You know, we lean toward the property owner in the property rights as well.

And I don't think that this property owner is doing anything.

With their land that you shouldn't be able to do with that type of land and.

You know, I I not every rural place can be you alone and quiet and peaceful.

As it was pointed out, it could also be.

Fully cultivated agricultural field in production.

So yeah, I I think there there.

I think it's fine.

I think it's.

I think it's an appropriate use of an AGW 40.

I think that the application was truthful and correct and the decision I don't see a reason to overturn that decision.

So that's my feeling.



Jill Johnson 24:10

I'll just jump in and say, Rick, you know on the other issues I you know, I kind of separated it out.

You know the three issues, the easement and then the.

The permissible uses under AG40 and then the the structures.

I I agree with you that as I was sort of hinting at earlier with my my question to the.

Appalachia applicant you know.

When I look at the definitions, it seems much more closely aligned with.

The.

Determination here.

Excuse me, it's getting late.

This seems much more closely aligned with commercial develop.

Versus no strike.

That is much more closely aligned with recreation comma developed as opposed to recreation comma commercial.

And even if there was some ambiguity, I think you pointed out that it was section 1.8 or something.

Like that in the zoning that says, you know, staff instructs the county, and I think rightfully so, if there's any ambiguity.

You know, resolve that ambiguity in favor of the landowner.

You know, property rights are are sort of paramount typically.

So yeah, I guess I agree.

With what you said and same.

Same for the structures I mean.

I don't think.

Yeah, I guess I'll just leave it at that.

I only have one comment to add to that, and it'll just be in passing and that comment about the 1.8. I do think that's an important comment, but I think that can be taken both ways too, because there's an appellant who says my property rights are.

Being impinged on by the inappropriate application of this so they could make an argument as well. I think that you know that's an infringement and should their rights prevail. So that's a statement.

And I guess if you're asking to do something in that case and said I want to do something.

And there's ambiguity.

The that would tell me, you ought to say to that person. Well, we're going to air on your side of doing what you want to do.

But when you've kind of got two people against it, you can use that argument two ways, in

my opinion.

And to the board for the record, that section of the zoning regulations is 1.14 point 8.2.

Thanks. Now I appreciate it. And I, I agree, Andy, that I did not mean to suggest that.

Did not mean to elevate 1 property owner's rights over the another property owner's rights.

I just.

I read that provision in the context of, you know, we're just looking at.

What the county did, the county got an application for zoning.

Compliance permit and there were some, you know, maybe it was completely clear to the office.

Maybe there was some uncertainties, but you know that provision.

That Kevin just read for us, I forget the citation, you know, and that's it's just looking at it that way.

But yeah, it's an important point and I agree with you that I I if.

If my comments were construed as we need to, you know, look in favor of this property right owner as opposed to the other property right owners?

I that was not my intent.

I was just just in the context of party a submits an application and you know, Yep, done taken. I just.

I just can see it both ways in this case and you know and like I said, as far as issuing the zoning compliance, if there was ambiguities then that's where you could apply that one for and say we should favor this way.

But in a contested case, I can sort of see that cuts both ways, if you will.

Yeah. No, it's fair enough.

Any other comments, deliberations, thoughts by the board members?

RH

Richard Hall 28:04

Are we ready for a motion?

JJ

Jill Johnson 28:04

I'd be willing to. Yeah, take that.

Yeah. Sounds like Rick was ready.

RH

Richard Hall 28:13

Rick was just in planning and zoning till 9:45 last night too, so.

JJ

Jill Johnson 28:18

And won't be done before 9:45, but you never know. You know, got old business. New business, you know.

RH

Richard Hall 28:20

I know.

Thank you.

No, no hurry.

We take as long as we need.

OK.

I'll make a motion.

I move that the board approve and adopt the recommended findings of fact and conclusions of law on the staff report and that the board make the following decisions one affirm the Missoula County Planning, Development and Sustainability Staff decision that the uses approved in land use and zoning compl.

Permit LZ 25059311. Fall under agricultural.

Working 40 AGW 40.

Under the definition of recreation developed outdoor and to the appeal is denied.



Jill Johnson 29:11

Is there a second?

I would second OK any further deliberation, since the motion is on the floor.

All right. Can we go to a roll call? Vote please.

Roll call vote Rick Hall.



Richard Hall 29:27

Yes.



Jill Johnson 29:28

Andy mefford.

Yes, Babek Raskefard, Mr. chair. The motion passes with the unanimous vote.

All right.

Thank you.

That will conclude.

Conclude the public hearing portion of the meeting.

I want to thank everyone.

A few little things still left in our Board of Adjustment meeting, but I I know most people here were here for the public hearing and.

Appreciates everyone's.

Thoughtful comments.

Thoughtful written submissions and just taking the time to to be here and and provide comments and help us sort through this I.

I.

Recognize there's, you know, a lot of strong feelings at issue and you know, as as Mr.

Medford said, as Andy said, maybe maybe we're not the last word on this or maybe there's this will continue.

But our part here, at least at the public hearing, is concluded and.

The the.

That's the proper term. The uh.

Challenge. That's the challenge.

What's the word I'm looking for?

It's a the appeal is denied.

Thank you.

I couldn't think of the word alright. Sorry, it is getting late.

Do we have any communications and special Presentations, committee reports, old business or new business?

Jill, I'm looking at you.

Do we have anything we don't? OK and.

From what I understand, they will not be meeting in January and maybe by February this Board will be replaced by the other board is that we don't have anything on the agenda currently for January 21st, but we will be kind of in touch with you in the.

Next week or so to confirm that.

And then moving forward for February, same thing.

Just expect some communication from us, OK?

Thank you any any comments from board members?



Richard Hall 31:28

Well, I was gonna comment on that.

Jill the planning board.

The Consolidated Planning Board is having their last meeting on the 20th of January.

I know that they've announced the new county consolidated land use board will have its first board meeting on February 4th.

So is it looking like if there's nothing on the agenda?

That this will be our last meeting.

And if there is, we'll have one more.
Can I get clarification there?
So I'll be in Mexico, so.

Jill Johnson 32:02

JJ No, you're correct, Rick. If we don't have anything on the agenda for January 21st, likely everything will just move to that consolidated board.

Richard Hall 32:04

RH OK.

Jill Johnson 32:11

JJ But just knowing we're in transition, we like to.
We'll just keep you posted, but you are correct.

Richard Hall 32:17

RH OK.
Thank you.

Jill Johnson 32:20

JJ Well, that's a good point. I guess before we adjourn, the comment from me as a board member is to thank the county staff, fellow board members both.
Current and past.
It's been an pleasure, enjoyable experience to serve on this board, and if this is the last time, we'll thank everyone and happy Holidays and New Year.

Richard Hall 32:45

RH And I think I may have the shortest tenure ever on a board.

Jill Johnson 32:51

JJ Yes.

Richard Hall 32:52

RH I just get on it and they fire me so.

Jill Johnson 32:54

JJ Uh.
I would certainly echo Babbitt's comments.
There's been a lot of good people through this board and a lot of good staff and a lot of things, and we appreciate all the help and glad to serve.
And I guess lastly, thank the. I know they're not here, but the board of County Commissioners for appointing us and and trusting us with overseeing this process.
I appreciate that as well, so please let them know.
Any other comments from board members?
All right, we could adjourn.
It is 9/26.
Thank you everyone.

Richard Hall 33:27

RH Thank you all.



3614 HWY 200 Special Exception Request

Date: December 17, 2025

Property Location: 3614 HWY 200

Applicant: Mike Morgan

Technical Representative: Hoffman Morgan
Associates

Planner: Kathleen Arthur

Location

- East Missoula off HWY 200



Background

- Property is zoned Neighborhood Center (NC)
- Applicant is proposing a mixed-use development combining multiple-household dwellings with small business commercial spaces.
- Lot 6 of the site contains slopes greater than 25% which requires a special exception for development per Missoula County Zoning Regulations Chapter 7.1.C.2

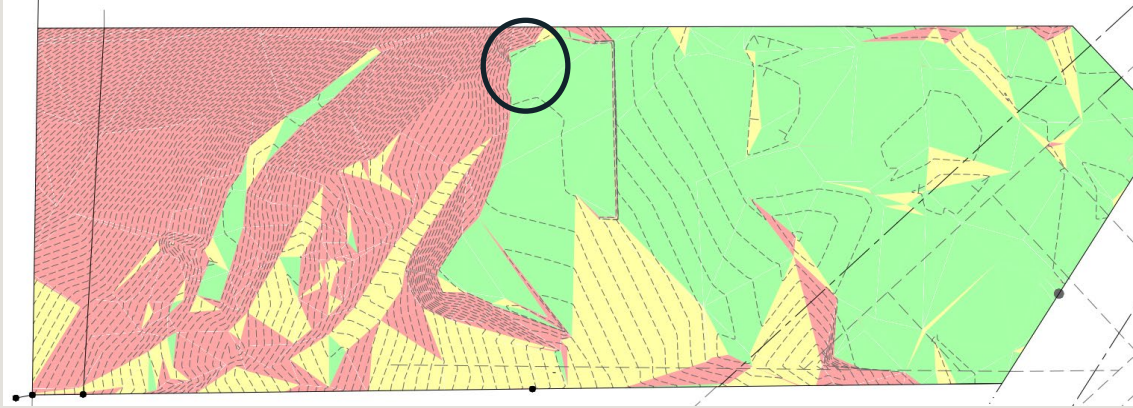
The site plan shows a development bounded by Highway 200 to the east and a creek to the south. The plan includes the following details:

- Lot 1:** 18,411 sq. ft. 3-story mixed-use building with 100 parking spaces.
- Lot 2:** 11,000 sq. ft. 3-story mixed-use building with 100 parking spaces.
- Lot 3:** 12,000 sq. ft. 3-story mixed-use building with 100 parking spaces.
- Lot 4:** 41,100 sq. ft. 3-story mixed-use building with 100 parking spaces.
- Lot 5:** 28,100 sq. ft. 3-story mixed-use building with 100 parking spaces.
- Lot 6:** 47,500 sq. ft. 3-story mixed-use building with 100 parking spaces.

Other features include:

- Highway 200:** Located to the east of the development.
- Street Elevation:** Indicated by a circled '2' near Highway 200.
- Orientation:** A north arrow is located at the bottom center.
- Scale:** 1" = 20'-0".
- Site Plan:** Labeled with a circled '1' at the bottom center.

Existing Conditions



Cut-bank

Foundation and Retaining Wall Elements



NOTES

- 1 THE FIRST FLOOR DAYLIGHTS TO THE SOUTHEAST AND HAS THE SECOND FLOOR AT GRADE WITH THE HILLSIDE SLOPE.
- 2 PROPOSED RETAINING WALL.
- 3 PROPOSED STORM DRAIN INLETS.
- 4 PROPOSED 18' PVC STORM DRAIN PIPE.
- 5 PROPOSED STANDARD 8' PRECAST SUMP.
- 6 PROPOSED 1 STORY TALL FOUNDATION WALL.

Criteria for Review

- 1. The proposed use/development will be compatible with and will not substantially injure the value of adjoining property**
- 2. The proposed use preserves the character of the district, and the property is suitable for the use proposed.**
- 3. Substitute or additional design standards will preserve and protect the area's architectural and aesthetic qualities.**
- 4. Section 11.6.D.1.a-m of the Missoula County Zoning Regulations have been given due consideration.**

Criteria for Special Exception: Hillside and Ridgeline Development on slopes greater than 25%

- a) **The activity will not result in accelerated erosion or create hazardous conditions on the site or on adjacent property, as demonstrated by an erosion and sediment control plan and supporting evidence.**
- b) **The applicant considered and evaluated alternative locations for all development (including structures, buildings, retaining walls, roads, driveways, parking areas, and other infrastructure) on non-steep slopes (those less than 10%) and can demonstrate these locations are either inappropriate or unfeasible.**
- c) **Surface runoff will not create unstable conditions, and appropriate stormwater management facilities will be constructed as necessary.**

Agency Comment

- Missoula Office of Emergency Management does not have significant comment for the special exception; however, it should be noted that MT Jumbo does have a history of avalanches on both the west and east slopes. I have attached the MT Jumbo avalanche atlas for reference of this hazard as well as a specific call out for potential hazard zones on the east face. While there is not recorded avalanche in the area of lot 6, under the right conditions a destructive avalanche could occur.” (Adriane Beck, DES Coordinator, OEM, 11/14/25)
- Missoula Parks and Recreation reviewed and we have the following comments: Due to public land with a public trail upslope from this property, it will be critical to include safety measures such as fencing on the uphill side of any retaining wall to prevent accidental injury. Any retaining wall installed must be designed so as to not destabilize the area upslope of it. Be aware that there is the potential for avalanches on Mount Jumbo and that hazard is not mitigated by Parks and Recreation.

Staff Recommendation

Staff recommends **Approval** of the requested Special Exception based on the Findings of Fact and Conclusions of Law presented in the Staff Report, subject to three conditions of approval

Conditions of Approval

1. All other necessary permits administered by agencies other than Planning, Development, and Sustainability shall be obtained by the property owner or designated representative. These permits may include, but are not limited to, building, zoning compliance, electrical, mechanical, approach, and sanitation permits.
2. Per the geotechnical engineering report, Todd Lorenzen, or an equally qualified engineer, must be present prior to and during the slope flattening to verify the slope materials and their orientation.
3. Final construction shall incorporate recommendations from the 2017 Geotechnical Report completed for East Village Townhomes by Lorenzen Soil Mechanics, Inc. Notations of where these recommendations are being applied should be shown on the building permit application plan set. These recommendations are found in sections: 3.3 Foundations, 3.4 Foundation Walls, 3.5 Slabs—on-Grade, 3.6 Exterior Flatwork, 3.7 Fresh Concrete, 3.8 Underground Utilities, 3.9 Groundwater Table and Surface Water, 3.10 Seismic Considerations, 3.11 Shrink/Swell Characteristics, 3.12 Typical Section, 3.13 Compaction and Fresh Concrete Testing Frequency.

Motion

I move the Board of Adjustment to **approve** the Special Exception Request from Mike Morgan to deviate from Chapter 7.1.C of the Missoula County Zoning Regulations, as presented in the application, subject to the recommended conditions.



Missoula
C O U N T Y



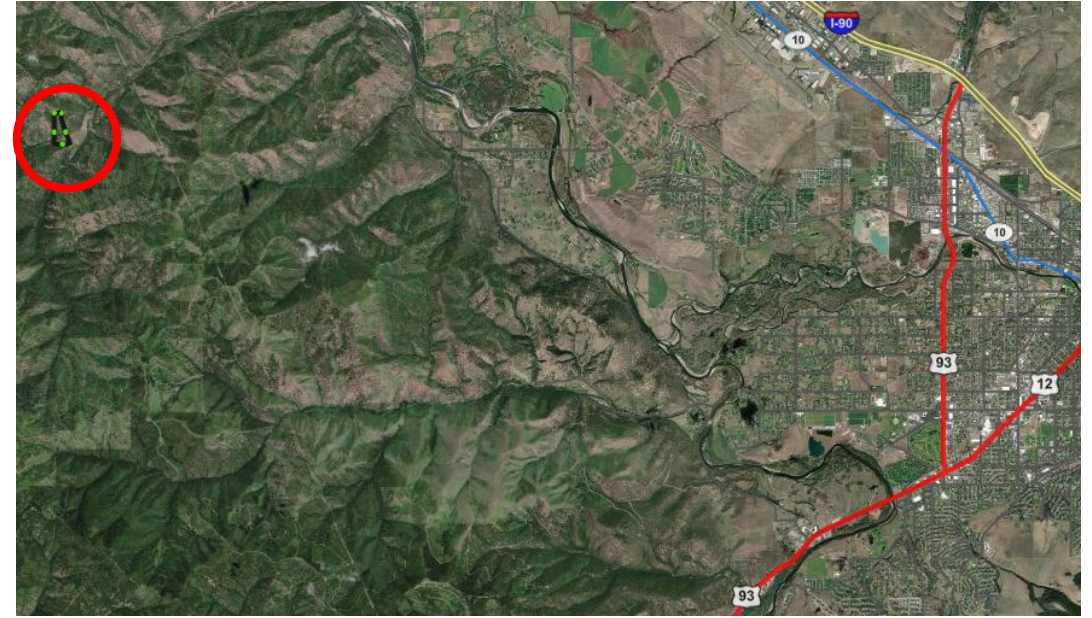
MISSOULA COUNTY BOARD OF ADJUSTMENT: GILMAN CREEK APPEAL OF ADMINISTRATIVE DECISION



Case Planner: Kevin Dantic

Public Hearing Date: December 17th, 2025

Applicants: Jesse Kodadek, Parsons Behle &
Latimer, on behalf of Arrowleaf Gulch LLC and
Cameron & Faith Schmitz



VICINITY MAPS

Background

Property is zoned Agriculture, Working (AGW 40)

Land Use and Zoning Compliance Permit LZ25059311

Staff classified the uses as Recreation, Developed Outdoor

Determined to capitalize on natural landscapes, dependent on rural locations

Appellants claim misclassification. Recreation, Commercial Outdoor and Entertainment Venues are not approved uses.

Missoula County Zoning Regulations Section 11.6.B, MCA §76-2-226



Missoula Family YMCA Proposal

Camp Ponderosa
summer youth
program

Day campers July
14th to August 22nd,
2025. Approx. 9am-
4pm daily

Special activities
considered on a
case-by-case basis

Proposed facilities

Details needing to
be addressed

REQUEST FOR INVESTIGATION

Received May 22nd, 2025

Frisbee golf course operated as a business

Youth camps with Boy Scouts, scheduled with YMCA

Considering other public uses on property

Staff visit June 2nd, 2025

Staff encouraged Kee Holdings LLC to submit permit to
assess current and proposed uses



Land Use and Zoning Compliance Permit

Submitted July 3rd, 2025. Approved
July 11th, 2025

“Recreation and education by youth and other social programs such as the YMCA”.

Missoula County Zoning Regulations Section 2.3.C permits Campgrounds, Guest Ranches, Open Space, Public or Private Parks, and Active, Developed Outdoor, and Passive Recreation.

Permit clarified structures and uses allowed per issuance of LZ25059311.

Staff identified the proposed uses pertaining to the Gilman Creek YMCA Program as Recreation, Developed Outdoor.

Appeal

Received October 29th, 2025

Appellants contend the uses on the property are commercial and are inconsistent with AGW 40 Zoning

New classifications of "Recreation, Commercial Outdoor", "Entertainment Venue", and parking structure

- Section 11.2.A.14- Zoning Officer has authority to interpret the meaning and intent of regulations
- Section 1.14.A.2- Interpretation should be made in favor of the property owner's rights
- MCA §76-2-226(3)- Appeal stays all proceedings in furtherance of the action
- Structures can remain

Conservation Easement

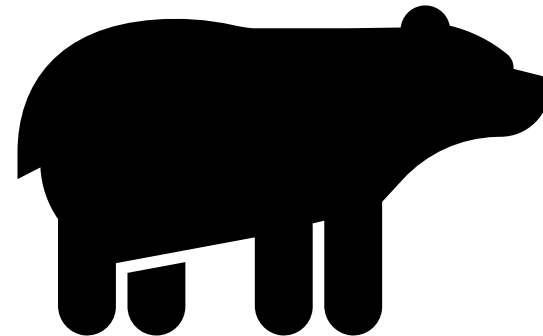
Missoula County Zoning
Regulations Section 1.8- Zoning
Officer may require conservation
easement be submitted for review

Site visit and investigation

Staff concluded nothing in the LZ
would be enforceable as a violation

Anything permanently built may be
enforceable in changed locations

- Intent of easement is
wildlife habitat protection
- §76-2-223(1)(a)



Public Comment

- In support of landowner sharing land with the community. Green spaces are hard to come by, and those lands should be protected.
- Shouldn't take away the ability to share private lands for youth recreation/programs
- An amazing place to recreate a have a good family-friendly time

CONCLUSION

- Planning staff interpreted land uses in accordance with AGW 40 Zoning and falling under Recreation, Developed Outdoor.
- Uses and accessory structures to support those uses were compatible with use definitions
- Planning Staff interpreted the regulations regarding the permit uses in favor of the property owner's rights
- Planning Staff concluded that neither they nor the BOA could act on an appeal about land uses under the conservation easement

BOARD MOTION

- I move the Board approve and adopt the recommended findings of fact and conclusions of law in the staff report and that the Board make the following decisions:
 - 1. Affirm the Missoula County Planning, Development, and Sustainability staff decision that the uses approved in Land Use and Zoning Compliance Permit LZ25059311 fall under Agriculture, Working 40 (AGW 40) under the definition of Recreation, Developed Outdoor.
 - 2. The appeal is denied.