

PUBLIC MEETING MINUTES

THURSDAY, FEBRUARY 25, 2021 – 2 PM

1. CALL TO ORDER

Commissioners Present:

Chair Strohmaier
Commissioner Slotnick
Commissioner Vero

Staff Present:

Violet Plummer, Administrative Assistant, Commissioners' Office
Amanda Henthorne, Budget Analyst, Finance
Bailey Minnich, Planner, Community and Planning Services
Tim Worley, Senior Planner, Community and Planning Services
Sam Scott, Real Property Projects Coordinator, Clerk and Recorder's Office
Nick Zanetos, Planner, Community and Planning Services
Matt Heimel, Planner, Community and Planning Services
John Hart, Attorney II-Civil Division, County Attorney's Office
Allison Franz, Communications Manager, Communications
Jamar Galbreath, Equity Coordinator, Commissioners' Office
Travis Ross, Environmental Health Supervisor – Water Quality District, Health Department
Anna Conley, Chief Deputy Civil Attorney, County Attorney's Office
Kyla Lehnerz, Administrative Assistant, Commissioners' Office

2. LAND ACKNOWLEDGEMENT

Missoula County acknowledges that this event takes place in the aboriginal territories of the Salish and Kalispel people.

3. PLEDGE OF ALLEGIANCE

4. PUBLIC ANNOUNCEMENTS

[None]

5. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

[None]

6. CURRENT CLAIMS LIST

Claims received as of February 4, 2021 to February 12, 2021 by the Commissioners' Office total \$7,827,981.65.

7. HEARINGS

Commissioner Strohmaier: [00:02:18] So, today we have a number of public hearings. The way that we typically work this is we'll begin with a staff report, if it's a proposal that is either brought forward by a landowner or an applicant other than staff, they will then have an opportunity to speak to us on the particular issue at hand. We'll then open it up for public comment, close the

public hearing, and then have a chance for discussion amongst the commission, deliberation and then voting on the item. If you could keep your comments to three minutes or less, be as succinct as possible, try not to repeat folks who might have said the same thing before you, that would be ideal. And to begin with, we will kick things off by opening up a public hearing on three budget amendments, and I will turn it over to our budget analyst out of the finance department, Amanda Henthorne. And, Amanda, why don't you just run through all of these budget amendments and, without objection, we can just take them as one motion to adopt them all unless something arises that I'm not anticipating by way of rancorous discussion on any of these. So, Amanda. Is Amanda with us?

a. Budget Amendments

Amanda Henthorne, Budget Analyst, Finance: [00:03:47] Yes. Can you hear me?

Commissioner Strohmaier: We can hear you now.

Amanda Henthorne: Okay. I'm not on my laptop, it decided to restart. So--

Commissioner Strohmaier: No problem. Ah, you're sneaking in with a phone number that I couldn't identify. Oh, you're now muted, Amanda.

Violet Plummer, Administrative Assistant, Commissioners' Office: [00:04:17]
Amanda, you'll have to hit star six to unmute.

Commissioner Strohmaier: Thanks, Violet.

Amanda Henthorne: Alright. Are we working now?

Commissioner Slotnick: Yes.

Commissioner Strohmaier: We are working now, yes.

Amanda Henthorne: [00:04:38] Okay. Alright, so the first budget amendment for today is for the CAPS grant fund. It's funding from the Montana Department of Health and Human Services, and it's the funds that we receive from the alcohol tax fund. And each year, we initially get an estimate of those dollars, and then the state provides a list of licensed and approved treatment centers. And through the grants department, each provider is made aware of their eligibility and all of the requirements in receiving the funding, and then you guys review all of--the board reviews all of the applications and sets a percentage of funds to be received. If tax revenues from the state are higher than anticipated, the county gets additional funds, and that's what these funds are today that we're amending to put into the budget, and they go to the service providers set at the percentage that was previously approved by the board. So, for this particular round of additional funding, the Western Montana Mental Health Center, Stepping Stones Counseling and Open AID Alliance will receive additional funds, and this is to add those additional funds to the budget. There is no match required, and there are--all of the expenses will be covered by the funds received. The next budget amendment that I have for today is in the Substance and Abuse Prevention Fund. The Health Department receives these funds from the Montana Department of Health and Human Services, again. These are to support substance abuse prevention efforts for drug-affected families and in the workplace, specifically where opioids are the primary impact. Again, all of the funding for these grants will cover all of the expenses, and the contracts for these grants were all previously approved by the board. And finally, the last resolution that I have for you today is, again, the health department, and this is to amend the budget to include revenue and expenses, which are neutral and don't require any match or any additional funding from the county, for our response to COVID-19, and these funds are, again, from the Montana

Department of Health and Human Services. And if there's any questions, I will do my best to answer them.

Commissioner Strohmaier: Thanks, Amanda, and just so everyone is clear, this has a positive fiscal impact upon Missoula County, and this is just more or less a squaring up of the accounting on the back-end after having received grant funds.

Amanda Henthorne: That's correct. When we initially do this, you know, several months away from now, it's typically an estimate, and this is just to firm that estimate up into actual.

Commissioner Strohmaier: Thanks Amanda. Alright. Any public comment on these proposed budget amendments? Okay, seeing none, I'll close the public hearing. Discussion, questions or a motion?

Commissioner Vero: No, we really shouldn't accept these funds.

Commissioner Strohmaier: Yeah, I was worried about that.

Commissioner Slotnick: Let's give them back. We can--

Commissioner Vero made the motion to approve the budget amendments.

Commissioner Vero: Is that accurate? I don't have the language in front of me.

Commissioner Strohmaier: I think that will suffice.

Commissioner Slotnick: [00:08:21] I will gladly second that.

Commissioner Strohmaier: Thanks. Any further discussion on the motion? All in favor?

Passed 3-0.

Commissioner Strohmaier: Okay. Thanks, Amanda.

Commissioner Slotnick: Thanks, Amanda.

Amanda Henthorne: Thank you very much and for your patience with my technical difficulty today.

Commissioner Strohmaier: That's the world we live in today, that's fine.

Commissioner Slotnick: No worries. Sign of the times.

Commissioner Vero: Thanks, Amanda.

Amanda Henthorne: Alright. Thank you so much. Bye.

i. **CAPS-Grants – MTDPHHS Funds for Chemical Dependency Services**

[Resolution 2021-018 B: 1050 P: 621]

ii. **Health Department – MTDPHHS Funds for Substance Abuse and Prevention**

[Resolution 2021-019 B: 1050 P: 622]

[Resolution 2021-020 B: 1050 P: 623]

iii. **Health Department – MTDPHHS Funds for COVID-19 Response**

[Resolution 2021-021 B: 1050 P: 624]

Commissioner Strohmaier: You bet. Okay. Our next public hearing, which I'll open, is on the Northgate Development Park proposed plat adjustment. Nick, would you like to introduce this for us? And you appear to be muted.

Commissioner Slotnick: There's Nick.

b. **Northgate Development Park – Plat Adjustment**

Nicholas Zanetos, Planner, Community and Planning Services: [00:09:10] There we go, unmuted, sorry about that.

Commissioner Strohmaier: No problem.

Nick Zanetos: [00:09:12] Welcome, everyone. Today I'm going to be talking about the Lot 5 Plat Adjustment within the Northgate Development Park. This project is located within the city of Missoula, near the intersection of Wheeler Drive and Expressway Boulevard. First, I'm going to get into a little background about this subdivision. It is eight lot, single phase subdivision that was approved by the BCC back in 1998. There was two extension requests granted before it was filed in May of 2000. And then, upon its filing, it was annexed to the city of Missoula's jurisdiction. The plat adjustment request today, here, is the removal of a one foot no access strip along Lot 5 abutting Wheeler Drive. This plat requirement stems from condition number three of the Northgate Development Park subdivision approval. This required Lots 7, 6, 5 and 1 to place this no access strip on the Wheeler Drive frontage. An agency letter was sent out to both county and city reps. There was no comment or concerns submitted from this letter. There was also a notice posted in the Missoulian on February 7th and February 14th, and, again, no comments or concerns were submitted. When reviewing for plat adjustments, we look at Section 6.7.4 of the Missoula County Sub Regs for our review criteria. Just going through these review criteria points quickly here. Number one, the changes are minor in nature. Number two, the changes comply with the regulations. Number three, the changes will not reduce protections or safeguards provided by the regulations. Number four, the changes will have no impact. Number five, the changes are consistent with the growth policy. Number six, the changes are consistent with the findings. Seven, the changes are not incremental. Eight, the changes have occurred--changes have occurred within the subdivided area. And number nine, economic changes are not applicable. So, next I'm just going to touch on some of the more relevant staff findings that I found based off these previous review criteria points. So, the first is the request was deemed minor in nature. Next, since the time of subdivision, Wheeler Drive has been upgraded to meet city road standards. This includes a 32-foot-wide paved surface with a curb, gutter and sidewalk on the north side, and it also is now no longer a dead-end street and connects to Wilkie Drive. The removal of the one foot no access strip on Lot 5 would not create any new impacts or increase a mitigated impact on the neighboring land. And last, the same request was granted for Lots 6 and 7 in 2002 and 2003, respectively. Lot 1 has not gone through this process but could in the future. Based on staff findings, staff is recommending approval of the proposed plat adjustment. That's all I have here, and I can take time for questions. And we do have Jamie on the line here, and she is the agent rep for the claimants here.

Commissioner Strohmaier: Thanks, Nick. Jamie, would you like to say anything?

Jamie Erbacher, Applicant Representative, WGM Group: [00:12:58] Thanks, Dave. Thanks, Nick, great job. Maybe just one quick update that we received from the city on January 27: it said that the building permit for 4395 Majestic Drive, which is the building

that is going to be under construction for the new access, is being held by engineering until the approach to Wheeler Drive is secured. We worked with Missoula Fire on determining what will be allowed and what can't. Without the legal approach onto Wheeler Drive, the facility will not have appropriate fire apparatus/engine access. Missoula Fire does not want combustible construction until appropriate engine access is established, which would be the Wheeler Drive approach, shown on the plans, or an on-site fire apparatus turnaround, which is not shown on the plans. If you're interested in looking at a site plan, I do have a site plan of the proposed development, but otherwise I think Nick pretty much covered everything.

Commissioner Strohmaier: Thanks, Jamie. Josh or Juanita, would you like to see the site plan, or are you good?

Commissioner Slotnick: I'm good, I think I understand that if this one foot no access strip is removed, then there actually is access from Wheeler Drive and fire protection can happen and life will go on.

Jamie Erbacher: You got it.

Commissioner Strohmaier: If you get a run at it, can you just--does the one foot extend vertically in a pillar of air or can you just--

Commissioner Slotnick: Not too much of a ramp to clear that one foot.

Commissioner Strohmaier: No. Thanks, Jamie.

Commissioner Slotnick: Thank you, Jamie.

Commissioner Strohmaier: So, this is a public hearing, is there any public comment on this, the proposed removal of the one foot no access strip? Okay. Seeing none, we'll close that public hearing. Josh and Juanita, what do you think?

Commissioner Slotnick: I'm happy to make a motion. I would move--unless, Juan, do you have any questions or anything?

Commissioner Vero: No.

Commissioner Slotnick: Okay.

Commissioner Slotnick made the motion that the request by Tabert Demeester to amend the Northgate Development Park filed plat, by removing the one foot no access strip abutting Lot 5 and Wheeler Drive be approved.

Commissioner Vero: [00:14:59] Second.

Commissioner Strohmaier: Any further discussion on the motion? Seeing none, all in favor?

Passed 3-0.

Commissioner Strohmaier: Okay, the one foot access strip is removed.

Commissioner Vero: Thanks, Nick and Jamie.

Jamie Erbacher: Thank you.

Nick Zanetos: Thank you.

Commissioner Slotnick: Thanks, Nick. Nice to see you, Jamie.

Nick Zanetos: Thank you.

Commissioner Strohmaier: Thanks, Jamie.

Jamie Erbacher: You too, thank you.

Commissioner Strohmaier: Thanks, Nick.

[[Letter 2021-073](#) Mailed to Jamie Erbacher]

Commissioner Strohmaier: Alright, next is Sam Scott with us to introduce and help open this public hearing on some proposed changes to the Missoula Rural Fire District. Specifically, we have a number of annexation petitions before us.

c. Missoula Rural Fire District Annexation Petitions

Sam Scott, Real Property Projects Coordinator, Clerk and Recorder: [00:15:39]

That's correct. We have--Sam Scott with the clerk and recorder's office. Our office received five annexation petitions to annex property into the Missoula Rural Fire District. I'm going--bear with me as I read through these five properties real quick. First, we have Tract B of COS 5607, located at 6481 Larch Canyon Road, Tract B of COS 6533, located at 9471 Highway 93 South, COS 1901, located at 20351 Deep Creek Road, Tract 1-A of COS 6106, located at 27920 Highway 12 West, and that part of the NE¼ SW¼ of S20 T12N R22W, which lies North of the Forest Service Highway Number 16, located at 28528 Highway 12 West. Each of these petitions was signed by the property owners who represent at least 40 percent of the acreage and 40 percent of the taxable value of the property, and the notice of hearing has been published twice in an approved newspaper, the Missoulian, and we submit them for your decision.

Commissioner Strohmaier: Thanks, Sam. Is there any public comment on the proposed annexation, is there anyone with us today who is the owner of one of these properties? Or is there anyone from Missoula Rural Fire District with us?

Commissioner Slotnick: I was going to ask that, yeah.

Commissioner Strohmaier: Okay.

Commissioner Slotnick: Dave, does this mean we are left entirely to our own devices on this?

Commissioner Strohmaier: I'm afraid it is. Last chance for any takers.

Commissioner Slotnick: Could we assign this to Ravalli County? Just--no one's here, so--

Commissioner Vero: Can we do them all at once?

Commissioner Strohmaier: Yes, absolutely.

Sam Scott: Yes.

Commissioner Vero: Great

Commissioner Slotnick: So, Sam, do you have an opinion on this?

Sam Scott: No, I have no opinion.

Commissioner Slotnick: Okay.

Sam Scott: These are pretty straightforward.

Commissioner Slotnick: Okay.

Commissioner Vero made the motion to approve the Missoula Rural Fire District annexation petitions as presented.

Commissioner Slotnick: [00:17:48] I'll second that.

Commissioner Strohmaier: Any further discussion? All in favor?

Passed 3-0.

Commissioner Slotnick: Thanks, Sam.

Commissioner Vero: Thanks, Sam.

[Resolution 2021-022 B: 1050 P:625]

Commissioner Strohmaier: Okay. Yeah, thanks, Sam. Okay, moving on to our next public hearing, this one relates to an appeal of the planning office's decision related to agricultural covenant restrictions for the property at 324 Cygnet Lane. And if we could begin with a staff report for this, brought to us by Matt Heimel.

d. Cygnet Lane Agricultural Covenant Restrictions

Matt Heimel, Planner, Community and Planning Services: [00:18:26] Good afternoon, Commissioners. Matt Heimel here with CAPS. I'm going to share my screen so I can show the location property--like an overview of the request. Okay, can everyone see the PowerPoint slide here [on screen]?

Commissioner Slotnick: Yes, thanks.

Commissioner Vero: Yep.

Matt Heimel: [00:18:43] Alright, so, this is a request from Michael and Robin Hall to appeal the final decisions by Community and Planning Services in a letter dated January 19, 2021, that it proposed attached garage is not an agricultural building and that lifting an agricultural covenant requires review pursuant to the Missoula County subdivision regulations in Title 76, chapters three and four of Montana Code Annotated. The subject property is at 324 Cygnet Lane between Cygnet and Lindbergh Lake legally described as Tract B of Certificate of Survey 2538 in Section 13, T19N, R17W, P.M.M., Missoula County. So, there are two planning office decisions being appealed. Decision one of two is that the proposed garage cannot be permitted through land use compliance review because it is not an agricultural building per Section 8.2.2 of the subdivision regulations, nor is it associated with an agricultural use per Section 8.2.1 one of the subdivision regulations. And decision two of two: that the only option to lift the agricultural covenant restriction that is applicable to this property is through a review pursuant to the provisions of Title 76, chapters three and four MCA, that's the subdivision review through our subdivision regulations. So, I'd like to show--well, if my screen will cooperate--this is a site map sent in with the appeal letter. I did one markup to show a bold blue line to highlight

the--Parcel B, that's the subject of this appeal. It's on the right-hand side of the screen, you can see outline of a proposed wood shop that's been approved. On the left-hand side, you see outline in red for the location of a proposed garage that was applied for through building permitting. This is the site plan with the building permit application set that we reviewed. So, we review two-fold: zoning compliance and land use review. This property is within zoning district 25 A. We found no issues with zoning compliance, however, the issue at hand is a land use restriction, being the agricultural covenant that is applicable to this property. So now, I'll move on to some background for the property. So, this tract was originally a right of way remainder tract, created through the Hackamore Subdivision in 1979, that I have on the screen here. That remainder, the right of way remainder from Hackamore, was then split in 1981 by H.A. Carlson by utilizing an exemption in state law that allows a division, not subject to subdivision review, to create tracts A and B of the COS, here. Tract B, the 0.71 acre tract, being the subject property. Part of that exemption includes a covenant running with the land, and I'll move on to the next slide. These are excerpts of texts from that survey, so you can actually see a little more detail here. So, there's a covenant running with the land, revocable only by mutual consent of the governing body and property owners that the divided land will be used exclusively for agricultural purposes. You can see that it mentions sole agricultural use, and also any change in land subject to the division, to the provisions of Title 76, chapter four, part one. I'll also move on to a declaration of restrictive covenant. So, this declaration of restriction, excuse me, restrictive covenant was filed in book 161, page 425 with Missoula County on February 18, 1981, and this restrictive covenant states that tract A and B of COS 2538 shall remain in agricultural use and that no structures requiring water and sewage facilities shall be constructed or utilized. This declaration also states that any change in the property from an agricultural use, subject to division of land created by COS 2538, that we saw here, to the provisions of Title 76 chapters three and four, Montana Code Annotated. So, for reference, the definition of agriculture for Section 8.2.1, Missoula County Subdivision Regulations, is here on the screen. This was sent in our administrative response letter to an initial appeal. That letter is in the packet dated January 19, 2021. We also cite the definition of an agricultural building, and I'm happy to go back to any of these slides and go into more detail on these. I know I'm moving through a lot of text quickly, so if anyone wants me to move back, feel free to let me know, please. So, per the declaration of restrictive covenant that is recorded with the property, created through an agricultural exemption with COS 2538, CAPS determined that the only uses permitted are those consistent with the definitions of agriculture that I showed earlier. A garage that is accessory to the residential use on the adjacent lot would not be compliant with the agricultural covenant, and although the proposed garage is permitted by Zoning District 25A, the agricultural covenant adds an additional layer of land use restriction, and CAPS also decided that the only means to lift the covenant is through subdivision review. So, appeals of subdivision-related administrative decisions are viewed pursuant to Section 5.1.1 of the Missoula County Subdivision Regulations, and so, as part of that process, in the packet today, you'll see a record related to the appeal. That includes the initial permit application, dated September 4, a string of emails between staff and the applicant dated October 5 to November 5, some notes from a brief scoping meeting we held about subdivision review on November 6, the first administrative appeal letter to CAPS dated November 10, the CAPS denial of that appeal dated January 19, and then the email letter to the Board of County Commissioners appealing our decisions dated January 25. So, if there are any questions on items related to this, I'm happy to go back over them. Also, I know the applicant and a couple of their representatives are all on the call today.

Commissioner Slotnick: Matt, can I ask you a quick question?

Matt Heimel: Sure.

Commissioner Slotnick: Can you go back to that little chunk where it says only by the county commissioners can this be done?

Matt Heibel: [Displayed the slide in question]

Commissioner Slotnick: Thank you. So, to be clear, the applicants aren't asking us to revoke the agricultural covenant, they're just asking us to undo the decision that CAPS' staff has made that a garage isn't agricultural. Is that correct?

Matt Heibel: It's my understanding, yes, and looking at their email from the 25th, 10:24 AM, last statement, number two, they're asking can the BCC, as a governing body, and we, as the property owners, mutually consent to lift the covenant, but I know Robin and Mike Hall are also on the call today, and they can clarify any of that if needed too.

Commissioner Slotnick: Thanks, Matt.

Commissioner Strohmaier: So, at this point, why don't we go to the Halls and or your representatives. If you'd like to speak to us, that would be great.

Robin Hall, Applicant: [00:26:53] Thanks. We--I'm Robin, this is Mike Hall. We kind of flipped a coin on who would speak. Thank you for the opportunity to be here. I also do want to thank Kent Means from MMW and Andy Mefford from PCI. So, Mike and I obviously have been dealing with this for the last seven months, so we did write some things down. I'm going to read them, and, you know, if you want to ask questions as we go, that's fine, or at the end. So, our goal, you may have seen on the slide that Matt presented, there are currently three old sheds on the same tract B. Our goal is to tear those down and put up a nicer two-bay garage. The garage will not have water, will not have sewage, and will house the same ATV, watercraft, firewood that the sheds currently use. So, our opinion is there's no change in use. The background that Matt presented is correct. The specific covenant, when it was formed, the relevant purpose from our standpoint is that it says the purpose of this division of land is to create parcels of land for agricultural or pasture use when no structures requiring water or sewage facilities are to be erected or utilized, provided the parties to the transaction enter into a covenant running with the land and revocable only by the governing body and the property owner. Any change in land use subjects the division to Title 76. So, that COS was approved by the county in 1981, and now, you know, we've been told by CAPS in a meeting that the designation of tracts A and B by the landowner and the county in 1981 was wrong from the beginning. The property is way too small to be considered agricultural use and is not used for growing, raising or marketing of plants or animals to produce food, feed and fiber commodities, and that's directly from the Missoula County Subdivision Regulation 8.2.1. Under Missoula, or excuse me, Montana Code Annotated 15-2-702: land that is contiguous, 160 acres or more can be designated and valued as agricultural land. The statute also allows for land 20 to 160 acres to be considered agricultural land under certain circumstances, but the statute never allows for land under 20 acres to be considered agricultural use. So, not surprisingly, the Department of Revenue taxes us at a residential use rate. So, the left hand of the government is not talking to the right hand of the government, and the result is that we have the restriction of an agricultural use covenant, but we don't realize the tax benefit of that designation. Now, we get it that in 1981, the county agreed to look the other way so that the approximately 0.86 Acre could be divided into two tracts without a subdivision review. 40 years later, though, the same county is now penalizing us for the improper action that was taken way back then. Frankly, we do think that the action should be void, deemed void from the beginning as beyond the authority of the government, but, you know, frankly, if it were, tract B would allow an accessory building, as Matt said. Even if you say, though, that the mistakes of the predecessors don't justify lifting the ag covenant now, we agree. We do think, though, that the county knew in 1981 that these small lots were not really going to be used for

growing, raising or marketing of plants or animals to produce feed, food or fiber commodities. It really comes down to whether the proposed garage meets the requirements of an agricultural building, and we think it does. CAPS thinks it does not. Look at Section 8.2.2 of the Missoula County Subdivision Regulations. It defines an agricultural building as a structure designed and constructed to house farm implements, hay, grain, poultry, livestock or other horticultural products. This structure shall not be a place of human habitation or a place of employment where agricultural products are processed, treated or packaged, nor shall be a place used by the public. So, that's the definition. We think our garage meets those requirements. There is no water, no sewage. It's not a place of human habitation. It's not a place of employment. It's not a place used by the public, and we do believe that the dry garage is compliant with that definition. Now, CAPS disagrees, and Matt didn't show Mr. Crowser's denial--second denial, but, essentially, what he said, and this is what Matt said earlier, was a garage that is accessory to residential use on the adjacent lot is not compliant with the agricultural covenant. That conclusory statement ignores the fact that Missoula's regulations don't state what is not--is or is not, quote, accessory to residential use. That's a term that CAPS seems to be reading into the regs without explanation. So long as the garage is not a place of human habitation or a place of employment or used by the public, we think it's compliant. And, you know, we don't want to get our neighbors in trouble, but on Tract A, which is the other parcel, the owners erected a water pump and a cement housing for that water pump, and it pushes water from the Swan River up to the owner's cabin for drinking and showering, and if that's consistent with agricultural use, that when it's specifically a water--water, specifically prohibited by the statute, then if the county granted her an exception, we wonder if we could get the same courtesy. Honestly, you know, we started this in August, and we do kind of feel beat up by the process. From the beginning, it seems like CAPS has been obstructionist rather than trying to find a constructive way to do this without a full subdivision review. You know, the county--we kind of feel as though it's absurd to require a full subdivision review just to permit a building of a garage. We are not rich developers, you know, we don't have a three hundred lot development plan that we can amortize the cost. Talking to PCI, they warned us that the cost of a subdivision review packet is in the tens of thousands of dollars, and, on top of that, of course, you know, the county requires a \$5,000 fee just to file the subdivision review. You know, is the county going to pick up those costs? I doubt it. And I apologize, I'm sure you can sense our frustration. If we had called this building a barn, would it have been deemed compliant? So, we do respectfully request that the board of commissioners find that this non-water, non-public, non-sewage, non-commercial garage be found not to be a change in use, and that it's consistent with the agricultural regs, and, therefore, we ask you to overturn CAPS' decision. Thank you.

Commissioner Slotnick: Dave--oh, Dave, you're muted there, brother.

Commissioner Vero: You're muted, Dave.

Robin Hall: What?

Commissioner Slotnick: Dave was muted, we were just giving him warning to that.

Commissioner Strohmaier: Yes. Thanks for heading me off the pass before I said too much. Thanks, Mrs. Hall. Mr. Hall, do you have anything you want to add, or do your representatives?

Mike Hall, Applicant: [00:35:35] I think Robin pretty well covered it. We do feel like at a number of junctures along the way on this, another red flag gets thrown up, so as we're going through the permitting process, we find out about the agricultural covenant. When we had the meeting the other day, immediately thereafter, Mr. Hart sent us an email and said: oh, there's a new law that was enacted two years ago that prohibits the county from

lifting the covenant. Didn't exist before two years ago, you would have been able to write it off just with our agreement, a written agreement between you and us would have taken care of this. So, things keep popping up that are not very helpful to what we would like to accomplish.

Commissioner Strohmaier: Thank you, Mr. Hall. Mr. Mefford or Mr. Means?

Kent Means, Applicant Representative, MMW Architects: [00:36:44] I think from--just my only comment is that we had also reached out to CAPS during the process of design to ask zoning questions, and during that process, you know, had several emails and correspondences where we were not informed of this issue until permitting process after we completed the documents, which I think is also a level of frustration with the Halls, of course, to go through the process and spend the fees to get the project all the way through-- basically through permitting almost, and then find this out. So.

Commissioner Strohmaier: Thanks. Josh, did you have a question?

Commissioner Slotnick: A question slash comment, but I'll wait 'til it's appropriate.

Commissioner Strohmaier: Okay, very good. Andy, did you have anything you wanted to add?

Andy Mefford, Applicant Representative, Professional Consultants Inc. (PCI): [00:37:36] Not a lot, I think Robin did a great job of covering most of it, and Kent. You know, it does seem like it's kind of an obscure situation. I mean, if you do look, even with one of those illustrations I think Matt had earlier, and I don't know the exact date, but you've even got a structure with water and sewer that overlaps onto that parcel. I mean, there's a structure sitting there, crossing numerous lot lines already. It's just kind of an obscure situation, and, you know, it was obviously put up for the intent to avoid going through subdivision, and this--one of the keys to it seems to be the structure requiring water or sewer, and it certainly doesn't, and, you know, this agricultural definition is pretty open-ended, I think, and there's enough gray area, it seems like there would be flexibility to at least give these guys an opportunity to better the property and not be drug through that kind of regulation and time frame that could be involved to go through a subdivision.

Commissioner Strohmaier: Thanks. And before we get into commissioner discussion or questions, is there anyone else from the public out there who would like to comment on this? Okay, seeing none, I'll close the public hearing. Josh?

Commissioner Slotnick: God, so a couple of things. First, I feel like listening to all this that CAPS has actually done a great job of sticking to the letter of the law. They followed that through. They didn't deviate, and it bums me out to hear people criticize them for following the letter of the law. However, I feel like this decision in 1981 was made in mistake, either mistake or willful ignorance of reality on the ground, in order to sidestep what should have been a proper subdivision. And now it feels like we are being shackled to that bad decision in 1981. This is too small to be real agricultural land, and it's not agricultural land, and it's kind of a goofy debate to say whether this garage is agricultural or the sheds are agricultural. And I disagree with you, Andy, about gray area. I don't think there is any gray area, but I'm sure I agree with you in this--none of this should be agricultural. That's kind of absurd that we are being held to that, and I would like it if we could unhinge ourselves from this covenant and let this be what it actually is, which is just a chunk of residential land. It sounds like from what the Halls are saying, that isn't possible, and I'd like to check in with John Hart to find out, and if it isn't possible to undo that covenant, then I'm going to be on your team, Andy, and say, well, there's enough gray area to let this thing be, because it's absurd that we're treating this like a farm when

it's not a farm, and there you go. So, John, can we undo this covenant and let this be what reality actually is?

Commissioner Strohmaier: Yeah, let's clear the decks of that question first. Mr. Hart.

John Hart, Attorney II-Civil Division, County Attorney's Office: [00:40:25]

Commissioners, if we follow the letter of Montana law, we cannot undo this covenant, and as one of the individuals just--oh, I think Mr. Hall indicated--I did send the Halls an email during the CAPS update on Monday morning, because it dawned on me during that meeting that there was new legislation passed by the--in Helena in 2019 that says that unless you can restore the original lot lines and aggregate the original two parcels or a government or public entity seeks to use the land for public purposes, and that's not the proposal, this land isn't going to be used by a government entity for public purposes, and it's not possible unless the Halls purchased that pork chop shaped parcel to aggregate the original two pieces of land that were divided in 1981. So, a very strict reading of the law is that the governing body does not have the authority to revoke this covenant, and I'm sorry to be the messenger.

Commissioner Strohmaier: Okay, so it looks like the other option, aligning with Mr. Mefford, might be a bad idea.

Commissioner Slotnick: Yeah. That's what I would like to do, given the, kind of, the absurdity of this case, and what I don't want to happen, though, is this be held up as a precedent later, and, oh, look, we can build garages and such on what is actually agricultural land. Well, I don't know why that's happening.

Commissioner Vero: There's a really bad feedback. Did you guys--could you hear Josh?

Commissioner Strohmaier: I could.

Commissioner Slotnick: Should I try that again?

Commissioner Strohmaier: So, if anyone is unmuted, go ahead and mute yourself, please, if you're not speaking.

Commissioner Slotnick: Can I try that again, Dave? With asking John Hart.

Commissioner Strohmaier: Yeah, sure.

Commissioner Slotnick: Thanks.

Commissioner Strohmaier: Unless, what was the portion you did not hear, Juanita? Did you hear John Hart's response?

Commissioner Vero: I did. I just didn't hear Josh's response, and it was so--there was so much feedback, I thought that it would be useful for everyone to hear it.

Commissioner Slotnick: Thanks. Am I good, Dave?

Commissioner Strohmaier: Go for it.

Commissioner Slotnick: Okay, thank you. So, John, if we were to say, and I really want to side with reality here, we're going to say this isn't a farm, okay, but it's been called agricultural. These guys should build--we'll let them build their building. Does this mean on land that's actually agricultural, where there is an ag covenant in place and there's an actual farm happening, that somebody can come up and build a three-bay garage

because we've made this decision today? A three-bay garage on the hypothetical farm to hold their cars.

John Hart: Every piece of land is unique, Josh. I don't--unless there was another, you know, example of an agricultural covenant on a similarly tiny piece of land in, you know, the middle of the Swan Valley that we all agree is not agriculture land, I don't think that someone could necessarily argue that this is a precedential thing.

Commissioner Slotnick: Great, thank you.

John Hart: However, you know, that--it is--I think that--

Commissioner Strohmaier: We'll stop you right there, John.

John Hart: Alright.

Commissioner Strohmaier: There's no however's, in this world today, so.

Commissioner Vero: I mean, and what we're deciding is it--

Commissioner Strohmaier: No, I'm sorry to cut you off, John, if you really wanted to finish that thought, I think we get the gist of it.

John Hart: No, that's fine, Dave. You know how I can ramble on. Sometimes, the one-sentence answer is the best.

Commissioner Slotnick: We got like 80 acres of hip-deep topsoil out in the Grass Valley, and someone wants to build an eight-bay building in the middle of it for boats and cars and such, and someone who wants to do that would say, well, look, you lifted that covenant up by Lindbergh Lake, we should get the same treatment here.

Commissioner Vero: We can say no.

Commissioner Strohmaier: As long as there's enough differences in the facts on the ground that we could justify a different decision in that case. Oh, John.

John Hart: Hey, can I ask a question? You know, I'm not necessarily--I mean, I have had discussions with CAPS about this issue. I know enough about it to be dangerous, but, Matt, I think I heard you talk about other sheds and buildings that currently exist on this ag parcel today. Is that correct?

Commissioner Slotnick: Three sheds.

John Hart: Three sheds?

Commissioner Slotnick: They will be torn down and replaced by the garage.

Robin Hall: Correct.

Commissioner Strohmaier: That is correct.

Matt Heibel: Right, and the house expansion that crossed the line onto the subject property appears to predate building permitting, so it would not have come across our eyes, and--

Commissioner Vero: Can you throw that slide up, Matt, please?

Matt Heimel: Oh, sure.

Commissioner Strohmaier: Go on. Go ahead, John, with your train of thought there.

John Hart: Well, this is totally out of my position as an adviser, but I'm wondering if--I mean, I can sense which way the wind is blowing here. I wonder if rather than compounding the situation, that if the commission wants to provide some relief for the Halls, that they do it in exchange for maybe demolishing the existing sheds in exchange for just the one garage building.

Commissioner Vero: Isn't that what they're proposing?

Commissioner Slotnick: John, I thought that's what the proposal was.

John Hart: Oh, that's what the proposal is?

Matt Heimel: Yeah.

Commissioner Vero: Yes.

John Hart: Well, you see, I don't even know enough to be dangerous.

Commissioner Strohmaier: So, John, here we go, in terms of here's a hypothetical, and I think you might have sense the breeze correctly, has yet to be seen, we don't have a motion on the floor yet, but assuming that CAPS' decision is reversed today, can we add a condition that the existing sheds--we've heard indication that the plan is to remove them, but that in order for the new structure to be built, the existing structures must be deconstructed or removed?

John Hart: Yes.

Commissioner Strohmaier: Okay. Josh, Juanita, what's your preference here?

Commissioner Vero: I think Josh is jumping out of his skin.

Commissioner Slotnick: Can I ask a question of the Halls?

Commissioner Strohmaier: Yes, absolutely.

Commissioner Slotnick: How does that feel to you?

Mike Hall: Feels kind of like what we asked for, so we would like that. We would be happy.

Commissioner Slotnick: There you go. Okay, so I would--okay, I got to read this right.

Commissioner Strohmaier: Well, let's see here.

Robin Hall: Can I say something? I think that if you overturn the decision that it's not an agricultural use building, then you don't even get to number two, because the ag covenant will still be there.

Commissioner Slotnick: Mrs. Hall, it seems that we cannot overturn the ag covenant.

Robin Hall: Right, and we're fine with that.

Commissioner Slotnick: Believe me, I would really like to.

Commissioner Vero: I have a quick question on the ag covenant that went into place in 1981. This land has never been used for agriculture, correct?

Mike Hall: That is correct.

Commissioner Vero: And then even in 1981, when it was under ag covenant, it still was not used for agriculture. Is that correct?

Mike Hall: Yes, ma'am.

Robin Hall: That is correct.

Commissioner Slotnick: This was just a slippery way to avoid subdivision a very long time ago.

Robin Hall: Right.

Commissioner Vero: Okay. Sorry, Josh.

Commissioner Strohmaier: No, that's okay. So, if I sense where this is going, I think the motion would be to reverse the decisions of the planning office and also add the condition that the existing sheds be removed prior to, or in conjunction with, the construction of the new facility. Something of that nature.

Commissioner Slotnick: That's it.

Commissioner Vero: Yep.

Commissioner Slotnick: Do you want me or Juan to make that motion, or can you have just made it?

Commissioner Vero: Can you say it, Josh, and then, John, will you tell us if we are correct?

Commissioner Slotnick: I'll give it a shot.

Commissioner Slotnick made that motion that we [the Missoula County Board of Commissioners] reverse the decision of the planning office and condition the building of the garage on the removal of the existing three sheds.

Robin Hall: Okay.

John Hart: That sounds fine.

Commissioner Strohmaier: Juanita?

Commissioner Vero: [00:50:23] Second.

Commissioner Slotnick: And before voting, Dave, I want to make one comment, just kind of for in the record. I do not believe the CAPS staff made a mistake. I believe they followed the letter of the law as they are supposed to, and according to the statute you brought up, it is our job to do what we just did, not the staff. So, I in no way want anyone on the CAPS staff to see us as cutting them out at the knees or undermining them. I

believe they did right, and then it came to us, and now I believe we did right. And I'm sorry for the Halls that this took so long, this is just the grinding wheels of process, and I hope all goes well for you next.

Robin Hall: Thank you.

Commissioner Vero: Thanks.

Commissioner Strohmaier: You said everything that I would have said, Josh, thank you.

Commissioner Slotnick: Then I know I got it right.

Commissioner Strohmaier: Any further discussion on the motion? Okay, seeing none, all in favor say aye.

Passed 3-0.

Commissioner Strohmaier: Okay. Thank you, Mr. and Mrs. Hall. Thank you, Andy, thank you Kent and everyone else, and also, again, thanks to CAPS staff for doing their job, and we are trying to do ours today.

Robin Hall: Thank you all. Thanks, Matt.

Matt Heibel: Thanks, bye.

Kent Means: Thank you.

[RCA and verbatim meeting minutes sent to Robin and Mike Hall on April 1, 2021]

Commissioner Strohmaier: Okay, moving on to our final public hearing today, this will be brought to us by Tim Worley providing a staff presentation on some proposed subdivision amendments for O'Keefe Ranch Estates.

e. O'Keefe Ranch Estates Subdivision Amendments

Tim Worley, Senior Planner, Community and Planning Services: [00:51:59] Senior Planner, CAPS: Yeah, good afternoon, Commissioners. This is a request to adjust elements of the preliminary plat and also some conditions for O'Keefe Ranch Estates. The request comes from RYN Built Homes as represented by Ron Ewart of PCI. O'Keefe Ranch Estates is an 80-acre subdivision approved in 2005. It will be planted into 197 lots if all nine phases are brought forward for recording. The first phase is due to Missoula County in October of 2022. This acreage is located between the Interstate and Waldo Road and west of Highway 93 in the WYE vicinity. So, this request is to adjust the preliminary plat for this subdivision and modify certain conditions of approval. The request is authorized under Section 5.8 of our subdivision regulations. So, there's fundamentally eight different aspects of this request. There's the request to delete what are known as short courts, which are private access lanes within the subdivision, and I'll illustrate what those are here shortly. There is a proposal to adjust connections to adjacent properties, particularly to the west. There's a request to amend parks maintenance RSID language, sort of an administrative adjustment, being requested. There is a request to delete a landscape median at the subdivision entrance. There is a request to increase a restriction on fence height adjacent to common areas from four feet to six feet. There's also a request to delete certain common areas and common area strips within the subdivision. There's a request to fold a common area/drainage into two adjacent residential lots while retaining the drainage function. And finally, there's a request to delete a five-foot-wide walkway requirement along the northern edge of the subdivision adjacent to Waldo Road. So, as Nick went over with regard to his platted subdivision, preliminary plats also have

very similar review criteria when folks want to change conditions or adjust the plat. The change has to be minor in nature, has to comply with the regulations; regulatory protections and safeguards need to be left intact; you can't have new impacts that result from the requested change or changes; the changes have to be consistent with the growth policy and consistent with the findings of fact for the subdivision; changes can't be incremental, which basically means a change that triggers a series of other changes; the change or changes have to stem from changes in the area, basically, the area of the subdivision, the landscape and the requested changes cannot be based on cost. So, commissioners, there's going to be eight separate motions as part of this request, as well as an updated master list of conditions of approval. There's a total of 28 conditions, but I'm only going to touch on the conditions that change as a result of all of the requests that are before you today, and I will pull out the individual motions, and then I'll bring them back together at the end so that you see all eight together as you make the decision at the end of the hearing. So, let's start with short court, and I'm just going to illustrate where one is located. This is a short court here [on screen] that allows for access to these, I'll call them landlocked lots here. This is a photo that illustrates what short courts are. This is actually in the city of Missoula on 9th Street West. These are private access lanes that come typically off public roads that allow for access. They're like driveways, but they have features of emergency vehicle access, such as turnarounds or hammerheads, and they typically allow for some sort of parking.

Commissioner Vero: And the owners maintain--who plows them and who maintains them?

Tim Worley: They are typically maintained by the homeowners.

Commissioner Vero: Okay. Thanks.

Tim Worley: So, here's a couple more short courts illustrated. This is closer to the southern edge of the subdivision because here's the interstate, here, and here's another short court [on screen]. I believe a total of nine lots would be impacted with this change of deletion of short courts. The lots impacted would actually be reconfigured to front on the public roads adjacent. So, the motion that goes along with this is a motion to support the deletion of these short courts, subject to the master list of conditions of approval. Now, the subdivision--.

Commissioner Strohmaier: Hey Tim, could you go back to that previous--the slide before it, please.

Tim Worley: Sure.

Commissioner Strohmaier: So, just so that I'm clear, so in order to allow access to those back-in lots, are the lots being combined? Such that you only have two lots, or are there are only four, or are they being realigned such that all four front the road?

Tim Worley: Yeah, they're being realigned so that all these lots front on a public road.

Commissioner Strohmaier: Okay, okay that's all I need to know. Thank you.

Tim Worley: Sure. So, in summary, we support the deletion of the short courts. There are a couple through connections that we feel are critical, and I'm just going to show the one on the western edge of the subdivision. Here [on screen], this actually connects to another subdivision you may be familiar with, and that's Gallatin Estates, which is a preliminarily approved subdivision of 70 lots. The applicant has requested, actually, that this through connection be eliminated and in its place, there would be a public access easement. So basically, you're looking at the approved preliminary plat on the left-hand

side of the slide, and on the right-hand side of the slide, you're looking at a concept of what the plat might look like with these condition amendments changes, one of which would be deletion of this pavement right here and just the platting of an easement. We don't support that change because we think it's vital to actually pave that through connection and make sure adjacent landowners know it's there and provide for that through connection so that when Gallatin Estates is platted, there is a functional through connection to the west. So, we have a motion with regard to that to deny the changes, and this is called Dufferin Drive that we're talking about on this western edge. And there's one condition of approval, it's condition number two, which dates back to the original approval of the subdivision. We've altered some language, and the most important language is just that last underlined sentence, that Dufferin Drive shall be constructed as shown on the preliminary plat approved October 19, 2005. So, parks RSID language. This subdivision, actually, the applicant originally volunteered to have an RSID for park maintenance, and what this applicant is requesting is a clarification that the initiation for the RSID actually has to happen by the county or through the county. It can't happen through a private entity. So, this is really an administrative change that we support. So, there's a separate motion that goes along with this and a condition of approval that the subdivider shall petition to Missoula County for creation of an RSID for basic park maintenance. So, there's really no functional change to this element of the approval, it's just getting the administrative language right. There's a request to eliminate a landscaped median at the entrance to the subdivision, it's right here, this oblong shaped piece, here [on screen]. I think to some degree, the realignment of Waldo Road with its reconstruction probably has eliminated some of that potential feature as it is. We support the request, and have a motion to that effect, to approve elimination of the Victoria Drive landscaped median. There is no condition of approval that goes along with this. It would just be a recognition with the platting of that first phase that they wouldn't have to create that landscape feature, which actually is a little piece of common area. So, there's a restriction currently for a four-foot fence height adjacent to common area strips within the subdivision. It's being requested to be raised to a total of six feet. Staff supports the existing four-foot maximum. If you look back at the original findings of fact, that was a public safety element to make sure that all eyes could remain on those common areas for public safety reasons. That's one of the reasons--you don't want tall fences next to public spaces. You can have tall fences next to certain private spaces, but not public spaces. It's just not good public safety. So, staff supports the existing four-foot maximum. So, we have a--

Commissioner Vero: Hey Tim?

Tim Worley: Yeah, Juanita.

Commissioner Vero: Sorry, maybe you'll get to this, I don't want to interrupt your flow, but can you show us on exhibit--I mean, or, show us where those public spaces are, but it's--

Tim Worley: You know what, I could go back, let me see if I can grab a graphic.

Commissioner Vero: I'm just not sure which one I'm supposed to be looking at, like which--

Commissioner Slotnick: Me neither, Juan, I'm glad you brought this up.

Commissioner Vero: Like which is the final one?

Commissioner Strohmaier: Let me interject here. So, Mr. Ewart, will you be going over that at all? In which case, if you have a graphic, we can address that then.

Commissioner Vero: Okay. Thanks, Dave.

Tim Worley: What I could do, just for starters, I could illustrate the hypothetical. Like if this were the strip involved, and I believe this strip will remain, this is one of the strips that's recommended for deletion, but this would be an area where you could build a fence, and Ron, you can correct me if I'm wrong. So, the issue is, if you're going to have a common area strip where people are walking down this cul de sac road to access the common area, you don't want tall fences on either side of this common area strip just for public safety reasons. You want--the recommendation originally was to keep those at a maximum of four feet. Rod might have some better illustrations than that. But that would be just--that's a hypothetical.

Commissioner Strohmaier: Ron, go ahead.

Ron Ewart, Applicant Representative, Professional Consultants Inc. (PCI):

[01:04:36] Hi. So, this is Ron Ewart with PCI. So, if you look--I don't have it right here in front of me, but there's three common areas strips. In--I think it's in phase three, and they go in between lots, so that the block isn't quite as long. So, in addition to this one where you point out, there's those--at the end it affects the total of 12 lots. And, I mean, this isn't a deal breaker by any means, but we figured that there's not a real regulation that limits the heights to four feet, but Tim did cite public health and safety, and, you know, I don't really agree that it's a safety issue, but, you know, we're not going to cause a scene over it.

Commissioner Strohmaier: Okay, thanks.

Ron Ewart: But we will go along with it.

Commissioner Strohmaier: Okay, hold that thought, Ron. We'll loop back to you and give you a chance to talk about anything that you want relative to these changes. So, that's helpful, Tim, thank you.

Tim Worley: Sure. So, there's certain common areas and common area strips that are proposed for deletion, and I think this is the majority of those right here. There's this fairly large common area strip between lots [on screen], and what would happen here is that the adjacent lots would be folded in and gain a little bit of square footage. There wouldn't be additional lots created, but there's also these leftover pieces here and here [on screen] that are proposed for elimination, and again, like in the case of this lot here, this lot would just grow toward the road to the west, and this doesn't impact the amount of parkland dedication by any sort of considerable amount. There's far in excess of the amount of parkland and common area dedication that's needed. So, we support this change, and we have a motion to that effect. And I should point out, as Ron mentioned, there's still a number of common area strips that are intended to break up long blocks, and those have been retained, and in some cases, those have walkway features within them. Those have been retained as part of this request. And there is one common area drainage between currently labeled lots 68 and 69 of phase three. It's proposed to be folded into the two adjacent residential lots. I think there's some concern that will appear to be orphaned area that might get taken over by residential lots anyway. So, the right-hand portion of the slide shows what that might look like when that 10-foot drainage area is actually folded into residential lots. We support that change subject to a condition of approval, and we think it's important to enumerate that that area cannot be encumbered. It has to remain free and clear. So, you couldn't really put a fence or anything within that. I mean, it has a drainage function. So, we wanted to be very clear about that, and after talking with John and the county attorney's office, we thought we probably needed to bolster that a little bit. So, I've added some language in blue to the recommended additional condition that says that the phase three plat shall depict a No Build Zone for

this area, which shall be included in a reduced-size exhibit attached to and described in the covenants. So, that just makes it clear to landowners that that space is intended for drainage. Alright. Originally approved with the subdivision was a five-foot wide walkway along the southern edge of Waldo Road, and as you're probably aware, a significant amount of square footage of this and other properties was taken for that reconstruction project. And with that, it's unclear whether the five-foot walkway could even be constructed today, and as you might be aware, there's actually a five-foot walkway that was constructed as part of the reconstruction project on the northern edge of Waldo Road. So, the applicant is requesting deletion of the requirement for the five-foot wide walkway along the northern edge of the subdivision, which we support. We do recommend a condition, however, that requires the platting with phase one of a 20-foot wide, non-motorized access easement, and in the locations where this space might be narrowed up significantly, because of the loss of ground to the highway, our recommendation is that that width of easement be as close to 20-feet wide as possible. We did receive one agency comment from the Water Quality District, acknowledging something that we also have observed over multiple springs, not only a shallow depth to groundwater, but spring flooding issues, which has impacted construction projects in the area. It's something that we keep an eye on and attempt to document most springs. Now, Commissioners, you don't need to read through this, but I think I'll read it into the record because I think it's important, and I think we have Travis from Water Quality District present to potentially comment on this, but I'll go ahead and read through this comment from Elena Evans in Water Quality District. She writes that, "The Water Quality District is concerned that impacts to groundwater and O'Keefe Creek have not been adequately addressed. We've seen increased flooding in recent years in the area. There is no regulatory floodplain on this section of O'Keefe Creek and groundwater levels seem to be higher and more flashy than in past years. The Water Quality District will be collecting additional groundwater and surface water data during 2021. I'm not sure it will be at the detail necessary to evaluate the impact to groundwater and surface water and resultant impacts on this development. Residential wells nearby that were a 55-foot depth to water in 2004 are now only a 13.75-foot depth to water. The long-term monitoring well that the Water Quality District monitors monthly was at a 2.64-foot depth to water in 2018 and groundwater has not fluctuated to more than 3.62-feet depth to water when, prior to 2017, it used to regularly fluctuate more. It is difficult to determine if this is cyclical or if it reflects a permanent change in groundwater elevations. Additional stormwater contributions to the area may further exacerbate groundwater issues in the area. There may also be issues with basements and flooding in the area if this data is indicative of a long-term trend and inputs to groundwater continue to contribute to increasing trends." We think that this is an important issue, however, we feel that the decision space by the preliminary plat adjustment and condition amendment process, probably at this time, would not allow for imposition of a new condition of approval related to the groundwater issue, which we fully acknowledge is real in this location and probably will impact the subdivision. If there were a request specific to this issue, like the lessening of the total amount of common area or impact of a location that clearly has a flooding issue within the subdivision, then we feel we could impose a new condition, but at this point, that's why, commissioners, you're not seeing a new condition related to the surface and groundwater issue out here at the WYE.

Commissioner Slotnick: So, Tim, can--or Dave, when can I ask Tim a question about this?

Commissioner Strohmaier: Yeah, please do.

Commissioner Slotnick: Thanks. So, Tim, I'm thinking about basements.

Tim Worley: Yeah.

Commissioner Slotnick: So, is there any way to condition the no-building of basements, or do we just leave that up to the good sense of the developer?

Tim Worley: I think that would be a wise course. I don't know if, within this process, that we feel that we have the latitude of recommending that condition. That's more something that you would impose at preliminary plat approval. And I realize that this is new information that was not known in 2005, and the phenomenon--

Commissioner Slotnick: Yeah, it changed from 2005.

Tim Worley: Yeah, things changed, and they're not--nobody's sure exactly why.

Commissioner Strohmaier: So, Tim, just to follow up on that, that would either be a bridge that we would cross at preliminary approval--or, not preliminary--would it be final approval, I'm assuming?

Tim Worley: Well, I think it's--.

Commissioner Strohmaier: Do we--since preliminary plat approval has already occurred, is there any decision space at final plat? Otherwise, as true as the observations that you just read may be, it seems as though they are not germane to any of the items before us today.

Tim Worley: Yeah, I think preliminary plat is the time to impose this sort of condition, and I don't believe at final plat there can be imposition of a new condition related to this.

Commissioner Slotnick: So, Tim, is it possible that at preliminary plat that that slide with the quote you had on it is part of the information we, or whoever is sitting in our shoes--standing in our shoes, gets to see that info when they're at preliminary plat?

Tim Worley: Well, if the phenomenon were occurring back in 2005, that's--that would be the type of information that could be operated with, but since we have new information that's probably post, I would say 2010 or so--I mean, I've observed--

Commissioner Strohmaier: Our predecessors approved the preliminary plat, so that ship has sailed.

Commissioner Slotnick: So, I get--I used the wrong words there. So, how do we make sure that this information is acted on?

Tim Worley: Well, short of imposing a condition of approval, I mean, you could ask--and, I don't know, Ron, is Scott present on this call? I don't know if Ron could represent the applicant. The applicant, on the record, I think, with other land use actions, has expressed that he's okay with going with no basements in this location. That's not a condition of approval, but to have it on the record is at least something.

Commissioner Slotnick: So, if it's on the record that the developer is good not going with basements, and then they build that out a couple of years from now, and they change their mind and do basements, and then people's basements flood. Does there--is their being on the record saying they weren't going to do basements offer any level of protection to the people whose basements are now flooded?

Tim Worley: I would--and this is more of a John Hart question--.

Commissioner Slotnick: That is a John Hart question, yeah sorry.

Tim Worley: On a civil level, perhaps. You had somebody on a public record saying, no, we would be crazy to do basements here, and then if they go back and do basements and then basements flood, that's more of a civil matter. I don't think there's anything related to Missoula County with that regard.

Commissioner Strohmaier: So, why don't we hold that thought, and we can hear from Ron Ewart on the full array of what the developer or developer's representative wants to talk about, and also, Ron, when you speak, let's also be sure to talk about the basement issue and options there. Tim, do you just want to wrap up before we go on to Ron?

Tim Worley: Yeah, and so, commissioners, when you get to the point of making the decision on this request today, I have two slides, four motions per slide, and we can just walk through those motions.

Commissioner Strohmaier: Okay.

Tim Worley: But I can stop sharing for now, and we can move forward.

Commissioner Strohmaier: Okay, thanks, Tim. Mr. Ewart, it is all yours.

Ron Ewart: Hi. So, we have had some conversations with Scott Krajack. I don't think he's on here today, but you all met him when we had the zoning public hearing about a month ago, and Scott's done a lot of building, he explained all the building that he does, and he knows how employing various techniques, especially when it comes to high groundwater issues. So, he was talking about--I don't remember if you said no basements, but I think he said there might be a situation where you can have a lower-floor daylight or something, but you can also do things like raise the finished floor elevation through the building up the pad. You can install drain tile, whitewashed rock. There's a lot of techniques that can be employed. So, he's well aware of this issue, and one thing we should remember is groundwater levels aren't that much affected by ground surfaces that are made impervious. That's more of an overland flow issue, and, in this case, we--there's a swale, which is like a tributary, to O'Keefe Creek, and that has drainage easement in it. And I don't--there's not a house within about 100 feet of the middle of that swale. So, the project was designed with that in mind. So, I think that--well also, there was a geotechnical report that was done, and in that report, there was a recommendation that you do a study for each one of the building sites, and Scott is planning on doing that. So, we're going to take a look at each unique site and determine what techniques need to be employed, and, like I said, I don't think he's planning on doing any basements, but I know he's going to do the right thing on each one of them, and--which includes a specific study for each building site of those 197 lots.

Commissioner Strohmaier: Okay, we might come back to that, Ron. If you want to go ahead and hit on anything else relative to your request, that would be good.

Ron Ewart: Well, no, I think I mean, we're all good with all the recommendations. You know, a lot of these things were things that just made more sense, made the subdivision a little bit better, and some of the things that we didn't quite agree with, like the four-foot fence thing, that's something that's not that big of an issue. So, I think all in all, we're good with all of the changes, and we're ready to move forward and start seeing some construction going on this spring.

Commissioner Strohmaier: Okay, before we get back to the commission, is there any public comment on the proposal before us? Okay, seeing none, we'll close the public hearing. Josh or Juanita, things you want to follow up on here?

Commissioner Slotnick: I'd love to ask John Hart a question, if I could.

Commissioner Strohmaier: Yes.

Commissioner Slotnick: John, if for whatever reason, basements end up being built and they flood, are we in any way liable for that, for the--would a person who owns that house sue us and be successful?

John Hart: Well, you asked me about three questions there, Josh, and I can answer one of them. Well, I'll only answer one of them. We would probably be party to a suit.

Commissioner Slotnick: What would--as a betting man, where would you bet? That it'll be a successful suit?

Commissioner Slotnick: I'm not going to bet on the prospects or likelihood or merits of that lawsuit. You know, a question that I had though is, Tim, would it be too much akin to a covenant, an additional covenant at this point in time, or a condition of approval at this time if they put that statement that you read from Elena Evans? Could that be put on the plat itself? Or is that akin to a condition of approval, which, you're right, we can't impose at this particular stage of this subdivision.

Commissioner Strohmaier: So, Tim, what can you put on the plat without it being a new condition of approval?

Tim Worley: Well, it would be a condition of approval, it would just be a softer reality on the ground. Because you're not absolutely restricting basements, you're just flagging what's going on, and the one potential problem with putting Elena's language on the plat is that there's new knowledge all the time of what's going on out there at the WYE, and it's a little bit fixed in time. So, if we move five, ten--I mean, this subdivision has a, I don't even know what it is, a 15-year horizon, something like that. It could be that that statement, 15 years down the line, it might even be inaccurate. So, I guess I would be a little cautious. We could maybe come up with something more generic, but it still would be a condition of approval. If we say: you need to put this on the face of the plat, whatever that note is, it would be a new condition.

Commissioner Vero: But even if it's going to be built, like--

Tim Worley: There's probably less risk.

Commissioner Strohmaier: Juanita?

Commissioner Vero: Oh, sorry. I mean, so twelve years from now, when something's actually being built, or four years from now when, I mean--at the time of the building, I mean, the ground is assessed and, I mean, what am I trying to say?

Commissioner Strohmaier: Well could someone speak to: at the time of actually acquiring a building permit, what additional inspection would need to--would occur then that could trigger some questions as to whether a basement is prudent or not?

Commissioner Vero: Thank you, Dave.

Commissioner Strohmaier: No, that's okay. Tim or John, is there anything that would be a red flag at that stage? Or fire up the excavator and pour the concrete?

John Hart: Not necessarily. I can't think of how that type of a review would be triggered at the building permit stage. I'm not--I don't think it would be triggered during the zoning compliance permit stage or anything else. I mean, really, we're at the mercy of the

developer to want to do the best thing for the purchasers of the lots in this development and, you know, and then also have high-quality, safe foundations in homes built out there. So, no, I'm not aware of how, at the time of building permit or at the time of actual residential development, we could assure that groundwater and stormwater issues would be addressed.

Commissioner Vero: Didn't this happen out in like Harry Potter Land when they were first built? What's that?

Commissioner Strohmaier: I don't know.

Commissioner Slotnick: There's, Juan, there's something like this in a relatively new development, kind of near Caras Nursery in my neighborhood, or--the legal battling has been going on for so many years, basements full of water, and it's just a mess.

Commissioner Strohmaier: So, here's another option, and this would require consent of--

Commissioner Vero: Oh, Travis.

Commissioner Strohmaier: Hold that thought, Travis, I'll get to you just in a second. So, one option would be that Mr. Ewart go back to be the developer and see if there would be any willingness to put forward a new condition to cover this, because clearly, it's not just on the developer. Missoula County potentially has some legal exposure for what has gotten us to this point, and, Ron, I recognize that you guys want to move quickly, but also there's at stake making sure that what gets developed on the ground accounts for the new conditions that we're seeing out there. And I am not proposing any lengthy, protracted sort of a process here, but something akin to not taking action today and waiting until the next public meeting date that we could schedule such a thing at. That's one idea, I just put it out there for consideration. Let's go to Travis, and then Andy has his hand up, and then I want to definitely hear from Ron. Travis?

Travis Ross, Environmental Health Supervisor, Water Quality District: [01:28:13] So, I just wanted to add that we, the Water Quality District, is doing some additional investigation right now. Postcards have gone out to residents of the O'Keefe Creek area and got 30 responses so far that are willing to participate. It's just a hard area to define with--have some wells out there that we've seen, even artesian, and--meaning that the pressure is such that it's actually become surface water, and circumstances. So, it's poorly defined, but we know there's a problem and certain areas of the WYE and especially that adjacent, oh, I can't remember the name of the road, Tim, that--just to the east of this project. Yeah, from a 30-foot rise, there's been some speculation and what caused it being related to road reconstruction, but there's a number of other hypotheses. The other question you brought up, Dave, about changes and subdivision conditions is we've seen something similar around Grant Creek and worked with the city on 44 Ranch, given some changes to the impairment status of Grant Creek and stormwater system that was proposed and a subsequent phasing amendment. So, you know, I'm not sure of the differences between the city and county subdivision regulations, the particulars, but there is that precedence there. So, yeah, we're working on it, but are concerned. That's all I wanted to add.

Commissioner Strohmaier: Thanks. Thanks, Travis. Andy?

Andy Mefford, Developer's Representative, Professional Consultants Inc. (PCI): [01:30:16] Sure, thank you. Maybe I can kind of wrap some of this up a little bit and pull some of these pieces together about this area. It would be interesting to see where these Water Quality District wells are. I think a lot of those are out in the kind of the plain or the

flat areas of that O'Keefe area. Most all of our areas are elevated. We are on elevated terrain that surround this low spot, the drainage. They're on fingers, they're on ridges. So, most all of our building sites are on elevated areas quite a bit above that floor out there. I also think one of the things, and just part of the heart of the conditions we're at here today is discussion about what we're doing is actually somewhat improving that because we are reducing impervious areas. We're reducing short courts. We're serving it by existing streets. We're getting rid of Waldo construction and more impervious areas. So, we're actually driving impervious area down with these plat amendments we are requesting today. The other thing is we talked about the--you know, and our developer really at one point had mentioned in the zoning application there was the same discussion about a covenant. They were really fine for this deal of a covenant that said no basements. The only thing to give us a little bit of angst about that, quite honestly, is, again, back to this term, a basement. We were a little concerned that those lots that are significantly elevated up along the highway may debate--are probably fitting for a daylight basement, you know, where you're building--you're well above the valley floor, and so, someone to cut in a daylight basement with a tuck-under garage is very probable. So, that's the only angst I have about a covenant that says no basements, because you could go to those interstate lots that are way above and someone could be digging in a quote, daylight basement. So, you know, if there was some covenant that we could maybe add that says this is an area known for high groundwater, and, you know, we do have an intention because the soil is not only high groundwater, but we intend to do geotech studies on each of these lots or blocks of lots, and they are being controlled by a single developer. So, you know, possibly a hybrid could be a covenant that says this area is an area known for high groundwater and concern and suggest that a geotech investigation be performed on each lot. You know, it stops short of saying no basements, that, you know, would be the concern on the daylight hillside lots, which we would fully waterproof foundations, put drain tile around, expose them to daylight so we don't get hydrostatic pressure and things building behind basement walls. So, I think that's a little bit of context, you know, that I know there are some high groundwater concerns out there and some surface water and flooding issues. I've seen exactly those wells Travis speaks of, artesian, but I think a lot of our property lies not in those specific areas. It's being generally associated with that, which I think is kind of a broad assessment, but I think our properties are pretty not prone to flooding of basements if they were even putting them in. But those lower lots, there's absolutely no intention to put any basements down on those lower reaches. It wouldn't be until those later phases, much higher that there would be some consideration of like a daylight type basement. So, I don't know that might provide some clarity. But, I don't know.

Commissioner Strohmaier: Thanks, Mr. Mefford. Tim, what would it take for adoption of a covenant change like that? Would--I'm assuming that would, like everything else that we are contemplating today, need to come from the developer and not be something that we could unilaterally impose. Or am I mistaken?

Tim Worley: Well, I think in that might be the entry point, if you will, to maybe facilitating this sort of thing, if it were initiated by the developer. Although, I don't really know the content of the covenants well enough to say what you're adjusting, because this process basically is for adjusting a plat, or adjusting conditions, or adjusting existing covenant language, and I guess we could look at it under the heading of a covenant amendment, but it would almost have to be volunteered by the developer.

Commissioner Strohmaier: And I guess that's where I come back to, without the developer being present today, it's difficult. Unless anyone on the line today can channel the developer's wishes, and I've been speculating a whole lot here. So, Mr. Ewart, do you want to jump in at all?

Ron Ewart: Sure. So, and I have no doubt that we can work out some covenant language that is agreeable to Tim, and we could volunteer that. So perhaps, if you wanted, maybe if we can come back next week with something that everybody's in agreement with. Because, I mean, Scott Krajack, the developer, he doesn't want to have any issues, neither does the county, nobody does, and, you know, we're all experienced folks who have been doing this awhile, and I'm sure we can come up with a way to make sure that this is not problematic.

Commissioner Vero: Great.

Commissioner Strohmaier: What do folks say?

Commissioner Slotnick: Dave, I like the language that Andy came up with. That area is known for high groundwater, and the developer will do a geotech analysis on each lot. I'd be happy with that.

Ron Ewart: And that's probably fine, because I think we'd rather have this taken care of today, I kind of wouldn't want to delay it, but if we can come up with something right now, like sort of what Josh just mentioned, that there will be a--I guess that wouldn't be in the covenants, but there will be a Geotech report done for each of the building sites, but obviously we could add a line in the covenants that says this area has been shown to have high groundwater, care should be used during construction and development to mitigate any potential issues.

Commissioner Strohmaier: So it looks like we do actually have a public meeting scheduled for one week from today on March 4. Violet, or anyone else, what do you think about getting that scheduled then? And that would give us a--just so that we're not monkeying around with, kind of, developing language on the fly here today, that would give us one week to get that worked out.

Violet Plummer: Yeah, there's room on the on the March 4 agenda for that, so I think we could move it there for sure.

Commissioner Strohmaier: John Hart?

John Hart: Yeah, I mean, I understand that Andy and Ron would like to get this done today, but just from a public notice standpoint, this particular voluntary language was not in the public record as being discussed or considered today, so I would agree that if we can just move it to next Thursday, that that would be the appropriate thing to do.

Commissioner Strohmaier: So, we will do a continuation of the public hearing. While we're all assembled today, though, one question I have is on the Dufferin Drive piece of this and adding connectivity to the West, to, is it Gallatin Estates? So, I generally think, and even in this case, I think connectivity is a good thing, but I can't help but think there's some faint resemblance to Stillwaters, which I think we all are familiar with, and I think that's the subdivision that was going down the path of litigation where--in that case, it's a little different. It was a phase that was built out prior to another phase. In this case, it would be a full on subdivision, perhaps getting built out before another subdivision, and then what you end up having is folks who are in the developed portion, only then realizing that there's this whole other thing that's going to be developed and spill traffic into my neighborhood, and so, just hypothetically, if either O'Keefe Ranch Estates or Gallatin gets built out first, maybe it'll happen simultaneously, but assume for sake of argument that one gets built out first. Everything is going to be fine until folks realize that: by God, there's connectivity on Dufferin here, and all of these people are going to be driving through my neighborhood, perhaps to get somewhere else. Maybe not a great analogy, because there's likely more connectivity to get out of these locations than the example

that I referenced, where it truly was one point of entry or egress, but I just bring that up as far as the decisions that we make today could be revisited by our predecessors decades from now. Mr. Mefford?

Andy Mefford: Yeah, Dave, I appreciate it. I think that was a discussion to probably lay some foundation for supporting staff recommendation to construct that road. Is that true?

Commissioner Strohmaier: Yeah, correct.

Andy Mefford: Okay. So, the only comment I had, and I don't know if Tim could bring that condition up. The reason we had proposed it, sort of, is it's potentially you build roads that, you know, we don't know if Gallatin ever happens or not, and for reasons you just brought up, that always can be contentious. But I guess the one thing I had, or concern I had, I think the condition says you're going to build a turnaround, which further concerns me a little bit. I mean, I think we're fine to construct the road and put the radius in and build a road to potentially a future subdivision, or potentially a road to nowhere if it never gets platted, you know, but my concern is: I think there's a condition that says build a turnaround on it if it doesn't get platted, and you've got an awfully short street that I really don't want to put a cul de sac or a hammerhead around on when it's a street that's 80 feet long.

Tim Worley: Yeah, I think I can answer that, Andy. So, the way the condition was modified, it allows for the Merit--Merit Drive is longer. It's like 180 feet long, to my recollection, and I don't have a graphic of it, but you all show that as having a turnaround, and, in this case, because it's like you say, it's either--I thought it was maybe a little bit longer, like a little bit over one hundred, it can function as a--essentially as a hammerhead in and of itself. It does not have to be built with a turnaround. So, if you read the whole condition, it says, if Merit Drive terminates in a dead-end at the time of final plat review, this road shall be designed with a turnaround. Does that make sense? So, this condition, as modified, does not require Dufferin Drive to have a turnaround because it basically is a turnaround.

Andy Mefford: Alright. That clarifies it. I just, I didn't want any--because that condition popped up really quick, and I didn't get to take it in its full value, but I concur with you that you did, you got rid of the turnaround requirement on Dufferin, which I think is important, because it effectively works as a turnaround, as a T-turnaround as it is.

Tim Worley: And I verified with County Public Works and with the fire inspector that it will work that way, and it doesn't--you don't have to build like a cul de sac at that location.

Andy Mefford: Ok, that's all I was concerned. Very good.

Commissioner Strohmaier: Thanks, Andy. Alright, any other questions or comments today, knowing that we will continue this until next Thursday?

Commissioner Slotnick: Dave, one last thing, is there anything we can do now to make next Thursday shorter? Not that this was too long, I'm not saying that. Can we--is there some element of process we could do to approve up to a point? That's my question.

Commissioner Strohmaier: So, I guess I will pose that question to either you, Tim, or John Hart: is there any benefit to going through the motions that we have before us today and resolving those and taking action on those and still keep the public hearing open such that we can dispense with the final item relative to the covenants next week?

Tim Worley: Yeah, these are all sort of atomized motions, so they could be taken today if you wanted to take them, and I don't think there's anything related to the drainage that's

wrapped up in any of these motions. You probably could go through them today if you wanted to, and then just--

Commissioner Strohmaier: Yeah, John Hart, what do you think?

John Hart: I agree.

Commissioner Vero: Great.

Commissioner Strohmaier: Well, good thought, Josh, that'll economize everyone's time next week, because, at least a couple of folks on the line, I think are probably living in the world of billable hours. So, maybe that will save their clients a little bit of money. So, without further ado, I guess we will just plow through the motions here, and if folks have additional discussion on any of them, we can take them up to.

Commissioner Vero: Great.

Commissioner Vero made the motion to approve preliminary plat amendments deleting all short courts, subject to conditions of approval.

Commissioner Slotnick: [01:44:54] I'll second that.

Commissioner Strohmaier: Any further discussion on that motion? Or comment? All in favor?

Passed 3-0.

Commissioner Slotnick made the motion to deny preliminary plat amendments deleting the Dufferin Drive through-road connection, subject to the condition of approval.

Commissioner Vero: [01:45:09] Second.

Commissioner Strohmaier: Any further discussion? All in favor?

Passed 3-0.

Commissioner Vero made the motion to approve amendments to the Parks maintenance RSID condition of approval.

Commissioner Slotnick: [01:45:23] Second that.

Commissioner Strohmaier: Any further discussion? All in favor?

Passed 3-0.

Commissioner Slotnick made the motion to approve elimination of the Victoria Drive landscaped median.

Commissioner Vero: [01:45:36] Second.

Commissioner Strohmaier: Any further discussion? All in favor?

Passed 3-0.

Commissioner Strohmaier: Think we need some background music with this, don't we? We're kind of in a rhythm here.

Commissioner Vero made the motion to deny the condition permitting an increase in fence height adjacent to common area strips.

Commissioner Slotnick: [01:45:57] Second that.

Commissioner Strohmaier: Further discussion? All in favor?

Passed 3-0.

Commissioner Slotnick made the motion to approve the preliminary plat amendment that deletes selected common areas and common area strips.

Commissioner Vero: [01:46:08] Second.

Commissioner Strohmaier: Any further discussion? All in favor?

Passed 3-0.

Commissioner Vero made the motion to approve elimination of the common area strip between Lots 68 and 69, subject to the condition of approval.

Commissioner Slotnick: [01:46:21] Second.

Commissioner Strohmaier: Any further discussion?

Commissioner Vero: Did you second it, Josh?

Commissioner Slotnick: Yep.

Commissioner Strohmaier: Josh seconded it, yep.

Commissioner Slotnick: And ayed it.

Passed 3-0.

Commissioner Strohmaier: Do we have one more?

Commissioner Vero: You're number eight. Yeah, Josh.

Commissioner Slotnick: Number eight?

Commissioner Slotnick made the motion to eliminate the five-foot-wide paved non-motorized facility along Waldo Road, subject to the condition of approval.

Commissioner Vero: [01:46:53] Second.

Commissioner Strohmaier: Any further discussion? All in favor?

Passed 3-0.

[Continued to March 4, 2021 Public Meeting]

Commissioner Strohmaier: Okay, we have dispensed with the majority of the business. We will keep the public hearing open. We'll continue it for next Thursday, and we'll come back with, hopefully, some finalized language related to covenants and basements and

such. And anything else on this item before we move on? Okay, well thanks, everyone, for hanging in there. We covered a lot of business today. We appreciate everyone's participation. If there is no other business to come before the commission, we will be adjourned.

Commissioner Vero: Thanks, everyone.

Commissioner Slotnick: Thanks.

Commissioner Strohmaier: Thank you.

8. OTHER BUSINESS
[None]

9. ADJOURN
Chair Strohmaier – Called the meeting to adjourn at 3:48 p.m.