

available or if it becomes available. And I think we've done that, I think we've done that on every subdivision with the exception of lot 4 of the Ridge to do that. So, I see where, I disagree with the interpretation and I think a good mitigation would maybe be consideration in payment of lieu.

Dave DeGrandpre: For eleven percent of the value of the property?

Paddy Trusler: You're making the mitigation proposal and then we have to evaluate it.

Dave DeGrandpre: Well, that's what the law requires. [Public surprise expressed] Now, is there, under the law, the law is cited right before you – is there any one of those four conditions this proposal has not met?

Paddy Trusler: I don't see where you cite anything within the subdivision. It's a condominium development so it's all jointly owned under the joint ownership act. They own the footprint, but everybody owns the property. Where's the set aside?

Dave DeGrandpre: According to the subdivision regulations, it's eleven percent of the area in the lots, which I take to mean the footprint of the units themselves because those are what will be conveyed individually.

Paddy Trusler: I'm just simply saying that under the unit ownership act, you own a footprint and everybody owns the open space so where's the set aside for parkland and common area?

Dave DeGrandpre: It's the eight percent of the property, the 2400' of frontage, and the clubhouse...

Paddy Trusler: I don't think that's what the law intended to do, Mr. DeGrandpre. That's my opinion.

Bill Astle: Mr. Commissioner, could I understand what you meant by public access? Were you talking about public access to the lake?

Paddy Trusler: We're talking about parkland. No, I didn't use the word public – if I used the word public access, I apologize. Parkland is the word that I am using. You are under no requirement to provide for public access, you are required to provide for parkland dedication, you know, to mitigate the impacts of the subdivision and the reduction of access. And I think that if you, if you would look at historical practices of this Commission, most recently the two years, Swan Crest subdivision there's parkland within that. The difference there is just the ownership mechanism. In other subdivisions you have deeded property – you convey title by warranty deed. In this particular proposal as I understand it, a condominium development in which you pass ownership of the footprint by deed and all of the property is all under the unit ownership act is conveyed jointly. So, I mean, it's just an ownership type. I don't think that parkland

requirement changes as a result of your interpretation. If it did, everybody would do it that way.

Mike Hutchin: Mr. Astle.

Bill Astle: If I may just say, that that way is a condominium way, it eliminates lots whereas in a conventional subdivision you can, in addition to the lot creation, have an area designated all by itself as the parkland. But if you do not create lots under the condominium, everything is con – if you want we can write it on the plat as parkland. The ownership of a conventional park in a subdivision isn't the public, it's usually owned by a homeowners association and it's usually taxed. I mean, my experience is that the counties throughout the state don't want it to be public because they lose the taxes and they also have the maintenance of it potentially. And so the little area in a conventional subdivision that you're familiar with is a park-dedicated portion of that. Whereas in this condominium, and that's why I think the law respects it, we eliminated lots. You got the footprint and the whole rest of it, as in perpetuity, that dedication for park or open space. And that's, I think the rationale to the respect to that in the law.

Paddy Trusler: Like I said, just 'cause an attorney say it doesn't make it necessarily so. And I don't take that same approach to the condominium ownership process. And I am not advocating frankly that there be parkland as land be dedicated either. In most cases, we would much rather have the parkland, simply so that we can acquire properties in the future for public access. Parkland isn't public.

Mike Hutchin: Just so you know, I disagree with Mr. Trusler on this one. And then I can cite some serious examples along the lines of Mr. Astle: Jette Lake subdivision. Most of you are familiar with that or at least have heard it. And even the Swan Crest and Kootenai Woods – those parcels that were set aside to meet this statute clearly are in the homeowner association hands which means that every person who has an ownership of parcels of land within a subdivision also is an owner of that homeowners association property. I don't see that this is any different than that, overall. Because I'm understanding, at least, the condominium approach, is that they own the footprint, or the parcel of the building and that the balance of however many units are landed there own undivided interest in an association of the parkland which is not called a parkland necessarily but it meets this requirement under the law. So, I have a different view than Mr. Trusler does and I wanted you to know that.

Paddy Trusler: Which just goes to show that just because a Commissioner says it, it ain't necessarily so either. [Laughter]

Mike Hutchin: However, there is a second aspect to what Commissioner Trusler is asking and I'll try to clarify that. As an example, we have three parkland dedications along the Swan River to Songbird Lane, we have one on Rainbow Drive, we have a 7-acre parcel that's interior on Rainbow Drive, next to Mr. Kellogg's place. He is suggesting that – would you be entertained – would you entertain the idea of giving a contribution to that parkland controlled by this Commission to make some sort of public

improvement for access to the Swan Lake in any one of those three areas or other areas by choice of this Commission and the Park Board? So, that's the question to you that he is trying to propose.

Paddy Trusler: I don't think you have to respond. I don't think you have to respond to that right now, but I think that we will come back and revisit that particular issue at a later time.

Mike Hutchin: Okay, we'll continue. You guys give some thought to that. We may at some point in our second infancy project here with the mitigation process, we did take a break to allow the developer and the components to go out in the hall and talk about these things that are being thrown out. Ah, Mr. Maddy took advantage of that and came back and had some alternatives which were accepted by the Commission so we will probably do a break here later on to allow you to have a few minutes for that, okay?

Unknown: Okay.

Mike Hutchin: Number four, mitigation is setback along Sunburst Drive. It's quite clear what your proposal is. Paddy, Chuck, any comments?

Paddy Trusler: Of course I got a comment. Number one I don't see where there's any mitigation that's actually involved here. All it is is just justification of what you originally proposed and I think this all, this has to do a lot too with other issues that haven't actually been discussed – the widening of the road, and where the road actually is within the right-of-way, and whether or not the fence line actually represents the property and a whole bunch of things. And then when you couple that with the height, which you are also requesting, which is again greater than what has historically approved in this particular area, you know, I think the mitigation, the twenty feet that you propose is not enough. You're going to have prob – you're going to have substantial removal of vegetation – you have to in order to get the number of units that are being proposed in that particular area. Plus the [indiscernible], plus you also indicated that construction would be on a fire-wise basis. Fire-wise basis requires a 50' clear span around the buildings, too, at least a substantial thinning in order to do that, so I don't find that setback from Sunburst Drive to be acceptable for the density that you are proposing.

Dave DeGrandpre: I would like to try to understand the situation a little bit better and ask a question. Ah, what exactly are, what exactly is the issue that we are talking about here? Are we talking about people driving down, and walking down Sunburst Drive looking at four homes along the road?

Paddy Trusler: Well, actually, there's seven that I count, if you go on both sides of the road, but, no, yeah, I mean my point obviously – visual impact of that particular density and also that the – in order to shield other neighbors of the development, you know, from the public view as well. Whether that be positive or negative, the view is certainly something that you wanted to mitigate and it is a mitigation discussion. I am just simply saying what you proposed isn't mitigation when you consider a 20' setback and maybe

fire-wise is going to basically take out all the vegetation you said is going to act as a natural vegetative buffer.

Dave DeGrandpre: Do you have any suggestions?

Paddy Trusler: You know, one of the things I think that was one of the reasons I guess that we, that we had talked about a greater distance, so that you could go ahead and meet the requirements, that you've basically self-imposed in respect to the fire-wise. And I think that that's very important that you do that and it's something that we have asked of everybody in forested areas in order to more or less prevent catastrophic situations. And so, I don't really have a suggestion. I think that the 20' that you are proposing is not adequate to do everything that you have self-imposed upon yourself. And also, to meet the fire-wise which is very important to us.

Mike Hutchin: You just want to put that on the list for further debate amongst yourselves? Sounds like they're nodding yes, Dave, so you don't have to come up with one right at the moment. Thank you. Okay, number, that is an issue, the setback 20 versus as 50 as Commissioner Trusler has discussed. Number five, back in safety. Any questions from the Commission? [Pause] John, I'm going to ask you one while these guys are thinking. What kinds of things other than no can you think of that might be beneficial in terms of river safety?

John Synder: Other than no?

Mike Hutchin: Yes, sir. As an idea.

John Snyder: I haven't thought a lot about river safety. I think of the river as starting where it gets close and stays at a consistent probably 80' wide there. Is that where you're meaning? Is the river safety?

Mike Hutchin: Well, you made the most comment in terms, in this session, in terms of the public water safety although it's been talked about extensively in e-mails and letters, etc, I was just fishing for something.

John Snyder: Okay, if you're talking about the five – ten thousand feet from the end of Swan Lake and the start of the river going southwards I have several ideas. One mitigation wouldn't be from the Milhous Group, it would be to make this ah, this whole area where all the rocks are and where the channels by the docks limited to an even more than a no-wake. You know, I don't know what a wake is, maybe it's three miles an hour, four miles an hour because we see the kids swimming there, we see the people swimming. If you limit everything way down then that takes part of the safety issue away. On the river, I thought of jet skis. One of the things that happens with jet skis is that this real shallow water they start screaming around real fast and up and down and maybe there's some way to mitigate it. I have the idea of no jet skis. Um, because they seem to be the craziest people. I'm really not sure. Ah, maybe, right now is the river a non-motorized area? Some people think that it should be non-motorized down there, but

for those people that live there and want to come up, you need a motor for part of the distance so that's a toughie. I would like to see it a no-wake, you know, increase it just from the river and come back up a ways.

Mike Hutchin: Kate, hang on, I'm asking John some stuff, here, I'll get back to you, Kate, okay. John, are you familiar with the Fish and Game Commission and their decision last year to do a no-wake zone on the river?

John Snyder: It says the river and I was never sure what the river meant.

Mike Hutchin: Well, the follow up question for that is were there pylons or any signs placed by the Fish, Wildlife and Parks on their – any-where's?

John Snyder: No.

Mike Hutchin: Sounds like it never occurred. That was, the Fish and Game Commission has specifically asked the Fish, Wildlife Division, District I, up here to place signs on the river that would indicate where that no-wake zone began. Sir.

Public Comment: Yeah, there are signs on the trees on the Kootenai Lodge that say no-wake zone.

Mike Hutchin: Okay, is there one on the opposite side of the river as well?

Public Comment: No, not on the Milhous side.

Mike Hutchin: John, along those lines, all of the things that you just mentioned here are really under the jurisdiction of the Fish & Game Commission and this County Commission did support the no-wake zone and policy implemented by the Commission last, I think it was last June, or May, one of those two days. So, we supported that because of the traffic and those sorts of things. They implemented a 5 mph no-wake speed as well. And it's hard to interpret that – even the law enforcement individuals for the Fish, Wildlife & Parks have a hard time because at times of years, as you are aware if you are on that river, you have to exceed five mph to beat the current back out to the lake and so you will have an increased level of wake as a result of that. So, then it becomes a common-sense judgment with the officer. They talked about that at length at the Fish & Game Hearing so most of what you said.

John Snyder: Or don't go down with a motorized vehicle, because if you just float down then you don't have to go faster than the current.

Mike Hutchin: That's not our issue, though, that's my point here.

John Snyder: Right.

Mike Hutchin: It has to go to a different Commission.

John Snyder: The – you ask about ways to mitigate and I suggested less docks and maybe some of the dock slips are for non-motorized boats. Maybe there's something that can be done with that. The other thing that's a concern is make sure it's in the covenants, not in the covenants, but a ruling of a Commission, that there's no funneling because then it can't go beyond what we see right now, and can learn to adjust. It's not going to turn into a big atomic bomb and so on.

Mike Hutchin: Okay, thank you, John. I didn't mean to put you on the spot, I just wanted to sit here and try my options.

John Snyder: No, I was trying to help as best I could.

Mike Hutchin: Dave, I need to get to Kaye. Kaye.

Kaye: I just want to support what you just said because there is a no-wake on the river and Fish, Wildlife & Parks has been very lax about getting signs. So, my project this year is to get the signs up on the river declaring it a no-wake zone. Now, I'm not sure where you define the river starting but Johnson Creek was, was the – don't shake your head, please. Johnson Creek was the point we were going to use. I know the current starts before that and that the river really starts before that but I'm going to try to get with Fish, Wildlife & Parks so we can get signs on both sides letting people know that it is definitely a no-wake river. That means no jet skis, no motorboats.

Mike Hutchin: Okay, Kaye, thank you. Kaye, by the way, I'll put you on the spot here in front of your neighbors. The Park Board met this morning from ten 'till noon, and Kaye put in her application to be a member of the Lake County Park Board and she is now being offered the position by the Commission. So, thank you Kaye for volunteering, too. I – there's one other hand that wanted to answer me. Clint, thank you.

Clint Fisher: Yeah, just from the Lakers stand point, the way to mitigate that issue is less density, fewer docks, and no funneling.

Mike Hutchin: But, response.

Dave DeGrandpre: Just to put the issue to bed, we've committed to not funnel. To remove any discussion of that from the covenants. I believe we discussed that at the last meeting. Apparently it didn't make it out there. That is a commitment.

Mike Hutchin: Yes.

Denny Kellogg: I was just kind of wondering if that was going to be in the covenants or is that going to be a deed restriction? No funneling as a deed restriction?

Mike Hutchin: How are you – that maybe is a fair question. How do you propose to do that from a legal perspective, Mr. Astle?

Bill Astle: Covenants are the restriction.

Public: That can be changed.

Denny Kellogg: That can be changed at the whim of the developer.

Public comment: Or the owners.

Mike Hutchin: Well, we can say without the consent of the Lake County Commissioners.

Public at large: [Groan]

Mike Hutchin: That's how the Ridge works. Got your answer. Okay, Mr. Whitson.

Chuck Whitson: I think that the audience is at a disadvantage because they don't – they haven't have the opportunity to review the response to the mitigation. Is that right?

General Public: No, we have a copy.

Chuck Whitson: Majority. I would say the majority of you have not reviewed the mitigation response. I just want to read part of the response so that you'd be better educated and better enlightened regarding the mitigation response for the docks and water safety. As you know, the issue was that, ah, condominiums will increase lake usage, which should result in unsafe conditions. The mitigation response, in part, I'm not going to read the whole thing, but the Milhous Group has agreed to limit the number of docks from 67 marina slips to 24 slips, if that means anything to you. And as additional mitigation the Milhous Group proposes to provide every owner of a unit at Historic Kootenai Lodge Condominium with a reliable navigational chart of the Swan Lake which identifies no-wake zones, areas used for swimming and rafting and navigational hazards. To the extent that additional restrictions are needed to protect the safety of swimmers and boaters, the Milhous Group submits that such restrictions could be applied, should be applied to all users of Swan Lake, not just the owners of the units at the Historic Kootenai Lodge Condominium. For your information.

Mike Hutchin: Okay, thank you Chuck. Anything to add to that Chuck? None.

Paddy Trusler: I just have a question of the developer, I guess. So, I think that there was a couple of comments made that spurred me to think a little bit. Is it the intent of the developer to actually allow jet skis as part of the permissive use – permissive use – at the boat docks?

Jerry Peasack: My name is Jerry Peasack. The response I think is very common sense. And that is whatever restrictions regulatory agencies would apply to all people who have access, docks, use to the lake. We are going to be very good citizens in responding to those things. Um, as Commissioner Whitson read from the mitigation

statement, we find that just as a fundamental issue of equity and fairness that there would be restrictions placed on us that would be different from all other people who live on the lake. It just simply doesn't make any sense to us.

Mike Hutchin: You started.

Paddy Trusler: No, I just said that I – I think can summarize what they are saying is that if that is a restriction that is applied to the, you know, I hate to agree with you but I do. I've given you a hard enough time, so.

Jerry Peasack: Thank you.

Mike Hutchin: Paddy, I, that question, I had a number of responses. Do you want to call on anybody?

Paddy Trusler: One person. Who wants to speak. Jack.

Jack Morton: Well, in this north end of the lake, whenever any of us do something so foolish as to let our children get a jet ski, there is peer pressure on us and we get rid of it fairly quickly. There are two jet skis on the north end of the lake. They live at a dock right here, which is the Milhous dock. And we have no way of putting pressure on Milhouses because they're never there. That will be the problem over here. You have itinerant owners who come and go. We can't say, hey, Joe, cool it with the jet skis because Joe is a renter on a monthly basis. That's the whole

Public Comment: Hey, Jack, show them – there's no one else on the whole lake in our area.

Jack Morton: No one down here has a jet ski. There are two and they are notorious. And we kinda smile because we know the Milhouses have company and we all get off the lake and let them play. But you multiply that times 57 units with rentals, I don't know how you deal with that. It's an interesting problem, but peer pressure can't do it and I don't know how regulation does it either but it gets back to this issue of environment and density.

Mike Hutchin: Mr. Trusler only wanted one question. I'll let you have one, sir.

Bob Slate: Thank you, my name is Bob Slate. I live diagonally across from the project to the south. The issue is not with respect to dock and boat and water safety, it's not an issue with the river. That river is mostly non-navigable in the summer to hard gear anyway. The issue is in the bay. All the calls that we have had to make to the Sheriff's department have had to do with illegal activity on the bay. It's not able to be adequately enforced. The rules that are in effect right now with the 200' no-wake zone and that means no white water in the wake by the way is regularly violated by many, many people who want to come up and explore that bay in the summer time. We can't control it. The regulation now is adequate – we don't need a new reg there – what we need is

enforcement of the existing regs. So, failing that enforcement, and Sheriff Barron has already indicated that's a failure, we then can only mitigate this by limiting the amount of traffic in that bay. Twenty-four boat docks does not accomplish that.

Mike Hutchin: Sir, one shot.

Public Comment: I know you said only one, but I had a question about this. When I looked at their drawings from right beside you, I noticed there is no boat dock, or there is no way for them to get a boat into the river – the lake there. Is that something, a ramp, is there something that they are going to be doing with that, too, in addition to this? Just a question because I have not seen a ramp anywhere and they would have to use Swan Sites area to launch a boat or go all the way down ten miles to Swan Lake area.

Mike Hutchin: Mr. DeGrandpre?

Dave DeGrandpre: Yeah, I think it ah, on one of the iterations of the plat that we have submitted here, there is a conceptual drawing for a boat access. The idea is to put in a boat ramp at some point that complies with the Lake County Lakeshore Protection Regulations. And I guess –

Bob Slate: Where would it be?

Dave DeGrandpre: It would be in compliance with the regulations. In other words, there would be suitable depth, there would be a suitable setback, it wouldn't violate any rules. I guess, along those same lines, I know you are aware of this, but the regulations currently allow for 67 units – 67 docks. [Public groaning & protestation] We are proposing -

Mike Hutchin: Folks, come on.

Dave DeGrandpre: We are proposing to cut that significantly. If there are any particular questions about further than that, I believe Mr. Peasack said it very eloquently, it's one of fairness.

Public Comment: Just a quick comment. It answers the time, if you're going to have a working session we have a specific proposal with five restrictions that we would want to put on these boat slips and the first is based on researching it that with stacking and other, end-to-end, you could put 72 wave runners in the space they're showing. It's not subject to density, it's intensity, where you've got potentially 72 wave runners focused in one place, we've got specific proposals that we could make to them that would be restrictions that would be – would go with the deed, go with the land that would prevent these critical safety issues and so we are going to have a working session, we have five specific proposals to make on that.

Mike Hutchin: Sir, I started this round of questioning on the river, so if you have that kind of specificity, come up here and talk about it.

Public Comment: Thank you, I just didn't want to take your time, there.

Mike Hutchin: No, that's fine. I was fishing. It's not your responsibility, it's mine.

Public Comment: I'm sorry. Um, the specific comments that we have is that if 24 boat slips are approved that detailed restrictions should be recorded and go with the land. Any powerboats using the slips must be registered and must be registered to property owners in the Kootenai Lodge project. No launching or boat slip use by boats belonging to guests of property owners, guests, excuse me, of the property owners since this is an easy way to circumvent the rules and allow funneling. And again, we are not talking about density, that you could have 67 units, so you got 67 docks. It's the intensity. I'm the swift water rescue specialist in the fire department. I'm the guy who pulls the chopped up body out of the water. I'm the guy who rescued the woman who was trapped under the Swan Sites Bridge. A lot of people know me here. I take it personally. I take it personally. And I see what happens and we've researched this all over the country and come up with some ideas. The no rentals of power boats by individual property owners, the condo association or a concessionaire of either. And this is a way around the country that people are dealing with this issue of insurance restrictions on these personal watercraft. You call up your insurance agent, say I'm going to have a personal watercraft, the guy's probably going to have a heart attack. So what they do is they set up an concessionaire and then rather than the homeowner who only uses it a few hours a year, you've got a concessionaire running this, you come to the Kootenai Lodge project and from dawn 'till dusk you've got these people like killer bees running around the lake on 72 watercraft, not 24. So, that's critical. No joint ownership of boats by one or more property owners or the condo association since this is just an artful way to circumvent the no rentals restrictions by allowing the same use pattern as the rentals by simply concealing the payment of rental fee each time the boat is used. Essentially, this is a joint ownership agreement in which the rental fees are prepaid. This is what people are doing around the country to fly in the face of common sense. This is a very sensitive area. You can't handle 72 wave craft, ah, water, a personal watercraft there. They're very simple and these restrictions are not covenants that go out the window the next day, these are items that have to go out. We need less docks, less slips, more restrictions, not less restrictions, not less restrictions, and they have to go with the land not these ethereal covenants that the owners can change at their whim. And excuse me for taking so much time, I just got a couple more. Am I okay to go ahead?

Mike Hutchin: Yes.

Public Comment: A couple more items. Due to the density of boat slips and the intensity of slips within a small area, hazards associated with poor lighting, etc, power boat operations should be restricted to specific hours – and these are coming from public safety people around the country – to specific hours of daylight. For noise purposes, no power boat operation should be permitted earlier than one hour after sunrise, no later than sunset. The issues are not just darkness but also the well recognized navigation and visibility issues associated with low-angle sun. No fueling or other boat maintenance or

services are allowed. No storage of fuel or other supplies. Finally the number of boat slips is meaningless since personal watercraft, wave runners, seadoos, jet skis, etcetera, can be stacked in racks vertically or stored end to end as many as three personal watercraft at each slip that means potentially 72 plus personal watercrafts roaring in and out of the marina from before dawn until after dark. This is the real world. This is what these guys do. This is the zoning game and when we make our rebuttal presentation, we'll show you how this is played, but these are specific things that we are willing to come forward with. We have articulated them here, we've got them on the record and I'm the guy – when my pager rings – that has to go down there and pull the chopped up body out of the water. And people who live here have seen me down there. I am the captain of the fire department, been a fireman since 1967.

Mike Hutchin: Okay, could you give that to one of these to go make a copy of that to give to the Milhous Group right now, please?

Public Comment: Sure. Sure. In fact, actually, I'll –

Paddy Trusler: Why don't you make a couple, Pam, so that you can keep one too.

Public Comment: Because public safety's a big issue and we are willing to participate. Thank you.

Mike Hutchin: Thank you, ah, we got to move on, mam. We've had pretty good – I'll let you take a shot though.

Public Comment: I just want to bring up one issue that nobody mentioned. A couple meetings ago they suggested that if there were more people that wanted to have a boat than what they had a dock space for that they could park those boats by their house, and I think also the subject of RVs came up. And I haven't heard anybody address from the safety viewpoint as how you get emergency vehicles through the Kootenai property if you've got boats and RVs parked there next to people's homes. Or do they end up out on the street?

Mike Hutchin: I'm not sure I understand.

Dave DeGrandpre: Could you repeat that, please?

Public Comment: If you have more boats than you have slips, and your group suggested that the answer to that would be if people wanted to they could park their boats or their RV next to their homes on the Kootenai property. I am asking if you've got 57 homes, 46 homes, whatever it ends up being, and you have boat spots all over the property as well as people having the option of having their motor homes there, how do you, what do you propose to accommodate the width of the road so that emergency vehicles can get through that property?

Dave DeGrandpre: The homes are all at least fifty feet apart. So, if someone was going to park a boat next to their home, or an RV next to their home, I mean how wide is that? Maybe 12 feet at the absolute most? 10' wide?

Public Comment: That would be extreme.

Dave DeGrandpre: With a few feet, maybe four or five feet maybe off the property. Let's say we're talking about 15 feet. Well, it's a 50' area, there's still plenty of space to get in and out of there with. It doesn't – are you viewing this as a safety issue where traffic may or may not be able to get around? I guess I'm not anticipating that RVs and boats are going to be parked in the road.

Mike Hutchin: That's her question. That's not our question. It's not.

Public Comment: Well, it's always a possibility if you're paying for a two million dollars for a house and you have – and you're coming in for a couple weeks and you have a motor home which many people in this community do and it was their suggestion they were going to park it next to the house. I'm only asking a question. How do you plan to deal with that?

Mike Hutchin: Just like you do or anybody else in Swan Sites, I presume, mam. I don't mean to be terse, but that's the way it is today elsewhere. They park them where they like. Okay, water safety: I've heard enough, anybody else have any questions on water safety?

Paddy Trusler: I thought that was excellent, though, and hopefully the developer can have an opportunity to review those five, those five issues.

Mike Hutchin: Okay, the biggie, obviously, density, is now on the table. Six, number six. Any questions from the Commission? Thank you, Pam.

Paddy Trusler: I think undoubtedly every issue that is in the mitigation response is secondary to this particular issue. And I think a lot of the testimony that we've heard to date talks about that. You know, one of the questions that's never every been actually resolved in my mind is how did you come up with the density on this particular unit? Was it based on land use or was it based on economic viability?

Jerry Peasack: Um, it's a ah -

Public Question: Could you use the microphone, please, sir?

Jerry Peasack: Sure. Sometimes in asking a question that appears to be simple, anticipates a simple answer when in fact it isn't always a simple answer. We tried in our letter to the Commissioners as well as the language in our mitigation response to share with you what, Commissioner Trusler, what some of our thought process was from the very beginning. One of the critical drivers for the project in terms of the way it looks

today was how do we, given all realities – the State wasn't going to buy Kootenai, the Rolfings made the decision to sell the property, private enterprise weren't coming up in a non-profit scenario to returning the Kootenai Lodge into a public historical preserve. It would have been considerably easier in many ways for us as developers to think about forty acres of unzoned land, um, and raze it, eliminate all of the historical structures. Have no regard for the character of the community, have no regard for the treasure of the Kootenai Lodge. We chose a more difficult course. We chose it voluntarily. We chose it because Paul Milhous cares deeply about where he lives, the love he's acquired over the years for Montana and I don't want to get saccharine or sticky here, but at the same time, I'm not going to feel or reflect being apologetic for a 66-year-old man who absolutely loves that property, loves what it stood for, knew that it was for sale, understood because of it's unzoned nature that any number of uses – many of which would have been onerous – we, the developers made the decision in a very thoughtful kind of way as to what it would take that would allow us in a reasonable way to build something beautiful, to build something that in fact would represent the character of the Lodge. And absolutely take into account, I don't know if there are any builders or developers here, the prodigious expenses that are associated with the rehabilitation of existing structures as a state from building ground up. And rather than going through, and I'm not sure we could do it here today, all of the calculus, all of the arithmetic, all of the mathematics, the driver was how do we really do this well? How do we mitigate all of the impacts that relate to density? How do we maintain the character of the Kootenai Lodge? How do we spend the dollars on architects and design, and equipment and material to absolutely have something that someone truly looking at it would be proud of. Um, Commissioner, I don't know if I'm responding to your question, but that's how 65 units came up, ah, in terms of our calculus. And then we, at our initiative, requested to hear from the neighbors, listened to lots of feedback, but also the reality of what it was that they were attempting to do here, no one else stepped up to make the offer to protect the Lodge. We voluntarily mitigated density – took it from 65 to 57 – um, 65 was really the original number in the calculus. It was not a posture, it was not a number that we believed that we would throw out because we knew that here was an adjustment to be made in a mitigation conference with the Commissioners. It was the thoughtful number that came. But we recognized there was a need to mitigate and we believe we've done so.

Mike Hutchin: Thank you. Any other questions from the Commission? Density stands as it is, I guess, that's your explanation, and we're going to take a break here pretty darn soon. We have to. Gotta get on with this thing. We could beat all these things to death. You have quite a lengthy analogy in there. Okay, anything from the Commission on density? Hearing none, we're moving to number seven, off-site water treatment thing. Any thoughts on that from the Commission first or questions?

Paddy Trusler: I guess that this is an area that I am very very partial to, I guess. And I really am having difficulty on how we are supposed to actually review appropriate land use in light of the fact that we don't know if or where a suitable wastewater treatment system is going to be located. I just feel that that's something that we have to know

before we talk about development on the bottom and how would you respond to that? What if you never find a suitable site?

Charlie Seaman: There is a condition in the preliminary plat approval which would require that an amendment of the plat be provided, submitted and considered by the County if the identified site turns out to ultimately not be available. When we started this, we believed, as a matter of fact in law, that that site was available. It has now through some intervening circumstances motivated by people who wish to try to force a particular outcome, they've changed the rules. There is – ought to be some opportunity, assuming this is approved, to reconsider whether the prudent course to protect the water quality in Swan Lake and River doesn't involve moving away from individual septic tanks to collective systems that relocate discharges away from the water body and preserve and do a better job. But if that doesn't happen, we bear the burden. If we can't come back with something then there's nothing that we can do. This preliminary plat is meaningful to us – meaningless to us. We are confident that if we are unable to persuade the neighbors after an approval that there is a better solution, this is a better solution, then we will have to locate additional- an alternative site. We will have to identify the same thing we did to demonstrate it's physical and technical capacity, to maintain, to provide the service, and we will have to come back and you will go through a public decision to approve it. And if we are unsuccessful in that then this preliminary plat – that's a risk we took, but when we started out that was not a fact in the set of circumstances that we confronted. I believe that that is a prudent and responsible course. It is a very common matter. But there is an underlying point that needs to be made, I believe. Septic tanks on the Swan Lake are not a prudent method of disposing of human waste. I have been involved in rural lands preservation and lake quality preservation all over this country for more than thirty years and it is not a prudent course for the future. And eventually, there should be an undertaking in this community to replace septic tanks with central systems that move discharge points away from the water. And I hope that won't be lost in all of this. But I believe we've hired a fine engineer, we've analyzed it, we've looked at alternative sites. There are, we believe, available alternative sites within our economic model that will allow us to meet the standards and of course it will be approved by all State and Federal requirements. And I want to, just, while I'm here, there was a statement made earlier today about the Smith-Robertson letter so, accusing, or saying that what we are proposing is a violation of Federal Law and I just want – I'm just another lawyer – but, I want to represent to you the letter doesn't even say that, and that we intend to comply with all State and Federal regulations as we go forward with this process.

Mike Hutchin: Thank you, and I want to make sure, Mr. Peasack, go ahead.

Jerry Peasack: If I might? And it's quite frankly more parenthetical. Charlie Seaman is an outstanding attorney and member of our team, but you answered in this – you asked in this instance, Commissioner Trusler, a simple question and there is a simple answer. And that is that if we don't come up with an appropriate site that meets all county review from staff to the County Board to the Department of Environmental Quality there won't be a project. And, having already advanced monies for the purchase of the property, we

absolutely are understanding of the risk but feel confident that at the end of the day we will present something that will make sense to all concerned parties.

Mike Hutchin: Okay, thank you for your response, and I hope you understood what Mr. Seaman said, is that if the first alternative should this pass fail and they have an alternative site for wastewater, it will have to go back through the public process. They've admitted that and said that will occur, so – sure, Mam, one shot.

Paddy Trusler: Can I ask a question? Jerry said by the end of the day we will put forth a project?

Jerry Peasack: I'm sorry, that was a figure of speak, Commissioner. At the end of the process.

Mike Hutchin: Watch out, mam.

Public Question: Does that mean that there's a possibility that this project could begin cutting down trees, clearing land, and then in a year discover that they can't find a place to use for a drain field?

Mike Hutchin: If I were spending money, then I would say, no, mam, it wouldn't be that way. And I presume these people are in the same mind-set. They're going to get business taken in order before they proceed with that. That's only logical. Now, I presume that would be the same answer? Correct. Okay, I'm trying to speed up things. Peter, one shot.

Peter Leander: Thank you. I guess I would like to bring us back to the point which we asked Mr. Conrad last time whether this project would have been allowed to have gone forward initially if it lacked, as it does today, a viable sewer plan and Mr. Conrad said no, it would have been rejected. I don't see how they can then leap-frog to this point today and ask this Commission and ask the citizens of this community to go along with a piecemeal project.

Mike Hutchin: Peter, it's not necessarily piecemeal, it's happened numerous times throughout the twenty years I've been here and the people have conditions of approval they try to get done, and if they get them done they have their deal. If they can't get this done, they've already said it would be not – it won't happen. Okay, one -

Public Comment: Sir? That was a statement for Sean Conrad, your County planner.

Mike Hutchin: But he's mixing apples and oranges, sir.

Public Comment: But he said that he would not move forward or accept that as a completed application.

Mike Hutchin: But mitigating circumstances – things changed in this interim. That's what made the difference here, the covenants were changed by the majority of owners. Cara?

Cara: I just want to say that I own the majority of the Ridge lots and we're not going to allow it so his option A should be thrown out. It's not going to happen, so, I don't think this should go any further until we see what the option B is.

Public Comment: She said that at the first meeting that we had before the County people that the – the Planning People.

Mike Hutchin: Fine, that's the way it is. That's what they had to deal with.

Public Comment: But why are you going?

Paddy Trusler: Mam, I want to answer this lady's question right here in maybe a little bit more depth. And I use the word if – approval is granted, or preliminary approval is granted, the condition would specifically say, you know, that nothing – that they could not do anything on the lot until such time as a final plat were approved.

Public Response: Thank you.

Mike Hutchin: Okay, enough on wastewater. Number eight; stormwater management. Any questions by the Commission? Paddy, that's your area, you got it on the mitigation.

Paddy Trusler: I, ah, I guess I have to make a little bit of light out of something that's really, really serious and dear to my heart. You know, Jerry or Mr. Seaman talked about hiring a very good engineer and I looked around to see who that was. I have to say that because I've known Jay Billmeyer for thirty years and he would have said the same thing of me so I'm just beating him to the shot. Anyway, one of the things that I will tell the public here, that I did bring up the issue stormwater. I think that there is still extreme concern, and not necessarily because of the proposal but because of what the proposal will bring. And certainly we can engineer to the degree possible for containment and treatment and discharge etc, but we are on an alluvial plane here and the biggest concern we have is that the development will bring in artificial nutrients, you know, in the form of, of a, I can tell right now, I'm guessing they're not going to let the grass burn up, that they will maintain the green space and everything that's going to require nutrients, etc. When we talk about responsible fertilization and all of that and I just question on how that can all be done and better yet, how can it be enforced? You know, I don't think that, that we have the capability nor are they going to expend the responsibility that somebody who has best management practices in form. And frankly, and frankly, you know what? The state or nobody else can enforce it. So, it's always good to say you'll do it, but nobody can enforce it and that includes the County and the developer. So, any [indiscernible] any mitigation plane for what he can control, but I guess what the problem is what he can't control is a major issue. And I guess if you wanted to respond to that I would appreciate it. Not the jab. You can't respond to the jab, Jay.

Jay Billmeyer: Well, I was just working up to that. Jay Billmeyer responding to Commissioner Trusler's question regarding whether we can enforce this and certainly there is an increased awareness and there is a trend toward addressing stormwater where in the past it has been more of a nuisance that had to be dealt with in a development and ultimately surface water discharge was the way it was dealt. And we have over the past ten years started focusing in line with some EPA goals focusing on stormwater, not just management, but treatment. And the ideal was in the past if there was any receiving body, if you could handle it on the surface, that's the way it was dealt with. The vast majority of the systems that we have designed in the last ten years, have some sort of treatment. The mitigation proposal that I have advanced here is a quantum step beyond the accepted practice elsewhere even in Lake County. I think that if there are filtration and hydrocarbon absorption and removal systems being utilized, I'm not aware of them. We've focused on a level of treatment here before we discharge - and the discharge is dispersal as subsurface discharge - it is not a surface discharge, so, we, - that properly maintained is going to give us an excellent result. The fundamental issue is a guard against nutrients as they may migrate to state waters primarily Swan Lake and Swan River. We've known that there would be some concern over fertilizer from the start or any other nutrient that might be added to the site to enhance the landscaping issue, or the landscaping that's going to be present. The idea is to try to manage the nitrogen loading and when you manage the nitrogen load on the landscape and have a proper landscape plant matrix, we can actually get nitrogen consumption occurring and I think right now what you're seeing is these sites dry out without any management practice at all, you're seeing a nitrogen from the atmosphere comes off, runs off into the lake and isn't being actually utilized by - or at least the majority of it, or at least the major component of it isn't utilized by the plant structure. And we are attempting to change that. And I think that's what I've offered here. The idea that will it actually be executed comes, I think, as one of the benefits of this condominium concept in that rather than rely on 57 individual non-resident land owners or, um, leased facilities with intermittent use, we have full time management at the site under a management structure. And I think that once goals are established and we enhance the vegetative matrix - the landscaping, the sodding on the site - I think you're actually going to see nitrogen consumption as a rather - as opposed to nitrogen passing through this lighter soil structure on into the system. And I think that's the argument that I'm trying to make. So, what probably - what wasn't addressed adequately was the management issue and I think that's a real benefit here having the common area commonly maintained and professionally maintained. Long answer to a short question.

Paddy Trusler: One of the things that was brought up before was the storage of excess boats or motor homes, etc, and I think part of the mitigation issue - well, it wasn't actually part of this mitigation issue, it must have been actually the Planning Board meeting in which that was discussed, but I know it's been discussed recently, but it does make me wonder if that's going to be allowed, how do we deal with the hydrocarbons off of those particular units? And would there be a possibility that an area could be - I mean, if you have boats, motor homes, I don't know, maybe you maintain them better than I maintain my stuff, but they always leave a little gas or a little oil and that's going to go

right into the ground surface. How can we deal with that? Why don't we move along and you can discuss that during break, okay?

Mike Hutchin: Pete.

Peter Leander: Thank you, I just wanted to mention for the record and for your consideration I was just advised out in the hallway that there's an attorney's opinion by Mike McGrath as well as –

Public: Speak up.

Paddy Trusler: And Peter, before you start talking about that, let me just say that senate bill 290 which became effective almost immediately has already dealt with that issue, so I don't think that that's something that is instrumental at this point.

Peter Leander: Okay, just in case it doesn't relate to that, do you mind if I just speak and it'll be very brief. Um, it's my understanding there's an [indiscernible] by Mike McGrath as well as a case called the Hatchford and Ben case. It says that at the time of preliminary plat approval, stormwater and wastewater plans must be in place, or reviewed and approved and cannot wait until the time of final plat approval. Thank you.

Mike Hutchin: Mr. Maddy is going through that litigation with us. Okay, anything from the Commission on the stormwater? Okay, number nine, we're moving on to nine, which unless you have a clearly response from the Milhous Group. Jay, with this, okay. Legal status of the proposed offsite wastewater treatment facility – woops, I'm skipping something here.

Paddy Trusler: [-indiscernible]

Mike Hutchin: Okay, let's see, next one. Setbacks from Johnson Creek

Paddy Trusler: No, the status of the proposed S.I.D.?

Mike Hutchin: No? Okay. Wastewater. Offsite. Any questions from the Commission? I think we've talked about that one.

[end of tape 1 side B]

Mike Hutchin: Food for thought, I guess, for comment. Okay, any questions from us on the offsite? No further comment necessary there?

Dave DeGrandpre: Well, I know that water quality information has recently been collected by DEQ. As I think we're all aware, the Montana Department of Environmental Quality has recently completed a total maximum daily load allocation plan for nutrients entering Swan Lake. A great deal of data was collected, in fact, it's ongoing as well. Landmark Consulting is doing it through a – I think it's a 319 grant –

through DEQ. You know, we would be happy to participate in water quality monitoring as it pertains to the area, the offsite from the subdivision, of course, included. But, let's make it, ah, if there's a water quality district that's proposed or some other community wide effort, we'd be happy to participate.

Mike Hutchin: Thank you, Dave. Number nine is water treatment. Okay, Paddy.

Paddy Trusler: The legal status of the water/sewer district – first off I'll preface my remark by saying that, you know, formation of the sewer district has to include the name of Lake County, and it can't be called Kootenai County. I don't know just exactly where that is, so, but, um, the point is I still have reservations about the public status of a condominium development sewer district. But, I think the more appropriate time to bring up those particular concerns is if the district is actually formed. We can, at that point in time, more fully discuss the reservations that I have on what would be necessary to change my mind. But, I do know that what you are proposing to do is to [indiscernible] in order to be eligible for federal funding or, you know, those types of things as far as the biggest concern. And, I don't know, I just have problems with that. So, I think bear in mind that what you are proposing with the ten additional units does not satisfy my concern about public. I still think that it's private, plus I don't think that you could actually implement – I don't know how you implement ten additional ones when you don't know where they're at because there is very, very specific requirements as far as expansion of sewer districts and continuity and those types of things. So, those were all things that I think you should be aware of as far as my concerns. I don't think it's public. I know that the Commissioner had some [indiscernible] because of the number of service connections at 57, you know, but we disagreed before. We've always worked it out.

Mike Hutchin: Okay, any comments on that issue left? Dave, thank you. So, now we are going to setbacks from Johnson Creek.

Peter Leander: Mike?

Mike Hutchin: Yes, Sir.

Peter Leander: Just a bit of education if I can. I'm not sure if I understood the process of – Paddy, you said it would be addressed at the time a district was actually formed. Would that suggest that the district would have to be formed before final plat approval?

Paddy Trusler: Yeah. I'm sure that that would be true. Yeah, and there is a public process, a petition, a public notice, etc., in order to form that particular district. I can't quote you the cite right off the bat, Peter, but it's very, very clear.

Peter Leander: Thank you.

Mike Hutchin: Thank you, Peter. Okay, setbacks from Johnson Creek. As you know the, all those who are the professionals are saying 100, you're still saying 80. Any

options that you want to discuss on that? Or do you want to go on break and talk about that.

Dave DeGrandpre: Well, we put forward our position. Do you have any questions?

Mike Hutchin: Questions from the Commission?

Paddy Trusler: I don't know. There's always so many questions to ask. I guess the only comment that I would make on this is that your particular mitigation response does not appear to have too much scientific basis to it. It seems more like it fits the development a little bit and it would say that we are doing the best that we can. I guess the thing that I was expecting in this response is to possibly debate what the professional people at the Fish, Wildlife & Parks are saying about the setback being what is recommended. You know, frankly, you know, we are asking professionals to make comments and you don't seem to be, to me, refuting anything that they say. And I think it should be, and I think the 100' is probably what we are going to be probably looking at and is that going to be [indiscernible] elsewhere?

Dave DeGrandpre: Well, I guess...as we all know water quality is a function of many, many measures. Distance of impervious surface of stormwater is one of them, but it's certainly not the whole story. You know, as I – I guess the reason that we didn't provide more detail is we've discussed many of these things, they've been thoroughly discussed in the staff report, they were thoroughly discussed in the application and in the subsequent hearings. Because under the site specific conditions, it's a flat area. It's heavily vegetated on both sides of the stream. I guess to the north it's disturbed for the most part, it was originally apparently a polo field and it has been used as a driving range for many years. So that's already disturbed. The soils are not friable in that area. They are not – the vegetation is intact. It's not eroded. You know what, it's easy for a biologist and a state agency to put his wish list on paper, but the area disturbed to the north, to the south it's a great vegetative buffer, and to the north it's also a solid vegetative buffer for a good forty feet and it's flat. You know, what sort of water quality impact are we talking about? How is the stormwater actually going to get there? Is it really going to travel through the existing buffer?

Paddy Trusler: I guess my concern was the grizzly bear corridor, frankly, that the U.S. Fish & Wildlife Service have developed.

Dave DeGrandpre: I would like to address that.

Paddy Trusler: Okay.

Dave DeGrandpre: Now, there's no information that I have seen in Lake – in the maps proved by the tribes, by the Confederated Salish & Kootenai Tribes, the US Forest Service, Chris Levine with the US Fish & Wildlife Service who is their national bear recovery coordinator. None of that information shows that there is a grizzly bear corridor on this property. Certainly, there are grizzlies in the area, there are grizzlies in the