

vicinity, there are grizzlies in the Swan Valley, but as you probably know from working with the Swan Ecosystem center that designated corridors, the most frequently traveled areas are significantly south. There are three through the Swan Valley. And they are significantly south. Ten miles to the south, I think. They – I don't know if anyone has a copy of the growth policy here, but there is a wildlife map that shows where that corridor is. This property is not within that corridor. This area is developed, this is a forty acre parcel – to the north, south, east and west it's heavily developed already. It's cut into lots, so I guess I'm not sure what the discussion is all about regarding grizzly bears in the area – certainly they exist, certainly we do not want to encourage conflict. But how this development being surrounded by dense development could somehow lead to greater grizzly bear problems, I guess I'm not aware of that. Furthermore, US Fish & Wildlife Service responded with a letter – we requested a letter – they responded. The Montana Department of Fish, Wildlife & Parks did the same. And no where did they say that this is a grizzly corridor, that this would result in an incident of a take of endangered species or anything of that nature. Otherwise we would have addressed it earlier on in the application.

Paddy Trusler: Denny, I'm going to call on you, but maybe I used the wrong terminology. But, in this vast array of stuff that we have been proposed, anyway I do recall agencies talking about wild land or wildlife corridors. I use the wrong word wildlife corridors, I used grizzly bear corridors and I apologize. But wildlife corridors in the 100' buffer on each side of Johnson Creek.

Bill Astle: There was a letter from a wildlife biologist at Montana Fish & Wildlife, I don't know the agency, suggested that a buffer of a 100' would be appropriate. I don't know if that biologist had access to either aerial photography or any other information as to the special location of the riverine environment and the fields to the north and the south that have previously been cleared. A hundred feet is often invoked by – in the literature – as a standard, as a departure point in identifying appropriate wildlife corridors along minor water courses, three hundred feet for larger water courses. I would submit to you, and I actually am a trained biologist as well as everything else I do that the reality here is that particularly on the north side, after about 45' except in one location the area is already open, cleared, it's been cleared for more than fifty years according to the information we've been able to collect and is not going to be a part of any effective wildlife corridor. All of the data and all of the information that we have been able to identify about at least the mammals in this area that are either threatened or endangered are that they have a strong aversion to open fields and roads and that they are, avoid human beings by confining themselves to riverine and other environments. So, we are suggesting to you that we're not deviating – I am suggesting to you that we're not deviating from an effective wildlife corridor. We are just asking not to have land that is not going to be ever effectively a part of that corridor because it's been cleared for so long. And we think 80', which actually still includes a significant amount of open fields that's previously been cleared, but that ensures that all of the riverine environment along the entire course would be included in that setback. And a 160' is a significant corridor. And so, that's our position. We also note that just to the north of here, the corridor leading to the national parklands and other major forested areas is already constrained

and in some places to a corridor as narrow as 40'. So, we think that we are being reasonable. That's our position.

Paddy Trusler: Denny, I know that you had a information specific to -

Denny Kellogg: Have you guys read the Chris Surbein's April 20<sup>th</sup> letter specifically stating that dense development on Swan Lake will impact grizzly bear recovery in the area and that area of the Kootenai Lodge property is on the northern continental divide ecosystem recovery zone? I'd like to ask the Milhous Group if any of these people have walked Johnson Creek? Have you walked Johnson Creek? From highway 83 to the lake? Has anybody here looked at that? Do you know what the corridor is like there? It's hundreds of yards wide, hundreds of yards wide. On the south side of Johnson Creek, there's a few houses that are up on a bluff, probably 60 to 70 feet above the creek bottom. Once you get across Highway 83 to the east there's not a single bit of development all the way to the Swan Range. What you're talking about with your little 40' barrier is maybe a hundred yard stretch from Sunburst through half a dozen lots or so right there. Otherwise, it's wide open from the top of Swan, Swan Range all the way to the river. And I think that you - I gave you a map at the last meeting that shows that there had been two actual captures of grizzly bears within the section of land that the Kootenai Lodge lies in and that has radio collar data of hundreds of transmission locations just from radio collared grizzly bears in that immediate area. That's not counting all the ones that aren't packing a collar. So, to argue that that's not a significant wildlife corridor is -ah - you're missing the point.

Paddy Trusler: Denny, like I say, I get confused sometimes about the correspondence. Did Chris Surbein, who I know is our grizzly bear specialist, did he recommend the 100' as well?

Denny Kellogg: No, but the US Fish & Game did and I believe it's in the ah, your original document that was given to the Planning Department. And they recommended that and they also recommended a tertiary sewer system.

Paddy Trusler: Okay, that was...okay.

Public Comment: I have on your April 14<sup>th</sup> Commissioner's Report, page 19, it sounds like Mr. Lichfield recommended the buffer be increased for the potential for walking paths along the creek and that the high density subdivision could easily impact the effectiveness of the riparian buffer strip at the state of 100'. He also points out the need for fire protection [indiscernible] within the riparian buffer strip should not be a major consideration. He states that rarely [indiscernible]. So, it's in your report.

Paddy Trusler: Does it say what criteria or qualification he has to make that statement?

Denny Kellogg: He's official...

Public Comment: Another letter sent by Thomas Lichfield, Aerial Wildlife Biologist, Montana Department of Fish, Wildlife and Parks.

Bill Astle: Accordingly, all of that riparian area is within, would be protected by the 80'. On both sides.

Mike Hutchin: Peter.

Peter Leander: Thank you. This sort of goes into the evolution of better planning and I would suggest that the Milhous Group is turning the logic on it's head rather than saying that we should not have to have this corridor because it's now some open field, I would suggest that they add to the corridor by possibly revegetating any area along the north side that they mentioned before that is not currently, does not have that riparian nature, rather than taking that away from you.

Mike Hutchin: Thank you, Peter. Okay, any thing else from the Commission? Last comments. Okay, we're taking on number 11 as I call it, fractional ownership. I know you responded to that several times throughout this afternoon. Any questions from the Commission? That funneling is a part of that.

Paddy Trusler: It specifically does not talk to the issue of funneling it talks about fractionalization, would you like to respond to that?

Dave DeGrandpre: Sure, we've already committed to prohibit the practice of funneling. Anywhere it's mentioned in the covenants, I think there are a couple of sections right now, we are committed to that at the last Planning Board meeting, if I'm not wrong. That's the intent.

Paddy Trusler: And I am one of the few in here who is not an attorney, so, Mr. Astle, I've picked on you a lot, I'm going to do it again. Is, I mean, from a legal standpoint, you know I know the limitations the CC & Rs have. A deed restriction appears to be something that is passed with each title and is picked up to subsequent owners by the title company where sometimes covenants aren't. I guess my question is what is the legal difference between a deed restriction and a CC & R?

Bill Astle: Frankly, I don't think deed restrictions are used any more, primarily because of the inability to enforce them. Who do they run to and who has the right? I mean, if you put a deed restriction on it, for example, all the people involved in it can get together and eliminate the deed restriction. I think the appropriate way that Counties are doing it, and municipalities, is if it goes with what your concerns are in the subdivision and the review is that you put it in the form of a covenant, have that be a condition, and that that amendment – any amendment to it – would come back through the commission. And I think Flathead County has learned the error of some of that in terms of like age discrimination in some of their subdivisions that brought them into actions before the human rights people. But they still are involved in those particular covenants that deal with your proof that you're concerned about fractional, you're concerned about

funneling, I think truly can be a condition that we agree to and put in the covenants and at the bottom end of the day - of those covenants - you have the right to say no to those amendments because they effect the approval process.

Paddy Trusler: Yeah. Okay. Well, thank you, and I concur with that. The problem I have with covenants is that where we can be party to initial inception and changing. We're not involved in enforcement so we can go ahead, so if for example, you know, there is violation of the particular covenant, how does the governing body get involved with the enforcement and require the homeowner association perform as the covenants require?

Bill Astle: Because that particular condition you made a condition of your subdivision approval – having it be in the covenants and having the right to police and monitor that like the rest of the conditions of final plat. Those are part of what the law has now placed through you on that piece of land. So, I think very simply when that comes about, you have that standing. Now, the rest of them normally – the Commissioners and governing bodies, they defer to the neighborhood and allow them to do it because they are not the ones that you are concerned about. But the ones that you are, you do enjoy that because you have that in the final plat approval like all the other conditions.

Paddy Trusler: Before, before, Clint. I'll have to admit that I'm not very smart and I apologize for that. But, it seems to me like the best way to handle this particular issue is concurrence to form a zoning district to incorporate all that and allow the governing body to be involved in the enforcement of it right off the bat. Would you consider that?

Bill Astle: Consider the formation of a zoning district?

Paddy Trusler: Specific for this particular property and the uses that are associated with it.

Bill Astle: I think in terms of the way we have now found this application and our ability to proceed, we have no zoning on the property and so we and everybody in the room is stuck with that so we do the best we can with what we have. And I think the concerns that we now have would still have that enforcement element even if it's zoning, it's still going to have to be enforced by Lake County. Covenants are enforced. I, in my experience have enforced it. I've enforced them pro and against on behalf of homeowners associations. They do work. Our supreme court has upheld them. But I hate to say now that the only answer is to go back to zoning. What parts of Lake County aren't zoned? I mean, it's true in Flathead.

Paddy Trusler: Yours. Yours for example is not zoned.

Bill Astle: But nonetheless, that's the way this property owner finds it and we proceed in the avenue, and I think that we are in agreement that if these are the issues we do the best we can. If the Commission feels that a deed restriction is something, I don't feel that it is as good as a covenant because the covenant runs to the spirit of the ownership plus the

additional protection of the Commissioners and for the very reason that it is unzoned is why they have done that over the years.

Paddy Trusler: It's speculative on my mind, you know, why this particular property isn't zoned. I think that we've heard testimony that maybe there was some misrepresentation to the public and to the other groups that were forming the zoning district at the time they had proposed. But, you know, that is water under the bridge so to speak. I guess, Clint, maybe you could – you've been in land use quite a little bit, too. You know you've been on both sides of the issue and are covenants an enforceable thing by the governing body?

Clint Fisher: The covenants can be made an enforceable item by the governing body if they so state. Usually they state that they are enforceable either by the homeowners association or any individual lot owner subject to the covenants. As a practical matter, governing bodies have never wanted to step in and enforce covenants and they have refused to do so. Even if the covenants would allow the governing body to do so, I mean, the governing body doesn't want to go out there and enforce private covenants on small tracts of land. They don't see that as their public obligation. So, in terms of enforceability, I agree with you. I think zoning would be better. In terms of covenants they would absolutely have to say that the governing body has the right to enforce them. As a practical matter, you're never going to get the county attorney's office to go out there and enforce them even if they have the right to do it. And so, you know, if the governing body and the county attorney chooses not to do so and the homeowners choose not to do so then in regards of that issue it's lawless.

Mike Hutchin: Paddy, any follow up? Dennis, brief, please.

Dennis Kellogg: All I'm going to say is that we ran into this issue when we got the Swan Sites Homeowners Association's covenants codified into law in a zoning district because essentially they were unenforceable. And we were told by the County Attorney's office that the only way to make them enforceable was to codify them by zoning. And that's the only way it's going to work here.

Mike Hutchin: Okay, thank you, Dennis. Anything else from the Commission? Ten minutes, fifteen minutes, what do you want?

Paddy Trusler: Don't forget the height issue.

Mike Hutchin: That's our own issue, that's not a mitigated issue.

Paddy Trusler: The height?

Mike Hutchin: They brought it up but it's our own issue.

Paddy Trusler: Okay.

Mike Hutchin: How many minutes you want? Ten, fifteen?

[Unknown]: Fifteen.

Mike Hutchin: Ten? Okay, ten it is: ten after four.

[Ten minute break]

Mike Hutchin: Ladies and gentlemen, while Paddy's coming up here I want to thank you folks for two good meetings. You've been good citizens and we respect all your comments. And thank you for your peacefulness, calmness and all that. We've been intending, but we're not quite so good, so thank you all for being that way. Now, we want to proceed rather quickly. We want to turn it over to you guys, you shoot us what you want. We're going to close everything down, the three of us will make some kind of a decision. So, shoot, Mr. DeGrandpre.

Dave DeGrandpre: I need to draw your attention to the proposed mitigation response to parkland to start. It's on page three and this is straight out of the Lake County Subdivision Regulations and I quote, "The local governing body shall waive the parkland requirement if," and there are four specific conditions that are listed. It's not optional, it's shall. And what it boils down to is the recreational needs of the people within the subdivision as specifically stated under A-1 the local governing body shall waive the parkland dedication requirement if 1) the preliminary plat provides for a planned unit development or other development or other development with land permanently set aside for park and recreation uses sufficient to meet the needs of the persons who will ultimately reside within the development. Specifically what it says.

Paddy Trusler: I'll defer. You know that one. I think we're asking for something you weren't willing to give anything, but I will defer that after further consultation with legal we probably can't enforce that. I still don't think that was the intent.

Dave DeGrandpre: Docks and water safety is the next one.

Paddy Trusler: Dave, could I suggest that we go through in the same manner that we started? You know, that's easier for us to keep track of for us, at least for me.

Dave DeGrandpre: All right, let's start then with the landscape buffer along the northern property line. We've agreed to install a fence as described and install more evergreen trees along that corridor as well.

Paddy Trusler: A fence as described – does that mean a three rail fence that's similar to the front fence?

Dave DeGrandpre: That's what I was referring to. Under the Sheriff's department capacity to serve, there wasn't a lot of discussion. I didn't take it as there was an issue regarding that.

Mike Hutchin: No.

Dave DeGrandpre: We've covered parkland. The setback along Sunburst. I guess there are a few different components of this. We would be happy to increase it to thirty feet but there's a – and also build a berm 3 ½' tall with the vegetation, but your question was well taken about fire-wise and how to make it a fire-wise community. Reduce fire danger levels while still providing for setback. I have a few different responses to that. I guess number one is we've been working with the fire department very closely and have agreed to put in a number of different hydrants, dry hydrants, for them to use, a lot of them hook onto the water system, put in a dedicated area for the fire department for a new fire station, increase the road capacity so that emergency vehicles can get in and out and then one of the conditions of approval as proposed is that there be an additional ingress and egress built that we have no problem with. Additionally, the ground surrounding the homes will have lawn grass with a sprinkler system and we also have a defensible space where there was a fire break right along Sunburst directly to the east. So, we've got a fire break directly to the east along Sunburst, we also have a fire break between the homes in the grassy area before you get to the berm. So, I think thirty feet – again, that's more than is required in the zoning district that surrounds this. If we build a berm along the trees and shrubs right on top of that berm, it should take care of the visual impacts and we have two fire breaks and numerous other measures to take care of the public safety. So, I guess that's what we'd like to propose in response to your concerns.

Mike Hutchin: Okay, number five, river water.

Dave DeGrandpre: Docks and water safety. There's a lot of good information in the – in what was submitted by the gentleman who is the rescue swimmer. You, we'd be happy to go in along with other people in the community. It's just – again – it's a matter of equity here, you know. These are public waters of the United States, and the State of Montana, and what's required of a certain set of individuals must be required of all. And, you know, Commissioner Trusler, you were talking about policing, enforcement and those sorts of things. It's a similar situation. I don't know if you had a chance to look at this, but there are very detailed provisions in what was proposed. I'm sure they're all smart and safe and provide for public safety and those sorts of things. It's just very difficult to police over time. I mean, we just received this. My initial response, I haven't had a chance to study it in detail, but my initial response is along with many of the other measures that we are talking about today is we'd be happy to do it in conjunction with others in the community but to single one particular property owner for rules that are significantly more stringent than the rules that apply to the rest of the public is an inequity that...I'll leave it at that.

Mike Hutchin: That's it? Number six.

Paddy Trusler: Can I get... I don't know what you just said. [Laughter]

Dave DeGrandpre: What I just said is...

Paddy Trusler: No, wait, wait, wait, wait, I think what I heard you say is that even if you adopted them you couldn't enforce them? Is that over time or what – I don't understand what you said.

Dave DeGrandpre: What I'm saying is the regulations that are in effect today allow for something much, much greater – more than twice as great as what we're proposing. We're proposing a voluntary restriction in order to deal with the public health and safety issues. If the regulations are too liberal today they ought to be changed.

Paddy Trusler: And those regulations are the shoreline protection regulations?

Dave DeGrandpre: Yes. And we are proposing to limit ourselves far and above what those regulations allow that are adopted by Lake County. If this property wasn't subdivided, if a marina was proposed to be built in a commercial undertaking there, we could come in and under the regulations, assuming that all conditions like water depth and all these other conditions are met, if we could comply with the regulations, we could have 67 slips. We are proposing to voluntarily reduce that number. What I'm saying to you is I believe that we have mitigated that concern. At least to a degree; more than that just to me seems unfair.

Mike Hutchin: Density.

Jerry Peasack: The um same question seems to be asked again and again and I would hope that at some point that the answer – I sincerely hope that at some point the answer that we provided suffices. I don't think there's any more that we are capable of doing than that which we have already shared with you.

Public Comment: We can't hear you, please.

Jerry Peasack: I just simply don't believe that there is any additional response other than that which you've already heard from us both in terms of our mitigation of density earlier in this process and also to answer Commissioner's questions in terms of the process that we went through that determined that density. We feel very strongly, Commissioners, as we've understood the concept of density as it relates to impacts of a variety of kind and particularly in our letter to you – all of the Commissioners – in addition to our mitigation response. I hope that one noted, and I have not counted them, dozens? Of very specific actions that we have taken, many of which go beyond any regulatory statute of responsibility. We exceed a number of those things. And the number of those mitigating actions were all in regard to the idea of mitigating any of the impacts associated with the density that we are proposing. We really believe that 57 units, with all of the mitigation that we have taken from the very beginning all of which is numerated in that letter to the Commissioners is actually more than anyone could require of the developer.

Bill Astle: Let me just add to that by saying that as an attorney involved in going through this process, I have learned that you defer with a great deal of [indiscernible] to the

professional planners involved. That doesn't mean that that denies a discretion to the governing body, but it is very much what you use as your experts in terms of arriving at it. If you give them that consideration, in light of the fact that it is unzoned, normally on this type of activity of subdivision activity you look to the zoning and that's where you follow the density. Without that zoning in place, you do have some component along with the growth policy and you look to the compatibility generally speaking with the neighborhood. We debated back and forth what that is, but I think in the final analysis the professional planning staff has agreed that all the statutory criteria that they can see and advise you on have been met by the 57. They have said that, they have recommended it to you in the Planning Board. The Planning Board reviewed it also and felt that we met the statutory criteria without zoning and using those other items coming up with some area of density around it, that is what they were recommending. And that's why we feel we've come down from where we were to that and that's where we stand. I think as a matter of again our legal right. That doesn't ignore the legal rights of everybody else involved. It has been deemed compatible as best we can without the zoning there.

Mike Hutchin: Okay, density's...the way it is. Okay, so now we're taking on wastewater, offsite wastewater.

Dave DeGrandpre: We have no other comments.

Mike Hutchin: Okay, no comment. Um, stormwater.

Dave DeGrandpre: Again.

Mike Hutchin: No comment. Water treatment off site. [Pause] No comment. Setbacks from Johnson Creek.

Bill Astle: Yes, Mr. Chairman, I have a letter dated April 4, 2005 from the US Department of Interior Fish & Wildlife Service addressing the subject and I just want to state for the record that it talks about a buffer which relates to the maximum height of the tallest dominant tree growing in the riparian area which is along the stream corridor. And that generally ranges from 70 to 110 feet and that is the starting point. I would suggest to you that at 80 feet we are falling within that range. In addition, it says that the primary riparian zone should be 50'. But, what we would like to offer as a mitigation is that if you approved the 80' setback, there are areas which have been cleared and maintained as open fields for many, many years – decades. That area between the existing plants and trees in that zone and the 80', we will implement a revegetation strategy to, over time, recapture that previously mowed area and turn it into additional buffer area that will be actually used by the animals so that you will have 80' of real buffer over time. And, I mean 160' from side to side, but 80' on either side and that we will implement a revegetation zone with natural and appropriate tree – tree cover, etc. in that area to over time recapture that area as additional buffer – real buffer.

Mike Hutchin: Okay. Any questions on that one? Hearing none, fractionalization, number ten – eleven, excuse me. No additional comments, we'll take care of the following as you've already said. Thank you for your comments back. Any questions?

Paddy Trusler: Yeah, only one I have is that you didn't respond to the question of possible zoning district.

Bill Astle: Commissioner, are you saying that if approval is granted and then after that, assuming that a final plat is actually recorded, that a zoning district reflecting everything that has been approved and whatever applicable regulations for future consideration, that's what's proposed?

Paddy Trusler: No -

Bill Astle: You're saying stop now and start over?

Paddy Trusler: No, no what I'm saying is that as part of the preliminary approval, that prior to final plat approval a zoning district would be put in place and would then be transferred to each owner of the property upon sale.

Bill Astle: Implementing.

Paddy Trusler: Implementing some of the –

Bill Astle: - what had been approved in the preliminary plat?

Dave DeGrandpre: And other additions? Or simply what's included in the preliminary plat. You know, it's kind of a big issue. There are a lot of thing that could go in zoning. It could be part one zoning or part two zoning.

Paddy Trusler: You know, I think that there is certain requirements that you would put forth – I would say that as a minimum to ensure the public that this governing body that indeed you will go ahead and follow through and if you don't we have every right to take the appropriate legal action.

Bill Astle: I think that we would be willing to entertain that condition as long as it's understood that working out the details is not anything that is written down today and it's reasonably work with you to implement the approved preliminary plat through an appropriate zoning district that will give you the enforceability through your regulatory power.

Bill Astle: So, in other words, I think the simplicity of it that whatever the conditions that are established , would be a condition of our final plat that we would not oppose the zoning if that's something that you have and we could even put that as a condition that runs with the land.

Paddy Trusler: To contain at a minimum those particular requirements that have been set forth in the preliminary approval.

Bill Astle: Well, I think...

Dave DeGrandpre: That opens the door wide to ten thousand other things that could be -

Paddy Trusler: No, I don't think I'm intending that to say that. What I'm saying, what I'm simply saying is that you know that no structure will be closer than 50' to Sunburst Drive or 100 feet to Johnson Creek or something like that. And so then they could be – you know, I don't know what the build up plan is on this. Are you going to sell sites, are you going to sell footprints, are you going to build and sell? I mean we don't know any of that and frankly we don't care about any of that as far as your business plan is concerned, but we want to make sure that the requirements that we set forth – specific requirements, you know – that we are able to step in and deal with them if and when it becomes practical or necessary.

Milhaus Attorney: Commissioner, I just want to make – try. I think what you just said is fine. The specific conditions and limitations that are imposed as a part of this preliminary plat to make them enforceable through an appropriate zoning of the property, I think we would not have an objection to. But, a second bite of the apple, to be put in the vernacular, is we wouldn't want to agree to that.

Milhaus Attorney: In other words: To simply implement what you have done today would not be proposed in the form a zone. I think it's a matter of law if we have that. I think we have a vested right in those subdivision regulations, but I think under Montana law we vest once you give us those rights. If we meet the conditions. But I think we could also, or the people that we sell to could oppose that zoning, so I think what we're saying is in fairness to the question we would not object to the implementation of those conditions through a zoning district.

Paddy Trusler: Swheh. I'm glad I wasn't an attorney. Okay, and –

Dave DeGrandpre: The only other issue that I think we haven't discussed is building height and I don't know if we want to discuss that together or if you want to...

Mike Hutchin: Peter, sorry.

Peter Leander: Just an education. An educational question?

Mike Hutchin: Paddy, you want him?

Paddy Trusler: I'll take him, yeah.

Peter Leander: I'm just wondering if a zoning district was approved, and there were these certain restrictions, and at some time down the road they wanted to modify the

restrictions such as allow funneling, would anybody outside that district be allowed to weigh in? Or would it be just those people within the district that would vote to change it? If so, once again it's illusory to anybody [indiscernible]

Paddy Trusler: Yeah, I can answer that particular question, I think. And that simply is, I think, in every zoning district that we have there's mandatory reviews, you know, on a periodic basis. Those are all taken to the Planning Board for review and therefore becomes a public process. As far as the people who basically change them, you know, it ultimately is the people who are effected and the governing body. But the governing body is directed by the public process to contain within the mandatory review period. So, your question isn't very straight forward, I mean, it's a public process and therefore people outside the zoning district can comment, however, the actual change is only voted on by the people within the district and that's the law.

Dave DeGrandpre: Well, the County would have to be party to any changes.

Paddy Trusler: Yeah, and that's part of the public process.

Peter Leander: I'm wondering if a cleaner method may not be simply – and again I'm not a land use guy, so this is...

Paddy Trusler: You're an attorney, aren't you?

Peter Leander: Uh-huh.

Paddy Trusler: Yeah.

Peter Leander: Whether a cleaner process wouldn't simply be making those restrictions a part of the approval.

Paddy Trusler: That's basically what we're attempting to do.

Peter Leander: So that it can just never change.

Paddy Trusler: Never is a long time.

Peter Leander: Oh, that's good.

Paddy Trusler: You know, and it really is a long time and let me tell you, I think that it's fair to say that mandatory review for the zoning districts have never proven to weaken the requirements. I've never seen that happen yet, you know, but I'm never going to say never.

Peter Leander: Having said that, I just want to make it clear that it's not our suggestion that this should be approved in any form.

Paddy Trusler: I know. [Laughter] Does that go without saying?

Peter Leander: Yup. Thank you.

Mike Hutchin: Okay. Okay, you're done?

Paddy Trusler: [Indiscernible]

Mike Hutchin: That's our issue. Okay, the hearing – our discussions are over. We'll debate amongst ourselves and come up with something. What's the process you want to go through, boys? Well, let's take them one by one for ourselves and see if there's any common ground that we can agree on, okay? And that doesn't mean that there's a foregone conclusion in terms of a motion, that's just saying well, if possible I could live with this. Number one, the north boundary, does that satisfy your needs?

Paddy Trusler: I ah...

Mike Hutchin: No more questions, just us.

Paddy Trusler: I believe it does. I'm looking out there in order to get my visual bearing.

Mike Hutchin: Chuck, does that meet your needs?

Chuck Whitson: Yes.

Mike Hutchin: Okay, that one would, would appear to be okay. On the Sheriff's issue, what's your labor there, boys?

Paddy Trusler: You know, I just – my feeling on the Sheriff's issue is that whereas it's a pretty nice gesture, it doesn't really mean anything because it's a very, very short term fix to a long term problem. I think that the Milhous Group in the past has offered property somewhere. I guess it's not really clear either, it hasn't been discussed, whether the covenants of the Ridge subdivision would allow the heliport and or the fire station. But, I'm assuming with the outside easement, if you cannot find that – that is not an allowable use on that Ridge subdivision that you will find property to locate that? To continue that? I believe it would be more practical than to provide for something that would be much more long term and one of the biggest problems we have on the Swan Lake area is storage for search & rescue. And believe it or not, they are not compatible with the fire station. I would say that I would like to see the \$50,000 given to the sheriff's office be used for search and rescue facilities for their water search and rescue operations, which they do not have right now. That would be seadoo or whatever you call those scuba damn things and boats, you know, that they could use as part of safety. And I think that that would be a better and longer term use for the \$50,000 that was proposed. And that would be, if that would not be allowed at the Ridge subdivision it would be required elsewhere.

Mike Hutchin: Okay, the Sheriff's thing you're saying, Paddy, okay? As submitted, but with a different twist in terms of where the money goes?

Chuck Whitson: No, I disagree.

Mike Hutchin: Okay.

Chuck Whitson: \$50,000 will equip one officer, will put one officer on the street, in the car. But that \$50,000 will last just a few months and then where does the rest of the money come from to keep that officer on the road? I think the sheriff has plenty of safety equipment. He just drug in two brand new ski doo's over there that were donated to Lake County for search and rescue purposes, so I don't agree with that.

Paddy Trusler: So, Commissioner Whitson, I guess that my question is would you agree to them providing land and building to house search and rescue stuff that is currently sitting over there up in Swan Lake in order to enhance response time for possible public safety issues up in Swan Lake?

Chuck Whitson: No, because the issue is sheriff and sheriff deputies to make, to answer calls, not just on the water. It's on the land as well.

Mike Hutchin: Any response?

Paddy Trusler: I guess I don't, I guess I'm confused. If we have a building – a land and building was donated to search and rescue, that's part of the sheriff's department.

Chuck Whitson: Yes.

Paddy Trusler: And you need a place to store that stuff so if there is a need to have them, to have that equipment on the water they can do it more quickly.

Chuck Whitson: That's probably true, but if someone is shooting up a cabin down in Swan Lake like was mentioned before they need a quicker response time for that also. So the \$50,000 that I'm thinking that you're going to donate will equip one officer.

Paddy Trusler: For two months.

Chuck Whitson: Our sheriff spends money fast.

Paddy Trusler: Then how we going to finance them after?

Chuck Whitson: That's right. That's my question.

Paddy Trusler: I mean, to me that's a short-term band-aid approach. I guess my question is wouldn't this be a longer term more useful thing?

Chuck Whitson: Yeah, but with a boat sitting in a shed, isn't going to respond to a call that comes in from Swan Lake when somebody's shooting at you with a gun.

Paddy Trusler: No, but the boat that's in the shed currently isn't housed at all.

Mike Hutchin: They're housed down here, they're not housed up there.

Paddy Trusler: Yeah, they're housed down here so it takes an hour, hour and a half to have 'em. That's what I'm thinking.

Mike Hutchin: Okay, any compromise that you want to offer up?

Paddy Trusler: I just think that that's a better use for the money than one officer for two months...that we have to pay for the rest of the time.

Mike Hutchin: You want the money or not? He says no for sure.

Paddy Trusler: I want land and building.

Mike Hutchin: And buildings?

Paddy Trusler: Yup, or at least land and buildings equivalent to the \$50,000.

Mike Hutchin: I'll, I'll, okay, I'll break the tie here. No money, but a space can be offered. We'll put it in a condition of space just like you did for the fire station. It could be a combination space of a building – a piece of land that will work for the fire department and/or search and rescue. But no building. Okay, is that fair enough, Chuck?

Chuck Whitson: I don't agree with it, but...

Paddy Trusler: You have to lose once in a while.

Mike Hutchin: What I'm saying here, I'll give him a little land. I don't want the money and so I split the vote here, okay? I didn't throw out the baby yet, though.

Chuck Whitson: Okay.

Mike Hutchin: Okay. Now the power plant issue; you happy with the resolution there? Sounds like you were Commissioner.

Paddy Trusler: No I wasn't. I'm not happy with it. I just resolved myself.

Mike Hutchin: Okay, so number three, that mitigation, Chuck you okay with that?

Chuck Whitson: Yup.

Mike Hutchin: Okay, the response that we had to that. Number four, Sunburst Drive setback.

Paddy Trusler: He started at 20, they've offered 30. You know, I ...you know, a comment was made that you do go ahead and follow the recommendation of professional staff, you know that's one of the things that we should do. I would point out that professional staff recommended 50' setback. Planning Board staff, or the Planning Board I think it was, actually went back to 20 – is that how it was? I don't what that basis, what the basis is of the 20 either, but I guess that I would have to say that we would follow that particular logic, we should go back to 50'.

Mike Hutchin: Chuck.

Chuck Whitson: I agree.

Mike Hutchin: 50' it is two to one, so 50' set back will be a condition of approval assuming we go that far. Ah, river safety.

Paddy Trusler: I'm really troubled by a decision that was made here earlier and that had to do with limiting public testimony, you know, during this particular mitigation process. I guess sometimes you don't always understand the full implications of your decision, but I do recall early on that the gentleman wanted to talk about, you know, how to kind of close out stuff. And as a result of our action he's been deprived of that, and if you put that camera down long enough to where he could possibly respond, I'd like to give him about five minutes just to go ahead because I think that we guaranteed you that and I would like to hear that at this particular time. I think it has a lot to do with the boat safety issue.

Mike Hutchin: No, correct you. We did not guarantee that. I, as Chairman, suggested that we would consider that.

Paddy Trusler: I guess I would like to consider that we give you five minutes and it's up to the other two, I guess, to do that.

Mike Hutchin: Chuck, you want to do that?

Chuck Whitson: No.

Mike Hutchin: No. Okay. River safety.

Paddy Trusler: See, lose one once in a while.

Public: Glad I'm recording this.

General public unanimously: Yeah, yeah, yeah.

Paddy Trusler: Okay, density I guess is our next issue?

Mike Hutchin: If you're done on the river.

Paddy Trusler: I guess that, I guess that what I heard you say, Dave, correct me if I'm wrong, is that you felt that there was some merit to some of the safety proposals that were put forth and that those ought to be actually incorporated into the Lakeshore Regulations? Is that – you did not say that?

Dave DeGrandpre: That's not what I was intending.

Paddy Trusler: Okay.

Dave DeGrandpre: I haven't had a chance to study them to know where they might fit in, so the answer is no, that is not what I was suggesting.

Paddy Trusler: Okay. Um, I think that there was some things there, you know, that I think is, I think if you look at this particular depiction without actually looking at the unit overlay on it you can see the restriction on the river and how motorized boats would create potential safety hazards on that. I guess I would like to suggest that there maybe is some mitigation issues contained within this particular document that should be further considered. I think that it's unfair for us to ask you or ask us to consider those without a little bit more study. And also re-evaluate the, quote, experts in that particular area. And I think we have an expert right here, and I think that he sees merit. I would, I don't know how to do this because it is, quote, kind of new information, but I think we all agree it has some merit and a need for further consideration. So, I guess in order to put this in a motion, that you will agree - all these attorney's intimidate me – that you will agree to compliance with reasonable requirements set forth within the Shoreline Protection Regulations including safety concerns that will be further identified in the review process, in the preliminary review process. It's pretty open, but I think that it does allow us an opportunity to further discuss this at this process because I think that there is some things there. Mr. Astle, I very seldom ask an attorney for help, but I need help on this one. And I think, do you understand kind of where I'm trying to get to with this mitigation?

Bill Astle: David is prepared.

Dave DeGrandpre: I think I have an idea. When docks are considered, the developer would have to come in with an application under the Lake County Lakeshore Protection Regulations for a boat ramp, for docks, for etc., right?

Paddy Trusler: Umm hmm.

Dave DeGrandpre: For any lake related improvements that might take place.

Paddy Trusler: Umm hmm.

Dave DeGrandpre: At that time it might, the opportunity when all the specific conditions of the lake, of the depth, of the high water levels, all of those things are evaluated under the regulations, maybe then it's time – the window will be open for that specific area, I guess.

Paddy Trusler: Yeah, I don't disagree with it as far as you've taken it. I guess that historically you would have to agree that the Shoreline Protection Regulations are fairly generic, and frankly are more attuned to Flathead Lake, which is a much different water body than Swan Lake. I mean, you know, it's pretty obvious to see, I mean we have a restriction here and when you start adding boats, that's going to add problems. We just need to have some concurrence on the part of the developer that the strict interpretation of the regulations is not what you are interested in, that you're also interested in providing for public safety for the – for both your client and also the remainder of the public there, because you know as well as I do, public safety concerns within shoreline regulation are not very explicit.

Dave DeGrandpre: There's no question that we at this table are just as concerned about public safety as, well, as anybody in this room, I would suggest. We don't want anything, you know, I certainly don't want to be associated with someone getting hurt out in the Lake. Nobody here does. From a moral standpoint, from a liability standpoint, from any of those things, just as the county does, nobody wants to be involved with that. You know, I think people tend to – I don't want to get off track, I know we need to get this thing done.

Mike Hutchin: Dave.

Dave DeGrandpre: People want to assume that the developer is only in it for the immediate profit and the immediate short term, all those sorts of things. Hey, you know, we're people, too. I live around here. I plan to do work here for the rest of my life. I don't want to be associated with a project that causes negative, that causes problems.

Paddy Trusler: So, I'm still waiting for – I mean I understand –

Dave DeGrandpre: What exactly is the question?

Paddy Trusler: Well, what exactly is the question is, is –

Jerry Peasack: It's Jerry. I want to know whether I understand what it is that, um, what it is that you are suggesting. And I could be way off base here. If you're talking – if you're asking that if the County

[end of tape 2 side A]

Paddy Trusler: No, no, no, no, that, that's not what I'm asking.

Jerry Peasack: I'm sorry, I misunderstood.

Paddy Trusler: Actually, what I'm asking is something like this: the review process for lake related structures is contained within the shoreline protection regulation. Pure and simple. As part of those particular regulations, there is contemplation for safety issues and concerns that have been raised, but those particular contemplations are very generic and frankly are much more attuned to shoreline development to Flathead Lake. This particular project, I think, you know, is unique and we want to have the flexibility to look at those particular factors that that gentleman put forth and determine whether or not they have merit and incorporated – incorporate them into the particular approval process.

Mike Hutchin: Paddy, I have to slow you up here, buddy. We're kind of back in the mitigation discussion.

Paddy Trusler: No, no –

Mike Hutchin: You're trying to fish and I think you got some answers but we got to keep moving. What it simply means is that any regulations, to me, that are looked at in terms of the river or lake, if we want to change them we put it up for the public process and we accept changes in terms of river safety and all those things. That's –

Paddy Trusler: And I'm not asking, all I'm simply saying, Mike, is that, you know, if there's conditions that we can have the flexibility to put conditions on their particular application under the current regulation.

Mike Hutchin: We can try it. That's up to us as the Lakeshore Protection Regulation Authority.

Paddy Trusler: I know this is confusing and you're supposed to help me and you're not. But the point I'm making is that we haven't had a chance to look at these things but we are being asked to consider boat safety. You have a unique situation here and we just want to have the ability to look at them closer and hopefully come up with a – I guess with a set of conditions when you apply for that Shoreline Protection Regulation that we can all agree with and that also meets the public safety criteria. That's all I'm asking. I don't know, you know.

Mike Hutchin: How about a specific condition of approval we would like to deliberate?

Paddy Trusler: I don't know how to get to that specific. I mean, you understand?

Mike Hutchin: Permitting process, then, reviewable.

Paddy Trusler: So, the only thing that we can actually put in the approval, or in the preliminary approval would be the limitation of the number of boat slips is what I understand.

Mike Hutchin: No, not even a limitation that could [indiscernible] by the lakeshore regulations.

Paddy Trusler: But it says right here 24. That's what they're proposing.

Mike Hutchin: Yup. And they have to get permits for them to be able to be constructed. They have to go through that process. And the conditions of approval is to simply go through that process. That process has to go to the soil conservation service as well as us. That's when we have the proper input to try and do some improvement in terms of river safety if we deem them necessary. But the rules are the rules. That's the way they are today.

Paddy Trusler: Okay. Thanks for the help guys.

Mike Hutchin: Okay, the river thing's okay. Density. That's us, guys, [indiscernible]

Paddy Trusler: I guess, I guess just for comment it is pretty well understood by at least the legal people that are here that this particular Commission cannot look at density in an unzoned area. They have to look at what factors actually are mitigate – can be mitigated by the particular density proposed. And, um, unfortunately the density map, had it been adopted would address this. It is too bad that it wasn't. That is why we continue to push forward in light of that particular opposition, is because it does provide for a lot of certainty. My personal opinion is that the density is too high. I think that it does not fit with the growth policy. Legally, I cannot go ahead and use that for overall review of the project. It's an unfortunate thing, but I think they know they don't have to mitigate density and obviously they've chosen not to, so...

Mike Hutchin: Chuck.

Chuck Whitson: Well, I think that the density, I think if they wanted to make this thing simple – simplify things, any chance you get, that the density should not be any more than the surrounding neighborhoods. What's wrong with that plan?

Mike Hutchin: They tried to answer that guys – it's between us pretty much. Good statement, but I don't want them to answer it. I've heard enough from them.

Chuck Whitson: Okay, answer it.

Mike Hutchin: Um, I don't have an answer. [Public groaning in disbelief] Paddy answered the question the same way that I had to answer it if that's what you're looking for.

Chuck Whitson: Opinion.

Mike Hutchin: Sorry, [indiscernible]