

Commissioner's Mitigation Hearing  
Concerning Kootenai Lodge  
May 3, 2005 Transcription

Commissioners Present: Chuck Whitson, Paddy Trusler, Mike Hutchin

Staff Present: Sean Conrad, Sue Shannon, Pam Repnak

Mike Hutchin: Good afternoon, ladies and gentlemen. Ah, you're back, Vern, how are you doing?

Jack Morton: I'm Jack.

Mike Hutchin: Jack Morton, I'll never forget Vern either, so. Folks, welcome back to the reconvening of the public hearing on the Kootenai Lodge project. But before I start there, I got to bring up something kind of – well, it's not humorous if you're involved in these serious things, but this meeting is totally unnecessary today and I'll tell you why: Because the Hungry Horse News had an article in the paper and they put this in there, "Recently, Lake County gave the Milhous Group of Florida the okay to build 57 condominiums on the property." [Laughter] So don't believe everything you read, folks, whether it's in the paper or otherwise. Another point I'll make had a little bit of humor here, from my perspective humor, got more attorneys around this project than I've ever seen in my life. And you can't always believe every attorney, what they say, either. So, we'll find out through that process somehow.

Public Comment: Well, that's good; there are a few sitting over there.

Mike Hutchin: For those of you who have not been here before, this is Paddy Trusler, Commissioner, Chuck Whitson, Commissioner, and my name is Mike Hutchin. Over here we have the staff: Sean Conrad, Susan Shannon, and Pam Repnak. If you've got the agenda out here you know the format. We wanted to hear -- most of you have been pretty well aware of and keeping track of this whole situation. We had an e-mail – this pile grew from last week, plus there's a bunch downstairs that came in yesterday in terms of letters and e-mails. So we have substantial information. We do believe it's pretty repetitive and redundant, but it's all there. Not a lot of new information came forward to us, but what was posted on the web, many of you reviewed that and have comments and because we've got enough information – we had four hours of public comment last time – we're going to restrict the public comment this time to thirty minutes. And we would like each person, who would like to take that opportunity, to be brief and to the point. And I will time it – precisely in thirty minutes from this moment we will stop the public testimony and proceed with the mitigation discussions between the developers and the County Commission. Any questions? Jack.

Jack Morton: Do mitigation discussions not involve the public?

Mike Hutchin: No sir. Thanks for asking. Peter.

Peter Leander: Is there a limit on the amount of time the developers will have?

Mike Hutchin: No, it's between – it's our decision here as a commission. Any other questions? Peter.

Peter Leander: How is it that a table appeared on behalf of the developers here and not for any other group?

Mike Hutchin: It was requested and it was a practice we began at the last mitigation process that we held on Northridge subdivision. It's a new trend. Okay, any other questions? It may or not be right, but that's the way we're doing our business. Yes.

Public Woman: I guess I have a question. I do not feel that it is fair for one group to be limited to thirty minutes and the other group to have two days of – that's not fair by the way of the American way of democracy.

Mike Hutchin: Well, we had a four hour hearing two weeks ago, mam. The information is overwhelmingly in the same category as always. Any other questions?

Bradley Worth: Did your notice of this meeting indicate that there'd be thirty minutes of this?

Mike Hutchin: No sir.

Bradley Worth: I didn't think so.

Mike Hutchin: Sir.

Public #1: Have the minutes of the last meetings been available to the public?

Mike Hutchin: Were they posted on the web?

Public #1: Why not?

Mike Hutchin: Don't know. They're available, you can call down here. It's a short time frame.

Public #2: Do you have a standard protocol for how you address these mitigation issues by way of format?

Mike Hutchin: No.

Public #2: So, do you determine it on the day or the day before on what your agenda items are going to be and how much time each of the sides get to speak?

Mike Hutchin: We determined that yesterday in terms of the format and the 11 mitigation factors are what we intended to discuss.

Public #2: So, there's nothing you can count on on a regular basis?

Mike Hutchin: No, mam, it doesn't happen on a regular basis of this nature, either.

Peter Leander: Thank you, Mike. Have the minutes of the Planning Board meeting been made available and reviewed by the Board members?

Mike Hutchin: Yes, sir.

Peter Leander: Thank you.

Mike Hutchin: Sir.

Public #3: Have you guys received the letters from Rolwing's attorneys. Have you read them?

Mike Hutchin: Yes, sir. Yes, sir, we have. I added them to the list of attorney's who are involved here. Sir.

Public #4: Is the County Attorney here?

Mike Hutchin: I don't see him, Bob are you out there? No sir.

Public #4: Why wouldn't he be here?

Mike Hutchin: No sir.

Public #4: No sir?

Mike Hutchin: He may be here but he's not here at this meeting.

Public #4: Do you normally ask the County Attorney to be present at...?

Mike Hutchin: On occasion.

Paddy Trusler: He was requested to be here.

Mike Hutchin: Any other questions? Mam.

Public #5: When will the decision be made? How long will you deliberate?

Mike Hutchin: It is our intent to make a decision today. The decision has to be made no later than Thursday.

Public #5: Why?

Mike Hutchin: Because the deadline in terms of Montana statute requires unless the developer gives us an extension to the granted period of time to make a decision, that decision must be made. Any other questions? Good, we'll proceed. Whoever wants to come up here, I'll call you. Mr. Fisher.

Clint Fisher: Thanks, I'll be brief. I'd just like to summarize on behalf of the Swan Lakers that organization's position with regard to this application. Number one, from a procedural standpoint, this application should not be being processed for two reasons; one is that the application was not signed by the owners of the property, and number two that there is no viable and available wastewater disposal site for review by this governing body or by the Planning Staff or by the members of the public. For procedural reasons, then, this meeting should be terminated and the application should also be terminated. Number two from a substantive standpoint, the issues are - regarding this highly controversial development proposal really revolve around the issue of density and in the mitigation response supplied by the developer, the number one reason for the density request was economic viability. Obviously that is not one of the issues that can be determined by this commission as a reason for granting the developer's proposal. Every reasonable standard indicated that the development should be limited to density a half or less than what's proposed. The Laker's position is that the surrounding area is 1.4-acres per dwelling unit and that would limit development density on this project site to 29 units. It would also basically limit the dock proposal by half, from 24 down to 12. The Laker's would go on record as saying that is reasonable and there are substantial factual reasons in order to meet that density requirement. We believe that is what the Commissioner's should do. Thank you.

Mike Hutchin: Thank you, Mr. Fisher. Jack.

Jack Morton: My name is Jack Morton. I was glad to see the mitigation report because I had never been able to figure out how they calculated 65 units and now they admit they pulled up 65-units based on economic viability. And I find that nowhere in the statutes or regulations that that's a factor. If we apply the 1.07 standard for the neighborhood as they calculated, we come up with 38 units. 38 units is much more reasonable. They then take the 38 units or some other number and come up with a 40% density bonus. And I've got my little fifteen-dollar chart here to show you under Montana Law where the density bonus is illegal. You can only do a density bonus if we have County Regulations defining the density bonus rules. We don't have the County regulations. If we did have, they would have to be based on the amount of open space preserved through a conservation easement. We don't have it. The density bonus is flagrantly illegal. So, if we throw out the density, worst-case scenario, we're back to 38 units. I argue that's absurd because that's a fabricated measurement of the density of the neighborhood. Recent subdivisions are three acres, two and a half acres, and two acres. By any of those standards we should be down to something like 13 units for this project not this absurd 65 that's compromised down to 57. Last time I complimented you on what a wonderful

democratic process that last meeting was, this is absurd. Pardon me. But you have no choice but to deny this application. It's wrong on every legal basis and every standard you have in the County Growth Plan.

Mike Hutchin: Thank you, Jack. [Applause] Next.

Public #6: I want to talk about dock safety and the Milhous Response on mitigation. They talked about putting out maps. This completely misses the point. People that live on the lake, Swan Lakers, we're not worried about propellers hitting rocks; we're worried about propellers hitting us. We need some kind of a mitigation so that we don't get run over. The easiest way to mitigate is to decrease the number of docks. If you look at the neighborhood, the median is about 1 dock for every 100 feet. The mean is 1 dock for every 200 feet within the first 10,000 feet. So, if we take that measurement of 1 per 200' and they have 850' on the lake and the rest is on the river, that gives them four docks. Or, if you cut that in half to 100' that gives them 8. We said, well, there's people in the back we want everybody to have access that would be 12 docks. The other thing is if you want to mitigate, the map stuff doesn't mitigate the safety issue. The map takes care of the propellers hitting the rocks, but not the propellers hitting us so we're very concerned about that safety issue. Maybe you could mitigate by saying get rid of the jet skis all total on this end of the lake. There's some options available, but we're very concerned about the safety to us.

Denise Lang: First of all, I'd like to, ah, I brought you each a copy of the Daily Interlake opinion page today. I'm Denise Lang from Bigfork. Just thinking that perhaps you might not have gotten the latest press. In addition, I'm going to give you a copy of the statement that I am going to be reading to you today. Does it flip? Oh, well, that's too bad. There are some stickpins down below there. So, again, I'm Denise Lang and before I speak on the visual impact of the proposed major subdivision on the Shores of Swan Lake, Johnson Creek, and Swan River, I'd like to address the issue of precedent setting of property rights versus speculative proposals. The Milhous Group has repeatedly used the following phrases throughout this public discourse: economically feasible, financially viable, protection of private property rights of landowners and the Milhous' Group right to develop the Kootenai Lodge. I would argue that when you begin to talk about development, rights must take a secondary position to the common welfare, environmental protection with regard to water quality and protection of wildlife. In other words, the very gems that contribute to the unique quality of this pristine, historic, magnificent state and county should in fact interfere with the private property rights of developers. I ask you, because a developer thinks a project-slash-development will be financially viable and economically feasible, is the developer's concept necessarily the highest and best use of the property? The monetary notion of highest and best use for a particular property can at time conflict directly with the broader public welfare. In the aforementioned we have addressed the greater public good versus the individual property rights. However, as we all know, and have heard on numerous occasions, the Milhous Group is not the owner of record. Does the developer have speculative rights at the expense of this County? Is it the correct precedent to set for the County to hear every developer's wish list development? Can the County afford to pay for speculation to

review every proposal before ownership? The unprecedented proposal would be a precedent – open that very expensive door for the County. Consider this costly precedent carefully. You have asked the Milhous Group to address 11 mitigation items. As you know, Lake County has a check list of compliant items to be addressed and in Mr. Seaman’s Own words, an attorney for the Milhous Group, a one size fits all solution and cookbook planning at it’s worst. I have brought representation of the designs that are being cooked up by the developer, which is a recipe for disaster. Mr. Milhous printed – presented you with pretty artist’s renderings from Mr. Milhous’ dock looking down upon his proposed acquisition. His representation did little to accurately represent the, um, request to exceed the height limit of buildings in Lake County beyond the thirty feet show the closeness of the water of the condos and the visual impact of the views of the neighbors to the north, east, and across the river. Minor attempts at landscaping do very little to lessen the impacts of this excessive major subdivision. I have before you the recipe of reality for this obtrusive, ugly development, this particularly visually offensive area of the development to the north cannot be hidden by trees and obliterates open spaces and vistas that makes this property unique. Imprint these compelling photos with the development overlay on your mind’s eye and imagine how this would look to any Montana citizen as they float or canoe past the horror of this conspic – conspicuous consumption of history and, ah, consumption of history and natural resources. As you can see, this is undeniably out of character with the surrounding area. I implore you to act as good stewards of the Montana landscape and ideal and protect our environment, culture, and history. Deny this attempt to destroy and permanently alter the character of this unique Montana landscape for now and forever.

Mike Hutchin: Thank you, Denise. [Applause]

Bradley Worth: I’m Bradley Worth. I’m on the north side of that monstrosity. I – first of all I think it’s outrageous that they can send a 20-page epistle and then our commentary is limited to thirty minutes on what can be very much new information contained in that. From page four of the Milhous letter, this policy statement calls for the protection of private property rights of landowners and respecting their wishes to get enjoyment and economic return out of their land while not unreasonably compromising the enjoyment of neighboring landowners and the value of their properties. That’s what they were citing as a benchmark of quality. If there is any proof to the pudding that a development like this will allegedly increase our property values I remind you that a property value is not the same as the marketing value. Market value does not take place until one sells this property, but while one lives on that property the ability of these people to somehow be adversely affected is very suspect. We are going to lose the availability of services, our amenities, the open spaces, every thing we’ve been arguing for the last times in front of you and the only mitigation that we seem to be getting is the assurance that in fact there is going to be a one time fifty thousand dollar check offered and then similarly that there’s going to be a notice to people moving into the area that they’re not going to get the police there quite on time. That’s all we get. It’s a negative impact on our property. It’s a fantastic argument that they have been putting forward that somehow this is going to make our life that much more cheerful, and our living there, and I just cannot believe that anything other than looking at this as negatively influencing the

value of our land would tend to be the result of it. I believe that the, ah, Commissioners have an obligation – to protect the property values of the people who actually live there, not the property values of those who fancy themselves there.

Mike Hutchin: Thank you, Mr. Worth. [Applause]

John Pierson: My name is John Pierson. I'm the President of the Swan Crest Homeowners Association, the property directly to the north and adjacent to the proposed sewage treatment plant. I'd like to read an excerpt from the covenants of the Ridge subdivision. "No sewage disposal system may be constructed in the Ridge subdivision which serves residences or subdivisions which are located outside the Ridge subdivision." Mr. DeGrandpre, at the Planning Board meeting made the casual comment that if this is in violation of our covenants that they would go back and amend the covenants. We know that's not going to happen. He went on to further say that it was unlikely that this would happen and that they had other options. I don't know what those other options are and I don't know if you do. I would urge you not to take action on this application until we know what an acceptable sewage treatment plant, ah, plan that they have is. Thank you.

Mike Hutchin: Thank you John.

Peter Leander: Excuse me, Mr. Hutchin, could you let us know when there's just five minutes left?

Mike Hutchin: Yes.

Peter Leander: So we can sort of time ourselves out.

Mike Hutchin: Yes, I can do that. Mam.

Sue Laverty: My name is Sue Laverty. I live at 1718 Sunburst Drive. Someone suggested that the objections voiced at these public meetings is the not-in-my-backyard syndrome. That is totally false. We are not opposed to the development of this property as long it is done in a reasonable and intelligent manner with keeping with the surrounding area, the County Growth Policy and the proposed density map. It is a great concern to us that in this mitigation response the Milhous Group feels that they have already spoken to these points and offers no other option. In at least three areas they have requested the mitigation to be reduced. With regards to the Density on page 6 of the Milhous Group's response, they state that both parties have manipulated the available data to serve their own purpose. Then they proceed to submit a handpicked map showing the properties of one acre or less. I could also submit a handpicked map showing one acre or more so I'm asking you to rely on the staff's figures of 2 ½ acres per dwelling unit for both Swan Sites and the Ridge subdivisions. The County's own density map shows 1.5 acres for dwelling – per dwelling – for unzoned areas around Swan Lake. By reducing the project to one and a half acres per dwelling, or 27 units, many of these reasons for mitigation themselves become reduced. It would allow for more open space,

reduce the impact on roads and in particularly the lake and river and better setbacks especially along Johnson Creek. The Milhous Group is asking that you reduce the setback along Johnson Creek as recommended by qualified biologists from 100 to 80 foot setbacks. Keep the 100-foot setbacks. Please respect the words of qualified biologists and not developers who have a financial gain to extract. Finally, I urge you to place a plat restriction on this property to eliminate the right to expand language on their CC and Rs. This would ensure that no funneling would occur. As you are aware, there is a lot at stake here. It's a huge impact, not only for this neighborhood, but for the entire Swan Lake area. Thank you.

Mike Hutchin: Thank you, Sue. [Applause] Next. Denny.

Denny Kellogg: My name is Denny Kellogg and I'd just like to speak about one core value that all of us here share and this is a concept that is the basis for all morals, ethics, community service and spirituality and that is: A man or a woman only does what their conscience allows.

Mike Hutchin: Thank you, Denny. [Applause] Next. Peter.

Peter Leander. Thank you, Mike. Paddy, Chuck, thank you for your time, Planning Board thank you for your time. [Audience asking him to speak louder] Sure. I just wanted to thank everybody up in the front of the room here and in the front and on the left for the time that they have given to this project. I know it's been extraordinary. I've got to tell you, folks, that on behalf of [indiscernible] and myself and as a representative, a representative of the Swan Lakers group, we're really, we feel like we've been slapped in the face by this mitigation proposal. We feel that they could respectfully - that they've slapped the Commission and the entire Lake County in the face by having been given a privilege to present mitigation. And instead of taking advantage of that privilege they have taken that opportunity to just rehash and reargue their same points with no substantive difference. I think it's not just a lack, but it's an absolute affront to the process. They could not have stood up at the end of last meeting and say, hey; we'd like one more chance to restate our position once again. I think you folks would have said no, public comment is closed, developer comment is closed, it's over. Well, that in effect is what they have done. I couldn't agree more with Sue Laverty; this is not a case of not-in-my-backyard. This is not a case of not-in-my-backyard. We as Lakers, we as citizens, are absolutely open and compliant with the idea of reasonable development that will protect the health and safety of our lives, of our children, of our parents who will be paddling, swimming, and enjoying this lake and the roads around it. Please do not be, I guess, dissuaded by anybody who will say that this is a not-in-my-backyard issue. We talked about the white elephant that was here before, being concerned about a lawsuit. Mr. Hutchin, you read from a suit earlier. Let's talk about that for a moment because I think it hangs over the heads of this entire hearing. I don't believe this commission or the folks of Lake County need fear retribution from the Milhous Group on a practical level. Number one they are not owners of the land. They do not have property rights. As mentioned before, they may have some speculative development rights, but that is not a property right. The only folks with property rights are the Rolfings and the surrounding

landowners and they say no to this project. We have no viable sewer plan. On that basis, on that legal basis, this Commission, I believe, and I respectfully submit has the basis, and I would also respectfully submit has the – I hate to say duty, but should deny this. As Sean Conrad said at the last meetings, if this had been presented to the Planning Board as it is today with no viable sewer plan, he would have rejected it. And that is how it stands today. They are asking to go ahead piecemeal and that is not the appropriate way and that is not what the regulations require. Jack Morton spoke about the density bonus. There is absolutely no legal basis for the density bonus, which they request. They also, and it is very clear now after we've all received on review the Roling letter that it is an illegal, I believe, and unacceptable application absent the signature of the Rolings. They were very, very concerned about the way the process took place with regard to this application having a parallel mission been rejected. Then Mr. DeGrandpre going in and speaking again with the Board and others of whom we're not sure at that meeting and then the application is accepted.

Further, according to the letter from the Smith and Robinson – Robertson – law firm. This application and this proposal will violate federal law on several fronts. I as a citizen, as a taxpayer of Lake County, I'm concerned what may happen if this proposal is put forward. I fear, not that you will be sued by the Milhous Group, but you are opening the County to suit for being a third-party participant in allowing a proposal to go forward when it's in violation of federal law. I don't want that as a taxpayer. I don't want to be responsible for that and I would suggest that it's not from them there may be fear, but from others. And I don't want to...I hope, I don't mean that as a threat, just as a reality. I don't want this Commission to be a part of putting forward a proposal that is in violation of federal law. I would like to step back in conclusion and look at the big picture. I can't help but believe that it was the intention of the founders of this Commission that this Commission listen and hear the voices of the Lake County residents and that they react and react when the voices of the residents who come before you are reasoned, are logical, and are well founded. And I think that is what you heard. Ninety-nine percent of all voices that you have heard are in opposition to this and with well-founded expert testimony. And I can't help but to believe that if this Commission ignores the voice of such an overwhelming majority that the citizens of this County – the hardworking, dirty-shirting, roll-up-your-sleeves spine of the – of this County - whether it be in – in Swan Lake or in Hot Springs will come to the conclusion that we really have no voice. And if we have no voice we are really not citizens of this County at all.

Mike Hutchin: Thanks, Peter. [Applause] Next.

Jack Morton: Could I say one last word?

Mike Hutchin: Jack, Jack, I'd rather not for the moment. Someone else, please. Mam.

Public Question: I just have a question. Um, we will not know how the Milhous Group has addressed the 11 points.

Mike Hutchin: Yes, you will. You are here.

Public Question: How will we know?

Mike Hutchin: Mam, you will be right here in the room with us when we conduct that mitigation discussion.

Public Question: Oh, I'm sorry, I misunderstood. I thought we wouldn't be able to do that.

Mike Hutchin: Oh, no, you're all very welcome to stay. Sir.

Public Question: May I ask Jack Morton to speak for me?

Mike Hutchin: Yes, you may. Jack, he's letting you give you his time.

Jack Morton: Thank you. I think it's unfortunate in this whole process that it – that we have spent so little time addressing the issue of the federally protected bear corridor through Kootenai and what will happen to that when this development is placed there. It's a stunning impact on the grizzly bear recovery area and it's simply been bypassed in the whole discussion. Likewise, the statement – eloquent statement – from the Salish Kootenai Tribe on how this impact on Johnson Creek could impact other drainages, simply bypassed. If the appropriate density in the neighborhood is 2.5 acres per unit then we're down with that to something like seventeen units here and that's the basis for discussion. That's a reasonable place to begin, with seventeen units. That might be an appropriate discussion point. And I hope, in closing, that you will include us on issues on mitigation particularly that all-important term funneling. They were asked to address funneling in the mitigation report and didn't discuss funneling at all. We don't think it's enough to not mention funneling in the conditions, we think it's important that funneling any commercial activity be prohibited should the unthinkable occur that any part of this project be approved.

Mike Hutchin: Thank you, Jack. Any one else? There's exactly five minutes. How many folks really want to speak? Raise your hands? Jack, you've had enough, sir, thank you. [Laughter] There's five minutes at least. At the end of that time if there's hundreds of you who want to speak, I'll talk to the Commission about extending that time, but at this point, it appears that there's not voluminous hands who want to speak. [Pause]

Bradley Worth: Commissioner, I think that would have been a good thing to have said to us before we all jumped up with abbreviated reports.

Mike Hutchin: It doesn't matter when, Bradley. It's that you have the opportunity. If everybody wants to, you know, have an extended time frame, we'll address it.

Bradley Worth: Well, all right.

Jack Morton: I'd like to read the proposal I originally had that I wasn't able to use.

Mike Hutchin: Jack, you probably summarized it pretty well, wouldn't you say?

Jack Morton: No.

Mike Hutchin: No? Why didn't you?

Jack Morton: Because I felt under pressure.

Mike Hutchin: You want a shortened time?

Jack Morton: I'll pass. But I think every one of us felt so pressured. You try making a presentation in two minutes, Mike. It is not doable. It's that we all changed our presentations. It's unfortunate.

Public #1: You can have my time.

Public #2: You can have my time. Jack.

Many people: You can have my time, Jack.

Mike Hutchin: Okay, Jack. Jack? Jeff?

Jeff: You know, the Growth Policy that this County has put together recently and the density map that the County is trying to put together; this type of growth is not in accordance with what - the growth that you would like to see in the future. 'Cause you know you are dealing with a massive amount of growth right now. And if you consider that to be good growth policy right there - I mean that's what you have to make as a Commissioner, I know you have to stay within the law and all that as well, but you also have to decide what's proper growth, what's good growth for the community. And I know the density map - the whole purpose behind that, and I know Dave DeGrandpre went over that with me carefully so that I understood it - was to cluster so that services aren't stretched so much. And cluster where there's already density is the way I understood that, that density map to work. I don't know. I wonder if that's being considered as far as future?

Mike Hutchin: Certainly, Jeff. It is. Jack, you have an opportunity.

Jack Morton: Thank you. The key issue here is density. How do we calculate the density? If we solve that problem everybody goes home happy. The neighborhood for Swan Sites is one unit per two-and-a-half acres. If we apply that standard to this project, we end up with sixteen units. A far cry from 65 which came from I have no idea where. If we, if we apply the standard for Bug Creek, the Bug Creek on-the-lake subdivision, that was three acres per unit. Here we would then have thirteen units. We can't even speak to this project it's so far beyond the standards for the community. But if we use the Bug Creek standard of three acres - and so we allow three - thirteen units, Bug Creek was not a particularly environmentally sensitive spot, it wasn't in the grizzly bear

corridor; it wasn't a historically significant spot as this. You combine both the historic ramifications and the unique environmental aspects to what should be a thirteen to sixteen unit density project and I would submit to you that it should be down to six or eight units. And you'd say that's absurd, but no, this is the most environmentally sensitive and historically sensitive piece of property in the county. Sixty-five is off the wall. Thirteen? Sixteen? Maybe eight with the preserving the existing buildings as residential units. Save those outbuildings, those little cottages, see if we can save them as guest homes. And then preserve the grizzly bear corridor through Johnson Creek and the historic polo ground. That would be a viable project and you could make money upon that. This – this – we can't even discuss 65. It's so far beyond anything in the growth plan, anything in state law, anything the federal courts or the state courts would even consider. Thank you very much.

Mike Hutchin: Okay, Jack. Okay we've reached [Applause] – we've reached the time limit, but for the benefit of the three of us up here, how many more people would like to speak?

Public question: Can we indicate how many are opposed to this project as it stands?

Mike Hutchin: No. We understand that.

[Audience moaning and protesting]

Mike Hutchin: There is no point. We understand that.

Public commenter: Well, let's raise our hands.

Public commenter #2: Let's raise our hands.

Public commenter #2: Who would speak in opposition?

Mike Hutchin: Anyone else? How many people would like to speak and offer some comments?

Public question: Mike, I have a question.

Mike Hutchin: Jeff.

Jeff: I had no intention of speaking. I came to listen, but something concerns me greatly. There's been talk, three different, by three different people about the density map. Is the density map being considered in any decision making on the County at this time?

Mike Hutchin: It's going through the process, Jeff, yes. But there's no adoption of it yet.

Jeff: Okay, I'm just, I just want to clarify that because I assumed it was still in its process and therefore it cannot be used until it's officially adopted?

Mike Hutchin: That is correct.

Jeff: Thank you.

Mike Hutchin: You're welcome. How many people would like to continue to speak?  
Sir? How many?

Public comment: I just have a couple questions, quick ones. If you haven't adopted the new density map for the county yet?

Mike Hutchin: No, we haven't.

Public Comment: Why can't we use the old one then? How can we go through life without one?

Mike Hutchin: There is no old one, sir.

Public Comment: Oh. There wasn't? Then we were talking about it before when Dave said that he shut it down and was going to adopt a new one for the density plan.

Mike Hutchin: No, there was a growth policy that was adopted, sir.

Public Comment: Without a density/growth policy, you shouldn't be making any decisions until you have one.

Mike Hutchin: Sir, there is a growth policy that has been adopted. There has not been adopted a zoning document for density. That's still in the mill. That's significantly different issues. Mam.

Public Comment #2: Yes, I believe that I am seeing that you are making special conditions for the Milhous Group. You've got them seated at a special table and I believe as today, since you decided that you were going to go ahead and mitigate with them, I believe that there should be a chance for a rebuttal from the other side because that would be another little 'special' comment so that they could have some – a say after you are done.

Mike Hutchin: Okay, thank you for your comment. Mam?

Public Comment #3: Okay, I have a question about public opinion and how a positive or a negative public opinion effects your decision one way or the other? It would seem to me that the public opinion that we have spoken in the last two or three meetings that I, we have been attending have certainly been against the issue. So I guess, how, my question is how do you weigh public opinion when it's so much on one side versus positive opinion on the other?

Mike Hutchin: Public Opinion is very important to us. It is accepted in terms of the five criteria that we have to judge a subdivision by. Those five criteria, I don't have them memorized on a complete basis, but they are within the subdivision regulations. And as an example, those criteria do not include density. So, public opinion as a whole is not accepted as arms in the air or a vote by the public, but the public's input on those basic five criteria are what we are trying to weigh out.

Public Comment #3: Well, it would seem to me that public opinion opposing this is so overwhelming that, I mean, that should really have quite a bit of determination upon this city.

Mike Hutchin: I'm sorry, mam, it just doesn't in that light. Mr. Maddy over here is the developer for the Northridge subdivision up in Lake Mary Ronan and he can vouch for the same kind of situation. He sat in the same room with as many people opposing him as this group. Because that's the way it was up in Lake Ronan as well. I think he's enjoying this one this time and last time he wasn't. [Pause] How many - you guys want to extend it if people are willing to come?

Paddy Trusler: I'm willing to do a little bit, yeah. Sure.

Mike Hutchin: A little bit? Okay. Comments, still, please? If you have a comment. Peter. Jack you're next.

Peter Leander: Thank you. In all of this there's been by the Milhous Group a picking of this number for this purpose, and that number for that purpose, and sometimes they want to use numbers that exist in the Swan Sites area and sometimes depending upon whether or not it fits their purpose. This is what I would like to suggest to you gentlemen is that there must be some Darwinism, somewhat evolution in our thought process. Not rely on the lowest common denominator so that it will fit their financial picture, but the highest common denominator so that it improves the zoning, improves the lifestyle, improves the character of this County. I just ask that you consider that whether it's relating to this - I'll just leave it at that.

Mike Hutchin: Jack, follow up.

Jack Morton: The Planning Staff, in their report, began their whole discussion based on density. That's because state law says we look at the growth plan. The growth plan says we have to look to encourage compatible development with the surrounding community. So, compatible development to us is density. That's the whole basis for ah why we're here and for you to say we're not looking at the density, I am stunned. I thought that was what I'd been reading about in state law and your growth plan.

Mike Hutchin: Jack, it's not a part of the review criteria is what I said. Specifically. Sir.

Public Comment: If I could just make a procedural suggestion? When you look at all the people who are here who drove an hour down and an hour back and spent all the man-

hours that are invested in this, I'd like to make a suggestion in two regards. One is you're asking us – this is like buying a pig in a poke – you're asking us to have a public comment on something we haven't even heard yet. I – we came prepared to make about a fifteen minute presentation after we heard their 11 mitigations and I would like to just suggest, and we could have a show of hands, if you think it would be useful to have the mitigation discussion and then give the Swan Lakers an opportunity for a ten or fifteen minute discussion because we have – we think we understand what their mitigations are. There are serious defects in the project, there is misleading inaccurate information in there and we've got a couple specific examples to bring up and otherwise the whole public comment in on something we haven't even heard yet and so we would like to suggest that and just get a show of hands – people who think that would be worthwhile to get a chance for a rebuttal? Anybody violently opposed to it? I'd ask you sir if we could do that with all due respects.

Mike Hutchin: Okay, we'll give some thought; we'll give some thought to that process up here.

Public Comment: And we're ready to do ten, fifteen minutes, and it will be a very concise and give us an opportunity what we expect they are going to say.

Mike Hutchin: Okay, we will definitely consider it. Anyone else who would like to make a comment? [Pause] Seeing none, we'll close this part of the public testimony and will consider possible further testimony.

Public Comment: We had one hand back here.

Public Comment: Just one, ah, we cannot hear you when you speak if you don't use the microphones.

Mike Hutchin: You can't hear me?

Public Comment: No, I can hear you, but the other two I cannot hear them at all.

Mike Hutchin: Okay, thank you.

Paddy Trusler: That's because we haven't said anything yet. [Laughter]

Mike Hutchin: Just nodding their heads. Okay, we're closing it to public comment at this point. We will consider the request by the last gentleman in terms of further possible comment from the public, however we have reserved this time to deal with the Commission, the Milhous Group and you as an audience because any of the three of us can also desire possible comment from those of you out there and may ask that to happen, okay? So, we will, I will sit down, and we will get down to the serious task of going through this packet of information that's been presented to us as well as to all of you through the website at least on the mitigation factors. So, we'll proceed with that and I

guess first of all we'll give your agents and/or the Milhous Group in any fashion the floor.

Dave DeGrandpre: Thank you County Commissioners, ah, just a few – [Microphone feedback]

Paddy Trusler: Just don't get too close to it.

Dave DeGrandpre: Paul Milhous recently had knee surgery.

Mike Hutchin: You might introduce yourself, Dave.

Dave DeGrandpre: Thanks. I'm Dave DeGrandpre. I'm a planner representing the Milhous Group today. Paul Milhous recently had knee surgery and so was unable to make it. However, we have two of the other principals in the Milhous Group here, Jerry Peasack and Bob Milhous. On April 19<sup>th</sup>, the Commissioners asked the Milhous Group for additional information on 11 specific items.

[Audience voicing that they cannot hear the presentation]

Dave DeGrandpre: We responded a few days after that and now [indiscernible] The additional time, the additional time, I think has been very helpful. It has helped to flesh out some of the remaining issues; the additional time has enabled us to demonstrate how the application complies with Montana and Lake County Subdivision law. And it also makes for an excellent public record in for a defensive decision on behalf of the County Commissioners. We appreciate the opportunity to make our positions known as we have because we have been able to show that we've mitigated all the potential impacts. Everybody in this room is aware that the stakes are very high here today and we intend to be very responsive to your questions and very responsive to your concerns and we would like to open the dialogue with you on specific items and other items as you so choose. And with that, we will await your questions and discussion on the specific items.

Public Comment: We can't hear you.

Mike Hutchin: Yell into that thing, Dave, okay? No additional comments from any members of the Milhous Group at this time? Okay, barring any suggestions by the balance of the Commission, we'll just take them as they were issued in terms of your mailing to us, [indiscernible]. First one, landscape buffer along the north property line. And it was brought up by Melinda Stivers who is out there: Hi, Melinda. In terms of that north boundary, and Mr. Worth is close to there. That looks like that is a reasonable suggestion. Any questions from the Commission?

Paddy Trusler: Well, as long as Melinda is here and she was the one who brought the issue up, I guess I would be interested in her viewpoint as far as this mitigation. Have you actually seen it, Melinda? Where are you? You were here. Oh, there she is. Melinda, excuse me, the first mitigation item talks about the landscape buffer on the

north end or the north side of the property. You would be the most immediately impacted by that measure. Have you reviewed that and would you have a comment on it?

Melinda Stivers: Yes I did. They said that they would build a berm. I don't know how high the berm is going to be on the north side of the property. It wasn't in the original plan [indiscernible] the landscape berm. I also have a question about having a fence put up there to match the other fence on the park part of the property. If the barn's going to be moved, if it is going to be moved, that is because the public had been walking all over our property and trespassing and I just want to ask that something be presented to put some kind of fence to go along the private property down the side to keep the workers and the property [indiscernible] so that they don't track [indiscernible] don't make a mistake [indiscernible] because they're [indiscernible].

Mike Hutchin: Commissioner Trusler, your response?

Paddy Trusler: I guess that the developer is what actually will need to respond to this particular request. If we could summarize it, I think we are talking about not only the landscape proposal that you have put forth but also some kind of access restriction maybe more permanent like a fence similar to the fencing on the Sunburst side of the property. Is that that fencing that you are talking about? The rail, the cedar rail type fence?

Melinda Stivers: Right. Right, it's a rail fence.

Paddy Trusler: So, really access restriction isn't a concern, it's decoration, because that doesn't provide any real access restriction.

Melinda Stivers: The berm that was proposed was adequate for protection, but I don't know if vegetation, an increase, you could probably work with a landscaper on that.

Paddy Trusler: So, I don't understand. Do you want the fence? Do you believe the fence is necessary for any purpose other than, say, decoration?

Melinda Stivers: It's not for decoration, you know, I mean, a lot of people who wander around property lines. Whether [indiscernible] any kind of inspections going on, I don't care if it's road construction or whatever and the proposal is that the barn be moved which, and it was because, too, that the public would have access to see the old barn. And where it's proposed to be put is right on the end, you know, that there would be nice, that there would be privacy, not privacy fence, a real fence put up so people don't wander – people wander all over the place.

Paddy Trusler: Okay. Do the developers understand the request that is being made? And would you comment on it?

Melinda Stivers: And the landscape along the...

Dave DeGrandpre: So if I understand this correct, and just for your information, on the drawing itself that the mound, or the berm is three-and-a-half feet high with trees and shrubs located all along it. Which I think would provide a barrier. You know, if it's necessary to put in a real fence, I don't think that's a huge issue although I think under Montana fencing laws it's the responsibility of both parties isn't it? [Public groaning] And also, I guess, to clarify one other issue, the barn is not proposed to be open to the public. It may be at some point that the owners of this area want to have a display or perhaps party or whatever it might be to celebrate the history of the lodge, [public heckling] but it's not a public attraction.

Mike Hutchin: Folks, come on, let him talk.

Dave DeGrandpre: It's not a make or break issue by any means, so I guess I'll leave it at that.

Paddy Trusler: There may be some response to your question and I think you've asked back historically, I think in other subdivisions we have required legal fencing prior to approval.

[Public asking for volume]

Paddy Trusler: I just wanted to have him point out, you know, the question was raised isn't it the responsibility of adjacent landowners? By Montana law that's probably true, you meet in the middle and you shake hands and you are responsible for the fencing on your right. In this particular case though, I think there is plenty of precedent that the developer legally fence his property, at least fence his property prior to final plat approval.

Dave DeGrandpre: We have no objection.

Bradley Worth: We're property owners there too.

Mike Hutchin: So, we will add a fence to that north boundary in terms of some structure that you will propose to us?

Jerry Peasack: Correct.

Paddy Trusler: And this will be the whole north boundary. This would be the entire [indiscernible]. Intersection with Sunburst and also with the...you also are adjacent?

Bradley Worth: You look at the map there and you see where the Polo grounds is, both the Langs and the Worths share that view. We'll be looking at 41% of the development.

Mike Hutchin: This is Melinda's here?

Bradley Worth: Right, now go another...

Mike Hutchin: And that's yours?

Bradley Worth: We're all in that section there. We have a straight shot at it. If we're talking homes that are twenty-five, thirty feet tall, a three-and-a-half foot berm with a slow growing conifer on it is probably not going to cut it for us. It will be a difficult thing with just some deciduous trees, which, as you know, lose their leaves in the winter. That won't cover it. We'll be looking at that higher left side of the lower picture there and it needs to be something much more dense at least to satisfy me. Of evergreens.

Public: And I as the adjacent neighbor to Melinda, I saw that it was a low-growing, low berm only and I do know that Mr. Milhous has a property off of Rainbow Drive that has a park-like appearance with some rolling berms that's much higher with some higher trees. And for us, with 30-foot building heights, that is what I would prefer seeing.

Bradley Worth: Similarly, the further back you get from that, the less a three-foot berm affects you. If there's a six-foot fence and I'm standing next to it, I'm going to see very little over it. But if I'm standing 100' away from it, I'm going to see considerably over it. It's just the length of the optical sighting. So, we would, I would want to see a lot more evergreen and higher, denser.

Mike Hutchin: Mr. Trusler, you're on board. It's your question, your process.

Paddy Trusler: Well, when I put down as notes – what I put down for notes for consideration, what I put down for notes for consideration was the berm, um the fence, three rail fence all along the north boundary and in order to reduce the visual impact at this density, more evergreen trees.

Mike Hutchin: Okay, Chuck, any comments, questions on that one?

Chuck Whitson: No comment.

Mike Hutchin: Any additional things you would like to say? Hearing none, we'll move on to the second one; the Sheriff's department capacity to serve the Historic Kootenai Lodge Condominiums. That issue is put forth. Any questions from the Commission?

Paddy Trusler: I guess my question is, is, um, on an ideal project, it takes a certain amount of time to have build out. What would the developer's thoughts be with respect to the timeframe for building on these?

Dave DeGrandpre: It will be five years.

Paddy Trusler: Five years?

Mike Hutchin: Okay, Commissioner Trusler anything follow up?

Paddy Trusler: Not at this point. I might, I might revisit that issue.

Mike Hutchin: Okay, Chuck, any comments on that one?

Chuck Whitson: No.

Mike Hutchin: Okay. Number three, parkland dedication. Any question from the Commission? The last group went through some legal extrapolations and offered up their opinion of the law.

Paddy Trusler: [indiscernible] was the one last time that brought up the parkland dedication and we have had a lot of discussion about the interpretation of this law. And I guess that, you know, one of the things that I really truly believe and that is that everybody should have access to, you know, state waters, etcetera. And I think that is why the parkland dedication was actually imposed. And I guess I learned a long time ago that just because an attorney says it doesn't make it necessarily so. I'm sorry, sir, this is the best the sound system does. You know, so, I don't know what we can do about that. Anyway, I don't agree with this particular interpretation of the law. I do believe that the condominium processes on the residential basis require some parkland dedication for, ah, under the law. I do believe that.

Mike Hutchin: Chuck, any comment?

Chuck Whitson: The only comment would be that I would certainly agree with Paddy that there should be some dedicated land for parkland.

Paddy Trusler: Or payment in lieu of parkland. I think that is another option that you might want to propose for purposes of acquiring additional land. I think, I think that Swan Sites homeowners have long understood that the County has been pursuing land to purchase for public access. Um, frankly, we have been somewhat stifled in that action as a result of the covenants, too, so this is an opportunity if we could acquire some revenues to purchase land that the Swan Site people could maybe help us find some land.

[End of tape 1, side A]

Mike Hutchin: Quiet, please, folks.

Dave DeGrandpre: I need to try to understand the objection to the issue? Are you saying that the...in the mitigation response we stated that parkland under the subdivision regulations is for the people within the subdivision not for the general public. Are you disagreeing with that interpretation?

Paddy Trusler: I am, I am indeed. I think that historically we have taken, I'm not talking about parkland right just for the development, but I think it's fair to say that we have always tried to take monies in lieu of parkland dedication that can be accumulated and used for acquisition of public access as it becomes available or when it becomes