

# CASCADE COUNTY PLANNING BOARD

SERVING CASCADE COUNTY, MONTANA

## **Hybrid Meeting Format:**

**Courthouse Annex Room 105**

325 2<sup>nd</sup> Ave. N.

Great Falls, MT 59401

**Online Zoom Meeting ID: 852 9012 2284**

Go to <https://us02web.zoom.us/j/85290122284> to join

Toll-Free: 888-788-0099 or 877-853-5247

*Board Members: Dexter Busby, Richard Liebert, Elliot Merja, Bruce Moore, Makenzie Rummel, Beth Schoenen and Rob Skawinski.*

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# AGENDA

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**7/18/2023  
9:00 AM**

**1. Call To Order**

**2. Roll Call**

**3. Meeting Minutes**

3.I. Draft Meeting Minutes For June 20, 2023

Draft Meeting Minutes for June 20, 2023

Documents:

[PB DRAFT MINS 6-20-2023.PDF](#)

**4. Old Business**

4.I. None

**5. New Business**

5.I. None

**6. Board Matters**

**7. Public Comments On Other Matters Within The Board's Jurisdiction**

**8. Adjournment**

121 4th St. N, STE 2H/I, Great Falls, MT 59401

Phone: (406)-454-6905 | Fax: 406-454-6919 | Email: [\[email protected\]](#)

<http://www.cascadecountymt.gov>

CASCADE COUNTY  
**PLANNING BOARD**

6/20/2023

09:00 AM

Zoom Online/Hybrid Online Meeting

**Board Members: Dexter Busby, Richard Liebert, Elliot Merja, Bruce Moore, Makenzie Rummel, Beth Schoenen and Rob Skawinski.**

**NOTICE:** PURSUANT TO MCA 2-3-212(1), THE OFFICIAL RECORD OF THE MINUTES OF THE MEETING IS IN AUDIO FORM, LOCATED AT CASCADECOUNTYMT.GOV AND THE PLANNING OFFICE. THIS IS A WRITTEN RECORD OF THIS MEETING TO REFLECT ALL THE PROCEEDINGS OF THE BOARD. MCA 7-4-2611 (2)(B). TIMESTAMPS ARE INDICATED IN RED, WITHIN EACH AGENDA ITEM BELOW, AND WILL DIRECT YOU TO THE PRECISE LOCATION SHOULD YOU WISH TO REVIEW THE AUDIO SEGMENT.

THESE MINUTES ARE PARAPHRASED AND REFLECT THE PROCEEDINGS OF THE CASCADE COUNTY PLANNING BOARD AND ARE CONSIDERED A DRAFT UNTIL FORMALLY APPROVED BY THE PLANNING BOARD.

**STAFF ATTENDEES:** Kevin Angland, Carey Ann Haight, Raina Leavens, Phoebe Marcinek, Alisha Osborne, Charity Yonker.

**PUBLIC ATTENDEES:** Matt Cash, Amanda Ferderer, Ronnie Ferderer, William Ferderer, Anton Giger, Rick Higgins, Bill Levine, Connie Manning, Gary Manning, Raymond Russell, Ronda Wiggers, and Ken Wright.

**1. CALL TO ORDER:** Richard Liebert called the meeting to order at 09:01 AM [00:00:32].

**2. ROLL CALL:**

**BOARD MEMBERS PRESENT:** Dexter Busby, Richard Liebert, Elliot Merja (Online at 09:17), Bruce Moore, Makenzie Rummel, Beth Schoenen, Rob Skawinski.

**BOARD MEMBERS ABSENT:** Elliot Merja (Offline at about 9:55 AM)

**3. APPROVAL OF THE MINUTES :**

**A. Draft Meeting Minutes for April 18, 2023. [00:01:37]**

**1. Board Discussion & Decision**

**Richard Liebert:** Asks if everyone had the chance to review those.

**Dexter Busby:** Moves to approve.

**Beth Schoenen:** Seconds the motion.

**Richard Liebert:** Asks if there are any additions or corrections. He asks if there are any comments from the public on the meeting minutes from April. Hearing none he calls for the vote.

***All in Favor, motion carries 6– 0.***

**4. OLD BUSINESS:** None.

**5. NEW BUSINESS:**

A. Eagle Nest Ranch Minor Subdivision Preliminary Plat Application, Submitted By Ken Wright  
[00:02:41]

1. Raina Leavens presents the Staff Report.

**Motions Presented for the Board's Consideration:**

**A:** I move that the Cascade County Planning Board recommend, after consideration of the Staff Report and Findings of Facts, **denial** of the Eagle Nest Ranch Minor Subdivision Preliminary Plat;

**Or**

**B:** I move that the Cascade County Planning Board recommend to the Board of County Commissioners, after consideration of the Staff Report and Findings of Facts, adoption of said Staff Report and Findings of Facts, and **approve** Eagle Nest Ranch Minor Subdivision Preliminary Plat subject to the following conditions:

1. Cause to be recorded in conjunction with the final plat, a statement of waiver placed on the final plat requiring property owners of each lot in the subdivision to take part in any Rural Special Improvement District (RSID) for the reconstruction, improvement or perpetual maintenance of any county road in the vicinity used to access the major subdivision, or any other road that can be used to access these lots as determined by Cascade County, provided that all other property owners served by said road share equitably in such an RSID. This waiver shall expire 20 years after the date the final plat is filed with Cascade County.
2. A statement shall be included on the Final Plat stating: "Lot owner(s) shall comply with the required Noxious Weed Management Plan, approved by the County Weed Supervisor."
3. Submit a written Weed Management Plan to the Cascade County Weed Board specifying the methods for weed management procedures with regards to this development and incorporate it into the HOA CCRs or file with the Clerk & Recorder's Office along with the Final Plat.
4. The Montana Department of Environmental Quality (MDEQ) Certificate of Subdivision Approval (COSA) must be provided prior to final plat approval.
5. Inclusion in the HOA or on the Final Plat a covenant restricting structure height of no greater than five hundred (500) feet in height.
6. The final plat must contain the following statement: "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, electric power, gas, cable television, wired broadband, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement' to have and to hold forever."
7. Correct any errors or omissions on the preliminary plat prior to final plat approval.
8. File with the final plat submittal a certificate of a title abstracter showing the names of the owners of record of the land to be subdivided and the names of lienholders or

claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

## 2. Board Discussion [00:10:32]

**Richard Liebert:** Asks if there are any questions from the board.

**Dexter Busby:** Says Condition #3 requires a Weed Management Plan and asks if he understand correctly that the Homeowners Association did not exist for this lot.

**Raina Leavens:** Says this lot is not part of the subdivision, even though there are covenants on it.

**Dexter Busby:** Asks about a homeowner's association.

**Raina Leavens:** Says no, and according to number three (3), they can either put it in the Homeowners Association, or they can file it with the plat.

**Dexter Busby:** Says he wanted to make sure.

**Richard Liebert:** Says he has a question on Condition #8 and asks if Ms. Yonker can elaborate on that.

**Charity Yonker:** Says yes and explains that per the statute listed, no public hearing is required, despite what it may say on the agenda.

**Richard Liebert:** Says we will have the public hearing.

**Charity Yonker:** Says that a Minor is not subject to a public hearing.

**Richard Liebert:** Says that he means the pros and cons and since many people are here and they are concerned about this, we will have public comment. He explains the process and asks if there are any other questions.

**Beth Schoenen:** Asks for confirmation that they are just removing the agricultural covenant.

**Raina Leavens:** Says yes, on one lot.

**Richard Liebert:** Says he has a question about the purpose of removing a covenant.

**Raina Leavens:** Says when there is an agricultural covenant on a property, you are not allowed to build on there, or put any improvements on there.

**Richard Liebert:** Says those are the restrictions.

**Raina Leavens:** Says yes. On properties with agricultural covenants, you cannot build on there, but this property does have a building on there, so that is why they are in violation, and we are trying to remedy this [by removing the covenant].

**Richard Liebert:** Says he is looking at the adjacent properties, as some of the people who have provided comment are adjacent property [owners]. He asks if the 5.3-acres was the original size when the covenant was put in place.

**Raina Leavens:** Says it was a little over twenty-eight acres as the original, and the parcel we are talking about was split and an agricultural covenant put on it. People would do that so they could split the property without having to go through subdivision review, and then another piece that was created was an occasional sale.

**Richard Liebert:** Asks if we can pull the map up so we can all see it, as he wants to identify the property, and the adjacent properties.

**Charity Yonker:** Asks Mr. Liebert if he has a preference and if he is okay with Cadastral.

**Richard Liebert:** Says he is just looking at the engineering report and says that it is a good picture. He asks the size of the property back in 1984 and the original tract was much larger than it is now.

**Raina Leavens:** Affirms.

**Richard Liebert:** Says about twenty (20) acres or so.

**Raina Leavens:** Says yes, a little over twenty-eight acres.

**Richard Liebert:** Says and it was all adjacent to this property in question.

**Raina Leavens:** Says it included some of the property surrounding.

**Richard Liebert:** Says right, I am sure people will comment after.

**Raina Leavens:** Says it was never actually subdivided, they used the exemption to create a new lot.

**Richard Liebert:** Says that is why he is trying to sort all this out. He asks for confirmation that there is no Homeowner's Association there.

**Raina Leavens:** Says no.

**Richard Liebert:** Asks if there is record of a Homeowner's Association existing.

**Raina Leavens:** Says no, just record of the covenants.

**Richard Liebert:** Says he is trying to look at the intent of lifting the covenants and asks if it gives them more flexibility with their property.

**Raina Leavens:** Says the purpose is to lift the agricultural covenants on it.

**Richard Liebert:** Says if you are watching or participating on Zoom, to please mute yourself. So, for the benefit of everyone, the agricultural covenant restricts building.

**Raina Leavens:** Says and any improvements to the property.

**Richard Liebert:** Says and any improvements.

**Raina Leavens:** Says yes, it should be only used for an agricultural purpose.

**Charity Yonker:** Says no water, no sewer, or stormwater, because it did not go through Department of Environmental Quality review.

**Richard Liebert:** Says right. I would like to know when the home was built, I am sure the Wrights can elaborate when it was built and any other restrictions, because it says there was a barn there. So, the barn was built after the covenants.

**Raina Leavens:** Says yes. The structures were built after the agricultural covenants.

**Kevin England:** Says the home was built in 2006 per Cadastral.

**Richard Liebert:** Says he is just trying to get an image so he can see it so the adjacent property owners can be informed. He asks for confirmation that the south, east and west are the city. He asks if the applicants are present.

### 3. Public Hearing opens at 09:18 AM, [00:17:56].

**Ken Wright of 500 31<sup>st</sup> Ave S:** Says in 1991 they bought the property, and the real estate agent told him it was zoned agricultural with no mention of an agricultural covenant on the property. We got a permit to build, over the past thirty years I have gone to the county and was granted them to build. The health department granted us a septic permit. I put in a twenty-two-thousand-dollar septic system. My house has been completed since about two (2) years ago, it was started in 1991. In the matter of these covenants that are under contention, I originally put them in there to see what my neighbors would react to and anticipate they will be denied and taken off all the legal paperwork. I just wanted to see who my friends were, and I plan on trying to improve this area and reside there until death. My main concern is when I was granted permits and went to that subdivision meeting, I was told that I misrepresented myself and I was then forthcoming on everything I had built, I had gotten all the proper permits, and they were all granted by the Cascade County Planning Department. If there was a problem with the permitting process, the permits should never have been permitted. It is my hope and recommendation that you guys pass this in my favor so I can continue to live there.

**Richard Liebert:** Says I may have a couple questions for you and asks if he has an engineer with him.

**Ken Wright:** Says he said she was not going to be here.

**Richard Liebert:** Says well, we have the NCI report, and that is a considerable expense as well, is it not.

**Ken Wright:** Says it is.

**Richard Liebert:** Asks what sort of timeframe we are talking about that the permits were issued by the county.

**Ken Wright:** Says 1991.

**Richard Liebert:** Says so it was City/County Planning combined at that time. They split back in 2005 and asks for confirmation that there is an existing home, barn, and the intent is to remove the covenant.

**Ken Wright:** Says yes, the only thing I basically wanted was to have some chickens. There was no chickens and no pigs on the original parcel covenants. He asks why someone should not be allowed to have any pets if it is not for human consumption. He says he has a large ant problem and free-range chickens would solve the problem. Since this process was so expensive, he would at least like the opportunity to have chickens. The neighbors have chickens and sheep so that should not be a problem.

**Richard Liebert:** Asks if there are any other questions for Mr. Wright. He asks Mr. Wright if he bought the property in 1991.

**Ken Wright:** Says yes.

**Richard Liebert:** Asks if the realtor gave him any information about the agricultural covenant.

**Ken Wright:** Says no.

**Richard Liebert:** Says he was never a realtor, but he thinks they would have provided that information in the due diligence.

**Beth Schoenen:** Says she is a realtor, and the agricultural exemption should have been explained.

**Ken Wright:** Says he wanted to greatly improve the property and increase the property values.

**Richard Liebert:** Says alright, sir, at this time we will go to other public comment. We will be talking more [about this]. At this time, I will ask for public comment.

**General Public Comments Regarding [Item]:**

**Anton Giger of Box 2668 Great Falls, MT 59403:** Says he approves.

**Richard Liebert:** Says you are for it, sir.

**Kevin Angland:** Says Mr. Chair, he is making a comment for the next item on the Agenda.

**Richard Liebert:** Says we are not on that project yet, my apologies, we are on Eagle's Nest and that agenda item is later.

**Bill Levine of 3021 8<sup>th</sup> Ave S:** Says he is the attorney representing Mr. and Mrs. Manning, who own the adjacent agricultural parcel to the North. He states the issue before the board is the agricultural covenant created by Certificate of Survey 2313 in 1988 when the parcel was created. The owner at that time took a shortcut to get the property divided. No one here is opposed to the removal, but the question is how it is being removed and what conditions are being put on it during that removal.

The covenants placed by a Mr. Pritchard are still in effect and encumber the Manning's parcel and the Wright's parcels, and several other parcels. Mr. Wright's proposed covenants in two places, directly contradict the existing covenants. He explains that this is why the application is eliciting so many public comments. He states that the Mannings' letter indicates the two conflicts of covenants and reads the section two (2) of the proposed covenants and section three (3) of the original; and the one referencing existing covenants on animals which prohibits pigs and fowl. He says the neighbors asks that Mr. Wright be required to submit a new set of amended covenants that are not in conflict with the original covenants.

**Richard Liebert:** Asks if they would be going back to the original document.

**Bill Levine:** Says that would be up to Mr. Wright. He could declare new covenants if he wants to, but any new covenants would have to coexist with the existing one. They would only be affecting his lot and may not contradict the pre-existing covenants. The old covenants do not go away, but it will create confusion for any new owner regarding which covenants apply. Both sets of covenants apply, and the most restrictive covenants rule. Thank you.

**Richard Liebert:** Says we will be talking again. He calls for additional comment on Eagles' Nest.

**William Ferderer of 2901 6<sup>th</sup> St S:** Says he is a little east and north of Mr. Wright, two lots away. He says he is not opposed to Mr. Wright building. He concurs with Mr. Levine's comments. The road is private, and he does not want traffic through there due to manufacturing.

**Richard Liebert:** Says thank you, we may have more questions for you, too.

**Ronnie Ferderer of 609 31<sup>st</sup> Ave S:** Says he is kitty corner to Mr. Wright, and they do not have an issue with removal of agricultural covenants. He says he is concerned about being blocked from the road by Mr. Wright. He concurs with Mr. Levine's comments, as well.

**Richard Liebert:** Asks if he is talking about 31<sup>st</sup> Avenue South, which runs east to west.

**Ronnie Ferderer:** Says yes.

**Richard Liebert:** Asks if those are all private roads in the county.

**Ronnie Ferderer:** Says that road goes from 25<sup>th</sup> to 31<sup>st</sup> Avenue South in a big horseshoe. The county does not pay for any of that, we pay for that.

**Richard Liebert:** Says so 31<sup>st</sup> Avenue South is a private road, not county.

**Ronnie Ferderer:** Says yes.

**Richard Liebert:** Says and you are Ron, correct.

**Ronnie Ferderer:** Says yes.

**Richard Liebert:** Says alright, and asks any other citizens please come to the podium.

**Raymond Russell of 610 31<sup>st</sup> Ave S:** Says the only thing he has an issue with is the covenants.

**Richard Liebert:** Asks how long Mr. Russell has owned that property.

**Raymond Russell:** Says seventeen years.

**Richard Liebert:** Asks if anyone has questions for Mr. Russell. Hearing none, he says thank you. He asks for additional public comment.

**Amanda Ferderer of 609 31<sup>st</sup> Ave S:** Says she has lived there for nine years and is concerned about changes being made at the property and how that will affect the property for other owners in the future. She says she worries about property values from covenants on Mr. Wright's property.

**Richard Liebert:** Asks Mrs. Ferderer if they have any animals.

**Amanda Ferderer:** Says no. We bought the property knowing we would not have to have farm animals as neighbors.

**Richard Liebert:** Says he has a question for staff and asks if the *[inaudible]* goes straight to Suburban Residential-1.

**Raina Leavens:** Says it is SR-1.

**Richard Liebert:** Asks what that zone allows without a covenant.

**Raina Leavens:** Says it allows for Home Occupations, which he would have to get approved for whatever business he is planning to do out there. We do look at the surrounding uses and if it is in line with the surrounding uses.

**Richard Liebert:** Says he does not have zoning regulations right in front of him, and he is trying to figure out a list of what is allowed in that zoning district.

**Raina Leavens:** Says he would be restricted to what that SR-1 District allows.

**Richard Liebert:** Asks if she can pull that up. He says if you must go through that process that is another application.

**Raina Leavens:** Says correct, a Location/Conformance Permit for any business or any additional animals.

**Charity Yonker:** Says and Suburban Residential-1 District allows for only limited agricultural uses and discusses limitation on livestock based on acreage.

**Richard Liebert:** Asks if that is with or without the covenant, regardless.

**Charity Yonker:** Says regardless of the covenants.

**Beth Schoenen:** Asks if things like a sawmill would need to be taken through the Planning Department for approval.

**Raina Leavens:** Says a sawmill would not be allowed in that zoning district. That is usually an example we get, but we have zoning, so you do not have sawmills [next door].

**Kevin England:** Says Home Occupations typically need to be confined to inside of a building. We do not allow for contractor yards, but there are other home occupations that would be allowed.

**Charity Yonker:** Clarifies there can be no auto repair or restaurants.

**Richard Liebert:** Says everyone around this property is all Suburban Residential-1.

**Raina Leavens:** Says there are some city zoning.

**Richard Liebert:** Says to the west.

**Charity Yonker:** Says the CCZR § 7.3.2 are your Permitted Principal Uses and also the § 7.3.3 those are Accessory Uses, meaning he would just need a Location/Conformance Permit to establish one of these uses listed, and then lastly CCZR § 7.3.4 requires a Special Use Permit. One could do a bed and breakfast with a Special Use Permit.

**Richard Liebert:** Say so anyone wanting to do any of these with their property would need to go through a public hearing process.

**Charity Yonker:** Says only for Special Use Permits.

**Beth Schoenen:** Asks what about Home Occupations.

**Charity Yonker:** Says that is like a Location/Conformance Permit, so that is internally done through the Department.

**Rob Skawinski:** Asks if the department has verified that the covenants that were recorded in 1984 applies to his property.

**Raina Leavens:** Says yes, he brought us that Certificate of Survey 2313 which was verified.

**Richard Liebert:** Asks if there are any questions for the board.

**Gary Manning of 415 31<sup>st</sup> Ave S:** Says he has lived there since 1981 and has no problems except with the covenants issue--citing concerns for future use.

**Richard Liebert:** Says and you live to the north.

**Gary Manning:** Says yes.

**Richard Liebert:** Asks if it is on the private road.

**Gary Manning:** Says yes. The city is just west of the property.

**Richard Liebert:** Asks if Mr. Levine is representing him.

**Gary Manning:** Says yes.

**Richard Liebert:** Asks Mr. Levine to come forward again. He asks Mr. Levine if he has any suggestions on a path forward.

**Bill Levine:** Say he suggests Mr. Wright submit a new set of proposed covenants and strike his section two on businesses and his section four on pets from his proposed covenants because those are the two that conflict with the existing covenants.

**Richard Liebert:** Says he has a question about section five.

**Bill Levine:** Says he agrees that section five is problematic due to how many more residences there are and the fact it is only five acres that it is probably not safe to shoot there. However, it is not addressed in the existing covenants.

**Richard Liebert:** Says we might go after a raccoon in a hen house if it is threatening animals.

**Bill Levine:** Says sure and in section five it refers to self-defense, which is a right no matter what he says about firearms, as everybody has a right to self-defense.



**Richard Liebert:** Says thank you and asks if there are any other questions for Mr. Levine.

**Unk:** Says in that area you can legally hunt with bow and arrow only, and it is legal to shoot out there regardless of hunting season.

**Richard Liebert:** Says he has another question for staff. He asks if someone wanted to start a business if they would still need to go through a process for that Suburban Residential-1 zoning district.

**Makenzie Rummel:** Asks if his neighbors would still be able to have input on the business.

**Raina Leavens:** Says if it is a Special Use Permit, yes, but if it is just a Home Occupation or a Location/Conformance Permit, then no. Those are all lined out in the regulations.

**Richard Liebert:** Says but that is still a public process.

**Raina Leavens:** Says the Special Use Permits, yes.

**Richard Liebert:** Says yes. The other items concern chickens and livestock. He asks if there is latitude there.

**Raina Leavens:** Says they have restrictions on how many they can have based on the size and the acreage, it does line that out in the regulations how many they can have per acre based on if it is large or small.

**Richard Liebert:** Asks how five acres in Suburban Residential-1 would apply.

**Raina Leavens:** Says she thinks it is two (2) large animals per acre, such as a horse; and then small animals are four (4) per acre.

**Kevin Angland:** Says we have a table within the regulations that outline that.

**Richard Liebert:** Says so there are provisions for that.

**Raina Leavens:** Says yes. It is not a free-for-all, there are provisions.

**Richard Liebert:** Says he has learned more about Suburban Residential-1 [District]. Back to Mr. Skawinski and asks if he was going to ask a question or make a recommendation or comment.

**Rob Skawinski:** Says no, he was going to try to make a motion. He moves that they approve and that they add existing covenants from reel document 1631.

**Richard Liebert:** Asks if there is anybody on Zoom with public comment. Hearing none, he asks Mr. Skawinski if he was adding an additional condition.

**Rob Skawinski:** Says he did.

**Richard Liebert:** Says number nine.

**Rob Skawinski:** Says yes.

**Beth Schoenen:** Says *[inaudible]*.

**Richard Liebert:** Says we do not need to amend the original.

**Dexter Busby:** Says no, this is part of the original if that makes sense.

**Richard Liebert:** Says so we are adding item number nine (9).

**Rob Skawinski:** Says yes.

**Richard Liebert:** Asks Mr. Skawinski to re-state that again.

**Rob Skawinski:** Says that the property be subject to the existing covenants recorded on February 4, 1984 on reel 63 document 1631.

**Dexter Busby:** Seconds the motion. He says he has a question for Ms. Yonker. He asks if this is usually a civil motion if it changes whether they just have to go through the other landowner.

**Charity Yonker:** Says for the original ones, yes.

**Dexter Busby:** Says so there is a method of changes those in the system.

**Charity Yonker:** Says yes.

**Richard Liebert:** Asks what that process is.

**Dexter Busby:** Says get permission from the other landowners and everybody agree on the changes. It is not a public process.

**Beth Schoenen:** Says and everybody signs.

**Dexter Busby:** Says yes.

**Richard Liebert:** Says he is just looking at the legal implications.

**Dexter Busby:** Says it has to be that everybody has an opportunity and then I do not remember if it is a majority vote or two-thirds majority, there is some differences in how covenants are read.

**Charity Yonker:** Says it usually depends on the covenants themselves, so they will typically provide a methodology for changing them. Just looking at these, I am not seeing any.

**Carey Ann Haight:** Asks if the Board can hear her.

**Beth Schoenen:** Says yes.

**Carey Ann Haight:** Says she is concerned about the Board taking any interest in HOA covenants discussion, as those are private arrangements, the County does not enforce, we have no role to play with regard to covenants, and if the neighbors feel there is a problem with how the covenants are applied to this property or any other property, that is a civil matter for the landowners to sort out. For purposes of the Planning Board, and its role, the covenants are not an issue. I believe we have a requirement regarding fire suppression, I believe, be addressed in terms of covenants or Homeowners Association, but all the rest of these matters they are debating are beyond the scope of this Board's responsibility of this act.

**Richard Liebert:** Says so with that said, item nine(9) condition would be inappropriate.

**Carey Ann Haight:** Says that would be her opinion.

**Richard Liebert:** Asks if he wants to make the motion to remove it.

**Rob Skawinski:** Says he does not want to make the motion to remove it because he feels that us removing the agricultural covenants from the property should circumvent the covenants that it is already under. He says he does not understand the legal part of that.

**Carey Ann Haight:** Says that lifting the agricultural covenant, only removes the agricultural covenant. It does not affect any of the private covenants that may or may not apply to this property. So, what this Board is doing has no impact on the private covenants one way or the other, as those covenants either exist and are enforceable against the subject property, or they are not. That is not for this Board to decide, and it is not appropriate for this Board to step into private covenants and enforcement that the county has no business in doing that.

**Rob Skawinski:** Asks Ms. Haight how then they would approve the motion to lift it when in his documents he has got covenants that conflict with the existing ones.

**Carey Ann Haight:** Says we are not approving his covenants, we are approving the removal of the agricultural covenant, and we are doing that based on the eight (8) items the staff has recommended.

**Dexter Busby:** Says we are simply removing the agricultural covenant.

**Charity Yonker:** Says when we are looking at the covenants, we are looking to ensure they are complying with subdivision regulations, and our zoning provisions. Both provisions limiting or allowing businesses; business is allowed with the appropriate zoning permits, and only certain kinds. With the livestock, we are also reviewing for conformance with the zoning requirements for limited livestock in that area, and nothing more. So, if property owner wants to impose more restrictive regulations than our zoning regulations, then that is a matter of private agreements and that is what he is doing here with these covenants.

**Beth Schoenen:** Asks [inaudible].

**Charity Yonker:** Says the other covenants are not being revoked on this property. They are continuing to run with the land. They are still in play, and these would be in addition.

**Dexter Busby:** Asks what if they are conflicting.

**Charity Yonker:** Says then there is a private civil issue.

**Richard Liebert:** Asks if condition nine is being kept in there.

**Rob Skawinski:** Says not if the attorney says it is not good. No, I withdraw my motion.

**Dexter Busby:** Seconds the withdrawal.

**Richard Liebert:** Says Mr. Skawinski withdraws the motion and Mr. Busby seconds it. Now back to the original two motions.

**Rob Skawinski:** Says hang on, I have got some more questions. He says we are talking about conflicting covenants, and then it becomes a private civil matter between all these homeowners, and they get to sort it out amongst themselves. He asks if the Board has an obligation to prevent that.

**Carey Ann Haight:** Says, no we do not. It is a contractual relationship amongst the neighbors. The county has no authority, no jurisdiction, we have no place in a discussion or dispute or interpretate those private covenants.

**William Ferderer:** Says he has a question and states that the county has nothing to do with the covenants on the properties. He asks if they have a say whether to lift his agricultural covenants. He asks whether they have a say in what he wants to do with his property.

**Richard Liebert:** Says that is what you are doing right now.

**William Ferderer:** Says he is asking the gal online.

**Richard Liebert:** Says oh, a question for Ms. Haight.

**Carey Ann Haight:** Says she is not sure what the question is and asks if he wants to know if he can repeat the comment.

**William Ferderer:** Says he wants to know if he has a say in lifting Mr. Wright's agricultural covenants so he can build. He asks if this is correct.

**Carey Ann Haight:** Says he wants to lift the agricultural covenants so that his property is in compliance, because he has already built.

**William Ferderer:** Asks if the neighbors out there have a say in that part.

**Carey Ann Haight:** Says yes, you are all here today providing public comment on his request to covenants.

**William Ferderer:** Says he thinks the neighbors will agree and they will all oppose the lifting of the agricultural covenants if he does not follow the existing covenants. You say it is not your problem with the covenants, but we will deny and totally oppose him lifting his agricultural covenants so he can build. That is my comment and that is our right.

**Charity Yonker:** Asks the Chair if she may speak.

**Richard Liebert:** Says yes.

**Charity Yonker:** Says to be clear, this for an agricultural covenant on a minor [subdivision] one (1) lot and is not subject to public hearing per statute. It is only a public meeting, so what the Board is allowing to occur today is really at their discretion.

**Richard Liebert:** Says he wants to explain that people have their voices heard and assures Mr. Ferderer that there are still procedures to follow such as abiding by the district regulations for Suburban Residential-1, Location/Conformance Permits and other requirements. He asks for confirmation.

**Charity Yonker:** Affirms.

**Richard Liebert:** Says people still have a chance to weigh in if something else goes on with the property, just like anyone else would with yours. He explains that the Board's decision goes to the County Commissioners next, and they have the final decision on this. That will be another opportunity to talk to your elected officials.

**William Ferderer:** Says so we still have a say.

**Richard Liebert:** Says absolutely.

**William Ferderer:** Reiterates his opposition to the removal of agricultural covenants if other covenants are not followed. We do have a say in that.

**Richard Liebert:** Says it goes through the Board and then to Commission. Measure twice and cut once, it will go again before the public view for comment before decision.

**William Ferderer:** Says he would hate for Mr. Wright to tear down his house, but he is pretty sure all of the people living out there will be on his side.

**Richard Liebert:** Says that is your right. He asks Mr. Levine if he has a comment.

**Bill Levine:** Says he does not disagree with what Ms. Haight had to say about the covenants, but reiterates that whatever he does with new covenants, old covenants remain in effect. He says as part of agreeing to remove the agricultural covenants, he understands the County and this Board can put conditions on it, and he thinks one of those conditions could be that any new covenants he wishes to declare at this time be consistent with these existing covenants. Thank you.

**Public Hearing closes at 10:10 AM.**

**4. Board Discussion & Action: [01:10:28]**

**Richard Liebert:** Says I think that is what you were trying to do.

**Rob Skawinski:** Says yes.

**Carey Ann Haight:** Says again, we have no role as the county, in regard to private covenants that are imposed by homeowners on their property. We have no role. To impose that as a condition, that brings it under the county's umbrella in terms of compliance and enforcement and it is totally inappropriate for the county to be doing that.

**Richard Liebert:** Says oh, well we took care of item we moved back to the original motion in the staff report. We must make a motion.

**Dexter Busby:** Says I do not think so.

**Multiple Board Members:** *[Inaudible]*.

**Richard Liebert:** Says we went through that. Now we are back to what we have now in the Staff Report. If someone wants to make a motion to that effect. Back to where we started, right.

**Dexter Busby:** Says we must move forward.

**Richard Liebert:** Says that is what I am saying.

**Dexter Busby:** Says it is what he understands about the conditions.

**Richard Liebert:** Says it is the original motion that has the eight (8) conditions in it, not nine (9). We are going back to the original motion. He asks if Mr. Busby wants to do it.

**Dexter Busby:** Motions to approve.

**Richard Liebert:** Asks if there is a second.

**Makenzie Rummel:** Seconds it.

**Richard Liebert:** Says Ms. Rummel seconded it. He asks if there are any other comments or final say.

**Beth Schoenen:** Asks if homeowners with a one (1) lot minor subdivision can change their own covenants without neighbors agreeing.

**Charity Yonker:** Asks if Ms. Schoenen is asking if a one (1) lot minor subdivision can change their covenants down the road.

**Beth Schoenen:** Says right.

**Charity Yonker:** Says yes.

**Dexter Busby:** Says *[inaudible]*.

**Rob Skawinski:** Says they are still subject to the existing covenants.

**Dexter Busby:** Says yes.

**Charity Yonker:** Says correct, anything that has run with the land unless it has been revoked.

**Beth Schoenen:** Says the existing covenants are there, but it is not up to us to enforce them.

**Charity Yonker:** Says procedurally, what would happen since these are private agreements, then any agreed party is going to file for an injunction with the court, and then the court is going to take action at that point.

**Richard Liebert:** Says he has one more comment. This is all about the process and due diligence, and all of us are learning more about this property than can be imagined. You have the right as a public to weigh in on concerns, and that is your right. Wherever it goes from here, it still has to go to county commissioners, probably next month, deciding on this, where you can bring more people to argue the case, it is not the final say today. This is just another step to get to that. Then you can decide if you want to seek council and so forth, that is your right. This cannot be solved in an hour and a quarter. I find it quite interesting to learn about agricultural covenants myself.

**Rob Skawinski:** Says one more point of clarification. He says he understands it is not the Board's position to get involved in private covenants, but from what is understood is that if we lift the agricultural covenants, this property is still subject to the existing covenants on reel 163 1631. In essence, the Mannings' letter already is [in effect].

**Richard Liebert:** Says what Mr. Skawinski is saying is it falls back to that 1984 covenant.

**Rob Skawinski:** Says yes, no matter what we do, it still applies.

**Richard Liebert:** Says he thinks in the interest of the public, now they know what the covenant was and everyone else who has bought property in the eighties or nineties, or nine years ago are fully aware of what is on the table. He asks if someone will call for the question.

**Dexter Busby:** Motions to approve.

**Richard Liebert:** Calls for the vote.

*Motion carries 5 – 1 For: Dexter Busby, Bruce Moore, Beth Schoenen, Makenzie Rummel, Rob Skawinski; Against: Richard Liebert.*

A five-minute recess after the vote. [01:17:35]

**B. Subdivision Variance Application, Submitted By Higgins Enterprises LTD. To Amend Preliminary Plat Approval For River Bend Estates No. 4, A Major Subdivision [01:19:04]**

**1. Kevin Angland presents the Staff Report.**

**Motions Presented for the Board's Consideration:**

**A:** I move that the Cascade County Planning Board recommend, after consideration of the Staff Report, and adopt said Staff Report, and deny the River Bend Estates Subdivision No. 4 variance application requesting a variance from Section 10-2(A)(1) upon a finding that strict compliance with the Cascade County Subdivision Regulation will result in undue hardship;

**Or**

**B:** I move that the Cascade County Planning Board recommend, after consideration of the Staff Report, and approve the River Bend Estates Subdivision No. 4 variance application requesting a variance from Section 10-2(A)(1) upon a finding that (1) strict compliance with Section 10-2(A)(1) will result in undue hardship; and (2) strict compliance with Section 10-2(A)(1) is not essential to the public welfare.

**2. Board Discussion [01:37:28]**

**Richard Liebert:** Says thank you to Mr. Angland and asks if the River bend Estates can be pulled up on the map and identify the buffer.

**Kevin Angland:** Says in the application is an exhibit that was given by an engineer that should show the area.

**Richard Liebert:** Says he did not get anything in the mail. He says he wants everyone to see the lots and buffer in question.

**Kevin Angland:** Says that is the preliminary plat for phase four (4), and where you see the arrow and the scale on the map, that is the remainder lot the buffer would be on. It is adjacent to the property owned by Anton Giger on the east side.

**Beth Schoenen:** Says so that is not a road, that is a property.

**Kevin Angland:** Says that is a property. The access will be on Boundary Line Lane.

**Richard Liebert:** Says he is wondering where the hundred-foot buffer is.

**Kevin Angland:** Asks Ms. Yonker if she can pull up the variance application. Yes, there it is. It is a bit difficult to see, but there is a dashed line right about where it says "188". That "188" in the middle is considered prime farmland and then that dotted line that forms a rectangle is the buffer zone. It calculates out to approximately one and a half acres.

**Richard Liebert:** Says that is on the property line there.

**Beth Schoenen:** Says so near the pink line.

**Kevin Angland:** Says the pink line would be the remainder tract line, yes.

**Richard Liebert:** Says right at the arrow.

**Kevin Angland:** Asks if it can be zoomed in.

**Richard Liebert:** Says it helps us get a better perspective.

**Kevin Angland:** Says slightly to the right of Lot 48, where you can see the dashed lines, where the arrow is pointing to the proposed setback.

**Richard Liebert:** Says we have an image up and asks if there are any questions from the Board for Staff. He says we have seen this before when it came through in 2022. *[Inaudible]*.

**Dexter Busby:** Says *[Inaudible]*.

**Richard Liebert:** Says if there are no more questions at this time, he asks Ms. Yonker if we need formal proponents.

**Charity Yonker:** Says yes. It is a public hearing.

### 3. Public Hearing opens at 10:42 AM, [01:42:02].

**Matt Cash of Triple Tree Engineering:** Says this variance was requested to eliminate the condition of approval the required buffer. He says that the twelve lots included in the plat do not include this residential buffer and feels they do not need to subject to the hundred-foot buffer, and future development of the property would be subject to Department of Environmental Quality review and sanitary restrictions being proposed. They would like to eliminate the covenant for the buffer based on the twelve lots.

**Richard Liebert:** Asks if there are any additional questions. Hearing none, he thanks Mr. Cash.

**Public Proponents:**

**Anton Giger of 8300 Fox Farm Road:** Says he used to farm that same land.

**Richard Liebert:** Asks Mr. Giger if this impacts him directly.

**Anton Giger :** Says it borders his property. It is right next to him.

**Richard Liebert:** Says thank you and asks if there are any other proponents. Hearing none, he calls for opponents.

**Public Opponents:** None.

**Public Hearing closes at 10:49 AM.**

#### 4. Board Discussion & Action: [01:44:45]

**Richard Liebert:** Asks if there are questions for the applicant and discussion or thoughts.

**Rob Skawinski:** Asks whether all the findings have been satisfied.

**Kevin Angland:** Says they have not. Regarding the criteria for undue hardship, the subject property the buffer would be on does not have any topographical differences to lots adjacent as well as different soils, therefore any other lot in that are that would be going through the subdivision process that still has prime farmland would still be subject to the same regulations in the Cascade County Subdivision Regulations (CCSR) for the hundred-foot buffer.

**Rob Skawinski:** Says thank you.

**Richard Liebert:** Asks what the impacts are to the other properties, or implications.

**Kevin Angland:** Says the implications would be that future development on the remainder lot would be that if the buffer were not in place, it would be encroaching on agriculture land. It is not in production now, but it is still in prime farmland, so folks brought up last time, it is looking toward the future. It goes hand in hand with our growth policy so it may be used in future.

**Richard Liebert:** Asks how long the property in question is.

**Kevin Angland:** Says the one to the east is Mr. Giger's property.

**Richard Liebert:** Says so that is Mr. Giger's property.

**Kevin Angland:** Says yes.

**Richard Liebert:** Says that would impact his property.

**Makenzie Rummel:** Says if he would want to subdivide, he would want the ability to do that.

**Richard Liebert:** Says right.

**Kevin Angland:** Says or if anyone ever wanted to put that back into agricultural production, and it would be more in line with the harmony of uses. As the remainder lot gets developed, there would not be an encroachment with the agricultural land with the buffer space provided.

**Richard Liebert:** Says Mr. Giger is a proponent of this, on the record.

**Kevin Angland:** Affirms.

**Beth Schoenen:** Asks Ms. Yonker if she can bring up the map. She asks if the buffer zone is where the arrow is pointing.

**Kevin Angland:** Says yes.

**Beth Schoenen:** Says so any other further subdivision would be a hundred-foot gap in between.

**Kevin Angland:** Says it would be included in the covenants that in this location, there are no structures allowed to be built.

**Beth Schoenen:** Says oh, okay. So later on, if you are doing other things there, there would be an open area.

**Kevin Angland:** Says not necessarily, a future developer could have that area incorporated as parkland if it is a major subdivision and we do have those requirements. So that space could be left undeveloped or serve a different purpose in the future.

**Beth Schoenen:** Says so it could be used.

**Kevin Angland:** Says yes.

**Richard Liebert:** Says the variance would allow a structure then.

**Kevin Angland:** Says yes, it would strike the hundred-foot buffer from the *[inaudible]*.

**Richard Liebert:** Says it would allow and kind of structure then.

**Kevin Angland:** Says it would still depend on zoning and meet setbacks in the regulations.

**Charity Yonker:** Asks the Chair if she may clarify his question. She explains that the condition that was imposed, which was condition one (1), was to put the provision in the actual CCRs, so if there is a structure, anybody part of the association knows that they have to maintain a one-hundred-foot buffer from any prime agricultural farmland. What seems to be the point of confusion is that this has to be delineated on the plat, which is not what the condition requires. Putting it on the plat may pose an issue later if they are no longer adjacent to prime farmland. The condition as imposed does not require it to be placed on the plat. It requires it in the CCRs, and it is going to be structural-specific based on orientation of the adjacent farmland.

**Makenzie Rummel:** Says if the ground is not prime farm soil, the buffer goes away.

**Charity Yonker:** Says that is correct.

**Dexter Busby:** Says if they develop this open land, will it not make this a big open area between two developments.

**Rob Skawinski:** Says it will go away.

**Charity Yonker:** Says the condition is to put it as a condition in the CCRs. The condition is not to put it on the plat. If it is placed on the plat and if it goes away in the future, it will still be on the plat and will be an issue later.

**Dexter Busby:** Says it would be a problem later.

**Charity Yonker:** Says yes.

**Richard Liebert:** Says so if we do not have the variance, it stays as is.

**Charity Yonker:** Says right.

**Richard Liebert:** Asks if there are any questions for the Board, applicant or anyone else. Hearing none, he says we have two motions we can take. He asks Mr. Higgins to come to the podium. He says to Mr. Higgins that he would like to hear how the variance affects him directly, with yes or no answers.

**Rick Higgins:** Says phase four (4) is not going to infringe on this prime agricultural land, and he understands the remainder portion of tract one (1) is affected by this agricultural property. He says they are wanting to get approved for subdivision in the future. He asks if they can go back to that map as he has a concern about a discrepancy between maps from the Conservation District and the one he has. He says there is only a three-acre section of prime farmland within the blue area. He says the hardships is putting the designation on the property that should not affect the prime farmland.

**Richard Liebert:** Says a lack of a variance would hinder your development.

**Rick Higgins:** Says right.

**Dexter Busby:** Says on this map, we are talking about a piece of property that is narrow and about three hundred feet long out of the whole quarter mile of property with the hundred-foot buffer, so it is an isolated piece of buffer. He asks if he understands that correctly.

**Richard Liebert:** Says it is the way he understood it.

**Dexter Busby:** Says eh understands the purpose of this the way everything is written.

**Richard Liebert:** Asks if it is a hundred foot by a certain width.

**Dexter Busby:** Says a hundred feet wide and three hundred yards long.

**Richard Liebert:** Says one big rectangle.

**Multiple Board Members:** *[Inaudible]*.

**Richard Liebert:** Says that is what he is trying to get at and why we need engineers.

**Dexter Busby:** Says you can see it right here.



**Richard Liebert:** Says going due north.

**Dexter Busby:** Says yes.

**Richard Liebert:** Says that is all the questions he has. He asks if there are questions from the Board. Hearing none, he thanks Mr. Higgins.

**Dexter Busby:** Says *[Inaudible]*.

**Richard Liebert:** Says we have two motions and not amended any of them.

**Dexter Busby:** Motions to approve variance application.

**Richard Liebert:** Says thanks for the motion and we will editorialize. He asks for a second.

**Bruce Moore:** Seconds the motion.

**Richard Liebert:** Says now you can editorialize.

**Dexter Busby:** Says it is not essential to public welfare, and he believes it is a hardship whether due or undue, because when it comes to development of property, if he is going to develop it, it serves no useful purpose as a subdivision development and do not see the necessity for it.

**Richard Liebert:** Asks if there are any other Board discussion or comments.

**Beth Schoenen:** Asks Mr. Angland the purpose of the buffer.

**Kevin Angland:** Says it is pertaining to soil and we have a direct callout in the Growth Policy about soil, but it does have an effect on how someone would enjoy their property as well. Usually, it is stuck on the plat as an agricultural covenant.

**Charity Yonker:** Says a statement, yes.

**Richard Liebert:** Asks Mr. Giger if it buffers his property.

**Anton Giger:** Says no it is near it.

**Richard Liebert:** Says but as a farmer and property owner you approve.

**Rob Skawinski:** Says he has a question for the staff, or maybe legal. He asks if it the applicant's legal obligation to prove the undue hardship.

**Charity Yonker:** Says yes, it is the Applicant's burden to prove the undue hardship, and the undue hardship are two criteria have been provided so in both of those criteria, findings need to be made that those have been satisfied.

**Rob Skawinski:** Says and it is the Staff's analysis that they have not.

**Charity Yonker:** Says correct.

**Dexter Busby:** Says *[inaudible]* a usefulness for anybody.

**Bruce Moore:** Says well I *[inaudible]* develop it.

**Dexter Busby:** Says it is still an isolated piece because there is nothing to the north of it and south, it is two hundred yards long and a hundred feet wide.

**Richard Liebert:** Asks if there are any other questions for comments for staff. There is a motion on the floor. Hearing no further comment or discussion, he calls for the vote.

***Motion Carries For: Dexter Busby, Richard Liebert, Bruce Moore, Makenzie Rummel–  
Against: Beth Schoenen, Rob Skawinski .***

**Rick Higgins:** Asks if he can get his maps back.

**Richard Liebert:** Says of course.

**Charity Yonker:** Says just to be clear, it goes to the County Commissioners next, this is just a recommendation to the Commission.

**Richard Liebert:** Says measure twice and cut once.

**Multiple Board Members :** *[Inaudible]*.

**Rob Skawinski:** Says the reason he voted the way he did was because he currently has property in the city that is a four-plex that built over the top of the neighbor's sewer service. The house was built first and the same landowner owned both lots. The sewer service went to the alley. Four years later they built a four-plex over the top of the sewer, which is not allowed. Somehow, it got done and now there are issues because they did not think ahead. This has given me a new appreciation for following the regulations and this hundred-foot buffer may affect the next buyer of that property. He asks if this makes sense.

**Richard Liebert:** Says yes.

**Rob Skawinski:** Says you never know what is going to happen in twenty or thirty years.

**Richard Liebert:** Says it informs the public and all of us about the consequences.

**Beth Schoenen:** Says it is part of the policy, you know, because the requirements were not met.

**Dexter Busby:** Says the thing that bother him about this one is the different soil types there and it is a piece of isolated soil type that just interrupts the development.

**Richard Liebert:** Says it is all relative with findings and facts, when others live next to it, it makes a difference.

**Dexter Busby:** Says it is dramatic.

**Rob Skawinski:** Says this was open ground at the time.

**Richard Liebert:** Says Staff report, findings and due process, let us move on to our other last action item.

C. Conservation Easement, CE #001-2023, Submitted By Montana Land Reliance [02:06:26]

1. **Charity Yonker presents the Staff Report.**

**Motions Presented for the Board's Consideration:**

**A:** I move the Cascade County Planning Board, after reviewing the proposed conservation easement presented by the Montana Land Reliance, **adopt** the Staff Report in its entirety, and **find** that the proposed conservation easement is in general compliance with the Cascade County's Growth Policy and **recommend the proposed conveyance be executed** .

**Or**

**B:** I move the Cascade County Planning Board, after reviewing the proposed conservation easement presented by the Montana Land Reliance, **find** that the proposed conservation easement **is not** in general compliance with the Cascade County's Growth Policy and **recommend the proposed conveyance not be executed** .

4. **Board Discussion & Action:** [02:16:58]

**Richard Liebert:** Says thank you and asks if there are any questions from the Board. He asks if there are any comments from the public. He asks what the financial benefit for the applicant is.

**Charity Yonker:** Says she does not know the answer off hand.

**Richard Liebert:** Says he does not know if anyone else here would know, and he is sure there is a financial incentive.

**Dexter Busby:** Says maybe a tax break.

**Richard Liebert:** Agrees with Mr. Busby.

**Dexter Busby:** Says he does not know how they do it. He asks what the tax situation with the county is.

**Charity Yonker:** Says she also does not know that without a comparison.

**Dexter Busby:** Says in general though we do not know how much.

**Richard Liebert:** Says this is a substantial piece of property. He says he knows most of those folks. He says if there are no other questions or public comment, we would entertain a motion. He says he thinks the last one they did was over toward Cascade, and it was a couple thousand acres.

**Dexter Busby:** Says this is pretty substantial.

**Richard Liebert:** Says so it meets all the provisions of the Growth Policy.

**Beth Schoenen:** Motions to approve.

**Bruce Moore:** Seconds the motion.

**Richard Liebert:** Asks if there are any other questions, or discussion from the board. Hearing none, he asks if there are any questions from the public. Hearing none, he calls for the vote.

**Motion Carries For : Richard Liebert, Bruce Moore, Beth Schoenen, Rob Skawinski– Against: Dexter Busby, Makenzie Rummel .**

**Richard Liebert:** Asks if there is anything else on this one.

**Charity Yonker:** Says no, and that she will present the recommendation to the Montana Land Reliance later today.

#### 6. BOARD MATTERS [02:21:33]

**Richard Liebert:** Asks if there is a training session coming up.

**Charity Yonker:** Says yes, and Ms. Fogerty will coordinate the training and three of you have already let her know you will be attending, and if any others want to, please let her know.

**Richard Liebert:** Summarizes: Thursday night and contact Ms. Fogerty to let her know.

#### 7. PUBLIC COMMENTS REGARDING MATTERS WITHIN THE BOARD 'S JURISDICTION [02:22:00]

**Ronda Wiggers of 417 US Highway 89:** Says she is member of the Great Falls Homebuilders Association. She mentions the revisiting of the Growth Policy and that the legislature has recently passed a number of new bills that need to be incorporated into the regulations. She asks that the Board keeps in mind these new items as there has been a few instances of overreach and keep in mind the large umbrella of large concepts and we have to match the zoning with the legislation, which is what gives us half football field sized areas in the middle of nowhere that are prime agricultural areas. That is not the Staff's fault, they did not do this. This is because we have passed an overarching legislation in favor of agricultural land uses. She says she hopes this is considered when the Growth Policy is revised next, to show how the concept looks on paper and the difference it makes in practice. She asks the Board to reconsider what they have done today with a public hearing for a first minor subdivision. Montana Code Annotated 76-3-609 which is the review of procedure under 2 (e) says, "the governing body or its authorized agent may not hold a public hearing for first minor subdivisions from a tract of record as described in subsection 2". She says she understands the idea that the Board wanted to hear from the neighbors, and it is a nice idea, but it is a really good way to read in an op ed in the paper that you listened to forty-five people opposing what you did, and you ignored them. You legally cannot hear them. It is also a good way for you to end up in court, because now you have to prove that your decision has nothing based on those people you listened to in that public hearing. As the board looks through them and as the

committee wrote the subdivision plans, understand that we are balancing two set of property rights; those of the neighbors and your right to do what you want with your property. We all would like to control our neighbors; nobody wants our neighbors to control us. That is a tough balancing act, but in the first minor subdivision, that is exactly how we balanced it. This is not one over the other and is also why under the Suburban Residential-1 District, we wrote a whole list of things that can and cannot be done, because it does not go through public review. You put a first minor subdivision through public hearing, and I would like to officially object. The Homebuilders do not want you to set a precedent of trying to override state law. Those are not subject to public hearings for a reason. Thank you.

**Richard Liebert:** Says point well taken on the proper protocol. He says he still thinks the public has to weigh in on it and the decision was from the initial finding. We have to be careful on how our opinions are formed and so forth and how we present facts. The point was well taken. Thank you.

**Beth Schoenen:** Says so technically, the public can be here but not have time to speak.

**Richard Liebert:** Says no, they have a right to speak. That is Montana law, the right to participate and the right to know. That does not mean they have the right to dominate but they have the right to participate and when you identify proponents and opponents you are sorting people and generally when you open it up anyone can come up and talk about the topic. It is a fine line. He asks what happens if the others want to come and do something different with their property. The other applicants can argue they do not like their neighbor's plans, either.

**Ronda Wiggers:** Says she believes what your Staff is trying to tell you is that when we wrote the zoning, and you were at the table when we wrote the zoning if I recall correctly, there are sections in it. If I buy a property that is zoned Suburban Residential-1, I have a whole page of things I can do without ever coming to talk to you. There is another page of things I can do but getting a permit, again never talking to the Board, just the Staff because we have said those are probably okay to do within reason. It is a difference between running a Tupperware business out of my house or holding concerts that last until three (3) in the morning. The staff reviews those for conformity. The next one requires you to come in and offer comment. We have categorized those for a reason, so we do not have folks in here attempting to control their neighbors' smallest choices. What I am saying is that not only does the first minor subdivision not require a hearing, it says you may not hold a public hearing. I think we might have come very close to violating that. There is a reason for that, it was debated thoroughly at the legislature, and it is a law.

**Dexter Busby:** Says to Ms. Wiggers that there are three (3) or four (4) things we must think about with that. Old planning departments gave us no opportunity to make any changes by issuing zoning and septic permits, and technically should not have been done. The second part of that is that we cannot just not have the public here. We cannot stop them from having an opinion.

**Ronda Wiggers:** Says she would just ask that you clarify with the legal staff where the line is, and that she knows that that cannot be a public hearing. You would have to prove otherwise if you were taken to court over it, you would have to prove the denial was not based on the public opinion. She says had that been her minor subdivision, she would have begun by objecting to the fact that the Board were holding a public hearing. She says she does believe that the process from now on that you just did today will be administrative, and she will be allowed to do that in office without you ever talking about it. We have removed that from your board for exactly that reason. You have a public meeting; you must allow the public to speak but are not allowed to listen to the

public. That makes no sense. You may not take their comments into consideration. It is against the law and that is not allowed.

**Richard Liebert:** Says the legislature went through many hearings on subject such as childcare and so forth. We have learned a lot today, thanks everyone for being here, remember there is Board training Thursday night. He asks if there is anything else.

**8. Adjournment at 11:36 AM [02:32:04]**

**Richard Liebert:** Says he will accept a motion to adjourn.

**Rob Skawinski:** Motions to adjourn.

**Dexter Busby:** Seconds the motion.

DRAFT