COMMISSIONERS APPROVAL

CHILCOTT

THOMPSON

LYONS

PLETTENBERG (Clerk & Recorder)

Date.....June 4, 2007

Members Present..... Commissioner Greg Chilcott, Commissioner Alan Thompson and Commissioner Howard Lyons

Minutes: Beth Farwell

The Board met for the following administrative issues:

Resolution No. 2112 to sell county vehicle (weed truck) – Commissioner Thompson made a motion to approve Resolution No. 2112 as presented. Commissioner Lyons seconded the motion and all voted 'aye'.

The Board reviewed a contract extension for labor negotiator Jeff Minckler. Commissioner Thompson made a motion to extend the contract from December 31st through January, 2009. Commissioner Lyons seconded the motion and all voted 'aye'.

Commissioner Thompson made the following motions for certain budget transfers and cancellations of budget amendments due to duplications or corrections:

- Resolution No. 2113 – Rescinds Resolution No. 2079 for a budget amendment due to a needed correction
- Resolution No. 2114 – Rescinds Resolution No. 2024 for a budget transfer due to a needed correction
- Resolution No. 2115 – Budget transfer within the County Attorney's Office for various line items
- Resolution No. 2116 – Budget transfer within County Land Info to GIS
- Resolution No. 2117 – Budget transfer for motor pool usage not budgeted for by 911
- Resolution No. 2118 – Budget transfer within Clerk & Recorder's Office for various line items
- Resolution No. 2119 - Budget transfer within Clerk & Recorder's Officer for various line items
- Resolution No. 2120 – Budget transfer in Park Fund to Bitter Root Land Trust
- Resolution No. 2121 – Budget transfer within Commissioners' transition account fund

- Resolution No. 2122 – Budget transfer within the DES fund for auto mileage
- Resolution No. 2123 – Budget transfer within the Weed Fund for various line items
- Resolution No. 2124 – Budget transfer within the Clerk & Recorder's Office for various line items
- Resolution No. 2125 – Budget transfer within Clerk of Court for various line items
- Resolution No. 2126 – Budget transfer within the Treasurer's Office for various line items
- Resolution No. 2127 – Budget transfer within the Clerk & Recorder's Office for various line items
- Resolution No. 2128 – Budget transfer within the Planning Office for various line items
- Resolution No. 2129 – Budget transfer within the Planning Office for various line items
- Resolution No. 2130 – Budget transfer within the Planning Office for various line items
- Resolution No. 2131 – Budget transfer within the Planning Office for various line items

Commissioner Lyons seconded the motion and all voted 'aye'.

Minutes: Glenda Wiles

The Board held a closed door litigation strategy with Civil Counsel Alex Beal in regard to the Lords Et all litigation. Also present at this meeting was Planning Director Karen Hughes.

The Board then held an open settlement meeting on the Lords Et all litigation. Present at this meeting were Civil Counsel Alex Beal, Planning Director Karen Hughes and members of the public and press. Plaintiff Attorneys Terrance Perry and Bill VanCanaghan, were present as was the Attorney representing the County, Alan Chronister.

Commissioner Chilcott called the meeting to order noting public comment will be allowed.

The Plaintiff's counsel presented an overview of the settlement agreement. Bill VanCanaghan stated this lawsuit is in U.S. District Court alleging violations of the plaintiffs' civil rights in the subdivision review process. This case has allegations of damages which include punitive and compensatory. This settlement agreement hopes to reach an agreement that some plaintiffs be allowed to proceed forward with their applications. Part of what started this litigation process was the '1 for 2' (interim zoning which came about due to the ballot initiative on the November ballot) which shut down the plaintiffs' subdivision. They would like the process returned to the status quo so the

plaintiffs may proceed and have their applications reviewed by planning on a timely basis. The Plaintiffs have agreed to waive the fees for damages along with attorney fees. The settlement agreement has been hard work. This document is for 11 of the 14 plaintiffs in this case. Three of the plaintiffs are not included in this settlement. The settlement agreement specifically names the plaintiffs that are to be reviewed under the new subdivision regulations. Bill stated the applications need to be processed in a fair and timely process. He also noted the plaintiffs' staff would be able to assist the county in this process in order to move these forward in a timely basis. If independent consultants are not available, the County would need to move forward in a Request for Proposal (RFP) process which would bring independent consultants into the review process. Bill stated some of these 11 subdivisions were quite far in the application process and those time lines are taken into account.

Alan Chronister, Attorney for the County noted one unusual situation the county is facing is the county has insurance from MACo for legal costs but no coverage for damages. He stated that factor needs to be kept in mind while they make an analysis of this settlement. Another important factor is that none of these plaintiffs (14 plaintiffs with 11 being settled) are being promised anything other than the county will review and process their applications, which will then be taken to the Board for a preliminary plat decision. Alan stated he felt this is simply a way to get through the process. The proposed agreement does not require the county to pay for damages or attorney fees. Also, part of the problem was the county's inability to process the work load that was brought forward by developers. This agreement recognizes that problem and establishes a RFP for contract in order to bring in professional consultants for larger projects. That will free up the planning staff to handle smaller projects and other related planning activities. The plaintiffs will pay for those consultants, not the county, thus no extra burden for the taxpayers. Alan stated there are some changes, though substantive, and grammatical, in the settlement agreement that the Commissioners need to be aware of.

Alan then gave some stylistic examples of those changes:

- Page 1: First line simple change of grammar. First whereas, ends in semi colon rather than a period.
- Page 2: strikes Big Sky Development Group; Page 2: grammatical changes in first paragraph entitled "The parties…"
- Page 3: #3 the RFP/RFQ process is defined in the first sentence.
- Page 5: fourth paragraph defines a preliminary plat decision. Page 5: #7 adds the word 'supplemented' and strikes the word ever. Page 5: #9 strikes the remainder of the sentence after approval. Strike 'either in the first incidents or upon first submittal as above'
- Page 8: #26 strike the word 'and' and 'no' and after the word 'add' 'as to any'

Public Comment was then called for.

Kathleen Driscoll asked how the county could have better insurance coverage in order to handle the damages portion of this litigation. Commissioner Chilcott stated that is not the

issue today. Kathleen stated it is the issue because she sees the County has to settle because they do not have coverage of the damages portion.

Attorney Sarah MacMillion spoke as a representative for the Bitterrooters for Planning. She stated citizens have the right to participate under the constitution, as well as the right to know. She stated these documents were just provided at the beginning of the meeting and it is not enough time to review them properly. She felt the appropriate thing to do is allow the citizens enough time to review the documents which will then provide meaningful comment.

Michael Howell of the Star asked if this settlement only covers 11 plaintiffs, what about the other three plaintiffs? Alan Chronister stated through this negotiation process there have been differences identified between the 11 plaintiffs and the remaining 3. Rather than hold up the agreement, they all agreed to move ahead on the first 11 in regard to a settlement. Alan stated he wants to continue negotiations with the Plaintiffs' attorneys on the remaining three suits.

Michael Howell of the Bitterroot Star Newspaper also commented he has not had time to read this document and might have further questions after he takes the time to do so.

Joel Gallob of the Ravalli Republic Newspaper asked about the exposure to liability for the county. Alan stated the answer is somewhat predictive. The county's exposure was quite high and if they found themselves in court, the court could determine damages to what the plaintiffs were entitled to; it could be in the millions of dollars. (Keilly vs. City of Red Lodge – has many similarities according to Alan). Alan stated he based his opinion on this case on the subdivision delays. In this case the court ordered the county to approve the subdivision and damages of $200,000.00 plus $200,000 in attorney fees. The Supreme Court upheld the damages, not the attorney fees. Alan stated in this case of 11 plaintiffs in Ravalli County, doing the math beats out a 'great amount of damages' the county could be held responsible for.

Sarah MacMillion stated the settlement could be divided into two separate issues; the process for deadlines and the interim zoning. She asked if there is a precedent for separating those issues out.

Alan stated the proposal addresses that issue in that either the zoning will stop consideration of these subdivisions or not. Under this settlement, the proposals are allowed to move forward. The resubmittal only speaks within the review process; which entitles the County to review the subdivision and a County may send out a deficiency notice and the applicant will be required to resubmit. Under a bifurcation, as Sarah has suggested, he is not sure how they would be able to do that.

Sarah stated certain claims could be dismissed; so could there be an agreement that the plaintiffs resubmit and hire the consultants, then not apply any new ordinances? She stated she understands the deficiency notice, but was there any consideration of simply settling the damages and separating out the zoning ordinance?

Alan stated one of the things the County agreed to was while the applicant is under review, the County agrees not to impose zoning that would cause a material alteration of the project. There is also some language under #9 that addresses zoning that might occur after there is preliminary plan approval. His understanding of the law is that once the preliminary plat approval is granted, then whatever is provided for is grandfathered in for zoning anyway. Thus the County can not impose zoning after preliminary plat approval is granted. However, under MCA Title 76 Chapter 2, there is an ability to change or impose the zoning.

Joel Gallob asked what an unreasonable time delay for the approval process is. Alan stated the planning staff did an in-house evaluation of the involved subdivisions making an estimate of the time to complete them. The 11 applications were in different states of completion; some ready for commission hearing other at the beginning stages. The time estimates from planning have been shown in Attachment A which will show timeline goals.

Citizen (unknown name) asked if this set a precedent for future subdivisions and does the '1 for 2' still apply? Alan stated the short answer is no. Technically the precedent is only done by the court; everything else is taken from its own facts. These are 'simply a roadmap for peace and blueprint for progress'.

Phil Taylor stated the information being presented today in document and by this meeting is huge and his group would like several weeks to review this settlement agreement. He stated the law allows the citizens to participate in this process.

Commissioner Chilcott stated he believes this settlement agreement is litigation strategy and the open meetings act does not apply here for continued participation by the citizens. He stated the Board is simply trying to allow the public to see how the Board arrived at this decision, and they are not attempting to violate any open meeting act. Alex Beal stated his role is to deal with the procedural areas and the open meeting law is not the clearest to interpret. He sees the public as having the right to comment and the Attorney acting in behalf of the Board of County Commissioners and the Commissioners themselves should make their comments public in this regard. Alex further noted there are no court cases in regard to settlement agreements, but every settlement agreement is not the same. They only have so much time in this process. The public can read this seven page agreement while they are sitting in this meeting.

Alan stated it is not his job to deal with the public process of this settlement agreement. He simply addresses the settlement agreements, and those never get done through public meetings. It is only in an extraordinary case that the local governing body allows this, and most of the time it does not happen.

Sarah stated she appreciates this comment by Alan, but noted there are some case laws in regard to settlement agreements as they are brought forth due to citizen initiative. In this

case, the Ravalli County Commission chose to hold this meeting and she would like more time to review the document.

Alex stated there is no specific language on public comment and how it can be done. He indicated it might be a good idea for the Commissioners to allow the public to voice their opinions on this matter.

Commissioner Chilcott called for Board deliberation and discussion.

Commissioner Thompson stated he does not want to strap the citizens with additional settlement payments. He stated they visited with various attorneys and some attorneys would not even represent the county. He feels this issue comes down to fairness. The planning staff becomes busy and can not meet the deadlines. Most developers realize the County is trying and showing due diligence. However, when the initiative was passed it stopped everything. The settlement documents needs to be decided this date. He noted the changes that were made which he appreciates.

Commissioner Lyons stated he has nothing to add as it is 'beyond the Commissioners' but they must come to the agreement. Some of the developers have already put up quite a bit of money to reach this decision. Therefore the Commissioners need to approve of the agreement as the attorneys work the language out.

Commissioner Chilcott complimented the attorneys and planning staff for their hard work and ability to 'give and take'. The planning staff's number one priority is planning and zoning. The Plaintiffs' attorney has made concessions to keep zoning at the forefront of this agreement. The Commissioners have responsibility to the applicants to review these applicantions in a timely manner and through a reality check; those deadlines are not being met. Commissioner Chilcott also noted the applicants have allowed this in the past, noting this is a fair and equitable settlement for both the applicants and citizens. Several million dollars in damages could occur in this litigation, and this settlement does not put the burden on the tax payers. This also allows some protection of the '1 for 2' as it has not been put under judicial scrutiny. Commissioner Chilcott also noted the 11 plaintiffs are paying their own attorney fees which keeps the costs down for the citizens. He also felt this settlement will keep zoning as a priority and the '1 or 2' intact. Commissioner Chilcott also expressed concern about page 3, first paragraph, of the settlement agreement.

Alan stated the Commissioners' concern in regard to this paragraph is the prior page which provides that the county will go forward with consultants and staff to work on the applications within the time line. The concept is there might be delays outside of the county's purview and the county should not be responsible for those delays. The paragraph on page 3, however puts the delay back on the county. Alan noted that if there is a deficiency and the county needs more information and the applicant delays in his response, the language makes the county the responsible party. He stated he apologies for not addressing this language with the Plaintiffs' Attorneys this morning and asked if they would like to address this language now.

Bill stated both he and Terrance would like to address this issue prior to any further discussion. They asked for a 30 minute recess.

Sarah brought up paragraph 7 and Exhibit A, in regard to if the old or new regulations apply to these 11 plaintiffs (applications)? Bill stated if they review the paragraph, they can strike the word 'ever' and address those that are in effect after October 1st (paragraph 7). Bill also noted under #16, they would like to include the words 'agencies and political subdivisions'.

Terrance stated the citizens can review those documents during this 30 minute recess.

After a 50 minute recess, the Board reconvened and the meeting was called to order.

Discussion of page 3 first paragraph for delays on processing then took place. Alan addressed the concern of various delays that would not be under the control of the County. He stated if such events occurred, the County should not be penalized and hauled into court. Language to address this issue could be "unless as a result of acts defined herein, in no event shall this provision be constructed to show the defendant delayed the process of 30 days within an aggregate period" (*paraphrased by Glenda*). The second paragraph would also need some changes to accommodate this new language. Bill VanCanaghan stated they were satisfied with this change.

Citizen Claire Kelly asked if the Board was going to have another meeting with the other three plaintiffs, and also asked when that issue would be resolved. Alan stated he is not sure when the other three plaintiffs' issues will be resolved. However all of the plaintiff's have stated they would continue to work with the County. Alex stated the other three litigants would have a similar proceeding as these eleven.

Sarah emphasized the time they are being given to review this settlement document is not sufficient to make reasonable comment.

Public Comment was now closed and Board deliberation took place.

Commissioner Thompson asked if there were any changes the planning staff would like to see. Karen Hughes stated when they reviewed the 11 subdivisions they gave the best 'guess estimates', allowing for some flexibility. The problem is they cannot account for everything as sometimes things come up which extends the time required for the review period. She stated there is still an element of risk in making any estimation. Commissioner Thompson stated he had no further comment on the document itself.

Commissioner Lyons stated he has nothing else to comment on and he will see what comes back in 24-hours.

Commissioner Chilcott addressed the 30 day time frame asking if those were working days or did they include weekends, and asked if that is 30 working days. Bill stated it is

30 days in the aggregate time line, and that would include Saturday and Sundays. Commissioner Chilcott suggested this be 30 working days. Alan stated this was not anything they discussed and he felt the only practical way to construe this time is to view it as actual working days. He suggested this be left at 30 days with the understanding that Saturdays and Sundays are not included in the aggregate days. Bill stated they would need to go back to their clients and consult them on this issue.

Alan suggested the Board provide instruction to him in regard to how this document is to be presented for signatures as he is returning to Helena.

Commissioner Chilcott concurred they need to have a clean copy for signature tomorrow but agreed the corrections need to be spelled out today and approved. Commissioner Thompson concurred. Bill stated that was fine, the settlement should be approved as to content. Commissioner Chilcott also stated the county is engaged in the RFP and RFQ process in order to obtain consultants, and given these tight yet hopefully fair time frames under Attachment A; they need to make sure the time frame is given to the county. The time frame to execute contracts with the consultants will take a minimum of four weeks, thus 'time is ticking away'.

Commissioner Chilcott called for a 20-minute recess so the Plaintiff's Attorney's could review the 30 day time line.

After a 20-minute recess, Commissioner Chilcott reconvened the meeting.

Public comment was called for. No public comment was noted.

Board deliberation took place. Alan noted the changes on Page 3 which does not address the 30 days to include weekends and holidays. That item can be discussed if and when they come to it, as per the applicant's request. Commissioner Chilcott stated he would still like this to be defined but agrees this is a good agreement. They have insulated the taxpayers from any judgment costs, protected the interim zoning regulation and protected the interests of citizens who were caught in the delays of the subdivision process due to staffing limits. Thus all things considered, this has been a long but responsive process from both sides of the litigation. He stated he is satisfied they have provided for the interests of both sides. Therefore he would entertain a motion.

Commissioner Thompson asked Alan if he would clean up the working document and prepare a clean document that reflects the many changes discussed this date. Alan stated he would prepare that. Commissioner Thompson stated since they do not have this document, his motion would be to continue this meeting until tomorrow at 10:00 a.m., at which time they receive it electronically, review and take public comment. Alan stated he can have the document prepared and delivered to the Commissioners by 10:00 a.m. tomorrow but he would have a difficult time being here physically by 10:00 a.m. since he would be coming form Helena. Commissioner Lyons seconded the motion. Discussion of the motion then took place. The attorney agreed to be available by telephone conference at the 10:00 a.m. meeting. All voted "aye".