

COMMISSIONERS APPROVAL

KANENWISHER 

FOSS 

CHILCOTT 

IMAN 

STOLTZ 

Members Present.....Commissioner Matt Kanenwisher, Commissioner Suzy Foss, Commissioner Greg Chilcott, Commissioner J.R. Iman and Commissioner Ron Stoltz

Date.....January 20, 2012

► Minutes: Glenda Wiles

► The Board met at 9:05 a.m. for a hearing and decision on an employment matter involving Road Supervisor David Ohnstad. The first meeting in regard to this matter occurred on November 21, 2011. Present were Deputy County Attorney Howard Recht, Special Investigator Pete Clarkson, Human Resource Director Robert Jenni, Road Supervisor David Ohnstad and Attorney George Corn who represented David Ohnstad.

Commissioner Kanenwisher called the meeting to order and explained the hearing process and purpose of the hearing which is to ascertain if the Ravalli County Employee Policy was followed by David Ohnstad and if the Commissioners feel disciplinary action is required.

Attorney Corn stated it is premature to move forward with this hearing as neither he nor David have had enough time to respond to the allegations which includes 30 more exhibits they received on January 10, 2012 as well as the Stahly Engineering report received on January 16, 2012.

Commissioner Kanenwisher noted these comments and letters are on the record and the meeting will proceed.

Attorney Recht stated documents were provided ahead of time, of which the Commissioners also have. Attorney Recht then presented a power point presentation which included the following:

- Procedural History - Meetings held on August 18, 2011, August 26, 2011, and August 29, 2011. A vacated hearing on November 5, 2011. A first hearing held on November 21, 2011, at which Mr. Ohnstad waived his right to privacy.
- Recommended Process - Hearing is to review allegations; procedure discussed. At the conclusion of the hearing the Commissioners will take action by motion. He noted this process will include presentation of facts; David Ohnstad's response; rebuttal; public comment; recommendations; opportunity for Commission action of which will be documented in writing.

- Background: Saddle Hills Development and Sardot litigation; Settlement agreement of that litigation with the roadwork commencing on June 2010 and the problems that surfaced April 14, 2011.
- Culverts: Attorney Recht addressed the culverts that existed, were removed and not replaced in the areas above the canal until further road repair was requested by the Commissioners. He noted WGM was not contracted to perform any engineering on the drainage for the upper portion of the road but WGM did look at profiles of asphalt on that section of the road. Therefore the failures of the road becomes a critical issue i.e., the lack of a drainage plan required a re-work of the construction on the road.
- Settlement Agreement: (Exhibit 2 of notebook) Paving from 8 Mile Road to the Ravalli/Missoula County line. Exhibit 13 referenced the standards to be followed and a review shows those standards were not followed.
- Ohnstad Email of Oct 20, 1010: References the settlement agreement has been satisfied, except some minor miscellaneous items, the project is complete.
- Sardot Complaint Letter April 14, 2011: Sardot's state that culverts were removed and not replaced, drainage issues, and fence removed and not replaced.
- Road and Bridge Response June 17, 2011: Disputed culvert existed at entry to development and stated they will install culvert 950' south of line, roadside slopes to be re-graded and fence line is an unpermitted encroachment, which the county will not replace. Attorney Recht stated the Commissioners need to determine if this was forthright response to the Sardot letter as employees knew the number of culverts and the culverts that were removed.
- Sardot Response June 23, 2011: Sardot's address the missing culverts, drainage issues and failing asphalt.
- Summary of BCC meetings: Commissioners referenced and discussed the asphalt alligator cracking with no drainage engineering done in that area. The question of culverts being removed was addressed and David was not telling the Board at this time they had been removed. The Sardot's then showed the Commissioners the culverts that had been removed. Discussion included the asphalt failing due to poor design, the four culverts that were needed, and the patching and ditch lining needed.
- Personnel Policy 3.03 Employee Conduct: Attorney Recht noted this includes failing to perform duties and falsifying records, reports, claims or providing false statements which could lead to disciplinary action. Attorney Recht stated there is evidence that this policy has been violated and referenced the Due Process Letter to David Ohnstad. The engineering issues have been addressed by an outside engineering company, Staley Engineering, which does show deficiencies. Attorney Recht stated that all the engineers that had been contacted were in agreement that proper drainage is of the essence of road building.

- **False or Misleading Statements:**
 - June 9, 2011: David Ohnstad made a statement that it could not be determined if a culvert existed. Attorney Recht stated the Commissioners can decide if this is a forthright statement. He also stated the landowner (Sardot's) complaints have been substantiated and appear valid.
 - August 18, 2011: The Sardot's complain of removed culverts, the drainage being lower than the culverts. David Ohnstad stated the alignments and engineering was paid for by the county because they could not be obtained from the Sardot's.
 - August 26, 2011: At a site visit by Commissioners and David Ohnstad, David stated the water in the area was a 'fluke', and the failing asphalt was not the fault of the asphalt contractor or engineer and claimed that a sufficient number of compaction tests were performed.
 - August 29, 2011: David Ohnstad stated due to poor design, the road now needs four culverts, as well as patching and ditch lining which he estimates to be \$46,780. Attorney Recht stated the Commissioners need to determine if David's statements were forthright.
 - November 2, 2011: Letter to Bitterroot Starr by Nikki Sardot

Attorney Recht addressed the following:

- **Failure to perform duties/supervise:** The due process letter to David addresses asphalt failures due to inadequate compaction and drainage, culverts and ditching required, culverts being installed incorrectly and the waste water discharge permit being violated. The investigation report notes that one culvert had a bend in it and the other culverts were not sufficiently covered and had damage. In regard to the waste water permit, the pollutants were not addressed, and while the permit was received, the plan was not adhered to. In early 2011, DEQ finds the county did not follow the permit and it was not signed off by the right person. The water pollution prevention plan did not match the site conditions, inspections were not conducted and reports were not conducted nor signed. DEQ thus found violations to be significant and required remediation.
- **Failure to obtain engineering:** Engineering is necessary for a project.
- **Stahly Engineering Report:** reads the compaction was inadequate, shoulders and ditches not constructed in accordance to plans, culverts were missing, and cause of asphalt failure.

Attorney Recht then referenced the Settlement Agreement (paragraph #4) noting the Commissioners had a requirement to fulfill this legal agreement.

Attorney Recht referenced the April 14, 2011 letter written by the Sardot's in reference to make consistent with letter regarding the three culverts existing and the fourth culvert that did not exist but installation was necessary to take care of the low spot. Attorney Recht also referenced the June 23, 2011 letter by Sardot's, the email from David Ohnstad on July 8, 2011 to Attorney Karen Mahar whereby he responded to Nikki Sardot's April letter. In that response David Ohnstad indicated he would go back and address drainage by re-doing the slopes but did not

indicate they would replace the removed culverts. Attorney Recht also referenced Commission minutes and emails to the Commissioners for purposes of litigation satisfaction.

Attorney Recht referenced WGM Plans for the Upper Woodchuck Road and the work to be done would conform to the Montana Public Work specifications. However, Stahly Engineering stated the work performed did not conform to these specifications. The County Attorney's investigation shows one culvert with a hump, one not even installed. On the uphill side of newly constructed road no drainage engineering was done and no culverts installed. The re-work performed after the August 2011 site visit required the fourth culvert. Original cost to this road was \$172,484.67 and the additional costs (approximately \$49,000) are significant.

Attorney Recht referenced spreadsheets for costs noting the significance of no monies being spent on culverts in 2010, nor were any ordered or obtained for the upper portion of the road. The Stanly Engineering Report addresses some of the following issues:

- road realignment;
- necessary compaction, with no indication that a control strip was performed thus the amount of quality control testing is very insufficient;
- elevation tests were never recorded; quality testing failed to meet standard;
- photos show ditches less than 19" deep and the ditch centerline is not 6-feet from the edge of the pavement;
- road needs 2' gravel shoulder adjacent to the edge;
- ditch and shoulder not being constructed according to construction drawings;
- crushed base course required, no documentation found for this depth quality control;
- asphalt testing - seven samples taken of which five did not meet minimum density and two did not meet thickness specification;
- county negotiated with Blahnik Construction and Blahnik did replace a particular section, but the complaint is not within this section of asphalt;
- in regard to culverts on the lower portion of the road, the one installed at 9+50 has a sag or horizontal deflection and it was to be installed at 9+00. The culvert to be installed at 15+00 could not be found. In the 2011 rework, new culverts were installed at four stations. Pictures showing erosion alongside the road due to the lack of culverts;
- culverts appear to be functioning but the issue is the amount of cover that exists over the piping - does not give structural stability and all have damage with 1 1/2 to 2 " of deflection. In regard to asphalt paving there is apparent alligator cracking, which is caused by too little structural strength in the road base so traffic loads will displace the asphalt. County Attorney investigation reveals the asphalt is failing because of the lack of compaction and excessive moisture. The shoulder are typical locations where compaction efforts were over looked;
- there is proof of drainage issues with soft soil and there was never a posting on the road to limit the load limit while the asphalt was curing if required. Wheel ruts show the shoulder is subject to moisture;
- Stahly Engineering recommends more gravel be placed over the one culvert at the beginning of the subdivision; the other culverts need continued maintenance, and in the future, compliance of materials testing is necessary. The final paragraph of this report refers to the lack of proper oversight and the problems that have arisen.

Attorney Recht referenced the June 13, 2011 discharge permit letter from DEQ which noted the failure of Ravalli County to follow the pollutant plan, have proper inspections, and failure to sign off on the reports.

Attorney Recht also noted the upper section of this road did not address the diversion of drainage above the project, referencing the Sardot photos showing the condition of the road prior to the re-work, erosion due to the removal of a culvert, lack of ditching, a rock dam placed on the side of the road in order to control the velocity of water coming down the hill (which runs into the road), the culverts that were removed and asphalt alligator cracking where road was repaired. Attorney Recht also referenced county photos showing the entrance to the subdivision, how the road climbs the hill, installation of culvert after the re-work with more erosion occurring, 4- 6" of cover over a culvert which should be a minimum of 12", the alligator cracking still existing after the re-work, the culvert at the entrance with a lack of depth to cover it which resulted in a significant amount of erosion occurring around the culvert, fill being placed too deep at certain sections of the road and necessary matting that had to be placed around the culverts.

This completed Attorney Recht's presentation.

Road Supervisor David Onstad's Attorney George Corn requested a short break at 10:40 a.m. Reconvened at 10: 48 a.m.

Attorney Corn noted this road work was done pursuant to a court settlement with a different set of Commissioners except Commissioners Iman and Chilcott. He stated one critical issue in any discipline hearing is if the investigation was done fairly. With any disciplinary proceeding the employer has the responsibility to find all facts rather than just selective facts, and that has not occurred in this case. He stated David was charged with fulfilling the May or June 2009 settlement agreement, and that agreement only states the road will be paved. Paving did not take place until August 2010 and the significance of that start date was that the parties to the settlement disagreed over what paving meant. David Ohnstad was not one of the parties making those decisions. Rather, he was instructed by the Commissioners to fulfill the paving obligation to the best of his ability. Attorney Alan McCormick was hired by the County to handle this litigation. Neither Attorney McCormick nor any of the Commissioners were interviewed as part of this investigation. None of Attorney McCormick's files or notes were made available to the County Attorney's investigator. Attorney Corn indicated he made an attempt to talk with Attorney McCormick but was denied. Attorney Corn felt the investigation presented is incomplete without interviewing these people. He noted two of the previous Commissioners will testify that David was to fulfill the agreement but he was to do it as economically as possible for the county, and that is what David attempted to do.

Attorney Corn stated Ms. Sardot even sent a letter thanking the county for the good road, however he noted that letter is not part of the investigation. He stated the history of this case goes back to June 2006 when Saddlehills Subdivision was submitted. WGM Engineering Group was the consulting engineer for the county for the subdivision submittal. The Sardot's consultant was Landworks. Landworks submitted a road reconstruction plan to the county, and while they denied those plans to WGM, WGM utilized those plans as best they could for the work required (by the settlement). He noted this is not part of the county's investigation either.

Attorney Corn noted the grading and drainage plan was prepared as well as Commissioners Resolution No 2182 which approved the variance for the road due to the subdivision application. The Sardot's complaints started in April 2011 which included complaints about the culverts being removed and one that should be installed. It is that April letter that David responded to in his June letter. In the Commission minutes, it is portrayed that David is not candid, but he was called upon to address the culverts, not to anticipate what they would want. His responses were according to each letter as they were received. Attorney Corn felt the significance to this is that at some point in the investigation, it should have shown the Sardot's were asking for more and more demands and not one single interview was done with those two Commissioners (referencing Grandstaff and Rokosch) in regard to exceeding the scope of the settlement. Thus it was important for Attorney McCormick to be interviewed to see if the Sardot's even have a claim or if it exceed the agreement. The road design was also not brought forth to the Commissioners. Attorney Corn felt these facts should have been addressed prior to the November 21, 2011 due process meeting with David Ohnstad.

Attorney Corn noted Exhibit # 20 (letter to WGM) addressed the compaction, and another letter not included in this investigation from WGM Engineer Jonathan Gass addresses the culverts, which is the basis of this investigation charging that David made false statements. Attorney Corn stated the county's investigator took at face value what the Sardot's said with no input from Commissioners, the Settlement Attorney or WGM Group who works with the County. Attorney Corn felt there are legitimate questions that should have been asked prior to this larger investigation.

Attorney Corn stated the letters of January 11th and 17th, 2012 from Jonathan Gass will be given to the Commissioners which shows the only culvert is for the existing irrigation canal at the intersection at 8 Mile Road. He stated this is disturbing because the Commissioners are not being told nor are they asked about this information yet they are attempting to make a decision on this issue. He felt it important that Commissioners find all the facts before any discipline is discussed.

Attorney Corn felt Stahly's Engineering report has problems because of what the settlement agreement meant in regard to paving. He stated the decision to do the work was not David's decision, it was the Commissioners decision which included not spending any more money than necessary, yet the engineering report challenges the work done. Other illustrations of the engineering report having problems is the comment about the control strip being insufficient. Blahnik Paving addressed the issue of asphalt cracking and agreed they had done an insufficient job, therefore \$22,000 was removed from their paving invoice to the county. The investigation should have included this issue as well. Attorney Corn noted Stahly Engineer was never told where the gravel came from and therefore questions the compliance of the materials. Yet the materials came from the Stevi-Pit and have been tested. The engineering report addresses the crushed base put into place on this low volume, low speed rural road. The report also addresses the coverage of materials over the culverts, yet the engineer was not advised that it was the Commissioners who directed the placement of those culverts that were not engineered. Attorney Corn indicated once the roadway is in place, the level for the placement of the culverts is pretty well fixed.

Attorney Corn again addressed the lack of investigation by relaying that within the past two weeks 10 road employees were interviewed by the investigator. He had asked to see the interviews but the investigator did not share the reports with David. Did the reports contain information about the road and if so why is that not being brought forward.

Attorney Corn reiterated his concern as to David receiving his due process rights, noting that he received the Stahly Engineering report late and could not fully review.

Attorney Corn stated there is disagreement in regard to the amount of moisture, last year the county had a significant amount of moisture known in Montana's history. Yet the engineering report did not factor that in the erosion issue. The engineering report addresses the differential settlement in fill areas being visually evident, but that same engineer was never shown any of Landworks plans. Road Department workers have told Attorney Corn that Mr. Sardot was driving heavy dump trucks from his quarry right after the road repair which would have an impact on the asphalt. Attorney Corn indicated the investigator is not telling the Commissioners what was said and his client is not receiving that information as well. He feels this is a serious flaw to this due process hearing. Attorney Corn asked if Mr. Sardot's loads were overweight, and that they should remember this road serves one house and one stable, yet Attorney Recht says a sign (for weight load) should have been placed there.

Attorney Corn entered Exhibit G which is a picture that shows belly dump trucks being driven up the road in Sept 2010 to a Missoula county line project. Missoula County records show there are five different subdivisions being worked on that enter through Upper Woodchuck Road noting Sapphire Ridge at Red Quill is one of the subdivisions (Red Quill is one of the developments from the Sardot's). Missoula Co. Public Works Dept called for 11,445 tons of 3/4" aggregate in October of 2010 right after the road was completed. By his calculations that would be over 500 loads of material being hauled over a low volume road, by a developer that is now complaining. Attorney Corn stated this is simply the developer (Sardot) who wants to have the county continue to pay. Attorney Corn stated this information that is pertinent to the investigation and are not being revealed. He felt Stahly Engineering should have known that information which might have made a difference in their report. But the fault is being placed on David. In regard to pictures presented here today by Attorney Recht, one can see Commissioner Stoltz holding a ruler for the ditch depth. The cardinal rule in any investigation is separate from the disciplinary action if it becomes warranted. Landworks consulting and design work for this subdivision is in the planning office right down the hall from the Commissioners. That design discusses the storm drainage, where culverts are located, the irrigation ditch capacity, disturbance of steep slopes and storm water pollution plan as well as hydro seeding. Attorney Corn stated David's interview is critical to the investigation particularly when the Commissioners are considering discipline. Attorney Corn felt the commission minutes is a misrepresentation of what David said and it is the first time he has seen those minutes. The problem with the minutes are these are summaries, subject to review and approval by the Commissioners, yet they are being the basis of David being disciplined, and not the actual facts of what was said, and what was occurring. The storm water drainage letter (from DEQ) was received last Friday. The letter simply reads that the violations mean to conform (obtain the right reports, have them signed by the right person, and you might be fined). Yet Attorney Recht presents this with great fan fair and it is relatively

minor in the scheme of things. Also the investigator pictures were taken June 2011 and there has been significant water during this time.

This ended Attorney Corn's comments.

The Board confirmed David can go over his points then Attorney Recht can rebut.

David Ohnstad addressed evidence presented by Attorney Recht which included the lack of drainage plan, engineering, poor design etc. He stated when the road department was directed to undertake this project there was a gap between that date and when the settlement was reached. David stated he has never seen what that definition is. Out of the months of negotiation with attorneys the project was to include the relocation of Upper Woodchuck Road for alignment purposes. The County tasked the Civil Engineer to recreate that since there was no luck obtaining that from Landworks. The basis for the Saddle Hill Subdivision road plan was approved in part in their application in 2006. That application is the basis for the road design and the re-design work that WGM did. In the grading and drainage report by Landworks (Exhibit B -page 2 of 3) it shows the amount of land to be subdivided. Page 5 of 5 shows four culverts being proposed and the only culverts being proposed for the existing irrigation is at the intersection with Upper 8 Mile Creek Road. WGM had to recreate this also, but the design did not account for 170% of the normal precipitation that we received. David referenced Exhibit C (Resolution No. 2182) noting Landworks Engineer Jason Rice stated they are in compliance with AASTHO standards, but a design variance had to be done due to the 8% grade. David stated those are the basis of the road plan and the basis for the recreated road plan by WGM who acted at the behest of the Commissioners, as well as what the road department followed. David then referenced Exhibit 27 (page 9), which show the road approach and culvert. He indicated those construction drawings did not show that it was the developers private property. David addressed the check dams (page 12 of Stahly Engineering report) and the culverts being installed by the check station. He stated Attorney Recht failed to address this. He also noted the cross sections of the road, the two culverts is what the developers identified in their application of 2006. David stated they did not chose to install (after the additional construction was requested in 2011) they were directed those culverts. He noted they installed them in the only logical place after the road construction was complete. In regard to coverage of the culverts being incomplete, in many places that coverage performs adequately. In regard to the June 21, 2011 evidence presented by Attorney Recht, David stated he sent an email to the Commissioners showing the information is available for review by the Commissioners, i.e., one culvert into their private development - no other culverts were addressed by Sardot's. David stated he simply responded to the one issue addressed. In regard to the letter to the editor by Nikki Sardot he asked why that would be put into evidence. The writer chastises the paper for making misstatements, yet stated we removed and failed to replace. We were following the developers design. David stated they did give the culverts to the developer, and they had to reduce the road grade by 5 1/2 feet so the culverts had to be removed. David stated the money for this construction came from the Road Department Stevi Capital Improvement Fund for development.

David also addressed the fences. He stated they and the field engineer discussed with Mr. Sardot that the fences would be removed, the steel posts would be set aside and Mr. Sardot would reset at his convenience. David stated the Sardot's were interviewed by the Investigator they did not

tell him about the heavy loads done by the developer in 2010 plus repeated loading by the culvert installations in September 2011. Exhibit F was submitted of which are the conversations with Jonathan Gass and the Sardot's. He stated this information was in the road files but left out of the investigation.

David then addressed Exhibit 13 (WGM road plans) stating when he had conversations with the county and counsel, he was advised to move forward with the design recreated by WGM, within reason. The Sardot's involved themselves in the width of road which extended completion of the project. In regard to David's statement of the project being satisfied, that was the attorneys decision to make, and when the project was completed in 2010, the county counsel did make that notice. In June 2011 county counsel advised the case was dismissed with prejudice. In regard to the density testing (David referenced section 1400 of MT Public Works) noting MT Public works is to produce the end product, not the process. Blahnik Construction subcontracted with Geotechnical Engineering. Due to paving deficiencies, negotiation occurred with Blahnik Paving Contractors. Had the issue been compaction and testing, Blahnik would have raised their concerns then. On page 10 of the Stahly Engineering report it address the soil not being sufficient. David felt there is no evidence to support that also noting 11,000 tons being transported. The engineering report addresses the lack of testing (page 12) not being in accordance with MT Public Works. He felt after over 500 loads went over this road, had there been a structural compromise they would have seen it. At the time there were no signs of differential settlement. The report addresses the culverts (page 14) being installed according to construction. David stated it was reasonable not to install those culverts. Regarding DEQ's letter we have close relationship with regulators we are subject to. Compliance was performed, some minor items were noted and no citations were issued. They immediately did remedial work and on October 17th he sent an email to DEQ with photos to show stabilization. DEQ thanked us noting it looks like it is working. David stated his letter to the Sardot's was in behalf of the Commissioners in regard to restablizing. That repair was done and we made sure we had the easement for the outflow. The engineers did not note the culvert to the private subdivision. The Road Foreman was on site every single day. In regard to the remaining two culverts, it was not the road departments idea to install. In August 2011, we said we would re-grade and restablize. The Commissioners then told us to install the culverts and we did so in the only logical place.

Meeting adjourned for lunch at 12:15 reconvene at 1:00

Reconvened at 1:04

Attorney Corn called past Commissioner Jim Rokosch as a witness.

Mr. Rokosch stated he served on the Commission Board from 2007 to 2010 and as one of the negotiators in the Saddle Hills Subdivision litigation. He was also a Commissioner when the Sardot's subdivision came as an application with a variance request as well as the subdivision. He felt the litigation negotiations were successful as they were a balanced/business decision for the county. He stated he found it curious that Attorney Recht chose not to interview either him or Commissioner Grandstaff or any of the sitting Commissioner s (Iman and Chilcott) who were also members of the settlement agreement. He felt this is an over sight to the investigation. He

is an aquatic biologist and hydro thermology, with expertise in sanitation, drainage, and sedimentation, so the decisions to the litigation were not made hastily. Commissioner Kanenwisher stated he is not sure why this Board would want a former Commissioner's interpretation of Stahly Engineering report. Attorney Corn stated this engineering report is important to the decision made today and Mr. Rokosch is a technical consultant for water, so he feels he can comment on both issues. Commissioner Chilcott addressed the need to speak specifically to the November 21st due process letter. This is not a streamside issue and wants to keep this on point.

Mr. Rokosch agrees with the Stahly Engineering report in regard to this project being unique. The project was done in the context of a settlement agreement and the contractor and developer is the same entity. In his opinion the County has discretion of the control measures needed for this project. He will forgo pointing out the supportive comments that their own report indicates but noted they did point to the excessive moisture, and relayed it was a heavy precipitation year with the most protracted hydrographs since the 1800's (moisture occurred over a long period of time). In regard to the recommendations of the engineering report nothing substantive was addressed about the costs to the tax payers. But the settlement agreement overrides those issues of the project and any remaining dissatisfaction should be directed towards the Commissioners and not towards David.

Engineer Jonathan Gass of WGM who is the county engineering consultant was then asked questions by Attorney Corn. Jonathan stated he has spent 16 years as an engineer at WGM, he has a degree in engineering and has spent time as an engineer in Idaho and Montana. He has seen the Stahly Engineering report and in regard to compaction being inadequate, Jonathan states this is unique because the county is owner and independent contractors bid on the project. He relayed that because it is a low volume road, therefore they put together a paving contract for road paving with the county doing the grading. He stated he had a conversation with David about the possible finger pointing if something were to occur. At that time David suggested the density tests be done and given to Blahnik (the paving contractor) so there would not be any issues. The density tests were in accordance with MT public works standards. We did not take a test of the base material source because the source was known to us (Stevi-Pit). There was existing materials on site as well as the imported materials, Geo Tech ran the density testing with the existing materials and did the same with imported materials. Density tests are made with the best information given to us. In regard to the statement that the control strip was not being done, that is not correct as we did take tests up front and found 2-3 tests below density which is to be expected. The contractor then adjusted their means of construction to obtain the results they were looking for. After that, no tests came in below the necessary standard. There were 40 some tests and the 2-3 areas were re-worked resulting in passing tests being obtained. 95% results is more than adequate as mentioned in the Stahly report. Jonathan noted Section 1400 of the MT Public Works leaves the number of tests to the engineer or owner, and we felt more tests were not needed since the numbers came in so good. Nothing indicated more tests needed to be done or different work. He met with David several times to discuss the contract requirements.

Attorney Corn asked Jonathan if he recognized his Exhibit F which is a summary of the onsite visits and conversations with adjoining land owners as well if other WGM staff members were on this project. Jonathan stated they were on site during the grading, centerline staking and

paving plus, plus GeoTech Consulting was on site numerous times which included density tests during grading and paving. Road Forman Bill Meisner was on site and received compacting tests.

Attorney Corn noted the investigator never interviewed Bill Meisner who was the onsite manager. He also noted WGM has worked with the county, which includes David Ohnstad at the road and bridge department and planning department numerous times. Jonathan stated his firm was brought into this project for paving directions and road alignment since it did not match the easement. WGM re-created the grading and drainage plans noting there was a limited way the road could fit into that area

Commissioner Kanenwisher asked if WGM engineered the drainage for the entire stretch of the road. Jonathan stated there was no alignment done through the re-construction area and the plans they received from Territorial were for the subdivision. He also noted WGM had prepared some of those plans for less money, but they did not do any of the drainage plans for the top portion of the road.

Attorney Corn asked if the realignment portion had anything to do with the alleged erosion. Jonathan stated there is erosion through the realignment portion (through the steeper portion of the road). He noted they utilized the Saddle Hills Subdivision plans. Attorney Corn commented that those were plans submitted by the Sardots.

Attorney Corn asked Jonathan about his Exhibit M (which is letter about two culverts on the lower portion of road locations of 9+ and 15+) in regard to the culvert at the 15+00 location not being installed. Jonathan stated it was not installed because on the plans it was not part of the drainage report, and it was reasonable during the course of construction not to place one there because it was not at a low point.

Attorney Corn asked Jonathan if the oversight was consistent with the scope and design. Jonathan replied it was for the direction they were given.

Previous Commissioner Carlotta Grandstaff was called by Attorney Corn. She read a statement (see attachment). She felt the road fared well with the prolonged spring runoff as well as the developers running the heavy loads on the asphalt.

David Ohnstad asked Carlotta if additional engineering work outside of reconstruction was within the scope of his direction given to him by the Commissioners. Carlotta responded that the Plaintiffs got more than they bargained for and while David was to pave, he was not to re-grade or design outside the area of the subdivision application of 2006. She felt the work done actually went beyond the BCC direction to make the investment a long term investment. Carlotta stated she remembers having conversations with other existing board members, and yes they wanted to make it somewhat better for future use.

Attorney Corn presented a letter from Steve Henault (see attached) who thinks the road work is done well. Attorney Corn anticipates they might have more questions as this moves forward and reiterated his concerns as well as objection to Commissioner Stoltz being involved in the investigation because he has compromised his objectivity and should not vote on this issue. Attorney Corn also noted it would be worthwhile to know what Commissioner Stoltz actual involvement is in this matter.

Attorney Recht stated the settlement agreement is not on trial as it speaks for itself. In regard to comments that the investigation not fair, the County Attorney's Office is to provide information to the BCC and they invited David Ohnstad to give his information. It is up to the BCC to determine if the investigation is fair. In regard to Commissioner Stoltz, he felt it is of little concern as all board members were on site and the Commissioners were recipients of information from David. Attorney Recht also stated even if this was a court trial, a Judge will go out and take a look at the site which not a breach of impartiality. He does not feel it to be an issue. He stated he wanted to know where the drainage plan was but never heard that from David and it is up to the Board to decide if his new explanation is different from what was said by David Ohnstad at a different time. The Commissioners can decide if what David is saying now is that he did what a former Commissioner told him to do, or followed WGM or Landworks plan, or he was saving money, or possibly not saving money is consistent with what David had said. Attorney Recht noted he is in possession of Territorial Landworks plans, and that drainage plan only deals with the subdivision so how can any drainage plan for the upper road be based on that? He noted the county was not authorized to use them because they were not paid for, thus WGM was contracted to do the work. So WGM should prepare the plans and that is the question we have been asking, whether the work was WGM plans. The issue is not the settlement, it is whether the road construction followed WGM plans. In regard to compaction tests, Stahly Engineering states those standards are not followed. There was a question about understanding Sardot's communications and David Ohnstad not being a mind reader. When the Sardot's came before the Commissioners, as well as wrote the letters, they were concerned about three culverts, not one. There should have been a forthright response to that issue (from David) and it seems that the oversight of work and placement of the culverts should not be from the BCC but rather the road department should have that expertise. In response to the wet year, the plan specifications for the ditches were not met, thus the plans were not followed. Attorney Recht relayed that other statements the Commissioners should consider is culverts that were installed not in accordance with the manufacturing standards, the fact that the DEQ permit was violated, and since the county was the owner and contractor the plans and standards should not be ignored. This represents a pattern or attitude that seems to pervades the entire project, like one can get away with it. Attorney Recht stated the biggest corner cut is the failure to obtain a drainage plan so the argument that these were a series of minor violations does not excuse the fact that they are violations. Stahly Engineer came after the re-work was done and thus far nothing has been brought forth to indicate why a drainage plan was left out. If the stated desire to do an adequate job for future use as Carlotta Grandstaff pointed out, then why was this project done without drainage plans?

Attorney Corn stated the work was done according to WGM. He also noted the Sardot's concerns about the culverts does not line up with their letters. David simply responded to their letters in sequence. Commission minutes are not verbatim, the culverts were not expected and

they have heard here today from WGM and the developers who want a continued level of attention. Once the road way was completed, the road department had to do the best job they could to install the culverts. Witnesses say the developers ran heavy loads down the road in 2010 and 2011. In regard to an adequate job for future use, this road was designed for low volume use, and thus the work done was adequate for future use. Attorney Corn indicated the road supervisor was told to pave the road by one set of commissioners and then the another set of Commissioners side with the developers who are on the other side of the law suit from the county. The current Commissioners never looked at this settlement and now David is caught between two different set of Commissioners. To discipline him would be grossly unfair. Attorney Corn felt the County Attorney investigation is incomplete. Numerous road employees are here to give their letter of support but none of their testimony has been given.

David Onstad addressed the engineering plan in regard to a drainage plan. He stated the engineering report was submitted by the developers engineer from 8 Mile Creek Road to the top of the hill and it is housed in Planning Department. During this investigation, himself, Bill Meisner, and former County Commissioners were not interviewed. When they were asked to redesign this for road construction, they utilized that engineering report (by developers engineer). David noted from the point of the drainage study to the end of county road at the county line, there was not a study, as it was outside the scope and not directed to be done by the Commissioners. The work they did was done according to plans, and we did not build the subdivision access. We did go beyond the expectations at the time in regard to paving the road because it is an investment for the tax payers. David noted none of the road employee interviews were not shown to the Commissioners, and those interviews state we did not cut corners. The drainage engineering report states the w/s of road is where the drainage is to be collected, not under it, but alongside to the irrigation canal, and that is what we did. The pavement failure is on the e/s of the road on the uphill direction where the 500 fully loaded tractor trucks were hauling to the developers site in Missoula County. It is not due to poor compaction, but rather the failure is from the heavy loads. In David's estimation the road has not failed. While there might have been some unforeseen issues, he never used the word 'fluke'. On the steep slope with heavy precipitation it has an effect and we mitigated that. Was it bad luck to have those heavy trucks run on the road, unfortunately that did occur, but in his opinion this is a sound road and it has not settled. David stated the scope of this project was to pave while working under the direction of the BCC in order to satisfy the settlement agreement and that is what we did. The opinion of legal counsel was that the settlement was satisfied and the suit was dismissed with prejudice. In the investigation County Counsel should have asked if we cut corners, or purposely did a bad job. They did not ask and now these the good workers are being impugned and are owed an apology.

Attorney Corn presented a letter of support signed by 15 members of the Road Department.

Board discussion and questions.

Commissioner Kanenwisher asked if there was a drainage plan by an engineer north of the subdivision as it continues up Upper Woodchuck. David replied there was none. Commissioner Kanenwisher asked if David had asked WGM to engineer a plan. David replied no. Commissioner Kanenwisher asked if Stahly's report (page 13) #2 is a correct statement. David

replied that the area north of the access was not reconstructed, it was graded to accommodate the pavement. So in some areas those 2' shoulders may be less than that. In the section that was reconstructed that is not a true statement. Commissioner Kanenwisher asked about the construction drawings. David responded that the plans were developed by WGM (recreated) for the area to be reconstructed.

Commissioner Iman asked if there was a redesigned section of the road that construction drawings were provided. David answered yes. Commissioner Iman asked if there was a redesign after the subdivision entrance north. David answered no. Commissioner Iman asked if there was a supervisor on site during the entire construction. David answered yes it was Bill Meisner who has 35 + years with the county and work orders were provided by Bill every day. Commissioner Iman asked about the roads to be built within the subdivision in regard to the angle, percent of slope and how they attach to the county road. David stated those roads have not been built within the subdivision. Commissioner Iman asked if the trail had been designed and if any excavations had been made. David stated those are not the obligation of the county. Commissioner Iman noted the subdivision roads would drain into the county road. David stated yes and the criteria for that connection would be that the developer obtain an encroachment permit from the county. David noted when the trail was established it was steep and they were asked to flatten it out in order to get to trail. Commissioner Iman asked if in between the design and the construction did the county gift the easements for the realignment at the request of the developer. David stated that is correct. Commissioner Iman asked if there is any place on the w/s of the road where actual road degradation had occurred. David responded no. Commissioner Iman noted 100% of the pictures are on the low side of the road.

A 10 minute break was taken.

David Ohnstad stated he felt it best to have Jonathan Gass lay out the plans developed for the paving contract (entire road which includes the regrading of the alignment). The Commissioners, David Ohnstad and Jonathan Gass then reviewed the plans as laid out by Jonathan which included the upper portion of the road, project locations and the lower portions to be about 3,000'. It was noted from the lower portion of 8 Mile it is relatively flat and the shoulders were cleaned but nothing was reconstructed. Jonathan pointed to a particular location noting fill was placed there to accommodate the design grade, as well as reconstruction through the curves with a portion of the road being realigned. Climbing up the hill, and pointing from an area north, the work done was general grading. David noted in regard to the profile it shows the old road. Commissioner Foss asked at what point on this road did the engineering stop. Jonathan pointed from here (referencing a portion of the map) to the lower portions where we staked, noting they attempted to match the previous plans. He noted because of the road radius and grades they could not propose something new, as the previous plans came with the subdivision application from Landworks. Commissioner Chilcott pointed to a location and asked if from this spot to the top of the hill, did WGM provide the design for paving. Jonathan noted there were no culverts placed there, but they followed the drainage plan from the subdivision. Commissioner Chilcott asked if it was their intent to follow the road to the irrigation canal. Jonathan answered yes. Commissioner Foss asked about the ditches being about 18" deep.

Commissioner Iman asked how far up the road was the subdivision. Jonathan stated road sections were more or less to their driveway. The plans were then put away. Commissioner Chilcott stated the questions raised in the letter and the investigation was not at Attorney Howard Recht's direction, they were at the direction of the Commissioners. He noted Attorney Recht is doing what he was asked to do as our advisor and is doing as good of a job as he can do. Commissioner Chilcott also noted in regard to compaction tests, (page 13) it appears that Stahly Engineering is making assumptions after the fact because what he is hearing today is that testing was done on the ground during construction. He asked if this compaction is consistent with other road projects. David Ohnstad stated if a road had a historically stable base they would do what they did and lay a layer of crushed aggregate, but in this area with reconstruction, since this was not a typical road department project, he asked Jonathan what those standards should be. Jonathan noted the density testing is discretionary because every job is different. He noted through the reconstruction area they did density tests about every 158'. Jonathan also addressed materials that were existing noting Stahly Engineering would not know the materials that were there and those which were imported.

Commissioner Chilcott addressed page 12 - #1 which noted the compaction was not adequate. Jonathan stated the Stahly report does not reference the embankment testing. He indicated there were about 19 tests taken (in about 158'). Some agencies might require one test every 200' so we are substantially less than that. On the base material we are about one every 325' and that is reasonable. Jonathan noted since there not a lot of failing tests, there was no need to do more tests. Jon stated under #3 in Stahly's report he is unsure how there are interpreting the control base for the 800'. David stated in August he gave the Commissioners the test stations, noting they went beyond the areas that were reconstructed in order to know that when they let the paving out to a third party they could demonstrate that the roadway had been built property. And then when the issues with the paving contractor came about, the paving contractor did not question the compaction.

Commissioner Chilcott asked if the grading and drainage plans (paving plans) were submitted with the storm water application. David stated those plans were submitted with application and the flow pattern was reflected in the permit. The permit addresses the erosion control which manages the storm waters that flow into the state. Commissioner Chilcott stated Stahly indicated in their closing remarks that the embankment was not within the permit (page 12 #1). David stated that is not storm water, but is referenced in MT. Public Works, he also noted in the next sentence of the Stahly reports it notes nothing is wrong with the differential settlement (it is visually evident). Therefore David felt Stahly Engineering is contradicting their first sentence. He noted it is also contradictory to what the our Engineer just stated.

Commissioner Chilcott asked about the grading and drainage study for the subdivision application being the basis for the plan WGM. Jonathan stated they had a print out of plans for the subdivision and the survey in order to recreate the site measurement for boundaries, the meets and bound for the easement, they also adjusted for the hill and curves with very little options. David stated there were two dozen instances were they had to go beyond the easement, which is reflected in the notes with the property owner. Commissioner Chilcott asked about the

culverts that were stacked up. David stated the first letter (by Sardot) was sent to the County Planning Department and it referenced the centerline at the entrance to the subdivision in regard to the culvert and fencing. The other culverts were identified later. We knew there were other culverts but they were not identified in the plan. The issue to begin with is their private road. He indicated he was only responding to that culvert.

Commissioner Stoltz stated David had told the Commissioners there was not a culvert there and it was not removed. David began to address what was there historically. Commissioner Stoltz responded that he on site and the culvert was there, there was also the asphalt break up going downhill as well. Commissioner Stoltz asked about DEQ addressing the water to be dumped into the irrigation ditch. David stated he does not believe that was an issue. Jonathan stated the uphill portion of the road has settling, so it (the water) drops into the irrigation ditch and it has been through a treatment basis. Commissioner Stoltz noted the pictures of gravel in the canal which looks like it came from the road. Jonathan stated the old road was in a different location, so that would not surprise him, but he cannot speak to what Commissioner Stoltz is seeing. Commissioner Stoltz asked about the amount of fill. Jonathan stated there is 3' - 4' at the deepest sections and he recalls 6 compaction tests in that area. Commissioner Stoltz stated there is only one.

Commissioner Foss stated she has heard things David has said here today that is in direct contrast to what he said in June. She advised David that he told both the Commissioners and Sardots that there were no culverts. She stated she trusted David and she is astounded in what he is saying today, so she is not sure she can ever trust what he says again. She stated she does not know where to start on this matter because there is so much. The issue in her mind is that the Road Supervisor does not address the questions and he gives different answers. She noted David has still not addressed the plan. She stated she does not care that he was told to build a bad road, because he should not have built the road in that manner.

Commissioner Kanenwisher asked David if in all of the meetings held, did David believe they were only discussing one culvert? David indicated that is what the letter indicated, as it was the subdivision access being addressed. Commissioner Kanenwisher asked David if in the last two subsequent two meetings did he still think they were still talking one culvert? David stated when they met on site, the water was flowing on a w/s ditch to the irrigation canal so no culverts were necessary. Commissioner Kanenwisher asked again if David continued to think they were always talking about the one culvert at the subdivision access. David stated he never represented that the centerline culverts were not there, rather they were made moot by the reconstruction of the road. Commissioner Kanenwisher stated David and the Commissioners had a conversation on site about the cause of the failure. David stated he remembers the conversation in general. Commissioner Kanenwisher then asked David if in that conversation David did not tell Commissioner Kanenwisher that the top portion (of the road) did not have any engineering. David stated he believes the area represented was redesigned and realigned, he does not remember whether north of the subdivision access was engineered. Commissioner Kanenwisher asked David if he thought he should have mentioned it was not engineered. David stated the pavement was designed or engineered and it had some failing, but the road did not fail. Commissioner Kanenwisher asked how David interpreted the definition of paving. David stated

according to the defined settlement agreement he is still not sure what it meant. Commissioner Kanenwisher asked David if that was not an important part of the project. David stated he followed the Commissioners direction and actually exceeded their direction by grading and placing gravel not just on the part for reconstruction. Commissioner Kanenwisher asked if David was asked not to get engineering on upper portion. David responded no. Commissioner Kanenwisher asked if in all of the conversations did David ever tell the Commissioners that Landworks Engineering provided plans for any part of this construction. David stated the road department was told to recreate the realigned section, so they asked Landworks for their survey notes and they were denied, because the property owner never paid Landworks for them. So the road department had WGM recreate the information necessary to design the road.

Commissioner Iman asked Attorney Recht if Resolution No. 2082 was part of the litigation settlement that allowed the subdivision to be recorded as approved. And when that action took place, is it the engineers responsibility for the legal drawings. Attorney Recht stated Resolution No. 2082 is a matter of public record. Commission Iman asked once they become public record, who owns the plans. Attorney Recht stated he does know the answer to that questions. In terms of the engineering work product, Landworks denied the county's use of them because of non-payment.

Attorney Corn addressed Exhibit D which is a letter from Attorney Alan McCormick to Attorney Karen Mahar which addresses the subdivision submittal.

Commissioner Stoltz stated there have been comments made about the trucks running on the asphalt, and are we not suppose to run trucks on this pavement? Attorney Corn stated this road is a low volume road with low classification. Commissioner Stoltz stated there is timber in this area and historically trucks run on this road. And while there is only one house, Missoula County residents use that road. Attorney Corn stated that is not the point, the point is that you don't build a Lexus for a Ford road. Commissioner Stoltz stated all county roads have trucks running on them so they are legal to run on the road, and you cannot blame them for using the road. Attorney Corn stated and Commissioner Stoltz cannot blame David for that either.

Commissioner Foss stated there are five subdivisions in that area and they are not fully developed yet. She asked who makes the determination of the road classification. David stated the Commissioners do. He also stated while this is a public road one shouldn't ignore the heavy truck traffic of 509 trucks within a few days of paving.

Commissioner Foss asked David if the design by Landworks was for an 18' road. David indicated the minimum design standards is a 18' road and the issue of road width was part of the negotiation for the developer and county 's attorney, which is how they determined that road width. Commissioner Foss stated regardless of this, the county owns the road and while we can place blame on others we should have some preparations for that. David stated the design called for a drainage pattern on the w/s of the road precluding centerline culverts which is supported by

WGM plans. He stated there are isolated areas of failure and the heavy trucks could have caused that failure.

Commissioner Chilcott asked how often David has received storm water permit violations. David stated he has received no outstanding violations because all the issues are dealt with. David also noted that some of the permit violations were inherited such as Fish Hatchery and West Fork. In regard to the letter they note the plans do not reference what is on the ground at marker 15+00, Jonathan stated he should have countersigned that report.

Commissioner Chilcott asked Jonathan if he remembers direction from David on the engineering portion. Jonathan stated WGM was tasked with preparing a paving contract, going to bid and administering the paving contract. WGM also assisted them with staking, the storm water pollution plan, and general questions on the project as questions came up.

Commissioner Iman stated he recalled a conversation about protecting the county with density testing for the road base. Jonathan stated the density testing was made available to the paving contractor. The paving contractor made some errors and there were never a question on the density portion of this road. Also, on the design from Landworks, WGM asked for their CAD files (electronic version) and that was denied.

Commissioner Kanenwisher stated they will take public comment, then review the findings for the due process letter with action if appropriate.

Attorney Corn then handed in their exhibits for the record.

Public Comments:

Road Employee Steve Henault addressed the comment that the ditches were not deep enough. He stated it looks to him that the ditch line was measured after the sediment. He was sure the ditches were 18" at the time of the project.

Road Employee Kurt Jevning asked the Commissioners if it is fair or right to be an active participant in the investigation and then make a decision as well as handing out forms to the employees referencing Commissioner Stoltz.

Retired Road Employee Mike Nichols stated he has worked for eleven different road supervisors and David is honest and not arbitrary. When it comes to culverts it would not matter to David how many culverts needed to be replaced. Mike has never seen him willfully do anything not beyond reproach.

A 5 minute break was taken.

The Board then addressed the findings.

- Referencing the November 21, 2011 due process letter to David Ohnstad item #1 (violations of Employment Policy 3.03(c) by making false or misleading statements to the Commissioners) does the Board find that David made misleading statements? Commissioner Stoltz referenced slide #15 as presented by Attorney Recht and stated yes David had made false or misleading statements. Commissioner Foss agreed and reiterated that David has stated there were no culverts removed. Commissioner Kanenwisher stated at every meeting in this room we addressed the culverts and everyone was clear on that discussion yet David brushed the idea aside completely and Commissioner Kanenwisher took David's word. However at the second meeting Commissioner Kanenwisher began to have concerns. Whether the culverts belonged there is not important, the importance is David's statements being inconsistent. Commissioner Iman noted David's first comments were in regard to the letter (from Sardot) to the County Planning Department. David noted because of the slope of the road being different, that the culverts would not be relocated in the same location or replaced at all. Commissioner Iman indicated there were multiple references to multiple culverts and David referenced them stored. Commissioner Iman stated there was confusion but was there misrepresentation that culverts were removed? Commissioner Chilcott stated he can find no motive for David to mislead the Commissioners in the number of culverts but he is clear in his mind that they asked if culverts were removed and David said no. So the question is if the problem is communication or misinformation. He does not believe David had any intention to mislead the Commissioners.
- Commissioner Kanenwisher referenced slide #16 in Attorney Recht's presentation which addressed whether culverts were removed, and were they replaced? The Ravalli County Personnel Policy prohibits falsifying records, reports whether verbal or written. **Commissioner Stoltz made a motion finding that false and misleading statements were made by David (relative to the culverts) . Commissioner Foss seconded the motion.** Discussion: Commissioner Chilcott stated for him to vote in favor of this motion he would have to understand why David would give the Commissioners false information, in other words what that motive be. Commissioner Kanenwisher stated it would be a mistake for the Commissioners to determine that motive, from our point of view, given what we have seen. Commissioner Chilcott stated 'false' indicates an intent to do something. Misspeaking on the other hand, and while he agrees that has happened on one occasion, he does not see an intent. The policy speaks to false statements. Commissioner Foss stated the Commissioners did not obtain straight answers from the meetings held, but at the June meeting David stated there were no culverts removed. She stated she is not worrying about his motivation. Commissioner Chilcott agreed the Commissioners do have a communication issue with the Road and Bridge Department. Commissioner Iman noted he was not present at the August 18th meeting, and while he agrees they might have been misled, he would question whether they were false statements. He stated he is not willing to go that far. Commissioner Kanenwisher stated he was present on August 18th and he heard David's comment. There was a question posed to Attorney Recht in regard to the legal standard. Attorney Recht stated the Commission is not using a legal standard rather they have a policy (employment policy)

which is their applicable standard. **Commissioner Foss, Commissioner Stoltz and Commissioner Kanenwisher voted "aye". Commissioner Iman and Commissioner Chilcott voted "nay". Motion carried 3-2.**

- Commissioner Kanenwisher referenced Slide # 17 in Attorney Recht's presentation noting a long conversation was held on August 26th in regard to the engineering and contractor problems. David attributed the failure to 'bad luck' or to 'things that happen'. Commissioner Kanenwisher noted David never said it was not engineered. Commissioner Kanenwisher stated a lot of the problems being exhibited here today includes items not being communicated to us. Commissioner Stoltz stated he agrees with that. Commissioner Kanenwisher relayed they did ask David why the engineer and the asphalt contractor were not responsible for the failure and David stated that is our problem and we will fix it. The Commissioners asked if engineering was done on the upper and lower end of the road and David said yes. When Commissioner Kanenwisher asked who did it, David never answered. Commissioner Kanenwisher asked the other Commissioners if they were ever told that Landworks had this information. Commissioner Foss stated this is the first she had heard of it. **Commissioner Stoltz made a motion that David made false statements on the engineering for the drainage. Commissioner Foss seconded the motion.** Discussion: Commissioner Chilcott stated there has been engineering but according to the discussion today, none was done on the upper portion of the road. Commissioner Chilcott stated he knew there were plans and permits, but he had not seen them until today. Commissioner Iman stated this is specific to a date and he was not present. Commissioner Kanenwisher stated this motion is not based just on this date. Commissioner Iman stated two dates have been referenced and he was not part of that. He stated he was part of the settlement agreement and he knows that engineering did take place and criteria was set forth for the road department to follow. Previous to this conversation he was a planning board member when this subdivision came up to begin with. He felt the law suit had to do with improving the road to the access of the subdivision intersection with 8 Mile Road, but not past that. Commissioner Iman felt road department improvements past that point (subdivision access) are a representation of the level of services established by the road department from that portion to the county line. Commissioner Iman asked if everyone was knowledgeable in the difference of the engineering for the different sections of the road, because he was. **Commissioner Stoltz, Commissioner Foss and Commissioner Kanenwisher voted "aye". Commissioner Chilcott and Commissioner Iman voted "nay". Motion carried 3-2.**
- Commissioner Kanenwisher referenced the due process letter in regard to the necessary and extensive re-work as well as following the standards. He asked if this was unsatisfactory work. Commissioner Stoltz stated on the upper portion anyone can see it is moon shape and there is no drainage. Commissioner Iman suggested they look at these individually. Commissioner Stoltz indicated the work shows how water runs up on the road, noting where the culvert was not placed the asphalt failed. He feels this is due to the moisture. Commissioner Chilcott stated moisture does impact the project but he does not see that in this area. He also referenced Stahly's Engineering report, noting there is latitude in the construction. Commissioner Kanenwisher noted that as they talked about the report he sees some are objective and some are arguable. Commissioner Foss asked about the culverts having appropriate coverage on top. Commissioner Stoltz stated

he is not an expert, but he is just going over what the report says. Commissioner Kanenwisher stated it is arguable why things fail, but a different question is if proper techniques were used. So the question is, was it done correctly or is there a failure in the execution of the plan? Commissioner Chilcott stated the design features are based on topography and they were to just pave outside the reconstructed area. Commissioner Stoltz stated Stahly went over the engineering on the road. Commissioner Kanenwisher asked the Board if they wanted to review unsatisfactory work and unsupervised work together. Commissioner Iman stated in regard to the area above, we have two standards that are not understood. For example above the entrance to the subdivision there is no new engineering and there is no requirement for that, but they did provide standards to add pavement that was enhanced by the county. Stahly might not have been provided with that information, so the satisfaction of the law suit was to pave the road and there is different standards to paving the road. In some sections we discuss drainage, raising & lowering the culverts as well as paving. Commissioner Iman also asked Commissioner Stoltz about the culvert located above which is almost to the county line noting he agrees there might have been a need to have a culvert in that area. Commissioner Kanenwisher stated the idea that you can just pave over gravel is silly, noting David stated he did not know what it meant, but he went ahead and paved it anyway. Commissioner Foss felt the road supervisor should challenge something that he has been told to do when it compromises his work. And if he was told to compromise the work being done, shame on those Commissioners. For the past 8 months she and other Commissioners have asked these questions, and just today we are getting the information. She knows that culverts have a purpose so why were they not installed right at first? This work falls on the supervisor of the department. Commissioner Kanenwisher asked what did the Commissioners direct David to do, because the Commissioners do not direct a department head to do it wrong. The question is if the work was done correctly. Commissioner Stoltz stated Stahly Engineering stated these will fail (the culverts) plus they are already damaged, and the damage was not done by traffic, so they were not installed correctly and it is unsatisfactory work. **Commissioner Stoltz made a motion that the duties were performed unsatisfactorily. Commissioner Foss seconded the motion.** Discussion: Commissioner Stoltz stated the new culverts were not properly installed, the sub-base was dug up and different materials were put in. Plus David stated they were at fault. Commissioner Chilcott stated that is a high bar (standard) because then they make it so an employee can't make a mistake. Mistakes would have to be gross mistakes for any severe action and he does not feel that standard has been met in this issue. Commissioner Foss asked if the 2' shoulder being only 6" from the edge is a standard. Commissioner Stoltz commented it was that way down below also. Commissioner Kanenwisher stated he believes things were done incorrectly. Commissioner Iman asked if the motion just addressed performing the duties unsatisfactorily. **All "nay".**

- In regard to the supervision issues Commissioner Iman noted a supervisory person was on site daily reporting to the road supervisor. Commissioner Kanenwisher referenced the due process letter, #4 in regard to obtaining appropriate engineering services. He stated the appropriate engineering services were not done. Commissioner Chilcott noted that DEQ stated it was appropriate for this road. **Commissioner Stoltz made a motion that David failed to obtain proper engineering which violates Employment Policy 3.03(b).**

Commissioner Foss seconded the motion. Commissioner Iman and Commissioner Chilcott voted "nay". Commissioner Foss, Commissioner Kanenwisher and Commissioner Stoltz voted "aye". Motion carried 3-2.

Commissioner Kanenwisher asked the Board if they felt any disciplinary action was appropriate.

Commissioner Stoltz made a motion that disciplinary action is appropriate. Commissioner Foss seconded the motion. Discussion: Commissioner Kanenwisher noted the primary information is the false statements, and the Commissioners have been informed of things today that we were never informed of. We talked about the culverts and David denied Sardot's claim. In his opinion David's statements about the engineering were inaccurate. Commissioner Kanenwisher stated the Commissioners are accountable to the taxpayers, the owners of the road are the people of the county, and this supervisor is responsible for the largest portion of our budget. He asked how can the Commissioners be accountable to the people if we cannot supervise this employee. He stated they need accurate statements and this is not about motivation, or about part of the story, but this story has evolved over time and is different over time. He is disappointed that this is not seen by all Commissioners. He stated disciplinary action is necessary to deal with an employee. Commissioner Foss stated this is a matter of trust and noted the derogatory comments about the Sardots. She feels when the county tells the Sardot's that the county will build the road, the Sardot's assumed it will be done correctly. Knowing the logging that goes on there and the five subdivisions, it boils down to trusting the supervisor. She stated she is responsible for the dollars and she indicated the goal was to obtain straight answers from the department head which they did not obtain. Commissioner Stoltz stated he is for this motion because he can see how the department is run, and he cannot determine what statements are true and what are not. Commissioner Chilcott stated accountability is important, Commissioners are accountable to the citizens and the employees are accountable to us. The Commissioners need that trust. He believes information to the Commissioners was inaccurate and they need to work on communication and accountability with David, but rising this to the level of disciplinary action he questions. Perhaps a letter of reprimand, but he feels they need more effort to make sure we understand each other better. Commissioner Iman stated he thinks there was a miscommunication in the standard of the service. He indicated they are looking at a section of road that does not meet any standard. There is less than 80 cars per day on that road. He stated in regard to the subdivision, the county owns to the easement and the developer must attach by appropriate means, which requires a permit to do so. Commissioner Iman stated it is not the county's obligation to place culverts onto private property, and the county has no application yet. He felt in this case there is grounds for a letter in David's file with corrective action but the other half to this issue is that the Commissioners have not made themselves knowledgeable about the types of roads and their use. He considers this an opportunity for improvement, but he questions David's intent to evade any Commissioner action. **All voted "aye". (5-0)**

Attorney Recht stated the findings show there is a violation of the Employment Policy under Section 2.03 and that there is sufficient severity for termination of employment, or short of that, minimally there could be a letter of reprimand, or suspension for a period of time. While he has no recommendations, the Commissioners should come to agreement.

Commissioner Kanenwisher commented that the notion that the litigation settlement gives a separate set of rules does not give the right for the non-communication. Anywhere in this process David could have addressed this direction by the previous board, and David never clarified the one culvert. Today the story is different than what it was in a previous conversation. He asked how the Commissioners would measure a plan to make sure false statements would not occur again. Commissioner Kanenwisher felt this is a very important issue. Commissioner Foss agrees. Commissioner Stoltz agreed and felt they could not see when statements are true or not. Commissioner Chilcott felt a work improvement plan would be appropriate, and part of that measurement is that the Commissioners watch statements and actions, making sure they are validated. He noted they should expect more concise statements from our employee. We have an employee who notes David is honorable and has integrity. Commissioner Chilcott felt they could foster that relationship with better communication. Commissioner Iman stated there are two obligations; one is to understand what is being passed on to us, recognizing our communication skills can be improved also. He suggested they craft a letter indicating the specific areas where they expect a different standard of communication. He feels there is an issue of the previous board, and what this board's standard is. He would be in favor of working on the problem, and while he does see a problem, it is not enough for the extreme measure of termination. He feels it is the Commissioners responsibility to work on the things they want fixed, and in regard to the things that are not acceptable, reprimand or guidance is needed. But to say there has been a problem on one mile of 800 miles of road in the entire county is ludicrous.

Commissioner Kanenwisher stated it has nothing to do with one mile of road, rather it comes down to untrue statements made by the employee. He expressed frustration in that they have had hours and hours of conversation just to have this conversation today. Commissioner Foss advised Commissioner Iman this is what they have done for the past 7 1/2 months, asking how many culverts there were and they (the Board) were clear about that. She asked if he was suggesting that the previous board had different standards, i.e., misleading the board when all the asked for was the facts.

Commissioner Stoltz made a motion for termination. Commissioner Foss seconded the motion. Discussion: Commissioner Foss stated they cannot talk about other issues, just this issue. Commissioner Chilcott stated this situation does not rise to that level of discipline, we should try to facilitate success and that should be the first disciplinary action with David. He felt there should be an opportunity to correct, improve and be successful. Commissioner Iman stated a single incident for over 6 years does not rise to the level of termination. He felt by law they need to give direction with an opportunity for improvement in regard to the level of communication, particularly those with supervisory capacities. Commissioner Iman stated he disagrees with this motion violently. Commissioner Foss stated she understands, but how do we measure the truthfulness of an individual from this day forward? Commissioner Kanenwisher stated they have sought to improve this and figure this out since April. Today is the latest version of that discussion. Commissioner Iman stated he can see the difference in individuals understanding just by the discussion here today. There are different parts of this road that were

under different parts of the law, and if he does not understand it all himself. He stated their questions display their level of ignorance on the road, so they need the opportunity to educate themselves better particularly those that occurred in the past. Since May and June we have had numerous questions, and a representation by Stahly Engineering that did not take into account what has happened over the past three years. There may be insufficiencies and oversights, but they do not know what the county took on well months ago. Several times today they have said engineering is an inexact science, and we have utilized our own engineers who agree it is not perfect but adequate. In Stahly's report on Page 12 their own recommendations conflict in themselves in what might be adequate.

Commissioner Stoltz made a motion to call question. Commissioner Foss seconded the motion. Commissioner Stoltz, Commissioner Kanenwisher and Commissioner Foss voted "aye". Commissioner Chilcott and Commissioner Iman voted "nay". Motion carried to call the question (3-2).

In regard to the motion to terminate, Commissioner Foss, Commissioner Stoltz and Commissioner Kanenwisher voted "aye". Commissioner Iman and Commissioner Chilcott voted "nay".

Commissioner Kanenwisher then suggested Road Employee Mike Roth as acting crew leader, administering the snow program and crew work. **Commissioner Stoltz made that motion and Commissioner Foss seconded the motion.** Discussion: Commissioner Chilcott asked about compensation for that work. Commissioner Kanenwisher stated Mike Roth will not have the administrative duties of the road supervisor. Commissioner Chilcott suggested the Human Resource Director advertise for the position. Commissioner Iman stated this action is premature at this time as it is the obligation of the county to look at the duties and see if we want to reassess the position or turn this into a temporary situation until other agreements may be made. He asked if Mike Roth is the most senior person. Human Resource Director Robert Jenni stated they have two crew leaders, Mike has been active on work crew but he does not know the seniority level. Commissioner Kanenwisher stated one crew leader is retiring and this is only temporary. **All voted "aye". (5-0)**

Commissioner Kanenwisher stated on Monday a.m. there will be lots of questions, and as Chair he would like to update employees, also noting the Commissioners need to have oversight and as such he suggested Commissioner Stoltz be that liaison.

From the audience Carlotta Grandstaff thanked Commissioner Iman and Chilcott for being the only honest Commissioners and then thanked David for his service. Commissioner Kanenwisher advised Carlotta she was out of order.

Commissioner Iman suggested Human Resource Director Robert Jenni be the sole liaison because Commissioners have to act on employment issues. Commissioner Chilcott stated due to personalities he would suggest Commissioner Iman be the liaison. The meeting was interrupted due to fall in stairway and medical personnel was called for assistance.

The meeting reconvened.

Commissioner Foss made a motion to have Commissioner Stoltz be the liaison first thing in the morning and in the evening. Commissioner Stoltz seconded the motion. Discussion: Commissioner Chilcott felt this puts Commissioner Stoltz at risk for certain perceptions and comments being made. Commissioner Foss then withdrew her motion.

Commissioner Chilcott made a motion to have Commissioner Iman be the liaison in the mornings. Commissioner Stoltz stated he is not for Commissioner Iman being the liaison because Commissioner Iman does numerous things on his own and does not bring things to the board. Commissioner Chilcott then made a motion to have the chairman of the board be the liaison. Commissioner Stoltz seconded the motion. Discussion: Commissioner Foss understands Commissioner Chilcott's point of view. All voted "aye" (5-0).
The meeting was adjourned.

Commissioner Kanenwisher called for comment not otherwise on the agenda. Ren Cleveland expressed dissatisfaction about honesty and what kind of people the Commissioners were. When he attended a subdivision meeting with the Commissioners, one of the Commissioners rebuked him and verbally attacked him in the road. He felt that Commissioner should come out and apologize.