PUBLIC MEETING
BOARD OF COUNTY COMMISSIONERS
WEDNESDAY, JANUARY 9, 2013 – 1:30 P.M.
ROOM B14 – ADMIN BUILDING
MINUTES

If anyone attending the Public Meetings needs special assistance, please provide advance notice by calling 258-4877. Missoula County will provide auxiliary aids and services.

1. CALL TO ORDER
Commissioners Present: Commissioner (Chair) Michele Landquist, Commissioner Jean Curtiss, Commissioner Bill Carey

Staff Present: James McCubbin, Deputy County Attorney, Greg Robertson, Director Public Works, Steve Smith, Surveyor, Kim Cox, Clerk of Recorder

2. PLEDGE OF ALLEGIANCE

3. PUBLIC ANNOUNCEMENTS
Missoula Aging Services needs volunteers to help deliver meals or work as foster grandparents/senior companions; you need to be 55 or older.

4. PUBLIC COMMENT

Tim Mooney: December 29th there was an article in the Missoulian regarding an underage drinking party in Huson. I’m concerned about all parties not receiving tickets ~ 40 plus teenagers at this party and only 4 kids received tickets, the rest walked away. I can’t believe that the Sheriff’s Department didn’t give all kids with a drink a ticket. Why hasn’t anyone said anything about this? If the teenager has alcohol on their breath why are they allowed to leave? I’m the only one in the community that seems to be outraged by this…why?

Chair Landquist: I’m glad you brought this up again; I’m also concerned about the drug & alcohol abuse in our community. You can bet I will follow-up on this with the Sheriff’s Dept.

Tim Mooney: We spend a lot of money on this and yet we allow the kids to walk away. The High School has a zero tolerance policy to alcohol and then allow all these kids to drive to Huson. Imagine if one of those kids killed somebody after leaving that party, after being checked to see if they were impaired. I think the Officer on-site should be suspended for a week without pay ~ to have a consequence for this.
Chair Landquist: I will follow-up on this. Tim, please leave me your contact information.

5. ROUTINE ADMINISTRATIVE ACTIONS
Weekly Claims List ($1,456,823.09)

Executive Session
Commissioner Curtiss made motion that the Board of County Commissioners approve the weekly Claims List in the amount of $1,456,823.09. Commissioner Carey second the motion. The motion carried a vote of 3-0.

6. HEARINGS
a. Petition to Alter (Relocate) Utility Easement – West End of Industrial Parks I & II (postponed from November 28, 2012)

Commissioner Curtiss: The reason we had delayed this is because not all of the utility companies had signed a release, we now have one from all. There was a question on the one because the person at Blackfoot Telephone that signed, from their engineering department was also a notary, so I did call today and they did send a new release form. I think we’re okay. We have a fax and they will mail the original.

James McCubbin: Normally I’d recommend that you wait until you actually have all the waivers but I think because you have the fax you can approve it contingent upon receiving the original.

Public Comment
None

Executive Session
Commissioner Curtiss made motion that the Board of County Commissioner approve the petition of the West End Industrial Parks I & II to relocate the Utility Easement, contingent upon receiving the originals. Commissioner Carey second the motion. The motion carried a vote of 3-0.

b. Petition to Abandon a Portion of Old Lolo Creek Trail

Steve Smith read petition. The petition is to abandon a portion of a public road on the petition described as the Old Lolo Creek Trail and also depicted on an accompanying map as being located in the SE ¼ of Section 35, Township 12N, Range 21W. The segment effects the portion or a good half of the north boundary of Lot 10 in Lolo View Acres and goes through the west boundary of parcel 1A of COS 5954.

Kim Cox: I did verify that the necessary signatures are there.

Roy Van Ostrand: Also on Lot 6. My brother owns a 49 acre piece where you see on the map, it’s specific to the cabins where Hwy 12 comes up on the corner (on this map) and basically goes clear up to what he described as the petition piece. We, as well, have
supported the idea of abandoning the road, particular because everything else on Lolo Creek has been abandoned, with the exception of this, I believe. We’re concerned about some of the interest of Plum Creek wanting to subdivide and that sort of thing. I’m not sure why Dave isn’t here. Some of that that I see looks like it’s sectioned out ~ the county has actually surveyed in a small portion for Dave Trusty to purchase from Plum Creek or is that to purchase from the County?

Chair Landquist: Dave Trusty did…actually, the history behind this is that Dave Trusty did try to abandoned some of this a year or so ago, that’s when he found out that that road…that he was actually encroaching on the road and he couldn’t abandon it because it was owned by Plum Creek. Dave then had it surveyed and met with Plum Creek and purchased a portion of that for the purchase of being able to abandon it because as you know the area as well, part of this is where his parking area is and some of his storage buildings and storage items for his excavation business. He was able to craft a deal…a purchase agreement with Plum Creek, if you have a copy of Exhibit A, these hash lines, the reason that full abandonment request is not going all the way to the edge of his lot 5 is because that’s a flat area once you’re up on there and that’s to allow Plum Creek access from Hwy 12 up through your area to that property that they own.

Roy Van Ostrand: If in fact it’s a County road, does it actually belong to the County, the right-of-way or do they just have the right-of-way through the property?

James McCubbin: The latter. It’s just an easement.

Roy Van Ostrand: Okay. So on page 24 it says…I apologize because I had about 5 minutes to educate myself on this. My father Roy Van Ostrand, as well, tried to do this on April 15, 1992 ~ looks like these are the minutes from that meeting. I actually met with Steve Niday, he was up there and I got some specifics from him as to where the location of the property that I own is up there and he depicted it as to the center of the road. He wrote me an email and I can certainly give you a copy of that. Basically his first impression of this…to resolve this; I would own to the center of the road and Plum Creek would own the north side of the Road, if you want to call that. He had a secondary conclusion and his third was lease likely; was that the County owned the road and that if you look at the map (he made me a map), but if you look I actually have a water hydrant that’s on the verge of being 10 feet from the center of the road, so he wasn’t exactly sure who owned the road. My main concern is that I’d like to see it resolved but I guess at the end of day, if the majority of the old trail, if you will, has been abandoned I’m not…through the Lolo Ranch to the Bruce Buffalo’s to all these other existing neighbors on that path, why wouldn’t it be this as well? That’s my thought.

Chair Landquist: Back to the old minutes that you referenced about the abandonment that your father and Dave I think was in on that, at that time too, trying to abandon it, it was approved and then it rescinded because at the time Champion International owned that and Champion wasn’t contacted and when the County found that out, if was prior to any of us being here, but reading those old minutes they had to rescind the approval and it’s laid dormant ever since. Now Plum Creek owns it, they acquired it from Champion.
**Roy Van Ostrand:** Where does it lay now? If I was to request this, where these hash marks are from that point South towards the Hwy, would we have to go through this same thing again?

**Chair Landquist:** You’d have to follow the same procedures that Dave Trusty has followed; get the application for the abandonment, have all of your contiguous neighbors sign-off on it, including Plum Creek, then bring it back to the Surveyors Office and Kim Cox so they can verify the signatures, then put it here for Public Hearing.

Just so you know, we won’t make any decision on that today because what we have to do next is, if there’s any other public comment and we do have had some written comments we need to enter in the record, then we have to set a site visit for that and anybody that wants to join in on that site visit can at that time. We’ll try to set that date as close as possible to our next public meeting. Then we’ll make the decision at our next public meeting after we have our viewer’s report done.

**Roy Van Ostrand:** So is the written comment that you have, is that available for us to read?

**Chair Landquist:** You sure can, I’ll make sure you get a copy of that.

**Commissioner Curtiss:** James, could you please clarify; I believe if someone partitions to abandon a portion of the road and one of the folks that uses that road to access their property says no, it’s dead right? Which is why we have to have concessions for Plum Creek, if that’s what they want.

**James McCubbin:** Right. If you are looking to try to abandon the rest of it, you would basically have to have Plum Creek’s consent to do so. It’s really the place to start.

**Roy Van Ostrand:** Right. Thank you.

**Sandy Boehmler:** Private land owner with county easements and county deeds for roads across my property and I understand all of the complexities because we deal with that. I’m very concerned about continued abandonment of the Lolo Trail. We have a wagon road on our property that dates back to the 1860’s, as a family we steward that. I try to protect that to preserve that history, I’m for doing whatever holds that record of the trail being in that place into the future that wouldn’t allowed for further construction in the easement. Especially with the Lolo Trail, it’s not just the Lolo Trail for the Salish, it’s the road to the fish for the Nez Perez, it’s the road to the buffalo and I think that history is really, really important to preserve for all of the people that live here in perpetuity. That’s the connection to the land and the value of that I think is important to take into consideration in this process. I just wanted to speak for keeping our history alive in this area and this is a very significant trail and road that’s part of our history.

**Corey Van Ostrand:** I own the 50 acres from Hwy 12 through. I have a deed from 1969 that says…”old abandoned county road” so I don’t understand why this from ’69 that says ‘old abandoned county road’ as well as on this map which is essentially the same map that you have, also lists ‘old abandoned county road’, which is basically right through the 50 acres. There are remnants of cabins from mining days. Our little girl will be playing in that...
road come spring, it’s literally right out the front door. The actual road is below the bank, the current road that’s standing is actually an after the fact road from the original Lolo Trail. The road that’s in question really isn’t a road, technically speaking.

**Chair Landquist:** By calling it the old abandoned county road, it makes it seem like it’s already abandoned doesn’t Corey?

**Corey Van Ostrand:** It does, yes. The hillside is steep; we own well over half way up it clear all the way to where Dave Trusty is at. Everything is inside our property as far as that road is concerned. Certainly don’t want a freeway up there; I’d like to keep it private.

**Chair Landquist:** Dave was also arguing with me about the fact that…why should he go through this process because it should have already been abandoned and he thought it was. He’s been going through these hoops and the records are showing it’s not actually abandoned. I think the reason why it was being called abandoned is because Hwy 12 got built when they straightened the creek out and they paved and created the official Hwy 12 Highway, that’s how it was a name only it never really got recorded as abandoned and feel free there’s a Surveyor and a Public Works guy and a lawyer here to set me straight. So it was in language only but not in legal terms or legal process was it actually official abandoned. That’s my understanding.

**Corey Van Ostrand:** As far as getting that road abandoned, what’s my first step?

**Chair Landquist:** Your first step is to go to the Surveyor’s Office and get the appropriate application for that. Or you can go online to get it too.

**James McCubbin:** I think your practical first step is to talk to Plum Creek. Not much point in doing anything the petition if they won’t agree to it.

**Corey Van Ostrand:** Where’s the legal proof that Plum Creek has the right-of-way on it?

**Commissioner Curtiss:** Because it’s a County easement and that means the public has it and they’re part of the public.

**Corey Van Ostrand:** Would it be feasible (Plum Creek) to subdivide that canyon up there?

**Commissioner Curtiss:** Yes.

**Corey Van Ostrand:** And let cars run right through my front door.

**Commissioner Curtiss:** Yes

**Corey Van Ostrand:** Is there a limit to how many gates a guy can put up?

**Commissioner Curtiss:** You can’t put any on a public road.

**Corey Van Ostrand:** So whenever ‘Joe Bob’ the gun shooter comes up to go shooting, how much of my property can he trample over without me running him off?
Commissioner Curtiss: Only the right-of-way.

Corey Van Ostrand: Which is from the center of the road how far?

Commissioner Curtiss: 10 feet on your side.

Corey Van Ostrand: 10 feet from the center of the road basically and that depends on if we’re going with the original road that’s down by the creek or if we’re going with an after-the-fact road that’s on the bench.

Commissioner Curtiss: And that might be what we discover when we get out there because Steve Niday is very familiar with it and he’s excellent at locating these is that the right-of-way doesn’t even exist where the road does.

Corey Van Ostrand: What do you do in that case?

Commissioner Curtiss: We can move the right-of-way to where the road exists.

Chair Landquist: I think Greg Robertson has some suggestions that he mentioned to me earlier. Greg would you care to tell us what’s on your mind regarding the hic-ups that we’re running into on this?

Greg Robertson: This isn’t the first time we’ve dealt with abandonment and just as a matter of clarification, just because a deed shows or makes reference to an abandoned county road right-of-way, does not necessarily translate into it, unless official action is taken by a Board of County Commissioners and entered into the record. That’s how an abandonment happens and until that happens it’s still of record regardless of what deed transaction have happen in the past or occur in the future.

Commissioner Curtiss: That’s why we have our surveyors look at deeds now before they’re recorded so that we can try to catch those things.

Greg Robertson: In terms of the correspondence that you received, you received two; one from the Shipo as well as one from the Nez Perez Tribe regarding the trail. This issue has come up before although we haven’t had a whole lot of discussion but not that it’s on the table I think it’s probably warranted that we follow through with the tribes and actually involve them in a discussion trying to map their claim of the historic trail vs. our Book One rights-of-way, so that in the future we have at least some guidance on how to proceed with these things, as they come up. My recommendation is to continue the hearing allow time for Steve Smith and myself to make contact with the tribes, as well as the Shipo and see if we can actually develop a GIS base map of the Book One right-of-ways vs. what is claimed by the resource agencies as to the disposition of the historic trail, obviously there’s a dispute here and it would be good to see if we could get that map so that this issue when it comes up again, and it will, we have some basis for making a then informed decision.

Commissioner Curtiss: So did they…the Historic Lolo Trail is that one of the things listed in Book One ~ we call it book one because that’s what it says on it, it the real old books showing surveys and roads in Western Montana. Does Book One refer to it…does it become a road right-of-way?
Greg Robertson: It depends. A lot of the old wagon trail roads followed historic trails and they just gravitated towards that, I don’t know that to be fact, I’ve seen that in other parts of Missoula County and some of the abandonments we’ve dealt with but in this specific case I couldn’t tell you. I think in order to answer that question we need to have dialogue with the Nez Perez to see if we can get their take and their position in more of a map form.

Commissioner Curtiss: And the Salish Kootenai did not comment as of today but I think they used this trail too. So if the Historic Trail or portions of the historic trail were never used for things that had wheels on them, does it still translate in to some sort of road right-of-way or can we just map it as a historic trail?

Greg Robertson: I think unless it’s defined as a Book One right-of-way that would be very dubious to try and perfect. It would be good to have the trail map, at least in the Missoula County portion. I don’t think it would be that big of a deal to try and at least develop that but engage the Nez Perez, if they have made comment and/or are concerned about it in that discussion and see if we can come up a reasonable map that can be used for decision making purposes in the future.

Chair Landquist: Those are all good questions. Also the Montana Preservation Alliances sent us a letter asking us to defer the decision and allow time for discussion with the interested tribes, so we’ll be pursuing that as well and try to include them in the site visit as well.

Greg Robertson: Yes, my recommendation is that we continue the hearing, have the site visit but delay any decision until we’ve engaged the tribes in a dialogue.

Commissioner Curtiss: Seems we should continue this hearing out a ways so we have adequate time and we don’t know what the weather might do. Maybe out to March or something so that we have plenty of time to engage all the folks that want to be.

James McCubbin: I’d recommend that you just go ahead and appoint the viewers but not necessarily set a date. The viewers can then coordinate with the property owners, with the tribes, to set a date that will work for everybody. You can schedule the continuous of this hearing out far enough that there will be some wiggle room.

Commissioner Curtiss: So I’ll put this piece of paper out for anyone that’s interested in going, please sign the sheet.

Chair Landquist: Jean you are next in line to do the site visit; the Commissioners take turns going out on site visits so its Jean’s turn to go on this site visit so she’ll be the Commissioner’s point person and then someone from the Surveyors Office, Steve Niday has requested to go. I’m assuming that both Roy and Corey Van Ostrand will probably want to be present too.

Roy Van Ostrand: One of my thoughts as I’m listening here, with respect to the tribes, is what properties that the road actually went through, how many sections of that road have been abandoned? And if so, if there is some sort of historical trail or what, if you will, and are they going to go through the Osmond Ranch, are they going to go through that sort of
thing? If it's just this little section that's of concern, I think that's kind of ridiculous in the
fact that the road went from Lolo 23 miles up the springs. If I could ride my bike through
the Lolo Ranch at any time I wanted, I would, I absolutely would. So I think with respect to
the land owners that are up there that possible have a abandoned road in their minds, but
it really hasn’t been, they also need to be contacted, I’m sure that the ranch would probably
throw a red flag as well, that their property is subject to a 60’ right-of-way going through
there. I’m sure that they should have some comment as well, as well as everybody in that
effect area.

Chair Landquist: I think we’ll end up finding out more once we take Greg Robertson up
on his offer to get that mapped out showing what the historic trail is or was and then we’ll
be able to look at how much of it has already been officially abandoned. I know that for
that Lolo Creek Trail Subdivision right across from me, that trail is still delineated through
there. With all due respect to historic entities that want these things preserved, if nobody is
going to take care of them, if these entities aren’t going to take care of them in perpetuity
then it’s pretty hard to hold the landowner that, per say.
One just straight forward question, you being one of the contiguous neighbors there, yes or
no answer, do you have a problem with the County abandoning that portion that Dave is
seeking to abandoned today?

Roy Van Ostrand: No

Sandy Boehlmer: Just to add a little bit of information that maybe is helpful; there’s the
historic trail and then there's the historic Lolo Hot Springs Road and as the land owners are
saying, they're not necessarily in the same place. Perhaps you already know this and I
apologize for speaking up if you do; the Forest Service has done a survey of the historic
trail to the Salmon Trail to the Buffalo, it was very thorough. I believe it may have been
done by Allen Mathews, I've had dinner with, I think it was Allen Mathews, who was
contracted by the Forest Service into this huge very detailed, very in depth survey of the
native American trail.

Commissioner Curtiss: So the Forest Service should have that research.

Chair Landquist: I do have an email that started out with the Forest Service and it went to
those at Travelers Rest State Park regarding this. It came from Margaret at the Lolo
Forest Service and I think that she probably has some good information too.

Executive Session
This Hearing will not be closed, Hearing will be continued February 27th. Viewing will be
scheduled.

c. Petition to Annex a Parcel of Land into Missoula Rural Fire District (3735 Trail's
End Road)

Chris Newman, Missoula Rural Fire District: We’ve already approved from Missoula
Rural Fire District's stand point the annex; I’m just here to answer any questions.
**Commissioner Curtiss:** It’s contiguous to the fire district, it’s just never been added in. Is there a home on this?

**Chair Landquist:** Is that a County maintained road?

**Greg Robertson/Commissioner Curtiss:** Yes.

**Kim Cox:** I did verify signature on the petition.

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**Executive Session**

Commissioner Carey made motion that the Board of County Commissioners accept the petition received by the Clerk & Recorders Office to annex the parcel in question, located in Missoula County into the Missoula Rural Fire District. Commissioner Curtiss second the motion. The motion carried a vote of 3-0.

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7. **OTHER BUSINESS**

None

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8. **RECESS**

Being no further business to come before the Board, the Commissioners were in recess at 2:20.