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

Staff Present: Todd Kleitz, Floodplain Administrator

2. PLEDGE OF ALLEGIANCE

3. PUBLIC ANNOUNCEMENTS
Missoula Aging Services also need volunteers to deliver meals. Call 728-7682. They deliver over 1,000 meals a week.

4. PUBLIC COMMENT
None

5. ROUTINE ADMINISTRATIVE ACTIONS
Bi-Weekly Claims List ($665,133.51)

Executive Session
Commissioner Curtiss made motion that the Board of County Commissioners approve the Bi-Weekly Claims List in the amount 665,133.51. Commissioner Carey second the motion. The motion carried a vote of 3-0.

6. HEARING
Floodplain Permit Variance (11055 Silver Street in Clinton – Simmons)

Todd Kleitz gave staff report and showed PPT presentation
Christy Brandon, Chapter 7 Bankruptcy Trustee appointed to Meryl J. Simmons Bankruptcy Estate: She filed her bankruptcy in September 2011. My job is to assess the assets, bring them in, liquidate them and get the money together so we can distribute them to the creditors in the case. She has roughly $200,000 of creditor claims that have been approved by the court that we’re trying to get some funds out to them. I know that’s not this Commissioners business, I understand that, I’m just gonna give you a little brief background of who I am and how I fit into this picture. Our last asset will be this home with the 77 surrounding acres. The court approved my employment of Pat Byrne, he’s here with me today, the Realtor for the bankruptcy estate and with me today also is Myron Stroh, who has helped me many times and maintaining this property, cleaning it, doing a lot of the remediation work as well. Working on this asset, I started to learn when I got to the 431 meeting, that’s one of the first meetings that we go to with all the creditors. At that point I learned there were remediation problems. Going back to the assets just briefly, those that I have liquidated brought in around $24,000 for the estates, of that I’ve spent around $18,000. We spent larger that money on remediation efforts, trying to get the main asset for the estate ready for sale. We hired excavators; MJ and a friend of hers were instrumental in doing a lot of the vegetation. However, while we were out at the property and reviewing the excavator’s final work that was completed in June of 2012, Mr. Kleitz was there with us to review the floodplain issues because the ditch work had gone into the interior of the property. While walking past the home we saw the chin scratch and it became an issue of; do we have another remediation problem with the property. Indeed, upon investigation, the house was found to be in noncompliance, we didn’t have a floodplain permit. The troublesome facts on this case that I wanted to bring to the Commissioners attention would start with your findings of facts that you’ll be reviewing, as well as your variance determinations that you’ll need to be working through. I thought it might be helpful to give our perspective and we’ll have Mr. Byrne available and Mr. Stroh as well. Mr. Stroh has been down into the crawl space for the home, so he has particular eyesight, first-hand knowledge of what it looks like down there, that he’d like to share with the Commissioners. My job is mostly to walk you through the facts that are alleged in your draft findings of facts, as well as to walk through the variances.

I have no dispute with the findings of facts 1-3, in fact, there is no floodplain permit for this property that was built back in 1993. A common fact pattern, if I could suggest it that way, I’m not going to give that as a factual representation but just as an observation; this was done by Jerry and Merrial Simmons, they didn’t hire a general contractor, they did what they thought they needed to do. They got their building permit, they got their septic permit, they failed to get the floodplain permit. I would just observe that this is a 20 year problem and there was the initial building permit review process and then in 1998 there was also a subdivision review where the parcel was split into a few parcels, again nothing was ever mentioned of floodplain. That does not shift the burden, I’ll be very clear with you on that, this is the land owners responsibility, I just bring it to light that again this is a 20 year old problem that we’re trying to resolve at this point.

Turning now to findings of facts 4 and 5: As Mr. Keiltz or whoever drafted this has mentioned, the flood insurance premiums may go up, which would be a significant cost down the road. I would note though for this purpose, for this hearing, when you look at the criterion for evaluating the variance that we’re looking at a showing of good and sufficient cause. And under that heading, this backdrop of the bankruptcy, I don’t think you see that in many other findings of fact and what does that mean in this context? I am trying to make a distribution to creditors; I am trying to resolve a bankruptcy estate.
On the flood insurance premiums, I would note for the record for today’s purpose that we’re not feeling it now. I’ve done full and fair disclosures to our insurance agent, we do have coverage with minimal premiums they’re under $400.

**Chair Landquist:** That insurance is it just regular home owners insurance or is that actual flood insurance?

**Christy Brandon:** It’s flood insurance. Fact #5; I’ll disagree with this one. I think what Mr. Kleitz was suggesting to the Commissioners is that alternative locations for the home could be up here (Zone X), as well as there’s another location that has some room. I would expect that Mr. Kleitz would argue that alternate locations may exist (looking at map – proposed alternate site/alternate building location). The problem with that is that there’s easement of records and then there’s setback requirements. My opinion, I think we have problems with the finding of facts that there would be alternate building location; I’ll let Mr. Kleitz response to that, if there’s something I’m overlooking.

Going back over to the variance considerations that you’re working on today; The showing of good and sufficient cause, I wanted to point out a few more things that I think make a difference, again given some peculiar facts. There’s no evidence of water or water damage in that crawl space. MJ waived her homestead, there were some nondisclosure problems in the bankruptcy estate and she vacated the premises to allow me to sell. Once she vacated we had cleanup, significant cleanup that needed to occur, Mr. Stroh was retained to do that so he can answer any questions you might have. To require changes on this property at this time would create a hardship for the bankruptcy estate and I think that’s a unique fact pattern that you may not of had to deal with before.

I don’t believe there are any alternative locations; I don’t think we could move that building anywhere.

I think you get to decide the hard question of what to do with this property with our 20 year old problem discovered last year.

**Pat Byrne, Realtor:** I’ve lived in the Clinton area for 45 years. I was very familiar with this property as it was originally owned by Jerry Simmons. As Todd pointed out, the upper end of the property has been eroded away with the high water, which is a real concern and has been for us for a long time. The easements that exist there, there’s a utility easement just below the railroad tracks and there’s a road easement that goes right through the middle of the property. We did not survey the actual location of relocating that house but the cost to do so are almost prohibitive, I think it would almost be better to burn the house down rather than move it – the cost would be that much. We had a bid of $56,000 just to raise that and fill in the lower level and that was only to a level of two feet. I have not seen any flooding in the crawl space, typically realtors look at concrete to see if there are any water marks or mud, there was none of that found in this. We went through, it’s certainly not 100 years but in 1996 we went through some very high water out there, did not have any evidence of flooding. I don’t think there’s any problem in that lower level with regard to equipment, there’s no furnace down there, all of the plumbing and heating goes through the floor Joyce’s which is above the floodplain by one foot. I realize that you have a requirement of two feet in the State of Montana, isn’t that right. (Answer was yes)

**Myron Stroh, Independent Contractor:** I pulled the carpet from the crawl space and there wasn’t any evidence of water. I looked at the installation around the foundation, no water lines, nothing on the installation.
Chair Landquist: Are you able to stand up fully in this crawl space?

Myron Stroh: No, you can kneel, it’s basically four foot. It is lit up real well with lights.

Chair Landquist: Todd, do you have anything to talk about with Christy disputing #5 in the findings?

Todd Kleitz: The finding of fact for #5 is that the parcel has approximately 2 ½ acres outside of the designated floodplain. It does not include or address easements; it’s just the area that’s outside the 100 year floodplain, as designated by FEMA. In regards to groundwater not showing in the crawl space, that’s great news. We haven’t had a 100 year flood, the last 100 year flood that we had was in 1908.

Commissioner Curtiss: What was the ’96 flood considered?

Todd Kleitz: About a 10 year flooding – the Spring of ’97 was about a 10 year flood event. Same thing we had in 2011, for the FEMA flood insurance study.

Chair Landquist: Todd, what is the risk if any, to Missoula County if we with regards to FEMA and our designations, if we start granting variances?

Todd Kleitz: Well from FEMA’s perspective they consider crawl spaces to be the lowest floor, even though it’s just a dirt floor crawl space. Under their rules, at a federal level the crawl spaces have to be considered the lowest floor or the basement. Federal rules could be at the 100 year flood elevation, no lower than the 100 year flood. Anything more than two feet beneath the 100 year flood elevation can generate what’s called a submit to rate request to FEMA, which is where the regional office of Denver would assume what the rate is when a flood insurance agent receives an elevation certificate and it documents that the lowest floor is too low, in this case the crawl space too low. Those are supposed to be submitted to FEMA if there significantly low and then FEMA has to review those and determine and track those and determine whether or not a local community in compliance with the Federal standards in their own local requirements. Missoula County does participate in the community rating system, that’s the voluntary program that we participate in with FEMA that provides for a 10% insurance discount for all residents either in or outside the 100 year floodplain who obtain flood insurance.

Chair Landquist: The entire county right?

Todd Kleitz: The entire City and County. The City of course participates on their own. That’s a 10% discount for all flood insurance premiums. Whenever FEMA looks at these then the concern is that they may see a pattern of non-compliance, a pattern of regulations not being enforced and so it’s possible that they could remove CRS rating from us; they have done that recently in some of the communities and counties in Montana, just heard that last week. We did get our re-certification for CRS just a month or two ago so we’re good to go for five years, as long as we keep doing what we’re supposed to be doing. So those are the two concerns;
1. That FEMA will see a pattern of non-compliance and the possibilities of our CRS discount being removed
2. and flood insurance premiums going up that mandatory 10%.
Commissioner Carey: I’d like to hear our Deputy County Attorney’s take on this; a year or two before I got on this Board, I think the county was dealing with a situation where there were lots of folks who built in the floodplain…

Marnie McClain: The first note I have to myself is that this Board has first-hand experience with what happens when houses are built in the flood plain. What happens is that the homes flood and that has terrible impacts for the home owners. This is a significant public health and safety issue; flood that crosses over pastures gets really voile when it ends up in people’s homes and there’s considerable safety and damage to septic systems. So I would say it is important to consider what kind of impacts the county might experience if we were to grant a variance because that would affect our program. I think it’s more fundamental to remember that this public health safety and wealthy regulation and its purpose is to protect people in their homes and letting a home be built in the floodplain without correcting it, it’s hard to justify. I had a couple questions that I wanted to ask Ms. Brandon; you had said that this house was built in the 1990’s?


Marnie McClain: And they had a building permit?

Christy Brandon: Yes.

Marnie McClain: We didn’t have a building permit program then, are you thinking maybe electrical permits or …

Christy Brandon: I called Helena when we were preparing for this hearing, part of your application requires that we investigate what permits were out and existing. So I called Helena to confirm whether or not there was a building permit and the woman investigated it on her computer, she couldn’t see it right away, the answer so she investigated it and called me back. On the return call she stated that it had been approved so that’s why I believed there was a building permit. I don’t have a piece of paper showing you that.

Marnie McClain: I think that was probably the permits that the State issued which were electrical permits and plumbing. We didn’t have a county wide building program until sometime in 2006 and part of the reason for implementing the building program was for exactly this kind of situation.

Chair Landquist: The county didn’t have the building permit program but in order to even get your sanitary stuff and your septic stuff, did people still have to get floodplain permits if they were in the floodplain?

Marnie McClain: Yes, that was still a requirement. I appreciate what Ms. Brandon is trying to do, which is what she should be doing as a bankruptcy trustee and that is maximizing the value of the assets for the benefit of the creditors. That then puts us where we’re competing with the assets of the creditor and the value of assets for the creditor vs. public health safety and welfare. That’s kind of a difficult setoff to make. I think that we have as good a chance as we’re gonna get to correct this problem now, then we would at any other time. That’s one of the reasons why I’m concerned that we would regard the need to maximize a bankruptcy assets as being something that should be
secondary to the need to correct this problem. There’s no dispute that this is built in the floodplain and that this structure is well below the level of the 100 year flood elevation. If the intent is to sell it to other people, presumably they will occupy it. I have some concern about when you sell the property with the disclosure that this property is in the floodplain and it’s out of compliance and its well below...doesn’t that effect the value that you can get for it? Don’t you reduce the value with the asset of equity?

**Pat Byrnes:** In order to sell it we would have to value the property to the amount of suggested here what the bids do to correct the situation. It might even be anywhere between $60,000 to $80,000 in order to do that so yes, we would have to deduct. I wanted to point out and the attorney mentioned there was no one else who would be in harm’s way if this were...Todd could you put that first map up there showing me the property itself? Looking at the map, there’s no one in harm’s way to the West there toward the top of the map; there wouldn’t be any problem there if it did flood right through the middle of the field. I don’t see where that would affect any other property owner, in any way. Any water that came through there would return right to the river.

**Public Comment**
None

**Commissioner Curtiss:** Todd, based on a previous statement that you made it sounds like the rational for Montana to require that the elevations be two feet above the 100 year floodplain is so that we do not have to submit to FEMA the submit to rate because you’d have to it all the time.

**Todd Kleitz:** No, the two foot free board requirement actually went in in the early 70’s. I believe the rational for that was just because the FEMA maps can be wrong and we’ve seen that in Grant Creek on our floodplain project at Mullan Trail, where the FEMA identified 100 year flood flow was 465 given feet per second that would come down during a 100 year flood. Our engineers had identified that would be almost double that and when it came time to sign the papers at the very end, FEMA agreed with the engineers saying that the earlier estimates were wrong and that the 100 year flood flow was significantly greater. What Montana did years ago was not to put a whole lot of faith in the federal government’s 100 year flood elevations and require this two foot of free board (the lowest floor has to be two feet about the 100 year flood elevation). What that does, it provides because we’re required by state law to go above and beyond the federal minimums, it provides the people that do live in the floodplain a significant insurance break on the cost of insurance for that, if they meet the requirements and their lowest floor is two feet above. FEMA sees it as a reduce risk to them, to the taxpayers having to pay for the damages that would otherwise have occurred.

**Executive Session**

**Commissioner Curtiss:** I think we can amend our findings of fact #4 & #5 just to reflect.

Commissioner Curtiss made motion that the Board of County Commissioners amend findings of fact #4 to add a second sentence that says; current flood insurance premiums on the property are less than $400 per year. Commissioner Carey second the motion. The motion carried a vote of 3-0.
Commissioner Curtiss made motion that the Board of County Commissioners amend findings of fact #5 to add a second sentence that says: because of setback requirements and easements of records these may not be buildable. Commissioner Carey second the motion. The motion carried a vote of 3-0.

**Commissioner Curtiss:** I think that our biggest challenge is our goal to protect and I understand…it’s really unfortunate that we’re in this predicament. While some people think that permits are just a bunch of government sticking their nose in other people’s business, there really is a reason for permit and its prevention. So if in 1993 they had either realized or taken advantage of the fact that we had a floodplain permit that was require, it was to protect them and protect the house in the future and it would have prevented us being here today. My concern is understanding that there would be a disclosure so that someone buying this property would know that they had a lot of work to do. That if they bought it in May and you distributed the money to the creditors as your charge and we had the event that happen two years ago where we had flooding in our community, they could come back on us and say; what is the matter with you people, your job is to protect public health and safety. I just think that although it’s unfortunate and it will require a longer time for the bankruptcy to be settled and the assets to be sold, I think its best that we look at the seven things that we have to consider and require that the work be done before it’s transferred to a new ownership. I just don’t think it’s fair to expect new owners to take on that responsibility and hopefully you can get some other bids that maybe you could get a better deal on the improvements of the mitigation. I can’t favor granting the variance.

**Commissioner Landquist:** Is this an actual stick built on-site house or was this a modular?

**Pat Byrnes:** It’s a stick built house on site.

**Commissioner Carey:** I concur with Commissioner Curtiss, it is an unfortunate situation but allowing people to build in floodplains, I don’t think is a service to the public we want to engage in.

**Chair Landquist:** I agree. I appreciate the hardship case that this estate is in but I certainly can’t see putting other people in harm’s way, if it could just be elevated. I agree with my fellow Commissioners on this and I’m not willing to jeopardize the good standing that the rest of the residents of Missoula County get to enjoy because we are being really careful with what we allow to be done in our floodplain. We have a pretty good reputation going for ourselves and while you can’t predict Mother Nature and the 100 year floodplain really doesn’t mean every 100 years we’re going to get a flood in a particular area. I don’t know if I can say this correctly, it means there’s a 1 in 100% chance at any time there could be a 100 year event.

Commissioner Carey made motion that the Board of County Commissioners accept the Community and Planning Services recommendations and deny the variance request. Commissioner Curtiss second the motion. The motion carried a vote of 3-0.

### 7. OTHER BUSINESS
8. **RECESS**  
Being no further business to come before the Board the Commissioners are in recess at 2:27.