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

Staff Present: Deputy County Attorney, James McCubbin, Lewis Yellow Robe, CAPS, Todd Klietz, Floodplain Coordinator

2. PLEDGE OF ALLEGIANCE

3. PUBLIC ANNOUNCEMENTS
Chair Landquist announced Haz Waste Days is being held September 13th & 14th at the City Shops on Scott Street. This is a good time to get rid of unwanted chemicals and paints.

4. PUBLIC COMMENT
JoAnne Wallenburg, Double Arrow Ranch: On Saturday, Pat O’Herren of the CAPS Office attended our annual meeting and discussed the zoning initiative that's going on. There was one piece of information he divulged that really caught my attention; that was the last the State Supreme Court declared our right to protest the zoning unconstitutional. This specific law, I don’t remember the exact name, but I’m sure you all are aware of it. This is the same law that in July, when you were all in Seeley Lake at the open meeting, that the County Deputy Attorney schooled us on as our recourse, should the zoning go forward. Even to the point of telling us that we needed to get the names exactly as on the titles and everybody had to sign it and so forth. So I read the State Supreme Court case file and was very surprised to learn that it was actually declared unconstitutional in District Court in 2010, that Missoula County was a party of that lawsuit, was the defendant, but agreed with the plaintiff and failed to mount an argument and then the case was appealed to the State Supreme Court. In April of this year, just 3 months before the July meeting that same County Attorney argued on behalf of the Appellees’ (I believe it’s pronounced) arguing to support the declaration that that law is unconstitutional and asking the Supreme Court to uphold it. But that piece of information was never made public to the people in
attendance at the July meeting. I feel it’s a very critical piece of information that we needed to know to inform our decisions on how to go forward. We’re looking at we can get 40% to protest if we need to and now that ship has been blown completely out of the water so what I would like to know is why was that information withheld from us by the representatives of the Missoula County Government that were there and all had to have known about it.

**Chair Landquist:** Normally we don’t address things, like give answers and stuff at public comment, but I really do want you to know that we also don’t believe in counting our chickens before they hatch. Since this was in the courts waiting to be decided on, there was nothing else for us to go on, other than the opinion that we had been working off of for many years. I don’t know if anybody else wants to add anything or not but once the Supreme Courts finally ruled, that does then change how that is viewed.

**Commissioner Curtiss:** Are you still on the leadership team for the HOA?

**JoAnne Wallenberg:** No.

**Commissioner Curtiss:** Do you know if the HOA plans to send us a letter asking the same thing? I’m just trying to figure out who we should address it to other than you.

**JoAnne Wallenberg:** I don’t know what they’re going to do. I do know it’s going to be the lead article in the Pathfinder today.

**Commissioner Curtiss:** Okay, I guess we’ll respond to you since you’re the one that asked – at a later date.

**Chair Landquist:** We’ll get you a well-thought-out answer to explain why we did what we did, when we did it.

5. ROUTINE ADMINISTRATIVE ACTIONS
   Weekly Claims List ($484,167.15)

**Executive Session**
Commissioner Carey made motion that the Board of County Commissioners approve the Weekly Claims List in the amount of $484,167.15. Commissioner Curtiss second the motion. The motion carried a vote of 3-0.

6. HEARINGS
   a. Milltown State Park Rezoning
   Lewis Yellow Robe gave staff report and showed PPT Presentation. Staff recommends approval. Planning Board approved the zoning request. Public comments have been received. Comments also received from City and County Agencies, all included in staff report.

   **Chair Landquist:** I see Planning Board reviewed this, what did they have to say?
Lewis Yellow Robe: Other than the discussion items that they had, a majority of them had to do about park uses. The park manager was able to answer those. The specific zoning questions they had about the zoning was height restrictions, the applicability and the airport facilities. Mike Kustudia was able to answer that and any potential future uses. The Planning Board didn’t have any sort (in auditable).

Chair Landquist: Mike Kustudia do you have anything to add?

Mike Kustudia: Lewis did a great job but I can answer any questions.

Chair Landquist: I have one question regarding some of the people that wrote in and this irrigation ditch. Is that something that needs to be addressed as far as; is this still running and is it going through park land to get from point A to point B? Can someone speak to the issue that’s been brought up about this irrigation ditch?

Mike Kustudia, Montana State Parks: That’s kind of in the back 40 of the property, so to speak, and it’s in an area that we have not done anything really, not even taken a look at yet. Whether or not that was an irrigation ditch or just an old finger of the reservoir, I just don’t know enough about it at this point. The other part of it is that we have nothing planned up there; we’re so focused on trying to get things developed in the confluence in the gateway areas. If we ever did do something up there I can’t imagine it would be much more than just some trail work perhaps, but again that is far out on our planning horizon.

Chair Landquist: I guess my concern is; irrigation ditches, most of them in our area thankfully have been adjudicated. These people are calling it an irrigation ditch and are concerned about water rights or anything like that, they can tell you if it’s an irrigation ditch and if they need it for irrigating. And if it runs through the state park, unless it originates as point of diversion before the state park and gets to those peoples properties and then ends or terminates back into the river, may not be such a concern. But it’s important, if there’s people that are dependent on getting their water out of this irrigation ditch that the land in which that water travels, that’s considered their transport system, that that not be messed up with people visiting the park and playing in the park. It may mean that you need to do some outreach to those folks regarding this and some more work. And you’re right, unless you investigate it you need to make sure it has a head gate that is turned on and off, otherwise its kinda like the Mitchell sluice in Ravalli and could be looked at totally different.

Commissioner Curtiss: The only thing they wrote about this is that it has mosquitoes in it and the ducks and muskrats get it in. They don’t claim they use it for water rights or anything.

Chair Landquist: I realize that but it certainly still looks like an irrigation ditch and they show a pipe off of it. All I guess I’m saying is; I want to make sure that anybody that may have rights to this irrigation ditch, their property rights or water rights are being respected.

Mike Kustudia: Absolutely, I’d be happy to follow-up if they have ongoing concerns.
Public Comment

JoAnne Wallenburn: Member of the Seeley Lake Flying Club. I’m confused as to whether this means there will or will not be an airport landing strip there and if there is going to be one is it going to be open to the public?

Mike Kustudia: The zoning would allow it but we have no plans what-so-ever to develop an airstrip or any kind of airport at this state park.

Executive Session
Commissioner Curtiss made motion that the Board of County Commissioners approve the zoning change as presented in the packet or materials that was presented today to change the lands that are identified to Open and Resource CP1, Public Lands and Institutions. Commissioner Carey second the motion. The motion carried a vote of 3-0.

b. Floodplain Variance Request (Meinzen, Jr.)
Todd Klietz gave staff report and showed PPT Presentation.

Eric Anderson, WGM Group: I’ve been the primary engineer working with Todd on this revision of his application, or new application. I’d like to emphasize that we’ve been working with Todd to work on all the design engineering details to get all those in conformance with floodplain regulations; that includes elevating the house, his well, his sewer and electrical and as far as I know I think Todd’s happy with all those design details. I think the emphasis here is, what it really boils down to, is disconnection between the floodplain regulations and the whole comprehensive plan. Unless somebody has any questions about the design details, I think that I’m gonna let Nick sort of summarize our stance on the comprehensive plan and the relation to the floodplain permit.

Nick Kaufman, WGM Group: Seldom have I ever come to the microphone and used the word acquiesce, but I might do that today. While Tim and I might disagree on a few things relative to the interpretation of compliance with the growth policy, I’m not sure that they would be beneficial to the discussion today. Instead, I think that the proposed use and the people who are proposing the variance are worthy of your consideration for a variance. I would note that way back in 1977 we did the first Lolo growth policy, sometime around there, and that if the property had been zoned, as an example, CP1, which is what the open resource is. That zoning district does allow up as small as 10 acre tracts and a density of 1.40, instead of growth policy designation. I’d also say that if we had the zoning in place we might be able to do some of the things the growth policy recommends and just transfer development rights, but we just don’t have that mechanism. So because people in the area haven’t implemented land use controls like zoning it does (in auditable). I want to talk a little bit about the overarching goal of the growth policy, it seems to be to protect the riparian area, protect the stream and the wildlife corridor. It sort of alleged that that can be threatened if you put a single family home there. I just want to share with you something from my own experiences that I think you should consider also, that the growth policy certainly talks about interrupter. So some of the things that are permitted there now, like the (in auditable), they’ve talked about money in Lolo a number of times. In fact, there was an emergency zoning
ordinance and there was a rezoning property, which resulted in a District Court case, which resulted in a Supreme Court case --- so mining's not such a good deal, that's not what I want to propose. But I want to talk about agricultural uses. On my little 5 acres, I've got horses and it's hard to do agriculture on this piece that sits right on Lolo Creek. I can only imagine in 10 years what that riparian vegetation will look like and what the stream bank would look like, Michele I think you've got some experience with that too. So in terms of the growth policies, how do we do agriculture adjacent to our riparian areas, whether it's farming in terms of applications, pesticides, fertilizers, or whether we approach into that riparian vegetation with (in auditable), it really is what the growth policies are. So I would hope that the County Commissioners could look at Mr. Meinzen and remember that his dad is right on the end and I've known his dad since 1970 when I used to pump gas in his car, I'm not sure that Ted was even around then. And remember that he lives in Lolo right across the street, that's grandpa to the kids. Ted owns a business in Lolo that's associated with agricultural, which is a butcher shop, that's where I take my 4-H beef when I get it. So we've got a family that's established in Lolo, they understand the values of the community, they're not going to leave tomorrow; he's not going to get a floodplain permit. So as I read the communication from the Health Department with concerns about the riparian area, as I analyzed what Tim had to say about the growth policy, what I would suggest Commissioners that we need to do on this piece of property is imagine a covenant. That covenant can easily address growth policy issues and be mitigation for a variance. So what I would suggest is that the following activities are prohibited within 200 feet of Lolo Creek or the Bitterroot River. This encompasses the riparian vegetation. So prohibited activities would be mining, agricultural use for grassing animals in that riparian area not out in the fields, broadcast burning, operating wheeled or tracked vehicles except on established roads, clear cutting, constructing roads and handling, storing, applying or disposing of hazardous or toxic material in a manner on that or may cause damage or injury to humans, land, animals or plants. So this really comes from the stream management zone guidelines and state law, primarily designed for logging industry. However, we've all lived through a bit of cottonwood clear cutting, down on the floodplain of the Bitterroot River. So I would propose that, if you think about it and you think this is appropriate mitigation to the growth policy that's how its presentation and Tim has proposed it. James, perhaps this could be a covenant that's following the Clerk and Recorder that the Commissioners could be a part of as a way of mitigation for the record.

Chair Landquist: Would covenant be the right term or would it be a condition? We're not like the seller or the conveyor of this land and generally I thought that's when covenants were put on.

James McCubbin: You do a conditional approval requiring the covenant as a condition. So to meet the condition there would be the covenant.

Chair Landquist: And the owner would then put the covenant on?

James McCubbin: Yes. So you could impose that on a particular where proposed by the applicant as a condition of approval of the variance. Then I could work with the folks to approve the form.
Chair Landquist: I like that idea; I thought that was some creative thinking on your part Nick.

Nick Kaufman: Well what we’re trying to do and its taken Tim a decade to pound it into me is to really listen and understand first, so we’ve tried to listen and understand what the real issues were and to address the real issues.

Chair Landquist: One of my questions I think is for Ted Jr. as far as the way you wanted to build the house with the things that Todd Klietz was saying, as far as the crawl space versus stem wall.

Ted Meinzen, Jr: I do not have a problem with the proposal on it. We were looking at different options and if that’s more suitable, then I don’t have a problem with it.

Commissioner Carey: And we’re talking about the stem wall foundation?

Chair Landquist: Yes.

Chair Landquist: Somebody mentioned earlier when we were being briefed on something like this that a lot of people are doing that kind of poured foundation thing because they’re incorporating hydronic heating in it too. So you might look into that if it’s approved.

Commissioner Curtiss: I just have one question; I know that you’re planning to bring the sewer from the Lolo Sewer Plant, are you planning to bring water or are you gonna drill your own well?

Ted Meinzen, Jr: We plan to drill a well.

Todd Klietz: I’d like to address the well issue. That would be covered under the floodplain permit as well, and the well head would have to be 18 inches above the 100 year flood elevation. It’s the well drillers requirement so that the top of the well will be capped a foot and a half above the 100 year flood elevation minimum.

Chair Landquist: Okay so we have a series of questions that we have to…are you going to ask us these out loud? And they have to be answered affirmative in order for this to be a valid request, right?

Todd Klietz: That’s correct.

Todd asked the Commissioners Floodplain Variance Hearing questions. (.pdf of questions)

A. AYE

Chair Landquist: Personally I think the fact that he has all of those lots and would like to build a house, especially a house next to grandpa, next to where he grew up and he’s an old Lolo boy. Just the fact that I think he’s a land owner and has that right, and has exhausted his efforts to look at the other lots and find a spot that he can build on, I think that is good and sufficient cause for me.
Commissioner Carey: works for me too particularly because we’re talking about just one building.

Commissioner Curtiss: I agree. I think because WGM Group has helped them to show that they have a dry route to get to where they plan to put this house and it’s not in the floodway.

B. AYE

Commissioner Carey: Question for James if I may? James I may be wrong on this but we can’t consider loss of income or anything as part of this?

James McCubbin: Financial hardship is definitely part of the picture. Typically most regulations if it’s a self-imposed economic hardship and that’s the entire nature of the hardship that’s not gonna usually qualify as an adequate hardship. Here I don’t think that’s what we’re talking about at all. I think you do also have a background of some confusion over what the law was that was expressed to the Meinzen Family and that’s no fault of theirs, that’s no fault to the County Attorney’s office either. We just had a change in the legislature in the early 2000’s and then most attorneys read that the County Attorney’s office read it at the time. Then in 2008 we had a Supreme Court opinion that sort of changed that interpretation around, basically so that the earlier interpretation was that we could not enforce the part of our floodplain regulations that basically say that you can’t build in the floodplain. But then in 2008, the Supreme Court made it clear that if you actually incorporate the growth policy into your regulations, then it is enforceable. They’ve been previously told they can build there and then we switched on them, no fault of our own but the law essentially changed. I think you do have some adequate conditions there to find a hardship, if that’s what you choose.

Commissioner Curtiss: I think that B is that there is a unique or undue hardship for someone to own five lots and only have one spot to build. Seems like it would be an undue hardship if we didn’t grant this variance, which is not a variance to the floodplain but rather a variance to what was written in the growth policy.

C. AYE

James McCubbin: If you were going to impose a condition for the covenant that was proposed, this may be the factor where you would take that into account. In other words, you might agree with that based on the existence of that covenant.

Commissioner Curtiss: I always try to remind people when we’re talking about flood water that we need to go back and remember our 5th grade science project; where you filled a glass with water and then you put a rock in and saw what happened. So I think that what Todd has talked about with the onsite excavation, in other words you’re digging a hole to build a hill. There won’t be any additional offset; you won’t be putting a rock in your glass of water. I guess we can talk about it here but do we make…it if we wanted to go with the streamside management covenants as proposed would we just make that in the motion or would we say we approve of this with that condition?

James McCubbin: If you feel like part of the factor of why you can agree with one of these statements or agree that there’s not an impact is because of the condition that you’re gonna impose, I think you need to discuss that at the time of saying; yes we agree this isn’t going to be an impact because we’ll have this covenant in place, because we’ll have that vegetation there to slow down streamside erosion and slow down stream flows, those kinds of things that talk about why vegetation is good for floodplain. I’m sure WGM folks could as well. If that bears upon your finding that that criteria is met, then yes, I think you should mention it at the time that you’re 
going over the criteria. Then at the end when you do a motion, you do a motion that’s conditional approval based on…and you list all your conditions.

**Commissioner Curtiss:** Seems to me that this Item C is more talking about increasing of flood heights and maybe F would be where the streamside….  
**Chair Landquist:** I think it’s just cleaner to leave C as it is; either yes or no, hopefully it’s a yes and then we’ll include that in our motion as far as any other conditions or covenants, personally. But I find I’m able to look at C and say yes.  
**Commissioner Curtiss:** So Todd, in their proposal is it written that they plan to use onsite excavation or do we need to add that as a condition?  
**Todd Klietz:** That’s in their proposal.

D. AYE  
E. AYE  
F. AYE  

**Commissioner Curtiss:** I think this is a good place to talk about – so there’s two things and I think the reason our regulations talk about the ability to put an agricultural building in these areas is not so much of saying that everybody’s gonna go and graze all their cattle there, but rather the hay shed water can flow through and that kind of thing and it’s not hopefully gonna put people’s lives at risk. I think that the streamside management covenants as proposed by WGM Group today adds to not just the flood hazard but again that streamside protection zone which is what the goals of the land use plan were, so I think that adding that to this section is good and then I can say Aye.  
**Chair Landquist:** Okay so for F you just want to add the bit about incorporating the streamside management - the States guidelines for streamside management? Is that what I’m getting?  
**Commissioner Curtiss:** Whatever Mr. Kaufman handed us on paper today.  
**Chair Landquist:** Okay.

**Commissioner Curtiss:** There is one more item that’s in our regulations that is now not – the rule changed in the State but I think you probably should still say it on the record; Item G.

**Todd Klietz:** Right. Item G is an approval of the Montana DNRC required prior to the Missoula County Commissioners approving any permit application which is in variation to the regulations. That essentially has been deemed null and void by the Department of Natural Resources and Conservation in an email effective March 21, 2012. The State is no longer approving variance requests prior to the local communities making their own decisions on this.


**Executive Session**  
Commissioner Curtiss made motion that the Board of County Commissioners approve the variance in our floodplain regulations requirement; asking not to meet the Lolo regional plan goal policies and objectives just in this case as presented, with the condition of the streamside management zoned covenants and the stem wall modification and the other things that are in their proposal. Commissioner Carey second the motion. The motion carried a vote of 3-0.
We need to have Todd then draft the findings of facts and conclusions of law to reflect all of the things that we said today. For the record for Todd to put in the findings; the issues that were brought up by the Water Quality District were addressed by the things that we talked about and put in conditions. Make sure we get a copy to the applicant and their representatives.

7. OTHER BUSINESS
   None

8. RECESS
   No further business to come before the Board the Commissioners are in recess at 2:43.