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) Jean Curtiss, Commissioner Bill Carey, Commissioner Michele Landquist

Staff Present: Dorie Brownlow, County Deputy Attorney, Greg Robertson, Director Public Works, Andrew Czorny, Jennie Dixon, CAPS, Shyra Scott, Chief Deputy Clerk & Recorders

2. PLEDGE OF ALLEGIANCE

3. PUBLIC ANNOUNCEMENTS
Commissioner Landquist: Just a reminder that the Fort Missoula Museum has a nice Christmas display.

4. PUBLIC COMMENT
None

5. ROUTINE ADMINISTRATIVE ACTIONS
Current Claims List ~ $4,350,282.37

Executive Session
Commissioner Landquist made motion that the Board of County Commissioners approve the Current Claims List in the amount of $4,350,282.37. Commissioner Carey second the motion. The motion carried a vote of 3-0.

6. PROCLAMATION
Missoula 150 ~ Celebrating Missoula’s 150th Anniversary. Commissioner Carey read the Proclamation. Visit missoula150events.com to get more information.
Commissioner Carey read the Proclamation. Christina from the Historical Museum gave an update of activities. Missoula 150 kick-off will happen during First Night. Our website: Missoula150events.com will have a list of historical activities happening throughout the year.

7. HEARING & DECISION (Continued from 9-24-2014)
Petition to Abandon a Portion of Public Right-of-Way (Lundberg Road, Condon) (Postponed from 10-22-2014)

Chair Curtiss: At the last meeting we postponed until today because the Salish & Kooteni Tribe were working on some comments. I’ll open this up for more comments but the tribes would like more time so I don’t think we’ll make a decision today.

Public Comment
None

Chair Curtiss: The Tribe has asked for a little bit more time and for those of you who haven’t been here when we had previous hearings on this one, there is a sacred site to the Tribe that is close to this road so they would like more time to make contact with the land owners and talk about how they can work together. This road accesses one house that’s owned by the people requesting this so it’s not going to hurt to delay. The viewing has been done and the Tribe has asked for some time, so April 15th will be a public meeting date, I just picked that date out of a hat.

Executive Session
Commissioner Carey made motion that the Hearing be postponed until April 15, 2015. Commissioner Landquist second the motion. The motion carried a vote of 3-0.

8. HEARING (Continued from 11-12-2014)
New or Expanding Industry Tax Benefits Application (Roseburg Forest Products)

Ken Fargo, Plant Controller at Roseburg Forest Products: At our last Hearing, to give a recap, we have a major modernization construction program going on at our plant in Missoula. We’re expecting to have it completed in 2014 but because of some fires in California that prompted our engineering staff, at our corporate headquarters, to zip on down there to get the plant up and rolling and postpone the second phase of our operation, which was supposed to be completed in November. So as it sits now we have phase I that was completed in July, that portion is up and running and producing board. Then we will complete phase II in 2015 and I’m anticipating it will be in Q1 of 2015. We have all of the equipment here, what we’re going to center it around a little bit is like market slowness because it really won’t take us too long. We’re building inventory now, so whenever it looks like it’s going to be a soft spot we’re gonna jump on it and complete it.

Chair Curtiss: What we can do today is approve the amount that you’ve spent in this calendar year, looks like the amount is $8,988,007.00?
Ken Fargo: Correct and actually that would be the amount that we capitalize and put into service. Just a little clarification in terminology.

Chair Curtiss: Andrew, are we required to...they can come back for the additional amount next year, but do we have to hold more hearings?

Andrew Czorny: We would have to hold another hearing next year, to anticipate $9,100,000.00.

Ken Fargo: In that range, yes.

Andrew Czorny: So this first phase would be applicable to the 2015 tax year. If they come back next year with the phase II amount, it would be applicable to the 2016 tax year. We anticipate the savings to Roseburg to be $325,185.00 over the next ten (10) year period, for this first phase.

Public Comment
None

Chair Curtiss: The Commission has the authority to grant a phased in paying of taxes on equipment that increases their production and their jobs and that kind of thing. They phase in the taxes over time which helps to pay for that capital investment.

Executive Session
Commissioner Carey made motion that the Board of County Commissioners adopt the Resolution approving the amount of New or Expanding Industry Tax Credits for Roseburg Forest Products in the amount of $8,988,007.00. Commissioner Landquist second the motion. The motion carried a vote of 3-0.

9. CONSIDERATION (Certificate of Survey) (Postponed from 11-19-2014)
Geneau (Audra) Family Transfer ~ 7850 Graves Creek Road
Jennie Dixon gave staff report. As Commissioner Curtiss indicated, this is a consideration of an exemption avadavat submitted by Audra Geneau owner of 78 acres located at 7850 Graves Creek Road, approximately 17 miles west of Lolo along the Hwy 12 corridor. Ms. Geneau proposes to use the family transfer exemption to create two (2) additional parcels to transfer to her adult son, Tyler and her parents. Ms. Geneau proposes to divide two (2) 20 acre tracts from the southern portion of the original tract for family transfer, leaving a 38 acre remaining tract to the north. The northern tract is the site of the existing home and shed and the application states that the two (2) new tracts are intended for residential development. All parcels are accessible from Graves Creek Road and the claimant has not previously used exemptions to divide property in Missoula County. Therefore, as it does not appear that this request is an attempt to evade subdivision review, staff is recommending approval of this family transfer request.
Jennie Dixon asked Audra Geneau the standard family transfer questions.

Public Comment
None
Executive Session
Commissioner Landquist made motion that the Board of County Commissioners approve the request by Audra Geneau to create two (2) additional parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Carey second the motion. The motion carried a vote of 3-0.

10. HEARING
Installation of Water/Sewer Main in County Right-of-Way (Upper Miller Creek Road) ~ Gilbert Larson Engineering

Chair Curtiss: Commissioners some years ago passed a Resolution saying that if it's going to serve six (6) or more properties there needed to be a hearing.

Greg Robertson: This is a request to install a water main as well as a sewer force main, an extension in two (2) areas; one on Lorraine Drive and the other on Lower Miller Creek Road area, on the gravel portion, as I recall. The mains are being installed to improve capacity and pressure in the South Hills, Linda Vista area. The sewer main being installed for future development, I believe. Gilbert is here representing Twite Family Partnership can expand on that. As you area aware, you adopted a Resolution several years ago that due to public concerns about water and sewer main expansion and that general follow of annexation it was determined that both water and sewer are at your discretion on whether it occupies public rights-of-way and the Resolution you adopted included a requirement of a public hearing anytime one is being proposed to be extended.

Gilbert Larson: I don't really have anything else to add. I can answer any questions.

Chair Curtiss: So this is city sewer mains and Mountain Water lines?

Gilbert Larson: Correct.

Chair Curtiss: Is it to serve an existing subdivision or future?

Gilbert Larson: The one on Lorraine Drive is to improve existing service to Lorraine Drive and through the whole area. It’s going to allow water to pass more freely from Hillview to Miller Creek and back and forth, depending on need. The waterline across lower Miller Creek Road will be to...we just got new water rights in the Maloney Ranch; this will be to connect those wells to the Mountain Water system and being able to provide 2,000 gallons a minute to their system, which again, can be pumped and used wherever it’s needed. The sewer, it’s a lift station, it'll have a gravity line going into it and a force main coming back out. That’s part of the city master plan and that lift station is designed to serve all of the lower Miller Creek area. Their master plan that was done by HGR was pretty generous with the service area and the lift station was designed to handle all of it.

Public Comment
None
Executive Session
Commissioner Carey made motion that the Board of County Commissioners grant the excavation permit request by Twite Family Partnership. Commissioner Landquist second the motion. The motion carried a vote of 3-0.

11. HEARING
Petition to Abandon or Alter a Public Road (Right-of-Way between Lot 1, Block 2 and Lot 3, Block 4 of Rio Vista Addition)

Chair Curtiss: The process for this is that we have the Hearing, we take comment today and then one Commissioner and someone from Public Works, Surveyors Department will have to do a site visit, so the decision will not be made today.

Shyra Scott: On October 30th the petition was received by the Clerk & Recorders Office asking that a Right-of-Way be abandoned for the Rio Vista Addition in Missoula County. It contains the signatures of ten (10) Missoula County free holders but as the right-of-way is adjacent to the Bitterroot River and the State of Montana has not signed the petition. The Clerk & Recorders Office has determined that it does not contain the signatures of all land owners affected by the abandonment, thereby failing to meet the requirements for establishment alterations and abandonment of a county road.

Chair Curtiss: So we can take information today but they…

Peter Dayton, representing Tyler Callsen: I’ll address that legal issue in my presentation today; I think she’s incorrect on that. James McCubbin has taken the position that we need the signature of the State of Montana; I think he is absolutely incorrect.

Chair Curtiss: Okay, then we’ll take public comment and make legal determination some other way.

Peter Dayton: The petition requests the abandonment of an unused and undeveloped county road easement in Rio Vista Subdivision. Showed PPT Presentation.
I have no idea why the surveyor chose to locate that Right-of-Way where he did, it doesn’t make any sense with the typography. So an issue arose and the county went out and did a survey, an encroachment survey which shows that Tyler’s house encroaches seven (7) feet on one side and 11.1 feet on the other side into the Right-of-Way. Needless to say, Tyler was unhappy when he discovered that his house encroached into this Right-of-Way so he came to me. I went out and looked at it and I said; gee this can’t be right, this makes absolutely no sense with the topography. Either the County survey is wrong or there’s some kind of error in the original subdivision plat, so we hired Ken Jenkins of Montana Northwest to retrace the boundaries in the area. He did a survey that agreed 100% with the county surveyors so for some reason this Right-of-Way was located in a rather bazaar place, which doesn’t make any sense with the topography and then it runs towards a very high and steep river bank.
The biggest question is how did this happen? How did Tyler’s house end up encroaching the Right-of-Way? My guess as to what happen is that the prior owner of the property went in and found the pins along Rio Vista Drive and then he’s looking around at a very
steep and overgrown river bank and he found a pin and thought it was the another pin. That makes absolute sense with the topography so I can understand how he did it. This is a perfect example of why you should always hire a surveyor before you build anything. The way we decided to handle this was to file a county road abandonment petition. Both Tyler Callsen and Rowland Pruyn, who lives on the other side of this Right-of-Way, got together and agreed if they can get it abandoned, if they can persuade you to abandon it, they will divide it as shown on the Exhibit, they’ve entered into an agreement. The petition asks the Commission to state in its abandonment Resolution that the Right-of-Way will revert to Callsen and Pruyn in the manner shown in Exhibit A. If the Commission prefers to have the Right-of-Way revert to its centerline, Callsen and Pruyn can record a boundary relocation survey after the abandonment.

In the course of digging into these survey issues we discovered something else, which is that Tyler’s property is separated from the river by a strip of land, which is really a remainder. The people that filed the plat of the Rio Vista Subdivision owned not only the SW quarter and the NW quarter, but another property to the south. When they filed the subdivision plat it created a remainder and the way that remainder is portrayed in the subdivision plat is highlight on the Exhibit. The subdivision plat however, does not correctly show the location of the river. The plat shows the pins are located out in the river, they are definitely not, they are about 1/3 of the way down the bank. The way the subdivision plat shows the river is not correct. The SW boundary of the subdivision plat is a fixed boundary; it doesn’t pertain to any calls to the river. One year after the plat of Rio Vista Addition was recorded; Deed Exhibit 990 showed that the distance from the end of the easement to the river was 10 feet more than the width of the easement. The surveys were prepared by the same surveyor. A remainder strip of land up to 58 feet wide is located between the end of the easement and the river.

Chair Curtiss: Since they both have calls to the river, has the river moved closer than that 58 feet now?

Peter Dayton: I don't think it has here. Over at the other end it looks like there has been some erosion, doesn't seem to be any erosion here. You can stand at the pin. The surveyor of Rio Vista Addition could have run the southwest boundary of Block 3 and the end of the easement along the river, as he did in Deed Exhibit 990. He didn’t. He placed pins marking a fixed boundary about a third of the way down the river bank, a considerable distance vertically and up to 58 feet horizontally from the river, as shown one (1) year later by Deed Exhibit 990. The original pins are still in place and have been located by the County and by Montana Northwest Company. This is definitely not a good place for public access; you have a very steep bank, you have no place to stand at the bottom, you have deep, fast water. In terms of recreational purposes for public access this doesn’t pack it.

Chair Curtiss: Does someone currently own the one that was 990?

Peter Dayton: 990 is owned by Rowland Pruyn. Because a remainder strip of land lies between the east end of the easement and the river, the easement doesn't provide legal access to the river.

Chair Curtiss: Someone owns that piece too?
**Peter Dayton:** Tyler owns it now. What happen is we researched how this remainder was created, the remainder actually consisted of three (3) parcels of land; one on the west side of the river, the biggest one down further and then this strip here. Montana code annotated 7-14-2615(3) does not require the government entity with jurisdiction over the public land or water to agree to the abandonment. Therefore, I think Mr. McCubbin and the Clerk & Recorders Office is incorrect in claiming that this county road can't be abandoned unless the State agrees to the abandonment.

The easement doesn’t provide legal access to the Bitterroot River. Even if it did, there is a better river access only 264 feet away; the west end of Briggs Street, a paved road which runs right to the bank of the river. It’s still a deep river bank and there’s still deep, fast moving water along the base of the river bank. This is a way better source of public access then the easement that we’re requesting you abandon because there is a paved road developed in it. There is parking right there. You could reduce the angle of the river bank, you could put in stairs. If you wanted to develop this as an access, you could do it and it would be enormously better than the easement that we’re asking that you abandon. Even more so, there’s a source way better directly across the river. This is the gravel bars along the river, which I’ve done a lot of fishing there myself. People park on the north side of highway 93.

**Chair Curtiss:** Where it says “no parking”?

**Peter Dayton:** Yes. Everyone parks there. This is way better because of the gravel bars. So the statue does not prevent you from abandoning the easement that we’re asking you to abandon.

The other statutory restriction is 7-14-2615(4) which say that “The Board (of County Commissioners) may not abandon a county road or Right-of-Way used to access private land if the access benefits two or more landowners unless all of the landowners agree to the abandonment”. This deals with access to private land and only requires the permission of the private landowners. This doesn’t require the permission of public landowners because access of public land is dealt with in the other statue.

The reasons why Callsen, Pruyn and other landowners in Rio Vista Addition have filed the county road abandonment petition:

- To fix the encroachment of Tyler Callsen’s house into the easement.
- To prevent recreational use of the easement from disrupting the neighborhood and adversely affecting property values.
- To prevent camping by transients from disrupting the neighborhood, creating safety and security problems, and adversely affecting property values.

**Commissioner Landquist:** How did you come aware of this encroachment and wanting to abandon this?

**Tyler Callsen:** This is my first house; I bought it in December 2012. It’s important to me to own a house and provide my family with a safe house. One day I looked out and there’s the county surveyors walking through my lawn and literally putting stakes in the middle of my lawn and I freaked out a little bit. I met up with Peter. Where it stands right now, my kids sleep on public land, people could camp out on my lawn technically and it freaks me out. The realtor said here’s the house, here’s the land and showed me where the corners were and I took their word for it. Apparently that’s a good enough defense to say they didn’t know they were selling me public land. I paid $350,000 for it and it represents well
over half of my worth and my families worth. As it stands now, I couldn’t sell my house if I wanted to because it’s not worth anything right now, because it’s not entirely on my own land. As Peter has explained I didn’t even know I didn’t own river front. My house was listed as river front property and I had to buy a strip of land from Eric to get that back. I think this whole process is pretty ridiculous. I just don’t know what the average person would be able to do, I was able to ask my family for help but I was in this for over $50,000 at this point and anybody else would have had to default on their mortgage so that their mortgage company could sue the escrow people. I can’t sue the escrow people because I’m not covered for family disputes. It’s a very emotional situation; the first day I owned my house I walked around and even like little light switches, I was like that’s my light switch. This just really threw me a loop when it happened and it’s been going on for over a half a year and I’m worn out on it at this point, I don’t have as much energy to fight it at this point. I still really appreciate your consideration. It doesn’t provide any access to the river because I bought the strip of land between it and the river. If you are really interested in creating some official river access there, I inadvertently bought the land on the other side of the river where all those people hang out on that gravel bar and I would certainly entertain talking to anybody who’s appropriate to selling or donating that land to the public to create a river access there that’s official, but not through my front yard. Thank you for listening.

**Commissioner Landquist:** Greg, was this in preparation for the trail or anything that the surveyors were there wondering around his place or do you know?

**Greg Robertson:** I do recall some time ago, probably before this property owned it that there was an issue with a proposed abandonment of the Right-of-Way. So there was some survey work done at that time to determine encroachment, in the like, done at that time to determine encroachments for evaluation purposes.

**Tyler Callsen:** The surveying happen long before I got involved. I could of one day sold this property to someone and never known of this situation. I parked my travel trailer there and I think my neighbor Rowland Pruyn, whose family has been in this community for a long time, I think he probably talked to some people and asked how can we get rid of that trailer? Is it on public land? They came and surveyed the situation and found that my trailer was on public land. That’s probably where the first survey came from was from that.

**Chair Curtiss:** Is this the same output for storm water, the one that comes from Moose Can Gully or whatever?

**Greg Robertson:** No. This one was put in and it looks like it’s fairly old. But it looks like it was put in to get rid of a drainage problem. Back in the 60’s when these were platted storm water wasn’t much of a consideration in the subdivision review process. Lands got platted, roads got built to whatever degree and they create an issue. Some people get defended when they get storm water in their basement or their kitchen or whatever. So this looked like a retro fit type of thing that was done.

**Chair Curtiss:** Is there someone that’s responsible for that? Is that a county drainage thing?
Greg Robertson: It was put in with county forces back in the day to deal with a localize drainage issue and it runs generally, from what I can see, down an old ditch line.

Chair Curtiss: And then dumps in the river.

Greg Robertson: And just opens up, that's not uncommon.

Chair Curtiss: Do you have money to replace that with a sump that Eric was talking about?

Greg Robertson: We budget annually. This year is going to be awful tight because of SRS and not coming forward so I would say no, not at this point.

Chair Curtiss: Would we want to retain an easement?

Greg Robertson: That's been my preference, is to not abandon the Right-of-Way simply because of the natural draw.

Chair Curtiss: Is this considered a road then?

Greg Robertson: Yes. It's a public Right-of-Way but never built. It was dedicated and never built, again, not uncommon in the older subdivisions.

Chair Curtiss: The reason I ask that is we can't, I don't think, we have the ability to abandon...well, yes we can. You can abandon the Right-of-Way and then they could grant us a different type of easement, a utility easement.

Greg Robertson: You could do that. You could make it conditional. I think in fairness to the situation and the property owners; this is a very convoluted issue and has some history to it. The players that know the history are James McCubbin and Steve Niday both are not present here and really they need to weigh in on this discussion. I think it's a little bit more than the simple question of an abandonment. I do believe there are some disagreements between legal interpretation with the county and Mr. Dayton that needs to get resolved one way or another before any sort of decision is made.

Chair Curtiss: That's why we have to do a site visit.

Tyler Callsen: Right now the water collects in the street and then goes through the little grate into the pipe, and then the water that comes from that pipe is all on Rowland Pruyn's property. So by topography, if you're trying to retain ownership in order to create drainage, the topography for that is all on Rowlands property. The topography that the State owns is all on an angle which you wouldn't be able to put a ditch through. And it doesn't drain into a drainage it drains into a big puddle there at the top of that horse pasture.

Chair Curtiss: Okay, that's why we have to do a site visit.

Tyler Callsen: I hear you; I just don't want incorrect things being said.

Peter Dayton: We'd be glad to be present at the site visit to help you guys locate this.
Chair Curtiss: Yes, we always set that up and give you the opportunity to join.

Tyler Callsen: You said something about the Moose Can Gully drainage, is that just further up Miller Creek?

Peter Dayton: Actually, I think that Moose Can outlet…remember the big parcel of land that you acquired from Basher? I think that there's some kind of a public drainage.

Tyler Callsen: On the bigger parcel and I own that parcel. That drainage is constant, year round and goes directly to the river, pouring trash into it with much higher flow. I own that property now that I had to buy it and I go through there and pick the trash out. If the State wanted to do something for drainage, to improve the water quality, by all means go in there where there’s already an easement, there’s already a permitted easement for the State to go in and put some kind a better drainage and the amount of flow going through it is over 10 times the amount of flow going through this other one. The good for the community would be much higher than that other one and there’s plenty of space to put as big… you could put ponds…I don't know how it's done but there's plenty of space there.

Public Comment
Meaghan Bailey: Tyler Callsen is my spouse. I just want for clarity sake, because I'm really confused by it, the gully which would make the most sense is not the road in question. So the road that’s actually in question goes through our bedroom, our lower level basement, our master bathroom and our back deck and hot tub and I would take issue with the county coming in and trying to put some sort of drainage system that literally comes through a good chunk of our house.

Commissioner Landquist: So you wouldn’t have a problem necessarily with it being relocated to where it makes sense? If it comes down to us being told we shouldn’t abandon it but we can relocate it off to the side, so it’s not running through your house and your yard.

Peter Dayton: I think the thing to do is to make sure you have the right to run drainage down there would be to say; we'll abandon the Right-of-Way conditionally on you granting an easement acceptable to us for drainage down there. That would end up mostly or entirely on property that Rowland Pruyn owns but I’m sure that Rowland and Tyler would agree to that.

Commissioner Landquist: Okay. I just thought I'd check for the record.

Peter Dayton: You don’t need a road easement there; all you need is a drainage easement. That would be the appropriate way to do it I think.

Chair Curtiss: So since this has gone on for about six (6) months, I'm thinking about weather, people's schedules and Christmas. We meet for this type of meeting every other week but we don't really want to meet on Christmas Eve. Are you okay with moving this clear to January for the decision?
Tyler Callsen: I guess I’m okay and yes it has been going on a long time but it also means every time I go to bed…my kids are sleeping on public land every night. I really would like to get this resolved; I’ve been dealing with it for a really long time. Of course, I don’t want somebody who’s grumpy at work making a decision because they’re out there on Christmas Eve, but at the same time I really want to get this resolved so that it’s over.

Chair Curtiss: Robin, did we have a tentative date of a meeting on December 17th?

Robin Moore: We said there’s a possibility if we have items.

Chair Curtiss: Whose turn is it to do the site visit?

Robin Moore: Bill did the last one.

Chair Curtiss: Greg, do you want Steve Niday to be able to go with us?

Greg Robertson: Yes, I think that would be wise. Just because of the location of the….

Chair Curtiss: Because he’s probably the one that staked it?

Greg Robertson: Yes, he did the original survey and he knows where the pins are.

Chair Curtiss: And did you want to come too?

Greg Robertson: Yes, I should.

Chair Curtiss: Are you open Friday afternoon?

Greg Robertson: I think he needs to weigh in before you make a decision.

Chair Curtiss: We don’t usually take an attorney with us.

Steve Smith: Mr. Niday is out of the office, he’s not feeling well. He ordinarily works Monday – Thursday exclusively, just so you know.

Chair Curtiss: Michele is your schedule open Monday?

Commissioner Landquist: Yes.

Chair Curtiss: We do have a letter from Fish, Wildlife & Parks.

Executive Session

Chair Curtiss recessed the meeting until December 17. Viewing will be Monday, December 15th at 1:30 with Commissioner Landquist and Steve Niday.

Dana Borsch, DNRC: I was wondering, if anything, we’d like to know what your determination is on that questionable strip of land and whether this public Right-of-Way doesn’t meet...
Chair Curtiss: That viewers report will reflect that so we'll be sure to send you a copy of the report before we meet on Wednesday.

Dana Borsch: My other question would be about the high water mark ~ this public access that begins at the high water mark, how did the data get in the survey.

Peter Dayton: On the east side of the highway the bank is very steep, as you will see, and of course there is a high water mark...you're standing on the side of your feet, you can walk down there to look at it.

Commissioner Landquist: Anybody who’s floated that river and I have, knows that that portion there is pretty steep and is riddled with old cars.

Greg Robertson: For clarification; we're going to meet on site at 1:30 on Monday?

Chair Curtiss: 1:30 on site.

12. OTHER BUSINESS
   None

13. RECESS
   Being no further business to come before the Board the Commissioners are in recess at 2:45.