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

Staff Present: James McCubbin, Deputy County Attorney, Steve Niday, Public Works, Shyra Scott, Clerk & Recorder

PLEDGE OF ALLEGIANCE

PUBLIC ANNOUNCEMENTS
You can still enjoy the Holiday display at the Historical Museum at Fort Missoula

PUBLIC COMMENT
None

ROUTINE ADMINISTRATIVE ACTIONS
Current Claims List ~ $552,683.12

Executive Session
Commissioner Carey made motion that the Board of County Commissioners approve the Current Claims List in the amount of $552,683.12. Commissioner Landquist second the motion. The motion carried a vote of 3-0.

HEARING & DECISION
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)

Steve Niday read the road viewers report.
Commissioner Landquist and Steve Niday did the road viewing December 15th. Also present at the viewing were representatives from the Department of Natural Resources, Montana Fish, Wildlife & Parks, Missoula Public Works, Missoula Independent and the primary petitioner and his legal counsel. It is the recommendation of the viewers that the northerly 20 feet of the subject Right-of-Way be abandoned. This 20 foot wide strip of Right-of-Way is on top of a steep slope and is not necessary for public use. This partial abandonment preserves a public drainage way and is necessary for storm water from Rio Vista Drive and the surrounding area. The parcel abandonment also any public Right-of-Way access to the river. It protects the primary petitioner, Tyler Callsen, from unwanted public use of this 20 feet wide strip, which has been developed and occupied by him and eliminates the public Right-of-Way from the area occupied by his house and other improvements.

**Commissioner Landquist:** I concur with what is written here and what was settled on after seeing the site, it still leaves plenty of room for the drainage and public access in that draw. I think if this is accepted then we should have a conversation regarding the owner's course of action that he could take, possibly keeping the improved pad that he has for parking his camper. Which he could probably get an encroachment permit from Public Works for, you don’t need to have that written here, it’s something you could do separately. As well as discuss how to handle future notifications for road abandonments because some information that was brought to my attention from the Fish, Wildlife & Parks folks regarding how they’re always the last to know ~ somebody called them and notified them about this, otherwise they wouldn’t have known. We might want to do some things different in our notification processes on these things, as far as who to notify. Other than that, this viewer’s report I stand behind 100%.

**Public Comment**

**Peter Dayton:** Counsel for Tyler Callsen. Well first we requested that the entire Right-of-Way be abandoned, we would definitely and I hope that you will, if you follow the viewers recommendation and only abandon the north 20 feet, that’s better than nothing, as it eliminates the encroachment to his house. The one thing that I would request; in the petition we asked that you record a copy of the Resolutions so that will be on the real estate records and the Resolution should specify that that 20 feet would revert to Tyler Callsen. We would like to see that recorded.

**Executive Session**

**Chair Curtiss:** So the viewer's report would be the Resolution so should we add any language about reverting to Mr. Callsen?

**James McCubbin:** I agree with Peter as an operation of law attaches to the northern parcel here, that doesn’t mean it’s not a good idea to address it in your Resolution. I agree that that’s a good idea to add that to your Resolution that this area reverts as ownership with full rights to… I’d identify it as description to property by Mr. Callsen.
Just briefly I’d note the decision today really doesn’t address whether there is an intervening strip of land between this easement and the subdivision lots and the river. After reviewing the lots with the surveyors --- I don’t think there is any property there but that’s an issue for another day. Even if there were a separate strip of land between this easement and the river, the county still at this point would have a descriptive right of drainage across that property. So this easement is still necessary, if for no other reason than drainage and then
this preserves any right of access. So if this easement does go all the way to the river then it cannot be legally abandoned as an access passage, unless you find another equivalent access. Those issues don’t need to be addressed today. The viewers report is a very good compromise solution that reserves public interest, while accommodating the house encroachment that’s there and is not Mr. Callsen’s fault.

Commissioner Landquist:  I know Dorie was asked to do some of the research, did she ever find anything?

James McCubbin:  I discussed that with her a little but really the tax records don’t answer that question, as to whether there’s a separate strip there or not. There was an error in the description, tax records, but it has no bearing on this issue. It was described as a remainder so the question is interrupting what that remainder is. It just doesn’t give us an answer.

Chair Curtiss:  So if they would like that clarified it would have to be done through a court?

James McCubbin: It would have to done through a court action, yes.

Chair Curtiss:  So if we so choose we could adopt the viewers report and then just add some language saying because then the Resolution is created after this, right?

James McCubbin: Correct.

Chair Curtiss: It’s filed and then we could put the language which we know the law says it reverts to the property owner but this would just make it easier to trace with a title or something so someone else doesn’t end up in the same position.

Dana Boursch:  I’m wondering if that 20 feet that they’ll get, will they own that in fee simple title? And my second question is whether that includes the steps? And if it does include the steps will the county retain an easement to utilize those?

James McCubbin: So in terms of ownership I think arguably they already own it, but the Resolution will help clarify that yes they will. The reason why I say they might already own it is because the county really just holds an easement there, even though it’s shown as a separate strip on the plat. As a matter of law they probably own to the center of that easement, not really an issue we need to address. So anything in that 20 feet the public has no right to it. In the part of the easement that’s preserved, not abandoned, the county has whatever easement rights we have there. I think that includes access rights, I think we have a dispute over that but I don’t think there’s much of a factual issue there.

Chair Curtiss: The question was about the steps.

James McCubbin: Do they go past the 20 feet?

Peter Dayton: If you look at the copy of Ken Jenkins survey that’s in there, it’s on page 9 of my materials. You can see the stairs there and the west end or SW end of that
easement is 47 feet wide and the stairs are pretty clearly to the south of the 20 foot strip. So those stairs would clearly remain in the 20 foot public Right-of-Way.

**James McCubbin:** The way that that can be addressed is the same way of the parking pad area. If we could do an encroaching permit and that will document that he has a right to have that there. To the extent that someday there might be a public use there that would in consistent with the steps or the parking area then at that point they could be required to be removed, but I don’t think anybody anticipates that. Basically as long as it doesn’t turn into a problem for anything there’s no reason why the steps can’t remain there.

**Chair Curtiss:** So the access to the river issue to public lands and waters, Briggs Street has a way better access and a place to park and isn’t very far away. So in reality there is access to the river. We’re not talking about that today but I’m just saying that there is. There’s plenty of ways for the public to get to the river without being here anyway.

**Steve Niday:** I would suggest a site visit by yourself, just to evaluate it.

**Commissioner Landquist:** It would certainly need a whole lot more improvement for the elevation to get down there.

**Ladd Knotek, Fish Wildlife & Parks:** So there’s currently two (2) other access points that are viable there; one is Briggs Street which is extremely steep. The access point that’s being used is off the highway bridge, just downstream and that’s really our big concern is that somehow that may not be available in the future. So that’s our interest here is making sure we have all the options open for the public to get to the river.

**Chair Curtiss:** The one on the opposite side of the river?

**Lad Notek:** Yes.

**Commissioner Landquist:** The one where people park underneath the no parking signs?

**James McCubbin:** That likely will be physically blocked in the near future with the construction of the trail there.

**Lad Notek:** That’s the issue is that we’re losing opportunities for the public. We’re just trying to keep the options open.

**Chair Curtiss:** Just so you know, Mr. Callsen said last week that’s he’s interested in talking to somebody about that side of the river.

**Motion**
Commissioner Landquist made motion that the Board of County Commissioners approve the Viewers Report for abandoning 20 feet of the Right-of-Way in the Rio Vista Addition. Commissioner Carey second the motion. The motion carried a vote of 3-0.

7. **OTHER BUSINESS**
Commissioner Landquist: I know that the Commission has done some work in the past on our permits for abandoning roads or encroachments, etc. for making sure changing what we considered relevant for signatures to be on the petitions and people to be notified so that people aren’t surprised in those neighborhoods. It was brought up to my attention during this viewing out there on site that other land managing agencies had been kept rather clueless when things like this come up that may be in there realm of wanting to have some feedback. So it was discussed a little bit on site how we could make those changes and I did discuss that with Steve Niday and James McCubbin during the discussion of what we were gonna say in our viewers report. We thought perhaps some fixes could be made as simple as the county notifying different agencies when road abandonments or encroachments like this come up and we’re asked to be entertained similar what people do for subdivision, there’s a whole list of different agencies and/or people that you may need to notify regarding a subdivision that may have impact on them. I think this will save some anx on the part of land managers, Fish, Wildlife & Parks, Forest Service, DNRC, BLM, any of them that might be affected on that. I won’t be here to carry that forward but I thought it was worth a brief mention.

Peter Dayton: I teach a lot of seminars on public road law and do a fair number of road abandonment petitions and the statues say that one of the things the petition has to do is list the effected land owners. That’s always an interesting question because…

Commissioner Landquist: The petitioner?

Peter Dayton: When you file a petition it has to identify the effected land owners. I think that list is then used to send out notices for them. And it’s always a question for them, how big or small is that group? My practice has been to prepare a draft of that petition and show what I think is reasonably the effected land owners and then send it to the County Attorney’s Office and ask for comment. In this case, I had a bunch of lot owners in the surrounding in the area and subdivision but not the state because we believe this doesn’t provide access to the river. When I sent it to James he said; we’d just like to have the people that are actually immediately adjacent. So the statue is not clear and the question of who’s affected is pretty much open to interpretation. Perhaps one thing you could do is in your processing is encourage petitioners to submit the proposed petition to the County Attorney’s Office for comment on a variety of things. For example; there’s a number of things they could be counseled on; one is that many petitions provide no explanation of the history of the situation and that means the burden goes on the County Attorney’s Office to do it. So if someone just sat down around a restaurant table and prepare it on a napkin and it has no explanation of what’s going on, the County Attorney’s Office could say look you need to have an attorney do some research and give us and explanation of what’s going on here. You could also then provide them with feedback about what they chose to call the effective land owners, which is always open to interpretation.

Commissioner Landquist: Since I’ve been on this Commission we’ve been working hard to make sure we’re not making this over erroneous and costly for the land owners and operate as transparently as possible. I just wanted to bring it up knowing that I’m planting this seed for something that has been identified as something that needs to be done and trust now that it’s been identified that it will be looked at.
James McCubbin: I think what Peter is talking about and what Michele is talking about are slightly two (2) different things. I think giving public agencies that might have an interest in it, whether or not they’re an affected property owner because I think we’re talking about a broader range of agencies. For example, I don’t think FWP would ever be considered a property owner that’s affected but obviously there’s an interest in this type of access there. What I think an effective and cost effective way of doing that is just putting together an e-mail distribution list. Ask that the Clerk & Recorders Office when they get these petitions just email it out to that distribution list. And if we have agencies that say; we really don’t want to receive these, take us off the list, or they can change it. That would probably include DNRC, FWP, Tribes and utilities. These are the ones I can think of off the top of my head. We can just do that as an informal, internal policy that we do that to give people notice. There’s no legal requirement for that type of notice, it’s really broad; hey you might have some interest in this so we’re giving you a heads up. Although, arguably the Tribes are legally entitled to notices if they have some type of affected interest, whether or they’re a land owner or just treaty rights.

In terms of having people consult with the County Attorney’s Office, I hesitate to go that far. I’m certainly open to talking to Peter, particularly attorneys that contact us. We want to hash this out before it gets in a public process.

What we do have in our instructions and I think even on the form is encouraging the petitioners to contact the Surveyors and work with them there. And then if the Surveyors have legal questions they can contact me or somebody in the County Attorney’s Office. I think that system works pretty well.

We need to be careful about what we put in the forms and even in our instructions because we’re limited by statute what we can require. There’s a lot of information we might like that goes beyond that but we’re doing a balance of providing people with forms that make the petition clearer without adding requirements, so that’s a sort of tight balance there. People can just write up a petition on a paper napkin and bring it in and if they met the legal requirements, we have to process that. It’s not really doing the petitioners any good, it’s not doing us any good, and it’s a lot more difficult. But if we make our own forms too erroneous, they’re not going to follow our forms.

Shyra Scott: I would be more than happy to put together a list of affected government parties that aren’t necessarily land owners to contact and maybe the County Attorneys will I help me compile that and send it out. We’d be happy to do that.

Chair Curtiss: The Planning Office probably already has a pretty good list we could use.

Commissioner Landquist: I’d like to make sure that Mr. Callsen understands what we’re suggesting he do regarding the encroachment permit for the camper pad and/or stairs if you need to. Do you understand what we’re suggesting you do, going to Public Works and getting a permit? He’s nodding his head yes, he knows.

One more thing; this will be my last meeting serving as a Commissioner for Missoula County and if I can get through this without crying, I’d like to say it’s been an honor and a privilege serving the county in this capacity. I’ve appreciated working with everybody here and representing my constituents to the best of my abilities. Thank you very much.

8. RECESS
Being no further business to come before the Board the Commissioners are in recess at 1:58.