1. CALL TO ORDER
Commissioners Present: Commissioner (Chair) Bill Carey, Commissioner Nicole “Cola” Rowley, Commissioner Jean Curtiss

Staff Present: Steve Smith, Public Works Surveyor, John Hart, Attorneys Office, Adriane Beck, OEM, Todd Klietz, CAPS, Tim Worley, CAPS

2. PLEDGE OF ALLEGIANCE

3. PUBLIC ANNOUNCEMENTS
Proclamation: ADA 25th Anniversary
Commissioner Rowley read the Proclamation.

Chris Clasby from Summit Independent Living: Thank you for reading the Proclamation today. We will have a celebration July 4th at Caras Park, 10:00-2:00.

Commissioner Curtiss: Robin, would you please send the Proclamation to Matt at the Historical Museum? They have a July 4th celebration and may want to acknowledge this.

Robin Moore: Yes.

4. PUBLIC COMMENT
None

5. CURRENT CLAIMS LIST
6. HEARING AND DECISION (from 6/10/15)

Petition to Abandon or Alter a Public Road (Homestead Estates, Lot 4)

Commissioner Curtiss: We have a viewer’s report; Steve Smith and I were the viewers.

Steve Smith: Yes, last week Commissioner Curtiss and I were the appointed viewers to go on site. We were met by a representative of the petitioner’s, Laurie Page, we did a site view and discussed some issues. I prepared a report for you to consider the abandonment. We made a comment that we recommend granting the abandonment as petitioned by the petitioners.

Commissioner Curtiss: As you know when we had this hearing a couple weeks ago, when we opened the hearing, there was some discussion about sometimes these old GLO roads often meandered through the countryside from homestead to homestead, or wherever it was easiest to get along before the days of structured roads. Therefore, when the Clerk & Recorders Office reviewed the petition to abandon this portion of the right-of-way there was question about whether or not all of the effective land owners have been notified because as I said, it wanders around. The majority of the road is on forest service land, some of it used to be Plum Creek land until the legacy project transferred it over. This morning in our Administrative Meeting with discussed this with the Deputy County Attorneys about what does this really mean because the law talks about who the land owners are and whose effected. I think that I’m comfortable in saying that the Commissioners have declared that the petition does address the concerns about whether or not the effected land owners were notified. The benefit is the access to the property and to this portion of the road, which is about 400 feet cutting through the corner of this private property. In this case, the effected folks, if we use that, would be the petitioner and the forest service. Any of the other effected folks would be a couple miles, at least, down the road to the SE and they have lots of access from that way, and it won’t affect their access to the forest service land, this access is actually better from that end. I think that we can do two (2) things; one is to declare that the petition is adequate, is sufficient. The second would be to say, that in this case, the benefit is the access and the petitioners and forest service are the only effective parties. If we agree with that and adopt the road viewers report, there will be a Resolution that could outline those two (2) discussion points so that it’s clear. Seeing how the road was, how the road is used now, I’m comfortable with the fact that we are not cutting off any of the publics access to forest service land by abandoning this small portion that really doesn’t cumber this property unfairly because the property has also been encumbered having to place all its building in a building envelope and this happens to be where that is. If you’re on site, you can see that the building envelope makes sense because it too protects the resources in the area, which are wetlands and such.

If that’s the way we want to go, we could have a new request for Commissioners Action that reflects clearing the petition adequate but then based on the onsite visit. We have Attorneys in the room, I don’t know if we need to, I guess we can make our decision on the Road Viewers Report and then address the Commissioners Action and then the meeting maybe, so that it reflects things properly?

John Hart: Yes. I think just in discussing this, this morning, perhaps you don’t have to do another request for Commissioner Action, you can incorporate it all into the Resolution.
Declare that you found the petition to be adequate and you address the other statutory requirements for abandonment here. Including all of the things that you mentioned Commissioner Curtiss, that there is adequate access, substantially similar access for the public to reach this forest service land and then all of the effected land owners, as best as we can determine who those effected land owners are and they have been given notice and consent to the action.

**Commissioner Curtiss:** How detailed does our motion need to be?

**John Hart:** I think you can move to make the recommendation of the viewers report.

**Public Comment**
None

**Commissioner Curtiss:** I think Shyra probably brought us the right recommendation for us to consider, based on the fact that the law is a little bit vague on that portion. I think we just need to look at things on the ground and decide whether or not we believe that the abandonment, that’s part of the reason we have to do the in-person viewing, gave people enough of the right information.

**Executive Session**
Commissioner Curtiss made motion that the Board of County Commissioners accept the Road Viewers Report for the petition to abandon this portion of the GLO Road to Lion Creek Road as request based on the discussion and the Resolution will reflect the items we talked about. Commissioner Rowley second the motion. The motion carried a vote of 3-0.

**7. RESOLUTION**
**Title III Fuel Mitigation Requests**

**Adriane Beck:** On May 5th a proposal was brought before the County Commissioners to allocate our share of Title III money for fuel mitigation, consistent with Title III Regulations. That recommendation needed to be out for 45 days for public comment. So public comment started on May 5th, we ran two ads in the Missoulian and received no public comment on the proposal to allocate funds to Missoula Rural Fire District in the amount of $26,800.00, Frenchtown Rural Fire District $37,000, Greenough Potomac Fire and the Blackfoot Challenge $8,700, Clearwater Resource Council $13,300, Clinton Rural Fire $8,700.

**Commissioner Curtiss:** All of these will be used to help private land owners for fuel mitigation, correct?
Adriane Beck: Yes. Thank you Commissioner Curtiss. The proposal is for these local fire districts and land management agencies to utilize these funding mechanisms to promote fire wise communities and do fuel mitigation on private properties.

Public Comment
None

Commissioner Curtiss: I would speak in favor of adopting this Resolution. This is what Missoula County has been doing for a few years and I think it’s been a successful model to help land owners do some of this fuel mitigation. I think in about two weeks we’ll….we’re way ahead of ourselves even now on where we are with fire danger. So the more we can do to help folks protect their own property, which protects public property too is always good.

Executive Session
Commissioner Curtiss made motion that the Board of County Commissioners adopt a Resolution to allocate the Title III Fund Mitigation Funds as proposed. Commissioner Rowley second the motion. The motion carried a vote of 3-0.

8. HEARING
Subdivision Regulations REWRITE - Article 5: Procedures for Subdivision Review, Variance and Appeals

Tim Worley gave update and PPT Presentation.
I want to talk about how the article fits into the big picture and how article 5 itself is important. The effective date that we’re proposing for these changes is July 1st, which you’ll see on you proposed Resolution in your packet.
I want to go over a little bit of history with article 5, which hopefully along with infrastructure was launched last summer. We went public with some drafts in late August. Those two projects took on different lives at that point where Article 5 went back for a review at the county attorney’s office. We got some really good comment from the county attorney’s office that we incorporated into the clean draft that you see today.
Why is article 5 important within the larger subdivision regulations? Article 5 chronicles the live of subdivision and chronic to … If offers opportunity for the public to review and comment on subdivisions and it really dictates how a subdivision navigates through reviews for completeness. It includes the criteria used by both the Planning Board and the County Commissioners to review subdivisions. It contains regulations for noticing and – with state law. And it dictates how and why subdivision approvals can be extended. Article 5 also includes the variance standards. And it includes a brand new section that we’re proposing, that’s on Administrative Appeals to the Board of County Commissioners.
So what all is included in Article 5 – is what we talked about; minor and major subdivisions and how those are processed per application meetings, neighborhood meetings, reviews
for completeness including efficiency review and element review, agency reviews and then public notice is also included. Extensions and phasing plans are included in Article 5, as well as what to do when new information about a subdivision or relevant to a subdivision is introduced in the middle of a process, as well as when an application is omitted after being deemed sufficient for governing body review. As I mentioned before variances are also addressed in Article 5, as well as a brand new section near the end of the chapter, appeals of administrative decisions.

I’d like to talk about Article 5 in terms of what’s remaining the same with this chapter versus what is changing since this since so many pieces – come straight out of state law, I’d like to highlight the changes more than anything else. With minor and major subdivisions, obviously we’re taking those straight out of state law but we feel that we really – come up with a review procedure, sort of, in 14 or 15 steps that really steers the development community along the path that they need to go as far as giving them an idea what to expect in their review procedures. We have a similar step by step process outlined for major subdivisions, nothings essentially changed in these steps, we’re just putting them right up front in the regs so people know what path they’re going to travel. So with pre-application you have a state mandated meeting between staff and the development community before an application is submitted. What we’re adding to this process is the requirement for an electronic submittal. This allows for the electronic information to be disseminated to different agencies as early as possible, with staff being required to reconcile potentially conflicting comments between agencies.

I’m calling it an electronic submittal but it’s more when we compile their material against our material, we’ll make sure things are in electronic form so it can be sent to Fish, Wildlife & Parks, Public Works and the Health Department.

Public agency review is something that has gone on for some time; again we’re encouraging electronic submittals, which is something we’ve done for 3 or 4 years. It allows staff to assemble comments electronically, essentially saving from sending it through the US Mail, which costs money. It allows staff to comment electronically and the regs actually require the posting of the comments from different agencies on a website. So the regs as drafted encourage staff to assemble the comments on a website and work to potentially resolve potentially conflicting comments.

This is the basic review criteria out of state law and they’re contained with Article 5 and summarized. Our consultant team felt we should probably simplify these criteria further and maybe go back a little bit closer to how they appear in the subdivision and platting act, where you’re required to look at impacts of the subdivision on agriculture, agriculture water use on facilities, local services, the natural environment, wildlife, wildlife habitat and public health and safety.

You’ll notice in Article 5 per our recommendation, we’re really slimming down the reference to the state recommendation criteria. Planning Board asked; are we losing anything essential by doing that? We are slimming down the criteria significantly. Our answer to that is; we feel Article 5 is really about procedures and that review criteria bellows elsewhere within the regulations. We also feel that criteria summaries could create the impression of being wholly inclusive. However, we feel, this is something Planning Board
brought up is that if you want to recapture those concepts but maybe not in the regulations themselves, maybe do it in an appendix. That’s one thing I put together for the Commissioners consideration, its part of your short stack, review criteria consideration is what I entitled it. Really I took the state review criteria

**Executive Session**

Commissioner Rowley made motion that the Board of County Commissioners adopt the attachment 1 as amended by staff. Commissioner Curtiss second the motion. The motion carried a vote of 3-0.

Commissioner Rowley made motion that the Board of County Commissioners approve the preliminary plat deadline 5.7.16.1. Commissioner Curtiss second the motion. The motion carried a vote of 3-0.

Commissioner Rowley made motion that the Board of County Commissioners amend 5.7.7 page 11, so that it includes reviewing agencies and interested parties. Commissioner Curtiss second the motion. The motion carried a vote of 3-0.

Commissioner Rowley made motion that the Board of County Commissioners alter the title to include preliminary plats. Commissioner Curtiss second the motion. The motion carried a vote of 3-0.

Commissioner Curtiss made motion that the Board of County Commissioners amend 5.7.7.2 the last sentence to read (in auditable) associations to include community councils (in auditable) posted new comments to reflect other comments they have submitted Commissioner Rowley second the motion. The motion carried a vote of 3-0.

Commissioner Curtiss made motion that the Board of County Commissioners include the memo received today as a new appendix. Commissioner Rowley second the motion. The motion carried a vote of 3-0.

Commissioner Rowley made motion that the Board of County Commissioners approve the Resolution to amend the Missoula County Subdivision Regulations be adopted as amended by the Missoula Consolidated Planning Board and the Board of County Commissioners. Commissioner Curtiss second the motion. The motion carried a vote of 3-0.

9. **HEARING**

Amended Floodplain Regulations

Todd Klietz gave update with PPT Presentation.
Link to Presentation ~ [Floodplain Regulations PPT.pdf](Floodplain Regulations PPT.pdf)
Todd Klietz: There is no definition of garage in state statute for floodplain or state administrative rule for floodplain.

Commissioner Curtiss: Is there in FEMA's?

Todd Klietz: There is but again garages can be well below ...they don't have to be at the 2 feet above.

Commissioner Rowley: Where are they getting that the garage has to be 2 feet above?

Todd Klietz: I think it would be best to refer that to the State, Stacy is prepared to address that.

Commissioner Curtiss: So, should we have a definition of a garage? To clarify that is not a place for people to live?

Todd Klietz: Whenever we issue a floodplain permit for a building permit, typically we'll have disclaimers that go right on the permits and sometimes written on the place saying that those structures cannot be converted to that. But it's not just the conversion to living areas its other things that the state has concerns with.

Stacy Sears, State of Montana: We spent quite a bit of time on this issue when we were working on the model ordinance. Where we really looked at this definition of how does this apply to an attached garage, a residential structure. We went back to the administrative rules that support MCAs. Essentially, the Administrative rule was very clear that prior to 2009 you had to use fill for the residential structure and that fill had to extend 15 feet out from the structure. It never distinguished a portion of the structure, it never said 15 feet out except for an attached garage. It goes back to the whole essence of this program and that's to reduce risk and so we went over it and back and forth on this information, in 2009 it's was great, it's a wonderful proposal to have an alternative to just using fill, but it did come back to the intent back from when from the ARMS was supporting the MCAs and it was pretty clear there was not a distinction on residential structures, on a portion of a residential structure, whether it be an attached garage or if they were going to do additions. All that had to be elevated based on fill and we believed that carried forward even with the additional change of allowing stem well construction as well.

Commissioner Rowley: That's having the legal assumption that residential structure includes a garage?

Stacey Sears: Attached garage, correct.

Commissioner Rowley: Do we have a legal opinion on that?
John Hart: I don’t.

Commissioner Curtiss: So I guess my question though is – it doesn’t apply if it’s a detached garage?

Stacy Sears: Correct.

Commissioner Curtiss: Those are both in the State ARMS/Administrative Rules?

Stacy Sears: Well, detached garages are listed as accessory structures. So the only reference on attached garage would be as a whole component of the residential structure.

Commissioner Rowley: Is there a definition of a residential structure in the ARMS that includes attached garages?

Stacy Sears: They do not address garages at all, attached to the structure.

Public Comment
None

Commissioner Curtiss: Seems to me we have the three issues that have been pointed out so far; the garage, attached/detached. Do we have structures or accessory buildings defined? Even if we threw garages out, can people still do that stem wall fill? I just think it would be best not to have water flowing through that garage while the house is sitting there.

Todd Klietz: There are a couple structures built like this in Missoula.

Commissioner Curtiss: With the vented garages?

Todd Klietz: Not on an attached home, as of yet. We have them on detached garages and detached shops, where instead of bringing in the fill, they just build it at grade and put the flood venting in. During the floods in 2011, down on Tower Street, there’s a detached garage that has garage vents like this and during the flood, the flood waters go in and out so it doesn’t provide a substantial blockage of the flood waters, nor does it cause the structure to suffer significant damage because there’s no pressure on the walls because the water just flows through.

Commissioner Curtiss: So are there any studies on what the water damage can be with mildew and that kind of thing? Now you have a house sitting on a (un audible).
Todd Klietz: Sure. In order to build a garage like this, the stem walls would continue two feet up, the concrete walls would be the same height as the wall that faces the house and there wouldn't be anything installed underneath that two (2) foot area that would be damage to reflect. It's just solid concrete that would be there.

Commissioner Rowley: So you don't foresee any structural issues or anything to a building like this that would cause a determent to the structure?

Todd Klietz: Again, that's where it goes back to these construction types that FEMA has studied all these years they've had insurance, since 1968. FEMA doesn't have – that you have to construct your house any particular way, they don't mandate a specific construction style. Like the State of Montana, specifically mandated fill, but FEMA doesn't do that. Throughout the county what they were able to do was to go back and look at the significant flood events and see the homes that had the damage, see the homes that were built with floodplain permits that met the minimum standards, that had damage and ones that were built with permits in a different style and compare the two. What they determined was that through all these flood events was that filling on fill was a good method, it's not the same as what we've been building for the last 40 years, it's not incredibly bad, but it's not the safest one out there. And that's how the legislature agreed to say that we shouldn't be mandating that anymore, we should not mandate that they build to a lesser standard.

Commissioner Curtiss: I guess my problem is how…trying to figure out…we have to meet FEMA and we have to meet State floodplain, but we don’t have to meet ARMS?

Todd Klietz: I think that just depends on the county's willingness to pursue its goals. I think there are differences of opinion of what's being required at the State level and when it doesn't specifically have the word 'garage' in state law or state ARM requiring it to be constructed a certain way. With the goal of floodplain management to allow structures to be build, it also minimizes the effect of floodplain construction on others this requirement to have garage slabs 2 feet above.

Commissioner Curtiss: But they're only doing it for attached?

Todd Klietz: Correct.

Commissioner Rowley: So I guess it's just based on their interpretation of a residential structure includes an attached garage and that's not specified, so they're playing on the side that if it's omitted, it's included. Where we could have the interpretation, if it's omitted, it's not included. I guess the question that arises from that is if we decide that we think residential structure omitting garages, does not include garages, are we going to be sued by the state for adopting regs that they disagree with the interpretation?
**Todd Klietz:** We wouldn’t be sued by the state. The state has the potential to formally deny our regulations. They do have ultimate authority on that and I think if that happen, if the commission was so inclined, we’re John would have to give his two-bit on the garage situation.

**Larry Shack, State Civil Engineer:** This can be a little confusing but when we go back to what Tracy was saying. (Looking at slides) If we go back to this same structure, except there was a garage underneath it and we were elevating on fill, that fill would have to extend 15 feet around all sides. Larry continued through the slides explaining the various structures with attached garages. FEMA's minimum standards are not the state minimum standards. FEMA's minimum standards would allow you to build a house at the base flood elevation; it would allow a developer within the floodplain to raise that base flood elevation by a foot. The state doesn’t like that idea, from a safety standpoint. That’s why the state says you have to elevate two foot above the base flood elevation. FEMA's definition that Todd is showing you doesn’t take into account that extra two foot the state has. The portion of the interpretation that is out there is what effect does our two foot of elevation for freeboard and safety have on FEMA's definition? We’re not trying to change FEMA's definition but we have that two foot of higher standard.

**Commissioner Rowley:** So I suppose the real question is; is there a point to have this argument because ultimately if we adopt a regulation a certain way, you could just reject it. So would you reject if we choose not to go with the interpretation, would our regulations be rejected?

**Larry Shack:** I can’t speak to that; I’m just a field engineer. But I guess my point is once you attach something to part of the residence, it’s part of the residence.

**Stacy Sears:** FEMA right now is trying to gather as much information as possible, especially with what happen with hurricane Sandy, to start figuring out what are the costs with different types of construction. So we can only pull from the experiences that we have seen and Louisiana and other areas where they are requiring elevation contrary to what people think, those structures are being completely elevated. Even though FEMA's regulations allow it to be built to PFE, we are seeing higher standards because they will see these areas that are attached to their entire units; their structure does suffer damage after time and time again in certain areas.

**Commissioner Rowley:** Any data and/or letters of fact would certainly be appreciated in making our decision.

**Stacy Sears:** I certainly understand that and I appreciate Larry getting up here discussing this issue. Right now we’re talking regulations, there’s a whole other component to FEMA with insurance. Most of the time regulations and insurance don’t match up. We have seen structures here in Montana for whatever reason, the community...we have one community
that just followed the FEMA regulations against the state; they have since come back into compliance. But it was a long time ago, they have since allowed structures to be built and they did a similar situation where an attached garage was lower than the actual living floor. Two years ago they got hit with insurance in the tune of about $3,000-$4,000, that's before all this other insurance that's increasing now. So you have to be very, very careful too when you're talking about anything attached to that residential structure. If it's below and the flood elevations are not correct, it will have potential impact on those homeowners and insurance, that's not something we talk about because we deal with regulations but, they go hand in hand. But really, when we're looking at these attached garages and you ask the question, could we at the state not approve the ordinance, this would be something that we would flag – we wouldn't move forward until this has been addressed legally and in the situation that you're in right now, your maps are going effective July 6th. If this discussion started a year ago, that might've given more time, now it puts us in a very particular situation.

**Commissioner Rowley:** And I’m certainly interested in the safety of our citizens. I just want to have the most reasonable design standards that we can and balancing that with insurance.

**Commissioner Curtiss:** Tracey, the insurance is only for the house, so when the insurance agent is writing a policy they have to waive the effect of what that garage means to that house. But the garage portion isn't insured, right?

**Tracy Sears:** Well no, the garage portion is, it's part of that residential unit.

**Commissioner Curtiss:** Because it's part of the house?

**Stacy Sears:** Correct. Detached garages can be insured but when they are looking at a residential unit, they will look at a detached garage. And as Larry mentioned, they will also look at that deck because that is now considered part of that residential structure, as well.

**Commissioner Rowley:** Are there any other issues that DNRC would have with any of our thoughts about changes on this, like the water right thing? Is there a certain way that's not going to pass the state? It's kind of controversial as well.

**Stacy Sears:** This is a difficult one too. With the proposed changes that Todd mentioned earlier, sealing out a water rights permit, the regulation that this is attached to is a federal regulation. We couldn't make that decision at the state; all regulations have to be approved by FEMA. If you add in that exclusion to the water right you could get in a situation where now that particular portion of your regulation have to be sent to FEMA headquarters and they would have to make that determination that they would agree to move forward with it or not.
**Commissioner Rowley:** So we really don't have a choice on that on either?

**Stacy Sears:** Not with the time frame that you have.

**Todd Klietz:** If we exclude water rights from being something that we review...right now its in the current 2004 floodplain regulations that are currently in effect that we check in the water rights. DNRC initially said take that out, so if we take that out then it leaves the county in a little bit of a limbo as to already review these or are we not because by Federal law we’re supposed to all other permits are supposed to be reviewed and approved prior to floodplain permits being issued. So, on the one hand if DNRC is requiring us to take it out, then at the county level we don’t want to take that liability on for saying, okay DNRC is making us not review water rights so fine, we’re not going to review water rights but we say up front in our regulations that we don’t review them. DNRC is saying – then that will have to go through FEMA review because technically we are supposed to reviewing all other permits before we issue floodplain permits. So I think what you just said a few moments ago, we should leave it in, that’s correct, that’s what Stacy was saying.

**Commissioner Rowley:** So put it back in?

**Todd Klietz:** Yes, put it back in as it is in the 2004 regs.

**Public Comment**
None

**Executive Session**

**Motion #1:**

Commissioner Curtiss made motion that the Board of County Commissioners amend the floodplain regulations on page 10, section B to add a new number for the effects on water rights. Commissioner Rowley second the motion. The motion carried a vote of 3-0.

**Motion #2:**

Commissioner Curtiss made motion that the Board of County Commissioners amend page 23, #7 to add at the beginning of the sentence detached garages. Commissioner Rowley second the motion. The motion carried a vote of 3-0.

**Motion #3:**

Commissioner Curtiss made motion that the Board of County Commissioners adopt the Missoula County Floodplain Resolution as amended. Commissioner Rowley second the motion. The motion carried a vote of 3-0.

**10. OTHER BUSINESS**

None
11. RECESS
Being no further business to come before the Board, the County Commissioners are in recess at 2:20.