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

Staff Present: Jennie Dixon, CAPS, Lewis Yellow Robe, CAPS, Shyra Scott, Clerk & Recorder, John Hart, County Attorney

2. PLEDGE OF ALLEGIANCE

3. PUBLIC ANNOUNCEMENTS
Proclamation: UM Retirees' Day
Commissioner Curtiss read the Proclamation

4. PUBLIC COMMENT
None

5. ROUTINE ADMINISTRATIVE ACTIONS
Current Claims List ~ $3,551,981.70

6. HEARINGS (Certificate of Survey)
a. Thorpe Family Transfer
Jennie Dixon gave staff report. This is a consideration of an exemption affidavit submitted by Tom and Jacqueline Thorpe, owners of approx. 5 ½ acres, located at 4400 S. 7th Street W. They propose to use the family transfer exemption to create two (2) additional parcels to transfer to their adult children, son, Randall Thorpe and daughter Stacey Black. A similar family transfer was approved for the Thorpe’s in 2008, however, that survey was never filed and the lot layout has changed since that approval. If this family transfer is approved, its recommended that the amended survey show an easement to access the NE
tract which does not have frontal on S 7th Street W. This property has not been the subject of an exemption request besides the original 2008, which was never filed. The claimants have not previously used any exemption in Missoula County, again, other than the 2008 exemption that was never filed. As this does not appear to be an attempt to evade subdivision review, we are recommending approval of this family transfer request. Jennie asked Tom and Jacqueline Thorpe the basic family transfer questions.

Public Comment
Nathan Lucke, Territorial Landworks: Representing the Thorpe’s. We may choose to file these kinds of family transfers in sequence. So the COS that transfers Stacey’s property first and then come back later to get the family transfer for Randall. We’re evaluating that simply because this is one of the more complex family transfers I’ve had to operate I think because of the zoning, buildings and barns and the setback requirements. That zoning was a little challenging. Stacey and Matt want to very much get building as soon as they can, so we want to get that done as soon as we can. Randy’s is a little less pressing; he wants to build in a year or so. So that may be the approach that we take.

Commissioner Curtiss: Jennie, since in 2008 we approved a family transfer that looked a little different, will the approval letter that you draft for us to sign refer to the one being withdrawn to allow the other so there aren’t two letters floating around?

Jennie Dixon: Yes. And your motion, the motion that I recommended on the front page of your Request for Commissioner Action (RCA), the last sentence of that motion does indicate that this request vacates that 2008 family transfer approval. And we’ll make sure that’s in the approval letter as well. Very good question, thank you.

Executive Session
Commissioner Rowley made motion that the Board of County Commissioners approve the request by Tom and Jacqueline Thorpe to create two (2) additional parcels on property described as A-1, COS #3601, by use of the family transfer exemption, based on the fact that there does not appear to be an attempt to evade subdivision review. Approval of this request vacates the 2008 family transfer on this parcel by the same applicants’ to the same transferees. Commissioner Curtiss second the motion. The motion carried a vote of 3-0.

b. Gentry Family Transfer & Boundary Line Relocation
Lewis Yellow Robe gave staff report. There are two (2) subdivision exemption requests; one is a boundary line relocation and the second request is a family transfer. First step is the boundary line relocation of Tract 1 and Tract 2. Step two of this subdivision exemption is the proposed Gentry family transfer, which would create four (4) tracts. As a result of this proposed family transfer, it is subject to some evasion criteria in the Missoula County Subdivision Regulations. There are 10 criteria shown in the staff report. Of the 10 criteria in the subdivision regulations, the family transfer exemption request appears to meet four (4) of the evasion criteria. As noted, those criteria evasions are #1, #2, #3 and #6. The Transferees, Jay & Anne Gentry, do not intend to use the parcels as home sites; however, the parcels are intended for a debt repayment from Kirt Gentry to the transferees. Lewis asked Kirk Gentry the basic family transfer questions.
Public Comment

Dale McCormick, Professional Consultants: I’m representing the Gentry’s. I’d like to thank Lewis for assisting us through the process. It’s been unusual and a bit awkward. In the five (5) years I’ve worked with the county as a planner and then also in the last 10 years as a consultant in a private sector, I find myself trying to get...when you get to this point you get a recommendation of approval, not denial. Needless to say, I was disappointed at the recommendation and it was unfortunate that we, despite the attempt to get staff’s recommendation, we couldn’t get that recommendation until this staff report was basically being issued. As a result of that, there’s not much that we can do to prevent the decision from happening or modify the application. What I prepared today...at the CAPS update meeting there was some confusion about what we’re doing, so the first page is the existing COS, it shows tracts 1 & 3. The second page shows the boundary line relocation, which creates a 20 acre plus parcel on the north and a 38.3 acre parcel on the south. This is normally administratively reviewed and doesn’t require a review by the County Commissioners, so we did it as one (1) plat. The third page shows the proposed two family transfer lots Tracts 2 & 3 and then the remaining tract 1. Tract 3 would go to Kirk’s father, tract 2 goes to Kirk’s mother and tract 1 would be retained in ownership by Kirk. Then the last one shows the plat with the aerial photo so you can see how the existing two tract parcel would provide access that conforms to the two parcels. The part that was disappointing to me was the basis of what the recommendation was. Since we went through this process, six (6) of the ten (10) criteria we meet favorably and there were concerns expressed before those criteria. So in my mind, we were meeting the majority of the criteria and Lewis couldn’t really be specific about the criteria related to the access until that last meeting, which is why we put together this proposal indicating a 30 foot easement, rather than a 60 foot easement. The reason we have the 60 foot easement was because the road ganders and it just makes sense to let it ganger to a wider easement. So this does the same thing, a narrower easement. My hope is that perhaps this modifies the plat and will give to the County Commissioners an opportunity to perhaps support this proposal. I appreciate Lewis’ help through this process; I know it’s been difficult for him as well. I’ve had very different experiences in other counties where these types of proposals are looked at differently and so as I stated I was disappointed with the recommendation and disappointed here today with the recommendation of denial. If there’s any way to answer any questions or to help get to that place where we find something we can agree on, I would ask for your support. Thank you.

Commissioner Rowley: I just wanted to explain, I don’t like that they’re called evasion criteria. It’s not a majority type thing, where if you meet a majority of the criteria you go on. This is criteria that we use to see if potentially somebody could be evading subdivision review. So really if somebody hit one (1) out of ten (10) it could be such a blatant and obvious thing that they were trying to evade, that’s all it would take to trigger a denial. Even though you feel that you met six (6) that said you weren’t trying to evade it, it’s not really a majority thing, it’s kind of a preponderance of evidence but it’s described poorly in the way we use it.

Dale McCormick: I asked that question to Lewis, as I said, we’ve met six (6) of the four (4) and four somehow becomes over powering. One of those four (4) criteria is the most significant criteria. And so in your example of one (1)...we could never find an answer to that question. It was just more that those four (4) in some way was enough to reach a conclusion that it was evading...potentially.
**Commissioner Curtiss:** I just want to add that the criteria just trying to help us work through this and the criteria of course is part of the Subdivision Regulations so it was adopted by the Commissioners and then we just ask staff to review things and bring us a decision based on that. However, when it gets to us we do have the option of...while there’s a reason for all of those, we still judge each one on its own merits. But sometime staff brings us what seems to be the recommendation from the regulations and there may be things that we think differently. For example, the one on the (---), the 60 foot easement, to me when you look at it in reality, it does look next to a 60 foot easement that’s part of a subdivision, looks like it could go on and make another subdivision but if you look at the aerial and where the road lays and the fact that it’s on a hill, to me it makes sense to cap a 60 foot easement because it means less excavation, you don’t have to move that road because of the (inauditable) within that 60 foot easement, which is why it was presented in the first place. In some ways it’s better than a 2 tract but we end up someday, somebody lives here and here and here and then there’s just a crappy road. So in my mind we can take that one off the radar. The other – we ask if it’s going to be used as a home site, we were trying to figure out, while the law doesn’t say that this isn’t meant to divide land up so that somebody could have a house, we kind of think that’s the intention of it but it doesn’t say that. We ask those questions legitimately.

I have a question that I’d like to ask Mr. Hart, one of our County Attorneys. This property has haunted Missoula County for 30 some years and I’m sorry, Mr. Gentry, that you got sucked into it and this bankruptcy and all this stuff. But my question is; what Mr. Gentry is trying to achieve is a way to pay his parents back for making a bad investment with him, couldn’t that be achieved through a court order? Wouldn’t we end up with the same thing? The court can divide a property. If his parents decided to say; dog-gone-it you ripped us off of all this money, couldn’t it be achieved that way too? I’m not recommending that you do that, I’m just saying, why make them go through that when we could (inauditable). So my question is; if somebody owes you money, then someone could go to court and say I want this property? And the court could divide the property.

**John Hart:** Well if somebody owes you money then yeah, take them to court and you can ask for a judgement of the court saying that person owes you money, pay the money back. I’m not sure Commissioner, if you could ask the court to say instead of having them pay the money back, why don’t you have them give me some land? They got some land as part of granting the land, let’s go ahead and do a court ordered division of it. Now nothing would prevent you from asking that.

**Commissioner Curtiss:** We see that through divorces mainly.

**John Hart:** Yes, we do see it through divorces but also through other actions too. But in terms of good payment, I’m not sure the court would feel that’s within their jurisdiction as part of Title 76.

**Commissioner Curtiss:** One other one is the dividing the three (3) parcels. If somebody has five (5) kids, then you divide it in five (5). It’s kind of a measurable tool.

**Commissioner Rowley:** And my point too, although it’s creating three (3) parcels out of one (1) lot, it was two (2) lots and it’s only going to four (4). So if they were being divided differently, it wouldn’t have met these criteria. It’s just the way that it’s arranged.
Commissioner Curtiss: I appreciate staff going through regulations and bringing this with interpretations but I don’t see reason to deny this one.

Commissioner Rowley: I guess I have one more question on Number 1; to divide is created through the use of an exemption, is that ever or by that person?

Commissioner Curtiss: There’s a whole subdivision west of town, the whole thing is created this way. That’s kind of what it is, is to have us look at whether this is just a pattern that he’s going to do this and then his parents are going to divide it again.

Kirk Gentry: Thank you very much Commissioners for hearing this proposal. Like you said, I got sucked into a deal, bad investment, but now that both my folks are 83 years old, I’d like to at least be able to parcel off some of this to them so they can do with this what they want. At least it cleans things up a little bit. I just hope you’ll take into consideration something that was a mess and trying to clean it up. It’s been a lengthy process.

Chair Carey: I have a question for John. Have you reviewed this?

John Hart: Yes, but I have to be honest, this is the first family transfer that I’ve reviewed in my position at the County Attorneys Office.

Chair Carey: I’d like you to take a step back and give us your read on whether or not we undermine these criteria. They’re factual matters so do we enter into a realm of capriciousness and start applying this to someone else if it didn’t work?

John Hart: I’m not sure...each one of these is unique; like Commissioner Curtiss said that you can review each one of these on their own merit. I don’t really want to suggest or say right out that you’re bound by what you’ve done in the past and that you have to do everything each time, like you’ve done in the past. But, by the same token, you also want to be fair with everybody; to the extent you can apply these criteria as evenly as possible. I would recommend that you do that.

Executive Session
Commissioner Curtiss made motion that the Board of County Commissioners approve the Boundary Line Relocation Subdivision Exemption request between tracts 1 and 3 of COS 5928 to create a 20 acre tract and a 38.33 tract, based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Rowley second the motion. The motion carried a vote of 3-0.

Commissioner Curtiss made motion that the Board of County Commissioners approve the Gentry Family Transfer Subdivision Exemption request to create two additional parcels for transfer to Father, J. Cleveland Gentry, and Mother, Anne F. Gentry, based on the fact that there does not appear to be an attempt to evade subdivision review. Commissioner Rowley second the motion. The motion carried a vote of 3-0.

Chair Carey: I just want to remark that this is a close one and I appreciate staffs position; they have to play by the rules. I don’t want staff to think we ignore their work.
Commissioner Curtiss: I do too. I think they probably could of done the 30 foot easement, they probably said that but we didn’t look at this. It doesn’t make sense in this particular case to me to make somebody move a bunch of dirt.

7. HEARINGS (Petitions to Annex Property into Missoula Rural Fire District)

a. 7945 Bootlegger Trail
Shyra Scott gave update. A petition has been received by the Clerk and Recorders Office to annex to the Missoula Rural Fire District an area of land described as follows: Lots 1 and 8 of Certificate of Survey 4135, located in the NW ¼ of Section 8, Township 12 North, Range 18 West, P.M.M., Missoula County, Montana. Parcels #3148701 and #3149203, 7945 Bootlegger Trail, Missoula, Montana records of Missoula County.
All signatures have been received.

Public Comment
None

Executive Session
Commissioner Rowley made motion that the Board of County Commissioners approve the annex request for Lots 1 and 8 of Certificate of Survey 4135, 7945 Bootlegger Trail, Missoula, Montana into the Missoula Rural Fire District. Commissioner Curtiss second. Motion carried a vote of 3-0.

b. 28225 Highway 12 West
Shyra Scott gave update. A petition has been received by the Clerk and Recorder’s Office to annex to the Missoula Rural Fire District an area of land described as follows: A tract of land being a portion of the W1/2 SW1/4 SE1/4 in Section 20, Township 12 North, Range 22 West, P.M.M., Missoula County, Montana, being more particularly described in Certificate of Survey No. 183. Parcel #3148701 #5837007, 28225 Hwy 12 W, Lolo, Montana 59847, Montana, record of Missoula County.

Public Comment
None

Executive Session
Commissioner Curtiss made motion that the Board of County Commissioners approve the annex request for Certificate of Survey No. 183, Parcel #3148701 at 28225 Hwy 12 W, Lolo, Montana into the Missoula Rural Fire District. Commissioner Rowley second. The motion carried a vote of 3-0.

c. 11162 LaValle Creek Road
Shyra Scott gave update. A petition has been received by the Clerk and Recorder’s Office to annex to the Missoula Rural Fire District an area of land described as follows: Tract 1 of Dougherty Tract No. 1, located in Missoula County, Montana, according to the official recorded plat thereof. Parcel #3386603, 11162 LaVelle Creek Road, Missoula, Montana, records of Missoula County.
Public Comment
None

Executive Session
Commissioner Rowley made motion that the Board of County Commissioners approve the annex request for Tract 1 of Dougherty Tract No. 1, Parcel #3386603 at 11162 LaVelle Creek Road, Missoula, Montana into the Missoula Rural Fire District. Commissioner Curtiss second. The motion carried a vote of 3-0.

8. OTHER BUSINESS
None

9. RECESS
Being no further business to come before the Board, the County Commissioners are in recess at 2:17.