

# MINUTES

Regular Meeting  
Powell County Planning Board  
Thursday, June 9, 2011  
Deer Lodge Community Center

▪ **Call to order at 1 p.m.**

▪ **Attendance**

**Members Present:** Rick Hirsch (RH), John T. Manley (JM), Randy Mannix (RM), Bruce Thomas (BT), Sharon Jacobsen (SJ), Marlin Gilman (MG) and Bill Pierce (BP)

**Excused:** John Beck (JB), John Hollenback (JH)

**Staff:** Brian Bender (BB), Peggy Kerr (PK) and Lewis Smith (LS).

**Also Present:** Gordon Sorenson 549-9693; Nels Wilkins 431-6509; Steve Kirksey 204-4479; T.A. Rue 793-5050; Tim Swanberg 793-5038; Michael Strand; Bill Ray 880-8080; Kristi Dubois 542-5551; Price & Laura Williams 793-5902; Bee Hall 443-6731; Pat Hansen 492-6753; Alan Bird; Court reporter.

▪ **Approval of the Agenda**

John Manley proposed moving the non-public hearing items ahead of the Williams Conditional Use Permit item. Sharon Jacobsen made the motion and Marlin Gilman seconded it for the Board to approve the agenda with amendments, through a unanimous vote.

▪ **Approval of the April 14 minutes**

Rick Hirsch noted that it is not Dempsey Creek but Racetrack Creek that runs to the south of the Fortner property. The correction will be made to the item eight comments down on page 2.

Rick Hirsch made the motion and Bruce Thomas seconded it for the Board to approve the minutes as corrected, through a unanimous vote.

▪ **Non-public hearing items**

**TNC/Swanberg COS – Boundary relocation (see attached staff report)**

Q: Will this be aggregated and not create new parcels? Answer: Yes.

SJ - Made the motion, and it was seconded by MG, for the Board to approve the TNC/Swanberg COS application with conditions put forth by planning staff, since it is determined that it is not an attempt to evade subdivision review, through a unanimous vote.

Bee Hall – The property, which will be purchased by US Fish & Wildlife Service, will be used as an office and waterfowl production area. The deed that transfers property to Swanbergs restricts any additional residences.

**Kirksey/Bird COS – Boundary relocation (see attached staff report)**

Q: What are the plans for the garages?

Alan Bird: With square footage at \$350 to \$450 per square foot, it would be cheaper to buy this than build in the future. The fence has been removed. We have 8,000 square foot of storage.

Q: No other use planned except storage?

Alan Bird: The Department of Corrections holds a lease on those units. They may lease in the future. We have contracts on those units.

BT - Made the motion, and it was seconded by RH, for the Board to approve the Kirksey/Bird COS application with conditions put forth by planning staff, since it is determined that it is not an attempt to evade subdivision review, through a unanimous vote.

Alan Bird: Invited planning board members to tour the hospital. Let him know the number. Board members will meet at the hospital at 11 a.m. before the next meeting on July 7.

**Rue/Brumit COS** – Boundary relocation (see attached staff report)

Gordon Sorenson: A meeting was held May 4 with Lewis Smith, Brian Bender, Peggy Kerr, Tom Rue and Sorenson regarding whether they needed a variance. In accordance with District 3, Chapter V-D-3(d)(v) allows us to do this split. Where does it say you have to have a minimum lot size of 160 acres.

LS – If you are going less than 160 acres, then that's the restriction for District 3. The fact that DEQ has a different lot size does not affect our minimum lot size.

Sorenson: We had this discussion before you stated there was no Board of Adjustment and you had no idea when they would be set.

BP – You need to read the section in its entirety, not out of context. The intent is you can't create a parcel smaller than 160 acres.

Sorenson - The key here is we are not creating a parcel.

SJ – There is no parcel being created?

Sorenson - Yes. We have a time issue here. Brumit is a mining engineer in the Congo. He is on his way up here to close the purchase around June 21 or 23. The purpose of the transaction is he wants the irrigation pivot to increase production of his base.

LS – For this board the decision is whether this is an attempt to evade subdivision. The other issue is before the Board of Adjustment.

BP – Could there be a condition that you could not divide the tract. Answer: If less than 160 acres, you would have to go through subdivision review.

BB – You can't place a condition on a potential act. If this action takes place, 160 acres is the minimum lot size.

BP – By enabling this action, they are able to create a subsequent parcel.

BB – You shouldn't worry about subsequent action. If you feel strong enough about this, say no.

RH – Everybody who has more than 160 acres has that ability, so there is no way to limit how he does his 320 acres unless he went below 160 acres.

BP – There is the potential of three parcels if we allow this boundary relocation.

RM – What is the current use of the Brumit property?

Sorenson – Pasture. There is no change in occupation, uses, environment.

SJ - Made the motion, and it was seconded by RM, for the Board to approve the Rue/Brumit COS application with conditions put forth by planning staff, since it is determined that it is not an attempt to evade subdivision review, through a unanimous vote.

Sorenson will call Monday regarding whether a variance will be required.

▪ **Continued or Tabled Business** – The Chapel at Riverfront Park

BB – The issue is still in limbo. Will talk to Chad Lanes about the application and get it off the agenda.

▪ **Public Hearings**

**Williams CUP** – (see attached staff report and separate memo):

JM announced the subject and purpose. The petitioners have submitted an application seeking to construct a cell tower on their property. The purpose of the public hearing is to receive public comment on the proposal.

JM stated the hearing notice was published in the Silver State Post on May 25 and June 1.

JM asked if any board member wished to declare a conflict of interest in the matter. No conflicts.

JM asked the Planning Department to present its report. BB – The site is unimproved. Two days ago staff received a letter from Fish, Wildlife & Parks regarding an eagle's nest. Staff put together a memo with possible conditions to mitigate those issues. There is a court reporter, so everything you utter will be transcribed. Will request a copy of the transcription from the applicant.

Court reporter – Cannot make a record unless I know who is speaking. Identify yourself before you speak.

Q – Why the court reporter?

Michael Strand – The last time we applied for a cell tower it went to appeal; we didn't have a record and lost.

BB – Everything assembled in your packets is up to date.

Bill Ray – I hope you approve it this time around.

JM asked if the board had questions regarding the location and nature of the proposal.

No questions.

JM – Announced the public hearing to be open. Asked for any petitions. No petitions submitted.

Pat Hanson - All of a sudden you have a different location when before you stated there is no reception anywhere else except at Trixi's.

Strand – This is a different provider. They have different equipment and different goals as to where they want to serve and different criteria they're aiming at such as Ovando versus Highway 200. From the looks of the maps they'll do a good job serving Ovando as well.

JM - How close is the eagles nest?

Kristi Dubois - Slightly less than one-half mile from the bald eagle's nest on the same ridge; about four-tenths of a mile.

LS – In regard to the tower, is it a physical danger to the eagles as far as the power line?

Dubois – The main concern is we've developed management guidelines for bald eagles to ensure that compliance with the federal act that prohibits disturbance that results from reduction or abandonment. We recommend people stay one-half mile away, or if it's visible from the nest, we recommend time restrictions to keep construction out of the nesting season. We have construction concerns. We don't want someone proposing to tweak the location to a closer location. The guidelines are vague. Power lines should be one-half mile away. There are collision hazards. Tower guidelines recommend being away from nests, foraging area, migration quarters. I have observed eagles flying across Dry Gulch Road to go to Brown's Lake for feeding. The fact that tower is within the one-half mile buffer, with seasonal restriction of tower itself. And people who maintain go on a sightseeing trip. Activity limited to tower site.

The bald eagle has been delisted from the Endangered Species Act and in the monitoring period now. It would be relisted if there is a declined population. The purpose of the guideline is to help people to do the right thing around eagles to maintain their population as best we can. There is a good conservation ethic with the landowners in the Blackfoot.

Requests Clearview delay construction until after the eagles have fledged because they will then be moving around. Once the tower is in, there shouldn't be a problem.

For the access road we don't feel any improvements are needed to prepare for construction because it is out of sight.

Strand – Isn't a mono versus lattice pole helpful?

Dubois - Does it have guidelines on it? Once the tower is in place, the eagle will be aware of it. Monopoles with guy lines are hazardous.

Has concerns with the activity associated with erecting tower when eagles not used to it and recommend stay out of season.

Ray - The way raining now is not going to be a problem. Should get the foundation started by Aug. 1. Will erect the steel after that.

Dubois – Wants to require the cement trucks be quiet.

Ray – They are very quiet.

Dubois – The base of the site appears to have some visual screening between it and the eagles nest. She flew near the nest a few weeks ago and saw two eaglets. They should be fledging in July. Will work with the tower company to let them know what is going on.

SJ – What kind of power? Answer: Underground.

BB – Is seeking a sample of the tower color.

Q - If you paint who is responsible for maintenance. Answer: Clearview.

Laura Williams – The color will be black with a tinge of green.

Ray – The site has large trees around it for screening.

BB - Provisions in the ordinance require screening. Would like to waive that requirement because location and isolation of the spot makes it not necessary. It's the board's discretion.

Ray – It has an 8-foot-high chain link fence.

BT - Can there be a balance for discretion for number of trucks a day to get his base work done? Can you find common ground there and allow them to start pad work before that?

Dubois - Would be happy to work with them; would like to go to the site to see how good the screening is. From the road it is not a problem until the tower pops at the ridge. Thinks there is enough screening if starts pouring the concrete. Will monitor the nest to see the size of the eagles for the earliest fledging date, about Aug. 1 or once the eagles are verified to be gone.

The US Forest Service has been the managing authority for balding, golden eagle protection act since 1940. She can give contacts of Helena people.

RH – Lighting?

Strand – They aren't requiring; they are suggesting.

Ray - Will give sample of light.

SJ – You won't see the tower from your house?

Price Williams – We'll see the top of it.

JM – Is there a decision on the color?

RM – Have you heard from the Ovando residents?

BB - One individual stopped by. We discussed the tower and gave her a copy of a staff report and told her to call if they had comments. I did not receive anything.

RH – Road issues?

BB – They have to improve it. There is a possibility for maintenance crews. One condition is they have to submit road plans.

RH – Asked about a legal easement on the road.

LS – They hold a private easement with the Williams. The second issue is whether Dry Gulch Road is a county or a state road.

BB – That is irrelevant to this issue.

RH – Do they have an easement?

BB – It is written as a condition. Make sure conditions noted into motion.

PK – Exhibit C of the easement was left out.

SJ - Do we want to add to conditions for the bald eagle?

BB – It's at our discretion.

JM – It's a non-issue. My experience is you can have an atom bomb under them and it wouldn't matter.

SJ – We should have something generic saying the company would work as much as possible with FWP to make sure the eagle is secure. It sounds like the company is willing to do that.

Ray – We'll work with them.

LS – We will record the ground lease showing both easements.

RM - Propagation maps: Helmville to the south of the reservoir shows in-building coverage beyond Helmville and into Kleinschmidt Flats.

Strand - Cell One is a smaller company than AT&T, who probably has vastly superior equipment.

PK – Will Verizon cell holders have service?

Ray – Verizon stops at Trixi's. The hope from the tower owner is for co-location.

Strand – Does it offer roaming/

Ray – Verizon does not have service.

Strand – Because of Powell County rules, if Verizon wants to have service they will have to go on this tower.

Ray – They would have to prove they can't go on the tower if they want to be somewhere else.

Strand – It might be the impetus Verizon needs.

JM – Declared the public hearing closed. He called for a motion and discussion by the board.

SJ - Made the motion, and it was seconded by RM, for the Board to approve the application to construct a cell tower with conditions put forth by planning staff.

Discussion: Went through the conditions.

Ray - Fence – 6 feet with 2 feet of barbed wire.

Easements will be filed and we'll get copies.

Lights? Ask the landowner.

Price Williams - No. Not a strobe.

BB - Have them deal with the state.

SJ – It's a safety issue.

LS - Having a black pole at night is a safety issue.

TM – They applied for a 310 permit, and it was granted.

BP – What are we going to do about the FWP request?

SJ – It's up to the board.

BB – It's not included in the original conditions.

BP – It sounds like the parties will work it out.

MG – Asked about weeds.

LS – The conditions will cover them.

Q – What about the light.

BB – If the state requires it, they'll have to put it in.

PK – Did Bill Ray talk to the state? I've asked for documentation but have never gotten it.

Ray – I had dialogue with the state and am willing to work with them. If they want it, we'll put it in.

Strand – The FAA has determined it is not a safety hazard. The state can't overrule the law of the feds.

LS – If we have differing requirements, the FAA doesn't have the exclusive say. The issue is at 200 feet, a light is automatic. We have a 199-foot tower within one-half mile of the highway.

Strand – Federal law supersedes state law. My recommendation to the client is to put the light on.

BB – The planning board is asking for information showing you had dialogue with the state. If they have overlapping jurisdiction.

Vote on SJ's motion: SJ - Made the motion, and it was seconded by RM, for the Board to approve the application to construct a cell tower with conditions put forth by planning staff along with one added condition verifying the applicant obtained a 318 permit, through a unanimous vote.

▪ **Planning Board Comments**

JM stated planning staff did a good job on the cell tower.

RM – Why didn't we have the meeting in Ovando.

BB – This is the county seat. You hold meetings here. It doesn't say you hold meetings in the outlying communities. If you did an informational meeting or were working on the Growth Policy or making changes to the rules and regulations, you would hold the meetings in the outlying communities.

SJ – By going out to the different towns, you will get a better feel about how the county feels about your job.

BB – I discussed where we would hold this meeting with Lewis Smith and the county commissioners. This is the county seat.

SJ – It's about getting input from the people who are affected by what we are doing.

BB – We did public notice.

JM – I received four or five e-mails concerned about the view shed of the cell tower.

RH – Is Garrison cell tower running?

BB – Has not researched it. We have documented lighting on Powder House Hill.

LS – Have we looked at access issues?

BB – If Bill Ray does not provide documentation, we can't sign off on this CUP. The conditions need to be met prior to installing and met within a time period and on an ongoing basis.

SJ – Asked who was on the BOA.

▪ **Staff Updates**

**County Attorney** – LS: Discussed Lawsuit regarding density near Missoula. Growth Policies trump city agreements with landowners. The Growth Policy has teeth if accepted correctly.

Easement by prescription usually limited to historical nature, but the Supreme Court ok'd use from five families to 15 with a subdivision of two lots to 15 lots.

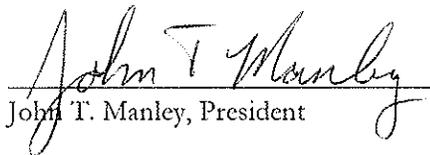
State leases – Improvements are the responsibility of the leaseholder after it terminates.

**Planning Director** – BB: Discussed the April monthly status report.

**Assistant Planner** – None

- Other – None
- Public Comments – None
- Next Regular Meeting  
The Planning Board scheduled a tour of the PCMC hospital at 11 a.m. on July 7 and convening at 1 p.m. at the Deer Lodge Community Center to conduct their regular meeting items.
- Adjourn  
MG made the motion and BT seconded it for the Board to adjourn, through a unanimous vote.

Assistant County Planner Peggy Kerr compiled the Minutes for review by Planning Director Brian Bender.

  
John T. Manley, President

  
Date