

MINUTES

Regular Meeting

Powell County Planning Board

Thursday, March 17, 2011

Deer Lodge Community Center

- **Call to order at 1 p.m.**

- **Attendance**
Members Present: John Beck (JB), Marlin Gilman (MG), Rick Hirsch (RH), John T. Manley (JM), Randy Mannix (RM), Bill Pierce (BP), and Bruce Thomas (BT).
Excused: John Hollenback, and Sharon Jacobsen.
Staff: Brian Bender (BB), Peggy Kerr (PK) and Lewis Smith (LS).
Also Present: Lewis Kogan, FVLT; Mike Stenberg, RCCC; Pat Hansen.
P

- **Approval of the Agenda**
BT made the motion and RH seconded it for the Board to approve the agenda with no additions, through a unanimous vote.

- **Approval of the February 10 minutes**
BP made the motion and JB seconded it for the Board to approve the minutes as presented, through a unanimous vote.

- **Continued or Tabled Business** – The Chapel at Riverfront Park, a Subsequent Minor Subdivision. The petitioner has not yet met the required elements of his application, namely, he needs a title report on mineral rights. In addition, DEQ requested the petitioner go through its review. The question is whether the county sanitarian's (Chad Lanes) approval is sufficient to meet statute requirements or if it is DEQ who gives that approval. LS wrote a memo to DEQ, seconding Lanes' opinion. DEQ is talking to its legal counsel on the matter.
Q: Didn't the petitioner have the option to put in a sewer and septic?
A: He has issues with soils. The property is close to the floodplain. Schillo doesn't want to put in a sewer and septic, and he's pretty adamant that he's in the right.
Staff recommends leaving it on the table.

- **Public Hearings - None**

- **Non-public hearing items**
Fleck Minor Subdivision – see separate memo
Five Valleys Land Trust / Conservation Easement – see separate memo
RCCC requested a Conservation Easement (CE), 634 acres at Garrison Junction.
Lewis Kogan of Five Valleys Land Trust (FVLT) noted one change to the document in section 2 regarding transferable development rights to meet zoning regulations for Powell County. They want to file the document by April.
The gravel pit is outside of the CE. The BPA powerline is inside the CE.
Q: Is this whole area part of the Superfund site? Yes. The easement document allows for superfund activities.
Q: Is it targeted for restoration? Not now, but it will be.
RM: Has mediation ever been used? (No.) Glad to see it in the document. Glad to see language under fencing. Under timber management believes there is more verbiage than necessary as far as

management and products. Best Management Practices (BMP). Riparian should be consistent with the streamside management zone (SMZ). It curtails logging.

LS: Some exemptions from prohibitions regarding riparian.

RM: Riparian area exceeds BMPs.

Kogan: Will look at the template.

BB: You can make recommendations stemmed from state statutes. Recommends changing the process where documents go directly board members. Wants the documents sent to Planning Staff who will then pass them on the board members.

BB: Does anyone have easement with FVLT? No

RM: Regarding gravel, is there a clause allowing for gravel extraction on property?

Kogan: That is not something they want in the easement.

RH: Is the Garrison Back Road included? Yes

LS: It's a county road easement.

Kogan: The existing ROW excludes the easement.

BT: Should the Garrison Trail project continue would it not affect the CE?

Stenberg: As long as it is within the county road easement.

LS: That is the Old Milwaukee Railroad ROW.

Stenberg – That is outside of the CE.

Lewis: Any problem to have an exception to the trails?

Kogan: We would need to change the ROW restrictions.

BT: Understands that project has gone far enough down the river as far as a trail system at Garrison. WRC is in charge, it is in negotiations with BNSF with the project area right outside of Garrison. It will run through Phosphate all the way to Kentucky Ave. in Deer Lodge.

BP: Asked discussion on taking an easement on a parcel of ground that is a superfund corridor.

Kogan: That was discussed with the decision largely made because there still is importance to that river corridor and to protect it regardless of it being in a superfund site. The site would eventually rebound without superfund work. A portion of the ground is within the floodplain, but some is outside of the floodplain. It's still buildable.

BP: When you take a superfund-designated site under easement, is there any scrutiny on behalf of the IRS that you are getting tax relief.

Kogan: Plopping an easement on any site brings scrutiny. The IRS would do an appraisal.

BP: Placing easements on areas with these kinds of limitations.

Kogan: If you fail to identify some sort of contamination, liability for cleanup could ensue.

BP: This could be easily abused; taking an easement on Berkeley pit for example.

Planning Staff will compose a letter with board comments to FVLT.

▪ **Proposed revisions to Zoning & Development Regulations** – see separate memo

BB: We are going to attempt to correct an over site in the current ordinance that is inhibiting the ability of commissioners to appoint members to the Board of Adjustment (BOA). We have only two members at this time. Appeals of board decisions are guided to the BOA, but state statute does not specify that. If someone is not happy with our decision, the only recourse is to file in district court. The appeal process for the BOA to hear is administrative decisions of planning or anyone in our behalf. It concerned me that if you rendered a decision, another entity could look at it and then screw it up a second time. The appeal process is set up for administrative decisions; not planning board decisions. By doing this, the county commissioners can appoint members to the BOA.

The BOA would listen to administrative appeals and to variance applications.

I advised the commissioners it was a good idea to have one planning board member on the BOA, but the commissioners believe strongly that a separation is good because the planning department

works closely with the BOA. If the board wants, they can give concerns about no planning board members being on the BOA.

LS: The impartiality issue is eliminated if you don't have planning board decisions appealed to the BOA. Before, you could have a five-member board able to flip the decision of nine-member board.

BP: Wouldn't we want at least one planning board member on the board. Can we have a compromise with the commissioners on that question?

LS: We don't have the conflict of interest we had before because you're not ruling on a decision you ruled on earlier. From a legal standpoint he doesn't see a legal prohibition; however, it's a decision of the commissioners. If you wish to recommend they put someone from this board to that board, this is a good time to do it.

BP: Would like to see at least one member of the planning board on that, partly because the director is new to the position; a new perspective of no history.

BB: 1) Technically, you have a crossover member. If the BOA is granting numerous variances. 2) We have new policies in our office - more communication with the BOA, planning board, commissioners that we didn't have before. 3) We are turning a corner. We almost want to treat them differently. A variance is a yes or no. We want to buffer them because they render hard decisions.

RH: Agrees, but the most important thing is communication. One meeting a year is an issue. If you run it that way, it will not work. The board needs to be more active. You need to keep them abreast on more controversial stuff.

JM: Do we want to make a formal? He doesn't think need a board member now.

BT: Doesn't think we need a board member either.

RH: I don't either if the board is improved.

BP: Could the commissioners appoint an advisory member for historical background?

BB: Would rather have a member than a non-voting member because of liability issues.

We are working at knocking down the barrier that commissioners are not a part of anything with the planning board. The new focus is keeping them informed.

RM: Favors a board member on the BOA.

BP: Do you want to amend the regulations (for the BOA issue) without doing the whole thing.

BB: The initial goal was to work on ordinance provisions. The Growth Policy has a five-year review time frame. Changes to the regulations should stem from Growth Policy objectives. This is an anomaly because we don't have a BOA. If there is no decision within 60 days, a variance could be automatically approved. He will go to the commissioners Monday to talk about the Growth Policy and the provisions in that. If the planning board has concerns about the Growth Policy or other regulations, make up a running list.

LS: Because of time constraints to get the BOA up, the commissioners would go ahead with the public hearing. The regulations require just one public hearing for regulations before the county board.

BP made the motion and RM seconded that the planning board move ahead with the procedure to amend the regulations regarding the BOA but request the commissioners appoint at least one planning board member to the BOA. BT opposed, RH abstained. Motion approved.

BP: Interested in the transfer of information.

JM: Who wants to be on the BOA is commissioners approve? BP.

▪ **Planning Board Comments**

BP: Legislators considering bills addressing second residences on a tract of land, affectively subdividing ground. The bill would allow three residential structures in counties without zoning. It is interesting how far ahead Powell County is on this issue.

RH: Spotted Dog. Avon is trying to organize. One bill has been presented that would have commissioners be able to say yea or nay to allowing buffalo in their county. Rather than jumping up and down stating we don't want it, we need to use law to fight this just like Judge Malloy does.

▪ **Staff Updates**

County Attorney – Nothing new on legislation. Nothing is dead. If something comes up, he will send e-mails.

It is important for the board to let BB know what is important to them.

The Legislature is working toward repealing the marijuana law.

Planning Director – BB: Will present the February monthly report to the commissioners on Monday. It will include EPA/DEQ issues with the Clark Fork River cleanup.

PK and BB attended the annual Association of Montana Floodplain Managers (AMFM) Conference in Lewistown.

A few goals include updating the official maps in the planning department as well as the planning-related regulations, including the floodplain ordinance.

Staff is currently addressing the county's GIS capabilities. It is worthwhile to go digital.

RH: Asked if there are rules for the floodplain. A. We have an outdated ordinance. We are waiting for the state's Model Floodplain Ordinance.

▪ **Assistant Planner** – None

▪ **Other** – None

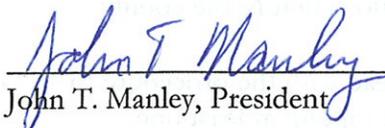
▪ **Public Comments** – None

Pat Hansen: She agrees you must put a planning board member on the BOA. If anyone leaves from the planning office, you lose continuity. She does not agree with the Legislators' proposal of repealing a public vote.

▪ **Next Regular Meeting** – Thursday, April 14, at 1 p.m. to accommodate Planning Board members' scheduling conflicts.

▪ **Adjourn** – BT made the motion and RH 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