



Planning Department

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MINUTES

PLANNING BOARD

The Powell County Planning Board met in a regular session on Thursday, July 13, 2017 at 1 PM.

Members Present: John Hollenback, Tracy Manley, Bill Pierce, Rick Hirsch, Earl Hall

Members Absent: John Beck, Randy Mannix, John Wagner

Staff: Carl Hamming

Public: Brenda Moore, Tim Sommers, Joe Smith, Joe Dabney, Carl Beckwith, Ms. Beckwith, Gerald von Bargaen, Floyd Yoder

President Manley called the regular meeting to order at 1:05 PM.

Agenda Item #1 – Attendance

Five Members being present established a quorum.

Agenda Item #2 – Approval of Agenda

The Board approved the agenda as presented.

Agenda Item #3 – Approval of Minutes

Member Hollenback motioned with Member Hall seconding to approve the May Minutes as presented. The Planning Board approved the motion through a vote of five to zero.

Agenda Item #4 – Continued or Tabled Business

LHC, Inc. – Cottonwood Lakes Road Gravel Pit CUP

County Attorney Smith updated the Board on the appeal of the Montana Constitution’s language that permits a gravel pit to be constructed adjacent to residential properties if the adjacent land is not officially zoned as residential. There will be a hearing with the judge in District Court in August and Mr. Smith will inform the Board of the details.

Agenda Item #5 – Non-Public Hearings

Peter Miller & Floyd Yoder – Amendment to CUP 04113-01

Mr. Miller of Gold Creek, received a CUP for his Panel Concepts business in 2013. He is now interested in turning over the business to Mr. Yoder who will operate a metal fabricating business. Mr. Yoder also intends to construct a new building behind (to the west) of the current commercial building for additional office space.

After Mr. Hamming presented the petitioners’ application and some pictures of the site, the Board asked the petitioner (Mr. Yoder) several questions about the specifics of the business. Mr. Yoder stated that

the metal fab business will all be conducted indoors and that it is limited to assembly and shipping. He will not be doing any painting or welding. Mr. Yoder also specified that there will be no solvents located at the site in response to Member Hall's question about fire and hazardous materials. Mr. Yoder also stated that there will be no drains or drainage in the new building.

Member Pierce suggested that as part of the conditions, the Board include a condition requiring the petitioner to acquire and be in compliance with all EPA and DEQ permits and regulations. The Board also discussed including a condition requiring the petitioner to supply the Planning Department with proof of building permit secured from the State to demonstrate that they are adhering to all building codes.

After the discussion, President Manley called for a motion. Member Hollenback motioned to approve the Amendment to CUP 04113-01 with the five conditions recommended by Staff in the July 5, 2017, Staff Report, plus the two additional conditions recommended by Member Pierce.

These are:

- The petitioner is required to provide proof of a building permit from the State of Montana to demonstrate compliance with all commercial building codes.
- Second, the petitioner will be required to secure all required DEQ and EPA permits and licenses and to comply with their regulations; otherwise, the CUP shall be revoked by the Planning Department.

The Board voted 5-0 to approve the Amendment to CUP 04113-01 with seven conditions.

Agenda Item #6 – Public Hearings

a. Billy Joe Dabney – CUP Petitioner

Mr. Billy Joe Dabney, petitioned the Planning Board to operate a small business doing custom work on trucks on his property at 640 Aspen Lane in Gold Creek. Mr. Dabney currently works in Alaska as a miner, but would like to also operate a small business from his shop on his property working on trucks when he is in the State. Mr. Hamming presented the application to the Board and discussed the three inquiries received by the Department regarding the proposed business. The three inquiries were made by adjacent landowners wondering about hours of operation, noise, and diesel exhaust or other fumes. Mr. Hamming then presented several pictures of the property including the half-completed workshop and its proximity to the surrounding residential landowners.

Prior to opening up the discussion to the public, Staff and the Planning Board discussed the specifics of the proposed business with Mr. Dabney. Mr. Dabney stated that his son will only work on one truck at a time and does not plan to line up numerous trucks in the yard. Mr. Dabney also stated that clients will drop off and pick up vehicles themselves. Mr. Hamming informed the Board that these landowners have a Homeowners Association (HOA), but their rules and regulations are not the subject of today's hearing. The petitioner will be required to be in compliance with both approved conditions of the Planning Board and the HOA regulations.

Member Pierce suggested that similar to the last Agenda item, the petitioner be conditioned to comply with DEQ and EPA rules and regulations and to supply the Planning Department with copies of any necessary building permits that may be required by the State.

President Manley then opened up the public hearing.

Mr. Beckwith stated that he is still conducting research as to what HOA regulations were formally signed by the landowners but stated that HOA restrictions would also apply to Mr. Dabney's business. There was discussion with Mr. von Barga regarding the hours of operation since he appreciates the peace and quiet of the subdivision and likes to read on his porch. The Board read the suggested hours of operation to the public and asked for their feedback. Further, it was stated that even though it is ideal to have peace and quiet on the weekends, not everyone works a Monday through Friday workweek. The adjacent landowners asked Mr. Dabney to clarify Billy Joe's work schedule in Alaska and how often he would be in Montana operating his truck business. Mr. Dabney stated his son is home for fourteen days (minus two travel days) every three to four weeks. Mr. Dabney also informed the Board that his son has no intention of doing engine work or paintwork but rather adding specialty lights, lift kits, and tires.

Mr. Beckwith asked Planning Staff to specify the procedure for formal complaint if the petitioner is not in compliance with the conditions of the CUP. Mr. Hamming stated that typically, once a formal complaint has been submitted and non-compliance documented, the Department will contact the petitioner with a letter detailing their infraction and steps to remedy the situation and be in compliance. If after 30 days the petitioner is still not in compliance, the Department will then follow up with the County Attorney and eventually the County Sheriff to notice the petitioner that their CUP is being revoked and to cease and desist.

The Board also discussed the possibility of Mr. Dabney's yard turning into a dumping ground or parking lot if too many vehicles are being lined up for work or if spare parts are being left in the yard. Mr. Beckwith stated that their HOA has a no dumping requirement and Mr. Hamming discussed the recommended condition of restricting the number of trucks that can be parked in the yard at any time.

The public also asked about the number of people that Mr. Dabney has at his residence for social gatherings, but the Board reminded the public that they have no authority to restrict the number of guests an individual may invite to their home. It is not the purpose of the public hearing.

President Manley closed the public hearing.

The Board discussed how best to condition the petitioner to permit them to operate their cottage industry (as promoted by the Growth Policy) and to respect the adjacent landowners who moved to their residences for the peace and quiet. The idea of requiring insulation on the workshop was discussed, but eventually determined to be too specific of a condition that was not defensible. Mr. Hamming stated that he tried to word the condition in a manner to restrict the noise-inducing work to be limited within the recommended hours of operation. The Board further recommended adding language that the petitioner be required to pursue noise reduction and mitigation measures. Mr. Hamming also stated that he'll specify the procedure for complaints and non-compliance in the Minutes and Findings so that the neighbors understand the process for complaint. The Board also suggested to Mr. Dabney that if they approve the CUP, he inform his son about the lengthy discussion by the Board and public concerning noise pollution and that he be respectful of his neighbors.

Member Hollenback stated the importance of the HOA and for individuals to have private property rights and the difficulty in establishing the fine line between a small cottage industry operated from an individual's home and a business accelerating into a larger commercial operation. The Board again specified the need for the condition to limit the number of trucks that can be moving in and out of the shop and that Mr. Dabney stated that he'll only be working on one truck at a time.

Member Hall motioned with Member Pierce seconding to approve the CUP with conditions. The additional conditions include:

- The petitioner be required to pursue noise mitigation measures.
- The petitioner will supply the Planning Department with proof of State building permits if required.
- The petitioner will comply with all DEQ and EPA rules and regulations.

The Planning Board voted 5-0 to approve the CUP, with conditions, to Mr. Dabney.

b. Sommers Minor Subdivision - Gold Creek

Jared Lay, acting as the agent for Mr. Sommers, petitioned the Planning Board to receive a favorable recommendation from the Planning Board to do a minor subdivision on his property at 3314 Gold Creek Road. Mr. Sommers would subdivide Tract 11-C3B1-A, 104.04 acres, into Tract 11-C3B1-A1 to be 94.04 acres and Tract 11-C3B1-A2 to be 10.00-acres.

Mr. Hamming presented the application and showed pictures of the subject property. Mr. Sommers stated that a relative of his will construct a residential home on the new 10-acre tract. Mr. Hamming informed the Board that Mr. Sommers had already gone through the Family Conveyance process and therefore had to go through the formal minor subdivision process.

The Board asked Mr. Sommers about the easement granted on Eagle Crest Way that would extend through the property to the new tract on the western edge. Mr. Sommers stated that it is a 60' wide easement on the private lane.

Member Pierce motioned with Member Hirsch seconding to send the subdivision to the County Commissioners with a favorable recommendation and staff's recommended conditions. The Board five to zero.

c. Mobilitie CUP- Boulder Road - Brenda Moore

Brenda Moore, representing Mobilitie who is working on behalf of Sprint PCS Assets, LLC, petitioned the Planning Board to approve a CUP to erect a 120' transport pole in the County Right of Way on Boulder Road approximately 1 mile southeast of Deer Lodge. Mr. Hamming presented the Board with the application and pictures of the pre-determined location. Mr. Hamming informed the Board that Ken Hosford of the County Road District #1 met with Ms. Moore and determined that the pole would be permissible, but requested that it be located as far from the road as possible. County Attorney Smith stated that the County has the legal right to require the petitioner to co-locate the telecommunications infrastructure on pre-existing infrastructure if reasonable and compatible.

Ms. Moore presented a short slideshow presentation to the Board illustrating the current infrastructure being installed across the United States. In many urban places, micro-carriers are being installed on lighting fixtures and on pre-existing poles, however, a small number of transport poles (the stand-alone, 120' poles) are still required and need to be located strategically near town centers and transportation corridors.

The Board discussed their concerns with permitting a pole to be installed in a County Right of Way and if this is the trend of the future. The petitioner stated that companies are now trying to permit and license poles in public right-of-ways as a strategy to move quicker with permitting and to try and minimize costs as the major carriers compete for market share. Ms. Moore stated that she does not know exactly why the new technology for 5G cannot be located on the existing tower or other infrastructure in the vicinity but will follow up with those knowledgeable on the subject. She also reminded the Board that they would be willing to have a franchise agreement discussion with the County Attorney/County Commissioners and to include a condition of removal if the pole is not utilized for a certain length of time.

The Board discussed Mobilitie's strategy of only locating these poles in public right of ways rather than provide income through a lease agreement to nearby landowners. The Board asked the petitioner who would benefit from the transport pole and was informed that only Sprint subscribers will benefit. However, for those utilizing Sprint, it will boost performance of both cell and data coverage and assist those traveling on the interstate. Ms. Moore said she had been shown a proprietary image showing dropped calls in the Deer Lodge Valley and they are numerous and this new pole would alleviate that problem. It is unknown at this time if Sprint is one of the carriers on the pre-existing tower on Boulder Road.

The Board further discussed the construction plans and anchoring the pole 25'6" in the dirt along with a base plate just beneath the surface. County Attorney Smith also voiced concern about liability of drunk drivers or drivers on icy roads striking the pole and recommended that the Board condition the petitioner to sign a release and hold harmless agreement.

President Manley opened the public hearing. Mr. Joe Smith, an adjacent landowner, voiced concern about the potential number of cell poles and towers being constructed around his house. He is worried that they will continue to be erected and he has no benefit from any of them obstructing his viewshed. Member Pierce asked the Board and Mr. Smith that if in the future, after construction, the County needs to expand their use in the Right of Way, if they would have the legal right to require Mobilitie move/remove the pole. Mr. Smith informed the Board that that can be required in the future and that Mobilitie would have to relocate to an agreeable location at their cost. The cost of the pole will be \$92,000 and will provide cellular and wifi coverages. The Board asked Ms. Moore if she knows what the line of sight of the tower will be (since it is significantly shorter than the existing tower) and she said she will consult with their experts. She also suggested that the Board can condition safety measures or alternative benefits to be included with the CUP approval. The Board discussed the potential for the CUP to require guardrails or other additional safety measures to provide protection from vehicles. Mr. Hamming also suggested that the Board condition the CUP approval to also be authorized at a public hearing before the County Commissioners.

The Board then discussed tabling the matter to allow Ms. Moore to consult with Mobilitie to get answers for several questions and then to return to the Board at their August meeting.

Member Hirsch motioned with Member Pierce seconding to table to the CUP subject until their August 10th meeting. Mr. Hamming will coordinate with Ms. Moore in the meantime to provide more information to the Board. The Board voted 5-0 to table the Agenda item.

Agenda Item #7 – Planning Board Comments

None

Agenda Item #8 – Staff Comments

a. County Attorney

Mr. Smith informed the Board that Mr. Hamming and he attended a MACO Land Use Seminar that updated the attendees on issues from the 2017 legislative session. The Department of Commerce is attempting to update their model Subdivision regulations this fall and Mr. Smith reminded the Board that this would be a good and useful update for the Board.

b. Planning Director

Mr. Hamming informed the Board that Member Martin had to step down from the Board due to personal reasons. Mr. Hamming expressed his thanks to Mr. Martin for serving on the Board. President Manley stated that he will inquire around the Ovando area for a replacement.

c. Other

None.

Agenda Item #9 – Public Comments

None.

Agenda Item #10 – Announcement of the June 8th meeting

President Manley announced the Planning Board will hold their next meeting on August 10th at 1 PM.

Agenda Item #11 – Adjourn

President Manley adjourned meeting at 4:45 PM.

Respectfully Submitted,
Carl Hamming
Powell County Planning Director

Tracy Manley, President

Date