



Planning Department

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MINUTES

PLANNING BOARD

The Powell County Planning Board met in a regular session on Thursday, December 8, 2016 at 1 PM. (Meeting held at Deer Lodge Elks Lodge to accommodate large public attendance).

Members Present: John Beck, Earl Hall, Rick Hirsch, John Hollenback, Ken Martin, Randy Mannix, & Bill Pierce

Members Absent: Tracy Manley (& one vacant seat)

Staff: Carl Hamming, & Lewis Smith

Public: Gary Lewis, Frank Tabish, Andy Henckel, Sheriff Howard, Pat Elliott and 35 property owners of the Double Arrow Ranch

Vice President Hirsch called the regular meeting to order at 1:00 PM.

Agenda Item #1 – Attendance

Seven Members being present established a quorum.

Agenda Item #2 – Approval of Agenda

Vice President Hirsch asked if there is a need to amend the agenda. Due to a request from Andy Henckel (agent of Mercury Towers) to switch agenda items #5a and #5b because he was stuck in snow and was running late, Vice President Hirsch asked for a motion to hear the gravel pit CUP prior to the cell tower CUP. The motion was proposed, seconded, and approved by the board unanimously, seven to zero.

Agenda Item #3 – Approval of Minutes

Member Hollenback motioned with Member Pierce seconding to approve the November 10th Minutes as submitted. The Planning Board approved the motion through a vote of seven to zero.

Agenda Item #4 – Continued or Tabled Business

a. None.

Agenda Item #5 - Public Hearings

a. LHC, Inc. CUP Gravel Pit (Seeley Lake)

Vice President prefaced the public hearing session by explaining the proper procedure for Public Hearings at Planning Board meetings. Vice President Hirsch stated that notice for the public hearing was properly posted in the Silver State Post on November 23rd and 30th as well as in the

Seeley Swan Pathfinder on Nov. 24th and December 1st. Vice President Hirsch then asked the Board if there were any members who wished to declare a conflict of interest and remove themselves from participation in the discussion and vote. Member Martin stated that he would abstain from the agenda item as he works with Mrs. Lewis, the wife of the property owner.

Planning Director Hamming presented an overview of the application and provided a slideshow to show where the proposed pit would be as well as its proximity to the Double Arrow Ranch and Missoula County border. Photos on the proposed property were included to show the Board members the topography and timbered nature of the subject property.

Next, Mr. Frank Tabish, agent for LHC, Inc., gave a brief overview of the submitted application documents for the proposed pit. Mr. Tabish reminded the Planning Board that he was here to discuss zoning and that should be the only topic of concern for the Board members. LHC, Inc. will be working with the DEQ to address water, wildlife and all environmental concerns.

Member Hall opened up questions with Mr. Tabish by first asking about the exact distance from the southernmost part of the proposed pit to the nearest residence within Missoula County. Mr. Tabish responded that the distance is approximately 1,240 feet. Member Hall also asked about specifics of the mining plan, that only 10-20 acres were proposed to be mined and clarified that the berm height would be at least 10 feet high. Member Hall asked Mr. Tabish about the potential volume of gravel to be removed and how 300,000 cubic yards could be removed from a pit no larger than 20 acres in an area where digging could not go more than 5 feet deep as proposed in the application. Mr. Tabish explained that the 5 foot depth would only apply to the areas closer to the creek and in the flat staging area and digging would be deeper, up to 30 feet, along the ridgelines running through the proposed site.

Member Hall asked about the visibility of the proposed pit and Mr. Tabish stated that with the timber and topography of the area, he doubted it would be visible from the Double Arrow Ranch (DAR) but could not say so with certainty. A member of the public pointed out that he could see the southwest corner of the proposed pit from his backyard along the county border.

Member Beck then asked Mr. Tabish to clarify the proposed site map showing where different piles and equipment would be located. Member Hall then asked Mr. Tabish, the Planning Director and the general public what current zoning applied to Missoula County within the DAR and what it was on the Powell County side on Mr. Lewis' property. Mr. Tabish had Mr. Hamming read the Chapter 1(D) of the Powell County Development Regulations, the Preservation of Rights. Mr. Hamming also noted the language stated in the site characteristics for Zoning District #3 in the Powell County Development Regulations.

Member Pierce asked Mr. Tabish about the potential road access along Cottonwood Lakes Road as well as the seasons the pit would be in operation and the hours of operation. Mr. Tabish explained that on the DEQ draft application he wrote 7am-10pm, Monday through Friday, and would work on Saturdays, but was requesting more hours than what he required and was willing to negotiate with the Board and DAR residents to find a more acceptable plan. Mr. Tabish also described the potential contract requiring 16 miles of asphalt paving along the State highway and why it would be necessary to have an asphalt plant and be operating for many hours during certain times of the construction season.

Member Pierce asked Mr. Tabish how often a rock crusher would be operating on the site and how many trucks would be using the proposed haul route. Mr. Tabish explained that the crusher would only be there for a month per year and at times it would only be a few trucks hauling each day, but there would be certain times that operations would accelerate and they would need to operate for additional hours. The pit would not be in operation from December through March, when the Forest Service has that road designated as a snowmobile route.

Member Pierce clarified with Mr. Tabish that the Hot Mix setup would only be moved on site for short periods of concentrated time and use. There was some discussion about air and noise concerns when the rock crusher is in operation, but was agreed by Member Pierce that the DEQ has more expertise on the matter.

Mr. Tabish spoke to the proposed location being justified because of the topography and geologic benefits of the gravel quality running through the ridgelines. The region has a lot of poor gravel material, but this is one location with higher grade gravel and well situated for the proposed work on the State highway. Vice President Hirsch asked why LHC didn't want to move the pit further north, even further away from the DAR and Mr. Tabish explained that the relatively flat ground between the ridges and hills was ideally situated for the operation and was still over a 1000 feet from the county border/DAR. The proposed site was dictated by topography and easy access onto Cottonwood Lakes Road.

Vice President Hirsch asked Mr. Tabish to define what emergency access would entail. They agreed that it would be access for emergency vehicles such as fire trucks and ambulances, never for employees or hauling trucks. Vice President Hirsch also voiced concerns about the condition of Cottonwood Lakes Road where there are several narrow spots or where it is poorly graded with blind turns and bends. He stated that LHC would need to make significant improvements to the road before it could be a permitted access route for safe use by trucks and recreationalists. Mr. Tabish agreed.

Member Beck asked about groundwater concerns and how many test pits were drilled and at what depth did the test pits strike water. Mr. Tabish explained that at Test Pit #2, groundwater was found at a depth of 10' and they would be working with DEQ to ensure proper procedure and cautions were taken concerning groundwater. Mr. Tabish explained that there would be, at minimum, a five foot buffer above the groundwater surface.

County Attorney Smith made a comment to the Board to clarify MCA 76-2-209 that gravel pits are a permitted land use within Montana, but they may be conditioned within reason. This is to state that the Board cannot simply deny the gravel pit application on the grounds that it is a gravel pit and an industrial use.

Member Hall asked a rhetorical question of the Board, wondering if the fact that the affected residents are from Missoula County, rather than Powell County, should factor into their vote. He asked if the Board would permit this CUP if the neighboring residents were from Powell County.

Vice President Hirsch then opened up the Public Hearing.

Mr. Mondul of Seeley Lake asked Mr. Tabish to clarify if all mining operations would occur within the proposed 26.5 bonded acres and Mr. Tabish confirmed. Mr. Mondul also stated to the Board that even though the DAR is not officially zoned residential within Missoula County, it is a residential neighborhood.

Mr. Cropper of Seeley Lake asked Mr. Tabish to clarify the distance from the proposed southern end of the pit to the nearest residence within Missoula County. Mr. Tabish stated that it is roughly 1240' from the southern end of the proposed site to the DAR. Mr. Cropper also informed the Board about the history of the DAR as a HUD design that was originally developed for housing for blue-collar workers who needed a place to reside close to the Town of Seeley Lake.

Ms. Joyce Stockton asked what the current status was of LHC and the USFS regarding the shared use agreement. Mr. Tabish explained that they hold an easement from 1964 to use the road, but talks with the USFS as far as improvements are ongoing. Ms. Stockton then asked the Board if they were aware of the Missoulian article from (12/7/16) announcing Montana's Department of Transportation canceling over twenty road projects, including one on Hwy 83 north of Seeley Lake. Mr. Tabish said he was aware of the article, but did not believe all of those cancellations were finalized and expressed hope that funding would become available in the future. Ms. Stockton expressed concern about a pit being created and then sitting idle while LHC waited for State funds to become available.

Ms. Anne Mondul of Seeley Lake asked Mr. Tabish about the operation of the rock crusher. How often would it be used because Mr. Tabish and Mr. Lewis had said different frequencies, Mr. Tabish stating 1-2 times per year and Mr. Lewis stating every other year. Mr. Tabish said some of the operation schedule is still being sorted out and will be dictated by market conditions in the future and the potential contract with the State.

Ms. JoAnn Wallenburn of Seeley Lake explained to the Board why the DAR is not zoned residential. She stated that the DAR historically fought against zoning because they were concerned that official residential zoning would have permitted additional subdividing. She continued that their Growth Policy document refers to the DAR as a residential neighborhood. She also emphasized that of the 620 property owners in the DAR, roughly 250 of them are active members of the community and associations and the fact that the Board received signed letters against the pit from 209 property owners represents 84% of the active community being strongly opposed to the proposed gravel pit. Ms. Wahlberg also noted that the roads through the DAR are actually all easements cutting across properties and they are agreed upon by all the landowners. Finally, she voiced concerns about the timing that the test pits were dug since they were completed in August-October when water tables are at their lowest. She says that the spring season brings lots of water to the area and many of the wetlands/marshes hold water for several months.

Mr. Brian Larabee of Seeley Lake expressed concerns about the use of Cottonwood Lakes Rd. as the designated route because of the increasing ATV and mountain bike use on the road. He stated that it is already a dangerous road in its current condition with the amount of recreational users and the blind corners and adding large trucks on the route would be a serious safety

concern. He asked the Board to conduct a traffic analysis and think about ways to improve safety along the route.

Mr. Ron Deets of Seeley Lake pointed to the proposed map of the gravel pit and explained that the wetland due south of the site holds water for much of the year. He also passed out a map of the DAR to the Board members to show them how they should consider the DAR to be a residential neighborhood considering all the homes located within the development.

A woman, (couldn't hear name) a property owner since 1975, recently built a house on their DAR property and, following the advice of her contractor, added a basement to the house. The construction workers hit groundwater and the basement filled with water for months and couldn't be pumped clear until September. She also stated that she has bad asthma and is very concerned about potential dust pollution from operations or fumes from the trucks. Mr. Tabish stated that LHC will be under orders and strict guidance from DEQ as far as dust, air and noise emissions.

Mr. Beaugood of Seeley Lake expressed concerns to the Board that as a property owner along the county border within the DAR, he is concerned that there will be contaminated surface water runoff from the pit property because he already experiences surface water runoff in his backyard every spring. He asked Mr. Tabish if water runoff would be filtered and Mr. Tabish responded that they would address water issues and concerns, but that is under the expertise and control of the DEQ.

County Attorney Smith clarified that typical CUP applications contain a clause to adhere to DEQ regulations and requirements. Therefore the Planning Board isn't required to write conditional language for operators to comply with every environmental concern that is under the expertise of the DEQ and/or FWP.

Mr. Mondul asked Mr. Tabish about the potential access of DAR trucks to enter the pit site through Evergreen Drive (southern access through the DAR) and stated that they did not want any trucks entering through Evergreen Drive. Even if they are DAR trucks utilizing sand/gravel piles within the LHC, Inc. property. Mr. Mondul asked for a condition to be written that no trucks may be permitted to use Evergreen Drive.

Mr. John Rice of Powell County stated that the proposed land is environmentally fragile and is popular grounds for wildlife. He stated his concerns for water contamination and was worried about the bull trout habitat within the watershed and mentioned the concerns of Ladd Knotek of the FWP. Mr. Rice also claimed the area is lynx habitat as he has observed one on his property. He requested that the Board require a full Environmental Impact Statement before any pit be permitted.

Pat Elliott of Seeley Lake asked the Board to use common sense. He stated that even if the DAR isn't officially zoned as residential, common sense would acknowledge the hundreds of homes within the DAR as a residential neighborhood. Mr. Elliott said the Board was their best hope for blocking the pit from being permitted as he feared the DEQ would allow it. He also asked the Board to consider the report he submitted that states the negative impact on real estate values for residential homes near an operating gravel pit.

Ms. Jean Tester of Seeley Lake stated that the DAR covenants are more restrictive than county zoning as residential. She stated that when it was Plumb Creek land, the logging operations were acceptable and permissible because of the Powell County zoning, but a gravel mining operation does not fit with the language of the development regulations. She said the Board has a duty to minimize negative impacts on residential neighbors by not permitting the CUP.

Member Hollenback asked Mr. Rice about the lynx he said are in the area since the FWP wrote in their letter that the proposed area is not current lynx habitat. Mr. Rice responded by saying he has seen them, even if the FWP has not.

Member Pierce mentioned that, in regards to many of the groundwater concerns, the DEQ has certain expertise that the Planning Board does not contain. He asked the public to clarify the road easements within the DAR if they're only for property owners or for the general public and was informed that they are public roads for everyone. Member Pierce also asked the public about the average size of the lots within the DAR and if there is a single landowner who owns many of the undeveloped plots. He was informed that many plots are 1-2 acres, though they vary in size and owners.

Next, Member Pierce asked why the DAR Association Board did not submit an opposition letter to the gravel pit. Ms. Wahlberg stated that she sits on the Board and does not speak for all of board members, but voiced her complaint that the Association Board did not get involved because they would not be opposed to acquiring cheap gravel for road improvements. The Board told the residents that the proposed pit was out of their realm and jurisdiction to get involved. Member Pierce mentioned how this is an interesting case due to the rights of private property owners on both sides of the issue. He stated that Powell County, being a large and rural county, has extensive gravel roads and when the development and zoning regulations were written, the county commissioners were concerned about securing decent gravel in the future and wanted language in the zoning regulations that permitted gravel operations. He asked County Attorney Smith if he was correct with his history and the written language permitting gravel pits.

County Attorney Smith clarified language within the MCA that gravel pits are a permitted use and can be conditioned within reason. As far as Environmental Impact Statements, the expertise of scientists from state/federal agencies would be better equipped to handle such a matter.

Member Pierce addressed the public audience by stating his prior experience with gravel pits in Lewis and Clark County that have been reclaimed and become a popular place for residential developments as Helena continues to build for its growth. He does not believe the long-term impacts to real estate values of properties near a gravel pit are as grim as the study cited by Mr. Elliott suggests.

Mr. Elliott once again expressed his concern about the immediate impact on real estate values if the gravel pit were permitted. He appealed to the Board to use common sense that the DAR is a residential neighborhood and should be considered as such. Member Pierce responded that the statutory language is written in a way that makes it difficult for him or the Board to deny a gravel pit without a zoned residence as a neighbor. He also added that there would be future hearings and opportunities for the residents to voice their concerns to the DEQ and perhaps they would require an EIS. County Attorney clarified that the DAR is not technically zoned residential.

Member Hall asked the Board about being a good neighbor, even if that means going across a county border. He stated the difficulty of this issue because of the private property rights on both sides of the issue and the desire to be a good neighbor.

Vice President Hirsch raised the issue that even if the gravel pit was granted a CUP, would it benefit Powell County. The history of the language to permit gravel pits was with the intention to help and assist Powell County with its roads and developments and this pit would primarily benefit Seeley Lake and Missoula County.

At this time, Vice President Hirsch announced the end of the Public Hearing for the CUP.

Vice President Hirsch then asked Member Mannix about his views on the issue. Member Mannix stated his desire to be a good neighbor and his concerns about the adverse effects from the pit to both the environment and the DAR residents. He asked Mr. Tabish to clarify what hours of operation he would be willing to tolerate within the conditions of an approved CUP. Mr. Tabish explained that 8am-5pm would be extremely difficult, but 7am-7pm, Monday through Friday would be acceptable. Member Mannix also stated his concerns about groundwater contamination and the high water table of the area around the DAR.

Member Beck confirmed with Mr. Tabish that five days a week would be acceptable. Mr. Tabish explained that it would not be ideal, especially when bad weather is an impediment, but if necessary, would be an acceptable condition with the hopes that they could expand operations for special occasions and circumstances. Member Beck asked Mr. Tabish to describe how often the Hot Plant would be operating and wondered if five days a week would be acceptable. Mr. Tabish said yes, but hoped that special circumstances would permit them to operate with more flexibility and he requested that language be written into the condition that permitted LHC that flexibility.

Member Hall stated his belief that the DAR is residential, but the hard language of the MCA makes this issue difficult. He wanted to amend the language of the condition regarding USFS work on Cottonwood Lakes Road to read that the petitioner must meet USFS road specifications. Member Hall expressed his concern for groundwater contamination and asked if a condition could be written to have the petitioner provide the county with an Emergency Action Plan with spill mitigation plans once approved by the DEQ. Member Hall also voiced concern about the longevity of the operation and if the petitioner would be able to keep extending their permit. It was agreed upon by the Board that another condition should be that the petitioner, if granted, can only operate for ten years and then must re-apply for a new CUP to extend their operations any further.

Member Pierce voiced his understanding that the hours of operation for the proposed pit be reasonable to meet contract deadlines and be able to operate sufficiently during the primary work season. He reiterated that the conditions either define emergency for the Evergreen Drive access or write clear language that only emergency vehicles be permitted to access the pit from the southern route along Evergreen Drive. Member Pierce stated his concern about mandating too many improvements on Cottonwood Lakes Road because they may attract more traffic and future residences. Members Hall, Pierce and Hirsch discussed the merits of requiring a condition

that the road meet Powell County specifications or USFS specifications or if it would be better to write some sort of language that would mandate additional safety measures on the road when the pit was operating, but not condition the petitioner to meet County or Forest Service specs so as not to attract too much additional traffic. The potential for mandatory signs and flashing lights was also proposed.

Member Hollenback stated his displeasure for the issue and vote, but felt somewhat restricted by the language of the regulations and MCA. He also voiced his safety concerns for Cottonwood Lakes Road.

Vice President Hirsch described the difficulty of this decision due to the property rights concerns from both sides of the issue. He also stated his serious concerns for the safety and the condition of the proposed access route along Cottonwood Lakes Road.

County Attorney Smith stated the complications of the issue due to the de facto residential nature of the DAR. Missoula County has had previous cases where residential zoning is addressed and there may be an overlay district applied to the DAR in the future, but we still need to address the situation as is. He stated that both sides have legal basis to make their case as gravel pits are permitted within the County Regulations and MCA, but reasonable conditions may be applied, but what is reasonable? How far can the Board condition the improvements and use of Cottonwood Lakes Road? And would requiring Powell County road specs be useful in this scenario?

There was some Board discussion wondering if it would be best to spell out all the new and edited conditions now, or should the Board table the issue thus permitting the Planning Department to work on the careful language of each condition and then vote on the issue in January. Some members expressed their concerns and frustrations that they would have to go through the entire public hearing process again. County Attorney Smith reminded the Board members to have the conditions decided upon during a Board meeting and to be sure each one could be supported by strong and clear reasons.

Member Mannix motioned to deny the CUP application by LHC, Inc. and Member Hall seconded the motion. Vice President Hirsch asked the Board for their votes and it was a three to three tie with Member Martin abstaining. Members Hall, Mannix and Hirsch voted for the application to be denied with Members Pierce, Hollenback and Beck voting against the motion to deny the application.

After clarification of the current approval conditions of the application from the Planning Department, Member Pierce motioned for the application to be approved with the conditions listed in the Staff Report and those added during the meeting. The motion was seconded by Member Hollenback and Vice President Hirsch asked for a vote from the Board. The vote was three to three with Members Beck, Pierce, and Hollenback voting for approval with conditions and Members Hall, Hirsch and Mannix voting against approval.

As both motions failed to pass with a majority vote, and the application failed to be approved, it stalled and a CUP was not granted to LHC, Inc. The Board clarified to Mr. Tabish that he may

make edits to his application and clarify some of the language and resubmit the application to the Powell County Planning Department.

b. Mercury Towers CUP for Cell Tower (Ovando)

Vice President Hirsch opened the public hearing by stating that notice for the hearing was properly posted in the Silver State Post on November 23rd and 30th. Vice President Hirsch then asked the Board if there were any members who wished to declare a conflict of interest and remove themselves from participation in the discussion and vote. No members had a conflict of interest.

Planning Director Hamming presented an overview of the application and explained that this was a CUP application previously submitted to the Planning Department in October of 2014 and was granted. In 2015, Mercury Towers was granted a one-year extension, but as of December, 2016, they have been unable to initiate construction. Therefore, according to the Powell County Development Regulations, Mercury Towers must submit an application for a new CUP. Planner Hamming provided a slideshow to show the proposed cell tower to the Board with details from the application.

Member Martin asked the agent, Andy Henckel, why no construction has yet occurred. Mr. Henckel explained that telecommunications is a 'feast or famine' market and though they have not been able to build on it yet, they do have plans and desires to construct the tower near Ovando in the future. The Board discussed a prior issue in which case a cell tower was constructed with no service provider agreement established and so the cell tower exists with little or no use. Planning Director Hamming stated that condition #2 of the Staff Report recommended a condition that no construction may occur without a signed service provider agreement in place and have it copied to the County Planning Board.

Vice President Hirsch then called for a motion to approve and Member Martin moved to approve the CUP with the recommended conditions as stated in the Staff Report. Member Hall seconded the move and with a vote of seven to zero, the CUP was granted to Mercury Towers.

Agenda Item #6 – Non-public Hearing Items

a. Growth Policy Update

Joe Willauer from Headwaters RC&D was absent and due to the length of the meeting up until that point, the Board decided to address the Growth Policy during the next Board meeting.

Agenda Item #7 – Planning Board Comments

None.

Agenda Item #8 – Staff Comments

a. County Attorney

None.

b. Planning Director

None.

c. Other

None.

Agenda Item #9 – Public Comments

None.

Agenda Item #10 – Announcement of the January 5th meeting

Vice President Hirsch announced the Planning Board will hold their next meeting on January 5th at 1 PM.

Agenda Item #11 – Adjourn

Vice President Hirsch accepted a motion from Member Martin and seconded by Member Hollenback to adjourn meeting.

Vice President Hirsch adjourned meeting at 5:35 PM.

Respectfully Submitted,
Carl Hamming
Powell County Planning Director



Rick Hirsch, Vice President

1/12/17
Date