



Planning Department

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MINUTES

PLANNING BOARD

The Powell County Planning Board met in a regular session on Thursday, January 5, 2017 at 1 PM.

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

Members Absent: Tracy Manley, John Beck (& one vacant seat)

Staff: Carl Hamming, & Lewis Smith

Public: Sherm Anderson, Will Pauley, Two representatives from Dillon Energy Alliance, Wade & Launa Murphy, Jeff Janke, Evan Johnston

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

Agenda Item #1 – Attendance

Six 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. The updated agenda provided to the Board at the meeting was approved.

Agenda Item #3 – Approval of Minutes

Member Hall motioned with Member Mannix seconding to approve the December 8th Minutes as submitted. The Planning Board approved the motion through a vote of six to zero.

Agenda Item #4 – Election of Officers

Member Hall made a motion to nominate Member Manley to be President of the Board and for Member Hirsch to be Vice President of the Board and the motion was seconded by Member Hollenback. The vote passed the Board with a vote of six to zero.

Agenda Item #5 – Continued or Tabled Business

- a. County Attorney Smith updated the Board on a letter submitted by Mr. Frank Tabish of LHC, Inc. requesting the Planning Board to reconsider its December 8th decision regarding the proposed gravel pit on Cottonwood Lakes Road near Seeley Lake. Mr. Smith informed the Board that after further legal consultation, according to the statutory language of the M.C.A., the Board cannot deny a gravel pit CUP with no residentially zoned, adjacent landowners. The

Board can vote to approve a CUP and attach conditions for its approval. Mr. Smith informed the Board that they may reconsider their December votes regarding the CUP request and vote again at the February 9th Planning Board meeting. Vice President Hirsch asked for a motion to hold a reconsideration vote at the February meeting and Member Hollenback made a motion for the vote. Member Mannix seconded the motion and the Board voted six to zero to reconsider the vote at the February 9th Board Meeting regarding LHC, Inc.'s request for a CUP to operate a sand and gravel pit on Cottonwood Lakes Road.

Agenda Item #6 - Public Hearings

a. Gravel Pit CUP 12-16 – Sherm Anderson

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 December 21st and 28th. 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 removed themselves from the discussion and vote.

Planning Director Hamming presented an overview of the CUP application and located the proposed pit on several mapping exhibits. Mr. Anderson made a statement about the pit and explained that he had been in contact with DEQ, but needed zoning compliance prior to their review.

Member Mannix asked how long the proposed pit would exist and Mr. Anderson responded that he was proposing a fifteen year timeframe, but that market demand would also be a factor. Member Hirsch asked Mr. Anderson if there was a specific proposed use and Mr. Anderson explained that the DEQ had expressed interest in the gravel for their upcoming cleanup of the Clark Fork River at Grant Kohrs, the National Park Service unit in Deer Lodge. Mr. Anderson also stated that the haul route would be along Emery Road, a road in good paved condition that would create minimal dust.

During Mr. Anderson's statement, he stated that the nearest residence to the proposed pit is his own. He also stated that he will be working with DEQ closely to address potential air, water, and dust issues. As the proposed pit is on his private Aspen Grove Lane, he would not need an approach permit and that the proposed haul route has excellent vision for turning on and off Emery Road. An archaeological survey will also be conducted prior to any ground disturbance.

Vice President Hirsch asked about the size of the pit and Mr. Anderson responded that the proposed maximum pit size would be 42.5 acres and remove 1 million cubic yards. Mr. Hirsch also asked about irrigation ditches and Mr. Anderson responded that there are no ditches running through the proposed opencut. Member Hall asked Mr. Anderson about onsite fuel storage and Mr. Anderson answered that it would be unlikely, but he would have to work with DEQ regarding that matter.

Vice President Hirsch opened up the hearing to public comment. Mr. Murphy, a nearby property owner, asked if gravel crushing would be occur at the proposed pit and Mr. Anderson said it was

a possibility, but had no immediate plans for a crusher. Mr. Anderson stated that the National Park Service would not require crushing for their material on the Clark Fork River, but Mr. Anderson would like to have the option to crush if it was required in the future. Mr. Murphy expressed serious concerns about noise pollution and its potential adverse effect on his quality of life and the surrounding wildlife.

Vice President Hirsch reminded the Board and public that the Board does not have legal authority to deny a CUP for a gravel pit, but the Board can condition an approved CUP.

Mr. Murphy expressed additional concerns about groundwater and their property value being decreased by the proposed pit.

Member Hall asked if a crusher is used, can it be located in a way that will be furthest from the Murphy's and make the least amount of noise due to the location of berms. Member Hirsch asked about the test pits that were drilled and Mr. Anderson responded that he thought they were 10 feet deep and conducted in the summer.

Member Pierce asked the Board and Mr. Anderson about the condition of limiting hours of operation and what would be acceptable to both the neighbors and Mr. Anderson.

Mrs. Murphy expressed concerns about the riparian area of the proposed pit and worried about sediment disruption that could end up in the wind or waterways. She stated that they were drawn by the agricultural area of the land and she is concerned that groundwater could be an issue as the soil drains easily.

Mr. Anderson responded that he will have to work closely with DEQ to comply with their standards, that there will be a berm produced along the western edge of the pit from the 6" of topsoil removed and that the land will be reclaimed as the work progresses. He has already prepared the weed management plan for seed mixing and fertilization and will have to limit the reclaimed pit to a 3:1 slope as required by the DEQ.

Mr. Murphy again expressed his concern with crushing taking place at the site. Member Hall asked Mr. Anderson if crushing could take place at the other pit that Mr. Anderson has submitted a CUP request, and the answer was no due to the length of road miles between the two proposed pits.

Mr. Evan Johnston spoke about his personal history of reclamation work on his property conducted by DEQ and their contractors.

Mrs. Anderson spoke about the work ethic of her husband and stated that he would not do anything to harm the neighbors in the subdivision that they built. Mrs. Anderson voiced a concern about the lack of economic movement in the county and this was a project that would employ people and help businesses thrive.

Vice President Hirsch closed the public hearing.

County Attorney Smith talked to the Board about their ability to craft conditions, but not deny the CUP because it is a gravel pit in an agricultural-rural zoned area.

The Board discussed potential restrictions on Hours of Operation and 7am-7pm, Monday through Friday, were agreed upon as a compromise to be conditioned on the approval of the CUP. The Board also discussed that the CUP should be transferable to a direct family member if the operation parameters stayed the same. Basically the CUP would run with the land. Member Hall proposed conditioning that if a crusher was onsite, that it be furthest from the residences to the west, but Member Pierce stated that the crusher would have to be in a central location.

Member Pierce motioned to approve the CUP with conditions and the motion was seconded by Member Mannix. The vote was five to one with Member Hall stating that he did not agree with the attached conditions.

b. Propane Storage Tank CUP 14-16 – Mr. William Pauley & Montana Energy Alliance

Vice President Hirsch opened the public hearing by stating that notice for the hearing was properly posted in the Silver State Post on December 21st and 28th. 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 the history of the application dating back to January, 2016. Mr. Hamming explained that according to Mr. Pauley, after the CUP request originally came before the Board and was tabled due to a lack of approval from the State Fire Marshal, Mr. Pauley thought he could install the tank once he received approval from the Fire Marshal. Therefore the tank was installed without proper approval from the County in November, 2016. Once the County contacted Mr. Pauley regarding the tank, installation and operation of the tank was halted until the January 5th public hearing.

Mr. Hamming also passed around a letter submitted by Mr. Saba with his concerns about the proposed tank and explained that Mr. Saba had to leave the public hearing, but was adamant about expressing his views.

Members Pierce and Hall voiced their displeasure and frustration with Mr. Pauley's lack of compliance with the CUP process thus far.

Vice President Hirsch opened up the public hearing and Mr. Johnston stated his pleasure that Amerigas would have competition from Montana Energy Alliance if the CUP was approved. Vice President Hirsch agreed that the competition would be good for the community and potentially force Amerigas to improve their customer service.

Member Hall asked the Montana Energy Alliance representatives for the precise distance of the tank from the railroad tracks and they stated that it is at a minimum, 260 feet away. Member Hall expressed concerns about the potential for a train derailment, but said the distance from the tracks removed several of his fears. It was also mentioned that trains passing through Deer Lodge have a 35mph speed limit and are rarely approaching that speed.

Vice President Hirsch asked the Alliance representatives what would happen if someone shot the tank with a gun and the possibility of it blowing up. It was explained that the shell is ½” thick and there are numerous safety measures installed to avoid catastrophic explosions.

Member Martin asked about driver safety and negligence and the possibility of them causing an explosion. It was explained that there are federal regulations about drivers not smoking and that cement jersey barriers would be installed around the tank to prevent any large vehicles from driving into it.

Member Pierce again raised the issue of the sequence of events and the lack of proper procedure followed by Mr. Pauley. Mr. Pauley expressed his lack of awareness of the Planning Board requirements and accepted responsibility for the improper installation of the tank prior to securing CUP approval. Mr. Smith also recounted the sequence of events through the entire application process.

Currently the tank is full of propane, but not operating. Montana Energy Alliance stated that they would remove the propane until proper installation and compliance was achieved.

The Board discussed the length of time required to bring the tank into compliance and a 90 day limit was established and to be added to the conditions of approval for the CUP.

Member Hollenback mentioned to the Board that there is currently a propane tank in the town of Deer Lodge that has been operating for years with no safety issues to date.

Member Martin moved to approve the CUP with the attached and edited conditions and the motion was seconded by Member Mannix. The CUP, with conditions, was approved and granted to Mr. Pauley and Montana Energy Alliance by a vote of six to zero.

c. Gravel Pit CUP 13-16 – Sherm Anderson

Vice President Hirsch opened the hearing and stated that notice for the public hearing was properly posted in the Silver State Post on December 21st and 28th. 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 removed themselves from the discussion and vote.

Planning Director Hamming presented an overview of the CUP application to expand a pre-existing sand and gravel pit. Mr. Hamming displayed the location of the pit on several mapping exhibits and stated that Mr. Anderson had been informed that this pit would be classified as a hard rock mine rather than an openpit pit.

Mr. Anderson gave a presentation to the Board about the proposal and clarified DEQ’s ruling that this would be a hardrock mine and no bond would be required. Mr. Anderson stated that the hardrock mine would require that no more than five acres of surface ground could be disturbed without reclamation. Mr. Anderson stated that this pit has previously been used for personal use,

but thought it would be beneficial to have the potential to open it up to commercial uses if the market arose.

Mr. Anderson answered several questions from the Board regarding road access, nearby property owners and length of potential operation. Mr. Anderson stated that max potential would be fifteen years and 13 acres.

The Board discussed changes to the conditions and language was edited.

Member Hall motioned to approve the CUP with conditions and Member Pierce seconded the motion. With a vote of six to zero, the CUP was granted with conditions to Mr. Anderson.

Agenda Item #7 – Non-public Hearing Items

a. Janke – Bacon Boundary Relocation COS

Mr. Hamming presented the request for the Boundary Relocation 3.7 miles west of Elliston. The exemption would transfer 10.07 acres from Mr. Janke to Mr. Bacon.

There was a discussion about Mr. Bacon’s future plans with his property and his ability to secure mortgage financing or a mortgage exemption.

Vice President Hirsch called for a motion that the Janke – Bacon boundary relocation was not an attempt to evade the County’s subdivision regulations. Member Hall motioned and Member Mannix seconded the motion and the Board voted five to zero (with Member Pierce abstaining due to his prior work experience with Mr. Bacon) to approve the boundary relocation.

b. Growth Policy Update

Joe Willauer from Headwaters RC&D discussed Chapter II, goals and objectives, with the Planning Board. The Board went through the document page by page and edits, comments and suggestions were made. Mr. Willauer will make the revisions and send out the updated document to the Board. The Board should review the material and make all comments by the end of next week.

Agenda Item #8 – Planning Board Comments

None.

Agenda Item #9 – Staff Comments

a. County Attorney

None.

b. Planning Director

None.

c. Other

None.

Agenda Item #10 – Public Comments

None.

Agenda Item #11 – Announcement of the February 9th meeting

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

Agenda Item #12 – Adjourn

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

Vice President Hirsch adjourned meeting at 5:30 PM.

Respectfully Submitted,
Carl Hamming
Powell County Planning Director

Rick Hirsch, Vice President

Date