



# Planning Department

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## MINUTES

### PLANNING BOARD

The Powell County Planning Board met in a regular session on Thursday, August 17, 2017 at 1 PM.

**Members Present:** John Hollenback, Tracy Manley, Bill Pierce, Rick Hirsch, Earl Hall, John Beck, Randy Mannix

**Members Absent:** John Wagner

**Staff:** Carl Hamming, Lewis Smith

**Public:** Brenda Moore, Ken Jenkins, Bill Baker, Gary Lewis, Cheryl Lewis

**President Manley 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**

The Board amended the Agenda to move the Mobilitie item to the top of the Agenda due to Ms. Moore’s travel schedule.

#### **Agenda Item #3 – Approval of Minutes**

Member Hollenback motioned with Member Pierce seconding to approve the July Minutes as presented. The Planning Board approved the motion through a vote of seven to zero.

#### **Agenda Item #4 – Continued or Tabled Business**

##### **Mobilitie CUP**

Ms. Moore of Mobilitie re-opened the discussion by stating that she attempted to follow up on all the questions that the Planning Board had asked in July, but could not be answered by herself. In regards to the question why the company could not co-locate on the existing tower on Boulder Road, Ms. Moore stated that Mobilitie said that it is infeasible, that the equipment will not fit on the existing tower, but could not be more specific.

Planning Staff could not determine what carriers are on the current tower, but Mr. Hamming spoke with American Towers (operators of the existing tower) and was informed that the current tower is “rather crowded at the top,” but he could not find out who is currently operating on the tower. Ms. Moore does not know if Sprint is presently on the existing tower.

The Board also inquired about market demand for Sprint services and the coverage the proposed pole would provide. Ms. Moore stated that she could not share the visual aid, but that Mobilitie did have a

map showing the Deer Lodge valley with numerous dropped calls provided by Sprint. Ms. Moore passed around her computer with a coverage map showing the proposed coverage that would be provided by the new telecommunications pole. The Board expressed frustration that they could not cross-check or verify any of the information with an outside expert.

The Board discussed the proposed concept of the County establishing a franchise fee with Mobilitie. The Board questioned why Mobilitie preferred to deal with County governments rather than private individuals. Ms. Moore stated that permitting through City and County governments is the current business strategy of Mobilitie and that she is limited to dealing only with local governments and is not authorized to approach private landowners to discuss a lease agreement.

Ms. Moore suggested potential conditions that could be attached to the CUP and stated that the Board could require the new pole be required to permit other carriers to co-locate. Furthermore, the County could require a bond to cover the cost of removal if no carriers are located on the pole within a certain amount of time. The Board expressed concern about other carriers also approaching the Planning Board and demanding space within the County Right of Ways so that numerous poles and towers are being located every few miles along the busy roadways.

Member Hall made a motion to deny the petition due to too many Board questions being unanswered or insufficiently addressed. Member Beck seconded the motion and Members Hall, Beck and Mannix all voted to deny the CUP application with the other four members abstaining. The remaining members stated they did not want to approve the petition, but rather offer Ms. Moore, on behalf of Mobilitie, the proper opportunity to supply more information. Ms. Moore stated that she would likely withdraw the application if the Board tabled the issue again as she did not believe she would be able to get any more information or technical assistance from Mobilitie. Furthermore, Ms. Moore stated that it would be likely that even if the petition is denied this time, it is likely that Sprint or a different contractor will approach the Planning Board in the future.

Vice President Hirsch made a motion to table the Agenda item for six months to permit Ms. Moore and Mobilitie to provide the Planning Board with more information. The motion was seconded by Member Pierce. Six members voted to table the petition for six months except for Member Hall who voted against tabling the item.

After the meeting, it came to light that citing Robert's Rules of Order:

*When a quorum [64] is present, a majority vote, that is a majority of the votes cast, ignoring blanks, is sufficient for the adoption of any motion that is in order, except those mentioned in 48, which require a two-thirds vote.*

Therefore, the first motion, to deny the CUP request, should have been carried by a vote of three to zero (with a quorum established by the seven members present). This results in a denial of the CUP request submitted by Ms. Moore on behalf of Mobilitie.

### **LHC, Inc. – Cottonwood Lakes Road Gravel Pit CUP**

County Attorney Smith updated the Board on the appeal of the MCA language that permits a gravel pit to be constructed adjacent to residential properties if the adjacent land is not officially zoned as residential. The hearing in August was postponed due to the Rice Ridge fire burning near Seeley Lake. It has been rescheduled for September 5<sup>th</sup>.

**Deer Creek Excavating, LLC – Amendment Request #1 to CUP 10-16**

Gary and Cheryl Lewis of Deer Creek Excavating requested permission from the Planning Board to amend the CUP granted to LHC, Inc. to change the name of the recipient and operator to Deer Creek Excavating, LLC. The Board confirmed that the petitioners would still be operating under the original site plans and CUP conditions. The petitioners stated that they would adhere to the plans submitted by LHC, Inc., but will be operating in a slower, scaled down scope. The Board concurred with the County Attorney and Planning Staff that this should be considered a minor amendment to the CUP that does not change the affects to adjacent landowners and does not need to be heard at a public hearing. Planning Staff will change the name of the CUP recipient and operator to Deer Creek Excavating, LLC. The County Attorney and Staff noted that while the appeal is still in District Court, the pit cannot become operational, but this will allow DEQ to conduct their review of the proposed gravel pit.

**Deer Creek Excavating, LLC – Amendment Request #2 to CUP 10-16**

Mr. and Mrs. Lewis, acting on behalf of Deer Creek Excavating, LLC, also petitioned the Board to amend Condition #3 stated in the original CUP granted to LHC, Inc. It states:

*Except in emergency situations in which emergency vehicles require access via Evergreen Drive, access to the pit will be restricted to Morrell Creek Rd./Wordworth Seeley Lake Rd./Cottonwood Lakes Road. Gravel trucks and vehicles for gravel product operations within the Double Arrow Ranch are restricted to accessing the Double Arrow Ranch development via Highway 83, south of Seeley Lake.*

The petitioners requested that this condition be rescinded as they wish to pursue road maintenance projects within the Double Arrow Ranch and want direct access to minimize hauling costs.

The Board discussed how the condition was originally determined and agreed upon by Mr. Tabish of LHC, Inc. since his company wanted the gravel for the Highway 83 project and only needed to haul along Cottonwood Lakes Road in the summer. The Board, Staff and petitioners discussed that a request to amend Condition #3 would be to utilize Evergreen Drive only for projects within the Double Arrow Ranch. For all other contracts, the operators would still be required to utilize Cottonwood Lakes Road.

The Board agreed with Planning Staff that the request to amend Condition #3, specifying the hauling route, should be heard before a public hearing at a Planning Board meeting. The Board discussed with the petitioners that they can hold the public hearing, even if the court appeal is still pending, and make a decision that will apply to CUP 10-16 once the appeal is decided.

**Agenda Item #5 – Non-Public Hearings**

**Hebee-Cooper BR – OSI Subdivision**

Mr. Hamming opened the discussion with a presentation of PowerPoint slides showing the four tracts that were surveyed. It was explained that this Boundary Relocation was being submitted to satisfy an encroachment agreement signed in January of 2017. This was due to the location of a cabin on the edge of Tracts 3 and 4. Mr. Ken Jenkins, acting on behalf of the petitioners, discussed the importance of surveying the OSI subdivision and establishing the actual property boundaries to minimize neighborly disputes.

Member Mannix motioned with Vice President Hirsch seconding, that the Boundary Relocation is not an attempt to evade subdivision review. The motion included the conditions recommended in the Staff Report. The motion passed with a vote of seven to zero.

**Baker BR – Helmville**

Mr. Hamming opened the discussion with a brief presentation displaying the proposed boundary relocation as well as the previous boundary relocation submitted by Mr. Baker. Mr. Hamming explained that the forty acres are unimproved grazing land. Mr. Baker, the petitioner, stated that he is interested in adding the forty acres to his residential property for personal use and removing it from the Wineglass Trust in which he is a part owner.

Member Mannix motioned with Member Beck seconding that the boundary relocation is not an attempt to evade subdivision review. The motion included the recommended conditions stated in the Staff Report. The Board voted seven to zero in favor of the relocation.

**Growth Policy**

Mr. Hamming and the Board discussed the draft of the Growth Policy. Mr. Hamming is hoping to have a complete draft to discuss with the public this fall. The Board discussed the language included in the zoning and subdivision section and thought it sufficiently covered their desire to examine the acreage minimums and potential residential overlay district when the Board updates the Subdivision Regulations and the Zoning and Development Regulations.

**Agenda Item #6 – Public Hearings**

None

**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 October 5th meeting**

President Manley announced the Planning Board will hold their next meeting on October 5<sup>th</sup> at 1 PM.

**Agenda Item #11 – Adjourn**

President Manley adjourned the meeting at 4:30 PM.

Respectfully Submitted,  
Carl Hamming  
Powell County Planning Director

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Tracy Manley, President

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Date