



Planning Department

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MINUTES

PLANNING BOARD

The Powell County Planning Board met in a regular session on Thursday, July 12, 2018 at 1 PM.

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

Members Absent: None

Staff: Carl Hamming, Lewis Smith

Public: Toby Dumont, Tim Hendricks, Kathy Hendricks, Tim Berry, Carl G. Flygare, David Wallenburn, Nancy Braun, Patrick Elliott, Ken Silverstro, Peggy McChesney, Joann Wallenburn, Brian Larabee, Debbie Larabee, Gary Lewis, Brian Page, Lucy Stokes, Calvin Stokes

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

Agenda Item #1 – Attendance

All nine members being present established a quorum.

Agenda Item #2 – Approval of Agenda

The Board did not change the agenda.

Agenda Item #3 – Approval of Minutes

Member Hollenback motioned with Member Beck seconding to approve the May minutes as presented. The Planning Board approved the motion through a vote of nine to zero.

Agenda Item #4 – Non-Public Hearings

4a. Shafford/Anderson Farm – Boundary Relocation

Mr. Hamming presented the Board with an overview of the request from their agent, Ken Jenkins. The Boundary Relocation would increase the acreage of the homesite for the Shaffords by 0.09-acres. The uniquely shaped parcel existed prior to Powell County adopting zoning. Mr. Hamming stated that the listed purpose of the BR was to ‘square’ the parcel and to enable the Anderson Farm better irrigation access. Through the process, the easement for the Shaffords to access their property would be clarified and filed with the County.

Member Hall motioned with member Wagner seconding the motion that the proposed boundary relocation was not an attempt to evade subdivision review. The Board voted nine to zero in favor of the motion.

4b. Two Creek Ranch – Boundary Relocation

Mr. Hamming presented the Board with a brief overview of the request from the Two Creek Ranch to relocate property boundaries to convert three parcels into two for ranch management purposes. The Ranch would use Monture Road as the new property boundary. Both parcels being larger than 160-acres would adhere to the density requirements of Zoning District #3. The request was represented by Mr. Dumont who answered a couple of questions about the current ownership and management practices of the ranch and family.

Member Mannix motioned with member Hall seconding the motion that the proposed boundary relocation was not an attempt to evade subdivision review. The Board voted nine to zero in favor of the motion.

4c. Deer Lodge Landfill/Nyquest Property – Boundary Relocation

Mr. Hamming presented the Board with an overview of the request from Lewis Smith on behalf of the Deer Lodge Landfill Board. The proposed boundary relocation would enable the Landfill Board to purchase roughly seven to nine acres from Mr. Nyquest. The property acquisition would allow the landfill to expand to the north and on top of the bluff so that the landfill would have a staging area and better access to their property. A preliminary survey had not yet been submitted to the Planning Department. Mr. Lewis had previously informed the Planning Department that the parties have agreed on terms for the purchase. Mr. Williams offered some additional information about the future intentions of the landfill to expand and contract with the rural districts to accept their trash as well as line the landfill in a phased expansion.

Member Pierce motioned with member Wagner seconding the motion that the proposed boundary relocation was not an attempt to evade subdivision review. The Board voted nine to zero in favor of the motion.

Agenda Item #5 – Public Hearings

5a. Request to Amend Condition #3 (the Haul Route) – Deer Creek Excavating, LLC

Mr. Hamming gave a history of the Conditional Use Permit that LHC and subsequently, Deer Creek Excavating, LLC, received to prove zoning compliance in their application to the DEQ to operate a gravel pit near Seeley Lake. Mr. Hamming discussed the previous public hearings that had taken place and the previous request to revise Condition #3 that was approved by the Planning Board, but required the Missoula County Commissioners to sign off on the Road Agreement entered into by the Double Arrow Ranch Landowners Association (DARLOA) and Deer Creek Excavating (Deer Creek). In May 2018, the Missoula County Commissioners held a public hearing and were advised by their legal staff that they could not legally sign off on a Road Agreement between two private parties that limited or restricted access on a public road. They only have the authority to restrict or prevent access to the public temporarily when there is a public safety concern.

The Board asked several questions about the jurisdictional boundary and the ability to condition the gravel pit operation. The conditions applied to the CUP are to minimize the adverse impacts to neighboring residents, regardless of their County residency. The Board discussed the issue that the road is public on the Missoula County side within the Double Arrow Ranch (DAR) but is a private road across the border in Powell County. Mr. Smith advised the Board that they could condition the operation within the ‘CUP Property’ that minimizes negative impacts to neighbors.

President Manly opened up the Public Hearing portion of the meeting. Mr. Hamming stated that notice of the hearing ran in the Silver State Post on June 27th and July 4th as well as an article in the Seeley Swan Pathfinder.

Pat Elliott spoke about the Board's authority to apply conditions on the CUP to minimize the negative impacts to neighboring residents. Mr. Elliott said the Board had previously done this and should not change those conditions because Evergreen Drive is an unsafe road for large trucks.

Carl Flygare showed pictures of trucks owned by Deer Creek Excavating that were parked on a bend in the DAR that did not allow a lot of access around the trucks because the roads are narrow. Permitting hauling along Evergreen Drive would be dangerous for the other cars and pedestrians using the road. Mr. Flygare also questioned the economics of saving on gravel if it could be delivered via Evergreen Drive.

Kathy Hendricks asked the Board about others who may access the pit of stockpiles that are not part of the proposed Road Agreement. Ms. Hendricks supports market competition, but is concerned about the amount of truck traffic that would be utilizing Evergreen if DARLOA's contractors would be permitted to also use Evergreen Drive.

Ken Silvestro told the Board that they are the gatekeepers and the conditions applied on the CUP are best the way they currently exist. He also said that the DARLOA Board does not speak for all landowners within the DAR.

Tim Berry voiced his concern about the property devaluation if the pit becomes operational. Mr. Berry also discussed his displeasure with the DARLOA Board and their language dissuading opposition to their decisions. Mr. Berry discussed how Mr. Lewis is already using Evergreen Drive for access into the DAR for other work and has had a bad encounter with a local landowner. Mr. Berry stated that he prefers Condition #3 stay the way it is written, but said that if the Board did decide to allow limited access via Evergreen, he had a list of suggested conditions that should be included.

Brian Page, Vice President of the DARLOA Board, discussed the Board's six to one vote for the Board to sign and approve the Road Agreement with Mr. Lewis of Deer Creek. Mr. Page also talked about the elections of Board members and that it is representing the people as they try to do and vote for what is best for the entire DAR, even if some residents do not agree. Mr. Page talked about the fact that no matter which route Deer Creek trucks take, they will be driving on narrow, gravel roads in DAR to access various landowners as well as plow and maintain roads. Mr. Page stated the DAR begins plowing and sanding of their roads at 2am because of safety concerns. Mr. Page also mentioned that one part of their phased subdivision is on the west side of Highway 83. Mr. Page and Mr. Lewis discussed the number of truckloads of sand and gravel that are required each year for road maintenance. Over the past six years, DARLOA has used 13,000 cubic yards for road maintenance and sanding.

Joann Wallenburn stated that she is the one who voted against DARLOA entering into the Road Agreement with Deer Creek. Ms. Wallenburn discussed the legality that the Missoula County Commissioners cited when they determined they could not enter into a road agreement that would limit access for a private party. Ms. Wallenburn stated that she would prefer Condition #3 remain as it is written, but if it were revised, she would prefer that the Road Agreement be reviewed annually. She also offered a different version for why DARLOA had issues with the gravel that was supplied by Mr. Richards.

Brian Larabee is concerned with the safety of the residents of DAR. The roads are in poor shape with bad potholes that force drivers to veer across the roads and could hit a gravel truck. Mr. Larabee also stated that people, in particular Deer Creek trucks, drive too fast on the DAR roads.

Tim Berry spoke again that the DARLOA Board is not transparent and is not democratic in their operations. Mr. Berry would urge that the Powell County Planning Board require that an electronic gate be installed at the County border that would restrict access to certain times and for emergency access.

Debra Silk, President of the DARLOA Board, spoke that the Planning Board has now heard from the same group of landowners and pit opponents at numerous public hearings. Ms. Silk stated that the DARLOA Board is the governing body for the DAR and that they do hold elections to represent the people and they voted six to one to enter into the Road Agreement with Deer Creek. Ms. Silk also said that DARLOA is not required to purchase anything from Deer Creek. They took no position on the gravel pit issue when the pit was proposed, but now that it is permitted by the County, they would like to have market competition and options for their gravel.

Tim Hendricks spoke that he would like to see the Condition #3 remain the same.

After no one else rose to speak, President Manley closed the public hearing portion of the meeting.

The Board discussed their various options and whether or not they should edit Condition #3 to allow limited access, but specify the number of trucks or volume that would be permitted via Evergreen.

Member Pierce questioned whether a petition of landowners could force Missoula County to change the status of the road and restrict certain types or volumes of traffic. The Board was frustrated that Missoula County did not seem to involve itself in this matter concerning Missoula County residents. Mr. Hamming reminded the Board that Missoula County's position had remained the same since February 2017 when they stated that only emergency vehicles should be permitted ingress and egress via Evergreen Drive.

Member Wagner voiced his thought that there was no way to make everyone happy in this case and that a compromise would be hard to strike. Member Pierce warned the Board against trying to be too specific in the motion because if the number of truckloads is specified, the Board would be opening itself up to a lot of questions and uncertainties about different scenarios such as if contractors of DARLOA would be allowed access or if their loads would count against the total annual limit. Vice President Hirsch restated his belief that the Board should not condition anything beyond the geographic boundaries of Powell County. Member Pierce restated his belief that Missoula County should engage in the issue, is capable of being able to do more, and does not want to involve Powell County in the enforcement of road use restrictions.

Member Pierce motioned with Member Hirsch seconding to deny the request from Deer Creek Excavating to revise Condition #3 to permit hauling via Evergreen Drive. The Board voted as follows: Members Pierce, Hirsch, Hall, Beck voted yes. Members Hollenback, Wagner, Mannix and Williams voted No. President Manley broke the tie with a yay vote. Therefore, the request to revise Condition #3 was rejected by the Planning Board.

Member Pierce stated his hope that an agreement can still be worked out with Missoula County and its landowners that does not involve Powell County or require enforcement from the Powell County Planning Department.

Agenda Item #6 – Continued or Tabled Business

Update on Supreme Court Ruling

Mr. Lewis informed the Board that the Supreme Court had ruled on briefs that the District Court was correct in their ruling that the Powell County Planning Board had acted correctly in their approval and conditioning of the CUP for the gravel pit to be operated by LHC (later Deer Creek Excavating).

Swan Mountain Estates

Mr. Hamming informed the Board that no new information had been submitted.

Family Conveyance Criteria

Mr. Hamming discussed a recent abuse of the Family Conveyance exemption and asked the Board for their support to draft different options and additional criteria that the Planning Board can use to assess a request heard by the Board. The Board discussed their authority as permitted by Montana Code and gave their support to draft different options and criteria to assess and track family conveyances.

Agenda Item #7 – Planning Board Comments

Member Hall was slotted to give a presentation on new construction in the WUI, but due to the late hour, decided to postpone his presentation until September. He did discuss a little bit about what he will be talking about and handed out a report from a conference he recently attended with Commissioner Crachy.

Agenda Item #8 – Staff Comments

- a. County Attorney
None
- b. Planning Staff
None
- c. Other
None

Agenda Item #9 – Public Comments

None

Agenda Item #10 – Announcement of the August 9th Meeting

President Manley announced the Planning Board will hold their next meeting on August 9th at 1 PM.

Agenda Item #11 – Adjourn

President Manley adjourned the meeting at 4:45 PM.

Respectfully Submitted,
Carl Hamming
Powell County Planning Director

Tracy Manley, President

Date