



Planning Department

Powell County Planning Department • 409 Missouri Ave., Suite 101 •
Deer Lodge, Montana 59722 • 406.846.9795 • chamming@powellcountymt.gov

MINUTES

PLANNING BOARD

The Powell County Planning Board met in a regular session on Thursday, January 11, 2018 at 1 PM.

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

Members Absent: John Wagner

Staff: Carl Hamming, Lewis Smith

Public: Justin Williams, Ken Silvestro, Tim Hendricks, Patrick Elliott, Don Mondul, Nancy Braun, Brian Bender, Elizabeth Rutz, Cal and Lucy Stokes, Greg Wall, Michael Stafford, Debra Ghee, Warner Bair II, Teresa Kendall, Cheryl Lewis, Gary Lewis, Larry Martz, Joseph Miller, Teresa Cahoon, Leelyn Cahoon, Tony Colter, Sherm Anderson, Bradley Ford, Gary Swant, Ed Janney, Ed Janney, Anne Herman, Hansen

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 did not change the agenda.

Agenda Item #3 – Approval of Minutes

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

Agenda Item #4 – Non-Public Hearings

4a. Thomas Rue – Family Conveyance

Mr. Hamming gave an overview of the petitioner’s request with a mapping exhibit. Mr. Hamming stated that he did a search on Montana Cadastral of surrounding counties and did not discover any previous family conveyances executed by the Rue family.

Mr. Rue purchased land along Highway 141, several miles north of Avon, from the Hendricksons in 2017. He intends to divide the land through a family conveyance to give land to his son and daughter and retain some for himself. The Planning Board asked Mr. Rue if he intends to continue to operate the sawmill and he stated that he does not intend to continue operations. (Note: at the next Planning Board meeting, Member Mannix noted that Mr. H. Hendrickson intends to continue to operate the sawmill on

Mr. Rue's property). The approach to the new lots would be from the existing approach onto Highway 141 and create an easement to the center of the property offering access to both lots.

Member Mannix asked the petitioner if he had previously executed any other family conveyances and if he still lives on land near Ovando. Mr. Rue stated that he had not successfully executed any other family conveyances as one near Ovando in 2011 fell apart before subdivision.

Member Hall motioned with Vice President Hirsch seconding to approve the request as not an attempt to evade subdivision review with the conditions recommended by Staff. The motion passed by a vote of six to one with Member Mannix voting against.

4b. Boundary Relocation – Janney/Family Dollar (Leading Tech Development)

Mr. Hamming presented the Boundary Relocation request and explained the two-step process that Leading Tech was hoping to accomplish. First, they wanted to relocate one of Mr. Janney's property boundaries to create a 0.94-acre parcel that they would then like to receive a conditional use permit to operate a Family Dollar business. Mr. Hamming discussed the property and access issue off of Buckskin Drive on the north side of Main Street.

Mr. Wall, representing Leading Tech Development, stated their previous work in Montana including Family Dollars in Anaconda and Townsend. Mr. Wall stated that typically Family Dollar businesses operate on properties that range from 0.9-acres to 1.1-acres depending on the context and topography of the property.

Member Hall asked about an indoor sprinkler system for fire safety purposes and Mr. Wall stated that the Family Dollar will be constructed of Type II-B non-combustible materials. Mr. Wall said that Family Dollar typically does not install a sprinkler system unless required by state regulations as only a few items of general merchandise are flammable. Mr. Bender of the City of Deer Lodge responded that Chief Scharf is aware of the building plans and has no special conditions other than what is required by State law and code.

Member Pierce motioned with Member Hall seconding to approve the Boundary Relocation as not an attempt to evade subdivision review. The motion passed by a vote of 7 to zero.

Agenda Item #5 – Public Hearings

5a. Family Dollar – CUP

Mr. Hamming presented the request for a Conditional Use Permit to operate on the north side of Deer Lodge, within the Deer Lodge Planning Area of Powell County. The City of Deer Lodge will provide services for the proposed business as far as garbage, fire, water and sewer. If approved by the County, the City intends to annex the land into city limits. Mr. Wall has stated that Family Dollar is interested and willing to be annexed and will sign an agreement that waives the right to be annexed if hooking into city services.

Mr. Hamming discussed that the petitioner does not show any plans for a sidewalk to be constructed, but this is consistent with the adjacent properties. The City has expressed an interest in having Family Dollar agree to a cross-access agreement that will permit customers and the public to drive through the

parking lot of the Family Dollar to any potential businesses/developments that may be constructed on property to the west of Family Dollar.

Mr. Hamming and Mr. Wall discussed the issue of the public access on Buckskin Drive. Mr. Hamming recommended that the Planning Board require the petitioner to secure authorization and legal access from the adjoining property owners to utilize Buckskin Drive for its customers. The previous Minor Subdivision by Mr. Janney left the easement language vague as to the public access issue of the drive.

Member Pierce asked about the parking situation in the Family Dollar and Mr. Wall stated that the 9'x18' parking spaces are standard and the drive aisle is larger than standard and what is typically required. There should be adequate space for larger trucks and vehicles. Emergency access to the building will be serviced by the two approaches onto Buckskin and restricting parking on the west side of the building to increase accessibility for turning.

Mr. Wall discussed the results of the environmental assessment and the soils testing. He stated that there is a sand dune that will have to be compacted and dealt with before the building is constructed, but everything else was reported to be sufficient and in good condition.

The Board discussed the number of jobs to be created and where the employees will come from. Mr. Wall said that typically a Family Dollar creates 9-13 jobs and depends on the hours of operation and demand for services in each town. Typically, Family Dollar brings in a manager from an experienced location and then trains the new workers and transitions out of the new location. Leading Tech typically develops the Family Dollar stores and then makes a decision after one year if they would like to hold onto the lease or sell the business and use the capital to open a new one in a different location.

Member Hirsch asked about local community involvement and Mr. Wall stated that the stores typically hold a small budget for local causes and events. He was unsure of the exact amount. Mr. Wall also said that Family Dollar prefers to utilize local builders and employees.

Before President Manley opened up the Public Hearing portion of the meeting, Mr. Hamming read Mr. Rase's letter voicing his support for the business and economic development, but stated his concern for maintaining dark skies. Mr. Wall stated that Leading Tech utilizes dark-sky friendly lighting and does a site-specific analysis to assess where best to locate exterior lighting for safety, but to minimize impacts to adjacent landowners.

President Manley opened the public hearing portion of the meeting by stating that notice of the public hearing ran in the Silver State Post on December 27th and January 3rd as well as notice published on the Powell County website.

Sherm Anderson asked about the road issues pertaining to Buckskin Drive and why the Board reviewed the Boundary Relocation COS rather than a minor subdivision. The Board discussed the need to rectify the issues of the previous minor subdivision by requiring all landowners of the subdivision to sign off on easement language that clarified the responsibility and access of Buckskin Drive. Mr. Wall stated that they're also interested in clarifying the language so that their customers can't be denied access to the store as the 60' right-of-way for Buckskin Drive exists on the former Title and Registration property.

Teresa Kendall stated that she supports the Family Dollar because it fills a niche in the community.

Anna Herman stated that she is concerned about a box store coming to Deer Lodge that will hurt the local economy. She believes that the money earned by the business will leave the community. She

believes it will compete with the Mom & Pop stores of Deer Lodge and put them out of business as well as detract from Main Street.

Gary Swant speaking for himself and Allen Roe stated he believes the Family Dollar will be a benefit to the community as it enhances the area by allowing residents to stay in the City and spend their dollars locally rather than traveling to Butte or Helena.

Justin Williams asked about the property setbacks of the Family Dollar versus the other nearby properties and Mr. Wall stated that the site plan has not yet been surveyed yet as they wanted to secure the CUP before hiring a surveyor due to the significant cost.

President Manley closed the public hearing. The Board discussed the need to clarify the road access issue on Buckskin Drive and Mr. Hamming stated that it could be included as a condition of approval. Member Pierce motioned to approve the CUP with conditions as well as an additional condition to secure proper legal access from Subdivision landowners on Buckskin Drive. Member Hall seconded the motion. The Board voted seven to zero to approve the CUP with conditions.

The petitioner is required to secure legal access and file necessary easement language for customers to utilize Buckskin Drive.

5b. Deer Creek Excavating – Request to Rescind Condition #3 of CUP 10-16 (Haul Route)

Mr. Hamming gave a brief overview of the lengthy history of the CUP and conditions. Mr. Hamming reminded the Board that the CUP had already been issued and this was a discussion only about the haul route. Missoula County had re-submitted their February, 2017 letter, but had offered no other opinions or recommendations. Mr. Hamming also passed around comment letters that had been received since Staff had sent out the Board reports. These included a letter and draft agreement presented by DARLOA (Double Arrow Ranch Landowners Association) that they would enter into with Deer Creek Excavating if the Powell County Planning Board amended Condition #3 to allow some hauling along Evergreen Drive (of Powell County).

After some clarification questions from the Planning Board, President Manley opened up the public hearing. President Manley stated that notice of the public hearing ran in the Silver State Post on December 27th and January 3rd as well as notice published on the Powell County website. Mr. Hamming also stated that Missoula County officials as well as the Seeley Swan Pathfinder had been notified of the public hearing.

Calvin Stokes is a resident of Deer Lodge but also an owner of the Double Arrow Ranch and stated that DARLOA maintains their roads as they pay an association fee each year.

Ken Silvestro recently met with Missoula County Planning Department and stated he is the likely reason that they re-submitted their letter from February, 2017.

Debra Silk, President of DARLOA, stated that DARLOA supported the suggested amendment language proposed by staff and would be satisfied to enter into a road use agreement with Deer Creek Excavating to limit their use to 300 truckloads per year and only use DAR roads for projects occurring in the DAR. Evergreen Drive would be a secondary means and the primary haul route would remain on Cottonwoods Lakes Road. Martin King, counsel for DARLOA, drafted the road use agreement. Six out of the seven members of the DARLOA Board voted to approve the proposed road agreement. Ms. Silk stated that some members of the DAR simply don't want the gravel pit to exist and are trying to block everything

to do with the proposed operation. Through the road use agreement, DARLOA will require that Deer Creek Excavating carry an insurance policy, something that is not required of any other commercial outfits operating within the DAR. DARLOA does not want unrestricted use to Highway 83 through the DAR.

Member Hollenback questioned Missoula County's role and position on the whole matter. He voiced concern about overreach by stating that Missoula County controls their own roads and can erect a gate at the Powell County/Missoula County border since it is a public road on Evergreen Drive within Missoula County. Ms. Silk stated that as part of the proposed agreement, Deer Creek Excavating will be required to provide DARLOA with a monthly report that details the number of truckloads that traveled along Evergreen Drive and within the DAR. Member Hollenback also asked about other individuals accessing the pit and gravel and Mr. and Mrs. Lewis stated that it is still private property and unauthorized individuals or companies would be trespassing. Ms. Silk reiterated that Evergreen Drive is a public road, but it is not maintained by the County, the residents of the DAR pay a \$450/year fee per lot.

Member Pierce questioned DARLOA's authority to close or restrict road use within the DAR if it is a public road. Ms. Silk responded that Mr. Martin King, the lawyer for DARLOA crafted the language of the agreement in such a manner that he thought legal and just.

Gary Lewis of Deer Creek Excavating stated that they wanted an agreement with DARLOA to ensure they had access along all roads to reach any and all DAR residences. Mr. Lewis stated that DAR had 179 loads of gravel delivered last year and 110 of those loads were to one construction project. Mr. Lewis also questioned the argument about safety because he believes being required to travel through downtown Seeley Lake is more dangerous than a more direct route to residences within the DAR.

Don Mondul asked the Board to not rush this decision. The gravel pit has not been approved by the DEQ yet so there is no need to make this decision now.

Joe Miller told the Board that the DAR roads are safe and Evergreen Drive has been improved for hauling. Mr. Miller stated that the DAR roads are sparsely populated and that reducing some use of Cottonwood Lakes Road would improve the safety of the overall operation. Mr. Miller is confident in the maintenance work of the DAR roads.

Teresa Cahoon stated that the road use agreement applies to the Powell County portion of Evergreen Drive and the conditions of the CUP and that is within the power of the Powell County Planning Board. Ms. Cahoon stated that dispersing traffic of the gravel operation will improve safety. She also said that there has been some inaccurate information claimed by certain opponents and this must be ignored.

Member Pierce discussed the potential cost savings of hauling gravel directly into the DAR rather than along Cottonwoods Lakes Road and through Seeley Lake and came up with a conservative \$4,100 depending on mileage and truckloads.

Ken Silvestro told the Board that cost savings of that amount seemed insignificant compared to the potential impact to property values.

Tim Hendricks stated that Deer Creek Excavating is looking for an access route to Highway 83 in the winter when Cottonwood Lakes Road is closed to automobiles. Mr. Lewis stated that he does not operate a gravel pit in the winter. Mr. Hendricks is also concerned about other contractors utilizing the stockpiles via Evergreen Drive and the safety of the roads as DAR roads are curvy and narrow.

Member Mannix asked for clarification about the request and what had previously been heard by the Board. Mr. Hamming and Cheryl Lewis stated that Deer Creek Excavating is requesting that Condition #3 be rescinded completely. Ms. Silk stated that DARLOA still prefers their suggested language from the November meeting discussing the potential amendment to Condition #3.

Patrick Elliott stated that it is the Planning Board's duty to mitigate the adverse impacts to adjacent landowners of a proposed change in land use. When he purchased his property, it was ag-rural land to the north.

Leland Cahoon stated that no matter what, gravel is going to be passing by residential homes.

Nancy Braun stated that she is not an Evergreen Drive resident and she is opposed to hauling along Evergreen. DARLOA does not speak for her.

President Manley closed the public hearing. The Board discussed their options and what a motion would carry with it as far as conditions. Member Hall stated that he would like to make a motion with Staff's recommended language and add that Missoula County also be required to sign off on the road use agreement between DARLOA and Deer Creek Excavating. President Manley seconded the motion. County Attorney Smith explained his reasoning for suggesting that the Board add language about Deer Creek Excavating not accessing Highway 83 through the Double Arrow Ranch to keep the conditions and restrictions consistent. Member Mannix motioned to amend the motion presented by Member Hall and was seconded by Member Beck. The Board first voted on the amendment to the motion. Members Hall and Hirsch voted against the amendment with the other five members voting in favor of the amendment. Next, President Manley held a vote on the motion with the amendment language. The motion passed by a vote of seven to zero. The following is the language for Condition #3:

The primary means of ingress and egress to the gravel pit is permitted via Cottonwood Lakes Road/Morrell Creek Road. The portion of Evergreen Drive within Powell County may be utilized as a secondary means of ingress and egress, provided the operator of the gravel pit has entered into an ingress and egress Agreement with the Double Arrow Ranch Landowners Association (DARLOA) and Missoula County to minimize adverse impacts to adjacent landowners within the Double Arrow Ranch. If a road use agreement is established between DARLOA, Missoula County, and Deer Creek Excavating, LLC, documentation of the agreement shall be provided to the Powell County Planning Department. Ingress and egress through the Double Arrow Ranch to Highway 83 is not permitted.

Agenda Item #6 – Continued or Tabled Business

Growth Policy

Mr. Hamming informed the Board that there is one more public meeting to produce feedback on the proposed update to the Growth Policy. It will be held on January 24th in Helmville.

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 February 8th meeting

President Manley announced the Planning Board will hold their next meeting on February 8th at 1 PM.

Agenda Item #11 – Adjourn

President Manley adjourned the meeting at 4:35 PM.

Respectfully Submitted,
Carl Hamming
Powell County Planning Director

Tracy Manley, President

Date