

POWELL COUNTY PLANNING BOARD

AGENDA/MINUTES

Regular Meeting – Thursday, December 9th, 2021 – 1 PM

Members present: John Beck, John Hollenback, Bill Pierce, Randy Mannix, Justin Williams, Tracy Manley, Earl Hall

Members Absent: John Wagner, Rick Hirsch

Staff: Amanda Cooley, Ann O'Toole

Public: Mike Wenzel, Bill Ries, Dan Senecal

Meeting called to order at 1:00 p.m. President Hirsch was unable to attend so Mr. Pierce headed the meeting.

1. **Attendance:** With six members being present at the onset of the meeting, a quorum was established.
2. **Approval of Agenda:** Motion to approve by Mr. Manley. Seconded by Mr. Beck. Approved with unanimous consent.
3. **Approval of Minutes:** Motion to approve by Mr. Pierce. Seconded by Mr. Hall. Approved with unanimous consent.
 - a. October 7th minutes
4. **Non-Public Hearings**
 - a. EBK Boundary Relocation #1

Director Cooley presented the application for the boundary relocation submitted by EBK Investments LLC. concerning tracts in Section 4, T12N R10W. She explained which property lines were to be relocated and what the acreage of the new tracts would be. She affirmed that the relocation meets the requirements set forth by the Zoning Regulations, Subdivision Regulations, and the MCA. She recommended approval of the relocation contingent upon basic conditions listed in the staff report. She invited Bill Ries, the surveyor of the proposed relocation, to come up and clarify the request. There was some confusion as to how these tracts came to be and whether there was a legal chain of deeds to support the request. Mr. Ries explained the relocation and that there would be a 30' easement for access and utilities. Member Williams questioned whether there would be power and infrastructure and Dan Senecal replied that there would be none at this time. Mr. Ries went on to explain the plats and deeds for the tracts to clarify how these tracts came to be. Neither of them meets the 160-acre minimum for the zoning district, but the parcels were created prior to zoning code being in place. Following a discussion about government lots and homestead deeds, the Board asked no further questions. Mr. Williams motioned to approve the boundary relocation and Mr. Hall seconded the motion. The Board approved the application with a vote of 7-0.

- b. EBK Boundary Relocation #2

Director Cooley presented the application for boundary relocation submitted by EBK Investments LLC. for tracts located in Section 6 T12N R10W. She explained the history of the lots based on tracts of record

dating back to original Homestead Certificates on through to the current legally defined boundaries. When the Homestead Certificates were issued, the lands were assigned patent numbers and were no less than 160-acres. After this point, the 160-acre parcels were divided through deeds, prior to current zoning regulations being in place. Mr. Ries further helped to explain how the patents assigned by Homestead Certificates are platted on a Master Title Plat when land is deeded from public to private ownership. Director Cooley asserted that the Planning Board supports the approval of the application. Mr. Williams clarified easements for the tracts under discussion with Mr. Ries. Member Hall presented the motion to approve and Member Williams seconded the motion. The application was approved with a vote of 7-0.

5. Public Hearings

a) M & M Property Holdings LLC Conditional Use Permit

Vice President Pierce opened the public hearing and explained the procedures the Board would follow. Vice President Pierce explained that the hearing had been noticed twice in the Silver State Post on November 24th and December 1st. Vice President Pierce requested Director Cooley to present her report. Director Cooley explained to the staff that the petitioner, M & M Property Holding LLC, had begun constructing a garage with living quarters prior to obtaining a permit from the planning department.

Planning Staff was notified by the DOR that construction was underway and responded by sending a letter to the property owner requesting that he cease construction. It was negotiated that the property owner would be allowed to install their garage doors only to provide some weatherproofing until the permit could be approved. The property owner responded as requested by filing for a Conditional Use Permit. Ms. Cooley recommended to the board that the application be approved contingent upon conditions listed in the staff report. She also presented complaints received via phone about construction of the new building. Jim Gallo feels there are already too many people in the area and even more are going in. He is opposed to a great deal of new construction in the area. Once he understood the scope of the project, he was more understanding of the development. Sheryl and Roger Hyndman own a property in Section 10 and 11. They have lived there for 40 years and they do not want to see new building either. They voiced their opposition to new residential construction. Once they understood the nature of the construction they also were more amenable to the building. Member Mannix asked where the residents who filed complained live. Admin O'Toole showed the Board.

Vice President Pierce asked the representative for the CUP, Mike Wenzel, if he had any comments. Mike explained that he has known the Kelly's (the property owner) for 20 years and has done a lot of work for them. He told that board that Mr. Kelly was out of room in his small house for their kids, and grandkids to stay and that the previous summer they had to stay outside in a tent with bears roaming around. He said the building is a reasonable improvement.

Member Hall asked how it is determined what is a residential structure – whether it means having bathrooms or a kitchen. Director Cooley responded that the zoning regulations only specify that residential structures have “living quarters” and that there is no further definition of the term. Member Mannix asked Admin O'Toole whether a penalty fee had been assessed and paid and Admin O'Toole confirmed that a fee had been assessed and paid. She also stated that Mr. Kelly had been in full cooperation with the planning department.

With no comments from the public, Vice President Pierce closed the public hearing. Member Mannix motioned to approve the CUP. Member Beck seconded the motion and the motion passed 7-0.

b) Graveley Gravel Pit Conditional Use Permit

Vice President Pierce opened the public hearing and explained the procedures the Board would follow. Vice President Pierce explained that the hearing had been noticed twice in the Silver State Post on November 24th and December 1st 2021. The county website also posted notice of the hearing. Vice President Pierce requested that Director Cooley provide her report.

Director Cooley presented a map of the proposed gravel pit and showed the location of the pit. She explained that the pit was originally permitted as Amendment #1 to the DSL Snowshoe Pit. The current petitioner, Powell County Road District #3, will be leasing the pit from the Graveleys. The original pit is adjacent to the area of Amendment #1 and has since been reclaimed. The planning staff did not see any potential conflicts with the conditions listed in the CUP application. Director Cooley recommended approval of the pit contingent on DEQ approval and other basic requirements as listed in the staff report. Admin O'Toole stated that she had talked to Travis Craig and he thought that the DEQ was waiting for approval of the CUP before they would give their final approval. Aside from that, everything else had been filed and approved with DEQ. Only one person had called to inquire about the gravel pit, and no complaints were made.

The board questioned whether gravel pits should have to have hours of operation in order to not disturb the peace of neighboring landowners. There is only one residence near the pit and it seems to be far enough away that the operation of the pit will not cause significant disturbance. Member Mannix inquired whether they were going to crush and be done or if it would be a continuing operation. Admin O'Toole responded that she assumed operations would continue until the county did not need the pit.

With no comment from the public, Vice-President Pierce closed the public hearing and asked for a motion. Member Manley moved to approve the CUP for the Graveley Gravel Pit contingent upon the recommendations of the staff and Member Hollenbeck seconded the motion. The motion was approved 7-0.

6. Continued Business

- a. None

7. Planning Board Comments:

The planning board welcomed Director Cooley to the position of Planning Director for Powell County and asked her to give some background on herself. She thanked the board and introduced herself.

Mr. Hall expressed the need to tighten up the language about what constitutes a residential structure in the Powell County Zoning and Development Regulations. He stated that it should include whether a kitchen, shower, bathroom, or septic contributed to the definition of a residential structure. Mr. Pierce mentioned that sleeping quarters and sanitary facilities should be included. Ms. Cooley agreed that there needs to be a definition of these terms and will follow-up with this revision.

Vice-President Pierce initiated further discussion around the homestead certificates, land patents, and government lots and how that works with zoning code. Ms. Cooley affirmed that any land divisions made prior to zoning code that have been filed with the clerk and recorder are legal divisions of land. Government lots are not legally filed with the clerk and recorder and therefore are not considered land divisions unless a land patent or other legal documents are filed recording the description.

8. Staff Updates

- a. County Attorney - none
- b. Planning Staff
 - a. Staff informed the Board that Rock Creek Cattle Company had several applications in for review, there will be a gravel pit on the next agenda, and a CUP for the first

dispensary in the county will be on the agenda. The Planning Board briefly discussed the dispensary and questioned whether the county would impose a tax on marijuana. Director Cooley explained that it would need to be put to a vote by the public and that it should be seen on the next election cycle.

c. Other - none

9. **Public Comments** - none

10. **Announcement of the January 6th Meeting**

11. **Adjourn:** Mr. Manley moved to adjourn the meeting. Mr. Williams seconded the motion. Approved with unanimous consent.

Respectfully Submitted,
Amanda Cooley
Powell County Planning Director

Vice President Bill Pierce

Date

**The Planning Board meets at the Powell County Community Center
416 Cottonwood Ave., Deer Lodge, MT 59722
For Further Information Contact:
The Powell County Planning Department**