



Anaconda-Deer Lodge County

PLANNING BOARD MINUTES

Monday, July 8th, 2019 ADLC County Courthouse Courtroom

Meeting called by **Art Villasenor, Chair**

Type of meeting **Monthly Meeting**

Minutes taken by **Carlye Hansen**

Members Present: **Art Villasenor, Chairman; Rose Nyman, Vice-Chair; Frank Fitzpatrick; Mary Kae Massey; Bob Wren; Craig Sweet; John Lombardi**

Excused Absence: **Annette Smith**

Staff: **Chas Ariss, P.E., Planning and Public Works Director; Gayla Hess, Planner I; Carlye Hansen, Planning Department Secretary**

AGENDA TOPICS

Call to Order

Meeting was called to order at 6 pm by Art Villasenor, Chairman.

Approval of Minutes

Motion was made by John Lombardi to approve the minutes from April 8th, 2019, with corrections as noted by Bob Wren; seconded by Craig Sweet. Motion passes 7-0.

Old Business

Follow-up on Issue Regarding 4-Way Stop Sign on Poplar Street Coming Down from Sunnyside Road.

Wayne Wendt, Road Foreman for Anaconda-Deer Lodge County, has discussed with Annette Smith that right now, and after discussion with other road crew men, he feels that this intersection is pretty safe. There have not been many accidents in this area, actually only one, and it was during the midsummer. He feels that they either will need to leave this as is or leave it as a 4-way stop. He feels that if they pull the stop sign at Poplar and put one on 4th Street, this will just create more hazards and confuse folks if they do that, as it has been this way for many years. He feels that if you wanted to go 100% safe, you would need to a 4-way, as what folks think is Bill Hill's driveway is actually an extension of 4th Street going up the hill on the dirt road. The other thing is, that in talking with the guys, this intersection is not nearly as slippery an intersection as



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it is a block down on 3rd Street. Again, he feels either leave this as it is or install a 4-way stop. Wayne feels that there are a lot of other intersections in town that are more concerning than this intersection at this time.

Craig Sweet stated that he doesn't feel this is a Planning Board issue, in which they would handle complaints about a stop sign. He feels this should be handled by the Road Department and they should handle it and go from there.

Rose Nyman stated that she would think the heavier traffic in regard to this would be during the summer in regards to cemetery visits. Art Villasenor agreed with this. Art also leans towards what Mr. Sweet stated, that we have the staff to deal with these things and he asked if this is a normal procedure with this coming before the Board when Wayne's department could make a decision. Chas Ariss stated that the reason this is being discussed is because it was a member of the Planning Board who brought this up and was asking that changes be considered.

Wayne stated that in the past, per MCA, they are allowed to put up signs as per traffic demand. He feels that this is not a real area of significance.

Motion was made by Bob Wren to move the issue back to the Road Department to handle as they see fit; seconded by Frank Fitzpatrick. Motion passes 6-1. Planning Board was polled and Mr. Sweet felt that this was not an issue that should have come before the Planning Board at all, so that is why he has the nay vote.

New Business

West Barker Creek Subdivision - Raymond and Lori Harshbarger

Gayla Hess, Planner I, stated that the developers spoke with the Board in February and since then they have submitted additional information about their subdivision as well as a revised plat. Not included in the packet, however, were copies of their permits requested and a weed control agreement to Ms. Hess and the Planning Department. Mr. Villasenor asked if things were in order per the Planning Department and then Frank Fitzpatrick asked if this application was complete now. Gayla stated that it was. Mr. Fitzpatrick then questioned the information that she stated that they should have and then determined that this is not a complete application packet at this time.

Craig Sweet had two questions. First, the side and rear lot lines at 10 feet, and he wants to confirm that those are the setbacks and that a building cannot be closer than 10 feet to the rear and side lot lines. Gayla confirmed this for the Spring Hill Development District. He also is questioning some drainage plans as there appears to be some slopes on the property and Gayla confirmed this. Craig questioned how they are moving water off of the property. Chas stated that there is a storm water pollution plan that will be required at a later time after the dirt work has been completed.



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Frank asked if there are buildable sites at these lots. Raymond Harshbarger noted that there are a number of very buildable sites mainly from left over areas that have been logged. He explained the growth and the areas available for building on this property as well as the slopes that are on the property and the requirements that will need to be dealt with and the excavation that will be completed in these regards. Frank asked about whether or not the sanitarians have been up to the area. They have and there were no objections to this by them. Frank asked about the fire district, being the Georgetown Fire District, and he asked Fred Bjorklund where they are at on this topic. Mr. Bjorklund stated that they met with them in February and there was still snow on the ground, so they were not able to even leave the highway. Mr. Bjorklund definitely has a few questions that he would like to have answered, but he feels they have not gotten to that point yet. Frank feels that the Harshbarger's need to submit a fire plan seeing this is a high hazard area and the Planning Board did not receive this in their packet and he was quite upset that this had not been received and basically stated that what the Planning Department has supplied to the Planning Board is incomplete. He feels that at this time he does not have required information and he feels that this cannot be approved in this manner.

Lori Harshbarger stated she has met extensively with the Planning Department and in reviewing the guidelines and requirement by the Georgetown Volunteer Fire Department, they are quite extreme and she believes that this is only the initial phase of this. She states she has met with Chas Ariss, Planning Director, and they went through this and the way it is being addressed is all the requirements will be complied with when they come to get the permit. She asked that if the board were to read the restrictions that have been proposed, she set forth that if someone wants to buy the lot and decide to build, then all of the requirements will kick in that she and her husband have set forth in the covenants. She stated that a building permit would not be issued and that nothing would be built until those issues are complied with and ultimately it is the commissioners who have the authority to determine where this goes, as well as Chas' department, and of course the Planning Board's recommendation to the commissioners and that the commissioners have the final say in what actually does get incorporated. She states that they appreciate that folks toured the area and she has appreciated everything has been done, but at this stage they need to be able to move forward and see what will happen with these lots. Based on so many of the requirements, economically, that would not occur at this point if they had to put a lot of these things in at this point. She states that this took place, according to Chas, on another subdivision that took place a year ago, not in the same district, however.

Again, Mr. Fitzpatrick stated that he has dealt with this over the years and he does not want to see these applications come through incomplete, but if they can't do it, they can't do it. However, he does state that the fire protection plan must accompany the submission of any application for preliminary plat approval, and again he states they do not have it for this project. Mrs. Harshbarger disagreed with him as she states that it is worded specifically in the covenant and it is cited in there. She, therefore, feels that it is a complete application and again, he disagrees.



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Craig Sweet then stated that he was having a problem with this and it is similar to what Frank is saying about an incomplete application. He states that they are wanting the Board to approve the subdivision to divide the property into three lots. As far as he can see, he sees nothing that gives him any idea of average slope size which, to him, is very important to know before he, himself, approves a subdivision that is buildable and not wait for down the road when the problems arise and someone else has to deal with it after he has approved this. He also states that a covenant is between the seller of the property and the buyer and that the government agency really has no business approving or disapproving this. He is a bit confused when Mrs. Harshbarger states that this is in the covenant and exactly how legally binding this is for the Board as opposed to standing alone as a separate agreement in the packet of what they are proposing.

Mrs. Harshbarger stated that in regards to the legal aspect, there has to be a permit obtained in order to build in this county. At that point, Mr. Sweet asked if the fire management plan got into the covenant or stand separate apart from any other covenants.

Chas Ariss, then stated that the intention is similar to when they would put sanitary restrictions on a plat, stating that there is no existing permit and that when an individual well or septic is needed, this would be recorded on the plat, and the intent here is to record on the plat the need for a fire protection plan. He states that this is the only way that the County can insure that this would be followed up if a successor, per say, would see this on the plat and it would clearly state that this requirement would need to be satisfied as a requirement. He states that if this is in the deed, on the plat, and on the covenant, this cannot be missed. This is not as common with fire protection standards but again, in these rural areas, this seems to be a compromise for allowing the development of the property and still require the individual lot purchases to be held accountable for items listed on the plat and trying to not delay this process for the developer. Gayla Hess also explained that since these are greater than 20 acre lots, the sanitary restriction is only permitted on the county level and is not through Montana DEQ. They did walk through the properties and since they are larger and the sanitarians were aware of other wells and septic systems in the area, they didn't foresee any difficulty with these sites for development.

Mr. Fitzpatrick again argued that the covenant is only as good as a home owner's association. Chas states that the CCNRs will be between the buyer and seller, but what is recorded on the plat will be the County requirement and thus will be recorded as such. Mr. Fitzpatrick is again arguing that he has seen this come in year after year and these things come in incomplete, the Board approves them with conditions and then there is never follow-up and then nothing is completed as it should be. This is just his opinion, but he feels all the ducks need to be lined up ahead of time.

Again, there is some conflicting opinion in regards to how these subdivisions should be presented to the board and to avoid the Planning Board from getting in trouble such as suits, etc. Mr. Sweet wants to make sure that they are protecting themselves as well as the city and county and having a complete packet with the information signed off prior to the board approving any of these subdivisions.



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Mr. Lombardi stated that there is a section that states that this must all be approved before final plat approval, so there is an opportunity for the fire departments to weigh in before the plan is actually approved.

Rose Nyman asked about the \$70K to \$80K for the fire protection plan and she asked if this was per lot or the total for three lots. They stated that it is about \$20K per lot, but you would then need to build the road, include the installation, etc. There has to be 10,000 gallons within 500 ft. of a house. He did state that if two folks wanted to live next to the lot line, then they can share the 10,000 gallons and reconfirmed this.

At this point, Mr. Fred Bjorklund came forward, representing the Georgetown Lake Volunteer Fire Department. He states that they are trying to develop their plan for the future and are trying to use the rules and regulations that are on the books, including the fire prevention plan that is supposed to be presented. He also realizes that these rules are probably better suited for 2-acre subdivision as you are already pretty limited to your building envelope. However, a 20-acre subdivision is quite unique and different. He feels that these things just happen and we all need to accommodate them that is just a fact. He has never dealt with the notation on the plats. He has also seen sanitarians signatures. However, he feels that the restrictions listed on the plat is new to all of us and uncomfortable, per se. He feels that water is one thing, but that road access is another issue altogether. He feels that they should not be putting in roads that will not fit the future. He is liking all the information that they are receiving this evening and appreciates the conversation, but this needs to be handled once and for all as there may be another subdivision coming up with similar tract sizes that would again need to be addressed with all of these issues.

Mr. Harshbarger again explained that he has already installed several roads, which he did get development permits to do so, and he cannot expand them to meet the requirements in regards to slopes, the logging roads will take some work in order to meet the requirements to get the trucks in there in case of an emergency. However, he states that folks will pay a lot more money for the higher properties and feels that they should be able to add whatever road they need and they would want to do this on a per buyer basis. Mr. Bjorklund however states that the road standards they are setting forth are no more stringent than what the county standards. He feels that this is something they will continue to deal with again, and again, and again. Chas Ariss, as well as Gayla Hess, Planner I, also stated that once a parcel land goes below 20 acres, then it will need to go before DEQ for review.

Frank asked what the issues are of the fire department going through at this time. Mr. Bjorklund has never dealt with signoffs on plats and basically doesn't want to be left in the dust in regards to this. He does not want to deal with any of this after the fact. He states that he is all for understanding, but as things develop on the property, there must be a turning point and understanding amongst all individuals and all entities involved in regards to all the standards that



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are in place. He would like these answers before anyone applies for all permits. Chas states that this is something that the Planning Department already does and that when we receive our initial applications, it triggers a response from the department to reach out to the various entities of the county for approval. He states that this is probably not the first subdivision that will be coming in that does not want to put the infrastructure in place up front.

Mr. Bjorklund stated that they had all met back on August 20th, 2018, of last year, and he feels that they had a good plan, but this was stalled by the commission. He stated that he was told that he needed to be in contact with all fire departments and that he has had numerous meetings amongst all the fire departments, but that the areas all have different requirement and needs based even on fuel loads, terrain, etc. He feels that these questions were all “put away”. Seemed to end up with one question and it is the question we are dancing around now and that is the load limit on the bridges. The county standard is 20 ton. He states that they have a truck that weighs 70,000 lbs. That bridge limit is not going to work for any of the fire departments. He states that this is something that needs to be addressed before even the subdivisions themselves. He feels that there are things that cannot wait until later and he would like to see these issues addressed now and not later after a tragedy occurs.

Mr. Wren reconfirmed and restated all the information listed above and the listing of all restrictions on the plats in regards to sanitary restrictions and fire protection plans.

Chas stated that he would talk to the county attorney regarding all this and be sure that he gets the appropriate legal working on these plats to move forward with this plan.

Mr. Villasenor is very happy with the conversation that we are having this evening and the fact that are all trying to follow with the procedures in place and trying to understand that this is probably not the first time nor the last time this will come up. He states that he has total faith in the process that the Planning Department has in place.

At this point in the conversation there was much conversation in regards to the fire standards and Mr. Ariss states that what we have in the codes right now does allow the Georgetown Fire District to use their own standards and they are in a review process with ADLC.

Motion is made by Art Villasenor for minor subdivision and review preliminary plat approval with seven (7) restrictions as describe as per Planning Department: 1) Incorporate Montana Fish, Wildlife, and Parks “Living with Wildlife” principles into CC&Rs, 2) Recommend defensible space surrounding building envelopes, 3) Recommend stream setback, 4) Addition of fire protection plan to the plat, using rather than NPA 70, we need to refer to the current code 16-284 and NFPA 1142 with specific language for covenant pertaining to the specific fire department protection plan 5) Addition of any sanitation restrictions to the plat, 6) MT State DOT highway approach, 7) Weed control plan. This motion was seconded by Craig Sweet.



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At this time the above motion was withdrawn by Art Villasenor; seconded by Bob Wren and a new motion is made.

Motion is made by Bob Wren for minor subdivision and review preliminary plat approval with seven (7) restrictions as describe as per Planning Department: 1) Incorporate Montana Fish, Wildlife, and Parks "Living with Wildlife" principles into CC&Rs, 2) Recommend defensible space surrounding building envelopes, 3) Recommend stream setback, 4) Addition of fire protection plan to the plat, using rather than NPA 70, we need to refer to the current code 16-284 and NFPA 1142 with specific language for covenant pertaining to the specific fire department protection plan 5) Addition of any sanitation restrictions to the plat, 6) MT State DOT highway approach, 7) Weed control plan. If these conditions are not met, then this would be brought back to a second Planning Board meeting for further discussion. This motion was seconded by John Lombardi.

At this time Mr. Harshbarger stated that nothing will occur at this time until this has all finalized. He can continue to work on the roads. Mrs. Harshbarger does state that this will delay everything. She states that she came in to see about this in February and it is now July and she is very frustrated. She states that the commissioners are the ones who ultimately approve this and if you put the conditions in place tonight and make it very clear what was done then it is up to the commissioners to make sure the above items are in place, and if not, then this does not get approved. The marketing time for them is getting very short and folks don't buy lots when they cannot access them. She would like to emphasize that all this is one more delay for yet one more month. This is not very positive from an economic development standpoint. She feels that she is being railroaded by the fact that we don't have our regulations approved and she wants a commitment from the Planning Board to move forward as she states that they have given a commitment and they are asking for the same courtesy. Ms. Nyman stated that she very much agrees with Mr. and Mrs. Harshbarger, but she feels this is more of a caution to get more information made available to the board rather than a ploy in which we delay them purposely.

Mr. Ariss stated that the major issue that needs to be addressed is the legality of placing the fire protection plan restrictions on the plat. To his knowledge there is no restriction to placing the restriction on placing conditions on a plat. We have the legal basis to require the plan so he has a hard time seeing how an attorney representing the county would oppose recording this on a plat. To him, this is the only thing that would be a problem and he feels that this is something that could be handled fairly quickly, but that is up to the board. The other information requested is in the file. He sees the only problem as being the recording of the fire protection plan on the plat. Other than that, he states that we could proceed as we do have all the other required paperwork and information.

Craig feels that we should approve the preliminary plat with the restrictions placed on the final plat, including the sanitary restrictions, as well as the fire plan. If the county attorney has an issue with this then possibly we may need to call a special meeting and deal with this then. He also doesn't feel there should be an issue with this in regards to the county attorney. Chas feels that this will allow the project to move forward and will cover all the bases.



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Rose Nyman asked for clarification that if this board chooses to move this onto the commission, it won't be on their agenda until July 23rd, and then with five Tuesdays in the month of July, it won't be voted on until the first Tuesday of August. If we delay this, it will be kicked back even more. At this point she sees this not occurring until August in regards to getting the vote from the commission.

Chas stated that to be fair to the process, they have received their ADP and are allowed to do their dirt work and they do have the approach permit and have executed on that. They can continue to work on the site a bit at this time but they cannot put it on the market at this time.

At this time the above motion was withdrawn by Art Villasenor; seconded by John Lombardi and a new and final motion is made.

Motion is made by Art Villasenor for minor subdivision and review preliminary plat approval with seven (7) restrictions as describe as per Planning Department: 1) Incorporate Montana Fish, Wildlife, and Parks "Living with Wildlife" principles into CC&Rs, 2) Recommend defensible space surrounding building envelopes, 3) Recommend stream setback, 4) Addition of fire protection plan to the plat, using rather than NPA 70, we need to refer to the current code 16-284 and NFPA 1142 with specific language for covenant pertaining to the specific fire department protection plan 5) Addition of any sanitation restrictions to the plat, 6) MT State DOT highway approach, 7) Weed control plan. This motion was seconded by Mary Kae Massey. Motion passes 6.1. Poll was taken and Mr. Fitzpatrick was the nay vote.

Proposal for Land Purchase from Anaconda-Deer Lodge County by Joel Heppler

Gayla Hess, Planner I, discussed that Mr. Joel Heppler has submitted a proposal for a parcel he would like to create in the Light Industrial Development District. This is in the Red Sands Area in Parcel D.

Mr. Heppler has a plan to build up a light industrial development area in this district. He has been in business for 22 year and he would like to include automobile towing and when he contacted the state, they require an enclosed storage facility due to a call or something that needs to have something locked up until authorities can finalize inspections. He is looking at a 4500 square foot building. This would be a metal building with a metal roof. He has already talked with the fire chief and there is a fire plan for the infrastructure and this is set. He has been working with Gary Warner of the Warner Group as they have installed water and sewer to the bus barn, so they are familiar what is needed for Mr. Heppler's property. In the meeting with the fire chief, he laid out the specs for the locations and setbacks for buildings for access to properties in case of fire and/or emergencies. He believes there will be a 30 ft. approach and it is right off of the main Arbiter Road. If the need for this project works out, then he would continue to install these types of buildings as the need grows. He would fence this with chain link fencing around the property. He has been in to talk with Code Enforcement, the Planners, and the Building



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Inspector and the plan would be for a frost wall footing and foundation for this building because of the heating cost to a building of this size.

Mr. Fitzpatrick asked if all the vehicles would be stored inside of the building. Mr. Heppler stated that there may be some inside and some outside, but there will be chain link fencing with slats to avoid the public from having to view this area. Mr. Heppler does not want a scrapyard. If a car is towed and it is not redeemed, then he would send this to a scrapyard.

Mr. Sweet asked if this is similar to what they county has been doing in the East Yards. Mr. Ariss confirmed this and the fact that this program was adopted by the commission.

Motion is made by Bob Wren for the proposal for land purchase from Anaconda-Deer Lodge County by Joel Heppler; seconded by Rose Nyman. Motion passes 7-0

Clark Fork Coalition Purchase of Dry Cottonwood Creek Ranch and Hadley Ranch and Request to Place a Conservation Easement on Both Properties

Chas Ariss, Planning Director, just wanted to advise that we received a submittal from the Montana Land Alliance and apparently the Clark Fork Coalition has purchased two privately owned ranches and they are basically in the northern portion of the county north of East Side Road and what they want to do is preserve this area by placing a conservation easement on this. According to Montana Law this has to be presented and approved by the appropriate Planning Board and Commission of the County in order to move forward. All the information is enclosed in the packets to the Board.

Mr. Sweet did ask if there would be any public access to this area and Chas stated that he believed there would be.

Ms. Nyman stated that if the Planning Board and the Board of Commissioners did not approve this, then no money would be received. This was confirmed by Art and Chas.

Motion was made by Craig Sweet recommend the approval if the Clark Fork Coalition Purchase of Dry Cottonwood Creek Ranch and Hadley Ranch and request to place a conservation easement on both properties; seconded by John Lombardi. Motion passes 7-0.



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Miscellaneous

Matters from the Staff

Chas just wanted to state that we are very busy with varying large projects all over town. He did explain several of these. They are trying to complete these in conjunction with some of the activities that are going on within the community.

Another huge project is the Wastewater Treatment Plant and the issues regarding that were discussed.

The Mill Creek Highway Project was discussed. Senator Daines has also pushed the county to apply for grant that he is knows of to get additional work done on the Mill Creek Hwy, so the plan is to have a grant application for the \$10M range to do the 4.5 mile stretch through the S-curves of Mill Creek Hwy.

We are also looking at the State Department of Commerce Infrastructure Grant to apply for to develop the infrastructure for the East Yards.

Gayla just wanted to state that the Sidewalk Improvement Program is up and running and there are interested applicants and there have been several successful sidewalks installed this summer.

The county has also issued a number of burn permits electronically this year. Some folks were a bit frustrated by the online process, but hoping that this will move more smoothly in the future. Open burning was suspended as of July 7th.

She has had numerous discussions with folks about further subdivision in Opportunity and a lot of those lots do not reach the minimal lot size for that district, so the Board of Adjustment could see an increase in the future. At this time, we only have two members on the Board, so if anyone knows of anyone, we would encourage them to look into this as we do have several vacancies that we would encourage to see filled.

Matters from the Board

There was a question by Bob Wren as there is still an ad in the paper for the Conservation position applicant. He was understanding that this was going to be removed. This was confirmed and Art will let Lori Sturm, Clerk of the Commission, to have this removed from the board vacancy ad. The only thing that the Conservation Group requested would be our board minutes and Carlye will talk to Art regarding this after this meeting.

Craig Sweet would like to suggest that when we get a preliminary plats in the future, that on that plat and/or in the packet, we can see where the fire folks have had their discussions, police, etc. Carlye stated that there is a bullet list that she said the Planning Board was using, but she feels that it got lost in the transitions. She will send this to Gayla.



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Public Comment

None

Next Meeting Date

August 12th, 2019

Adjournment

Meeting was adjourned at 8:10 p.m.

Respectfully submitted,

Carlye Hansen

Carlye Hansen, Planning Department Secretary

Approved 11/18/2019