

# MINUTES

ADLC Planning Board

Community Center, 3<sup>rd</sup> Floor Conference Room



*Monday, March 22<sup>nd</sup>, 2021 at 6:00 pm | Meeting called to order by Rose Nyman, Chairperson*

## Attendance

Members Present: Rose Nyman, Chairperson; John Lombardi, Vice-Chairperson; Frank Fitzpatrick; Colleen Riley (via conference call) Annette Smith; Art Villasenor; Mary Kae Eldridge Christine Klanecky

Members Absent: Bob Wren, excused

Staff Present: Carl Hamming, Planning Director; Gayla Hess, Planner II; Carlye Hansen Planning Department Secretary

Guests Present: Please see sign-in sheet

## Approval of Minutes

February 22<sup>nd</sup>, 2021

Motion was made by Art Villasenor to approve minutes from February 22<sup>nd</sup>, 2021, with corrections as noted; seconded by John Lombardi. Motion passes 7-0

## Introduction of New Board Member, Christine Klanecky

Rose Nyman asked that the Board and Staff go around and introduce themselves to Christine Klanecky, as this is her first meeting with us this evening. Christine just wanted to thank the Board for welcoming her and she is excited. She states that she needs to learn a lot but is looking forward to it.

## Public Hearings

Penn State Development, LLC

PUBLIC HEARING on a Major Subdivision request by Penn St. Development, LLC to subdivide a tract of land on Pennsylvania Ave. between Cedar and Birch Streets. The preliminary plat proposes the creation of 13 residential lots from the existing 2.5-acres. The land is located in the Medium Density Residential Development District (MDRD). Pursuant to Sec. 16-64 of the DPS, A public hearing is required before the Planning Board for their consideration to recommend preliminary plat approval to the ADLC Commission. Property is legally described as:

S03, T04 N, R11 W, C.O.S. 231A, PARCEL 2B

## Staff Report

Carl Hamming, Planning Director reviewed and presented the staff report put together by he and his office. All content can be located on the ADLC website. We did meet last month for the preapplication meeting for this project. He just wanted to touch on a few changes that were made to the original application.

There was a new preliminary plat that was submitted with the updated application that increased Lots I, J, K, and L from a width of 58' to 60'. An updated drainage plan was submitted. There were some spelling typos that were corrected, and the language was clarified that the developer is responsible for the service line connections for the water and sewer. This is now clear as to what the County responsibilities are as well as the developer.

Carl did want to touch on the proposed conditions listed on Page 6 of his report.

For #3, he would recommend that this be struck from the list of conditions since this no longer applies and there has been a change that will try and incorporate the road dedication into the subdivision so that we can have a track of land that can be deeded from the developer to the County rather than doing a separate agreement that would overly complicate things between the County and the developer. He would be happy to talk this over with anyone or answer questions but doing it this way will ensure that they have a proper deed that can be created for the title report so that any subsequent landowners will know what was deeded to the County, and that Pennsylvania is on a platted right-of-way and to clean up the property line boundary issues. He recommends striking this since the path forward has changed.

For #6, he had originally inserted this a few weeks ago as a point of discussion and he would be happy to discuss this further tonight. He had a follow-up conversation with the developer, John Fitzpatrick, and agrees that it would be beneficial to move the language from anything that would be required as part of the preliminary plat approval and recommend that this be incorporated into a covenant so that the property owner will be responsible for their own fencing including the appearance, the structure of it, and safety if they have small children. This way the County would not be in a position of saying whether a certain type of fence is adequate for purposes of public safety or fencing along the right-of-way right of this area. He would be happy to hear anyone's thoughts on the matter, as well as John but would recommend that fencing be included in the covenant part of the HOA for the subdivision.

### Questions from the Board

Frank Fitzpatrick stated that a covenant is one thing, but how will anyone make folks do these things? He stated that a covenant is no better than the piece of paper it is written on and states that with a Home Owner's Association, you would all have to agree with it. He is, therefore, quite hesitant to have each homeowner do their own fence and if they do not want to do it, how would you make them do it? Carl stated that this is in place so that if the homeowner did not want to do it, then the County would not be stuck in the position as we are not the ones enforcing the covenant. This is up to the lot owners and would remove the County from trying to police whether there is fence there, and if there is a fence there, whether it would be a good enough or adequate fencing. Frank thought that the reason was because there was no park or land dedication, there was going to be a fence put up there. Carl stated that the lack of parkland dedication was just worked out with John and the CEO, as the thinking was that there was no space for a park, and that it would just be an empty lot and no real suitable land for parkland. Frank thought that the Planning Board wanted a fence there. There was a comment at the last meeting by Rose asking if the land near the tracks was suitable for a park space. Carl stated that if there was a park space, one would think you would want full containment of that and to fence this entirely, but since we are not talking about a park here, perhaps there would be an interest in doing some sort of fencing along the southern property line, but in talking about the cost of this and if you would put up a fence right now, the subsequent home owners would likely rip this out or change it and this would be nothing more than a waste of funds that would be passed onto the lot owners. Frank is really hoping that a small child does not run out over the railroad track and gets run over by a train. Carl states that John could probably speak more to this issue.

At this point in the meeting, Colleen Riley, who is on the Board, joined the meeting via conference call and there were issues regarding her getting on.

John spoke to address the fencing issue. He spoke with Carl extensively regarding the fencing requirement and there are several problems with it. First is that the cost of fencing is rather exorbitant. He did not get a chance to get a firm bid from a fencing contractor, but he sat down with staff at ABC and talked to some local contractors and they talked about near \$20,000 for fencing and that was based on relatively low material costs that he picked up off of the Home Depot website. If it stays at the price it is, that would be adding an additional \$1500 to \$1700 to the price of the lot. Carl is correct in the fact that you are basically wasting that money because any subsequent owner is going to come in and change this. It needs to become the owner's responsibility so they can do this as they want and to their taste.

Regarding the railroad being a hazard, it is not. There are 10 trains a week on that railroad. There are 7500 automobiles on Pennsylvania. If there is a hazard, it is the vehicles and not trains. John feels that fencing the south boundary is not going to accomplish much except essentially provide a form of liability protection for the railroad and he does not feel that is his business. He states that if the railroad feels there is a hazard there, then they can put up the fence to keep folks out but noted that they have never done this. He is very comfortable with putting something in the deed restrictions that makes this legally binding on the homeowner. He has gone over the language with Carl Hamming, and he feels that we can move this process forward. He is ready to go, he has the contractor lined up, and he is ready to start turning dirt on April 12<sup>th</sup>. He understands that the county has published the bid request for the water line, and they are planning to award bids on April 2<sup>nd</sup>, and if things come together here in the first part of April, we will be fixing the street and building the subdivision.

John Lombardi asked if John would comment on the fencing used to delineate property lines for future owners. John states that you can delineate the property lines with markers, or other sorts of delineation methods. You do have to be careful as you cannot string wire out there as that is a safety hazard, but there will need to be some way to monument each piece of property, the entire 60' of each.

Rose asked whether there are 13 or 15 lots? John confirmed that there will be 13 lots and the two end properties would have duplexes, so there would be two residences per those two lots, so turning into 15 separate residences on 13 lots.

Public Hearing Proponents

None

Public Hearing Opponents

None

Public Comment

None

Board Discussion

Frank feels that the fencing should be included in the deed restrictions. Art agrees with this and states that he does not know where they would put this to pass this on to the Commissioners, and he does not know if they would add another line as to what they are asking for, but he does agree with Frank on this topic.

Rose confirmed that we would just add this to the deed restrictions that are already in place. This would be included in the Recommendations of Approval and incorporate the fencing language into the deed as part of the preliminary plat approval that would go before the Commission.

Motion is made by Frank Fitzpatrick to recommend and forward the request by Penn Street Development, LLC, submitted by John Fitzpatrick, between Cedar and Birch Street, to the ADLC Commission for their consideration, and include all conditions placed by the Planning Staff, as well and the Planning Board, including deletion of the #3 Condition, and adding the deed restrictions as discussed; seconded by Art Villasenor. Motion passes 8-0.

East Yards Subdivision

A PUBLIC HEARING on a Major Subdivision request by Anaconda-Deer Lodge County (ADLC) to subdivide a tract of land in the East Yards parcel of Anaconda. The preliminary plat proposes the creation of 18 non-residential lots from the existing 91- acres. The land is located in the Railroad Transitional Development District. The subject property is located south of Montana Highway 1 and north of Smelter Rd. Pursuant to Sec. 16-64 of the DPS, a public hearing is required before the Planning Board for their consideration to recommend preliminary plat approval to the ADLC Commission. Property is legally described as:

S01, T04 N, R11 W, C.O.S. 456A, ACRES 91.34, TRACT 1-E EAST YARDS FRONTAGE

Staff Report

Gayla Hess, Planner II, reviewed and presented the staff report put together by her and her office. All content can be located on the ADLC website. Based on the comments and questions at last month's meeting from the Board, a modified application was submitted and is available on-line, but it mostly addressed the questions and comments that the Board had and she believes that Todd from Pioneer is on the line to address any other questions anyone may have.

Todd Kuxhaus, Pioneer Technical

Todd Kuxhaus, from Pioneer Technical called and stated that based on the comments that were received at the last Planning Board meeting, there were some modifications added to the application to address those comments. One of those was a revised preliminary plat exhibit. It does show the missing utilities and the proposed utilities per that comment.

#### Questions from the Board

Rose stated that she noticed a lot on the plat marked for parkland. She wanted to know if this was a reality in this type of area. Todd said that this was the plan and that the thought behind that is that this is right underneath the power lines and that it was a less usable piece of property so they felt that it would be a decent spot for parkland.

#### Public Hearing Proponents

Mike Martelli, 1918 Smelter Road, Anaconda, MT 59711

Mr. Martelli contacted the Planning Board on March 3<sup>rd</sup>, 2021. Mr. Martelli hopes that the subdivision moves forward, and he would like to see the entire length of Smelter Road paved to make this a complete commercially developed area. He also stated that he looks forward to improved access to Smelter Road via Filmore for commercial vehicle access.

#### Public Hearing Opponents

None

#### Public Comment

None

#### Board Discussion

None

Motion is made by Frank Fitzpatrick that the Planning Board move forward and recommend to the Commission consideration of a request by Anaconda-Deer Lodge County (ADLC) to subdivide a tract of land in the East Yards parcel of Anaconda with all updated documentation; seconded by Art Villasenor. Motion passes 8-0.

River Properties, LLC

A PUBLIC HEARING on a Major Development Permit (MDP) request by River Properties LLC to construct 15 condo-style cottages with an office/gym and chapel. The property is located on the north side of Pennsylvania Ave and Pizzini Way and south of Warm Springs Creek. The property is located in the Medium Density Residential Development District (MDRD) and pursuant to Sec. 24-83, an MDP is required for any proposed special use in the district. Property is legally described as:

S03, T04 N, R11 W, C.O.S. 231A, PARCEL 1

#### Staff Report

Carl Hamming, Planning Director reviewed and presented the staff report put together by him and his office. All content can be located on the ADLC website. Carl stated that this proposal may be familiar to those who have been on the Planning Board for roughly three or more years now. This is essentially the same application that was reviewed and permitted in the summer of 2018. The Cavanaugh's of River Properties, LLC, are here today, and did receive the Major Development Permit to construct 15 cottages along Warm Springs Creek, however they were issued this in August of 2018, and they did run into substantial delays due to the convenance on the property stemming from Superfund restrictions. It took them a substantial amount of time to work through the EPA, DEQ, and Atlantic-Richfield to amend and to remove and to change the convenance on the property so they would be permitted to develop these cottages, gym, and chapel on the land. This took a substantial amount of time as well as the issue of trying to figure out water service to the cottages and that is something that has recently been discussed as John had discussed this in an earlier public hearing

that the County is working on improving Pennsylvania and running the water line to this. The Cavanaugh's contributed \$30,000.00 to that effort to have water service to help their project. When he spoke to the Cavanaugh's in the spring of 2020, he was unaware of the fact that the MDP's do expire after two years if there has been no construction or any sort of movement towards the development that was permitted, so the MDP that was granted expired in August of 2020, and so now that the water main is going to be installed in the next couple of months, the Cavanaugh's have reached out to our department in hopes of developing the cottages, resuming the project, get it up and going again, and unfortunately that is when we realized that the MDP was no longer valid and that they would need to update that and bring it back before the Planning Board as well as the Commission. They have an updated application this evening which he thinks is pretty much the same as what was seen a couple of years ago with some perhaps updated dates and signatures and such, but they are looking to do essentially the same project where they are trying to do this condo style, where they will develop the cottages using the Unit Ownership Act so that they will be selling the cottages themselves, but not the land beneath it, and that they would be in control of the actual property, itself, and maintaining the landscaping and the ongoing work on the grounds, keeping it clean, maintaining access to and from, but that the individuals would be able to own the actual cottage.

#### Questions from the Board

Frank asked if this was under the Urban Area Planned Unit Development back in 2018, or under Medium Density. Carl stated that they are not going through a subdivision process and that is important when they are talking about this condo style arrangement where it will still be the 2.1 acres of land and that it is not going to be carved up any smaller. They would just be selling the cottage, itself.

Frank also asked that with the letter from FWP, they are concerned about getting anything too close to the creek where you would have to dig or do anything such as this to the creek bed. He does not see any measurement as to where the trail will be from the creek bank. Carl believed that this was agreed to with the original MDP that there as going to be an agreement hammered out as to relocating the walking path and move this closer to the creek so that this would be part of the setback from the riparian court to the cottages themselves. This is an outstanding item that would need to be addressed.

#### Developer Report

Susie Cavanaugh, River Properties, LLC

Susie Cavanaugh stated that she just talked to FWP on Friday, and she stated that she is not sure what this all means as it made her somewhat nervous, and the gentleman said that it is a document change and that he is very familiar with the plan and that they are the right distance from the water and he said that they way they are going to be doing the walking trail would be beneficial. He stated that the only thing he is concerned with is if they disturb the riverbank. Whenever there will be any landscaping, they will need to have FWP come out and if there is a permit needed, it is a very simple one and that is for taking out dead trees. He stated that there was nothing to worry about and it would not need to go through the DNRC and all those hoops.

Carl noted that as originally proposed, the cottages are set back far enough from the creek that they would be located outside of the flood plain, which is to anyone's benefit, including the future cottage owners, the Cavanaugh's, and the County. That setback would need to be adhered to for their own safety and to keep this out of the floodplain. FWP would be satisfied that this is not encroaching into the creek or the riparian quarter itself and that there would be adequate setback from Warm Springs Creek.

Rose asked if there is a required number of feet for the walking trail to be from the creek bed. Carl stated that from the County's position, no, but that it is something that would need to be worked out with FWP as well as the Cavanaugh's. This is an easement agreement that would need to be worked out along with the relocation of the walking path and it would all need to be agreed upon with all parties involved.

John asked that with trying to get through the MDP request, would there be any restriction on a proposal made based on this hearing and would we be able to move forward without considering the question about distance? Carl said the agreement would be signed off by the County and it would go to the Commission for review and approval and public vetting. If the Planning Department wanted to make a requirement that the MDP is not valid until the trail agreement is signed, then this is something that could be proposed. Carl verified that there would be a formalized easement that would be signed and it would be separate from the MDP. John was okay with this.

Rose had another question on the walking trail and that was at what point would that be relocated? Mr. Cavanaugh said that it would be whenever the Planning Board wanted it to be. If the Board wants it before they break ground on the first unit, they have no problem with that. If they want it after they have completed three units, that is also okay with them. He thinks that it would be better to put it in a little later to keep the existing walking trail where it is and that way once the construction is done it would make this a little bit cleaner, for the trail to be put in and tie it in with the elevations of the cottages and such. He says it is pretty much up to the Planning Board and what they decide.

Rose asked about the hours for the gym and the office. She is more concerned about the gym hours. Mr. Cavanaugh said he really has not thought about it and that it would be their clientele that will be coming there probably early in the morning. He is thinking maybe 6 am to about 8 pm. Rose states this is reasonable.

Rose stated that there was one question on the MDP application that was not answered. This is on Page 2, and it is about the soil. It is stated that there will be 5200 yards of soil being brought in, but it is not stated where it will be brought in from. Mr. Cavanaugh has no answer for this. He asked if there is a requirement about the type of soil used. He states that it would be topsoil so he wants this to be good soil for landscaping. Carl stated that this is part of the Superfund routing process and there are certain sources for clean dirt. Mr. Cavanaugh asked that if the dirt is to be obtained from those places, and Carl stated that this is correct and to be sure that no one is using contaminated soil on the property.

Frank asked where they will be putting the snow in the winter? Snow removal? Mr. Cavanaugh stated there was no plan. He asked about other subdivisions and how they handle snow removal. Frank stated that there should be a snow removal plan or something where they are responsible for the maintenance of this regarding snow. Johns does not want to see a situation where it is put up next to the creek and then all melts into the creek at one time. Mr. Cavanaugh states that there will likely be an area on the property where they can stockpile all of this.

Rose asked if there are any concerns about the title of "Man Caves"? He has no concerns. He states that this will be under River Properties.

#### Proponents

None

#### Opponents

None

#### Public Comment

Zoe Smith, 101 Cedar Street, Anaconda, MT 59711

Ms. Smith lives directly west of the proposed development. She has been looking over the plans and states that is a very well detailed plat and plan proposal. She did have several questions that she hopes can be clarified or considered. One of them is that she did speak with Caleb who wrote the letter for FWP to help educate herself on what exactly a 310 permit entails and they indicated to her that if there are modifications to the creek bank directly, In reference to the proposed walking trail, they said will not allow this type of scenario done directly on the bank, so she is wondering if because they will not allow any sort of manicuring or disturbance of the riparian space, she is wondering if that trail will not be allowed up against the bank, and would the plat and permit remain as is or will the department need to make a different location available for the proposed walking trail.

Carl stated that from his understanding of the proposed walking trail, that it would be set back from the riparian willows and brush that are on the corridor itself and so you would have the vegetation, the walking trail, and you would still have space so the cottages would be set back out of the flood plain so that there would be room for both the walking trail, the cottages, with no interference of the creek itself and no 310 permit is required.

Zoe is looking at sheet #L1 from FWP and it does show the proposed walking trail directly up against the center line of the creek so that seems to reflect tight up against the edge of the creek. Is she mistaken in that?

Mr. Cavanaugh stated that when he originally did the application there was concern that they would disturb access as to where folks fish along the creek. This was something that they just threw in as a goodwill gesture toward the County. He states that they don't need to have the walking trail. If it becomes an issue for the

County to have this there, they can remove it, but again, it is just there to provide access for local folks to be able to fish down there. To him, it does not matter, and at the time it seemed to be a very important thing, but if this becomes an issue, they can easily remove this if Fish and Game does not want it.

Rose stated that she thought that the trail had to be relocated and Carl stated that was part of the original approval. They were going to take the original walking rail as it is along Pennsylvania and move it a little further north and it sounds like the Cavanaugh's are interested in finding whatever compromise will allow the development to happen.

Zoe wanted to say that she is a huge proponent of the trail along the creek. She is just nervous that it will become derailed based on the FWP 310 permit and that she would hope it could stay but is concerned about any sort of development that close to the river's edge regarding erosion. In looking at this plan, the #6, #7, and #8 cabins are still within the 100-year flood boundary so she asked if they anticipated any problems and if this will impact anything and if they would still be building Phase 1 cabins within that flood plain. Mr. Cavanaugh stated that they had a flood study done. The flood study is part of the most recent submittal. Zoe appreciates having the walking trail where it is at and she does not want this misconstrued as she does not want it there, as this is much more preferred location for the public. She has

one last question and whether this proposed walking trail would be considered private property with the walking trail on the north side of the development. Mr. Cavanaugh stated that it is private property while crossing over his property it would be, but he believed that they are looking at some sort of easement for this. He also wanted to say that Susie has already talked to a gentleman about making sure that the walking trail is put there in a way where it will not interfere with the creek bank.

Rose confirmed that Zoe is not opposed to this project and was just looking for information. Zoe stated that she just did not want there to be any roadblocks. She states that she cleans up this area and is personally passionate about the area, but she understands that this is progress for the community and she certainly supports that.

John asked for some clarification from Carl. With the way the proposal is prepped at this time, it seems to him that it has fell short of considering this issue of the walking trail. He is wondering if they can move ahead and somehow refer to the discussion and results regarding the trail. He knows that ALDC also looked at this and has primary interest in the trails through Washoe Park and there has been a lot of maintenance done for that and it has been sponsored by ALDC. He is just curious in how they should do the proposal this time.

Carl stated that he thinks that they can move forward with the current wording. If it helps ease the process to include some language about conditions for trail access or an easement officially recorded before the MDP becomes valid or before the building permit can be issued for the cottages to ensure that we do not fall into a situation where we lose the trail or lose access or start relocating it and completely obliterate the existing trail and not have the proposed route along the creek for some time. He thinks there could be some additional language added here to the recommendation to the Commission that would include specifics about the need or requirement for a trail easement through the property and what is valid.

John is still troubled by this and he does not think he is up to the task of crafting an addendum to this and yet he feels compelled to see something like this in the motion.

Rose asked if there was any correspondence from the Trail Society. There was none. Carl did state that Adam Vauthier is aware of this and he is part of the Trail Society.

Art stated that they have already been in discussion with the FWP, and he believes that the gentleman told them that they would come and inspect that before he signs off on this, so that eases his mind a bit. Secondly, he states that the County does not have the say in this, it is strictly FWP, as to whether the trail can go there. He also stated that the Cavanaugh's did say they would make any necessary arrangements for the walking trail. Worst case scenario is that the walking trail would be put back where it currently is. As far as language, he feels that the one thing that will be a factor is that FWP will need to sign off regardless, but Carl stated that this was only if they needed a 310 permit. Art is comfortable with the answer that they got from FWP.

Frank asked if there is something on the plan that states that there will need to be an easement for the relocation on the new proposed trail so that the County can state that if there is an easement, then it must be done. John also sees Art's point that if FWP is going to be involved and there is a sign off on that, then this may be adequate.

Motion is made by John Lombardi to recommend to the Commission approval on a Major Development Permit (MDP) request by River Properties LLC to construct 15 condo-style cottages with an office/gym and chapel. The property is located on the north side of Pennsylvania Ave and Pizzini Way and south of Warm Springs Creek. The property is located in the Medium Density Residential Development District (MDRD) and pursuant to Sec. 24-83, an MDP is required for any proposed special use in the district. Property is legally described as: S03, T04 N, R11 W, C.O.S. 231A, PARCEL 1. In addition, FWP will provide all necessary guidance on the proposed walking trail; seconded by Art Villasenor. Motion passes 8-0.

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## Old Business

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Frank inquired about the old guard shack going to the old smelter. He is wondering if there has ever been any talk about removal and restoration of this small building. Gayla stated that she has been asked that question several times. There may be some plans in the future to try and save this. He feels that there is a lot of history there and that this really needs to be preserved. He is just curious about this.

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## New Business

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None

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### Matters from the Board

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Frank just wanted to thank the staff for their hard work on the three reports and for pulling all the information together for tonight's meeting.

Rose just wanted to wish Carl a Happy 1<sup>st</sup> Anniversary working for Anaconda-Deer Lodge County

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### Matters from the Staff

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Gayla Hess just wanted to remind everyone about the online survey for the Historic Preservation Plan. It will be open for another two weeks. She said that you could stop by the Planning Department or the Library for a hard copy of the survey. She noted to Frank that perhaps he could make a comment about the guard shack on that survey. There is also a State of the County Report that talks about our history and urban structure available on the website.

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### Miscellaneous

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John asked if the DPS includes Chapter 16. It was clarified that this is included in the MuniCode and this can be referenced on the website or on [municode.com](http://municode.com)

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### Public Comment

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None.

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### Next Meeting

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Monday, May 10<sup>th</sup>, 2021

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### Adjournment

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Motion was made by Art Villasenor to adjourn; seconded by Annette Smith. Motion passes 8-0.

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### Final Minutes Approved

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Respectfully Submitted,  
Carlye Hansen  
ADLC Planning Department Secretary