

**REGULAR MEETING OF THE  
CARBON COUNTY PLANNING BOARD**

November 17, 2015, Tuesday 7:00 PM

Carbon County Courthouse  
102 North Broadway Avenue  
Red Lodge, MT

**A. CALL TO ORDER**

7:00 Julie called the meeting to order.

**B. ROLL CALL**

Present: Annette Anderson, Pete Cretelli, Pits DeArmond, Clint Giesick, Gordy Hill, Julie Jones, Gene Koch, and Diann Fischer Larson.

Absent: David Alsager (excused) and John Francis.

Staff: Brent Moore, Monica Plecker, and Angela Newell

Audience: Becky Grey Red Lodge, Julie Holzer Red Lodge, Deborah Muth Red Lodge, Maggie Zaback Billings, Carol Nash Bridger, Tim Tschida Bridger, Sharlene McComas Fox/Red Lodge, Ilean Koch Bridger, and Susan Beug Red Lodge.

**C. MINUTES**

Diann noted that "k" need to be added to "nap weed" on page 1. Annette noted there is only one "t" in Pilati (3<sup>rd</sup> paragraph page 2). Pete moved to approve October 20, 2015 meeting minutes as corrected; Annette seconded; motion carried

**D. PUBLIC HEARINGS**

None

**E. REGULAR BUSINESS – Development Permit Working Session**

Julie turned the meeting over to Brent. He reviewed progress from past Development Permit working sessions and reviewed what a Conditional Use Permit is and the different levels of review for different classifications of development: a "Group 1 Development Permit" is required for new residential uses, and would consist of an administrative review to help guide landowners through the permitting process and is not subject to conditions of approval; a "Group 2 Development Permit" is required for any expansion or new commercial or industrial use that is not specifically identified as a Conditional Use, and would require an administrative review by Planning staff.

Julie asked if it was necessary to establish a Board of Adjustments to perform the reviews; she is concerned establishing an additional entity for reviews would only add another layer of bureaucracy. Brent noted that per Montana law there must be a Board of Adjustments, but it is not clear who must serve in that capacity. One option may be for the three Commissioners and Planning Board Officers to serve in that capacity.

Diann asked if it may be more appropriate to move items in the "Agriculture" definition such as "husbandry of poultry, forestry, horticulture, and floriculture" to conditional uses

as those activities entail large buildings and could be considered separate from general farming / ranching activities. Pits noted that it would be hard to make a distinction between large buildings used for different animal species or other operations. Brent also noted that if the activities resulted in on premise retail sales it would fall under Group 2 Commercial facilities and require an administrative review. Annette asked if seasonal auctions for livestock animals would push an operation into Group 2. Brent noted that this would be an exempt use; it has not been regulated in the past and seasonal auctions would not be interpreted as a commercial operation.

The Board reviewed Conditional Uses in the draft document.

Industrial - It was noted that there will be some discretion from the Development Regulations Administrator to determine if a development would fall under a Commercial Group 2 classification or an Industrial Conditional Use.

Wind Energy and Telecommunication Towers sections did not have comment.

Animal Feed Lots - It was noted that with respect to Animal Feed Lots, DEQ is only concerned with discharge into State waters. Property setbacks were reduced to 50' from the property line. Annette believes 50' is a reasonable setback. Diann asked if 50' setbacks would be sufficient to address neighbor concerns of dust, odor, and noise. Clint agreed that 50' may not be sufficient especially with regard to odor. Pits asked if setbacks could be scaled based on the size of the property. Monica noted the distance was borrowed from other regulations; a minimum lot size could be set to allow for Animal Feed Lots or Regulations could state that there are conditions that could require greater setbacks.

Signage (212 Corridor) – Brent noted the goal of this section is to prevent sign clutter; regulations would be specific to off premise advertising. The Board discussed adding additional corridors including Highways 78 and 310; the census was that there is not enough future growth potential to go above existing State regulations. The Board did express concern regarding sign lighting and animation and thought signage may be more appropriate under a Group 2 review.

Commercial Salvage / Wrecking Yards – The Board approves of the language in the draft document. Julie asked about existing yards; they would be grandfathered in. It was also noted that most "junk vehicle" issues in the County should be addressed under the Litter Ordinance.

Commercial Kennels – The Board discussed the distinction between nuisance properties with too many animals and commercial kennel operations; they thought a Group 2 review may be more appropriate for Commercial Kennels.

Rifle and other Shooting Facilities – Annette asked that the language used in other sections be added to note existing facilities would be grandfathered in. Annette and Julie questioned if this was also more appropriate for a Group 2 review. Diann noted that Group 2 reviews only require notice to adjacent landowners. Pete agrees that a Public Hearing process would be appropriate for these developments.

Oil and Gas – Staff has started to draft the definition section, but has not built in criteria until it is determined to what extent the Board would like to regulate this type of development. It was noted that the Board of Oil and Gas is considering establishing setback requirements, but for horizontal drilling it is not effective to have setbacks. Annette noted that areas where oil and gas development are being considered are at existing sites or adjacent to existing sites. Brent noted that the Commissioners are concerned about impacts of any large development to county infrastructure and noted

that it may be more appropriate to address some of these impacts through a permit fee. Brent requested that the Board consider what other impacts of Oil and Gas developments the Board would like to mitigate or minimize. Clint noted well water testing and mentioned that there should be a distinction between intermittent and start up processes and issues that may arise from ongoing operations. Pete noted dust mitigation, hours of operation and noise after hours, and lighting. Diann concurred with Pete. Annette noted waste disposal including water; Pete also noted waste storage. Annette asked what Federal Regulations may already address waste storage.

## **F. PETITION AND COMMUNICATION FROM THE AUDIENCE**

Julie opened the meeting to public comment.

Susan Beug, Red Lodge – Her biggest concern is water quality. She would like to see base line water testing by a 3<sup>rd</sup> party prior to the start of drilling activities; believes this testing would protect both the land owner and Oil Company. She noted the American Petroleum Institute recommends testing of domestic wells and open water within one mile of the drill site.

Becky Grey, Red Lodge – Believes setbacks are important and recommended setback requirements of 1320' from residents, hospitals, and schools and 500' from surface water and wells. With horizontal drilling she believes these setbacks are feasible.

Carol Nash, Bridger – Is concerned about flaring. She would like to see plan for capturing gas beyond the initial flaring period and limiting initial flaring to 2 weeks. Believes valuable resources are lost in the flaring process and that is also a health hazard and Public Health issue. She believes noise is concern, but is not sure what can be done about it. Carol noted it was "up to us to protect landowners" as the Board of Oil and Gas has stated that is not their job.

Deb Muth, Red Lodge/Roberts – Is concerned about waste disposal and open pits. Would like to see that open pits are not allowed and that a closed loop system is required so waste water is recaptured and best practices are instituted to reuse water. She would also like to see a requirement for a full impact statement for Oil and Gas developments beyond the environmental assessment.

Bill DeGrout, Red Lodge/Roberts – She is concerned about protecting property values and noted there is documentation of reduced property values in the Marcellus Shale region because of concerns about well water.

Julie Holzer – Likes the language on page 1 of the draft Regulations to "minimize, where possible, impacts....on government services and infrastructure" and would like to see that language reiterated in the Oil and Gas section. She also proposes the Board consider requiring Oil and Gas Companies to follow the "best practices" for operations, identify substances used in the process, have emergency plans for spills and wildfires, and work with emergency responders especially fire departments.

## **G. WRITTEN COMMUNICATIONS**

Pete's letter attached.

## **H. REPORTS FROM PLANNING BOARD MEMBERS AND COMMITTEES**

None

## **I. STAFF REPORTS**

It was noted that the Mangy Moose Minor Subdivision Preliminary Plat is on the Commissioners' Agenda Monday at 10:00. The Board discussed skipping the December meeting. Pete moved to skip the December meeting; Diann seconded; motion carried. The Board thanked Diann for her for service as this is her last meeting as a Planning Board member.

Annette asked if Staff would gather information on current regulations that Oil and Gas operations are subject to.

8:50 Gene moved to adjourn; Clint Second; motion carried unanimously.

November 15, 2015

Carbon County Planning Board,

I would like this entered into the record, as part of either October's subject matter, or November's. The first part is a generic response to us as a recommending board. The second is subject specific.

I am a total proponent of responsible development, either commercial or residential. My reluctance to support conditions/or recommend approval, to a one lot subdivision in October, was not for any reason in opposition to the applicant's project or new home. On the contrary, I was sympathetic to their unfortunate experience of not being informed of the recorded restriction on the property. And I am one hundred percent in favor of them being able to lift that restriction, and proceed. Although I am not privy to the details of their purchase transaction, I can state that full disclosure is imperative in any transfer of real property. It is incumbent upon all the parties involved in any conveyance of real property, to disclose any known facts, material or otherwise, affecting the property. I have no knowledge of that particular sale, rather this letter is an umbrella reminder to us as a recommending body. If we as a board recommend, or the county commissioners approve, a project with multiple conditions for approval, then two things need to be taken into account. 1. The financial imposition placed on the applicant to accomplish these conditions. 2. The counties resources to enforce and maintain the conditions. While certain conditions are required to be recorded, and letters of credit/bonds are required in others, some conditions such as landscaping, road maintenance, or water management, to name several, may or may not have a mechanism to insure compliance. So hypothetically: to recommend a dozen conditions, all twelve should have an accompanying explanation of how the governing body, or applicant, intends to follow up and enforce each. It may better serve applicants, as well as the county, to encourage projects to submit along with their applications, specific time frames and mechanisms for completing all, maintaining all, and paying for all, required or recommended conditions of approval. Gray areas should be eliminated before the project comes to the governing body for review. Those responsibilities go both ways. I will give an example of my point. Subdivision A goes before the governing boards for approval. One of the conditions for approval is that the applicant install a large French Drain to gather and slowly distribute rain and snow run-off. The drain and all of its laterals are constructed at substantial costs, and drawings are submitted for the record. In case 1 the governing body accepts the applicants word that the applicant or subsequent homeowners will maintain the pond and drain mechanisms. Two years later both the pond and drain pipes are clogged and no one has worked on them since they were constructed. In case 2, the same scenario, but this time the governing body requires a bond or cash for the governing body to maintain the French Drain. Applicant provides \$10,000 in cash for an estimated twenty year maintenance plan to be performed by the governing body. Two years later, the governing body has the money, (or spent it), and the pond and pipes are clogged, and no one has worked on them since they were constructed. My point here is follow up. If the governing body does not have the budget to follow up, then the governing body needs to insure that someone pays for, and coordinates follow up. The above scenario is not a made up example, this actually did occur.

My other concern is fire and emergency service. I believe we should review the allowance of cash contributions in-lieu of tangible requirements. If only the establishment of a home owner's association, (HOA), is necessary in order to require fire suppression apparatus, then perhaps the

establishment and recordation, of a HOA, should be mandated in specific situations. Fire systems can be either throughout the entire structure/building, or be limited to 'hot spots'. Dry hydrants or underground storage are other possible systems. While I am aware of the substantial costs of such systems, the safety of the public is paramount. Inclement weather, or difficult approaches, may delay emergency responders the time necessary to save the home, but fire suppression requirements might give the occupants those few extra seconds to evacuate themselves out of harm's way. Additionally I do not believe any approach, driveway or otherwise, should be allowed unless the fire and emergency service vehicles have a reasonable expectation of reaching the structure. Grading and switchbacks are also expensive, but getting to the victims far outweighs the investment required. I am in no way suggesting we over-govern our citizens here in Montana. I am suggesting that as a public board, we do have a responsibility to provide awareness of options for the public's health, safety, and welfare.

The dialogue and discussions in our October meeting were productive and educational. I am confident we as a board will continue to examine thoroughly the items put before us.

Pete Critelli