



# Planning Department

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## MINUTES

### PLANNING BOARD

The Powell County Planning Board met in a regular session on Thursday, February 6, 2020 at 1 PM.

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

**Members Absent:** None

**Staff:** Carl Hamming, Kathryn McEnery

**Public:** Dianna Robinson, Brady Christensen, James Powell, Ralph Phillips, Lori Yount, Kayo Fraser, Marilyn Mueller, Michael Torok, Kevin Brunet, Dana Brunet, Andy Adamek, Phil Murphy, Sam Hobley, Tim Olsen, Lisa Olsen, John Molendyke, Charlotte Molendyke, Joe Bensick, Scott Wolff, David Phillips, Dawn Phillips, Lynne Stanley, +4

**President Hirsch called the regular meeting to order at 1:05 PM.**

#### **Agenda Item #1 – Attendance**

With nine members being present, a quorum was established.

#### **Agenda Item #2 Approval of Agenda**

The Board made no changes to the Agenda and approved with a motion by Member Manley that was seconded by Member John Beck.

#### **Agenda Item #3 – Approval of Minutes**

Member Manley motioned to approve the January minutes as submitted. Vice President Pierce seconded the motion and the Board voted nine to zero to approve the Minutes.

#### **Agenda Item #4 – Non-Public Hearings**

**Nash FC**

Mr. Hamming presented the overview of the request from the Nash family and their surveyor, Ken Jenkins. Mr. Hamming began by discussing the history of the request as it was discussed at a previous meeting when discussing the Thompson FC. This is due to the fact that the land the Nash family would like to convey to their daughter was created by an earlier exemption from subdivision via an Occasional Sale exemption in 1985. Mr. Hamming discussed the desire of the Nash family to have their daughter move back to their property so that she can keep an eye on them as well as work in Helena. Ms. Lynne Stanley of Montana Northwest Company confirmed the family's intentions and reminded the Board that the Nash family submitted letters as part of their application to express their intentions for their daughter to own a piece of land and move back to their property.

Mr. Hamming gave a brief overview of the consultation provided by Tara Depuy of MACO that the Planning Board has the authority to consider previous exemption use when deciding whether to permit a proposed FC, but that the County should not completely prohibit applicants of a FC who have used exemptions in the past. The County Planning Department and Planning Board is currently working to make this edit within its rules and regulations and adhere to current statutes.

Member Manley made a motion that the proposed FC was not an attempt to evade subdivision review. Member Hall seconded the motion. The Board voted eight to zero to approve the Family Conveyance, with conditions, as requested by the Nash family and their surveyor, Ken Jenkins. Member Pierce abstained from the vote.

### **Agenda Item #5 – Public Hearings**

#### **Whitehall Trucking and Towing CUP – Andrew Adamek on behalf of Kevin Brunet**

President Hirsch opened the Agenda item by reading through the Public Hearing procedure and reminded the public to direct all comments and questions through him. Mr. Hamming began by introducing two visitors from the Waste Management and Remediation Division of DEQ. They briefly introduced themselves and their area of expertise within the DEQ as far as junk vehicles and licensing for commercial vehicle graveyards. Mr. Hamming then gave an overview of the request for the CUP as well as the history of the application from November 2019 to the January Planning Board meeting at which the CUP request was tabled by the Board. Mr. Hamming stated that public notice had been published on the County webpage as well as notice published in the January 22<sup>nd</sup> and January 29<sup>th</sup> editions of the *Silver State Post*. Notification letters of the hearing had been mailed to adjacent landowners.

Mr. Adamek submitted an application on January 16<sup>th</sup> on behalf of Mr. Kevin Brunet for a CUP *to expand the current land use to include operation of a commercial tow truck and recovery service to the public from his home and the existing outbuildings on the parcel. The commercial use may include tow truck storage and secured temporary storage of recovered vehicles on the parcel in existing outbuildings and/or within fencing and new signage for business identification and operating hours.*

Mr. Adamek proceeded to address the Planning Board members as well as his intention to address the concerns of the public that had been mentioned in various letters to the Board. Mr. Adamek began by discussing the importance of the County's existing Growth Policy as it enables the County to implement Zoning and Development Regulations and stipulate the requirements of a Conditional Use Permit (CUP). He continued to state Mr. Brunet is simply looking to expand his residential use to allow occasional use of his wrecker that would be primarily stored in his garage. Mr. Brunet is not seeking permission to construct any new buildings or operate a junkyard. Mr. Adamek informed the Board that Mr. Brunet sold Whitehall Trucking and Towing, but still has permission to conduct business with them to use their yard store various tractor trailers at the site.

Mr. Adamek stated that the petitioner agreed with the Planning Staff's finding that cited the DEQ in that on-site contamination from potential leaks and contaminants has not been a major issue at other commercial towing operations. Further, he stated that it a potential what-if, but should not be a serious concern from neighbors.

Mr. Adamek stated that the proposed business fits the County's Growth Policy as the proposed business within the Deer Lodge Planning Area promotes home occupation businesses and cottage industries. He also stated that the business will not change the character of the neighborhood as the Brunet's will still be occupying their home for residential purposes.

Mr. Adamek said that if Mr. Brunet needs to temporarily store a vehicle on his property, the State Statute requires that the vehicle(s) be secured or stored behind a 6' high fence. If the public needs to visit the vehicle, they would only be able to visit the site during standard business hours, 8am-5pm, Monday through Friday. Mr. Adamek stated that Mr. Brunet was open to the possibility of erecting the fence on the north side of the garage if he is required to temporarily store vehicles on his property. As for letter (g) within the Staff Report, Mr. Adamek was

unclear what the Planning Staff was recommending as it was somewhat vague in regards to what it was proposing to minimize impacts to neighbor viewsheds.

Mr. Adamek told the Board that light pollution should not be a major issue as Mr. Brunet will store the wrecker in his garage as well as idle it in there to warm it up. He cannot control the time of day that he would be called, but he does not anticipate many calls and intends to be a good neighbor that will minimize noise and light pollution, especially if called in the middle of the night. Mr. Adamek finished by stating that in his personal view, the Planning Staff's report did not substantiate a need for conditions to be applied to an approval of Mr. Brunet's CUP, but due to the desire of Mr. Brunet to be a decent and willing resident, was willing to adhere to conditions of approval. Mr. Adamek distributed an edited version of the proposed conditions that Staff had recommended to the Planning Board, specifically items #3 and #5.

Finally, Mr. Adamek questioned how much weight questions and comments should be considered, especially if they signed a petition against the CUP, but live miles away from Mr. Brunet's property.

President Hirsch asked if the Board had any questions for the petitioners.

Member Pierce asked Mr. Adamek if he would clarify the language within the application that stated the wrecker 'shall' idle in the garage versus 'may' idle in the garage. He also asked Mr. Adamek to read the statute for further understanding of what the State requires for a junk vehicle yard and the specifications for the fence. Mr. Adamek discussed the potential that Mr. Brunet may need to erect the fenced yard for temporary storage.

Member Hall asked the petitioners about the proposed conditions and to clarify their intent to temporarily store vehicles on the property. Mr. Adamek further stated that they proposed a change to #5 to follow along with the County's regulations for notice of non-compliance. Member Hall also asked Staff about precedent and there was a discussion regarding the process for review of each CUP and that each CUP is evaluated by its own merits.

Member Wagner asked the petitioners to clarify what type of fencing would be erected if needed to store vehicles for a temporary amount of time. They stated that a chain-link fence would suffice and that Mr. Brunet was offering to build a fence if that helped the cause for the CUP and minimize concerns of the neighbors.

Member Mannix asked about the #5 proposal from the petitioners and there was further discussion about the County adhering to the general notice for non-compliance versus the more stringent version as proposed by Staff within the Report. The Board felt more comfortable with the 30 days language as written in the rules and regulations.

President Hirsch opened the public hearing portion of the meeting.

Dr. Murphy asked the Planning Board which members had visited the site or driven past the residence. Dr. Murphy also asked for clarification on the stipulation that the proposed condition would allow temporary storage for a maximum of three *business* days. Also asked about Member Wagner's question for the types of fencing that would be permitted for the secured storage lot. He also asked about the dimensions of the garage and if a tractor trailer could fit in the garage. Finally, Dr. Murphy stated that other neighbors are also concerned that an ugly business or intrusive business could devalue neighboring properties.

Lisa Olsen questioned the Board about requiring a commercial approach onto Sam Beck Road. Mr. Hamming stated that the County maintains Sam Beck Road after the junction with Boulder Road, but this was disputed by the Lisa Olsen. Mr. Hamming stated that the pre-existing approach would not require any action from the County to change it from a residential to commercial approach.

Scott Wolff stated that he was from Iron Horse towing of Missoula and was in attendance due to an invitation from Ms. Yount, the neighbor of the petitioner. Mr. Wolff went through a list of questions and comments for the Board's consideration. He asked if the petitioner will split and divide the tractor trailer at the scene or tow them as a unit. Petitioners stated that it will depend on the wreck. Mr. Wolff stated that wrecked tractor trailers never leave

his yard within three business days. And he questioned why Mr. Brunet would drive 75 miles away from his residence to drop tractor trailers in Whitehall as it would be inconvenient. Mr. Wolff also stated that a tractor trailer setup would not fit in Mr. Brunet's current garage and that the State requires there be sufficient space for two units to be securely stored at the business and he questioned if Mr. Brunet could provide this at his home. Mr. Wolff said that trailers are occasionally carrying loads with bad odors, especially if they start to rot and the neighbors would not like this. Mr. Wolff mentioned that the Brunet's would need to be able to have available staffing for their operation if the public needed to visit their property during business hours. Finally, Mr. Wolff stated that as part of the rotational system, they are called and can't be selective if the MHP requires that a broken down RV be hauled away. Sometimes, owners are not interested in recovering broke down RV's and there is a lengthy process for the towing business to work with the state to change the title and scrap the RV. Mr. Wolff also said that in his professional experience, no towing business only did class c, heavy-duty towing since there are many more opportunities for light-weight vehicles.

Kayo Fraser stated that he was speaking on behalf of Marilyn Mueller, as she was an 84-year-old woman who lived on the property due to the quiet nature of the neighborhood. She is concerned about having to live next door to a commercial operation, as it will disturb her quality of life. She already had an issue with a disturbing experience with the lights from the wrecker in the middle of the night. She's concerned that there are inconsistencies in the application and they should be addressed and questioned before granting a CUP. Stated that it will clearly affect the traffic on the road and the viewshed. Finally, said that she's not against the type of business, simply where it's being located.

Sam Hobley asked the Planning Board if an approved CUP is transferred or if the property is sold. Mr. Hamming clarified that typically, a CUP runs with the land and that all employees and future owners are required to adhere to the conditions of approval if they continue to operate the business. Any substantial change would require a new CUP and public hearing. Mr. Hobley also stated that neighbors would be concerned about vandals sneaking onto the property if vehicles were being stored on the property.

Mike Torok, a real estate agent from Bozeman who represented Mr. Brunet when purchasing his property, asked Mr. the public if they had driven by the Whitehall operation as it is very clean and organized. He also said that Mr. Brunet is only looking to conduct two to five jobs per month.

Lori Yount identified herself as one of the adjacent landowners that would be directly affected by the proposed business. She asked the Board to consider that the future is unpredictable and no one knows how busy Mr. Brunet's business could be. She asked if the petitioner had been approved for the rotation system and he said that he has been approved by MHP. She's also concerned about the inconsistencies between this application and what was previously submitted and claimed by Mr. Brunet. She also said that the horse trailer on her property is only temporary as she'll be using it in the winter and thus it won't provide a privacy shield from his proposed yard. She also does a lot of work in her yard and can his property from many angles. Ms. Yount spoke about her concern that the water flowing near her property is part of the Cottonwood Creek watershed that has cutthroat trout in it as confirmed by Grant Kohrs Ranch. Finally, Mr. Yount expressed concern about the potential that leaks on machines can sometimes appear days later and wanted assurance that fluids are drained at the scene of a wreck. The DEQ did state that the fluids do have an economic value and are often drained for their value.

Dr. Murphy voiced concerns about the nearby drinking wells becoming contaminated by the operation. He also asked Mr. Hamming to summarize his conversation with Mr. Fickler as far as his agreement to allow Mr. Brunet to temporarily store trailers at his business. Mr. Hamming informed the Board about his conversations with Mr. Fickler.

Kayo Fraser wanted to ask the real estate agent about his knowledge and information provided to Mr. Brunet about the CUP process, but he had exited the meeting.

Mr. Wolff stated that on his property, leaking vehicles are an issue and stated that vegetation cannot grow on parts of his yard.

The Brunets stated that this is their residence and they want to keep it clean for their own personal enjoyment and they continue to work to clean it up from what the previous owner had done to the property.

Member Williams asked for clarification regarding the process to trash/scrap an abandoned vehicle and Mr. Wolff provided his insight and said the entire process takes three to four months.

Mr. Hamming offered the statistics of the rotation system calls from MHP for 2019 in the Deer Lodge area.

Member Pierce made a few comments and observations to the Board and public. He stated that technology had substantially improved over the past 20-30 years and diesel trucks are now much quieter than they used to be. In fact, it's hard to hear them idling from 75-100 feet away. Member Pierce also stated that the noise pollution from trucks driving by on the highway or interstate is much great and impactful than a neighbor idling a truck on an adjacent property.

Member Hall wondered aloud if the Planning Board had ever denied a CUP during his time on the Planning Board. Member Hall thought the Growth Policy highlighting and promoting home-based businesses as a good thing for the Deer Lodge Planning Area, but he wondered if the conditions could help alleviate the potential issues for the neighbors. He proposed allowing no temporary storage on the property and requiring Mr. Brunet to park all other vehicles, trailers and wrecks at other businesses.

Mr. Adamek offered a rebuttal statement to the concerns and questions of the public. He stated that the Brunets will be residents of the property first and foremost. They don't want fluids leaking on their land. They don't want to hurt the property value of their home or their neighbors. Mr. Adamek said that Mr. Brunet has been a successful business operator for the past twelve years and has never been in non-compliance. He also stated that temporary storage on the property needs to be an option and part of an approved CUP for the Brunets. He admitted that one cannot see into the future and one cannot control the weather, but these what-if scenarios present infrequent circumstances and rare events. Mr. Brunet will not be conducting a lot of business from his property. As far as the agricultural character of the neighborhood, Mr. Adamek referenced Mr. Klapan's letter that described several commercial/non-residential properties near the Brunet property.

Member Hollenback clarified with the Brunets where abandoned and broken RVs would be towed. Mr. Brunet said they would go to Whitehall.

Mr. Olsen questioned why the Brunets need any storage on their property if Mr. Fickler granted him temporary storage. The Brunets stated that they need to be able to conduct the business and operate things from their property at 207 Sam Beck.

Member Beck asked the petitioner if they were willing to do an enhanced privacy fence, but the petitioners stated that they would not be required to erect such a fence under State statutes.

President Hirsch closed the public hearing portion of the meeting and took a five-minute break.

Member Manley started to make a motion, but withdrew it after wanting to continue the conversation about potential conditions of approval.

Member Pierce motioned to approve the CUP with the following conditions:

- I. *The petitioner abides by all representations, testimony, and materials submitted during the application and hearing process, to the extent those items were not negated by the Planning Board, as well as they are not inconsistent with the spirit or letter of explicit conditions to the Conditional Use Permit.*
- II. *If necessary, the petitioner secures all other applicable business permits and commences operations within twelve months or applies in writing to the Powell County Planning Department for an extension that may be granted up to twelve months.*

- III. *Apart from the single Class C commercial wrecker, the petitioner will not store wrecks, commercial trucks, tractors, trailers, and/or abandoned vehicles for commercial purposes on his residential property at 207 Sam Beck Road for a period of time longer than three business days beginning as soon as the vehicle(s) is/are parked on the petitioner's property.*
- IV. *Storage of junk vehicles, private or commercial, on the property at 207 Sam Beck Road, will not be permitted under this CUP. The petitioner would be required to obtain a new CUP as well as secure all necessary State licenses.*
- V. *If the Planning Department receives questions or concerns regarding the operations of the business or otherwise determines or suspects that the petitioner is not in compliance with this CUP, the Planning Department shall notify the petitioner of any inconsistencies or violations in writing with a notice requiring compliance within 30 days.*
- VI. *Pay any remaining fees, including public hearing notice, notice to adjacent owners, or any consulting fees.*
- VII. *The petitioner will abide by all State and Federal rules, laws and regulations.*

Member Manley seconded the motion.

Member Hall motioned for an amendment to edit #3 to prohibit any temporary storage of commercial vehicles on the property. President Hirsch called for a second and there was none so the motion to amend failed.

President Hirsch called on a vote of Member Pierce's motion and asked Mr. Hamming to review the proposed conditions of approval. The Board voted eight to one to approve the motion with conditions.

### **Phillips CUP for Second Residence**

President Hirsch announced the next agenda item, the Phillips CUP request to build a second residence on their property off of Greenhouse Road. President Hirsch asked Mr. Hamming to give an overview of the CUP request.

Mr. Hamming informed the Board that he had been in contact with Mr. David Phillips for the past several months discussing his different options to move back to his father's land. Mr. Hamming gave an overview of the request in which Mr. Phillips is seeking permission to build in the southwestern corner of the property near the former gravel pit. He will access the residence with an extension of the gravel pit road. Mr. Hamming discussed the County's role with the gravel pit and then turning it over to Sherm Anderson to dig some more gravel before he reclaimed the property. Recently, as agreed in the 1980s, the County signed a quit claim deed to return the property to the Phillips family.

Mr. David Phillips talked about the site visit he conducted with Chad Lanes and his engineer from WET and they were not concerned with the water table or Tin Cup Joe since the test well did not hit water within 9' of the surface.

The Board asked Mr. Phillips to clarify the diversion and irrigation on the property. Mr. Phillips explained their stock right and irrigation infrastructure for the property. Mr. Hamming also discussed the future potential for the Phillips to execute a Boundary Relocation to encompass the new residence if the property lines around the gravel pit were to be relocated.

President Hirsch opened the Public Hearing. There were no public comments and he closed the public hearing.

Member Hollenback motioned to approve the CUP, with the three conditions recommended by Staff in the Report. The motion was seconded by Member Hall. The motion passed nine to zero in favor of approving the CUP.

### **Agenda Item #6 – Continued or Tabled Business**

#### **FC Criteria**

Mr. Hamming drafted an updated version of the FC criteria to follow along with Tara Depuy's advice. As the Board saw no edits or concerns, they recommended that Planning Staff prepare a formal version for their consideration at the next Planning Board meeting.

**Agenda Item #7 – Planning Board Comments**

Member Mannix asked about the proposed FAS near the vet clinic and FFA building on the north side of Deer Lodge. Mr. Hamming informed the Board about his knowledge of the proposed site.

**Agenda Item #8 – Staff Comments**

- a. County Attorney – Ms. McEnery discussed the ongoing negotiations concerning the MRA.
- b. Planning Staff – Mr. Hamming stated that they may postpone the next meeting until April if nothing urgent is received by the Planning Department.
- c. Other - None

**Agenda Item #9 – Public Comments**

None

**Agenda Item #10 – Announcement of the February Meeting**

President Hirsch announced the Planning Board would hold their next meeting on March 5<sup>th</sup> or April 9<sup>th</sup> at 1 PM.

**Agenda Item #11 – Adjourn**

President Hirsch adjourned the meeting at 4:50 PM.

Respectfully Submitted,  
Carl Hamming  
Powell County Planning Director

President Rick Hirsch

Date