



# Planning Department

Powell County Planning Department 409 Missouri Ave., Suite 114  
Deer Lodge, Montana 59722 406.846-9795 [planning@powellcountymt.gov](mailto:planning@powellcountymt.gov)

## MINUTES PLANNING BOARD

The Powell County Planning Board met in a regular session on Thursday, January 9, 2020 at 1 PM.

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

**Members Absent:** John Beck, John Wagner

**Staff:** Carl Hamming, Kathryn McEnery

**Public:** Will Danforth, Paul Thompson, Lori Yount, Kayo Fraser, Alex Fraser, Marilyn Mueller, Kevin Brunet, Dana Brunet, Kelly Leaver, Phil Murphy, Sam Hobley, Bob Rase, Tim Olsen, Tracy Klapan, Jack Andersen, Mike Stenberg, Sarah Johnson, Dana Launderville, Ricki Yount, Yvonne Hanson, Joe Bensick, Shawn Goudy, Ron Snow, +1

**Member Manley called the regular meeting to order at 1:05 PM.**

### **Agenda Item #1 – Attendance**

With seven members being present, a quorum was established.

### **Agenda Item #2 – Annual Meeting – Election of Board Positions**

Member Pierce made a motion to nominate Rick Hirsch as President of the Planning Board. Tracy Manley seconded the motion. The Board voted seven to zero to make Rick Hirsch the new president of the Planning Board. Member Manley motioned to nominate Bill Pierce as vice president of the Planning Board. Rick Hirsch seconded the motion and the Board voted seven to zero to make Bill Pierce the vice president of the Planning Board.

### **Agenda Item #3 Approval of Agenda**

The Board made no changes to the Agenda.

### **Agenda Item #4 – Approval of Minutes**

Vice President Pierce motioned to approve the December minutes as submitted. Member Hall seconded the motion and the Board voted seven to zero to approve the Minutes.

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

#### **Rock Creek Cattle Co. – Multi Unit Employee Housing CUP**

President Hirsch announced the agenda item and turned it over to Mr. Hamming to announce the public hearing notice. Mr. Hamming gave an overview of the CUP request to construct two ten-unit dorm buildings for seasonal employee housing at Rock Creek Cattle Co. The development is proposed to be located off of Spring Ranch Rd. where some existing developments are already serviced for gas and electric. The proposed development would be situated outside of the RCCC PUD and located within Zoning District #4.

Member Hall asked why the proposed CUP did not have a WUI manual submitted with the application. Mr. Hamming explained that he offered the packets to people applying for a Development Certificate, but did not habitually offer them to CUP applicants, but that is something that could change in the future. Mr. Hamming informed Mr. Stenberg and Mr. Snow about the WUI manual and said he would send it to them for their reference.

Mr. Stenberg, of Hyalite Engineering, gave an overview of the proposed development. He stated that the development was situated near existing development and out of the way of the pivot and agricultural production of the ranch. The Board asked MR. Stenberg if the new development would be sprinkled and he stated that that hadn't been determined yet. Vice Chair Pierce asked about the septic. Mr. Stenberg said a new septic system would be installed at a central location to service both the buildings. Mr. Snow discussed the need for housing to continue to attract quality club employees by offering them housing on the property. The resort has 25 employees in the winter and increases to 125 employees in the summer. Mr. Snow specified that these employees would be for the club operations and not the cattle operation. Member Williams and Mr. Snow discussed the current system for trash disposal. Mr. Williams informed Mr. Snow about different options for paying for a central dumpster that would be serviced by the Rural Disposal District and not need to be hauled by a private company to the Deer Lodge landfill. Mr. Snow said he would follow up with Mr. Williams regarding this service.

The Board asked about the current employee housing that RCCC offers. Mr. Snow stated that they currently own roughly twenty beds in Deer Lodge spread between a couple of rental houses and the former DownTowner motel. Member Mannix asked Mr. Stenberg for justification as to the location of the proposed housing. Mr. Stenberg stated that topography and the existing developments with services made it an ideal location on the property. Member Hirsch asked about the status of the Spring Ranch Road as he thought Spring Ranch was a County road on the original GLO maps. Mr. Stenberg said he was unaware of the road ever being a County road, but that he would look into it with Mr. Hamming.

Mr. Eric Klapan asked the Board about tax assessment and consequences to the bottom line of RCCC if they chose to offer employee housing as part of their salary rather than rent the units to interested employees. Mr. Hamming clarified that the Department of Revenue would be made aware of the new construction, but it is their decision how they determine the tax classification and assess the improvements. Mr. Hamming stated that the Planning Board cannot regulate or condition the cost of the housing offered to RCCC employees by the resort.

Member Pierce requested that Hyalite Engineering clean up a misprint in the CUP application. Member Pierce made a motion to approve the CUP with conditions and application revision. Member Hollenback seconded the motion and the Board voted seven to zero to approve the CUP for Rock Creek Cattle Co.

### **Whitehall Trucking and Towing CUP – Kevin Brunet**

President Hirsch stated the agenda item and asked that Mr. Hamming inform the Board regarding the public hearing notice. Mr. Hamming stated that public notice had been published on the County webpage as well as notice published in the December 25<sup>th</sup> and January 1<sup>st</sup> editions of the *Silver State Post*. Notification letters of the hearing had been mailed to adjacent landowners.

Mr. Hamming gave an overview of the history of the application and his communication with Mr. Brunet concerning the CUP. Mr. Hamming stated that they had originally discussed the need for a CUP to operate the towing business from land Mr. Brunet was interested in purchasing from Mr. Swant on the north side of Deer Lodge. Mr. Brunet submitted an application in mid-November for a CUP to operate his semi-truck towing business from the property. Mr. Brunet proposed to build a garage to house his wrecker. However, the land purchase deal dissolved and Mr. Brunet did not purchase the property. Mr. Brunet stated that he was looking around at other properties near Deer Lodge to operate the business.

At the December meeting, Mr. Hamming informed the Board of the application and Mr. Brunet's request to withdraw the application from the Agenda, as he no longer was able to purchase the property. The Planning Board tabled the request to allow Mr. Brunet to bring another public hearing before the Board after he closed on a different parcel of property that he was interested in acquiring to reside and operate the satellite towing business.

After the December Planning Board meeting, Mr. Hamming contacted Mr. Brunet to inform him that he would need to update his CUP application and submit new material for the Board's consideration as he sought to acquire a CUP to operate his towing business from his recently acquired property at 207 Sam Beck Rd. Mr. Brunet stated to Mr. Hamming that he would rather address all questions and comments at the Planning Board meeting and would not be submitting any new material for his application. At the Planning Board meeting, Mr. Hamming stated that he decided to proceed with the public hearing to encourage more information be disclosed and to continue the CUP permitting process as Mr. Brunet was already advertising the business from his property.

The Planning Board discussed their attitude that it would be hard to vote on the CUP, as there was little current and accurate application material for them to consider.

President Hirsch asked Mr. Brunet to speak on behalf of his request for a CUP. Mr. Brunet introduced himself and stated his intention to operate the towing business for wrecked semis as he owns and operates a 50-ton wrecker. He will store his wrecker in his garage when it is not in use. He would be hauling wrecks to Whitehall or Missoula and not be storing them on site at his property. Mr. Brunet stated that he was interested in this property off of Sam Beck Road because there were no covenants, but that he was unaware of the need for a CUP. He thought a Conditional Use Permit was required at the Swant property because of the covenants. Mr. Brunet also stated that he had spoken with Mr. Todd Fickler regarding permission to store a wreck on his property at the I-90 plaza. Mr. Brunet said he had permission, but that it was not a written agreement.

President Hirsch opened the public hearing portion of the meeting.

Dr. Murphy asked Mr. Hamming to clarify the type of zoning. Mr. Hamming discussed the Deer Lodge planning area or 'donut' around the city limits of Deer Lodge. Mr. Hamming detailed the county zoning that exists for acreage minimums and subdivision densities, but does not distinguish between agriculture, commercial and residential land uses. Mr. Hamming explained the purpose of a Conditional Use Permit and why it is necessitated by a land use change. In this case, Mr. Brunet is looking to operate a commercial towing business from his residential property.

Alex Fraser stated that he was speaking on behalf of Marilyn Monroe, 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.

Kelly Leaver stated to the Board that Mr. Brunet is an upstanding citizen and that one cannot currently even tell that a business is being operated from the property. It is very low impact. It is also bringing a good, new business to the Deer Lodge Valley. Something that is greatly needed to further economic development in the Deer Lodge area. Further, she stated that Mr. Brunet would not be storing junk or wrecked vehicles on the property.

Joe Bensnick asked the Board why is does the Board/community say no to every new business that tries to move into Deer Lodge. He voiced frustration that the community is not more welcoming and stated that we need to support the businesses that we have like the lumber mill.

Dr. Murphy stated that neighbors are concerned about the business because it may lower their property values if they try to market and sell their land and have a commercial business next door.

Dana Brunet stated that she and her husband would not be storing vehicles or wrecks on their property. She said that they want to live and retire on the land. They are not looking to junk up the property or rent it out to other businesses; the land is for them and their home. She also stated that there is a garage for the wrecker to be stored out of sight and that this is a satellite operation for Whitehall Trucking and Towing. They will still be bringing wrecks to Whitehall and just the two of them will operate the business. There is potential that if they are extremely busy, they may hire a temporary, part-time employee from the local area, but that is not anticipated at this time. In addition, to address concerns about wrecks being stored on their property, when a call comes at 2am and they are hauling it back towards Deer Lodge, they will be storing it at Todd Fickler's business.

Kelly Leaver stated that she lives on Kentucky Avenue and has taken pride in beautifying her property, however, her neighbors have trashed their yards and she has to accept it, as she has no control over their private properties. She cannot always control what her neighbors do or do not do. She said that she thinks this new business will be good to bring new people and new money to the community.

Bob Rase asked about the process if the business were to transfer hands. He was wondering if the CUP runs with the land, business, or individual. Mr. Hamming clarified that it depends on how the CUP is conditioned with approval, but typically, the CUP exists with the LLC that applies for it.

Tim Olsen told the Board that land on the east side of town and I-90 is residential and agricultural, not commercial. He is concerned about the precedent that could be set if the wrecker business is permitted and then additional businesses want to establish on the east side of the valley.

Kayo Fraser said that she is not challenging Mr. Brunet's character or their desire to bring new business to Deer Lodge, but there are reservations about this proposed location. They drive horses on Sam Beck Road and worry about heavy truck traffic getting in the way or being dangerous. There is concern that bringing a wrecker business to the neighborhood will change the character. Kayo reiterated that she is supportive of a new business moving to the Deer Lodge area just wants to see it located in the appropriate location.

Dana Brunet spoke to the character of the neighborhood that they have tried to maintain as the previous owners had numerous bird feeders and they have continued to supply them. They have had deer and birds in the yard and continue to house the cat that Mr. Weaver used to care for.

Shawn Goudy asked about the specific driveway that the Brunets use for the wrecker and access to their property and garage. Mr. Brunet informed the Board regarding the driveway and said he has used it roughly twenty times in the past month and nobody has complained to him yet.

Sam Hobley asked Mr. Brunet and the Board if there was consideration for leaking contaminants from the wrecks. He was concerned that a wreck could have a leak that was not noticed at the scene of the accident but may spill on Mr. Brunet's property if he was temporarily housing it on his property. Mr. Brunet said that there are numerous state laws and regulations that require fluids be drained before hauling a wreck along the highway and that both he and his wife have hazmat certifications and deal with the state on safety concerns and licensing.

Lori Yount mentioned that she had submitted a letter to the Board with questions. Thus far, some had been answered, but she still wanted to ask what Mr. Brunet meant when he said that he might "occasionally" haul a truck to his property and store it for a minimal amount of time. Lori also asked what traffic comes to the property to inspect the wreck such as insurance claims adjusters. Mr. Brunet said that insurance agents typically come quickly as they want to get the paperwork moving along quickly and that Mr. Brunet does not anticipate storing wrecks on his property much at all as he has a deal with Todd Fickler to store trucks on his property.

Yvonne Hanson stated her frustration that she has heard Mr. Brunet's has said uncomplimentary things about her name, business and reputation around town. She stated that she is not anti-truck as he supposedly claimed because her husband is in the trucking business. Yvonne stated that during the cold winter months, she is familiar with the need for trucks to warm up and that no neighbors want to hear Mr. Brunet idling his truck for 15 minutes at 2am. She had advised against Mr. Brunet purchasing those properties because of the residential nature of the land and her concern that it would upset the neighbors. She is supportive of the business but wants it to go in the right location.

Dr. Murphy asked the Board why they are currently operating without a permit. The Board discussed the unfortunate reality that they often have to inform applicants after they have begun building/operating about the CUP process as not everyone contacts the Planning Board to inquire about regulations. The Board spoke of their desire that if the public hearing continues at the February meeting, they will have more information to make a decision at that time.

Dana Brunet said that she'd help Kevin Brunet properly fill out and submit the CUP application paperwork.

There was discussion by the Board and public asking what happens if the CUP request is denied. The Board and Mr. Hamming discussed the options for the petitioner that include appealing the Board's decisions as well as challenging the ruling in district and supreme courts. Mr. Hamming also answered Mr. Brunet that the County has previously delivered cease and desist letters, and worked with landowners to either secure a CUP or inform them that they cannot operate without a CUP.

Member Pierce discussed his personal preference to wait on deciding until next month when they can gather more information and allow the Brunets to submit a proper application.

Eric Klapan discussed his pride in the community and concern for infringing upon private property rights. He would encourage the petitioners to get their paperwork set and submit the agreement with Mr. Fickler to the Planning Department and Planning Board.

Mr. Brunet stated his belief that there are already some commercial businesses on the east side of the interstate. He said he has seen numerous gravel trucks drive up and down Sam Beck Road and that his business will add very little traffic to the road.

With no additional comments, chairperson Hirsch closed the public comment portion of the meeting.

Member Manley made a motion to table the request for a CUP to allow the Brunets time to submit a proper application and allow the Board to review the request with more information. Member Pierce seconded the motion and the Board voted seven to zero to approve tabling the request.

Member Hall voiced his frustration with holding the public hearing despite having little information in the application.

#### **Agenda Item #6 – Non-Public Hearings** **Thompson FC**

Mr. Hamming presented the overview of the request from the Thompson family and their surveyor, Will Danforth. Mr. Hamming began by discussing the history of the request as it was originally submitted in spring of 2019, but pulled from the agenda shortly before the meeting. This is because the land the Thompson family would like to convey to their two sons was created by an earlier exemption from subdivision review when the Streitz family executed a Family Conveyance in 2009.

Mr. Hamming informed the Board about their decision to table the matter at the December meeting to allow Mr. Thompson's son to submit additional legal material and enable the County Attorney and Planner to consult. Mr. Hamming gave an overview of the consultation provided by Tara Depuy of MACO that the County was overextending its authority by creating a total prohibition of applicants requesting permission for a FC if the land had previously utilized an exemption from subdivision review. Tara specified that the Planning Board have 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.

County Attorney McEnery added additional detail about the specifics of the FC criteria and a couple of items that will need to be addressed and clarified within the criteria that the Planning Board and Department should work to correct and adopt over the next couple of months.

Member Hall made a motion that the proposed FC was not an attempt to evade subdivision review. Member Manley seconded the motion. The Board voted seven to zero to approve the Family Conveyance, with conditions, as requested by Mr. Thompson and his surveyor Will Danforth.

#### **Nash FC**

Mr. Hamming gave a brief update of the proposed Nash FC that the Board had been made aware about by Member Pierce. Mr. Hamming stated that he had spoken with Ken Jenkins, surveyor and agent for the Nash's, and they had agreed to wait until the Thompson FC was sorted out and the criteria issue dealt with. Mr. Jenkins

wanted to leave the item on the Agenda to ensure the Board members were aware that the exemption rule was not an isolated case for the Thompsons. Mr. Hamming informed the Board that they would likely see the application and request at their February meeting.

**Quigley BR - Elliston**

Mr. Hamming informed the Board of the history of the Quigley BR. The County Commissioners had approved a petition to abandon portions of an alley in Elliston, however, they required that an updated COS be filed and recorded with the Clerk and Recorder. This proposed BR would satisfy that condition of approval. The BR would also clean up several property line issues such as lines running through existing buildings and not following accepted fence-lines between neighbors.

Member Manley motioned to approve the Boundary Relocation as not an attempt to evade subdivision review and Vice President Pierce seconded the motion. The Planning Board approved the motion by a vote of seven to zero.

**Agenda Item #7 – Continued or Tabled Business**

**FC Criteria**

Mr. Hamming will work to draft an updated version that the Planning Board can review. Mr. Hamming stated that it would be the Department’s goal to help the Board develop, and ultimately recommend, updated FC criteria to the County Commissioners for them to adopt the FC criteria as part of the Subdivision Regulations for Powell County.

**Agenda Item #8 – Planning Board Comments**

Member Pierce discussed the idea of having a ‘cheat sheet’ of informational items to help the public understand the need for various permits and what the zoning does and does not allow.

**Agenda Item #9 – Staff Comments**

- a. County Attorney – Ms. McEnery discussed the ongoing negotiations concerning the MRA.
- b. Planning Staff – Mr. Hamming thanked the Board for their conduct during the heated public hearing and to the new officers for being willing to serve in chair positions.
- c. Other - None

**Agenda Item #10 – Public Comments**

None

**Agenda Item #11 – Announcement of the February Meeting**

President Hirsch announced the Planning Board would hold their next meeting on February 6<sup>th</sup> at 1 PM.

**Agenda Item #12 – Adjourn**

President Hirsch adjourned the meeting at 3:45 PM.

Respectfully Submitted,  
Carl Hamming  
Powell County Planning Director

President Rick Hirsch

Date