

RICHLAND COUNTY PLANNING AND ZONING COMMISSION MEETING

MEETING MINUTES

June 25, 2018 @ 3:30pm

Richland County NUTTER BUILDING

Meeting was called to Order by Chair, Commissioner Duane Mitchell at 3:40 pm.

Present: Duane Mitchell-County Commissioner, Loren Young-County Commissioner, Shane Gorder-County Commissioner, Stephanie Verhasselt-County Clerk & Recorder, Adam Smith-County Public Works Director, Kale Petrik-citizen member, Devin Bell-citizen member, Marcy Hamburg-County Planner & Zoning Administrator and via phone Tara DePuy, MACo/PTC Land Use Attorney.

Approval of Minutes of Preceding Meetings: Commissioner Mitchell entertained a motion to approve the June 12, 2018 minutes; *Commissioner Gorder moved to approve the June 12, 2018 minutes as written; motion was seconded by Commissioner Young; motion carried.*

Conflict of Interest: It was noted there were no conflicts of interest.

Staff Report: Marcy reported she had provided to the Commission with a copy of the Draft regulation in a 3-ring binder. She took the opportunity and put together an outline that could be used for the future on “How to create a Part 1 Zoning District”, an application form for a conditional use permit, and an outline for the County Planner’s web page on the Zoning, she will make sure the information is available on the web site prior to a public hearing. .

Chair reads public comment guidelines: It was noted no audience member were present, therefore the public comments guidelines were not read.

Public Comment Including Comment on Agenda Items Not Scheduled for a Public Hearing: It was noted no public comments were provided.

Old Business

- **Draft Bylaws – discuss, review, and consider adoption:** Commissioner Gorder asked if the changes were highlighted, and included in the tracking on the side. Marcy said yes. She stated the changes shown on the side of the document in the tracking area; the underlined in blue is new and the crossed out ones in red would be deleted. The first change in the draft was in Article IV, all agreed with the change. Loren noted the page numbering is off. Marcy stated she will make sure the numbering is correct for the next draft. Article V all agreed with the changes. Adam stated the Article numbering was missing for Amendments number (VII), Marcy said she will make the change.

Commissioner Young asked if Tara had an opportunity to look at them. Marcy stated no, Mike Weber (County Attorney) reviewed the changes. Commissioner Young noted then an attorney has looked at them; Marcy yes. Commissioner Mitchell asked if the Bylaws could be changed once they were adopted; Tara, yes they can be changed. Adam asked by majority vote; Tara stated she did not have the one with the changes, the one she had any amendments would be by the Article for making amendments.

Commissioner Mitchell entertained a motion to adopt the Richland County Planning and Zoning Commission Bylaws. *Commissioner Gorder moved to approve and adopt the Richland County Planning*

and Zoning Commission Bylaw as drafted and to have the Amendments Article be stated as “Article VII – Amendments”; motion was seconded by Commissioner Young; motion carried.

New Business

- **Review and discuss McGlynn Reservoir Citizen Initiated Planning and Zoning District Development Pattern and Zoning Regulations**

Marcy stated the following documents were provided to the Planning & Zoning Commission (PZC) members in a 3-ring binder:

- 1) Staff Report dated June 12, 2018,
- 2) copy of Draft II (dated 5/18/18) McGlynn Reservoir Citizen Initiated Planning and Zoning District Development Pattern and Zoning Regulations,
- 3) email document dated May 1, 2018 from Richard Scheetz,
- 4) written comments from Devin Bell,
- 5) written comments from Raymond Bell,
- 6) written comments from an attorney submitted by Raymond Bell,
- 7) a Landowners meeting Agenda dated April 27, 2018
- 8) Landowner meeting minutes dated April 27, 2018,
- 9) a meeting notification letter that was mailed to the landowners, dated April 20, 2018
- 10) a Landowners meeting Agenda dated April 20, 2018,
- 11) a map provided by Yellowstone Disposal that shows the location of the oil wells sites in Richland County,
- 12) Landowner meeting minutes dated April 20, 2018,
- 13) a meeting notification letter that was mailed to the landowners, dated April 10, 2018,
- 14) a contact list of the landowners within the District, the letters were mailed, emailed to those listed,
- 15) copy of Draft I (dated 4/10/18) McGlynn Reservoir Citizen Initiated Planning and Zoning District Development Pattern and Zoning Regulations,
- 16) the Landowners Exhibit Map (showing the District boundaries
- 17) document providing the MCA codes for Part 1 County Planning and Zoning Commission,
- 18) and the County Commissioners’ Resolution No 2018-006 that created the District.

Marcy noted the following resource materials were available: 1) the Montana’s 2017 Land Use and Planning Statutes handbook, 3) Richland County Growth Policy, 3) Montana’s Growth Policy Resource Handbook, and the 4) APA “The Planner Dictionary”.

Marcy stated the first few pages if the staff report provides the legal and back ground information on the zoning requirements and that the draft zoning regulations needed to be in conformance with the County’s Growth Policy; and the report includes comments from the stakeholders (landowners) meetings. She suggested going through each section to make sure the regulations were acceptable for the County. Marcy drew the PZC’s attention to page 5, she went over the first section regarding the public hearing requirements.

Section I – Title, Creation and Adoption:

Section II – Intent and Purpose:

Marcy explained the PZC will need to go through this section in detail to make sure it is in Compliance with the Growth Policy, those are shown in the green. She changed the wording a little to fit the regulations but believes the intent is still the same. The ones in blue are from the landowner meetings and from the submitted comments. The ones in black are from the samples she used and some were also in

the Growth Policy; the sample regulations used were from four different counties. Marcy recognized how much Tara had helped her through the whole process and with the drafting regulations. She expressed how much she greatly appreciated Tara's assistance and guidance.

Marcy stated the first two bullets in the staff report are the staff notes on the draft regulations, the two following breaks are the comments from the landowners meetings and those from the submitted comments. The report is broken down into three different sections. She asked if the PZC would like to read through each one or just discuss them; majority agreed to discuss them. She anticipates this process to take the PZC at least two meeting, may be three meetings to discuss the draft regulations as they need to be careful and make sure this what the County would want. Commissioner Mitchell stated they are pretty concise, he read #10.

Commissioner Young stated he had to leave meeting.

Adam noted the list was huge, Marcy stated this was why she wanted them to go through and determine which ones were best for this district and the ones that fit the County. Marcy asked if number #1 was a good fit; Commissioner Mitchell stated it was a pretty general statement then other are more specific. Adam stated some seemed to be redundant; others agreed with him. Marcy reminded everyone to keep in mind they need to discuss the ones that are in Growth Policy, they would need to consider leaving them in to make the regulations are in conformance with the Growth Policy. Like number #2, which should be broken into two different numbers, there would be a new #3 stating "To maintain and improve agricultural production farmland", then the numbering would continue thereafter.

Marcy asked if the group felt all three agricultural ones were good fit, they asked if they could be grouped together. Commissioner Mitchell asked if the statement "protect and preserve agricultural land" was too broad; Marcy agreed, she said it could stay in.

Commissioner Mitchell asked about 5 & 6 if they preserve the McGlynn Reservoir would that not be the same as for the Beanie Pier Creek or does it need to specify Beanie Pier? Commissioner Gorder stated they are two separate areas. Devin stated they are two different drainages, one goes to Beanie Pier Creek and there other goes to the McGlynn Reservoir. Adam asked if it could be simplified, to just say drainage and watersheds? Commissioner Mitchell thought it might be too broad, he didn't know. Marcy stated they could put number 5 & 6 together, Adam suggestion combining #9 & 10 with them. Tara suggested combining 9 & 10, then to add "including but not limited to McGlynn Reservoir, Beanie Pier Creek", Marcy agreed, and the PZC members liked Tara's idea. Tara stated she was not trying to tell them what to do. Marcy stated in the minutes from the landowner meetings, the intent to protect and preserve the surface, spring and ground water, they were concerned with the ground water being contaminated up there. Devin stated it was the shallow wells. Marcy asked if the PZC would still like to combine 9 & 10. Devin stated as long as it is included in there.

Commissioner Mitchell stated #8 is to "protect and expand the ability to address water quality issues on an individual basis or at the community level". Adam asked what it meant. Tara asked if it was part of the Growth Policy; Marcy, yes. Tara stated when we talk about having regulations consistency with the Growth Policy, you can change the wording, it just can't be contrary to the Growth Policy; she agreed this one was a little odd as listed. She stated you would want to protect the water quality issues and didn't think the zoning regulation would be the mechanism to "expand" the ability to address it. Marcy asked the PZC if they wanted to eliminate it. Tara felt this was already addressed, in some of the previous ones that were already discussed, but it would be up to the PZC. Marcy asked the PZC members if they are okay with eliminating #8.

Commissioner Gorder stated he would be, however 5, 6, 9, & 10 does not talk about exsiting water wells, it just talked about surface, spring and ground water quality. He felt they need to preserve what water wells are there for human consumption, for drinking, that it's not listed anywhere else. Marcy asked if it

would be in #9. Tara stated groundwater wells would be under groundwater. Commissioner Gordet noted that it doesn't spell it out, the groundwater could be from the rain shed, it doesn't say wells. Marcy suggested changing the wording in 9 & 10, to combine them, and to include "surface, spring, and groundwater wells and water quality". Commissioner Gorder thought it should be separate because when they are talking about springs, those springs are shallow, that's what they are referring to the spring and ground water quality but the wells are drilled, he estimated them around 200 to 300 in depth; the wells should be separate. Adam suggested to state "surface, spring groundwater and aquifer quality; Commissioner Gorder agreed.

Kale asked if the Intent and Purpose, the whole section, is more like to setup the rules, to back those on. Commissioner Mitchell stated it was what they are doing. Devin stated these aren't rules yet, they are waiting until they're done.

Commissioner Gorder asked Tara if it was understood to cross #8 out, Tara yes; then he asked Marcy if she came up with some wording. Marcy suggested eliminating numbers 5 & 6 and to keep numbers 9, & 10; change #9 to state "To preserve and protect, surface, spring groundwater aquifer quality", and #10 to state "To preserve and protect existing natural lands, watershed and drainage to the existing stock dams, including but not limited to the McGlynn Reservoir and the Bennie Pier Creek". Devin asked if the word "wells" was going to be added in there anywhere. Commissioner Mitchell suggested adding "private wells". Marcy suggested adding it to #9. "surface, spring groundwater aquifer quality, and private water wells". Commissioner Gorder suggested private water well and aquifers. Adam stated he would be okay with it.

Marcy said #9 would then be "To protect and preserve the surface, spring, groundwater, aquifer quality and private water wells". Adam asked if there was a community water system up there, Commissioner Gorder said it was in the Thiel Subdivision area, but not within this zoned district.

Marcy asked if the group was okay with #7; the PZC members appeared to agree. She then asked about #11; the PZC members appeared to agree. Commissioner Mitchell stated if #11 meant that this zoning was going to enhance property values. Marcy asked if the PZC was okay with #12, which was from the Growth Policy. Tara suggested taking out the word "county", as the regulations would not be county wide; Marcy agreed; the PZC members also appeared to agree.

Commissioner Mitchell asked if #13 wasn't a given since they have to protect the public health and safety; Marcy agreed and that it is throughout the Growth Policy.

Commissioner Mitchell asked if #14 was out of the Growth Policy; Marcy, yes. Tara questioned if it did? Marcy, sorry it was a suggestion from one of the landowners, in one of the submitted written comments. Adam stated it was a long sentence. Tara suggested ending the sentence after "future generations" and to delete "in case of land transfers to new owners that could hurt ecosystem or public health" she did not think it was needed. Commissioner Mitchell stated it was pretty much already said by stating "a healthy ecosystem for future generations:"; he went on to say there was going to be land transfers for generation to come. Commissioner Mitchell asked if #14 was going to end after "future generations".

Tara stated there's a whole legal thing about enacting regulations where it restrains someone's ability to transfer land, if left, this could be read to mean that. She went on to say you couldn't sell your land to a new owner and you can't vouch they wouldn't hurt the ecosystem. There's times where people will need to sell their land for economic reasons and the regulations when in place are going to do exactly what this says, the regulations are going to protect the land and not allow people to hurt the ecosystem or public health. She didn't think it needs to say the rest of that sentence.

Commissioner Mitchell asked if everyone was okay with that; the PZC members appeared to agree.

Commissioner Mitchell stated #15 looks like mitigation; he didn't think they could restrict the use of the land if it can be mitigate; it appeared PZC members agreed. Tara asked Marcy if #15 was from the Growth Policy; Marcy yes. Tara suggested massaging the wording, to state "to ensure that development does not create hazards", she was trying to think how this would apply; for instance if the County had wildfire interface in areas, fire hazard area then you might want to reduce development in those areas because of the natural hazard. She thought the sentence could be wordsmith because the sentence did not read well.

Commissioner Gorder asked Marcy if she remembered where it was stated in the Growth Policy, he wondered if there is another part to it. Marcy said it was for the Mitigation Disaster Plan to develop setbacks near oil and gas well extraction points, in the Land Use section of the Growth Policy. Tara asked if it could be reworded, something like "To limit development in areas of man-made, natural or other hazards"; Marcy agreed. Tara stated "setbacks" maybe a better word instead of "limit" this way they could require setbacks for development. Marcy said she would work with Tara on the wording for #15 for the next meeting.

Commissioner Mitchell stated #17 is better stated than in #18, he didn't think they needed have "to preserve wildlife and wildlife habitat" because #18 says "To ensure wild animals and domestic and livestock..."; isn't that what it is doing in #18 so that wildlife and domestic would co-exist, and it says "which may affect agricultural lands and natural habitats". Commissioner Gorder was concerned with listing only a few of the wildlife and missing others, the list does not include the ducks or geese. He thought it should be just wildlife in general instead of listing a few of the animals then missing others. Stephanie said it does say "such as" it's not listing them all, either way would be fine. Commissioner Mitchell suggested taking bison out, because the County doesn't want the bison here.

Tara stated she knew this came out of the Growth Policy, but she was not sure with zoning regulations if you would be cooperating, coordinating with the State and Federal agencies. She thought that maybe it could be stated "To preserve wildlife and wildlife habitat that may affect agricultural lands and natural habitats"; she thinks #17 was good enough and to get rid of #18; Marcy agreed with Tara. Commissioner Gorder stated then livestock is missed, it wasn't listed anywhere else, he suggested to list livestock in #17, and list both wildlife, wildlife habitat and livestock. Commissioner Mitchell wanted to added "domestic animals". Tara state what #18 is saying is to have wildlife and wildlife habitat co-exist with domestic animals and livestock. Commissioner Mitchell stated which they do throughout the county.

Devin stated there are a lot of people who hunt in that area, there are a lot of animals that come that way when they are migrating, people don't what to see tall fences, but then they want the fence to keep away the garage from coming into their area. They need to make sure there is a regulation down the line that can allow for the movement of those animals, so the recreation can stay the same.

Tara asked so what you are trying to say is that you want the co-existence between wildlife and domestic animals, she then suggested the statement say "To encourage the co-existence between wildlife and domesticated animals"; some of the members agreed. She went on to say, the zoning regulations would have the allowed uses and conditional uses, if they had a use that was going to fence an area that would prohibit the wildlife corridors, then they could perhaps put in a condition on that particular zoning application, that they would have to build a certain type of fence that would allow wildlife to pass through but keep the domestic animals inside.

Marcy suggested combining #17 & 18 to state "To preserve wildlife to co-exist with domestic and livestock that may affect agricultural land and natural habitat." Tara suggested adding the word "animals" after "domestic". Marcy read "To preserve wildlife to co-exist with domestic animals and livestock that may affect agricultural land and natural wildlife habitats"; this would take place of both #17 & 18. Commissioner Mitchell said it sounded reasonable. Marcy re-read the suggested statement; the PZC members appeared to agree with change.

Marcy asked about #19. It appeared the PZC was okay with the way it was worded. She asked about #20, she stated there are existing communication towers. It appeared the PZC member was okay with the wording. Marcy then moved on to #21 and 22. Then on the top of page 6, #23-25. Marcy stated the County does have a noxious weed plan, so that would fit for what is required by the County. She noted *23 “to protect the Yellowstone Corridor”; Commissioner Mitchell asked if it could be listed with to protect the Reservoir and Beanie Pier Creek; Commissioner Gorder agreed that it could all go together; Marcy agreed.

Marcy explained the landowners wanted this zoned area to be an agricultural and residential district. She asked if the County was in an agreement with this. Devin asked what the commercial was up there now. Marcy said when she looked on the Montana Cadastral and Google Earth web sites it looked like there was only one area that looked like it could be commercial. But she was not familiar with the properties in the district; those who lived in the area, such as Commissioner Gorder, Kale, and Devin may know more about the area. When she looked at Google Earth there was only one site that looked to her like it could be a commercial or industrial site. Devin asked if it was Waldo’s place; Marcy, yes. Devin didn’t know what they were doing there. Commissioner Gorder thought they may be license through the State for a disposal site for salt water injection.

Marcy referred to the map she had and confirmed it was the Waldo property. Kale asked if it was the property that has all the tanks on it; Devin, yes. Marcy said she put a map in the Dropbox link she sent to the PZC that identified the location of what was in the district; the map was not included in the packers. Devin stated he the copies of the maps in his packet; the map were passed around. Marcy stated the map shows the location of what she thought was the existing houses, oil well sites, where the reservoir is and other water formation (which looked like holding ponds, or something), she did not find the location of the communication towers. Devin stated they were in the location of where the little box is located on the map which is MDU’s parcel.

Adam asked why it doesn’t have commercial and industrial development, if it was only for agricultural and residential. Marcy stated it was a good question, the next Section is regarding the map and she would like the PZC to look at map and discuss the uses. Adam stated it looks like they would be grandfathering the existing businesses in and then not let any others in. Marcy explained the regulations would allow for the existing uses and the few that would come in through the conditional use permit. Commissioner Mitchell noted it would be just like the disposal site would be considered commercial. Devin stated he did not know if an agricultural based business would be commercial; he asked about home based businesses. Marcy stated they would be either an allowed use or they would be a conditional use.

Marcy asked if the group was okay with #25. Devin asked if there was an agricultural business that would fall under commercial, like a seed company. Marcy, yes it would be commercial.

Adam asked if they could still conditionally approve for a commercial or industrial use. Marcy said only if they are listed as a Conditional Use, if they are not listed in the conditional uses, on page 14. Tara stated the regulation (section VII-B) does state all commercial and all industrial, so then all could apply for a conditional use permit. Marcy stated the PZC would need to discuss the conditional uses that are listed, because if they leave it as stated then any commercial or industrial could apply. Devin asked if they could say no “Strip Clubs”.

Section III – District Boundaries:

Marcy stated she contacted Interstate Engineering, as they were the ones who prepared the “Landowners’ Exhibit” map, she asked if they could modification the Title of map. And that map would need to be included in the regulations. For the Zoning District the landowners wanted to identify the area agricultural and residential. Commissioner Gorder stated the map looked okay. Marcy asked the PZC

members if they were okay with identifying it as agricultural and residential. Adam stated only if an conditional use permit. Marcy said if that is what the PZC agrees on; the PZC members appeared to agree the map was okay.

Marcy explained the boxes on the map are for the information that needs to be placed on the map and for the Clerk & Recorder recording, when it is filed at the Clerk & Recorder Office along with the regulations. Marcy asked Tara for conformation on the filing of the regulations at the Clerk& Recorder Office. Tara agreed, she asked Stephanie if the public could get to them, Stephanie, yes, they get one paper and 2 mylar copies, and they are scanned in. Tara said as long as no one can walk off with the original; she said there should be at least two originals, one at the Planner Office and one at the Clerk & Recorder Office, because people do walk off with them. Stephanie stated the documents are scanned in; the record would still be there. Tara stated then yes they could be on file at the Clerk & Recorder Office.

Marcy stated the District Boundary section pretty much explains itself.

Section IV – Establishment of the District:

Marcy stated this section is the legal process, and is pretty much standard; that during one of the meetings with the Landowners there was a comment to include “the findings of fact” to the first paragraph in section IV-C. She asked Tara to comment on this, if it should be left in or take it out. Tara thought it was okay, but that it was in the wrong order, that is should state “the Planning and Zoning Commission shall determine and make findings of fact for the appropriate classification of use”, there are two different acts the PZC will be making, they would make a determination and then make findings of fact. Marcy asked if they were backwards? Tara stated it should be stated as “shall determine the appropriate classification for that use in findings of fact.” Marcy asked if the PZC member if they was okay with it; everyone appeared to agree.

Section V - Definitions:

Marcy stated the definitions are from the samples, the County’s Growth Policy, and some were taken from the Planning Dictionary.

Devin asked about the agricultural use, the landowners talked about the livestock in the meetings; as it reads now they are allowing for, at one time they were talking about a 1,000 animal units, was it decided to take it out and allow whatever? Marcy stated if you read through the landowner meeting minutes, from her understanding, she could have interrupted it wrong; the land owners didn’t want to allow anything that was allowed under CAFO. She thought it was stated that way in the regulations, if it’s not clearly stated then they would need to consider changing it. Devin stated that was his point, he wanted everyone here to understand that; that if they had 1,000 cattle it would be okay. Marcy asked the Commissioners what their thoughts were on it; Commissioner Gorder indicated he was okay with it. She then asked Stephanie and Adam.

Adam asked if the landowners wanted to be able to have those? Marcy said they did not want to include those that qualified as a CAFO operation, like a feed lot. Tara asked if someone could propose it as commercial under the conditional use permit; Marcy agreed that was her understanding. Adam stated if they wanted one then they would have go through the Conditional Use Permit; both Tara and Marcy agreed it would be able come in as a commercial business.

Devin asked what is considered not commercial then, 10 cows, 50? Marcy stated anything that is not defined as a CAFO. Devin asked if you above the 1,000 animal units, if you go above that then you have to apply for a conditional use permit, under a 1,000 then you would not have to apply, an animal unit is a 1,000 pounds. Commissioner Gorder asked if it was defined, he said Marcy said earlier what it was defined as. Tara stated there is a whole list of things, she started to read the Montana Code Annotated for

a CAFO. Marcy said she would put the State statute in the Dropbox link. Adam asked if they wanted to define the number. Devin stated they wanted to use the CAFO requirements, to make it easier.

Tara stated she is looking at the CAFO MCA 75-5-801, she said there are actually two different levels of a concentrated animal feeding operations, there's large and there's medium. Tara suggested the PZC take a look at the definition and that the regulations and consider it to say either large or medium. She noted how many cattle were allowed for the large and medium operations. Marcy said she thought the group wanted to allow the medium sized but not the large. Tara said then they would have to put in "large" in the definition, they would be commercial then and would be able to come in under a conditional use permit.

Adam asked if they had under a 1000 cows, but 90 % were other people's cattle they were bring in, is it a commercial business then? Marcy stated it doesn't state the difference between whose cattle it just says the number of cattle. Tara stated they may have to define what commercial use is, for example sale, rentals, retail, wholesale. She said so if they had 999 cows and they liked looking at them and they weren't going to sell them, then that is not a commercial use. Devin asked if he had 999 cows wouldn't have to meet a conditional use? Tara and Marcy stated if it is an Allowed use. Devin asked if he owned the land and he wanted to let lease the land for grazing land and it's under 1,000 cattle, it's okay too? Marcy said that was the way she understood it.

Tara said a large CAFO with 500 hundred horses, if you were boarding 500 horses, she thought that would be commercial. Devin said he would probably agree with that. Tara stated it was a lot. Adam thought it was more like a feedlot then; Tara agreed. Tara noted under CAFO definition for a medium operation they could have 750 to 2,499 hogs, she asked if they would be okay with that; Devin stated he didn't think it would be an issue. Marcy asked the group if they wanted to change the regulations so that it does not meet a large.

Kale asked what the acreage would be; Commissioner Gorder said that it was not stated. Tara agreed didn't limit the acreage just the number of animals, they could have 37,500 to 124,999 chickens. Tara suggested for the next meeting to provide the PZC with a copy of the MCA, looking at it she would like everyone to know what would be allowed.

Devin asked if they could just say what they could have for each species, they wanted define it as CAFO because it seemed the easiest. Commissioner Gorder thought it was important to define what (how many animals) you could have. Tara said they could have 16,500 to 54,999 turkeys. Commissioner Gorder stated they wouldn't survive here, but it is a good idea to have the number defined in the regulations.

Marcy asked since it was getting close to 5pm if the group would like to stop and then schedule another meeting to finish discussing the draft regulations; everyone agreed.

Adjourn: Commissioner Mitchell moved to adjourn the meeting.

Duane Mitchell, County Commissioner
Chair of the Of the Richland County Planning and Zoning Commission

Date

***All Planning and Zoning Commission meetings and hearings are electronically recorded; if you feel there is an error in these minutes an electronic copy of this meeting/hearing is available upon request.