

RICHLAND COUNTY PLANNING AND ZONING COMMISSION

MEETING MINUTES

July 16, 2018 @ 3:30pm

Richland County NUTTER BUILDING

Meeting was called to Order by Chair, Commissioner Duane Mitchell at 3:10 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, 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 25, 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 stated she added the Zoning Commission information to the County Planner webpages on the County's website and the draft regulations and hearing information could be added to the website when or if the Zoning decides to hold 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:

- **Continue to review and discuss McGlynn Reservoir Citizen Initiated Planning and Zoning District Development Pattern and Zoning Regulations**

Commissioner Mitchell asked Marcy to proceed. Commissioner Gorder asked what page they left off on.

Marcy asked for confirmation from the Commission if they still had the documents that were identified at the last meeting. She noted that she provided a copy of MCA 75-5-801 for concentrated feeding animal operation, if not she had copies. Marcy stated at the last meeting they discussed the zoning district map, what existing uses were (shown on a map); she asked if the members had a copy if not copies were available.

Marcy noted the Commission left off on page 10, Agricultural definition, bottom part of the definition. She noted the following were available: MCA Planning statutes, County Growth Policy, APA Planner's Dictionary. She stated she forgot to mention at the last meeting the Richland County Subdivision Regulations were also used to define some of the Definitions, which was also available.

Section V-C Definitions:

#1. Agricultural Use - Marcy stated the first part of the agricultural definition was adopted by the County, in the Growth Policy and County Subdivision Regulations. The Commission left off on the bottom portion of the agricultural definition.

Commission Gorder noted when they left off there were comments from the public on the definition (CAFO) and the wording; he asked Devin if he remembered what was said, if they were going to stay with the MCA code wording or if they were going to change it. Marcy read “Agricultural uses does not include the raising of livestock under the requirements ...” She said anything that was not defined by the MCA definition would be allowed; she asked if they wanted to change to allow the medium sized ones.

Devin asked then under #3 the large anything under 1,000 veal calves would be allowed? Marcy said they would want to take a look at the numbers in the medium requirements; she went over the numbers listed in the MCA code for a medium sized operations. Devin stated when they were talking with everyone, everyone was looking at the 1,000 number for cows, when they had the meeting with the landowners, and it was Scheetz (Richard) that said maybe they should just follow the CAFO requirements. He said in talking with the landowners a few of them, the big thing they want was cattle, to be able to have up to 1,000 cattle; they really didn’t care if there were swine or turkeys in there. But if it was easier to just make a statement like “Agricultural use include up to 1,000 mature dairy, beef cows, veal calves, 100 horses, 1,000 sheep, 500 swine” they could throw the numbers out then get rid of the code or they could follow it. The big thing is people want beef cattle number up there.

Adam asked if they’re doing a 1,000 confined animal feeding operation, they’re supposed to be permitted by DEQ; members agreed. He has a problem with just making the numbers whatever they want to be that this (referring to MCA 75-5-801) supposedly was based off of some science, how much of an impact they would have to the water shed, and that’s exactly what the Commission is trying to protect in the Intent; Commissioner Mitchell agreed. Adam stated his opinion is it should stay in the regulations as it is written, they have to be permitted by DEQ. The Commission is trying to protect the watershed with all the other rules and this is the Intent. He didn’t know if they should just throwing numbers out there, it would contradict what they are after.

Commissioner Mitchell asked how big a feed lot could be to not be reviewed by DEQ review. Adam said it have to be smaller than the smallest number of a medium sized one, so they would be looking at 300 cattle. Marcy said it is 200 for a medium sized one. Adam noted that was for dairy cows. Devin asked what it would be for other; Adam, it looked like 300; Devin agreed that was what he understood.

Marcy asked Tara if there was an existing farm or cattle operation already out there and if they had more than what would be allowed they would be grandfathered in; Tara, yes but if they dropped below then they would have to comply with the regulations.

Devin stated there were no feedlots out there right not; there is one just outside of the district area, he didn’t know if that would even be considered a feedlot, space wise, what they have is some grazing land so maybe it is not even considered a feedlot.

Adam said he tried to do some research on it.

Marcy said if it is a commercial business they would be able to apply through a conditional use permit, she asked Tara if that was correct, if they left the definition in the regulations would it eliminate them altogether? Tara said they have a commercial use and they are not grandfathered in and it’s not allowed use then they would have to apply for a conditional use permit; but then they would be limited by the numbers; so if you are saying that agricultural uses does not include large then they could not go up over the 999 cows.

Devin asked what is keeping them from calling it large; both Tara and Marcy said there was nothing, it was up to the Commission. Devin said he would like to go with large (to not include them); some of the Commission members agreed. He went on to say then if they have to follow the DEQ rules, that’s State mandate. Devin said in talking with the neighbors they didn’t seem too worried about a 55,000 turkey ranch; Commissioner Gorder stated they didn’t have the climate for them. Devin thought the swine would

be a little issue but no one showed any concerns, it seemed people don't mind the smell of animals, than they do about garbage.

Commissioner Gorder stated as it's written right now, it's not defining large or medium; he said they would need a motion to. Marcy clarified they wouldn't need a motion as the regulations are only a draft; she said if the Commission is okay with identifying it as large, she suggested adding the word "large" is in the second line where it states "...requirements of a large concentrated...", she then read the statement as it would be written; this would eliminate the large CAFO and would allow medium ones. Devin asked for clarification, then it would eliminate the large; Marcy yes, but it would allow the medium sized ones. Devin asked what if they wanted to allow the large; Marcy recommended removing this whole paragraph; Adam agreed they could remove the whole thing. Marcy agreed if they removed it then any size operation would be allowed. Commissioner Gorder stated it was what they wanted; Devin agreed. Marcy asked for clarification, if the Commission wanted to remove the whole thing; Commissioner Gorder agreed. Devin said he could keep talking to all the neighbors up there, to see what their feelings are, the few he talked to that's what they said. Marcy asked the Commission again if everyone was okay with removing the last paragraph from the definition of agricultural.

Commissioner Mitchell said the ones they would be zoning out may raise an issue with it, like Adam said they're trying to protect the pond but they would have a feedlot above it. Devin stated if they are large then they would have to meet the DEQ requirements. Commissioner Mitchell said that is what those guys are saying, that they are meeting DEQ requirements. Gorder stated it's a double edge sword. Commissioner Mitchell went on to say what they are saying is they have better system than what they have with all the liners, cement and all, so he didn't know; they don't trust DEQ.

Marcy commented on what she is hearing is some of the Commission members are for it and some aren't. Commissioner Mitchell in his opinion it should go down to the medium instead of a large because then it would keep them down under a 1,000 at 999. Devin asked so if you go to medium size then it's 999, correct; others agreed that was correct; Devin went on to say he would be fine with that. Commissioner Gorder stated they would only be one animal short from the 1000.

Marcy asked again if the Commission would be okay with the way she worded it earlier, so that it does not allow for a large operation, she then re-read "Agricultural uses does not include the raising of livestock under the requirements of a large concentrated animal feeding operation(s) pursuant to Montana Code Annotated (75-5-801, MCA)." Commissioner Mitchell asked if it put a restriction on a medium then; Devin it would put the restriction on large. Marcy stated it would allow medium. Commissioner Mitchell stated for clarification then it would allow medium and it put a restriction on the large. Devin stated he would be fine with it; it also appeared the other Commission member were okay with it.

Commissioner Gorder asked Tara if it was correct the way they understand it? Tara said yes, it would allow medium but not large.

Marcy went over the following definitions:

#2. Agricultural Water Uses Facility - the definition was from the Growth Policy and Subdivision Regulations. The Commission members appeared to be okay with the way it was written.

#3. Allowed Uses - Commissioner Mitchell said it's the district regulations, Marcy agreed. The Commission members appeared to be okay with the way it was written.

#4. Bed & Breakfast - The Commission members appeared to be okay with the way it was written.

#5. Buildings - Marcy said even though they would not be regulating buildings, they still want to define it. Devin asked about building heights. Marcy said if they put in building heights then they would be regulating buildings. Devin asked about structure height? Marcy said again if they put in the height then they would be regulating buildings; then they would want to add in requirements on how high, distance and things like that. She said they (Tara and her) were under the understanding it was not what the group wanted; they didn't want to regulate how to build a building, and where they could be placed; just the use.

Devin said he thinking of something that would obstruct someone's view, example a dirt mound a 100 feet in the air, that these people are thinking about, can you say structure. Adam said not with the way it is written, not right now. Devin asked they not be over 50 feet or something similar, or is that forming an opportunity for a lawsuit. He asked if it could say we didn't want a structure over 50 feet high? Stephanie didn't think a dirt mound would fall under it (buildings, structures). Commissioner Young asked if you could create a new one, and call it aggregate over-burden, Devin said maybe not call it a building but add a new definition. Marcy said she didn't think it would be considered a berm, maybe a mound of dirt.

Commissioner Gorder asked Tara if she had seen anything in zoning, like around Gallatin County with the heights of the gravel or dirt mounds. Tara stated she did not think they regulated it because the gravel was only temporary. She looked at it and said if they wanted to put a height restriction it would have to be in Section VII, added a new subsection like (h), after Land Division; they would put in something that would restrict the height of a building berms, whatever it is. She is not sure what the definition would be, that it would be more of an actual regulations.

Commissioner Young stated he believed they would have big piles of aggregate over-burden and top soil, the piles could be incredibly high. Tara stated they could in the regulations could say any permanent buildings or whatever they want to call it; the gravel going to be high but it's going to up and down. Commissioner Young said they can't get much over aggregate over-burden and top soil. Commissioner Gorder asked if 20 feet for slope and grade, on page 20, it would go from surface to horizontal. Adam said he didn't know, Commissioner Gorder thought the wording could be slope and grade. Adam suggested having Tara or Marcy see if there are any other examples where it might have been done. Devin thought when he was looking on-line in the city there were height requirements, he thought they could have for anything, whether it's a building. Adam said in the cities there are, city zoning is setup more to restrict (regulate) those types of buildings.

Marcy asked if the Commission would like her to check into. Commissioner Gorder said having both Marcy and Tara to check into it to see if there is some wording that could be used and where it would be added, to talk about top soil, over-burden, gravel. Commissioner Young said he thought it should be over-burden and top soil, because the over-burden could be massive. Commissioner Mitchell said it would depend on deep they would have to go. Commissioner Young said they could have the piles a 100 foot high. Adam stated at the landfill the County has a couple good sized piles for over-burden. Commissioner Mitchell didn't know if they were over 100 foot, 25 or 30 feet; the thing is if they have house on the other side all they'll see is dirt. Adam stated he wouldn't like to look at dirt all day long. Marcy thought it might come under slope and grade, man-made slope and grades. She said she would check into it. It appeared the Commission members agreed.

Marcy did not think it would fall under buildings; buildings are more of a structure. Devin and Commissioner Mitchell stated there are also structures, it does say "Any structure supported by columns and walls..."

#6. Commercial Use: Marcy asked if the members were okay with the wording. Commissioner Gorder asked if it was out of our code. Marcy said it was out of one of the sample regulations. Commissioner Gorder asked about the definition for the county's Building Permits, if it matched. Marcy asked if the County has a definition for Commercial Use in the Building permits? Commissioner Gorder said he didn't know. Marcy said she would check with the Building Inspector, to make sure. Adam asked if it was defined in the County Subdivision Regulations; Marcy said she didn't think it was, the definition was from one of the sample regulations and out of the Planner's Dictionary.

Devin asked that if someone had a home business, the way this read, they would have meet the conditional use requirements. Marcy said if it is an existing one it is grandfathered in, if it's a new one they would have to meet the definition and the requirements. Devin stated so if some lady was selling candles out of her home she would have to a condition use permit. Adam stated it does say on #8 (page 14) they are allowed; Marcy agreed. Adam said there is a discrepancy with the footage, it says 3,000 square feet, and in Home Occupation it says 1,000. Devin agreed it would need to be changed.

Marcy asked if the members if they were okay with the wording for Commercial Use, and she will check with the Building permit, Codes, Inspector to see if there is a definition; it appeared the Commission members agreed.

#7. Communication Towers – Marcy stated this definition came out of the Planner’s Dictionary. Commissioner Gorder asked how they could define the height between a communication tower and an over-burden pile. Commissioner Young noted there were towers up there already. Commissioner Gorder agreed, his concern is if the new ones would have to follow the requirements. Commissioner Mitchell read the definition. Marcy asked if it could be for berms? Commissioner Gorder and Devin both said you would be dealing with the height. Commissioner Gorder said they are trying to put in a height restriction. Commissioner Young said they would probably go higher than that. Devin asked how it should be worded that towers are allowed without meeting a height restriction. Marcy said they are an allowed use, there would be no restriction on them. Commission members agreed they are an allowed use. Commissioner Mitchell thought the towers would be controlled by the FFA, if that is an emergency area they be so high; Commissioner Young, they have to have a beacon. Devin asked if they had a height requirement would the towers be exempt from the way the regulations read, because it’s an allowed use. Marcy said that was the way she understood it.

The Commission members appeared to be okay with the way it was written.

#8. Conditional Use - Marcy said this came from the sample regulations. The Commission members appeared to be okay with the way it was written

#9. District Map – The Commission members appeared to be okay with the way it was written.

#10. Dwelling Unit – Marcy said the definition came from the sample regulations and checked it in the Planner’s Dictionary. The Commission members appeared to be okay with the way it was written.

#11. Home Occupation – Marcy said this came from the Planner’s Dictionary. Devin stated they want the square footage to be same, up to 3,000 square feet. Adam said he saw it in a couple places. Marcy asked if it would be changed to 3,000; Adam and Devin said yes. Adam said in Section VII, #8, there is two places where it states the Home Occupation would be up to 3,000 square feet. Commissioner Mitchell stated 1,000 square feet is not very much. The Commission members appeared to agree that it should be 3,000 square feet.

#12. Legally Existing - The Commission members appeared to be okay with the way it was written.

#13. Lot or Parcel - The Commission members appeared to be okay with the way it was written.

#14. Manufactured (Mobile) Home or House – Commissioner Young asked if this not too old on the mobile homes, 1976. Marcy said this was a HUD requirement; Commissioner Young said when they talked about earlier the County (subdivision regulations) was going to change it to the age. Adam asked if the 1976 was an important date? Commissioner Mitchell asked if it was when they took the formaldehyde out of the installation; Adam said he was not sure but now they have to HUD certifications on how they are built. Marcy checked the wording it the County’s Subdivision Regulations and confirmed they are directly from the regulations. The Commission members appeared to be okay with the way it was written

#15. Natural Environment – Marcy said the definition was out of the Growth Policy and Subdivision Regulations. The Commission members appeared to be okay with it was written.

#16. Official Zoning Map - The Commission members appeared to be okay with the way it was written.

#17. Prohibited Use - The Commission members appeared to be okay with the way it was written.

#18. Setback - The Commission members appeared to be okay with the way it was written.

#19. Single Family Residential Dwelling - The Commission members appeared to be okay with the way it was written.

#20. Slope or Grade – Commissioner Gorder stated this is where they may want to put in the height requirements. Commissioner Young asked how many feet should it be, 15, 20,... Commissioner Gorder

said it should be 6:1. Marcy thought she had read somewhere about the percentage of the slopes. Adam asked if anyone knew what the FFA height restriction was up there; Commissioner Gorder is sure they have one. He went on to say that the towers up there have a flashing red light on them, so they must be at a height where they have to have them. Devin thought they could go on a base and have all the other. Adam said it depends on how far away you are from the runway. Devin thought they had a height, a base where you can start. Commissioner Young said you usually can put three stems in, that would be 90 feet. Commissioner Mitchell said the sub is about 25 feet from the ground. Commissioner Young guessed the towers were about 150 to 165 feet. Adam asked if they had to set it up and put it together. Adam asked who's rig it was; Commissioner Mitchell said he couldn't remember, maybe Newfield.

#21. Structure - Marcy said going through the regulations, that building and structure mean the same thing, they were identically the same thing. She asked the Commission if they wanted to leave both in or take one out. Commissioner Gorder suggested to take one out; Commissioner Mitchell suggested putting them together, with a slash between them. Devin asked how it was worded throughout it all, when you get to the regulations how is it worded. Marcy said it talks about both; Devin said then we want to keep both. Adam said you could combine, and put "Building or Structure". Marcy clarified then it would say "Building or Structure". The Commission members appeared okay with suggested change. Commissioner Gorder asked if she thought they were word for word; Marcy yes. Commissioner Gorder said the last part of the sentence in Building is not stated in Structure, "which may include an attached decking with having a roof." Marcy agreed they are little different. Adam said it looks like you are calling a building a structure and a structure a building. Marcy asked what definition the Commissioner would rather keep or both of them. She agreed they are not word for word. Commissioner Gorder said then there is Adam's point, when you start out with Building it says "Any structure" and then you read Structure then it says "Any building", he asked if maybe they didn't get switched around. Adam asked if a fence is considered a structure; Commissioner Mitchell said no because it is not "intended for shelter, housing or enclosure of any individual..."; he went on to say that it should be "Building or Structure", and that "Any building or structure..." and including the remaining definition of "Building". Adam said it seems a little confusing, if we use the word be are defining by using the word. Commissioner Gorder asked Tara about #21 & #5; she thought they could be just combined to be "Building / Structure" then state "Any structure or building...". The Commission members appeared to agree to combine them.

#22. Use - The Commission members appeared to be okay with the way it was written.

#23. Utilities – Marcy believed this is out of the Subdivision Regulations. The Commission members appeared to be okay with the way it was written

#24. Variances - The Commission members appeared to be okay with the way it as written **#25. Oil Well and Facility Pads** - Marcy said this is out of the Subdivision Regulations. The Commission members appeared to be okay with the way it was written.

#26. Zoning - The Commission members appeared to be okay with the way it was written.

#27. Zoning Administrator - The Commission members appeared okay with it was written.

#28. Zoning Enforcement Officer – Marcy said with the Zoning Administrator and Zoning Enforcement Officer allows the County to have two different staff or one person could do both. The Commission members appeared to be okay with the way it was written.

Section VI. Application of Regulations: The Commission members appeared to be okay with the way it was written.

Section VII. Regulations:

VII-A. Allowed Uses as a Matter of Right:

#1. The Commission members appeared to be okay with the way it was written.

#2. The Commission members appeared to be okay with the way it was written.

#3. Commissioner Young asked if the other crops would include alfalfa; Devin thought it should, Marcy agreed it would include all other crop. Commissioner Young stated maybe like marijuana. Devin asked about solar farm or something similar, like a bunch of solar panels, would it be an allowed use. Marcy stated it's not in the definition of agricultural use, these (#3) would fall under agricultural use; she asked for Tara assistance, solar would be under energy development. Commissioner Young stated if you have pipelines, you wouldn't be putting up solar panels, he checked it out. The Commission members appeared to be okay with the way it was written.

#4. Tara said they will have to add to, ""that do not fall under the definition of a large commercial feed operation." to be consistent with the definition. The Commission members appeared to be okay with the way it was written.

#5. The Commission members appeared to be okay with the way it was written.

#6. The Commission members appeared to be okay with the way it was written.

#7. The Commission members appeared to be okay with the way it was written.

#8. The Commission members appeared to be okay with the way it was written.

#9. The Commission members appeared to be okay with the way it was written.

#10. The Commission members appeared to be okay with the way it was written.

#11. The Commission members appeared to be okay with the way it was written.

#12. The Commission members appeared to be okay with the way it was written.

#13. Commissioner Young stated FFA will control them. The Commission members appeared to be okay with the way it was written.

#14. Commissioner Gordor asked when the roping arenas got added. Devin said when he talked to JJ, he would like to have it in there. The Commission members appeared to be okay with the way it was written.

VII-B Conditional Uses (Must Meet Condition Use Criteria):

#1. The Commission members appeared to be okay with the way it was written.

#2. The Commission members appeared to be okay with the way it was written.

#3. The Commission members appeared to be okay with the way it was written.

#4. The Commission members appeared to be okay with the way it was written.

#5. The Commission members appeared to be okay with the way it was written.

#6. The Commission members appeared to be okay with the way it was written.

#7. The Commission members appeared to be okay with the way it was written.

#8. The Commission members appeared to be okay with the way it was written.

#9. The Commission members appeared to be okay with the way it was written.

#10. The Commission members appeared to be okay with the way it was written.

#11. Adam asked how you would differentiate between this and a gravel pit. Marcy asked Tara during one of the conversations they had on the gravel pits, that it falls under mineral rights. Marcy asked if they should leave it or remove it. Devin said during the meetings with the land owners they wanted to go grab some gravel they could, to put it on their roads, and that's why the commercial use was added. Commissioner Gordor thought DEQ had a set amount a farmer/rancher could take; Adam agreed, that you are allowed to take 10,000 tons out of your land before you have to get a permit for it if it is for your personal use. Marcy said this was in one of the sample regulations.

Tara said for Part 1 Zoning you can regulate gravel, Part 2 County imposed zoning you can put a bunch of conditions on how you can regulate gravel pits. It is fine the why it is in the Conditional Uses, why did we

have the way it is in the Allowed Uses, why was “removal for on-site uses” crossed out and then added to Conditional Use for commercial. She likes the way it is written in the Conditional Uses, but in the Allowed Uses the on-site should be put back in. Marcy said the gravel pits in the Allowed Uses, if she remembered right, in the meetings with the landowners, like Devin was saying that if they want to extract gravel out of their owner property they could and move it around, without any issues cropping up. Tara said they could use on their own property, they can give it away, they just couldn’t sell it or trade it without getting a conditional use permit; both Devin and Marcy agreed. Marcy asked if this would work? Tara thought it should say “gravel removal for personal use” in the Allowed Uses because then you would have distinction between the gravel for your uses but if you are going to see it then it requires a conditional use permit. Adam said he was okay with it the change, he thought it should be clarified more.

The Commission members appeared okay with making the change.

VII-C. Existing Uses: The Commission members appeared to be okay with the way it was written.

VII-D. Prohibited Uses: Devin asked if they could go ahead and add things in, they had talked about things adult entertainment and facilities like that; now we are talking about structure over a certain height. Would that fall under prohibited uses; Marcy it could.

Tara said if the Commission is going to do things like setbacks under prohibited, she thought it would be fine, it could become problematic if they start saying they don’t want certain activities in the zoned area, and start listing them out. They would have to be very careful they are not in any way listing anything that could be found discriminatory or violate someone’s 1st Amendment Rights, free speech. It’s much cleaner to just leave it as it is now, if it’s not an Allowed Use or Conditional Use Permit then it would be a Prohibited Use; they would need to allow medical marijuana. She then said but they have “All other Commercial”. Commissioner Young noted the commercial greenhouses on #4, that would take care of the medical marijuana.

Tara said she did not know, that she would like them to talk it a little bit more about it, there is the broad statements for “all other commercial” and “all other industrial” that would pick up almost anything. Devin stated in talking about the structure over 50 feet. Tara said she would be okay with that since it would not be discriminatory of someone personal rights. She wanted the Commission to know that right now with the way the regulations were written that if she moved to Richland County and opened up a strip club and it’s a commercial business in the zoning district all she would have to do is come in and get a Conditional Use Permit.

Adam didn’t know if there would be any way they could say no to those things. Marcy said if they identify them as prohibited use, then yes they could. Tara said yes they could, but they would need to be a little bit careful, she is concerned about medical marijuana dispensaries, there are people who are disabled and have to have marijuana card. They would need to be careful so they are not discriminating against them if they are in the zoning district, that’s one she cautioned the Commission about not allowing. They could prohibit uses that may include strip joints, whatever they want to name it. Every time they get somewhere where your zoning regulations say that the regulations are discriminatory then they may lose that part of it, but not all of them just those particular requirements. Marcy stated Commissioner Young suggested one prohibit uses be adult entertainment; Tara said she would not have a problem with that.

Marcy said in one of the landowners comments had a few suggestions on the prohibit uses, one was the landfill, they wanted to know why they couldn’t prohibit it, she asked Tara to explain. Tara said it would look like the whole intent of creating the zoning district and regulations is to prevent the landfill and she thought it would give them (landfill) a better foot in the door to try to sue the County over the regulations. She’s not saying they would be successful, she didn’t know why the County would want to give them a reason to sue, what she was saying is that by saying no landfill it would start the fight. Commissioner Mitchell said because they would be targeting them; Tara agreed.

Marcy asked if they could put junk yards or if it was close to a landfill definition; Tara said no they are not called a landfill they would be called an automobile wrecking yard or facility, something like that, it’s not the same as the landfill. Tara stated she would recommend the Commission include definitions for

any prohibit they wanted to include. Devin said he would be okay with prohibiting junk yards. Marcy asked the other members. Commissioner Gorder agreed, he asked what a definition of a junk yard would be, so many vehicles on a piece of property; Devin included that doesn't run? Commissioner Mitchell thought they already had something, that after they had so many they would be required to get a junk yard license. Marcy said DEQ may have some requirements on it, or definitions; she said she would check into it and come up with some definitions. Commissioner Mitchell said there is some kind of number you would have to have DEQ permission; he thought it might be over 6, he wasn't sure. Marcy looked at the definitions in the Planner's Dictionary and could not find one that worked, she will do some research in the Montana statutes.

The Commission members appeared okay with adding both and to include a definition.

VII-E. Density: Marcy said this would allow them to have their primary residential with four additional dwelling units as long they were within 20 acres. The utility lots could not be less than one acre; so if a utility company wanted to create another lot in the district they would to have their lots be one acre.

Marcy noted that under the Land Division the smallest a lot can be is 2.5 acres.

Adam thought the density would then be one structure per 4 acres. Commissioner Young asked if they would not have to go through subdivision review. Marcy said yes, they still have to meet the County regulations, including buildings lease or rent. If they have their primary residential and four additional dwelling units and they lease or rent out the dwelling units then they would fall under the Buildings for Lease or Rent Regulations.

Devin asked if a farmer/rancher wanted to build a Quonset or something for tractors that's' over 3,000 square feet, that's an allowed use? Marcy agreed that was how she understood it, the only one that would be restricted, is the size of a Home Occupation.

Adam asked if they can have lots less than 20 acres, but they can't put a house on it? Marcy, yes they can have a lot less than 20, they just can't have more than one (dwelling unit) unless it's over 20 acres. Adam asked Marcy to clarify it.

Marcy explained that if someone had their primary residential house there and they wanted to put in 5 more, under these regulations it's only 4 more housing units and rent them out, without subdividing, they can do it, it would be reviewed under the Buildings for Lease or Rent Regulations, but they would be allowed to have them, but the limit and number of acreage they would have to have to be allowed to do it they need to have 20 acres.

Adam asked what if they only wanted to put one additional house, then they would need to have 8 acres. Marcy said the smallest the lot size would be 2.5 acres, she said even if they had 20 acres they could put just one house on it that would be allowed; she asked Adam if she understood what he was asking.

Commissioner Gorder asked if the 2.5 acres defines the house with a well and setbacks for sewer; Marcy, that's the way she understood it. Commissioner Gorder said she mentioned something about more than 20 acres. Marcy said yes, the lots can go larger; the smallest lot size would be is 2.5 acres. Commissioner Gorder said as long as they had 20 acres they could have one primary and four additional dwelling units. Marcy said with the 2.5 acres or anything less than 20 acres they could only have one, their primary residents on it. Adam said if they wanted one primary residents then wanted their kids to have another house on their property, they could do that with 8 acres or would they have to have 20 acres no matter how many house they put on it. Marcy said 20, that was the way she understood it. Adam said that really isn't what the Density is then. The way he reads it is that there is one unit per 4 acres; they can have 5 units on 20 acres. Commissioner Young agreed with Adam they could have up to four additional units. Marcy said it would need to be defined (better) if that was the way they understood it.

Commissioner Gorder asked Adam to explain it. Adam said what the Density really was saying is one unit per 4 acres, so what he's wondering is what if they don't want four houses, they only want one or two, do they need just 4 acres per house up to 20 acres; or is it set in stone the 20 acres and if they have less than 20 or can they only have one house on it.

Marcy explained the discussion the landowners had on it, how many additional units they wanted if they wanted their in-laws, farmhands, or whoever to stay in any additional housing, how many extra units they would want on their property; the 20 acres was from a sample regulations, so it is not set, it is something for the Zoning Commission to discuss and change if they wanted. If they wanted to say no more than one primary residential unit and four additional dwelling units on 20 acres or 4 acres for every dwelling up to four additional dwelling units, and not to go over four additional units. She can work on the wording to change it to where it would meet that. Commissioner Young agreed. Marcy asked if the Commission would like her to work on the wording then bring it back; Adam agreed.

Commissioner Gorder asked if the wording would carry over to the next one where talked about boundary line adjustments, the 2.5 acres. Marcy said no that would be different; it's Land Division, so if they had a land division and do a boundary line adjustment. The Land Division and the Density are two different things. The Land Division only allows them to create a lot that's not less than 2.5 acres, except for a utility site which would be one acre. If they did do a boundary line relocation they couldn't go smaller than 2.5 acres.

VII-F. Lighting: Commissioner Young said they should follow the same code everyone else is, the ones that don't shine up. Marcy said she believed part of the definition came from the Planner's Dictionary. Commissioner Young said he didn't find the type of wording that was used for the subdivisions. Marcy said it does have the shielded and downward directed. Commissioner Gorder said that it had a name for it; Marcy and Adam both said Dark Skies; Commissioner Gorder agreed. Marcy said when one of the Planners was reviewing an application (subdivision) he researched it and found there was no State requirement, she didn't recall the name of the application.

Commissioner Gorder asked Tara, he thought it was under her advice a couple of years ago to put it in there; Commissioner Young and Mitchell agreed. Tara said it was when they were looking at updating the subdivision regulations, there is no State law that they could adopt. It's more zoning when you start doing lighting, and that's what she believed she told them then, it is zoning when they are regulating lighting. Commissioner Gorder said he thought that this was zoning; Commissioner Mitchell said that's what they're doing right now; Adam agreed. Commissioner Gorder asked if she had the term handy they used for Dark Skies; Tara, no. Marcy said she can check on it; Commissioner Young and Commissioner Mitchell agreed. Commissioner Mitchell said it was some kind of the UFO code, so it the lights don't shine up.

Devin noted that "unless required by State and local requirements" was added because at night when they are running their loaders they wanted to be able to operate at night, and they are talking about putting in working hours so that kind contradicts all that, that was what Chris brought up. Marcy said there are different types of lights that they would use during construction which included the strobe lights; and this way if there was any State law requirements they would have to meet them or local requirements. Adam suggested to even "Federal" because the beacons on the top of the communication towers are federal regulated.

VII-G. Land Division: Marcy asked if the Commission was okay with the Land Division at 2.5 acres. Commissioner Mitchell indicated he was. Commissioner Gorder thought it should match the Density, because the way Adam explained it, it should be 4 acres per unit, because the top one Density says if they put five units on the 20 acres and if you divide it by 5 it's 4 acres per unit. Marcy asked if the Commission would like to change to 4 acres. Commissioner Young asked if you would then change the boundary line adjustment to 4 acres; Marcy yes. Commissioner Gorder stated to keep it the same.

Adam asked how they came up with the 2.5; Marcy it's what the landowners discussed at the meetings. He asked if they could just move the Density, if that's what the landowners wanted for the smallest parcel, the Density could be one unit per 2.5 acres. Marcy said she could work with it. Commissioner Gorder said to include the 5 units. Adam said they should at least match.

Marcy suggested adding the utility site in the Land Division; Adam agreed. She asked if the Commission was okay with making the changes in Density to be consistent with the Land Division at 2.5 acres for each unit. The members appeared to agree.

Section VIII. Existing Non-Conforming Uses and Lots:

VIII-A. Intent: Marcy said this is where any existing non-conforming uses would be grandfathered in. The Commission members appeared to be okay with the way it was written.

VIII-B. Existing Nonconforming Lots of Record: Marcy noted the boundary line adjustments acreage would remain at 2.5 acres. The Commission members appeared to be okay with the way it as written.

VIII-C. Existing Nonconforming Uses of Land: Marcy asked if the Commission would be okay with (c) stating three years; it was listed as one year, but they (landfill representative) said there is times it would not be possible to get it completed within one year, but the landowners did not want to leave it open for more than that in case it (any application) didn't get completed.

Adam asked if there were any existing non-conforming uses in the zoned area. Commissioner Mitchell asked if three years would give them enough time.

Marcy stated the only site she had any concerns with when looking at the zoned area, she hasn't been up there and not real familiar with the area, would be the Waldo property, if it was going to fit in with the regulations or not. If they change anything then within 3 years they would have meet the regulations, if they don't change anything they would be grandfathered in. Devin said he is not sure what's going on there, he (Waldo's) live in Washington and his son lives in Miles City.

Adam, Commissioner Mitchell and Commissioner Gorder agreed three years would be okay. The rest of the Commission members appeared to be okay with the way it was written.

Section IX. Conditional Uses:

IX-A. Intent: The Commission members appeared to be okay with the way it was written.

IX-B. Conditional Use Requirements: Marcy noted the landowners wanted to include the school bus stops in (c), she agreed since it was discussed at the public hearing. Then on (e) there was some discussion on the hours of operation; she read what was written and noted the hours were defined. Commissioner Mitchell said he would like it to say sunup to sundown, half an hour before sunrise and a half hour after sunset. Marcy asked if that included winter hours; Commissioner Mitchell, yes it would be 5pm. Marcy said the sun sets at 4 – 4:30, Commissioner Mitchell said the half hour would give them till 5pm. Commissioner Young said then they could begin at 4am. Stephanie said it would give them longer hours in the summer. Adam stated they could work until 10pm; Devin agreed. Stephanie questioned if that is what they want. Commissioner Mitchell said most people are up until 10pm in the summer.

Commissioner Young suggested leaving it as written because it would give them a 13 hour work day. Commissioner Gorder said he liked defined hours. Adam stated it seemed standard, most construction projects, he's been involved with lets them start work about 6am and go till 6 or 7pm. Commissioner Mitchell said they usually got their equipment fired up at 6:30am.

Marcy noted in the meetings with the landowners, there was one person who spoke out against it because if they put in the hours of operation it would limit their business hours, they are in the oilfield business, and the oil wells are an allowed use that run 24/7. She noted that it came from the landfill representative.

Marcy said to keep in mind when they (applicant) comes in for a variance, she asked Tara for assistance, the variances that they can apply for is for only the "Density, Lighting, and Land Division", anything else in the regulations they would not be able to apply for a variance from.

Commissioner Mitchell noted that as a contractor, if he's out there building and says they are going to work until 8:30pm then quit at 9pm, he would working past 7pm, who would stop him. Marcy said when the regulations are in place (adopted) the Zoning Enforcement Officer or Zoning Administrator will need make sure they abide by the regulations. So if there is complaints received that they are operating after hours, the staff would have to go out and investigate it. Commissioner Mitchell said they would have to put out a ceased and desist order on them. Devin asked if the two house, Kale's and his, and wanted to shilling their house and started before 6am, he heard it a mile away. Adam said it sounds like construction repairs to him. Stephanie noted that someone would have to report it. Commissioner Mitchell stated they

would have to act on it. Marcy stated unless the County wanted her out there every day making sure they stay within their business hours. Adam asked if it was normal to limit construction?

Commissioner Mitchell stated they couldn't work in the city limits until 7 am. Commissioner Young stated a Fire Department is 24/7 in the big cities; Adam said and mostly at night time. Commissioner Mitchell said he didn't remember that it was 7am in the city and on Sunday not till 8am. When cutting his trees down he was told it wasn't going to happen at 6am on Sunday. Stephanie said she felt the more leeway in here, the more leeway they would take and would make hard for those living out there. Commissioner Mitchell said he is fine with hours, 6-7. He asked if this would be same for the farmers or would they be exempt? Devin said if you are tilling out in the field it would be exempt. Commissioner Mitchell asked about if it was a feedlot; Devin said if it was a large then they would have to abide by it.

Marcy said this was a question she had asked Tara previously in one of their conversations about this, or in an email. Marcy asked Tara if it was an allowed use and would they have to follow the regulations for a conditional use? Tara said no, it's those that are required to have a Conditional Use Permit would be subject to the condition use requirements. Devin asked for example if he was building a barn, he would not have to follow the time for construction, Marcy if he is an allowed use.

Commissioner Young stated farmers expect again; Marcy said it would also be the Home Occupation (under 3,000 sq ft), gravel pit (for personal use) public utility, oil well pads, churches, libraries, communication towers, roping arena; all of those that are allowed, any time they have anything going on they would be exempt from the requirements.

Stephanie asked where the closest house was located from where the landfill was going to be. Devin stated his and Kale's, but the Thiel Subdivision is the closest, the house is about a half mile away. Stephanie said as a mother, 6am is pretty early if you have little kids, was there something loud enough that they would wake-up little kids; would they want to go 7am and give them later at night. Is there any house close that they would wake-up any kids. Devin said outside of the zone it would be about a half mile from the end, he was not sure what would be loud. Stephanie stated so it might not be. Adam said they might hear a piece of equipment running. Stephanie said that was her question. Devin thought they might hear beeping. Marcy drew their attention to the map provided to the Commission that showed the location of the houses. She noted from what she understood the landfill is proposed in Sections 24 & 29. Stephanie asked Devin if he thought if there would be anything loud enough, Adam didn't think there would be. Adam said there should not be anything they could hear inside a house. Commissioner Gorder said he was more worried about waking the mother up.

Marcy asked if the Commission was okay with the 6am-7pm or would they want to change it. The Commission members appeared to be okay with the way it was written.

Marcy said the change shown for (g) is per the Weed District requirements, it's out of the Subdivision Regulations. Commissioner Mitchell asked if it was on a final plat. Marcy said there would not be a final plat; for example, if the landfill put an application in they would have to have a signed and notarized Noxious Weed Management Plan in place. Commissioner Mitchell said he did not have problem with it.

The Commission members appeared okay with the way the Conditional Use Requirements as written.

IX-C. Conditional Use Application: The Commission members appeared to be okay with the way it was written.

IX-C-1. Conditional Use Application Requirements:

Marcy said there was a question (landowner meetings) on the traffic study that it should be done by an engineer, so the new portion added is from the County Subdivision Regulations. Adam asked if anyone knew, there is not lot of literature on the trip generation out there, that the rule of thumb is a single family house generates 10 trips per day. Marcy said she thought a single family was 8. Adam said it's anywhere between 8 - 12 trips; he went on to say so anything over a single would need to have a traffic study done by a licensed engineer. Commissioner Mitchell asked if it was true (10 trips). Adam said coming and going from your home counts as two trips. Commissioner Mitchell said so if there are two of you that would be four a day; Stephanie asked about lunch hour; Marcy said after work when you get home,

realize you need something from the grocery store. Commissioner Young said now you are up to 8, then there is a night meeting they might have to go to, then if they have 2 or 3 kids driving their own vehicle. Devin asked if single family residents would be exempt; Adam yes. Marcy said this requirement would only be for those that apply for a Conditional Use Permits, not the Allowed Uses.

Marcy asked if the Commission was looking at the tracking comments, the one for “additional information that could be required” there is certain things as a Zoning Administrator is not qualified to look at, it would be required they provide comments from DEQ, that could be any Federal or State agency, and they would have meet those approvals. Commissioner Mitchell asked what the additional information is in #11.

Adam asked like #6, does it mean that they just need their water quantity and quality tests analyzed by the Sanitarian’s office. Marcy asked if the Sanitarian would be qualified to do this. Commissioner Mitchell said he was not sure, but was guessing so. Marcy said she would check with the Sanitarian to see how it’d be handled. Commissioner Gorder believed they’d just send them off; Marcy was thinking the same thing. Adam said so they go to the Sanitarian Office, ask for them to look at their water samples or do they send them off to a third party.

Adam asked if there was a Conditional Use Application Form; Marcy said she’s generating one, it will be a draft, she’s using samples from a couple of other counties, she will put one together then bring it to the Commission to look at.

Adam asked about the requirement for current and previous deed. Marcy said it would provide a track of history, for any restrictions on the property, and that sometimes the deeds may have an agricultural covenant. She had seen one where it was in the deed, not on a plat. And it would show any other restrictions they placed on the property and if there is then they would have to follow the deed restrictions that are in place. Marcy said they still have to meet all the State and local requirements, so if there is restriction on the property then they may not be able to do what they want on the property. She said the 20 years she added, she was comfortable with the 20 year period, or maybe they should go back further.

Adam asked if twenty years from now, is 20 years going to be enough. Marcy asked if they wanted to put a year on it. Tara suggested using July 1, 1973 because it’s when Montana Subdivision and Platting Act was enacted, so they would see things like agricultural covenants, family transfers, or boundary line adjustments after July 1, 1973. Commissioner Mitchell asked if anything happened between now and then would it be recorded at the Clerk & Record Office; Tara agreed. She stated before July 1, 1973 they didn’t have the Subdivision and Platting Act, it would be hard to do anything about what they did prior to 1973. Commissioner Mitchell stated he like the 20 years. Marcy agreed with Tara to go with July 1, 1973, because if they have the 20 years, is it 20 years from the date they bring an application in or is it the year the “regulations” would be adopted. Commissioner Mitchell asked Adam if that was his point, Adam said no, but he can see the reason why they would want to go with 1973, he doesn’t know if it is the Planning & Zoning responsibility, he guessed it was their responsibility, to make sure they can actually do what they want to on their land. Tara agreed, if there was an agricultural covenant on the property and they wanted to do something else, like commercial, then they would have lift it through the subdivision review process first. Adam agreed with Tara on the date. The Commission members agreed to change the years to the July 1, 1973 date.

Marcy asked if there were any other comments on the requirements. Stephanie asked if the County Attorney would have to check the legal documents when the County Commissioners ask for it. Adam said this was the one he had emailed Marcy about, if they were an advisor board or a regulatory board. Tara said that should not say County Commissioners; Marcy, it should the Planning and Zoning Commission, Tara agreed. Marcy asked Adam to explain about the question he had asked.

Adam said he asked Marcy if they were an advisory board to the Commissioners, or if they were a regulatory board, meaning they didn’t just make a recommendation to the Commissioners; he asked because it seemed like the County Commissioner were just involved in decision and it wasn’t clear in the Montana code or these regulations, or the Bylaws. Marcy said the “Appeals Process” should clarify it, if

not we need to take a look at and make sure it does. Adam said so the answer was they are a regulatory board.

IX-D. Conditional Use Procedure:

IX-D-1. Review Timeline for Submittal:

Adam said he knew someone would ask at some point, that it doesn't have a timeline defined for when after you (Zoning Administrator) notifies them when the application is complete; if you're talking about a conditional use permit, and they submit a complete application to you what happens after that. Marcy said it would go to the Planning and Zoning Commission, public hearing, and the Planning and Zoning Commission is the one who approves the application, whatever conditions were set then they would have to meet those conditions, once they met conditions then a Conditional Use Permit would be issued. Adam asked if something could be added that lets them know what would happen afterwards.

Marcy said if they continue going through the regulations, it should explain it. Commissioner Gorder said it states "the process shall be repeated until all of the specific reasons found...", he asked Adam if this was what he was asking for. Adam said he was just wondering if they would think that after the 20 days that they're going to get a permit when they are notified it's complete, not that they would, with the two week notice for a public hearing.

Marcy said there's Planner's review time, then the staff report, then there's public hearing, the approval criteria, then the Zoning Commission holds the public hearing, so the approval criteria is what the Planning and Zoning Commissions will look at. She went on to say then if they transfer ownership there's that section, then there's the time limits for the conditional use permit they would, to satisfy all the conditions to get the Conditional Use Permit. She asked Adam if that answered his question; he agreed.

IX-D-2. Zoning Administrator's Report to the Planning and Zoning Commission:

Marcy asked the Commission to consider Section IX-D-2(a), she read the requirement, the Staff comments on the statement, and that if it was required would this put the burden on the County to monitor and enforce. She asked if this was something the County wanted to take on. Commissioner Gorder thinks the burden of this whole thing is on the County. Marcy said each of the requirements that are added she asked if the Commission is willing to make sure they are done. Commissioner Gorder asked it is the job of the Administrator, isn't it. Marcy asked the Commission to also think about the cost. Commissioner Gorder said he knew that it going to cost, they are going to have to send the Sanitation, Public Work, etc. out.

Adam asked if the Planning and Zoning Commission is qualified to ask for this data. Marcy said they can ask for it, but does the County have staff who understands the data and information; Adam agreed. She went on to state, if not, hiring a third party to do it, is the County willing to pay for those services. Commissioner Gorder asked if she was saying she can't do both jobs. Marcy asked, ground water monitoring? Commissioner Gorder said she going to push it off to the Department that's going to need to look at. Marcy stated if they are qualified, that is what we need to make sure if the Sanitarian is qualified, if not, then the County would have to hire a third party person to do it. Commissioner Gorder asked Tara if there were any other Counties that initiated the zoning that have run into this. Marcy explained on the bottom of page 21, whether or not doing periodical testing for ground water, quality and quantity would the burden be on the County for the expenses. Tara said the County is requiring a collection of surface and ground water that is done by a third party; she didn't think the County would be qualified to do ground water quality testing. Commissioner Mitchell asked if they could pass this fee onto the conditional use permit user, can't they hire the third party and they pay the bill. Marcy said this would be ongoing for the life of the facility.

Commissioner Mitchell stated when they had theirs out at Mitchells they had to pay for it, they had to have it tested every three months on all twelve wells, they paid for it but it was a requirement by DEQ, they suggested old Rubus, so they used him. He asked if the County couldn;t do the same thing? Marcy asked Tara if they could ask for the funds under the Security? Tara agreed, she said because they would not get repaid unless they have some way to get the money. Commissioner Mitchell said tax assessment.

Commissioner Gorder said he was asking if there was any other Counties that have done the Initiated Zoning that have run into this situation and how they handled it. He went on to say she probably wouldn't know unless she reached out to the other Counties; Tara agreed she would have to ask and agreed she could do it, it would probably be Gallatin County and Missoula County. Commissioner Gorder suggested sticking with Gallatin.

It was suggested to table the discussion until the next meeting.

New Business: It was noted there was no new business.

Adjourn: Commissioner Gorder 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.