

PROCEEDINGS OF THE BOARD OF COMMISSIONERS

BROADWATER COUNTY, STATE OF MONTANA

LOCATION: 416 Broadway, Townsend, MT 59644

DATE: August 1, 2023

Commissioner Debi Randolph called the Rolling Glen Ranch PUD as it relates to the proposed Rolling Glen Ranch Estates Minor Subdivision public hearing to order at 6:00 PM. Commissioners Darrel Folkvord and Lindsey Richtmyer were also present.

6:02 PM Broadwater County Deputy County Attorney Jania Hatfield opened with expectations of the public hearing.

6:05 PM Broadwater County Community Development and Planning Director Nichole Brown commented on public hearing location, certified letters and sign in sheet. Read into record a portion of the Addendum to Findings of Fact and Order Report.

6:11 PM Broadwater County Deputy County Attorney Jania Hatfield commented on history of the Master Plan Planned Unit Development.

The Master Plan Planned Unit Development (PUD) was approved by the Commission on February 12, 2007, and it calls for if any further phase is going to move forward, it's a requirement that the phase be submitted as a separate preliminary plat and that it be reviewed under the conditions of the Master Plan and under the current subdivision regulations at the time that the phase is submitted. This public hearing is regarding a new subdivision that was submitted this year and whether or not it is a phase of the Master Plan PUD. If it is decided that it is a phase of the PUD, but because it doesn't meet all the same conditions required in the Master Plan PUD, would an exception to meeting the PUD conditions be allowed by the commission?

6:14 PM Member of the public, Greg Miskulin, asked a clarifying question. County Attorney Cory Swanson commented on the PUD and to clarify the decision in front of the commission today.

6:16 PM Proponents: Rolling Glen Ranch Subdivision Developer Steve Cavanaugh introduced himself, provided 50 water reports for the public, and stated he would be available for any questions.

6:20 PM Opponents: Public comments were made from Michelle Bodenheimer, Peter Reiss, Julie Jensen, Ann Peavler, Martin Bailey, Terri Barber, Sean Koenig, Meghan Mitchell, Greg Thomas, Butch Barton, Lori VanVleet, Elizabeth Barton, Joe Barber, Kat Cederberg, Bob Markham, Deanna Kolodka (online), and Greg Schob.

6:56 PM Broadwater County Attorney Cory Swanson asked Cavanaugh to clarify the water study Cavanaugh needs financing for, as well as, his PUD plan for the source of that water and how that is different from this 3-lot minor subdivision with exempt wells.

Cavanaugh stated when he appeared before the Commissioners about two years ago, he asked for them to address the water rights issue and to allow him to secure water rights for the first five years and not for the 40 years which was denied. During this period of time, when he started the master plan again and at the time he originally applied, the impacted mitigation area and water reports from 2007, showed he needed 1,045 gallons per minute for the entire project from the Townsend/Toston area but when he went back to meet with DNRC, they disagreed and said that the impact zones might actually be from the Jefferson and Gallatin aquifers and requested to have another study done which is the \$250,000 report from his engineers he is needing. One thing about the water rights, it's how fast the aquifer system can recharge itself which is also in the report he handed out at the beginning of the public hearing. When he did the original Rolling Glen Ranch project, he was hitting water at 28 feet. He would go down to 60 feet and maybe some of the wells are shallow. For the recharge, he was pumping out 1,100 gallons per minute from some of the test wells and it would recharge in less than two minutes. His proposal moving forward is to put tests back on those wells again which would answer the county's and public's concern about how much water is actually available for the next phase of this project of 28 lot subdivision with 1.3 acres per lot. He may have to drill the wells a little bit deeper or do some other things to help mitigate it. When he spoke with Dennis Rahn, Dennis stated the water levels are still the same.

7:02 PM County Attorney Swanson asked Cavanaugh how deep of a well would it be for the public system and to explain getting rights to mitigate.

Cavanaugh stated what is required to mitigate is what the impact of the water usage through the proposed project areas which is also called the impact zone. He can't get his water rights until he determines the impact zone and the impact area. His engineers feel that if they were to drill down 650 feet and get down below the confined aquifer not even effect the entire area, the impact zone will be down around Townsend. If that is the case, we can get water rights from the Department of Reclamation.

7:03 PM County Attorney Swanson asked Cavanaugh if he agreed that this minor subdivision is a phase of the PUD but different.

Cavanaugh stated it's something he can live with or without it and doesn't really care which way the county goes on it; like he said in the last meeting on whether or not they want to void the PUD. It's more of a burden for him to go through the process each time as it's the same requirements and the conditions of the PUD which is the same as a major subdivision. The only benefit is that Cavanaugh doesn't have to deal with a public hearing. It would be best for the general public to have a plan out there to at least when moving forward to try to keep this plan and great to see it come to fruition. The plan was to divide it up into about 34 different phases to allow smaller developers to come in and take over a phase.

7:04 PM County Attorney Swanson asked Cavanaugh if he got this approval on this minor subdivision, does he still plan to try and develop the following phases to keep the PUD intact?

Cavanaugh replied that he would like to be able to do that but if not, then, his plan would be just to subdivide and try stay as consistent and true to the master plan as possible but without the burden of the master plan approval.

7:05 PM County Attorney Swanson asked Cavanaugh if the condition stated this is really a phase of the PUD just wearing different clothes, do you agree or disagree with that?

Cavanaugh stated he disagrees in that it's a material change but you've shown me legislation that says otherwise.

7:05 PM County Attorney Swanson asked Cavanaugh if he agrees generally that this is a phase of the PUD, it just looks different?

Cavanaugh stated he would like to keep it a phase of the PUD. He can go either way with it as it really doesn't matter to him which way we go as he can still follow his plan and just do it incrementally, moving forward.

7:06 PM County Attorney Swanson responded that the Commissioners have to make a couple decisions before this is done and that's one of them. Swanson stated we (Broadwater County staff) did the Addendum to the Findings of Fact in Order. If the minor is approved, would it require amendments or relief from or variances from some conditions of the PUD? It would be helpful for Cavanaugh to tell us if he disagrees with any of these conditions in the Addendum to the Findings of Fact in Order that we think are different between the PUD, etc.

Cavanaugh stated he would do that but wants to reiterate the bigger issue is, like the conditions, is to obtain all the water rights which will be a 3- to 5-year process to complete it. He's willing to complete the requirements but needs this first step with the 3-lot minor approved so he can get the allocation for the water rights and subdivide.

7:08 PM Commissioner Richtmyer asked if she's understanding correctly that the three parcels we're talking about right now, you are going to do another 14 within each of those?

Cavanaugh stated parcel 1 and 2 he does not have the information with him but there's 14 lots on each of those two, 20-acre parcels.

7:09 PM Commissioner Richtmyer asked for this development if we are looking at public water system for each of those 14 parcels and not individual wells?

Cavanaugh stated no, it would individual wells and septic's; 1.3 to 1.4 acres gives us enough land to run both the well and a septic system.

7:09 PM Commissioner Richtmyer asked that with the water test and drilling deeper the water would actually be coming from the Townsend area?

Cavanaugh stated the theory is with the impact zone, the further down we went with our wells, the further down the impact zone if that confined aquifer, what they're calling confined, is actually at around 560 feet but he doesn't know exactly and that is what the tests will tell us. His hope is the \$250,000 will be well spent because then we can have the impact zone be from Canyon Ferry and the Department of Reclamation water rights will be less expensive. If the impact zone shows that it is that area then we have to go

secure water rights from the Jefferson, Gallatin, and Townsend/Toston water sheds. DNRC is thinking the impact zone is in three different areas. So, basically, when you drill down low enough in your well, pump it, and you don't have any draw down on that well then you know it's not coming from the confined aquafer above.

7:11 PM Commissioner Richtmyer asked does everyone on those lots have to drill at that depth? Cavanaugh stated for the 1.3 lots, DNRC gives us the water right allocation of 35 gallons per minute per 1.2 to 1.3 acres so we don't have to that nobody has to get on a water system of the first 28 units and that is why we are doing this to generate the money to move forward with an actual public water system after we get these tests done. If we do the tests, and we find out it's good for us then we will get those water rights off to the races with the master plan. If not, then I have to spend time securing water rights from land owners up in those areas to mitigate the water right issue for that particular zone that DNRC is saying is impacted.

7:12 PM County Attorney Swanson asked about all those individual homes within that 20-acre piece, cumulatively their total volume is 10-acre feet? Cavanaugh replied cumulatively each 20 acres is 10-acre feet. You are allowed to use 0.2-acre feet with a 3-bedroom residential unit and that is with some kind of control with the type of irrigation you are doing, drought tolerance, etc. so there are more than enough acre feet to handle it.

7:13 PM Commissioner Folkvord stated so as he looks at the proposed subdivision overlays the PUD, one of the questions we have to answer is if it materially alters any portion of the original plan which in his mind it does and in looking at how all the streets and things laid out in the original development, all that is going to change? Cavanaugh stated it is. He talked to his golf course designer and WGM and they estimate to reroute the road and figure it will cost \$18,000 for the two of them. Yes, it will have to be reconfigured.

7:14 PM Commissioner Folkvord asked that if we move forward with the water portion, and you are proposing that at some point you would start a public water supply system, correct? Steve Cavanaugh stated yes.

7:14 PM Commissioner Folkvord asked if he would also be starting a waste water portion at the same time? Cavanaugh stated yes, he would start the two at the same time and it would be after these first two 20-acre parcels, next 28 parcels generating sales and then we would get the water rights perfected, then start the waste water treatment facility which can be built in stages.

7:15 PM Deputy County Attorney Hatfield commented on one of the things Cavanaugh said just a moment ago to Commissioner Folkvord is that he is looking at redesigning the golf course and redesigning the roads and know that when she had talked with Cavanaugh before and he had said the roads were going to stay the same and the golf course was going to stay the same. Hatfield asked when and why that change would happen?

Cavanaugh stated it changed because looking at where the golf course in that section of ground, the golf course took up about 55% of it which would then only end up with about 11 parcels left hence why we can reconfigure that and why we need to reconfigure it. We've always maintained the roads but how the lot lay out, the lots, as it says in the Findings of Fact in Order, that we designate a minimum or maximum lot size; on page 3 of that report.

7:17 PM Deputy County Attorney Hatfield referred to the map and clarified with Cavanaugh, what you are saying is that the two parcels you are going to develop which are lots 1 and 2, and that essentially, he's going to just scrap what's on here and not deal with roads as it is, not deal with the golf course as it is and just redo it.

Cavanaugh responded that it's really what he ended up having to do and pencil out which did not make sense any other way.

7:18 PM County Attorney Swanson stated there was a comment possibly from one of the Planning Board members on the computer about a sign saying selling lots up to 50 acres. Can you tell us what that is about?

Cavanaugh stated that he was talking about doing that but he wanted to first get this stuff approved and if that's the case the sign comes down. At one time, we had a map here with 75 parcels that was submitted that was about 20 to 50 acres and we were just thinking about blowing it out with 20-acre parcels and being done with it.

7:18 PM County Attorney Swanson asked Cavanaugh when was that submitted?

Cavanaugh asked Director Brown if he even submitted it or if she ever got drawings on it.

Director Brown stated she does not have a recollection.

Cavanaugh stated it was his original plan; this all about trying to preserve the master plan.

7:19 PM County Attorney Swanson stated he's not aware of any plan to sell 50-acre parcels there and just to confirm that you do not have an approved subdivision for that?

Cavanaugh stated he drew up all the maps and can send Swanson a copy of all of it; he's not going to do this but it may be an option but this is the one he'd like to get approved.

7:20 PM County Attorney Swanson asked Cavanaugh if he's currently offering them for sale now?

Cavanaugh stated no. Actually, what it says is a proposed subdivision and it doesn't have a price on it. We put that up there just to see what interest there was which is what we do in marketing real estate which is to find out there is an interest in it and we found out there was an interest in the 20-acre parcels.

7:20 PM Commissioner Randolph asked Cavanaugh if she drove by, see that sign and call you, what are you going to show me?

Cavanaugh replied that it should say proposed subdivision 20 to 50-acre parcels and he doesn't remember putting a price on it because he doesn't think he's allowed to do that. So, how the sells thing works and what we did in the original phases of Rolling Glen Ranch, Cavanaugh talked to the title company (Cavanaugh offered for a member of the public to speak).

7:21 PM Michelle Bodenheimer asked to present a picture of the sign which is currently located on the northwest corner of Wheatland and Rolling Glen.

Cavanaugh stated there absolutely nothing illegal about that.

7:22 PM Commissioner Folkvord asked if it does say proposed on the sign?

Michelle Bodenheimer stated it does.

Cavanaugh stated there's nothing wrong in doing that, you see it all the time.

7:22 PM Commissioner Randolph wanted to clarify with Cavanaugh that if she sees it, interested in it, she calls, she's assuming it's his phone number, there's no land for her to look at?

Cavanaugh states there is a preliminary plat he can show people but it's not approved and we tell people it's not been approved to the county governmental agency's approvals. His intent is to have a waiting list.

7:23 PM Josh Shively, resident of Jefferson County which is just across the county line from the proposed development, stated he inquired via email with the developer in regards to the 20 50-acre lots and he provided me with a plat map and is willing, from the correspondence, to accept a \$10,000 deposit on those lots. He was of the opinion based on that, they had been approved and that's how he was able to do that.

7:23 PM Commissioner Randolph asked Josh if this contact information used was from the picture just shown?

Josh Shively stated yes.

7:23 PM Josh Shively stated he's been in Townsend in the past in regards to some easement issues and access with ingress and egress of the current development of Mountain Vista that was in question and he met with both members of Broadwater and Jefferson County emergency services in regards to that easement and at the time it was his understanding that an easement/road (Silver Sage Rd) falls on the Jefferson County side of the line was a possibility for ingress/egress. It's his understanding both in dealing with Jefferson and Broadwater County that no such agreement actually existed.

7:24 PM Julie Jensen stated her son also called and inquired about those 22 50-acre lots. Her son was given the plat map and told that he would just put a \$10,000 deposit down; it was last fall when this occurred.

7:25 PM Commissioner Randolph asked Cavanaugh if the two of the three 20-acre parcels are approved for further subdividing but the water study doesn't happen and Cavanaugh can't get the water for the rest of this, what happens?

Cavanaugh stated he will just do whatever the state allows him to do to cut the property up into 1.3 or 1.5-acre parcels and get it an allocation of 35 gallons per minute with onsite septic systems; there could be 1,000 or 1,200 lots out there but it's really not the best use of the land but it's the alternative for us as developers.

7:26 PM County Attorney Swanson asked Cavanaugh if he's been receiving deposits on the 20 to 50-acre purchases?

Cavanaugh stated he will send Swanson what they get. He had a title company and attorneys review it and it puts a person a place in line. He had one person put a \$10,000 deposit that is released unilaterally without their consent to release it and it puts them in a position in line for a lot. He took one of those which is being held right now still at Montana Title. There's nothing wrong with it, the attorneys have looked at that. He's not preselling lots, not telling what the price is. Cavanaugh will send Swanson a copy of the reservation form and it says basically that you're reserving a spot in line. He did this on Rolling Glen Ranch for the first 20 lots on the first phase and it worked perfectly as people were able to get in there and when we came out with prices the first 20 people loved it but everybody after that not so much.

7:27 PM County Attorney Swanson asked what plat Cavanaugh is sending these folks that put the deposit down?

Cavanaugh stated that they don't say a lot.

7:27 PM County Attorney Swanson commented the two folks who spoke stated Cavanaugh either did or offered to send them a plat they could look at of what lots they were contemplating. What plat is it that you are sending?

Cavanaugh stated he will send it Swanson tomorrow so he can see what it is.

7:28 PM County Attorney Swanson asked if it was the same plat the Commission is looking at right now?

Cavanaugh stated no, it was a plat they were doing back then for 2020. Schaubert Surveying did a map for us and we cut it down into 20 and 50-acre parcels, 75 parcels. Cavanaugh went out and did test wells on all of them. We've had the application ready to submit but decided not submit it and to go this other way. The form doesn't mention a price, doesn't mention a lot as it's a reservation for a spot in line and when you read it you'll see it. The attorneys wouldn't have done it if it wasn't done right.

7:28 PM County Attorney Swanson asked so you have a person that put down a \$10,000 deposit without any pricing of the aggregate lot they would buy?

Cavanaugh stated that is correct and they have reservation number 1; then we stopped doing that not because we thought there was anything wrong with it because we've done it before but we stopped doing it because we changed directions on the process and going this other route now with just three 20-acre parcels.

7:29 PM County Attorney Swanson but you don't have preliminary plat approval on this other 75 lots?

Cavanaugh stated no, there's no other reservation for them on this one no.

7:29 PM Deputy County Attorney Hatfield asked if Cavanaugh took this deposit from one person on a 50-acre lot, how does that comport with the plan in the PUD because it's on the same land?

Cavanaugh stated it doesn't tie itself to a lot or price. There's no lot or no price on it. All it does is say you've got number 1 right whenever we get a final map done, you have the first right to pick the lot and we don't even say what price it is. We say price is subject to all the approvals that we have to deal with through the county and other agencies. The reservation form is only for a place in line to have the first position to pick a lot once it's approved and once the price is set.

7:30 PM County Attorney Swanson asked Cavanaugh to provide the contact information of the person that gave you the deposit?

Cavanaugh stated absolutely and he will send Swanson everything tomorrow; when you read the form, you'll see. It is what it is.

7:30 PM Commissioner Richtmyer clarified with Cavanaugh that this was a backup plan.

Cavanaugh stated this was an original plan we actually started working on almost a year and half ago when we realized that the Commissioners that we couldn't just get by with just the water rights we needed for the first five years of our master plan so we said let's cut it up into 20's that way people have water rights they can further subdivide them for themselves and each 20 plus acre gets 10 acre feet of water so people could buy a 20 acre parcel and get 14 lots out of it. It made sense financially to do that and still might but right now if I can get all this stuff approved this is the way we are going.

7:31 PM Commissioner Randolph stated there is a comment online from Tara McInnis-Alvord she states please explain to me why you are even entertaining this idea from someone who has not only declared bankruptcy in the past but apparently has not even bothered to fulfill his obligations to the current development.

Cavanaugh states he respectfully declines to answer that just because.

7:32 PM Commissioner Randolph requests to have Tara McInnis-Alvord comment continued to be read which states he is not giving clear and sufficient answers to any questions posted. The entire deal seems extremely shady in my opinion. I would not do business with this person, period.

Cavanaugh commented let me explain that really quickly. Back in '07 and '08, we got into a dispute with the county, and the county chose to void our master plan and our Rolling Glen Ranch phases. And, so, the quickest way to get that resolved, because they were in error we felt and the court agreed, that the quickest way to do that was to go through the U.S. Bankruptcy Court, which can accelerate those type of decisions very quickly, and so my attorney Joe Guffles, who is probably the finest bankruptcy attorney in the state, won the case and the county had to reinstate everything but it required me to go into bankruptcy to do that. I didn't sue the county for damages or wages and all the stuff I could've done. I chose to just forget about it and walk away and that's all public record stuff.

7:33 PM County Attorney Swanson responded briefly on Cavanaugh's comment; as Swanson understands the issue was, when an entity goes into bankruptcy, it's specifically when land is an issue in bankruptcy, certain conditions or burdens on land can be stripped off and certain ones are not and I think that's ultimately what the subject of that litigation was. Swanson was not county attorney at the time but ultimately what the ruling from the court was to permit the PUD to remain as a burden or as a plan approved pertinent to the land. The issue wasn't that the county just willy nilly decided to void it, the issue was if you were in bankruptcy were conditions pertinent to the land or specifically to the development, and did those remain in effect or not?

Cavanaugh commented that he filed bankruptcy. The company that owned the land filed bankruptcy in order to accelerate this decision, to get a decision.

7:34 PM County Attorney Swanson stated understood, otherwise it would never go to federal court, the only reason it went to federal court is because the bankruptcy proceeding rules on that issue but you're correct ultimately the court ruled that the approval of the PUD was not vacated or voided.

Cavanaugh yes for phases 1 and 2 because we already had people living in there.

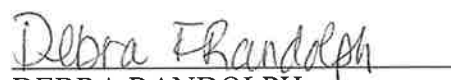
Present at the meeting were Nancy Marks with MT43 News, Martin & Lori Bailey, Bob & Kate Markham, Larry & Leslie Haas, Barbara Mutter, Michelle Bidenheimer, Paul & Sharon Finlayson, Nicole Fry, Greg Miskulin, Kegan Rummel, Julie Jensen, Duane & Liz Barton, Peter & Patricia Reiss, Ken & Elizabeth Dykema, Josh Shively, Jerry & Michelle Deitsch, Robert Peavler, Mike Richter, Greg Schob, Joe & Terri Barber, Meghan Mitchell.

Commissioner Randolph adjourned the public hearing at 7:35 PM.



Attest:

ANGIE PAULSEN
Clerk and Recorder


DEBRA RANDOLPH
Commissioner Chairwoman