

BROADWATER COUNTY PLANNING BOARD MINUTES

November 30th, 2021

Chairman, Ed Shindoll, called the meeting to order at 10:00 AM. Once seated, all rose for the Pledge of Allegiance.

Other board members present were Mary Heinemann and Dallas Diehl. Trinity Vandenacre was not present.

Board member, Mary Heinemann, made a motion to accept the Planning Board minutes, dated November 9th, 2021. Board member, Dallas Diehl, seconded the motion. All board members voted in favor and the motion carried.

No new business to discuss.

Old Business: Horse Creek Hills Major Subdivision

Planning and Development Director, Nichole Brown, approached the podium to provide an update regarding the proposed Horse Creek Hills Major Subdivision. This subdivision was remanded back to the Planning Board, per the Planning Board's request at the previous meeting. The intent of this meeting was to review the Horse Creek Hills Major Subdivision, seeking the Planning Board's recommendation of approval, approval with conditions, or denial. Nichole Brown provided a brief overview of the timeline and process of the subdivision application. This was followed by a brief summary of the public comments received, in which six major areas of concern were highlighted. Nichole Brown noted that all public comments were received and taken in to consideration by herself, Deputy County Attorney Jania Hatfield, the Commissioners, and the Planning Board. The six major areas of concern are as listed below.

1. Effects on agriculture: Two major items of concern, shared by oral and written comment, were the increase in traffic and the financial loss of livestock due to traffic and domestic pets.
2. Effects on wildlife:
 - a. This subdivision could displace wildlife in the area.
 - b. The increase traffic on Highway 284 could increase vehicle and wildlife collisions.
3. Water rights concerns:
 - a. Additional wells could have an adverse impact on existing wells, irrigation systems, streams, the wetland and the Aquifer.
 - b. A more extensive study should be performed by DNRC.
4. Road concerns:
 - a. Lower Confederate road is narrow, with some blind hills.

- b. An increase workload to the Broadwater County road crew, due to increased traffic on Lower Confederate Road.
 - c. The developer is not paying their fair share of road improvements.
 - d. Lower Confederate should be paved. The traffic impact study was not performed at a reasonable time to capture the real live traffic counts.
- 5. Environmental Assessment deficiencies:
 - a. Water availability.
 - b. The Montana Historical Society cultural review.
 - c. Impacts to wildlife.
 - d. Impacts to public safety.
- 6. Miscellaneous concerns:
 - a. The electrical use required by this development, and the future homes in this area, will be greater than Vigilante Electric can handle.
 - b. It would eliminate the military training in the vicinity of this proposed development.
 - c. There could be a theft of private property.
 - d. Loss of nature.
 - e. Loss of tourists and tourist dollars.
 - f. Increase in solid waste capabilities and fees.

Deputy County Attorney, Jania Hatfield, approached the podium to speak more on the legal aspect of the Planning Board's recommendation. Jania advised the Planning Board that if a decision was made based off of public comment, that it also needs to be based off of the statutes and regulations. It was noted that Montana Code Annotated 76-3-608 sub 1, covers how a subdivision proposal needs to be reviewed. It was noted that the information is to be specific, documented and clearly defined. Specific categories listed to be reviewed were, the impact on agriculture, agricultural water use facilities, local services, the natural environment, wildlife, wildlife habitat and public health and safety. Jania Hatfield advised the Planning Board of their ability to recommend approval, conditional approval, or denial. Along with the recommendation, specific reasons why need to be included. This recommendation will be considered by the Commission. It was also noted that statute 76-3-608, sub section 4 and 5 allows mitigation with the developer.

Categories covered are as follows:

- 1. Public safety:
 - a. Roads – A letter was provided, from the Broadwater County Road Department. Jania Hatfield noted that in the report, in Appendix I, a traffic letter from the developer was included. This letter included data collected, based on a traffic count on the highway, between February 17th, of 2020 and February 23rd of 2020. It was noted that 400 vehicle trips per day, triggers the need to pave. This particular subdivision would add an additional 352 vehicle trips per day. Jania did recommend an engineered traffic impact study. This study will provide more information to indicate the impact on the county, financially. It was

advised that the Planning Board could either recommend approval of the subdivision, with the condition that the vehicle trips per day and developer's proportionate share of expense for road improvements is calculated, or recommend denial due to the cost of road improvements to the county. Jania Hatfield also advised that if the Planning Board recommends denial, this is able to be mitigated prior to going to the Commissioners. In this case, Jania's recommendation to the Commissioners would be different than her recommendation to the Planning Board.

- b. Response times for emergency services (Police and Fire): Jania Hatfield's concern with this issue is that the Planning Board is consistent with subdivisions across the board.
- c. Affects on Agriculture: Issues with water and concern with free range livestock were both concerns. Jania announced that the developer was present to discuss the water issue and mitigation options regarding the free-range livestock.
- d. Wildlife: Wildlife was addressed by Department of Fish, Wildlife and Parks in Appendix H, as well as in the Environmental Assessment. Jania's recommendation was to have a supplement to the Environmental Assessment.
- e. All requirements of 76-3-617 need to be followed, which includes a phasing plan. Process requirements for each phase needs to be followed.

Jania Hatfield's recommendation for the Planning Board was to either approve with conditions, or denial. If approval with conditions was the decision made, it was suggested to require a Weed Management Plan, a phasing plan, and require 76-3-617 be followed, require that the EA get supplemented, and traffic impact study. If denial is recommended to the Commissioners, there should be a discussion regarding roads.

Public Comment:

- Bill Waldren approached the podium, representing the Confederate Gulch Homeowner's Association, as well as an adjacent land owner. Mr. Waldren gave a presentation, displaying points to support denial of the Horse Creek Hills Major Subdivision.
- Cody McDaniel approached the podium to emphasize on the impacts this subdivision will have the community.
- Bill Waldren approached the podium to remind the Board of the impact on the wildlife, and mentioned the two letters regarding this concern.
- Sarah Seiler approached the podium to request clarification on the mitigation with the developer. Jania Hatfield responded, explaining the topics to be mitigated with the developer.
- Mark Fasting, with Allied Engineering, approached the podium to address items of concern. A copy of the letter regarding wildlife was requested. A phasing plan was submitted on November 29th. The timeline for each phase approximately every couple of years. Horse Creek Hills Major Subdivision Phase one is twelve lots, which is

approximately 117 acres, which would include one commercial lot on the Southeast Corner. Final plat would be anticipated in 2022, then each subsequent phase would be every two years. Phase two would be expected in 2024, phase three expected in 2026, phase four to be expected in 2028. Mark provided a letter regarding the phases in the application, outlining the timeline. Regarding the cultural resource investigation, GCM Consultant Services out of Butte conducted a site survey. This report concluded that the Horse Creek Subdivision would not impact any important or significant cultural, archeological, historical, or paleontological resources. In addressing the water issue, Mark explained that the necessary information was submitted to DEQ. Mark also explained the water rights. DNRC also regulates water usage. Colleen Coyle, Water Rights Attorney for the developer, explained exempt appropriations, in response to Board Member, Dallas Diehl's inquiry about irrigation wells. Mark Fasting explained the monitoring of the water usage. Jania Hatfield stated that the water use would be monitored through the Homeowner's Association. A copy of the letter submitted to DNRC was provided. Mark Fasting also addressed the concern with open-range cattle, indicating that they're open to mitigation. It was clarified, from the subdivision application, that the actual outside boundary was 442 acres, as there was a discrepancy from the Montana Cadastral site. This was revised on the application form, along with a table of the lots. Mark also addressed and explained the issue with traffic and traffic counts. There was open discussion regarding the developer's responsibility in road improvements, accumulative trips per day and proportionate share in paving the road.

Board Member, Dallas Diehl, questioned areas in the application, such as the first map, in Section A, the standards for building on 15% slope or greater, and page 9, G, noting that the adjacent land appears to be vacant land. This needs to be addressed, as county statutes classified ranching as agricultural.

- Dan Artz approached the podium, stating self-limiting water usage in an HOA is not enforced. Dan also questioned the application, stating it does not seem complete when submitted and the process seemed rushed. The issue with the road expense was another concern.
- Tanya Dundas approached the podium, with concerns with the possibility of the developer raising the density, meaning more homes. Board member, Mary Heinemann, responded by stating that another subdivision would need to be approved.
- Jan Finn approached the podium to address Mark Fasting, regarding a cultural research, road improvement expense effects on tax payers, the water supply issue, and the concern of conflict of interest with County Attorney Cory Swanson. The request was that County Attorney, Cory Swanson, recuse himself, as he has relations with the Galt family.
- Toby Dundas approached the podium to comment on the expense of the cost for road improvements, which will affect tax payers. Water supply is also a huge concern. The cattle safety was another concern.
- Tansy McDaniel approached the podium, asking about the roads and traffic.

- Colleen Coyle approached the podium, to explain the water rights and exempt appropriations. It was noted that the developer was utilizing less than what is entitled to. There is no permitting process in place. In regards to the roads, there was a road study done. Page 20 of the 2020 growth plan was also noted. There was open discussion regarding the subdivision roads and county road standards.
- Bill Waldren approached the Planning Board to demonstrate a photo of the wildlife in the area, stating the subdivision is in a poor location.
- Tina Read approached the podium, to ask if the studies include the commercial lots. Planning and Development Director, Nichole Brown, approached the podium to answer Tina Read's question, stating that the Growth Policy plan factors in a rate of 8 vehicle trips per day for residential and 20 vehicle trips per day for commercial. These numbers are included in the 352 vehicle trips per day.
- Nichole Brown shared an emailed comment from Mike and Vicki Sullivan, received the morning of November 30th.
- Mr. McDaniel approached the podium to ask about the old subdivision regulations, versus the newly adopted regulations. Nichole Brown responded, by confirming that the regulations are different.

The Sanitarian, Shawn Rowland, approached the podium to assure the public that public comments from the Planning Board meetings and the Commissioner's meetings are reviewed by the DEQ. It was explained that the DEQ also reviews reports regarding waste water and septic systems, as well as storm water plans. Shawn stated he also reviewed every soil profile on the property, to confirm soil types, as well as ground water monitoring on the commercial lots. The DNRC water rights is not an issue that the DEQ will be reviewing. Dallas Diehl asked who reviews off site water impacts? Shawn Rowland responded that the DEQ reviews this and explained the test performed and how the data is processed.

- Toby Dundas approached the podium to ask Shawn Rowland about waste water drainage to the lake. Shawn Rowland explained the specific requirements expected from the developer by the DEQ, followed by a demonstration of how drainfields operate and the aquifer.

Jania Hatfield noted that DEQ is not able to approve the preliminary plat without all of the information required.

Dallas Diehl questioned Chairman, Ed Shindoll, regarding response times for the Fire Department and if a request for mutual aid is allowed. Chairman, Ed Shindoll responded by stating that the department is part of the Montana Mutual Aid, which is throughout the state. Department options available are Meagher County, for Grassy Mountain, then Tri-Lakes would respond. Dallas Diehl reminded the board that they need to be fair regarding response times. Jania Hatfield reminded the board that she does not recommend using this as a reason for denying the subdivision. Jania Hatfield referred back to the letter received by Sheriff Meehan, stating he had concerns regarding response times to the subdivision.

There was concern regarding the solid waste canister site. Information was needed from Public Works Director, Josh Obert.

Board member, Dallas Diehl, stated there was not information provided in order to make a solid recommendation. Jania Hatfield explained the deadlines defined by statute. Another extension would be required to be granted by the developer.

Chairman, Ed Shindoll, provided information regarding response times for the Fire Department, as the Fire Chief.

Public Works Director, Josh Obert, approached the podium to provide information regarding the traffic monitoring on Lower Confederate Road and Lower Duck Creek Road. He also shared information regarding the Dry Gulch canister site. This site will require adding additional canisters to accommodate for the solid waste received by the subdivision. It was noted that continuing with a gravel road will require a high level of maintenance. Josh Obert stated that yes, there is a separate county road standard. Josh agreed to provide the Planning Board members, Colleen Coyle, and Jania Hatfield, with the county road standards.

Board Member, Mary Heinemann, inquired about requiring the developer to cover the expense of extending the solid waste canister site. Jania Hatfield agreed to research this, stating the developer would be responsible for a proportionate share.

There was open discussion amongst the Planning Board members regarding making a recommendation.

- Gerald Hewlett approached the podium to suggest the Planning Board recommend denial based on unresolved issues.

Nichole Brown advised the Planning Board on the timeline and the options for making a recommendation. This was followed by more open discussion regarding a recommendation. There was more discussion regarding the road improvement and a traffic impact study.

Josh Obert approached the podium to make a statement regarding the traffic study conducted to calculate trips per day, stating July displays the best recreational traffic. He stated that the traffic impact study he performed was for personal use.

There was more discussion regarding the request of a continuance. Jania Hatfield did state that another continuance was requested, with no response. The attorney, Colleen Coyle, stated it was a verbal request. A formal request would be required, to present to the land owners. Jania Hatfield agreed to submit a formal request. Colleen Coyle agreed to present this request to the land owners and provide Jania Hatfield a response.

There was more open discussion regarding a recommendation with conditions. Jania Hatfield advised the Planning Board that the Commissioners will need a letter stating the reasons for the decision made.

- Bill Waldren approached the podium to remind the Planning Board regarding the impact on wildlife.

Board member, Dallas Diehl, made a motion to pass this preliminary plat application to the Commissioners without a recommendation, and subsequently move that the Board send a letter siting the reasons for the decision, based on the lack of data in the traffic impact study, road impacts, and several necessary additions to the environmental assessment, including the impact on agricultural activities, wildlife and the pursuit thereof, military training opportunities being diminished. Board Member, Mary Heinemann seconded the motion. All voted in favor and motion carried. Board Member, Dallas Diel, made a motion to include that the Planning Board does not have enough time to properly analyze all of the information. Board member, Mary Heinemann, seconded the motion. All voted in favor and motion carried. This letter was to be drafted by Nichole Brown. Nichole Brown stated that this subdivision would go before the Commissioners on December 20th, 2021. The time was to be determined.

Other Business:

Nichole Brown approached the podium to share two letters from individuals interested in serving on the Planning Board. The first letter was received from Jeanene Stone. The second letter of interest was received from Diana Collada. Both are residents of Broadwater County. Board member, Mary Heinemann made a motion to recommend the two appointees to the Commissioners. Board Member, Dallas Diehl, seconded the motion. All voted in favor and motion carried.

Mary Heinemann requested a copy of the newly adopted subdivision regulations, along with the supplements. Nichole Brown agreed to provide each Planning Board member a copy.

The next Planning Board meeting was scheduled for December 14th, at 1:00 PM.

Dallas Diehl made a motion to adjourn the meeting at 1:57. Mary Heinemann seconded the motion. All voted in favor and motion carried.

Approved



Date

