CASCADE COUNTY
ZONING BOARD OF ADJUSTMENTS
January 23, 2020
9:00 AM
Cascade County Commissioners Chambers
Room #105
Court House Annex
325 2nd Ave North

Board Members: Bill Austin, Charles Kuether, Michele Levine, Leonard Reed, and Rob Skawinski.

NOTICE: PURSUANT TO MCA 2-3-212(1), THE OFFICIAL RECORD OF THE MINUTES OF THE MEETING IS IN AUDIO FORM, LOCATED AT CASCADECOUNTYMT.GOV AND THE PLANNING OFFICE. THIS IS A WRITTEN RECORD OF THIS MEETING TO REFLECT ALL THE PROCEEDINGS OF THE BOARD. MCA 7-4-2611 (2) (B). TIMESTAMPs ARE INDICATED IN RED, WITHIN EACH AGENDA ITEM BELOW, AND WILL DIRECT YOU TO THE PRECISE LOCATION SHOULD YOU WISH TO REVIEW THE AUDIO SEGMENT.

THESE MINUTES ARE PARAPHRASED AND REFLECT THE PROCEEDINGS OF THE CASCADE COUNTY ZONING BOARD OF ADJUSTMENTS AND ARE CONSIDERED A DRAFT UNTIL FORMALLY APPROVED BY THE ZONING BOARD OF ADJUSTMENTS.

STAFF ATTENDEES: Anna Ehnes, Destiny Gough, Sandor Hopkins, and Charity Yonker.

PUBLIC ATTENDEES: Carolyn Craven, Russ Eustance, Glenda Horner, Karl Puckett, Tammie Lynn Smith, and Don Weber.

1. CALL TO ORDER: Bill Austin called the meeting to order at 09:06 AM
2. ROLL CALL:
   - BOARD MEMBERS PRESENT: Bill Austin, Charles Kuether, Michele Levine, Leonard Reed, and Rob Skawinski.
   - BOARD MEMBERS ABSENT: None.
3. APPROVAL OF THE MINUTES:
   A. October 24, 2019, Meeting Minutes
   1. Board Discussion & Decision

   Charles Kuether: [00:02:38] says that he has a question in regards to page eleven (11) of the meeting minutes. On that page, Charity Yonkers comments at 00:05:01. He says that Charity Yonker’s comment states that it is mostly an administrative process and if the Commissioners deem a record insufficient, it can send it back to the Zoning Board of Adjustments (ZBOA). He

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1 The order of the meeting minutes follows the order of the agenda for the public meeting on January 23, 2020. For more information on the agenda please see http://www.cascadecountymt.gov/departments/public-works/planning/zoning-board/2020.
asks if this is the reason why the one item of the SUP# 006-2019 (Special Use Permit), Big Sky Cheese, was returned to the ZBOA.

Charity Yonker: [00:03:28] says that all findings of facts must be on the record as well as any conclusions of law.

Charles Kuether: [00:03:45] asks if then that the record was considered insufficient.

Charity Yonker: [00:03:46] replies yes. On the issue remanded those facts exist on the record. However, they do need to be tied with a conclusion.

Charles Kuether understands.

Charles Kuether: [00:04:00] motions to approve the meeting minutes for September 24, 2019.

Michele Levine: seconds the motion for approval.

All in favor, motion carries 5-0.

4. OLD BUSINESS: NONE

5. NEW BUSINESS:

A. Board Appointments

1. Board Discussion & Decision

Bill Austin: [00:00:14] says that he has been on the Zoning Board of Adjustments for fifteen (15) years. He says that he would like to share or have someone takes his place as the Chairman of this Board.

Michele Levine: [00:00:52] nominates Bill Austin for the Chair of the Board.

Leonard Reed: seconds the nomination.

Bill Austin: [00:00:58] asks if they are railroading him.²

The Board and county staff laugh.

Bill Austin: [00:01:09] nominates Charles Kuether for Chairman.

Charles Kuether: [00:01:12] politely declines Mr. Kuether’s proposal.

Charles Kuether: [00:01:28] nominates Michele Levine for Vice-Chair of the Board.

Bill Austin: seconds the nomination.

All in favor, motion carries 5-0 for Bill Austin to remain as the Chair of the Board.

All in favor, motion carries 5-0 for Michele Levine to remain as the Vicechair of the Board.

B. SUP 017-2019, Praise Tabernacle

1. Board Discussion & Decision³

² According to Collins English Dictionary, to "railroad" someone is to hastily make and pressure someone to do some sort of action/take action regardless if that said person wants to do it. For more information please visit https://www.collinsdictionary.com/dictionary/english/railroad.

³ Please see footnote 1.
The Board and staff discuss with one another the order of agenda for today's meeting.

Anna Ehnes: [00:04:30] states that they have heard from the landowner right before the meeting, that they do not wish to go through the SUP process presently due to them being in a buy-sell agreement with a different person other than the applicant. Therefore, this SUP will be on hold.

Bill Austin: [00:04:51] says that he has heard about this situation earlier.

Anna Ehnes: [00:04:54] says that it is true.

Sandor Hopkins: [00:04:58] says that there was a fourth item on the agenda that was an appeal for 963 McIver Rd. It was removed from the agenda at the applicant's request.

Michele Levine: [00:05:21] asks if the appeal was from the adjacent landowners.

Sandor Hopkins: [00:05:27] replies that the appeal was from the property owners. The property owners were denied a Location/Conformance Permit, and are appealing to ZBOA in concern to the Planning Department's denial of their permit.

Michele Levine understands.

Sandor Hopkins: [00:05:36] says that the property owners are now doing something else.

Michele Levine: [00:05:39] asks if this is Rockwell Scales.

Sandor Hopkins: [00:05:41] replies no. He says that it is a different business, different property owner, and a different entity.

Michele Levine understands.

Bill Austin: [00:05:53] asks if the SUP #018-2019, MRTE-Carlile Gravel Pit is still on the agenda.

Sandor Hopkins: [00:05:57] replies yes.

C. SUP #018-2019, MRTE-Carlile Gravel Pit

1. Sandor Hopkins presents the Staff Report.

2. Board Discussion & Decision

Board Discussion:

Bill Austin: [00:23:47] asks if this pit is already in operation.

Sandor Hopkins: [00:23:51] replies that he does find that it is in operation currently. He says that there is a Shoemaker gravel pit nearby it. He says that he understands how that can cause some confusion.

Bill Austin understands.

Charles Kuether: [00:24:11] asks in regards to item A of the motions if they are required to regulate this project such as the Department of Environmental Quality (DEQ) regulates certain businesses.

Rob Skawinski: [00:24:34] replies that they do not need to regulate the gravel pit as it is DEQ's job to regulate such businesses. He goes on to say that DEQ is very thorough.

Michele Levine: [00:24:48] asks if they need to lie down some findings of fact in concern with the hours of operation.
Sandor Hopkins: [00:24:59] replies that it is connected to point number four (4), subpoint A. He goes on to say that he is not opposed to further explain why there are set hours of operation.

Michele Levine: [00:25:32] asks if the applicant is present and if they would like to speak.

Glenda Horner at 3121 Rainbow Dam Rd. Great Falls, MT 59404: [00:25:46] introduces herself.

Bill Austin: [00:25:56] says that the hours of operation are not too much of a concern for this project. He asks if the area is remote.

Glenda Horner: [00:26:11] says that this area is very remote. She says that the decision to have the hours of operation was based on the summertime sunset being later in the daytime. Typically, she says they work to five o'clock (05:00 PM) or six o'clock (06:00 PM) at night.

Rob Skawinski: [00:26:24] asks about the working days and whether they are Monday through Friday. He says it is limiting to the business.

Bill Austin agrees with Mr. Skawinski.

Michele Levine: [00:26:50] asks the Chair as well as the applicant what is their recommendation for hours and days of operation and why they decided upon those hours and days for operation.

Glenda Horner: [00:26:56] says that habitually, they do not start working in the gravel pits till seven o'clock in the morning (07:00 AM). Additionally, there will be days where they will not be open. She says they have limited staff as they share staff with another gravel pit. At the other gravel pit that these employees work at, their work time is also limited. She finds seven o'clock at night (07:00 PM) to be late enough. She likes to send her employees home at a reasonable hour. Furthermore, she says that there is very limited staff around six o'clock as most of the drivers go home around six o'clock at night (06:00 PM). If they keep staff later than seven o'clock at night (07:00 PM), then there are fewer mechanics, equipment operators, etc.

Michele Levine: [00:27:34] asks if Ms. Horner finds the time for the hours of operation reasonable then.

Glenda Horner: [00:27:39] says if it is limited to seven o'clock in the morning and at night, and they put in their employees' application that it is from these work hours. Then, she has no problem with the SUP condition of hours of operation.

Michele Levine: [00:27:44] understands. She asks if there is anything that Ms. Horner would like to state.

Glenda Horner: [00:27:50] replies no.

Public Hearing opens at 09:33 AM

Proponents: none

Opponents: none

Public Hearing closes at 09:34 AM

Board Discussion & Action:

Charles Kuether: [00:29:36] moves to adopt, “the staff report and approve the Special Use Permit to allow the open cut mine/gravel pit on the property, subject to the following conditions:

1. The applicant obtains approval to operate an open cut mine or gravel and sand pit from Montana Department of Environmental Quality,
2. The applicant obtains any other required county, state, or federal permits and comply with regulations associated with any other permits.

3. Hours of Operation shall be limited to 7:00 a.m. to 7:00 p.m. Any building housing power or power producing machines shall be a distance of at least two hundred (200) feet from all adjacent property or street and highway lines.”

Leonard Reed: seconds the motion to approve.

Charity Yonker: [00:30:01] asks if they would like to include the findings that the applicant provided.

Bill Austin: [00:30:10] replies that incorporating the applicant's findings sounds like a good idea for they have already discussed her findings on the record.

Michele Levine: [00:30:13] moves to incorporate the findings from the staff report and the findings from the public meeting on January 23rd, 2020, including comments from the applicant as the basis for the reasons for the conditions on the hours of operation for the approved motion.

Charles Kuether: [00:30:31] asks if we are amending the motion and if we need a second for the amendment.

Michele Levine: [00:30:34] replies yes.

Charles Kuether: seconds the motion to amend the motion to approve.

All in favor, motion carries 5-0.

6. PUBLIC COMMENTS REGARDING MATTERS WITHIN THE BOARD’S JURISDICTION:

Carolyn Craven at 101 14th Ave. S. Great Falls, MT 59405: [00:31:30] says that the ZBOA on August 28, 2019, at a public meeting approved of seventeen (17) conditions. Big Sky Cheese appealed nine (9) of those approved conditions. On November 21, 2019, the Cascade County Commissioners, amended eight (8) of the conditions and remanded one (1) of the conditions back to the ZBOA. That remanded condition was the hours of operation. She asks when will this item be on the agenda, and if this meeting will allow public comment. She goes on to say that it is vital to resolve this issue as soon as possible as it relates to the Silver Falls Distillery.

Bill Austin: [00:32:44] says that Sandor Hopkins has discussed this topic before. He asks Mr. Hopkins where they are currently at with that process.

Sandor Hopkins: [00:32:47] replies that the county staff is uncertain about the best method to proceed in this manner for such reasons as that the county has not had time to put the item on the agenda and is now facing a lawsuit against these conditions.

Charles Kuether: [00:33:47] asks about the status of the litigation.

Sandor Hopkins: [00:33:54] says that he is uncertain.

Charles Kuether understands.

Charity Yonker: [00:33:55] says that the county is currently represented by council. Susan Swimley from Bozeman, Montana has taken the case and is advising the county on how to move forward.

Charles Kuether understands.
Charles Kuether: [00:34:20] asks Ms. Craven if that helps answer her question.

Carolyn Craven: [00:34:24] replies yes.

Charles Kuether: [00:34:27] asks the county staff if there are some means they can let Ms. Craven know what is happening.

Charity Yonker: [00:34:33] replies that she is a part of the party to the lawsuit. She says that her attorney needs to speak to our attorney.

*Charles Kuether understands.*

Charity Yonker: [00:34:43] says that this adds another layer to the process.

Charles Kuether: [00:34:46] says in a backhanded way you will find out.

Carolyn Craven: [00:34:50] says that she just wanted this to be a part of the record.

*Charles Kuether understands.*

Bill Austin: [00:34:56] asks if they will learn what is the current situation.

Charity Yonker: [00:35:02] replies yes.

Charles Kuether: [00:35:04] laughs and says that he understands.

*Bill Austin laughs with Charles Kuether.*

Charity Yonker: [00:35:08] says that they will be moving forward on the remand issue upon the advice of legal counsel. She says once the county receives such advice, the county will let the Board know.

*The Board members understand.*

Charity Yonker: [00:35:35] says if they have any more issues regarding this litigation, the Board will have to go into a closed meeting.

*Michele Levine understands.*

Tammie Lynn Smith at 397 Valley Rd. Great Falls, MT 59405: [00:35:56] says that Kate McMahon, Carolyn Craven, Nate Kluz, and herself are requesting information from the Cascade County Planning Department regarding the SUP 016-2019, Silver Falls Distillery as well as preparing public comment. She says that she has been notified that all PIRs (Public Information Request) must go through the Cascade County Attorney’s Department and are not considered a high priority. She says Deputy Civil Attorney, Charity Yonker, has stated to Ms. Craven that it may be a couple of weeks before her questions are answered. She says that she asked the county Planning Department to ask the applicant a question for her, but the Interim Planning Director, Sandor Hopkins, denied her request and referred her to the applicant’s responses in the applicant’s SUP application to answer her question. She says that her group is not receiving answers, which is troubling to her as there are set timelines for these different processes and different forms. She says that the Planning Department is withholding information. She says that her group needs this information and answers to write as well as give oral public comments that are relevant and knowledgeable. She says that she would like to discuss the August 28th, 2019, public meeting. She says Mr. Kuether did an analysis of the public
comments and challenged three (3) people who write public comments. She says that he was condescending to the public and battered the public. She says that Mr. Kuether did not find the public valid and that he made the public feel discredited. She adds that he stated that the public did not find that the SUP for Big Sky Cheese was a big concern to the public. She says that he claimed that there were three (3) main commenters in the public comments who wrote hundreds of pages of comments. She explains that she is a part of a group of people that consist of two hundred (200). She says that there are three (3) main commenters who do write the majority of these public comments on the group’s behalf. She adds that there also three (3) people assigned to speak at public meetings on behalf of her group. She says that they coach these people in the group as well as give them insight and knowledge. She says that many of these people in the group are unaware of how these various government processes work. She says that many people in the group cannot attend meetings and/or write public comments as they either do not understand or do not have the time. She says that unlike Mr. Kuether she finds the public valid. Moreover, she says that the public was told by a different Board last year to save time, it was acceptable to orally state that one agrees with a speaker, instead of repeating what that particular speaker, which they agreed with, said. She says that the public commenters who stated that they agreed with someone in the public comments for the SUP Big Sky Cheese public meeting was following the advice given to them by this other county Board. She ends by stating that she would like to discuss it with Mr. Kuether to sort things out.

**Charles Kuether: [00:43:47]** says that he does not have his comments from that meeting in from of himself nor does he have the summary that he presented at that meeting with him today.

**Charity Yonker: [00:43:55]** advises the Board to not respond further or to limit their comments as this is a representative of party that is discussing matters that are being litigated.

**Tammie Lynn Smith: [00:44:16]** apologizes for discussing that meeting. She says that this is not a part of the litigation, but she understands and will not pursue forward.

### 7. BOARD MATTERS:

**Rob Skawinski: [00:45:27]** says in concern with hours of operation, the board sees that condition listed in numerous SUPs recommended conditions by planning staff. He asks if they can go back and give findings to those limitations for hours of operation.

**Sandor Hopkins: [00:45:53]** replies yes, but he needs to look into it further. He says in this case with the gravel pit, they decided to use those set hours of operation as it is reflected elsewhere in the Zoning Regulations for the Agricultural District (Ag District). He says they will also set the hours of operation to comply with the applicant’s response for the operational use statement. He says that seven o'clock in the morning to seven o'clock at night appears to be a set hours of operation that reduces the number of complaints of a business operating too early or too late.

**Rob Skawinski: [00:46:35]** says that time has become the standard for hours of operation in our county SUPs. He says that many people have never operated a business before or filled out a SUP application. They are unaware of the future consequences or circumstances, so these people use the default hours of operation. Then, they find themselves in trouble. He asks if there is some more research that they can do in regards to this situation.

*Bill Austin and Sandor Hopkins agrees with Mr. Skawinski.*
Michele Levine: [00:47:14] says that it would be beneficial to know the logic behind and underlying reason as to why this became the standard hours of operation for the Ag District. She finds that for the ZBOA to impose this condition they need more reasons and findings of a fact.

Sandor Hopkins: [00:47:38] says that he will research it.

*Michele Levine understands.*

Sandor Hopkins: [00:48:01] asks if the Board members are available to have a public meeting on February 13, 2020.

Leonard Reed: [00:48:17] asks if that is a Thursdays.

Sandor Hopkins: [00:48:21] replies yes. He asks if the Board has a different date in mind.

Michele Levine: [00:48:24] says that date works for her.

Bill Austin: [00:48:27] says as far as he knows, it works for him.

Sandor Hopkins: [00:48:37] says that Mr. Kuether and Mr. Reed have already given their opinion and availability for that date.

Rob Skawinski: [00:48:41] says that date works for him.

Sandor Hopkins: [00:48:42] says that they will use that date then for the next meeting.

Michele Levine: [00:48:43] asks how many items are anticipated at that meeting.

Sandor Hopkins: [00:48:46] says currently he anticipates one (1) item.

Leonard Reed: [00:49:01] asks where are they proposing to have the Praise Tabernacle.

Bill Austin: [00:49:04] replies at the old Skyline Bar.

Sandor Hopkins: [00:49:06] replies at the old Skyline Bar.

*Leonard Reed understands. Bill Austin recalls when he drove past that building when the owner was getting ready to build that old bar. The Board members and county staff discuss how that building has been many things in the past.*

8. Adjournment: 09:55 AM

Michele Levine: moves to adjourn.

Rob Skawinski: seconds the motion to adjourn.

All in Favor, Motion carries 5-0.