

CASCADE COUNTY
PLANNING BOARD

3/21/2023

09:00 AM

Zoom Online/Hybrid Online Video Meeting

Board Members: Dexter Busby, Richard Liebert, Elliot Merja, Bruce Moore, Makenzie Rummel, Beth Schoenen, 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 PLANNING BOARD AND ARE CONSIDERED A DRAFT UNTIL FORMALLY APPROVED BY THE PLANNING BOARD.

STAFF ATTENDEES: Raina Leavens, Phoebe Marcinek, Alisha Osborne, Charity Yonker.

PUBLIC ATTENDEES: Robert Osowski, Spencer Woith.

1. CALL TO ORDER: Elliot Merja called the meeting to order at 09:00 AM [00:00:45].

2. ROLL CALL:

BOARD MEMBERS PRESENT: Dexter Busby, Richard Liebert (online), Elliot Merja (Online), Beth Schoenen (Online), Rob Skawinski (Online).

BOARD MEMBERS ABSENT: Bruce Moore, Makenzie Rummel.

3. APPROVAL OF THE MINUTES :

A. Draft Meeting Minutes for February 21, 2023 [00:01:49]

1. Board Discussion & Decision

Elliot Merja: Asks if anyone has additions or subtractions.

Richard Liebert: Motions to accept the minutes.

Elliot Merja: Says there is motion to accept the minutes and asks if there is a second.

Dexter Busby: Seconds the motion.

Elliot Merja: Says moved and seconded and asks if there is any further discussion. Hearing none, he calls for the vote.

All in Favor, motion carries 5 – 0.

4. OLD BUSINESS: None.

5. NEW BUSINESS:

A. Bauch Minor Subdivision Preliminary Plat Application [00:02:42]

1. Raina Leavens presents the Staff Report.

Motions Presented for the Board's Consideration:

A: Move that the Cascade County Planning Board recommend, after consideration of the Staff Report and Findings of Facts, **denial** of the Bauch Minor Subdivision Preliminary Plat; **or**

B: Move that the Cascade County Planning Board recommend to the Board of County Commissioners, after consideration of the Staff Report and Findings of Facts, adoption of said Staff Report and Findings of Facts, and **approve** Bauch Minor Subdivision Preliminary Plat subject to the following conditions:

1. Cause to be recorded in conjunction with the final plat, a statement if waiver placed on the final plat requiring property owners of each lot in the subdivision to take part in any Rural Special Improvement District (RSID) for the reconstruction, improvement or perpetual maintenance of any county road in the vicinity used to access the major subdivision, or any other road that can be used to access these lots as determined by Cascade County, provided that all other property owners served by said road share equitably in such an RSID. This waiver shall expire 20 years after the date the final plat is filed with Cascade County.
2. A statement shall be included on the Final Plat stating: "Lot owner(s) shall comply with the required Noxious Weed Management Plan, approved by the County Weed Supervisor."
3. Submit a written Weed Management Plan to the Cascade County Weed Board specifying the methods for weed management procedures with regards to this development and incorporate it into the HOA CCRs or file with the Clerk & Recorder's Office along with the Final Plat.
4. All vegetation disturbed during construction shall be reestablished with vegetation types that have been recommended by the MSU Extension Office.
5. The Montana Department of Environmental Quality (MDEQ) Certificate of Subdivision Approval (COSA) must be provided prior to final plat approval.
6. The utility easements must be shown on the plat with dashed lines.
7. The final plat must contain the following statement: "The undersigned hereby grants unto each and every person, firm, or corporation, whether public or private, providing or offering to provide telephone, electric power, gas, cable television, wired broadband, water or sewer service to the public, the right to the joint use of an easement for the construction, maintenance, repair and removal of their lines and other facilities, in, over, under and across each area designated on this plat as 'Utility Easement' to have and to hold forever."
8. Cause to be recorded on the final plat a statement concerning limited public services.
9. Correct any errors or omissions on the preliminary plat prior to final plat approval.
10. Submit with the final plat submittal a certificate of a title abstracter showing the names of the owners of record of the land to be subdivided and the names of lienholders or claimants of record against the land and the written consent to the

subdivision by the owners of the land, if other than the subdivider, and any lienholders or claimants of record against the land.

2. Board Discussion & Action [00:10:18]

Elliot Merja: Says thank you and asks if there are any questions for staff.

Richard Liebert: Says he has two (2) questions.

Elliot Merja: Says yes, Mr. Liebert.

Richard Liebert: Asks reference condition number seven (7) where it says, "the Final Plat must contain the following statement...", is that a routine condition or is that unique to this property.

Raina Leavens: Says no, that is a routine condition.

Richard Liebert: Says okay and the other question is regarding the agricultural covenant. He asks when that was implemented and by whom and whether it has any bearing on who requested that initially. He says he is just trying to get some history on that covenant and how it came to be Light Industrial (I-1) [District].

Raina Leavens: Says she does not think she has the information on when it was put on the property, or by whom, but I think it was put on before zoning was in place.

Richard Liebert: Says he is trying to figure out what the intent was back then and whether it was farmland before it was zoned. I guess this is some housekeeping.

Charity Yonker: Says generally, the agricultural covenants are put on because owner's at the time do not want to go through subdivision review, and so the previous property owner could have put the agricultural covenant on to divide the property, and then they are able to sell that property off with minimal costs to them and pass that on to the next purchaser. Then we have a situation where the agricultural covenant needs removed and must go through subdivision review. It is like passing it on the subdivision review to the new buyer.

Richard Liebert: Says got it, understood thank you. He says he will have a couple question for the applicant later, thank you.

Elliot Merja: Says on page eight (8) of the Findings of Fact, section "E" I understood this to be serviced by the Great Falls Fire Department and asks if that is correct.

Raina Leavens: Says yes, they call it "the donut," which is a certain area around Great Falls that the rural fire departments do not service, even though it is county.

Elliot Merja: Says okay, he just wanted to clarify that. He asks if it is a commercial building. He says he did not see anything where there was a house.

Raina Leavens: Says that one does not pertain to this one because it is not residential.

Charity Yonker: Says this one appears to be a holdover from one of the other subdivisions.

Elliot Merja: Says it might have been something from somewhere different.

Raina Leavens: Says it is on page eight (8).

Elliot Merja: Asks if there are any other questions from the Board. Hearing none, he asks do we have the developer here or anybody representing them.

Charity Yonker: Says we have both engineers present.

Elliot Merja: Asks if they would like to speak, or whether there are questions for them.

Richard Liebert: Says he has a question, Mr. Chair.

Elliot Merja: Says yes, Mr. Liebert.

Richard Liebert: Asks what the current use of the property is and then what is the intended use be with the warehouse or shop, so as to give it some context.

Spencer Woith of Woith Engineering, 405 3rd St. NW, Unit 206, Great Falls, MT: Says the current use is vacant, and the intended use is a commercial shop for a construction company.

Elliot Merja: Asks if this where the underground wire stuff is set, or if that is next to this lot. Someone in that area is doing fiberoptic work.

Spencer Woith: Says it is on the parcel adjacent to it.

Elliot Merja: Asks if there are any other questions for him. Hearing none, he thanks Mr. Woith. He asks if there are any proponents to this.

Charity Yonker: Says the public hearing is on the agenda, but this does not require a public hearing.

Elliot Merja: Asks if it does not require asking people if they are for or against.

Charity Yonker: Says no, there is no need to open a public hearing, if it for a minor [subdivision].

Elliot Merja: Says okay, so we can go back to the board discussion if anyone else has any questions. Hearing none, he would entertain a motion.

Dexter Busby: Moves to recommend approval.

Elliot Merja: Asks if there is a second.

Rob Skawinski: Seconds the motion.

Elliot Merja: Asks if there is any further discussion. Hearing none he calls for the vote.

All in Favor, motion carries 5 – 0.

6. BOARD MATTERS [00:17:36]

A. Land Use Bill Legislative Update.

Charity Yonker: Says right now, we are tracking sixteen (16) different bills that are moving forward related to land use, the first of which is Senate Bill 382, which is creating a Montana Land Use Planning Act, and the purpose is a planning reform bill aimed at more consistency between growth policy, zoning, and subdivision regulations. It is a large act; however, it is opt-in for counties and not a requirement. It gives less discretion to boards and more outlined processes statutorily. There are pros and cons, in that it provides more government transparency and predictability, however, it limits stakeholder input. The stakeholders were not able to participate in the creation of it, and currently a hearing is scheduled for March 23, 2023 at three (3) P.M. for local government.

Senate Bill 379 is to revise zoning laws, it revises maximum minimum lot sizes for residentially zoned districts in cities and is a state mandated density requirement that the Accessory Dwelling Unit language would supersede zoning standards with more subjective language. It also restricts the local government's ability to manage family transfers and review for evading review for impacts on public health and safety, access et cetera.

We have Senate Bill 331, to revise condo and townhouse exemptions. This has been discussed amongst the Zoning Board a lot. It adds language about townhome/condo to remove going through subdivision review. It adds determination by governing body to review proposals. Local government cannot prohibit townhome form of ownership or impose conditions in the determination of exemption from subdivision review to go through a conditional use permit which would be the equivalent of our Special Use Permit process, or a quasi-judicial government review process as a prerequisite to determining eligibility for and exemptions from the subdivision.

Phoebe Marcinek: Asks if that means they wouldn't have to go back and have approval and be allowed to do what is on the plat.

Charity Yonker: Says she believes so, the way it is currently proposed.

Dexter Busby: Says he read that it did not matter how it was initially proposed, they could do it.

Charity Yonker: Says they could just do it.

Phoebe Marcinek: Says for townhomes and condos.

Charity Yonker: Affirms.

Phoebe Marcinek: Says she knows that this one talks about if it is in the plat, they could then do what they have initially decided in the plat.

Charity Yonker: Says yes. Senate Bill 319 concerns laws regarding to tracts of record, which clarifies that existing tracts of record are expunged when a Certificate of Survey (COS) or subdivision plat is filed. Senate Bill 268 revises laws regarding short term rentals and prohibits zoning from banning short term rentals in residential districts. Senate Bill 178 which generally revised cryptocurrency laws and was originally proposed MCA § 7-1-111(28) language to prohibit changing the zoning if it contains active digital asset mining. This was struck and is going to the business and labor committee on the twenty-fourth at eight (8) AM. We have Senate Bill 170, which allows administrative review of minor subdivisions. It allows for internal review for first and subsequent minors, but they must have access to public sewer and water, be on an existing road network, and be in areas with zoning. The appeal goes to the governing body.

Phoebe Marcinek: Says so it would be your office essentially.

Charity Yonker: Says that is correct. Right now, they must have access to public sewer and water, and many of our subdivisions in the county do not have access to that, so that would trigger them to come through the Board, but if they are connected to public sewer and water, the Board would not be seeing any minors, only majors. The idea is to streamline things and get them through faster without having to go through the Board, because first-time minor subdivisions are not subject to the public hearing, though subsequent minor subdivisions are. Senate Bill 158 is to revise family transfer law, allows family transfer in platted and unplatted subdivisions to be exempt from lot size requirements if tract is five (5) acres or more, allows family transfer to a spouse, allows jurisdictions to set a hold period of up to two (2) years before a parcel can be sold. Right now, we do not have a holding period, across the state, this exemption is abused, and we see surveys dividing the property using the family exemption and sometimes the same day it gets transferred to someone that is not an immediate family member and there is nothing we can do about it. Senate Bill 152 revises minor subdivision laws of 1973 and replaces it with 2003 to determine a minor subdivision of any subdivision of five (5) lots or less on a tract of record that would be considered a minor. Tract of record date would be status as of that date (it was previously 1973, now possibly 2003). The purpose is to clarify MSPA due to various interpretations. Senate Bill 143 allows referendum to terminate citizen initiated zoning districts. It removes the protest provision in Part 1 zoning deemed unconstitutional in Part 2 zoning, and mirrors referendum provision of Part 2 Zoning. We have part 2 zoning in this county, but originally, we did have Part 1, it is the flood district that was a Part 1 before we adopted Part 2. Senate Bill 131 revised exempt subdivision review timelines and establishes a 20-day timeframe to process an exemption. One thing this Board does not see, is when we review the subdivision exemptions. We do not usually take twenty (20) days unless that survey really needs some work. That bill prevents some conditions of approval being placed, which is something we really do not practice in this county, at best we make recommendations to the surveyors for proposed changes but do not impose a condition. The clock starts with complete application and fee. Applications will include surveyor review and errors and omissions. Senate Bill 130 allows for county consolidated land use

board, so consolidation of the Planning Board and the Zoning Board of Adjustments and the purpose is because some counties have a difficult time obtaining volunteers to serve on the boards. Some pros include consistency in the process, and the ability to get volunteers. The cons were no issue getting volunteers and increasing the risk of conflict of interest. House Bill 299 will revise resolution and ordinance requirements regarding land use regulation enforcement. This clarifies 2021 House Bill 257 as to authority to enforce lawfully adopted zoning regulations. This is going to hearing, I think it was set for yesterday. Then we have House Bill 246, which allows for zoning of tiny dwelling units, which is a big push in the affordable housing discussion, and the demand for housing.

Phoebe Marcinek: Asks if this will allow tiny homes on regular size lots.

Charity Yonker: Says yes. County and city expressly allowing for tiny dwelling units in zoning districts and defines tiny dwelling units. The purpose is not to revise the zoning, though if we wanted to, they are trying to make it easier by setting the definition in a statute so if we want to adopt it, it will be easier with consistency across jurisdictions.

Phoebe Marcinek: Asks if it is correct that we do not allow tiny dwellings on properties.

Charity Yonker: Says we do. We do not have a call out for tiny dwelling, which can also be termed an Accessory Dwelling Unit (ADU), but we do allow for second dwellings, which is why we see the Special Use Permits for the second dwellings. Part of the definition of tiny dwellings, is it must be a 350 to 750 square foot structure on a foundation.

Phoebe Marcinek: Says oh, it is not movable.

Charity Yonker: Says yes.

Phoebe Marcinek: Asks if you can have more than one per lot, with a variance.

Charity Yonker: Says it gets into subdivision [regulations] when it concerns how many they are putting on a lot, and how the ownership is done. Right now in zoning we allow two (2), so the second dwelling unit, which is where we see the Special Use Permit, as we do not allow for more. We do allow for multi dwelling units such as apartment units or a fourplex, which are treated differently. But for these, we do not have a specific call out for tiny dwellings. We have the provisions and definitions in the regulations to know how to treat them if they come forward, so it is not like they are prohibited. Lastly, we have House Bill 211, to revise the local subdivision review process. In the last legislative session, we had the expedited review process come forward, which is a thirty-five (35) day review, you had to meet a certain number of criteria to qualify for the expedited review, this one is to clarify some of the provisions under the expedited review. It codifies how to handle new information and subsequent hearings; when a hearing is needed for final plats in phased subdivisions; how to handle variances during an expedited review. Under the current statute, if a variance is needed you would automatically be disqualified for an expedited review. House Bill 364 allows independent subdivision review for past due applications, and while this is not directly related to us, it has to do with expanding the Sanitation Act, so it would allow a private engineer to do the Department of Environmental Quality Certificate of Subdivision Approval process if for some reason the application was past due at the local government level. That one concerns the sanitation act. That is all I have.

Elliot Merja: Says thank you and asks if there are any questions for Ms. Yonker on these bills.

Richard Liebert: Says he would like to thank Ms. Yonker for the good work and the thorough examination of all these bills. He says it is a lot to track and he appreciate it. He says he has a comment on Senate Bill 382 that master land use planning act. I think when the interim committee

established the working group they left out agriculture. He says they did make an amendment to throw the word agriculture into the body of the text, but not sure they did anything more than that. As an agricultural producer, I think they need some more refinement. He asks about the impact of the Planning Department man hours if some of the bills get passed, when they go into effect, and whether it affects the zoning regulations and the effect on hearings and administrative upgrades and so forth.

Charity Yonker: Says the answer to that is absolutely, and depending on which bills get passed, it could be quite a lot of work, such as Senate Bill 382, which would affect growth policy, subdivision, and zoning. With legislative items, we will wait until the end of the session and determine at that time which regulations will need revised. It looks as though it a good possibility this year.

Richard Liebert: Says he has one follow up [question].

Elliot Merja: Says yes.

Richard Liebert: Says at that point then it probably becomes a budget issue for more man-hours and then focus on the growth policy that is in the works that must be budgeted and so forth.

Phoebe Marcinek: Asks Ms. Yonker if she has an idea of which bills may be successful, and if there are any that she thinks will not advance.

Charity Yonker: Says the ones she believes will move forward, given the support they have, is Senate Bill 382, and I think what is likely to happen is that any of the other bills that are much smaller and may deal with just one (1) or two (2) provisions, are going to be wrapped into Senate Bill 382. I think the consolidate board bill is likely, just given that there is jurisdiction issue with getting volunteer board members. Most of these have pretty good support from MACo, the League of Cities, and from the Realtors' Association. I cannot say for sure which ones, if any, are going to die at this point.

Dexter Busby: Says that is going to make budgeting challenging, and I hear the consolidate board bill has got some legs.

Charity Yonker: Says that is a good point, so Senate Bill 382, according to Gallatin County, the manpower on that bill is going to be somewhere around three (3) hundred to eight (8) hundred thousand dollars of consulting fees for them.

Dexter Busby: Says yes, but that is Gallatin County.

Charity Yonker: Says yes, I have faith in the department being able to handle those.

Elliot Merja: Says thank you for that report and asks if there was anyone else that had questions. Hearing none, he asks if there are any public that would like to speak.

Charity Yonker: Says there is no one online or in the gallery.

7. PUBLIC COMMENTS REGARDING MATTERS WITHIN THE BOARD 'S JURISDICTION [00:37:16]

8. Adjournment at 09:37 AM [00:37:43]

Elliot Merja: Says he would entertain a motion to adjourn.

Rob Skawinski: Says "so moved".

Elliot Merja: Asks if there is a second.

Dexter Busby: Seconds the motion.

Elliot Merja: Calls for the vote.

All in Favor, motion carries 5 – 0.