

CASCADE COUNTY  
**ZONING BOARD OF ADJUSTMENT**

3/17/2022

9:00 AM

Hybrid Meeting Format/Zoom Online Video Meeting

**Board Members:** *Dexter Busby, David Deffinbaugh, Kathryn Hanning, John Harding, and Ken Thornton.*

**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:** Kevin Angland, Kareece Dafoe, Carey Ann Haight, Amber Hobbs, Phoebe Marcinek, and Alisha Osborne.

**PUBLIC ATTENDEES:** Eric Urban.

1. **CALL TO ORDER:** Ken Thornton called the meeting to order at 09:08 AM [00:09:52].

2. **ROLL CALL:**

**BOARD MEMBERS PRESENT:** Dexter Busby (Online), David Deffinbaugh, Kathryn Hanning, Ken Thornton.

**BOARD MEMBERS ABSENT:** John Harding.

3. **APPROVAL OF THE MINUTES :**

**A. Draft Meeting Minutes for February 17, 2022. [00:10:51]**

1. **Board Discussion & Decision**

**Kathryn Hanning:** Motions to approve the minutes.

**David Deffinbaugh:** Seconds the motion.

**Ken Thornton:** Calls for a vote.

*All in Favor, motion carries [4 – 0.]*

4. **OLD BUSINESS:** None.

5. **NEW BUSINESS:**

**A. Special Use Permit Application #002-2022, Submitted by Signature Homes, LLC To Construct Two-Unit Townhomes [00:11:21]**

1. **Amber Hobbs presents the Staff Report.**

Motions presented for the Board's consideration:

**A:** Move that Special Use Permit #002-2022 to allow the construction of a second dwelling unit on Lot 012, Block 015 of the Foothills Ranch Phase III Subdivision in Section 24, Township 20 North, Range 04 East, P.M.M., Cascade County, MT, be denied (Board must make findings delineating the legal reason for denial);

**Or**

**B:** Move the Board adopt the staff report and findings of fact and approve Special Use Permit # 002-2022 to allow the construction of a second dwelling unit on Lot 012, Block 015 of the Foothills Ranch Phase III Subdivision in Section 24, Township 20 North, Range 04 East, P.M.M., Cascade County, MT, subject to the following conditions:

1. The Applicant obtains any other required county, state, or federal permits and comply with regulations associated with any other permits.
2. Applicant obtains addressing from the GIS Department for E911 purposes.
3. Applicant obtains an approved Subsurface Wastewater Treatment System Permit from the City-County Health Department prior to installation of any wastewater treatment system.
4. The second dwelling unit cannot exceed 150 feet in height.

**2. Board Discussion [00:37:24]**

**Ken Thornton:** Asks if there is any comment from the public on the matter.

**Carey Ann Haight:** Advises that public comment must be called three (3) times.

**3. Public Hearing opens at 09:35 AM, [00:37:24].**

**Public Proponents:** None.

**Public Opponents:** None.

**Public Hearing closes at 09:35 AM.**

**4. Board Discussion & Action: [00:38:14]**

**Kathryn Hanning:** Says, "I move that the Board adopt the staff report and findings of fact and approve Special Use Permit # 002-2022 to allow the construction of a second dwelling unit on Lot 012, Block 015 of the Foothills Ranch Phase III Subdivision in Section 24, Township 20 North, Range 04 East, P.M.M., Cascade County, MT, subject to conditions one through four."

**Ken Thornton:** Asks if there is a second.

**David Deffinbaugh:** Seconds the motion.

**Ken Thornton:** Calls for a vote.

*All in Favor, motion carries [4 – 0].*

**B. Special Use Permit #003-2022 Submitted by Edwin & Margaret Birky for A Quarry [00:39:40]**

**1. Kevin Angland presents the Staff Report.**

Motions presented for the Board's consideration:

**A:** Move that Special Use Permits #003-2022 to allow a quarry on the subject property on Parcel #6120300, be denied due to (Board must make findings delineating the legal reason for denial);

**Or**

**B:** Move the Board to adopt the Staff Report in its entirety with Findings of Fact and approve Special Use Permits #003-2022 to allow a quarry on Parcel #6120300, subject to the following conditions:

1. The Applicant obtains any other required county, state, or federal permits and approvals, and comply with the laws, rules, regulations, and/or ordinances associated with any other permits and approvals.
2. Applicant obtains an approved Subsurface Wastewater Treatment System Permit from the City-County Health Department prior to installation of any wastewater treatment system.
3. Operations hours shall be from 7:00 a.m. to 7:00 p.m.
4. In the case of an open excavation there shall be substantial fence, suitable gates, completely enclosing the portion of the property which the excavation is located in, and such fence shall be located at all points forty (40) feet or more from the edge of the excavation.
5. No rock crusher, cement plant, or other crushing, grinding, or polishing or cutting machinery, or other physical or chemical process for treating the product of such quarry shall be permitted.
6. In the case where excavation activity is discontinued, the excavation shall be restored in accordance with Open Cut Mining Reclamation guidelines (See MCA § 82-4-400, et. Seq).

**2. Board Discussion [01:06:21]**

**Kathryn Hanning:** Asks whether that is the only fencing the Applicant needs or if it is just a sample of what he is proposing. She is guessing that is fencing around the quarry on the map.

**Kevin England:** Says yes.

**Kathryn Hanning:** Asks if it is that area *[indicates the area on the map]*.

**Kevin England:** Says if you look at the vicinity map what they are proposing is the topsoil stockpile acting as the sight and sound barrier.

**Kathryn Hanning:** Says she sees it and thought it was *[inaudible]*.

**Ken Thornton:** Asks if the Applicant is present and will take questions from the Board.

**Eric Urban of 1564 Charlie Russell Drive, Helena, MT :** Says yes and introduces himself, explaining he has a consulting business in Helena and has twenty (20) years in public service, most of that time spent in DEQ. He says Mr. Birky hired him to do the job right and so he would be happy to answer any questions from the Board.

**Ken Thornton:** Asks the Applicant to verify the hours of operation as from 7 AM to 7 PM and whether it is weekdays or seven (7) days a week.

**Eric Urban:** Says that in the application it is proposed for seven (7) days a week but they would be amenable to modifying that.

**Ken Thornton:** Says there was one letter in opposition and asks if there were any other comments.

**Kevin England:** Says that was the only comment submitted, and it was submitted this morning. He says there were a couple calls from people who did not want to make public comments.

**Ken Thornton:** Asks where 1186 County Line Road is located.

**Kevin England:** Says there is a vicinity map but it is only *[inaudible]* no addresses.

**Kareece Dafeo:** Asks if he has a copy of the map.

**[Inaudible chatter].**

**Eric Urban:** Asks what the address is and says perhaps he can help.

**Kathryn Hanning:** Says 1186 County Line Road.

**Eric Urban:** Says that it is going to be two (2) parcels east of the site. The first one would be Weaver and the next one would be Mary Hyland.

**Kevin Angland:** Says that will be Parcel #6118700.

**Eric Urban:** Says "Mr. Chairman?"

**Ken Thornton:** Says "Yes?"

**Eric Urban:** Says since the comment came in this morning, there has not been the opportunity to read it, and asks if someone could briefly summarize the concerns.

**Kevin Angland:** Says there were six (6) comments raised, the first being air quality, then water quality, land value, noise, increase of traffic, and future business ventures on the parcel. The air quality comments were concerned about dust and the effects it could have on asthmatic folks around that area. The water quality comments were concerned with how the use of the quarry affects livestock in the area. The comments on land value were concerned with the quarry adjacent property affecting land values, the noise concerns from the machinery, and the traffic being from the customers and the heavy machinery. The future business ventures comments were concerned with being able to get certain organic certifications.

**Eric Urban:** Thanks Mr. Angland for the information.

**Ken Thornton:** Says that in the permit application it says no rock crushing, or any other type of physical processing. He asks Mr. Urban if the plan is to screen the material.

**Eric Urban:** Says that is one point he would like to discuss. He explains that for a quarry and open cut mining, for DEQ he and the clients were under the impression that it was fully encompassing all the tools and machinery necessary for an open cut permit. The proposal for Condition #5 to limit the applicants would be a very big business change for the project. For the material to be made, they would need the ability to crush on site different products for the customers and existing business. Mr. Urban proposes a level of mitigation in lieu of limiting or excluding the equipment. He says he is unsure as to what the mitigation would be, however he welcomes the discussion on hours of operation for that type of equipment.

**Ken Thornton:** Asks how long Mr. Urban thinks the quarry would be open and whether it would be a short duration or many years.

**Eric Urban:** Says at this point, he usually advises obtaining a DEQ permit that lasts approximately twenty (20) years. He explains that the speed at which they proceed with mining will be market-driven. He says he expects that with Mr. Birky's busy schedule, the duration would be much less than twenty (20) years.

**Ken Thornton:** Says thanks and asks if there are any other questions.

**Kathryn Hanning:** Says there are no questions for the Applicant *[inaudible]* board discussion.

**Eric Urban:** Says they would be open to mitigation and reiterates the concerns of the comments submitted. He explains the requirements for a sight and sound barriers and the reason for the soil stockpile and additional screening considerations. He requests that Condition #5 be modified.

**Ken Thornton:** Asks if he opens up the Public Comment first.

**Carey Ann Haight:** Says Mr. Thornton can do the Comments first.

**3. Public Hearing opens at 10:17 AM, [01:18:41].**

**Public Proponents:**

**Eric Urban:** Says Mr. Birky is a proponent of the project and would like to see it approved with modifications to Condition number five (5).

**Public Opponents:** None.

**Public Hearing closes at 10:18 AM.**

**4. Board Discussion & Action: [01:19:38]**

**Ken Thornton:** Says he will open it up for discussion by the Board.

**Carey Ann Haight:** Says "Motion".

**Ken Thornton:** Reiterates that it is a Motion.

**Kathryn Hanning:** Asks if there are any questions.

**David Deffinbaugh:** Says go ahead, he will be the second.

**Amber Hobbs:** Asks if she can add something.

**Ken Thornton:** Says sure, you bet.

**Amber Hobbs:** Says Section 8.1.5, for "Natural Production Use," provides the conditions that are in the Staff Report, and for the one that indicates no rock crushing comes from number two (2), which states except in heavy industrial district or permission by ZBOA.

**Ken Thornton:** Says okay.

**Kathryn Hanning:** Notes they are back to where they started and asks if the Board is going to make a motion.

**Ken Thornton:** Says maybe we should table this.

**Kathryn Hanning:** Asks if they are tabling it, and how that works.

**Carey Ann Haight:** Says Mr. Thornton makes a motion to table it *[inaudible]*.

**Kathryn Hanning:** Asks if they talk about why they are tabling it.

**Carey Ann Haight:** Says sure.

**Kathryn Hanning:** Explains that it should be tabled because of Condition #5 which is not agreed upon by all parties and that it should be before it goes out to the public. She asks if it is incorrect.

**Ken Thornton:** Says no, that is what it sounds like.

**Kathryn Hanning:** Asks Mr. Deffinbaugh what he thinks and then asks Ms. Haight if the motion was tabled, what the Staff can do to rectify the issue or if it will return the same way.

**Carey Ann Haight:** Says it gives Staff an opportunity to review it and discuss with the Applicant and identify the mitigation measures, but the Board could elect to incorporate if they are inclined to allow that additional processing to occur.

**Ken Thornton:** Says that needs to involve the neighbors.

**Kathryn Hanning:** Says that not knowing what those mitigation methods are that they have in mind makes it hard for the Board to decide. She asks whether they are breaking any laws.

**Carey Ann Haight:** Says no, this is fine. Any sort of *[inaudible]* if the Applicant had not seen it and was not aware of it.

**Kathryn Hanning:** Asks if there must be a motion to table.

**Carey Ann Haight:** Affirms.

**Kathryn Hanning:** Motions to table the SUP.

**David Deffinbaugh:** Seconds the Motion.

**Ken Thornton:** Calls for a vote.

***All in Favor, motion carries [4 – 0].***

**Kathryn Hanning:** Says she does not like to delay items but cannot see past the mitigation issue.

**Ken Thornton:** Says that is a big issue.

**Kathryn Hanning:** Says Mr. Angland and the Applicant will be in touch.

**Ken Thornton:** Says they will pick that up at the next meeting.

**Kathryn Hanning:** Affirms.

5. **BOARD MATTERS [01:23:45]**

None.

6. **PUBLIC COMMENTS REGARDING MATTERS WITHIN THE BOARD 'S JURISDICTION [01:23:51]**

None.

7. **Adjournment at 10:23 AM [01:24:05]**

**Ken Thornton:** Asks for a Motion to Adjourn.

**Kathryn Hanning:** Says "So moved".

**David Deffinbaugh:** Seconds the Motion.

*All in Favor, motion carries [4 – 0].*

DRAFT