

## **Planning & Community Development Board**

January 20, 2011

Park County, Montana

**Attendance:** Planning Board Members Bill Berg, Peter Fox, Dave Haug, Traci Isaly, Dale Reinhart, Frank Schroeder and Lewis Wilks. Community Development staff Philip Fletcher and Mike Inman. Commissioners Durgan and Malone. Shannan Piccolo, legal counsel. Sarah Orms, PCEC. Wes Venteicher, Livingston Enterprise; George Borneman and George Fraidie, CTA Engineering; Don Tompkins and Fred Fleet, applicant representatives.

**I. Call to Order:** @3:32:23 p.m., Chairman Dale Reinhart called a meeting to order in the Community Room of the City/County Complex.

**II. Approval of Minutes:** The Board considered approval of minutes for the December 16 2010, planning Board meeting. *Lewis Wilks made a motion to approve the minutes. Bill Berg seconded that motion. Motion passed.*

**III. Conflict of Interest:** None reported

**IV. Public Comment on Agenda Items not Scheduled for a Public Hearing:** None

### **V. New Business**

**A. Welcome New Board Appointment:** Dale Reinhart welcomed Peter Fox to the Board. Fox provided his background information.

**B. Election of 2011 Board Officers:** Reinhart opened the floor to nominations for Board chairman and vice-chairman. Lewis Wilks nominated Reinhart to renew his tenure as chairman. Traci Isaly seconded that motion. *Reinhart was elected chairman.*

*Frank Schroeder made a motion Bill Berg be elected vice-chair. Lewis Wilks seconded that motion. Berg was elected vice-chairman.*

**C. Board Member Certificate of Appreciation:** Reinhart said former Board member Kerry Fee was not in attendance and the Board appreciated Fee's service on the Board.

**D. Goals and Priorities for 2011:** Commissioner Durgan said he expressed appreciation for the Planning and Development Board in how it conducts business and the Board members' interests. Commissioner Malone said he agrees the Board makeup is well-balanced with countywide representation, members have strong personalities, and the Board has good debate and a transparent process with public comment.

Reinhart said the Commission asked the Board to address issues with the family conveyance as a priority for 2010 and thinks the Board and staff fulfilled that request. He

said addressing the zoning district within the donut area with public input is a current issue he is not sure how far the Board will take.

Wilks said he thinks subcommittee work on the topic of renewable natural resources has been mainstreamed into the planning Board and is a regular part of the agenda, so he expects the Board to put a lot of time and energy in that area in the year ahead. Wilks said he thinks economic development will take a lot of Board time as well. He said the Board may consider starting its meetings earlier in the day to ensure enough time for all topics and Board responsibilities.

Schroeder said it is really important for the Board to have direction from the commissioners in order to avoid going down a wrong path. He said the Board appreciates the work Inman and Fletcher do for the Board, and their efficiency and effectiveness help the Board get to the heart of issues it has to address.

Isaly said the Board may become more active with subdivision reviews with the economy improving and not have as much time as it thought for housecleaning. She thinks that it is important for the Board maximize down time to address all necessary issues. Berg said the Board needs to keep on task with updating the growth policy and floodplain regulations.

Reinhart asked if long-term planning can be done to address the effects development in remote physical locations of the county has on county resources, which is an existing and potential problem.

Durgan said it is important for the Board to keep abreast of legislation. He said the Commission must be impartial and unbiased when considering subdivision applications, thus it has no place in Planning Board meetings when subdivisions are reviewed, but the Commission appreciates being invited to meetings otherwise.

Malone said subdivision approval is one of the toughest things the Commission deals with as legislators have not taken a stance on the issue. He said it would be helpful for the Commissioners to attend meetings if economic development and renewable natural resources discussion were held early in meetings. He said he thinks more Rural Improvement Districts (RID) should be instituted for people who live far from county services. Malone said he is concerned with Payment in Lieu of Taxes funds down the road, which makes up \$500,000 of the road department and \$300,000 of the Sheriff's Office budgets. He said he encourages the Board to seek public comment on issues. Malone said he applauds both staff members for doing a good job with taking on new tasks and responsibilities.

Dave Haug said he agrees with Malone on roads, and the Wineglass and other areas really need RIDs. He said he would like to see communications between the Commission and Board remain open.

Community Development Director Philip Fletcher said zoning continues to be a big issue in the county, and revision of the donut area zoning is a big task in the 2011 planning Board work plan. Fletcher asked if the Commission has thoughts on that Board task.

Durgan said citizen taskforces helped in the passage of the county growth policy, involving the public from both sides of the argument. Durgan said he suggests the Board consider whether areas of the donut have been annexed by the City of Livingston and issues that may create with land uses and adjacent neighbors. Malone said the county needs to work with the city to understand whether zoning and road infrastructure line up when the city annexes something.

Fletcher asked the Commission what it thinks good economic development for the county would be. Malone said the county needs to maintain businesses it has before attracting new ones. He said small businesses are probably the number-one employer in the state, and potential businesses need to be educated about what types of businesses will, and will not, make it in Livingston and Park County. He said he thinks entities need to move on without RC&D if that entity is struggling and thinks the Board and staff are very knowledgeable about economic development and can help the Commission along in that area. Durgan said RC&D began struggling when the entire county's economy fell and he would like RC&D to get back to its roots of high-potential economic development projects.

Fletcher said the main issue discussed by the Board regarding renewable natural resources is the potential effects of fracking and opportunities of natural gas development with creating jobs. He said Board and staff priorities support the need to develop a public education program and comprehensive database on the effects to county infrastructure, finances and the natural environment.

Durgan said Park County and Montana in general has had natural resources as a big part of the economy and definitely need to continue to pursue those. He said the county needs to hold educational public information sessions that deal with facts and figures and not emotion and present positive aspects and ensure citizens they know what they are getting into. He said positive examples of gas development done right exist and he does not know why the Board could not look into the natural gas development issue and he would applaud that effort. Malone said it is good for the Board to look into the issue. He said education enables people to make proper decisions and he would applaud the Board for educating the public, holding hearings and giving the public a forum to express its voice.

Reinhart said the Board will try to live up to the effort of public education and receiving input.

E. Update of Best Management Practices (BMP) for Natural Gas Exploration: Wilks said he would like to express appreciation for Sarah Orms's efforts on behalf of the Board as an integral and active participant on the Renewable Natural Resources Subcommittee in researching issues and providing a lot of legwork, such as the BMP document.

Orms said she is a consultant for Northern Rockies Consulting, a nonprofit consulting firm specializing in public outreach campaigns. Orms said she is a former employee of the Park County Environmental Council (PCEC) and now sits on its Board of directors. She said she is working on an effort for PCEC to provide a series of BMPs to limit negative effects of natural gas exploration in the Shields Valley. Orms provided the Board with a working draft document on BMPs and said PCEC hopes to work with the county to identify a community working group to oversee the development of a list of BMPs for the Shields. She said PCEC's end goal for the effort is for the document to be a resource for Park County and county landowners, and the Planning Department could have it to hand out to landowners.

Orms provided a tutorial on how she compiled the working list of BMPs and what resources she used to generate the draft document. She said she is just starting the effort and a completion date of the draft remains to be seen and is dependent on funding. Orms said the only detailed topographical knowledge and information comes from the individuals conducting oil and gas exploration in the Shields. She said technical consulting resources or grant funds could help compile baseline inventory and data of the Shield's resources.

Citizen Chuck Donovan said the Bureau of Mines did a \$400,000 water study in Park County and baseline information exists. Donovan said the Forest Service and some fire departments have done vegetation studies and he recommends Orms consult with the Planning Department of information.

Reinhart asked PCEC's goal for the BMP data. Orms said PCEC's goal is to ensure Park County's natural resources are adequately protected in the face of any natural gas development that may occur and such is the end goal in terms of the BMP project. Orms said PCEC recognizes the BMP effort very much should be a public process and input from many different constituencies is necessary for a final draft, thus the idea for community working groups. She said it will be up to the county, and possibly through working group recommendation, as to how the BMP document is implemented. She said regulations could possibly be implemented or the BMP list could be a tool for individual landowners in how they want natural gas development to occur on their property.

#### F. Review of Orfalea Subsequent Minor Subdivision Preliminary Plat Application

**1. Introduction by Chair:** Reinhart provided an explanation of the review process.

**2. Subdivision Administrator Report:** Subdivision Administrator Mike Inman said applicants Paul and Natalie Orfalea submitted a preliminary plat application on the Community Development Department on October 12, 2010, and proposed revocation of an agriculture easement for a 1.975-acre lot located near Tom Miner Basin. Inman said requests to lift an agriculture exemption must be reviewed as a subdivision under the Montana Subdivision and Platting Act and 2010 county subdivision regulations. He said a pre-application meeting was held on July 30, 2010.

Inman reviewed potential effects the subdivision may have on various types of resources, as well as associated recommended findings and conditions, as noted in his Subdivision Administrator report provided to the Planning Board.

**3. Applicant Presentation:** Fred Fleet, Orfalea representative, provided information about the Montana Yellowstone Expeditions youth camp associated with the property in question and said the Orfaleas want to get the maximum utility from an adjacent parcel by lifting the agriculture exemption. George Borneman of CTA Engineering said he would like to clarify issues addressed by Inman regarding a 100-year floodplain setback requirement and the developer proposed setback. Borneman said a 1,625 square-foot employee dormitory sized for a maximum of 13 people is the intended use of the property. Borneman said the applicant is now requesting to comply only with the 100-year floodplain requirement per the county subdivision regulations, which is 100 feet setback from the creek, not as submitted by the applicant which is 100 feet beyond the required setback.

**4. Opened Public Hearing:** @5:29:19 p.m., Reinhart opened the public hearing.

a) Public Comment on Proposal: None

b) Public Comment on Water and Sanitation: George Hedrick, adjoining property owner, said he has no problem with a single-family residence but is concerned about groundwater contamination in that area. He said Orfalea has three properties in the area with structures on each. Inman said the Planning Board is only to consider the property and proposed structures within the application in question. Hedrick said he has concerns about the maximum usage of the property and the size of the proposed drain field as he has water wells close to the drain field. Fleet said the lifespan of the proposed drain field is well beyond 20 years since the camp is only used 90 days per year. Fleet said flow tests were conducted on the property for elevation and direction of drainage, and water wells on the Orfalea property would likely be contaminated by the drain field before Hedrick's wells.

Hedrick asked if the Board will require a plot plan of what the applicant is proposing to build. Inman said it is up to the applicant to identify what he is or is not proposing, but county subdivision regulations do not require the applicant to provide building envelopes. He said the applicant must meet review and approval of the Montana DEQ.

Fleet said static water levels, perk tests, and pits were done as part of due diligence to understand flow gradients. He said he is fairly comfortable with the location of proposed septic field and the applicant is proposing its own water wells in that area.

**5. Board Discussion and Recommendation:** Wilks asked Inman to clarify whether DEQ has an element within its process of approval that takes into account potential effects of structure placement. Inman said DEQ does take such into account to his knowledge.

The Board reviewed recommended findings and conditions as submitted in Inman's report as follows:

I. Affects on Agriculture:

*Bill Berg made a motion to approve the findings and conditions for Roman Numeral Section I. Affects on Agriculture. Peter Fox seconded that motion. Motion passed.*

II. Affects on Agriculture Water User Facilities:

*Peter Fox made a motion to approve. Lewis Wilks seconded that motion. Motion passed.*

III. Affects on Local Services: Berg said teenagers can be an interesting demographic and may cause noise that currently does not exist.

*Lewis Wilks made a motion to adopt the recommended findings under Roman Numeral III items A through E and conditions five through seven. Frank Schroeder seconded that motion. Motion passed.*

IV. Affects on the Natural Environment: Reinhart said the application requested a 100-foot buffer from the floodplain. Wilks said the applicant will not be developing within that area and structures already exist there. He said he is more concerned with what may happen if those structures are torn out and subsequent damage occurs from the deconstruction relative to the riparian area. Reinhart said an environmental assessment stated there would be no impacts on riparian areas or wildlife. Fleet said the applicant had misinterpreted the subdivision regulations as stating development must maintain a 100-foot standoff from the 100-year floodplain. He said the applicant would now like to not be held to that.

The Board proposed the following recommended finding: "The applicants have indicated that no permanent structures shall be located within the floodplain area or a 100-foot buffer adjacent to the floodplain. The applicants would like to place temporary structures within the floodplain and 100-foot buffer, such as wall tents and rope courses.

The Board proposed the following recommended condition: "Prior to final plat approval, the applicants shall meet with Montana Fish Wildlife and Parks and present all proposed and existing temporary uses within the Tom Miner Creek floodplain and the 100-foot buffer. The applicants shall meet with the Park County Commission and present all recommendations from MFWP regarding temporary uses and locations of all temporary structures. The Commission shall make the final determination regarding temporary uses and structures within the floodplain and 100-foot buffer.

*Peter Fox made a motion to accept the findings and conditions within (Recommended Finding) J as enunciated by Inman. Bill Berg seconded that motion. Motion passed.*

The Board discussed and agreed to strike the language “or single family residence” from Recommended Finding L and Recommended Conditions 17 and 18.

The Board added the following language to Recommended Finding M; Condition 19: “A covenant shall be filed with the final plat stating ‘Owner(s) are hereby informed that it is unknown if mineral rights have been separated from the surface rights of the Orfaea Subsequent Minor Subdivision.’”

*Lewis Wilks made a motion to approve Roman Numeral IV items A through I and K through M as modified in the current findings and conditions. Frank Schroeder seconded that motion. Motion passed.*

V. Affects on Wildlife: The Board added the term “Pronghorn” to Recommended Finding E.

*Lewis Wilks made a motion to approve Roman Numeral V. items A through G and conditions 20 through 23 including modifications of addition of “Pronghorn.” Peter Fox seconded that motion. Motion passed.*

VI. Affects on Wildlife Habitat: *Frank Schroeder made a motion to approve Roman Numeral VI. Affects on Wildlife Habitat findings A through D and conditions as stated. Bill Berg seconded that motion. In discussion, Wilks requested the language “See Condition 16” be added under item D. Motion passed.*

VII. Public Health and Safety: *Bill Berg made a motion to approve Roman Numeral Section VIII. Affects on Public Health and Safety A through G and conditions 24 through 27. Traci Isaly seconded that motion. Motion passed.*

VIII. and IX.: *Lewis Wilks made a motion to accept Roman Numerals VIII and IX findings and conditions, Compliance with the Survey Requirements in Part for the Montana Subdivision and Platting Act and Compliance with Provisions of Physical and Legal Access to Each Parcel within the Subdivision and the Required Notation of that Access on the Applicable Plat and Any Instrument of Transfer Concerning the Parcel. Bill Berg seconded that motion. Motion passed.*

X. and XI.: Compliance with the Provisions of Easements for the Location and Installation of Any Planned Utilities and Compliance with the Review Procedures Contained in the Montana Subdivision and Platting Act: *Bill Berg made a motion to approve Roman Numerals X and XI with Recommended Findings A in both cases and conditions 31 and 32. Lewis Wilks seconded that motion. Motion passed.*

XII and XIII. Consideration of an Officially Adopted Growth Policy for the Area Involved: *Frank Schroeder made a motion to accept Roman Numerals XII and XIII recommended findings and conditions as stated. Traci Isaly seconded that motion. Motion passed.*

*Bill Berg made a motion to recommend approval of the Orfalea Subsequent Minor Subdivision with findings and conditions as amended by the Park County Planning and Development Board. Lewis Wilks seconded that motion. Motion passed unanimously.*

## **VI. Old Business**

**A. Update on Zoning Regulation Amendments:** Inman said he will work on the zoning regulations once finished with floodplain regulation amendments.

**B. Update on Floodplain Regulation Amendments:** Inman said he is working on floodplain regulation amendments.

**C. Economic Development Subcommittee Report:** Wilks said the subcommittee met that day. There was discussion about that subcommittee meeting as an *ad hoc* Board. Wilks said he will submit a note to Fletcher stating the subcommittee needs to have noticed agendas and appointments in light of its needs moving forward.

Reinhart appointed Fox to the subcommittee.

## **VII. Staff Report**

None

## **VIII. January Planning Board Agenda**

Inman said a subdivision titled *Parcel 45* will be reviewed and an onsite Board inspection will be held before the next meeting.

**IX. Public Comment:** Wilks said 3:30 p.m. meeting start times were an experiment to see whether more public would attend meetings. He said there was zero impact and the Board can always hold special meetings when necessary.

*Lewis Wilks made a motion to amend meeting start times to 1:30 p.m. Frank Schroeder seconded that motion. Motion passed. Reinhart voted in opposition to the motion.*

**X. Adjournment:** @7:20:51 p.m., the meeting adjourned.

Dale Reinhart  
Chairman