

# Planning & Development Board Minutes

August 18, 2011  
Park County, Montana

**Attendance:** Planning Board Members Bill Berg, Peter Fox, David Haug, Dale Reinhart and Frank Schroeder. Community Development staff Philip Fletcher; Shannan Piccolo, civil deputy county attorney; Barbara Woodbury, director of environmental health; Barney Hallin, surveyor; Mr. and Mrs. Jackson, financiers; Chuck Donovan and Jeff Tong, PCRFD#1; Citizens Julie Inderland, Ted Madden, and Ted and Debbie Gould; John Mueller, minutes clerk.

**I. Call to Order:** @1:35:45 p.m., Chairman Dale Reinhart called a meeting to order in the Community Room of the City/County Complex.

**II. Public Comment on Agenda Items Not Scheduled for a Public Hearing:** Ted Madden said he would like consternation about a Fleshman Creek restoration project resolved one way or another, but would like to see the county move forward with the project with modifications that will appease the Commission.

**III. Approval of Minutes:** The board reviewed minutes for the July 21, 2011, meeting. *Peter Fox moved to approve the minutes for the July 21 meeting. Frank Schroeder seconded the motion. Motion passed.*

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

## **V. New Business**

### **Consideration of Cochran First Minor Subdivision Preliminary Plat Application**

**1. Introduction by Chair:** Dale Reinhart reviewed the board's subdivision review hearing process and procedures.

**2. Presentation of Subdivision Administrator Report:** Community Development Director Philip Fletcher said the proposed subdivision is a two-lot first minor off of Eldridge Creek Trail, a county road, in Cokedale. Fletcher said the applicant proposes dividing 120 acres into a 20-acre parcel with an existing house and a remainder of 100 acres as vacant land.

**3. Applicant Presentation:** Land Surveyor Barney Hallin said he is working for Kincaid Land LLC and provided a history of the property in question. Hallin said the applicant is trying to move a 20-acre parcel from the entire 120 acres.

#### **4. Public Comment**

a) Public Comment on Proposal: Citizen Julie Inderland said she owns the water rights on a spring on the property and asked how a fire fill pond would be built. Hallin said the pond would use a spring on the property, but a second option is to drill a well.

Citizen Debbie Gould said she owns a number of land development companies, including an adjacent development that adjoins the subdivision property in question. Gould said she drafted a letter of concern for the public record. She said the subdivision's preliminary plat submitted on June 22 showed two easements, but she did not receive an attachment of the preliminary plat with her copy of meeting materials. Gould said she was given a second preliminary plat document without the existing easements on July 24. She said she wants the planning board to introduce the legal documents, which must include a variance to show the proposed subdivision roads are incorrect. Gould said she and her husband are agreeable to the two-lot minor subdivision per the original preliminary plat submitted to the planning department. She said they have no problem with the concept and have nothing against the Jacksons, but want easements acknowledged as they were on the original preliminary plat.

Reinhart asked if the litigation dispute precludes the board from reviewing and making a recommendation on the subdivision. @2:21:55 p.m., the meeting recessed. @2:56:39 p.m., the meeting reconvened. Civil Deputy County Attorney Shannan Piccolo said her opinion is the lawsuit and easement issues have no bearing on the subdivision or the board's review of it, as the criteria the board reviews does not deal with the easement. She said a decision by the judge will be imposed on the property, regardless.

Hallin said the issue is whether or not the property should be subdivided, and the easement is a separate side issue and has no bearing on the planning board's recommendation. Chuck Donovan, PCRFD#1, said he agrees with Hallin. Donovan said wildlife-friendly fencing does not comport with state law in his experience and he has had nothing but trouble with Wildlife-friendly fencing. Donovan said the Goulds have been grazing their property, and failing to do so causes high grass to turn to fuel and burn.

Citizen Tom Gould said he has no problem with the Jacksons splitting their property, and they have access to their easement. Gould asked about three proposed home sites in the development and how those would be accessed.

Jeff Tong, PCRFD#1, said the fire district had not seen the fire mitigation portion of the subdivision application until today. Tong said the department is okay with the proposed fire fill site, but the drawing in the plan has a defect in the plan view of the pond. He said the view makes a year round water source untenable, but making the pond a dry barrel hydrant is an option. He said the intent of the owners is to put in a dry barrel hydrant, which avoids the potential of freezing.

b) Public Comment on Water and Sanitation Information: None

**5. Board Discussion, Findings, Determination and Recommendation:** Fox said he has confusion about ingress into the area, whether Eldridge Creek Road or a supposed newly developed road is the preferred route into the subdivision and to what extent interior roads may affect future development of the subdivision's proposed building sites.

Frank Schroeder said he thinks the current process is sloppy with multiple different forms submitted at different times and information was not received by experts who need it. He said he has a problem with having to make a decision on the matter and he would vote to deny the subdivision if he is asked to make a vote.

Fox said he is confused with the applicants proposing to use an "unnamed" interior road, which is at odds with the Goulds. He said he also has issue with the fire suppression system to be reviewed, as the board is not a water rights court and he has concerns with how water will enter a suppression reservoir. Fox said he thinks part of the board's due diligence of review is understanding how the water system will be formed. He said he is prepared to vote no on the subdivision at this point, as well, and that may not be in the best interest of all parties involved.

Reinhart said the application was deemed complete and sufficient per staff and the subdivision will go to the Commission next week regardless of whether the board makes a recommendation on the subdivision today.

The board move forward with review of required criteria as follows:

I. Affects on Agriculture: *Peter Fox moved to recommend approval of Condition 1 and Finding A as submitted. Bill Berg seconded the motion. Motion passed.*

II. Affects on Agriculture Water User Facilities: *Peter Fox moved to accept Recommended Finding A for Roman Numeral II: Affects on Agriculture Water User Facilities. David Haug seconded the motion. Motion passed.*

III. Affects on Local Services: The board said it would like to add the following and cross reference it to the public health and human safety section: "Due to the short review time by Rural 1 fire district, the district present the Commission with its comments on the proposed fire fill site prior to the Commission meeting on the subdivision." The board also added the following amendments: a condition to correspond with Finding E to say: "The Cochran First Minor Subdivision will install a fire fill site with over 300,000-gallon water capacity which will aid the Fire Dept when providing emergency services." Add a condition to correspond with Finding F to say: "The proposal is located in the Wildland Urban Interface and the applicant shall use survivable/defensible space provisions, fire suppression systems in all new structures and a fire fill site in order to mitigate the threat of wildfire in the area."

*Bill Berg moved to approve recommended Findings A-H and Recommended Conditions 2 through 4 as amended. David Haug seconded the motion. Motion passed.*

#### IV. Affects on the Natural Environment:

The board revised Condition #8 with insertion of the word “both” to say, “Prior to final plat approval, the applicant(s) at their own expense shall provide evidence of both reseeding for any areas disturbed and a contract that guarantees 70% revegetation for a period of at least one full growing season...” The board revised Condition #12 to say: “Owner(s) are hereby informed that mineral rights may not have been transferred to any units/members or the Cochran First Minor Subdivision.” The board revised Condition #13 to say “Prior to final plat, the applicants through their professional engineer, shall verify that no associated water rights off Eldridge Creek have been diminished by the proposed subdivision, including the fire fill site, which as proposed will utilize spring water that currently runs in the Eldridge Creek.”

*Bill Berg moved to approve Roman Numeral IV Affects on the Natural Environment findings and conditions as amended. Peter Fox seconded the motion. Motion passed.*

V. Affects on Wildlife: The board revised Finding C and Condition 15 with the term “bear-resistant” in place of “bear-proof.” The board revised Condition 14 to say: “A covenant shall be filed with the final plat and shall state: ‘All landowners within the Cochran First Minor Subdivision are required to utilize wildlife friendly fencing for all new interior fences in accordance with Montana Fish Wildlife and Parks wildlife friendly fencing specifications.’”

*David Haug moved to accept Section V Affects on Wildlife A through E and Conditions 14 through 17 with amendments. Peter Fox seconded the motion. Motion passed.*

VI. Affects on Wildlife Habitat: *Peter Fox moved for adoption of Section VI Affects on Wildlife Habitat with Findings A and B and Recommended Condition 5 and 6 regarding Finding B as presented. David Haug seconded the motion. Motion passed.*

VII. Affects on Public Health and Safety: In Finding F, the board noted “Granite Street” should be changed to “Eldridge Creek Road.” Fox said Eldridge Creek Road is a county road but is not maintained to county road standards. He said part of the issue with the subdivision is whether to bring Eldridge Creek Road up to standards or allow an easement on the Gould’s Vision Ranch roads. *Peter Fox proposed approval with recommendations, as Findings A through F and Conditions are appropriate in the whole context of the subdivision. Bill Berg seconded the motion. Motion passed.*

VIII. Compliance with the Survey Requirements in Part Four of the Montana Subdivision and Platting Act: *Bill Berg moved to approve Roman Numeral VIII with Recommended Finding A and Condition 21. Frank Schroeder seconded the motion. Motion passed.*

IX. Physical and Legal Access: Hallin said the Eldridge Creek Road is the primary road into the subdivision according to the plat.

The board revised Finding C to say: “The applicants are proposing to use the Eldridge Creek Road as the primary access to the subdivision.”

@4:56:05 p.m., the meeting recessed. @5:04:03 p.m., the meeting reconvened.

*Peter Fox moved to adopt items under Roman IX Compliance of Provisions of Physical and Legal Access with amendments as discussed. Bill Berg seconded the motion. Motion passed.*

X. Compliance with the Provisions of Easements for the Location and Installation of any Planned Utilities: *Peter Fox moved to adopt Section X with recommend adoption of Recommended Finding A and Condition 25. David Haug seconded the motion. Motion passed.*

XI. Compliance with the Review Procedures Contained in the Park County Subdivision Regulations and the Montana Subdivision and Platting Act: *Peter Fox moved to adopt Section XI Finding A and Condition 26. Frank Schroeder seconded the motion. Motion passed.*

XII. Consideration of an Officially Adopted Growth Policy for the Area Involved: *David Haug moved to approve XII Findings A through C with no recommended conditions. Frank Schroeder seconded the motion. Motion passed.*

XIII. Compliance with the Park County Subdivision Regulations: *Peter Fox moved to adopt Section XIII. Compliance with the Park County Subdivision Regulations with Recommended Findings A through G and Condition 27 through 33. Bill Berg seconded the motion. Motion passed.*

## **Conclusion**

*Peter Fox recommended approval of the Cochran First Minor Subdivision as amended by the Park County Planning and Development Board. David Haug seconded the motion. Motion passed. Schroeder voted in opposition to the motion. Reinhart, as chairman, did not vote.*

In discussion, Schroeder said he is objecting to the process today with three different maps, different explanations and litigation. He said he thinks it is a little sloppy and too ad hoc for him. He said the board has worked hard to hold applicants and staff to a high standard of expectation and today that fell backward.

Berg said he felt anxiety with the late breaking fire plan and learning of the litigation over the road situation.

Fox said he shares the concerns expressed, and he is confounded and mystified as to why the board had to dance around the road issue for such a long period of time and why it was not clear before the applicants cleared it up.

Reinhart said he is not sure if this debacle was more the applicant's or staff's fault. He said he has a feeling it is staff's fault. Fletcher said staff has to take responsibility. He said the staff is to certify the applicant has done what it is supposed to do before it goes to the planning board, so as a department he thinks the finger can only be pointed in one direction, and not at the applicants. Reinhart said the review would have been a big issue had it been review of a major subdivision. He said changing Eldridge Creek Road at the last minute may have severe expense implications for the applicant in improving the road to county standards. He said he wants the applicants to be aware of that fact.

Piccolo said with the limited information she had, rural fire was invited to the site visit, but did not show for whatever reason.

Reinhart said he thinks the board has an understanding of the Gould's situation and predicament. Reinhart thanked the Goulds for bearing with the process he said was not pretty.

### **Public Hearing on Proposed Draft Floodplain Regulations**

Barbara Woodbury, director of environmental health, said the present meeting is the last public meeting required of the county in order to pass its draft floodplain regulations. Woodbury said new FEMA floodplain maps will become official on October 18, 2011, at which time the county must adopt those maps. She said the county decided to update its floodplain regulations (in accordance with the new FEMA maps), which had not been done since 1991, in order to remain in the National Flood Insurance Program. She said Clyde Park is currently signing up for the program as a new participant. Woodbury said Berg and Reinhart worked with her and Inman on the effort, which primarily was updating language, adding definitions and making sure the regulations are in compliance with state and federal laws. Woodbury said the revisions included consideration of a channel migration zone, but that zone cannot be used as a regulation tool.

Woodbury said meetings were held for public comment on the draft regulations in Emigrant, Livingston and Clyde Park with no public citizens attending. She said the draft regulations were reviewed by Montana DNRC and FEMA and she is asking the board to recommend adoption of the regulations to the county commission.

*Peter Fox moved to adopt the Draft Park County Floodplain Regulations as presented. Bill Berg seconded the motion. Motion passed.*

**VI. Public Comment:** Tom Gould said he appreciates the process the planning board went through today to make a decision, because it is hard to herd cats. Debbie Gould said the original plat was submitted in June and was not dated again when a second plat was submitted on July 24, nor was it attached to the notice, nor were any other regulations or stipulations included.

Reinhart said it was a rough meeting and there were issues with emails and times of the meeting before the meeting. He said something is going on and he would like to see things get a little smoother. Fletcher said he can almost guarantee the issues will be addressed in some detail by the September meeting.

Fox said he is concerned about how the impression arose with the proposal regarding the use of the roads the Goulds built and got themselves into trouble over and the use of Eldridge Creek Road. He said he would like to find out where the impression about using the roads came from. Piccolo said the issue arose because Eldridge Creek was going to be used as the primary access, but that road does not meet subdivision standards and could cost the applicant a fair amount of money. She said a second road constructed to subdivision standards crosses the applicant's property. Piccolo said Inman told the applicants they could use that road as the primary access if they do not want to upgrade Eldridge Creek Road. She said they planned on using the other road as the primary access road until they changed their mind to Eldridge Creek Road.

Fox said there seemed to be some projection and assumption that it was okay to use that other road even though it is legally clouded. Piccolo said it is not legally clouded as far as the planning board's ability to approve the subdivision, because the board looks at the subdivision, not the outside and the other road goes through the subdivider's property on their land. She said whether or not the owners of the subdivision lots are allowed to use that road as an access to get to the 100 acres is what is being fought about in litigation.

**VIII. Discuss September Meeting Agenda:** Fletcher said he plans to hold work sessions on the growth policy update and provide an update on the Economic Development Committee.

**IX. Adjournment:** @5:51:55 p.m., the meeting adjourned.

Dale Reinhart  
Chairman