

RICHLAND COUNTY PLANNING AND ZONING COMMISSION

MEETING MINUTES

August 20, 2018 @ 9:30am

Richland County NUTTER BUILDING

Meeting was then called to Order by Chair, Commissioner Duane Mitchell at 9:34 am.

Members Present: Duane Mitchell-County Commissioner, Loren Young-County Commissioner, Shane Gorder-County Commissioner, Stephanie Verhasselt-County Clerk & Recorder, Adam Smith-County Public Works Director, Devin Bell-citizen member. **Absent:** Kale Petrik-citizen member. **Staff Present:** Marcy Hamburg-County Planner & Zoning Administrator and via phone Tara DePuy, MACo/PTC Land Use Attorney.

Approval of Minutes of Preceding Meetings: Commissioner Mitchell entertained a motion to approve the July 30, 2018 minutes; *Commissioner Gorder moved to approve the July 30, 2018 minutes as written; motion was seconded by Commissioner Young; motion carried.*

Conflict of Interest: It was noted there were no conflicts of interest.

Staff Report: Marcy stated she's researching the information requested by the Zoning Commission. She sent and received an email from the County Sanitarian, Heather Luinstra; she then received comments from the County Health Department on August 16, 21018. A copy of the email to Heather and a copy Health Departments comments were provided to each Commission members.

Chair reads public comment guidelines: It was noted no audience member were present, therefore the guidelines were not read.

Public Comment Including Comment on Agenda Items Not Scheduled for a Public Hearing: It was noted no public comments were provided.

Old Business:

- **Continue to review and discuss McGlynn Reservoir Citizen Initiated Planning and Zoning District Development Pattern and Zoning Regulations**

Marcy stated she sent the email to Heather Luinstra (dated July 23 & August 7, 2018) asking was about the water testing requirements (per the Commission), to see if she could do it. Marcy received a response back from Heather asking for a copy of the draft zoning regulation; she emailed a copy to Heather. On August 16, 2018 Marcy received an email with comments from Stephanie Ler, Health Department on the draft zoning regulations, those comments were attached to the email communications from Ms. Luinstra that Marcy gave to each of the Commission members. She noted the Commission would need to discuss the comments, and that it appeared the letter was addressed to the Zoning Commission.

Marcy noted the first comment was on section **I. Title, Creation, and Adoption** of the regulations. She said this was an oversight on her part and the Commissions'; so where it says who is on the Zoning Commission, it states County Sanitaria this will need to be changed to County Public Works Director. The Commission members agreed with the change.

She said the Health Department wanted in section **V. Definitions** for "**Bed & Breakfast**" to be changed to the definition of MCA code 50-51-102(1), she did look over some of the other sample regulations, she used, and found some did use the MCA code definition. Marcy said the MCA definition is stated as "Bed and breakfast" means a private, owner- or manager-occupied residence that is used as a private residence but in which: (a) breakfast is served and is included in the charge for a guest room; and (b) the number of daily guests served does not exceed 18, [MCA 50-51-102(1)]" She asked the Commission if they would be okay with changing the definition to the MCA code, the Commission members agreed.

Marcy said in order to address the Health Department comments on Density they could add the following statement at the end of the paragraph, which would state: “And must meet all other applicable Federal, State, and local regulations.” This way it would cover everything the Health Department talked about. She asked if the Commission would be okay with adding this. Devin stated this would apply to anything, anywhere (in the District). Adams stated and it would mean in this zone the density you could have.

Commissioner Young asked if there was a hunting operation would then be restricted to only having 18 people for a Bed & Breakfast; Marcy, yes.

Commissioner Mitchell asked for confirmation on what she recommended adding; Marcy said it would be at the end of the paragraph. She referred to section **VII.E. Density** (page 16). Marcy stated the Commission had asked previously that the Density be changed to allow one primary residence with up to 4 additional units, and that for each unit they would have to have at least 2.5 acres. She suggested, now, to take the last sentence on the Utility out of the Density section and add it at the end of the Land Division section, as this is more about Land Division than Density. Marcy said to address the Health Department’s comment she recommends the following statement be added at end of the Density paragraph “And must meet all other applicable Federal, State, and local regulations.” This way they would have to meet sanitation requirements, regulations.

Commissioner Gorder said he was okay with it, all the Health Department was trying to do is get it to match their Richland County Health Code. The Commission members were okay with adding the statement.

Marcy noted the next section the Health Department comments were on was section **VIII. Existing Nonconforming Uses and Lots**. Commissioner Gorder stated he thought they had it in there that any new would have go through the review but anything prior was grandfathered in. Adam stated it sounds like the Health Department doesn’t want the “grandfather” clause to apply to water and sewer. Marcy suggested since the zoning regulations would be grandfathering them in, would be to change the last part of the sentence; she read the section as it was stated in draft regulations. She said if they are any nonconforming uses, for example, if Devin had his house and another building, and that other building was not in compliance, nonconforming, and the wastewater and everything else was already installed, the Zoning Commission would not know if they already had their permits, if it was grandfathered in, or if he went and got his wastewater permit, building permit or any other type of permit, or if it was permitted or not. Marcy thought what the Health Department was referring to is whether or not if an existing system has been permitted or not. She suggested to change the wording so if there is a wastewater system out there that is not in compliance (permitted) the Health Department, Sanitarian would still have the authority, they still do, to go out and make sure they are in compliance (with their regulations), if they get a report on it or not.

Marcy asked Tara to correct her if she was wrong, the Zoning Regulations does not restrict the Sanitation Office from doing their job. Tara, that’s exactly right; the zoning is for the use of the land, it no way effects whatever is in the sanitation regulations. Both Adam and Stephanie asked if they needed to do anything. Marcy suggested to change it a little bit to state “allowing the uses and the uses of the structures on the lot to remain...”, she thought the Health Department might have gotten hung up on what’s on the “lot”, by changing the wording a little bit she felt this would clarify it better.

Commissioner Mitchell asked for example, if they had a lot up there and it has building on it, they have fire then they want to rebuild but they never had a sewer permit or can’t find it or a water permit. He asked if they would have to go through all the subdivision review stuff. Marcy said not if they are just replacing the structures; but it would have to meet the zoning regulations. Commissioner Mitchell stated the last sentence states “to remain in their present state”. Adam stated in the City when it’s rezoned they have a 50% rule (he thought), so if your house burned down and you had to rebuild over 50 % then you would have come into compliance with the zoning; he didn’t know if that was the intent of these regulations.

Tara stated the grandfathering clause of nonconforming uses or structures is that if the use stops or it is demolished, however, then when they rebuild they have to comply with zoning. It doesn’t require subdivision review, it’s completely different; they just have to comply with zoning, so they would have to comply with whatever the use(s) are. If they had a use that wasn’t allowed without a Conditional Use Permit and the structure burnt down when they rebuild they would have come through the conditional use permit process. It

doesn't prevent them from doing it, it just means when they do they have to come back through they have to comply with the regulations (zoning).

Adam asked what if they were adding on to a building that's a nonconforming use. Both Tara and Marcy stated it was not allowed. Marcy went on to say they would have to go through the Conditional Use process. Tara stated they can add on, but then they have to make the whole structure comply.

Devin asked if someone had a shed they're using, let's say JJ wanted to build a shed for storage to store his tack, tractors, and things like that, its' agricultural, but let's say on one side of the shed he was tinkering with some leather work and his wife wanted to sell the leather work; is it automatic even if 99% is farm. Commissioner Young, if it was exempt. Devin asked how it would work. Tara stated the home businesses are allowed unless over 3,000 sq ft. Devin said then let's say it's in a Quonset it's over 3,000. Tara stated so if there is a farm, and they wanted to rent out a portion of it to a vet, then they would have to come through the conditional use process for that portion. Commissioner Mitchell asked if it would be to this Zoning committee (Commission) that they're trying to setup; Tara agreed. Devin asked what if it was a home project or a home use and it wasn't a vet and his wife was doing leather work and it's over 3,000 sq ft for the total building, but where she is doing leather work may be it's only 100 square feet, does the whole building now have to meet. Marcy said if it's not an allowed use, what Tara is saying, if she understood her correctly, is that only that portion of what they are using for the nonconforming use would have to go through the conditional use process. Devin agreed if it's over 3,000 sq ft, but what if that spot is under 3,000 sq ft, it's a household, a home business, she is only using a section of it and the other portion is over 3,500 sq ft, he wondered how this would work. Tara said as long as the home use (business) was less than the 3,000 sq ft it wouldn't require a conditional use permit even if the building was bigger, because you are only looking at the use and if the use is smaller than the 3,000 sq ft it wouldn't be reviewed.

Commissioner Mitchell stated in the Health Department comments in the second paragraph, in the second line it states "*While there maybe existing nonconforming lots that are in good standing with the requirements of the district, the potential exists for lots, regardless of size, to be in violation of the Richland County Health Code and/or Montana Department of Environmental Quality Certificate of Subdivision Approval Statements.*" So if they don't add any more lots, the grandfather clause is in effect for those that are existing lots. Marcy clarified the grandfather clause is only for the "use", Commissioner Mitchell asked the use; Marcy, yes. He went on to say that is all we are talking about is the "use"; members agreed with him. So why do they want us to clarify what's in the regulations what the "Grandfather Clause" specifically applies to, do they not understand that it applies to the use and not theirs. Adam wondered if they don't. Commissioner Mitchell asked if they see what he is sayings. Stephanie stated that's what she was saying is do they need to even need to change it; what they (Zoning Commission) are trying doing, it works; so do they even need to change anything at all.

Adam said he liked the way Marcy put it "the uses and uses of the structures on the lots" then the way the sentence was worded right now. Marcy asked the Commission if were interested in changing the sentence. Adam said, after he read the paragraph it did sound like anything on the lot.

Marcy stated if the Commission wanted to change it, it would read "It is the intent of this Regulations to establish a "grandfather" clause, allowing the uses and the uses of the structures on the lot to remain in their present state." Both Commissioners Gorder and Mitchell agreed. Commissioner Mitchell went on to say that way we are specifically talking about the uses not the regulations that they maybe nonconforming with. Devin said then they would have to meet the local, state and federal regulations, as long as they are not going to put a magnification on this zoning district that would hit them harder than it does everyone else in county. Commissioner Mitchell said like the guy that might have the vet shop up there, he can still continue to be a vet, but then if he starts a horse racing outfit up there then he would have to go to the zoning committee; he asked if this what they were talking about.

Commissioner Mitchell asked if everyone if they were okay with the change; the members agreed.

Marcy noted the next comment from the Health Department is at the top of the third page on section **IX-C-1. Conditional Use Application Requirements**. Tara stated she didn't think this was necessary at all, she's sorry, what you (Commission) are trying to do is make the zoning regulations just like subdivision

regulations, that is not their (zoning regulations) intent. She suggested adding that they have to comply with all other Federal, State and local regulations; she asked Marcy if it was already in the regulations in the Conditional Use section. Marcy believed it was, she wanted to double check. She said the last statement [section IX-C-1(b)(xi)] that “any additional information as deemed by the Richland County Planning Department during any pre-application reviews.” Tara stated it doesn’t specifically state they would have to meet them. Marcy stated that’s what she thought, but when she looked through the regulations when she received their comments to try and figure out if it was listed, she found it wasn’t listed in this section. Tara said she would stick with what she recommended before, instead of making this specifically to the Environmental Health Office is that you just put in a condition for the conditional use permit that they will have to comply with all other Federal, State and local regulations and that would cover it. Otherwise we (Zoning) are going to be in a situation where we are waiting for the environmental health comments and they may not like some of the conditional use conditions the Planning and Zoning Commission is recommending, and it really isn’t in their jurisdiction. In no way is the Zoning Regulations taking away the authority or the enforcement of their (Environmental Health) own regulations, it’s a separate process.

Commissioner Gorder asked, so Marcy is going to put it in there just like she ready earlier. Marcy clarified for the one on the “grandfather clause”, she will put it in there for that one, and then for this one they won’t need to address it. Tara said no what she wanted Marcy to put in is in the Conditional Use conditions is that they have to comply with Federal, State and local regulations. So when you condition a use, let’s say you grant a conditional use permit for a veterinary clinic and one of the conditions on their Conditional Use Permit is that they have to comply with all Federal, State and local regulations; then the Health Department would tell you that they did not get the required sanitation permit/approval then you could revoke their Conditional Use Permit. Marcy asked if this would be a new section (#xii) and it would state “Must comply with all other Federal, State and local regulations”

Adam asked if they needed to submit proof; Marcy, yes. Adam said if it’s listed in the list of conditions that could be required and in the Administrator’s report. Marcy drew Tara’s attention to this; she then asked if it also needed to be added to the application requirement section (Section IX-D-2(1))? She then read the section as stated in the draft zoning regulations. Tara stated they didn’t need to do anything. Marcy asked the Commission members if they were okay with it; the Commission members were in agreement not to make any change.

Marcy stated the next comment was on section **IX-C-1(b)(vi) in the Conditional Use Application Requirements**. Commissioner Mitchell stated this has to do with the water quality and quantity, they (Health Department) are saying they don’t have any authority or we don’t. Marcy clarified it said they don’t have the authority is what they were saying in the letter, the way she understood it. Commission members agreed. Marcy said it does not mean the Zoning Commission could not require it, it just means that we have to make sure that when we do require it that we have someone who has the qualifications to take the tests and can review it. So what the Commission would need to do is change “Richland County Sanitarian Office” to “by a third party”.

Commissioner Mitchell stated by a Montana licensed engineer. Adam stated they would want an environmental engineer. Commissioner Mitchell asked about Dave Rubas, if he just takes the water sample and sends it to some lab? Adam said yes, Energy Labs, probably a State approved lab; Energy Lab is the closest one that’s in Billings. Commissioner Mitchell stated what he is saying is that Dave Rubas would be the third party, environmental company that would take the water sample, because you just can’t send one of your guys to go out there and take the sample. Marcy said, or they could use Terry Murphy, to do the water sample. Commissioner Gorder said we don’t need to list any names, all it needs to say is a third party, all the Richland County Environmental Health Office wants is their name off of it, because they are not the ones who will be doing it when we want water quality and quantity tests; so we have to strike Richland County Environmental Health Office (County Sanitarian). Marcy said what her suggestion would be, is because Commissioner Gorder is right, but they would also need to eliminate “the minimum requirements” have it state “Water quantity and quality test and analysis”, then the applicant would have to provide it. She stated then if the County had to use someone then they could use the one Commissioner Mitchell was talking about

or even Terry; Commissioner Gorder stated Third Party, we don't want names tied to it, just third party. Marcy asked if the others were okay with the suggested change.

Adam asked so what they would have to submit for their application, a water quality and quantity test and analysis, from what, from their well? Commissioner Gorder, agreed from their well. Marcy asked if they wanted to add "well" it could be a stock pond. Adam stated if it was him, he was going to submit a conditional use permit application and he looked at it (zoning regulations) he would originally call the Health Department and ask them what they wanted, since they don't want to be in it anymore, and it's going to be stricken, he would probably ask what is he supposed to be testing and analyzing. Marcy asked if they wanted to add water well? Tara said no you don't want to put water wells, because it could be almost anything. Adam said that is kind what he is getting at, who decides what. Tara stated it would be the Planning and Zoning Commission who is going to set the parameters for it. Adam asked so they (applicant) are going to submit something, then we are going to turn around and in the Conditional Use Permit define what is supposed to be tested. Tara agreed, it's going to depend on what the proposed use is.

Adam stated he didn't know how you could make it any better; it would just seem confusing for someone right off the bat. Devin suggested "as determined at"? Marcy said if she was the one looking at the application, like it says in the "pre-meeting" she would identify that a water well test, or it could be a stock pond, creek area that's close and if there was an area for water run, or a holding pond of any kind in that area, she would say they would need to do a test of that pond, that would give you the base up front.

Commissioner Mitchell said because if there is a breach in their dike they will want to probably test the water at least once a month or for a while, from leaching and that type of thing.

Marcy stated when you read the regulations, it says the intent of these regulations is to protect the water, watershed, drinking wells, the stock ponds, Reservoir, so if it's in that vicinity she would say, whoever the Planner is or Administrator of these regulations, it is to protect those water sources; so when it says water quality and quantity tests what you would want is a test of their water wells, stock pond, reservoir or whatever is in the vicinity, you would want a water test of the ground water. Adam said that makes to him; he suggested then to add, if they are going to get rid of the County Health Department, it should say "as defined in the pre-application meeting" so they know where they're suppose get those parameters from. Marcy asked the rest of the Commission members if they were okay with adding what Adam had suggested; they agreed.

Marcy noted the next comment is on section IX-D-2(a) in the **Zoning Administrator's Report to Planning and Zoning Commission**. This was one the Commission had previously discussed at length (during one of the previous meetings).

Commissioner Gorder stated they're also asking to strike out "be license and bonded environmental engineer and/or sanitarian"; he believed they did not want sanitarian listed there; when you read the sanitarian is "not equivalent to an Environmental Engineer." Isn't this what the Health Department is asking? Adam thought so.

Marcy said she called Terry Murphy and ask him about this, as a Zoning Enforcement Officer, if he was to do it, as the third party, to do the testing what he would do, he said he would go out pull the test, do a water sample, send it to a State lab, have them do the testing and analysis of the test, they would send him a report, then he would report it to the Zoning Commission or Zoning Administrator. And she asked him about being a license Sanitarian, he is; if he was bonded, Terry questioned whether it was bonded or if it was insured. Marcy asked if environmental engineer or sanitarian, as the third party if they are insured or bonded? Commissioner Mitchell stated he thought it was bonded. Adam thought they would have liability insurance. Tara said private engineers or sanitarians would be "insured", if they work for a government organization they are bonded, so in this context it probably should be "insured". Commissioner Mitchell thought it should be both. Marcy asked if they could put in pretenses "(bonded)". Tara said they could have it as "bond/insured" that way it could be either or.

Commissioner Gorder said he is kind of confused on the State, because most of their water wells are drilled then sent over to Williston, ND to be tested for water; he's struggling with this. He went on to say that their Sanitation Department is not license to do it, he understands that part of it, he thought it just needs to be as simple as what they have there, "may be done conditional use permit by a third party". Because all that needs

to be done, once they start listing States or, and he is not listing names again, just keeping it as a third party. He knows their water is tested in Williston, North Dakota, most of it.

Marcy said here's what the sentence would read, if they made the change "The third party shall be license and bonded/insured environmental engineering or sanitarian which shall be agreed upon by the Planning and Zoning Commission and the applicant." She suggested deleting the last part of the sentence. She restated what it would state "The third party shall be license and bonded/insured environmental engineering or sanitarian which shall be agreed upon by the Planning and Zoning Commission and the applicant." This way it addresses what Commissioner Gorder is asking that there are no names listed, it would be just a third party whether it is a license environmental engineer or license sanitarian.

Stephanie said she doesn't understand why they couldn't leave it that way as it gives them more leeway. Adam stated a sanitarian could definitely do it you are talking about they are just following a certain procedure to take a water sample then transporting it to a testing facility. Commissioner Young asked what if they (applicant) used their own engineer, Shane is right it should be a third party.

Commissioner Gorder stated but when you read what the Health Department wrote "The Richland County shall not be requested to complete testing for the Commission". Marcy stated they wouldn't be because it "a" sanitarian, not the County Sanitarian, it would be just a sanitarian. Commissioner Gorder asked Tara if they had to have sanitarian in there, they are already asking an environmental engineer to do it. Tara stated the point is most sanitarians can do this, it's not that big of a deal, they get the water sample they send it off to the lab, they get the lab results, they get the results back to the planning and zoning commission and the applicant. She stated they could take it out but then again, she does not think it is necessary. Adam thought maybe it should focus on the testing lab, instead of who's taking the sample, because that's where all the work is done.

Commissioner Mitchell stated whoever the taking the test or where this licensed guy is taking it, so they could say "hey I took the water sample" but they (Commission) don't know where it came from, they could say anything if they didn't have licensed person doing it, that's why we are being specific on who's doing it; Adam agreed. Commissioner Mitchell went on to say that he does not have a problem with it being a licensed sanitarian because these sanitarians might want to moon light. If they are license sanitarian maybe we can call them up and ask if they could go up there on Saturday or Sunday and get a sample and take it over to Williston or do whatever it is they do with it; if they want to do that, he would not have a problem with it. Commissioner Young stated not all Sanitarian work for the County Health Department; Commissioner Mitchell agreed. Adam said we could get a different county sanitarian too.

Marcy stated there are other contract sanitarians out there that do provide services; Tara said that was just what she was going to say, especially on the eastern side of the State there are a lot of contract sanitarians that the Counties use that don't have a sanitarian on staff. Adam and Marcy stated one was Mike Rinaldi. Commissioner Mitchell stated Kelly might want to do it too. Commissioner Young stated there is one in Lambert too.

Marcy asked the Commission if they were okay with the way she suggested it; the members agreed.

Marcy suggested addressing the last two comments when they get to those sections; it was agreed.

Commissioner Mitchell stated Shane had asked if they could allow for an escrow; did it ever get answered. Marcy asked what page, section it was on. Commissioner Mitchell stated Procedure in the Variance section. Commissioner Gorder said Tara was going to research this? Tara said, Marcy this goes back to the discussion they had about a whole different process, she asked if they were talking about escrow. Then she said she was not sure where they are at. Commissioner Gorder stated it wasn't in the chart, he was just asking about if money could be set aside. Marcy asked if it would be the Security? Tara said this was what Marcy and she had talked about, and they both decided this was already in the regulations. Marcy said she was trying to remember what they had talked about. She asked if it was when they ask for the testing and monitoring to be done? Marcy looked over the past minutes; and the board members continued discussing what this could be, trying to figure out what it elated to.

Commissioner Mitchell said he wrote it down under section X-C, maybe it wasn't part of the conversation for this section, he was looking above it and didn't see anything, any kind of fines or money. Marcy asked Commissioner Gorder if he would explain what it was for, to see if this would jiggle her memory as she was having a hard time remembering what this was about. Commissioner Gorder stated Tara, we know firsthand that any operation such as a gravel pit has to be bonded (at the State) and that money is to be used to clean up if the company up and left or other things, he thought they could put an additional Richland County bond, the money would sit in a special account. Tara stated she remembers the conversation, and Marcy and I went through that on the phone and she went through the regulations and thought it was already there. The other thing she did she pulled the Bozeman Pass Zoning District where they had a whole section on this that she had sent to Marcy; Marcy agreed.

Commissioner Mitchell stated if you read (a) "written applications for variances shall be submitted to and filed with the Richland County Planning Department. The required variance fee (refer to Section XI-B-1) shall accompany each application. An application shall not be regarded as having been submitted until the fee is paid." He asked if that is what he figured on putting in an escrow? Commissioner Young asked what section it was in? Commissioner Mitchell said it was under Variances X-B, looking at X-C the Procedure in (a); he didn't know why you would want an escrow there. Tara said she was trying to get the Bozeman Pass regulations to come up on her internet.

Commissioner Gorder stated it was kind of mentioned in "landscaping", if landscaping is required, it talks about "a certificate of deposit or certified check in the amount equal to 110 % of the estimated cost of landscaping, as approved by the Zoning Administrator" He felt they need some additional help if that time ever came whether it is a gravel pit, landfill, or hog operation that up and went south. Marcy stated she believed the Security allows it, she said instead of bonding, it has to meet all the other State and Federal regulations, then for the additional Security you are ask for it to be "in the forms of cash deposit, certificate of deposit, or certified checks in order to secure compliance with conditions imposed". If they imposed the conditions they would have to have the Security up front and set aside for it with a certified check, certificate of deposit, or a cash deposit. Marcy thought it would allow them to do what they wanted. He asked where the money was going to be setting. Devin, agreed, and went on to say that if it is in their bank then they would still be able to get to it. Marcy said this would be the same as what was in the Subdivision Regulations for an SIA, it would be like a letter of credit from the Bank. Commissioner Gorder stated and the Bank is holding it separately. Marcy asked Tara that was correct; Tara yes.

Tara went on to say that the other option would be is what they did in the Bozeman Pass Zoning District, which was in response to oil and gas development, they added a whole section what they called Natural Resources Conditional Use Permit, so on top of all the other requirements that were in the zoning that if they were extracting a natural resource which they defined then they went up and beyond, then they had to get a separate Natural Resource Conditional Use Permit, they had to do an EA, there had to be adequate financial secure as determined by the County Attorney that would mitigate any adverse effects, so it was this whole big process that was above and beyond if it was a Natural Resource extraction. The Commission could do something like that but they would have to have defined up front what it applied to, it was a very detailed process they went into. They're concern was the same concerns Shane had expressed if the State wasn't requiring what they thought was adequate financial security then the County could go above and beyond. So they could look at it, she sent the link to Marcy. Tara asked if she had the ability to go look at it and pull anything up right now; Marcy, not right now. Marcy said she does have that section of those regulations printed out.

Tara said they had monitoring expenses, conformance bonds, Marcy could print that out and they could look at it and discuss it at the next meeting if they wanted to; Commissioner Gorder agreed. Tara said she thinks it addresses what his concerns were. Commissioner Gorder thought that Carbon County did the same thing with the hydraulic fracking, they did the same similar thing. Tara stated they might of, Gallatin's was in Section 4.0.5 in the Bozeman Pass regulations. What Carbon County ended up doing is Part 2 zoning, County Imposed, because they got into a litigation with their Part 1 zoning and ended up having to scrap it after the Court said their process was illegal, then they did Part 2 zoning. Commissioner Gorder stated, okay, that he would have to look at it the wording. Tara said she would forward the email to Commissioner Gorder right

now, then he would be able go to the link then scroll to that particular section and look at it. Commissioner Gorder stated his going to have to take a look at the wording, it might take some time to look at; Tara agreed. Commissioner Mitchell asked what section it was; Tara said it's in the Bozeman Pass Zoning District section 4.0.5. Marcy said what she could do is go that section in their regulations, select it, then save it as a pdf file then send it to everyone so they have it. Commissioner Mitchell agreed. Commissioner Gorder agreed they should take a look at then when they have a chance then come back to that section.

Devin said and we talked about we were going to look the structure grade and heights and things like that, did it ever look into it? Marcy said yes, she is working on their suggestions and at the next meeting she is hoping to have all the questions and concerns they had throughout all of the regulations then they would be able to look at what she found and what she would propose; Devin said he was okay with it.

XI. Administration:

Marcy noted the Commission left off on the Administration section, on page 27. Commissioner Mitchell noted it was section Roman numeral XI.

XI-A. Employees and Officers:

Marcy stated the first section in the Administration section identifies the Planning and Zoning Commission **appoints and hires the employees and officers**, which includes the Zoning Administrator and/or Enforcement Officer and that the Administrator may be an employee of Richland County Planning Department.

Commissioner Mitchell asked if they strike "and hire such employees as shall be deemed necessary". He said he does not have a problem with appoint, but hiring bothers. Commissioner Gorder asked who has the authority to hire? Commissioner Mitchell said that the regulations stated this Board does; Stephanie agreed. Commissioner Mitchell stated it would be like the library board. Adam said the Commissioners are always going to be on this board; Commissioner Gorder said kinda. Commissioner Mitchell asked for clarification, so all the Commissioners will be on the board or are they going to have to authorize the hiring. Adam said unless the board voted to amend the bylaws, and there are only three of the Commissioners. Stephanie said there are four others, so it could happen. Commissioner Mitchell asked Commissioner Young what he thought; Commissioner Young agreed he did not like "hire" either.

Commissioner Mitchell said to appoint is one thing, and the appointment process everybody submits a letter asking to be appointed to that board, the Commissioners then say yes or no; he does not like it. Adam said to take it off. Stephanie said not appointing to the board; Marcy agreed it's appointing employees or officers. Commissioner Mitchell stated he did not think they need to put "hire such employees", it should say "here by authorizes to appoint officers as shall be deemed necessary to carry...", because as a board they could hire someone like Kelly Logan to go out monitor that on a part-time bases but not an employee, they don't need any more employees in the County. Adam asked how they would do it then. Commissioner Gorder said that contract would be a better word. Adam suggested "contract such employees". Stephanie said if it is a contract employee, they would have to look at to make sure they have their insurances and all that. Commission Young stated it should be "may contract" Commissioner Mitchell asked if that was how they wanted to it read "appoint or contract". Marcy recommended they leave staff in; several members said that "staff was not in theirs". Marcy said what she is suggesting is to change employee to staff and that it read "appoint staff or contract services"; she asked if this what the Commission wanted. The Commission appeared to be okay with the change. Commissioner Mitchell said that way if this gets out of control then they can hire someone.

Marcy asked the Commission if they were okay with the wording in the second paragraph; the Commission appeared to agree.

XI-B. Schedule of Fees, Charges, and Expenses:

The Commission members appeared to be okay with the way it was written.

XI-B.1. Fee Schedule:

Commissioner Gorder asked where she got the fees from. Marcy said the fees were from the sample regulations she used and she did some more research on it because at the last meeting the Commission asked about the fees.

Commissioner Young asked if had to have duplicate fees or could they be different fees one for commercial and one for agricultural. Marcy said she did not think they want to identify a fee for each different use; he asked why not. Marcy said they would want to have one fee for all uses; that way they are not being arbitrary and capricious, for who's paying the most. Commissioner Young said that most will be agricultural, farmers they don't have deep pockets. Marcy said to keep in mind that most of those are allowed uses, except for the commercial feedlots, the large ones; from what she was understanding that would be the only one (agricultural) that would have to have a conditional use permit. Devin said those that would be doing the horse training would have to pay those fees too.

Marcy stated she did do some research, she checked out Billings, Missoula, the bigger counties. Tara said Missoula is really high; she asked how much Missoula charges for a Part 1 application. Marcy said Missoula was the highest one; she could not locate the research materials she had, she said if her recall was correct: the Amendments went as high as \$450, a zone change was between \$350 to \$700, for variances they were mostly \$350, conditional use for the initial application some had them up to \$750 (she thought it was Bozeman) and Missoula was over \$1,000.

Commissioner Mitchell asked where those funds would go, back into the County coffers? Marcy said they go to the County's general fund. He asked if this would pay for the advertising, legal notices, etc.; Marcy, it should. Commissioner Mitchell noted when it goes into the general funds it usually isn't ear-marked. Adam asked if this fee would cover any of her time, do a site visit or anything else?

Tara said Missoula County changes \$6,000 just to create the district. Marcy asked if they could add that in the regulations; Tara no that's for Stephanie (Clerk & Reorder) to determine since she's the one who has to process the petition. Stephanie asked why she didn't give her that price before when they were looking at this one. Adam asked how much did she charge. Tara said Missoula's is a little crazy. Commissioner Young said she charged \$200 or \$300; Stephanie agreed it wasn't very much. Tara obviously Missoula County does not want those (Part 1 zoning). Marcy went on to say a normal fee for an appeal was \$350. She said she would put together a sheet with the fees for the Commission to look at, she will put in the Dropbox link.

Commissioner Mitchell said he liked the fees just the way they were; however he's open to suggestions. Marcy stated unless the Commission wanted to set them now. Commissioner Mitchell said they would just apply to this zone. Devin said these fees are not going to hurt any big company, they might want to keep it low for the smaller ones. Commissioner Mitchell these fees are for this committee; some of the commission members agreed. He went on to say, so they have the zoning committee in place. He asked for example as to why they would want to come to this zoning committee to talk to them. Commissioner Gorder said for example to open up a body shop. Commissioner Mitchell so you would want to put one in this zoning district, so we would change you charge you what \$350? Commissioner Gorder said it was \$200 for a Conditional Use Permit, he possibly need a variance, zoning change, and he could need an amendment. Tara said no the amendment is for a change in the regulations. Commissioner Gorder said he wanted to operate from 6am-4pm because his other job. Tara said it would be a variance and a conditional use, you could have an allowed use too. Commissioner Gorder said then if there was something in there that he didn't like then he would have to appeal it; both Tara and Marcy agreed. He went on to say, his neon light flashed all night, so now he would need to appeal the outdoor lighting. Tara said with all these you will have some noticing requirements.

Marcy said she found the printouts she had, Gallatin County for a standard conditional use permit it was \$725, a variance for a single family was \$500, other use was at \$725, for a map amendment it's \$775, and the regulations amendment was \$725, they didn't have a renewal fee; they did have a pre-application fee of \$400, and an extension was \$450, and they did have other fees included. Commissioner Young said she should send this to them. Tara said they might want to leave them where they are at, because they are going to go through a public hearing process and see what comments they get on the fees then if people say they are too then they could revisit them. Marcy suggested to consider increasing the variance, a variance in the Subdivision Regulations is at \$350; Commissioner Gorder said to keep it the same. Marcy said the variance criteria they would look is similar to the subdivision regulations, then do the findings. Adam said so she is reviewing the variance, providing a staff report, and the Commissioners would have meeting. Tara said there is a hearing for variances; Marcy agreed. Adam said then she would have quite a bit of time invested in it. Marcy said she sees the variance being done just before the Planning & Zoning Commission meeting for the application.

Commissioner Mitchell said so she wants to raise the variance from \$200 to \$350; Marcy said that is what she's suggesting if they want to go a little higher. She went on to say for a Conditional Use Permit she would suggest going up to \$400 because of the time it would take staff to review the application \$200, with County wages and benefits, you are looking at 4 or 5 hours, it may not cover everything. Commissioner Mitchell stated and if she can't do the review and they would have to send it off to Dave; Commissioner Young said he's at \$80 an hour, Commissioner Mitchell so then \$400 is not out of line. Marcy said they might want to consider \$400 to \$500; then to renew a conditional use permit should be \$200, for an appeal to go \$300 or \$350.

Commissioner Mitchell asked so there is no agricultural exemption on any of this, Devin, yes. Marcy said there are the allowed uses; Adam agreed if they are allowed. She went on to say if there an allowed use, they don't have to get a conditional use permit and wouldn't be changed the fees.

Marcy asked if they were okay with the suggested changes. Commissioner Mitchell stated he was. Adam asked then it would be \$350 for a variance, \$400 for a Conditional Use. Commissioner Gorder stated \$450 for a variance; the other members said they had it \$350. Commissioner Gorder said he wants it to be \$450, Stephanie said so you want it higher. Commissioner Gorder said it's going to go to the public so they should be higher. Commissioner Mitchell agreed to go \$450 on the variance, they could lower it. Commissioner Gorder said to always start high. Adam asked about the Conditional Use fee? Commissioner Young said they could always do a commercial and agriculture one; if you go buy a license at the courthouse there are two different rates. Marcy suggested to go with \$500. And for renewal, the Administrator is going back over the application materials, conditions of approval, go do a site visit and make sure they still comply; she feels \$200 would be sufficient for the County to recoup their cost. Then for the Appeal, she asked Commissioner Gorder \$350; he agreed. Commissioner Young said he has so many crossed out that he hoped they will get a clean one, Marcy said yes they would. Commissioner Gorder said right before we go to the public. She said what she is working on right now is putting all the Commission's suggestions and edits in the next Draft, then there will be a final draft that will go out to the public it won't have all the changes in it, it would be as it would be if it was the final. Commissioner Young asked and the numbers on the bottom will match; Marcy yes, everyone will get a clean copy.

XII. Minimum Requirements:

The Commission members appeared to be okay with the way it was written.

XIII. Violation of Regulations:

Marcy noted this was the section the Health Department also had some comments on, she suggested the Commission read the comments to see if they needed to address them or to make any changes. She said the Health Department talked about the "land use permit"; she suggested in the last sentence where it states "land use permit" to change it to "Conditional Use Permit". Commissioner Young said "any land use permit" covers just about any kind of permit that was permitted. Marcy said that was what their though. Commissioner Gorder said then just change it to "Conditional Use Permit". Marcy said that's what she suggested, or if they wanted to leave it as stated, they could leave it. Commissioner Mitchell asked who was going to the Zoning Enforcement Officer; Marcy, that would be her. Commissioner Gorder stated so she would get a compliant and drive out there, and say oh, my god this is bad, that is not the intent of this zoning was, and since they in violation with the intent of this zoning committee, then she is going to talk to whoever it is or is she going bring it to the Committee, then they have to make an action then they would talk to that person. Marcy said what she would do if she went out on the site and seen it wasn't in compliance give would give them a written notice stating what the violation is, give them time to correct it, then if they don't then bring to the Planning and Zoning Commission; or if it is a really bad case, they can always bring it back to the Zoning Commission and appeal it to the Zoning Commission, so if it is a bad case then she would discuss it with Tara (attorney) and if she says it needs a cease and desist order right away they would do it then bring it to the Zoning Commission; that would be for the worst case, she does not see this happening; Commissioner Young said he does. Marcy said if it was water/sewer she would notify the County Sanitarian Office right away and notify them. Commissioner Young stated to get it resolved, Marcy agreed.

Commissioner Mitchell asked Tara what her thoughts were. Tara said that is the normally process. Stephanie asked if she was recommending not to change it. Tara said changing the “land use permit” to “Conditional Use Permit” would be fine. Commissioner Gorder said it might be easier to define it that way; Commissioner Mitchell agreed. Commissioner Gorder said to strike “land use permit” and put in “Conditional Use Permit”; Marcy asked if the rest of the Commission was okay with the change. Adam said he thought it would be okay with the way it written and the way the Zoning Administrator’s duties are outlined, he agreed the change would be fine too; everyone agreed with the change.

Commissioner Young said they reason he agreed is because he had a situation where the Building Inspector went out to inspect a building and he was run off, he did have a second chance to go back but if he wasn’t treated decently then Mike Weber, County Attorney was going to do a cease and desist order for the construction; so there may be cases where she might be run off. Marcy said if there a building is in the district d it’s to be inspected and they have an issue with the Building Inspector, he could come to the Zoning Administrator then they could take action after that, if they don’t satisfy the Conditional Use Permit. She asked by changing “land use permit” to just “Conditional Use Permit” would not allow it to happen, or should it stay as “land use permit”?

Commissioner Young said this one has more teeth in it with the way it is written, the building permit is land use, so it’s how much teeth you want in it. Commissioner Mitchell said it won’t do any good if there isn’t any teeth or back up, so you think “land use” has more teeth than just the “conditional use”. Commissioner Young said yes because if they are not doing the sewer permit right then she could revoke that too, he didn’t know if just “conditional use” would allow that. Marcy stated as the Zoning Administrator she would work with the Sanitarian on it, she would not push her authority above and beyond without the cooperation of the Sanitation Office. Commissioner Mitchell said so what these guys are saying is that “land use” is too vague; he asked Commissioner Young if he thought it was too vague.

Commissioner Young said he would not know which one it should be unless he asked Tara, Commissioner Mitchell asked which one had the most teeth. Tara said the only permit in zoning is the Conditional Use Permit; and the only jurisdiction the Administrator has is what is in the zoning regulations, so it would probably be appropriate if it said “Conditional Use Permit”. Commissioner Mitchell asked the Commission if they agreed; all agreed with the change.

XIII-A. Permits Issued Contrary to Regulations:

The Commission members appeared to be okay with the way it was written.

XIII-B. Compliance Regarding Violations:

Adam asked what a normal timeframe would be to allow the Conditional Use Permit holder to correct violations? Marcy stated it would probably be a judgement call for the Zoning Administrator, because it will depend on the case and what the situation is; if they have something they are out of compliance with and not addressing, you would have to give them enough time to address it, a reasonable time. You can’t say one week when they actually wouldn’t be able to accomplish it in within a week. Marcy asked if the Commission preferred to have a date, timeline listed. Devin stated he thought it should be open. Adam said he is fine with it, he was just curious. Marcy said typical with the compliance cases (subdivision) she has worked on about 30 days was given for them to respond by. Adam said he thought that seemed fair. She went to say it also depended on the situation, somewhere little longer. Commissioner Gorder said he believed every situation will be different, it could be small. Commissioner Young said it could 6 to 8 months before it’s fixed. Both Commissioner Gorder and Young thought it should be up to the Zoning Administrator’s discretion.

The Commission members appeared to be okay with the way it was written.

XIII-C. Permits, When Void:

Adam asked so if they come in for an approach permit is he supposed check to make sure, for whatever they were getting the approach permit for, he would have to check the zoning regulations, so that they matched, he doesn’t like it. Marcy stated when they apply for a conditional use permit, and they needed an approach permit they would come you and would have to build it according to what the use is, according to the Public Works’ regulations and standards, his is was how she sees it, then once the Public Works issued the approach

permit they would send it in with the conditional use application. She said what this section is dealing is the conditional use permit not the other permits. She said where it states “no such permits” should be “conditional use permit”. Commissioner Gorder asked if this doesn’t this give Adam the authority to do that because it says “All departments, officials, and employees of Richland County...” Adam stated in this situation where he sits on this board, if not he would miss what is going on, but there are other departments out there that do issue permits that don’t know what’s going on.

Tara said the biggest one the Commission needed to keep in mind is the building permits, they really didn’t want the building permit department to issue a permit to build a structure that would be noncompliant with the zoning uses, or the size, or whatever it was.

Marcy said another instance that has happened in the past is, in a subdivision we review it for residential, then they come back in for a rewrite for water/sewer to change the use from residential to commercial; she said they would want this in there to protect them on whether or not if a rewrite to DEQ is being done for a use that has to go through a conditional use permit process.

Tara said it says permits, the other thing she is thinking of is, she was thinking of the exceptions that would be more of an issue than those that are the exception to subdivision review, because there are those that have to be compliant with zoning. The real issue is the building permits, she asked if they cared about the rest, that Richland County has building permits, encroachment permit, and sanitation. She asked if that was a permit, both Adam and Marcy said septic permit. Tara went on to say those are the three that would come into play here as far as permits. Subdivision is not a permit, exemptions from subdivision review are not a permit.

Commissioner Young asked if water wells are permitted. Tara said so far, no one in the County has the authority to issue a water well permit. Both Commissioner Young and Adam said they would have to through DNRC. Tara said that’s State and this is specifically to Richland County, she went on to say the Zoning Commission could limit this to just building permits, if they wanted, that’s the really big one where they would have an issue. It’s this thing that happens all the time where, let’s say, they have a piece of property where it has an agricultural covenant on it that says can’t have any sort of sanitary facility on it but guess what some how they built the house, got the septic permit and then when the County shows up and says hey they can’t have a house on here, but they go, oh we got a permit for the septic. Tara stated that’s what this was a catch all, they trying to make sure the County isn’t issuing permits on one hand that violates a different set of regulations, because it doesn’t look good in court.

Commissioner Mitchell said the problem with the building is they already got the permit to put in the sewer. Commissioner Young said they should coordinate. Commissioner Gorder said there should be a checklist. Adam said the problem is they only give us a certain amount of information. Tara asked Adam if there is a catch all on the encroachment permit that they have to be in compliance with all other County regulations. Adam said he couldn’t answer that. Tara said if they had this on the permits than this would take care of that. Commissioner Mitchell said it should be on all County permits; Adam agreed. Tara said then the burden would be on the applicant to make sure they have looked at zoning. She said that would be the easiest way to handle it, suggested to tell the Environmental Health Department their permit process should say the same thing, but it might start a whole another around of comments from them.

Commissioner Mitchell stated they should say “This permit is only valid if it is in compliance with all other County or State issued permits” that needs to be on all our permits. Tara agreed. Commissioner Gorder said he would have check on it.

Commissioner Young said this one might need some tweaking but didn’t know if it could be done at this time. Marcy asked if the Commission wanted to leave it as written. Commissioner Mitchell said he like the “null and void” because then that would tie in with the new, that they are going to put on the permits, it’s their permits so they can put whatever they want on them. Commissioner Mitchell stated like Adam can issue an encroachment permit but if it crosses over a right-of-way what do you do; like if you are on an easement property, like Mid Rivers lines, do you go through or over the top of them. Commissioner Young said they have to go get a use permit from the Bureau of Reclamation.

Commissioner Mitchell agreed they should leave this one alone. Marcy asked the rest of the Commission members, they all agree to leave it as written. Commissioner Young asked Tara to dwell on this a bit more;

Commissioner Mitchell thought she might come up with something different. Commissioner Young said otherwise they should leave it unless they can come up with something different.

Tara said this is the one the Health Department had a comment on it; she is not sure she understands their comment. Commissioner Gorder stated he does not think they like to be caught in the middle when they issued a permit. Tara said the section of law they cited 50-50-207 isn't what they meant to cite because it does say what they think it states that it's for retail food licenses for the expiration of the license. Commissioner Mitchell said that's what it would be because that's what they work on. Tara said she guessed that if they had regulations that said they could have a restaurant and the zoning says no restaurant and they issued a retail food license then the Planning and Zoning Commission or the court would have the authority to void that permit.

It was noted the Commission members agreed with the way it was written.

XIII-D. Written Comments:

The Commission members appeared to be okay with the way it was written.

XIII-E. Enforcement:

The Commission members appeared to be okay with the way it was written.

XIII-F. Injunction:

The Commission members appeared to be okay with the way it was written.

XIV. Invalidation:

The Commission members appeared to be okay with the way it was written.

XV. Appeals Process:

Marcy stated this is basically the State law requirements; Tara agreed. Marcy noted the time line for the appeals, which would include the appeal for a violation. She noted State law requires the timeline, which is calendar days. Commissioner Mitchell asked if the public hearing notice was to be published twice; Marcy, yes. Commissioner Mitchell asked how she was going to "the Zoning Administrator shall submit the request ... the Planning and Zoning Commission in 5 day" then we got 20 days to act on it; she was going to have a hard time getting it in for the two times. Marcy said for the appeals process it is basically getting everything done; all the other work would be done, so once they receive the appeal this gives the Zoning Administrator the time to get a statement together for the board, this should be penalty of time. Commissioner Young thought it was okay. Commissioner Mitchell stated then IX-B is after the hearing; they don't have to worry about that; so if they get a comment today, if they received one today they have 5 calendar days, so Saturday they would have to make a decision. Commissioner Young wondered then if it shouldn't be working days? Commissioner Mitchell said no, she has to notify the Commission in 5 calendar days; he read (b). So if she gets it at 2pm then by Saturday by 2pm she has to notify us, they need to know that XYZ is appealing their decision, she might be able to do this in an email form. Then they would say okay, then as a Commission they would have to say okay when they see that person, because it has to be within 30 days.

Marcy said the way she sees and reads the State law is that the Zoning Administrator or Enforcement Officer has 30 days in which to do all of the work, the rest of the time, the 5 days and 20 days fit in the 30 day time period. Tara said the way she reads it is the applicant has 30 days to appeal, then once Marcy gets the appeal then she has 5 days to get to the Planning and Zoning Commission; it says a public hearing shall be held it doesn't state how long and then once the hearing is held then the Commission would have 20 days to the findings. There's not a time in there for when the Planning and Zoning Commission has to hold the hearing. Marcy thanked Tara for clarifying this.

It was noted that the Commission members appeared to be okay with the way it was written.

XVI. Zoning Regulations Amendments:

Marcy stated she would recommend adding "calendar" after "fifteen (15)" to be consent. The members agreed with the change and with the way the rest of it was written.

XII. Adoption:

The Commission members appeared to be okay with the way it was written.

Marcy stated she has been going through each one of the minutes to make sure she is covering everything, she will put together a report then bring "Draft III" which will have today's date for the next meeting. The revisions will not show all the tracking that is in Draft II, it will only show the changes made by the Zoning Commission. Then she will make a Final Draft once the Zoning Commission has looked over Draft III and is okay with the changes or if there are any other changes.

Devin asked she had mentioned she was going to have a sample permit application ready for them to look, if they were still going to get; Marcy, yes, she will make sure she has it ready for them for the meeting and she will add it to the Dropbox link.

New Business: It was noted there was no new business.

Marcy asked if the Commission would like to set a date for their next meeting. She said she is hoping to have the information ready for the Commission by the first week in September. They discussed dates and time and agreed the next meeting would be September 11th at 9:30am.

Adjourn: Commissioner Gorder moved to adjourn the meeting.

Duane Mitchell, County Commissioner
Chair of the Of the Richland County Planning and Zoning Commission

Date

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