RICHLAND COUNTY
PLANNING AND ZONING COMMISSION

MEETING MINUTES
September 11, 2018 @ 9:30am
Richland County NUTTER BUILDING

Meeting was then called to Order by Chair, Commissioner Duane Mitchell at 9:45 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 August 20, 2018 minutes; Commissioner Gorder moved to approve the August 20, 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 completed the research that was asked on Draft Zoning Regulations, and a report was provided to the Commission to consider the information.

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 noted the Commission received a packet with a copy of the draft III of regulations dated August 20, 2018 and a Staff Report on the research that was conducted by both Tara and her; dated September 4th and a draft copy of a Conditional Use application form and a draft Compliant Form. She suggested the Commission go back through the changes in the draft regulations and to go over the staff report on the search information. Marcy stated couple changes in the Table of Contents were made, the page numbering will change for the final. She stated Draft II showed changes by the landowners, she accepted those changes which is now Draft III, she then added the changes made by the Commission. The side tracking shows those changes and the comments that includes few clarification changes.

There was a change in Section I on page 4, the next change is in Section II. #7 where the Commission wanted to include the private water wells and aquifer. The previous discussion the Commission wanted to combine #7 & 8, she suggested to keep them separate. #8 is where the McGlynn Reservoir, Bennie Pier Creek and the Yellowstone Corridor not limited to those were added. #13 & #15 had some clarification changes.

Commissioner Gorder asked if he was reading #7 it correctly, if was “to protect and preserve the surface, spring,” “ground,”; Marcy agreed. He asked what they were trying to say with ground; wouldn’t surface be covering the ground water. Marcy said she understood what he was saying, that it should be “surface, spring, and ground water”. Commissioner Gorder said there should be an “s” on “spring” because there is more than one. Marcy went on to say “and private water wells and aquifer quality”. Commissioner Gorder asked Adam if that was correct. Adam agreed that surface is different than ground water. Commissioner Young agreed. Commissioner Gorder thought “water” should be behind “ground”, then put the “s” on “spring” “and private water wells and aquifer water quality.”
Marcy restated #7 would then read “To protect and preserve the surface, springs and ground water and private water wells and aquifer water quality.” Commissioner Gorder and Commissioner Young thought it sounded better.

It appeared the Commission was okay the changes in Section II along with the recommended change suggested by Commissioner Gorder.

Marcy asked Tara in Section III since the Planning and Zoning Commission identified the district for agricultural and residential uses; would a statement need to be added in the regulations stating that or if it was okay the way it was. Tara said it was fine the way it is. It was noted no additional changes were required.

It was noted in Section IV on page 8 the suggested wording was switched to the end of the paragraph per Tara’s previous recommendation.

The Definitions in Section V there was change on #1 which would not allow the large operations as an Allowed Use, they would have to go through the Conditional Use Permit process. Marcy stated for #4 the MCA code 50-51-102(1)(a & b) would need to be added at the end of the definition. She also noted when this was changed to the MCA code definition, it previously it was for five rooms, with two guests in each room it would be 10 guests, and with three guests in each room it would be fifteen, with the change the Commission wanted it now would allow for more guests. Marcy asked if the Commission was still okay with the MCA code definition; Adam agreed it should be the MCA definition; it appeared the other members agreed.

Commissioner Gorder asked Tara for a clarification, what it was they were calling it when people are renting out the extra bedrooms in their home, there’s an online Airbnb. Tara stated they were Airbnb or vacation rentals that are rented out by the owners which are VRBO. Commissioner Gorder asked if this matched what they are doing. He said they pretty much go to a house where the husband and wife are live and rent their extra room for one night. Tara said she did not know if it quite applies, because usually on the VRBO B&Bs they are not serving breakfast they are just renting a room. Commissioner Gorder said he didn’t know he has yet to stay in one. Tara went on to say some people just rent out rooms in their house, like if someone is working out in the oilfield and they have an extra bedroom they might rent it out to someone for a period of 6 months; it’s not necessarily a temporary stay this would come under Buildings for Lease or Rent, only if they are renting out more than three rooms. Tara stated this was definition from the statute, the Bed & Breakfast is different from the Airbnb or VRBO B&B’s a vacation rent by owner, they can cross over but they usually are different.

Commissioner Young asked who’s going to “police” it, the Bed & Breakfast definition would be the cleanest. Marcy asked if the Commission if they were okay with leaving as defined by the MCA code; the Commission agreed.

Marcy noted the next change in the Definitions was on page 10 at the bottom, #14 continues which goes over to page 15, at the bottom of the definition on page 15 it stated #17; this change was due the change in the numbering, as it referenced Single Family Residential which is #19.

Commissioner Gorder asked Commissioner Mitchell if they learned anything on the communication tower, the last one being proposed on top of the hill, did they need to get a building permit from the County. Commissioner Mitchell stated no one returned his call. Commissioner Gorder asked if they should include a building permit in the regulations, because all it saying is that all communication towers must comply. Commissioner Mitchell added with FAA. Commissioner Gorder asked if they should be applying for a building, he asked Tara if she knew. Marcy reminded the Commission the regulations do state they have to comply with all the federal, state and local regulations. She went on to say if they do have to have a building permit it would fall under this requirement.

Tara said there was a typo in #7 it says Communication Towers, then it say “A communication tower” need to take out the “n”; Marcy agreed.

Marcy said the next change was in #11. Devin said it doesn’t make sense “which shall not to exceed one thousand” it should be three thousand and he suggested taking the word “to” out; the Commission members agreed. Marcy said this would be for the ones that are allowed, and those over 3,000 square feet would need to get a conditional use permit. Adam stated it should read “which shall not exceed three thousand square
feet”, he agreed the word “to” needs to be removed. Marcy said the reason why it is 3,000 is that anything over the 3,000 square feet would need to have a conditional use permit, she thought maybe it should say 2,999 because when it goes to a conditional use permit it’s over 3,000. The members said they understand, they asked Marcy to read the way it was worded. Marcy asked Adam to repeat what he had said; he restated what he stated. It was agreed to change the last part of the sentence to “which shall not exceed three (3,000) thousand square feet”.

It was noted there were no changes made in **Section VI**.

It was noted there were changes on page 13 #4 and #9 in **Section VII** in the Allowed Use section.

Devin asked about slope and grade. Marcy said it would be coming up, it’s in the report and that the Commission would need to look at to see where they wanted it placed in the regulations.

Marcy said she did take the initiative and added some of the recommendations from the research such as on page 14 Prohibit uses. She asked the Board if they could back up a little to discuss the research that was completed, she referred the Staff Report dated September 4, 2018. Marcy noted they did discuss and address the Definitions, #1, & #4. She explained the Commission did discuss the slope and grade during the review of the definitions, the discussion was on the building height, over-burden and topsoil. Marcy went over the definitions and requirements she found in the sample regulations, one was from Gallatin County and one from Missoula County’s zoning Part 1 Zoning. She thought Missoula County’s definition would be better suited for what the Commission was looking for. And per the discussion at the previous Zoning Commission meetings, they did not want them to exceed the 50 feet, she suggested to include this as a new Section in the regulations which would be VII.H Aggregate, Over-Burden, and Topsoil (Man-made Mounds) to be on page 15. Marcy also noted this was a recommendation from Tara. The new section would be:

**VII.G. Aggregate, Over-Burden, Topsoil (Man-made Mounds):**

*Aggregate over-burden, topsoil, man-made mounds shall not exceed fifty (50) feet in height. Aggregate over-burden and topsoil, man-made mounds plans must be approved by the County Public Works Department. Each site shall provide for adequate storage for the difference between the existing storm runoff for 24 hour-100 year storm and the developed run off for 24 hour-100 year storm. And shall meet the requirements of the FAA.*

Adam stated she bounced around a whole bunch. Devin asked where they were at in the draft, and if they could continue with the regulations from where they left off. Marcy stated it was on the bottom of page 14 the Prohibited Uses, these were the two definitions, she refer to page 3 of the Staff Report, she found in the Cascade and Gallatin County sample regulations. Commissioner Young asked where the marijuana would be. Devin said the Commission decided to keep it out because it would be a medical type. Marcy stated the definitions for the Adult Entertainment Facility was from Gallatin County. And for the junk yards and automobile wrecking facilities she looked at the sample regulations from Cascade County and Bridger Canyon and Bozeman Pass in Gallatin County, she suggested using the one from Cascade County. As Cascade County was Part 2 zoning she asked Tara if it would be an issue if they used the definition; Tara said it would be fine.

Devin stated this is where he thought in the Prohibited Use section he thought they were talking about putting height requirements. Marcy said if they wanted to deal with buildings, she suggested adding the requirements in the definition section for Building / Structures (V-C). Devin asked if they still could get a conditional use for it. Marcy thought they could still come in for a conditional use and a variance; both Adam stated they wouldn’t be able to; Marcy agreed. Adam went on to say they wouldn’t be able to get conditional use, a variance, or anything if it would be defined in the Definitions. Marcy reminded the Commission they didn’t want to regulate the use of the buildings, just regulate the use of the land.

Tara said they could come in for a variance; Marcy asked Tara where to add it if they couldn’t get a variance for a definition. Tara said it would have to be added in where the Section with the Density, Lighting, and Land Division. In Sections VII-E, F & G those are the ones they could get variances for.
Devin asked if this was for a building or structure. Marcy stated what she is suggesting the restriction for is just for the mounds, the aggregated and over-burden mounds to not allow them to go over 50 feet. Marcy asked Devin if he would be okay not including buildings. Adam asked if this would be 50 feet above the existing ground, so when they crush gravel, dig a pit they could put it back so they are actually be 50 feet lower. Marcy asked if it should be 50 feet from the existing ground elevation.

Commissioner Gorder asked if this would cover cut & fill as stated in Gallatin County, should it the lowest elevation of the land around the structure. Commissioner Young asked they could have 75 foot cuts, or more. Commissioner Mitchell asked if they couldn’t be 50 feet from the original cut site. Devin thought it should be from the base of whatever structure it was. Commissioner Mitchell stated they would have to know what the original was, from where they started. Adam stated that would make since to him, because if they did dig a hole, then they could put it back in the hole, and no one would see it. Commissioner Mitchell stated they are trying to keep them from obstructing the view. He went on to say the gravel pit they were at they watch them put the crusher in, it was in a gully, so if they use the original elevation, they wouldn’t be able to go over that, they have to know what the elevation was when they started. But on top of the hill, even if they were halfway down the hill and they even went up 50 feet from the original spot they couldn’t go more than that, unit they started to back fill.

Marcy stated what she heard the members say they would like it worded as “Aggregate, Over-Burden, and Topsoil (Man-made Mounds) shall not to exceed fifty feet in height from the original elevation”.

Commissioner Mitchell stated when they build a pit out in the oilfield they just start scooping it up and laying it on the side; he asked Adam if that is what the County did. Adam said it was, he was just trying to figure out how it could be worded, they wanted it from the ground where the structure is going to be. Devin said this structure is 100 yards wide. Commissioner Gorder stated it should be the lowest elevation of land; Commissioner Young agreed. Commissioner Gorder said that is how it is somewhat worded in Gallatin County’s, around the structure. Commissioner Young said if they had a slope that was 2:1 they could have over 100 feet; he is more concerned with the cuts, depth of the cuts verses the height of the stack. Commissioner Mitchell said they are more concerned with the height of the monument, like the guy in Utah had to look at every day. Devin said he sees both sides.

Marcy stated what she has is “the mounds shall not exceed 50 feet in height from the lowest original elevation.” Commissioner Mitchell stated they would have to have base. Devin stated so that would be before they did any construction, before they do any cutting. Adam agreed if they did cut it would from where it was originally. Commissioner Mitchell stated they could cut 75 feet deep then fill it and then add 50 feet more; Marcy agreed. Commissioner Young stated this is why they are going have the hearing; the other members agreed. Marcy asked if the Commision would be okay with the change; everyone agreed. Devin asked where it would be added. Marcy stated on page 15 right below Land Division, it would be section VII-H. Adam stated FFA should actually be FAA; the other members agreed as FFA referre to Future Farmers of America.

Marcy directed the Commission back to page 14, Prohibited Uses; she asked the Commission if they were okay with the way Adult Entertainment Facilities was defined. Commissioner Gorder asked how it got in there, he didn’t remember discussing it. Devin, Adam and Stephanie both agreed they did discuss it. Marcy said they did discuss it at the July 16th meeting, when they discussed the Prohibited Uses they had asked to include the Adult Entertainment Facilities and Junk Yards and the Automobile Wrecking Facilities. Commissioner Gorder stated it is out of the MCA code so it’s good. Marcy asked if the Commission was okay with both definitions; they agreed.

Marcy stated the change in Density is what the Commission had discussed, she asked if the wording was okay; the members agreed. She asked the Commission was okay with the utility lots being not less than acre, in the Land Division section; the Commission agreed. Marcy noted the Commission also discussed the Lighting requirements.

Marcy noted the change in Section VIII-A the Commission made was per the Health Department comments in the Intent on 15.

Then on page 16 in Section IX she stated as she listened to the meeting minutes (audio) she noticed there were a lot of comments from the Commission, most from Adam, on how the applicant would know the
timeline of the application. She found some wording in one of the sample regulation, so she added and thought this would clarify it a little better on the process, how it was going to work, she asked if the Commission was okay with the wording and if they wanted to leave it in the regulations; Adam said he liked it. Marcy asked if it clarified it; Adam agreed; it appeared the other members agreed to leave it.

Devin asked for a variance how it worked, how are they granted or not granted. Marcy stated typically in a subdivision application, she thought the process would be similar, they would submit an application with the variance request, she would review the application, the variance and do a staff report; there would be a hearing first for the variance with the County Commissioners then Zoning Commission would have a public hearing, they would be done at the same time which would immediately follow the Commissioners’ public hearing. If the County Commissioner decided to deny the variance then the Planning and Zoning Commission wouldn’t have the other hearing. Devin said now he understood it better. Marcy said it was a good question.

Commissioner Young asked to go back to page 17 letter “g”. He said Kochia and thistles are not a noxious weed they need to insert in the regulations the applicant would have to a weed plan, the Commission could come up with some wording that “commercial property shall spray or use some sort of sterilent to control Kochia and thistles...” Devin stated both are very prevalent in the zoned area. Commissioner Young said what happens is when the Weed Director goes out there finds no noxious weeds they do allow for the Kochia and thistles, we all have them. He went on to say that the Kochia and thistles roll off in the fall and spread seeds all over; once the ground is disturbed they grow everywhere. The Commission would actually be asking for more than what’s in the County’s Weed Plan, they’d ask on commercial property that they spray, control or sterilize. Adam stated they could replant grass seed back; Commissioner Young agreed, but it would still take years to grow the grass back.

Commission Young went on to say every one of the oil wells out there on the banks the thistle and Kochia are growing, and it’s a nightmare out there. Devin stated they can see it in a farm field exactly where weeds rolled through the field, if this is an agricultural zone it probably good thing. Commissioner Mitchell asked if you could spray for either one of them; both Devin and Commissioner Young stated yes. Commissioner Young went on to say they are hard to kill but they can be sprayed; that’s why he wanted to make sure the word “spray” and “sterile” were included; as long as they are on a commercial site they would probably use a sterilent because it’s a more positive way of doing it. Commissioner Mitchell asked so he wanted to make a “g(a)” or a “g(1)”; Commissioner Young stated that would be up to Marcy.

Commissioner Gorder asked if the County could change the Richland County Noxious Weed Plan. Both Adam and Commissioner Young didn’t think they could. Commissioner Mitchell stated its State regulations. Marcy thought they would want them in both.

Commissioner Gorder stated so what Commissioner Young is saying is that this would only apply to this Zone; Commissioner Mitchell and Marcy both agreed it would be just for this zone. Commissioner Gorder stated he would like it changed county-wide. Marcy said this would be a start. Adam asked if the weeds were state regulated; Commissioner Young stated Kochia and thistles are not noxious.

Marcy said what they could add is that they have plan or provide a plan on how to control them. Commissioner Young said we could give them a break, the noxious weeds on site are taken care of by “g” and the rest of the property usually natural ground that has not been disturbed does not have the thistles and Kochia, it’s the disturbed property. Devin agreed. Commissioner Mitchell asked if Kochia is the fire weed; Commissioner Young, yes. Marcy said she did not think it should be limited to just commercial because all the Existing Uses and Allowed Uses would not have to have to do it. Commissioner Young said all the farmers have Kochia and thistles in their fields, when the ground is being disturbed, they do control it. Marcy said she would do some checking on it.

Commissioner Gorder asked Tara if she was following them on “g” the applicant shall have implemented a Richland County Noxious Weed Plan, “the applicant must meet the requirements of the plan.” He asked if the Commission could add additional conditions just in this zoned area that they don’t have in the actual Richland County Noxious Weed Plan. Tara stated yes, they can add more requirements. Commissioner Gorder asked so it doesn’t have to match the weed plan that is already in place, they would have a new plan for this. Commissioner Mitchell asked if they put it down here where it says the requirements of the plan “the plan
shall include a means to control noxious or Canadian thistle or Kochia or” Commissioner Young said Canadian Thistle is noxious. Commissioner Mitchell then asked Commissioner Young if this is what he talking about. Commissioner Young stated he was talking about “Kochia, Russian thistle, extra”; the extra would cover anything else and that it can be controlled by means of sterilization or mowing, it would give them three options. Commissioner Mitchell asked did they see what he was saying that the plan shall include not only the Richland County Noxious Weed Plan, but this zone is going to require them to take care of these ones that the Commission deemed bad. Commissioner Young asked Devin if he was okay with it; Devin agreed.

Marcy suggested to adding it at the end of the sentence in (g) to say “And shall provide an additional plan to control during construction and routine maintenance for, including but not limited to, Kochia and thistle weeds.” Commissioner Young said he would be okay with it, because if they get the Mare’s Tail growing that could be enforced too.

Commissioner Gorder said what he is saying is the County’s Weed Coordinator would have two separate plans, one for everybody else in the County and then another for this zoned area; so it’s going to have to be two different permits. Marcy said she did not think the Weed Coordinator would do the second one it’s going to be up to the Zoning Commission. Commissioner Gorder asked then why would he’d have to sign it; Marcy said he has to sign the Richland County Weed Plan. The other one would be an additional plan to control those that are not in the Noxious Weed Plan.

Commissioner Gorder asked who’s going to monitor it, if there is weed problem out there. Marcy indicated it would be her, the Zoning Administrator. Devin stated she would probably get a compliant. Commissioner Gorder stated then she would have to get a license to identify the weeds. Commissioner Young stated he didn’t think so, it’s visually. Adam said he couldn’t identify one weed from another, he does know what fire weed looks like. Commissioner Young stated the Noxious Weed Plan would probably take care of the 90% of the property that is not being disturbed; he’s only talking about the property that would be disturbed which would probably be fenced. Commissioner Gorder said if he was building up there, and she, he’s going to want to know he’s getting fined for on the weeds out there, it would be wide open, it would be nightmare. Commissioner Young stated not if they planted grass, when you plant grass after a few years, the Kochia and thistles usually subsides once the grass is growing; otherwise if they have a site, they don’t have grass, they need to keep it sprayed or sterilized, keep it clean or mowed.

Commissioner Gorder asked what the definition of the site would be. Devin said this would not be for the residential, only the conditional uses. Commissioner Gorder said he wanted teeth to it, that to have someone’s signature on it that would have some teeth; all he’s trying to do is get it all to match, because right now, they have teeth with the Coordinator, he’s licensed by the State of Montana, he is following our Richland County Noxious Weed Plan; this will be an additional one, the way he reads it’s the Weed Coordinator who would still have to sign off on it, they are going to have change the signing off if it’s going to be the County Planner who’s going to sign off on it, authorizing the application. Marcy said for this weed plan, the second one, she would not sign off on it, it would be just a plan they would have to submit on how they are going to control those weeds, the Zoning Commission would look at the plan, it’s going to be the Zoning Commission, they would have to make sure this plan is acceptable and then the applicant would have to follow that plan.

Commissioner Young stated it is a lot like a lot of things, like the hours, we can’t enforce it but if we have it in writing, it might remind them to do a better job of controlling their weeds; Devin agreed. Commissioner Young went on to say it needs to be another condition under “g” and not combine with the Noxious Weed Plan. Devin thought it would make the County in charge of it if it’s with “g”; but if they make it another one (item) then it would be the zoning commission. Marcy agreed. Commissioner Young added it would be for this zone. Commissioner Mitchell added then “h, i, and j” would change and it would move them all down.

Marcy asked for clarification on what Commissioner Young wanted; that for Allowed Uses they wouldn’t have to do anything according to what’s in the regulations, so if it a small commercial use that is an allowed use then they wouldn’t have to do it, but if it a conditional use then they would have to meet these requirements. She stated most of the conditional uses are mostly industrial or commercial, so they wouldn’t need to identify it as commercial, and it should just be the letter “h”, that it should read something like “the applicant has to
provide a plan to control and maintain the Kochia and thistles”. She said she would come up with the wording for it.

Commissioner Gorder asked wouldn’t they want the plan to be that they have meet it, mowing conditions, spraying or grazing or something, it’s reading they have to create the plan. Stephanie said they would then the Board would look at, from the way she understood it. Commissioner Gorder stated then they would have come up with a plan that we would have to approve; but everyone else has to follow the County’s Plan for every other subdivision; the others agreed. He went on to say everybody that applies for a subdivision in the county, right now, has to meet the Noxious Weed Plan that the County created it, this one is saying, you, the developer create a plan, come to us, we’ll (the Commission) say yes or no. Commissioner Young said he didn’t think it should be a plan it’s a maintenance issue. Stephanie said we are still leaving the Noxious Weed Plan in they still have to meet it.

Commissioner Young said but the Noxious Weed Plan doesn’t include Mare’s Tail, Kochia, and thistles. Adam asked what the Mare’s Tail looked like. Devin said it would depend on if you sprayed or not, it’s a straight up shoot. Commissioner Young stated they would need to use the word “must control” in the wording. Commissioner Gorder agreed he thought they could add it and that it should have a timeline for controlling it, or they could just say they’re going to mow it. Commissioner Young said Whiting is the one that does mow, they come in at the end of July or the first of August to do the mowing, they are gaining, there is getting to be less and less weeds. He went on to say this is going to be a massive amount of dirt being moved, massive amount of piles of dirt, and there is going to be a massive amount of noxious weeds (invasive) Kochia and thistles. Commissioner Mitchell stated when they get so big it’s hard to cut them down.

Commissioner Gorder said he just wanted it to cover the whole area (County); Devin said he thinks what they (Commission) are dealing with is the zoned area, when they (Commissioners) go to the Weed Board they would have to implement there, right now they (Commission) was talking about is the zoned area. Commissioner Young stated this has nothing to do with any other subdivisions, just this area. Commissioner Gorder stated he understands, he’s just saying that he could have 3,000 acres out there so you’re telling him he would have to mow it; Devin said no. Devin went on to say that if it’s agricultural and it’s grazing land then it’s not an issue. Commissioner Young stated it would be the ones Marcy stated earlier; Devin added it would be the Conditional Uses. Marcy agreed it would be only for the Conditional Uses. Commissioner Gorder said anything that spreads off the conditional use permit would not have to be followed up.

Adam stated or if they go put a house, move a bunch of dirt, and end up with a bunch of weeds up they wouldn’t have to do anything. Commissioner Young said that was correct.

Commissioner Gorder said he is looking at a gravel pit every day and the mounds are over 6 feet tall or higher and are full of weeds, Kochia. Devin stated which would be a conditional use, so they would have to do it. Adam, unless it was his (personal use), others agreed then he wouldn’t have to. Commissioner Gorder stated then it blows all over onto the neighbors. Commissioner Young said that what he was saying and why he wanted the wording. Commissioner Gorder said he understood, he just wants it to have some teeth. Commissioner Young said the pit he has on his property they actually take care of it, they mow them down. Commissioner Gorder thought it should also be the slope of the pile so that they could at least mow them when they build; with a 4:1 slope they can’t mow them. Commissioner Young stated it would take too much land to do it that’s why they don’t. Commissioner Gorder stated well as long as they got who’s the weed checkers is.

Marcy said they could add in the regulations when they wanted them to mow, at certain height, so say if they get a foot tall and they wanted them to mow that would mean the Zoning Administrator or Enforcement Officer would need to go out there and make sure the weeds are mowed. Devin stated or she hears (receives) a compliant. Commissioner Young said maybe it should just be to have the ground sterilized; most thistles are full grown at 12 inches. Marcy asked if they wanted include a height, the members agreed not add the height. Commissioner Young said it needs to say “must control”, he wrote this into all the leases for his property and his cousins for all the oil companies; they do come in and spray. Commissioner Gorder stated he just wanted a good deputy, that’s all he wanted.
Marcy noted the water quality and test and analysis was edited by the Commission per the Health Department comments and added “as defined in the pre-app meeting; she noted they will need to ask for a pre-app meeting to know what the water testing requirements they have to have done.

Then on page 20 for the current deeds (x.A), per Tara suggestion, was changed to “since July 1, 1973” and then in the paragraph under (C.) were it stated “County Commissioners” it was changed to “Planning and Zoning Commission”.

On page 21 in “a.” were they wanted the third party to be an “environmental engineer or sanitarian” that they are “licensed and bonded / and insured”. And then for the fencing (g.) it would be an “appropriate fence”, this means it could be a structure or a living fence. Commissioner Gorder asked what type of fence. Marcy said she added this because the Commission didn’t want to identify what type of fence they just wanted it to be just an “appropriate fence”. Stephanie asked who determines if it is an appropriate fence. Marcy stated the applicant will propose the style of fencing they want then it would be up to the Zoning Commission want to approve the type of fence. The members appeared to be okay with this.

Marcy drew the Commission’s attention to page 22 right below “k” where they would need to add the requirement they wanted them to follow for the new weed plan that Commissioner Young talked about, which would be a new “l.” then the next one would change to “n”. Commissioner Young stated he didn’t know if they had seen these sites, but if they get this thing permitted they’re going to want to proud of this thing, they’re going to want to go around their site with their skidster buckets and Sere the weeds off, but next to the fences won’t be able to get at, they’ll have to either have to mow it, spray it, or sterilize it. The Commission members appeared to agree.

Commissioner Gorder asked if she was going to add the Administrator to “k”; Marcy said no, what they are doing is separating it out (from “k”) so this would be a new one, they would still have to comply with the County Noxious Weed Plan, also this one for the district they would have this additional weed plan.

Commissioner Gorder asked who’s, he thought that they said it was the Administrator would be. Marcy said the Administrator would enforce the regulations; Commissioner Gorder, all of this. Marcy went on to say she did not think they would necessarily have to add it in. Marcy asked Tara if they would have to add the “Administrator” or “Zoning Enforcement Officer” to go out and regulate the weeds for this new section that they wanted to add; Tara said no she didn’t think they need to add it in that section. Commissioner Gorder noted she would do it all.

It was noted on page 24 in Section IX-F there was the change from “ten year” to “approval period”, and in Section IX-G (b.iii.) was changed for clarification.

Marcy noted in Section X-C(d) “calendar” was added before “days”.

In Section XI Marcy asked the Commission members to refer to the MCA book to look at 76-2-102 (2) and (3) on page 79 at the top which she read. She noted the during the Commission’s previous discuss on the authority of who does the hiring of the employees, she believed the way the Commission changed that it does still reflect what’s in State law. Commissioner Young noted she would have job security. Marcy stated she wanted the Commission to take a look at the MCA code to make sure what’s in the regulations was still the same in the State law. She asked Tara if she had a chance to look this to make sure this didn’t change what’s in the State Law definition; Tara asked Marcy to clarification. Marcy clarified that in the Administration section XI-A when the Planning and Zoning Commission discussed this at their meeting (previous) they wanted to take out “and hire such employee”, she said she wanted to make sure what’s in the regulations would still complied with State law. She asked so by making this change in the first statement would it still comply with State law 76-1-102, pertaining to the section (2) and (3) in State law? Tara, yes it was fine.

Commissioner Young asked Tara about the MCA code number 3, if they could permissible add a mil if they had to hire this person. Tara said yes, if the County could stay within their allotted mil levies; Commissioner Young asked for more clarification if they stated within the allotted mills by the State, so if they 2 or 3 mils left they could put them towards the planning, zoning. Tara said yes, they could even make it broader because the planning board statutes allow them to do the same thing so they could just do it for planning.
Commissioner Gorder asked how come they can’t just change the description of the County Planner because that’s who will be the Zoning Administrator, then they don’t have to, all they would do is change the description of the county employee. Marcy asked why they would want to change the job description. Tara said they could change the description, she then asked if it was her job description he wanted to change; Commissioner Gorder, yes. Tara then said yes the Commissioners could change her job description to include the duties of the administrator and enforce zoning; she asked Marcy if it was already in her job description; Marcy, yes.

Commissioner Young said he just cited it as an example, so if the boom came back and she’s over whelmed with subdivisions and the County would have to put on another employee, that was where his thought was coming from. Tara said several counties do assess a levy for planning. Commissioner Young said they do have some levies for planning; Tara said they could increase it. Commissioner Young asked they could increase it as long as they don’t exceed the total; Tara, right. Marcy said the mil for planning is really, really low, that it was not even a full mil that it’s the lowest one.

Marcy drew the Commission’s attention to the Staff Report on the research information, she included what the other counties’ fees were.

She asked the Commission to go to the Lighting in Section VII-F page 15 that Commissioner Gorder had asked about the Dark Skies and what the County had allowed before. She referred to the information in the report. Dark Skies was an Association, they have website, their mission was to preserve and protect the nighttime environment and their heritage…she continued to read what was written in the report on Dark Skies. She also searched what the County’s condition approval of subdivision applications were before and what was placed on the final plat was “All night time outdoor lighting shall comply with the International Dark Skies Code.” She stated the lighting requirement in the draft regulations basically is the same as the Dark Sky’s mission, she recommended leaving it the way it is stated in the draft regulations that all the lighting would have to be downward facing. Commissioner Gorder stated it was perfect.

Marcy stated then in Section IX page 20 of the draft regulations and on page 5 of the Staff Report. The Commission asked Tara to check into bonding, she contacted Sean O’Callaghan from Gallatin County on both the water testing and bonding. The Bridger Creek zoning regulations were used as the sample, which Tara provided the information to the Zoning Commission in an email sent on August 20th. The Commission had asked Marcy to check with the County Sanitarian on the water testing and the Commission received a response back from the Health Department regarding that. Marcy asked if the Commission wanted to add anything in the regulations about the bonding, this would be a requirement they (applicant) would have to do.

Commissioner Young stated DEQ is going to require a bond, he asked Tara how much more bonding requirements could they exceed than what DEQ requires.

Tara said this was in response to Commissioner Gorder’s questions in requiring a bond above and beyond what DEQ would require, so what Gallatin County had done was they have a monitoring performance bond just to make sure that everything is being monitored and they’re submitting that monthly monitoring report and if they don’t then they could use the bond to have someone go out there and monitor and make sure there are no spills, leaks or containments. The Commission wouldn’t set an amount in the regulations it would be something they would consider for each particular application that came in for a conditional use permit. So the bonding says “The Monitoring Performance Bond shall be in addition to any required reclamation bond or other performance bond required by any other local, state, or federal agency.” What Gallatin County was doing was trying to come up with was a different type of bond that the applicant couldn’t claim that was already required by another State agency so they did the Monitoring Bond. Tara also stated it’s not a remediation bond it’s a monitoring bond. Commissioner Gorder stated perfect, the Commission would determine it as applicants are in front of them. Tara stated it would only apply to conditional use permits. Commissioner Gorder stated it sounded good, he likes the wording.

Marcy asked the Commission if they wanted to add it, changing a few of the words to fit this District’s regulations, what was in the Gallatin regulations, which was:

4.05.5 Monitoring Schedule. The Monitoring Schedule must provide a mechanism for prompt notification to any and all local, state, or federal agencies involved in any permit or certification.
required for the proposal. The purpose of such notification is to ensure adequate enforcement of existing local, state and federal laws and regulations to protect private property and other rights of Montana citizens and Montana’s natural resources. The Monitoring Schedule shall require the Applicant to prepare and submit to the Planning Department a Monthly Monitoring Report.

1. Monthly Monitoring Report. The Monthly Monitoring Report shall include a description of all data collected during the period, as well as data trends collected over time, detailed descriptions of any and all spills, leaks, contaminations, regardless of whether the spill, leak or contamination is a violation of local, state or federal laws or regulations. The Monthly Monitoring Report shall also include a detailed description of any violation of local, state, or federal laws or regulations and any corrective action taken. The Monthly Monitoring Report shall be a requirement of conditional approval and the failure to supply such Monthly Monitoring Report may be grounds for revocation of a Natural Resource CUP.

2. Monitoring Expenses/Performance Bonds. Such monitoring shall be at the sole expense of the Applicant, and a specific Monitoring Performance Bond shall guarantee all costs of monitoring. The Monitoring Performance Bond shall be approved by the Gallatin County Attorney and made payable to the environmental engineer selected as the third party monitor. Gallatin County shall be a beneficiary of the Monitoring Performance Bond and shall have express authority to collect upon said bond in the event Applicant, their successors or assigns, fails to adequately monitor the project. The Monitoring Performance Bond shall be updated annually and shall provide for payments and expenses of all monitoring for no less than a 10-year period from the date of each update. Failure to maintain payment to the monitor and failure to maintain an adequate Monitoring Performance Bond for all monitoring expenses for no less than 10 years from the date of each update shall be cause for revocation of the conditional use permit. The Monitoring Performance Bond shall be in addition to any required reclamation bond or other performance bond required by any other local, state, or federal agency.

Commissioner Gorder stated they would have to or keep it similar; the way he understood it the Commission would make the determination for the bond case by case. Commissioner Young stated then they would have put the monitoring in. Commissioner Gorder stated just as she stated it. The Commission member appeared to agree to add it to the regulations. It was noted it would be added under section IX-D-2(a).

Marcy stated the next one (page 6) in the Staff Report was regarding Section IX-G(b.iii) which is on page 24 of the regulations. She went on to say Commissioner Gorder had asked how the Zoning Administrator or Enforcement Officer or applicant is going to know what the definition of maintained is, so she did some research and found there were several. She found ones in the Cascade County and Paradise Valley regulations and in the Planning Dictionary which had a couple and was the best one she thought would fit if the Commission decided to use that one, and she did a search on Google just to see what it would say about good repair since it was in the first draft. If the Commission wanted to keep “in good repair” in the definition they could or leave as it, and they include the definition for maintained, she suggested using the one from Cascade County as stated in the report, she noted the Paradise Valley appeared to deal with the construct of buildings and the Commission is doing the use of the land or they could use the one from the Planning Dictionary, which is for structures and the overall improvements, maintenance of the lot.

Commission Young asked her to read that one. Marcy stated Cascade’s definition was “To support, keep and continue in an existing state or condition without decline.” and the Planner Dictionary’s definition was “To cause or allow to continue in existence; when the context indicates, “maintain” shall mean to preserve and care for a structure, improvement, conditions, or area so that it remains attractive, safe and presentable and carries out the purposes for which it was installed, constructed, or required.” Commissioner Gorder stated he liked the Planning Dictionary definition better. Marcy asked if the rest of the Commission members was okay with adding the Maintained definition from the Planner Dictionary; they agreed.

It was noted that on page 27 of the regulations, Section XI-B the fees. Commissioner Young asked if she was able to find samples and fee; Marcy, they are included in the Staff Report. Adam noted there as a fee $16,800 for a permit; Devin noted this was for an oil and gas permit.
Stephanie noted they didn’t have the Map in there before, she asked if this would be the zoning changes. Marcy stated there are two amendments that could be done one for the regulations and one for the map. She stated it was listed previously as Zoning Changes (for the map), the Zoning Changes are more for different zones, for instance residential, agricultural, commercial, like the City is zoned. This district wouldn’t have them because it would be only one zone so that it be would an amendment to the map and any changes to the regulations (after they are adopted). She said she changed it to help clarify it better, when she researched the fees from the other Counties, the zone changes didn’t seem to apply to this district.

Stephanie asked what kind of map amendments would they make. Marcy stated for instance, if someone else wanted to come into the district it would be a map amendment. Adam asked what if they wanted to leave the district, they can’t. Devin stated it would have to be 80 % approval of everybody he thought the way they put it together is the same way they would have to take it out. Marcy asked Tara if it was correct that they would do it the same way was when they petitioned for the district.

Stephanie asked if they would have to pay that fee to her office again, so would they pay two fees. Tara said yes, so a map amendment would have to go through the same petition process. Stephanie asked if they would have to allow it; Commissioner Gorder said yes, they would. Marcy said she did some research that would be helpful for Stephanie, and would give it to her later.

Marcy suggested leaving the fees the way they are stated in the draft. Stephanie asked Devin what they changed them for the map (petition) if it was $300; he didn’t think it was that much. Commissioner Mitchell said he didn’t think it was very much. Stephanie said they tried to keep it low. Commissioner Young and Gorder thought it was $200. Marcy asked the Commission if they were okay with leaving the fees they were shown in the draft.

Commissioner Mitchell said if they are going to be spending a bunch of time on these he was not sure if this is enough money.

Tara said these would be the planning fees, Stephanie charges a different fee for the petition process. Stephanie said she sure if what she charged was enough compared to when she looked at these changes. Tara said she can definitely raise it, just don’t go to $3,000 like Missoula County.

Commissioner Young stated starting with the Conditional Use Fee every one of them they should have another zero on them; Adam noted the conditional use fee would then be $5,000. Commissioner Mitchell said the thing of it is they’re going through all this process to get this in place they are basically going to have to back through everything, go through every one of them again, and say does it meet this, does it meet this, does it meet this.

Tara said a map amendment is when they wouldn’t have to change the regulations; they would be adding more property into the boundaries or taking property out.

Commissioner Mitchell stated but the variances and conditional uses and the appeal is going to be a process that’s going to cost the County time and money. Tara agreed that it would definitely cost time. Commissioner Mitchell stated he is kinda with Commissioner Young on that they need to put another zero on them, just to say it’s going to get costly if they want to change one of these things or a conditional use. Tara said they will probably spend more time on a conditional use. Commissioner Mitchell stated the variance might not be a big deal because instead of having a fifty foot pile they could say well we’ll give you 55 foot; he asked if that would be a variance. Tara, yes, she went on to say that the variance would be very similar to what’s in the subdivision process, there would be the criteria for public health and safety, what’s the hardship, all things that aren’t in compliance with the regulations. She thinks it would be more difficult to do a conditional use permit.

Marcy asked about putting a conditional use at $1,000; Commissioner Young disagreed. Commissioner Mitchell said how about $2,500. Marcy went on to say for a condition use renewal $500, and an appeal at $700. Commissioner Young continued to disagree. Commissioner Mitchell said too cheap. Adam said they need to cover all the time it would take, the insurance, wages, and advertising. Commissioner Mitchell added, and don’t forget the attorney fees. Commissioner Young stated Tara is already going to eat this up in her billing. Adam said he didn’t know what they already had invested in these regulations.
Commissioner Mitchell said the Conditional Use should be $2,500 and the Conditional Use Renewal at $2,500 a minimum and the Appeal at $2,500. He went on to say the Appeal is going to take some time; Commissioner Young added, to get it started. Marcy grabbed the County’s Subdivision fee scheduled, for a subdivision application she knows they may not be a similar application, but the review time could be similar to the review time of a subdivision application. Minor subdivision the highest is $1,375 and for a major the highest was $2,500 but then there is also the $50 fee for each lot which wouldn’t apply to the zoning, for a variance it’s at $350.

Stephanie asked if Commissioner Young has more numbers for them to consider. Commissioner Mitchell said if he was paying that he would have to think twice that Commissioner Young suggested $5,000 for Conditional Use, $3,000 for a Renewal, $2,500 for an Appeal. Commissioner Gorder stated, say that again. Commissioner Mitchell stated the fees again: Conditional Use $5,000, for a Renewal $3,000, and for an Appeal $2,500.

Stephanie asked if an Appeal could end up costing the County the most. Marcy said if the county wins then the applicant would have pay all the fees that’s the way it’s stated in the regulations.

Adam asked what kind of time is involved in amending the subdivision regulations. Marcy said it should not take long to do an amendment like it has with this initial process. Marcy thought the fees for the Map amendment and regulations amendments should be around the same fee at for $350 each; Commissioner Young agreed.

Stephane thought maybe the Conditional Use and Appeal amounts should be switched around. Commissioner Mitchell asked her if she thought the Appeal would cost more than a Conditional Use Permit. Stephanie said she didn’t know for sure, when they get attorneys involved. Commissioner Mitchell said one thing about this is they can take this to public review and they can hear what the public had to say; some agreed they could always come down.

Devin said he could guarantee them that the average Joe isn’t going to do anything in the zone.

Marcy asked them to consider a Variance then at $1,000, a Conditional Use Permit for the Initial permit $1,800 which would be the review process where the Administrator would spend most of the time reviewing an application, then for the Renewal at $750 since all the Zoning Administrator would be doing is going back through the application materials to make sure it complies and if it doesn’t then it comes back to the Zoning Commission, and the Appeal at $1,500. Marcy asked the Commission if they liked those numbers; most said no.

Commissioner Gorder asked Commissioner Mitchell to read the number again, Commissioner Gorder went on to say they would do the Variance at $1,000, Conditional Use at $5,000, Conditional Use application Renewal at $3,000, and an Appeal at $2,500; Commissioner Mitchell agreed those were the numbers. Most of the Commission members agreed with the amounts Commissioner Gorder stated and the Amendments both being at $350.

In Section XII it was noted there were not additional changes.

In Section XIII it was noted the only change was the change from “land use permit” to “conditional use permit”.

In Section XIV it was noted there were not additional changes.

In Section XV it was noted there were not additional changes.

In Section XVI it was noted the only change was to include “calendar for the 15 days in the last paragraph.

In Section XVII it was noted there were not additional changes.

- Review draft Conditional Use Permit Application form: Marcy stated since they were out of time as there was a meeting scheduled right after the Commission’s meeting they would need schedule the next meeting, then they could discuss the application form and compliant form. She mentioned that Tara had reviewed them and noted some changes on the two forms, so Marcy will send out a new updated copy to the Commission members.
Devin said he would like to put a little bit of pressure on this, to make sure they are good. Marcy said they should schedule another meeting, the Commissioner are gone the week 16th, so it could be the week of 24th. Tara said she is concerned that the landfill may get their permit before the Commission ever gets the regulations adopted; Devin agreed. She stated if the Commission wanted to schedule another meeting they could, but she recommended scheduling the public hearing to get the process rolling. The Commission members agreed. Marcy stated if they were to schedule the hearing today and to be able to get the notice in the newspaper this week the earliest they could have it would be October 9th or 15th. Adam suggested the 9th. After some discussion on the dated, time and location the Commission agreed to hold a public hearing on October 9th at 3:30 pm at the Community Services Building using both rooms.

Adam asked if they were going to go through the changes again; Devin said he thought they just accepted them. After discussing dates it was suggested to do it by email. Mary asked Tara if they could an email, Tara said yes but they would have to notice it in the paper. Tara said they did talk about the changes, they would get a draft, when they have the public hearing they will take public comment; so they’re going to make more changes based on the comments, so they could make the changes they discussed before they finalized it; she didn’t think they really had to have another meeting; everyone agreed to not have another meeting before the hearing date.

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

Adjourn: Commissioner Gorder moved to adjourn the meeting.

[Signature]
Diane Mitchell, County Commissioner
Chair of the Of the Richland County Planning and Zoning Commission

10/9/18

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