

ZONING AND PLANNING BOARD MEETING MINUTES

November 21, 2024, Zoning & Planning Board meeting was called to order at 7:00PM at City Hall at 206 Main Street, Three Forks, MT 59752.

Members Kelly Smith, Racheal Tollison, Jacob Sebena, Matt Jones, Amy Laban were present at City Hall, and Reagan Hooton attended via Zoom. Niki Griffis was excused. City Planner Randy Carpenter and Lee Nellis (consultant for Impact Fees and Zoning/Subdivision Regulation rewrite) were present at City Hall. (Zoom is a virtual meeting tool allowing people to attend remotely, which started as an option during the COVID-19 pandemic and the City has continued to offer for meetings.) There was a quorum with the attendance of six members, and the meeting was held. The minutes were completed by City Clerk Crystal Turner after the meeting.

Matt Jones called the meeting to order. He reminded all that the meeting was being recorded.

Public Present: Mike Stenberg

PUBLIC COMMENT (items not on the agenda): Kelly Smith informed the Board members that effective January 1, 2025, City Hall will be renovated and will be temporarily relocated to the Library. Jacob Sebena asked for how long, and Kelly replied it will most likely last through March. Kelly said there is a big meeting room in the upstairs of the Library which the Board could hold its meetings in. Amy Laban asked that Kelly inform them when she sends the agendas out where they will be meeting. Randy asked about ADA standards and access to the basement. Kelly explained the Library is also being renovated to improve the ADA doors and ramp as well as the main entrance doors.

CONSENT AGENDA

Approval of the 10/1/2024 and 10/17/2024 Meeting Minutes

Amy Laban moved to approve the minutes the 10/1 and 10/17 meeting minutes. Racheal Tollison seconded the motion. Motion Passed Unanimously.

PUBLIC HEARINGS

There were no Public Hearings.

NEW BUSINESS

A. Election of Officers

1. Chairperson

Amy Laban moved to nominate Matt as the chairperson. Kelly Smith seconded the motion.

2. Vice Chairperson

Matt Jones moved to nominate Amy Laban as the vice chairperson. Racheal Tollison seconded the motion.

The Board voted on these two motions together, the vote was unanimous.

B. Discussion regarding Chapter 3 Zoning Code

Lee Nellis said he will briefly explain this chapter, which is the roles of the members and then includes an ethics section for those who serve. Kelly Smith said if the name of this board changes, as is referenced in the new draft, the bylaws would need to be amended as well. Amy Laban said she had wondered how that would work as well. It was not on the agenda to decide upon tonight. Kelly also brought up that the draft says if a zoning permit is denied, it goes to the Board of Adjustments. Lee

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explained, "It could, if the applicant files an appeal to be heard before that board. Technically, it is a Board of Appeals but Montana State Law still refers to it as a *Board of Adjustments* so we will not change its name." Kelly stated this board also hears variance requests. Lee explained a variance is an appeal. Randy Carpenter said you are appealing the decision of the administrator. "You don't just say *I need a variance* until you know you've been denied. If I were the applicant and I am required to have a 25-foot setback and I only have 15-feet available, you as staff would tell me that is denied since 25-feet is required. Then I could apply for the variance. The variance is just a specific type of appeal," Lee explained.

Amy Laban asked Kelly Smith directly, since Kelly is staff, "On page 2, Section 11-3-4.2 where it talks about reviewing the regulations and administration during the previous year at each year's January meeting. Do we want that in here now, do we think that City Staff can handle it?" Kelly Smith said the Zoning Board would be the one to review it. Amy continued that it would require a report (a compilation of what was decided). Lee said there is no requirement for an annual report, a bigger planning department may want to conduct an annual report but he does not foresee Three Forks needing one. Amy recommended the minutes could suffice? Lee agreed but he likes to build it into the regulation about *How are we doing?* for accountability. Amy said she likes it too, "I think we can all agree that last year we were pretty overwhelmed with conditional use permits until we got the ball rolling on this stuff.

Kelly stated she did not read anything about conditional use permits. Lee said in Chapter 4 they will be identified and defined and then each have their own chapter. Kelly asked if 11-3-5 needs to be updated to reflect that responsibility then, since it specifically mentions some types of permits but does not mention conditional use permits specifically? Matt Jones and Lee said that it is on page 2, in 11-3-4.5. Kelly said, "No, that is for the Zoning Board. I'm talking about what the Council decides upon." There was discussion about the role of the Zoning Board making decisions and the existing Board members believing they are only a recommending board; Lee stated that the law allows the Zoning Board to make decisions as well. It was agreed to leave the decisions to the Council – or let them decide if they wished to omit the hearing and decision of conditional use permits before removing that in the draft chapters. This segued into ex parte communication and the section covering that, which recommends it be on every agenda to declare any ex parte communication or conflicts of interest. Randy asked Lee to expand on what ex parte communication is, since there are newer board members. "Ex parte is really hard to avoid in a small community. However, if anyone has an application in but comes up and tries to talk to you about their application, the best way to handle it would be to say something like *I have this role on the board and I have to play it, so I need to only have these conversations in public*. However, you probably won't do that, you'll probably let your neighbor talk about it and then at the meeting you could state on the record that *I spoke with Mr. Nellis who is very uptight about this development and provided me with all sorts of information that you all need to hear as well* and then report what that information is. You are not supposed to have contact with one side and not the other, you aren't supposed to have contact that is privileged information. It's best to say *Look I talked to this person, this is what they said* and you can leave it up to the Board to request that you recuse yourself from the vote. However, if you are a friend or some sort of other relationship, the Board may want you to remove yourself from the decision." Randy Carpenter added, "This is on

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like conditional use permits, but not like adopting regulations which is a legislative decision people can lobby you all day long.”

OLD BUSINESS

A. Update and Discussion with Lee Nellis Regarding the Recommendation from the Impact Fee Advisory Committee about Impact Fee Amounts

Lee Nellis reported the Impact Fee Advisory Committee met yesterday at 3PM. “We had a good meeting and helped me understand what they understood so far. We are reviewing a consolidated version of that, and will forward that on to you so you can see it as well when they have approved the final edits. These are pretty modest impact fees that will be proposed. This will all go to the City Council on the 28th of January. If you are interested, you can ask Kelly or Crystal to forward on the Advisory Committee’s recommendation. We are closing in on it. The fees have gotten down to where I think everyone is comfortable, roughly \$5,000 for a home and \$9.50/square foot for commercial. The committee has taken the numbers as far as they go, and any further reduction will be a political decision which is the Council’s job,” Lee said. Reagan Hooton asked what the fee is for commercial? \$9.491/square foot, which is infill commercial uses (applies to all existing lots) but larger ones that need to be annexed in will be discussed and agreed upon during annexation.” [Secretary Crystal Turner note: This is not entirely true as there are some large lots that are already within city limits and will not need to be annexed.] Reagan also asked if impact fees are paid multiple times, or just once? Lee said just once, at the time a zoning permit is granted. “The City has been charging impact fees for a long time. We are drastically reducing the fire fee, we are reducing the water fee, there is a somewhat higher wastewater fee. There is a new fee for municipal buildings and transportation. Transportation is driving the majority of the cost just because road improvements cost a lot to complete. For large projects where the infrastructure does not yet exist, they would be required to build the infrastructure but then not pay impact fees. Same amount of money really, but from a different requirement, and all comes out in the wash,” Lee said. Racheal Tollison clarified that it only for new construction though? Lee said no, it also applies to changes of use of an existing structure. He gave an example of a semi-abandoned building that was maybe semi-warehouse or industrial now turning into an indoor miniature golf course, “This would have an entirely different impact to the city’s services. There would be a lot more traffic generated by a mini golf course, there would be a lot more water and sewer, so they would have to pay an impact fee.” Amy asked, “So if the gym moves into the building next door, or has a community center, they would need to pay impact fees correct?” Lee replied yes.

B. Continued discussion on the Kyd Road Zoning District

Lee Nellis said he would like to hear if the Board members have any thoughts or questions so far in the draft, he would like to hear those first. If the Board is fairly comfortable with the draft so far, Lee recommends holding a public hearing in January to see what the public thinks of it so far.

Kelly Smith questioned, “On page 5 at the top, that doesn’t change any of the city’s parking ordinances right? A developer can’t change the rules for how long a vehicle can be parked on the street.” Lee said no. Reagan Hooton asked if a public hearing was held, it would only be for this chapter correct? “The Growth Policy I think says a minimum of 5 units an acre, but I don’t think we’ve heard how many acres they are going to develop yet,” Reagan stated. Amy Laban added, “Or how many are developable.” Lee said we will set the standard, and they will need to show you how they meet the standard. Amy

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questioned low impact commercial uses. Lee said he sent the definition. Amy did not seem satisfied with the definition and asked how it is currently defined. Kelly replied the City does not currently have a definition. Lee said it stems from this development exclusively, due to the fact that it is adjacent to the wastewater treatment and a railroad. "No one is going to want to live next to the wastewater treatment, and you wouldn't put houses right next to a railroad either, so an industrial buffer would be best in this location. What would be compatible to make use of this land and minimize potential nuisances? This definition is just a starting point and I am happy to expand or shrink it," Lee said.

There was discussion regarding buffering. Amy agreed that there will need to be a buffer with the number of homes proposed, she believes the future residents will want to ensure there is significant space. Lee said he did not believe this area would be good for retail, there would not be services like a barber shop or hair salon. The conversations held so far have discussed mini-warehouses and even a church as both are low impact. Mike Stenberg expanded on the expectations for the commercial, something like a mini-warehouse or light industrial between the railroad tracks, the talc plant, and the main road (which would need to be built from Kyd Road into the neighborhood). "Light industrial, I look at the south side of Manhattan where the gym, Ace Hardware, autobody shop are located, but probably not a large scale like Blackhawk," Mike said. "I can see a plumbing place or yard services, where employees come in and grab their work truck or tools and head elsewhere to a job site," Mike continued. Lee offered, "A steel building, prefabbed style buildings." Matt asked if retail would be allowed. Lee replied that retail will be hard to prohibit because, "If it is a plumbing shop for example, one could come in and get a fancy faucet; or a new light fixture if it were an electrician's shop. That is small scale retail, but I don't envision a small bakery for instance as it would generate more traffic on a consistent basis," Lee explained. Amy clarified that perhaps it should be defined as "incidental retail". Lee asked if this language was good enough to move forward with a public hearing to see if the public is in agreement with this. If the City wants to get more specific with language regarding commercial facilities, it could do that in the annexation agreement. Reagan asked if "regular retail" is considered high impact then? Lee said yes, mainly due to traffic generation. Matt said he reads this as discouraging any retail in this area, but as described by Mr. Stenberg it seems like there would be a little retail. He asked why we would discourage, say the hardware store in town needing to expand and wants to be on this buffer road. "If it's not allowed here, we are just going to push them to Broadwater County," Matt said. Jacob stated if you use Wild Crumb in the eastern edge of Bozeman as an example, it hardly has any parking around it as it's in an industrial area that has had residential built up all around it, "So many people just walk there," he said. Lee said he understands the Board's intent is to lighten up on the "no retail". He will work on the language to clear up but wants to be sure it's low impact because it will be adjacent to residential and also not to steal business from the true downtown. It is a guiding principle to promote a healthy downtown area in the Growth Policy. Mike Stenberg said it is hard to predict what would be built out there, but if the development makes a 2-acre lot, it could be a variety of retail on one lot. There was discussion about the convenience of being across the street from a hardware store or small bakery/restaurant. Kelly questioned if hours of operation could be the trigger to determine what type of businesses would be allowed, noting that would limit late night traffic style businesses if hours were limited. Lee agreed and said these conversations are great because they bring up these items he had not considered.

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The conversation continued about hypothetical subdivision applications, conditional use permit, or even zoning permits – in which staff would have the majority of control in saying “yay” or “nay” to certain aspects, and then ask for the Planning Board’s input/help if needed. Lee said that with performance standards, you have the applicant show you how they met those standards. “In my experience, most people who are motivated to making development, will be creative enough to figure out how to meet the standards,” Lee said. Amy Laban agreed that, at least from the conditional use permit angle, she would prefer there are a set standard conditions that all CUPs must meet and leave less responsibility on the board to be consistent implementing conditions. “If those conditions are just within the code and the applicant must meet them, they could do so in a few different ways. As they are consistent with what this Board has recommend in the past,” Lee said would be the goal.

Matt Jones stated his concern was that if you put words in the document like *no retail* when in fact we would allow it within certain parameters, “I’m happy to have limits of size of building or hours of operation to help allow commercial businesses and keep it from being a nuisance to the neighborhood,” Matt explained. Lee said he will work on the language to be more neutral. Randy Carpenter said trip generators can help also define low-impact. Lee argued the trip generation manual may not accurately reflect a coffee shop in Three Forks, MT, as well as it is costly for an annual subscription to ensure you have accurate data.

Then the discussion turned to required parking. Lee does not want to have too much parking, Randy wants to have less than what is currently required. (Something about landscaping in parking areas, but there were several discussions happening at once.) Amy said if you do not have any landscaping within a parking lot, people will just drive wherever they want through the lot. Jacob encouraged having shading required due to the heat generation. Kelly read the current ordinance, which said over 3,500SF, then whatever number of parking spaces are required for the business use type, 2% of landscaping is required in the parking areas. There was discussion regarding shared parking for multiple businesses in same area. Randy said the Parking Ordinance section will be amended, but not much and shared parking is already addressed.

Lee moved on to alley requirements. “We probably need to have a conversation about the existing Growth Policy statement and Subdivision Regulations which require alleys. Given this piece of property, the shape of it with the wet spots, I am reluctant to put any more land in the public ways than is absolutely necessary. But we will need to discuss the alley requirement,” Lee said. Lee stated that for this property’s topography that alleys do not fit well. Jacob thought removing alleys would free up space, which would be nice all over town, “As long as we aren’t taking anything away from the residents I don’t see why we required them.” Lee replied again that this land is unique, and alleys may be good for new development to be consistent with the rest of town. “But I hear what Mike is saying about this land and not wanting to generate any more runoff than is necessary,” Lee said. Reagan said she loves alleys, but sees the hardships on this piece of property and could agree with them not being a requirement in this development. Randy said, “Yes, it could be different for the Buttelman property to the northwest. Mike Stenberg questioned why? “What is the existing subdivision near the Cook property – it doesn’t have alleys.” Kelly informed him that was subdivided out of the city limits and annexed later. Amy and Matt said they like to see the continuation of alleys, and the Buttelman property is a natural continuation of the original part of town. (Many comments were spoken at the

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same time making it difficult for the secretary to capture any decision.) Lee said for the land talking about here, he is encouraging the Board to not require them. Randy Carpenter said, "The other way to do it would be to require everyone to install alleys." Kelly said, "Which is the way it is required now." Randy continued, "Right now, a subdivider could apply for a variance because of the topography being very flat, has a high-water table, and cannot get rid of stormwater well, they could request not having to develop alleys. But we are really trying to get away from variances. So that's why we would have different standards in different zoning districts." Amy said the board is really creating its own zoning district in this land, with its own standards. Matt asked, "But then Buttelman's will have its own standards as well?" Randy agreed. Matt continued, "Well what if Buttelman's want to develop and say *We don't want alleys either?* I am more a fan of the garages on the alley side, houses on the road. That helps keep the streets open. What is to limit Buttelman's for saying the same thing? I'd rather the Kyd Road have to ask for the variance, but I could argue it either way." Mike Stenberg said that if alleys are required, prior to any annexation, the first application will be seeking a variance from that requirement to install alleys. "We are not going forward with the project if we have to have alleys because the configuration of the property reduces the number of lots we could come up with because the drainage and wetlands mean we can't have a nice square block," Mike stated. Kelly said she believes Matt is saying we [the City] don't want it to be the norm to not have alleys – so a variance granted to that because of these reasons would be justified but not just a blanket *no alleys*. There was discussion on the process of allowing no alleys here now, versus requesting the variance and taking up too much time for that variance process. Lee suggested it be documented in this zoning district. Kelly agreed but said it would need to be very clear as to why in this zoning regulation does not require alleys so that the next developer does not think it can ask the same thing. Mike questioned why the Buttelman property should have alleys. Kelly said the community has responded it wants alleys. Matt answered that we need to decide if we do alleys or not do alleys. Matt argued, "What if it is just flat land? Let's say we grow towards Willow Creek, that is all flat land." Lee added that is also have a high water table. Jacob concurred. Lee said it would have the same logic if it has the same drainage issues, and when that property annexes it, it seems it would fit best with choosing the zoning classification the same as the Kyd Road Zoning District. Amy liked that it would help the Board be consistent then. Mike asked about Kelly's comment about the community liking alleys. Kelly explained, and Matt agreed, the community felt strong about the alleys being consistent with the character of Three Forks, and that was adopted as goal in the Growth Policy. Most agreed that on this piece of land, alleys are not practical. Randy recommended not creating an ordinance that you know is going to require a variance. Lee recommended it also be discussed when this goes to public hearing and let the public weigh in on it so this Board can make its final recommendation, and then the Council will have good information. "I say we take the alleys out for now, because that is practical for this property. If the public shows up and says otherwise, then we will have a conversation based on that at that time," Lee said.

Anti-monotony discussion – "As we drove around in Bozeman, I noticed there are long walls of front yards, or all the same colors. But you also see too much variety and it ends up making the neighborhood look weird. I want to encourage some form and function that relate to each other. I would be willing to, in the Purposes section of this Zoning Chapter, add that we want visual variety and interest that gives you the chance to allow some freedom to require variance," Lee said. Kelly said she does not want that authority, "To me, I like purple so everything would be purple. That is too arbitrary." Mike agreed not to have staff get too far into the architectural review. Jacob asked how it

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will be accomplished when the same developer is building a whole bunch of houses? Mike recommended sending the architectural guidelines for two subdivisions so that he can try and formulate some language. Amy agreed, and would love to see some variety like the same house plan but cannot be used next door to each other, but maybe that plan can be used again seven lots down. Kelly asked if any of the board members have driven down on Jefferson and Front Streets where the newest homes are? Some have, some have not. "I live over there and the same builder built the majority of those homes and they look alike. It does not bother me," Kelly said. Matt added, "They have alleys!" to which the board laughed. Matt clarified though, "Mike is going to send over some guidelines that have no alleys, and variety, and see what we can use?" Mike agreed to send the guidelines to Lee.

Next, the board discussed the building height limit. The Fire Department is saying they can only handle a 2-story building which would be 24-feet, which my condo is 36-feet. I know there are other guidelines what the fire department has to do once it is working on a fire at a certain height. Kelly said she will speak with the Assistant Fire Chief because anything over 32-feet, if a call comes in Dispatch knows it has to also send out a ladder truck. Lee said once Kelly gets the information, he will work on the height limitations.

General Comments

Kelly commented that on Page 3 "Home businesses in continuing compliance with City Ordinances" – Is that is like our residential requirements? Lee said yes, we will get to it as we update each chapter, so far now our existing ordinances will have to be enough. Kelly also asked about AirBnb's being addressed. Lee said they are not addressed yet. Kelly asked if we should add this into the chapter of the Zoning Regulation. Amy thought it should be saying she does not want the entire neighborhood to turn into vacation rentals. Lee said he sees vacation rentals as purely commercial in nature. Mike asked, "So if a property owner buys or builds a house they can't Air bnb it out?" Kelly said no, not according to our current regulation, one would have to apply for a conditional use permit to operate a business within the home as well as live in the home. In the commercial district it is allowed. There was discussion regarding this industry really growing in the past few years. Lee said he has seen whole communities hollowed out with vacation rentals and it has a huge impact on the social fabric of the community. Reagan asked about the Accessory Dwelling Unit (ADU) and the new law that just went into effect. Kelly responded that the state law says ADUs are allowed, but cannot be turned into Airbnb or other vacation rentals. Mike recommended, "No Airbnb in your primary residence, but could be allowed with a conditional use permit," and Amy replied that it is pretty much what the existing [residential] ordinance states.

Lee went over the checklist, which is a summary of all the standards. This is what the Planning Board, or Kelly, will be using as you review a zoning permit. Does this make sense, or could it be better somehow? There was no input for edits.

Kelly commented on the street lighting that is mentioned. "Northwestern Energy installs the lights for us, and we administer the payments after taxing all the properties," Kelly stated. She was inferring that down-facing lights may not be what Northwestern Energy installs. Reagan asked that these properties would pay into the Street Lighting District, and then the downward-facing lights could be

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installed by the developer? There was discussion on “full cutoff luminaires”. Lee said he was trying to not get too complicated in this section of the ordinance. “The finance mechanism will remain the same and not change based on the zoning,” Lee said. [This means upon annexation, the property will have to waive the right to protest any existing special improvement districts benefitting the property. Then the boundary of said districts would be amended to include these properties in order to tax them for the bills Northwestern Energy sends the City for providing the light to whatever poles are there – installed by Northwestern Energy, installed by the City or developer.] Mike asked if there are any existing regulations regarding how far apart the lights must be, certain distances, number required, etc? Lee said he believed the utility provider decides that; Kelly believed that is correct that it is one block each. Mike added he believed the lights staggered from block to block down the street.

Meeting for December – is the 12th better than the 19th? Kelly said she remembered Amy and Matt saying the 19th conflicted with other events. All but Kelly’s schedule worked for 12/12/2024.

There was discussion to hold additional meetings to have a Zoning meeting and public hearing for the KRZD chapter on January 27th or January 29th (no meeting on January 23, 2025 then). Amy thought having two meetings in January would be ok based on an early meeting in December and late meeting in January – this way Lee could get the board Chapter 4 and then the chapter (# not referenced on the recording) regarding Landscaping. Matt requested Chapter 4 at the 12/12/2024 meeting, if possible.

There was discussion regarding ensuring the floodplain ordinance is cross-referenced in all chapters.

Amy Laban moved to adjourn. Matt Jones seconded the motion.

Meeting was adjourned without a vote and the meeting adjourned at 8:55PM.