MADISON COUNTY PLANNING BOARD
MEETING MINUTES
Madison County Administration Building, Public Meeting Room
June 29, 2020

1. **Call to Order:** 6:07 p.m. by President Darlene Tussing

2. **Roll Call**
   Members present: Pat Bradley, Del Bieroth, David Laufenberg, Steve Janzen, Jacqueline Lev, Tamara Millican-Wood, Rita Owens, Lincoln Roberts, Laurie Schmidt, and Darlene Tussing.
   Lincoln Roberts (Virtually)

   Staff present: Alex Hogle (Planning Director), Michelle Schriock (Planning Clerk)

   Others present: Kevin Germain (Lone Mountain Land Company), Eric Butts (Beartooth Engineering), Mace Mangold (WGM Engineering), Lynn Bacon (TerraQuatic, LLC).

   Virtual Attendees: Paul Grigsby (Grigsby Law) representing Brenda and Howard Sheridan, Keely Larson (Madisonian), Maggie Good (Big Sky Owner's Association), Mark Davidson (Jack Cr. Rd. Resident), Paul Scarborough (Jack Cr. Rd. Resident) and Kacey Carroll (Jack Cr. Rd. Resident)

3. **Minutes:** May 26, 2020

MOTION: To accept the minutes of the May 26, 2020 with corrections. Moved by Bieroth, seconded by Schmidt. Motion carried.

4. **President's Comments:**
   A. Welcome to new Planning Board Member Steve Janzen

5. **Opportunity for Public Comment for items not on the agenda:** None

6. **Statement of Conflict of Interest/Ex Parte Communications:** Tussing stated she is not employed by Moonlight Basin and not being compensated.

7. **Monthly Report**: Hogle reviewed Planning Department activities including Temporary Addressing, Exemption Review Board, Floodplain Development, Conservation Easements, Continued Subdivision applications, staffing and daily routines. It was noted that from the May 27, 2020 meeting, that anything needing the Planning Board's attention from the Planning Department would be mentioned at the meeting. Monthly reports prior to the meeting will be provided and if there are any questions, the Planning Board can address it during this time.

8. **Public Hearing opened: 6:26 pm**

   Tussing read the statement of Process and Rights.

A. **Lee's Pool Preliminary Plat – Public Hearing**

- Lee's Pool Subdivision and Planned Unit Development. A request by Lone Mountain Land Company on behalf of MB MT Acquisition LLC for Preliminary Plat approval of a 132-Unit mixed residential/commercial development on the 233.78 - acre subject property.

Planning Director: Hogle requested the Staff Report (MPP-20-01) be entered into public record effective June 29, 2020. Reviewed the Staff Report. The Madison County Planning Board held a public hearing on June 29, 2020 beginning at 6:15 P.M. in the Public Meeting Room of the Madison County Administrative Office Building, to review the proposed preliminary plat and requested Planned Unit Development (PUD) which includes a requested modification to the standards outlined in Section IV-B-1(c)(3) of the Madison County Subdivision Regulations (MCSR), to reduce the applicable construction setback from onsite waterways from 100-ft to 40-ft. Please refer to the June 15, 2020 Staff Report on the proposal for detailed project description and review based upon the applicable review criteria.

- **Kevin Germain Lone Mountain Land Company Presentation**: Provided general comment on the proposed project, discussing development history of Moonlight Basin; background of the project relative to the Moonlight Basin Overall Development Plan; anticipated future plans for 'Lot R', noting the likelihood of a future request to establish 20-30 residential units within the lot; and, prospects of site-specific geotechnical analysis for every building in the project. Germain provided several slides including graphical depictions of the proposed main lodge and periphery.
- Eric Butts of Beartooth Engineering discussed water and sewer provisions of the subdivision and its planned connections to and service by the public water and sewer systems operated by the MT Moonlight Basin Water & Sewer LLC. Butts discussed the 'membrane bio-reactor' (MBR) sewer system which is a Class I system offering the highest treatment standard, noting the current proposal would use a gravity fed sewer main extension to remove wastewater from the premises to be treated in the MBR wastewater treatment facility.
- Germain added and emphasized, as related to the proposed 40' construction setback from waterbodies that all units would be served by the public sewer services (and not be served by individual onsite wastewater treatment systems).
- Mace Mangold of WGM Engineering discussed the PUD request for an applicable 40' construction setback from waterbodies. Noting the wetland related to the small stream in the 'west meadow' transitions to upland forest vegetation in a short distance from the stream. Mangold provided discussion on the modeling of potential flooding in the 'west meadow', noting the HEC-RAS model is a very conservative assessment based on calculations of a hypothetical 100-year maximum rainfall event exaggerated by a factor of three to provide a practical estimate of potential flood extent at the 'west meadow' location which is adjacent to the proposed cabins planned as an element of the hotel. Mangold concluded with a description of potential flooding as pertaining to 'bank-full width ratios',

referring to a slide which compares typical bank-full ratios for various different stream and river systems.

Planning Board comments/questions:

- **Bradley** What is behind the cabins? Mangold: the 'east meadow', which has wetlands but not a perennial stream.
- **Janzen** noted the past permitting by the Army Corps of Engineers (Appendix N of application) for work done in wetlands within Moonlight Basin and proposed for the Lee's Pool proposal area. Germain had noted the only physical impacts to wetlands would be certain road and culvert crossings and that the proposed structures would not physically impact wetlands.
- **Gerth** asked if LIDAR was the basis of the HEC-RAS model, stating LIDAR is typically not effective for vegetation due to varying height of vegetation above ground. Mangold: LIDAR is adequate for the particular scale and purpose of the modeling.
- **Laufenberg** asked about how variations in precipitation and soils are accounted for in the modeling. Mangold: Indicated snowmelt events present the highest potential for discharge and that soils are not specifically accounted for in the modeling. For these types of reasons, the modeling conservatively implemented the 3X exaggeration.
- **Schmidt** asked if there would be irrigation around the cabins. Germain: Indicated no plans to plant/install turf but anticipates drip irrigation of trees/shrubbery.
- **Gerth** regarding the seven proposed cabins surrounded on each side by wetlands, why not relocate the cabins? Germain: Indicated they've looked closely at other areas and options but this plan is what they're requesting, noting the actual construction site between the west and east meadows is appropriate ground (moraine) and that relocating the cabins would spread the development footprint out more.
- **Bradley** asked if it is critical to have these cabins. Germain: Replied yes because the development is already slightly below the number of units typically needed for a financially successful hotel/lodge project considering offsetting the development costs with projected revenue. Germain indicated typically 100 units are needed and the project was at 94 branded/keyed units.
- **Germain** added a discussion point regarding 'access' and the staff report recommendation for requiring paving of a section of Jack Creek Road. Germain indicated he is amenable with the staff recommendations and that the upper Moonlight Basin gate was placed at its current location on the Jack Creek Road intentionally to serve as the entry point for the Lee's Pool development area.

Question/Answers ended at 7:55 p.m.

Agency Comments: 7:57 p.m.

There were no agency comments provided in the public hearing. Additional written comments were received after the staff report had been prepared via email from Mike Duncan of Montana Fish, Wildlife & Parks on June 28, 2020 and from Kerri Strasheim of MT DNRC Water Resources on June 29, 2020.

- Duncan's email consisted of 4 separate .pdf attachments ranging from 1-176 pages in length, which essentially reiterated and provided context and additional basis for his original recommendation for a 200-foot setback as previously submitted and discussed in the Staff Report.
- Strasheim's email indicated the 'change authorization' regarding water rights covering the entire service area of the MT Moonlight Basin Water & Sewer LLC has been formally issued.

8:00 p.m. Public Comment Opened

Tussing stated that all public comments have been received by the Planning Board with the exception to the new comments received today before the meeting.

- Lynn Bacon-(P): Wetland scientist and wildlife biologist representing Dr. Howard and Brenda Sheridan who are residents on the lower section of Jack Creek Road, Ms. Bacon provided verbal comment at the public hearing and wrote a written comment, which was provided by attorney Paul Grigsby via email on June 29, 2020. Bacon expressed objection to the PUD proposal to reduce the applicable construction setback from water bodies from 100-ft to 40-ft. Points of concern indicated at the public hearing by Bacon include: need for all waterways on site to be surveyed (staff report raised the issue that an effective buffer should be based upon actual delineation and not just a straight line segment representing a stream); the MCSR standard for construction setbacks is based on stream bank and doesn't necessarily encompass extent of wetlands adjacent to water bodies which may extend beyond standard setback limits; clustering of development units and consolidation of a 'development footprint' is not enough of a reason to reduce an applicable Construction setback from water bodies; a modified setback should require that every building specifically addresses independently of one another, and that the approved setback does not need to be a single fixed distance; the ground between the wetlands is important habitat for wildlife which would be impaired by the placement of the proposed cabins, and; any approved modifications to applicable construction setbacks from water bodies should be specific to particular location and not site-specific a proposed.

- Mark Davidson-(V): Mr. Davidson resides on the lower section of Jack Creek Road and provided written comment via email on June 29, 2020. Participating in the public hearing via the phone-in option of the WebEx platform, Davidson's main concern was traffic and implications for increased traffic associated with development of Lee's Pool subdivision on the west side of Jack Creek Road between the subject property and the Madison Valley,

and he asked why the staff report review did not focus more on potential traffic impacts on that area of Jack Creek Road. Staff responded the review was based on the route of primary physical and legal access as proposed and demonstrated in the submitted application.

- Paul Grigsby-(V): Representing Dr. Howard and Brenda Sheridan, Mr. Grigsby expressed concerns with the proposed subdivision and objection to the PUD proposal to reduce the applicable construction setback from water bodies from 100-ft to 40-ft. Points of concern indicated at the public hearing by Grigsby include: the setting is an important wildlife corridor occurring between two units of the Lee Metcalf Wilderness; it should be feasible for the county to hold the applicant to a high standard; while the applicant referred to the 'bottom-line', it's interesting such a thin margin for the development's success requires the citing of the seven cabins at the proposed location; the Planning Board (and Commissioners) should read Ms. Bacon's letter and findings; only the stream in question should be considered for a modification to the applicable construction setback from water bodies; there are three new Planning board members since October 2019, and all board members should be provided a site visit before making a decision; a decision of approval should be postponed until the shortcomings noted in Ms. Bacon's report are addressed, or the decision should be to deny the requested reduction of the construction setback from water bodies; there seems to be a lack of a 'wildlife assessment' in regard to the requested reduction of the construction setback from water bodies, and; he's concerned the staff report recommendation for approval is based on things the applicant states they 'would' or 'might' do, and these things should be conditioned (i.e. prohibit use of pesticides, herbicides, hazardous chemicals, etc.).

- Kacey Carroll-(V): Ms. Carroll resides on the lower section of Jack Creek Road and participated in the public hearing via the phone-in option of the WebEx platform. Carroll's voiced concerns regard potential impacts to ground water and area wells and the inadvertent use of the lower section of Jack Creek Road 'as-is' by contractors engaged in Lee's Pool development activities as well as from future Lee's Pool guests and residents. Concerned the gravel sub-standard road currently experiences relatively high through traffic with regular 'bottleneck' congestion at certain hours of the day, Ms. Carroll asked "can we guarantee their use stays on the east side", and "what about guests being given day passes"? Germain provided response indicating the lower section of Jack Creek Road is a public road able to be used by anyone and above the lower gate it's private and there is no guarantee regarding limitations on its use.

- Margaret Good-(V): Ms. Good participated in the public hearing via the phone-in option of the WebEx platform and fielded the following question to the applicant: Regarding the anticipated approximate 550 average daily trips of traffic accessing the development from the east side, does that estimate include construction traffic too? Germain: No, the estimated vehicle trips are for the development at full build-out.

- Paul Scarborough-(V): Mr. Scarborough is a landowner of property located to the east of the proposed development with a driveway extending off the section of Jack Creek Road planned as primary access to the subdivision (upgrade and east of the upper Moonlight

Basin gate on Jack Creek Road). Participating in the public hearing via the phone-in option of the WebEx platform, Mr. Scarborough stated he was representing himself and neighbor Jim Roddy, both of whom are concerned about the prospect of the subdivision entrance being located past and beyond their own shared driveway approach onto Jack Creek Road. Scarborough expressed concern the proposed access will impact his and Roddy's private driveway noting when he bought his property he was under the impression the area (of Lee's Pool?) would be under an 8000-acre conservation easement.
Germain: Indicated the proposal was clearly outlined in the 2018 update of the Overall Development Plan, and there isn't really another feasible access route that's logistically possible, and that he would be glad to look at maps together.
Scarborough was clearly upset and suggested he and Roddy hire an engineer to find an alternate access route. This seems to be personal matter between the applicant and neighbors, and it was not resolved at the time of the meeting.

Public Comments Closed 9:08 p.m.

Applicant response to Public comments:

- The matter of improving lower Jack Creek Road is a 'bigger issue' that is related to every subdivision in the Big Sky area.
- The application does request a general 40-ft construction setback from water bodies, but all we need is the limited area on Lot 1 in the 'west meadow'.
- The purpose of the cabins is not just about our 'bottom-line', we can look at relocating them in an open space tract.
- Referring to geomorphology of meandering streams and the notion that meanders will continue to adjust and migrate through time, allowance for 'smoothed' delineation is requested. What we're proposing protects the entire meadow.
- Perhaps make the meadow a 'no-build zone', we've obligated ourselves to using native landscaping, storm water will be directed away from the watercourse, and it will all be central sewer.
- There was discussion between Mr. Germain and the Board regarding the very recent input of written information by Mr. Grigsby, Ms. Bacon, and Mr. Duncan. Mr. Germain stated he believes the submitted application is in compliance with the current applicable subdivision regulations.

10 Minute Break

Board Deliberation/Discussion: 9:28 p.m.

- Steve Janzen - "What's the precedent for this? What's the precedent for relaxing these standards?"

  Laurie Schmidt: "Want me to comment?"

  Darlene Tussing: "Yeah, go ahead Laurie…."

Schmidt read a prepared statement "In my involvement with Madison County Planning for the past 20 years not one PUD modification or variance to our setbacks according to previous planners have been granted". In her experience, we've worked with 35 citizens, two planning directors, and multiple Commissioners and through that time, "she dealt with setbacks with the recognition that water was the most important resource to the citizens of Madison County". Referring to backup information she had previously sent with the additional information received 'today', Schmidt presented the notion that the "significant elevation language in our regulations applies to rivers as stated and no other waterways" based on her interpretation of semantics in Section IV-B-1 MCSR, noting "if you talked to previous directors they would validate that I'm correct on that we do not consider elevation differences, except for rivers". Continuing, "For a perennial stream, in this case a headwater stream, current science says 200-feet. 100-feet is our long-standing regulatory minimum- anything less in my opinion is simply not acceptable. I will submit that the setback modification request negates the necessary advancement of three purposes for consideration under our regs regarding PUD's, and while our regs also say that a PUD does not have to adhere to all the design and development standards the Planning Board shall consider any request for modified standards as a part of the overall review of the proposed PUD. Nothing says we shall grant the request that we have to grant the request. That's my two cents until we get into the staff report."

Janzen had further questions and comment to staff regarding the topic of waterways, riparian resource, and the findings and conditions related to the stream within the west meadow. Janzen followed that discussion with a query regarding offsite road improvements, RID's, and the Jack Creek Road. Staff indicated interests/concerns/challenges regarding lower Jack Creek Road are broad, questions regarding its use and level of improvement have been discussed/debated for decades, and that while the county is working on certain improvements to the road the larger question regarding the future of that section of road is a policy matter transcending the scope of any single subdivision request.

- **Roberts** – Indicated resolution of the Jack Creek Road improvements matter is a discussion that needs to occur, and suggested further discussion on employee housing, suggesting a hotel as planned would employ a large number of people who would potentially be travelling the Jack Creek Road between Ennis and the Lee's Pool location. Roberts had been demonstrated (staff note – 'hardship' is a 'variance' criteria and not an applicable PUD modifications reductions of construction setbacks from water bodies, and that the request was not a 'variance' request.

- **Schmidt** – Discussed the number of people accounted for in the water projections on page 4 of the Engineering Design Report. Related to Roberts' comment, a question raised is whether the projections include employees.

  Germain: Indicated the Design Report projections are based on full capacity and indicated the hotel will employ "approximately 200 people (not included in the projections)."

  Schmidt: Remarked the number of people is 'a lot', particularly compared to the population of Ennis.

Germain: Regarding Robert's question about housing, there is no definite current plan that involves Ennis for employee housing, however employee housing is essential for success. Additionally, Germain asked Schmidt about the history of PUD modification requests for reductions of stream setbacks, noting the current request was not technically a variance request and that Lincoln had mentioned no case of 'hardship'. Schmidt acknowledged there were no clear examples of a PUD modification request for reductions of any construction setbacks from water bodies, that she remembered, and this was not a 'variance' request.

- **Millican-Wood** – Suggested the Board identify the key issues and focus on them. The Board focused on Part 8 of the application and the PUD component of the staff report pgs. 21-24.
- **Bradley** – Indicated she didn't think the proposal demonstrated that three or more of criteria (6)(a)-(e) are reasonably met, going through her opinion on those criteria.
- **Schmidt** – Suggested language she'd add to the staff report's conclusion regarding criteria (6)(c) – "*the open space is significant in acreage but it is located in the corners and not around the water features*".
- **Millican-Wood** – Indicated Board consensus regarding the proposed reduction of the applicable construction setback stating "most *of us feel that we don't feel comfortable going with the 40-foot setback even in that area...*" Additionally, she discussed apparent locations where the cabins could be potentially relocated, noting potential in some of the 'open space' areas.
- **Laufenberg** – Provided conversation regarding ecological perspectives and the significance of the location between two units of national wilderness units, noting "when animals travel those spaces they tend to follow riparian spaces", and "when you look at richness and diversity and productivity of our natural world, water and energy are the two limiters, and for the most part around here it's water. So, when you have water you have life, and so, anything less than 100 foot, to me from the ecologist perspective, from the discipline expert perspective, it seems improper, it doesn't seem prudent. And so, if it turns out that Kevin comes back to us with another proposition that's looking more at a reduction perhaps in the open land space area (i.e. to re-locate cabins), from an ecologist perspective that would be preferable. To compare a couple acres of land of a wetland/riparian space relative to a couple acres of land in higher, drier country post-logging – it's 'apples and oranges' to make a direct comparison- the riparian resource is much more valuable".

- **Gerth** –<u>Finding of Fact #16, 7b. Storm Water Drainage</u>. These are detention ponds not retention ponds, detention ponds outfall. There are several culverts that allow for offsite drainage. She did note that there are discharge structures, meeting the pre-condition two-year flow, still leaving the site. Recommended to strike-through 7b. second sentence "the plan indicates no storm water drainage would discharge offsite or directly into area surface waters".

Board Action:

Adoption of Findings of Fact:

MOTION: To adopt the Staff Report as Findings of Fact by Del Bieroth and seconded by Laurie Schmidt

SUBSIDIARY MOTION: to adopt revisions to the Staff Report MPP-20-01 as discussed moved by Janzen and seconded by Schmidt. Roll call vote passed unanimously 10-0

SUBSIDIARY MOTION: Move to adopt amended Findings of Fact 11, 13,16,26,27 & 30 by Millican-Wood and seconded by Owens. Roll call vote passed unanimously 10-0.

MOTION: The main motion to adopt 'Board Amended Report MPP-20-01' as Findings of Fact. Roll call vote carried unanimously 10-0.

Recommendations on the requested PUD:

MOTION: Recommend approval of the PUD without approval of the requested modification to allow 40-foot construction setbacks from water bodies by Bieroth and seconded by Schmidt. Roll call vote carried unanimously 10-0

Recommendations on Approval and Conditions:

MOTION: Recommendation of approval of the Lee's Pool Subdivision Plat, as conditioned, forwarded to the Madison County Board of Commissioners by Schmidt and seconded by Millican-Wood.

SUBSIDIARY MOTION: Amend Condition #23 by amending and striking language to state - Construction setbacks from all waterbodies shall be shown and labeled as 'No-build Zones' on the face of the final plat. The 100-foot construction setbacks shall be based on the specific actual delineated alignment of the stream. IV-A-3, IV-A-20, IV-A-23, IV-B-1(c)(3) MCSR, 76-3-608 MCA by Schmidt and seconded by Lev. Motion passed unanimously 10-0

Aff. - 1st 2nd?? 1. Gerth 2. Schmidt

SUBSIDIARY MOTION: Amend Condition #22 to specify 24-foot wide paved surface of subdivision as the paved surface of roadways within and to the subdivision are to be twenty-four (24) feet in width. IV-A-10, Table IV-1, MCSR 3/2018, 76-3-608, MCA MOTION Carried.

MOTION: Strike Condition #24 in its entirety by Janzen and seconded by Bieroth. Motion passed unanimously 10-0

MOTION: Roll call vote the main motion to recommend approval MPP-20-01 Lee's Pool Subdivision, as conditioned. Roll call vote carried 10-0

9. Old Business: None

10. Board Functioning: None

11. New Business: None

A. Planning Board Member Reports - None

13. Adjournment: 12:54 a.m.

Darlene Tussing

Darlene Tussing, President

Michelle L. Schriock

Michelle Schriock, Secretary