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March 6, 2023

VIA EMAIL ONLY

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Madison County Planning Board
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RE: Opposition to Major Subdivision Preliminary Plat Application – Mile Creek RV Park,
440 Montana Highway 87, Cameron, Madison County, Montana

Honorable County Commissioners and Planning Board Members:

This information is submitted on behalf of Madison County Matters and a considerable number of property owners and concerned citizens in the vicinity of the Mile Creek RV Park (“Concerned Citizens”) in response to the new information made available by the County on March 2, 2023. *See* the list of Concerned Citizens included as Exhibit A to the previous letter dated January 23, 2023. The new information, listed in the 30-page Memorandum to the Planning Board dated February 28, 2023 (“Staff Memo”), is information not previously available to the public for review related to the 149-space Mile Creek RV Park, proposed four miles south of the US Hwy 287 N and Montana Hwy 87 junction in Cameron, Madison County, Montana (Mile Creek RV Park” or “RV Park”).

Response to New Information and Opposition to
Mile Creek RV Park Major Subdivision Preliminary Plat Application
Madison County, Montana

The following is provided in response to the new information and based on observations of the Planning Board public hearing on January 30, 2023, continued from the November 28 and 29, 2022 public hearings.

New Information Hearing – Mile Creek RV Park Major Subdivision

Madison County first made available the new information regarding the Mile Creek RV Park Major Subdivision on Thursday, March 2, 2023, with that information scheduled to be considered by the Planning Board on Monday March 6, 2023. The new information posted on the County website includes a 30-page Staff Memo, which lists ten pieces of material information not previously disclosed, a 94-page Public Comment Analysis updated March 1, 2023 with at least 20-pages of new analysis and/or conditions, and 800 pages of public comment. As relayed by the planner in the Staff Memo, “the public must have time to review these documents in order to make meaningful public comment.”

Given the scope of the new information, three days, including a weekend, is an inadequate amount of time for the public to meaningfully consider the new information, weigh the impacts, and provide comment on this matter of significant public interest. The information should have been provided 15 days in advance of the public hearing, when the notice was published in the paper and delivered by certified mail to adjoining owners in order to allow the adjoining owners and the public an opportunity to be on equal footing with respect to participation in the decision.

The new information certified mail notice was not received by all adjoining owners. Neither Marina Smith, Ranch Manager, nor the owners of the Three Dollar Ranch, could confirm receipt of the certified mail notice of the new information and additional Planning Board public hearing.

Given the extremely limited timeframe in which to comment on the new information, preliminary comments are provided herein, which will be supplemented in advance of the Board of County Commissioners decision on the Mile Creek RV Park.

Preliminary Plat that Formed the Basis for the Recommendation, Number of RV Spaces, and Phases

At the conclusion of the January 30, 2023 Planning Board Public Hearing there was significant confusion among contract planner Jerry Grebenc, the Planning Board members, Ms. DePuy, the MACo attorney, and the applicant’s engineer, regarding which version of the preliminary plat the recommendation of the Planning Board was to be based upon, and the corresponding number of RV Spaces being considered for each of the three phases. As a result of the confusion over this material information related to the proposed RV Park, the recommendation from Ms. DePuy was to start the subdivision process over. This is commonly required when

changes are material – that is essential or relevant to the subdivision application – in order for the local governing body to adequately review the subdivision and its potential impacts. Absent clarity on this material information, any decision would have an inadequate factual basis.

As further explained below, the studies on which the Mile Creek RV Park is conditionally recommended for approval are necessary in advance of any approval, rather than after the fact, further supporting restarting the subdivision application process to ensure the County has sufficient and adequate information on which to base an approval, conditional or otherwise.

We agree with the attorney’s recommendation that the Mile Creek RV Park should be required to start the review process over given the material nature, relevance, and importance of the changes included in the new information and the new conditions proposed by the County.

Again, the public has not been afforded sufficient time to meaningfully consider the new information and the new conditions proposed by the County nor to weigh the impacts and provide comment on this matter of significant public interest. And, again, given the scope of the new information described above, and the extremely limited timeframe in which to comment on the new information, the comments herein are preliminary and may well be supplemented in advance of the Board of County Commissioners decision on the Mile Creek RV Park.

Authority of Planning Board and Planning Board Analysis

Individuals serving on the Planning Board have an obligation to act in accordance with state law, taking into consideration the public health, safety, and welfare of Madison County citizens. It is patently clear the Planning Board does not understand its obligations based on the comments of several Planning Board members at the January 30, 2023 public hearing on the Mile Creek RV Park and its dismissive treatment of and negative attitude toward public comment.

One or more Planning Board members stated on numerous occasions that the Planning Board did not have the review authority to address adverse impacts and concerns raised by public comment, nor the authority to make recommendations in favor of conditions suggested by Planning Staff to mitigate the impacts and concerns raised by the public comment. The January 12, 2023 Supplemental Information provided by Jerry Grebenc, Madison County Contract Planner, included additional findings and conditions of approval based upon public comment (“Supplemental Information”) in an attempt to aid the Planning Board in complying with the applicable regulations, yet the Planning Board persisted in undermining those efforts by amending conditions and failing to recognize the time sensitive nature of information and studies needed to make an informed decision about the Mile Creek RV Park Major Subdivision as further addressed in the comment letter submitted on behalf of the Concerned Citizens on

January 26, 2023. This is contrary to the Madison County Subdivision Regulations (“Subdivision Regulations”) and legislative intent and statutory framework for Planning Boards as explained herein.

Through comments and actions of members, the Planning Board conveyed a significant lack of understanding of its obligations to the public interest and clearly displayed a bias toward the applicant, contrary to the requirements of the Subdivision Regulations, governing state statutes, and guidance from the Planning Board Handbook prepared by the Department of Commerce.

Madison County Subdivision Regulations and the Planning Board

The Subdivision Regulations’ Preliminary Plat Review Process steps specifically provide the following requirement regarding Planning Board review and recommendation.

- (1) **The planning board shall consider all relevant evidence relating to the public health, safety, and welfare**, to determine whether the preliminary plat should be recommended for approval, conditional approval, or disapproval by the governing body. In reviewing the proposed subdivision and arriving at its proposed findings of fact and recommendation, **the planning board shall consider:**
 - (a) the information submitted by the subdivider, including the environmental assessment if required;
 - (b) the information submitted by review agencies and utilities;
 - (c) **the information submitted by the public;**
 - (d) the **Madison County Growth Policy** and any other pertinent, officially adopted growth policy for the area involved;
 - (e) as applicable, **the seven (7) public interest criteria pursuant to 76-3-608(3)**, MCA, namely, the effect of the proposed subdivision on: agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;
 - (f) the **effect of the proposed subdivision on other resources** in the county;
 - (g) the **effect of the proposed subdivision on the local economy;**
 - (h) the **effect of the proposed subdivision on public services provided by other entities in the county;**
 - (i) compliance with the survey requirements detailed in 76-3-401 et seq., MCA;
 - (j) **compliance with these regulations** and the Montana Subdivision and Platting Act;
 - (k) the provision of easements for the location and installation of any planned utilities; and
 - (l) the provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

See Subdivision Regulations, Section II-E.1.g.(1).

These are not discretionary considerations. The plain language of the Subdivision Regulations says the Planning Board shall.

Related to a recommendation by the Planning Board, the Subdivision Regulations further provide as follows.

In order for the planning board to recommend a proposed subdivision for approval or conditional approval, its proposed findings of fact must conclude that the proposed subdivision is in compliance with all applicable rules and regulations, and that potential significant adverse impacts are reasonably mitigated or minimized for each of the seven public interest criteria, plus other resources in the county, the local economy, and public services provided by other entities in the county. Mitigating measures may be required in order to reach these findings.

Based on the Planning Board's comments on January 30, 2023, it is clear it, or its members, did not understand the necessity that the proposed subdivision be compliant with all applicable rules and regulations, and that potential significant adverse impacts are reasonably mitigated or minimized for each of the seven public interest criteria, plus other resources in Madison County, the local economy, and public services provided by other entities in the County. It was repeatedly stated that the Planning Board had no authority to consider these very things.

State Law Applicable to Planning Boards

Planning Boards are authorized by State law and intended to promote the orderly development of a County and its environs.¹ Planning Boards were implemented by the Montana Legislature to effectuate the following purpose.

76-1-102. Purpose. (1) It is the object of this chapter to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

¹ Section 76-1-101, MCA.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials.

Based on the foregoing, related to review of the proposed RV Park, the Planning Board must work to:

1) improve the present health, safety, convenience, and welfare of Madison County citizens;

As demonstrated by the public comment and expert reports in the record, the present health, safety, convenience, and welfare of Madison County citizens will NOT be improved with the approval of the proposed 149 space Mile Creek RV Park.

2) plan for the future development of Madison County so that to that highway systems are carefully planned;

The proposed RV Park Major Subdivision is future development which was not planned for in a way that considered the affected highways 287/87.

3) ensure that new community centers (such as this 149 space RV Park, comparable in size to a small town) grow only with adequate highway, utility, health, educational, and recreational facilities;

The RV Park Major Subdivision, with 149 RV spaces, store, etc., is the equivalent of a small town, and has the potential to grow into a new community center comparable to the neighboring Island Park. Adequate highway, infrastructure, health, and recreational facilities were not given meaningful consideration by the Planning Board – despite extensive public comment. Quite the opposite, vocal Planning Board members dismissed these considerations as outside the Planning Board’s authority. One Planning Board member went so far as to characterize the public comment as having no value, as it was only opinion, despite the expert consultants’ comments and the factual data therein and other fact-based, data-driven, and detailed public comment.

4) that the needs of agriculture, industry, and business be recognized in future growth;

Sufficient water is necessary for agriculture and the record is replete with comments questioning sufficiency of water to serve the RV Park subdivision and with concerns regarding sustaining water quantity and protecting water quality. An after the fact study is not an adequate basis on which to base a decision on the proposed subdivision, as explained in the

previous comment letter submitted on behalf of the Concerned Citizens dated January 26, 2023. The results of the study are necessary and relevant to the decision being made.

5) that residential areas provide healthy surroundings for family life; and that

This agricultural and rural residential area of Madison County currently provides healthy surroundings for family life. The transient nature of a 149 space RV Park with the potential for 149 (one person in each space) to 586 (4 persons per space) or more people is the equivalent of a small town plopped down in an area with no services. The resulting population, vehicles, pollution, damage to wildlife habitat, water quantity and quality and other impacts will be ruinous to the healthy surroundings for family life that currently exist in this area of Madison County.

6) the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

Substantial evidence has been provided that the RV Park will not provide for the growth of the community commensurate with and promotive of the efficient and economical use of public funds. To the contrary, it will be a drain on already strained County resources as evident from a data driven analysis submitted in public comment. Locating the equivalent of a small town in an area far from services is contrary to efficient and economical community growth.

The Planning Board did not adequately consider the foregoing when it recommended approval of the Mile Creek RV Park with conditions.

Furthermore, the role of a Planning Board is “to ensure the promotion of public health, safety, morals, convenience, or order or the general welfare and for the sake of efficiency and economy in the process of community development.” Section 76-1-106(1), MCA. In its discussion of the Mile Creek RV Park on January 30, 2023 and relaxation of conditions intended to mitigate the numerous inadequacies of the RV Park Subdivision Application and adverse impacts that will result from its approval, the Planning Board failed to act in accordance with its obligations under state statute, including its responsibility to ensure the public health, safety, morals, convenience, order and the general welfare. Again, the Planning Board has been dismissive of the extensive written public comment, the expert reports, and the public comment provided at the two November 2022 public hearings.

The Planning Board’s focus on the scope or lack of subdivision review for existing development in this area of the County is not among the review criteria for the Mile Creek RV Park Major Subdivision.

Based on the discussion on January 30, 2023, the Planning Board failed to accomplish the stated objective provided in state law and failed to comply with the Madison County Subdivision Regulations.

Montana Department of Commerce Planning Board Member's Handbook

The Montana Planning Board Member's Handbook, dated September 2020, provides the following fundamentals regarding Planning Boards.

Planning board members must act and make decisions in the "public interest." The public interest represents the benefits to society rather than to a certain group or an individual. For the planning board, the society is the community that you serve in your jurisdictional area.²

The actions of the planning board should be transparent to the public. Part of acting in the public interest is ensuring that the public has the right to know about proposed actions and is provided an opportunity to review documents and submit comments prior to a decision. Public right to know and right to participate are embedded in the Montana Constitution.³

Planning board members need to understand the basics of land use planning and the purpose of regulations. Read and be familiar with the local growth policy, local subdivision regulations, and any other regulations and plans the planning board deals with on a regular basis. Doing so will help to ensure objective decision making.⁴

Much of what you review as a planning board member is explicitly required by Montana statute.⁵

Encouraging public involvement, communicating the value of planning, and consensus building are important for planning board members. Planning board members learn what is important to everyone in the community by listening to citizens' concerns, especially those concerns of differing views. A planning effort should involve as broad a segment of the community as possible to assure that the community's opinions are heard. Consensus on issues can be

² Montana Planning Board Member's Handbook, Montana Department of Commerce, September 202, https://comdev.mt.gov/_shared/CTAP/docs/Planning-Board-Handbook-2020.pdf (accessed March 3, 2023), page 5.

³ Id.

⁴ Montana Planning Board Member's Handbook, Montana Department of Commerce, September 202, https://comdev.mt.gov/_shared/CTAP/docs/Planning-Board-Handbook-2020.pdf (accessed March 3, 2023), page 6.

⁵ Id.

difficult to achieve, and when it is not possible, demonstrate leadership in working toward compromise.⁶

It can be easy to think that an applicant is the “client,” but when you serve the public interest, the client is everyone in the community.⁷

Decisions made in the public interest should consider, to the extent possible, future as well as current generations.⁸

As a group, planning board members represent a balance of the various interests and perspectives in the community. Planning boards often are the first public body to hear comments from the public on a proposed action. Governing bodies rely on planning board recommendations to objectively consider public comment, staff input, and compliance with local plans and regulations. Although final decisions rest with the governing body, planning board recommendations are a crucial step in that process.⁹

These fundamentals are integral to the Madison County Planning Board’s review of the Mile Creek RV Park and other subdivision applications. The Planning Board has not applied these fundamentals in the public hearings on the RV Park. Several members have repeatedly dismissed the significant public comment and facts and data included therein, rather than listening to citizens’ concerns. The Planning Board’s recommendation on January 30, 2023, was not in the public interest and did not consider future generations. Through their comments, several Planning Board members demonstrated a bias toward the applicant. As a result, the recommendation cannot be said to be fair nor objective.

Planning Board Recommended Conditions

Additional Findings and Conditions are offered in the *Exhibit 1: Mile Creek Major Subdivision Public Comment Analysis Updated March 1, 2023*. As with the prior Conditions, many do not meet the plain language of the Subdivision Regulations, and others offered as attempted mitigation do not actually mitigate the impacts as explained in the January 26, 2023 letter submitted on behalf of the Concerned Citizens, or the conditions request studies to be completed after the decision on the Application is made. The additional studies and results thereof are more properly in front of the County now, in advance of a decision on this Major Subdivision Application, to allow an informed decision on the Mile Creek RV Park Major Subdivision, not after the decision is made – when the County’s opportunity to address the

⁶ Id.

⁷ Id.

⁸ Id. at page 33.

⁹ Id. at page 1.

results of the studies has been foreclosed upon and no further conditions can be imposed. See Section 76-3-610, MCA.

The authority cited in Exhibit 1 to imposed conditions, that is 76-3-620(7), MCA, does not contain a subsection (7), thus cannot be relied upon as authority.

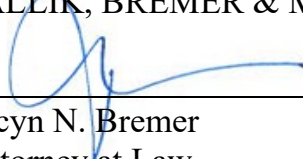
The Phased Development statute, Section 76-3-617, MCA, does allow the governing body, after a hearing, to determine “whether any changed primary criteria impacts or new information exists that creates new potentially significant adverse impacts for the phase or phases.” (Emphasis added.) This statute addresses changed impacts and new potentially significant adverse impacts after the fact – that is after the Subdivision has impacted neighboring owners and does not address the impacts resulting from the initial approval of the RV Park if the studies indicate a lack of water supply or significant impact to the aquifer. Once approved, the County cannot rewind the clock. The first phase, at least, will exist despite the impacts – which may very well be significant and adverse. The appropriate time for the County to analyze and address such impacts is before the subdivision is approved, not after.

Once the Subdivision is approved, and if the studies indicate a lack of water supply or significant impact to the aquifer, for example, the County cannot rewind the clock and take away the approval – and the neighboring property owners will be the ones to suffer the consequences of even one phase of the Mile Creek RV Park development.

Conclusion

The Planning Board has an ethical obligation to “act and make decisions in the ‘public interest.’”¹⁰ “Unlike a special interest, where a limited number of people would stand to benefit or profit”, such as an applicant in the Subdivision review process, “the public interest represents the benefits to society.”¹¹ Pursuant to State law, the Planning Board is charged with serving the public interest, which is everyone in the community. The Planning Board’s recommendation of conditional approval for the Mile Creek RV Park is not in the public interest and does not comply with the applicable regulations, statutes, and guidance for Planning Board decisions, as explained above.

Respectfully,
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¹⁰ Id. at page 33.

¹¹ Id.

c: Client
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