**BIGFORK LAND USE ADVISORY COMMITTEE**

**Draft Minutes Thursday December 30, 2021**

**4:00 PM Bethany Lutheran Church – Downstairs Meeting Room**

Chairwoman Susan Johnson called the meeting to order at 4:02 p.m.

**Present:** Committee member attendees: Susan Johnson, Shelley Gonzales, Chany Ockert, Lou McGuire, Jerry Sorensen, and Richard Michaud; absent: Tricia Pollett; Public: 7 members; Flathead Planning and Zoning: Laura Mooney.

The agenda was approved (m/s McGuire/ Sorensen), unanimous.

Minutes of the August 26, 2021 meeting were approved (m/s McGuire/Ockert), unanimous.

**Administrator’s Report and Announcements:**

Sign-in sheet passed around. Approved minutes and documents are posted on the County website: flathead.mt.gov/planning\_zoning. Click: meeting information.

Gonzales presented the status of most recent applications:

FCZ-21-02/Strable was denied by the Board of Adjustment

FZV-21-06/Pracht and Breymeier was denied by the Board of Adjustment

The Bigfork Chamber of Commerce will reach out to their Volunteer Committee for a BLUAC recording secretary.

Openings for 2 elected positions to BLUAC has been posted on the Planning and Zoning website. Application for filing can be found on the Election Department website and must filed by May 3, 2022. Openings for two appointed positions to BLUAC, member-at-large and recording secretary, has been posted on the Planning and Zoning website. To qualify for a seat on BLUAC you must reside in the Bigfork Zoning District for the past two years and be a registered voter in Flathead County.

**Public Comment:**

None

**Application:**

**FZC-21-20** A zone change request from Sands Surveying, Inc., on behalf of Montana LLC and Robert G. & Rita A. Boese for property within the Bigfork

Zoning District. The proposal would change the zoning on property located at 1308 Highway 83 and assessor #0007637 in Bigfork, MT from SAG-10 (Suburban Agricultural) to SAG-5 (Suburban Agricultural). The total acreage involved in the request is approximately 38.5 acres.

**Staff Report:**

Laura Mooney presented the staff report as the planner of record Erin Appert was not in attendance. There were two comments submitted. The Environmental Health department stated a special waste permit for a slaughterhouse and retail license for the sale of food products. MDT stated an approach permit would be required.

Q. Sorensen: In SAG-5 there is no provision for a retail market, is there a provision for that? A. Mooney: That will need to be researched.

Q. Sorensen: I am not OK with there being a 7-11 type store on these properties, to commercial store fronts are allowed.

Q. Gonzales: Under SAG-5 there is no retail sales and under Home Occupation definition nothing that creates smoke, dust, noise, odors, etc. I think those issues would come up with a slaughterhouse.

Q. Gonzales: This looks like it should be two separate applications. You have two different property owners with properties that are not adjacent to each other and an application for a retail operation. A. Mooney: It is common for multiple property owners to submit one application for a zone change. The retail issue can be addressed later.

Q. Sorensen: Neighbors have come together to rezone their neighborhood, so I do not think that is an issue.

Q. Ockert: What is the zoning definition for a produce stand? It is not in the Zoning Regulations. A. Mooney: I will need to research that.

Q. Michaud: Which parcel will the retail store be on? A. Mooney: Not sure, that will be looked at after the zone change.

**Applicant Report:**

Donna Valade of Sands Engineering presented the report. The Montana LLC property (north side of highway 83) is split zoned. They want to rezone the 10 acres that are SAG-10 to SAG-5 and leave the other 10 acres at AG-40. The retail sales proposal will be only for the beef raised on the property.

Q. Sorensen: What part of the property is the subject of rezoning? A. Valade: The parcel that is presently zoned SAG-10.

Q. Sorensen: Is the LLC property one or two parcels? A. Valade: It is one parcel.

Q. Ockert: Does Montana LLC intend to purchase the Boese property. A. Cottle (applicant): The intent is to purchase the property behind the Boese property. We also own the property used to be the sod farm.

Sorensen stated that he is not in favor of creating retail in the SAG-5 zoning as it could open the door for future expansion of retail.

**Public Agency Comments:**

None

**Public Comments:**

None

**Staff Reply:**

Mooney stated that she would address our questions about the definition of a produce stand with the Planning Director.

**Applicant Reply:**

None

**Committee Discussion:**

McGuire stated that she does not have any problem with the zoning change but is not in favor of the produce stand (retail meat sales) as there is no definition of a produce stand retail sales are not permitted in SAG-5 zoning. The applicant may need to apply for a variance if meat sales are outside of the definition of a produce stand. We have no clarification from Planning and Zoning on the inclusion of meat sales at a produce stand. Mussman may have said that, but he is no longer here.

McGuire stated that there is nothing in the Findings of Fact that state whether there can be a produce stand or not, so we should adopt the Findings of Fact, but not endorse a retail produce/meat operation.

Ockert stated that keeping this land in agriculture is one of the goals of the Bigfork Neighborhood Plan.

**Findings of Fact:**

McGuire moved to adopt the Findings of Fact, seconded by Ockert. Sorensen wanted to amend #10 to prohibit a produce stand. McGuire stated you cannot condition a zone change. If a stand was put up a code violation could be filed and investigated by the code officer.

Ockert read the entire definition of a produce/market stand, which does not include the sale of meat. The SAG-5 zoning does not permit a market stand. Ockert asked Mooney how are zoning definitions created. Mooney stated that Planning and Zoning creates the definitions. The county commissioners would have to adopt any changes to the definitions. Sorensen stated that the Planning and Zoning Director cannot arbitrarily change the definitions.

Motion to adopt the Findings of Fact was approved unanimously.

**Committee Discussion and Vote:**

There was no further committee discussion. McGuire moved to forward a recommendation to the Planning Board to approve FZC-21-20, Sorensen seconded the motion, motion passed unanimously.

This application will be heard by the Flathead County Planning Board on January 12, 2022, 6 p.m. on the second-floor conference room at 40 11th Street West, Kalispell, MT.

**Application:**

**FZC-21-18** A zone change request from Alex Olson on behalf of Tim J. & Sherrie L. Calaway for property within the Bigfork Zoning District. The proposal would change the zoning on property located off Highway 83 near Bigfork, MT from SAG-5 (Suburban Agricultural) to I-1 (Light Industrial). The total acreage involved in the request is approximately 20.02 acres.

**Staff Report:**

Laura Mooney presented the staff report. MDT stated that an additional access point to the property may be required, and an approach permit will be required. There was a discussion on zoning and location of the current storage units.

Q. Gonzales: The buy/sell agreement is for only 10 acres of this 20 acre tract. (There is an addendum to the buy/sell agreement providing a first right of refusal to purchase all or some of the remaining 10 acres.) Your build out analysis is for the full 20 acres zoned at I-1. It looks like the analysis in the staff report is incorrect. A. Mooney: I do not look at the supporting documents when preparing the staff report.

Q. Ockert: If the other 10 acres are not purchased by the applicant and are re-zoned I-1 in this application, can those 10 acres have 58 lots. A. Mooney: Yes.

**Applicant Report:**

Alex Olsen stated that he wants to acquire all 20 adjoining acres to his existing storage unit business for expansion. Financially it would be easier to acquire 10 acres at a time. There likely would be restrictions on putting in septic and wells for 58 lots on 10 acres. Perhaps I’ll split the 20 acres into four 5-acre private lots. I have no plans for the rest of the property.

Q. Gonzales: How many buildings and storage units are on your existing 5-acre parcel? A. Olsen: There are 8 buildings with 225 storage units.

Q. Gonzales: So by adding another 10 acres for expansion you could add 16 more buildings and 450 more storage units. On your proposed 15 acres, not including the other 10 acres that could be purchased and developed, there would be 24 buildings and 675 storage units. A. Olsen: Yes. My intent is to develop the 20 acres as demand for storage units increases but I doubt that storage units will cover the lots fronting highway 83.

Q. Gonzales: How will you access those back 10 acres? A. Olsen: There is a road along the west boundary line.

Q. Sorensen: Where will the second access road be located. A. Olsen: About mid-way between the property and the boundary with the Nelson property. Calaway stated on the front 10 acres there will be one building on a 5-acre parcel.

Q. Ockert: On the B-3 zoned property adjacent to the subject property there was a plan to hook up the subdivision to Bigfork Water and Sewer (BWS). Is that still a plan? A. Olsen: That is an option, but the infrastructure has not been brought over to that 20-acre parcel yet as it has not been approved by BWS.

Q. Gonzales: Do you plan on building another caretaker building on the 10-acre parcel? A. Olsen: No. That building is an office. In the future we might sell packing supplies on the first floor and the office will move to the second floor.

Q. Gonzales: Do you have any sanitation facilities on the property. A. Olsen: Yes, port-a-potties. With the extra acreage we might get a well and septic system.

Q. Gonzales: The title report submitted for this application indicates that the property owner is Richard and Nancy Whitaker. Calaway stated he owns the property.

Gonzales stated to Alex that such a title issue could affect your purchase. Again, this is a huge error in the staff report. As a banker, if I had made a loan on a property not owned by the borrower I would have been fired. It is the responsibility of staff to review the documentation you request to be sure you are not leaving your department, the Planning Board, and the County Commissioners open to lawsuits.

Comment by Sorensen: The green box site is zoned SAG-5 and there is no permitted or conditional use for garbage collection. Is the county not responsible for rezoning the property? Calaway stated he sold the property to the county, and they do not have to comply with their own zoning.

Q. McGuire: Mr. Calaway stated he has a permit for the road, does it contain any contingencies for a turning lane to help control the traffic? A. Calaway: MDT will determine that. McGuire further stated that we are concerned with the increase in traffic. Calaway stated that the road will be widened so vehicles can pull around turning vehicles.

**Public Agency Comments:**

None

**Public Comments:**

Paul Henion-261 Highway 83, Bigfork. My property is on northeastern boundary of the subject property. Concerned about proposed usage of the property. Hearing about a lot of maybes and if and ands on the parcels zoned industrial. The zone change will have a significant impact on the value of my property and all surrounding properties. I do not think this meets Bigfork’s land use model for future development. Development of the acreage fronting highway 83 is acceptable but industrial development of the rear 10-acres is not. Development will cause significant dust that will affect my residential property. A 20-acre industrial park in this area is huge.H

Ryan Nelson-253 Highway 83, Bigfork. My property is next door to the subject property. I offered Calaway $40,000 per acre for the parcel but sold it to Olsen for $50,000 per acre and for what I heard the buyer planned a hotel and a 100 to 150 multi-unit housing complex. Concerned about that density and public safety. I want a highway survey done by MDT from highway 35 though the highway 83 area. I heard they will mine the 20 acres and I do not want that piled along my property line and DEQ needs to permit for that activity. This application needs stipulations for approval or a denial. I am against this application.

Q. Sorensen: Does an I-1 zoning allow for a hotel? A. McGuire: Zoning regulations state a hotel/motel is allowed in I-1 zoning. Extractive mining is not permitted.

j**Staff Reply:**

None

**Applicant Reply:**

Calaway stated that Nelson changed his property zoning to I-1 and sold his topsoil creating dust. The subject property will be single use lots, not multi-family units. He further stated that he has owned this property for 30 years and he cannot find anyone to farm it. Light industrial is the right zoning for this property.

**Committee Discussion:**

Sorensen wanted to know if a hotel was a permitted or conditional use; it is permitted. He further commented that the current traffic problems will not be mitigated by a second property access given the potential of 49 permitted uses on lots of 7,500 square feet. There needs to be a traffic analysis of the increased traffic. Existing traffic backs up into the highway 35/83 intersection. Johnson stated that there is a new highway engineer who indicated there are studies in process for the area. Johnson informed the engineer that each application in our area that each application may only have a small percentage increase in traffic, but the problem of the cumulative increase is not being considered.

Sorensen’s concern is changing zoning that will add traffic without improved infrastructure. Ockert’s concern is with the sale of the property what will impact it the most and least, and with traffic. Gonzales stated that if the property is developed as storage units there will be less traffic impact than with commercial development.

**Findings of Fact:**

Gonzales moved to adopt the Findings of Fact, seconded by Ockert. McGuire proposed amending Findings of Fact #4 to read: The proposed amendments would (add) not facilitate the adequate provision of transportation...(remainder unchanged) because a 15% (709 trips/day) is not minimal. Also amend Findings of Fact #7 to read: Effects on motorized transportation systems will be (change to) significant because of the potential increase of traffic...(remainder unchanged) because a 15% (709 trips/day) is not minimal.

Gonzales moved to amend Finding of Facts number 4 and 7 as proposed, seconded by McGuire. Sorensen added that the Bigfork Neighborhood Plan states adequate infrastructure is required for developments and there is no infrastructure for this application. The vote in favor, Johnson, Gonzales, McGuire, Sorensen, and Michaud; opposed Ockert. Motion passed 5 to 1.

**Committee Discussion and Vote:**

Sorensen stated he could not support this application based on inadequate highway infrastructure. Sorensen moved to forward to the Planning Board a recommendation to deny FZC 21-18, seconded by McGuire. The vote in favor of the motion, Gonzales, McGuire, Sorensen; opposed, Johnson, Ockert; abstained, Michaud. The vote to deny passed.

This application will be heard by the Flathead County Planning Board on January 12, 2022, 6 p.m. on the second-floor conference room at 40 11th Street West, Kalispell, MT.

**Old Business:**

None

**New Business:**

None

**Adjourn:**

McGuire moved to adjourn the meeting, seconded by Sorensen, motion passed unanimously. Meeting was adjourned at 5:45 p.m.

Respectfully submitted,

Shelley Gonzales, member, and acting recording secretary