



## **Planning and Development Board Agenda**

**Thursday - March 18, 2021 4:00 PM**

**Virtual Login Info**

**<https://us02web.zoom.us/j/82231893225?pwd=VU91VlVZQUVSWTEzck44cjlkSjFEQT09>**

**Meeting ID: 822 3189 3225**

**Passcode: 387746**

**Phone Info:**

**+16699006833,,82231893225#,,,,\*387746#**

**+12532158782,,82231893225#,,,,\*387746#**

### **CALL TO ORDER AND INTRODUCTIONS**

Planning Board By Laws

[Signed Planning Board ByLaws\\_12.1.20 .pdf](#)

### **CONFLICT OF INTEREST**

### **PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA**

### **REVIEW AND APPROVAL OF MINUTES FROM PREVIOUS MEETING**

February Meeting Minutes

[2.18.21 PB Minutes.docx](#)

### **OLD BUSINESS**

Discussion/Decision on Content of the Draft Conflict Mitigation Zoning District and Regulations

[3-10-2021 Updated Draft Conflict Zoning District Regulations.pdf](#)

### **NEW BUSINESS**

### **PROJECT UPDATES**

### **DISCUSSION OF NEXT AGENDA**

### **BOARD CORRESPONDENCE AND FUTURE DISCUSSION ITEMS**

### **PUBLIC COMMENT FOR ITEMS ON THE AGENDA**

### **ADJOURNMENT**

# **BY-LAWS FOR THE PARK COUNTY PLANNING BOARD**

## **Amended**

### **ARTICLE I- NAME**

#### Section 1. Name

The official name of the organization is "The Park County Planning Board." ("Board")

### **ARTICLE II- OFFICIAL SEAT**

#### Section 1. Official Seat

The official seat of the Board is in the City- County Building of Livingston, Montana, and meetings will be held there except for occasions when the Board, by a majority vote of those present at any regular or special meeting otherwise directs.

### **ARTICLE III- OFFICERS**

#### Section 1. Officers

The elective officers of the Board include a Chair and Vice-Chair. The Director of the Planning Department, or appointed staff, will serve as Secretary of the Board.

#### Section 2. Nomination and Election of Officers

Nomination of elective officers will be made from the floor at the annual election meeting which will be held on the first regular meeting of each calendar year. The election will follow immediately thereafter. Officers may be nominated from among the Park County Commission-appointed Board members only. A nominee receiving a majority vote of those present, either physically, by telephone or Voice Over Internet Protocol (VOIP) at the election will be deemed elected.

#### Section 3. Terms of Officers

The elective officers take office at the first regular meeting of the calendar year, usually January, and serve for a term of one year.

Section 4. Vacancies in Offices

Vacancies in elective offices will be filled immediately at a regular meeting by regular election procedure for the unexpired portion of the term.

Section 5. Duties of Officers

(a) Chair

The Chair will preside at all meetings and public hearings of the Board and will call special meetings when he/she deems them necessary or is required to do so. The Chair shall sign minutes of Board meetings and all official papers and plans involving the authority of the Board which are transmitted to the Park County Commission. The Chair may discuss all matters before the Board and make motions on all voting thereon. He/She will perform all the duties normally conferred by parliamentary usage on such officers and will perform such other duties as may be ordered by the Board except as otherwise provided in these by-laws, in other Board resolutions, or in county ordinances, or state law. The Chair will take the lead in promoting effective public relations in the development of the County's *Growth Policy*, specific plans, programs, implementing projects identified in the *Growth Policy*, and reviewing and updating related land use ordinances and regulations.

(b) Vice Chair

The Vice Chair will assume the duties and powers of the Chair in his/her absence. If the Chair and Vice Chair are both absent, the remaining Board members may elect a temporary chair by a majority vote of those present at a regular or special meeting. This person will assume the duties and powers of the Chair and the Vice Chair for that meeting.

(c) Secretary

The Secretary will keep the minutes of all regular and special meetings of the Board. Such minutes will be approved by the Board. The Secretary will give notice of all regular and special meetings to Board members, prepare the agenda of regular and special meetings, serve proper and legal notice of all public hearings, and draft and sign the routine correspondence of the Board. The Secretary will maintain a file of all studies, plans, reports, recommendations and official records of the Board and perform such other duties that are normally carried out by a Secretary and as the Board may direct.

The Director of the Planning Department may designate a member of his/her staff to perform any of the duties of the Secretary under the Director's supervision. All meetings and hearings will be recorded on audio equipment. Either the Director of the Department or the Chair of the Board may designate what portion of Board meetings or Public Hearings shall be video-recorded.

## Section 6. Regular Meetings for Administrative, Routine and Hearing Type Matter

- (a) Call to Order by Chair, Introductions and Discussion of Conflicts of Interest
- (b) Review/ Approval of Minutes of Preceding Meetings
- (c) Public Comment for Items Not on the Agenda

Chair refers to public comment guidelines:

- A reasonable time will be allowed each speaker based on the number of speakers wishing to speak to a subdivision or issue and the Chair may appoint a timekeeper.
  - The Chair may require all speakers to sign a sign-up sheet in order to comment.
  - Each speaker must state their name, address and nature of interest in the matter
  - Information submitted should be factual, relevant and not merely duplicative of previous presentations.
  - No personal attacks of any kind will be allowed.
  - A written summary of a person's comments would be appreciated.
  - A person cannot assign their time to speak to another speaker and all persons wishing to speak shall speak before a person is allowed to make comments a second time.
  - If a speaker does not comply with the stated guidelines, the Chair may remind the speaker of the guidelines or terminate the speaker's comments.
  - Comments on items not on the Agenda cannot be answered at this meeting as the topic addressed is not on the Agenda and notice of the item to the public has not been given. At the end of the meeting the Board will discuss the public comment received during this Agenda item, determine if they are within the Board's jurisdiction and if so, make a decision as to whether to add the item to the next month's Agenda under New Business.
- (d) Board Subcommittee Reports.
  - (e) Staff Reports
  - (f) Update on Regulations
  - (g) Old Business (if a Work Plan is adopted, the Work Plan would be a standing item under Old Business)
  - (h) New Business
  - (i) Board Correspondence and Future Discussion Items (Standing items would be discussion of other meetings Board members had attended, contacts they had with the public and actions they may want to add to the Board's Work Plan)
  - (j) Public Comment on Matters Discussed At This Meeting and No Public Hearing Held
  - (m) Discussion of Next Agenda (to be included on the next agenda would be new items from public comments on matters not on the agenda and Board correspondence and future discussion items.)
  - (k) Adjourn

#### Section 7. Public Hearing Procedure

The Board will follow all applicable laws, statutes and regulations applicable for the specific type of public hearing being held.

#### Section 8. Quorum

Four members of the Board will constitute a quorum for the transaction of business and the taking of official action. A quorum will constitute a majority of the total membership of the Board physically present at the Board meeting, or participating via the telephone or voice over internet protocol (VOIP).

#### Section 9. Motions

Motions should be short and concise and may be submitted in writing to the Chair. Motions will be restated by the Chair before a vote is taken. The name of the members making and seconding a motion will be recorded in the minutes of the meeting.

#### Section 10. Voting

Any action taken by a quorum of the Board members at any regular or special meeting of the Board will be deemed and taken as the action of the Board. All matters requiring a public hearing before the Board and all matters referred to the Board by the Park County Commission may be by roll call vote and the vote of each member shall be recorded in the minutes of the meeting. The Chair may also vote.

#### Section 11. Staff Reports

On all matters considered by the Board, any report and recommendations of the Planning Department staff must be filed in the Department.

#### Section 12. Parliamentary Procedure

Parliamentary procedure in Board meetings will be governed by Roberts Rules of Order, as revised.

### Section 13. Code of Civility

The Park County Planning Board Code of Civility shall be included in the Agenda packet and/or made available to the public at every Board meeting in some capacity..

The Park County Planning Board conducts regularly scheduled monthly meetings, public forums, information sessions and other events throughout the year in connection with its prescribed responsibilities as a citizen-advisory panel to the Park County Commission and appointed by it.

Planning Board meetings and other functions are intended to provide all citizens with open and transparent access to the work of the Board, promote the free spread of ideas, foster open dialog, and encourage ideas and planning which will lead to improved quality of life and economic opportunities for all residents of Park County.

Citizen members of the Planning Board are dedicated to providing both a safe, harassment-free event and valuable meeting experience for everyone. Therefore, we do not tolerate harassment of/by event participants in any form. Participants include: attendees, speakers, support staff, and volunteers.

These behaviors are specifically prohibited:

- (a) Yelling at, threatening, or continued disruption of participants (verbally or physically).
- (b) Any behavior that creates an environment where people feel harassed or unsafe.
- (c) Harassment or intimidation based on race, religion, language, sexual orientation, gender identity, gender expression, ethnicity, disability, physical appearance, body size, or other group status.

All participants are expected to observe these rules and behaviors in all venues where the Planning Board carries out its responsibilities and duties. The Board takes all issues of harassment seriously. The Board values your participation and places high regard on the safety and well-being of all attendees at its meetings or other hosted events.

If you are being harassed or notice someone being harassed, or have other concerns, please report harassment or concerns immediately if feasible or as soon as possible to the chairman of the Planning and Board, the County Planning Director, a member of the Planning and Board, or a Park County Commissioner. Event participants violating these rules will be asked to stop. In extreme situations the Board Chair may declare a temporary recess and/or law enforcement personnel may be summoned.

## **ARTICLE IV- MEETINGS**

### **Section 1. Regular Meetings: Time and Place**

The Board will determine the time, days and locations of regular Planning Board meetings at the first meeting of the year. The Board has the discretion to change the meeting schedule as necessary and all meetings will be noticed prior in accordance with Montana open meeting laws.

Committees of the Board, made up of members totaling less than a quorum of the Board, may meet outside regular Board meetings. The Board may designate a different location or time for a public hearing by majority vote of the Board members physically present at the meeting or participating via telephone or VOIP.

### **Section 2. Recessed Meetings**

Any regular meeting may be recessed to a definite time and place by a majority vote of the Board members physically present at the meeting or participating via telephone or VOIP.

### **Section 3. Special Meetings**

Special meetings may be called by the Chair or by a majority of the Board members at any duly constituted meeting.

### **Section 4. Notice**

The Secretary will give written notice of all regular and special meetings to the members of the Board at least one week prior to the time of the scheduled meeting. A notice and agenda of all regular and special meetings will be posted at least seventy-two hours prior to the meeting. The meeting agenda will be posted on the Departmental portion of the Park County website, and bulletin boards in the Commissioners' Office and the Departmental office. The notice must state the time and place of the meeting and will be accompanied by an agenda of the matters to be considered by the Board at such meeting. The agenda of all regular meetings will be closed seventy-two hours prior to the following meeting of the Board and no new information will be accepted by the Board after the agenda closes except during public comment or at a public hearing.

Petitions and communications from the audience and matters brought to the meeting by the Departmental Director and Board members, which are not on the agenda for the meeting, may be received but not discussed at the meeting. No discussion or official action may be taken on any matter at a Board meeting which is not included on the agenda for such meeting.

Section 5. Public Nature of Meeting and Records

All regular and special meetings, hearings, records and accounts shall be open to the public and will meet notification requirements.

Section 6. Attendance of Meeting

Board members are expected to attend all regular and special meetings of the Board, as well as Board site visits. If a Board member misses, without good cause, three regular or special meetings within a twelve-month period, the Park County Commission may remove said member from the Board. Participation by telephone or VOIP is allowed with prior approval of the Board Chair, and, in any case, not to exceed three times during a 12-month period without good cause.

Section 7. Emails

Emails are subject to public information rights. Board members shall limit the email dialog to questions regarding notice and attendance of meetings, dialog to planning staff and educational information. If an email is to be sent to all Board members regarding a decision about a current or future land use proposal the email shall be subject to the notice of meeting requirements listed in IV. Section 4 of these bylaws.

**ARTICLE V- COMMITTEES**

Section 1. Establishment of Committees

The Board may establish such standing or special committees it deems advisable and assign to each committee specific duties or functions. Each committee will consist of up to three members of the Board and may include up to two members of the public, at the discretion of the Board. No committee may commit the Board to the endorsement of any plan or program.

Section 2. Appointment and Terms of Committee Members

The Chair shall appoint the members of each standing or special committee, name the Chair of each committee and state the objectives, time of duration and reporting responsibility.

Section 3. Meeting of Committees

All committees will meet at the call of the committee Chair, provided that the Chair of The Planning Board may, with adequate notice, call a special meeting of any committee at any time.

The Director of the Department, or staff, will issue notice of committee meetings at the request of a sub-committee Chair or the Board Chair. subject to the notice of meeting requirements listed in IV. Section 4 of these bylaws.



Section 4. Quorum and Voting

A majority of the members appointed constitutes a quorum of all committees. The affirmative vote of a majority of the committee membership is required for the adoption of a matter before the committee.

**ARTICLE VI-AMENDMENTS**

Section 1. Amendments

These by-laws may be amended at any regular meeting by the affirmative vote of four members of the Planning Board, provided that proposed amendments must have been submitted in writing at a previous meeting.

Board members may from time to time be assigned to represent the Board at special meetings. Such attendance is voluntary and does not commit the Board to any action until approved by the Board.

## APPENDIX I

### BEST PRACTICES FOR PLANNING BOARD MEMBERS

#### **1. Planning Board Members Should be Cognizant of Open Meeting Statutes**

- a. Electronic meetings by e-mail are a violation of the Open Meeting Act.
- b. All subcommittee meetings must be noticed, public comment must be taken and minutes must be kept.
- c. E-mails regarding Planning Board activities should not be deleted and should be kept in a separate folder. In *Delaney & Co. v. City of Bozeman*, Delaney was awarded \$3,000,000 in damages for abuse of discovery; the abuse was that the City of Bozeman failed to retain e-mails that Delaney alleged would have shown that the City of Bozeman intentionally undermined his purchase of the Mandeville property after he disclosed to the City of Bozeman his intention to purchase and develop this property.
- d. Limit the number of e-mails you use for Planning Board activities.
- e. Copying parties outside of the Planning Board or County on Planning Board Activities may appear to be a conflict of interest and subject that party to e-mail discovery if there is litigation.

#### **2. The Planning Board Should Act as a Board; Not as Individual Members**

- a. All information regarding Planning Board activities should be shared with the entire Board so that all Board members have the same information when taking action on issues.
- b. Inviting speakers to present to the Planning Board is Board action; not an individual member action.
- c. If a matter is under the jurisdiction of the Planning Board, stating that you are representing yourself and not the Planning Board in regards to that matter may create a conflict of interest for you to act on that matter as a Planning Board member. The majority of the Zoning Board of Adjustments in Three Forks was recently removed for cause after they signed a petition against a development. The development application included a variance which is heard by the Zoning Board of Adjustments.
- d. The Planning Board acting as a Board should determine Planning Board work plans, agenda items and best use of staff time.

#### **3. Planning Board Members Should Not Hire Outside Consultants to Advise the Planning Board.**

- a. State statutes states that all "staff" must be approved by resolution. 7-1-201(2)(d), MCA.
- b. County employees and county hired contractors have a duty to represent the best interests of the county. Outside consultants hired by private individuals have no duty to represent the best interests of the county.
- c. The County has disciplinary control and contract provisions to address county employee and county hired contractor actions. 2-2-121, MCA is a Code of Ethics for Public Employees.

d. County employees and county hired contractors are not allowed to have conflicts of interest in regards to County activities upon which they provide advice to the County.

**4. Planning Board Members Should Frequently Review Planning Board Policies and County Regulations.**

a. Planning Board By-laws should be consulted in regards to proper protocols for Board actions and activities. By-laws can be amended to include protocols the Board wishes to put in place, subject to County Commission approval.

b. The Growth Policy is a living document that by statute should be updated every 5 years and it should be read frequently so the Planning Board knows what action items it is supposed to address in what time frame and to be familiar with the Growth Policy when reviewing subdivision applications.

c. Outdated regulations are a liability to the County as they do not accurately reflect state law and may misinform the public. Subdivision regulations should be updated to conform to the goals and objectives of the Growth Policy and state statutes.

d. County imposed zoning must be consistent with the goals and objectives of the Growth Policy and cannot be enacted without a Growth Policy.

**5. Planning Board Members Should Be Cognizant of when Ex Parte Contact is prohibited.**

a. Planning Board members should understand whether they are taking action on a legislative matter or a quasi-judicial matter.

b. Planning Board members do not take action on zoning permits, variances, or enforcement so where zoning is concerned, the Planning Board is only involved in legislative activities.

c. Subdivision review is strictly a quasi-judicial matter:

i. Planning Board members should not meet with a subdivider, neighbors or other agency outside of public meetings on the subdivision that have been noticed correctly.

ii. Site visits must be conducted in such a manner as limit ex parte contact with the subdivider or his representatives. If present, contact with the subdivider or their representatives should be limited to answering specific questions about location of subdivision features on the ground, i.e. where the fire fill site is located.

**6. Planning Board Members Should Determine How the Board Interacts with the Press**

a. Planning Board members should determine who has the authority to speak to the press on behalf of the entire Board.

b. Planning Board members should make sure that any representations to the press by comments in articles in the newspaper or letters to the editor represent the positions of the entire Board or those comments should be made as an individual and not as a member of the Planning Board.

c. Care should be taken to make sure that information repeated to the press is accurate so as to not misinform the public.

**7. Planning Board Members Should Make Sure that Public Comments are Captured and**

**Analyzed**

a. While Planning Staff captures all oral public comments at public meetings and written public comments, comments made to Planning Board members on legislative activities should be conveyed to the entire Board and made a part of the record.

b. In *Citizens for a Better Flathead v. Flathead County* the allegations were that both the County Commission and the Planning Board failed to consider and analyze public comment. The MSCt found that all public comments had been captured, made a part of the record, and analyzed.

**8. Planning Board Members Should be Cognizant that Land Use Decisions are Frequently Litigated**

a. Land use issues are contentious across the State of Montana and Planning Board members should be aware that their activities and decisions will be under intense public scrutiny.

b. Planning Board members should remember that even if they follow proper protocols and processes they still may be involved in litigation. While this litigant was not successful, the complaint against Flathead County asserted 11 counts:

- I violation of due process by the Bigfork Land Use Advisory Committee;
- II negligence/negligence per se by the Bigfork Land Use Advisory Committee;
- III violation of equal protection by the Bigfork Land Use Advisory Committee;
- IV a negligence by the Planning Board;
- V violation of equal protection by the Board of Commissioners;
- VI negligence by the Board of Commissioners;
- VII violation of substantive due process by the Board of Commissioners;
- VIII negligent misrepresentation by the Flathead County Planning and Zoning Office;
- IX violation of equal protection by the Flathead County Planning and Zoning Office;
- X violation of procedural due process by Jeff Harris; and
- XI failure by Flathead County to adequately train and supervise employees and board members.

Created for the Park County Planning Board by

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Approved by The Park County Board of Commissioners on Dec 1, 2020.



Steve Caldwell, Commission Chair



Clint Tinsley, Commissioner



Bill Berg, Commissioner



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***County Planning Board Minutes***  
***Virtual Meeting***  
***February 18, 2021***

**Call to Order and Introductions**

John Heidke  
Rich Baerg  
Bryan Wells  
Taya Cromley  
Lara Birkes  
Dean Nelson  
Dave Haug

Staff: Mike Inman, Lawson Moorman

Call to Order and Introductions

John Heidke noted the Code of Civility was included in the packet and would be enforced.

Conflict of Interest

None.

**Public Comment for Items not on the Agenda**

Ken Cochran provided public comment.

Michelle Uberuaga provided public comment.

Wendy Riley provided public comment.

Jen Madgic provided public comment.

Jeff Reed provided public comment

**Review and Approval of Minutes from Previous Meeting**

January Planning Board Minutes

**Motion:**

Motion made by Dean Nelson, Motion to accept January Planning Board Minutes as written; second by Dave Haug; all in favor. Motion passes.

## **PUBLIC HEARING FOR PARCEL 23 SUBSEQUENT MINOR SUBDIVISION**

### Explanation of Subdivision Review Procedure and Decision Criteria

Mike Inman gave a brief review of the subdivision procedures, the laws that govern the subdivision process and the role of the Planning Board in the process.

### Subdivision Administrator Staff Report

Mike Inman presented the Staff Report for the Board.

The Board discussed specifics of the fire fill site.

### Subdivision Applicant Presentation

The applicant spoke to concerns surrounding the fire fill site.

### Questions and Answers to Clarify Points of Presentations

Dean Nelson had questions surrounding erosion and the water and sanitation site plan.

William Smith addressed the Board's questions surrounding fire safety, sanitation and access.

### Public Comment on Parcel 23 Subsequent Minor Subdivision

No comments.

### Staff/Applicant Comments/Rebuttal

No comments.

### Public Hearing Closed Board Discussion of Parcel 23 Subsequent Minor Subdivision

### Board Discussion/Decision on Recommendation of Parcel 23 Subsequent Minor Subdivision

Mike Inman outlined the Staff Report's recommendations for approval of the requested variance to the subdivision regulations.

### **Motion:**

Motion made by John Heidke, Motion to recommend approval of the Variance request of Parcel 23 Subsequent Minor Subdivision to the Commission with recommendations outlined in the Staff Report; second by Bryan Wells; all in favor. Motion passes.

Mike Inman outlined the Staff Report's recommendations for approval of the subdivision.

The Board discussed the Report's recommendations.

**Motion:**

Motion made by Rich Baerg, Motion to recommend approval of Parcel 23 Subsequent Minor Subdivision to the Commission with recommendations outlined in the Staff Report; second by Dean Nelson; all in favor. Motion passes.

**New Business**

Discussion of Residential Growth Trends in Park County

Mike Inman gave a presentation on residential growth trends in Park County.

The Board discussed the implications of the residential growth trends outlined in the presentation and its impacts in shaping future land use decision making.

Response to Public Comment from January Planning Board Meeting

Mike Inman briefly addressed some of the questions and comments raised by the public at the last Planning Board meeting and suggested Staff and the Board evaluate ways to answer public questions in a more direct manner.

**Old Business**

Draft Conflict Mitigation Zoning District and Regulations Discussion

The Board looked at the proposed schedule for moving through the Draft Conflict Mitigation District and discussed the need to put a workable draft forward to begin Phase II of the proposed schedule.

Mike Inman provided example definitions of residential at the Board's request.

**Project Updates**

Mike Inman informed the Board Park County was still working on the FLAP grant application for the Old Yellowstone Trail South Project.

Mike Inman also informed the Board there were several bills in the State Legislature currently concerning land use that could alter the role and structure of the Planning Board and significantly alter land use planning in the State as a whole. Mike indicated he would provide an update to the Board on the Bills at the next meetings.

**Discussion of Next Agenda**

John Heidke asked the Board and Staff to be ready at the next meeting to consider moving forward the Draft Conflict Mitigation Zoning District to the next phase of the proposed schedule.

John Heike asked Mike Inman to come up with example definitions for Agriculture for the Draft Conflict Mitigation Zoning District similar to what was done for the Residential definition.



### **Board Correspondence and Future Discussion Items**

Rich Baerg gave an update that the Clyde Park Planning Board was moving forward on their Growth Policy.

Taya Cromley gave an update from the City Planning Board on the Livingston Growth Policy Update.

### **Public Comment of Items on the Agenda**

Ken Cochran provided public comment.

Frank Schroeder provided public comment.

Walt Wiessman provided public comment.

Anne Donahue provided public comment.

Joe Phelps provided public comment.

### **Adjournment**

(DRAFT)

## PARK COUNTY CONFLICT MITIGATION ZONING DISTRICT REGULATIONS

Draft Date: November 21, 2019

### I. TITLE

These regulations and the accompanying map(s) shall be known as, and shall be cited and referred to as, the “Park County Conflict Mitigation Zoning District or District” in accordance with and exercising the authority of Section 76-2-201, MCA.

### II. PURPOSE

- A. The purpose of these regulations is to promote the public health, safety, and general welfare of the community and residents by regulating certain land use within the District;
- B. To mitigate impacts associated with land use conflicts;
- C. To protect agricultural production throughout the district;
- D. To protect certain residential land use and development throughout the district;
- E. To consider all forms of development through thoughtful discussion and mitigation of associated impacts;
- F. To provide the local governing body the ability to address the concerns of county residents;
- G. To mitigate impacts from development on county infrastructure, including, but not limited to, roads, bridges, culverts, etc.;
- H. To mitigate impacts from development on county services, including, but not limited to; water supply, sewage disposal, law enforcement, fire protection, emergency services, transportation systems, noxious weed control?
- I. To promote economic development and innovation in design;
- J. To protect wildlife and wildlife habitat;
- K. To minimize wildlife and human conflicts;
- L. To ensure all development within the district will facilitate adequate provisions for transportation, water, sewerage, schools, parks and other public requirements;

### III. AUTHORITY & ADMINISTRATION

- A. The Park County Conflict Mitigation Zoning District is adopted under the authority of Section 76-2-201, MCA.

- B. The Planning Department is designated by the County Commissioners of Park County, Montana, to administer these regulations and is hereby referred to as the Zoning Administrator.

#### **IV. SEVERABILITY**

If any provision of this District is held invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this District are declared to be severable.

#### **V. BOARD OF ADJUSTMENTS**

The County Commissioners shall create and appoint a Board of Adjustment. The Board of Adjustment shall consist of five members of the public residing within the boundaries of the District. Board members shall serve without compensation. Board of Adjustment members shall be appointed for a term of 2 years, with staggered terms. The Board of Adjustments will review and determine all Conditional Use Applications under Section XI of these regulations.

#### **VI. APPLICABILITY**

- A. This District applies to all unincorporated areas of Park County.
- B. In their interpretation and application, the provisions of this District may be regarded as the minimum requirements for the protection of the public health, safety, and general welfare.
- C. This District is not intended to abrogate or annul any other regulations applicable to a tract of land, including but not limited to, other zoning, building codes, private covenants, or floodplain regulations.
- D. Where the provisions of this District impose a greater restriction on land, buildings, or structures than is imposed or required by such existing provisions of law, ordinance, resolution, contract, or deed, the provisions of this District shall control. The powers, duties, and terms of office, including hearing appeals and Variances are set forth in Sections 76-2-221 through 76-2-228, MCA.

#### **VII. DEFINITIONS**

- A. Applicant: A property owner(s), or representative granted with power of attorney, applying for a Conditional Use Permit under section X of these regulations.
- B. Agricultural: See definition included under section VIII.B.2 [Permitted Land Use].
- C. Agricultural Water User Facilities: Any part of an irrigation system historically used to produce an Agricultural product on property used for Agricultural purposes as defined in these Regulations.
- D. Conditional Use Permit: A permit which allows certain land use not otherwise permitted under section VIII [Permitted Land Use] of these regulations, and outlined under section X of these regulations.

- E. Day Care Facilities: Daytime care for the needs of people who cannot be fully independent, such as children or elderly people.
- F. District: District refers to the “Park County Conflict Mitigation Zoning District Map and Regulations.”
- G. Dwelling Unit: Any structure used for human habitation by one family unit for any period of time, including manufactured homes and mobile homes.
- H. Government Facilities: Any Structure, Development or Land Use owned and maintained by a State, Tribal, Local or Federal Government.
- I. Home Occupation: An occupation carried on within a dwelling or an accessory structure by a resident of the dwelling, where such occupation is secondary to the main use of the property as a residence, and which does not require a commercial business license, does not result in the selling of goods on the premises and is not open to the public.
- J. Long-Term Rental: Any Dwelling Unit rented for more than thirty (30) days and includes a rental/lease agreement.
- K. Nonconforming: Any land use not otherwise permitted under section VIII of these regulations, and in place prior to the adoption of these regulations.
- L. Park County: A political Subdivision at the State of Montana.
- M. Permitted Land Use: See definition included in section VIII of these regulations.
- N. Public Health and Safety: A condition of optimal well-being, free from danger, risk, or injury for community at large, or for all people, as well as for the welfare of a specific individual or small class of persons.
- O. Residential: See definition included under section VIII.B.1 [Permitted Land Use].
- P. Short-Term Rental: Any dwelling unit rented for a period of less than thirty (30) days and without a rental/lease agreement.
- Q. Wildlife: Wildlife are animals (e.g. mammals, birds, reptiles, fish) that are neither human nor domesticated, existing in their natural environment.
- R. Wildlife Habitat: Wildlife habitats are geographic areas containing physical or biological features essential to wildlife for breeding, rearing, nesting, and/or winter feeding and forage, or important for migratory patterns; and/or essential to the conservation of listed endangered and threatened species under the Endangered Species Act.
- S. Zoning Administrator: Park County Planning Staff designated by the Park County Commission to administer zoning regulations and enforcement.

## VIII. REQUIREMENTS OF DISTRICT

- A. This District will regulate land use within the District boundaries. No type of land use is strictly prohibited, but may be prohibited if a Conditional Use Permit is required and associated impacts are not mitigated through the Conditional Use Permitting process under Section X of these regulations. All Permitted Land Uses within the District do not need a permit prior to implementation. Landowner's are encouraged to contact the Park County Planning Department prior to development or use of land to ensure compliance with the Permitted Land Use section of the District Regulations.
- B. Permitted Land Use: The following land uses are permitted within the District on an individual tract of record and do not require review and approval prior to implementation.
  - 1. Residential: The following Residential land uses are permitted on each tract of record and under these regulations, and shall include all other applicable local and state permits. All other land uses require a Conditional Use Permit under Chapter X of these Regulations:
    - a. Up to three (3) Dwelling Units, attached or detached, which are for use as full-time human habitation, seasonal human habitation, long-term rental(s) and Short-term rentals, including all accessory buildings and uses;
    - b. Home Occupations;
    - c. Schools;
    - d. Day Care Facilities;
    - e. Government Facilities
  - 2. Agricultural: Activities related to the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery and horticultural crops that are raised, grown, or produced for commercial purposes on lands taxes as agricultural by the State of Montana.
- C. Conditional Land Use: All land uses which do not meet the definition of "Residential" or "Agricultural" land use (above) shall apply for and receive an approved Conditional Use Permit under section X of these Regulations prior to implementation.

**IX. PREEXISTING NONCONFORMING LAND USE**

A Nonconforming Land Use in place before the adoption of this District may continue as nonconforming until one of the following occurs:

- A. The Nonconforming Land Use ceases to operate for a period of one year or longer. If a Nonconforming Land Use ceases for a period of one year or longer, as determined by the Zoning Administrator, the landowner will be required to either, receive an approved Conditional Use Permit, or remove the nonconforming land use and associated development;
- B. The Nonconforming Land Use is Increased or Modified, as determined by the Zoning Administrator, and in a manner which does not bring the land use in compliance with the Permitted Use Definitions above. Under this provision, a determination by the Zoning Administrator of an increase or modification of a nonconforming use, will require either, receipt of a Conditional Use Permit under Chapter X of these Regulations, or removal of any Land Use or development not permitted under Chapter VIII-B of these Regulations.

**X. CONDITIONAL USE PERMITS**

All landowner(s) are required to receive a Conditional Use Permit for any land use or development not otherwise permitted in the District under section VIII, prior to the construction/placement of any structures or infrastructure associated with a proposed land use.

- A. Conditional Use Permit Application: All landowners seeking a Conditional Use Permit shall first obtain the required Conditional Use Permit Application provided by the Park County Planning Department. Landowners are encouraged to meet with Planning staff prior to submittal to go over the District requirements and review process.
- B. Conditional Use Permit Application Review Process: All Conditional Use Permit Applications and the required review fee \_\_\_\_\_ shall be submitted to the Park County Planning Department in electronic and written form.
  1. After-the-fact Application: If a Conditional Use Permit Application follows enforcement proceedings for failure to comply with the District regulations, the landowner will be required to submit an additional \$200.00 after-the-fact application fee, in addition to the regular Conditional Use Permit Application fee.
  2. Upon receipt of a Conditional Use Permit Application and the required review fee, the Zoning Administrator shall review the application for completeness/sufficiency and determine compliance with the District regulations and application requirements within fifteen (15) working days of receipt of the application.
  3. If the Zoning Administrator determines the application to be incomplete or insufficient, or does not comply with the District regulations and application requirements, the landowner will be notified in writing of all deficiencies and no further action will be taken on the application until such time as the application deficiencies have been corrected. Incomplete or insufficient applications will remain on file for no longer than ninety (90) calendar days from the day after the landowner is notified of any deficiencies, after which time, the application will be nullified, requiring a complete resubmittal of the application and review fee for any landowner wishing to advance the original application.
  4. If the Zoning Administrator determines the application to be complete and sufficient for review, the Zoning Administrator shall notify the landowner in writing and schedule a public hearing before the Board of Adjustments for review and consideration within forty-five (45) working days following notification of the landowner.
  5. The public hearing and general information pertaining to the Conditional Use Permit Application shall be legally noticed in an official publication of general circulation between fifteen (15) and thirty (30) calendar days of the scheduled public hearing.
  6. All adjoining landowners shall be notified by mail of the public hearing and the nature of the Condition Use Permit Application.
  7. The Zoning Administrator shall generate a staff report for review by the Board of Adjustments and shall provide a recommendation to the Board of Adjustments based upon the general requirements of the District Regulations, and the review criteria outlined under section XI of these Regulations.
  8. During the scheduled public hearing, the Board of Adjustments will make all final decisions regarding Conditional Use Permit Applications after having considered the

Conditional Use Permit Application and supporting documentation, the Zoning Administrator Report and recommendation, all public comments, and any other pertinent information. The Board of Adjustments shall make specific findings of fact justifying the final determination. In making the final determination, the Board of Adjustments shall either approve, conditionally approve, or deny the proposed Conditional Use Permit Application.

9. The Zoning Administrator shall provide the Applicant a written determination of the Board of Adjustment within ten working days following the final determination made by the Board of Adjustment.
10. Applicants may appeal any determination made by the Board of Adjustment to the Park County Commission as outlined under Section 76-2-227, MCA.

## **XI. REVIEW CRITERIA**

The Zoning Administrator and the Board of Adjustments shall review a complete and sufficient Conditional Use Permit Application under the review criteria below in order to identify any potential associated negative impacts. The Zoning Administrator shall recommend, and the Board of Adjustments shall determine, specific findings of fact related to each review criteria. If during the analysis of the Conditional Use Permit Application the Zoning Administrator and/or Board of Adjustment determines negative impacts may be associated with the proposed land use, and based upon specified findings of fact, the Zoning Administrator and/or Board of Adjustment shall either; require specific conditions of approval which mitigate identified negative impacts; or deny the proposed Conditional Use Permit Application if determined negative impacts cannot be mitigated through required conditions. Conditions may include, but are not limited to: setbacks; hours of operation; dust control; lighting control; noise abatement; size and location of structures. Restrictive Covenants may be required to ensure continued compliance after the Conditional Land Use Permit Application has been approved. Criteria for granting a Conditional Use Permit Application include:

- A. Will the proposed land use create negative impacts to agricultural land use in the surrounding area, including, but not limited to:
  1. Will the proposed land use impede adjacent agricultural production?
  2. Will the proposed land use interfere with the movement of livestock or farm machinery?
  3. Will the proposed land use impact agricultural soils in the area?
  4. Will the proposed land use impact Agricultural Water User Facilities in the area?
  5. Will the proposed land use impact livestock in the area?
- B. Will the proposed land use create negative impacts to residential land use in the surrounding area, including, but not limited to:
  1. Will the proposed land use impede adjacent residential land use?
  2. Will the proposed land use create excessive noise?
  3. Will the proposed land use create dust?
  4. Will the proposed land use create excessive odors?
  5. Will the proposed land use create excessive light pollution?
  6. Will the proposed land use create heavy truck and equipment traffic on roads used by adjacent residential land owners?

- C. Will the proposed land use create negative impacts to any other land uses in the surrounding area, including but not limited to:
1. Will the proposed land use impede commercial, industrial, manufacturing, schools, health facilities, or other land use in the area?
  2. Will the proposed land use disrupt normal operations of other land uses in the area?
  3. Will the proposed land use create excessive noise?
  4. Will the proposed land use create dust?
  5. Will the proposed land use create excessive odors?
  6. Will the proposed land use create excessive light pollution?
  7. Will the proposed land use create heavy truck and equipment traffic on roads used by adjacent land uses?
- D. Will the proposed land use impact the Public Health and Safety of area residents and visitors, including but not limited to:
1. Will the proposed land use create dangerous situations for area residents?
  2. Will the proposed land use create injury for area residents or community at large?
  3. Will the proposed land use impact water availability in the area?
  4. Will the proposed land use create hazardous materials, by-products, or waste that may negatively impact surrounding residents and visitors? And if so, does a separate state or federal agency review for these types of potential health and wellness hazards?
- E. Will the proposed land use create negative impacts to the natural environment that are not otherwise considered through a local, state or federal agency, including, but not limited to:
1. Will the proposed land use spread noxious weeds?
  2. Will the proposed land use negatively impact water quantity?
  3. Will the proposed land use negatively impact water quality?
  4. Will the proposed land use negatively impact air quality?
  5. Will the proposed land use negatively impact soils?
  6. Will the proposed land use negatively impact native vegetation?
  7. Will the proposed land use create surface water drainage impacts?
- F. Will the proposed land use negatively impact public infrastructure, including but not limited to; roads, bridges, culverts, including, but not limited to:
1. Will the proposed land use exceed the recommended Daily Traffic Trips (based upon current Park County Transportation Standards) on any county-owned and maintained road?
  2. Will the proposed land use result in heavy truck and equipment traffic that will require increased maintenance of any county-owned and maintained road, bridge or culvert?
  3. Will the proposed land use increase county-maintenance of any other county-maintained infrastructure?
- G. Will the proposed land use negatively impact local (County) services or facilities local government is authorized to provide, such as water supply, sewage disposal, law enforcement, fire protection, emergency services, transportation systems, noxious weed control?
1. Will the proposed land use increase fire risk in the area?
  2. Will the proposed land use be located outside a Fire District?
  3. Will the proposed land use incorporate technologies, systems and features that minimize the risk of wildfire and structure fires?



4. Will emergency service providers have adequate access for emergency purposes?
5. Will the proposed land use generate additional school children? And if so, will the associated School District have the capacity to enroll additional school children?
6. Does the proposed land other applicable permits from local, state and federal agencies? And if so, are those permits approved accordingly?

H. Will the proposed land use impact wildlife and wildlife habitat, including, but not limited to:

1. Will the proposed land use eliminate critical wildlife habitat, as may be defined by Montana Fish, Wildlife and Parks?
2. Will the proposed land use impact critical wildlife corridors, as may be defined by Montana Fish, Wildlife and Parks?
3. Will the proposed land use attract wildlife in the area?
4. Will the proposed land use result in increased wildlife/human conflicts?

## **XII. ENFORCEMENT, PENALTIES**

Whenever a violation of these regulations occurs or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall then properly record the complaint and investigate and take action thereon as provided by this District.

- A. If any land use is developed or implemented, which would otherwise require a Conditional Use Permit, and is found in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may institute any appropriate action or proceedings to:
  1. Prevent the unlawful development or implementation of a non-permitted land use; or
  2. Restrain, correct, or abate a violation.
- B. Upon receipt of information pertaining to a potential violation, the Zoning Administrator will investigate the claim and verify nonconformance with the District regulations. The Zoning Administrator will notify the landowner(s) of the perceived violation and order the land use be removed or require submittal of the proper permits. The Zoning Administrator may apply reasonable time constraints on removal of any violations, or submittal of a Conditional Use Permit Application. If the landowner does not comply, the matter will be submitted to the Park County Attorney's Office for continued enforcement proceeding.
- C. Landowner(s) may appeal any enforcement proceeding as outlined under Sections 76-2-226 and 76-2-227, MCA.