



Planning Board Agenda

Thursday - April 15, 2021 4:00 PM

Virtual

Login Info:

<https://us02web.zoom.us/j/82231893225>

Phone Info:

Meeting ID: 822 3189 3225

One tap mobile

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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

March Meeting Minutes

[3.18.21 PB Minutes.docx](#)

NEW BUSINESS

Discussion of Growth Policy Goals and Objectives and Board Direction

Response to Public Comment from Previous Meeting

OLD BUSINESS

Update on Phase II of the Draft Conflict Mitigation Zoning District

[Updated Draft Informal Review Process Recommendation 2-19-2021.pdf](#)

Update on Enforcement Meeting

Staff Updates



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



County Planning Board Minutes
Virtual Meeting
March 18, 2021

Call to Order and Introductions

John Heidke
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

Sean Hill provided public comment.

Frank Schroeder provided public comment on behalf of Jean Keffeler.

Wendy Riley provided public comment.

Ken Cochran provided public comment

Jen Madgic provided public comment.

Ann Donahue provided public comment.

Review and Approval of Minutes from Previous Meeting

February Planning Board Minutes

Motion:

Motion made by Taya Cromley, Motion to accept February Planning Board Minutes as written; second by Dean Nelson; all in favor. Motion passes.

Old Business

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

Mike Inman presented the updated language based on Board comments from the last meeting in the Draft Conflict Mitigation District.

The Board discussed the new language surrounding residential uses and had a robust discussion on what constitutes agricultural and what the threshold into commercial might be.

The Board determined that the Draft was at a point where it was ready to be moved forward to bring to the public and anticipated public comment significantly influencing further iterations of the draft. The Board then discussed the importance of public input and the best ways to garner as much public feedback as the Draft moves into Phase II of the outlined process.

Motion:

Motion made by Dean Nelson, Motion to share the Draft Conflict Mitigation Zoning Regulations in their current iteration with the public and to move the Draft to Phase II; second by Lara Birkes; all in favor. Motion passes.

New Business

None.

Project Updates

Mike Inman informed the Board he had met with State Senator Esp and the Montana Association of Counties Attorney in order to discuss some of the land use bills and perceptions being considered in the current State Legislative Session.

Mike Inman also informed the Board he and Lawson Moorman met with Friends of Park County to discuss the Conflict Mitigation Zoning Draft as well as other land use issues and priorities in Park County.

Lastly, Mike Inman informed the Board that he was meeting the following week with the Commission and the Attorney’s office to consider moving forward in hiring a Code Enforcement Officer.

Discussion of Next Agenda

The Board asked for an update on the enforcement meeting at the next Board meeting.

Board Correspondence and Future Discussion Items

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

Public Comment of Items on the Agenda

Destin Sweeney provided public comment.

Johnathan Hettinger provided public comment.

Frank Schroeder provided public comment.

Jerry Ladewig provided public comment.

Wendy Riley provided public comment.

Ken Cochran provided public comment.

Adjournment

Park County Planning Board

Process for Review and Consideration of the Park County Conflict Mitigation Zoning District and Regulations

Updated on February 19, 2021

The Park County Planning Board will follow the following informal review process as part of the consideration of the Conflict Mitigation Zoning District and Regulations. The most recent updates were deemed necessary to reflect ongoing discussions and delays in the initial process. These timelines are intended as guidelines only and may be altered or extended as necessary.

1. **Phase I (October through March-April 2020-21):** The Board will focus on the extent of the District boundaries and the content of the District Regulations to ensure overall consensus and understanding. Proposed revisions by the Board should be considered during this time-period. The Board will continue to update the Abstract to reflect additional efforts and modifications to the process.
 - a. **Subcommittee:** During this initial time-period the Board may want to appoint a subcommittee to further explore the District boundaries and regulations.
2. **Phase II (April 2021 through June/July 2021):** Overall: The Board will take all available steps to ensure the public has ample opportunities to better understand and comment on the proposed District and Regulations, and account for social distancing and remote meeting requirements, including, but not limited to:
 - a. Post the draft District and Regulations to the Website and place hard copies in various public buildings/offices throughout the county. Create online comment form for easy access and submission.
 - b. Post overall process and meeting day/time/locations on website
 - c. Develop “Frequently Ask Questions” document to be published on county website.
 - d. Develop online survey(s) designed to solicit general feedback and allow comment—this can be distributed widely using social media, newsletters and advertising.

- e. Notice the draft District and Regulations and overall process format/information in the Enterprise as well as other publications throughout the county, such as the Shields Valley E-News Letter, the Cooke City News Letter, the Gardiner News Letter.
 - f. Reach out to community agency/groups and offer to attend already scheduled meetings to discuss/answer questions. Assign Board members to accompany Planning Staff to attend these meetings during this time period to educate the public and answer questions.
 - g. Include a public comment agenda item for each Board meeting during this time to allow members of the public opportunities to provide comment.
 - h. Network through informal channels in each community to ensure area residents are aware of the process and opportunities for comment.
3. **Phase III (July through September 2021):** The Board will further refine the draft District and Regulations based upon public comment, if necessary, and consider making a recommendation to the Park County Commission.