

October 26, 2010

A public hearing was noticed in the Carbon County News, the Post Office and City Hall for a public hearing held on the 2010 Zoning Regulations. The public hearing was opened by Mayor Roat at 6:30 p.m.

Sanderson noted for the record that Heather Quinn submitted a letter that will be put in the file. He said a brief summary of the letter showed her to be in support of the continuation of vacation rentals in the Hi-Bug R2. Sanderson said there has been some misinformation as the Planning Board has recommended vacation rentals in all residential zones.

Sandy Conlee, 307 N. Haggin, said she has a lot of experience with vacation rentals and the people that use these rentals take very good care of the home as the cost is generally high enough to ensure this. She said they have never had an issue with neighbors regarding things like noise on any of their rentals.

Leslie Bachmann, 119 W. 7th, said she does not want to see the Hi-Bug area become commercial and asked if the zoning could speak specifically to vacation rentals only. Sanderson read the uses in the R2 zone area where Bachmann resides and also listed the conditional uses in this zone. He said he does not classify any of the residential zones as commercial, however they have the potential for commercial, but most of the permitted uses are protected by law.

Diann Larson, 2 S. Platt, has a concern with the increased density that will take place in the R3 zone, specifically the parking. She likes this area to be available for parking during events that occur in Red Lodge. She feels the zoning comes up short with making sure off street parking will be used by tenants. She would like to see the Ordinance deal with this issue. It was said that the off street parking would be a requirement but there are no laws that prohibit people from using on street parking as long as they follow all laws.

Kathleen Delahanty, 12 S. Platt, said she is concerned with the R3 district and the amount of the lot that can be built upon. She said this will greatly reduce green space. She would like to see this percentage dealt with. She would like to see the front setback be changed from the current 10 feet to 15 feet. She said she would also like to see some incentives addressed that would perhaps entice people to keep the visual historical values of their homes. She would like to see this encouraged.

Brent Moore, 501 N. Cooper, thanked the Planning Board for the work they have done on the Zoning Ordinance. Moore raised a concern about processing and approval on commercial projects that are in excess of 2000 square feet in size. Sanderson/Stewart, City Engineers, answered Moore saying that there were conditional use permit standards as well as the standards of general applicability to be used.

Mayor Roat closed the public hearing at 6:50 p.m.

Council Meeting

The Red Lodge City Council met in regular session on October 26, 2010 at 7:00 p.m. The meeting was called to order by Mayor Roat followed by the Pledge of Allegiance to the Flag.

ROLL CALL OF OFFICERS Present: Mayor Roat, Aldermen Kampfe, Mahan, Richter, Labrie, Kennicott and Priest. Absent: None.

MINUTES OF OCTOBER 12 Motion by Mahan, second by Labrie to approve the minutes of the October 12 meeting as corrected and submitted. On roll call vote all Aldermen present voted "Aye". Motion carried.

COMMENTS FROM PUBLIC REGARDING AGENDA ITEMS None

SPECIAL COMMITTEES – Beartooth RC&D – Annual Report to Council Carla Lawrence, Coordinator for Beartooth RC&D, refreshed the Council telling them the names of the staff members at RC&D and what positions they held. She said there are eight RC&D's located across the State of Montana. Beartooth RC&D covers five different counties, Carbon, Stillwater, Big Horn, Sweetgrass and Yellowstone. She said that RC&D's are non-profit. Joel Bertolino handed out a pamphlet showing the projects that are being or were worked on during the past year.

ADMINISTRATION – Accept Brewer Right-of-Way Motion by Kampfe, second by Labrie to accept the Brewer right-of-way and the certificate of survey. On roll call vote all Aldermen present voted "Aye." Motion carried.

Sanderson said this right-of-way is a great donation from Mr. and Mrs. Brewer. He said the value of this gift is about \$380,000. The Brewer's were greatly thanked for giving the City this right-of-way.

Police and Emergency Services – Long Grass and Weeds Proposed Revisions to Ordinance This proposed ordinance will be sent to the City Attorney for his review before it comes to the Council table. Kennicott questioned if the cost would be greater with the new ordinance by making it a criminal offense. She asked who would be giving out the citations. She was told the initial contact would be through the Fire Inspector and he would issue the citations. Mayor Roat said his hope is that with time and hopefully articles in the newspaper people will begin to understand the necessity of taking care of tall grass and noxious weeds and that hopefully citations being issued will be minimal.

Anner Marble asked if this ordinance would criminalize a person by having long grass or noxious weeds. The Mayor said this citation would be a misdemeanor and would go on no record. He said it would only come to City court to be resolved such as a parking ticket would.

Committee Meeting Kennicott said the next meeting of the Ambulance District Board will be November 5, 2010 at the Fire Hall at 1:00 p.m. The Interlocal Agreement is still being processed by the City Attorney and will hopefully be ready this month for the Council to approve. The first payment to the Ambulance District should be received in December with tax payments.

The Local Emergency Planning Committee was held in Bridger on October 19 with only five people attending. The next meeting will be November 16, 2010 at the Fire Hall at 1:00 p.m. Public involvement is appreciated and anyone can attend these meetings.

Kennicott said the Police Department is ready for the new DUI ordinance. There will be no changes to the basics of probable cause and the need will be there as to how a person is informed of the misdemeanor offense. Chief Pringle is consulting with Kent Young as to what language should be used for informational purposes.

Kennicott said there will be an important hearing held on November 4, 2010 from 6:00 to 8:00 p.m. regarding Highway 78 at the Roosevelt School. This will be of particular interest to all but also to the Fire/Ambulance Department as the proposal has a roundabout being built at the intersection of Highway 78 and 212 where the Fire Hall is currently located.

The next DUI Task Force meeting will be held at Red Lodge Pizza Co. on October 28, 2010 at noon. Community participation is certainly welcomed.

The new hospital is having various walk throughs for the Fire and Police. The public open house will be held November 6, 2010 from 2:00 p.m. to 5:00 p.m.

Land Use and Planning – Ordinance #889 – Zoning Regulations – First Reading
ORDINANCE NO. 889

AN ORDINANCE ADOPTING THE 2010 RED LODGE CITY ZONING CODE AND OFFICIAL ZONING MAP #7 FOR THE CITY OF RED LODGE, MONTANA. AMENDING TITLE 12-4 AND TITLE 12-5 AND REPLACING THEM WITH TITLE 12 CHAPTER 4 OF THE RED LODGE MUNICIPAL CODE.

WHEREAS: § 76-2-301 et. seq. of the Montana Code Annotated authorizes the City of Red Lodge to adopt and enforce local zoning regulation to promote the public health, safety, morals, or the general welfare of the community; and

WHEREAS: The provisions of Montana Law allow municipal governments to regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of the lot that may be occupied; the size of yards, courts and other open spaces; and

WHEREAS: It is in the public and private interest for the City to establish use controls that limit the density of population; and the location and use of buildings, structures, and land for trade, industry, residence or other purposes; and

WHEREAS: The Red Lodge City Charter provides for the exercise of self-government powers; and

WHEREAS: The Red Lodge Planning Board and Zoning Commission prepared Zoning Regulations and a Zoning Map for the City of Red Lodge; and

WHEREAS: The Planning Board and Zoning Commission did on September 15, 2010 conduct a public hearing on the proposed regulations and map; and

WHEREAS: The Planning Board and Zoning Commission on a 5-1 roll call vote recommends that the City Council adopt by ordinance the Zoning Regulations and Zoning Map for the City of Red Lodge, Montana. And

WHEREAS: The Red Lodge City Council did conduct a duly noticed Public Hearing on October 26, 2010 on the proposed Zoning Regulations and Zoning Map.

Now therefore:

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF RED LODGE, MONTANA:

The Red Lodge City Code is hereby amended in those parts set forth below to read as follows:

Title 12 Chapter 4 of the Red Lodge Municipal Code shall be the Red Lodge Zoning Regulations including Official Zoning Map #7.

Be it ordained by the Council members of the City of Red Lodge.

1. The City Council of the City of Red Lodge adopts the 2010 Red Lodge Zoning Regulations and Official Zoning Map #7.
2. All ordinances or parts of ordinances inconsistent with the ordinance are repealed on the effective date of this ordinance.
3. It shall be the duty of the City Clerk to maintain the official zoning map.
4. It shall be the duty of the City Clerk to file a certified copy of the Ordinance, the Zoning Regulations and Official Zoning Map with the Carbon County, Montana, Clerk and Recorder.
5. This ordinance shall be in full force and effect thirty (30) days after its final adoption by a majority of the elected members of the City Council.
- 6.

Max Fogelsong, Sanderson/Stewart, stated that one of the purposes of going through this large exercise was to update the existing zoning code to make it clearer and easier for people to use. One of the main guiding documents was the Growth Policy. Another big portion of the project was to make a new zoning

map. A guiding document for this was the current land use map. These zoning regulations were made Red Lodge specific as much as possible.

Barb Beck also helped on the work done on these regulations. She said there are many more explanations in the new regulations to help people understand what the City is trying to accomplish. She said a couple of new things were discussed. One of these items being wireless communications and where these facilities should be located and what they should look like. The Airport Safety Overlay is now clarified and shown on the map. Clearer map boundaries are now shown and they are consistent with the GIS information the City has.

Sanderson said that when all is done Chapter 12 of the Municipal Codes will still be the Development Code but there will then be four chapters. These chapters will be the Growth Policy, the Subdivision Regulations, the Floodplain Regulations and the Zoning Regulations. The current Chapter 12 will be entirely superseded when these four chapters are completed.

The legal description of the properties involved is all lands that are within the incorporated City of Red Lodge located in Carbon County, Montana. All property within the corporate limits is subject to zoning under the 2006 Development Code. The Planning Board went through about seven months of meetings and work sessions and conducted a public hearing on September 15, 2010. First reading and public hearing are scheduled for the City Council today, October 26, 2010. The second reading, should the ordinance pass this evening, will be scheduled for November 9, 2010.

The draft document creates four residential zones. The Growth Policy speaks to expanding opportunities within the residential zoning district. This created the new R3 zone or medium density zone. In the commercial zones a new zone was included as Commercial Mixed Use Zone and labeled C-2. Two new public use zones were included. P-1 is limited to lands owned by the Federal, State, County or City government. P-2 is limited to lands owned by public education entities.

Sanderson summarized the rational basis of zoning. In the State of Montana, all jurisdictions proposing to zone or rezone property or to adopt or revise their zoning regulations must issue findings of fact on a twelve point test that constitutes the rational nexus/legal basis for the adoption of a zoning district, zoning regulations, or changes to zoning or zoning regulations. This rational nexus is called the "Lowe Test".

1. Is the zoning in accordance with the Growth Policy? There are six statements in support of the finding that the recommended zoning regulations and zoning map are in accordance with the Growth Policy and other adopted rules and regulations of the City.
2. Is the zoning designed to lessen congestion in the streets? There were four statements recommending the zoning will lessen congestion in the streets by insuring orderly growth and development of the property that is consistent with the proposed zoning and other regulations adopted by the City.
3. Is the zoning designed to secure safety from fire, panic and other dangers? There were three statements in support of the findings to recommend the zoning will provide safety to residents and visitors to the City from fire, panic and other dangers.
4. Is the zoning designed to promote health and the general welfare? There were three statements supporting the finding that grouping together of like and consistent uses promotes the health and general welfare of all citizens of the City. Further, the recommended zoning is substantially consistent with the existing zoning in the neighborhood.
5. Is the zoning designed to provide adequate light and air? There are two statements supporting the zoning will insure the provision of adequate light and air to residents of the City through various development limitations.

6. Is the zoning designed to prevent the overcrowding of land? There are two statements and sub-bullets supporting the finding that existing standards of the recommended zoning will prevent the overcrowding of land.
7. Is the zoning designed to avoid undue concentration of population? There are four findings to support the existing standards of the recommended zoning will prevent the undue concentration of population by encouraging the most appropriate use and residential density at any given location within the jurisdiction.
8. Is the zoning designed to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements? There are three findings that the standards of the recommended zoning will insure the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.
9. Does the zoning give reasonable consideration to the character of the district and its peculiar suitability for particular uses? There are five statements supporting the finding the recommended zoning gives due consideration to the character of the existing neighborhoods, within the City as well as suitability for the particular uses.
10. Does the zoning give reasonable consideration to the peculiar suitability of the property for its particular uses? There are three statements of support finding that the recommended zones give reasonable consideration to the peculiar suitability of the property for its particular uses.
11. Will the zoning conserve the value of buildings? There are four statements of support finding that the recommended zoning will conserve the value of buildings.
12. Will the zoning encourage the most appropriate use of land throughout the municipality? There were four statements of support finding that the recommended zoning will encourage the most appropriate use of land throughout the municipality.

Sanderson had two items that he recommends changing in the draft code. The first is to add a line for authority in the R4 to be consistent with the permitted use. This is to have more than four units in this zone to require tertiary review. The limit is being kept down to where the prevailing zoning establishes acceptable use regiments. The second change deals with the sign code. A promise was made to make it easier for the business community to comply with outdoor advertising. It was also promised to not reduce the amount of area that would be granted for signage. Sanderson said the draft code speaks to 60 square feet and the current sign code allows for 120 square feet. Sanderson said he recommends the Council change the sign code to a maximum of 120 square feet. He said with these two changes the recommendation from the Planning Board is the staffs recommendation to find the proposed 2010 Zoning Regulations and Proposed Official Zoning Map #7 reflects the 2008 Growth Policy, the rational nexus for the adoption of zoning has been met or exceeded by the proposed regulations and that the citizens of Red Lodge have participated in the creation of the proposed Zoning Regulations and Zoning Map #7.

Labrie said she would like to see the front setback requirement in the R3 zone be 15 feet. She feels this would be adequate and more consistent with the houses already in the area.

Diann Larson spoke again to the parking in the R3 zone and the requirement of off-street parking. She said there is no penalty if the area is not maintained or designated. She would like the parking to be apportioned to the dwelling units. The Council is not sure how this can be enforced. This problem is understood but no conclusion was reached as how to make sure the off-street parking is used in the manner it is intended for.

Brent Moore spoke again to the criteria of building above 2000 square feet if it is a permitted use in the district. He knows this is very technical stuff but feels it is important. He said he knows the Growth Policy will be used as a guideline but he feels any good developer can challenge the policy in court and

the court will say that the policy is not regulatory. Some in the audience felt there should be some form of review on large development.

Motion by Labrie, second by Mahan that the City Council adopts Staff Report ZC-10-01 as findings of fact. Further I move to pass Ordinance #889 on first reading with the recommended changes made by Sanderson. On roll call vote all Aldermen present voted "Aye." Motion carried.

Amendment to motion by Priest, second by Kennicott to amend the Hi-Bug overlay to be prohibited to medical and professional office uses. On roll call vote those in favor: Aldermen Kampfe, Richter, Kennicott and Priest. Those opposed: Aldermen Mahan and Labrie. Motion carried.

Amendment to motion by Labrie, second by Richter to include the 15-foot front setback in the R3 zone. On roll call vote all Aldermen present voted "Aye." Motion carried.

Amendment to motion by Priest, second by Kennicott to strike C-2 from the standards in 4.4.33 short-term rentals. On roll call vote all Aldermen present voted "Aye." Motion carried.

Conditional Use Permit – Red Lodge Ales Red Lodge Ales is applying for a Class II Review and Conditional Use Permit. The conditional use permit is the expansion of a use that required a conditional use permit. The expansion per this application is to expand the on-site warehousing associated with the conditionally permitted uses.

Motion by Mahan, second by Kampfe to adopt Staff Report RLCU-10-5 and RLC2-10-6 and attachments as findings of fact. Further I move to approve the Class II application for the expansion of the Red Lodge Ales complex in accordance with the plans and specifications submitted for review and including the following five conditions:

1. That the development of the property be in accordance with the plans, specifications and documents submitted for review except as modified by these conditions.
2. That the developer shall obtain a building permit from the City and comply with any/all requirements including obtaining a certificate of occupancy prior to opening or conducting any of the activities discussed in the application
3. That the building plans and use specifications be approved by the Red Lodge Fire Department prior to the use and occupancy of the structure.
4. That at the time of reconstruction of Highway 212 that the northernmost approach to Highway 212 is limited to right-in, right-out in keeping with City Resolutions #3223 and #3228.
5. That this approval is for construction of a new facility for Red Lodge Ales to begin within one year from the date of issuance. After construction, the right of use is limited to the proposal submitted for public review except as modified by the conditions of approval. This permit may not be transferred to another party or user without the express written consent of the City.

On roll call vote all Aldermen present voted "Aye." Motion carried.

Conditional Use Permit – Boyd’s Motor Sports Boyd’s Motor Sports is applying for a Class II Review and a Conditional Use Permit. The conditional use permit is for the expansion of a use that required a conditional use permit. The expansion per this application is to expand the on-premise warehousing associated with the conditionally permitted uses. Sanderson said the items of interest on this request were: a) the aggregation of the lots. There are three lots and one of the conditions states that the lots must be aggregated per City codes. b) City codes require that sidewalks be installed within one year.

Motion by Labrie, second by Mahan to adopt Staff Report RLCU-10-6 and RLC2-10-7 as findings of fact. Further I move to approve the Conditional Use application for the expansion of the Boyd's Motor Sports facility in the Community Entry Zone subject to the following conditions:

1. That the development of the property be in accordance with the plans, specifications and documents submitted for review except as modified by these conditions.
2. That the developer shall obtain a building permit from the City and comply with any/all requirements including obtaining a certificate of occupancy prior to opening or conducting any of the activities discussed in the application.
3. That the building plans and use specifications be approved by the Red Lodge Fire Department prior to the use and occupancy of the structure.
4. That the developer shall submit a landscaping or buffering plan for approval by the Zoning Administrator. The landscaping/buffering shall be installed within one-year of the date of issuance of this permit.
5. That the developer shall within one-year of the date of the issuance of this permit install sidewalks a minimum of five feet in width along 7th Street and Cooper Avenue adjoining the property.
6. That the property shall be aggregated into a single undivided ownership.
7. That a storm water detention system shall be designed by a licensed professional engineer or architect and installed prior to occupancy of the expansion area.
8. That the solid waste containers associated with the use shall be properly secured from wildlife.
9. That this approval is for the construction of a new facility for Boyd's Motor Sports to be completed within one year from the date of issuance. After construction, the right of use is limited to the proposal submitted for public review except as modified by the conditions of approval.

On roll call vote all Aldermen present voted "Aye." Motion carried.

Right-of-Way Disposition – Daly Avenue and 6th Street – Ronne Hopper Mr. Hopper purchased property located at 502 Chambers Avenue in 2002 from the estate of Beverly Coakley. There has been a fence along the west and south boundaries of the Hopper property for many years. The records recorded in the Carbon County Clerk and Recorder's Office show that the Coakleys owned the property for approximately 20 years. The Coakleys and Mr. Hopper have used and occupied the portions of Daly Avenue and 6th Street referred to in the Personal Representative's Deed throughout the time that they have owned the property. The real property tax records show that from tax years 1991 through 2007 City, County, State, School District and other taxes were levied and assessed against the portions of 6th Street and Daly Avenue and were paid by the Coakleys and Mr. Hopper.

Forrest Sanderson sent Mr. Hopper a letter from the City, which indicated that the City claimed an interest in 6th Street between Chamber and Daly Avenues. Hopper's attorney said the facts in this case show that Hopper was clearly a bona fide purchaser for value when he purchased the property from the Coakley Estate. Hopper also believes that he possesses a claim of ownership or title to the portions of 6th Street and Daly Avenue by adverse possession based on the use and occupation of the property and by the payment of real property taxes for more than five years by him and the Coakleys.

No records have been found that indicate the City ever closed, abandoned or vacated the street in question. In an effort to clear up any title issues Hopper is offering payment in the sum of \$5000 to the City as consideration for the execution and delivery of a Quit Claim Deed as well as any additional documents required in conjunction with the recording of the deed.

This matter has been turned over to the Public Works Committee for review to see if a recommendation can be found on this matter.

Public Works – CTEP/Safe Routes to Schools Sidewalk – Award Project The Montana Department of Transportation (CTEP) concurs with the recommendation to award the construction contract for the Safe Routes to Schools Project, in the amount of \$191,606.25, to Pioneer Mountain Substructures, Inc. This company was the low bidder for this project.

Motion by Richter, second by Mahan to accept the bid from Pioneer Mountain Substructures to provide sidewalks, curb and gutter, accessibility ramps, and storm drain modifications for the Safe Routes to School. On roll call vote all Aldermen present voted “Aye.” Motion carried.

Request Speed Study/Temporary Speed Reduction Highway 212 Sanderson told the Council that Beartooth Hospital and Billings Clinic are slated to move into their new facility beginning the week of November 15. The plan is to have the move completed by November 18. The speed limit at this location is 55 mph and transitions to 70 mph. Sanderson said he saw this speed could be an issue so he requested, from MDT, a reduction in the speed limit during this move. This request was denied. What MDT did offer to do is put up standard warning signs indicating the slow traffic and vehicles entering onto the highway and encourage motorists to be cautious. The hospital and clinic agree to comply with this. Sanderson said this does not address the long-term problem of the traffic that will continue to be in this area. Sanderson said with the hospital coming on line in this area the traffic speed needs to be reduced. He said the Council would need to request another speed study on this stretch of highway with the end product being a maximum speed of 45 mph with a preference of something less.

Kelley Evans said if a study is done she would like to see it be as comprehensive as possible. She suggested a double yellow line (no passing) from First Street to Two Mile Bridge Road.

Motion by Mahan, second by Richter to request a formal speed study for the corridor where the hospital is located with the goal of reducing the speed to a maximum of 45 mph and hopefully even less. On roll call vote all Aldermen present voted “Aye.” Motion carried.

Amendment to motion by Mahan, second by Kampfe to include a no passing area zone from First Street to Two Mile Bridge Road. On roll call vote all Aldermen present voted “Aye.” Motion carried.

Information Mahan said the committee met with Mr. Fordahl and he has agreed to withdraw his request to the City for the latecomer’s agreement. Mr. Fordahl has submitted a letter to the City stating he would like to withdraw from the agenda this evening and postpone the vote until any unresolved issues or deficiencies have been addressed. Mahan said the committee feels strongly that in terms of the City there are no unresolved issues or deficiencies that need to be addressed. She said if Mr. Fordahl wishes to pursue this he is on his own.

Mahan said that Boyer has winterized all his equipment. She said the automated meter project is about 1/3 completed.

Sanderson said a letter was received from School District #1 requesting the waiver of building permit fees for the new high school. This is not an actionable item for this evening and Sanderson said if the Council would like he can place it on the next agenda. However Sanderson said these fees cannot be waived. The Building Department is run just like water and sewer and if the school were to be given back their fee money everyone would need to be reimbursed. The City would then no longer have a Building Department. A letter will be written telling the school of the City decision.

CITIZEN REPORT Jenn Nelson spoke to the Council for the Red Lodge Merchants and Lodging Association. She gave the Council a collection of postcards promoting the 75th Anniversary of the

opening of the Beartooth Highway. She said that on November 16, 2010 Mayor Roat, Angela Beaumont and Patty Davis will be approaching Yellowstone Country for a contribution of approximately \$5000 to help fund this celebration taking place on June 10 and 11, 2011. The budget for this celebration is \$14,000 with about half of it being collected at this time.

CORRESPONDENCE None

MISCELLANEOUS Mayor Roat pointed out to the Council that they received a copy of the map showing a portion of White Avenue. He said what is being used now is a corner of Gaylen Klein’s property and Boyer will be tasked with finding out about the certain ownership of the tiny piece of triangular property. If this property does, in fact, belong to Klein then the City will need to negotiate with him to continue using the street.

Mike Schoenike, Planning Board President, submitted a letter to the Council. He said that on September 22, 2010 the Planning Board and Zoning Commission members heard public comments on items of concern within the 2008 Red Lodge Growth Policy. Approximately 10 members of the public attended the meeting. All members who chose to speak expressed concern about the portion of the policy that refers to expanding the City’s gridded network of streets, specifically the extension of Hauser Avenue in the Highway 212 north corridor. Schoenike said the Planning Board has not made a recommendation either for or against opening up the Growth Policy for changes at this time.

Meeting adjourned at 9:30 p.m.

Mayor

ATTEST:

City Clerk