



MINUTES OF THE 7th OF DECEMBER 2023 MILLS PLANNING & ZONING BOARD MEETING

Board Members Present: Bob Greenley, Dale Smith, John Gudger and Chris Volzke were all present for this P&Z Meeting. Leon Norvell was absent.

City Staff in Attendance: Megan Nelms, City Planner, Sabrina Kemper, Community Development Director, Pat Holscher, City Attorney, Matt Williams, City Engineer and Kevin O’Hearn, Building Official.

Others in Attendance: Ron McMurry, Applicant, Shawn Gustafson, ECS Engineering, Peter Nicolaysen, Applicant’s Attorney, Mark Ayan, WYDOT

Acting Chairman John Gudger called the meeting to order at 5:00 PM on December 7, 2023, as a quorum was present.

Chairman Gudger asked board members if everyone had read the minutes of the November 2, 2023, P&Z Board meeting and if there were any noted changes. There were none. Board Member Chris Volzke made a motion to approve the minutes. Dale Smith seconded the motion. Chairman Gudger called for a vote to pass the minutes of the November 2, 2023, P&Z meeting. All ayes, motion passed.

Chairman Gudger asked Megan to present the first agenda item. Megan noted that the Commission should make a motion to remove the case from the table, as it had been tabled at the November 2, 2023, meeting. Chairman Gudger moved to remove it from the table for discussion. Dale Smith seconded. All aye, motion carried.

Megan then presented case number 23.08 FSP, the 257 Business Park Preliminary Plat. She noted that the plat had been revised since the previous meeting when the case was tabled.

Background:

The applicants are proposing to subdivide approximately 23-acres into a 4-lot commercial/industrial subdivision, with lots ranging in size from 2.30 to 13.88 acres in size.

Planning Considerations:

1. Section 17.18.020(i) of city code provides the following: “The town shall adopt and enforce standards for subdivision layout, street construction, water and sewer system construction and storm sewer construction, as deemed necessary to promote the health, welfare and orderly grown of the town (Ord 274 §2 (part) 1979).
 - a. The City of Mills has adopted by reference, and long applied in practice, the City of Casper Design Standards for Public Works Construction and

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Infrastructure Improvements (Chapter 16.16).

- b. Per 16.16.060, the minimum right-of-way/access easement width for a local street within low density development is 50’.
2. Per Section 17.18.020(e)(10)(c) all roads within the subdivision must be dedicated to the public.
3. Receive an approved Access Permit from WYDOT for the approaches off HWY 20/26 and HWY 257
 - a. Comply with all requirements of the WYDOT access permits
4. Add road names to all streets within the subdivision
 - a. The access between Lots 1 & 3 should be named Chapman
 - b. Provide a name for the access between Lots 1 & 2
5. Submit infrastructure plans, including:
 - a. Water distribution system plans
 - b. Sewage collection system plans
 - c. Road plan, profile and construction drawings
 - d. Drainage plan
6. Discuss plans for construction of subdivision infrastructure, including roads and water & sewer infrastructure.
 - a. Timeline for Permit to Construct
7. All cul-de-sacs shall have a diameter of no less than 96’.
8. Delineate the drainage easement/retention area on one of the lots.
9. Survey Review:
 - a. Add State Plane Coordinates, northing, easting, elevation, Convergence and Combined Factor to two (2) of the exterior corners.
 - b. The coordinates are in grid but the distances are in ground
 - c. Verify the north corner(s) of the plat and Lot 1. Review Instrument #866007 as excepted in Instrument #1143765, with regard to the WYDOT parcel.
 - d. There is a mis-closure of Lot 4 by 1.63 feet
10. Cosmetic Revisions to the Plat:
 - a. Add TO THE CITY OF MILLS under “Plat of 257 Business Park” in the title block on both plat sheets.
 - b. Make the adjacent subdivision and road names gray.

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Staff Recommendation: Staff recommends DENIAL of the preliminary plat. Adopted Design Standards require a minimum width of 50' for all public right-of-way/access easements.

The proposed subdivision is zoned Established Industrial with parcels of adequate size for a variety of commercial and industrial businesses. Public traffic on the streets will occur and is allowed, and the streets should be of adequate size and properly dedicated for future vehicular traffic, installation of utilities and future maintenance by the City of Mills. Public street/access easements shall comply with the minimum width as required by the design standards.

Chairman Gudger thanked Megan and asked if there were any questions from the Board. There were none at the time.

Chairman Gudger stated that he had some comments on the plat. He understands what the applicant is up against with proposed Lot 2 and the easements and thinks it would be okay to require only the widened access off Highway 257 and just allow an emergency only access off Yellowstone Highway.

Ron McMurry, the applicant, replied that access and usability requires the use of both accesses. He said using only the 257 access wouldn't work because all the traffic would load up at the stoplight because everyone would be trying to turn left. Chairman Gudger asked if the Yellowstone access would be a right in/right out only? Ron said it will not be signed that way, but realistically, that is what will happen because it will be very difficult at certain times of day to make a left turn out of the business park onto Yellowstone Highway. To lessen congestion, you need both accesses to be functional.

Chairman Gudger then clarified his statement, saying it wouldn't really be an "emergency only" access, but would be a secondary access. He then inquired about the City's adopted design standards. Megan replied that the City has, by resolution, adopted the same subdivision design standards as the City of Casper.

Chairman Guger then stated he would encourage the applicant to pursue a variance to the required street width of 40' as he believes anything larger is a hindrance to the development. He referenced the shared access at Outer Drive and Poplar that the applicant used as an exhibit at the previous meeting. Megan then clarified how that worked in the City of Casper, stating that they allow shared access because the intent is to keep traffic from going back out onto main roads as they travel from business to business. However, Casper requires that all lots have *frontage* to a public right of way. She stated that the way the plat is currently laid out, proposed Lot 4 would not have any frontage on a public right of way.

Mr. McMurry then stated that WYDOT doesn't want multiple accesses onto the highway and that is why they are looking at utilizing both accesses. The way the subdivision is currently laid out,

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all but one lot would have access. He stated that when you start adding curb and gutter to the streets, then the drainage doesn't work. Then they are looking at having to do storm sewer, drainage and catch basins. If you start adding in that cost, then he can't market the subdivision and sell lots. He then stated that Mills would not like what he put in there if he doesn't subdivide it. They would be different kinds of businesses that would not be aesthetically pleasing. His public access easements are a good idea to him. He can write up documents that allow for access and are enforceable.

Chairman Gudger inquired about the zoning, stating Lots 1 and 2 are commercial. Megan clarified and stated that all lots in the subdivision are zoned EI, Established Industrial. There was general discussion about uses and that gas stations are permitted in the industrial zones. Chairman Gudger stated he felt it was unreasonable to ask for a 50' wide street easement and he thinks 40' is more than enough. He is recommending the 40' be allowed and that anything larger will create a hardship because the lots are not big enough.

Matt Williams, City Engineer, asked the applicant if he envisioned a road section or how he would design the street? Mr. McMurry said he thinks the road coming in will be designed to handle the trucks and traffic. He does not want to install curb, gutter, and drainage because he wants to have each lot do their own on-site detention. He would stripe the roads properly and keep people on the roadway. If he has to put a city-standard street in, no one purchasing lots will pay him any more money, but it will be all on him to install the roadway and he loses 40 to 50 feet of land. If he can build it and make the new lot owners participate, then he can make money, but he can't do that if he has to install the road himself prior to lot sales.

Mr. McMurry went on, stating that they turnover rate in the area is very slow. You have all the costs of upkeep and paying taxes. His development has the advantage of getting people in to pay property taxes and improve the tax base.

Shawn Gustafson, the Applicant's Engineer, again showed the exhibit of the Sportsman's Warehouse area in Casper and how they utilize cross access agreements. Board Member Bob Greenley agreed, stating you will never see a Mills snowplow in this proposed subdivision because the city is not going to plow the road, but the people that access them will. But there is a problem when people can't plow city streets. Board Member Greenley stated he thinks the area at Sportsman's Warehouse is good and he doesn't think a standard street fits in this subdivision.

Mr. Gustafson then submitted other exhibits, first showing the intersection at Highways 257 and 20/26. He made the comparison to Wyoming Blvd and 2nd Street, stating roads like Gannett are further away from the intersection. He stated that WYDOT does not like city streets that connect too close to an intersection. He also brought up how 15th St. and CY Ave were configured in Casper at one time and stated that same in this case, when you put a public street close to a high-volume intersection, then you are asking for trouble.

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City Engineer Williams stated he now has a better idea of what the applicant is trying to do, but that drainage is going to be a large factor on this property. There is a large amount of water coming off this property and they are proposing a lot of pavement.

Chairman Gudger then asked about drainage and retention on proposed Lot 2. Mr. McMurry stated that he felt drainage should be addressed at the site plan stage, not the subdivision, because you don't know how much pavement will be put in. It's not something he feels he can give right now, and he feels there are a lot of things that can be done on individual lots that are not too expensive.

Engineer Williams stated that if all the water goes to a pond on site and there is no storm sewer, the water has to go somewhere, and where is that? Mr. McMurry replied that if he must design and install drainage infrastructure it kills his costs.

Board Member Greenley asked how Mr. McMurry would stop the water from Highway 257 from encroaching on the subdivision. Mr. McMurry stated that he would belly and funnel the water off of 257 and into a drainage. It would be graded in such a way that it would flow onsite, not back out on to the highway.

Megan reminded the Commission that design standards are part of the cost of development and required by all applicants seeking subdivision permits. Chairman Gudger stated that he doesn't think the land has the capacity to meet the design standards. He feels industrial lots are different than residential homes or apartments.

There was general discussion on the amount of traffic the subdivision will generate, but that the streets will be public and there will be traffic, especially from the proposed gas station. Megan then read the dedication statement from the revised plat. City Attorney Holscher stated that there is a difference between dedication to the public and dedication to the City of Mills. The way the dedication currently reads, it does not give the streets to the City, but rather dedicates the access easements to the public.

Mr. McMurry then stated that he wants the lot owners to be able to plow the roads themselves. He says the City will not be out to plow and the City will not maintain them and it adds cost when he has to go through the City or WYDOT for a permit for the roads. He stated that he has seen places like Boulder, CO, where people like Megan want Cadillac cities. He said that you can put too many requirements in place and then it becomes impossible for someone to even comply. He then provided an experience he had in Platte County and stated they had tried to push rules more stringent than DEQ and created something no one could comply with.

Megan replied and reminded the Commission that the City of Mills has adopted the same design standards as the City of Casper and requires nothing over or above the design standards required of development in Casper.

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Chairman Gudger stated he still feels there is something specific about this property that it cannot comply with the design standards. Peter Nicolaysen, the applicant's attorney then presented an exhibit which listed subdivisions previously approved in Mills that do not have 50' rights-of-way or easement. Mr. Nicolaysen stated that Title 17 of Mills code says easements must be dedicated to the public. The public cannot be prohibited from entering the proposed 40' easements, and emergency response vehicles would be able to enter as well. He feels that is an important piece of this subdivision design. And while he is not aware of the specific resolution number where Mills actually adopted the Casper design standards, within Chapter 16 (Casper Design Standards) it states that any of the requirements may be waived by the Commission or the City Council. He doesn't see this as a variance issue, but one that the Commission can recommend a waiver to the standards based on the limited access and nearness to the intersection because they are issues that would make a case for when the standards should be waived.

Mark Ayan with WYDOT then stated that the 40' approach meets WYDOT standards. They would allow a larger approach if the City requested or required it. The only time they go lower than 40' is for a residential or agricultural access approach.

City Engineer Williams then asked the applicant what he envisions maintenance looking like if the city granted the private access easements or maintenance. Mr. McMurry said that he has great cross access agreements that he has used previously which outline the maintenance requirements. They include items like snow removal, road maintenance and more. Each landowner would be responsible for contributing to the maintenance. Engineer Williams asked how the participation was broken down, lot wise. Would it be based on frontage or something else? Ron said yes, and then if Lot 2 didn't help pay, then the owner of Lot 1 would invoice them for their share of the costs. Megan clarified if responsibility would be by lot frontage, as Lot 4 is on the cul-de-sac with a small amount of frontage but is the largest lot in the subdivision. Mr. McMurry said maybe Lot 4 would not be a big user, as the topography and usefulness of the lot is not very high. However, he does not want to divide it up or leave an orphan parcel.

Megan then asked if Mr. McMurry would be around in the future to do enforcement of the agreement or if there would be a landowner association or something else. Mr. McMurry said no, that LOA's do not work. Each lot owner would enforce against each other.

Attorney Holscher noted that those types of agreements don't seem to work out, and that he currently knows of cases around the city where this specific topic has become an issue. Megan also noted that many times the landowners end up in front of the governing body asking for assistance. Mr. McMurry then asked if they could guarantee that the city would maintain the roads.

Board Member Volzke discussed general road maintenance and said that what happens in the future will affect future lot owners, whether vacant or not. He agreed that the city road maintenance is not always perfect, but at least there is an owner or entity where people can go to make

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complaints. He thinks that while the agreements may work out now, however 10 or 15 years from now when no one in the subdivision wants to deal with the roads, it will become an issue.

Mr. Nicolaysen commented that he believes it is dependent on the quality of the contractual arrangement on the cross-access agreements. You do have the right to take people to court and file liens against property. You can foreclose. He felt it was not going to make sense for someone to retain an attorney to say, "hey, I need \$400 more from the neighbor." For significant projects, it would certainly make sense that you would hire an attorney. The statutes allow people to foreclose to receive their monies owed and while it's not easy to do, it can be done, and you will get paid.

Chairman Gudger asked if there were any further questions.

Engineer Williams asked Mr. Ayan if they would make the access of Yellowstone HWY a right in/right out only? He stated that the probably would not, but since it will most likely function that way, they will keep an eye on it for the future.

Chairman Gudger then made a motion to allow 40' access easements without curb and gutter and Mr. McMurry can work out the drainage and cross access agreements. Attorney Holscher stated that the City of Mills would not accept roads dedicated in that manner, that it would be a private easement in favor of the public. He reiterated that a dedication to the public is different than one to the City of Mills. There was general discussion about the responsibility of the City to repair the street if a water main were to break. Board Member Volzke asked if there could be streets dedicated to the City but still allow the 40' width but not require the curb and gutter. Chairman Gudger said he kept hearing the concern that citizens can't plow the street. Attorney Holscher said that generally, people are not supposed to plow city streets. He stated the motion was unlikely to pass city council.

Mr. McMurry then asked if the easement was for the benefit of the city and the public, then the city would still be able to repair the street if buried utility was being worked on. Attorney Holscher stated it may be possible to work out an agreement. He would recommend the Commission require some sort of easement on behalf of the City. He went on to state that if they want to pass the plat to Council with conditions, it should be to approve it with easements in favor of the public, but that they require an express agreement be worked out that Mills would not be responsible for maintenance or anything associated with the access easement.

Building Official O'Hearn stated he is concerned about the level of future maintenance of the streets and the ability for emergency services to access them. Attorney Holscher stated that brings up a similar situation that occurred in Hanley Acres and those access easements. Chairman Gudger stated he would like to work with the applicant as he feels they have a reasonable request for 40' access easements. Attorney Holscher then stated that a possible motion might be to approve the plat, contingent upon agreement of language regarding the responsibilities of lot owners to

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maintain and repair the easements in so far that it would not require the City of Mills to do the same.

Board Member Greenley then inquired who “staff” was. There was general discussion that staff would be those representatives from the City of Mills, including the city attorney, planner, building official, engineer, community development director, etc.

Chairman Gudger then asked City Engineer Williams if he had any additional comments or concerns. Matt stated he has a better understanding now of what this development could potentially bring at full build out. He had concerns about having a “city street” in an easement. He understands the applicant’s desire for cost savings in not having to design to city street standards, however, he still has concerns about the drainage. He is aware that a lot of drainage design is addressed at the site plan review, but for this property, we already know of at least one commercial development, with the gas station being proposed on Lot 1, at the bottom of the hill where all the water goes. He also commented on the large amount of pavement this development is going to entail and that while it can be mitigated through good engineering and design plans, it is going to be a challenge.

There was general discussion about the drainage plan and that since there will be no over-lot grading, it is difficult to predict what is going to be placed where. Board Member Volzke asked how the drainage plan will account for water coming down the slope of the hill and how someone designing their lot layout accounts for the natural drainage. There was general discussion about the existing drainage of the property shown for the subdivision and trying to account for what exists. Mr. Gustafson said he understands where the comments are coming from and that it can be hard to handle with existing drainage and grading. In this case, they are not planning to make any improvements, just selling the lots as-is. He noted there is a small pond on a portion of the property and he doesn’t believe that pond can be breached without a permit. Chairman Gudger asked that, during site designs, for instance, the owner of Lot 1 cannot design their drainage to impact Lot 2. It was stated that is correct.

Mr. McMurry said that in his discussions with the proposed gas station, they are planning on bringing in fill dirt and creating a bigger pond to hold water that comes down the hill. There was general discussion about each lot having its own on-site drainage detention. Megan noted that the regulations do state that the applicant needs to submit a drainage plan with the subdivision application. Engineer Williams agreed and stated that he would at least like to see the applicant’s engineer at least submit the existing contours as the ‘drainage plan’ and it would show the flow and where water is currently going. There was general discussion about the existing state of the property and that it is a ‘hole’ but there is currently no major flooding and so it is what it is.

Mr. Nicolaysen inquired about drainage requirements in Title 17. He understood that the drainage plan wouldn’t be down to the site planning stage, but that there should be a general drainage plan to help address the water on all the lots. There was general discussion about ensuring drainage is

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addressed at the site level and past experiences from city staff receiving complaints from residents dealing with their neighbor's run-off.

Chairman Gudger then asked if there was any further discussion. There was none. He then asked for a motion.

Chairman Gudger made a motion to approve the case number 23.08 FSP, 257 Business Park, pending completion of planning considerations as presented in the staff report, with the following exceptions:

1. Waive the requirement that subdivision streets be dedicated to the City of Mills.
2. Acceptance of 40' public access easements for the subdivision streets.
3. Approved and signed agreement between the applicant and the City of Mills that there is no city maintenance of the ingress and egress public access easements on the part of the City of Mills.

Board Member Bob Greenley seconded the motion. Chairman Gudger and Board Members Greenley and Smith voted in favor, Board Member Volzke voted nay; motion carried 3/1.

Megan stated the case would be tentatively scheduled on the January 9, 2024, city council agenda. She also let the Board know that there would be items on the agenda for the Planning & Zoning Commission's regular meeting, which will be January 4, 2024.

With no further business, Chairman Gudger declared the meeting adjourned at 6:47 PM.

John Gudger, Vice-Chairman

Attested: Sarah Osborn