



**Yellowstone County Zoning Commission
Minutes for the Meeting of
Monday, January 14, 2019**

The County Zoning Commission met on Monday, January 14, 2019 in the Billings Library 1st Floor Conference Room, 510 N. Broadway, Billings, MT at 4:00 p.m. Following the public hearing, the County Zoning Commission will make a recommendation to the Yellowstone County Commissioners.

The Board of County Commissioners public hearing for Special Review #330 will be held on Tuesday, January 29, 2019, at 9:30 a.m. at 316 N 26th Street – 3rd Floor, Commissioner’s Hearing Room. The Board of County Commissioners will hear all persons wishing to speak relative to the proposed special review.

Chairman Wittman opened the meeting and introduced the County Zoning Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Karen Husman, Planner I; Tammy Deines, Planning Clerk

Commissioners and Staff		01/14/2019	02/11/2019	03/11/2019										
Jerry T. Ray	Commissioner	1												
Troy Boucher	Commissioner Vice Chairman	1												
Ryan Wittman	Commissioner Chairman	1												
Tyler Bush	Commissioner	E												
Todd Hewett	Commissioner	1												

Attending: See attached attendance sheets.

Public Comment

Chairman Wittman asked if there was anyone wishing to speak during the public comment portion of the meeting. He stated any member of the public can be heard on any subject is not on the agenda; the Yellowstone County Zoning Commission will not take any action on these items at this time, but could choose to add an item to the next meeting agenda for discussion. There was none.

Disclosure of Ex Parte Communication: YC Special Review #331: There was none. The Commissioners reported no Ex Parte Communications.

Motion. Approval of Minutes: December 10, 2018

Commissioner Boucher made a motion and it was seconded by Commissioner Bush to approve the December 10, 2018 meeting minutes as submitted. The motion carried with a unanimous voice vote.



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Item #1: REQUEST The legal notice for County Zone Change #691 into the record.

County Special Review 330 – 3760 Wise Lane - A special review request to operate a gravel extraction open cut mine in an Agriculture Open-Space (A-1) zone on a fraction in the NE ¼ and on a fraction of Lots 1 & 2 in Section 34, Township 1 South, Range 25 East, generally located at 3760 Wise Lane, a 59.21-acre parcel of land. Additional area will be included in the open cut mine area but is not within the Zoning Jurisdiction of Yellowstone County. Tax ID: D01161.

BACKGROUND

This is a special review request to open and operate a gravel mine generally located at 3760 Wise Lane, at the intersection of Wise Lane and Story Road. The gravel mine will consist of 4 areas to be mined but will not include the active agricultural operations or the flood plain riparian areas along the Yellowstone River. Only Area A as shown on the submitted site plan is within Yellowstone County's jurisdictional zoning area. All of the surrounding zoned areas are designated for agricultural uses (A-1). The County zoning regulations allow gravel extraction in all agricultural and residential zone districts by special review approval.

Special Review applications are reviewed using County zoning code criteria referenced in this report. Special Reviews do not require a resolution for approval, are not zone changes on property; rather, are tied to specific uses that are allowed in a given zoning district but are subject to a review by the County prior to the use being allowed. Special Reviews, unlike zone changes, may be conditioned to mitigate possible impacts from the use on the subject property or surrounding properties.

This area of West Billings was identified in the 2001 West Billings Plan as an area with rich gravel resources. There have been few gravel mines south of the interstate and west of Billings. Many have been located north of the interstate. In each case, it is the intent of a special review application to consider and place conditions on these applications to minimize any adverse impacts to surrounding property and county assets. This location is over 1 mile from an arterial street - South Frontage Road. Wise Lane and Story Road are designated as principal arterial streets, but neither is built to even a minimum arterial street standard. Both are two-lane older county paved sections with no shoulders and open drainage ditches. The lane width on Wise Lane and Story Road is approximately 9 to 10 feet resulting in an 18 to 20-foot-wide road section. It is likely any gravel hauling trucks will need to take more than 1-lane to travel to and from the gravel operation. The gravel operation will not include an asphalt plant or concrete batching plant. The proposed gravel operation includes visual and sound attenuation barriers along the east, north and west property lines of the entire 116.8-acre site. The mine site will not encroach on the riparian area along the Yellowstone River to the south.

Traffic counts on Wise Lane measure between 800 and 1,000 vehicle trips per day. No traffic counts have been collected from Story Road. The intersection of Wise Lane and South Frontage Road does have a higher than normal crash rate due to the lack of lighting,



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the geometry of the intersection and the higher speeds of traffic on South Frontage Road. South Frontage Road is posted at 55 mph.

The Planning staff reviewed the application and is recommending conditional approval based on the proposed findings of the 3 review criteria. Potential impacts to Story Road and Wise Lane as well as residents in the area are proposed to be mitigated by conditions of approval. Many of the proposed conditions apply to other gravel mine operations in Yellowstone County for the same reasons.

Special review uses must meet three primary criteria; 1) the application complies with all parts of the Unified Zoning Regulations, 2) the application is consistent with the objectives and purposes of the Unified Zoning Regulations and the 2008 Growth Policy, and 3) the application is compatible with surrounding land uses and is otherwise screened and separated from adjacent land to minimize adverse impacts.

This application conforms to the first criteria in so far that it is within a zoning district where gravel mining can be allowed by special review approval. The application also conforms to the second and third criteria. The zoning regulations adopted by the Board of County Commissioners have designated all zoning districts as locations where gravel mines may be allowed by special review approval. The 2008 Growth Policy encourages new development that is compatible and similar in form and use. The existing gravel mine is compatible with most uses in the area and other surrounding uses if conditions are imposed to mitigate impacts. Conditions of approval can ensure the mitigation of any potential negative effects on surrounding property.

RECOMMENDATION

Planning staff recommends conditional approval and adoption of the findings of the 3 review criteria for Special Review #330.

PROPOSED CONDITIONS

1. The approval shall be limited to a fraction in the NE $\frac{1}{4}$ and on a fraction of Lots 1 & 2 in Section 34, Township 1 South, Range 25 East, generally located at 3760 Wise Lane, a 59.21 acre parcel of land. Property included in the mine area but outside the zoning jurisdiction is not subject to these conditions of approval.
2. This special review approval is for establishment and operation of a gravel mine on the subject property. No other special review use is intended or implied by this approval.
3. The development of the gravel mine shall be in substantial conformance with the submitted site plan. Minor adjustments to the location of haul roads or phasing of active gravel mining within the 59.21-acre site are allowed.
4. Dust suppression shall be employed on all exposed rock, gravel, sand or topsoil.
5. A traffic impact analysis shall be submitted to and approved by County Public Works. The



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applicant will consult with County Public Works on the scope of the analysis. Any mitigation recommended by such analysis shall be implemented as required by County Public Works.

6. Internal haul roads shall be graveled with dust suppression or paved.
7. The site shall be reclaimed according to the plan submitted to MT DEQ.
8. A weed control plan shall be submitted and approved by Yellowstone County Weed Control.
9. Any mining activity within 500 feet of a residence shall be limited to the hours of 7:00 am and 8:00 pm.
10. The operator of the mine shall appoint an individual to act as a contact person and complaints about failure to comply with these conditions shall be directed to that person in writing as a first step in resolving the problem. The name, address and phone number of the contact person will be provided to Yellowstone County Code Enforcement, County Public Works and the County Commissioners. Failure to respond to a complaint or to reasonably comply with the conditions of approval will allow the matter to be brought to the attention of County Code Enforcement. Failure to comply with a notice from County Code Enforcement may be resolved by filing a complaint with the County Attorney by the Code Enforcement Officer.
11. These conditions of special review approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
12. Failure to comply with these conditions of approval of the special review use shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.

****NOTE**** Approval of this Special Review does not constitute approval of a building permit, zoning compliance permit, sign permit, or fence permit. Compliance with all applicable local codes will be reviewed at the zoning compliance permit level.

Discussion

Chairman Wittman called for questions from the Board. Per Commissioner Ray's request, Nicole Cromwell clarified and said part of the parcel in question is unzoned and does not need to meet County requirements. She stated DEQ has a form required to be approved as either unzoned or in compliance with zoning. Since there is split zoning, the applicant has to finish this process to obtain approval. Chairman Wittman asked regarding the additional requirements for this request. Ms. Cromwell said DEQ has a fairly rigorous process for open cut mining beyond the zoning review, including consideration of cultural resources and the flood plain associated with the Yellowstone River. The DEQ permit is on hold until this review is completed. An



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unidentified citizen was recognized by Chairman Wittman who reminded him his comments will be addressed during the public hearing. An unidentified citizen asked aloud about the flood zone. Ms. Cromwell stated the flood plain area is governed locally through the State but not through zoning.

Applicant

Chairman Wittman called for the petitioners.

Ed Walker, FirstMark Materials, 6611 Trade Center Ave. Billings, Montana

Mr. Walker represents the operator of the gravel operation. FirstMark Materials and FirstMark Construction has about 250 employees and are based in Billings. They have offices in various locations and have experience with other gravel pit operations. FirstMark operates the Johnson Lane Materials gravel pit. They were approached by the Limpp Family about two years ago as they wished to build a pond on their property located at Oscar's Park, a well-known destination place. It was determined this will be a great opportunity to work out an arrangement to mine the area and sell the gravel commercially. The parcel under consideration for the mining operation is approximately 120 acres and the pond is about 90 acres. Their plan is to mine for a period between 12 and 15 years, depending on the market in the area. This will produce a good source of aggregate at a low cost for users in the Billings' west end market. This property will have a minimal impact to residents as it is surrounded on the north and east by agricultural property; to the south by the Yellowstone River; and by a feedlot on the west. Mr. Walker gave the reasoning for this application: maximizing the area for the pond; there is existing approach in the zoned area onto Wise Lane and Story Road; and their desire to move the equipment to the furthest part of the property away from residential areas and businesses. Mr. Walker said they have talked to several persons in the area in an attempt to address concerns. He clarified and said the DEQ application will not be submitted until a signature is obtained from the County on this zoning request and zoning compliance form. They expect the completed permit will be submitted the first week of February. The review period is about 45 days and all property owners within 1/2 mile of the location will be notified of a DEQ public meeting to take comments.

Discussion

Chairman Wittman called for questions from the Commission. Commissioner Boucher noted the proposed conditions and asked if the applicant is comfortable with the conditions. Mr. Walker stated they are familiar and in agreement with the proposed conditions, and intend to comply. Chairman Wittman asked what the estimated loads per day will be with the mining life expectancy of 12-15 years. Mr. Walker deferred to consultant, Mark Carlstrom.

Mark Carlstrom, 3139 Poly Drive, Billings, Montana

Mr. Carlstrom said it isn't unreasonable to expect 150 passes of truck activity on Wise Road during periods of high levels of mining activity and demand for product from the site. He clarified and stated a pass would be considered a truck leaving and returning. Chairman Wittman asked if there is a planned route for deliveries. Mr. Carlstrom noted a plan is a requirement but it currently isn't in place. He said it is about 1.2 miles from the potential access to Wise Lane. Trucks will travel up Wise Lane onto the Frontage Road, which is State highway.



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Public Hearing

At 4:32 p.m., Chairman Wittman opened the public hearing and asked for those in favor or in opposition of this application. He asked that testimonies be limited to three minutes.

Brent Lipp, 1914 Swanson Lane, Billings, Montana

Mr. Lipp is the acting superintendent of Canyon Creek School District. He read aloud a letter from the school board. The letter generally stated the board feels it is important to consider potential impacts of the gravel operation on Canyon Creek School and the existing surrounding businesses. He cited potential issues with noise pollution, increased traffic, water rights, water table management, and degradation of property values. Mr. Lipp voiced concerns with safety of the students who are transported by bus on Frontage Road, Wise Lane and Story Road. Mr. Lipp said they are unable to change their routes, and there is a bus stop at the corner of Wise Lane and Story Road. School bus routes are run at 7:25 a.m. and 3:20 p.m. daily, which is within the operation hours of the gravel pit. He stated the intersection of Wise Lane and South Frontage Road needs improvements and not an increase in truck traffic. He is aware there have been several fatal accidents in this area. He asked that more information be given during this process. Mr. Lipp stated they wish to ensure children and citizens are going to be safe. He suggested the community members impacted by the gravel pit have a say in the conditions of approval and informed on how they can be monitored and kept in check.

Jackie Kuhlman, 8908 Danford Ave, Billings, Montana

Ms. Kuhlman stated she concurs with Mr. Lipp's comments. She spoke to the high levels of high speed traffic on Danford Avenue. For the past four years, she has requested the County Commissioners conduct a traffic study on Frontage Road due to the number of accidents. She stressed the intersection of Frontage Road is very dangerous due to the limited visibility from all directions. Mr. Kuhlman said the roads need to be addressed as the gravel operation will make it worse. The road beds are not designed for heavy traffic. Needed improvements include shoulders on Wise Lane and a traffic light at the intersection. Ms. Kuhlman would like to see more monies to support the school and feels this is application a bad idea until more happens in this area.

Steve Owen, 2924 Wise Lane, Billings, Montana

Mr. Owen acknowledged Ms. Cromwell's presentation and said it sounds as if there isn't much that can be done legally to prevent this operation. He pointed out the gravel pit located next to Lockwood School. Mr. Owen asked if there is anything the Commission can do to prevent this operation. He commented the truck traffic will be a significant problem for road maintenance and safety, asked who will be responsible for the long term cost of maintaining the roads. Mr. Owen asked how the gravel pit operation will affect property values. He voiced concern with the mining operation water reducing the availability of water wells and potential for pollution issues. Mr. Owen said the "Swanky Roots" business will be negatively impacted by the location of a crusher across from their business. It is Mr. Owen's opinion FirstMark's first



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priority is to make money and they have no consideration of what it cost others to locate their business in this area.

Ken Frazier, 3185 Wise Lane, Billings, Montana

Mr. Frazier's house is located northwest of this location. He said the conditions of approval are not unique to this property as they are the same conditions used for other area gravel pit requests.

Mr. Frazier stated the Planning Division is obligated to the deal with the Growth Policy's elements of land use; aesthetics; natural resources; transportation; and community health; and this application does not address these elements. He pointed out there is minimal mention of the Yellowstone River or ground water in the staff report. Mr. Frazier said the biggest issue is the roads. He commented on the numerous accidents on Frontage Road and Wise Lane caused by high speed limits and roads not built to arterial standards. He read aloud sections of the staff report and said the road issues are not addressed in the conditions of approval. He said Wise Lane and Story Road used regularly for bicyclists. Mr. Frazier suggested conditions be imposed based on the area and the uniqueness of the property and that Staff "follow their own Growth Policy".

Joy Koerber, 3239 Brenda Street, Billings, Montana

Ms. Kerber deferred her time to Mr. Frazier and returned to her seat.

Peggy Glantz, 8928 Duck Creek Road, Billings, Montana

Ms. Glantz thanked Mr. Ken Frazier for his comments and the research he has done on this project. She brought up concerns with increased traffic, viability of drinking water, and disruption of the environmental flood plain area around the Yellowstone River. She said no one wants to live near a gravel pit and she asked the Commissioners to think of how this will impact the citizens living in the area.

Veronnaka Evenson, 9246 Kautzman Road, Billings, Montana

Ms. Evenson is the co-owner of "Swanky Roots" located at 8333 Story Road. She explained her business provides fresh produce to surrounding communities all year long by utilizing an aquaponics system in their greenhouse. The business is driven by fish providing nutrients for the plants which allows plant growth without using fertilizers. Ms. Evenson said she was contacted by FirstMark representatives who told her the rock crusher would be located across from the green house if the zoning application is not approved. Ms. Evenson has asked for additional research on the potential effects this operation may have on the well water. She is concerned as she has \$1 million invested in this business and does not wish to have it fail. Ms. Evenson urged the Commission to get more research and proof that this operation is not going to affect the surrounding community.

Dan Hickey, 3224 Wise Lane, Billings, Montana

Mr. Hickey's family have been in the area since 1963. Mr. Hickey understands the gravel



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operation is allowable in in this zone with the conditions. He would like to speak to the proposed conditions. He would like to see the rock crusher located as far south on the property as possible due to the noise and to limit the wind spreading dust. Mr. Hickey would prefer a condition stating the traffic analysis be reviewed by a group of the area residents. The condition for hours of operation should be clarified to match the hours of operation reported by FirstMark staff, 7:00 a.m. to 7:00 p.m., six days a week. A local person of authority from the mine should be appointed as the contact. He suggested adding Condition #13 to state there will be no asphalt or concrete batch plants allowed in this area; and Condition #14 stating no access on Story Road with the reasoning the proposed dike will create a holding pond of the Yellowstone River and eventually direct floodplain water to Story Road and flow toward his property. He would prefer a 40-50 wide greenspace to act as a screen instead of a dike. The access has to be to the east on Wise Lane below the Story Road-Wise Lane intersection. Another major concern is the water table and effects of dewatering the gravel mine on wells and Danford Drain.

Ken Frazier, 3185 Wise Lane, Billings, Montana

Mr. Frazier commented he has heard rumor FirstMark Construction does not carry insurance on their gravel trucks which is irresponsible and illegal. He said if this is true, it may give indication of the character of the company.

Robert Golubski, 3540 Duck Creek Road, Billings, Montana

Mr. Golubski is a retired firefighter who has been involved in answering calls for the accidents on Wise Lane, Frontage Road, and Story Road. He pointed out the elevation change on Wise Lane which contributes to accidents. He asked who will be responsible for the traffic analysis mitigation. He suggested a condition of approval to keep the traffic to Wise Lane as more issues will arise if it is directed closer to the school. He asked that the traffic analysis include consideration of foot traffic and bicyclists. He noted the line of sight is difficult at the intersection of Wise Lane and the Frontage Road and on vehicles traveling east and west on the Frontage Road are traversing at 65 mph. He stressed the traffic is a big issue. He asked what will happen if the violations imposed are not addressed. He suggested an additional condition stating if the permit is not approved the zoning can revert to what it is currently.

Kevin Kuhlman, 8908 Danford, Billings, Montana

Mr. Kuhlman said the traffic from the gravel pit will include employee traffic. He asked if FirstMark will sell gravel to the general public. He voiced concern with the additional wear on the roads as they were not constructed for this use and questioned how public traffic will be routed the proper direction. He adamantly expressed his frustration with semi and truck traffic traveling at high speeds in a 35 mph zone using jake brakes near his house on a daily basis. Mr. Kuhlman stated there are no shoulders or sidewalks and the safety of the children has to be addressed and maintained.

Heather Calderwood, 313 Duck Creek Road, Billings, Montana

Ms. Calderwood operates a wedding venue in this area. She stated the statistic of 150 passes of truck activity should be denoted as 300 passes a day not including employee traffic.



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Ms. Calderwood has children attending Canyon Creek School. She feels her business will be substantially impacted by this operation. Her business operates on Saturday evenings and her clients travel these roadways. The crushing process operating at 5:00 p.m. will limit her customer base. Ms. Calderwood said no one has made arrangements to not run the mining operation during her business hours or considered the safety of her clients coming to her venue. She generally has 200-400 people at an event every weekend, 6-9 months out of the year.

Ms. Calderwood stated FirstMark has made one effort to contact the neighbors and that has yet to happen, other than confronting the greenhouse and threatening to place the crusher in front of their business if this request is not approved. Ms. Calderwood related that other mining companies have questioned why FirstMark chose this parcel for their operation. She commented the Limpp family does not reside on the parcel and does not have to deal with the impacts. Ms. Calderwood voiced concern the proposed pond will have standing water with mosquitoes due to the lack of ingress or egress flows. She questioned whether FirstMark Construction is licensed and can deal with contaminated water or air particle pollution. Ms. Calderwood reiterated her concerns for her personal business, and this operation's effects on water quality, air quality, and the City water system. She stated they have a lot of questions and no answers. She submitted to the Zoning Coordinator and the Zoning Commission a list of 300 signatures from neighbors who do not wish to have the zone change or the mining operation.

Kris Fears, 8610 Danford Avenue, Billings, Montana

Ms. Fears is opposed to this application for all of the reasons that have been discussed. She pointed out the bus routes serve West High Students along with the students from Canyon Creek School. She stated the Shiloh Road overpass is in poor condition and cannot handle additional truck traffic.

Virginia O'Neal, 8921 Kautzman Road, Billings, Montana

Ms. O'Neal opposes this application due to the potential for water issues and children and pedestrian safety. Ms. O'Neal asked if FirstMark will furnish their water, drill new wells or provide cisterns if they lose their water. She the road space is limited said extra space is needed for gravel trucks. She said the applicant is lying to the residents if they say they are not going cause issues with road maintenance, water, and traffic safety.

Heather Calderwood, 313 Duck Creek Road, Billings, Montana

Ms. Calderwood pointed out a nearby parcel and said another oil company paid the delinquent taxes. She asked if this company an affiliate in any nature and will that parcel become a mine as well? Ms. Calderwood was reminded by a Commissioner this is not within the purview of this hearing. Ms. Calderwood disagreed and stated if this is approved, it is all connected.

Charles Schweigert, 9401 Rudio Road, Billings, Montana

Mr. Schweigert said he feels this company does not care about the people in this room. He said there are three existing gravel pits in this end of town. He commented he knows several



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contractors. He plans to notify contractors to ask them to boycott this company and eventually close their doors.

Dawn Calderwood, 4313 Duck Creek Road, Billings, Montana

Ms. Calderwood referred to the conditions of approval. She said the conditions do not address contamination from the trucks, oil spills, or gas spills onto this property. She stated she is surprised the City of Billings has not addressed potential for contamination of the Yellowstone river. She feels this all is to benefit the construction company or the Limpp family. She asked if the results from the test wells will be published?

Joy Koerber, 3239 Brenda Street, Billings, Montana

Ms. Kerber is a longtime resident and is this has been an agricultural community. She stated she doesn't know that a value can be put on life that can be taken from the community by traffic accidents. Ms. Koerber voiced concern with the Yellowstone River and the proximity of the mining operation. Her concerns are dust control; effects on livestock and horses; and having open ponds and mosquitoes.

Marty Davis, 3614 Mallard Drive, Billings, Montana

Mr. Davis is an avid motorcyclist and Director of the Beartooth Harley Owners Group. He stated he would like to address the traffic issues. He related he frequently takes large groups of motorcyclists up and down Wise Road and Story Road. He stated there is a huge impact at the intersection Wise Road and Story Road and intersection of the Frontage Road and Wise Road where his nephew was killed in a traffic accident. Mr. Davis stated he has made efforts to change this intersection by petitioning the State, the Board of County Commissioners, and the Legislature. He was assured a Traffic Study would be conducted this year or the next but have not heard of anything substantial. Mr. Davis stated he is afraid to drive in this intersection and is reminded of the hazards by the cross marking the his nephew's loss. Mr. Davis stated this proposal will not help with these issues, and affect the recreation of the area and the increase traffic impacts.

Colleen Cantrell, 3534 Duck Creek Road, Billings, Montana

Ms. Cantrell related there is traffic on any given day from early morning to late at night traveling at high rates of speed. Her primary concern is she has asthma and does not want additional dust. Ms. Cantrell said she finds a gravel pit ugly and she loves seeing the lights of the hydroponic business at night and wishes to keep things that way. She stated she is "85 years old and should be able to think of something pleasant and not worry about a stupid gravel pit so they can have more money in their pockets".

Mark Malsom, 3705 Duck Creek Road, Billings, Montana

Mr. Malsom has lived at this address for thirty years said they moved there as they wished to live in the country. Mr. Malsom stated this request is all about dollars and Mr. Limpp's financial



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issues should be his and not spread out among the residents of Duck Creek Road. Mr. Malsom believes there will be no reclamation of the property and the residents will have to live with it. He stated this can be resolved by this company and Mr. Limpp taking this operation elsewhere. He asked the Commission to put themselves in the residents' position as they do not want this approval.

Kelly Wiedrich, 3337 Duck Creek Road, Billings Montana

Mr. Wiedrich related his experience working on crushers and heavy equipment. He said even with the operation's dust control there is always a cloud of dust creating visibility issues. He commented on the high volume of noise from a pit area the equipment is loud. Mr. Wiedrich commented on the need for safety due to the narrow roads and said he regularly cleans up deceased pets off the road which are victims of the traffic. He said the truck traffic from the pit will be going where business takes their material and bicyclists and pedestrians will need to be wary. He commented this is not the only location to build a pit with easily accessible gravel and he feels this parcel should be residential instead of commercial. Mr. Wiedrich stated he can speak to hazards with a working pit. He asked how this will affect the ground water table for his property and the surrounding residents. He does not want to deal with year round dust.

Rebuttal

Chairman Wittman called for rebuttal from the applicant.

Ed Walker, FirstMark Materials, 6611 Trade Center Ave. Billings, Montana

Reclamation-FirstMark will post a bond generally in the amount of \$1.2-\$1.5 million as required by DEQ to cover reclamation costs if the mine is abandoned. They are required to reclaim the property as their plan and the permit will indicate.

Communication with Landowners- Typically, DEQ will hold a public meeting. The applicants are here today as part of the parcel is zoned and requires the special review process. All other questions will be addressed by DEQ and the permitting process.

Pollution of water-ground water issues-During the last County Zoning Commission meeting they requested additional time to have a public meetings to obtain the neighbors' questions.

After the Zoning Commission meeting, it was apparent there was a lot of opposition and they did not feel it was safe to have a meeting in that location. They decided at that time to notify DEQ and request re-resting of the ground water.

Chairman Wittman asked for information related to the aspects of permitting process.

Mark Carlstrom, 3139 Poly Drive, Billings, Montana

Traffic Impacts and Public Safety-The Special Review hearing is part of the process to obtain the required signed Zoning Compliance Permit. The Traffic Study to meet the condition of approval can be in process while doing the application for the open cut mining program.



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Open Pit Site Layout-This special review application included a preliminary site map. The permit application requires and detailed area map with land uses, a location map, and a reclamation map describing how the site will be reclaimed. There is a 28-20-page form to complete for the operation and reclamation plan which should address most of the concerns. Hydro Solutions is conducting an extensive ground water study to identify water pollution from one well coming toward the site and how to maintain level of water in wells. DEQ will not allow a permit on a site that dewater wells. Hydro Solutions has done a lot of ground water monitoring. FirstMark put in four monitoring wells to glean information on the groundwater. They have to address off-site impacts. Air quality is addressed through the DEQ Air Quality Management Program. All of the equipment is covered by an air quality permit regulating operation times and emissions. He said they have to take reasonable precautions to address fugitive dust.

Chairman Wittman asked if the operation will go forward if DEQ does not approve the permit request. Mr. Carlstrom stated the Open Cut Mining Program administers the Open Cut Mining Act and the rules adopted pursuant to the Act. If a company can comply with all of the rules and statutes, the Open Cut Mining Program must approve the permit application. Violations during operation are addressed through an enforcement division. If staff from the Open Cut Mining Program inspects the site and finds violations, they will forward a recommendation to the enforcement division who issues legal documents for proposed penalties. Mr. Carlstrom stated it behooves the operator to keep the operation in line.

Nicole Cromwell asked about the delinquent taxes on the property south of this parcel. Rick Limpp, (no address given), stated he is one of the property owners. He explained that although it may not be best practice, in the past he has let property go delinquent on taxes and then addressed payment depending on how cash flows go. He stated he has no knowledge of the tax situation and hasn't purchased any property.

Vehicle Insurance-Mr. Walker stated they are fully insured through an insurance company.

Staff Response: Nicole Cromwell, Zoning Coordinator

Legally can Yellowstone County prevent, stop, or disapprove this special review request for a gravel mine?- Under State law the County cannot impose unreasonable regulations nor disapprove this request under zoning. It is stopped at both the State level and in conformance with case law. The County Zoning Commission recommend imposing reasonable conditions on the request.

Implementation of the Traffic Impact Study and Improvements-Yellowstone County Public Works Department will require implementation of mitigation measures of any impacts that come out to the Traffic Impact Analysis.

Enforcement of Violations-The County enforces violations of the Conditions of Approval Code Enforcement Officer Mike Schieno investigates violations and they will be given at least 30-days to comply or abate the conditions violated.

If DEQ doesn't approve the permit for the mine will the Special Review request be void?

The gravel mine operation will not happen but the County's Conditional Approval for the Special



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Review will be in place for the zoned piece of the property. The conditions will have to be met for any future mining operation that may or may not come forward for that piece of property. Commissioner Boucher asked if the conditions laid out for this application are the extent of what can be imposed based on the criterion. He stated clearly there will be substantial traffic impacts. He asked if the Zoning Commission can recommend speed limit changes. Nicole Cromwell said for traffic issues there are traffic engineers who work towards mitigation of traffic impacts. She said the Commission can add conditions or modify the proposed conditions. Staff has found the proposed conditions proven as reasonable for application for gravel mine operations within Yellowstone County. Commissioner Ray asked what restriction can be imposed to ensure the gravel company pays for widening the road and bringing it up to County standards. He suggested addition of a condition of approval to require the company to bring the roads up to standards at the company's expense.

At 5:54 p.m., Chairman Wittman asked if there is anyone else wishing to speak in favor of County Special Review 330 – 3760 Wise Lane. Chairman Wittman closed the public hearing at 5:54 p.m.

There was an outburst from an unidentified woman in the audience asking if they can get answers for questions- "What is the reclamation going to look like? Are we going to get any results from the water testing? Are they going to ante up monies for roads, signs, and stop lights? Are they going to do the traffic study? Chairman Wittman responded and explained this goes back to putting the reasonable burdens to the different agencies to address the different aspects. The audience continued with outbursts of comments. Chairman Wittman used the gavel and called for order. He stated this application will be heard by the County Commissioners and announced the public hearing is closed. The outburst continued. Chairman Wittman asked those involved to continue the discussions outside of the room so the Commission can deliberate.

****At 6:00 pm Chairman Wittman called for a 10-minute recess.**

**** At 6:10 p.m. Chairman resumed the meeting for deliberation of this request and called for a motion.**

Motion

Commissioner Ray made a motion and it was seconded by Commissioner Hewett to forward a recommendation to the Board of County Commissioners of conditional approval and adoption of the findings of the review criteria for Special Review #330 with an additional condition of approval stating the applicant will pay for any improvements on County Roads that are needed based on the gravel mining truck traffic and adopt the 12 conditions.

Discussion

Zoning Coordinator Cromwell asked if the condition is for Wise Lane or any road and Commissioner Ray stated it is for any road affected by the truck hauling. He said the City and County have departments to address the roads.



**Yellowstone County Zoning Commission
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Monday, January 14, 2019**

Name	Favor	Against	Abstain	Absent
Chairman Wittman	X			
Commissioner Boucher				X
Commissioner Ray	X			
Commissioner Bush	X			
Commissioner Hewett	X			

The motion passes 4-0. The BOCC will meet for this hearing January 29, 2019, 9:30 a.m.

OTHER BUSINESS

a. 2019 Officers: By acclamation, the Commissioners unanimously agreed that Commissioner Boucher will serve as Chairman and Commissioner Bush will serve as Vice Chairman for the 2019 term.

b. Announcement: The next Yellowstone County Zoning Commission meeting will be held on Monday, February 11, 2019, 4:00 p.m. in the Miller Building 1st Floor Conference Room, 2825 3rd Avenue North.

Adjournment: The meeting adjourned 6:30 PM.

Draft. To be approved by a motion February 11, 2019.
Tamara L Deines, Planning Clerk



**Yellowstone County Zoning Commission
Minutes for the Meeting of
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**City-County Planning Division
Monday, January 14, 2019
Yellowstone County Zoning Commission**

<i>Printed Name</i>	<i>Address/email</i>
Mel Armstrong	9244 Radio Road
Don Lee	9305 Radio Rd
H Davis	8603 Bijhorn
Jay Koerber	3239 Brenna Street
Peggy Blantz	8928 Duck Creek Rd
Jackie Kuhlman	8908 Danford Ave
Kevin Stefek	3849 MALLARD DR Bldgs 5910/1
Sissel Goldberg	8907 Susanna Dr., Bldgs 5910/1
RaeAnn Mace	9233 Radio Rd Bldgs 5910/1
Jacobs Cote	107 N Broadway Billings 5910
Roy Halsz	1365 Blue Cross Dr Billings 59106



**Yellowstone County Zoning Commission
Minutes for the Meeting of
Monday, January 14, 2019**



**City-County Planning Division
Monday, January 14, 2019
Yellowstone County Zoning Commission**

<i>Printed Name</i>	<i>Address</i>
Ronna Klamect	2100 544 St W Billings
Hene Klamect	" " " "
Donna Griffin	1145 Custer Ave B.M.
Farnell Griffin	" " "
Arlene Schweigert	9401 Redio Rd. Blgs.
KVET GOUDBERG	8907 SUSANNA DR
Veronnaka Everson	8333 Stony Rd. Billings 59101 9246 Kautzman Rd 59101
Kayla Deroules YPR/Mu	406 Merber Ln.



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**City-County Planning Division
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<i>Printed Name</i>	<i>Address/email</i>
Carol Lawson	4148 S. 56 th W Blvd
Amy Sironi	2930 Wise Lane
Bar Lee	9305 Radio Rd.
Kristianne Wilson	6531 Bengtson Rd. Shepherd 59079
Melissa Koenbe	3225 Broadst Billings mt 59101
Wes STARK	8628 LAURON LN 59101
Kevin Kuhlman	8908 Danford AVE 59101
MARK PALMOWSKI	3849 MAWARD 59101
MIKE NERWORSKI	1663 PICKARD PL. 59105
Brant Lipp	1915 Swanson home 59102
ROBERT GOLWBSKI	3540 Duck Creek Rd 59101
Smith Holubek	3540 Duck Creek Rd 59101
Charles Schweigert	940 (Radio 59101)
Kelly Wiedrich	3337 Duck Creek Rd, Bhs 59101



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**City-County Planning Division
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Yellowstone County Zoning Commission**

<i>Printed Name</i>	<i>Address/email</i>
DAN Hickey	3224 WISE LANE
LINDALEE HICKEY	3224 WISE LN
Ken Frazier	3185 Wise Ln
D. CALDERWOOD	4313 Duck Ck. Rd.
MARK MALSON	3705 DUCK CREEK ROAD
Kris Fears	8610 Danford Ave
Shirley Wagner	8722 Danford Ave
URGENSEA O'NEILL	8921 Krutzman Rd.
Ed Walker	6611 Trade Center Ave.
JOHN MALL	9233 Radio Rd.
Ron L. Himmelschein	8943 Krutzman
Marla Carlstrom	3139 Poly Dr 59102
Sheilah Srazier	3185 Wise Lane 59101
Carlyn Rukstad	8627 Lawson Ln 59101