

**LAKE COUNTY BOARD of ADJUSTMENT**  
**November 8, 2006**  
**Meeting Minutes**

**MEMBERS PRESENT:** Lucille Buchmann, Jack Meuli, James McKee

**STAFF PRESENT:** Sue Shannon, Alex Hogle, Lita Fonda

Lucille Buchmann called the meeting to order at 4:04 pm

**Motion by Jack Meuli, and seconded by James McKee to approve the October meeting minutes. Vote unanimous to approve the minutes.**

**TAYLOR VARIANCE REQUEST**

Alex Hogle presented the staff report and one additional written comment received today.

Shirley Taylor, the applicant, spoke. She outlined the history of the property since the early 1940's. The home was primarily a recreational summer home. Now they are moving there full time. By adding space, they'll have enough room for storage of equipment and vehicles inside.

Todd Taylor showed a diagram illustrating the prior conformance, and the proposed additional garage. He referred to figures #5, #6 and #7, and explained the drawbacks they saw with these alternatives. Figure #2 is the option they would like, and seems to be the most logical. There have been other variances given to neighbors. They feel this is an unobtrusive proposal, and would be more considerate than having tarped equipment or vehicles in the yard.

Sue Shannon asked about a letter from the neighbor to the south, who requested a non-disturbed landscape buffer along the other property line, and if the Taylors would be agreeable to that. Todd thought the idea of a conservation zone would be something that they could agree upon. He didn't think they'd want the entire 50 feet affected in perpetuity. They agreed to work with the neighbor in building a screen, maintaining it, and taking care of some of the purchase price. Shirley added that he put his road in this summer.

Sue clarified that he wants the buffer in the 15' where the garage would be built in the buffer. She didn't think he was asking for a landscape buffer to be maintained for 50' along the entire length of the property.

Todd wasn't quite sure how long or wide the buffer would be. They just spoke with him briefly on the phone, and going together on the cost of some screening. Shirley pointed out that this would cut down on dust from the road, and work for the benefit of both parties.

*Public comment opened:*

Mark Cantrell: He owns the property to the north, 2 lots over. He recapped the history on these parcels. His family voiced opposition to the zoning since they were the only non-conforming lots. He wanted to make sure that there is an understanding about this. The buildable area is

very small. Both his property and the property between the Cantrells and the Taylors have received variances. He is in support of the variance for the Taylors.

*Public comment closed.*

Jack Meuli recalled that when the zoning was discussed, it was specific that these non-conforming lots would come up for variances. Lucille agreed. James McKee felt that the applicants have made a good case about the options.

James felt having a healthy buffer was to both parties' advantage, and he felt they could work that out amongst themselves.

**Motion by James McKee, and seconded by Jack Meuli, to grant the variance as requested with the staff recommendations including the water management plan (#7). Motion carried, all in favor.**

### **GOLDES/KAMURA CONDITIONAL USE**

Alex Hogle presented the staff report.

James asked about the permit for the boathouse. Alex clarified that a lakeshore permit for the boathouse had been obtained from Lake County but it had expired. The boathouse was not constructed during the time the permit was effective. There was significant late winter/early springtime flooding this year, which had a fair amount of effect on this property. Mr. Kamura wrote a letter to Don Wood, explaining he hadn't been able to do the work he wanted to do within that time frame, because the road has been damaged up above.

James asked about the drainage swales, and 1' x 1' versus 2' x 2'. Alex felt it should have more capacity. If a backhoe has to get in there to dig the ditch, why not 2' x 2' for more capacity. As stated by the engineers, they used no calculations to determine the 1' x 1'. They are using their judgment in this situation.

Alex affirmed for James that the plants listed are native, and have appropriate qualities for this type of work.

Clint Fischer spoke on behalf of the applicants. He listed the applicants and representatives. He presented copies of the entire application to the Board members. He commented on the history of this property. He felt the staff assert that the owners contributed to significant erosion. The owners deny this assertion. They obtained permits to do construction work. During the course of the permitted activities, a rainstorm of historic proportions caused a massive landslide. Per the property owners, the big clay portion in some photos was caused by the landslide, pushing the bank towards the lakeshore. They had a contractor hauling material away from the lake for months. The retaining wall in progress when the work was stopped in June 06 was designed by a Missoula engineering firm. They thought they were in compliance with any regulations under the Finley Point zoning regulations. There was regular communication with Don Wood while the work was being performed. They complied with the 'cease and desist' in June 06, to stop the project and stabilize it. They continue to want to restore and revegetate that slope, and protect

the shore of Flathead Lake. They would like their historic road access down to the lakeshore replaced. There is a historic easement that calls for a 16' width roadway. As built, the road was less than that. He thought the travel surface was 12'. There are very few conditions attached to the Planning staff recommendations. Most are acceptable to the owners. There are certain conditions that the engineers have technical issues with. He pointed out the willingness of the owners to cooperate with the regulations and restore their property.

Jack asked if no work had been done at the time the landslide started. Clint showed one of the available photos that reflected the property condition at the time of applications. The permits granted were to build a breakwater and to remove existing riprap to build a boat ramp, a shore station, a water break and construct a boathouse. The property owners were in the process of the permitted work but had not changed the terrain when the rainstorm happened and the erosion sloughed things away. In response to that, they had to have a road to haul material off the beach, and the bank kept sloughing.

Sue provided the lakeshore construction permit date. It was issued 10/25/04. The rain event was in June 2005. Jack summarized that the work had started before the storm.

Johna Morrison spoke. She works for Schwartz Engineering as a land use planner. They have been hired to do the mitigation on this. Oddly enough, her family owned these two properties previously. The road was built in 1989 with a lakeshore construction permit. Some slumping occurred off of that road over the years. It was obvious that retaining walls would need to be built at some point. The retaining wall plan was designed by Cliff's Engineering, out of Missoula. Ted Matlich is from MT Helical Piers. Inside the packets she gave out are envelopes with the plans for the retaining walls. The wooden retaining wall down on the lake was built by Russ Kamura. The Tribe was adamant that this be replaced with a cement wall. This is in the plans, to replace this across both properties. The seawall plan was approved by the Tribe in October. A lakeshore permit application has been submitted to the County. The retaining walls to be installed would be backfilled at a 3 to one slope (approximately 40%, not 70%). She did a vegetation plan, using a website recommended by the Soil Conservation Service, and tried to match the vegetation. Approximately 80% of the properties down in this area were brush or grasses. She described what she looked for with respect to the vegetation. In photos showing heavy vegetation, that's actually a bamboo-type plant. She thought it was called cow parsnip. It can grow 16' in a season. It dies in the cold weather, so the property looks lush at times and dead at others. She showed some of the photos again, with respect to vegetation. Regarding the road, her family put an access easement on it prior to selling the Goldes property. She then spoke about some of the conditions on the staff recommendations. With condition #5 on the road, they want to keep the road as it existed previously, rather than reduce the width per lake access zoning regulations, so she'd like to see that portion of the condition taken out. She understood the staff point that the grandfathered right is gone after the road is lost. She thought if it was theirs, the staff would feel differently, and that the road was important to property maintenance. For condition #7, they have no problem with the condition except for the grassy beach area that was there before. They don't believe that should be trees and shrubs there. With condition #8, she suggested adding "while construction is occurring" to the end of the condition. She wasn't sure construction would occur before the snow flies. They don't want to be down

there biweekly while no construction is occurring. She left condition #4 for Eric Garberg to discuss.

Eric Garberg spoke. He's a licensed engineer for Schwartz Engineering. There's nothing magic about 1' x 1'. He felt the swale would be handling some water weeping from behind the wall, and he didn't see it being a large amount. He thought staff saw it more as handling storm drainage. If the channel were to get too large, with too much flow, you'd have a problem. He thought either 2' x 2' or 1' x 1' seemed reasonable. His only concern, for which clarification would be good, is the injection wells in reading condition #4. The worst thing for slope stability would be water being reintroduced into the slope. If you can convey it across the top and keep it from getting in there, you basically maintain higher shear strengths and higher stability in the slope. He'd rather see the injection wells removed.

*Lucille checked for public comment. Given none, public comment was closed.*

Alex pointed out figure 2 in the staff report, regarding the vegetation in the buffer strip. He used the diagram to explain that there is no intent to take away the grassy beach, and referred to areas behind that. He asked if the Board could see the difference on the diagram, and they affirmed.

James asked Johna if she was happy with that. She replied yes and no. The applicants still intend to apply to build the boathouse after the other problems are solved. If trees and brushes are planted there, they'll be ripping them right back up. James asked where the proposed boathouse would be. Johna described the location using one of the maps, and that there would be a few trees between the retaining wall and the boathouse. Alex explained the staff proposal is simply interpreting the Finley Point zoning regulations, including the buffer strip regulations. James asked if the excavation was mostly done and the retaining wall started. Johna said that the retaining wall is up. Alex said that portions of the retaining wall are up; there's still a considerable amount of machinery work to be done to complete those and do the backfilling.

Jack asked why the trees were indicated for the boathouse location. Alex explained that the boathouse permit expired, and we can't assume it will be permitted when they apply. It may be. He thinks that it may be a challenging proposal, given impervious surfaces based on lakeshore regulations. The restoration plan is not aimed at a boathouse that does not currently exist nor is permitted. Staff are simply trying to interpret the regulations, which are clear about change of use on premises. The road has a deed to describe it. It is a usage and it is a premises. The regulations speak directly that if such use is discontinued or destroyed by natural causes, it needs to be brought into conformance. The amount and degree of work that went on in the name of taking care of the slumping lacked attention to the natural environment. Not a single 'best management' practice had been incorporated. There was piling of dirt that went into the lake. He is trying to interpret the regulations as they are written.

James asked if the staff proposal was to restore the natural slope where the boathouse excavation has been done. Alex replied that if the boathouse had not been permitted as such, then yes. There had been a permit. James referred to the boathouse cross section. From the retaining wall to the high water mark or new seawall, it's pretty flat, and he asked if trees were needed there. Alex responded that this is a buffer strip. A buffer strip plan has nothing to do with angle. Trees

are wanted in some of the flat area, but not all of it. They are not wanted where there was the grass lawn. There's been considerable excavation beyond that point that appears in the photos as being that nice grass lawn.

Johna thought the grandfathered clause for the Finley Point zoning regulations was put in to protect rights, not to take them away when they fail or are gone. She felt the spirit of the regulations had a different interpretation. James pointed out if there's language that specifically speaks to a certain circumstance, it's hard to throw that out because it's inconvenient.

Alex added that the road measures 29% grade. The extent of new development work requiring excavation or vertical piers and the incomplete helical pier walls was considerable, more than the landslide probably contributed to the situation. There was not pursuit of a conditional use permit to disturb slopes exceeding 25%. He did not see an effort to conform to the regulations.

James clarified that he's looking for something acceptable to staff and applicants that works with the zoning regulations to get this back to a nice-looking piece of property. Alex suggested looking at the buffer strip regulations and guidelines on page 5 of the staff report.

Clint Fischer asked if it was in the ability of the Board to grant a variance from regulations based on circumstances, one being compliance would result in unnecessary hardship due to the physical conditions and limitations of the property. There's no other access down. The Board could grant the roadway because of the physical limitations of the property and the hardship on the parties. There's significant work to be done, lakeshore development, use and enjoyment of the lakeshore, it's been there for years and the property was purchased with the road in place. He also felt that the regulation referred to by Alex was intended to apply to a structure, not a roadway. Sue cautioned the Board that a variance was not requested, nor was one legally noticed. The Board agreed that this is a conditional use application.

Alex referred back to figure 2 and the landscape buffer info, which directs to enhance shrubbery and trees. It's about finding a balance. These exist only at the base of the walls. There's been a lot of inappropriate disturbance within the 50' setback, and the plan addresses that. James counted 7 trees on the lakeside of this retaining wall. Johna showed a graphic related to the vegetation. James wanted clarification on a specific area. Alex reminded that part of the concern for the north end is a 4'-deep trench for the water line is being installed. Especially in the lakeshore area, there's a concern that the area stay vegetated. It's currently vegetated.

James verified that Alex thought Johna's suggestion on condition #8 sounded excellent. James summarized other points of agreement that had been reached.

James asked Alex about the injection wells. Alex replied that if Eric feels comfortable that this site would stand the test of time with something like that. It's not atypical to include injection wells in storm water management plans, especially when there's a condition where you want to manage water below a certain elevation. Eric thought that he's looking at a typical drywell or open-bottomed catch basin, where the water will catch and then perk into the ground. He didn't think that was appropriate here since they're not perking into a flat surface at a depth and soil

that they believe will take it. He felt the conveyance structures they have should be adequate for this.

Motion by James McKee to grant the conditional use permit with the conditions listed as written except for striking the 2 injection wells listed in condition #4, and adding the phrase “while construction is occurring” at the end of condition #8, and in condition #7, the vegetation plan shall be what the engineer has proposed on the drawing with some trees on the lakeside of the retaining wall.

James and Jack had questions on condition #5 and the narrowing of the road in the lakeshore buffer area. Alex explained that within the lake buffer strip, the idea is to have a meandering path to prevent straight graded path going straight to the lake, which would get channels in it. He mentioned that many people access the lake with 4-wheel machines, which are appropriate on a 6'-wide access, rather than driving autos or trucks. This is a reflection of the regulations. James thought it didn't make sense to bottleneck the road within 30' of where it ends. Alex commented that it's in order to increase vegetation and soil stability, and minimize erosion. They want to offer guidance for a robust plan for this to be a healthy and enjoyable place for the owners on the lakeshore. Jack asked if they could get to the boathouse with a vehicle with the 6' width. Alex replied that you could not with an auto or truck, but you could with a smaller 4-wheel, which is typical of lakeshore properties throughout several of the zoning districts on Flathead Lake. To launch a boat, you'd go to a place with a ramp and that type of facility. Many boathouses, docks and seawalls are not accessible by land. James thought perhaps they'd need a variance to go against the buffer zone regulations. The applicants could apply for one. Clint Fischer said that the only ability to deny the roadway being grandfathered is reliance on article 15 of the zoning regulations, which refers to an existing use of property being a specific use of building, structure or premises. He didn't believe that this addresses the roadway. Alex replied that the road has surfacing involved and it has a complex engineered wall to keep the mountain from reclaiming it, so he does believe it certainly constitutes a use and quite likely a structure. Roads are typically engineered to be sure they are sound, which he believes is a structure. It is a use and a premises.

**Motion made by James McKee and seconded by Jack Meuli to grant the conditional use permit with the conditions listed as written except for striking the 2 injection wells listed in condition #4, and adding the phrase “while construction is occurring” at the end of condition #8, and in condition #7, the vegetation plan shall be what the engineer has proposed on the drawing with some trees on the lakeside of the retaining wall. Motion carried, all in favor.**

#### **DICKSON/REID CONDITIONAL USE--WITHDRAWN**

#### **OTHER BUSINESS**

A thank you note was received from Jane Winkley for the Alert donation. The Board vacancy has been filled by Sue Laverty, from the Swan Lake Zoning District. She will be here next month.

Meeting adjourned at approximately 5:50 pm.