

LAKE COUNTY BOARD of ADJUSTMENT
August 13, 2008
Meeting Minutes

MEMBERS PRESENT: Mike Marchetti, Sue Laverty, Jack Meuli, Tim McGinnis

STAFF PRESENT: Sue Shannon, Tiffany Lyden, LaDana Hintz, Joel Nelson, Lita Fonda

Tim McGinnis called the meeting to order at 3:59 pm. He announced that the Slack proposal would not be on tonight's agenda. It will be next month.

Motion made by Sue Laverty and seconded by Mike Marchetti to approve the July 9, 2008 meeting minutes as written. Motion carried, all in favor.

BAKER/NZGH 2000 LTD VARIANCE

Tiffany Lyden presented the staff report. She noted that at the time of the staff report, it wasn't clear what was needed by the Environmental Health Dept in terms of septic approval. Since then, a change of use permit has been submitted.

Paul Bishop spoke on behalf of the applicants. He said these were long-term landowners. The improvements would enhance their ability to keep it a family place. The main problem is the 1940's garage size. The spaces are too small for modern cars.

Public comment: None offered. *Public comment closed.*

Sue S added that the density in this subunit is 1.5 acres per unit. They have 5.14 acres.

Motion made by Jack Meuli, and seconded by Mike Marchetti, to approve the variance and Planning staff recommendation and to adopt the staff report and application materials into the Board's findings. Tim clarified with Tiffany that Planning staff will work to finalize the exact impervious surface calculations and stormwater, and a permit will not be issued until a septic permit is approved. **Motion carried, all in favor.**

KORECHOFF & VALENTINE VARIANCE/CONDITIONAL USE EXTENSION

Sue Laverty recused herself and joined the audience. Sue Shannon presented the staff report.

Mike confirmed with Sue S that the applicants would have to follow the regulations as currently exist, and the applicants are aware of this.

Robert Korechoff spoke on behalf of his application. The main point he emphasized is that they have worked on this continuously since 2004. There have been a number of unexpected developments along the way that have caused them to redesign at several points.

Tim asked if they'd received permission to relocate the private subdivision access road. Robert said in 2004, they received written permission from the owner of the adjacent lot to move the road away from the lake, since this affected his lot. The Homeowners Board was fully informed

at this time and said if the property owner gave written permission, they saw no problem. The road was moved in 2004, and nothing has been touched since then.

Public comment:

Sue Laverty: They own property to the east of the subject property. They have no problem with the applicants building on the lakeside, and would actually prefer that they build down on the lake rather than up the hill. It's unfortunate that this has gone on for so long, as new regulations go into effect and new pieces of information come to light. At the time they were asked to move the road, the Swan Sites Homeowners Board initially saw no problem. The longer this went on, the more they looked at this, and found the road had originally been moved. What existed legally on the plat is different than what may or may not be visually what you see. The Homeowners Association then said they didn't have the authority to step in with this, and that the landowners needed to come up with where that easement is and road is. The floodplain issue is another issue. If the Board chooses to grant another extension, she hoped they did it as minimally as possible for them to get this done. To continue it for year after year just brings up more issues. She would support a short time to extend if that's what the Board chooses to do, or have them work hard now and get it finished.

Robert Korechoff: As far as the easement issue, what it says on the plat is that the easement is a 40' wide easement where the existing road is located. They have in their plan a 40' wide easement where the existing road is. In their mind, the easement question has been put to bed. The other issue is that things come up. They learned in July about the new FEMA regulations regarding the floodplain. Their design had been based on the previous floodplain information. It's been raised by 7 feet. They feel they need some time to make an appropriate adjustment to the house plan to accommodate the fact that, for example, they will no longer have a daylight basement. On Tuesday morning, he met with Mr. Shock, the DNRC representative in MT in Missoula to discuss the issues. They are trying to move as quickly as they can. It's a complicated issue. There are questions he had that Mr. Shock couldn't answer. He appreciated that people feel this has been dragging on, but it's not because they haven't been working hard. A number of things have occurred that have caused them to redesign the house to meet the necessary requirements.

Tim: He asked if the applicants could do this in 6 months.

Robert: He couldn't say. They'd like to. A lot depends on how quickly they can get information from agencies and how accurate the information is.

Sue S: Kay McCready, the president of the Swan Site Homeowners Association, called today and indicated that she felt if the extension was granted, she would like to see some sort of timeframe set for them to come back and say where they are and what their timeline will be.

John Robinson: He is the landscape architect. If the extension was granted, he would like it in the record whether they're going by the original Goacher survey high water mark or possibly a new high water mark based on more recent data. It would be easier for their project if they went by the original one approved in 2003.

Sue S: This is an issue that just came up yesterday. If you look at the plan in the packet, it shows the 30' setback from the straight property line, so the plan that was approved is wrong. When she and Don met with them initially in 2006, they mentioned using a high water mark pointed out by a realtor. She told them this was the plan that the Board of Adjustment had reviewed at the time of their approval, so at least they had to go from this. Robert Korechoff has a new surveyor, and he took this line and the distance from the property line and set it on his new survey, so it's different. In her mind, high water mark isn't arbitrary. It's an elevation. Under the lakeshore protection regulations, it's defined how to determine the high water mark. She went through yesterday with Mr. Korechoff and got from the gauging station the peak flow from the last 5 years and averaged it. They came up with a high water mark elevation of 3068.3'. In her mind, this wasn't a matter for the Board of Adjustment decision. It's an item for the Lake County Commissioners to decide under the Lakeshore Protection regulations.

Public comment closed.

Jack would like to see a time limit on the project. He asked if the high water mark was set for Swan Lake. Sue S explained that Flathead Lake was easier, because of the dam. Swan Lake varies from year to year, so the lakeshore regulations direct to take an average of the last 5 years. Historically they've looked at other lakeshore permits. She gave some examples, which used 3069' in Lower Bug Creek area and 3068' near a property to the north.

Mike didn't think 6 months would be sufficient to complete this project. He asked if the Board could request the owners to submit a plan within 6 months on how the owners plan to get done with this in a year. Sue thought the owners might need to ask for a different variance, based on the recognized high water mark. She'd like to see plans that comply with floodplain regulations, setbacks and so forth. Mike pointed out the Board can't change the high water mark.

Jack asked if they could give an extension as a last, final extension. Mike said if the extension was declined, they could come back with a new variance request based on the new rules. He thought this might be more prudent.

Motion made by Mike Marchetti, and seconded by Tim McGinnis, to deny the extension request. Motion carried, three in favor (Jack Meuli, Tim McGinnis, Mike Marchetti).

Sue L rejoined the Board.

STARKEY VARIANCE

Tiffany Lyden presented the staff report. She noted the additional letter provided to the Board from the landowner after the staff report was mailed.

Sue L asked why the regulation was written, with no detached accessory structures in the front yard. Tiffany replied that only some of the properties in the zoning district are on the lake. Others do not have this circumstance. The part of the property that fronts the road is the front yard. Sue S thought also it was because a lot of the properties are in the city limits, and they're

trying to avoid garages in the front yard on a city block, not necessarily taking into consideration the rural properties that are also included in this zoning.

Bill Starkey spoke on behalf of his application, and gave some recent history. He noted they would be happy to sign a deed restriction.

Sue L asked if they would be willing to leave the water or sewer facilities out. Bill said this would be less money to spend on the project. However, the covenants of Vista Shores do say if and when the sewer is extended their way, it would be permissible for lots to have a guest house. Also, for convenience and ease of usage, they'd like to have the water/sewer if they can. Sue L pointed out the zoning district rules say there will be no guest houses.

Mike checked with Bill that the upstairs use is for an art studio.

Public comment:

Stanley Peterson: He said he's been working on getting permission for having a guest house in the subdivision. The covenants say something about that, and additionally the rules of the Polson City-County planning district also prohibit it. He wanted to change that rule, and had no objection to the Starkey plan.

Dan Jensen: He's the contractor for the Starkey project. Based on his acquaintance and past work with them, if they say they won't have a guest house there, they won't. He spoke for Bill Starkey's integrity. In reference to the convenience, the proposed structure is quite a distance uphill from the house. To use the facilities mid-project in winter, or for water for supplies for artwork, his opinion was the lack of water and sewer would be a hardship.

Public comment closed.

Sue L was concerned that deed restrictions can be difficult to police when water and sewer are in. She thought a deed restriction was good. She was concerned what a future owner would do with it. Mike understood the water and sewer part. He also understood working with paints and art that water is critical in a lot of that process. He thought to deny that would be to deny the use of the building for an art studio. Jack thought the items in #14 of the staff report would cover the problems. Tim checked with Sue L to see if she had more specific language to suggest. She thought the given language would work

Motion made by Jack Meuli, and seconded by Mike Marchetti, to approve the variance request with the staff recommendations (listed in #14), and adopt the staff report and findings of facts. Motion carried, all in favor.

BAUMGARTNER VARIANCE

Tiffany Lyden presented the staff report. She corrected the staff report to read for the rear setback. She detailed on #11, pg.11 that the Lake County Environmental Health Dept. has also asked that no kitchen facilities are included.

Tom Baumgartner spoke on behalf of the application. He asked for clarification on what constitutes remodeling. He thought if he maintained the footprint and the height that he might not need a permit.

Tim explained that what was under consideration here was that he wanted to build a guest house, which is not permitted. Tom also asked about this, and whether it was detached or not, since it was part of an existing building. Sue L noted that it's not part of the existing single-family residence. Sue S explained there were two things. One is setback for an existing non-conforming structure that he wants to expand, mostly by adding a second story. The second is a variance to allow a guest house.

Tim said that the Board is determining if he's increasing the degree of nonconformance. Tom said when he talked to a planning staff in a previous year, the definition of remodeling was as long as you stayed in the footprint and the height restrictions, and didn't need a variance. Mike explained that remodeling or not, he needed a variance to put a guest house on the property, which is not permitted, so he would still need to be here. Sue L added that he would also need a variance to expand a nonconforming use.

Tom said that he would like to delve into dropping the staircase and researching the basis of a guest house before he proceeded. Jack checked that he meant he was dropping the variance for now. Tom confirmed.

NELSON CONDITIONAL USE

LaDana Hintz presented the staff report.

Loren Nelson spoke for the applicant.

Public comment: None offered. *Public comment closed.*

Motion made by Mike Marchetti, and seconded by Jack Meuli, to approve the conditional use request, including the staff report and recommendations, and application materials. Motion carried, all in favor.

BONNER CONDITIONAL USE

Joel Nelson presented the staff report. He noted regarding pg. 16, since the staff report was completed, the applicant has said he has no intent to do more blasting, and would not be against a condition that would disallow blasting.

Mike commented that a lot of work was happening on this property without a subdivision application. Zoning rules have been violated and a lot of surface disturbed. Why would the County not want a subdivision plan prior to this work? Joel replied that the applicant had some level of verbal approval for the boundary line adjustment from the County Commissioners. He would not be restricted from providing access to existing tracts of record. Preliminary plat approval is required to be granted per the subdivision regulations prior to commencing any of the subdivision improvements. Mike checked that there was no survey required prior to beginning work to see if they would be disturbing slopes greater than 25% or more than 2000 feet of slopes

greater than 25%. No one looks at it beforehand? Joel replied that staff were not aware that he was building roads that required slope disturbance. Sue L checked with Joel about the boundary line adjustment. Joel explained that he could start with 4 lots and finish with 4 lots after the boundary line adjustment. She said the applicant was doing this huge project, but didn't know that he was in a zoning district and needed approval for more than 25% slope. Joel confirmed that the applicant was not aware of that provision of the zoning regulations. Mike verified the area of sloughing on a visual.

Bob Bonner spoke on behalf of his application. He gave some history of the project. He hadn't realized that slope was a zoning issue rather than a subdivision issue, or he would have submitted an application earlier. He said they wanted to do the boundary line adjustment in order to identify 3 marketable building lots and sell them ahead of time so they could pay down the mortgage on the property and save on interest. He said Sue S had a concern at the time that they were trying to get around the subdivision process. He talked with the Commissioners, who asked him to agree with them that these 3 lots would meet the County specifications for a subdivision lot. When they submitted a preapplication, Sue S made a site visit, saw that over 2000 square feet was being disturbed on slopes above 25% natural grade, and he received a cease and desist notice. He talked about some details of upcoming plans.

He talked about condition #7. He provided the Board with a handout on National Bald Eagle Management Guidelines, and referred to pg. 11 and 12 regarding the active eagle nest that they identified. His blasting was done, but he wanted to be able to hammer during the non-breeding time from August to December, so he wanted to change condition #7. Joel said this was off a little. They had talked about requiring the applicant to obtain express written consent to the activities from both departments, that he provide evidence from those 2 departments to show he was in compliance with the guidelines. Bob said he had no problem with that. Bob thought they'd resolved condition #7 between them. Tim asked if on #7 he was going to get letters of consent from Fish and Game or Fish, Wildlife and Parks that it's okay to rock hammer and grind. Bob said he didn't want to get letters of consent because he thought the State would tell him they couldn't give him consent to do something on private property. Joel said on #7, after 'August through December', they could strike 'and/or blasting' if blasting was otherwise prohibited. This is prohibited unless the developer demonstrates to the Planning Dept compliance with the requirements of US FWS and the Montana Dept of Fish, Wildlife and Parks. Bob wanted to change this further. He pointed out geographic features such as a canyon on the map.

Bruce McKay said the rules proposed are currently not yet in effect. Currently they are using federal guidelines, which is 650' during the nesting season. It's stated in the letter from the federal people. They have no jurisdiction unless the nest is disturbed. Bob said it was 1200' not a half mile. Joel pointed out the language from the guidelines that Joel was referring to, about extremely loud noises within 1/2 mile of active nests, unless greater tolerance has been demonstrated by the eagles in the nest in the area. Bob said the nest wasn't active from August to September. Joel noted the rest of the restrictions specifically say 'during the breeding season' but this one does not.

Regarding condition #14, Bob said they didn't have heavy traffic use. Tim said they could give evidence of compliance. Bob was concerned it would take time to get a letter from MDT.

Regarding condition #15, Bob didn't understand what natural façade was. He wanted to know if it was the road cut, or straw and seed. Joel explained that wasn't natural façade. It could be a revegetated natural façade. Bob said for the high slopes, they were going to be stacking rocks, and checked for issues with that.

Regarding condition #18, Bob didn't understand why this condition was there, since it was being done. Joel explained it was an indemnification statement that's put in most permits.

Bob moved to condition #1. He said they've applied for a boundary line adjustment and a preapplication at present. Bob Long explained the issue with #1 is the County concern that the Board seem to authorize something that's prohibited by the subdivision regulations, which have a section regarding construction timing, that roads and infrastructure shall not be built while the application is pending. Bob Long said this was to prevent risking putting in infrastructure and then not subdivision acceptance. Bob B was willing to spend the money to work on his property without subdivision approval. Sue L asked why they had an objection to this condition. Bob Long said it was saying that they couldn't do work beyond these lots until the subdivision is approved. Sue L agreed. Bob L thought the condition went beyond that, and said they shouldn't work on anything else on the acreage while the preapplication was in place.

Joel explained that slope disturbances are west of the last boundary line adjustment plan. He didn't have a problem taking condition #1 out, but the developer should know that the County Planning staff and County Commissioners would enforce that division of the subdivision regulations.

Bob Long spoke for the applicant regarding conditions #2 and #3. If reference was being made in these conditions to subdivision regulations, they respectfully object, as he just discussed. He pointed out that Bob Bonner is risking a lot of money and trouble doing things that may or may not lead to subdivision approval, should he eventually get that on the rest of his property. Bob Long thought it was out of place to reference subdivision regulations. Sue S noted that the applicant references the subdivision in his application. It's getting cloudy whether they're intending to access existing tracts of record or whether they're building a subdivision road. Bob L didn't think a subdivision road should be the concern of this Board. The application was for disturbing slopes greater than 25% regardless of subdivision.

Tim said on #3, he didn't think they should degradate the environment for whatever purposes, so he wanted to leave #3 in. Bob Bonner said that #3 was great.

Condition #2 was discussed further.

Marc Carstens spoke for the applicant regarding condition #4. Long Engineering in Kalispell designed the road. Some field modifications have been made. The base topographic map was prepared with aerial and analytic processes, which was generally very accurate. If you have a vegetation surface, the height of the vegetation could affect the accuracy of the topographic map. They had to make a couple of modifications from the original engineered design, but in the spirit of the design and with the consent of the engineer. The problem with condition #4 for the

applicant was in the last portion 'as well as the buildable areas of the lots as they exist now and after the proposed boundary line adjustment survey. They would prefer that this be limited to the hard-surfacing of the roads. The buildable area of the lots would come later with other items. They would be back to deal with density in the Upper West Shore Zoning regulations, which allow for density and a density bonus. It states before making application for subdivision review, the issue of density must be resolved with Board of Adjustment approval. They would be back before this Board to deal with the impervious surface areas as it related to lots.

Tim thought a technique that didn't work in forests doesn't seem very helpful in this area. Marc said they like to proof it before they put much stock into it. Another reputable excellent firm had initiated the project and the creation of the map so they bought into it, until they started laying out the road and found a 20' lump that wasn't supposed to be there. Realizing there were some anomalies, they brought in conventional field crews and overlaid what the crew created with the map done with the aerial photography. The data they will bring in the future with impervious surface calculations and buildable areas will have been conventionally measured. There are some areas on the base map where they are relying on the base map's accuracy for areas with slopes less than 25%. The aeriels could generously be called conservative.

Public comment:

Lou Prezioso: She didn't think this project would adversely physically affect her. She wondered how it would affect the highway if they got a lot of washing. Had MDT figured out if it would handle the runoff like in a recent November? She wondered how many houses would eventually be there.

Tim McGinnis: He didn't think the density was currently under discussion, just the road. Those other questions would definitely come up and be answered for her with the subdivision review.

Public comment closed.

Tim didn't have a problem with #4 stating about hard-surfaced roads. He thought the rest would be covered later on with subdivision review. He didn't have a problem removing #1. He really liked #3. Jack said #2 could be out. Sue L said #6 could be changed to no blasting operations shall be conducted, period.

On #7, Jack asked why the time limit from 8 am to 6pm. He had no problem with the December to August. Joel said the people had the 8 am to 6 pm, and the eagles had the seasonal. Tim summarized that was for the neighbors. Bob said they were fine with 8 am to 6 pm. Sue L asked Joel to repeat his suggested language for a portion of the condition. Joel reiterated the suggested revised language for within 1/2 mile of the nest, including that the developer demonstrate compliance with the requirements of US FWS and the Montana Dept of Fish, Wildlife and Parks.

Sue L thought condition #14 should be left in. Mike said they just needed to show conformance with the rules. It doesn't require written from MDT. Jack asked what we had to do with the movement of their equipment. Sue S said part of the conditional use criteria is you're looking at impacts on traffic. Jack didn't think it was relevant. Sue L thought it could impact traffic. Sue

S noted you couldn't disturb those slopes without big equipment. Jack thought the State laws would cover this. Sue S said it has to be considered, and pointed out that large equipment would have to enter the property at this approach. Jack thought it wouldn't make much difference, and it could be put in if they'd feel better. #14 was left in.

Tim asked about #18. Sue L said it was fine.

Sue S asked about #4 where the Board wanted to say hard-surfaced roads, but not the buildable area of the lots as they now exist. Tim thought they were dealing just with the roads. Won't impervious surface be covered with subdivision review? Sue S said they were talking about buildable area on the property, too. She suggested they add a period after 'as they now exist'. Then, 'The impervious surface area created by this proposal shall be considered during the zoning regulation compliance on all future lots, when they create future lots.' Tim was concerned that they deal with the road. He was happy to add that it has to be considered in subdivision review. Sue S thought it made it clearer to the developer that this will be considered when he creates additional lots. Sue L and Sue S summarized that #4 would include '... as well as the buildable area of the lots as they exist now. The impervious surface area created by this subdivision shall be considered during zoning district regulation compliance on the creation of all future lots' or similar wording.

Motion made by Mike Marchetti, and seconded by Jack Meuli, to approve the conditional use request, including the staff report with the staff recommendations including the changes just discussed, and the application materials. Summary of changes discussed:

- # 1 and 2 shall be removed
- #6 is to be changed for no blasting to be conducted, period
- #7 shall have 'or blasting' removed plus the proposed revised phrase from Joel as discussed earlier in the meeting about prohibited unless the developer demonstrates to the Planning Dept compliance with the requirements of US FWS and the Montana Dept of Fish, Wildlife and Parks.
- #4 shall be changed as just discussed with the added language from Sue S so #4 would include '... as well as the buildable area of the lots as they exist now. The impervious surface area created by this subdivision shall be considered during zoning district regulation compliance on the creation of all future lots' or similar wording.

Motion carried, all in favor.

LONG VARIANCE

LaDana Hintz presented the staff report.

Marc Carstens spoke on behalf of the applicant. The applicants were in attendance. They had no issue with the staff report.

Mike asked about the disconnection of the septic from the unit. Marc confirmed for Mike that the present system will be abandoned and a brand new one will be installed for the residence. Marc said the abandonment was to satisfy the unit definition of zoning.

Public comment: None offered. *Public comment closed.*

Sue L asked for clarification. Sue S said the previous approval was based on an existing structure that had water to it. It was based on that existing structure, not disconnecting it and building another one.

Motion made by Sue Laverty, and seconded by Mike Marchetti, to approve the variance request, including the staff report with the staff recommendations, the findings of facts and the application. Motion carried, all in favor.

OTHER BUSINESS:

Sue S introduced Kurt Moser, the County Attorney.

Motion by Sue Laverty, and seconded by Jack Meuli, to enter an executive session for purposes of discussing litigation strategy. Motion carried, all in favor.

Motion by Sue Laverty, and seconded by Mike Marchetti, that Board of Adjustment public hearing is now closed. Motion carried, all in favor. Public meeting closed at approximately 6:30 pm.