

LAKE COUNTY BOARD of ADJUSTMENT
April 8, 2009
Meeting Minutes

MEMBERS PRESENT: Jack Meuli, Clarence Brazil, Sue Laverty, Tim McGinnis

STAFF PRESENT: Joel Nelson, LaDana Hintz, Lita Fonda

Tim McGinnis called the meeting to order at 4:01 pm. He announced the Sohlberg variance and conditional use has been postponed.

Sue Laverty gave an addition to the minutes on pg. 3, to add 'for the size of the house' following 'They felt a one-car garage was inadequate'. Lita verified for the Board that she corrected a name spelling.

Motion by Jack Meuli, and seconded by Sue Laverty, to approve the February 11, 2009 meeting minutes as amended. Motion carried, all in favor.

GOLDES CONDITIONAL USE:

Joel Nelson presented the staff report. (See attachments to the minutes in April 09 meeting file for the staff report.) He updated the note at the bottom of pg. 3 since landowner authorization for Alpine Land Consulting was received at the beginning of the meeting. He suggested possible modifications to the conditions. For condition #3 on pg. 14, he suggested requiring that the applicants delineate the extent of the proposed new retaining wall below the eroding soils. For condition #5 on pg. 14, he suggested adding 'and neighbors property' to the end of the condition.

Tim asked if the suggested addition to #5 was covered in #7. Joel said #7 was more of an indemnification statement requiring them to make sure everything happens on the property. #5 is in reference to the project engineers.

Regarding the other suggested modification, Joel explained an adjoining landowner came in today with concerns about the extent of the new retaining wall. He asked Johna Morrison, the applicant's consultant, if she would be willing to do that, and she said she would.

Sue asked if the Board would be approving this and accepting that what was done under the old permit has been completed and put to bed. Joel affirmed. She asked about the example of the inadequate vegetative plan mentioned in condition #7. Would such items that have not been fully satisfied also be put to bed? Joel explained they were proposing additional vegetation within the buffer strip, which was the main outstanding lack in the vegetation. Vegetation was further discussed.

Johna Morrison spoke on behalf of the applicants. She explained the contractor didn't notify the consultants when the work began, and apologized for the biweekly reports that were not produced as a result. That contractor is not longer on the project. She submitted an as-built and a letter, but she still had some concerns about the slopes on the property. The information they submitted to APEC said they'd revegetate it to a native slope. She never got a response to the

letter. She will add the 3rd water bar. She had no problem with the conditions of approval. She proposed to the Board that in the original proposal, they weren't going to do the upper retaining wall due to concerns of the pressure on the lower retaining wall. After talking to the engineers who did the retaining wall, they didn't think it would be a whole lot more pressure. Her concern was she didn't think they could contain the way that is now truly sloping off. The neighbors understand the problem that's going on further to the south on that hillside that affects them and their homeowners' park. A question was where the stairway would be. It's replacing a stairway that was there prior to the slumping. She showed the location on a map to the people in attendance and to the Board. She estimated it was 50 to 100 feet from the homeowners' area.

One condition was that the engineers would still be on the project. She still consults with APEC Engineering. On that retaining wall, the lead engineer on this project felt it was worth a try to put in the retaining wall, but he would not certify it because of the slopes there and the nature of the soils. If it doesn't work, they'll have to come back and figure something else out. This is the dry stack wall that they're proposing.

Regarding the additional shrubs in the lakeshore protection zone that were discussed earlier, the area has been seeded with grass sod. It's vegetated but not 80% trees and shrubs. They've submitted a plan to go ahead and do that. Delaney's will be doing that.

Clarence asked if a geotechnical engineer had been consulted, due to the magnitude of the project and the unstable slopes. Johna said they were professional engineers and structural. They've had geotechnical engineers on the premises to look at the property. They've done some soil testing. The structural engineer did the retaining wall, and she spoke with him about the dry stack. The geotechnical engineer doesn't design the structure to hold it back. They do the soil testing and give you the information. The geotechnical engineer they used gave the information and was not willing to talk about how to solve the problems, due to the soil instability.

The Board and people in attendance looked again at the picture Johna had showed earlier. Joel asked if she was going to draw in where the new wall would go. There was discussion over the picture, and Wes Delaney showed additional pictures. (Some pictures were given to the Board, and those are included with the attachments for the minutes in the meeting folder.)

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

Joel explained that Johna drew in the location of the wall on the last page of his report. It's within the area that the staff assumed it would be.

Motion made by Jack Meuli, and seconded by Clarence Brazil, to approve the conditional use with staff recommendations and corrections of conditions #3 (add 'delineate location of retaining walls') and #5 (add 'and neighbors property') and with findings of facts and staff report. Motion carried, all in favor.

JOHNSON CONDITIONAL USE:

Joel Nelson presented the staff report and attachments. (See attachments to the minutes in April 09 meeting file for the staff report.) He noted that 4 additional letters of public comment had

come in, and were given to the Board members at the beginning of the meeting. (See attachments to the minutes in the April 09 meeting file for the letters.) He gave corrections to the staff report on pg. 10. The first paragraph should say 'The second document states that the landowners have applied....' The second paragraph should say 'The first document on pg. 19 amends the second document on pg. 20-21 to: 1)....' He noted the legal notice said late comments would be read or synopsisized at the meeting, and did so. Tim asked if the items mentioned in the second letter were under consideration by the Board. Joel said they were not, but the letters needed to be presented per the legal notice, relevant or not.

Jack referred to the 1981 references. There wasn't zoning in Rollins in 1981. What permits did they need? He had problems with condition #5 specifying 2 meals. A third meal was served there at various times. Sue noted the hours of operation were set, and it shouldn't matter what they serve within those hours. Tim thought it seemed heavy-handed. LaDana thought this might come from the Environmental Health part of it. Joel said Environmental Health permits the food service operation. Jack and Tim said that wasn't for this Board. Joel said one of the ways of expanding a business was to add services and additional types of meal. He thought there was concern that expansion to that would require an upgrade to the drainfield.

Sue asked for a clarification on item #3 regarding seating and how to read it. Joel thought the 6-seat capacity referred to the one round table. This had to do with not expanding the restaurant. Tim thought this could be done with an overall seating capacity.

Sue checked this would negate the first approval. Joel said they could choose either one approval or the other, but could not pick and choose items from both.

Sandy Johnson read a statement. Their situation has torn the community and they do not want to be involved in that type of situation. They have decided to sell their business and move on. They hope to sell it before they lose it to the bank. They hoped for another source of income to help with winters. That's not going to happen. Mean spirited and untruthful things have been said in order for a group of people to get their way without consideration for cost or others. They have given to the community and looked out for neighbors. In 2004 when they bought the place, their realtor emphasized they would be in a zoned area. They didn't understand what that meant. They made errors of adding a lunch counter and erecting an awning without proper permits. They recognize the error. They request a permit for the lunch counter and awning. She also had one comment on the findings. It says there will be no other changes or permits offered until the subdivision review or whatever they call it has been done. She said according to Dave DeGrandpre, it's a 2 to 3 year process and \$20,000 to \$100,000 dollars they have wound up into it, and it's another problem for them to try to sell the place.

Public comment opened:

Helen Jenkins: She told how the counter came about when the Johnsons closed to refurbish the restaurant and their son, Keith, offered to build it on the spur of the moment and they did. She said that being from Eastern Montana, they didn't know that these sorts of things [permits?] exist. She referred to the Conklin letter, which said this was a conscious choice to ignore. She strongly disagreed. According to Steve Rosso, a licensed engineer, they didn't need one. The man who came to inspect the roof over the freezers wasn't sure they should have gotten a permit

to build that. She spoke highly of the Johnsons. The people objecting have the right to object, particularly the direct neighbors. When it says they can't make improvements without going through subdivision, does that mean they can't replace a window or rebuild a fence? She didn't know what this meant and thought it should be clarified. Some of the opposing people have been seen before, over issues of their own. She'd probably done stuff she should have had a permit for. She doesn't know that. With regard to the outdoor seating, her family group of 14 often goes to the eatery around 6:30. They've never been told they have to be out at 7 pm. She thought if they were eating at 6:45 they ought to be able to stay and finish. She didn't think they should be asked to tear out the bar. She thought this was punitive and unrealistic. She questioned why Dean Conklin focused on this issue as a cause. She thought people should move on from this battle, and let the Johnsons run their business.

Tim: He clarified that liquor was not before the Board and comments on liquor were not relevant. He wanted the comments to stay relevant to the issue before the Board.

Joe Archibeck: He was in complete approval for amendments to approve the counter and awning. If there're 4 families there, and no one can sit at the counter, there's no place to eat.

Mel Voos: He read a statement from Dean Conklin, who could not attend. Mel was in agreement with the letter for the most part. This was the third Board visit in a year on this property. The bar wasn't supposed to be built. The last approval was for a single-station service bar with no seating. The items approved last April were not done. Other things which were not approved or where there was a specific 'no' were done. A 22' bar was built instead of the single-station service bar. They built a concrete pad and awning that are not presently in compliance. They were told no gambling, and then applied for a gambling license 4 months later. In February, they asked for the barstools and 5 gambling machines. The Board said no to a pared down request for 3 gambling machines because in the limited space left, it would change the nature of the business. He commented on what they said about whether or not they'd apply for a liquor license. Instead of expanding the restaurant space, it was shrunk. He commented on barstools and space. He was concerned that if approval was given for a lunch counter, and then they were eligible to apply for a liquor license, it would be turned into a bar. He was concerned about enforcement. He disagreed with what was said in the Feb 18 West Shore News by the Johnson's agent that the Board acted emotionally. They chose to build a 22' bar rather than a single station service bar with no seating.

Tim: He reiterated that comments about liquor or gambling were not being considered by the Board, and were not relevant. He asked Mel to paraphrase as possible.

Mel: This was difficult since someone else wrote this. He was nearly done, and he continued with the statement. The choices were willful behavior, and he spoke of consequences to choices.

Marie Snavelly: She and her husband live on Juniper Shores Road in Dayton. They support the Johnsons. They eat there frequently. The counter isn't a problem and they sit there sometimes. She thought these are trustworthy people, and this should be approved and would be an asset.

Steve Rolfing: He's an adjacent landowner. He has no problem with someone eating lunch at the counter. The whole thing has been confusing, on a confusing and problematic property. He was concerned about the current application appearing to be in conflict with the April 2008 approval. It seems vague to leave this. How will the nuances be translated to a new owner? There's a lot of room for misunderstanding keeping the April 2008 approval along with the current one before the Board. This is his concern.

Sue Rolfing: She asked for clarification on why not to address the liquor situation.

Tim: It's not before the Board. The counter and cement addition are before the Board. There's nothing in the application that deals with liquor or change of use.

Sue R: How do you have this approval and the April 2008 approval side by side? The April 2008 approval specifies that they can't have seating at a counter and serve alcohol from the counter. What happens if they get this approval and go ahead with a liquor license?

Tim: They can't go ahead with the liquor license application. He thought that would be a change of use.

Sue R: The Board gave approval to serve alcohol in April 2008.

Sue L: Only with the service bar.

Jack M: We're not dealing with that today.

Sue R: The neighborhood has to be concerned about that. The Board has already approved the use of the building for alcohol sales, but you approved that in a greatly enlarged building with just a service bar, so the family eatery atmosphere was to be maintained, with just a service bar. If that stands, there is a problem. Part of this request conflicts with the April 2008 approval. The applicants want to have both of the approvals in place. She pointed to a March 13 email that stated 3 times that at this time they don't intend to do certain things that were already approved. She pointed to the most recent document which said they wanted to clear up the permit process to make the business more easily sold. She thought creating conflicting approvals would make it unclear and would be a disservice to a new owner and the community. She suggested a way to proceed with confidence would be to approve what they say they want at this time, and rescind the conflicting prior approval, which they now say they don't plan to go through with at this time, and when they or a new owner decide on a firm plan, then at that time a new application can be made.

Ron Jaden: He lives on Osprey Loop. There are 500 units in the Rollins district. He's been there 10 years. He described his community involvement with the fire department, community club and annual barbeque. This was the first time he's seen the Rolfings. He'd like to see this matter come to a close. He recommended the Board permit the eatery lunch counter and outside cover. The eatery was a community gathering place, and the Johnsons have been an asset to Rollins, which he elaborated. He thought a small handful of the community was against change. He noted that 25 indoor seats have been approved, but 7 plus 17 adds to 24.

Joyce Funda: She and her husband live at Elk Crossing Lane in Rollins. She thought there was a disconnect between various actions and what the zoning and subdivision regulations require. With regards to improvements, she noted the opportunity has been there to find out what is meant or what these things should mean. She was troubled that people were told there was zoning but then say they didn't understand what that was. Zoning doesn't have as a criteria what sort of person you are. She agreed with the wonderful comments about the Johnsons, but that was not what this is about. It was about whether or not this fits as a conditional use, within the parameters of the application, within the context of the Rollins zoning ordinances. She was also troubled with the sense that this application process was being utilized to enhance the value of the property through a conditional use so it would be more marketable. She noted there was a November meeting with the Johnsons at their place. The Rolfings, herself, Dean Conklin and Cheryl Miller were there. They admired the bar, ice bin and sinks. The discussion included comments from Sandy where she said only the Commissioners have the authority to make these kinds of decisions. They had a discussion about County procedures. She thought it was a surprise at that time. It's become an emotional issue, but it should not be. The Board's job is to intelligently look at what's before them and evaluate it in the context of the rules, regulations and so forth. She thought a lot of people lived in Rollins because it was one of the most tightly regulated communities in Lake County. She didn't have a problem with the awning or concrete, but had a problem with the bar, and asked for it to be denied. Someone new would be buying a building with a bar in it.

Helen Jenkins: She asked what person wouldn't try to improve a piece of property to make it more saleable. The state inspector didn't know she needed a permit for the awning. The engineer didn't know she needed a permit for the counter.

Sue Rolfing: At the November meeting, Sandy said this was a bar. Sue R understood at that time that they had already applied for the gambling and liquor licenses. They seemed to believe that if the State allowed it, the State would trump the County and they could proceed.

Public comment closed.

Clarence asked if they could still use the April 2008 approval to turn this into a bar. Joel replied that staff conditions included #1 (the restaurant building used as an eating establishment without a liquor or gaming license) and #2 ([the bar] shall not be used for service of alcoholic beverages). He read condition #13, and suggested inserting 'the April 2008 approval' in place of 'that approval' towards the end of #13. These basically say if they want to use the bar as a bar for serving alcoholic beverages, they would either have to come back to this Board or stick to the April 2008 approval. They'd probably have to tear out the awning, too. Clarence asked if they could still get a liquor license to serve beer or wine at the table. Joel said they could if they stuck to the conditions of the April 2008 approval. The bar would have to be removed to go back to the 2008 approval, since the 2008 approval was for a service bar. Sue thought Joyce had good points to bring it back into focus. It's not about emotions. Regardless of whether people are good or bad, regardless of whether they misunderstand or not, the Board has a certain obligation based on the Board's criteria. Clarence agreed that emotions were not part of it. Sue agreed with Joel about the insertion of 'April 2008' into #13.

Jack checked that the approval requested here was for the lean-to and the bar. Joel specified the awning, the concrete that the awning covers, and the lunch counter bar. Jack asked if the Board approved this, and the applicants decided to go back to the 2008 approval, then they'd have to take the lunch counter out and put a service bar in. Joel affirmed that the previous approval was specific to a service bar. Clarence asked what the difference was between the present bar and a service bar. Jack said a service bar is one where the barmaid drops off (inaudible). Joel said the zoning regulations don't have a definition, so it would probably be left up to the zoning administrator's interpretation at that time. The existing counter would not be a lunch counter if there was a bar with liquor bottles behind it, and they're serving beers and so forth. Clarence thought it could still be a lunch counter if a barrier were put up or if it were modified. Tim didn't think that was what the Board had in mind. Sue agreed.

Clarence thought it should be stipulated that if they get a liquor license and decide to put in a service bar that they remove the other bar. Joel thought that would be helpful. Tim called that #18. Joel summarized if they get a liquor license, the existing food counter would have to be removed from the premises.

Tim asked the Board about #5. Jack thought it should come out. Sue thought whatever you called it, if the hours of operation were set, it didn't matter what you called it. Clarence was comfortable removing #5 as long as the hours stayed the same. He thought if a party was seated before 7 pm, they could continue to stay and eat and finish. Sue thought that was a given.

Tim asked the Board about the identification of tables on the outside. Clarence suggested it could say for a total number of people. Sue asked if what was behind the identification of tables was so it didn't expand. Joel thought that was the intent with the language for the outdoor seating. Sue suggested saying the outdoor seating not to be more than 18, and eliminate the specifications about the type of tables. LaDana noted this said subject to sanitation and state building code requirements. Joel thought there was an intent when this was written to limit the outdoor seating to 15 seats subject to sanitation and state building codes. Sue suggested combining conditions #7 and #3.

Sandy said there were actually 3 picnic tables on the east side when they bought the place, and 8 seats on the deck. They now have space for a picnic table and a table for 6 on the deck with 2 recliner type chairs. She didn't know where 15 came from. There's always been room for 18 to 20. Sue said she was okay with 18.

Sue read the changed condition #3: The restaurant business is limited to a total of 25 indoor seats and outdoor seating on the deck and concrete patio on the eastern side shall be used for a maximum of 18 seasonal patrons, subject to sanitation and state building code requirements. Tim added conditions #5 and #7 were both being struck. Tim noted #18 was being added (discussed above) where if they get a liquor license they would remove the food counter. Joel detailed that this was if a liquor license was pursued by the land owners, the April 2008 would specifically require that the food counter to be removed from the premises. Any liquor service would be limited to a service bar and no seating at the bar. Sue reiterated the change on #13, to insert 'the April 2008 approval' in place of 'that approval' towards the end of #13.

Sandy asked about the subdivision thing. If she has to go through subdivision review prior to improvements, what about the collapsed deck, for which she had to apply for a zoning conformance to rebuild? Joel explained they were already processing that application. Sandy wanted to know if something else happens in the future beyond her or the future owner's control, what would happen. Sue asked if this was for an added improvement as opposed to repairing an existing improvement. Joel said typically they're required to obtain a zoning conformance permit for replacement of a destroyed structure. He didn't think that was the intent, so *it could be reworded to require that any application for additional development or further development or expansion on the subject property shall require that all necessary subdivision amendments and zoning permits have been obtained. It could even state that this is not intended to require the subdivision review process prior to zoning conformance permits for replacements of existing development.* Sue thought that would work. At least it would be clear cut, but not put such a burden on the property owner. *Joel said he could rework it according to how they would administer it.* Sandy said she was comfortable with that.

Motion by Sue Laverty, and seconded by Jack Meuli, to approve the conditional use request as amended, with staff report, recommendations and findings of fact. Motion carried, all in favor.

OTHER BUSINESS:

Joel gave an update on upcoming items. Clarence asked about a project on Mellet Point, and LaDana gave him an update.

Motion made by Jack Meuli, and seconded by Sue Laverty, to adjourn. Motion carried, all in favor. Meeting adjourned at 6:00 pm.