

**LAKE COUNTY BOARD of ADJUSTMENT**  
**February 11, 2009**  
**Meeting Minutes**

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

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

Mike Marchetti called the meeting to order at 4:00 pm.

**Motion made by Jack Meuli and seconded by Tim McGinnis to approve the January 14, 2008 meeting minutes as written. Motion carried, 4 in favor (Clarence Brazil, Mike Marchetti, Jack Meuli, Tim McGinnis) and 1 abstained (Sue Laverty).**

**NIELSEN VARIANCE—continued from 1/14/09:**

Mike explained that because this was a continuation, new comment would not be heard. The Board would have discussion, and ask questions of the applicant, and then the public could speak.

Jack asked Marc Carstens to reiterate how this happened. Marc Carstens spoke on behalf of the applicant. The Nielsens bought a piece of land from the Chapmans. The property had been created by boundary line adjustment as a 9.75-acre tract. During the course of the survey, the surveyor misinterpreted some County deeds and thought the most easterly 20' strip of property was deeded county road. The County did not hold title to the strip. This 9.75-acre property in 10-acre density zoning needs to be 10 acres in size to have a guest house or to divide. The 20' strip which was neglected to be included in any survey is 1/4 acre in size. If it had been left with the Nielsen tract, they would have a 10.03-acre tract. They are requesting that the Board consider these facts and allow the Nielsens to be considered as 10 acres within the 10-acre density zoning. It doesn't touch the parent tract. They didn't think this set precedence, since the conditions brought forth by the person asking for the variance would have to show the same.

Tim asked if a title search on the 20' strip had been done. Marc affirmed. You could say the Chapmans own it because they owned the property before the boundary line adjustment, but it's not currently on any tax roll. Tim asked why the Chapmans couldn't quit claim it to the applicants. Then they would have 10 acres and the Board would not need to do this. Marc said James Chapman seemed disinclined to this. A very easy solution would be to grant the County an easement on this strip and quit claim it back to the Nielsens. Tim asked about Claude and Rose Sager and the seemingly different legal. He wasn't sure what the relationship between the two. Marc said it doesn't exactly pertain to this. He fell in the same trap that Sands Surveying had. Planning staff had pointed this out.

Mike pointed out to the Board they are not judging the legality of the size of the property or whether a survey was done properly. The Board's job is to determine whether the 9.75 acres will be granted a variance to move into subdivision on this one. He mentioned the Chapmans spoke

at the last Board meeting. When they sold the property, it was under the intention that it would not be subdivided.

Tim said according to the applicant, who bought the property as plus or minus 10 acres, there wasn't anything that said they couldn't subdivide it. Mike said the deed outlines it as a 9.75 acre parcel, so there's what's actually recorded versus what was advertised. Sue L agreed with that. It should have been known that it was a 9.75 acre parcel, and the density requirements were already in existence. Perhaps it should go back to the two property owners to work out whatever errors may have occurred. That's not part of what the Board was here to do. Mike had a problem going against what the zoning was for the area, even with .25 acres. He didn't want to do something against what the people have already said they want. If there is a legal problem, he thought it needed to go to the owners to work out or to the courts to be worked out. Sue L said it was transferred in 2007. It's not like going back 15 or 20 years. She pointed out from the minutes that the hardship was referred to as the only way the owners could get their money back, to split it in two. That's an economic hardship. Tim thought this set a precedent to divide it up since it's less than 10 acres. He thought the simple solution for these parties is to quit claim the deed to the applicant and then the Board doesn't have to do this.

Jack said he still felt the same way as last month. It's a small amount and the land is under a road. Sometimes the simple solution to get things done can't be done. He still felt it should be approved.

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

**Motion made by Jack Meuli, and seconded by Clarence Brazil, to approve the variance. Motion failed, with 2 in favor (Jack Meuli, Clarence Brazil) and 3 opposed (Tim McGinnis, Sue Laverty, Mike Marchetti).**

Sue S asked if there were alternative motions or if it would be that the motion to approve had failed.

**Motion made by Tim McGinnis, and seconded by Sue Laverty, to deny the variance, including the findings of facts, staff report and staff recommendations. Motion carried, with 3 in favor (Tim McGinnis, Sue Laverty, Mike Marchetti) and 2 opposed (Jack Meuli, Clarence Brazil).**

**KORECHOFF/VALENTINE VARIANCES AND CONDITIONAL USE:**

Sue Laverty recused herself from the discussion and voting, and joined the audience.

Joel Nelson presented the staff report and attachments.

Robert Korechoff spoke on behalf of the application. He noted that Joseph Magaddino, the architect, was also present. It's a complicated project. He thought the issues had been described admirably by Joel Nelson. He emphasized that when they purchased the property in 2003, there were 2 variances in place. They were shown a plan that had been approved by the Board of Adjustment for a home approximately the size of the one they're proposing, with an attached

garage, similar to what they're proposing. That plan encouraged them to purchase. He also emphasized that without the variances, the property is virtually unbuildable. He referred to the 500 square feet of buildable area without a variance, mentioned in the staff report. He said a legal home couldn't be put on that size and it certainly wasn't commensurate with other structures in the neighborhood.

Mike voiced a concern with the vegetative buffer and cutting into it, and trying to keep the lakeshore as pristine and natural as possible. How do they plan on doing that? Robert replied that they had no plans to develop the buffer strip or replace the naturally occurring vegetation with non-naturally occurring vegetation because the buffer strip and the lakeshore protection zone are one and the same. They are prohibited from doing it.

*Public comment opened:*

Sue Lavery: She gave a handout to the Board. She and her husband were adjoining landowners. If this proposal were being requested for the first time, they would be opposed to it. This has been going on for 12 years, through 3 different property owners. Because of that, and because part of the variances were in place at the time of purchase, they are neither support or oppose the variance request. They requested some additional conditions, should the variances be approved. One was that the project begins within a year, and should no construction begin within that timeframe, no extensions on the variances are granted. Another was that these variances be for these owners only. Should the property be transferred without beginning construction, then the variances would not transfer to the new owner, so the variances would not be a marketing point.

She and her husband did object to the conditional use request for 41% coverage of the buildable area. They believed the home as designed was too large for the site. They were concerned about Moon Drive, and felt it was not accurately depicted on the site plan as compared to the original plat. The location was changed informally by neighbors to accommodate building on lot 163 about 15 years ago. They were concerned that the owner of lot 165 could dispute the road location on their property, which would leave the neighbors who access this property or the properties to the south with an unusable access to the common area and also for the owners of lot 166, further south. They'd like to see this staked before something goes further on that.

They disagreed that the size of the house will not change the essential character of the area (item #3, pg. 25) or that it would not disturb existing or future neighboring uses (item #4, pg. 26). They were concerned with inadequate parking, and concerns and confusions over where Moon Drive actually exists. They felt a one-car garage was inadequate for the size of the house.

They disagreed that it was in accordance with the general objectives of the zoning district. By reducing the footprint, this would also reduce the impact and concern regarding the stormwater management plan and the impact of the 20' setback as mentioned on pg. 12. These 2 items have a huge impact on this project and on Swan Lake. If the variances were granted without the conditional use request of 41% coverage, this still gives the owners a large enough 2-story house in keeping with the neighborhood. She gave figures. She thought the reduced size would lessen the impacts on the property and be in keeping with the neighborhood.

Doug Morton: He and his brothers own various lots in Swan Sites. He described his familiarity with easements and plats. His concern has been the absence of agreement of the adjoining landowners as far as the location of Moon Drive from this point on. How can a house be approved to be built on top of the platted road?

He had a certificate of survey showing the 40' road into common area 'C'. 'C' is intended to be for the benefit of the 300 owners of Swan Sites. He showed a portion where the shaded area showed the platted 40'-wide easement, and the yellow showed the estimated location where the landowners relocated the road, which he thought was 17' wide. A 40'-wide easement is needed through there. He hoped when all was said and done, the 300 lot owners still have a 40' easement somewhere and everyone knows where that location is going to be.

The lot in question is 95' wide. He wanted to see where the platted easement would be. There's about 65' from the front pin line on the lakeshore up to the beginning of the road on the easterly boundary, and only about 20' on the westerly boundary. That's not enough space to begin to put a house. In his opinion, this lot was intended as a view lot rather than a lake lot, with about 80% of the space above the 40' road easement. The red shows where the applicants have shown the relocation of the 40'. He didn't know if this was right. There were no stakes out there. He thought the septic tank was put in right on top of the 40' platted easement.

As a member of the Swan Sites Homeowners Association, he said they have limited resources, mainly to maintain common areas and do not have the authority to grant, change or relocate easements, and can only make recommendations on ways to keep this resolved. He read a portion from a 7/13/07 letter from Darrell Worm, an attorney in Kalispell.

He thought the Homeowners Association thought they had interest in protecting that road easement, although the ownership isn't in the Association. The plat language says it's to the benefit of the 300 lot owners. Worm wrote that all of the owners have an easement where the plat indicates, and no one has an easement where the roadway presently exists. Doug was concerned about building being allowed on top of a legal, platted easement that the homeowners do have, which is also against the covenants. He hoped the Planning office makes sure the homeowners have a 40' easement of known location when this is done.

Kay McCready: She agreed with Sue Laverty, and thought the house was too large for the lot. She didn't think it was a viable lot for a house. To build, they're asking to build on a 25% slope, to have 41% coverage and they want the high water mark. There are so many variances concerning this one lot. She sympathized. She thought they could go above the garage. They could build a smaller house and condense it. She thought they were asking for too much. The lot hasn't even been staked, so she couldn't see where the home was supposed to be. She measured the road, which is 17' wide to get to the common area and for the people further south for access. She thought some changes were needed.

Tim M: Is the road only 17' wide on the applicants' lot or on everybody's lot?

Kay M: The road is one-way and 17' wide. She measured it herself.

Robert Korechoff: He responded about the size of the home. The footprint of the home and garage was consistent with what was approved previously. The livable area footprint is slightly over 1000 square feet. By the regulations, he has to be at least 999 or would need a variance or conditional use permit from the Board.

The Moon Drive location has been an issue. The plat referred to has a notional drawing of where Moon Drive is. There is no survey done. It is not legally located. Moon Drive was displaced before they bought the property. They moved it on their own property and the property to the south with the written permission of the property owner to the south and with full knowledge of the Swan Sites Homeowners, who wrote a letter saying they didn't need to be involved, as long as written permission of the other owner was obtained. They haven't changed the width of the road. The common beach is as accessible now as it was before. Their plans show a 40' easement and they're putting no structure in that easement. The plat says the easement is located where Moon Drive is located. They've centered the easement around Moon Drive as it exists. For parking, the people going to the common beach aren't supposed to park on their property. They do not intend to use the existing septic tank. It will be removed at the time of construction. Its location relative to the easement is no issue.

They got a letter from the Homeowners Association's lawyer about the location of the road and easement and felt compelled to hire someone for legal advice, so they went to Darrell Worm. Since the Homeowners wrote a letter saying they no longer believed they should be involved in the easement issue, Darrell Worm has not been further involved. Regarding the Swan Sites covenants, they had to conform to those per the 2003 variance. Eventually the County said they should not be involved in the covenants, and the Board of Adjustment removed that language from the old variance. They are in conformance with the covenants; it's not an issue for this Board.

Sue Laverty: She clarified on parking that her comments were that they needed to provide parking themselves and their guests, not anybody else.

*Public comment closed.*

Mike asked regarding the memo on staking if it was customary to do so. Joel replied that usually prior to the issuance of a permit, it's staked. In talking with the applicants, they determined that it might be reasonable to not have it staked at this time, because it's hard to get to the property or see anything in the snow. Technically, it's supposed to be staked. He agreed that it would be reasonable to not have it staked at this time.

Tim asked to verify about the 1000 square feet of living space. Joel thought the figure might refer to the first floor. Sue S said on pg. 3, the conditional use is single family residential structure from 500 to 999 square feet of ground floor area. It doesn't talk about necessarily living space. It's talking about the area of the structure, the footprint.

Mike asked about the road issue. He took it that it was in the deed and recorded that the road goes through the property and is public access. The landowners would not be able to remove the

road or restrict access to the common area. He asked about the history of the loop at the end of the road. Joel knew only the road was moved at some point. Jack asked if it was an established road when Swan Sites was made. Joel thought it was probably a logging road. Jack asked about the easement. Sue said they know where the easement was for the plat. They're not sure about the driving surface. Jack thought if the easement was there, it was up to them if it was a private road. Mike checked that Jack meant if Swan Sites decided to move the road, it was their business. Jack affirmed, and added as long as the easement stays there. Sue S noted that Joel attempted to address that in #16 of the recommendations. Mike said his concern about the road moving is that if it was surveyed and the road was at a certain spot at one time, and then the road was pushed back, could someone legally come back and say the road was surveyed here, and now you're well within the easement of the road. Joel thought this could happen if the easements weren't changed or reestablished. Sue S again noted #16, that this is the owner's responsibility.

Jack and Mike asked if the variances needed to be done individually or as a group. If they're not all granted, the project doesn't happen. Joel said there're 4 items and one staff recommendation.

Tim asked if variances run with the land. Sue S said this was typical. Tim pointed out this seemed to get into issues here. Sue explained a lot of times, if the variance is for setback, after the structure was built, every new owner would have to deal with that. Tim also asked about the timeline. Joel pointed to condition #19 on pg. 19, and the sentence following #19. Tim checked that they would start over again, if they don't do it in that 2-year period. Joel replied it could be up to 3 years: 1 year to square away the conditional use, and a permit approval of one year, and an extension of up to one year.

Sue S let the Board know that part of the development of the property would require a floodplain application and permit, and those can typically take some time. Jack verified that they would have plenty of time to go through the permit process but wouldn't be given another.

**Motion made by Jack Meuli, and seconded by Tim McGinnis, to approve the staff report with one change that there shall be no transfer of the variance. Sue clarified with him that if the construction occurs with this landowner that the variance would transfer. Jack affirmed. Motion carried, 4 in favor (Clarence Brazil, Mike Marchetti, Jack Meuli, Tim McGinnis).**

**Motion made by Mike Marchetti, and seconded by Tim McGinnis, to approve the 3 variances and the conditional use, with the inclusion of the staff analysis and staff conditions and the findings of fact, as well as the additional condition approved in the previous motion. Motion carried, 4 in favor (Clarence Brazil, Mike Marchetti, Jack Meuli, Tim McGinnis). (Note: Sue Laverty had recused herself and abstained from the votes.)**

**JOHNSON VARIANCE REQUEST:**

Sue Shannon presented the staff report and attachments. She noted the 24' x 10' deck mentioned on pg. 2 has been removed since the staff report was written; it caved in and was removed. She highlighted #5 and #6 on pg. 10-11. Additional comment received was provided to the Board.

Jack asked about condition #9 and if the April 08 conditional use was still valid if this one was denied. Sue S said it would still stand. It's a little fuzzy because they built the bar, but it's not a service bar only. There's also an unpermitted expansion to the building.

Tim asked why the additional information 1 through 5 is not conditions. Sue S explained she wanted to make it clear that they could not operate the business with the alcohol and gaming until those items are taken care of. Tim asked if they had to come back to the Board with this information. Sue S replied they have to come back, but not necessarily to the Board. They would go through the Planning staff to demonstrate those things had been addressed. The Board would be the ultimate authority if they could not agree on whether or not the information was sufficient. These are conditions, but to not approve the expansion until the information is received and determined sufficient. She thought it was necessary because in the 2008 approval, there were things that didn't necessarily need a permit issued. It was kind of fuzzy if the applicant could still serve alcohol and operate at the expanded hours if she didn't construct. Sue S wanted to make sure all the needed information was received before anything was done.

Tim asked about #8 (pg. 20). Is that not covered by health department sanitation codes? Sue S replied part of the evaluation criteria is that the property is properly serviced. Currently the applicant says she is hauling waste to the Proctor container site, and you're not allowed to haul commercial waste to container sites. You have to take it directly to the transfer station.

Mike asked on pg. 20 on #1 and #2 if there is a contradiction. Sue S read from the evaluation criteria on pg. 15, b. In this section, the conclusion is there's an existing restaurant on the property. If they allow alcohol for the customers with their meals or up to 3 games to allow them something to do while waiting for meals, that wouldn't necessarily change the character of the property, so long as it's maintained as an eating establishment and not turned into a primarily drinking or gambling establishment. Mike asked if they were classified as a casino if they got a gaming license. Sue S couldn't answer that question. Sue L guessed that would be secondary to the business they were doing. Tim said this represented what they were shooting for when the State of Montana made gambling legal in its present form in the '70's: to help mom and pop operations make it.

Dave DeGrandpre spoke on behalf of the applicants. He said the staff report was thorough, accurate and they agreed with most of it. He wanted to make some clarifications. Regarding the discussion of the certificate of subdivision approval, in the past this was not considered a big deal. It was only recently that compliance with the certificate of subdivision approval has been seen as something that needed to happen by the Planning Dept and Environmental Health Dept.

On the hours of operation, he understood the sanitation license allows for seasonal use but he didn't think it talked about the hours of operation. He wanted to clarify this was not necessarily an expansion of hours, or at least the current use of the property and current hours are longer than maybe seem to be the case in the staff report.

He referred to #9 and #10 on pg. 12 regarding parking, and distributed handouts to the Board from a parking standards book, to show that parking requirements vary in different locations. He thought the important question was if the current parking was sufficient, or if there was a hazard

or problem with traffic. He thought the current parking was sufficient, and would still be sufficient with the expansion of use. If the parking was inconvenient or hazardous, it's the property owners that have the incentive to make it right for their customers. He asked for amendment to #9 and #10 to reflect that the current parking would be sufficient.

Dave gave the Board a 11/13/08 letter from Ken Lambeth of MDT that addressed the proposed use. He pointed out the 3<sup>rd</sup> sentence onwards. The Johnsons had this letter. The Planning Dept got the letter just a few days ago. He requested that the Board find MDT has reviewed the proposal and determined that it will have no impact on access.

On pg. 16 c, he couldn't find a clear rationale to limit the number of gaming machines, and asked that this be struck and removed from the findings of fact.

For the second condition on pg. 19, he and Susan Brueggeman thought this meant an engineered drainfield design that's approved by county and state be installed. It would not require a certificate of subdivision approval. Sue S said she had the same understanding as Susan Brueggeman as to what would be required at this point. Dave requested a slight modification of the language to perhaps after 'regulatory standards' to say in parentheses 'not including DEQ approval or certificate of subdivision approval' to clarify the intent. This was covered on condition #5 on the first page.

On pg. 20, condition #2, he'd like the 3 machines changed to 5 machines, as mentioned earlier.

He referred again to the parking handouts in reference to condition #7. He thought the 13 current spaces should be allowed to continue, and that #7 should reflect this.

Condition #9 rescinds the April 2008 approval. He said that makes sense where there are contradictory messages. In April, an expansion of the building was requested and the Johnsons would like to maintain that opportunity. They would have included that expansion in the building in this request as well had they understood that [earlier] permit might be rescinded with this request. He requested that they have the opportunity to expand the building as approved in April of 2008, but that the permit otherwise be rescinded however they think appropriate. A possible language might be to specify where conflicts exist between the two approvals, that the more current approval shall apply.

Pertaining to pgs. 19 and 20, if the permit is approved, the Johnsons would like to start to move forward with the Department of Revenue (DOR). They would like a letter of approval issued to the DOR, but that occupancy or use can't take place—the gaming machines can't be installed or liquor sold—until the first six conditions have been complied with.

*Public comment opened:*

Helen Jeakins: She introduced herself. She lives in Rollins. The Johnsons have been excellent neighbors and great supporters of the community. They have applied for a liquor and gaming license, and do not intend to use them to the highest degree, and have agreed to restrictions, of no more than 5 gaming machines, no packaged liquor sales and limited hours. A subsequent buyer would be limited by the same restrictions, which would appear on the permit. The property

would be conditioned with those items. The request was made to make the business economically feasible. There has been discussion regarding the bar added to the building. If a permit was required, the Johnsons were unaware that they needed it. There's been confusion, in part due the Johnsons' lack of experience with the process. They came from Liberty County, a farming county in eastern Montana. The offering of sale on the property has been in place for nearly a year. They've confirmed their support with over 200 letters and petitions in support of the business. She said there were many proponents in the room, although few would speak out of deference for the time. She asked the Board to consider and grant this permit with recommendations and restrictions as proposed.

Steve Rosso: He lives about 5 miles north of the eatery. As the previous speaker said, the limits that are in place won't allow a new owner to change those things without public review. Because this business expansion is limited, he didn't feel it would adversely affect the neighborhood or establish a precedent that could compromise future enforcement of the zoning regulations. He was in favor of granting this conditional use request.

However, the permitting process was very important and must be respected. He didn't think the Johnsons intentionally failed to follow the permit requirements in their efforts to improve their business, but he didn't think they should be allowed to skirt the rules. As recommended by Planning staff, the Johnsons must be required to show all past and future work as stated in county permits, subdivision approval, and that the water and sewer systems would protect the health and safety of the public and protect the environment. Most of the additional conditions recommended by the Planning Dept should be part of the permit, including the rescinding of the April 2008 permit for business expansion. If the physical expansion of the business is allowed, for the understanding of the community and what to expect on this business expansion, the number of seats in the restaurant recommended here should stay. He disagreed with the reduction from 5 to 3 gaming machines. He understood from other small business owners that because of some fixed costs, there's a threshold that must be reached before providing the machine gambling can be profitable. He trusted the Johnsons had researched this and could justify their request for 5 machines. This would not cause a significant increase on the impacts in the neighborhood.

He thought the Board should approve this request with the limits and conditions recommended. He requested to ask Planning staff to answer questions on condition #5 regarding signage. The zoning regulations specify sign size and location. It would be common practice to announce new services after a business expansion on a sign. It was important to let the neighbors know if the Johnsons would be allowed to change the wording if they don't change the size or location. Is a lighted sign in the window reading 'casino' or 'Budweiser' going to be allowed?

Steve Roling: He is an adjacent landowner. He gave the Board a copy of his statement. He summarized his written statement, in which he asked for denial, and gave reasons and concerns.

Joe Archibeque: He lives about a mile south of the eatery. He's worked for them over the last 10 years, both the prior owners and the new owners. He remembers the prior owners. You couldn't compare the family values that the Johnsons bring to the community with the prior

owner, although he considers the prior owner a very dear friend. They're a great asset to the community.

Helen J: She added that in the original request there was a service bar located away from the eating counter/bar is now. The Johnsons were willing to follow that and move the liquor to the service bar spot and use the counter as a counter.

Carole Dufresne Conklin: She's a year-round resident at Shelter Bay, with long time family history in the area. She's concerned about the impact and changes liquor and gambling will bring to the family property. The road is narrow and already difficult. There have been problems on the road, especially in the summer. Her family has been active for a long time in the community, which is rural, caring and quiet. She was concerned that the next target would be the docks down on Lakeshore Drive. She believed the majority of homeowners along this stretch of the drive, from the Rolfings to the Rigby place have been the same owners for over 40 or 50 years. It's an old and stable neighborhood. It's hard to see the changes coming on with the gambling and the liquor.

Dick Chapman: He thought it was opening a new can of worms in a new territory. He thought the Johnsons were good people, but were trying the wrong thing in the wrong place.

Sue Rolfing: Her family has property adjacent to the applicant. She supports the April 2008 approval and condition that there is no gambling. She reported Sue Shannon said the Board said no because it wasn't in the application. It was part of the discussion. She referred to pg. 2 and pg. 5 of the meeting minutes. She disagreed with an earlier comment that having games doesn't change the character of the property. This was gambling, and that gaming was a euphemism. She noted gambling activity had state departments and treatment centers to deal with it, and, and although this doesn't happen to all people, this was the type of gaming under discussion. When the legislature approved gambling, they approved it in bars. The long time poker game, the church bingo game and school raffles could go on. It was not anticipated in 1972 that casinos would displace family eateries across the state. She also had concerns about violations. The April 08 changes were not done yet. The business is for sale. The Johnsons may be wonderful, but they would not be running it. It wasn't suitable for a bar and casino. She was concerned about the road and law enforcement. She hoped the Board sticks with the April 2008 decision.

Christine Cook: She'd sent a previous public comment letter. She spoke regarding the petitions and form letters. They came from a wide area. The residents of Rollins were those affected and should have input. On #12, pg. 13 of the staff report, she noted that Richard Tressel was not the fire chief now. When the fire department looked at the project, the 264 square foot addition on the west side was not there or proposed. There are longer hours and more parking and so forth proposed. She thought the fire department should reevaluate the proposal.

Jane Butkay: She lives on Rollins Lane. This was retirement property. A bar/casino didn't fit. It would be the only gaming from Polson to Lakeside. She asked the Board not to approve this. The April 08 approval was okay.

John Lowell: He thought the bar scene description was overblown. It is for sale, though. The area needed a good restaurant and didn't seem viable as it was. He would continue to go there.

Cheryl Miller: She intended to work for the Johnsons. She spoke about the difference between a bar/casino and a restaurant with gaming. She ran a bar for 20 years, where people smoked, drank and played pool. This wasn't what the Johnsons wanted. It would be non-smoking. A place was only as bad as the manager.

Mimi London: She has been riding on her property for 68 years. She was disturbed at the change of nature of Rollins, and that this could become a roadhouse. She thought the Johnsons had said one thing, and done another, and now wanted something different. She was concerned about precedent.

Dean Conklin: He'd been here in April. The Slacks were given a violation fine that afternoon. The Johnsons were given permission for specifics, which he listed. There was also a condition requiring additional approvals for additional construction or change of use. The Johnsons did not do the things that were approved. They built a 19' bar, sink, ice bin, and a pad with an awning over it. They needed state approval for electrical and plumbing work. He called this self-help.

He gave details and background on the state application. Sue Shannon sent a letter to the hearing examiner when she learned about this, asking for the applicant to demonstrate compliance with zoning. A few days later, County sanitarian Christine Hughes wrote to the State and said she had just become aware of changes made by remodeling within the structure to create a bar, and they were not in compliance with the State Administrative Rules (ARM) for restaurants.

He referred to pg. 16 and maintaining the rural character of the area. He said staff found that changing from a food service oriented establishment to a primary drinking or gambling would most likely change the land use on the property to one not consistent or compatible with the pattern of growth. The reduction to 3 machines was said to ensure the proposed land use would result in minor impacts. He concluded there would be an impact with this, but to try to make it minor. How do you ensure this remains primarily a food business? He noted they had 5 years to bring this into compliance. ARM 24.301.903 section 1.d and 1.e require a place that serves food and beverage to have 2 restrooms if they are set up to do more than 20 people. He thought it would be difficult to maintain a food environment with 17 people (four 4-tops and 1 other), the impact of a bar almost the entire width of the north wall of the dining room, plus 3 gaming machines. He didn't think the Planning Dept could ensure it was primarily a food service place rather than a gambling and liquor place. He requested reaffirmation of the April 08 decision to deny the gambling. He also thought self-help violation consequences should be considered.

*Public comment closed.*

Clarence said the parking was probably necessary. He didn't think the owners would be responsive. He gave the example of business owners in Polson who park in front of their own stores on Main Street, and there was not always parking for customers. Mike agreed. Parking regulations and the rules were designed by the County for the County, not for the nation. It's what is needed for this area. Sue L agreed. Tim asked if the Polson Development Code was

used for the parking. Sue S replied she asked Sandy to address parking, and gave her the example of the Polson Development Code. Sandy used that example in her application but with the wrong square footage. Therefore, Sue's analysis and recommendation corrected the error in the square footage. This gave 18 rather than 13. The information submitted by Dave DeGrandpre was not submitted with the application or within an adequate timeframe for consideration.

Mike asked about pg. 13 and the MDT letter. He asked the Planning Dept to review that letter. Jack thought Ken Lambeth's letter solved this. Sue S thought the letter would address #3 on pg. 19 and also support findings. The letter was submitted late yesterday. She didn't see a need to change the staff report.

Tim asked about Dave's request to amend the condition on pg. 19, so that it's not a certificate of subdivision. Sue S liked the way it was worded, which would allow the Sanitation office to review and make a determination on it. It was her understanding that Susan Brueggeman thought this could occur without going through a subdivision review from DEQ. This wording would allow her to do that or if something presents itself such that it does have to go through review, it would allow that option too. She didn't think this group should be determining what's required on the water and sewer side.

Tim asked about Dave's comments regarding #2 on pg. 20. Sue thought there was a clear nexus, which was the size of the structure itself. It's a small room. Putting 5 machines in there could dominate the entire corner of it. The bar is dominating one wall. The intent was to keep the use from changing into a gaming establishment. Clarence thought the limit sounded reasonable. There'd also be fewer people playing on the gaming machines with their cars parked out front. He's seen people sit all night at one machine. Some big places are slow with getting dinner so people play more on the machines. He thought 3 machines were enough.

Mike asked about #9 on pg. 20, which would rescind the April 2008 approval. Sue S felt the application in April was for an expansion that included 12 additional seats. The status of the property is not clear now. There are 8 seats at the bar, but they removed tables. She thought it was best for any new proposal for expansion to come back to the Board for review in order to make sure the drainfield can deal with the expansion and to look at all the other things that we're doing with this review.

Mike expressed disappointment, remembering the discussion last April, and the pointed discussion about the service bar, which is now not a service bar but a sitting bar. Should this be approved, what guarantee can the Planning Dept give that they will follow the rules? They already have not. How do we make sure this is done properly and follows the recommendations of the Board? Sue S said there's an enforcement portion to the regulations. They attempt enforcement whenever possible. It's usually a long, drawn out process that's expensive to the taxpayers. Sue L also found it very disappointing to have gone through so much time, effort and energy on the part of the Board, community and staff, and less than 12 months later be looking at an application for something that she felt was addressed in the previous review. There were a lot of changes to what they'd approved, like the service bar. There has to be self-enforcement. If you show you can't enforce yourself, should the Board give you new terms to

try to enforce on yourself? She had a problem with this application, because of that. She thought the new proposal would change the flavor of an eatery. It changes the use of the business, whether it's 3 machines or 5 machines. It changes what she perceived as the existing use of the business.

Tim thought it did change the use. He had 2 separate nice restaurants together for 13 years, and had gambling in it, and kids were there. He didn't think it was detrimental. He could think of maybe 3 or 4 times in the 13 years when he was there that there was a problem. He felt nervous with the broad brushstroke of 'dens of iniquity'. Not everybody abuses those things. He thought quality of life included a glass of wine with dinner. Sue L agreed on that point. She thought that's what they'd agreed on before in April. Clarence thought a drink with dinner was fine, but they didn't need to change it to a full service bar or a gambling place. Tim said at the Rancho Restaurant, when he had a bar, about 70% of the bar sales were from food. Some people just preferred to sit at a bar to eat. Jack thought it would be that way at Rollins, too.

Jack agreed with Sue L that the bar shouldn't have been put in now; that was a mistake. Regardless, he thought the application should be approved, and that it would not be a detriment to the community.

Clarence said on Finley Point, there are 2 bars and restaurants. A big percentage of the people are there long after the restaurant is closed, drinking. In front, on Highway 35, they come out drunk and burn rubber and drive, where there's a 70 mph speed limit.

Sue L said her problem with the proposal is that it's such a small establishment that you are taking more emphasis off the eating or drink accompanying dinner; another use usurps the eatery.

Tim responded that it's hard to make a living—he didn't know how they did it with that number of chairs. It's another income center to allow the rest of that business to survive. He also pointed out this is not the final stop. The Dept of Revenue has a very strenuous application and permitting process of its own that allows for much public comment. He didn't think it would creep across the road.

Sue S noted one of the comments about it creeping across the road was that people would use the marina to dock boats and then walk over to the restaurant. That is clearly prohibited by the RV park approval. The marina is only for the RV park patrons. If the Board wanted to make this clear, they could add this as a condition of approval.

Mike returned to the trust issue. He didn't trust that the applicants would follow whatever the Board puts in the approval. The applicants have already proven that the Board won't get what they ask for. He didn't want to have to go through this process again.

Dave responded on behalf of the applicants. He appreciated the permit process. What the Board had in front of it was an attempt to put everything on the table. There's also an opportunity in the zoning for conditional uses and variances, and avenues for people to come back to the Board, and that's what's happening. He spoke with the Building Codes Division of the State, and they

were inconclusive regarding whether a structural permit was required. They suggested submitting some plans and they would figure it out. He also thought some of the rhetoric was overblown about the games. He didn't see a discernable impact on the surrounding neighborhood. MDT has said they don't see this proposed use impacting access to the property.

Dave addressed the comment about the applicants following what's discussed for approval. There's the rule of law. It's not about promises. There are zoning regulations and an enforcement arm of the County, although it's difficult, arduous and costly. They were here today to try to get everything on the table and put forth the positive step.

Going back to the zoning regulations, the Upper West Shore zoning has a district that allows for highway commercial and the expansion of existing businesses, if the request meets certain specific criteria. The staff evaluation looked closely and found that given certain conditions, those criteria were met. The Johnsons were not aware that by coming in for a conditional use permit request that they would be required to give up a conditional use permit that they currently possess. These aren't easy to get. There's no requirement in the zoning regulations or elsewhere that only one conditional use permit be open. He understood that you couldn't have conflicting conditions. He thought they had the right to preserve the conditions that weren't in conflict. He asked the Board to consider this.

Clarence noted the Johnsons were trying to sell this place.

Jack suggested that an addition be made to #9, to make clear that if this isn't approved, they still have the April 2008 permit. Mike thought that was implied—if this current proposal wasn't approved, the April 2008 still stands. Jack thought earlier the answer was it might not stand. Sue S said they'd have to comply with the conditions. Jack agreed.

Sue L checked that they would have to remove the bar and the concrete pad, because that was not part of the conditions in April. Sue S thought if the Board did not approve it today, some sort of notice of violation should be issued on the concrete pad and awning, and some sort of language about the bar that was installed does not comply with the service bar. It could cause problems through the liquor license if they're not completely in compliance with that approval.

**Motion made by Jack Meuli to approve the proposal.** He proposed a condition #14 to draft a letter of approval to Dept of Revenue so they have it when they go for their liquor license.

Tim checked that this was a letter of approval because of the 6 points needed. Sue S said she would just send them a letter that it's not approved until they take care of the 6. Dave clarified that the gist was the letter state the permit was approved but that use of the gaming machines and sale of alcohol could not happen until conditions 1 through 6 were complied with. Sue S understood the request. Sue worried that the discussion on this condition hasn't happened with the Board. While there was a motion on the table, this might not be an appropriate time to discuss it. She thought this letter would send a mixed message. If they get approval for the liquor license and gaming without complying to the 6, and suddenly start selling alcohol, what does Planning staff do? Jack said they'd have to comply with the 6, prior to her writing the letter. Sue said this was how it was currently written, so they wouldn't need to amend or add

#14. Jack explained he wanted to be sure the letter went in, but also that they complied with the first six. Sue S said that after the first 6 are taken care of, a letter will be issued that they can operate the property for what they're requesting.

**Jack clarified that the motion included findings of facts, staff report and conditions of approval, and that there was no additional condition in the motion. Motion was seconded by Tim McGinnis. Motion failed, with 2 in favor (Jack Meuli, Tim McGinnis) and 3 opposed (Clarence Brazil, Mike Marchetti, Sue Laverty).**

**Motion by Clarence Brazil, and seconded by Mike Marchetti, to deny the application for a conditional use permit, with the condition that the decision of the Board from April 2008 stands. Motion to deny carried, with 3 in favor (Clarence Brazil, Mike Marchetti, Sue Laverty) and 2 opposed (Jack Meuli, Tim McGinnis).**

**OTHER BUSINESS:**

Sue pointed out the Board training handout from the Flathead County Attorney Office.

**Motion made by Sue Laverty, and seconded by Mike Marchetti, to adjourn. Motion carried, all in favor. Meeting was closed at approximately 6:45 pm.**