

LAKE COUNTY BOARD of ADJUSTMENT
October 14, 2009
Meeting Minutes

MEMBERS PRESENT: Jack Meuli, Sue Laverty, Mike Marchetti

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

Mike Marchetti called the meeting to order at 4:02 pm. He noted the Bonner/Hidden Canyon Conditional Use has been postponed for 1 month.

Motion by Sue Laverty, and seconded by Jack Meuli, to approve the August 12, 2009 meeting minutes. Vote unanimous to approve the minutes.

KENNEMAN CONDITIONAL USE—MASUMOLA

Tiffany Lyden presented the staff report. (See attachments to minutes in Oct. 09 meeting file for staff report.) With condition #2 on pg. 7, she noted that the property owner requested that rather than removing the RV from the lot to activate the new 5 month periods, he would like to be able to move it off of the RV pad and park it somewhere else on the lot while not in use, as other properties in the district do. The use of it would just be 5 months.

Mike asked what Tiffany thought about just moving the RV off of the pad for 30 days, when it doesn't seem consistent with the actual zoning regulations. Tiffany replied she wanted to give it to the Board to think about. She wasn't sure about it. This was what the owner indicated in a conversation today. There are other RVs people park all the time without a permit. The regulations don't speak about the use ceasing. It speaks about actually removing the use. Sue L summarized the owner was asking that instead of taking it away for 30 days and bringing it back, he was asking to move it to the other side of the garage, shut it down, cover it up or whatever, or move it into the garage and go away. Tiffany said he was asking for this if needed. When he submitted the application, his plan was to come up seasonally, live in it and remove it. He wanted the option, if he needed it, to be able to park it on the property rather than finding another location for it, if his circumstances didn't allow him to move it. In answer to Sue L's question as to why he couldn't park it in the garage out of sight, Sue S said he was concerned about the boats he might need to keep in the garage. She thought a boat might be less visual impact than an RV. The Board might say it has to be parked in the garage. The regulation was written strangely. Not many of these had been reviewed.

Sue L confirmed with Tiffany that the septic system was originally permitted for a 4-bedroom house and an RV. Tiffany pointed out in this case it was just being used for the RV at the moment.

Mike noted there was no representative here on behalf of the applicant.

Public comment opened:

John Mercer: He introduced himself as an attorney here on behalf of Hedwig Golant, the trustee of the property below this applicant's property. He questioned whether or not the Board has the authority under the Masumola regulations to grant a conditional use permit here. Looking at the definition of a temporary dwelling, it speaks to travel trailers and single-wide mobile homes in one section, saying they don't want them there longer than a couple of years if someone is building something. The next section talks about temporary structures. It's a new and different terminology. If you look in enough books, all sorts of things can be structures. He thought if you read this section as intended, he didn't think a temporary structure would be a motor home. A motor home was a self-contained unit, not something put together temporarily and taken down.

If the Board does feel they have the authority, he thought they had to look further at the standard upon which they're supposed to apply. Does living in a motor home fit the purpose of the Masumola district? He didn't think this was the intent of the zoning regulations. He thought the intent was to be a rural residential area. The Board is charged to determine whether this request would maintain the rural character of the area, and protect and enhance property values. Living in motor homes wasn't consistent with that. It would be nice if people could do whatever they wanted, but because they live in a zoning district, he thought the Board would have to say no, and he asked them to do so.

Public comment closed.

Jack didn't see a problem with the proposal. He thought they should grant the applicant the right to take it off of the pad and put it someplace on the property. With that much property, he thought the owner could find a place.

Mike asked about the other RVs visible from the property. Those were just parked, and not being used to live in? Tiffany affirmed. When she was where the picture was taken, she saw the other RVs parked. This is something some people do in their driveway when they aren't using them. The Kenneman RV is not the only RV in the zoning district.

Sue L agreed with Jack to some extent. Some motor coaches can be nicer than people's single-wide homes. She didn't think that was visually a deterrent. If they could just store a motor home in plain view, she didn't see the difference, aesthetically. As far as moving it around the property, she didn't know about that. Should they ask him to garage it? Maybe that could be a compromise. It was a large property.

Jack thought the reason for this was that it's not used as a permanent dwelling, and is only used for 5 months. The big thing is to get it off the pad and disconnected so it won't be used.

Tiffany explained the property slopes up. It's fairly visible from the road. There aren't a lot of trees. Maybe behind the structure would be an option. Sue L said that it looks or would be made to not function as a dwelling unit when it's not supposed to be.

Mike understood the comments. He was concerned that the purpose of a temporary dwelling was for construction purposes not to exceed two years or a temporary structure. A temporary structure has to be removed for 30 days from the property. They would violate the community's

wishes if they allow them to leave this on the property after 5 months. He had a hard time with that one. It would be safer to have it removed. Otherwise there will be unpleasant community comment in the future. Sue L thought if it were gone or non-visible for 30 days, it would be a mitigating factor for the neighbors. Mike said if you drive by the property, it's wide open. There's no way to hide anything. A boat from the garage could be put out on the property, but that's still visible too. Jack didn't see a big problem, with it being visible or not. He didn't see a problem with either a recreational vehicle or a boat being on site, especially when you live in a recreational area anyway.

Sue S said we haven't reviewed a lot of these. This language was in all the zoning district regulations. In past reviews, we've reviewed them for RV uses on a seasonal basis. Her understanding was that the intent was for undeveloped properties, to allow people who live elsewhere, such as Missoula, to come up and spend the weekend in the RV, or to leave the RV parked on the property rather than driving the RV back and forth for the summer, on a seasonal basis. She thought this was the intent of the language. Jack agreed.

Mike asked if the owner intended to build. Tiffany understood that he would like to. He owns a property on the lake that he's trying to sell, and he seemed unsure at this point of his plans, depending on what happens with that. The intention was at some point to put a residence on the property, whether it was him or selling it to someone else. He also asked if he were to sell the property, if the conditional use could go to a future land owner. She explained that she told him this was a decision the Board would make. That's part of #1 of the conditions. Sue thought it was best to keep the sunset language. Then the new owner would have to come back to the Board and describe their reasoning for wanting the RV on there, and they would also understand the conditions about the 5 months. The zoning regulations might change between now and then. We'd want to get the property into compliance. Sue L agreed. She was not in favor of this being used as a marketing tool.

Jack checked that the recommendations included expiration with new ownership. Tiffany affirmed. Jack said he was with Sue L on having the expiration.

Motion made by Jack Meuli to approve the conditional use, with the language that the RV has to be moved off of the pad but can be left on the property, and with the rest of the staff recommendations. Motion died for lack of second.

Mike disagreed with leaving the motor home on the property. He thought the regulation for the community is clear that they want it removed. It's a temporary structure as the definition that's stated in the analysis and he believed it should be removed.

Motion made by Sue Laverty, and seconded by Jack Meuli, to accept the staff recommendations and finding of facts, with the modification to item #2 that the motor home or RV must be either removed from the property or out of view for a minimum of 30 days. Motion carried, all in favor.

SANDERS/ MANY SPRINGS CONDITIONAL USE—EAST SHORE

Joel Nelson presented the staff report. (See attachments to minutes in Oct. 09 meeting file for staff report.)

Mark Johnson spoke on behalf of the applicants. Their practice has been to meet or exceed zoning or DEQ requirements to maintain a high level of quality. It was a benefit to the community in terms of tourism dollars and employment of seasonal employees. They agreed with most of the staff report. On storm water management, their engineer will go into greater detail. They have planned and intend to deal with all aspects of onsite stormwater management to meet all of the DEQ requirements. Regarding water treatment and sanitation, they've investigated and initiated plans for compliance with DEQ standards. The preliminary system is shown on the site plan. It'll be a level 2 treatment system. Regarding outdoor lighting, the applicants have already dealt with this and will continue to deal with this.

The applicants do take exception to the parking issue. He touched on the history of the property. In 1999, the applicants bought the project and went into a process of upgrading the infrastructure. Parking was added. He outlined other changes that took place at that time. The parking was generated at that time, per their perception of what was needed to be adequate for all the facilities on the property. He said the current parking works and explained why they felt the current parking would continue to do so, with essentially 9 owners as proposed. There were no parking standards for the district. Some patrons come by boat.

He talked about the landscape buffer. It was a good requirement, but with this project, it seemed to be after-the-fact. They thought new changes should comply but they didn't see these as new. He thought the use of approaches and drives would diminish with the planned changes.

He invited other design team members to comment.

John Thomas explained he was a professional engineer with A 2 Z. There was no problem with the water supply. The wastewater was going to be upgraded to a level 2 system, which has a higher level of treatment and monitoring. For stormwater, this will be required to be reviewed under DEQ circular 8. The review process will say that anything that's the difference between pre- and post-development will have to be addressed.

John T had concerns with how to comply with a couple of the conditions. With condition #9 (pg. 35), he suggested modifying it by adding "Where modified from existing conditions," prior to the second sentence of the conditions. This addresses if they change something from the existing grandfathered use, it has to comply with the buffer and the new vegetation requirements. In light of the fact that it's already existing and landscaped, it's an existing use. This also addresses that if the landscape is torn out and replanted, sometimes the cure can be worse than the existing condition. If there's an existing concern about the impact of that, [inaudible] requires that natural fertilizers be used that have a slow nitrogen release rate.

His second concern was in condition #10 (pg. 35). The wording was difficult for them to comply with, since the wording is kind of subjective, rather than being grounded in requirements or code. He proposed rewording it to say the application shall meet the requirements of the Lake County

subdivision regulations and East Shore zoning regulations pertaining to parking. There aren't a lot of requirements in there, but those are the two laws of the land that pertain to how that land can be utilized.

Sue asked about the wells on the property. John T explained that this was actually surface water that's been treated.

Barbara Sanders spoke on behalf of the application. She described some history and background of the property, which they bought in 1999, and improvements they addressed to take care of the property. The easements got messed up in the '70s when the 12 housekeeping units were on the south end of the property. They have copies of two surveys they received when they bought the property that are both somewhat incorrect. They didn't know there were some setbacks that weren't in compliance when they remodeled. They've been operating for nine years, including weddings with 80 people and special events. They haven't had a parking problem on the property. She estimated that 75% of the people who come to the restaurant arrive by boat. She's not received a parking complaint. All the owners will have to comply with the CC&R's. For landscaping, when they came in, there was rock down to the water with very little vegetation. They took care to plant the north end and south end with the grass in between and a gravel path, with plantings on each side. They planted the rest of the hillside with natural vegetation. The issues of concern for her are the parking and the revegetation. She added they've operated in a neighborhood, so they've cut off their music from events at 10 pm.

Sue S referred to Mark mentioning the restaurant was moved under the house and a new building was built. Which building was that? Barbara replied this was the 6-plex. She said the Planning Dept said they couldn't build farther out than the restaurant and those existing structures, so that was the setback they took when they built the new building. She reviewed the different structures, locations and past changes. She noted the putting green is an impervious surface, being turf with a rubber backing. They would probably make that a pervious surface. Sue asked about the potential to put parking underneath the upper building. Barbara explained they thought about that but it wasn't high enough. Tearing down a building to add more parking didn't make sense to her. She showed the putting green on a map and another suggested parking location. There wasn't a way to get through there with a car. Sue suggested they could build something up, so it was level with the existing driving surface. Barbara and Sue discussed parking possibilities and challenges using the map.

Public comment opened: One person thanked the Board for having a public hearing. *Public comment closed.*

Mike checked that his concerns had been adequately answered. First, he was concerned about storm water management. Mark has said when this went to subdivision approval by the Commissioners, this will be addressed at that point. Mike wanted to be sure this was adequately addressed and approved, prior to modifications to the property. Second, he was concerned about increasing non-conformity by increasing impervious surface. To add a new building or whatever would violate the trust of the Board, in his view, and they would then have to come back. Barbara said they had no intentions of doing any other modifications. Thirdly, regarding the vegetative buffer strip, he didn't understand the need. He liked the proposal if they change

something or mess up the landscape, they're going to have to redo the vegetation appropriately and according to the zoning. He didn't know how they'd put in a vegetative buffer strip in accordance with the zone right now, without destroying what they have. Fourthly, with the parking issue, he agreed with the applicants that he'd never had a problem parking there. By decreasing the number of units that should alleviate the parking problem a little bit. It didn't seem like a big deal to him, but he understood the concerns.

Sue L asked if the parking seems to be adequate now and in the past, what is the concern. Sue S explained that typically when staying in a hotel or resort, a family travels together in one vehicle and doesn't have company. A living unit might have two vehicles, and visitors to accommodate for parking. Staff understand there are limitations, and were trying to come up with some ideas to make it better. Joel mentioned the restaurant could get busier. Sue S said the existing ownership understands and cares about the other people using the property. Under another ownership, if they decide to do whatever they want, problems could develop. Staff are trying to accommodate for the potential impact.

Sue S wasn't sure the storm water was going to definitely be reviewed by DEQ. They exempt out existing development. That's why Joel wanted to see a plan that accommodates for all the impervious surface areas. Mike said that if DEQ was not going to review it, he would agree with Joel on that point about needing to submit a storm water management plan and have it approved. John T clarified that they spoke with DEQ. [Inaudible.] Sue L said it wouldn't matter, then, if they leave this in or not. John T replied the language of it being in there right now is not [inaudible]. That's the same requirement of DEQ circular 8. He thought the staging of it was an issue, because of the cost associated with that, so traditionally you submit a [inaudible] storm water plan at this stage. [Inaudible]

Sue L agreed with staff on the parking issues. The type of ownership is changing, and that does change the ball of wax. Her other concern was on the vegetative buffer strip. This appears to be well taken care of, but it is lawn to the lake. She thought something needed to be in there about bringing it up to compliance in the future, such if there are modifications, it would have to be brought up to current regulations. As far as the fertilization, can that be limited, in CC&R's or whatever? That's obviously a concern still. She didn't want to substantially change too much of what staff was recommending.

Mike said he worked on the East Shore document, and they really didn't consider commercial property. They talked about residential things. There were maybe 3 commercial properties. Sue S thought there were two in this district. Mike wasn't sure how the County wanted to manage that. He would leave that up to the County as far as how parking needs to be. He had a hard time believing you could put more parking on that property. Sue L thought the way the language was in the condition put in on the property owner. It didn't say to change anything. That might come in subdivision review, and may say they have to give substantial information on their plan on parking and that concerns have to be addressed.

Jack said if they've had large parties there before and had more units previously at the motel, then he didn't see where the parking was a problem. Joel said the environmental assessment they'll need to prepare and submit with the subdivision could adequately address this condition.

Barbara addressed the parking further. When they've had large events, they shuttled people. With the motel units, 12 units had 12 cars. Sometimes they'd have more than 12 cars, because some families had 2 or 3 cars, and it hadn't been a problem. With 7 condominium owners, someone would be really ticked off if someone is in their parking place. It will be an issue with the Association. It's already in the documents and CC&R's that there can be no on-site parking of recreational vehicles, boat trailers or boats. You'll have 9 owners supervising that. With the restaurant, there would be a specific lot for the restaurant and the other parking places will be private for the condos.

Sue S asked if the declaration would state requirements for shuttling for large parties and so forth. Barbara affirmed. It would have all kinds of requirements about what the restaurant would have to do in association with the others. You have to have a symbiotic relationship with the restaurant and the bar and the residents. They have a list of people at this point who want the units, who are happy that the restaurant and the bar are there. It has to be a relationship where if they don't own the restaurant and the bar, which they plan to keep for a while, that someone else is going to have to adhere to all those requirements that the condo owners are complying to. Sue S said in the subdivision review, these are things that if it's adequately addressed, they can make findings.

Sue L asked how the Board felt about modifying condition #9. Mike liked the language that John T suggested. (John T had suggested modifying it by adding "Where modified from existing conditions," prior to the second sentence of the conditions.) Joel thought it would require a variance to the buffer strip requirements in the zoning. Sue L said they could come back for a variance for that. Mike agreed. Barbara asked if they could ask for the variance now, rather than coming back again. Barbara asked when that zoning requirement was done. Joel said it was in the 2008 update. Barbara thought it was grandfathered in until it changed. Sue L explained the new change was subdividing the property. Mike and Sue L wondered about adding this now, or if notice needed to be run. Sue S reviewed the legal notice and the conditional use section of the pertinent regulations. She explained when variances are requested, they have to be legally noticed as such. The legal notice that went in was for a conditional use and didn't mention there was a variance associated with that. She suggested to continue the meeting. Instead of having them resubmit, the variance could be posted and the items could be considered all at once.

John T suggested concluding the matter of the conditional use permit tonight. [Inaudible.] If it's not, they could submit a buffer plan and go after the variance [inaudible]. Joel thought this would work to basically leave the language as is. They could submit the application with the buffer plan. Sue encouraged the Board to go ahead with this tonight rather than continuing it. Joel said they could take the condition out, and the zoning administrator could deal with it, as if the condition never existed. It might result in the application being held up as insufficient. Sue S thought that could be left in there and some sort of language could be modified and incorporated in the subdivision review. She didn't think it should be removed here. Joel referred to the concern with the first statement in section 10 of the regulations that speaks to the buffer strip for newly subdivided properties. Sue L said the Board could leave it in, vote on it tonight and when they submit for their subdivision, they would have to address it and ask for a variance at that time. Sue S said that would be up during the subdivision review, whether they submit it,

and to leave it as it, then. Mike said to add a condition that upon approval from the subdivision/Commissioners, that they would have to apply for a variance. Sue S clarified that during the subdivision process they have to talk about compliance with the zoning so it would have to be prior or during the subdivision review that they obtain that variance.

Motion made by Sue Laverty, and seconded by Jack Meuli, to approve the conditional use, findings of fact and staff report with staff recommendations for terms and conditions. Motion carried, all in favor.

POUNDS SETBACK VARIANCE—EAST SHORE

LaDana Hintz presented the staff report. (See attachments to minutes in Oct. 09 meeting file for staff report and one letter of public comment handed out at the meeting.) She noted the applicant requested a 13' setback. Since then, the letter of public comment was received, of which the Board received a copy tonight. Staff verified the neighbor is right. She pointed out he said it was 38.5' from the telephone box. It was actually 28.5'. They had problems locating pins on the property. The one pin located was bent over. From the measurement she took, it was approximately 9' to the edge of the garage. This was based on a bent pin and not being able to locate other pins on the property. Staff is recommending the Board consider a condition that the northern property line shall be surveyed and the information shall be submitted to the Planning Department for review to accurately represent how far the property is set back from the northern property line. The applicant would be required to demonstrate this prior to the Planning Dept. issuing a zoning conformance permit. She noted in item a on pg. 11 that the 13 feet will need to be changed to at least 9 feet based on what staff measured on-site.

Kathy Matthews spoke on behalf of the applicants. When she measured the distance, she couldn't find the pin. LaDana couldn't find it either. Kathy rented a metal detector and found the bent pin. Today she hired Jack Duffey, who will come out Friday to put another pin there. It really was important to have the garage up here. They were doing landscaping and wanted to upgrade the septic. She was told several years ago not to take down the garage until she was ready to replace it. She inadvertently changed it, thinking it was an improvement.

Public comment opened:

Elizabeth Broom: She is the neighbor and sister of Kathy Matthews. Last year, Kathy parked her car down at the bottom. There was a snowstorm and she was stuck for 3 days without a car. She's getting old, and needs to be able to garage a car that she can back in and out of and not be stuck at the bottom of the hill. It's also an eyesore.

Mike M: He asked if in the staff report, this is not considered a permanent structure because it's not on a permanent foundation.

LaDana H: She confirmed. It's on skids and can be moved.

Public comment closed.

Motion made by Jack Meuli to approve the variance. Mike Marchetti modified the motion to approve the variance and add in the staff recommendations, specifically the 3: that it not be a permanent structure, that the north property boundary be surveyed and that the storm water drainage shall not go onto the property to the north (the storm water from the northern side of the property has to be collected on the south or the west). Sue Laverty seconded.

LaDana asked if the side setback granted was clear. Mike said it was 9' from the side property line and back off the highway it was 63'. Sue S suggested making the condition on granting the variance on whatever the survey information returns. They'll know a specific number after it's surveyed on Friday. The neighbor didn't care what the number was, but wanted the number to be specific.

Mike agreed the setback number should be accurate and modified the motion accordingly. The variance will be updated to reflect the results of the survey. Sue Laverty seconded. Motion carried, all in favor.

BROOKS CONDITIONAL USE—FINLEY POINT

Joel Nelson presented the staff report. (See attachments to minutes in Oct. 09 meeting file for staff report.) This review can be viewed as supplemental to the previous reviews. He recommended that the previous conditions remain as is. The new project deadline would be essentially a year from tomorrow. Conditions 6 and 7 should be changed to reflect changes regarding the log wall. Two approvals would then be in place, which would mesh with each other. The previous approval would stand. He pointed out the findings on pgs. 10-12 were new.

Mike Brooks spoke on behalf of his application. He outlined some history. He'd previously been given 5 years by the Board to remove treated wood from the buffer zone, and 18 months to put in an application for tonight's item. They've completed the upper tall treated wood wall. The backfill is in, but he needed to adjust the backfill. The mini-terraces are in and planted except 2 more. The property has been sprayed for weeds and hydro seeded. The road will be grass-seeded soon. He's replaced all of the treated wood for which he had been given 5 years.

Mike B had one request based on completing the removal of the treated wood in a 5-year timeframe. The removal would have to be put on the deed, per a condition. He thought this was condition #26 of Feb 7 approval letter. The staff recommendation was to have all the conditions move forward. He asked for consideration of striking #26, which was put in place at the time specifically because of the time length of the whole project. Sue S pointed the Board to exhibit B on pg. 5. Joel said that was added at the last review as a result of the treated lumber, mainly. The log wall would have to be addressed at some point.

Mike M asked Joel if he'd been back to the site to see the treated lumber was gone. Joel thought he'd been there on Sept. 22. He didn't measure back the 50', but as far as he could tell, the treated lumber was removed for about 50'. Mike B said 8 panels of wall had been replaced, and there were 6 panels above that.

Jack asked if it wasn't normal to remove the deed restriction when the work was done. Joel said they could request that it could be. Mike M clarified that the deed restriction had not yet been done, and now that he's ahead, he's asking for the condition to be removed so he doesn't have to file. As long as the concern that the Board had for including the condition was removed, his opinion was he didn't see why they'd need to leave this in at this point. Joel thought the condition was the result of the long-term things, like the treated wall still in place and the log wall not being taken care of at that time. Sue L and Mike M agreed it would be a moot point to put it on. Sue L said if the requirements were taken care of, it wouldn't go on. Joel clarified the requirement was still there. Sue S said it would be good to put in the record why it wasn't complied with. Joel summarized that the approval letter would say condition #26 which addressed a deed restriction will not be required. The Board agreed this would either be condition #22 or else in the approval letter somewhere.

Motion made by Mike Marchetti, and seconded by Jack Meuli, to approve the conditional use with staff recommendations, comments and notes, and with the removal of condition #26 from the letter dated 2/2/09 from the Planning Department regarding the previous meeting. Motion carried, all in favor.

OTHER BUSINESS

Lita F mentioned Board renewals for 2010 were coming up. These would be done the same as last year, where applications will be taken, and Board members can let staff know if they want to keep going. Everyone except for Sue L has terms that are up. Mike Marchetti expressed interest in continuing on.

Lita also reminded about the change in meeting day from Wed, Nov 11 to Wed Nov 18 due to Veteran's Day.

Motion by Jack Meuli to adjourn, and Sue Lavery seconded. Motion carried, all in favor. Meeting adjourned at 6:25 pm.