

**LAKE COUNTY BOARD of ADJUSTMENT
December 8, 2010
Meeting Minutes**

MEMBERS PRESENT: Clarence Brazil, Sue Laverty, Paul Grinde

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

Sue Laverty called the meeting to order at 4:02 pm

Motion made by Clarence Brazil, and seconded by Paul Grinde, to approve the November 10, 2010 meeting minutes. Vote 2 in favor (Paul Grinde, Clarence Brazil) and 1 abstention (Sue Laverty).

Motion made by Paul Grinde, and seconded by Clarence Brazil, to appoint Sue Laverty as temporary chair for the evening. Motion carried, all in favor.

Sue explained that the meeting might need to be temporarily adjourned for about 20 minutes around 5 pm, as the power would be out for about 20 minutes and the group had been asked to leave the building for that time.

WEEKS CONDITIONAL USE—UPPER WEST SHORE

LaDana Hintz presented the staff report. (See attachments to minutes in the Dec. 2010 meeting file for staff report.)

Sue checked that the Board was being asked to allow the impervious surface, even though the driveway paving might take place in the future. LaDana explained they would need a zoning conformance permit for the coverage, and they would have 6 months to meet the conditions of a conditional use approval or to extend the approval if necessary. They would have to go with the submitted plan for the impervious surface.

Kevin Treece spoke on behalf of the applicants. He shared a letter from A2Z Engineering concerning stormwater runoff with the Board. (See attachments to minutes in the Dec. 2010 meeting file for the handout.) When he originally received the covenants from the homeowners, they didn't have the addendum for the 1985 change to the setbacks. He would take the covered deck off the end of the house and take a foot from the building itself in order to meet the setback. He would resubmit that. They were bringing the building back from the lakeshore to save some large trees. The house was a little bit back and up the hill.

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

Motion made by Paul Grinde, and seconded by Clarence Brazil, to approve the conditional use with staff recommendations and findings of fact. Motion carried, all in favor.

BONE FAMILY TRUST CONDITIONAL USE—MASUMOLA

Joel Nelson presented the staff report. (See attachments to minutes in the Dec. 2010 meeting file for staff report.)

Hu Beaver spoke on behalf of the applicant. He thought the staff report was well written and he had nothing to add.

Paul checked that the building wasn't heated and was for summer use. Hu confirmed. There was a water tap in the floor. They wanted to replace the chemical toilet there since it was a handy spot for a bathroom at the beach and a shower for swimmers itch. Sue checked since this was intended as a summer use, how conditions of approval dealt with remodeling or changes that would include addition of heat or insulation. Joel said the requirements would require Commissioner permission. It would be an addition that would require the Commissioners to acknowledge under the lakeshore protection regulations.

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

Motion made by Clarence Brazil, and seconded by Paul Grinde, to approve the conditional use subject to the findings of fact, staff recommendations and conditions. Motion carried, all in favor.

BAUMGARTNER VARIANCE & CONDITIONAL USE—FINLEY POINT

LaDana Hintz presented the staff report. (See attachments to minutes in the Dec 2010 meeting file for staff report.) She included several corrections to the report. On pg. 1 near the top, conditional use #1 should read: Disturbance of slopes exceeding 25% on lakefront lot. On pg. 2 in the next to last paragraph, 'western' and 'eastern' should be switched. On pg. 20, #5 it should read '2954 square feet' instead of '1500 square feet'. LaDana shared a letter from John and Mia McGreevey, and an additional recommended condition (#19).

Jim Decker spoke on behalf of the applicants, who were present, as was Zane Johnson from Territorial Landworks Engineering. He displayed enlargements of drawings in the staff report packets. He gave some history of the project. He showed a diagram showing the 600 square feet of buildable area that was within the parameters of the regulations, of which 29% could be built upon without variances or so forth. He showed the current house, where over 70% was in the lakeshore protection area. With the proposed design, they had an opportunity to get out of the lakeshore protection area, have a house with a footprint no larger than it was before, and restore the lakeshore. They worked with Delaney's to help work with that. Part of the variance for disturbing that area is somewhat misrepresentative in that they're restoring it. For a fire truck, they need a 50-foot turnaround. The lot is 50 feet. At least they're closer to the road. They only would lose one tree and the rest could be maintained. They would put in a new well, and would not be pumping off of the lake.

Jim met with John McGreevey on Sunday regarding the McGreevey letter. The concern was that they share a driveway easement. The design didn't increase the square footage or encroach. They had 17 feet of clearance from the toe of the driveway, so they could get some more room. They met with the McGreeveys before the meeting with a can of spray paint and laid things out. They would continue to explore what they can do to give the McGreeveys some room. They couldn't push back towards the lake without getting into the lakeshore protection zone.

Jim continued that the intention here was for the betterment of the property. The proposed setbacks were similar in nature to the existing neighbors. It enhanced the public experience of driving by. It's beneficial to the health of the lake, and they hoped this would make it better for everybody.

Sue suggested it was time to adjourn for a break before the lights and power outage. When the Board returns, they would continue, and take public comment on this proposal.

Motion made by Sue Laverty, and seconded by Paul Grinde, to adjourn for a break for the power outage. Motion carried, all in favor at 4:53 pm.

Meeting resumed at 5:37.

Sue checked for additional comment from the agent. Jim referred to the setback from the lakeshore, and clarified that the square footage was a covered deck and the patio below. The living structure would be inclusive of the setback.

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

Clarence mentioned he studied this closely and spoke with the Finley Point Property Owners Association officers. They thought it was a win-win situation. He detailed some improvements. Sue commended the owners and planning staff for a well thought out plan. It would be better than remodeling what was there. Paul agreed with Clarence and Sue. The owners had gone out of their way to try to do the best they could with what they had to work with.

Motion made by Sue Laverty, and seconded by Clarence Brazil, to accept the proposal with the variances and conditional use with staff findings of fact, recommendations, condition of approval, and with the additional handed out condition #19. Motion carried, all in favor.

LAWS CONDITIONAL USE—EAST SHORE

Tiffany Lyden presented the staff report. (See attachments to minutes in the Dec. 2010 meeting file for staff report.)

No comments were offered by the applicant or agent.

Public comment opened:

Joe Bowman asked where this was located. Sue L described its location as south of Woods Bay. Frank Lopez detailed that it was just before Crane Mountain on the east side of the highway.

Public comment closed.

Motion made by Clarence Brazil, and seconded by Paul Grinde, to approve the conditional use with staff conditions. Motion carried, all in favor.

BOWMAN CONDITIONAL USES—EAST SHORE

Joel Nelson presented the staff report. (See attachments to minutes in the Dec. 2010 meeting file for staff report.) He noted that no written comment had been received. He did discuss it with a neighbor who thought it would be important to address where the on-site composting would be, to ensure it wasn't on a slope and that it was in an appropriate place. He had the Environmental Health file to the early 90's if there were questions pertaining to the history in those records.

Clarence asked what proof was available that the wine sales were grandfathered. Joel said he spoke with the applicant and with people in the area. It was a difficult situation when previous planning directors said things. There was also the Environmental Health file that referenced wine sales. Clarence thought an agency that taxed wine sales could say for sure. Joel thought they could get a license to make wine in WA State and sell it in MT. Clarence was in favor of making cherry wine, since so many cherries and pollinators got thrown away.

Gerald Bowman spoke on behalf of his application. They got started when people came to buy culled cherries by the bin to make cherry wine. It was another use for the second grade cherries so they didn't have to dump so many of them. The composting site was already established where they dumped the culled fruit. They mixed sawdust with the cherries and blended it in, per the recommended way to handle the material. When it turned into compost, they could put it back on the orchard. He gave an idea of the location. The property went back east ½ mile from the highway. The compost area was in a flat area about ¼ mile back. The nearest neighbor was about 330 feet away. They felt it was in a good location. It wasn't close to a water source. There wouldn't be a problem with it running down the hill and getting into someone's water system. It was confined to this flat area where there was good room to work with it. He mentioned that they didn't plan to turn the whole thing into a winery. The winery would be secondary. It would be another value-added product that they wanted to make, in addition to cherry juice, drying cherries, cherry jam, canned cherries and other things that they did. It would be an off-season use. For the tourists that came through to buy wine, they would really like to see a made-in-Montana wine rather than one made in WA.

Clarence asked if they planned to discontinue the WA wine. Gerald thought they would continue some of them. Cherry wine, and possibly huckleberry, or things grown in western MT they would rather do from here. They thought fruit wines were their niche. The grape wines from WA would have a label on them saying they were made in WA.

Clarence commented the Board turned down something similar recently, where the applicants were going to use out-of-state fruit. Sue added the previous group was also proposing on-site tasting. Clarence asked about composting the cherry pits. Gerald said the pits went in with the compost, like the sawdust. Clarence said the cherry pits remained on the ground for a number of years if you didn't cultivate the ground. Gerald replied they were going back to cultivating. For some years they used a Roundup product instead, but they discovered in a fruit grower magazine that it caused problems in the ground, so they were going to go back to cultivating.

Clarence asked how they would keep the cherries for the off-season, given the off-season processing. Gerald replied they would freeze them so they could make wine in the winter. Clarence checked that it wouldn't be a gigantic amount then. Would they be doing just their own or would they be buying from other people? Gerald thought they'd be doing their own. They wouldn't freeze all of them. They could start making wine right after harvest. He saw it as a nice use for the facility. Clarence hoped they would make more and use other people's pollinators and so forth. Gerald said that would depend on the success of it.

Clarence said the compost shouldn't be a big problem for the neighbors unless there was some runoff of the juice. Sue observed if they were already composting their current cherries without problem, then it didn't seem like an issue. Joel agreed.

Public comment opened:

Alan Roger: He represented the [inaudible] Creek Rock Springs Water Association, which were adjacent to the proposed winery. Was a state liquor license required for this winery?

Gerald Bowman: He affirmed. This was in place.

Alan R: Would there be a tasting room?

Gerald B: No. They didn't have the time to do that along with the cherry sales.

Alan R: He asked about #4 on pg. 2 of the application, regarding the project location and description. The lot size was given as 10 acres. Elsewhere if you skipped to the sheet provided at the end of the application, it said the winery would be located on a 70-acres orchard. He asked about this.

Gerald B: He explained there were three lots (lots 30, 31 and 32), which comprised 30 acres. These went back ¼ mile from the highway. Behind that, there was 40 acres. The total was 70 acres.

Alan R: He asked if the proposal should be listed as 10 acres or 70 acres, or if it was irrelevant.

Joel N: He clarified the building was on the 10 acres in the application. The applicant did reference 70 acres that was owned by Bowman Orchards.

Alan R: On which part was the compost going to be?

Gerald B: It would not be on the 10-acre parcel. He thought it was good for people to know there was 70 acres there. Having just 10 acres would be alarming. They had 70 acres total and the compost pile was located in the middle, a half-mile from the highway. It was also not over by a neighbor's property boundary. The warehouse part where the wine would be made was in the 10-acre tract.

Alan R: He asked if that should be clarified or stipulated. That was more than the 10 acres on the conditional use permit application.

Joel N: It should be specified what's happening on the 40 acres.

Alan R: He assumed Joel would fix that and he moved to a question on #10 regarding stormwater management. Was there documentation of EPA approval, or did EPA approve the piping by signage or whatever.

Joel N: He explained there was no new impervious surface coverage proposed with this so there was no stormwater management required.

Alan R: He asked if this meant there was negligible EPA approval.

Joel N: He didn't review the EPA letter, nor would he request it.

Gerald B: He had the documentation of that. It was done at the time they set up the building.

Alan R: Would there be more than one composting pile?

Gerald B: He didn't see a need to add another pile. The additional amount would be minimal.

Alan R: He asked if there would be wildlife problems.

Gerald B: So far, no. The bears did like to frequent it. That was a good thing.

Alan R: Did item #10 stormwater clause take into consideration the septic?

Joel N: He replied not item #10.

Alan R: Would there be a lot more effluent coming out because of the winery as opposed to the current conditions.

Joel N: The sanitarian that looked at this would need detailed information regarding existing and proposed wastewater flow. The applicants would have to address this with a septic application.

Alan R: He addressed the staff report. On page 3, paragraph one, he referred to the ambiguity of 'probably grandfathered'.

Joel N: He responded this was a statement a former County employee made to the applicant, as he recalled at that time. The quote he gave was as he recalled it from Oct. 2009. He considered the sales of the Washington wine, which was on about a 3' x 6' bookshelf display case, was grandfathered. If somebody wanted to appeal that decision, there was a process for that.

Public comment closed.

Paul thought what you could do that was value-added, such as this, was good. He was for it. Sue agreed with that, as well as if in the future, it did help other orchards or cherry growers in the area. She didn't know if some verbiage should be added regarding the composting. She asked if #6 (pg. 17) covered it. Joel thought it would be good to specify that it would be happening on the 40 acres behind the 10-acre tract as well as on the 10 acres. Paul observed the reference to the 70 acres in exhibit B. Sue noted the condition said within the owner's property boundaries. It did not refer to a specific parcel. Joel expressed concern that this has been looked at as being on the 10 acres. It was in the application submittal that it would be occurring on the 70-acre property as a whole. He thought those who were interested had an opportunity to look at this and know it was happening on the property as a whole. Clarence mentioned he'd like to see Gerald limit the out-of-state stuff as much as possible.

Joel returned to the 10 acres plus the 40 acres to the east. There was another 20 acres that was under other family members' names. The 10 acres and the 40 acres were referenced on pg. 1 of the staff report, under the Property Description. He read that portion. The statement was not completely an accurate statement. The winery would happen on the 10 acres, and the composting would happen on the adjacent 40-acre parcel and the 10 acres. Sue said the recommendation on #6 referred to the owners' property boundaries. Wouldn't that encompass the 10 acres plus the 40 acres? Or could the Board expand that, or address it as an easement? Joel explained he was thinking about the legal notice and adjacent property owner notification. The notice looked at tract 30. The conditional use happening on the adjacent 40-acre tract was not included in the legal notice. He wondered if they would need to amend it to clarify. The Board might approve it now, but the proposed uses included the proposed uses happening on tract 30 of Flathead Lakeshore Tracts. If uses such as the composting were to occur on the adjoining 40-acre parcel, it could come back for a revision. There were two separate parcels, but we looked at it as the subject 10 acres.

Gerald described that Jon and Gail Marshall, the neighbors next to the 40 acre parcel, and also to the south of the other properties, didn't get a notice but came and talked to the

Bowmans, so they had touched base. The Marshalls weren't adjacent to tract 30. Joel showed which properties were notified. We were legally required to notify adjoining property owners. The notice needed to be expanding to include adjacent neighbors touching that 40 acres. He didn't think it would be appropriate to approve uses on the 40-acre parcel right now. It could come back to the Board for the composting. Proper notice could be run, and they could see if an addendum was needed to the staff report and recommendation. Action could be taken as presented on the 10 acres.

Sue summarized that if the applicants desired to compost on another parcel, they would have to come back. Joel agreed. The report as written contemplated everything on the 10 acres.

The Board accepted a comment from the public. Gary Lapka was an adjoining neighbor on the north and west side of the 40 acres. His concern was that his property was below the ridge, and he didn't know where the compost pile was. If it flowed down, he was interested in knowing where it was. They told him. His thought was he didn't know that the applicants had to come back. His concern with the compost pile was that something might come down onto his property. Gerry had said it was 300' away from Gary's south line. If it stayed there, it had no effect on him. He was concerned that if it was moved across to his east side and came down the hill, it might or might not affect him. Gerry had assured him that it wouldn't happen, but Gary didn't see anything in the report that addressed the compost pile. They all had cherries. He didn't know what effect the sour mash would have. He noted that you don't know who your neighbors may be tomorrow.

Joel explained that a clarification that the proposal was specific to the 10 acres as it read, wouldn't preclude the Bowmans from doing whatever composting they've been doing. The new stuff from the new winery would need to be addressed by the Board. Gerald suggested the possibility of a new compost pile within the lower acreage, or hauling it off-site. Sue clarified that if the Board were to approve this right now, as written, then Gerald would have to take care of the composting on the 10 acres. Things pertaining to the winery would have to be done on the 10 acres. If he wanted to put it on the 40 acres, if that was better for him, he would have to come back to the Planning Department for another conditional use. The Board could approve it this way, and he could leave it on the 10 acres or haul it away. Joel explained if it were hauled, it would have to be hauled outside the zoning district. A revision or amendment would be needed to put it on the 40 acres. If it were a year or two from now, a new application would be needed. Gerald said he preferred to put in on the 10 acres, or if the Board preferred, he could also take the winemaking waste off-site. He'd rather do that than come back. He had been at this for a long time.

Clarence asked if there was some way to approve it and then work out the compost details without a full-blown hearing. Joel wasn't comfortable with that since notice hadn't been expanded to the neighbors adjoining the 40-acre. The legal descriptions did not contain the proper legal description. Tract 30 Flathead Lakeshore Tracts was the one that was looked at. The proposal could be approved as it is, on the 10-acre tracts as it's written. The applicant could come back for a change. Clarence said he'd rather see the

compost put on the orchards rather than chemical fertilizers with the compost hauled off. Joel said there might be an abbreviated way of doing it. Legal notice might be run. We might need to get some costs associated with the legal notice request. The staff would probably write at least an addendum to the staff report, and the Board would hear it again.

Sue suggested voting on the item as it was. It would be up to Gerald Bowman whether to bring it back. She asked if it should be tabled. Joel thought it should be looked at it as the 10 acres. If the applicant wanted to compost on the 40 acres, he could come back. If it was in the short-term, we could do it in an abbreviated fashion. In a year from now, we'd want to start over. Gerald said he would rather get the approval and do it on the 10 acres. He thought Clarence made a good point. It should go in an orchard, and there was no reason why that amount could not go in the 10 acres. Sue reiterated that in the next few weeks, they could probably work out a mini thing to add on to what the Board might approve now.

Motion made by Sue Lavery, and seconded by Paul Grinde, to approve the conditional use with findings of fact, staff recommendations and conditions of approval. Motion carried, all in favor.

OTHER BUSINESS

Motion made by Sue Lavery to adjourn, and Paul Grinde seconded. Motion carried, all in favor. Meeting adjourned at 7:01 pm.