

LAKE COUNTY BOARD of ADJUSTMENT
January 13, 2010
Meeting Minutes

MEMBERS PRESENT: Sue Laverty, Mike Marchetti, Tim McGinnis, Paul Grinde

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

Mike Marchetti called the meeting to order at 4:02 pm

2010 BOARD MEMBERS AND OFFICERS

Bill Barron, Commissioner, swore in the new Board member, Paul Grinde.

Motion made by Sue Laverty, and seconded by Tim McGinnis, for the same officers from the previous year (Mike Marchetti as chair and Tim McGinnis as vice chair). Motion carried, all in favor.

MINUTES

Motion made by Mike Marchetti, and seconded by Tim McGinnis, to approve the December 9, 2009 meeting minutes.

Vote unanimous to approve minutes.

Joel Nelson announced the Conrad Lake Property, LLC item on the agenda has been postponed to the February 10, 2010 meeting of the Board of Adjustment.

ANTONSON VARIANCE—LAKE MARY RONAN

LaDana presented the staff report. (See attachments to minutes in the January 2010 meeting file for staff report.) She corrected the staff report title to ‘Variance’ rather than ‘Conditional Use’. She noted the applicants were unable to attend due to an icy driveway.

Public comment opened: None offered. Public comment closed.

Mike saw no problem with the proposal. He liked the comments put in by the staff and the conditions within that. It seemed appropriate. It’s 80 acres and doesn’t push close to the density for Lake Mary Ronan. Sue L and Tim agreed.

Motion made by Sue Laverty, and seconded by Tim McGinnis, to grant the variance with findings of fact, staff report and conditions. Motion carried, all in favor.

VICTOR DENSITY VARIANCE

Joel Nelson presented the staff report. A memo received today was handed out. (See attachments to minutes in the January 2010 meeting file for staff report and handout.)

Sue L verified with Joel that currently the property contained a house, 2 mobile homes and a guest house, and they’re building a 5th structure as well. Joel wasn’t sure of the situation with

the mobile homes on the property. At one point the applicants said one was lived in by their children and one was rented. The application submitted indicated both were rented.

Paul asked about the 6 other properties on which variances were approved. Did each of those just have one guest house being added? Joel replied that for the 5 approved, a second structure was proposed. One of them had an existing old trailer that was being replaced with a new unit, and was restricted to landowners' guests. Sue S added it was approved for family members, and when that use ceased to exist, it would be limited to landowners' guests. Joel noted the other 4 approved were for guest houses.

Tim asked where things were at with the applicant removing a mobile home. Joel replied the applicant indicated at one point he'd be willing to remove that, but then he applied for a variance so he wouldn't have to remove it. Tim asked if the mobile homes were on permanent foundations. Joel wasn't sure. Both were skirted. Mike verified with Joel these buildings were on the property when it was purchased.

Tom Victor spoke on behalf of his application. He was willing to negotiate moving one of the mobile homes off because he was told it was non-permitted. He was told when he bought the property that they were all permitted. They found a permit and he submitted that to the County today. One reason they desired to buy the property was they were told there was no zoning [inaudible] they wanted to add a structure way in the back of the property. He said he wouldn't have started this project if he knew there was a density issue there. He said they were into the project for \$25,000 to \$30,000 right now. A few months ago, the excavator advised them to talk to the County and see that things were okay. He and his wife talked to someone named Lydia and another secretary there. One looked at the map with them. They said there was less than 10 acres and a couple of rentals and a house and they wanted to build a small cabin in the back of the property for he and his wife and the kids would have the big house. He said they were told there was no zoning in that area because they were out of the City limits. His wife asked if they needed to get a septic permit. He said the response was that they didn't need a permit until they started on the septic.

Tom said a grandson died and they were delayed in starting the project for a couple of months or so. They had to get an easement from two properties over to bring the power in from Greg Harding, who was a contractor and who asked if they'd check with the County to make sure they could get septic. They came back and went through the same thing, and he said they were advised there was no problem and that they didn't need a septic permit until they were ready for the septic. They started the project and got the foundation in and the walls poured for a daylight basement, the road cut, the well in and the power in. He submitted a septic permit and took the septic permit to be able to install it himself and passed that. Three weeks later, Joel called him and told him they would not be allowed to build back there because there was a density law in effect. He set up an appointment with Joel the next week. They talked about what was in the letter, that they weren't in compliance. The staff wouldn't sanction the variance. They talked about a couple different aspects, including a family split. He didn't really want to do that, but if that's what you need, then they're willing to go that route. One of the criterias against getting the variance was the financial hardship. They understood this was not a criteria, but because of the information they got from the county department, it put them in a financial hardship.

Hopefully things would be able to continue, and they'll get this through, and get it built. He would leave it in their hands. He said the surrounding properties mostly are not in compliance to the 10 acre density. To the east of them is a mobile home park. To the west, on the same size piece of property as theirs, there's two homes and a mobile home. Across the street from them is White meat locker, and next door to him is another mobile home park.

Tim asked about the permit given on the mobile home. Joel said there was another septic permit. Tim checked that it wasn't for a trailer park. Joel replied it was an old permit apparently for potentially one of the other structures on the property. He didn't think the Environmental Health Dept. had found that permit, and there's some language in the staff report that says there might be an unpermitted system on the property. Tim asked if they had two trailer spots that were available for [inaudible]. Joel said yes, that was a different [inaudible] than the septic permitting. Tim said it seemed like getting rid of one of the trailers makes a lot go away. Tom said the reason he was willing to discuss that before, as he mentioned, was because he was told by the Planning Dept. that it wasn't legal and there was no permit on it. Going through the previous owner's records, they found a permit, and that's why he submitted. Sue pointed out the Planning Dept. wouldn't have told him it wasn't a legal system. That would have been the Environmental Health Dept.

Tim said he wasn't talking about septic. He was talking about a trailer park permit. They don't have one of those. That's a different issue than the septic, if they need to be permitted as a trailer park. It seems like if one of the trailers goes away, then you solve two problems here. They can [inaudible] by building another structure so it's not increasing the nonconformity, and also they don't have to go out and get a mobile home park permit, by removing one of the trailers. Tom said he understood what Tim was saying, but it removed a part of his finances.

Sue L asked, since they have a guest house also, if they could exchange the guest house for the new house. Could they move into that? They have two mobile homes and a house and a guest house. Tom said if he'd known they couldn't do this, he would have made other arrangements. The guest house is pretty small. They now have a daylight basement concrete structure sitting out in the middle of the pasture that they can't do anything with.

Tim said he didn't know that the Board was responsible for people misrepresenting entitlements to the property that Tom Victor purchased, and there were definitely other avenues to deal with what was wrong there. Tim wasn't sure that's what the Board does here. Tom said the reason they came here before they started this project to make sure they were headed in the right road, and the directions that they were given weren't correct. That's what put them in this position today. Mike checked that they had no documentation, nothing in writing from their previous discussion. It's just hearsay at this point. Tom said they didn't see why they needed any at that time.

Sue L thought there were some more alternatives that could be done to the property to keep the nonconformity the same and not expand on the nonconformity. She referred to what Tim said that he didn't think it was the Board's responsibility, and the scope was any bigger than that.

Public comment opened: None offered. Public comment closed.

Paul agreed with Tim that the removal of one or both mobile units would solve a lot of problems. Sue L added the removal of the guest house might also; if it's that small it might not be that hard to remove, to keep it in the same non-conforming and not expanding. Paul said there appears to be several other non-conforming parcels there. Tim asked if the applicant agreed to remove a mobile home, then how the process would run. Joel said they might need some sort of deed restriction or document from the landowner agreeing that he's replacing one non-conforming unit with a different unit. Tim asked if he would need to come back to the Board. Joel didn't think so.

Motion made by Tim McGinnis, and seconded by Sue Laverty, to deny the variance request. Motion carried, 3 in favor of denial (Sue Laverty, Mike Marchetti, Tim McGinnis), and 1 opposed (Paul Grinde).

BONNER/HIDDEN CANYON CONDITIONAL USE—UPPER WEST SHORE

Joel Nelson presented the staff report, and referred to an additional letter of comment received since the staff report and handed out at the meeting. (See attachments to minutes in the January 10 meeting file for staff report and for letter handout.)

Marc Carstens spoke on behalf of the applicant. They embraced the conditions, including the new ones. There have been some good changes. He highlighted a few. As far as the subdivision itself, they had a preliminary meeting and a field trip with the Planning Board, and were preparing to go back to the review cycle next month. He said there was a chicken and egg thing. They couldn't really make the subdivision work without the disturbance, and they don't need the disturbance if they don't go forward with the subdivision. They've elected to go forward with this review, and then continue the subdivision review. He said the language in the new conditions adequately covered the safety of public health and the natural environment, should the subdivision not go forward.

Marc spoke about the increase in area. When the plan was originally put together, they estimated the disturbed level from the hilltop to the end of the proposed route. The estimations were short. It would take more area to make the cuts and fills work in order to meet the subdivision review roads. The involved contractor built some of the road where it wasn't supposed to be and elected to change some of the route without consultation. Some of that route went through an area with greater than 25% slope according to the preliminary topography map, which was prepared by aero process by a previous firm. The contractor became overzealous and moved material on the second portion of the road without engineering expertise or proper ground preparation, and caused some disturbance that they're unable to use. They also were now looking at driveways. Typically in subdivision review, they aren't terribly concerned about this because there are multiple building sites and the driveway could go a number of different ways. This site is very specific however. The building sites are closely isolated. Their previous calculations don't include calculations for the driveway getting to the building. They also hadn't contemplated the utility installation and construction. The disturbance level they're asking for includes anticipated construction areas, driveways, utilities and accounts for areas that have been disturbed that they now need to plant back but were unable to capitalize on. He thought developer concerns were adequately answered by planning staff in the staff report, and they were comfortable with that.

Public comment opened:

Steve Rosso: He recommended denial of the request. There had been much road and driveway construction for a planned subdivision that had no preliminary plat approval yet. This conditional use request was for more of the same work. The subdivision regulations state no construction work shall be done prior to preliminary plat approval. He understood also that some of the work would have to be redone, and that the plans were still in a state of flux. He believed it was best for the community that the construction work stop until the planning was completed and subdivision preliminary plat is approved. This might even save the developer some money. He asked the Board to please deny this conditional use at this time, and ask the developer to come back when the plans and approvals were complete. He thought the Board might be able to ask the agent tonight why it was they needed to get started on this work before the subdivision has been approved. It seemed to him that the right order of things would be to finely plan where the lots would be, where the roads would have to run and where the driveways were to be, and then apply for the permits required to do that work, rather than begin the work prior to that planning and approval, only to have to redo it again. He didn't see an advantage to anyone, including the developer, to beginning this work before the planning was complete. As the agent mentioned, the amount of ground disturbed was greater than it would have been, had the planning been done before the disturbance that was already done.

Marc Carstens: He said they wouldn't be pushing more dirt around until the subdivision review was concluded. There was some activity that raised some ire, including his. At the time that the construction activity was happening, a boundary line adjustment was going on. Some of the construction was to accommodate the boundary line adjustment. As far as the design work, they currently have complete engineered design for the roadways, driveways, and everything that they're asking for. It was true that some of the elements could change through subdivision review. As mentioned earlier, they have a chicken and egg equation. They would be happy to accept further condition that no more activity happens until subdivision approval was granted, with the exception that they may be doing some planting and erosion control work in order to take care of what is out there.

Tim asked Marc to repeat until what point there would be no more activity. Marc replied they didn't want to do more activity until the timing with the subdivision review. Typically they needed approval of the governing body and also the DEQ before they could typically go forward with construction. It had been the developer's position that the construction that happened so far was to accommodate a boundary line adjustment. It will be perfected into a subdivision road. It was unfortunate that some of the construction to be reconstructed was new. They weren't going to do it until they gained their approval statements. Access was possible to the boundary adjusted lots, which was what Bob Bonner was originally trying to do. He did push some other driveways that weren't part of the boundary line adjustment, and they go over a little bit in a couple of place. That activity has ceased and would remain ceased until the correct timing.

Mike checked back that they would agree to another condition that no more disturbances of slope would proceed on this property until after the next Board (Planning Board) or after that, but they

would continue work on replanting, as in the original agreement, and erosion control. Marc affirmed this.

Sue L asked why this proposal was in front of the Board, if they weren't going to do anything until they got subdivision approval. Marc referred to the chicken and egg thing. If they go forward with the subdivision review, they would end up accepting a condition that says they would need to go to the Board of Adjustment to get their impervious surface area disturbance. Marc felt the procedure would be better served by addressing this board first. If the subdivision didn't go forward, there's language in the conditions that would accommodate that. Tim asked if Sue S had an opinion on that. She thought it was fine either way. One thing that came to mind was that if there were changes during the planning review, they'd probably be back in front of this Board again. That's the risk Marc was taking. Marc added it was easier to prepare for a BOA hearing, and the decision was more forthcoming, than it was for the Planning Board and then eventually the governing body of the County Commissioners. It was more expeditiously handled for them.

Motion made by Mike Marchetti, and seconded by Tim McGinnis, to add a condition to this request that no other disturbances of slope will occur on this property until after the Planning Board and subdivision review meets with approval. Motion carried, all in favor.

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

CONRAD LAKE PROPERTY LLC VARIANCES & CONDITIONAL USE—UPPER WEST SHORE

Postponed to the February 10, 2010 Board of Adjustment meeting.

OTHER BUSINESS

Motion made by Mike Marchetti to move into executive session to discuss litigation strategy, and Sue Laverty seconded. Motion carried, all in favor.

Motion made by Mike Marchetti to move out of executive session, and Sue Laverty seconded. Motion carried, all in favor.

Slack V. Lake County Board of Adjustment

Kurt Moser, deputy County attorney spoke about the matter. (See attachments to minutes in the January 10 meeting file for information to Board and handouts.) He briefly discussed a proposed amendment to the settlement agreement. Based upon the settlement discussions, he believed it was fair to consider a small change to the settlement agreement, (See proposed amendment handout attachment to minutes in the January 10 meeting file.) The amendment would add a small staircase to the deck running towards the road and provide a second access to the road story level. The main item regarding the settlement was the settlement agreement and stipulation which the parties have been working on, off and on again since last June.

He outlined some history on the two cases. Both cases have since been consolidated by the District Court. Pretrial litigation has been ongoing since that time.

Kurt believed the settlement proposal represented a good-faith effort by both parties to find a resolution to the pending court cases. In participating in these settlement negotiations, the Board recognized the Slacks may have been able to demonstrate to the Court their right to a 3 story residence with additional decking and less of a lakeshore buffer in place. The Slacks recognized, in his opinion, through this compromise that the Court could have found they were not afforded the ability to construct a residence upon the lakeside of the road. They could have been forced to remodel their previously permitted garage to accommodate such a residence. It was a compromise. It did comport with the spirit of the zoning regulations. The settlement agreement was very detailed and very specific. It had been designed to mitigate the impacts upon the lake by limiting use within the lakeshore protection zone and through the requirement of an extensive landscaping plan, among other requirements. He asked that the matter be opened for public comment. Following public comment, he requested the Board vote upon the settlement agreement with the amended language regarding the stairs included. If the Board chose to approve the settlement, he asked that both parties sign the agreement prior to adjournment.

Public comment opened:

Lynn Weaver: He was a realtor living in the zoning district. He said these [zoning regulations] were very important and it was necessary for Lake County to back them up on these. He had the general parcel information from the Slack property dated January 31, 2008. This was a county record showing that the house on that property was 672 square feet. It was a 2-bedroom, 1-bathroom cabin. In addition, it had an enclosed porch of 48 square feet, a wood deck of 700 square feet and an open porch of 30 square feet. This was a non-conforming structure. According to the zoning, you can't expand the use of a non-conforming structure. He thought when you changed from a 1-bedroom, 1-bathroom 672 square foot building to what the new one was, which he thought was 2300 square feet, and it's changing from a cabin to a full-time dwelling, he didn't think that was allowed under the zoning. How it ever got from this little tiny cabin to what was being talked about here, he didn't know. It did say if there are hardships, the Board may grant a variance to let them do something, but it didn't say you had to. There were a lot of non-conforming structures up there in this zoning district. If this one was approved, he didn't know what would stop the other people from wanting to tear down their cabins and build houses down in this non-conforming area. He had a real problem with that. He read over the Slack V. Lake County thing. He got to thinking was there anybody there representing Lake County? He didn't think there was. That was how it appeared to him. He hoped they could find their way to decline this agreement.

Steve Rosso: He also lived in Upper West Shore Zoning District. He wasn't happy with this settlement, or any settlement in this case, that allows construction of a home within the 50' setback from the lake. He thought it was bad for the lake and bad for the community. Allowing a home this close to the lake would make it hard to say no to other applicants. Maybe this home by itself wouldn't be too bad for the lake. Several homes certainly would be bad. He also said he didn't like a lot of rules, but if we had them, it's only fair that we all played by them. They went through a very public process developing these zoning regulations, and the Slacks were

well aware of the zoning regulations that were there, and very well aware of the rules. They started working within those rules, but for some reason, failed to control their contractor or really show respect for the permit that they were given and the rules that they were well aware of, and got into the mess that they're in now. He thought that allowing this was really an issue of fairness; like was just mentioned, trying to deny the next application would be difficult. The regulations were designed so that non-conforming structures would die of attrition. At some point in the future, we could look forward to a fact that there would be no non-conforming structures. To allow a non-conforming structure now would stop that process and prevent that from continuing. He said if they had to settle, and couldn't say no to the Slacks, then this settlement was very specific and has a lot of good things in it that would try to protect the lake. It would be very hard to educate future applicants about this settlement, if they wanted to build the same kind of structure close to the lake. Lastly, he said it would be great for the public to learn more, if possible, about why it was the County wanted to settle this, and why they seemed doubtful about their ability to defend these two decisions that the BOA made, denying this cabin close to the lake.

Charles Meyer: He lived about 2000 feet around from the Slacks and walked his dog by there every day. He watched the construction and the stages. He could see why the Slacks would want to fix up the old cabin. It was getting pretty tough. But he was walking by one day and saw the forms going in. It was two footprints. Instead of 600 feet, it was a 1300 foot deal. They tore down the house. He read that they left up a wall, and then that wall disappeared. That wall was twelve 2 x 4's with some bracing. It was never intended to be a wall, or be part of the structure. He thought there was intent to do what was done, before it happened. Why put such a large foundation in? It wasn't part of this application. The building called the garage, west of the former structure, was supposed to be a garage and storage building. He remembered in a hearing last year someone looked at a picture of the building and said this wasn't what the Board approved—it was supposed to be storage. This building had nice stuff on the outside, housing windows, and looking inside, it's set up for a kitchen and they've put in a bath and plumbing. There's a history to this. He worked with the zoning in 1993. Jerry would come to the meetings, where he was adamant about this zoning, because he had more trailers that he wanted to drop in around the place. Charles didn't know how many of those kinds of structures and how many of those rental units Jerry has right now.

Charles thought the word hardship was wrong. He thought the word inconvenience would be more appropriate. He thought it was intentional, the way this was set up. He remembered when Karen came to his house to show plans of what they really would like to do. He said he didn't think it was the law, and Karen said he didn't really like her. He said [inaudible] it's the law. What was going to happen when this was let go, as Steve said? He asked if people remembered Lake Mary Ronan versus Lake County. That went to the Supreme Court, after a decision like this was made. It was reversed. He wondered if anybody would like to get their dollars together. He was involved in stopping a subdivision in Flathead County with very bad water conditions and so forth, with mixing zones going into a federally recognized wetland, to give an idea. Water was 8 inches below the surface. He wondered if sometimes the County didn't really want to litigate. Maybe they didn't have enough money, or had other things to do. He, like Lynn Weaver, couldn't figure out why they'd approved this. Is 2300 feet 30% more than 690 feet? It's just plain wrong. He didn't know if they did approve this, if it would stop here.

Ken Kalvig: He was with the law firm of Kalvig and Le Duc in Kalispell, and represented the Slacks. He thanked the Board for the time they've put into this, with the applications and once litigation began, with the settlement efforts. He agreed with Kurt that no case was black and white in the law, especially in Montana. No one in the room could say what the outcome would be if the case didn't settle. It could be worse for the Slacks, it could be worse for Lake County, it could be worse for the neighbors living in close proximity to the Slacks. They weren't here today to talk about past applications and how they got here. Litigation had gone on for a little over a year. He thought it was a case that was good for settlement, since there was risk on both sides. Both sides were compromising. It was the only way that all the parties in this case could guarantee what the outcome would be. He was sure not everyone would be happy with it. He was sure there were aspects that the Board wasn't happy with, that the Slacks weren't happy with, and clearly there were aspects that some members of the public weren't happy with. He had a few letters from some other members of the public that were not able to be here who support the settlement. (See attachments to minutes in the January 10 meeting file for handouts.) He read the names from the letters he was submitting (William Smart, Douglas Smart, Holiday Madich, David Miller, Beverly Olandt and Tony & Flo Adrignola).

Lynn Weaver: He noted the Smarts were just south of this property. They had some non-conforming stuff there, and they would probably want to put houses in the [inaudible] zone.

Charles Meyer: He agreed.

Public comment closed.

Mike noted it had been a very, very long process. He agreed he didn't want to discuss how they got here. They were here to discuss where they were today and the settlement.

Paul said he was new to this. He drove by what he thought was this project on Lakeshore Drive, a property facing east. He received confirmation.

Motion made Sue Laverty, and seconded by Tim McGinnis, to accept the stipulation and settlement agreement as amended. Motion carried, 3 in favor (Sue Laverty, Mike Marchetti, Tim McGinnis) and one opposed (Paul Grinde).

Kurt asked the parties to sign the documents before adjourning.

Motion made by Mike Marchetti to adjourn, and Sue Laverty seconded. Motion carried, all in favor. Meeting adjourned at 5:47 pm.