

LAKE COUNTY BOARD of ADJUSTMENT
June 9, 2010
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, 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 4:00 pm. He explained that due to the lengthy meeting ahead, there would be a time limit on comments. Tim McGinnis suggested that if someone agreed with the preceding person's comments, one could say so rather than repeating the details.

Motion made by Paul Grinde, and seconded by Sue Laverty, to approve the May 12, 2010 meeting minutes. Motion carried, 4 in favor (Sue Laverty, Mike Marchetti, Tim McGinnis, Paul Grinde) and 1 abstention (Clarence Brazil).

Mike noted that the Lorang Variances & Conditional Uses would be moved to the first item. Mike recused himself and turned the meeting over to Tim McGinnis, vice-chairperson.

LORANG VARIANCES & CONDITIONAL USE REQUESTS

Joel Nelson pointed out three handouts of additional public comment, and he presented the staff report. (See attachments to minutes in the June '10 meeting file for staff report and handouts.)

Mark Lorang spoke on behalf of the Lorang application. He farmed cherries for 35 years, and was also a research professor at the Flathead Lake Biological Station.

Public comment opened:

Don Patterson: He read the public comment letter from Richard F & Pauline M Hartman, who had concerns. (See attachments to the minutes in the June '10 meeting file.)

Patricia Bonner: She read selections from the public comment letter from her and her husband, Gary, regarding concerns, objections and questions. They opposed the request. (See attachments to the minutes in the June '10 meeting file.)

Ken Edgington: He lived in Yellow Bay and operated a cherry orchard. He read from an email. (Editor's note: No copy on this was received.) He moved here in the late 1990's to Yellow Bay to operate a cherry orchard. He was looking for a place with rural lifestyle in an area with zoning that would protect his property value. He wasn't in favor of the conditional use and variance requests because they ask for numerous changes that weren't in keeping with the East Shore zoning regulations, which were reviewed 2 years ago. His greatest concerns were as follows: The use, production and sales of non-local fruits and other products; the importation of out-of-state fruit juices and other products, including wines, for a store within the community; it would allow a business not currently located in this community and not owned by the current resident to be relocated into the community; it would provide for the

distillation of liquor and establish an operation that could include commercial production, wholesale distribution and/or retail operation, or offering alcoholic beverages. He applauded the Lorang's efforts, but felt the request and plan were based on hopeful anticipations and future expectations, since very little research or experimentation seemed to be done. The request seemed open-ended.

He disagreed with some of bases for assumptions for removing from the cherry business. Regarding the state of the cherry industry requiring 10 to 20 years to change, Ken E was on the Board of the Flathead Lake Cherry Growers (FLCG). To his knowledge, they hadn't seen industry reports saying the cherry industry was in a condition requiring 10 to 20 years to recover. If this report existed, they would like a copy. He talked about a regional feasibility study about regional distribution and marketing of Montana fruit. This could happen as soon as 2011. Regarding mention of a more intense effort to spray for fruit fly because fruit left on the trees, he didn't believe this year's spray requirements would be different from last year's. When previous years' crops remained on the trees, it was important to apply the proper spray at the proper time and interval. He agreed that growers must be dedicated to preserving the water quality of Flathead Lake. He quoted from a cover letter from a 2009 report done by the MT Dept of Agriculture sent to FLCG regarding sampled groundwater and surface water in the main cherry producing areas for nitrate pesticides. There were very few pesticide detections observed in groundwater in the project area. He thought orchardists were doing a fine job of controlling the fly and not affecting the groundwater feeding the lake. The zoning regulations were reviewed just 2 years ago, with community input and revised, which reflected what the community expected to guide its activities. Given this, he could not favor the requested variances and conditional use, as it contains considerable exceptions to the existing regulations. He thought Mark Lorang's goal could be attained by securing commercial space in a nearby locality where in-place commercial zoning regulations permit such business.

Nancy Tiensvold: She lived across the road. They bought the property in 1960. People stop at the bottom of the property to take pictures. Would a parking lot and plants really add to this?

Mike Marchetti: He was a resident of the East Shore zoning district, and part of the revision of the zoning regulations. Granting a variance and conditional use depended on whether there was an unacceptable condition to go around. They created the rules to protect the people of this district. They made sure the economic viability of those in existence would be preserved for them and their children. By granting this, he believed they would seriously degrade the work that was done and the commitment the community made to that district for preserving that way of life. He requested that the Board deny the request.

Mark Lorang: He said they produce 100,000 pounds annually from their cherry orchard. They had been selling and packing fruit at their place since 1972. They sold all over the place. The cherry market had crashed. Last year their price was \$1.25 per pound. They needed \$1.50 minimum at their packing plant. They've worked with Munson Fruit, who did a heck of a job at getting the fruit out. The cherry growers have been really good at trying to develop a market. Nonetheless, several million pounds of Lamberts rotted on the trees last year. His neighbors go back to their home in Los Angeles every year, and leave thousands of pounds of pears, apricots, nectarines, apples and cherries rotting. Those are fruit fly nurseries. This year they won't take anything under 11 row (?). They were so over pollinated in his orchard that they will have to

throw away 30,000 or 40,000 pounds of cherries. He couldn't take them to Munson's because there was too much small fruit to allow them to pack it and not send him a bill. He saw this as a time for change. He needed 5 years to go to Minnesota, where cold-climate grapes are being developed. He wanted to get 12 of those different varieties, and plant them in the orchard, and spend 5 years figuring out which were the best grapes. After that, they could take off. The conditional use was to get out of state juices and wines to bring in and blend and try to make something out of them. His winemaker was experimenting with distilling, and they thought they could actually distill enough rotten cherries to ethanol that could be sold to Conoco or at the very least, heat their building. Raising fruit and having it rot in the fields didn't work. He showed water from the Flathead Lake Biological Station that was full of Provado (?) (not Prozac) which was so toxic it killed aquatic insects. They would be shutting down the Flathead Lake Biological Station if they couldn't culture aquatic insects at their facility. It was elevated in nitrates and herbicides from Roundup. If they planted grapes, they wouldn't have this problem. If they stuck with what they were doing, it would all be contaminated.

Heidi Johnson: She was an organic cherry grower on the East Shore. She took some exception to the idea that continued cherry growth was harming the water. They don't use any of those chemicals. They sell all of their cherries every year. They don't let any hang on the trees. She could probably sell twice as much as she had. She agreed they needed to preserve agriculture in the whole Flathead Valley. She hoped they could find a way to do that. There were problems like growers who only have a hundred trees, so they're getting the ag break and don't take care of the trees. That does affect the rest who are actually farmers. Hopefully they could find some happy medium.

Mark Lorang: He couldn't go ag or organic because there was so much rotten fruit next to him. He would be full of fruit flies.

Ken Edgington: The area was known as a pest management area. There were monies to go after people who violated the law of not spraying their orchards. If people were suspected of being in violation, it could be turned over to the pest management area, which could then seek remedies against that. The worst remedy would be to get the State to approve cutting the trees down. If there's rotten fruit next store, he suggested having the pest management area try to resolve the problem.

Nancy Tiensvold: She referred to the Hartman letter that Don Patterson presented, who planted grapes in 2002 and successfully harvested 1 crop since planting. That was worse than most of the cherry growers had done.

Public comment closed.

Clarence noted he'd been coming to Board meetings for about 12 years. He was involved in getting the zoning done. In Finley Point, they definitely said they didn't want commercial in the zoning district. He described some attempts at businesses that were denied by the Board. At the time the permit was given to operate this cherry packing facility, Clarence was on the Board. They barely got the permit, due to water problems, concerns with the Biological Station

wells, which had to be pristine for their usage. He thought there was a statement that the permit could be rescinded if it did affect the well. He didn't think this was a good idea.

Paul was open to businesses, but he thought it didn't sound like this was the place. The East Shore zoning was obviously highly thought of. Sue L agreed with Paul. She believed it was more than an expansion of the existing business. It would change the nature of the business and expand it in a different way. She thought the community had been very thoughtful over the years in the zoning and active in the meetings to know what they want in their community, and this expanded it farther than the Board had the power to grant and stand behind. If he wanted to begin planting and harvesting grapes and adding a bit more to the business that way, it would still be locally grown fruits, but [the proposal] was too much.

Tim was in favor of value-added agricultural products, and he thought that was what the applicant intended to do. He thought it was the same business, adding value to the product. He didn't hear a specific format, rather than a general impact, from the public. Some mentioned concern with alcohol. He toured many wineries in the past, and felt they couldn't be called a high-impact business. He thought if you wanted to keep agriculture in the area, it was a changing world, there were local products and it would be good for the local economy. He didn't see a high impact.

Clarence repeated the concerns about the Biological Station well. He thought this would increase the concerns. The applicant could truck the grapes to a building in Polson or Ronan, and he could then accomplish what he wanted to accomplish. A large vineyard was next to the home Clarence owned for 18 years. He helped harvest the grapes. In the last 10 years or so, there had only been 2 or 3 good crops.

Tim suggested that the Environmental Health department would deal with the runoff of pesticides. He thought it was the job of the applicant's banker rather than the Boards to decide if the business plan was worthy.

Sue S clarified that the property mentioned as previously approved for a packing plant was a different property.

Sue L explained she had a problem with bringing in the non-local fruit since that was a prohibited industrial use. This was not something for which the Board to grant a variance. Tim asked if this was for a limited time. Sue L said if the Board chose to give it, it would be for 5 years. She pointed out that it said that the Board couldn't make that kind of determination or grant that for prohibited uses. Until the zoning was changed, they couldn't bring this up. Tim thought that was the point of the variance.

Paul agreed some people were concerned with alcohol sales. Maybe that could be added as a condition, to track it. Clarence was concerned about traffic problems. Tim didn't think this was a project that would work if it were shifted to Ronan. Part of the whole plan seemed to be to have a winery in a beautiful spot. That was the attraction.

Motion made by Clarence Brazil, and seconded by Sue Laverty, to deny the variances and conditional use requests as stated. Vote was 2 in favor of denial (Sue Laverty, Clarence Brazil) and 2 opposed to denial (Tim McGinnis, Paul Grinde). Motion failed for lack of 3 votes. No alternate motions were made. Proposals failed for lack of vote of 3 in favor.

NEW MOUNTAIN HEIGHTS II CONDITIONAL USE REQUEST—UPPER WEST SHORE

Joel Nelson summarized the staff report. (See attachments to minutes in the June '10 meeting file for staff report.)

Dave DeGrandpre spoke on behalf of the applicant. He was accompanied by Rob Smith, the project engineer from A2Z Engineering, and Jay Hoker of New Mountain Heights. When the Views at Timberlake subdivision was granted preliminary approval in 2007, it was known slopes greater than 25% would have to be disturbed in order to install the road infrastructure. A condition of approval was that they make a conditional use application to the Board. The report was thorough and accurate. Dave had two specific requests on the conditions.

Dave talked about condition #5. It stated that finished surfaces of retaining walls and road cuts visible from the highway, surrounding properties and Flathead Lake would be finished with flat, neutral colored natural stone or similar natural facades or revegetated. He referred to one big retaining wall and gave the Board some drawings. [Editor's note: handouts were shown to the Board only and not given for the Record during the course of the meeting, and have been matched to items after the fact. See attachments in the June '10 meeting file.] He referred to Deep Bay Road, which was essentially for fire safety. White Boulevard was located in a canyon, with the subdivision to the west. Existing residences looked towards Flathead Lake. They'd like to avoid putting a façade along the entire stretch. They'd like to blend it in through the use of color or texture. They don't have a final depiction yet. Dave proposed that the condition state, "The retaining wall shall be finished with a natural neutral color to blend into the surrounding hillside. All cuts and fills shall be revegetated to prevent erosion and visual impacts." This was not visible from Flathead Lake or Hwy 93. This retaining wall would only be visible from the opposite hillside and the homes on top of that hillside look out over the lake.

Tim asked how Dave's suggestion differed from the existing condition. Dave thought it said the retaining wall shall be finished with neutral colored natural stone or similar natural façade. He took that to mean the roughly 800' retaining wall be lined with stone. Mike asked if they'd spoken with the adjacent property owners about their request and how they'd like to solve this. Dave said this had not happened. Dave added the wall was up to 20' tall in response to Clarence's question.

Tim asked Planning staff what they intended by this condition. Joel said it was intended to address the road cuts and potential retaining walls for this road network. For that stretch of Deep Bay, this was the only retaining wall contemplated, but there could be others. Joel noted that as the condition currently reads, it would be just the opposing hillside from which you could see the wall. He preferred to leave the condition as is, with the exception of removing

'and road cuts' and then add the condition that Dave proposed specifically for that 800' stretch of the retaining wall. Other road cuts and potential walls would be covered as the staff had written it. Sue L agreed with Joel. Dave thought revegetation was the right answer for road cuts. Tim asked if this retaining wall could be seen from the highway. Dave didn't think so. Tim thought #5 said this condition was for ones visible from the highway. Mike added that it include those visible from surrounding properties. Dave thought the way it was written right now was confusing.

Sue L asked about Dave's other item of concern. Dave referred to #7 and the hours of operation. The idea was to limit impact to neighbors. Currently 7 full-time and 4 part-time residences were at Timberlake Ranches. The letter from Robert Lavin in the report suggested that construction happen more quickly, and that the hours would prolong construction. They would like to try to have longer hours, at least some distance from homes. He proposed changing the hours of operations from 7 am to 7 pm, but within 1/8 mile of a home, no work could occur other than the hours of 8 am to 5 pm. He referred to the maps submitted with the application, and said the vast majority of the work was up on a hillside outside the developed area. 1/8 of a mile wasn't a magic number—it could a 1/4 of a mile or whatever from residences for tighter hours of operations so that they impact less.

Tim asked what the 800' long, 20' high retaining wall would be made of. Rob Smith said they're scheduled to talk next week with a geotechnical engineer who has done soil studies, so they don't know yet.

Public comment opened:

David Fortenberry: He identified his tract. He had concerns about the project. The road construction and the selling of the real estate development would certainly result in traffic increases. Property construction would occur along the course of the construction of the road. He was concerned about the gently sloping bank that his property contained along the course of Kurzman Hill Road. There'd been no contact by New Mountain Height to the individual landowners with regards to the project, individual impacts on the property owners, the financial responsibility of New Mountain Heights or even things as simple as the width of the road.

Tim Calaway: He said this was a beautiful piece of property. The lumber companies did a pretty good job of thinning and left a lot of nice trees. He'd driven the roads and said there was very little that would require major cuts and fills beyond what had been mentioned. The roads were in pretty good shape and he thought the disturbance would be minimal. Given the construction season in Montana, to get stuff done he thought the hours would have to be at least 7 am to 7 pm. He thought it was a reasonable request up on the hill away from the residences. He'd known Jay Hoker for a long time and thought the quality of his work was first class.

Mike Wilson: He owned property in Timberlake Ranches subdivision, and the fire emergency road mentioned earlier would be constructed or improved through an easement along his property. Currently that road was a dirt track, and one of the steepest existing grades in this development was along that road. He thought if these roads were done, and done properly

according to the way they were proposed, it would be a significant improvement to the access and value of his property. He supported it.

Jay Hoker: He was the developer. He sent a letter out that they would advise the neighborhood as soon as they decided at what point they would move forward after the conditional use permit. They didn't know the width of the road yet, because new regulations were at 20' but right now it was at 26'. As far as impact and owners' participation financially, the applicants were going to maintain the roads. There would be no homeowners association. As for dust abatement, they would water as they went, and by the Fortenberry and Lavin places they hoped it would be every three weeks that they would be by there and inspect.

Robert Lavin: He asked if his letter was part of the record.

Joel N: He affirmed.

Public comment closed.

Sue L said with #7 there was no problem with the proposed change to expand the working hours if they weren't around residences. When making roads, they would eventually be passing back and forth past houses, so that wouldn't really work. They would still be moving materials by the houses. Dave agreed there would be some construction traffic passing the houses, but it wouldn't be construction equipment that was making noise, moving dirt, generating dust or things like that. Sue L noted she lived in a quiet area where construction was occurring, and when they started at 7 am and quit at 7pm it was very disturbing. Working activity around the residences would disturb the serenity of the residences. She thought it best to stay with the 8am to 5pm hours.

Paul referred to the suggested change in #5. Without knowing more detail on what the wall would be, it seemed premature to ask the Board. One alternative would be to leave it up to staff. Sue L suggested they could add a sentence pertaining to that particular wall (800' x 20' located along Deep Bay) that it could be a neutral color and blend in to the natural hillside, and leave the rest as is. Tim asked Dave to repeat his suggested change. Dave did: the retaining wall shall be finished with natural, neutral color to blend into the surrounding hillside. All cuts and fills shall be revegetated to prevent erosion and visual impacts. Sue L suggested that they specify the retaining wall along Deep Bay for the first sentence, and for the second sentence, they include all other finished surfaces of any other retaining walls and road cuts visible from the highway and so forth.

Rob Smith mentioned on the engineering of the retaining wall that tall concrete walls were expensive and hard to construct in steep areas. They were leaning towards was either a stacked boulder type wall or what was called a modular block wall. These would be a little bigger than the ones sold by Lowe's. They were usually tan with a textured surface, and they stack up. Those were the primary candidates at the moment. Certainly the Board could prohibit a large grey mass of concrete. Tim said if it was a bunch of rocks covered with white stuff, that this would stand out badly. Rob said there was a small quarry on the site, and they have some boulders quarried from it in Kansas City, and they're waiting to see if it could be useful for the

project. It was a natural stone or mudstone type of project. Tim said if it had calcium or whatever on the outside it wasn't really a natural stone. Rob S said it was mostly yellow and tan, and purples and blues.

Sue L liked Joel's change to #5 better than Dave's. Joel summarized that his would leave the sentence in #5 as is, and add Dave's language specific for Deep Bay Lane and that retaining wall. Mike said the language would be conditional on whether they put a concrete wall in, as opposed to natural stone.

Motion made by Mike Marchetti, and seconded by Sue Laverty, to change #5 in accordance with Joel's suggestion.

Mike asked Joel to reread the condition. Joel read 'All finished surfaces of any retaining walls and road cuts visible from the highway, surrounding properties and Flathead Lake shall be finished with flat, neutral colored natural stone or similar natural facades, or revegetated, with the exception of Deep Bay Lane. Deep Bay Lane's retaining wall shall be finished with a natural, neutral color to blend in to the surrounding hillside.' Sue L checked about the use of shall versus may. If they use natural stone, saying 'shall be' might be limiting. Joel suggested that Deep Bay Lane shall either meet those standards or the retaining wall shall be finished with natural, neutral color to blend into the surrounding hillside.' **Motion carried, all in favor.**

Mike brought up the change suggested for #7 regarding the hours for construction activities on the road. Clarence thought it sounded like a good idea, given that they only had summers to work and it would get done faster. Tim agreed. He wasn't sure what to use for the distance from a house.

Motion made by Mike Marchetti, and seconded by Paul Grinde, to change #7 to read that all road construction activities shall be limited to the hours between 7:00 am to 7:00 pm except within 1/8 of a mile from any residence, where it would be limited to between the hours of 8:00 am and 5:00 pm. Motion carried, all in favor.

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

BEAMAN DENSITY VARIANCE

Sue Shannon summarized the staff report. (See attachments to minutes in the June '10 meeting file for staff report.)

Dave DeGrandpre spoke on behalf of the applicants. He showed additional materials to the Board. [Editor's note: handouts were shown to the Board only and not given for the Record during the course of the meeting, and have been matched to items after the fact. See attachments in the June '10 meeting file.] He summarized some history, and referred to the April 2010 meeting, where an appeal was brought to the Board and rejected. The Board suggested coming back with a variance at that time. Dave read excerpts from the April 2010 meeting. He addressed the criteria for granting a variance. He referred to his letter of 5/5/10,

which was included in the staff report packet. He thought the letter clearly described the criteria of this proposal and he hoped the Board would consider adopting it at part of the findings of facts. He respectfully requested approval of the variance.

Mike checked that the property was split prior to the density regulations. Dave responded that it was not. Two parties purchased it, each with a half interest. The other party built a home on a portion of the property. The Beamans built a garage with guest quarters on the other portion of the property in 2002. The density map came into effect. The Court split the property in 2007.

Sue S advised the Board not to adopt Dave's findings from his letter. She thought they took assumptions regarding the service provision in subdivision. They had no comment from the fire department regarding the access roads. This area is ranked 3rd in Lake County emergency plan for wildfire hazard. If the Board would like to make findings regarding a decision, they should do so on their own, based on the information and knowledge they had regarding the property and the applicable regulations.

Public comment opened:

Wayne Jundt: He was the other part owner for the property that was split off. He said for the roads, they had the fire department evaluate them in 2007, and it was turned in for the package to have the land split. He reiterated some of the history of the property. They purchased together in 1991, with the intention of splitting. The judge split it. They were trying to get the property split in the right way. The owners wanted a variance so they could put in a septic system and move on to the property.

Public comment closed.

Clarence remarked he heard the whole thing last April. It was very complicated. He knew the people involved were very frustrated. He didn't think what happened previously made much difference with the decision. Basically, they owned a piece a property. Through no fault of their own, they couldn't build on it. The criteria for giving them a variance was usually that they own property with a hardship through no fault of their own, and the Board would usually grant that. He would be happy to grant them a variance, if it were entirely up to him.

Mike agreed. The property was bought prior to the density regulations. It was just the way things go that the density regulations went into place and then the property was split by court order. He believed it created a hardship for the owners of this piece of property, and that a variance should probably be granted to allow them to continue.

Tim said he was pretty clear in the last meeting on this on his thoughts on the subdivision.

Sue L agreed with Clarence. She didn't believe just because the Court ordered a separation of the property, that would overstep zoning. The zoning and density map did take effect on this parcel. Just because the Court split it was not the criteria that they needed to grant the variance. She believed that by granting the variance, that they were trying to find the balance between the rights of the individual and the common good. She thought that fell into why she would be in

favor of voting for this variance. She didn't think it would be contrary to public health or welfare. The property as a whole already had a single-family residence and a garage with the intent of having some sort of living quarters or guest quarters above it. By granting this variance, whether the property was two separate properties or one, she didn't think that would necessarily be against the interest of the density map. She thought they could have done that while it was one parcel. That would be her finding of fact or determination of why she was in favor of granting the variance.

Motion made by Clarence Brazil, and seconded by Mike Marchetti, to approve the variance as requested.

Clarence commented that Sue S mentioned the fire road and so forth, and that the applicants were already aware of this. There was a fire problem and the applicants were taking responsibility for it themselves. Mike and Sue S clarified with Clarence whether he was just commenting or amending. Clarence thought something should be added to say that, and to make sure the applicants were agreeing that they were aware of the fire situation. Sue L asked if Clarence was looking for something like that the property was in a wildland area and the owners were aware, or the County made no representation of how the fire department may respond or the road conditions. Clarence affirmed: something to indicate the Board was not approving it for fire conditions, that they are taking their own responsibility by building a home there. Paul thought they'd already done that. Clarence thought they should put it in, since it was mentioned. Tim thought Sue S had just been commenting earlier on the findings of fact that Dave DeGrandpre had mentioned, and that was one example she had used. Sue S said they were exempted from subdivision review process, so at this point the lot has no assurance regarding any of the impacts or criteria. It was exempted, so they didn't have an ability to say anything about it. The Court did that. Sue L clarified with Sue S that she was just commenting regarding Dave's findings of facts, and that she wasn't comfortable with those assuming things without evidence or review process and determination.

Sue L checked whether the Board needed to create their own findings of facts. Mike said those would be included from the staff report, and the conditions as stated, not the conditions that were stated from Dave's document. Clarence asked if the owner was present. (The owner was not.) Sue S said she got that Clarence felt the variance should be granted because the ownership of the property, that they currently own property, and that you felt that it met with the purpose of the regulations and goals and objectives of the Growth Policy in regard to balance of the individual and the common good. They could incorporate that into the findings of facts.

With those things said and in the record, Mike proceeded to the vote.

Motion carried, all in favor.

SPENCER DETERMINATION—UPPER WEST SHORE

LaDana Hintz summarized the staff report. (See attachments to minutes in the June '10 meeting file for staff report.) She noted on pg. 2 under section V.D, it should read subdistrict D instead of subdistrict A, and the acreage allowed is actually 5 acres, not 10 acres.

Dave DeGrandpre spoke on behalf of the applicants. He showed two items to the Board. One was a preapplication drawing submitted in December or January. The other was a full size preliminary plat, so the Board could see some of the challenges of the property itself. [Editor's note: items were shown to the Board only and not given for the Record during the course of the meeting, and have been matched to items after the fact. The second item is available with the meeting record—see attachments in the June '10 meeting file.] Dave pointed out the shading and slopes greater than 25% on the plat, and the road and stream locations. The Spencers were seeking to create two parcels for grown children and their families. Several lot configuration problems were pointed out in the preapplication response. Dave described challenges with a triangular property, steep slopes, limited building sites, a stream and access. Access was from Big Lodge Lane on the southern part of the property. The physical constraints were conditions unique to the property. If the Board chose not to approve this, they would submit a subdivision application with 5-acre lots and ask for Planning Board variances. They felt their proposal made sense, given the constraints and opportunities of the property. They wanted to have functional lots. He reiterated that the zoning's density requirement wasn't a minimum lot size, and read from the regulations. He wasn't sure why it was called density clustering. He said the criteria was whether the layout was compatible with surrounding land uses in the neighborhood. The land uses in the neighborhood were residential and agricultural, and that was what they were proposing. One rural single-family residential home per lot was proposed. There was one 2.7-acre lot in the neighborhood. The eastern and western lots were smaller than average, but it was the same land use and the same impact. He said the conditions proposed were fine.

Public comment opened:

Dave Houghton: He was an adjacent property owner. There were far more pieces of property bigger than the two plus that had been expressed here. His was a 20-acre. There was an additional 20, and Ed's was more than 20. Directly across the street was a minimum of 10's. He felt the zoning ordinances were pretty well stated. By allowing any variance, he felt they degraded themselves and the zoning. When the Yarborough Tract was originally broken up, the Planning Board denied it and the Planning Commission approved it. That was a density even with what they had broken it up to originally. He didn't believe there was an adjacent landowner that wanted to see the zoning changed from the 5-acres as a minimum to a couple of twos. He thought it could be done legally without a variance. He didn't know how to redraw it, but as proposed with less than the 5-acre zoning that was in place, he was opposed.

Dick Chapman: He bought property 32 years ago. The proposal was directly to the north of his. Two years ago, his family went through a family transfer, and they made sure nothing was smaller than 10 acres. They split up 80 acres. He was against the current proposal, but he would go along with 5 acres.

Lynn Weaver: He said this property apparently couldn't be split into 5's without variances anyway. He realized the zoning didn't say there has to be a minimum of a 5-acre tract. He thought that was the intent, and presently there's that or bigger lots in the surrounding area. He thought they should try to stick to that.

Lew Moore: He was happy with Steve and Peggy as neighbors, and knew Steve for a long time. He was also one of the first property owners in the area. He was never happy with the idea of multiple small lots. He wouldn't have a problem with this if it were 5 acres or larger. He thought it was a bad precedent to set to go down to a little over 2 acres.

Ed Jonas: He was the managing member of the adjoining 43-acre Blacktail Mountain Ranch. When he first came to that property, a realtor represented that the other 93 acres were available and nothing was going on with it. He later found out it was a subdivision. The Spencers couldn't be nicer people, but he had to object to subdividing or splitting these lots into small lots. The zoning laws were for a purpose, which was to be enforced unless there was some hardship. There were plenty of lots available in the subdivision across from him. That might not help Steve and Peggy, but it wasn't the nature of the neighborhood to have small lots like that. Dick Chapman had 80 acres, and he had 43. The Spencers had 20. He ran a beef production operation on his property. He had enough problems with some of the other neighbors with complaints. Respectfully to the Spencers, he had to object to it.

Diana Chapman Baumgartner (sp?): She would like the parcels to be 5 acres or above, not less.

Public comment closed.

Paul said he'd go along with Dave in that this probably makes pretty good use of this shape of property, but there was obviously overwhelming support of 5-acre minimums from adjoining landowners.

Sue L checked about the conditions with LaDana. She pointed them out on pg. 5.

Tim asked what the necessary variance would be for another configuration that he pointed out on a drawing. One was a flag-shaped lot. What was the difficulty with the other one? Dave thought it was mostly the western lot: it was flag-shaped, there were concerns with access and with depth-to-width ratio. He repeated that they could make 5-acre lots, and ask for variances. The impacts were the same. Tim agreed with that. He was concerned about setting a precedent for allowing smaller lots. The neighbors didn't seem opposed to 5-acre lots, but then they'd be setting precedence for flag lots. LaDana noted flag lots were subdivision review, so it was separate from this. The Board was deciding if the applicants could use the density clustering provision. Sue L asked if the Board decided to grant the density clustering, the applicants would not be able to divide the remaining larger lot any further. LaDana explained they had 20 acres in 5-acre density area, so there would be 4 development units. One would still be left. Sue L asked if they could limit that if the Board were to grant this particular density clustering. She and LaDana agreed [the property] would still have one development right. Mike said if they did approve the clustering, it would still have to go to the Planning Board. LaDana noted it would also have to go to the Commissioners for a final decision. The decision on the clustering portion would allow them to go forward for subdivision review. Mike checked that the decision was not on lot size—the Board wasn't approving 2-acre lots, but whether they could use density clustering. LaDana said they were looking at approving density clustering to allow for the two-acre lots. Mike added the density clustering could be for bigger lots. LaDana

said the Planning Board and the Commissioners would also be reviewing the lot sizes when it went through subdivision review.

Mike said he was opposed to this as he understood it. He wasn't willing to go with lots this small when the provisions of the community and the way the community was situated was obviously geared towards 5 acres or bigger. He thought they were intruding on the spirit of what the community wanted. He would rather defer towards what was spoken here today and make the lot sizes bigger. He didn't have a problem with clustering, and using the clustering rule. If they approve this and somehow let the subdivision group believe they are okay with 2-acre, he would not do that.

Clarence said he'd rather give a flag lot variance than to go down to the 2-acre size. It wouldn't affect the public as much and the neighbors would be happier with 5 acres even if it was a flag lot.

Sue L said with density clustering, with a 20-acre parcel and 4 development rights where they want to have 3 and cluster them, she didn't have a problem. If that remaining development right leaves it open to having even smaller lot sizes on the remaining large parcel, and the topography seems pretty hard to work with, she didn't like that. She didn't want it to look like they were condoning small lots, especially since the community was surrounded by a lot larger lots.

Mike listed some options. If they did not approve this, how long until the applicants could come back? LaDana said they could resubmit a new proposal and come back, or they could make it at least 5 acres to comply with the density in the zoning regulations.

Tim thought the shape of the lot and the topography made this a difficult lot to deal with. He favored the clustering because of the nature of the lot. Mike clarified he wasn't against cluster development on this; he was against the size of the lots. By approving this, they give, in a way, an approval of the lot size. He didn't think it was right for this community. Tim said he saw it as 3 units on 20 acres.

Clarence restated that they have 20 acres, and would be allowed four 5-acre parcels without clustering at this time. LaDana noted the 4 development rights were there. This Board was not restricting the four. Sue L checked that the Board could not add a condition saying they couldn't split the lot size further by clustering, that they would have the ability to transfer the development right but not use it. LaDana thought it was a stretch to put on a condition like that when the regulations allowed for it. Mike asked if they could approve the clustering and also put a comment in their findings that they were not in agreement with 2-acre parcels, so the subdivision board would understand where the Board was. LaDana replied they could chose to do so, and if that's what their findings were going to be. The Board needed to make findings.

Clarence asked about the problem with flag lots. Sue L asked for more definition. Joel explained a flag lot was one with a long narrow extension that was provided only for access purposes and avoidance of road construction standards. Clarence asked if a triangle lot was considered a flag lot. Joel said that a triangle lot would not have a long narrow extension.

Also, if the pole of the flag was where the building site was located, and it's developable, it wouldn't be a flag lot. Sue L asked more questions about a diagram and flag lots, which Joel answered. He thought the first lot on the diagram looked dysfunctional. Tim thought it only looked like that to get it to 5 acres. Joel wondered about the maintenance of the northern portion of that lot.

Tim said Dave had another concern about the length. Joel explained a lot couldn't be more than 4 times as deep as it is wide, using an average width. Clarence asked about the reason for that, given the prevalence of such lots on Finley Point. Joel said this was to avoid Finley Point. It was a design standard for subdivision regulations that probably helped avoid really long drives that encompass the majority of the lot.

Dave asked to briefly address the Board. He said they were trying to comply to the density to the best of their ability. Either they asked for the density clustering provision or they come up with lots that are exactly 5 acres and ask variances elsewhere. If the Board felt they had to have 5-acre lots for whatever reason, then they could do that, but then he asked that they waive the \$500 fee for a variance from the subdivision regulations. LaDana didn't think the fees could be waived, since they would have to review the lot. Joel noted that each subdivision regulation variance was \$100 per standard.

Sue L asked for clarification. Density regulations didn't call for a minimum lot size, but this was in a zoning district that did? LaDana answered the zoning regulations talked about 5 acres, as listed on pg. 2 of the staff report. In the density clustering section, it talks about density clustering. The other thing to remember was that the 2 lots being proposed for creation were on the opposite sides of the lot. Was it truly clustered? Should they be allowed to use the provision when the lots were not grouped together? Sue L thought clustering was supposed to be beneficial to have surrounding areas with a lot of open space around. LaDana pointed out with these lots, they were on opposite sides with the open area in the middle.

Mike asked how that was redefined if you split this into 2 and 2.7, leaving 15 acres could that now be split into 3 more for a total of 5. LaDana corrected that 3 units would have already been done, so there could only be one more split. They could have a guest house, but that was a different thing. She reminded the Board this would go to the Planning Board and the Commissioners for review. This board was not recommending approval of the subdivision. They were recommending about the density cluster.

Paul commented this might be the best plan with the oddball shape.

Motion made by Mike Marchetti, and seconded by Sue Laverty, to approve the use of the density clustering for this oddball property.

LaDana reminded the Board they needed to make some findings. Sue L based this on the fact it was an irregularly shaped lot, and the topography made it difficult to divide it. Tim noted it met the density requirements. He said the Upper West Shore zoning regulations did not specifically define a cluster development. Mike asked for the findings of fact to be repeated for the record. LaDana did so: It was an irregularly shaped lot, the topography made it difficult to

be divided, it met the overall density requirement and the Upper West Shore zoning district didn't specifically define cluster development.

Mike returned to the motion with the findings of fact. Motion carried, four in favor (Sue Laverty, Mike Marchetti, Tim McGinnis, Paul Grinde) & one opposed (Clarence Brazil).

Mike announced that the agenda order would be changed one more time. Larson would follow Newhall, and then Roe.

NEWHALL VARIANCE—FINLEY POINT

LaDana Hintz summarized the staff report. (See attachments to minutes in the June '10 meeting file for staff report.)

Norm Newhall spoke on behalf of his application. They purchased the property in 1987 and built a modest home. He addressed condition #2 on page 7, which he felt had been satisfied, and he requested that it be withdrawn as a condition. He handed the Board a packet of tabbed materials. [Editor's note: handouts were shown to the Board only and not given for the Record during the course of the meeting, and have been matched to items after the fact. See attachments in the June '10 meeting file.] He read the condition, and explained how it came about. The condition pertained to Environmental Health concerns. He explained how he felt he had addressed the concerns of Environmental Health regarding a replacement drainfield and how the residence would be provided with water, referring to the tabbed packet he had distributed to the Board.

Mike explained that the Board did not have jurisdiction over Environmental Health. The request was for a variance for the detached garage. He focused back to that, and asked if Norm had concerns about the proposal and location of the detached garage as shown on the plan. Norm said he was concerned about that condition, and that he couldn't get the permit because one was a condition to do things he'd already done. LaDana explained the condition was the same one as on the conditional use. Whether it was removed or not, it still had to be addressed under the conditional use. She explained that Norm would need to address his Environmental Health concerns with Susan Brueggeman. She was waiting for Susan's sign-off so she could issue the permit. Sue L checked that he was asking for condition #2 to be removed. Norm affirmed. Mike said that if #2 were removed, it still stood on the conditional use and would still have to be answered. LaDana pointed out that the site plan did not show 10' from the property line. If he was asking for 10', he needed to submit an updated site plan before the permit was issued. Jeff Gallatin said he'd just read that, and he had it drawn.

Public comment opened: None offered. Public comment closed.

Motion made by Sue Laverty, and seconded by Paul Grinde, to approve the variance with an additional condition #8 (the site plan shall be updated to accurately depict), and staff findings of fact. Motion carried, all in favor.

LARSON CONDITIONAL USE AND VARIANCE—EAST SHORE

LaDana Hintz gave the recommendations from the staff report. (See attachments to minutes in the June '10 meeting file for staff report.) On pg. 18 of the staff report, she corrected the wording in #1 to say cabin rather than guest house. In #3, she corrected the wording to say deed restriction rather than deed affidavit.

Tim Calaway spoke on behalf of the Larsons. This was an insurance job where the tree hit the house, and destroyed the stairs down to the lake. They rebuilt the stairs as quickly as they could. The insurance job turned into a nice remodel, with a 96 square foot addition to enclose an existing exterior staircase for safety and convenience. A lot of the expansions to the house were cantilevers or over the existing concrete. To the north there was 138' to the north that was cantilevered over the first story that did not disturb the soils but increased the roof area. He didn't realize he needed a permit. Septic and well were reviewed. They'd like to proceed as quickly as possibly given the rainy weather.

Tim C had a revision to the stormwater from Rob Thomas, his engineer. The report said up to 600 gallons of retention. He thought that was excessive since some of the roof area was over the concrete deck. He handed out information on StormTech systems to the Board. It was simple to expand from one system to two, by extending a little farther and attaching a second chamber. [Editor's note: handouts were shown to the Board only and not given for the Record during the course of the meeting, and have been matched to items after the fact. See attachments in the June '10 meeting file.] LaDana asked if this would direct all of the stormwater from the roof. Tim replied that it would. It would handle almost 700 gallons. The original was 343 gallons. He just had to add one more chamber.

Mike asked what the impact of not removing the concrete would have, since the staff recommendation was to not remove it in order to avoid slope disturbance. Tim said it was just ugly. It was a failed retaining wall from long before Daniel Larson purchased the property. They could take it out in pieces or with a crane in one piece. He didn't think there would be much disturbance. It was in the middle of the lot. LaDana noted no information had been received to demonstrate how they intended to get rid of it, so this was why staff recommended either tabling it or denying it. If the Board tabled it, they could bring in a proposal to review. Tim said his original thought was to get a crane in there. With the overhead wires and small area of the road, it would be hard to get a crane big enough to pick it up in that spot. They'd like to cut it into parts and bring it out in pieces. Mike suggested the Board could recommend approval with a condition that the applicants pass the plan for removing the concrete through the Planning Department, and staff could approve it before it proceeded. LaDana said the Board could do that if they were comfortable with it. Staff wanted to make sure the buffer zone wasn't destroyed in the process, and it was on slopes so the applicants should demonstrate it wouldn't hurt the stability of the slope by taking it out.

Public comment opened:

Daniel Larson: He requested approval. He suggested a husky 19-year old boy could haul the concrete chunks up the steps.

Public comment closed.

Mike understood the concerns about moving the concrete. He suggested tabling that portion and approving the rest. LaDana affirmed for Sue L that they could proceed with the rest of the project if that portion was tabled.

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

Mike checked with LaDana that on the conditional use, it was item B that they would table. LaDana said this was item #1.

Motion made by Sue Laverty, and seconded by Tim McGinnis, to table item #1 of the conditional use request at this time. Motion to table item #1 carried, all in favor.

Motion made by Tim McGinnis, and seconded by Sue Laverty, to approve the conditional use request for disturbance of slopes to create a footpath to the existing staircase to provide lake access... with staff findings of facts and conditions. Motion carried, all in favor.

The Board of Adjustment paused to move to the adjoining small conference room to continue the meeting and allow the Planning Board to get ready to begin its meeting.

ROE VARIANCE AND AMENDMENT REQUESTS—FINLEY POINT

Please note: LiDAR images & other pictures referred to may be found in the Roe variance file.

LaDana Hintz summarized the staff report. (See attachments to minutes in the June '10 meeting file for staff report.) She pointed out one additional letter that was received and handed out to the Board. (See attachments to minutes in the June '10 meeting file for staff report.)

LaDana showed the Board some drawings from the new LiDAR data that arrived Monday. It showed the distance of the house (cabin #1) from the lake. The site plan on the table showed 28' from the high water mark. The LiDAR diagram showed 28' 3" to 30'. The deck that was allowed to be 5' likely had portions in the lakeshore protection zone. Staff had requested this information to figure out if it was within that zone. With this new data, it does look like portions of the deck are within the lakeshore protection zone. On pg. 20, item A.1.c, 5' wide was selected before staff knew portions might be located in the lakeshore protection zone. The Lakeshore Protection Regulations dictated that. Things in the lakeshore protection zone have to be reviewed by the Commissioners, so this Board couldn't make a decision on those items. If it was in the lakeshore protection zone, it was there without a permit.

Tim asked if there was a picture that showed #3 for the expanded portion of the addition located within the 50' buffer zone. LaDana didn't think they had a good picture of that. She showed the one that seemed the best. The Board and staff looked at pictures and commented on items. LaDana described some of the features to help orient the Board as to where the pictures were located and what they showed.

Brad Roe: He spoke on behalf of his application. He lived in Missoula and always wanted to have property on Flathead Lake. He apologized for the deed restrictions. He was asked to put a deed restriction on the 3 houses. He was building the houses and bit off more than he could chew. He had no idea how much work was involved in a cherry orchard or in this whole project. He asked for the Board's help.

Public comment opened:

Rick Sternjacob: He lived across Hwy 35. He understood when the Roes bought the property, they obtained variances for the big house there, which might be house #3, and for the cabin, which he thought was #2. At the time, they said they were allowed to do this because they said their family was buying this, and they each wanted a house to live in. The variances were given according to that. He didn't have objections to these variances, except for the rentals. The property was never designed to be rented. He didn't think that variance should be given, regardless of what else the Board does with the other variances requested.

Mark Andrews: He asked to show Tim what Tim was looking for on a footprint. He did so.

Patty Sternjacob: She didn't have a problem with the variances but she had a problem with year-round renters. The big house was being rented year-round right now, as far as she knew. It had been, several times. This set a precedent. They've already had trouble with the renters there, who wouldn't communicate with the Sternjacobs. She gave them a chance. She checked that her email was in the report. (LaDana confirmed that it was.) She had questions about what was being rented. There was a lot of traffic in and out. She could see everything. She wasn't against things being built but she was against the year-round renters. She didn't mind seasonal. She thought it set a precedent. She reiterated her feelings on renters.

Adina Roe: She disagreed. She apologized to the Sternjacobs—she wasn't aware that they had issues. She pointed out 3 cabins on the map, the big house and other features. She purchased the property with her two brothers. They wanted to preserve the two cabins. She pointed out one cabin (in the middle) that had never been occupied. She said it had no impact to the property. She pointed out another cabin that had to be winterized. It wasn't designed to be year-round. It was occupied from May to September or October. She pointed out the only unit that was occupied year-round, when her brother could no longer manage the burden of having it. As far as impact to the area, if there were no one in it, there would be nobody there for a few months out of the year. She thought it was reasonable to have one house occupied year-round. If it weren't she and her husband and 4 children, it would be another family.

Patty S: She disagreed with that. A lot of places were left empty because people were gone so much. She was totally against the house being rented.

Sue S: She reminded that comments were to be addressed to the Board.

Adina R: Her understanding of zoning was that the purpose was to protect the character of the area and make sure of the environmental impact when growth and development occurred. Since they've owned the property in 2004, she said there had been minimal impact. She said it used to be a resort. They bought it to keep it in their family. When her brother had to let go of this, they still let him have ownership so he could have the option to buy back in, in 2014. She didn't know of other properties in the district with a similar situation to theirs. She hoped the Board would look at the impact to the environment. If they sold it and had another family there, it didn't mean they'd be better neighbors than the tenants the Roes brought in. Was the alternative to ask for a variance to turn it into a bed and breakfast, with a lot more traffic? She didn't see that as a solution. They were trying to find a solution that allowed them to keep the property. They had an orchard and sold cherries at the Missoula Farmers Market in the summer. They preserved two beaten down older cabins. They built a nice home and wanted to continue to have it, and they needed some help.

Brad Roe: He said that some of the stuff was already under construction when they bought the cabin, like the footings for the deck. They didn't ask for the deck or the 5'. It already had footings for the 8' deck or whatever it was and he didn't measure the deck. He just went off of where his footings were in the ground. They never poured concrete under the cabin or anywhere near the deck. When they purchased this in 2003, including the enclosed-in portion, which was the screened-in portion, there was a drop-down window that was already in there. The only thing they did was put siding on it that was different from what was falling apart.

Adina R: She wanted to show the Board photos of part of the deck.

LaDana: She asked part of what deck.

Mike: He said they had pictures of that.

LaDana: She explained that the Board saw the pictures that showed the footings. They had pictures from 2003, 2004 and today. There was a record of pictures from 2002 to 2010.

Adina: She talked more of pictures she took recently. [Not on file with this record.]

Marc Andrews: He was a friend of the Roes and did concrete work for them in 2004. He did various things out there, and Brad called him to finish the garage that was partially constructed in 2004. About the rentals, he understood there were conditions put on the permit in 2004 and that was a stipulation at the time. Since then, he said the zoning laws were amended and now allowed for the use of one rental on the property, with two or more prohibited, so he believed they were in conformance with having one house as a rental. He understood they wanted to have some people watch over their property year-round. He saw them really respect their property. With concerns of building the garage and the extra roof area over the garage, they had to control the stormwater. The Roes employed an engineer to design a stormwater system. He showed the design, which LaDana noted the Planning Department had not yet seen to review. [Editor's note: handouts were shown to the Board only and not given for the Record

during the course of the meeting, and have been matched to items after the fact. See attachments in the June '10 meeting file.] He said this was the full design of the proposed plan to control the existing and the additional stormwater. The engineer was evaluating the entire septic system for the health department so it would be in conformance now to the conditions of the property and the existing buildings and numbers of bedrooms and so forth. The engineer was also evaluating it to see if there could be an additional 1-bedroom proposed loft over the garage added to it, & if not, what improvements or upgrades needed to be made to handle that.

Public comment closed.

Mike outlined that to do this properly, the Board would need to go through each recommendation one by one, and look at each condition within each recommendation, and vote accordingly.

Mike began with A.1 on pg. 20 regarding the amendment to variance approval FP 02-23 for size of deck.

Clarence asked if this was the deck that further encroached on the setback from the lake. LaDana affirmed. Marc Andrews questioned whether the deck did impede into the setback. Adina asked which portions encroached. Sue S mentioned the image had 2' accuracy. LaDana showed the recent image to the Roes. She said they could submit something to demonstrate such as a survey, if they didn't believe that this was correct. Mike asked if they tabled it for a survey or other proof of distance, they would be okay with that. LaDana said it was still within the 50' buffer and located on slopes over 25%, and they installed supports without a permit, so that would have disturbed slopes, and these were things to keep in mind.

The Roes asked about the concrete. LaDana said they were not in the old pictures. Brad said they never poured concrete under the house.

Mike noted there was a lot of information here. He wanted to be precise. The original variance was for a deck on the north and the west side of the home. After that variance was approved, a deck appeared on the south side of the home. LaDana added that the deck on the north and west side was expanded. It was 8' instead of 5'. The deck on the south side was never approved. Brad checked that there was a deck there before. LaDana replied that there was no deck shown on the old plans, which were in the staff report. Everything was based on the old permits in the staff report. That's what staff reviewed it on. Adina asked about the footings that were there. Howie's deck was approved for the whole run of the house. LaDana said they didn't see any footings in the old pictures. In 2004, there were no footings shown for a deck, if she was talking about the poles up and down for the deck. She showed a picture showing the poles on the lakeview/west side. She added as an aside that [the Board] asked about the addition earlier in their discussion, and showed where that would be in the picture. She showed the concrete posts that were there. They were there now, but they [inaudible] there in 2004. Mike said they were preexisting. LaDana showed pictures from 2010 and the posts that staff were talking about that were installed but never permitted. Sue S noted [the former owner] had approval for footings for the house, not for the cabin, and the deck was going to be cantilevered off of [inaudible]. LaDana and the Board looked further at the pictures and

discussed them further. She suggested they just work through the pictures if that helped explain better. She would listen to them and they could ask questions when they had them.

Paul mentioned that staff recommended the deck be modified. He asked if the removal would cause more harm. Sue L thought if this was the recommendation, it would not. Clarence didn't think they were approved to put the deck on that side of the house at all. Mike clarified that the north and the west side were approved to 5' and they were bigger. The south side wasn't approved at all. LaDana pointed out exhibit 10 (deck proposed by staff). To have reasonable access on the south side, staff did propose a small deck area that seemed reasonable to allow that. The deck shown on the north and west side was the original deck that Howie was approved to have. Howie sold the property before it was finished. Paul assumed that the concrete and posts for the deck were at 8', so this would be moved back to 5'? Sue S explained that this was supposed to be cantilevered off of the home to be compliant. The home was supposed to support the deck. It wasn't supposed to have posts. LaDana added it couldn't be in the lakeshore protection zone. That required a lakeshore protection permit. There was never one granted.

Sue L asked if they had to remove this, would there be more damage to the lakeshore protection than leaving it as is. LaDana explained it could be revegetated, and there would be less stormwater getting into the lake. It actually improved environmental conditions by removing it. Mike said they could have it surveyed. LaDana said it was still within the 50' buffer. Clarence checked that it was in the lakeshore protection zone. LaDana said it looked like it was, based on an image she referred to. Clarence asked if they could approve a variance within the lakeshore protection zone. LaDana said they could not. Sue S said the County Commissioners had the authority for lakeshore regulations. No residential structures were allowed in the lakeshore protection zone. Clarence summed that if it was in the lakeshore protection zone, they couldn't approve it no matter what.

Mike said for 1.b, the recommendation to deny the request was based on the fact that the Board couldn't approve it anyway. LaDana affirmed, with this being based on the latest data that they had here.

Motion made by Sue Laverty, and seconded by Mike Marchetti, to deny the request in recommendation 1.A to amend the variance approval FP 02-23 for size of deck, and to support the staff findings of fact and recommendations. Motion to deny carried, all in favor.

Mike brought up item A.2 on pg. 21, amendment to variance approval FP 04-11 (1) for enclosure of porch. LaDana said this was the porch on the south side of the same cabin, cabin #1. The porch was enclosed, so it didn't expand the nonconformity of the roofline footprint.

Motion made by Clarence Brazil, and seconded by Sue Laverty, to approve A.2 amendment to variance approval FP 04-11 (1) for enclosure of porch. Motion carried, all in favor. Sue S asked about 2.b, which stated the property shall also be restricted from having additional living units or expansion of living area within the designated guest house, considering it didn't comply with density. She asked if the Board's approval of A.2 and the

recommendation by staff included that restriction about expanding living area in any of the guest homes. Mike and Tim thanked Sue S for bring that up. Sue L had assumed they were approving the whole #2 section. Tim asked for clarification. Was it not living area now? Sue S said it was. Right now, the zoning regulations limited guest houses to 1000 square feet without a conditional use. The Board would essentially be granting them to expand over 1000 square feet with this, but saying the guest houses on the property could not be further expanded. Tim said to do that, would it not increase the degree of nonconformity? He agreed with what she was saying. She said on this guest house it was a nonconforming structure and they would not be expanding the degree of nonconformity. There was another guest house on the property as well.

Motion made by Mike Marchetti, and seconded by Sue Laverty, to amend the previous decision to approve A.2 (amendment to variance approval FP 04-11 (1) for enclosure of porch) to include the staff recommendations a, b and c, and the findings of facts. Motion to amend carried, all in favor.

The Board proceeded to item A.3 amendment of variance approval for FP 04-11(1) for an addition on north side of structure (approved to be 19' wide, actual constructed addition is 24' wide). LaDana referred to a picture and visuals. The Board looked at them with comments and questions. Mike checked that this item was done. LaDana explained that this item was done without a permit. It wasn't approved. Mike noted if this request was denied, it would have to be removed, unless the Board chose to amend. LaDana pointed to A.3.c (on pg. 21), which suggested some possible mitigations should the Board choose an alternative decision. Both the buffer and the slopes would have required a variance. Sue L was bothered by this. Tim asked what year the permit for the 19' was issued. LaDana replied 2004. Clarence asked if there were posts and so forth. Sue answered no, that it was excavated. There were various conversations. Brad pointed to parts that Howie Long got permitted or built. He said there was no way they could have come around the deck without enclosing part. LaDana pointed out there was no access on the deck on the north side. It's only on the south side. Tim checked that the Roes got the permit for the 19'. Brad said he got a permit to connect them in the back. He said Howie Long got something on two of the sides. There was much disturbed soil, with piles of dirt. Sue S showed a 2004 picture of the structure, which showed no construction done or addition built. The group conversed about pictures and what they showed and what had occurred, including discussion about the disturbance of soils.

Mike asked if they would be okay to approve this given conditions that they would like to have mitigations occur as in the suggestions in A.3.c.1 through A.3.c.4 (pg. 21-22) and to return that area back and revegetate it and do those kinds of things, and this would not conflict with the Commissioners. LaDana said this was out of the lakeshore protection zone.

LaDana pointed out that was the nonconforming portion of the cabin, so they would be granting approval for something that was nonconforming. They would be expanding a nonconformity. The 19' was out of the buffer. The expansion to 24' brought it into the buffer, which made it nonconforming. Sue S explained the cabin was expanded. They got approval to expand it 19' wide and they expanded it 24'. The additional 5' was encroaching further into the lakeshore buffer, making it nonconforming.

Tim said he was unhappy with the list of the ‘oops’ in this whole thing, one after another. He felt that removal of the structure might be a little much, but he was strongly in favor of some very stringent best management practices to add some value to this dismal equation. Sue L agreed. She was amazed with how bumbling this whole thing was and out of control. She agreed with Tim that at some point they had to go forward. Tim pointed out that a lot of these were done in 2004.

Sue S returned to the alternative in A.3.c. Additional vegetation around that area might help to visually screen it, and also deal with some stormwater runoff. There’d be best management practices and oversight of a manager, with reports, while the buffer was being installed. They would submit a plan to shield that. Mike agreed. If the Board decided to approve this, then they needed to make sure item c was thoroughly complied with, and that Planning was kept apprised of all the activities going on, and no more slip-ups. Tim checked that the recommended vegetation was covered in A.3.c.4. LaDana noted that was the buffer management plan. They should develop a buffer management plan and submit it to Planning for review. There would be project manager to oversee it, so staff could ensure it was done in compliance with whatever approval was given.

Motion made by Tim McGinnis, and seconded by Sue Lavery, to grant approval for item A.3 amendment of variance approval for FP 04-11(1) for an addition on north side of structure (approved to be 19’ wide, actual constructed addition is 24’ wide), with the condition that the best management practices are spelled out and A.3.c. 1 through 4 are adhered to. LaDana pointed out that staff recommended denial, so the Board would need to pay attention to 3.b. Tim highlighted that he recommended approval. Sue L suggested deleting b. **Mike restated Tim’s motion: to recommend the approval of this amendment with items a and c (including c.1 through c.4). Motion carried, all in favor.**

The Board reached item A.4 amendment to conditional use/variance approval FP 04-11 (2) for relocation of house (on pg. 22). LaDana pointed out which one this was. It met setbacks and height, and was not located on slopes over 25%.

Motion made by Mike Marchetti, and seconded by Paul Grinde, to approve item A.4 amendment to conditional use/variance approval FP 04-11 (2) for relocation of house as written. Motion carried, all in favor.

The Board moved on to item A.5 amendment to conditional use/variance approval FP 04-11 (2) for size of cabin #2 (middle cabin) (on pg. 22-23). LaDana showed the picture of cabin #2 with the expansion. She pointed out some features. It met setback and height requirements and was not located on slopes over 25%. Mike checked that it did not meet the deck requirement. LaDana replied they hadn’t submitted an application for review for the deck. Regarding item c, it pointed out the deck was not being approved, in case they build it without a permit. Clarence asked how the addition size compared to what was approved. Sue S pointed out the old cabin, the addition and the two stories on a visual aid. Mark Andrews questioned that the square footage changed. LaDana described that it changed from 29’ x 29’ (one story) to 23’ x 37’ and was now L-shaped rather than rectangular, and now had 2 stories. This had a total of 2476

square feet for the existing L-shaped structure. Clarence checked that the 2nd story was never permitted. LaDana replied it was never reviewed.

Motion made by Mike Marchetti, and seconded by Tim McGinnis, to approve item A.5 amendment to conditional use/variance approval FP 04-11 (2) for size of cabin #2 (middle cabin) with the recommendations in the staff report 5.a through 5e, highlighting item c to remind that they don't have permission to do the deck, and also item e, which was the deed restriction. Motion carried, all in favor.

Clarence stated that he'd attended Board of Adjustment meetings for 15 years now, and this was the most things that they'd approved that were done without permission that he'd ever seen. It was ridiculous that this many things could happen to one person. Sue L said she was stunned.

The Board moved from the section dealing with 'amendments to previous approvals' to the section with 'new variance requests'. Mike brought up B.1 variance for a long-term rental of the house (pg. 23). Clarence asked if the rental of 1 house on a piece of property was allowed. Sue S said it was, but because they got variance approval for 3 homes, part of the approval for the variance was that none of them could be rented. Mike added this was the original deed restriction that wasn't filed. Clarence thought in that case it should hold. Sue L thought it was a hard one, but that was part of the package from the beginning. Clarence commented you weren't normally allowed two guest houses. This was part of the approval of allowing 2 guest houses. You've got to comply with something. Sue L agreed.

Motion made by Sue Laverty, and seconded by Paul Grinde, to deny the B.1 variance for a long-term rental of the house request, and include all of the findings of fact, and B.1.a, b, c and e, and eliminate d and f. Motion to deny carried, all in favor.

Mike brought up B.2 variance for a vacation rental of cabin #1 adjacent to the lake (pg. 23-24).

Motion made by Sue Laverty, and seconded by Paul Grinde, to deny B.2 variance for a vacation rental of cabin #1 adjacent to the lake, with statement of the findings of facts including B.2.a and B.2.b and recommendations of staff. Motion to deny carried, all in favor.

The Board arrived at B.3 variance for living quarters (loft) above a proposed garage (pg. 24). Clarence asked if a determination that this would be over 30' had been made. LaDana explained cross sectional drawings to accurately represent the height hadn't been received, but it appeared that it could be over the 30'. Since it's connected by the foundation wall, it was basically one structure. There's the house, and then it goes up, and connects to the garage. That's the way the height had to be calculated. They submitted pictures with the height on there. Staff needed a cross sectional drawing accurately representing the height. Someone else submitting an application would be asked for the same thing. It wasn't unusual. Staff needed to be able to verify that the height was accurate. Paul asked if this didn't revert back to this FP 04 variance with the living quarters. Mike agreed that it did. Sue L noted they began building again without obtaining the necessary permits.

Motion made by Sue Laverty to deny B.3 variance for living quarters (loft) above a proposed garage, with findings of facts B.3.a through f.

LaDana noted the second story had already been started above the garage, so this Board recommendation would remove that portion. She asked that the record clearly show that the recommendation was to remove the upper story of the garage. Paul said they couldn't have living quarters. LaDana pointed out they couldn't regulate it. The Roes weren't demonstrating that it wasn't expanding the living area in that existing guest house, which was already over 1000 square feet, since it was one structure, being attached by the foundation wall. The Board and staff looked at more pictures. Mike asked if Sue L would like to withdraw her motion. She said no. He restated the motion on the floor to deny the living quarters loft above the proposed garage with the conditions intact except for item g, and this did include the removal of the living structure that was already being built above the garage. Sue L stated this was her motion.

Tim McGinnis seconded the motion. Motion to deny carried, with 4 in favor (Clarence Brazil, Sue Laverty, Tim McGinnis, Paul Grinde) and one opposed (Mike Marchetti).

Marc Andrews said that inspectors came from the Planning Department and told Brad Roe he was doing a wonderful job. He asked if it was the job of the inspectors to ensure things were complied with and done right.

Brad Roe said he would tear down what they needed him to tear down. He thought he was wrongfully displayed today. He asked to come back for some sort of variance to either turn the property back into a resort or to turn it into a bed and breakfast for a seasonal set of months, or there was no possible way a Montanan could hold on to this. Mike said he would need to go back to Planning and discuss those plans with them. They would then bring those proposals back to the Board. Brad asked if it was another \$500. LaDana said it depended on whether the request was a variance or a conditional use, and what he was proposing.

Brad asked if given that it was a resort 30 years ago, was there a possible way for that. LaDana said it would have to be reviewed. Sue S commented that this property wasn't a resort. Brad said it was Hidden Rock Resort. Sue explained the Hidden Rock Resort went for miles. The two cabins were on the resort but the property itself wasn't a resort. The property was a large acreage with cabins on it. There were provisions for resorts in the zoning regulations. The Roes could look at them and see if they fit it. They could discuss that with Planning. Trying to claim that it was a resort was pretty far-reaching.

Brad wanted help. LaDana explained the proposals were reviewed based on the regulations, just like they would review other people's proposals. Brad thought they were hard to work with. LaDana explained they had to enforce the regulations. This was what the zoning district wanted. Sue didn't know how he said they were hard to work with. They sat down with him for hours. He said there were days where they came and tried to help him figure it out. He said half of this made him look bad that wasn't even him. LaDana said they needed pictures and materials to demonstrate. They were going off what they had in the record. He thought that

was totally not fair, and that was probably why they would lose their place and it was a terrible time to try to sell. They have no options. Clarence said a bed and breakfast was permitted under certain conditions. Maybe they could find out what those conditions were. He wasn't sure what was possible. Sue S explained that a bed and breakfast usually had to occur in one structure, under one roof. LaDana added that the owner or manager had to live there in the structure in which the bed and breakfast was occurring.

OTHER BUSINESS

Motion made by Mike Marchetti to adjourn, and Sue Lavery seconded. Motion carried, by general acclaim. Meeting adjourned at approximately 8:25 pm.