

**LAKE COUNTY BOARD of ADJUSTMENT**  
**November 10, 2010**  
**Meeting Minutes**

**MEMBERS PRESENT:** Clarence Brazil, Mike Marchetti, Tim McGinnis, Paul Grinde

**STAFF PRESENT:** Joel Nelson, Tiffany Lyden, Lita Fonda

Mike Marchetti called the meeting to order at 4:07 pm

**Motion made by Clarence Brazil, and seconded by Tim McGinnis, to approve the Oct. 13, 2010 meeting minutes.**

**Vote 3 in favor (Clarence Brazil, Tim McGinnis, Paul Grinde) to approve the minutes and 1 abstention (Mike Marchetti).**

**LOPEZ CONDITIONAL USE—EAST SHORE**

Tiffany Lyden presented the staff report. (See attachments to minutes in the November 2010 meeting file for staff report.) She provided a handout with an additional recommended condition. (See attachments to minutes in the November 2010 meeting file for handout.)

Mike asked about how the measurement from the excavated area to the lakeshore was done on pg. 5, item #6. Tiffany replied she used aerial photography to measure. The edge of the highway was 100' from the lake. He confirmed with her this was 100' from the eastern edge of the highway. She showed Mike the image. He, Tiffany and Joel clarified 'eastern' versus 'western' on pg. 7, near the bottom of the page in #5. This seemed to be the portion of the property on the eastern side of the highway and on the western end of the property.

The applicant, Frank Lopez, had no comments to add.

*Public comment opened:*

Peter Leander commented on behalf of Shannon and Nathan Amaral, who neighbored the property to the north. A major concern was a septic field easement that lay on this property and hadn't been considered. He noted the Amarals sent in a comment, but apparently no comments were received. He double-checked that it was not received. His copy of the comment was cut off, and he did not submit it for the record. He continued to speak about the septic easement on the property where development was proposed. He shared a copy of the mapped easement with the Board. (See attachments to minutes in the November 2010 meeting file for staff report, labeled 'Exhibit A' with document index #503633.) The proposed construction of the road and mostly importantly of the building site abutted the bottom of this drainfield easement. The drainfield easement would be sitting uphill of this proposed excavation, and would be draining down and through, potentially causing an undermining of whatever excavation retaining wall subsurface throughout the years. He didn't think the environmental impacts could be ignored or that

the Environmental Services department wouldn't want to take a look at that and determine what sort of issues might be involved. The easement crossed 89' across the 100' wide lot. It would have to seep down into this excavation and cause some significant degradation.

Regarding the application itself and the requirements of the East Shore zoning regulations, it appeared to him that the application was grossly incomplete. He noted this was an after-the-fact permit, and the Amarals could attest that Frank Lopez had been previously sanctioned or asked to cease and desist for the same sort of excavation and road development on his property. He thought Frank Lopez went ahead and did the work anyway. He was concerned that the report said that Frank owned part of lot 6, since their understanding was the Amarals owned all of lot 6.

Peter listed additional concerns pertaining to various sections of the application. In section 6.a, property use was listed as residential, but there was no residence on that portion of the property. He referred to lakeshore regulation XIII.e stating if Highway 35 divided the property, the portions were considered separate properties. He thought the talk of an existing road that was being improved was an exaggeration. There was an old trail, possibly resulting from unpermitted work. #6 stated there were no easements, but the septic easement existed. #6.d required a narrative addressing section 1, 2 and 3, but there was no narrative. #8.c required a contour map, but he didn't see one presented in the application packet. #9.b said the buildable area was 'to be determined'. He thought the presentation to the Board on the request was for the entire project [including the structure] rather than just the road, and he thought that was a more appropriate approach to handle the project, in light of the septic easement and other environmental impacts. Stormwater runoff plan, the environmental impact of potential erosion, drainage, impact on utilities and those sorts of things were not addressed here. It couldn't happen that way, in a practical sense, and the regulations said this information shall be provided.

Peter could not read his copy of the approach permit clearly, and asked about the date on it, since approach permits were good for 6 months before a new permit had to be applied for. There was nothing provided for #10 (stormwater management plan) or #11 (building plans). For #12, there had been no Environmental Health and sanitation review yet, and they didn't know if there would be plumbing, electricity or other utilities. He added that his understanding was there was a gas line directly under where the road was to be built.

Regarding the East Shore zoning regulations, Peter restated the purpose of the regulations was to create a consistent and compatible flow of development as it went along the lakeshore, and enhance property values and amenities and protect and enhance the natural environment and water quality. This wasn't area of lakeshore with just storage garages, which was all that was planned to be built on the site. There was no rendering of how the building exterior would appear with the application. These were residences along the lakeshore, not just storage units. The proposal was to build a very large storage unit in sight and close to the Amarals' property. They didn't feel this was consistent or compatible with the existing pattern of growth there, nor would it enhance the Amarals' property values, nor would it protect the natural environment. He read D.1 of the

regulations. The narrative statement of D.2 was not provided and those points were not addressed.

Shannon Amaral spoke. She sent an email a few times on Nov. 1 around 4pm that had not been received. She was concerned about the plans or lack thereof. There was no stormwater drainage plan in place. She was concerned about the impacts on their property and on their drainage field septic system, which was in close proximity to the proposed area of building. She referred to the procedures that she and Nathan went through about 2 years ago. They were freshly aware of the concerns on the environmental and why the regulations were in place. They took the steps required to make sure they were in compliance and followed the County requirements. For what they created for themselves, they wanted to make sure for what they created for themselves that the purpose of those regulations was fulfilled. She thought Peter covered everything. She said she could resend her email. She wasn't sure what had happened there. She thanked people for their time.

Nathan Amaral talked about the approach off the highway. It was not on lot 5. It was on a corner of lot 3 (owned by Sue Juhl) and on lot 4 (owned by the Laws). He didn't know if there was an easement required or zoning application needed from the Laws. His understanding was the road was put in because there was a 3-inch gas line that crossed their property, went down the hill and across Edgewater Lane, then fed into Edgewater Lane and ended. He offered to share a topographic map of the easement location. The existing gas line road could be seen on it. It was about 35' from the proposed parking area for the concrete level up to the top of where that structure would be backed up to. This was maybe 5 or 10 feet at the most if you pushed the building out of the hillside. You were talking about a 35' retaining wall. He'd never seen one. For their house, they had to dig back 60' or more just to get a grade down to the level of their second story. The first story was buried in the ground.

Frank Lopez said he put the gas line in himself for the gas company, so he knew exactly where it was, as did the gas company. Tim asked him why he didn't get a permit to do the road. Frank said the road had been there for years. He said it was used when work was done on Hwy 35. Tim said Frank was here because he needed an after the fact special use permit. Frank said no. Mike noted he drove by there regularly. That road was like a trail and was not maintained at least two years ago. He thought illegal activity occurred about a year ago. The culvert area on the side of the road was filled in and cut into the hill about 20 or 25 feet back off the road, and then it was stopped. Frank said he was going to build the road around the time the gas line was put in, but he never did. Mike said he wouldn't have classified that as a road. It looked more like a trail.

Tiffany explained on the question about ownership of lot 6, there was a small corner by the lake that had been part of lot 6. It didn't have to do with the side of the highway they were talking about. Shannon thought she meant the small block on the waterside that was in lot 6 but was now in lot 5. Tiffany identified that this was part of the legal description.

Regarding permit applications, Tiffany described from working in the Planning Office and receiving applications, they didn't come in with things addressed to the exact degree. As staff, they went through them. Some things were not going to be applicable. Sometimes things might not be necessary, like there was a newer contour resource available such that they wouldn't require the landowner to provide that if the County had the ability to access it. For the building plans, this was not part of the application. This was a conditional use for disturbance of slopes. They would address the use of the building and connections and such when the plans came in for the structure in the zoning conformance.

Joel mentioned they received comment from the Environmental Health Dept on the application when it was routed upon its arrival. Environmental Health provided some comment but did not address potential impacts on the septic and drainfield easement. They did reference a document, which he believed was the easement document or a shared users document. Their main concern was when Frank Lopez elected to use the shared septic tank, the parties must enter into the agreement stating the terms of use, and that department would need to be notified prior to construction. They did not specifically refer to the drainfield or the easement.

Joel saw a few other things. For buildable area of the lot, the application said 'to be determined'. As they disturbed the slopes to make them less than 25%, they would create buildable area, so the amount was not known at this point in time. The buildable area would result from this review. There were certain things in the regulations that the conditional use application needed to come in with. Some examples were listed, and then it said 'as determined by the zoning administrator'. A lot of those things were not applicable and not needed at this time. Tiffany gave the example of fire department comment. They didn't want have every applicant go through that if it wasn't applicable to the situation at hand. Usually for slope disturbance, they didn't require this. If they were going to build a building on there, then it would be done. The same was true with stormwater. The East Shore zoning regulations for storm drainage talked about managing stormwater runoff for each new structure or impervious surface area, so the requirement kicked in when there were rooftops or paved driveways. They liked to see how people addressed it when they were disturbing slopes. It gave an opportunity to address stormwater but wasn't necessarily a required component.

Mike asked if a packed roadway was not considered impervious surface. Tiffany said it wasn't typically, although it depended on the zoning district. She read the definition of impervious area. Non-gravel driveways and parking areas were specified in the definition.

Tim saw a conflict in dividing this up into building a road and building a structure. He asked if staff seemed comfortable with that. He understood why this would be separate in a subdivision consideration. He didn't see the purpose of the road unless they were building something up there. Joel said if the applicant didn't have the building plans, it was hard to require that. Tiffany said they tried to address that saying finish the road and create that parking area. If the Board approved the disturbance of slopes, they would

have the ability to disturb that area later, when they were ready to build and would not have to come back to the Board for that piece if that was the way they wanted to do it.

Tim said his other concern was that Frank Lopez didn't get a special use permit before he [inaudible] the road. Frank said the road was there before he moved in. Tim pointed to disturbing slopes greater than 25%. Frank said he had a permit from the highway department, so he and Roberto Zavala went ahead and made a switchback to get up there. Tim repeated that he needed a special use permit for that. Frank said they didn't know that. Tim checked that Frank now knew that. Frank said he did. He gave more description of putting in the gas line about 15 years ago.

Peter appreciated that it was tough to want to streamline things with applications, but he noted the regulations said these items 'shall' be provided and these questions 'shall' be answered. It wasn't a discretionary act with the Planning Department. If the applicant hadn't supplied everything, then ask him to go back and provide the information, or have a letter from the fire department that said why it wasn't applicable, or explain why there was no need for a stormwater plan. He added that the Amarals mentioned they had been rejected twice by the Dept. of Transportation in attempts to use that road earlier on when they were building their house. They were told it was too steep and not appropriate for building the road.

Joel explained that the application was not a regulatory document. It was a form that the zoning administrator could change at any time. He noted the form dated 6/29/10 was no longer in effect. It contained more information than staff were allowed to ask for. He repeated that the requirements of the regulations under a conditional use permit included 'and such other information as the zoning administrator may require to determine if the proposed conditional use meets the intent and the requirements of the zoning district'. Staff tried to get what was needed for an application, but not all that was necessarily a requirement.

Paul asked if the approach was not on Frank's lot, and if that required a separate permit, and what was going on there. Tiffany replied it did not as far as they were concerned. Staff were evaluating the slope disturbance on the applicant's lot. The neighboring property to the south, lot 4, submitted a conditional use application for slope disturbance on that lot as well. It was disturbance of slopes for an area over 500 square feet of slopes over 25%. They would look at that to determine if this was the case right at the base of the road. She pointed to exhibit 2. The actual roadway was a little bit under 25%. When the curve was reached, that was over 25%. Then it leveled out and the place where the building would be was over 25%. She wasn't sure if the actual approach from the highway had slopes over 25% on that lot. They would look at that.

Mike checked that they measured the 'after disturbance effect'. He didn't think they could measure the 'before' after what occurred. Tiffany thought they measured it both ways. One way they measured was using the topographic information that was obtained through the LiDAR images. She showed an image that was obtained in September of 2009. She wasn't sure when the road improvement began. Frank said it was 15 years

ago. Tiffany specified the more recent work. Frank said that was when she stopped by. Mike noted there was work about a year ago, when there was an excavator there and they dug in. Frank said they put in the approach then.

Nathan said in the pictures they sent, it showed a bulldozer pushing dirt over the hillside and creating more buildable area. Would that be considered buildable area later? You couldn't build on more than 49% of buildable area. He was creating buildable area that he could potentially use later to build into the hillside 40' x 60'. If he was going to excavate into the hillside now to create parking, they were still getting towards the drainfield. He said that Frank stated he'd blasted years before to put the gas line in. That said to Nathan that wasn't really a road, if he had to blast enough to put a gas line down. Frank said they had to blast to get the gas line down deep enough for that road. They had to have 18 inches or better for depth.

*Public comment closed.*

Paul commented he could see a homeowner not knowing he needed a special use. Roberto Zavala was a licensed excavator who did a lot of work in a lot of places, and he knew. Tim thought it was too bad it got done beforehand. It wasn't often the staff was cited for a laissez faire attitude to the rules and regulations so he sided with staff on interpretation on whether the applicant submitted a complete application. He didn't think the drainfield issue was an issue for the Board. Environmental Health took care of that. Staff felt the applicant met the application for this. Clarence didn't think people should have to present every last item if it was obvious that it wasn't needed. He thought that was an additional burden on the public.

Mike noted this cut across other properties. Were there other easements required to do work on someone else's property and create a roadway for a project? They were on lots 3 and 4. Joel said some was on the highway right-of-way. Tiffany noted the conditional use dealt with the slope disturbance. Mike asked if we didn't care about infringement on someone else's property. How could the Board approve action? Joel said the additional recommended condition helped place that burden on the property owner.

**Motion made by Tim McGinnis, and seconded by Clarence Brazil, to approve the conditional use with findings of facts and all 9 conditions suggested by staff. Motion carried, 3 in favor (Paul Grinde, Clarence Brazil, Tim McGinnis) and 1 opposed (Mike Marchetti).**

#### **OTHER BUSINESS**

There was brief mention of the recently approved updated BOA rules, the next meeting for which there were potentially 5 items and which would occur in the holiday season, and what kind of repercussions there were for after-the-fact applications.

**Mike Marchetti adjourned the meeting on behalf of the Board at 5:15 pm.**