

LAKE COUNTY BOARD of ADJUSTMENT
April 14, 2010
Meeting Minutes

MEMBERS PRESENT: Clarence Brazil, Sue Lavery, Tim McGinnis, Paul Grinde

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

Tim McGinnis called the meeting to order at 4:00 pm

Motion made by Tim McGinnis, and seconded by Sue Lavery, to approve the March 10, 2010 meeting minutes. Vote unanimous to approve minutes.

JONES CONDITIONAL USE—SWAN SITES

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

Roilene Jones spoke on behalf of her application. The trailer was around the corner from them where a brand new home had been built. The trailer has been sitting in the yard for over a year, so this also helped with getting this moved out of there. It would be skirted and repainted, and fixed up on the inside.

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

Sue L commented when Swan Sites zoning was redone, there was a concern about mobile homes older than 10 years old be weeded out, going forward. The Jones maintained their property well, and the trailer was coming from within Swan Site, not from a parcel outside of Swan Sites in which case she wouldn't be in favor of it. She didn't see a problem. It wasn't adding anything more to the neighborhood.

Paul said the 10-year thing was probably a good idea. This one was going to be maintained and skirted.

Tim asked about the covenants. Sue L explained the zoning and the covenants go hand in hand. The zoning was changes a few years ago to be more specific to have a conditional use if the trailers were older than 10 years.

Clarence referred to the lack of shielding mentioned in the report. He asked if the applicant would be interested in planting a few trees or bushes to help shield this. Roilene replied this was an absolute possibility. She described how the location of the trailer would help with the shielding. Clarence clarified he was referring to it being visible from the road. She said planting trees was not a problem.

Sue L highlighted the condition that this was to be a guest house, not to be rented or used on a year-round basis.

Tim asked Clarence if he wanted to add a condition to the staff report. Clarence thought the applicant's word was sufficient that she might plant some trees. Paul pointed out with property management, you get into trees for shielding view versus removing trees for home safety. He thought the conditions were fine, as is.

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

BEAMAN DENSITY APPEAL

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

Tim asked if the concerns that the density requirements were not met were taken to district court. Sue S replied that was documented in Aug. 20, 2007. He asked if the court was aware that the lot did not meet density requirements prior to the decision. She explained the ability to put the second unit on the property would be an issue. Tim said when he pulled the plat on this, the Planning Dept signature was scribbled out. She explained that they were not required under law to sign off on those, and so she chose not to sign off on that.

Dave DeGrandpre spoke as the first agent for the applicants. He said that he and Matt O'Neal were here representing the applicants for this appeal. He described that he was the primary author of the Lake County Density Map and Regulations, and deserved some of the blame. He had a professional disagreement with the Planning Department over the interpretation of rules. He felt they were overzealous.

Dave gave some background of the density map and regulations. Around 2001, the County wanted to come up with a written rule to provide predictability to the developers and to provide more legal backbone to the Planning office and County Commissioners' decisions. The Lake County Density map was the results. Dave said the map and regulations were developed to address the creation of parcels of land and subdivision, and not created to address the development of parcels of land. He referred to the staff report page 2, which discussed applicability. He pointed out it talked of the creation of land, not the creation and development. He read that the regulations stated to add provisions dictating specific land uses would result in the regulations being voided. He said the regulations had been expanded to include the development of parcels, through the staff level. He told people that this would be about the creation of parcels of land and would not inhibit the ability of people to develop the land, once parcels were created. He thought the term 'units' had taken on an unintended meaning, so it made more sense to substitute the term 'lots' for 'units'. It had been written with 'units' due to development scenarios that could involve apartments, condominiums and RV parks.

Dave had two main arguments pertaining to the Beamans' property. The Beamans' parcel was created so the density regulations no longer apply. He didn't think the density regulation were comparable to zoning districts with land use, lot size and setbacks. The density map was parcels per acre. His second argument was court-ordered land divisions

were exempt from these zoning requirements. He believed that staff agreed that the division itself was exempt from the zoning. He thought they were saying that while the lot creation may be exempt, the development was not. He agreed that if the density regulations had things like land uses and setbacks then this would apply, but these regulations only applied to the creation of parcels of land. He asked the Board to reverse the Planning Director's decision and send a letter to the Lake County Environmental Health Dept saying the Density Map and Regulations no longer apply once the parcel is created. He requested two findings: once the lot was created, the Density Map and Regulations no longer apply, and that the Density Regulations apply to the creation of lots and not the development of lots. Dave added that the Density Map and Regulations were up for review this year. If the regulations were supposed to govern the development of parcels in addition to the creation of parcels, then the regulations could be amended to make this known and bring it to the public.

Matt O'Neill spoke next. He represented the Beamans in District Court. Before they took this back to district court, he had to exhaust their administrative remedies. He said there were misrepresentations contained in the staff report regarding what happened at the district court. He gave the Board a copy of the district court file where he had highlighted parts. He said the issue of density provided to the Board was presented to Judge Christopher twice, and the issue of density stopping the partition was rejected by her twice. He said the representations that the density map be acknowledged were a misrepresentation of what was contain. The judge created two parcels and it was already done, so density no longer applied. He said the density map was to influence parcel sizes, not dictate them. He said the court recognized that, and that these people had owned defacto two parcels of land for over 20 years. It was originally divided with a mortgage survey, and endeavored to subdivide the property for 15 years. He said they were prevented from subdividing the property for 15 years by a bad faith approach by Lake County Planning staff, who said they had to improve Melita Island Road, a public road, to county road specs. He said the judge recognized that even if the density map applied, which it did at that level, it was entitled to a variance, which the judge gave it. He thought the judge would say this again. He said the referee's report pointed out the property was neighbored by over 90 lots between 1 and 3 acres in size. Since rejecting this subdivision approval, he said this staff approved the division of several other Wilderness Valley lots in half. He thought the Board should reverse the Planning Board's decision because the judge already split the lots.

Public comment opened: None offered. Public comment closed.

Paul thought if the judge was aware of County regulations, apparently the judge superceded these. Clarence hadn't reached a conclusion yet. Tim said Judge Christopher had seemingly made it clear these lots were to be split. He was under the assumption that if a lot was already created, it was beyond the density code. District Court decided the lot exists. Sue S didn't think the Judge decided whether or not it was going to have a unit; she decided on the partition. Sue S pointed out her letter said a lot could be created, but it still had to comply with the Density Regulations regarding the number of units. Matt said the judge rejected that twice, and they didn't appeal the judge's decision. Tim didn't think it was useful to divide a piece of property if you couldn't do anything to it. Sue L

noted that it has something on it (a garage) and they could get development rights transferred onto it to be able to develop it as well. Sue S noted they could also get a variance. The applicants would like the Board to say the Density Regulations aren't applicable to court-ordered subdivision when the Density Regulations clearly state they are applicable to court-ordered subdivision. Tim asked where that was stated. Dave thought this was a conflict between state law and local regulations. He referred to 76-3-207 that had certain divisions that were clearly subject to zoning requirements. In 2005, that was added by the legislature. Another section, 76-3-201 also gives exemptions to subdivisions. The legislature did not add that text in 2005, which included court-ordered subdivisions. Dave said a point in his letter was the legislature was taking these actions at the time the Density Regulations were in the adoption phase. He thought this just slipped through the cracks.

Sue L pointed out there didn't seem to be a problem with the division of the parcel. It was the unit. She said in Dave's interpretation, why was 'unit' put in? So people couldn't put in apartment buildings? This is what's unclear.

Sue S clarified that Dave was asking the Board to assume that, because 76-3-207 says the zoning regulations weren't applicable, therefore you should assume that they aren't applicable in 76-3-201. It doesn't state anything about zoning in 76-3-201. That's not something for the Board of Adjustment to determine. It's not under their authority. In adopting that line of thought, the Board would be assuming things that would affect the regulations as far as enforcement, without some sort of sound judicial decision regarding the intent of the legislative change in 2005. Matt said that Dave was speaking as the author of the Density Regulations when he said unit was being interpreted differently. Sue S noted that Dave wanted to assume other language in there. She thought that was arbitrary to start putting in different text.

Dave said Sue S pointed out a judicial decision that said the judge isn't supposed to insert language that's been omitted or omit language that's been inserted. In the case of the exemption (76-3-201) it doesn't talk about zoning regulations or compliance, so the judge, being the Board in this case, is not supposed to insert language assuming that those divisions have to comply with zoning. For the term 'unit', when the regulations were being developed, they tried to come up with clear and simple language that could comply to many different development scenarios.

Sue L said that if the Density Map was truly created only for the division of land, then 'unit' should not have even entered it. What would be the point? That talks of development. Dave said they needed a term to address density and define it. They could have used lots per acres, but used units instead because there are different types of development scenarios, like apartments, condominiums and large complexes. Units was chosen because it would encompass single family residential development and single commercial development on individual lots and would also encompass condominiums, apartments, RV parks and mobile home parks where there weren't individual lots. He thought the term had grown its own body.

Tim said there was a garage, but no water and sewer. A property has been divided off that they're not allowed to have water and sewer on. It seemed to him, if a parcel was created, you should be allowed to have water and sewer. If it didn't meet DEQ, that would be a different issue. They had a parcel created by a judge, and they couldn't use it.

Sue L pointed out that can't be said. They can use the parcel. It might not be able to be used as residential, but the property and the lot can be used and can be used individually, apart from the other parcel that was created. It could be used for a lot of things. It may not be usable in the fashion that they want it to be used in.

Matt pointed to the comments from Susan Brueggeman in the Aug 20 letter: she said nothing about meeting the Density Regulations from the DEQ standpoint. He said the judge already determined for the Board that this was entitled to a variance by granting the partition.

Sue S noted that the applicants weren't asking for a variance. They were asking the Board to state that the Density Regulations weren't applicable to court-ordered subdivisions. Matt said they were appealing her determination that the Density Map got to be applied in this case. He said this was why she crossed her signature off of the plat. They were asking the Board to determine that the attempt to apply Density Regulations contrary to what the judge already determined, to reverse that determination.

Sue S pointed out that Matt was giving one side of things, skimming the surface of what occurred during the division of land. Matt disagreed, noting he gave the Board the entire court file. He said he gave this to the Board because of misrepresentations of the Planning staff. He said had the staff not misrepresented what he said, he wouldn't be there; he'd go straight to the court as soon as they made their ruling. He was here to point out that they feel strongly enough about this to misrepresent things to the Board. Sue S asked Matt if he thought there were intentional misrepresentations. She read his documents and assumed that because he was mentioning the variance, he believed the Density Regulations applied.

Clarence thought the Density should apply countywide. He didn't know that this was an exception. Density meant a lot of things. It didn't just mean one lot or one unit.

Paul G said this started out as an 8.5-acre parcel, which is [inaudible]. There had to be other lots in there. There was Silver Rock Pines major subdivision with lots of 1.03 to 2.99 acres. Where did it start and stop? He didn't think any of the zoning regulations should be ironclad. Sue L noted they weren't here asking for a variance. They were asking the Board to say it didn't matter, that whatever the Planning staff had determined was in error. Clarence thought the Board should deny this, and let them come back and ask for a variance. Sue L agreed with Clarence.

Wayne Jundt said they bought the property in 1991, and the two properties existed before the Density Map. They tried to get the lots split. Every time, something new came up. The lot was 9.98 acres at the beginning. The state highway took part of it away. There were covenants dictating to them that they could subdivide the property once into two

separate lots, which was why they bought it together. Sue S's point was that it was made after the Density Map was put in. This was because Judge Christopher saw that they tried to follow what the County was doing. There was water hooked to a community well, electricity and telephone. He said the Beamans were okayed to order an Advantex system, and they put money down and had the contracts, and then got a phone call that this was being put on hold. The Density came into effect. They understood there was density and didn't want to go around it. The Court stepped in because the Planning Dept kept knocking them down. They wanted somebody to say they could put in the septic system.

Clarence asked if a variance was a proper request. Sue S said it was not improper. She thought there were lots of special circumstances. Matt said then to consider the appeal a variance request. Sue S replied this wasn't a variance request. Clarence said if there were a variance request, he would be in favor of that. Sue Laverty agreed. Matt asked why it couldn't be considered a variance request tonight. Sue L explained that it had to be legally noticed as such. Clarence suggested they submit the paperwork. Two members of the Board were saying they were in favor of a variance.

Motion made by Clarence Brazil, and seconded by Sue Laverty, to deny the appeal.

Paul asked for the original request to be repeated. Tim recapped that this was an appeal to the Planning staff's decision. The motion on the floor was to deny that appeal. Tim still felt the judge made a decision to create this parcel and what the people were asking was permission to get a septic permit. It didn't seem unreasonable to him. He didn't think that it had ramifications beyond that.

Vote on the motion was 2 in favor of denial (Clarence Brazil, Sue Laverty) and 2 opposed to denial (Paul Grinde, Tim McGinnis). Motion failed for lack of 3 votes. No alternative motions were given. Appeal failed for lack of vote of 3 in favor of the appeal.

MC CARTHY CONDITIONAL USE—FINLEY POINT

Joel Nelson presented the staff report. (See attachments to minutes in the April '10 meeting file for staff report.) On pg. 15, #9, he noted the Finley Point zoning regulations have a 30' maximum height requirement. The staff report recommended a condition limiting the guest house to a maximum average height of 18', which would also help keep the non-conformity of the guest house from expanding, and the single-family residence be limited to 25'. The applicants would like a bit of flexibility with the 25' average height given as the maximum limit in the report. Joel and Jeff Gallatin, the contractor, discussed this since the staff report was published, and Joel saw no problem with allowing it to go to the maximum of 30'. Staff would need revised elevations that show the additional building height.

Jeff Gallatin spoke on behalf of the applicant. The elevations were probably closer to 28'. The highest point was 29' with the average under 28'. Tim asked if they were asking for 28' or 30'. Joel said that 30' was okay.

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

Motion made by Sue Laverty, and seconded by Paul Grinde, to approve the conditional use with one change in the conditions on item #12 to be a maximum of 30' in average building height, along with staff report, staff recommendations and findings of fact. Motion carried, all in favor.

NEWHALL CONDITIONAL USE—FINLEY POINT

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

Paul asked if there were a further environmental health update. Jeff Gallatin explained Bret Birk had been hired. He handed the Board a letter from Birk Engineering and Construction Inc. (See attachments to minutes in the April '10 meeting file for Birk handout.) Tim asked if staff had seen the letter. Staff had not. Jeff said Bret sent it directly to Susan Brueggeman. LaDana said Susan hadn't mentioned it. Jeff resumed summarizing the handout. Tim checked that things were still covered under the conditions. LaDana confirmed that Environmental Health Dept did need to approve of the plan, as covered in condition #3.

Jeff said the only other condition was the 18'-wide access. There's two cars parked and the approach. You almost couldn't get 2 cars wide. He wasn't sure if it was going to work because it was so tight in there, with the 15'-wide Skidoo Lane easement, and then immediately the property line, and then the 20' setback from the garage. If two cars are parked there, you're going to need 20 to 24 feet. You'd need 22' to park a pickup truck or a suburban. LaDana commented the site plan currently shows 37'. Jeff said this was on the long side, and could probably be narrowed up. Paul asked what the concern for the 37' was. LaDana said it was for sight distance. You'd have to watch a bigger area if you were watching for cars. Typically staff require an 18' approach. Fire trucks can get in, but it's not too big. Paul asked about the garage width. He thought 18' was small. LaDana said if the Board wanted to do that, they should look at the findings to see if they needed amendment. Her recommendations were in the report. Tim suggested 24'. Jeff said anything would help. You'd be backing out directly onto the road.

Norm Newhall, the applicant, introduced himself. He believed in planning and was encouraged by the thorough staff review. He agreed a wider approach would be helpful. He mentioned that Jeff had attached a stormwater plan. LaDana explained it didn't address the runoff from the driveway, so they needed to update that.

Public comment opened:

Jane Larabee: She mentioned this was an opportunity to see government in action. They neighbor the property to the east. She asked where the new well would go.

Norm Newhall: The engineering plan shows that you could put a well in compliance with the regulations to the north of the house. The other alternative for domestic use was to take lake water. When and if the septic system needs to be changed, they would have

to comply and he was more than willing to do so. Susan Brueggeman was concerned about access. The neighbor to the west granted them access to get down to the front of the lake, which was the most immediate way. He thought there were a variety of other ways. When it was necessary to change the septic system, it was no problem to comply with the septic.

Jane L: It was kind of tight in the corner.

Jeff G: Regarding the existing septic, they've had David Graham find the tank. It was a cement tank and in good condition.

Jane L: She asked if the septic was south of the house.

Norm N: The septic was south of the house. The replacement drainfield was between that and the house, right off the front porch.

Clarence B: He recently learned that there's a high-pressure hose for rejuvenating drainfields that puts out 2000 pounds per square inch of pressure. They can run it down through the drainfield lines and clean them out if they ever get stopped up.

Norm N: It gets minimal use, about 2 summer months.

Public comment closed.

Clarence thought the proposal and conditions sounded okay, and that the driveway should be changed to 24', the size of the garage. LaDana said the findings of fact #4.f on pg. 12 and #8 on pg. 14 address the driveway width. Sue L suggested changing 18 to 24 in 4.f on pg. 13 and changing 18 to 24 in #8 on pg. 14.

Motion made by Sue Laverty, and seconded by Clarence Brazil, to approve the conditional use request with the changes to #4.f and #8 in the finding of fact from 18' to 24', and in condition #6 from 18' to 24', with findings of fact and staff report. Motion carried, all in favor.

ZIMMER CONDITIONAL USE—FINLEY POINT:

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

Jack Nordberg spoke on behalf of the applicant. They were high on impervious surface. It was a small lot, and small house and small garage. They were adding bedrooms. There was a 45' easement through the center of a half-acre lot. They were already over the percentages. It was a tough lot. When they did decide to do a house, they would have issues there. Paul asked what the easement was for. Jack replied this was for a power line.

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

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

NIELSEN DENSITY VARIANCE:

Sue Shannon presented the staff report. (See attachments to minutes in the April '10 meeting file for staff report.) She pointed out on the bottom of pg. 1 that the property to the north is in a 10-acre per unit development density, not 5-acre as written in the report. She handed out a clearer map with the density and the subject property location. (See attachments to minutes in the April '10 meeting file for handout.) She didn't address whether or not the mother could move in to the mobile home in the future, because she thought that should be reviewed at that future time. The daughter is the current need.

Tim asked if the mobile home was on a permanent foundation. Sue S replied that it was not. Tim checked that the daughter purchasing the just the mobile home and not the dirt underneath it. Sue S affirmed.

Peggy Nielsen spoke on behalf of the application. They bought 5 acres. They planned to put a home behind the existing mobile home. Her husband Jim was diabetic and they needed to watch out for him.

Public comment opened:

Nathan Lamphere: He lived SE of the property. There were 7 non-Trust lots. The Trust land lots had 1 to 4 places on each 2.5 and 5 acre lot. It would not be out of the norm for them to have an additional [inaudible] on the 5 acres. His own parents were getting in a condition where he might need to do the same process so he could take care of them.

Todd Rydalch: He lived to the north and had no problem with this.

Public comment closed.

Sue L was in full support of this. It's a critical need. Paul agreed. It sounded okay to Clarence provided it reverted to a guest house.

Motion made by Clarence Brazil, and seconded by Sue Laverty, to approve the variance with staff conditions and recommendations and findings of fact. Motion carried, all in favor.

OTHER BUSINESS

No other business.

Motion made by Paul Grinde to adjourn, and Sue Laverty seconded. Motion carried, all in favor. Meeting adjourned at approximately 6:05 pm.