

**LAKE COUNTY PLANNING BOARD**  
**December 13, 2006**

**Meeting Minutes**

**MEMBERS PRESENT:** John Fleming, Bob Kormann, Jack Meuli, Fred Mueller, Joyce Funda, Clarence Brazil, Ken Miller, Lisa Dumontier

**STAFF PRESENT:** Sue Shannon, Joel Nelson, Alex Hogle, Lita Fonda

John Fleming called the meeting to order at 7:01 pm.

**Motion by Fred Mueller and seconded by Clarence Brazil to approve the November meeting minutes. Vote unanimous to approve the minutes.**

**STONE RIDGE PLANNED UNIT DEVELOPMENT**

John clarified that the Board makes some determinations about that, and it comes back to the Board as a major subdivision if the Board okays it. Sue Shannon added the Board makes the final determination on a PUD. The developer then complies and submits for a formal subdivision.

Joel Nelson covered the staff report. Bob Kormann noted that the lots on page 2 add to 172 lots, rather than 170 total. Joel said that a duplex lot was added recently, to bring the number to 172.

Joyce asked about the slope area greater than 6% indicated on the map on the open space near lots 104, 103, etc., regarding how much greater than 6% and if it affects the ability of emergency vehicles to access. Joel replied the roads would be designed to grade, so the slope area wouldn't affect the road grade. Joyce clarified that her question is whether the slope greater than 6% applies to the open space areas but not to the roads that access the lots. John noted that the roads would not be more than 6%.

Bob Kormann asked about how the open space will be maintained, and what prevents a fire from happening there. Marc Carstens replied on behalf of the applicant that it is going to be maintained. There's hay harvesting in the flatter areas anticipated. The intent is to still do this in the open spaces after the homes are there. The developer wants to catch an agrarian feel. The administration of the open space will go to the Homeowners Association. The complexion of the Homeowners Association membership is likely to change as the division builds out, so the use could change in the future. Some trail networks are also anticipated to connect these communities together in the open space.

Bob asked where it would be addressed if the open areas become a fire issue. Marc replied that it would be the responsibility of the Homeowners Association to handle the situation, and they would have the liability in the open space. Sue asked if hydrants were proposed along the roads. Marc said there is some consideration happening between the developer and Polson Rural Fire Dept. The problem with hydrants is this water system doesn't provide adequate fire flow. There will be some connections where they can fill, but not your conventional fire hydrants. There are

also some plans in the incubation stage for water features that could be used with a dry hydrant to charge fire trucks. This question will be dealt with more in depth in the subdivision review. Ken Miller asked if comments from the fire and road departments go with the PUD planning or with the preliminary review. Joel responded this will come with the preliminary review.

John asked about the 4:1 requirement on pg. 4, where the developer is requesting relief from this in the event the development design must be modified prior to submission of preliminary plat. He felt that if prior approval was given, then this event would happen, and wanted to point out the odd statement. Sue noted that from last month to this month, the Meadow Home design has changed substantially. 15 lots have been counted right now that don't meet that requirement. He may need to modify designs to accommodate for the shared access roads in the future. John observed that they're small lots; that's a problem.

Marc Carstens offered to answer questions on behalf of the application. He spoke to the request for relief on the 4:1 requirements. They submitted requests for relief that they felt was applicable. On an irregularly shaped lot, there can be a difference of opinion on how to calculate there. They chose to be conservative with the interpretations, so if there was a possibility to calculate it where it wouldn't work, they requested relief. There is a possibility of some change as the subdivision review gets underway.

Sue asked Marc to explain about the Meadow Homes and the market they're trying to hit, and why the lots are being kept as small as possible. Marc said that his client describes the Meadow Homes as starter home, retirement home or recreation home, with moderate price, small parcel, back loading, with garages from the road and living quarters arranged towards the open space. The intent is to develop something with appeal within. He pointed out portions of the subdivision with very good view lines that have been laid out and reviewed in the field such that there will be two view corridors: one of the Missions and one of the lake. Those will be the upper end lots. He pointed out another area that's very flat, where building lessens the exterior views, so the attempt is to focus inwards. They've opened up the open areas with walkways, and designed the residences to load from the roadside. The living quarters and view areas are towards the open areas. These homes will have minimal lot maintenance because the lots are small. The area shown in green will be administered by the Homeowners Association. There's consideration from the developer for the homes to have a maintenance contract for their space with the Homeowners Association, so if you live in Missoula and want a place up here, the place is close to the lake and amenities, it should be affordable, and the maintenance is minimal, and the property will be maintained for you even when you're gone. For retirees, the property and trail systems are flat, and the maintenance of the grounds is being done by the Homeowners Association. The 3<sup>rd</sup> class of residences is a duplex situation of 6 lots, for rent or lease, in a location that Marc indicated on the map. The developer wants several different marketing plans given the number of lots this can yield. He pointed out another area for individual family homes where the view is not great but it's intermediate.

Colors have been used to show open areas (green) and no-build areas (yellow). The no-build areas go beyond zoning or covenants since the developer wants buildings placed to maintain and protect view corridors for the neighboring buildings. He pointed out the 'coving' aspect of the roadway and then a compound curve of the no-build zone. He showed an area where even though

these are portions of the lots, drain fields could go in there if they choose to go in that direction. The view as driving through this is opened up quite a bit.

Bob asked about the 64 Meadow Homes and the blue circle in the common area. Marc explained that was an anticipated potential pond area that probably shouldn't be on the plan at this point. It was located and they'd like to do it, but sanitation issues may dictate that there be no open water.

Marc continued that this division also has large stone structures at the major intersections. There are irrigation well and rights that they intend to use two-fold. One is to irrigate specific areas of the division, which have not yet been designated. The plantings on both sides of the road are being irrigated from this well. A certain amount of this water, prior to going to irrigation, is going to be used for water features, such as a fountain where a rock thing is. The developer would like to incorporate some manmade streams with the walking trails. These aren't shown because those plans aren't complete. It's part of the division down the road, and they aren't an element of PUD or specifically at this time, an element of subdivision review.

Bob referred to the map and confirmed with Marc that the walking trail crosses driveways. Marc added that these will be easements. They are trying to create a feel of open but still with ownership of land. The trail up on the hill exists. It's gravel. The developer tested a product that's a neoprene-based rubber mat with cups in it, that can be affixed to the ground. It does two things. It keeps the plants from growing through it. Once you put a gravel surface on it, the cups hold the gravel. You can put it on a steep hillside and you won't slip. In order to determine what size rock would work the best for the gravel cups, the developer tested 4 test walkways to nowhere on a slope.

Joyce Funda asked if the proposed development would be entirely residential or mixed use. Marc replied that this portion is entirely residential, in keeping with the zoning, though there is a mix of residential, both rent/lease and ownership. Joyce pointed out that the parcel is about 342 acres. This plan seeks to develop about 143 acres. Are the plans for the remaining acres known? She touched base with Marc that the map depicts pretty closely most of the 341 acres. Marc added there is additional property associated with the subdivision outside of this PUD. As the plans develop, they may need to borrow density out of the balance of the subdivision, which they are well aware of. This is an element of subdivision review, rather than PUD designation. Sue rephrased the question. The entire ownership that Ned Banning has is 300 + acres, and this is 143. What is the intention for what is going to happen to the balance of the ownership? Marc pointed out an area zoned industrial, where there is a subdivision to be proposed in the next months. The balance of the property is a mixed bag. He pointed out an area in the City commercial zoning, where there's nothing anticipated to be done at this time. He showed another large property block where there were some future sketches of what may happen down there, for residential per zoning. He pointed out sections that lie in different zoning districts: residential areas and industrial areas of Stone Ridge Zoning, and areas in City commercial, and areas that have been developed out already.

Ken asked about water and sewer. Marc explained that this project has a water company that supplies water for this division and also has a contractual agreement to supply water to Stone Ridge subdivision. The sewers will be a mix of individual sewers where applicable, and there

will be a number of community systems in order to pick up the usage of areas like Meadow Homes, where the building is very tight and intense.

Joyce checked with Marc as to whether he had particular problems or comments with respect to the staff conditions, since at the last meeting, he seemed to have difficulties to work out with staff. Marc was fine with the conditions. He said that taking the extra time was a wise thing to do, and they worked with the Planning staff well during that time to come up with a product that was a closer match with the regulations yet gives the developer the relief he was seeking.

On page 2, end of first paragraph, staff comment that PUD designation requires the developer to demonstrate the promotion of economies in providing services with preserving and enhancing open spaces and unique natural features. Ken asked if that was something that could also be done with a more conventional subdivision with fewer lots. Marc hadn't brought the numbers with him. He explained that the portion of the subdivision with the curly parts was designed by Rick Harrison Design, out of MN. He disliked it at first, but as he gained familiarity with those design techniques, he's found you can provide services by way of road and infrastructure on a reduced basis over the conventional rectangularizing of lots. It also provides more of a feel of open space, through positioning of the buildings. As far as economy, there is less road structure, which also helps the natural environment. The utilities are probably about the same either way. (He redesigned a Pablo project as influenced by this style and found the amount of road to be reduced by 20%.)

Sue confirmed for Joyce that this is the first project of its nature, using coving, in Lake County. Joyce referred to a reference in public comment to a comparison to one in Missoula. Marc visited the one in Missoula, and offered some comments on it. There's a concept there, but he felt some particulars on that one were overly tight.

Given that it's the first project of its nature here, other than the conditions, Joyce asked if there's a downside for this kind of PUD that could be seen for Lake County. Sue said that given the road design with the curves, they do have the main arterials in the subdivision that will allow you to drive along the major route and get to a county road or the highway rather easily. The 'coving' design is a term they are using. It's not designated as a design standard in the planning of subdivisions. It's a term the designing firm came up with for it.

John asked if a model has been done or considered for a section of this design. Marc explained the steps and methodology that was used to determine layout of houses and view corridors. Some houses will be able to have 2 stories and some will not. The developer wants these to be a 'no-brainer'—for instance, if you buy one of these lots, you're going to have to put your house here, it can only be a single-story, and you'll have a view when done. There are architectural committees involved and the Homeowners Association. It's a tight-run subdivision.

Sue mentioned that the area is zoned, and in response to Ken's question, that they're limited to 2.5 acre density for the entire property. They can receive bonuses for alternative types of housing. The overall density of the entire subdivision is limited.

Joyce asked about recreational facilities and about covenants. Marc said that these are limited to the trail network on the open space. The covenants are exhaustive, and will be seen with the subdivision review.

*Public comment opened:*

Kathleen Garza: She asked how much space is between each house and the meadow.

Marc: 20 feet on the close ones. The zoning mandates a 10' minimum setback from the property line. Since each house would be minimally 10' from the property line, there would be minimally 20' between the buildings.

Kathleen: That's the larger complex of the whole subdivision?

Marc: 64 homes are associated with it in an area he indicated. 58 homes are associated with this hillside area. There are 38-associated single-family dwelling down in an indicated flatter regions.

Kathleen: So in the largest home section, 20' is the maximum between homes on an average?

Marc: The Meadow Homes, yes.

Kathleen: What about the other sections?

Marc: It varies substantially, taking into account views. There's nothing closer than 20' by virtue of zoning.

Joe Garza: He confirmed with Marc that these were said to be starter homes and recreational homes. He takes it they'll be here for the summer and gone for winter. Is it thought that there will be homes with children there? If so, which schools will they attend?

Marc: Polson School District.

Joe: Those schools are pretty crowded now. How will they accommodate more kids?

Marc: That's an element that's included in the subdivision review. When this is done tonight, they don't have permission to do this. They have permission to proceed in this direction. They don't have the lots yet, and have to come back to the Board a few more times.

John: Local services are an element of that approval, and that's definitely an issue.

*Public comment closed.*

**Motion by Jack Meuli, and seconded by Fred Mueller, to approve the PUD plan as presented in the staff report. Joyce amended that the Board approve the request for designation of Stone Ridge Development major subdivision proposal as a Planned Unit**

**Development subject to the conditions of the staff report on pg. 12 and 13. Jack noted that this was his intent. Joyce explained that in a recent Commissioners meeting, the lack of an affirmative statement of this raised some issues. Jack seconded the amendment.**

**Vote on amendment: all in favor.**

**Vote on motion as amended: all in favor.**

**ROSENBAUM ACRES MINOR SUBDIVISION—POSTPONED**

Sue explained that this item has been withdrawn. The applicants have asked for a continuance to address some information regarding the irrigation plan.

**SONGER ROAD MINOR SUBDIVISION**

John noted that the County Commissioners are scheduled to hear this on Jan 10, 2007.

Joel presented the staff report. On pg. 7, he added that another issue that's come up since the staff report was written is that there's no current proposal to extend irrigation infrastructure from the existing mainline across the existing road. He recommended that this be a condition of approval that they install the line across under the road and that they have an adequate easement. This affects the conditions of approval slightly. Condition #22 could be amended to require the installation of a new line across the private access road ahead on the east side of the road and those things will get an adequate easement to be shown on the final plat. Condition # 31 was corrected to read "conditions 28 through 30" (instead of "conditions 25 & 26") at the top of pg. 19.

Fred asked why this was submitted without an irrigation plan. Joel replied that they did submit an irrigation plan, but it's not very specific.

On condition #28, Fred asked if it should read that there's no more subdivision. Joel explained that they haven't maximized what could be allowed by the density regulations.

Joyce referred to the finding on pg. 12 (first paragraph). She presumes that staff means there will be no adverse effect on the agricultural resources of the county, subject to the conditions that have been placed. She's very concerned about the emergency services, given the comments from the sheriffs' office. Sue explained that the comments from the sheriff have been consistent for 3 years.

The effects on the natural environment given on pg. 12 are very conditional. Joyce asked what the mechanism is to make sure that the conditions, with all those 'ifs', happen. Sue highlighted the building notification permit requirement and the requirement for permitting on drain fields. The weed management plan has to be filed with the final plat. They have to enter into an agreement with the weed district that they're going to manage it. The weed district checks every year for the next five years, or whatever is determined in that signed agreement. Joyce verified that Sue's opinion was that if all these things are done to acceptable standards, then the effect on the natural environment would be minimized.

Joyce referred to last time's conversation of the homeowners waiving right of protest for an RID for road building. There's an acknowledgement here that the roads have to be built to County

standards. The developer agrees that people will agree to waive their right to protest, but it doesn't do anything beyond that. Joel explained that the conditions recommended for this one don't require work to existing County roads, to bring them to standards. Sue added that a road right-of way dedication is being required here.

Ken had questions on the density, the conservation bonus and the set-aside. He noted the additional development unit to be allocated to another lot within this subdivision. The density regulations and bonuses aren't a guarantee or a given. These are a maximum. The applicants aren't asking for the maximum. Are we trying to throw development units at them that they aren't asking for? Joel replied that staff want to address this, since there is one unit that they aren't proposing to utilize at this time. Sue detailed that the question is how is it going to be done? Does the first person to come in get it, or does the developer want to say that it's going to be allocated to a specific tract? Staff want to put this question out there, so in a few years they don't have to try to figure out what is appropriate.

Ken asked how a large set-aside with a home on it is open space, since it is still a privately owned parcel, and is managed however that particular lot owner desires. He thought many of the benefits of open space are lost with a fenced in parcel. He had questions about allowing a home site on an open space set-aside. Jack thought the intent was to make open space, not public land, so a house wouldn't make a difference. Ken replied if it's privately owned, the owner can put up as many barns and outbuildings that he wants, in any spot. Lisa thought it would probably be better maintained regarding weeds and irrigation and grazing and so forth as private ownership than as open space.

In light of the irrigation issue that's not very clear, Joyce wondered what staff recommend about this. Joel said they haven't proposed a location for the risers and heads and future infrastructure that would be required to irrigate lot 5. John suggested that the Board ask for this, plus the other item to be dealt with. Joel checked that he meant the irrigation line on the main line across the road. John thought a condition of approval might get more specific with that irrigation plan plus the easement for the pipe to go across the road. Joel said there's a road easement but it doesn't allow irrigation [inaudible]. Irrigation currently comes from the property to the north. There're easements from the pump to the property. Then they're showing the existing irrigation easement along the western boundary. Sue added that now the property is on pivot with another property she indicated on a map and the 40 next door to it. The two parcels are under the same pivot. One parcel is now being developed. The applicant recently did a boundary line adjustment and built a road addition along the west property boundary. The road limits the ability to irrigate across it. Jack M summarized that he needs an easement along his own road. Sue said that he also has to install some sort of infrastructure from the pivot under the road and provide it on lot 5 so lot 5 can be irrigated.

Jack Duffey spoke on behalf of the applicant. He asked for clarification on the irrigation. Joel said that it's pivot irrigated. Jack D said that it was, but it isn't there anymore. Sue said that staff are working with the irrigation plan submitted for lot 5. The applicant presumes that lot 5 will have irrigation water where infrastructure doesn't have to cross the road in order to irrigate. Jack responded that the existing irrigation is on that tract from the west side of the road. Sue asked how irrigation will happen across the road when people need to drive down the road.

Some sort of infrastructure needs to be installed under the road. Jack D asked what else was needed. Joel reiterated that they need to get the infrastructure to the east side of the road.

Jack D asked about the designation of the additional lot. It says a maximum lot size of 3 acres. Do they have to designate that to the larger parcel? Sue explained that in order to get another lot, it could be any one of those tracts. The lot created has to be less than 3 acres in size.

Jack D highlighted that the applicant had issues with condition #19, which requires gates or cattle guards. They would prefer the same language as was done for Leighton Tracts. Jack M asked if this was a herd area. Jack D wasn't sure. John summarized that what the applicants would like is to have the accesses designated but cattle guards and gates not installed prior to filing of final plat. Jack D confirmed. They would like to have them required when developed. Sue described that with Leighton Tracts, it was put in as a conditional approval that upon development, the lots will have to install a cattle guard or gate, and this was put in the covenants. Joel pointed out that Leighton Tracts did not rely on an internal private access road. Jack M thought the Board had done this mainly for outside access roads, county roads. Sue thought Joel was saying they should have to install a cattle guard at the internal access road at its approach to the county road. Jack noted that the function of the fence is to protect people on the outside, so they don't have a bunch of neighbors to deal with all of a sudden. Sue pointed out that the fencing on this will have to be along the western property boundary. It's written as perimeter fencing. That internal road will be within the fence. So where the county road meets the internal subdivision road, a gate or cattle guard should have to be installed.

Jack D said that this is an existing road. They've agreed to widen it, but to tear it up and put in a cattle guard seemed excessive to him. Joel said that it's not a herd district but it is an area used for grazing.

John confirmed with Jack D that #19 was one that the applicant would like to have dealt with differently.

Fred asked why an irrigation plan was not approved before this meeting for the Board. Jack D said this is what he was asking, since the easements, pump contract, pipe and so on, is there. The issue is getting under that private drive to the interior of lot 5.

Lisa checked that this is an internal process, where it needs to be drawn, as opposed to having to get an easement from a neighbor.

Ken asked Jack D if the applicant was interested in having one more development right allocated to the property. Jack D said he hadn't mentioned this.

*Public comment opened:*

Janet Camel: She commented that she didn't see pens noted on the adjacent property. She didn't know if this was a requirement of planning. The Tribes owns the property to the east. There's a trespass situation with the current fence line. As one goes further south, the discrepancy becomes wider and wider, up to maybe as much as 10 feet. She asked if in the course of the

survey, whether the surveyor came across those pins. The farmer who owned the property previously had tilled them over.

Jack D: He spoke to this. He did the south and west corner. They are aware of the fencing being off on the eastern boundary.

Janet: She just wanted to make sure he was aware of it. When the applicant did the boundary relocation for the 3 lots to the south, on this 80, was that done before the density regulations were approved?

Sue: No, it was done after.

Janet: She asked how he could get more than 5 lots in a 20-acre density area, given 3 lots and 65 other acres, even with the bonus. You have to have a certain percentage set aside in order to get the bonus.

Sue: She explained that they aren't including the boundary line adjustment lots.

Janet: He's not really preserving open space, because he's allowing a home on one lot.

Sue: Density regulations allow for a home to be on one lot. It's not necessarily open space. It's open space for agriculture, for an agriculturally viable parcel. It would be appropriate to have one home so somebody's maintaining that.

Janet: So he can get one additional home. She repeated Ken's question: Why would you want to give him an additional unit if he's already proposing this?

John: We can change that.

Janet: This is her question. She can see the concept that it makes it more attractive. When the density map and regulations were worked upon, the whole point was to cluster the small lots similar to what Marc is proposing with his PUD development, where you have small lots with open space preserved. What she's seeing is fairly large lots that are going to be hard to maintain—3 to 5 acre lots. It seems to her that the maximum is being allowed in every circumstance that she sees. She thought the incentive was supposed to be to cluster them to smaller lots, with 3 acres as the maximum size. Here there are 3 five-acre lots. Are people being asked to consider making lots even smaller when they have their preliminary plat proposals? For instance on a Songer Road subdivision next door, they have 1 ¼ -acre lots and preserved one large agricultural block. It's easier for the farmers to farm and for the residents to maintain the smaller lots.

John: We're definitely pushing to put small lots in a small area as much as possible. He pointed out that they don't always go to the maximum of the density map. Last month, the Board turned down something that fit the density. He felt that they didn't feel they had to accept it just because it was within the density. It's private property and they can't tell them exactly how to organize their stuff.

Jack D: A suggestion was made to do away with the extra lot. He didn't think someone would want to give away something that has value to it, whether they use it or not. It seems like people were a little confused about conservation bonuses as far as lots in this open space. This is private property. It's open space but it's not the neighbor's choice to say what goes on. For lot sizes, you need a mix out there, and there's a market for 3-acre lots. If you want small size, go live in town.

Janet: She's been a planner for the Tribe for 17 years. She's seen a lot of 2.5-acre lots go to weeds. Here we have 3-acre lots. Oftentimes they are too small to graze. You can graze seasonally, but you have to supplement with hay. They turn into little ranchettes that get eroded if you graze them. She's just saying that it's conflict, and making the comment as to what she's seen. Her understanding of the density map with the cluster bonuses was that this was to try to get the lot sizes smaller.

Kathleen Garza: She wanted to know what kind of houses can go on these lots. Is there any designation as to that?

Sue: There may be in the covenants.

Joel: It doesn't really address that.

Joe Garza: So they can be mobiles, modulars, manufactured?

Joel: He confirmed.

Kathleen: Will there be a process somewhere along the line to give commentary on whether or not to vote against that?

John: That's what's happening now, asking for public comment, and the Commissioners, who actually approve or disapprove this.

Kathleen: They are the adjacent landowners and she is against trailer homes.

Joe: They are against the mobile homes, or turning it into an RV park

Kathleen: Or trailers or homes without foundations. She may be open to manufactured homes, possibly, with discussion.

*Public comment closed.*

Lisa commented that 5-acre lots have received discussion previously due to challenges with weeds and irrigation. She thought 3 acres was actually an ideal size for someone who wants a horse or a 4-H project or someone who doesn't want to live in town. The buildings take up a lot of it and the rest can be irrigated out of the well. She agrees with Jack. There is a huge market for that. She thought 3 acres has been a good answer to the complaints with 5 acres. If people

want to live on 1 ½ acres, they can live in town. With open space, the lot with the house does count as one lot. John noted that under existing rules, it can't be further subdivided. Ken said that except we're allowing them one more development unit. Lisa reiterated the reason that was brought up was to clarify, so it isn't a problem encountered down the road, of who will get this extra split, not to encourage it.

Joyce asked for clarification if there's been an agreement from Jack D on behalf of the developer as to the irrigation line under the road. Can this be approved without that?

John explained that a motion might deal with this, and several things.

Ken returned to the discussion of the additional development unit. This being a conservation development bonus, they're asking for 5 lots, and we don't have to give them 6. It seems all or nothing to him at this point, where that bonus unit goes away once this is approved. Lisa disagreed, saying they get what they get. Ken said you can't get a bonus today, and then come back for a second bonus later on. Joel said you'd basically be reserving that. Ken said that they're not asking for a bigger bonus, so why would a bigger one be given? Lisa said it was because he was setting aside the amount he was setting aside. John summarized that Lisa was saying that he has that available to him. Jack M said that he was setting aside the minimum that he needs to get this bonus now. That still leaves a small portion that can be used later. All he's giving away now is the minimum that he has to, to get the bonus that he's getting at this time. The rest is outside of that.

Sue described that to do the math, a certain amount of acreage needed to be set aside, something like 39 acres. He has a 52-acre parcel. If he had one more lot, he'd have a major subdivision. Fred noted that he was getting away from doing a major subdivision. Ken was concerned this would effectively give him a major subdivision without review. Sue explained that the creation of a new lot requires a subsequent subdivision review, and since it's a subsequent review, it would be reviewed under major subdivision rules, even for one more lot. This would include an environmental assessment. She detailed that differences with a major subdivision include the 60-day review period and the requirement to submit an environmental assessment. If it's a subsequent subdivision, they still have to do the environmental assessment, but they don't have to comply with the 60-day review period. John thought he wasn't gaining that much. Ken noted that he has a development right that he could sell elsewhere. Sue said that the regulations don't address it, so we're trying to deal with it so we aren't trying to guess what the intention was in 10 years. We want him to figure it out now, and set it up. Ken felt since he's not asking for it right now, the fact that the additional lot is coming from a bonus at this time, means that this bonus goes away after the Board approves it with this number of lots. The density isn't guaranteed, and this is a bonus. He's only asking for 5, so why give 6? Jack D said there's nothing that says he has to use them all up, either.

John outlined that there are 31 conditions, and a motion might include something to do with irrigation, and something to do with either Ken's idea or Lisa's idea.

Fred felt there should be an improved irrigation plan. Sue asked for clarification. Fred clarified that there should be an improved plan that is approved by the Project and the Planning Board

staff. They've been asked to move the pipe across the road, so that's not complete or in writing. Lisa thought that typically they'd have this before the final plat is approved. John asked if they could put it in writing now. Fred wanted a complete application.

**Motion by Lisa Dumontier, and seconded by Jack Meuli, to recommend approval with the staff recommendations as corrected, with the following amendments, and leaving the density as it reads.**

- **Amending #22 to say that a revised irrigation plan shall be submitted to show proper infrastructure to go underneath the road, which needs to be completed prior to final plat approval.**
- **Amending #19 to only require a gate or cattle guard at the internal access road at the approach to the County road.**

**(Correction made to staff recommendations: the reference in condition #31 to conditions 25 & 26 was corrected to conditions 28 through 30.)**

Ken referred to the idea brought up by the neighboring landowners for additional covenants on this property, for homes on this property to have permanent foundations. Is that something that the developer would be agreeable to add to the covenants? Lisa felt that the owner would do his own covenants and she did not include in the motion. Jack D did not feel he could make this decision for the owner.

**Motion failed, with 3 in favor (Lisa Dumontier, Jack Meuli, Clarence Brazil) and 5 opposed (Fred Mueller, John Fleming, Bob Kormann, Ken Miller, Joyce Funda).**

Sue highlighted the need to convey to the Commissioners the findings to support the recommendation for denial. Staff need an alternative motion with the denial, with direction to the staff as to how to amend the findings.

Joyce confirmed that final action by the Commissioners needs to be taken by 1/19.

Joyce formulated a motion that the recommendation for the subdivision as proposed be denied subject to an amended application within the appropriate time limits to include the items that have been discussed. There are more questions and missing information than there is complete information. It's just not clear. John asked for a motion that would put those items in now. Sue asked specifically what clarifications are wanted. Joyce wanted clarification on the 6<sup>th</sup> lot, per Ken's point—why give them the extra lot? The irrigation plan needs clarification. For the wording on condition #19, last month's wording with Leighton Estates has been referred to—her suggestion is to use the exact wording if that's what the developer will go with. And at least float the neighbors' concern about housing without foundations. Sue suggested requesting a continuance with additional information instead of a denial. That worked for Joyce—her point is to see the proposal cleaned up. John asked Jack D if that would work for him. Jack D didn't understand what's not clear, besides the irrigation. He can't answer the density questions about the extra unit floating out there. That's not his call. He was curious who on the Board has the expertise in irrigation. Joyce agreed with him and felt they needed the County attorney here.

John refocused on Board discussion and a motion. Lisa felt this was a fairly straightforward subdivision. Ken touched on two points that may have led to the denial on the first vote. These were the irrigation and this extra development unit. By requiring irrigation to be installed prior to final plat pretty much takes care of the irrigation issues. Fred agreed. Ken continued that this leaves the extra development unit. He thought it could be written in to the conditions of approval that there are no further splits of this unit, that a bonus was taken at this time to grant 5 lots, and no additional development units. Sue recommended that if you'd like to do that, suggest to staff where in the finding they can back that. In other words, is it in the impacts to agriculture, or to agricultural water user facility, or is it, as you see it, compliance with the density regulations? Ken thought it was in compliance with the density regulations, and John agreed. John would like another motion because of those two things, and he'd also like the Board to consider that we've often talked about the type of housing, in the sense of modular or mobile homes, and he felt it wasn't out of line to talk about that. The covenants don't cover that. Ken thought that by leaving it out, he's saying it's okay. John thought it could be put in. Sue asked the Board to include the basis for saying no trailer homes, to point to what regulation. Ken was trying to address the concern of local landowners, and the owner's agent was unable to speak for the owner in that regard.

**Motion by Ken Miller to recommend approval with the staff recommendations as corrected, with the following amendments, and the addition that this is for 5 lots only, and no further development rights exist on this under current density regulations.**

- **Amending #22 to say that a revised irrigation plan shall be submitted to show proper infrastructure to go underneath the road, which needs to be installed prior to final plat approval.**
- **Amending #19 to require a gate or cattle guard at the intersection of the private road with the County road at the NW corner of the property.**

**(Correction made to staff recommendations: the reference in condition #31 to conditions 25 & 26 was corrected to conditions 28 through 30.)**

Bob asked if the previous motion needed to be undone. Sue and John clarified that the first motion failed, and Joyce withdrew the motion she'd formulated. Sue explained that the first motion failed; the original motion was not a denial. A denial would be a motion to deny, based on a lack of compliance with the required findings.

Jack asked if it was legal to limit it to 5, or if he actually has 6. Sue thought the way the current density regulations are written, it allows for use of the maximum development bonus if it's approved through a subdivision review. She thought it complied with the current density regulations for him to keep another unit. John noted that the motion is that he receive what he asked for. Ken added that then nothing else would exist. Lisa and Jack M felt this overstepped boundaries. Lisa felt that boundaries with covenants were also being overstepped. Ken and John clarified that there was no change in covenants in the motion. Ken clarified that his point was that because he's using a conservation bonus to get additional lots, this is the reason that he doesn't think any additional lots would exist. He's asking for only this much of a bonus right now; he can't come back and ask for more of a bonus later. Lisa wanted to know where this is in the growth plan. Ken didn't think it was spelled out one way or another. Lisa asked how we would back this. Sue said this is something to address in the amendment [to density regulations]

that will be done for the one-year review, based on these types of struggles. We can address it then, but you can also set precedent on how you're interpreting it. At this stage, if that's the way you felt that was intended when the density regulations were written, then the Board has the ability to say that was the intent.

Sue said that she could get an opinion from the County attorney before this goes to the Board of Commissioners on the density bonus.

**Motion seconded by Fred Mueller. Motion carried, with 6 in favor (Fred Mueller, John Fleming, Bob Kormann, Ken Miller, Joyce Funda, Clarence Brazil), and 2 opposed (Lisa Dumontier, Jack Meuli).**

Lisa explained that she opposed the motion since she doesn't agree with the density portion of the motion. Jack agreed with her.

### **RESERVOIR RANCH MINOR SUBDIVISION**

John outlined that this is a public hearing. The findings will be forwarded to the Lake County Commissioners who will hear it on Jan 10 at 10 am.

Alex Hogle gave the Board information with a map for a graphic representation regarding the well situation, and presented the staff report. Regarding the discrepancies described on the lower portion of pg. 8, the one on the designated agent has been worked out. The Board was handed a document identifying Kirby Christian as the authorized agent for both the sending and receiving parcels. Alex noted that staff condition #4 is no longer applicable, since this confirmation has been received. He explained the features of the graphic that had been handed out. It may help understand the situation more clearly with regard to Seth Makepeace's letter.

Fred confirmed with Alex that DEQ deals with the water. Alex wanted the Board to be aware of it. Sue added that public comment is accepted and included in the record, and it's required to submit that comment to DEQ as part of the DEQ review.

Jack M asked for clarification on #16. They have three 20's left in the other 80 that the development right is coming from? Alex replied that they have 3 units left. He referred to an image showing the transfer, in the packet. Ken confirmed that this is just a little over a mile away. Alex mentioned that the regulations state the sending parcel must occur within 3 miles; this is definitely not farther.

Lisa asked about the well depths. Alex had the depths for the wells in red, and the others are available, but he didn't know them off the top of his head. She referred to the letter written mentioning a well with a depth of something like 600'. John asked Dennis Clairmont which well was his. Dennis said his well wasn't on there. It's directly south of the green dot, probably about 50' off the [inaudible]. His well is 635' deep. Fred asked how deep he pumps from. Dennis wasn't sure but thought it was over 100'.

Marc Carstens spoke on behalf of the applicant. He thanked Alex for the timely map. He also thanked Dennis and the others who wrote in with their concerns. He had a lengthy conversation

with Kirby Christian regarding the concerns. While Kirby Christian doesn't have a particular problem drilling a well to provide evidence of quality and quantity to DEQ review, he wanted to be able to have a preliminary approval of some sort so he would actually have a use for the well. He's currently got a dry land 80. In the recent past, Marc has received specific requests from Lake County Sanitation under the review guidelines for DEQ to drill wells in order to provide quality and quantity results before they'd go ahead with subdivision review. They are quite certain that before this subdivision can be concluded, they will be drilling one or more wells, depending on DEQ. The data they use isn't close to the project because there isn't a lot of close data. He didn't realize they were that far away. They suspect drilling a well will come out of DEQ review, but if it would make the Board feel comfortable in proceeding, they would be willing to accept a condition that prior to final that there is a well drilled and evidence of quality and quantity provided to DEQ for review.

He continued that there are concerns about wildlife, and referred again to the map Alex provided, which shows the project in relation to Pablo Reservoir. The water itself is over ¼ mile away from any point within the subdivision. They do have covenants for the subdivision that do address animals, such as #10 (no animal shall be allowed to become an annoyance or nuisance to the neighborhood) and #16d (the Jewel Bill: pets shall be confined to the house or fenced yard and not be allowed to roam as they can chase and kill big game and small birds and mammals. MT state law protects livestock. Pets found attacking or harassing livestock and can be shot and killed.) This is public notification to potential buyers, of existing state statutes.

Marc reiterated the fit to the zoning and the transfer of developmental rights. He thought it was a fair one, moving a development right from irrigated to non-irrigated. The vision that Kirby Christian has for this division is that he feels the purchasers would probably be people from Missoula who come up to hunt in the area and come up to enjoy the existing wildlife. To make an investment like this in the area, these folks are probably going to be pretty responsible owners with regards to wildlife and wildlife habitat. That's why they would want to be here.

Joyce asked about the proximity to the Pablo Reservoir and habitat. Marc referred to Alex's map. He thought they were over ¼ mile from the edge of the reservoir. The extreme NE corner of this project is probably within a few 100 feet above the boundary of the reservoir reservation take line. There are residences near the reservoir in some locations, a gravel pit that operates up against it, and the stock car track operates up against it.

She asked if it was known here how long ago the Tribe denied division approval as sited in one of the attached letters. Dennis thought it was about 25 years ago. She asked if one of the primary reasons was the disturbance of the wildlife habitat. Dennis affirmed. Next to Skyline Drive, on the east side of the reservoir, the Pablo delivery canal runs through a corner of it. It was 10 acres. The individual wanted to put a motel there. The Tribal Council turned it down. They didn't want to sell [inaudible].

Joyce pointed out that Kirby Christian's vision doesn't necessarily translate into the reality of what will happen. It's quite possible that the parcels will be sold to folks who might not be in line with the vision that he has. From her own living experience, there's disturbance of the wildlife just by people moving in. The Growth Policy specifically talks about that in the County.

Marc thought that the impacts of a motel would be different from those of a residence.

Alex spoke about the lay of the land. The parcel is very flat and treeless. It's been used for hay production. The 80-acre parcel to the north of it is the same type of land use. There is an area of riparian-type vegetation that goes around the actual water of the reservoir. He estimated that would come through about halfway between the ¼ and ½ mile mark on the adjacent property to the north. There is wildlife there. The parcel in question is an agricultural lot. He didn't believe there was a particular amount of habitat on that parcel. Joyce clarified that her understanding of the impact issue is not so much whether building on the land will impact wildlife, but also impact wildlife in the immediate surrounding area. Alex responded that there's always potential for effects. Clarence said that they have to keep the cats inside especially. At Ninepipes, the cats destroy lots of the baby birds and ducks.

Bob asked if the covenants address firearms or shooting. He was concerned with the potential for a shooting gallery developing. Marc found nothing in there on that. He couldn't speak for the developer as far as whether the developer would be opposed to that.

Alex mentioned that the restrictive covenants are in the packet, but he had summarized the covenants in that section of the staff report. A copy of the actual covenants was not included. John asked for specifics on pet containment and whether lighting is downshielded for migratory birds. Marc read the covenants in their entirety, which included some criteria for animals, wildlife and outdoor lighting (which must be downward pointed and side-shielded).

*Public comment opened.*

Oliver Dupuis: He owns three 80s, one being north of the subject property. That's really good agricultural land, capable of growing potatoes. Talking about the wetland on the subject property, the birds do nest there. The preserve border goes through Oliver's land, and the habitat is there, the animals live on his property; it needs to be increased, if it can someday, not reduced. This project will put quite a damper on their wildlife. The runoff on the land to be developed flows south down to that wetland. He has hunters who come out. They are good hunters who obey the law, and are there for a short time. He'd probably lose that income. He's farmed it for quite a few years. The closest well is Dennis', and it's around 600'. Up north, his brother Joel's is about 1000', he thought, and it will affect the water. The water needs to be done before considering further development in there. He can graze cattle and sheep, but you don't want dogs and people around the cattle and sheep. There are deer and pheasants and quail being raised inside the reserve, and he thinks all that will be in jeopardy. That's why he's here to protest tonight. He thinks the Board should consider that. It's an important part. Plus the good agricultural land will be destroyed. That 80 could grow good crops, even though it's dry land. It can be developed from the irrigation ditch. He didn't think it would be practical to put a well in, since it would have to be so deep. The water level seems to be going down. He asked Dennis if he'd had problems with fluctuation in his well.

Dennis Clairmont: His well is about 20 years old and doesn't produce as well now as then. He depends on it completely for his livestock in wintertime. They have to water the livestock and

then let the well build back up before they can do laundry or that sort of thing. In the summer, they don't irrigate their lawn because of [inaudible]. They have to use it sparingly and carefully. His concern is what punching 5 more wells will do to the aquifer.

Oliver: All the animals don't live on the water. They have to have food, cover to nest in, and that's why they're restricting the areas. When you put homes there, you're going to have trouble with cattle, sheep and wildlife, plus he doesn't know what will happen to the water table. It's part of your area and your hunting, all of us.

Dennis: He wanted to clarify part of what Marc said about being ¼ mile away. It's ¼ mile from the water but the actual refuge boundary is the jiggly line, probably less than 1/16 of a mile from the NE corner. He clarified which line is the irrigation easement boundary. The refuge uses that boundary for their boundary.

John: You can do agricultural activities inside that line if you own that property.

Dennis: That's right. Oliver owns some of the property and the Tribe owns the other. The Tribe has agriculture uses for both farming and grazing that's allowable practice on it. He echoed what Oliver said about the wildlife, and that it is a good farming area.

Janet Camel: She wanted to address a couple of issues, including the well and habitat. They have a statement from a wildlife biologist with a master's degree. She differs with Alex on that it shouldn't have an impact on the natural environment. The biologist says that it could result in adverse impacts upon wildlife and habitat. Also, ground-nesting birds are preyed upon by dogs and cats. These covenants say these pets *should* be confined to the house or yard, not *will be* or *must be*. She felt this language should definitely be changed. Her other concern is that these covenants can be changed by the owners. If they don't like these restrictions, they can change them. Then the adjacent landowners and wildlife have no recourse. Rather than have that restriction be in a covenant, it should be a condition of the subdivision approval to address the wildlife issue. We do know that animals will climb fences or dig under them. This is a big issue with 5 homes. Her concern on the well issue is we know how much trouble the County shop had in getting a well to serve the County facilities a little bit east of this property. They've found in this area that recharge is really difficult. If this is a perched aquifer, it's isolated. There's no way for it to recharge. The more users that tap into that well, the less likelihood that Dennis is going to have a viable home site. He's already living right across the road from the subdivision and is experiencing problems with his well drawdown. Why would you want to even allow a transfer of development right to this property if you know there are limited well yields. It's a difficult situation. We're looking at somebody's property rights and ability to develop their property, and then we're looking at somebody right next store who's already developed their property, and their right to be able to live there. Should Dennis have to pay the expense of having to drill a new well? She appreciates the fact that this developer will have to drill another well if the Board approves the subdivision. What if it comes up that it had similar well yields? We don't know what the drawdown levels will be with 5 wells. She does think the wildlife language needs to be much stronger and not something that can be changed by homeowners that live in the subdivision.

Sue: Those changes are typically required to be reviewed by the County Commissioners before changes are made. Because it's trying to mitigate the impact on wildlife, the County would not allow the lot owners to change it. Prior to amending the covenants, usually the covenants will specify that you have to get 60% of the landowners that are subject to the covenants to agree to them, and then get County Commissioners review and approval. The Commissioners review and approval entails asking if it was something that was utilized to mitigate an impact of the subdivision or to address some sort of concern regarding compliance with the rules and regulations of the subdivision.

Janet: How often are covenants enforced by the Commissioners?

Sue: She explained we don't enforce covenants, but she didn't think we would allow them to change that provision.

Janet: She asked how this provision will have force, if they aren't enforced by the governing body.

?: That's the big on-going question.

?: They're self-enforced.

Janet: She said we all know the [inaudible] with the national wildlife refuges, and how important they are to this valley, and here we are, less than 1/16 mile away. She just wanted to point these things out. She does respect Marc and his work too.

Kendell Dupuis: Just from looking at the map, the farther you go east there, it's just more residential. Wouldn't it be better to preserve this 80 and transfer those rights farther east, even though it is irrigatable ground. He agrees that as far as farmland goes, that's a better deal. It just seems like this is putting homes right out in the middle of nowhere.

Janet: The Tribes were looking at putting home sites out there, not just a motel. That was turned down also, probably within the last 10 years. Also, the Mission Valley Community Foundation wanted to site a swimming pool in this area to the east of Skyline Drive. That was also turned down by the Tribes because of its proximity to the wildlife refuge.

Dennis: His understanding from a conversation several years ago with the County was that Light Road started at Back Road. The maps are showing it as Stasso Road. Verification is needed as to whether that's Light Road or Stasso. He thought Stasso Road stopped at the juncture with Light Road, and Light Road goes on over to Back Road.

John: You think Stasso Road should stop at the corner.

Sue: There've been lots of changes to the roads with the 911 readdressing.

Dennis: Normally you would think it would keep going north.

Marc: With regards to Seth Makepeace's information, he read the last sentence in the report: "This review is preliminary in nature, and would be improved with more site specific information and additional time for analysis." By drilling a well on this, it would satisfy water quality and quantity, plus with the comments forwarded to DEQ, he was certain it would see a pretty stringent review at State. There's been a change in DEQ review. It used to be very mechanical. Statutory changes have happened within the last year, to where written comment from neighbors and interested parties can be included in the DEQ materials going forward for review. Seth Makepeace's work can go forward with his specific concerns, and the State will certainly look at it very hard.

John: And their comments will be in that report too, from this meeting, through the minutes.

Marc: Correct. Regarding Janet's comments on living with wildlife with pets and "should", they can say "shall". He asked staff if this would be an appropriate thing to put in to the conditions of approval. Would that have more enforceability?

Sue: It can be added to the conditions of approval.

Marc: He didn't think they'd have a problem with that. They'll maintain it in the covenants, and change the word to 'shall', and they can include it in the conditions of approval. They have no objection to that at all.

Alex: He wanted clarification about that. There's a big difference between cats and dogs. Are we talking cats to be confined indoors? He knows people with dogs that are well trained that he can't imagine living inside.

Marc: He clarified. He read the covenant sentence as is exists prior to change, and highlighted the word to change.

Janet: She thought 'must' would be stronger and clearer than 'shall'.

Marc: Yes.

*Public comment closed.*

Bob explained that he is opposed to this subdivision because he thinks the wildlife issue is huge. The wildlife has no voice other than ours. It's just too close to Pablo Reservoir. Five houses here are going to have a negative effect, however you cut it. He remembers Joe, a former Board member, who said "If we don't speak for the wildlife, who speaks for them?" He's speaking for them, and is going to vote against this. The covenants aren't enforceable. You've got to turn neighbor against neighbor, and that doesn't happen most of the time. You want to be able to walk out and cut your grass, and not have the guy pointing or swearing at you or something. He thought Kendall's idea of the other irrigated ground closer to the other developments or homes is probably a better idea than this piece.

Joyce said that she is also going to vote against it. She is not convinced that anything that can be done with respect to this development is going to not affect in a substantial way the wildlife. She thinks growth is important. We have a growth policy from Aug 2003, which very clearly sets forth what the vision of Lake County is. Lake County is to be preserved in many respects. There's a place for everything. While there very well might be a place for Kirby Christian's vision, she doesn't think, based on what's been seen here, that the place is where he's designating it right now. The second reason she's opposing it is concern with the well situation.

Ken appreciated the concerns with wildlife expressed by Board members. He also thinks that those issues were partly addressed when the density map was created, putting this into a 20-acre density rather than a 10 or a 5 or higher. He realizes that some things have fallen through the cracks with the density map, but it's the rules we're playing by at this time. He felt that needed to be honored. He also has an appreciation for the water in the neighborhood for current water users. He thought through the DEQ process, as they collect more information after they put in a well, DEQ will better be able to evaluate the water situation than we are at this time, without much data. He will vote for this.

John commented that he will also vote against it. It's the same thing that the others are talking about. Ken mentioned the density map. He realizes that they have 40-acre density around Ninepipes, closer to where he lives. There probably should have been 40-acre density here. We missed it. Our County growth policy talks about large changes in land use. He thought this is a tremendous change. He thought the information says that the lot sizes are 43 and 80 acres, and sizes like that, and we're jumping down to two 10's and three 20's. He sees the developer is trying to minimize as much as he possibly can. It's too great of a hurdle to overcome. It's too close and too many people. He thought about possibly having them as close to the road as possible, if they're going to have residences on these. It's another thing that we could do to minimize it. He knows this is DEQ's area, but once you drill the wells, you have to wait a certain amount of time to see what the impact is. You don't know quantity over time. You can know quality right away. Water works over a time period too. He too is going to vote against it. It's impact on wildlife and a large change in land use he thinks is incompatible with the other land uses in the area.

Jack M was worried about that well. He's also concerned about putting more houses in what is now one of the few agricultural areas in the County. If this goes, you're going to see some more [inaudible]. So he's going to be against it.

Lisa asked why the developer chose this piece. Marc thought it was chosen because it wasn't irrigated, and was not producing as agricultural ground can if it is irrigated. He was told by the developer that there was a proposal to sell it to the Tribes, but that hadn't been exercised for some reason. He thought the developer views the property as being less important to agriculture than the balance of his property. Lisa thought some of the developer's property is in 5-acre density. Marc confirmed this. He believed those were irrigated, and they were trying to maintain that.

Oliver Dupuis offered to answer a question. He had property surveyed to put in center pivots. He even talked to Cal about putting a center pivot between them. The irrigation ditch is very

close. That property can be irrigated. The only reason they aren't irrigating is that it's good production property right now as dry land. It's [inaudible] dry because it gets the water from the reservoir. You're kind of sub-irrigated. Marc said that it's currently not under Flathead Irrigation Project.

Clarence asked about the wells. He understands the water rights aren't settled at this time. When the water rights were in place, wasn't there such a thing as whoever had the first well, if that was impacted by the drilling of another well, the 2<sup>nd</sup> well had to give up their rights? Jack M pointed out that this was awfully hard to prove. John agreed.

**Motion by Joyce Funda, and seconded by Bob Kormann, to recommend denial of this subdivision, on the basis of the comments that have been placed on the record (effects on agriculture, wildlife).**

**Vote on motion was tied, with 4 in favor of the motion for denial (John Fleming, Bob Kormann, Joyce Funda, Jack Meuli) and 4 opposed to the motion for denial (Lisa Dumontier, Fred Mueller, Clarence Brazil, Ken Miller).** The motion did not pass, and can go to the Commissioners as a tie.

### **OTHER BUSINESS**

Sue gave a summary on the items from last month's meeting that were reviewed by the Commissioners. Leighton Tracts was approved, with one additional condition regarding the irrigation plan. They felt the irrigation plan wasn't adequate to provide access to the pump, so they added an easement across the northern property boundary. Otherwise whenever anyone was irrigating, someone else would get wet trying to get to the pump. Browns Estate II subdivision was continued until Dec 21. People who live in a previous phase of Browns Estate subdivision wrote in to the Commissioners that they were told when they purchased their property that there would be no further subdivision of the lots based on conditions imposed by the County. The previous approval was in 1998, and created 4 little lots and one 30-acre tract. A condition was put on the approval that the large lot would be subject to a requirement that had 4 acres per unit. When that was further subdivided in 2003, the subdivider was held to the same standard, and was only allowed 7 lots. Then the density map went into place. When the pre-application came in for the 10-acre parcel to be further subdivided, the property is now included in the community growth area for Arlee. Staff took the density regulations as precedence over the previous approval. Sue continues to feel that this is the best thing to do. It's been continued so the Commissioners could talk with the County attorney. He said the same thing: it wasn't a covenant on the property. It was a covenant between the developers and the County Commissioners, not the County Commissioners and the people who live there. The people had the opportunity to amend their covenants to require no further subdivision, or comment on the density map to require a specific density in that area. They will be allowed to go with the density map.

John referred to conversations about growth areas, where they were talking about hooking up to a municipal water or sewer system. There are proposals like this one where they're just outside the reach, and we're still treating them like a high growth area. Is that a conflict we should try to do something about?

Sue highlighted that with that one, when systems are available, it's in the conditions of the 1998 approval that they'll need to hook up within 180 days. One thing we could do is request that they consider shared wells and shared drain fields.

Alex thought for the community growth areas that it might be worth to have it in a condition sometime to require a cost analysis be done. For instance, for Browns Estates, the municipal sewer is as close as Rice Lane. Lisa detailed that this is about 1/8 of a mile. Alex continued that would be worth requiring them to communicate with Gary Wining, and actually get some numbers on paper. In the same way, with Cimarron, numbers have been calculated to determine the cost of road improvements, if they were to be done. Clarence reminded that the Board did require that with the project with Dave DeGrandpre's mother-in-law. Joel mentioned that it was within 500', so it was required by the state. Alex clarified that Browns Estate II is not within 500', yet it's awfully close. The same way that staff have tried to have the developers put money down for road improvements, at some point they're going to be the ones to put money down to extend these systems. Gary Wining will not do it with simply the funding he has to work with. Ken thought this was a good idea.

Alex said that there's an upcoming subdivision, based on pre-application, on the east side of Ronan, that's asking for the same type of thing. Sanitation has been a recurring issue, and this one's within a community growth area.

Ken thought the community growth area regulations need to be reworked, so you can't get the density of the community growth area unless you're on municipal water and sewer. Otherwise you have a much lower density. That will encourage the developers to work with the water and sewer folk. Sue thought in lieu of that, to require them to install dry infrastructure, which that can make it really easy to happen in the future, is an option. Sometimes in Lake County, the water and sewer facilities aren't adequate to support additional, and that's what's holding it up.

With Cimarron subdivision, it was sent with the vote of the Planning Board, but there was really no recommendation given. There was not a clear idea of why people voted against it. The Commissioners were given the minutes, the vote and the staff recommendation. Fred, Joyce and Steve were in attendance at the Commissioners' meeting, and gave a good summation of the Planning Board's concerns and discussion, and what they felt they were voting against. The Commissioners continued that one to Dec. 21 also. They're looking at impacts on agriculture, impacts on public health and safety regarding the lack of adequate County road leading to the subdivision, and the issues surrounding the bonds that are not complete from previous subdivisions.

Fred asked for clarification on the bonding. Sue answered that State law requires the County Commissioners to allow the developers to bond. The Commissioners signed an agreement with this developer that if he doesn't complete it within a year, they're going to take the money out and complete it. The bond expires on January 15, 2007. The Commissioners are going to have to obtain the money and install the irrigation items. Fred asked if the lots could be sold before that time, and Sue affirmed. The lots are created when he bonded. New legislation is being proposed that will allow the County to say you have to have a minimum of 80% of the infrastructure complete before a bond will be considered, or something along those lines.

Ken asked about the amount of the bond. A big concern is that people are bonding out for less of what the actual cost of the infrastructure will be. He confirmed with Sue that three competitive bids must be given. The Commissioners accept or reject the amount, and the bond is for 125% of the amount. Fred pointed out with the rising fuel costs, it falls short.

John asked if as far as the meetings are run, does it help when reasons are given for a vote, like with the last item tonight, when Bob led the way. The Board should be trying to tie them in to the Findings of Fact. Sue outlined the reasons would be non-compliance with the subdivision regulations or the public health and safety impacts with which the Board is familiar with. John summarized that to phrase the comments in those terms would help.

There was brief discussion on protocol whether or not the Chair typically votes. Members had been in a variety of other type of meetings where the Chair didn't vote, except in ties. The Chair always has voted here. John had been told that the Chair has to vote, and he would be out of the Chair if he couldn't vote.

Sue explained that when the most recent Board vacancy came up, the subject of Tribal representation came up. Paddy Trusler has encouraged the Tribe to provide someone to sit on the Planning Board. The Commissioners wanted to appoint Joyce, and also have Tribal representation, so the number of the Planning Board may be increased to 10. A public hearing will be held on Dec 21 on that. If all goes well, a Tribal Planning Board member, Brad Trospen, will join the Board in March.

Joyce was troubled by the lack of access on a regular basis, either formal or informal, to the County attorney by the Planning Board. She has relayed this concern to the Commissioners. So many of the questions and issues that come up here are legal, in terms of land planning and land use. She was told that 'civil' is not on the radar screen, just 'criminal'. She would like to see some sort of request from the Board. It seems that Sue often goes to the attorneys with issues from these meetings, only to be told 'What do you think?' The Commissioners responded to Joyce by pointing out that the Planning Board is advisory only. John said this was his answer also. Joyce felt that for them to take into consideration what the Board does, and not negate what the Board does, it's got to be done in such a way they can make some sense out of it. It goes to the protocols of the meetings. Paddy did tell her if the Board had some sort of internal, very brief document outlining the highlights of the things that would make the findings or decisions clearer to them, then when the subjects reach them, they wouldn't have to start all over. They would know where the Board is coming from. They could reject it, but at least they'd understand the thinking. The Commissioners peppered the Board members in attendance with questions, when she attended just to see how the Cimarron and other items played through. She offered to take a stab at an internal document for the Board's approval, if they wished.

Fred mentioned that Paddy had commented he was going to try to postpone these hearings with the Commissioners until after he got the meeting minutes. Paddy was going to talk to Sue about that. Sue said that whenever it's controversial, they typically do supply the minutes.

John wants to say how he feels on things, and doesn't want a lawyer restricting him in that sense. He thought he did a poor job at the Cimarron hearing, in that we didn't get a good statement about why the Board rejected that. We were so happy to be done with it that we went on. Tonight we did a much better job, as started out by Bob. Joyce agreed with him. Lisa thought on Cimarron, the Board had a pretty weak position for the denial. Bob said that he gets frustrated because the buck gets passed to DEQ and right down the line, and the staff recommendation just gets taken. The Board takes the findings of fact and the criteria to identify it by, and tonight he strongly felt and absolutely believes that 5 houses that close to Pablo Reservoir are going to have an effect on the wildlife. Each of us somehow puts a value on what that means for you each individually, what public safety means for you each individually, the effect on agriculture and what that means to you each, and they are not all equal. Just because we put 20-acre density out by Pablo Reservoir doesn't mean we knew what we were talking about. The wildlife is still there, whether it's 20-acre, 5-acre or 1-acre. Joyce recalled the rather heated discussion at that meeting regarding the value or the authority that the density maps had, period. Bob explained that he pays attention when a close-by landowner says that a situation is dangerous, like Steve saying with the buses that if the bus doesn't pull off the road, somebody is going to get hurt. A general murmur of conversation followed.

Sue thought that in that case, the Board could direct staff to show a direct findings of fact to deny this. It could be sent to the Board for revision. Sometimes the staff has given the Board the option: here's an option for findings to approve, and here's an option for findings to deny. Both things could be provided at the meeting. The Board can ask for findings to deny, based on these specific things. The meeting could be continued, and held on, say, the following Monday, or let the public and developer know that it'll be done internally and available on a certain date. John asked if after receiving a packet, a Board member could get back to staff if there's a feeling that it's on the wrong track, and ask for an alternative. Sue clarified that she's talking about at the meeting with the public, if they aren't feeling comfortable with the staff recommendation. You could say the Board wants to see findings of fact by the staff that would deny the subdivision based on this criteria. Joyce mentioned that whenever the Board votes, they are supposed to do a findings of fact within 10 days to send to the Commissioners, so there's more teeth in the denial. Joyce said that the Board can't really word it—the staff know how to make the informal comments more formal, that these are the criteria that it's not meeting.

Ken wondered if this didn't go in the face of the idea of the finding of fact. The facts shouldn't change bases on our emotion about things. Sue suggested you could say you disagree with the findings of fact, and that you think there is an impact. In the case of Cimarron, we didn't know that they were going to remove 15 acres from the Project until the night of the meeting. The findings were based on those kept in the Project. There's a big difference if you remove that land that's surrounded by an irrigated land. Those were never incorporated into the recommendation. Ken explained that he was interpreting the conversation as 'give us a set of finding of facts such that this is going to go through, and give us a set of finding of facts such that this is going to be denied'. Sue and John pointed out that's been done. Sue said on this one, it could have gone either way. Bob said that with the Rosenbaum subdivision, the staff came out pretty strongly about the effect on agriculture, but then in the finding of fact, it said it wouldn't have that much effect on that. Alex pointed out the "if" in there. He is going to aim to embellish more on the growth policy. He gave an example from Rosenbaum. Ken thought a finding of

fact should be like that. There's always going to be some sort of impact. Alex thought that #3 on pg. 49 was a particularly powerful example, which talks about an effort to retain farmland and a rural way of life. Jack asked what can be done. Stop subdivision? Alex didn't know. It's definitely written there. John thought Jack had put his finger on it when he said everyone around there is a rancher or a farmer. John thought that was clear. Jack asked how many are actually making a living off of being a farmer. What are you going to do if you have to get out? Joyce mentioned to Alex she noticed a difference in the writing of the reports for tonight.

Lisa went to many of the scattered density map meetings and stood up to sell the density map to the public. Those people were upset, because we were telling them what they can do with their land, as private landowners. Sometimes there were positive comments, but generally not. As a Planning Board, we adopted the map. Yes, it has problems. It bothers her that as a Board, we appear to the public that we don't stand behind that map. We need to stand behind that map. The Board is advisory; we are not experts. It's the staff job to figure the density, and it's not the Board's job to refigure it. It feels like the Board has wavered from that map, and this bothers her. It appears that we don't even believe in the map, and she feels that is a mistake.

Joyce asked where the map falls in terms of priorities. Lisa wasn't sure. Joyce thought the growth policy was the number one priority, per the Commissioners. Someone mentioned that the growth policy and density work together. John outlined that there is agriculture, wildlife concerns, public health and safety, density and about two others. John agreed with Lisa: they did sell it, and he sold it to himself. We have to honor that commitment. He also knows that most people you get at a meeting are the ones that are against it. You don't get all the ones who are supportive. We have all kinds of public surveys from the County saying that the people want this. Bob thought that Lisa was saying if we read a report in the paper of what the Board did with the Brooks/Songer subdivision, he'd be embarrassed. We voted against it, then decided we couldn't just vote against it, so let's figure out how we can vote for it. Lisa said that the developer for that one complied with the rules that we told him he had to comply with. She thought it was irresponsible to take a lot away. People are already mad that they have to comply with the rules, and then we throw in another rule.

Ken agreed with her where the density map is clear cut. He thought there are grey areas where we still have to continue to explore to make black and white as we revise the regulations, like with the bonus tonight. He thought there was a clear difference of opinion on that conservation bonus. Lisa felt that was cut and dried. John said they based denial on the impact on agriculture and the impact on wildlife, not on the fact that they didn't go by the density map. He didn't think there is a conflict there. Lisa felt there was a conflict. John couldn't vote for something just because it's okay with the density map. There are other elements that it has to meet too. Lisa felt that there were issues that came up. He was setting aside the larger lot to receive his bonus. He just didn't use all 6, he used 5. John noted that he was referring to another portion of the meeting. Lisa felt that there could be a home on that parcel, and that it was black and white. Ken didn't disagree with her on that—his only point was that the applicant was only asking for a conservation bonus of one extra lot, and to him there was a grey area with the possibility to come back for an additional bonus later on. Lisa said he can split that big lot once.

Sue remarked that what you'll run into if that's the case, we're going to say whether you get a 60% bonus or a 90% bonus, you still can't develop anymore, then everyone is going to go for the 60% bonus. It's going to undermine the spirit that we want to maintain larger parcels, agriculture and open space. Lisa said that once it's clustered, he can't cluster that big piece again, that he set aside to get this cluster. John asked if this was where tract of record comes in. Sue said no, it's part of the subdivision. John commented you can't reduce everything to numbers. There will be exceptions. He agrees with Lisa that we put the density map in, and we need to be careful. Lisa thought the Board looked bad. We appear not to know the rules, and disagree with each other. At some point she felt the Board needs to look to Sue to tell the Board the density. The Board is not expert at figuring that. Sue said staff could have been silent on this point, but staff were worried about what happens when someone wants to come back and subdivide. How is it determined who gets the right of further subdivide their lot? Bob said they have to look forward to what Alex showed on a recent Power Point presentation, where the density line goes through, with 20-acre and 40-acre on the same parcel. There were something like 700 pieces.

Alex asked about situations where development rights are transferred or conservation bonuses. Would the Board find it helpful to see the map? He described an example of a possible attachment. Board members replied yes. Bob added that the graphic tonight with the wells was great, and others agreed.

Joyce thought the largest currency in MT is land and private ownership rights. It's difficult to sit here and look at this stuff and recommend. People have a basic right to do what they want, subject to reasonable regulation. Lisa remembered the anger in some people's voices at the density map meetings. Sue mentioned that for years, we went on a case-by-case basis, based on surrounding parcel sizes for instance. There was no legal foundation for it. People were pushing the envelope and bringing lawyers. Putting it in a regulation was the best thing we could do. We can't go to every single parcel and say 'this is the perfect density', so we did it on a general countywide basis. Lisa and John thought it was better than a lot of things.

Sue mentioned that next month we might have a meeting with the Irrigation Project people before the Planning Board meeting, if things work out, about what is required in irrigation plans and what we need from them, taking land out of the Project, and tax things. We may come an hour early for this. We'll let the Board know.

**Motion by Jack Meuli, and seconded by Bob Kormann, to adjourn. Passed by general acclaim.**

Meeting adjourned approximately 10:55 pm.