

LAKE COUNTY PLANNING BOARD
November 8, 2006
Meeting Minutes

MEMBERS PRESENT: Bob Kormann, Jack Meuli, Joyce Funda, John Fleming, Steve Hughes, Ken Miller, Lisa Dumontier

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

John Fleming called the meeting to order at 7:02 pm. He and the veteran Board members welcomed Joyce Funda of Rollins to the Planning Board.

Motion by Steve Hughes and seconded by Jack Meuli to approve the October meeting minutes. Vote 6 in favor (Bob Kormann, Jack Meuli, John Fleming, Steve Hughes, Ken Miller, Lisa Dumontier) and one abstention (Joyce Funda).

CIMMARON MAJOR SUBDIVISION

John remarked that the Board will make a recommendation to the Board of County Commissioners, who are scheduled to review this on Dec 7.

Joel Nelson presented the staff report. He noted with the irrigation section, that the developers now propose to remove lots 1 through 14 from the Flathead Irrigation Project, at the recommendation of FIP. The pertinent letter was provided to the Board. Consequently, much of the Irrigation section in the staff report is no longer applicable. Consequent revision to condition #13 would include putting a statement on the final plat that says the process of removing the tracts is underway and they will not be irrigated in the future.

On page 13 regarding agriculture, Joyce Funda pointed out that in spite of efforts to mitigate impact on agriculture there is still the conclusion that this would have a significant adverse effect on agricultural resources of the County, and the project itself is being proposed in an agricultural area. Joel detailed that 2 sides are in 20-acre density and very agricultural area, and two sides are in 5-density and becoming more developed. Joyce asked for more discussion on how to reconcile the staff conclusion that there's still going to be significant adverse effect. Joel said that they're not sure what more could be done to mitigate those impacts.

Regarding the recommendation on pg. 3 to widen Forman Road to 26-foot County standards prior to plat approval, Bob Kormann asked how long that would take, what's involved and who's responsible. Sue responded that as the staff report is written, it would be the developer. Because of the subdivision setup between this property and Back Road, the majority of lot owners have waived the right to protest, if you include the 15 lots of this subdivision. The developer could initiate an RID to accomplish that. She didn't know how long the process would take. She said the County would sub this out, in response to Jack Meuli's query. Steve Hughes asked if this requires widening, but by the property owners within Forman Road in the NW corner by RID rather than by the subdivider. Sue explained that language specifying how the road would be widened was not included here, since in the past, when language has been put in to initiate an RID or similar action and it didn't work and nothing happened. Staff feel it needs to happen at

this time, based on the number of lots, and the developer can figure out how it's going to happen. Steve asked for some explanation of an RID. Sue explained that in order to initiate an RID, 60% of the affected property owners have to submit a petition to the County Commissioners, who pass a resolution of intention to create the RID. There are 4 different ways that it can occur. It could be by lot, by amount of frontage, or by amount of acreage in proportion to the other lots. After the resolution of intention is created, everybody is notified and the Commissioners have a protest period. In order to stop the RID, the owners representing more than 50% of the costs associated with the proposed district must protest. asked if the decision on how to apportion the costs is made when the RID is set up. Sue thought it was at the Commissioners' discretion, based on what seems fair. Jack checked about his understanding of the assessment methods, so Sue read information to the Board about the 4 methods. Steve said this leaves a wide open door for an RID. Given 15 lots requested for this subdivision, he asked how many more lots can be put on that piece of ground. Joel thought it was possibly 5 lots, depending on what's proposed. Steve asked how many lots could be placed on the large lot, which the developer has indicated he wants to sell. Joel mentioned that they'd have to transfer development rights or set aside land for a conservation lot bonus. John noted that there are 54 acres. Joel said that they could transfer development rights from another property. Sue added they could set aside 60% or 90% of the land and get a bonus. Jack asked if as the piece stands right now, aren't the developer rights gone, since he has 5 acres on the whole thing. Sue affirmed, since these lots are less than 3 acres in size. They're saying with the larger piece, they could use a conservation development bonus to subdivide the larger piece. Right now they're meeting the 5-acre density requirement on the total acreage. Lisa noted they have the bonus left to use.

Steve checked that going back to Hebron Estates, they put bonded for weeds, irrigation project and bus turnaround. Now this developer is here with 14 more lots. There's still no turnout, and the final plat that was agreed upon for Hebron hasn't been done yet. Sue explained that they were required to put an easement for the bus stop, but not to develop it. Staff tried to address this in the conditions of approval. Mr. Clark will work with either Mr. Hebron or the Board of County Commissioners to satisfy these. Steve checked about the installation of the irrigation pipeline pumps that were supposed to be put in initially by Hebron with Marc. John referred to condition #6. Steve voiced concern that we tried to get this done with Hebron and it didn't happen. What's to say that Hebron is going to agree to this now? Granted, it's bonded, but the bond isn't going to cover the cost on this. Marc Carstens pointed out that they can't be installed until after the irrigation season.

Marc spoke on behalf of the applicant. He was concerned about the pg. 13 statement regarding adverse impact on agricultural resources of Lake County. He referred to earlier comments of section I on pg. 13. He showed where the 14 lots are located with respect to the irrigation delivery ditch. There's some secondary irrigation delivery down in the large lot. The only lot to have irrigation will be lot 15. The irrigation facilities are related to this lot. There will be one party to involve irrigation rather than 2, as was the case with Hebron and this area, or the original plan from this subdivision to include 14 smaller units. He questioned the statement that the subdivision will disrupt irrigation flows.

Regarding road dust, Forman Road is chip-sealed. The subdivision road will be chip-sealed rather than gravel per the conditions if approved.

The historic agrarian areas are to the west and south, country road to the north and Hebron Estates 1 and 2 adjoin it. The conditions state the 14 lots shall be fenced, and also the perimeter. The historic agrarian use is on the opposite site of the large lot of more than 50 acres. In conversations with Lake County Weed personnel, they told him the lower flatland had indeed been sprayed. They had trouble with the steep hillside of lot 1 of Hebron Estates, which has a nasty infestation of knapweed. These are lots 3 and 4.

He read portions from the Lake County Density regulations, including portions on purpose, intent, rationale and methodology. Although it is near historical agrarian use, they have met the density and the developer has taken it upon himself to further buffer the division against the historical agrarian uses.

At the school district transportation meeting, the Polson people said they didn't want to go inside the subdivision. The operators said they liked to stop in the middle of the road so traffic doesn't attempt to go by them. The applicants still intend to put in the roundabout. The mail people do want to get off the road. It would be also possible for parents to drop off or pick up kids for the bus stop without going into the public roadway.

On condition #24, it specifies road improvements. It doesn't mention an SID for improving the road prior to subdivision approval. He felt the condition was aimed directly at the developer. His crew has measured places along Hwy 35 that were under 23' wide, asphalt edge to asphalt edge. He read Lake County Subdivision regulations, section IVA.12, Payment for Extension of Capital Facilities, section 1. He thought the important point was that the developer is responsible for the improvements of capital facilities, and the costs must reasonably reflect the expected impacts directly attributable to the subdivision. He also read section 2a through 2c, which suggests to him that a developer has an obligation to meet impacts that his subdivision is going to have on the facilities. This is a 13-unit subdivision. The neighboring subdivision has around 22 lots. They could waive protest to an SID. The way condition #24 is written, he felt it sounds like the governing body saddles this developer directly with the cost of improving this road. If he does an SID and it fails, it sounds like he has to do it. John pointed out that he also has the option to not do the development. Marc said that MCA 76.35.10, which may be the parent of the Lake County Subdivision regulations, says pretty much the same thing. Marc read points from the response from the Lake County Road Supervisor, who suggests that the developer waive his right to protest. The developer would be glad to both waive his right to protest an SID and also to initiate that RSID. County staff has informally mentioned that they feel there is an adequate lot count for this to happen. Waiving right to protest is very common in subdivisions. Otherwise, if an SID is proposed and fails, developer has to build 2 miles of road.

Joyce verified with Marc that it is 2 miles. Marc further verified that road standards call for a 26'-wide chip-sealed surface, and is currently 20'. A bid structure has not been run on this, but they've done so on similar road types. It would depend on the base material. If they have to excavate and bring in base material, it could run in the neighborhood of \$45 to \$50 per foot. The problem with estimates is you can't get oil prices for a month in advance, due to rapid fluctuation. Ken Miller pointed out that he'd either pass the cost on to the cost of the lots, or else he wouldn't do the subdivision. Sue said that the Road Supervisor estimated the cost to be around \$228,000 for the 2 miles. John checked that the way #23 and #24 are written, before this subdivision is granted, this has to be done. Marc said the #23 required the owners to waive their rights to protest, and #24 required that irregardless, the road will be built to County standards.

Jack pointed out that #23 has been in the others. Marc added that twice in the last year, they've had conditions requiring the developer to initiate the SID.

Steve referred back to the school bus situation. Sue explained that this is on a district-by-district basis, since districts pull their own insurance. Also, whenever the school bus goes off the county-maintained roads onto private roadways, they don't get the same funding per mileage. Marc provided that the roundabout distance is 110'. Sue reiterated that it's up to the school district, and we have a letter from the school district saying that they're okay with it. Nothing has been received since the meeting. We have to go with what's submitted. They'll develop it. We can't make the school district use it. They have their protocol. Steve asked Jack Duffey about Ingram Lane, the approach going into Forman Estates, which is at the crest of a hill. Steve explained that if you're coming from the opposite direction, you can't see the bus until you've crested the hill. In recent snow, the school bus routes were not plowed. Cars got stuck going up the hill because of the school bus flashing lights. Sue said that there are sign requirements in situations like that, for school bus stop ahead. John also felt he'd rather have the bus off the road. It is the schools who decide.

Bob wanted to clarify the RID. The first Hebron Estates have waived the right to protest. How could the RID not go through for those 2 miles? John paraphrased that Marc is saying that if it's not accepted, then you're out of luck. What Bob is saying is that it won't be unapproved because you have all these lot owners that can't refuse. Is this right? Sue wasn't sure about how this would go with the different types of assessments. In the past, when there's been the language to initiate an RID, it's never occurred. There has to be something else. If they initiate and it doesn't happen, then what—they just waive the right? Initiating and completion are two different things. Marc said that they've initiated two and the cause of failure was nothing that the developer did. With Randy Walton, there was incorrect count, and opposition killed it. The second was Johnson. Sue said that in the case with Johnson, the Commissioners said we should have had some sort of language in there for what he reasonably has to do to address his share of the impact, and address the concern if it doesn't go forward. Marc felt that this wasn't what #24 did and felt concern that it wasn't in keeping with the law. Ken Miller thought the verbiage could be changed. Sue was thinking along the lines of Northridge subdivision at Lake Mary Ronan. The road did not meet county standards and in order to do the lots, the developer had to bring it up to standards. She felt precedents have been set for major subdivisions on rural roads; this is not being arbitrary. View Point on Haack Road provides another example. Steve pointed out another example in Round Butte. Marc thought a problem with Northridge being applicable is that it's the only subdivision up there. This road serves not only this subdivision, but Forman Estates and some smaller divisions. Sue noted that was the end result with Northridge. In the beginning of the Northridge review, they talked about going around the north end of the lake, and improving that road. Kootenai Lodge subdivision is in the middle of Swan Sites, so she doesn't agree with Marc.

Public comment opened:

Jack Duffey: It's his first look at this division. To him, it seems inevitable that you're going to run into problems with the adjacent agricultural land, molding 5-acre density to 20. That's a flaw of the map. Marc's done a good job with his [inaudible], getting the smaller lots somewhat

clustered and away from the ag. He didn't know if this has been the first one since the density map to specifically point out the problems with adjacent agriculture. You're going to see it more and more often, just the way the map is set up.

Sue: The density regulations do say that the maximum density allowed is not a right, but could be approved in subdivision review and other review processes. It explicitly addresses subdivision review, and the primary review criteria are not waived.

Public comment closed.

Bob commented that it appears there's an unresolved safety question. Part is the road that's 20'. Part is the school buses; he doesn't know what the answer is there. There probably is an effect on agriculture, but the safety is big. He doesn't think the developers should have to pay for 2 miles of road. Steve felt that for the agricultural landowners adjacent to and across from the road, they would have to pay for an improved road for something they have no benefit from. If the SID is approved because the majority of the lot owners can't protest, then what for the agricultural owners? He wanted a better understanding of how the Commissioners would look at an SID or RID. He'd feel a lot more comfortable protecting the neighbors who would have to pay for this if it is approved by the majority of owners who can't protest. Jack said he was against #24, but he thought we should be able to tell the people how they're going to pay for this. Some might own a mile of land along that road and never use the road. Are they paying for that mile or for 1 lot? Sue thought it was determined on a case-by-case basis. John asked if the Board could guide the Commissioners to the one wanted, which would be 1 lot. Jack thought if on a case-by-case basis, it would favor the majority. Jack wanted to go with #23 not #24, but he'd like to know how this is laid out when you have to pay for it. Further discussion on the payment options ensued. Bob thought if it was left the way it is, someone might get killed.

Motion by Jack Meuli to recommend approval with the staff recommendations without #24, and with #13 amended as needed to address the removal of water rights from the land within the subdivision and to note accordingly on the preliminary plat, as discussed earlier.

John was concerned with the lack of a trigger for initiation of the road improvement. He would like us to have some sort of trigger, and this project is probably it. An accumulation has been hit. The road needs to be improved for these subdivisions. He thought that's what staff were trying to do. It's not fair for the developer to do it all, but it still needs to be started. To throw #24 out completely throws out the trigger. Jack thought if the people on the road want it, they'll start it. John thought that the Board responsibility as a County government is to ensure the safety of the citizens. We're supposed to be looking at this as a government point of view, and that is 'we're going to do something to increase the safety of our county'. Ken agreed.

Lisa Dumontier commented that the effect on agriculture really bothers her. The other problems are cropping up since the developer is trying to put 15 lots out in a rural area. The other issues are related to that. She can't support it the way it is.

Sue said that Fred Mueller called her with two comments. He thought it was too many septic in too small an area. He felt Forman Road should meet County standards.

Ken agreed there were issues with this conflict of agriculture. He thought the way they set up the lots minimizes those as best we can in this 5-acre density. This might be coming back to a density map issue. Putting this in a 5-acre density possibly gives false hope that we should be looking at 5-acre density out there when the rest of us are seeing this should be more of a rural agricultural area. He understands her concerns. Based on the current density regulations, they've done the best they can to minimize those impacts. Joyce pointed out that Ken has used the word 'minimized' and staff has used the word 'significant impact'. How much weight do you give the agricultural component when staff says even if they do everything they can think of, there's still a significant adverse effect? Maybe it can't be mitigated. Maybe this isn't land that should be developed. She doesn't know. Is it 'either/or'? Alex Hogle thought that the concern is the domino effect. You start having this as your example. Some fellow who's had his parcel out there for generations looks at this. Is he now more motivated to do the same on his, across the street? That's the threat to agriculture.

John and Sue referred to comments along these lines on pg. 13 of the staff report. Bob asked about one of the road improvement district items. Is it like zoning, where if you have a large tract you have more votes than an individual tract? She said that it depends on how the assessment is done. That's one of the possibilities.

Ken Miller seconded the motion on the table. Motion failed, with 2 in favor (Jack Meuli, Ken Miller) and 5 opposed (Steve Hughes, Lisa Dumontier, John Fleming, Joyce Funda, Bob Kormann)

John summarized that the motion has been opposed, so the Board has not accepted the staff's recommendations. He asked if there were other motions. Given none, the Board moved on.

BROWN'S ESTATE II MAJOR SUBDIVISION

Alex Hogle presented the staff report. He highlighted that there has been a significant change in design since the informational meeting. Based on input from the Planning Board, the developer and agent have reconfigured the subdivision in such a way that all the lots will access from the existing internal Williams Way. On pg. 13 of the staff report, he corrected condition #6 by removing mention of phase I, since this project does not involve phases.

Lisa verified with Alex that the road width in condition #15 is 24', since it accesses 4 lots. Alex added that dimension issues have been encountered with T-turns. It's been determined that the T-turn should have a minimum length of 35' from the edge of the improved road surface, such that each way on the T is 35'.

John asked if the sewer system in Arlee is operating. He understood it was not to this point. There was no further subdivision being allowed in the Arlee area prior to that happening, he thought. Perhaps this was just in the City. Alex noted that the sewer is close. It currently extends to Rice Lane, which is the next street developed to the west. He spoke to Gary Wining. John asked if they'd have the capacity now to deal with this, if they were there. Alex believed that they would. It sounded like it's continuing to develop. Joyce corrected a misprint in the first paragraph of pg. 13.

Bob asked if staff thought the variance for Williams Way was a problem. Alex thought that it probably was adequate at this time. When more developments develop in the community growth area, an area with some potential for high-density development, it may not continue to be adequate. It's certainly a nice road. It is 4' wider than other roads discussed this evening.

Marc had no comments on behalf of the applicant, and offered to answer questions.

Public comment opened:

Mary Kelly: She lives on Melita Island Lane. Why are these agricultural lots, when they're 1 acre?

Alex: They are still irrigated. As it stands now, that's how they're classified. It's a good observation. Technically speaking, 2 of the lots are over two acres in size. Somebody could continue to grow hay on it for a long time.

Mary: So the criteria for agricultural lots is that they can be irrigated?

Alex: It's definitely an element. Also, on the assessor system, they designate lots in a coding type of way. They're currently referred to as agricultural.

Public comment closed.

Lisa thought the proposal was much better than before. She asked what was happening with the mainline that was never done. Marc explained that he's had conversation with the developer and told him that no matter what happens, the developer is going to be held responsible to make sure that the mainline is in for this subdivision. Unfortunately that may include portions that should have been intact previously. The developer indicated that he and other landowners were already addressing the missing mainline through other legal channels. Independent of that particular activity, this developer will be held responsible to see to it that adequate irrigation infrastructure is in place. This is the current developer, not the past one. Marc further clarified that this will be just for these lots. The developer will be responsible for seeing to it that there is adequate mainline to ensure irrigation of the lots within his development. Per Lisa's query, the owners of the other lots have already initiated legal action.

Ken still had an issue with the community growth area designation, that we're allowing up to 6 lots on this piece of ground. The reason the Arlee sewer district was formed was because of high-density development in and around Arlee that was contaminating the ground water with individual septic. The fact that we're going to continue on by allowing more high-density development without being hooked up to the public sewer system flies in the face of why that system was put in place and goes against the spirit of the community growth area. He will not vote for it for this reason.

Motion by Steve Hughes, and seconded by Jack Meuli, to recommend approval of this subdivision with staff recommendations. Motion carried, 6 in favor (Bob Kormann, Joyce

Funda, John Fleming, Jack Meuli, Lisa Dumontier, Steve Hughes) and 1 opposed (Ken Miller).

STONE RIDGE PLANNED UNIT DEVELOPMENT

Marc Carstens requested for the Board to make a decision on this at a time other than tonight. He requested that this be reviewed in its entirety this evening, like an informational meeting, and come back next month, which would allow time to iron out some points of confusion. John asked about time restraints that might pertain to this. Steve asked if this could simply be reviewed at the next meeting. Marc requested again to treat it as an informational meeting tonight. There are quite a few things that need to be looked at. He thought this was the second PUD that Lake County has looked at in recent history. He felt it needed care. Sue suggested checking the audience to see who was here to hear other items. John did so, and after checking with audience and Board, the decision to move Leighton Tracts ahead in the agenda was made, and return to Stone Ridge PUD after Leighton Tracts.

LEIGHTON TRACTS MINOR SUBDIVISION

John summarized that this item has a public hearing and a recommendation will be made to the County Commissioners, who will act on this on Dec. 7.

Joel Nelson presented the staff report.

Lisa inquired if normally gates or cattle guards are requested. Joel said that there have been some subdivisions where these have been requested. Jack noted that it saves problems.

Dale Oakland, the applicant, spoke on behalf of the proposal. They want to get some nice 20-acre parcels for people with horses to be able to fence them and keep them clean. He didn't realize what he was getting into when he purchased this. He didn't know the fence was somewhere other than the property line. They are trying to clean up the loose ends. The irrigation doesn't appear to be a problem at all now. He spoke to Chuck Courville several times. They're not changing things there. The delivery point is still the same. The neighbor to the north has a pump house there that's been there for years. Irrigation was the real question on the property, and it doesn't appear to be a problem with Chuck, who is the joint board or irrigation [inaudible]. He offered to answer questions.

Jack Duffey spoke as the applicant's agent. He thought the irrigation wasn't quite clear. Joel expressed to him that the delivery point wasn't on the property and he needed to secure access to it. When Jack spoke to John Plouffe, the water master for that area, he said the water doesn't come from there, which is 1/2 mile west of the property; the water comes from Miller Coulee. It's a natural watercourse. If they need additional water they put it into Miller Coulee south of Pablo. Miller Coulee isn't under the project as a ditch or canal, but yet it's been used for many years. The pump has been in place and they're aware of the facilities there. He didn't think it was possible to obtain an easement over Miller Coulee. He didn't think anyone could detour, pond or divert that natural waterway, according to project personnel. Regarding the approaches to the County roads being installed, is that a standard? He knew that often it's said that the purchasers of tracts have to get the approach permit and install the approach to the County road. This one is before final platting. Is that typical? Joel explained that this is unique to this

property in that the entire perimeter of the subdivision is to be fenced, and there are some really unsafe locations of existing farm approaches on the property. Jack asked if the purchaser is required to get the approach, isn't that going to be addressed at the same time. Joel asked who would do the cattle guard and the fencing in that situation. Jack thought the purchaser would do that. He hadn't seen this required to be installed before final platting before. If it's legitimate for site purposes, they're willing. John thought that this had put in before. Board members contributed examples.

Joel said that Chuck Courville was in today having trouble with a 1994 subdivision, where there was a mainline. They created 4 or 5-acre lots and have been assessed irrigation ever since. Now they want water, but they can't get easements across the neighbor's property. This is a similar situation where there's not project infrastructure on the property. They're relying on Miller Coulee or natural drainage or the farm ditch. That property owner could divert the water or cut off the delivery point. Jack replied that there are multiple users on the newer coulee. It's not the only tract of land drawing water. Joel responded that it's the only one subdividing. Dale added that the other thing that's different is that Chuck is not building a new ditch. The irrigation point and the pump stay the same. The change is they're putting a new irrigation mainline on their property instead of Mike's property. In the past it was 30' to the west. They are trying to clean this up and get rid of easements or lack of easements. The irrigation point is not changing. Chuck is not having to build a ditch or create a delivery point. As far as the lots are concerned and the irrigation is concerned, it's staying the exact same. The only thing that's different is the property owners are now in this irrigation agreement.

Sue explained that they are adding 3 additional users, and that is the change. Part of the subdivision rules is that you have to provide access to the delivery. That's why easements are requested, to the delivery point. Jack said there was no specified delivery point. Joel said there has to be an easement from the pump, the project infrastructure, to the property and that doesn't exist at this time. Jack said that Miller Coulee is a natural waterway, so how to get an easement to this? Joel explained that owners in Leighton Tracts wouldn't be able to go across the neighbors property to maintain that coulee, to make sure they get water. Dale thought the way the verbiage is written is tract 4, the farthest north tract with the pump on it, is actually the water master. That person is going to be the one in charge of closing the switch and whatever. The delivery point stays the same. The discharge is set up for a 10-inch discharge. They only need 4 inches of water so they're well overbuilt on the water. He understands what Joel is saying, but the only way to do that would be to get access. The irrigation project has no problem with it. Joel said that Chuck told him today what if the property owner to the west decided to cut off the water through the coulee. Dale thought he was referring to 37A, which is 1/2 mile or 2 miles to the west. The water doesn't come from there. Dale didn't think Chuck realizes there are 2 different questions. Dale showed a map. Steve asked Mike Marmon the neighbor a question. Two discussions ensued.

Public comment opened:

Marc Carstens: He thought if you got your water through a draw, openly, continuously and notoriously over a period of 7 years, and the neighbor chose to shut it off, he'd visit with a judge about prescriptive easements.

John: It has to be adverse, though.

Jack: If the Project is taking money from him for delivering the water it should be the same as if it comes in a ditch. It should be the Project's.

Marc: The fact that it's crossing property openly and continuously, he thought if you wanted to prove it's not notorious you'd have to provide evidence that they had permission. Permission is licensed and revocable. He thought if you did that long enough you could develop a prescriptive right.

Steve: He knows there're a number of places on the Project that they dump water into a natural coulee and it's picked up by a pump. It's not necessarily the delivery point on that particular 40 or 80. It's done for costs and natural [inaudible]. He thought if you have easement specifying the 40 or 80 and approximately where the pipe, the mainline is going to be, with the pipe and pump site stated by description and agreement with other water users that take water out of the same coulee. You'd be covered, but he'd get a legal opinion from someone. It's not a river or creek.

?: It is a year-round stream, without irrigation.

Steve: Then he'd be concerned about water rights.

Jack: He would be more, if it's year-round.

Steve: It's one thing for the Project to dump water in an actual drainage or coulee that's not a creek and pump out, and not have an actual turn-off on your property, versus if this is truly a perennial creek. If he were going to buy one of these 20's, he'd be concerned about his irrigation water.

Mike Marmon: It's been in place for probably 20 years.

Steve: But still, if he was Dale, he'd get an opinion from somebody and get it legally drawn up.

Dale: Like he said when he talked to Chuck, they're not changing the delivery point.

Steve: Chuck's not the one that's going to say this is a natural river or this is a creek or we're shutting you off, you don't have a water right on this.

Dale: So he's asking what do we need to make it legal. Chuck wrote them a letter that states that they have water. What else do they need?

John: What are we asking?

Sue: We need an easement from where ever it's being delivered, from the project infrastructure to this property. It needs to be an easement or they could put the statement that the land could be

classified as irrigated, and continue to be assessed for irrigation water delivery, even though the water may not be deliverable to the tracts. It's kind of a disclaimer that the County is not putting our stamp on this that they're going to be getting water through that coulee forever, because there's no easement.

Mike Marmon: If you set a precedent like this, that means that anybody who's getting water out of the drainage could be shut off.

John: We wouldn't be shutting them off. Somebody else would.

Ken: We're just saying that if someone else shuts them off, they're not going to come back to us.

John: We're trying to protect the future landowners of those 20's.

Sue: They'll have to go after whoever shuts them off.

John: We're trying to make sure that we don't create problems in the long run. It sounds like you can't get an easement or you don't want to get an easement?

Jack: The Project commented that the Tribe has jurisdiction over the natural waterways. It wouldn't be some Joe Blow making a pond or a dam.

John: Would this disclaimer work?

Sue: People have [inaudible]. Jack do you know if you could dam Miller Coulee and create a pond?

Jack: He assumes that's wastewater coming down there.

Steve: There's a difference between wastewater and a natural creek. A natural creek runs year-round. If it's wastewater created by neighbors, then you could pick it up and irrigate with it. It's Project water.

Jack: If it's creek water, it would depend on the water rights they have. It would depend on how far up the creek they are.

Steve: Unless you can get some agreement with the Project that dumping water in will enhance the water flow so you can pump out.

John: That's what's happening.

Dale: Although there are 3 new owners on that piece of ground, there's the same amount of land, so they're still pumping the same amount of water if they were to use the maximum the entire time. It's just being used by 4 different families, in this case. It doesn't add load.

Public comment closed:

Lisa stated that on the fence, these are going to be 20's. It makes more sense to her for the buyer to get the approach permit, because they're going to want to put the approach where it makes sense with their home. John suggested saying 'obtain an approved approach permit' and scratch 'develop the approach'. Lisa also thought with the fence that the owner might want different types of fence. When someone gets a lawn, it should be up to them to keep the cows off it, not up to the developer, in her opinion. Joel explained that this was to make sure the approaches are installed in a safe location. The buyer is going to do it wherever they want, and they're going to use the existing farm approaches. Lisa thought the buyer would have to get the approach. Joel said 'theoretically'. John saw the problem. This is the time you can tell them where. Sue explained they're trying to put it in the approval.

Steve thought the purchaser could be required to get an approach permit rather than the developer, and it could be put on the final plat. Sue noted that the title companies have asked that extraneous information not be put on the final plat, so typically the approval statement will be filed. We're trying to take this one a step further because of the fencing situation. Lisa asked if it was unfenced. Dale replied there are currently 80 head of cattle there. It was not being used as graze ground when they actually looked at it. The leaser fenced the whole thing as part of his lease. Jack said if it's currently fenced, there's no problem. Sue pointed out that the fence could be damaged between now and 4 years and final platting. Ken said it may be fenced, but is it to legal standards. Lisa pointed out that obviously the owners will have to build cross fences when these are sold as 20's. If it's already fenced and fenced to legal standards now, she felt it was overkill to have them put in the approaches, cattle guards, gates and so forth at this point.

John broke down condition #11 into 2 parts. One part ensures that the perimeter is fenced to standards. The second part says either a gate or a cattle guard. Lisa clarified that she is concerned with the second part. Isn't that up to the County Road Supervisor? Sue explained when they file their plat, these conditions are checked upon. Lisa thought that if the buyer was required to place the approach, shouldn't the County Road Supervisor be on top of that and make sure they don't put it wherever they want? Jack thought that the biggest problem is where the approach is put, and Lisa agreed. Can't the Board do something that the County Supervisor says where these approaches go, or they deal with the Road Supervisor, and not only have to have a permit, but have to have a cattle guard or gate. John asked if wording for that could be worked out, i.e. that the gate or cattle guard doesn't have to be installed prior to plat approval, or the approach. Bob added as long as it gets inspected because there are sight problems on lots 2 and 3. Sue said this could be stated—due to sight problems on these lots, prior to development the property owner will obtain an approach permit and install a cattle guard or gate.

John confirmed that this will be in a new condition #9. Joyce asked for a clarification that the developer will obtain the permits but not develop the approach. Other Board members clarified that the developer is out of it, now. This will be the property owner.

**Motion by Steve Hughes, and seconded by Lisa Dumontier, to recommend approval of the proposal, based on staff recommendations, with the discussed changes to condition #9.
Vote carried, all in favor.**

STONE RIDGE PLANNED UNIT DEVELOPMENT

John checked as to time and what would be beneficial to discuss tonight.

Sue asked Marc what his concerns are that he feels the Board needs to be party to, at this point.

He still has some confusions where his office and the Planning office have come to a conclusion of what's happening in the [inaudible] area. Sue inquired if this could be worked out and brought to the Board next month as a complete project. Marc wanted to be able to report to his client. He understood. He said they'd like to review this next month. He'd like the latitude to work with staff a little bit more on this. There are areas of confusion. Sue noted that Board could continue it, for legal notice purposes.

Motion by Steve Hughes, and seconded by Ken Miller, to formally continue this item at the next meeting. Motion carried, all in favor.

OTHER BUSINESS

None.

Motion by Ken Miller, and seconded by Bob Kormann, to adjourn. Motion carried, all in favor.