

LAKE COUNTY PLANNING BOARD
December 12, 2007
Meeting Minutes

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

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

John Fleming called the meeting to order at 7:00 pm.

Motion by Fred Mueller and seconded by Jack Meuli to approve the Nov 14, 2007 meeting minutes. Motion carried, all in favor.

JOHNSON ADDITION TO RONAN PHASE II MAJOR SUBDIVISION

Sue Shannon summarized the staff report, and handed out updates. Both governing bodies (the Board of County Commissioners and the City of Ronan) must take final action on the proposal by January 15, 2008. She presented the updated findings and conditions, and detailed which conditions go with the City portion and which go with the County portion. The first portion of the findings should be amended by adding “as they apply to the conditions of approval” to the end of the opening paragraph. There is a variance request for this lot, having to do with an existing easement across the property for a driveway to access the property to the east. The variance request is from the through-lot requirements of the Lake County subdivision regulations, which do not allow lots to be dissected by a road or utility easement.

In the staff recommendation, the first variance needs a recommendation from the Board tonight. The conditions that apply to both the County and City are conditions 1, 2, 3, 8, 10, 12 and 17. The conditions that apply to the County are 11. Sue included additional conditions 22 for the County and City, and 23 for the County. For #22, both City and County lots pay the \$100 per lot fee to the fire department upon final plat approval. For #23, a revised irrigation plan shall be created for the amended tract A, and filed with the plat.

Bob asked if they would be required to hook up to sewer when the septic system on the 17-acre lot fails. Sue explained that this was part of the sanitation requirements. Current state statute says that if the property is within 500’ of water or sewer, it has to hook up unless the City says they can’t serve them. The Environmental Health Dept would review that at the time the system fails.

Joyce asked if there were road issues with respect to the County lot. Sue replied there were not. Sue said they are providing easements for future extension of the City streets to eventually hook up to Terrace Lake Road, in response to Fred’s question on other subdivisions and access.

Marc Carstens spoke on behalf of the applicant. On #22, was it either \$100 per lot or fire hydrants, as per Ronan Fire Dept? Sue agreed that this had been discussed. The Fire Dept has not yet commented on this subdivision. Fire hydrants were required for phase I, so it’s likely they would require fire hydrants, and typically the \$100 per lot charge would be waived. John

asked if the condition #22 could be worded with 'either-or'. Marc thanked the Planning staff for their work to dovetail two governing bodies in one document.

John asked if amended lot A was accessed from 7th Avenue. Marc showed features and locations on the map.

Joyce asked if the restrictive covenants had been changed in the revisions handed out today. Sue replied no. Joyce asked if the agriculture use on the 17-acre tract had been resolved in the CC&R's. Marc thought they'd reserved the right for agriculture on the existing tract. Both John and Joyce mentioned the concerns they had pertained to the City portions, which aren't issues for this Board.

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

Bob asked about #5 on the CC&R's, regarding fencing, which he read. Often the standard MT fence wording is put in. Marc said that these were 2 different things. The covenants are referring to the individual lots around the parcels within the City subdivision. The County still has the statutory fencing between the 2 lots of the subdivisions, so these are 2 different items. Jack asked if there would be an established fence between what's left of the farmland and what's being developed. Mark affirmed. Sue pointed out #20.

Motion by Jack Meuli, and seconded by Fred Mueller, to approve variance #1. Motion carried, all in favor.

John summarized the two added condition: #22, for \$100 per lot or hydrants, and condition #23 for a revised irrigation plan for amended lot A.

Motion by Jack Meuli, and seconded by Fred Mueller, to recommend approval of the subdivision with staff recommendations, including #22 and #23. Motion carried, all in favor.

SUBDIVISION REGULATIONS UPDATE DISCUSSION

Sue gave information to the Board regarding the subdivision regulations update. The last time they were updated was in 2000. In the last two years, the legislature has passed bills that have changed the criteria for the review process. The regulations need to be updated to comply with state law. Also, state law says the regulations should compliment the growth policy. A \$15,000 grant has been awarded to the County for updating the subdivision regulations, and Dave DeGrandpre/Land Solutions have been chosen for the contract. Over the next 8 months, we hope to have a document that can be taken through the public review process. Details of the contract and process are still being worked out. The general vision is that in the first couple of months, stakeholders and entities will be contacted, such as local consultants and agencies such as FIP, fire districts and FWP, to ask if they would like to participate and what their recommendations for modification might be, and what issues they feel need to be addressed. Then Planning staff will be bringing individual sections of the regulations with the proposed changes.

MACO (the Montana Association of Counties) had one of their attorneys do a model subdivision ordinance for county. The grant proposal was to take that, and make it our own. We definitely want to look at road design, buffer requirements along waterways and wetland areas, improved standards for subdivisions for rent or lease and improved standards for condominium subdivision. Across the state, no one seems sure how to do a condominium subdivision, as far as what gets filed and so forth, so hopefully we can better define it. Also, better standards for Planned Unit Developments, so a Master Plan with subsequent phases can be approved. Also, the irrigation section that Steve and Fred and others have worked on. We did get pretty good draft of what we'd like the irrigation section to look like. We want to look at the criteria for review for properties in high fire hazard areas and define those better, development of steep slopes, wildlife habitat, weed control, fencing in agricultural areas and commercial subdivisions. There is a problem with urban types of subdivisions, and the regulations don't really address impacts like standards for parking, for townsites such as Pablo or Arlee. Other types of items in the request include looking at the evasion criteria for family transfers, subdivisions and boundary line adjustments.

Two bills have been passed by the legislature. Senate Bill 209 dealt largely with water and sewer and what type of information is required to be submitted. Lake County was already doing much of what was amended into the code. It did change that during the public review Planning Board hearing, comments made regarding water and sewer has to be passed on to DEQ for their portion of the review. This needs to be incorporated into the regulations, as standards. Right now DEQ gets the minutes and the public comment.

SB 116 changed the process so there's now an element review and a sufficiency review. Once an application is submitted, Planning staff has 5 days to review it for all the elements being included. If they are not all there, they are sent a letter saying which elements haven't been included and need to be submitted before the next phase can be done. Once the additional information is submitted, Planning staff have 5 additional days to review it. Once all the elements are present, there is a 15 working-day period where it's determined whether the elements are sufficient for the review process, or in other words, whether adequate information has been given for the staff to make findings. This allows the staff to get better applications to the Planning Board. The staff have been doing this process, going by the stricter of the laws of the State or the County.

The regulations have to establish whether the Commissioners or the Planning Board will hold the public hearing. Typically in Lake County, the Commissioners accept public comment. The official legally noticed public hearing for subdivision needs to be defined in the regulations. Information received by the Commissioners that has not been heard by the Planning Board could compromise the process if decisions are made based on the new information. State statute also says what to do now when new information does come in at a public hearing. The Commissioners have to determine if the public has had adequate time to review that information and incorporate it into their comments on the subdivision. The regulations should say something about this.

Sue outlined some other ideas for changes. There is a provision in state law for single-lot subdivisions that allows them to be done in-house rather than brought to the Planning Board.

Historically the Planning Board has directed staff that they want to see every subdivision. As we see more and more major subdivisions that have a lot of public comment, sometimes it would be nice not to bring every single-lot subdivision as well. John agreed that he's been changing his mind about seeing all of them. Ken suggested that with things like single-lot subdivisions, the Board could have a consent agenda, where they still get a packet and can review it. By consent, those all could be approved with one vote at each meeting. Sue mentioned that there isn't a state requirement for public notice on those. Marc thought that statutorily, there is room for a summary review. Joyce asked if the summary review was by staff. Marc added that this was by staff and then the governing body would still have final say.

Fred asked about a timeframe for response from fire departments and the Tribe. Marc noted that the Tribal Historical Society has taken a renewed interest and makes every effort to respond in a timely manner. The group has come back with good questions.

Sue said she and Dave have talked about creating some sort of form, similar to what she and Joel created for irrigation. The developer fills out the first part. The second part is filled out by the project and is supposed to be submitted with the application. It could be an attachment or appendix to the regulations. The part sent to the entity could be copied to the Planning staff so it's known with what and when entities were contacted. The date comment is needed by could be included on this.

Marc said his business has retained the services of an irrigation design firm. They will need to know, and be able to contact FIP to get pertinent details to put the plan together. He asked if this form was the only vehicle, or if they could use other vehicles as well. Sue thought maybe something could be written in, such as either this or something that gives the information that's needed. Marc said the problem is they need specific details from FIP in order to come up with an irrigation plan. Sue asked if he'd seen the form; he hadn't. She explained the form is for basic comment. It doesn't have to be the completed form. Marc said that they want to bring the best plan they can to the Board. Historically, they've done enough to cover the bases, and he's gotten burnt on that. He said they're trying to come up with a more sophisticated plan on the first run. He likes what he's seen so far with this irrigation firm.

John checked with Sue that she's referring to an instrument so staff could tell when the developer asked for information and when the entity responded back, so staff know really basic information. Sue gave an example with FWP where the impacts on wildlife habitat are wanted. The developer would fill out the form with basic information, and include what elements are being put in to the application that will address the impacts on wildlife. A lot of the entities say they receive a small illegible map, and find it difficult to comment.

Sue explained that they've considered doing a draft set of covenants. What they'd eventually like to see is a separation of the covenants the developer wishes to impose and the covenants specific to the primary review criteria clearly defined in the document. It would give the governing body some oversight of those portions of the covenants. The County doesn't enforce covenants, so enforcing is up to the private landowners, so how can a finding have a lot of teeth in it. Marc asked why these covenants couldn't be written into the density and zoning. Sue said it might open the door to odd complaints, and the density regulations were adopted with the

assurance that they would not include land use type of regulations. Marc asked if there would be covenants enforceable by the County. Sue said it wouldn't necessarily be a covenant. It would be more like an agreement with the landowner who does the development that certain provisions will be maintained to comply with the subdivision approval. She gave an example of Orchard Preserve subdivision, where a vegetative buffer had to be established along the shoreline. An attorney suggested a separate document that was a separate agreement between the landowner or the developer and the County that transfers with ownership. Marc compared it to a deed restriction. Joyce asked why something like that couldn't be part of the conditions. Sue said this would be the other alternative, to make the things that are used to make the findings that are in the covenants part of the subdivision approval. Joyce thought the separate document was better for enforcement or modification.

John liked the idea of having a uniform draft set of covenants to compare to the covenants for a particular project, so the Board can know what's there and what's not there. It seems haphazard to depend on what the developer wants and puts in the covenants. He'd like to know what the potential is, and which ones are being left out. Sue thought that some covenants are up to the discretion of the property developer, and what kind of land use restrictions they want. If it's clear in the document which ones were specific to making findings and conditions of approval, such as defensible space around structures, and the other ones were the developer's choice to put in, when they go to amend the covenants, if it's one of the findings-specific covenants, the County should have more interest in the amendment. It would make it easier for future landowners, if they wanted to amend certain parts, since they would know whether or not the County would be involved.

Ken thought that a thing related to a finding or a condition of approval based on primary review criteria cannot be addressed solely in covenants. A way has to be found for the County to have teeth behind the enforcement. Sue mentioned another item, where currently on every subdivision, a condition is included that they have to obtain a building notification permit prior to development of the lot. The applicants need to know what is being looked at, and this can only really be compliance with the subdivision approval. The building notification process sprung up through the conditions of approval, and it's difficult to know what's being looked at. Stormwater is another thing. Typically a stormwater plan is approved for each lot. The developers submit to DEQ the typical structure size and driveway cross-section that will be implemented on this lot, and so many square feet of impervious surface, and the type of retention swale that the future owners will put in to retain stormwater, but no one goes out to make sure this is done when the property is developed. Whether it's part of the sanitation permitting process or if it's in the building notification process needs to be defined better. Bob asked what other counties do. Sue didn't think other counties required building notification permits. No counties are zoned completely for land use. Bob asked if other counties were reviewing for stormwater runoff. Sue didn't know. Stormwater wasn't even mentioned 5 years ago. She thought DEQ began to look at this in 2003.

Sue relayed some ideas Brad Trosper pointed out. He was unable to attend tonight. In the current subdivision regulations, a section talks about land unsuitable for development and slopes greater than 25%. In the density regulations, it refers to 35% for land that may not be suitable for development. He suggested that this be looked at. Ken noted an exhaustive look has been

taken at this in the city of Whitefish for the critical areas ordinance, with some great geotechnical, scientific basis behind it rather than amorphous numbers. Sue mentioned that on the County level, that level of detail would be a huge undertaking. Having mention of it in the subdivision regulations at 25%, if there is concern, does give the ability to say, "We need more information here". Ken agreed, and thought there were thresholds over which a closer look should be taken.

Sue relayed that Brad also noted for fire, 500 gallons per minute and 750 gallons per minute are mentioned, but it doesn't say for how long. He questioned in the irrigation portion, where the 20-acre threshold came from for lots for flood irrigation. Marc speculated that the roots may have been connected to being able to make 20-acre parcels in the past, as recent as 1993, without review. Sue relayed that Brad expressed concern with the variances for the roads that have been seen regularly, for road width and curve radii. He pointed out that in the density regulations under the impacts on agricultural lands, it talks about dust, and maybe some standards need to be incorporated for when paving is required. When chip-sealed surfaces are required, it doesn't say how thick that chip-seal has to be. There are standards that need to be incorporated in road design.

John asked what happens next in the update process. Sue anticipated that over the next couple of months, different sections of the regulations would be brought for review. John asked if the sections would need to be acted upon as the sections come to the meetings or if the Board will have some kind of time. Sue thought each section would be brought individually, because that's easier to manage, to get comment and the Board's review. Ultimately, there would be one public hearing for the entire set of regulations that the Board would act upon. Joyce asked if each section would be acted upon as an agenda item or at a work session. Sue said this hadn't been determined. It might depend largely on the agenda. If the agenda is long, another meeting may be called. She explained that the deadline is one they really want to stick to. Given the grant and the contract with Dave, we are under a timeline.

John asked how the Board would be working with Dave. Sue said that we've started lists of ideas that we want to incorporate. As he contacts the different stakeholders, they will give him more ideas. These ideas will be incorporated into the sections that are brought to the Board. When that section is being reviewed, if the Board has additional input, that's the time to get in incorporated into that section.

Ken asked if the subdivision regulations contain mention of the Uniform Building Code, the Uniform Electric Code or the Uniform Fire Code, or has the County adopted any of these. Sue replied that Ravalli County has adopted the ASHTO standards, which are road standards. WGM (Missoula company) helped them incorporate these into their subdivision regulations when these were updated. Now, whenever a final plat comes in, they have to send the as-built drawings of the road to an engineer to review, as the standards are very detailed and complicated. Sue would rather see the workingman's version of the ASHTO standards defined, as this would be easier. The County regulations and state law currently state that unless otherwise provided for in the regulations or approved by the governing body, as-built drawings certified by an engineer have to be filed with the final subdivision plat. Lake County hasn't historically been doing that, but we've been putting it in the conditions of approval and making it a requirement. The road

supervisor doesn't check each layer of road surfacing to make sure it's right, and he can't verify that it's been built to County standards by looking at it after it's done. Staff are trying to address this more completely.

Joyce asked if more detail added to the subdivision regulations would affect the 60-day time period for approval. Sue said the developer would know from the beginning that the roadways have to be certified, and will have an engineer design them and be involved in the process. She didn't think it would affect the timeframe. With the completeness and element review and sufficiency review that are required by state law, the 60-day window doesn't start until the application is determined to be both complete and sufficient. Joyce asked if earlier, it had been suggested that if an entity such as FIP or a fire department doesn't comment in 30 days, they waive their right to do so on a project. Sue explained that under state law, the application can't be held up because an entity hasn't commented. Joyce thought this seemed to be a conflict with the concept of public health, safety, welfare, etc. Marc thought the Board had a basis of experience to draw on to fill in the gaps if they don't respond. Sue said if there was a huge gap or concern and the Board felt they couldn't say there wasn't going to be an impact on public health and safety, then the Board could recommend denial. In some other counties, when they get the application in, the developer is required to give them applications to send to every entity, and the County sends them out. She discussed this with Dave, who likes the way it's happening now, where he talks to the entity, finds out their concerns and tries to address them before it gets into the public process where there's a review deadline. She wondered in other counties, when there's a 35-day review period, if there's a delay in sending it out, could the comments really be incorporated into the analysis. She likes the way Lake County does it, but we do need to establish that the applicant/agent needs to demonstrate they've made the best effort they can to contact these people and get their comments to incorporate into the development before the County sees it. She noted that many of the fire departments are volunteer, and they aren't paid for the reviews. They get \$100 per lot, but they don't see that money until the final plat is done. Marc said that for simplicity with developers, they could be offered a choice of paying, for example, \$200 per lot now, or \$400 per lot at final plat.

Bob noted that if he gets a meeting packet on a Monday for a Wednesday meeting, and depending on his schedule, he may have to buzz through the reports the day of the meeting. He wondered if it would be beneficial to have a standard form to list items of particular concern for a subdivision. He thought it might be helpful for long meetings, for items late on the agenda as well. Ken said he'd like the reports emailed to him when ready. John liked both ideas. Joyce suggested a separate document to help focus her attention as she reads through the reports. Bob thought a simple form would serve the purpose. Ken suggested underlining or bolding the special concerns. John asked Marc what a developer would think of a sheet listing items to pay most attention to. Marc felt it would imply that the Board members were not coming to their own conclusions. Sue thought that the concerns of the staff might be different than the concerns of the developer. John pointed out the Board may come up with yet another list. Marc pointed out the value of having so many board members, to give that much more consideration to a proposal. With a short cut, how much attention would a board member pay to the rest of the report? Joyce compared it to an executive summary. Sue thought the findings and the conditions should lead Board members to the areas needed to be focused upon.

Sue listed a few more items in the subdivision regulations that could use some attention. The requirement that all well isolation zones and drain field mixing zones are contained within the boundary of the subdivision is a requirement of Lake County, not the state. She thought the subdivision regulations should incorporate it. To find the minimum contents that's required to be in the environmental assessment needs to be clearly defined. She mentioned the procedure for amending plats. A plat goes through the preliminary process, then to DEQ. If a lot of things have to change for DEQ, how that process is defined. She mentioned driveway standards, if the building sites on lots are in areas such as steep slopes. Clarence suggested something on driveways and roads where a boundary line adjustment is done. Sue said that this would be difficult, because boundary line adjustments are exempt from subdivision review under state statute. Right now there's a provision for 15 lots or 1500 feet for cul-de-sac roads. Maybe setting some standards regarding secondary egress and when it's required would be good, such as a standard for daily trips within the subdivision that would require a secondary ingress/egress. Ken thought that with cul-de-sacs, the definition of cul-de-sac has been loose, and subject to interpretation. That's one of several definitions that could be improved and less subject to interpretation. Impervious surface is another. Joyce mentioned RV and Park model definitions.

Sue reiterated that over the next months during subdivision review, if things for updating in the regulations come to mind, please let her know for incorporation into the proposed draft.

OTHER BUSINESS

Motion by Fred Mueller and seconded by Joyce Funda, to adjourn. Motion carried, all in favor. Meeting adjourned at 9:12 pm.