

LAKE COUNTY PLANNING BOARD

February 14, 2007

Meeting Minutes

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

STAFF PRESENT: Sue Shannon, Alex Hogle, Lita Fonda

John Fleming called the meeting to order at 7:00 pm. Minutes from January irrigation meeting were postponed as they were not yet complete. John overviewed the procedures for the meeting.

MORTON MINOR SUBDIVISION

Alex presented the staff report. He explained that since his site visit, the site has undergone development, including the placement of the proposed home and establishment of the well. This had not fully come to light at the time the staff report was written. He will update as he proceeds. He has also received an updated version of the document to establish the easement mentioned on pg.2-3 of the staff report. The items listed for inclusion on pg. 3 have been included.

Fred Mueller asked if the new house allowed for the setbacks, and if roadwork has been done. Alex confirmed the setbacks. The roadwork that's been done is not up to the specifications required. Currently the modular structure is on a foundation. Electric utilities are installed underground behind the structure. It's not hooked up to the well at this point. There has been no septic established for it.

Steve Hughes asked what happens if the application is denied. Sue explained that staff wrote the applicants a letter about the violation, which says that they can't hold Lake County liable if they don't obtain approval. They could go to the Board of Adjustment for a second house on the property, after the fact. She said that it would be another residence, not a guesthouse, in response to Fred's question. She explained more about the situation. Ken asked what other steps are required for an after-the-fact zoning conformance. Alex outlined that the application is required and reviewed. There is a fee associated with that, and fines. There would be \$500 for the zoning conformance fine, as written into the zoning district regulations, and \$500 for non-compliance with the subdivision regulations. Sue added that this is specified in subdivision regulations. Alex explained in response to John's questions that there's a range specified (\$100-500), and Sue made the determination as the Planning Director and Administrator. Sue confirmed for Ken Miller that the fees go to Lake County.

Joyce Funda asked if the applicant contacted the Planning Dept prior to construction, at what time the improvements were done, and if someone spoke with the applicant about this. Alex explained a pre-application was received in the summer. No improvements such as the modular home, foundation, well and road to access them had been done at that point. He found out about the improvements while working on the subdivision review. Don Wood went out to the site and determined that in fact these improvements had happened. When Alex spoke to the applicant,

she had been anticipating approval. The home is intended for aging parents, and they wanted to have a lot of the heavy work done before spring thaw muck and mire, so they could get in and get going when the approval was ready. Joyce asked if there were unusual time delays with the application. Alex said there were not. John confirmed with Alex that nothing had been done that could not be rectified by the process tonight.

Joyce asked about the covenants for pets and wildlife. Ken noted that this is subject to Swan Sites. Joyce felt this answered sufficiently.

Alex confirmed for Ken that the internal access road requires a name. It is within condition #12. He also confirmed for Ken that on condition #15, it's \$100 per lot for \$200 total. Ken liked having the total amount was spelled out, since sometimes there's questions whether the existing lot is included.

Steve asked if after-the-fact situations like this have happened before in Lake County. Sue noted that it happened with an RV park, where the people didn't understand the process, and began developing while the application was in process. Board members suggested other examples, including zoning violations.

Ken's impression was that a guesthouse is allowed in this zoning district without additional permitting. Alex clarified that a guesthouse is permitted, but still required a zoning conformance permit, and currently a guesthouse is limited to 1000 square feet, which this exceeds. Also, it's being proposed specifically as a single-family residence on a lot. Joyce confirmed with Alex that the total combined maximum penalty is \$1000 here. Steve noted that the Board or Commissioners could deny the application, and gave an example from Big Mountain. Sue explained that typically the policy on zoning violations in Lake County is that you get one after-the-fact permit, and after that, you'll just be fined. It can be a per-day fine, after notice.

Joyce asked if the applicants have been cooperative with respect to conditions, comments, findings and proposals of staff. Alex replied that this is the first interaction with the applicants.

Erica Wirtala of Sands Surveying spoke on behalf of the applicants. She noted that the date on the preliminary plat is July 7, 2006. Some of the problematic timelines or delays may have been on the part of Sands. The application for public review was not submitted until January. On the plat, they noted and described all existing structures at that time. The shared access maintenance agreement was submitted. It holds the two parties, 22A and 22B, responsible for the maintenance and upkeep of the road she indicated. She disagreed with the description of lot 22 as a through lot. She thought maybe they could work that out. Swan Sites has extensive existing covenants. Lake County requires additional sets of CC&R's or Homeowners Association documents also be crafted. Those would include items not covered in the older ones, such as pets, which are covered in section 4.14 in the newly crafted CC&R's for these 2 lots. The covenants also cover things such as abandoned vehicles, defensible space standards—things that have come up since the Swan Sites original CC&R's were first put into place.

The Bigfork School District comments are now available, and say there will not be an adverse effect on school enrollment or existing bus routes. Rowland Environmental worked on the DEQ

submission. Typically this is submitted after preliminary plat approval. Somehow it got submitted and an approval letter dated 2/2/07 was received, and the site has been approved for environmental quality reasons. DEQ also looks at storm water drainage in that as well.

Erica spoke about condition #7. It deals with the well on lot 22B. Typically you would have a wellhead isolation protection zone, that you would avoid that with septic, but it's typical that your well would be close to your house or have a wellhead building site. She disagreed with the prohibition of building of structures within that easement. She asked the Board to look at this language, especially in light of the DEQ approval. She reiterated that Alex did get a revised easement agreement. Because the 100' goes over onto an adjoining property, a second landowner is involved and has signed off that he won't put his septic over there. This is fairly common.

Ken had questions pertaining to the wellhead isolation zone. Erica didn't know if the newly created structure was within that zone. Alex noted that it is not. She didn't know if the lot to the north was developed with a residence yet, although there is an existing well. Bob Kormann verified with Erica that DEQ already reviewed this. She added that they approved it. Joyce asked what structures typically are within the wellhead isolation zone. Erica gave examples of the house, pump house or anything. She explained that she needed some clarification on the word 'structure' or for the prohibition to be lifted. Joyce asked as to the general purpose of the 100' zone. Erica responded that DEQ doesn't want septic tanks in that area.

John asked Leta Morton about structures to the north of the well, and if the lot to the north has been built upon yet. She affirmed that it was already built. She explained further that she was trying to deal with 2 sets of 80-year old parents. Bob Kormann asked if she was aware that there were going to be fines, and for information as to what went on in her mind when she went ahead with development. She knew that there was a long process. They thought that what they were doing fell in the standards of what could be done. They figured they could work simultaneously. Bob suggested an analogy of "I don't have a drivers license but I'm a good driver, and am not going to do anything that will cause problems."

Public comment opened:

Richard Morrow: He asked if there was something in the report on 50' paving.

Fred: This refers to the 50' from the roadway for chip seal for dust abatement, onto Sunburst.

John: Or the gravel to come on. We typically do that.

Alex: It's not a driveway, because it accesses more than one parcel. It's technically a shared road. It's a road accessing a paved County road. Gravel brought onto the road can be damaging.

John: That's really all it is. Keep the gravel off the paved road.

Marc Carstens: He agreed with the consultant about the 100' radius well protection zone. DEQ is very specific about the activity that can happen in there. Storage of fuels, of petrochemicals,

of dangerous substances, or drain fields, etc.[can't be there]. But to isolate it from any kind of building structure seems kind of limiting beyond.

Public comment closed.

Bob noted that this is the first time DEQ had approved first. Sue said she would call DEQ tomorrow, because they are required to obtain public comment to go with the application. She didn't know why they accepted the application, as it was incomplete. Erica said that typically they have to wait until the Commissioners approve the conditions to submit. She thought it was a clerical error that it actually got sent to DEQ, and to compound it, DEQ missed the fact that the Commissioners' proceedings were not in there. Shawn Rowland was a little baffled as to how it had left his office and how DEQ had approved it without the Commissioners' proceeding, so Sands will look into it as well.

John asked Sue more about the 100' circle. Sue thought it was a communication error within the office. She agreed with Erica that Sanitation and Planning have separate roles. She'd assumed the language came from the Sanitation Office. Alex said that this was the first time he had to look at one of these, where it had been problematic. He'd discussed it with Sue and with Susan Brueggeman. He did what he could to condense the conversations. If it's an inappropriate element, he had no attachment to it. Sue thought condition #7 could say something like 'well isolation easement shall be filed with the final plat as approved by the Lake County Environmental Health Dept, and DEQ shall be filed with that. Joyce confirmed with John that given that DEQ approval has inherent in their standards no septic tanks or drain fields in the well isolation zone, so there's no need to specify this.

Motion by Fred Mueller, and seconded by Ken Miller, to recommend approval of the subdivision with the staff recommendations with amendment to condition #7, so #7 reads "The proposed well isolation zone protective easement shall be amended to comply with Lake County Environmental Health and DEQ approval and filed with the final plat". Motion carried, all in favor.

(A brief lull of general lightheartedness followed, prior to the next item. Serious comments on issues were then briefly made.)

ROSENBAUM ACRES MINOR SUBDIVISION

Alex summarized the staff report.

John clarified with Alex and Sue on condition #13 that this statement is put in so that future subdivision takes the record of the division evolution of this 80 acres into account. Based on today's regulations, the density is maxed. If the density changes, they would need to meet the new density, but all 4 lots would be used to determine the density. For instance, if the density changed from 20-acre to 10-acre density, you would look at it as 8 units for 80 acres, and 4 units have been used, so lot 4 could have 4 additional units. Lot 4 would not get 6 units. Ken detailed that you'd have to factor in lots 1 through 4 for the total acreage, and three units are used for lots 1 through 3, which leaves 5 total for lot 4. Marc Carstens pointed out that if it went to 5-acre density, then the 66-acre lot 4 could be divided by 5's. Ken explained that with 5-acre density,

the math happens the same way; it just comes out as a wash. Sue explained that it's a tract of record, but it has this approval associated with it.

Bob highlighted #3 on pg. 7, dealing with perimeter fencing. He asked if the perimeter was on the total 80. Alex affirmed. Bob pointed out that the covenants address fencing. Does that address the fencing for lots 1, 2 and 3? It was affirmed that this does address the interior fencing. Ken asked if this was required, and Marc said no. He said if it is required, then the standards within the covenants would apply. Ken thought that we do need to require fencing for the agricultural lot from the 3 smaller lots. Another Board member concurred. Sue read the fencing portion of the proposed covenants, which did not require a perimeter fence around the larger parcel. Ken's question is should we require this fence to be built by the developer. Steve thought we would. Marc agreed there should be a perimeter fence around the subdivision, but he didn't know about interior fencing. Steve thought the north end of the 3 lots should be fenced, separate from the 66 acres. Marc thought this might be beyond statutes. Alex thought this sounded like this might be something to recommend in a motion. Lisa noted that we haven't required that in the past. Further discussion of the fencing occurred. Sue thought the way it's been looked at historically, is that whoever owns the land now can impose certain covenants. If they want to set up lot 4 so they don't have to deal with 3 individual people every time a fence breaks, they can put something in their covenants for the owners of lots 1 through 3 to maintain that fence, or construct it. We haven't imposed that at final plat approval. Various situations were recalled by those present, where fencing served functions to solve problems with subdivisions.

John asked Steve about condition #16. Would it not be more consistent for us to say "...If the Flathead Irrigation Project does not allow the assessed irrigation operation and maintenance (O & M) fees to be removed from Lots 1-3, a plan to *continue O & M* to Lots 1-3 shall be created..." (rather than 'to supply irrigation water'). Discussion followed.

Steve thought this was an easy irrigation plan to develop, rather than remove. It's a plastic buried main line, no pump, gravity system, with 80 pounds of pressure on that line. All they have to do is run a buried pipeline on the back of the north end of those lots, and they could put risers on and irrigate those 5-acre lots. He personally planned to call Bud Moran to not approve a decision to remove. Marc explained that the irrigation was on an earlier version, but the applicants decided they did not want to do that, that they wanted to try for the removal. Alex noted that the original application was withdrawn. Since the meeting with the Irrigation Project, staff are adapting their procedures and the way it's approached in the reports. This is the first one to use what's been learned. This application was resubmitted after the Cimarron approval, and we changed the tone and tact considerably from the prior report.

Steve asked if the crest of the hill on Eli Gap was kind of dangerous with a double access. Marc said he could reevaluate. They need to get a permit from the County Road foreman before it could be installed anyway. They were trying to limit the number of accesses onto Eli Gap Road. Steve urged caution putting the access road there, given the way people come over the hill. Sue suggested it's better to have one access spot than two. Alex noted that the SE corner of the property is also the intersection point for Rose Lane and Eli Gap. Steve pointed out that it's a T

there. John verified that what Steve was suggesting was to move the access as far west as possible. School buses were briefly mentioned.

(A question was asked regarding at what point in the meeting the Board was, for procedures. Note that no general public were present to comment.)

Bob asked about the gates in the perimeter fence. Do you need a gate on both ends of the power easement? Marc replied that the gate on the easement would typically be the width to allow a pickup truck or line truck to go through to work on the power poles or lines. Bob also asked about the 80 x 80 shared access easement for the two driveways. Alex responded that this is actually 60 x 60. Marc explained that this is the area that the road surface is inside; it's not the road surface itself. Bob summarized that there'll be those gates, and at the easement for the power line, and at lot 4, and for the main line easement. Marc said that this would be correct, but he anticipated the gate at the main line easement and the gate for underneath the power line would be wire, not steel.

Sue clarified that when they do the perimeter fencing, they aren't going to have to be installing these gates. They're just going to fence the front of the lot to legal fence standards. That's all that we'd require of them. Over the last few months, this is becoming more and more of a discussion item with the Planning Board. Whether or not we are going to require cattle guards at the approach or gates, we probably need to incorporate that into the covenants so when the lot is developed that they are responsible to install something at the driveway approach. Bob thought that a wire gate had been okay in a recent one, rather than a cattle guard. Isn't a gate a service to everyone? Sue pointed out that we don't know at this time where they're going to put their approach, other than maybe the shared approach. What's shown for the driveway locations is not set in stone. They have to get an approach permit from Lake County, but there's nothing that's going to require them to put a gate at the approach, unless we require it as part of the covenants. Bob felt that we should require it, because we put in the right to farm. With all these subdivisions, it seems that we're not helping people who want to move to the country understand what moving to the country is about.

Lisa pointed out that we didn't do this in a recent one in Arlee because you don't know where they're going to put their house. Bob asked if we then tell them to perimeter the whole fence along that side before there's even a road. Why can't we say when you get the road permit and you have to cut through the fence, you're going to have to build a corner on both sides for your fence, if the fence perimeter exists before these things are developed, then put a wire gate in? Lisa responded that the developer needed to record the plat prior to selling the lots. Bob asked then why couldn't we put it in the covenants that when you do develop your road, you have to put a wire gate on it. Marc said that there's no problem putting it in the covenants, but there's no enforceability on your part.

Steve pointed out if the gate is there, they don't have to keep it closed. If a rancher is moving cattle down the road, they'll go ahead and close the gate before they start going through. If there's no gate, what do you do? If you establish in the covenant or by other means to have the gate there. Marc said that they'll put that in the covenants and accept that as a condition. Board members repeated that once you cut the fence to put the access in, put a wire gate or a cattle

guard or do whatever. Sue suggested that it could be added into the staff report under the agriculture where we're talking about fencing, and then in the findings; it will be a condition of approval, and she thought it would be enforceable then, to mitigate agricultural impacts. Lisa asked if it was the law to still fence people's cattle out. People don't know though.

Joyce referred back to the irrigation presentation last month, with regards to #21 on pg. 13. She thought Chuck said you can apply as often as you want, but they won't take land out of the irrigation. Steve explained that Chuck said they will look at it case by case, but they won't carte blanc allow people to take land away from O & M assessment simply because they're too lazy. They want to spend the money to set up the system. Joyce asked if in #21, if the language also relates to people claiming they're paying fees for something they're not getting. Alex said this is a separate issue from irrigation O & M. This is about water rights—well water and ground water. Joyce confirmed with the others that they still have to pay the fees, whether they use the water or not. Sue explained that #16 provides a mechanism to make them aware that it's been done. It's on the plat. If it hasn't been done, they're not going to file their final plat. If it's not removed, they're going to come back here with an irrigation plat. John noted that this would be on the plat too, and Lisa noted it would be spelled out on their taxes. A Board member recalled that Chuck said there hadn't been a piece removed since 1963. Alex explained that for a perspective buyer of a parcel of land, there are going to be different elements on that ground. It's the buyer's duty to do homework and see what you're buying. They can determine if their lot is irrigated, and try to look for existing shared water user agreements.

Motion by Ken Miller, and seconded by Fred Mueller, to recommend approval of this proposal with staff recommendations with the addition to #6 “Covenant language shall be filed with the division as proposed, *with the additional item that each access shall have a gate or cattle guard.*”

Steve suggested a conditional amendment on #17, so the language would say ‘due to the simple process by which irrigation water can be supplied to these 5 lots, it is highly recommended that an irrigation system be developed prior to the County Commissioner meeting on March 6’. Marc clarified with Steve that he's making a recommendation that the application be altered prior to review by the governing body. Steve explained that Paddy Trusler said he was considering that if an irrigation plan has not been seen by the Planning Board and gets to the County Commissioners, and they say they want an irrigation plan that's not there, they send it back to the Board so they can review the irrigation plan before it goes back to the Commissioners. This would add 3-4 months of delay, and they'd deny the application because there's no plan. Marc said let them deny it.

Sue noted that under State law, if there's additional information between the public hearing and the Commissioners' hearing, the Commissioners have to determine whether or not it should go back. If it's put in there, they're going to have to come back anyway. Marc felt this would be denying the application at this level.

John asked if it would be sufficient to be on record with the minutes, highly recommending the irrigation. He agreed with Steve that it would be a good opportunity to irrigate those 15 acres. Sue suggested that part of the recommendation is to accept the staff conditions, and to go on

record that you encourage the thought to continue the irrigating. Marc thought the staff language was pretty good. If it can't be removed, then a plan has to be brought forth. He suggested changing the subdivision regulations so that you simply can't take irrigated acres out from under O & M. Steve said there are instances where it should be taken out.

Steve thought it would be fine to put it on the record. John clarified that the motion is as Bob made it, with the change on #6.

Motion carried, all in favor.

OTHER BUSINESS

Prior to the meeting, Steve discussed a subcommittee to work with staff on the irrigation language, and work with FIP to come up with proper terminology and make sure we're all on the same page. There's still some confusion. He asked the Chairperson to appoint Steve, Fred and Lisa to work on this. He indicated that they'd have the staff and would get Chuck involved. Sue asked if he was going to try to amend subdivision regulations. He thought the language in the meeting with Chuck appeared to contain errors in the way it was written. Sue had a thought that there are some lands outside of the project, such as up in Proctor. Wouldn't water rights be applicable there? Steve said no, that water rights are a different issue. They can be adjudicated by the Compact Commission by the State of MT. He outlined some current activity in that realm. Sue asked further about the situation in Proctor. Steve said the Flathead Basin has not been adjudicated by the DNRC. John clarified that the FIP project and the non-FIP project might require different terminology. Sue affirmed. The subdivision regulation language is from the State model regulations, and is used places where they don't have the Irrigation Project or Reservation. Ken mentioned that he has a water right. Steve said the basin has still not been adjudicated. He referred to a \$20 payment recently to maintain a water right. The money was raised so they could do an adjudication from all the basins and determine all the rights that are out there in the State of MT. He outlined more of the process. Sue returned to the subdivision regulations. There are two scenarios to be accommodated in the subdivision regulations.

John asked Steve what the subcommittee would do. Steve thought they needed to work on the language. He thought they had to talk with Bud and Chuck. General conversation occurred.

John appointed a subcommittee to look into language regarding FIP and subdivision, our business here, and report back to the Board soon, and anything they come up with, the Board would like to hear. The subcommittee is Steve Hughes, Lisa Dumontier and Fred Mueller.

Meeting adjourned at 8:43 pm.