

LAKE COUNTY PLANNING BOARD
December 10, 2008
Meeting Minutes

MEMBERS PRESENT: Bob Kormann, Clarence Brazil, John Fleming, Lisa Dumontier, Fred Mueller

STAFF PRESENT: Sue Shannon, Joel Nelson, Lita Fonda

John Fleming called the meeting to order at 7:02 pm.

There was not a quorum present (a quorum is 6), so motions do not reflect official action by the Board.

Motion made by Fred Mueller, and seconded by Clarence Brazil to approve the Nov. 12, 2008 meeting minutes. 5 in favor (Clarence Brazil, Bob Kormann, Lisa Dumontier, John Fleming and Fred Mueller).

POLSON CONDOMINIUM STORAGE UNITS MAJOR SUBDIVISION

This is scheduled to go to the Commissioners on December 18th. Joel Nelson presented the staff report.

Clarence asked what provision there was for bathroom facilities at the storage units, since sometimes people might be there for a long time. Joel said there was none. Fred mentioned that a lot of times port-a-potties are used. Clarence suggested a condition for a port-a-potty be added.

Bob asked about the Army Corp of Engineers and what kind of timeline for review do they have to review wetlands. Bob pointed out that the staff does feel (pg. 21) this proposal will negatively impact wildlife. John noted this wasn't preceded by if it's determined wetlands exist. John asked how the Dan Lipscomb comments and Army Corp of Engineers delineation fit together. Joel said this is attempted in condition #7 (pg. 25). John checked that Corp of Engineers delineation was still required. Sue asked why the Corp of Engineers and Tribe were both asked in this case. Joel explained the Corp has been a party to this so far.

John asked about buffer adequacy. Does what we have meet the criteria that Jean Matt recommended? Joel said the buffer submitted was intended to comply with his recommendations, and staff recommendations would enhance them. John thought it looked like there was less detail in the conditions. Sue noted Joel was saying the plan should be enhanced even more, because of the public comment heard in October.

Bob asked why on pg. 6 of the staff report, MDT didn't address the issue of the potential drainfield located in the highway right-of-way. Joel said DEQ would need to address the drainfield if it's potentially located in the right-of-way. MDT may have to address that, too. As far as the 2 approaches, he thought MDT would have to address that. Bob asked how the communication between MDT and DEQ works. Joel detailed his understanding on this. Bob asked for clarification on whether this will be cleared up or may be cleared up. Joel said that

typically this would be addressed. Hew as surprised MDT was referring to a change in use for an access and not discussing the 2 approaches to the highway that serve the property. He thought DEQ would address the drainfield, and that DEQ would communicate with the sanitation consultant, who will communicate with MDT. Sue asked for clarification on the 2 accesses. Joel explained the existing house uses the approach directly south of the house. An approach in the SW corner of the property is a shared approach with the property to the west, and it's also accessed off the approach north of the drainfield. Sue asked if there was conflict between the drainfield and the approaches. Joel said he didn't think this was necessarily the precise location of the drainfield. John asked if we should say if the drainfield encroaches on the right-of-way what specific thing will happen. Joel and Sue didn't know. Both thought DEQ would address it some way. We don't know what happened when MDT acquired that right-of-way. They may have recognized the existing drainfield on that portion. She wasn't sure the County could start requiring things without knowing. The developers could be asked to consider requiring the existing house to access off the internal subdivision road. John asked about the second approach. Sue described it, going through the buffer.

Marc Carstens spoke on behalf of the applicants. He introduced Brian Long from Long Engineering, who worked on the stormwater management plan and Greg Howard who did wetland work. Regarding the dual approach, there is an approach to the house that would be inappropriate for access to the units. Immediately west of this approach, you can see where the house residents drive through an area similar to where this driveway is eventually going to be. There's a paved driveway there now that they don't intend to use. The buffer plan crosses it. They intend to use one approach, not two.

Speaking to the drainfield site, Marc said the existing drainfield was shown as taken off the County permitting installation documents. The proposal would go to DEQ for review for stormwater management. It would need to be easemented or in some form dealt with prior to DEQ approval. This would need to be dealt with prior to DEQ approval. He suspected MDT was aware of that when they acquired the right-of-way width.

Marc disagreed that the subdivision would have negative effects on wildlife and wildlife habitat. They arranged to have the CS&KT wildlife management program review the proposal. Whisper Camel was the biologist who prepared the report that is included, where she listed 3 concerns. He read from her report, regarding the vegetative buffer, light pollution and water quality. The report referred also to previous verbal suggestions by Sue Ball. His team took Mr. Howard's wetland determination and turned it over to the Salish Kootenai department for their comments, and indicated they were in concurrence with Greg Howard's findings. He read more from Whisper Camel's report, including a reference to Jean Matt with his contact information and native vegetation. Marc said this was the firm they hired to develop the buffer plan and turned in with the proposal. He thought it should be used as is, and not augmented. They've agreed to the condition pertaining to Whisper's comment on light. He read more from her report.

Marc said they'd gone beyond what was typically required by DEQ in 2 counts. One, they have designed stormwater management to contain 100% of the stormwater generated from a 100-year storm event, and two, they've introduced bioswale material as outlined and requested by this

study. He thought that concluded the comment from biologists and specialists on the impact of the subdivision on wildlife and wildlife habitat.

Fred asked about the driving surface. Marc said they needed to do paving up to the highway right-of-way line, per DOT standards. They would like to keep the interior roadway surfaces in gravel. It reduces potential of petrochemical leak-through of the road surface to the nearby water sources. And they have concern that something in the storage units may actually leak, and migrate or flow into the streams. With a gravel surface, leakage would be much more evident and the on-site manager would be able to see it and address it. So they've proposed gravel, and would accept a condition to do dust-abatement management practices.

Brian Long spoke about the stormwater retention design for the project. The wetland delineation wasn't finished when they started, so they assumed they'd be in a sensitive wetland area. DEQ standard practice is no more stormwater can run off of your property after you develop it than ran off before you developed it. He described the design, which would accommodate up to and including the 100-year 24-hour storm, without water leaving the site. They felt confident that this storm report, sent to DEQ, would be sufficient for their review.

Greg Howard spoke about the wetland delineations he conducted. His determination was that these are non-wetlands. There's a swale present that catches some hydrology. Several criteria are needed to consider an area a wetland: vegetation, soils and hydrology. He found two of them lacking. Regarding Sue Ball's analysis of the site, since she reached her conclusions, the Army Corp of Engineers released new guidance in April 2008. The characteristics to look for have been refined. His determination was based on the new material. The Army Corp of Engineers regulates wetlands and waters of the US. On site, he noticed the water doesn't actually leave the swale that's there. He said the Army Corp of Engineers likes to find a relatively permanent water body, which in their definition requires about 3 months of drainage flow. This site doesn't have signs of water flowing through it. He talked about where the water may be coming from. He can only make a preliminary determination as a consultant; he sends to the Army Corp of Engineers, and they ultimately make the decision. There's no proposed work being planned for this area, so no permitting is required. He didn't think the Army Corp of Engineers needed to sign off on this, because he saw no impacts. He showed the area on the map. Regarding timeframe, he thought the Army Corp of Engineers probably wouldn't make a site visit until next spring or summer. You can't really make a determination of what the hydrology is this time of year.

Bob checked that Greg Howard was also the vegetative consultant. He was concerned with the buffer on the east side, where it nearly touches the backside of the units. He referred to Jean Matt's recommended species mix, which Bob had on some property. He found them to be 'dirty' trees which are weak-rooted. After windstorms or major weather events, he's had a lot of downed branches and so forth. The report also mentioned trees that sprout from roots of other trees. What impact will this have on the adjoining properties? How would damage from these trees be covered, as far as insurance and so forth?

Greg Howard said the cottonwoods don't generally sprout until they're fairly mature. Bob said that it would happen, then. Greg added if the right conditions were there. Bob pointed out the

trees would die if the right conditions weren't there. Greg agreed. Bob asked what the recommendation for replanting would be if they died. Greg said he'd try a different species. They are trying to use native species found in the area. Bob suggested it would be a problem to have a weak-rooted tree right next to the storage units. Greg thought there needed to be some allowances made for what the trees grow into when they mature. Bob asked how much room he anticipated that to be. Greg said it would be quite a bit for a cottonwood. It may go outside the property line. He thought they'd recommend something other than cottonwoods. He liked aspen. Clarence described a cottonwood tree he had in Coeur d' Alene, whose roots went under the house, pushed up part of the basement concrete, and put up a new tree in the front yard.

Bob checked that from the back of the building to the east boundary line is 20'. Marc affirmed. Bob confirmed with Greg that cottonwoods would drape over the whole storage unit when mature. Marc confirmed for Bob that there are concrete slabs for the storage units.

Bob asked how potential damage from these trees was addressed in the covenants or insurance. Marc said the proposal was for condominium unit ownership. By definition under state law, that's where you own something individually inside something you own jointly. Anything not defined as a unit would be owned jointly. That would include the plants behind the buildings, so the unit owners association would be the body in charge of the maintenance and the insurance. Bob gave the example of a tree coming down on 3 units. Marc said typically the owner would have insurance on the contents inside the building. As far as the unit owners association, they would carry the insurance that would cover the buildings. Clarence wondered how the insurance providers will feel after it has been discussed that the trees might fall. Marc said the maintenance and management of the buffer area is the responsibility of the owners association. They had a wildlife biologist review this site, who gave specific recommendations and they attempted to follow through conscientiously.

Bob thought the recommendation was based on native species, and not on the practicalities of what this project is trying to achieve. How do you get equipment in there for maintenance if a tree goes down? He thought these particular trees would be problematic. Marc said the point was well taken. He was hesitant to steer too far away from the recommendations. Would it be possible to contemplate using fewer trees and more shrubs and bushes? Bob asked if it was possible to consider reducing the size of the storage units. Marc said he could run that past the developer, but the applicant does have this size in mind.

Public comment opened:

Bob Stone: He wrote a letter, and doesn't have a lot to add to it. He's concerned about the use of the north area that won't be developed. He gathered in September the common area was intended for and could be used to store vehicles and such, but he didn't get that feeling from this report. He asked if that was within the rules of the condominium.

Marc Carstens: He said it was not the developer's contemplated use to use it as open outdoor storage for boats or RV's.

John Fleming: Could a condition be that it not be used?

Marc C: He would be willing to have a condition that it not be used without further review.

John F: That would be in wetland.

Bob S: That's actually quite high in the middle of that. It's not a bad place to store something, except vehicles might leak oil or transmission fluid into the porous soil. He owns just to the east. It's very sandy, and what leaks out of a vehicle on that hill is going to go into the ground water and go somewhere we don't want it to go. If he knew that wasn't going to happen unless they brought it back for permission, then he wouldn't be concerned.

Marc C: He said they'd be happy to accept a condition that the northern piece of this property not be used for outdoor storage unless it comes back for further review.

Bob S: Everything else is in his letter.

Mason Niblack: His interest was primarily academic rather than vested. In teaching courses at business schools, he used to have students develop a business plan. He'd give this one an F. He'd given 4 reasons why it's a bad project in previous testimony. He revisited two of them. One was supply and demand. This is a condo for RV storage, so it's sold to people. Real estate and particularly condo sales are down. This is for RV storage. The market for RV's was already dwindling at the time this was proposed. What if the developers can't finish or can't sell it? He didn't think this was the highest and best use of the property. His second point was the owners of the property are real estate developers who have forgotten the importance of location. He thought it was the lowest and poorest use of the property. Also this project makes the rural residential neighbors angry. And it's a square peg in a round hole, both economically and environmentally. Why spend the extra money it'll take to mitigate the problems on this property and risk the environmental problems in the report that would still occur. The developer is out of it, once these condos are sold. Then the owners have to get together to decide what to do about the joint issues on the property. He concluded the developer had an enormous amount of time and money invested in this project at this point. He thought that the developer was so far in that he doesn't want to pull out.

Public comment closed.

Clarence asked if the units had big garage doors for the RV's, and if the units were designed for RV's. Marc affirmed. He said they were designed for RV's, boats and so forth.

Motion made by Fred Mueller, and seconded by Clarence Brazil, to accept the two variances (curb and road width). Five in favor and none opposed.

Bob asked Hu Beaver if in his experience having these trees within 10' of the cement slab would be problematic. Hu said it could be. It depended on whether the footings and walls and slab on grade are monolithic, that indicates the shallowness of the slab. The roots will tend to go underneath, but it doesn't heave a building like it does a sidewalk.

Lisa pointed out that it's in the covenants that the common area north of the wetland buffer has to come back for review.

Motion made by Fred Mueller, and seconded by Lisa Dumontier, to accept the proposal with the staff recommendation.

John noted this project has a lot of potential problems built in. We're deciding there needs to be a buffer, yet the buffer has some real potential problems in maintenance. The developers have worked hard on the things the Board asked them to do, and he appreciated that. He wanted to be on record that he thought this has a lot of problems and uses too much of a small area. He thought this was a really bad place for this, but he didn't think he could vote against it on those bases. Lisa agreed with John. She didn't think they could pick apart the experts' opinions on the buffer, but she found the cottonwoods to be a mess, and huge limbs break off in storms. She thought it would be a disaster. Clarence mentioned the cottony mess every spring or summer. Lisa understood the use of native plants. John suggested it was almost like putting native plants in a non-native area, since the area is restricted and the plant can't do what it's supposed to do. Lisa agreed this was a poor place for this project: a square peg in a round hole.

Vote on motion: 3 in favor (Lisa Dumontier, Fred Mueller, John Fleming) and 2 opposed (Bob Kormann, Clarence Brazil).

MASUMOLA ZONING DISTRICT REGULATIONS—PROPOSED AMENDMENT

Sue passed around some maps to provide an additional visual.

Joel Nelson presented the staff report.

Fred asked if family transfers could be done there if the amendment was approved. Joel replied there was a lot of potential for that. John asked for a sense of why a 20-acre density was selected when the area was zoned, and why 5 acre now. This is a major change of philosophy. Joel said he looked in the minutes and didn't find information specific on the density. Zoning was done in 1994, and it was already split up some. John noted this was community-initiated zoning. Bob asked what the next step for the homeowners would be if this were denied. Joel said they could propose other text amendments that were less dense. They could address some of the findings of facts of the staff report, or what findings the Planning Board makes. Regardless of what the Board does, the recommendation will go to the Commissioners for the decision.

Public comment opened:

John Tompkins: He spoke in favor of the application, which he submitted. He clarified it was forward by those living on Fox Lane. He was encouraged by the comments from Planning staff and others, both for and against this, since it seemed clear they wanted the same things: clean air, clean water, roads that are up to code, wide corridors for wildlife, hillsides free from noxious weeds, dark and starry nights, limited development and as much protected open space as they can get. He believed they could propose a lesser density and still have these things because they have faith in the county's subdivision process. The regulations are very strict and hard to

comply with. The worse case scenario he gave was that the number of dwellings could increase by 115 from what is allowed currently per Joel's calculation. He said of the 700 acres involved, a very, very small amount of this land could actually take advantage of their developmental rights through the strict subdivision rules. The applicants believe only those along Fox Lane have a chance of meeting the standards. They estimated that it would cost them \$200,000 just to come into compliance with the road regulations for a gravel road, since Fox Lane would have to be extended and widened, and 60' easements would have to be acquired. To go to chip sealing would be \$300,000 and paving would be \$800,000, which is well beyond their capability to do. He said it would be prohibitively expensive for anyone other than those along Fox Lane to satisfy the subdivision rules. He said this drops the worst case scenario from 115 additional dwellings to 16. They envisioned a maximum of 6 homes on the north side of Fox Lane, 6 on the south and perhaps 4 or 5 homes at the end of Fox Lane, which is a road that extends for over a mile.

John T said they don't want to stay with the status quo because of the opportunities. He didn't think the retirees in the area would want to do family transfers and having their kids building homes next store. As far as opportunities, he thought they were fortunate to have a growth policy with tools that will allow smart growth. With smart growth, there's the idea it's much more aesthetically pleasing to arrange a set of houses along a road on 5-acre lots than to allow 'goat ranchettes' to spread out over the hillsides. He gave the example of looking west where Hwy 93 'y's in with I-90, where goat ranchettes have been placed on 20-acre parcels. He touched on smart growth encouraging cluster housing, to protect open spaces.

John T described the situation for him and his wife. They own a 60-acre parcel immediately up the hill from the Sunrise subdivision. They wrote to those in the subdivision with Polson addresses and explained that they'd like to use the cluster housing concept to put 4 or 5 houses at the end of Fox Lane, and then they could afford to leave the entire 30 acres between their small cabin and the bottom of the hill where the Sunrise residents live completely and permanently protected, with no housing and just hiking trails. Further, there would just be the one house for the rest of the 25 acres. He and his wife hope to retire and move to Polson and build their retirement home up there. If they could take advantage of the cluster housing concept, there would be no houses from Sunrise all the way to the top of that 60-acre parcel that they own except for the one retirement home they would build. The vision was that the 30 plus acres would be held commonly by the people who live in the area such it would be commonly held and used for recreational purposes. He thought that growth could be limited by continuously saying no to people who want to take advantage of their development rights or they could take advantage of the growth policy and try to preserve as much open space as they can indefinitely.

Larry Skipper: He lived on Sunrise Drive. He had more questions than answers. If they have subdivisions, regardless of if they are PUD's, which is cluster housing with open land, where do these people get their water and what happens to the waste? He received a letter from John T that mentioned a different size, selling a few 1/2 acre lots. He doesn't have his water rights, although he's applied. It's still in the courts. If they allow more people up the hill, it could affect their water, or lack of. Septic fields in the rock soil are very limited. People who have purchased and built homes have gone into some very expensive septic reclamation on their street. He hoped that would be enforced up the hill from him. His concerns were what size

limitations and who pays. If this could be passed on without even coming to the Board, like with family transfers, the gate would be opened for a tremendous amount of damage. This concerns him. He respected property rights and agreed with John that if it's done correctly and within the guidelines, then he isn't opposed, but he would like to have his concerns addressed.

David Hummel: He lived on Sunrise Drive. His notification went to his business address in South Dakota, so he didn't have time to respond. A comment was made that the land is not longer suitable for grazing, yet as of now it's being grazed by cattle. Regarding the noxious weeds comment, it's the owner's responsibility to control those weeds. He didn't know whether the people were doing so or not. He hoped that they were, and if not, he hoped that they'd have to. Regarding what was called goat ranchettes and the example at Hwy 93 and I-90, he called those nice houses on a lot of land, and he thought they looked good. Regarding additional houses, he thought 115 were quite a bit. There's a statement that it's large enough to support individual wells and septic, but he doesn't know if there's been testing done, perc tests to see if the land could handle that amount of sewer if those houses were built and what effect it would have on the water table for those down below on Sunrise Drive. Where does the water table go up there and how much can it supply? He found a total lack of information provided. There was more in what Joel read.

Another question David H had was about congestion on Baypoint with 115 houses. A comment was made about connecting Fox Lane with Sunrise Drive, which would dump a lot of the traffic down Sunrise Drive. He didn't know if the County was up to rebuilding Sunrise Drive. It wouldn't be long until it needed a major overhaul. Heavy trucks have damaged the culvert across Sunrise Drive. It's a narrow road. If the roads connect, there'll be a number of cars going up and down. Sunrise Drive also ends long before what's shown on the map he received, at a little cul-de-sac. The rest shown is actually private driveway, on Mr. Aiden's (sp?) property, and he allows the people above him to use it. He didn't know if the County wanted to take on that much more road, and the probability of redoing Baypoint Road for the increased traffic, and redoing Sunrise Drive.

David H pointed out that you couldn't guarantee that a lot of the people buying these houses would be senior citizens, rather than young couples with children, which would go into the Polson school system, which was already overcrowded. He and his wife got their house as a retirement house, but due to a divorce in the family, they now have a daughter and 2 grandchildren living with them. The assumptions made don't necessarily hold true. He also noted the strain on the County services for police, fire and other services with 115 houses. It's difficult now. Police and fire respond as best they can, but there are times when they are delayed.

Public comment closed.

Bob asked if Sunrise Drive was a county road. Joel said it was for its first segment through the subdivision, to the cul-de-sac. John T clarified that their understanding was that they could not have access through Sunrise.

Bob mentioned on pg. 8 of the staff report, in the middle of the last paragraph, this amendment could greatly increase the development density without County requirements for provisions such as road improvements and public service provider access. On pg. 10 of the staff report, the Montana Code says the Board has to make sure the zoning provides secure safety from fire, panic and other dangers, and promotes the public health and general welfare. This is a concern. If the Board passes this and there's a number of family transfers, it's creating a situation where possibly the service providers won't be able to adequately service those lots. He supports the staff recommendation to deny this.

Lisa checked about how the current zoning regulations fit with the applicants using the density bonus that's already provided for. They own 60 acres. Can they still capitalize on the density bonus? Sue affirmed. In the Masumola regulations, there's a cluster development provision that allows for the bonus. If they set aside 30 acres of 60 acres, that would be 50% set-aside, and he could get a 20% increase in the number of units per acre. Also a portion of his property is located within 1/4 mile of Rocky Point Road, so a portion is 5 acre density. Lisa noted there's already a mechanism in place for them to make more lots if they want, as owners. Sue pointed out the subunit allows for density transfers. Maybe some of the area discussed as possibly undevelopable since a road couldn't be built, doesn't stop those owners from transferring down to where a road could be built. He could accept the transfer of other units. There are a couple of different options for developing at a higher density. Lisa heard a lot of information for the proposal based on theories and predictions of what people may or may not do, and the Board can't make rules that way. They have to make rules with what is. She was not in favor of the amendment.

Clarence asked why they were discussing 700 acres instead of just a change along this one road.

John said he supported the staff recommendation for denial. His basis included the listing on pgs. 12 and 13 in the staff report about the goals stated in the Growth Policy, and the idea that these goals and objectives should be adequately addressed prior to approval. He thought it was also as Bob said that he wasn't sure this would help promote health and general welfare. It leads to a great possibility of sprawl. It definitely wouldn't advance the rural character of the area.

Motion made by Fred Mueller, and seconded by Lisa Dumontier, to accept the staff's recommendation of denial and adopt the staff findings. Motion carried, 5 in favor, and none opposed.

Sue announced for the audience that this will be heard by the County Commissioners on January 14 at 10 am. That is when the final determination would be made on this proposal.

OTHER BUSINESS

Sue noted that without a quorum, it didn't make sense to elect officers for next term. John will not be at the January meeting. He suggested Bob Kormann would be a good chairman.

Lita reiterated that it's very helpful to know in advance if a Board member will not make it, even if the notice is short. She thanked those who have been conscientious about this.

Sue gave an update on the subdivision regulation revisions. A decision probably won't be made by the Commissioners until January. Clarence asked about the discussion regarding private streets. Sue indicated they hadn't got that far. She'll let the Board know.

John clarified that he would no longer be chair in 2009, and a new chair would be elected. Sue suggested people think about new nominees.

Lisa asked how family transfers worked in the subdistrict of Masumola that was under discussion earlier. As it stands now, in the area with the 20-acre density, how does that work? Sue explained that if the property was all in the 20-acre density, they could do 3 tracts and comply with the zoning. Lisa checked that if you have a 20-acre parcel, you couldn't family transfer then. Sue said family transfer regulations are exempt from the density regulations, per a provision in the density regulations, but this zoning district doesn't have that provision. They could still do a cluster and set aside a portion and get a bonus and use a family transfer. Clarence checked that this would have to go to a family member. John thought John T made a comment towards the end that he learned some things tonight and he thought he had the leeway he needed. Lisa agreed. Sue noted with family transfers, you do have to have a valid family member, and after 3 family transfers, there is discretion to say there's a pattern of development occurring here, especially if the parcels are being sold off.

Motion made by Fred Mueller, and seconded by Bob Kormann to adjourn. Motion carried by general acclaim. Meeting adjourned at 9:20 pm.