

**LAKE COUNTY PLANNING BOARD**  
**October 8, 2008**  
**Meeting Minutes**

**MEMBERS PRESENT:** Fred Mueller, Clarence Brazil, Brad Trosper, Lisa Dumontier, Joyce Funda, Sigund Jensen, John Fleming, Ken Miller

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

John Fleming called the meeting to order at 7:01 pm. He welcomed Sigurd Jensen to the Board.

**Motion made by Fred Mueller, and seconded by Joyce Funda to approve the Sept. 10, 2008 meeting minutes. Motion carried, 6 in favor (Lisa Dumontier, Fred Mueller, Clarence Brazil, Brad Trosper, Joyce Funda, John Fleming) and 2 abstained (Ken Miller, Sigurd Jensen).**

John announced that Buckskin Major Subdivision had been postponed.

**HERAK & MEYER MINOR SUBDIVISION**

This is scheduled to go to the Commissioners on October 21<sup>st</sup> at 10:30 am. LaDana Hintz presented the staff report and a map handout.

Fred thought the irrigation plan was incomplete. LaDana explained the proposal was to relocate the turnout. Ken asked about the history of the agricultural restriction. Sue explained the mother created tracts for the children through family transfer. The plat also had agricultural exemptions on the parcel.

Joyce asked if Herak Road was going to be adequate. Fred said it was narrow, but that wasn't unusual. The 60' easement is there. It needs more than just them to rebuild. John noted there were other recent subdivisions on this road. LaDana mentioned two.

John asked about the irrigation water for the property owner to the south, which could be affected by the farm ditch in tract 4. LaDana said it looked like tracts 3, 4, 5 of COS 5503 and parcel 1 of COS 6648 are being irrigated and farmed as one piece, from turnout 130.

Ken asked if the one unit per tract included a guest house. Sue affirmed.

Marc Carstens spoke on behalf of the developer. He noted that a number of the Heraks were in attendance. At the time that the family transfer was made, it was pretty common if you wanted to develop property rapidly to put an agricultural exemption on it because that would take care of sanitation issues. Lifting sanitary restrictions didn't mean that you had to go back to subdivision review at that time. They don't intend to stop irrigation. They will continue to work to ensure no property is left without irrigation because of the subdivision. He described the surface water flow direction, which would assure the drainfield sites were left dry. They have the issue of some smaller irrigation ditch. Those may cause problems as far as the drainfield sites. They may have to look at creating a new irrigation ditch to get irrigation water to those tracts.

Fred asked if they'd talked with FIP (Flathead Irrigation Project). Marc replied his office made an application for the headgate. Sue asked about the turnout and relocation. Marc wasn't sure there would be no turnout in the location of the existing turnout 130. It would be more accurate to say that they want to locate a new turnout. Joyce checked with Marc that the developer would accept the responsibility of assuring the water is delivered to the other properties if said water does traverse across these two lots.

*Public comment opened:*

Nick Herak: The ditch that runs from the present turnout in the upper lot is all the way if you run the water down to the last lot through the subdivision right along the fence. You can irrigate that bottom 10 acres and you don't have to go through the other. It's by the road. He talked to an FIP engineer, who agreed it wouldn't be that hard to take a backhoe and put in a turnout on the corner of those two lots because the ditch is there all the way. The other turnout also irrigates a 40 back so that one needs to stay there. He described what his sister might do if she decided to develop her acreage. He thought that when the division was originally done, it was as Marc described.

*Public comment closed.*

John stated that he would like to take part in the discussion, but he would abstain from the vote, since he knew the Heraks quite well.

Joyce asked the family about paragraph 3 in the Wharton letter regarding what would happen with residences. Marc didn't think this was a subdivision review criteria. Nick said the Whartons have the right of first refusal. There's some bad history that has nothing to do with this. They've turned it down, everything so far.

**Motion made by Clarence Brazil, and seconded by Lisa Dumontier to recommend approval of the project with the conditions as recommended by staff. Motion carried, 7 in favor (Fred Mueller, Clarence Brazil, Brad Trosper, Lisa Dumontier, Joyce Funda, Sigund Jensen, Ken Miller) and 1 abstention (John Fleming).**

**POLSON CONDOMINIUM STORAGE UNIT SUBDIVISION INTRODUCTORY**

The Planning Board's public hearing on this item is scheduled for November 12.

Joel Nelson presented the staff report and accompanying memo and letter.

Fred asked about the road surface. Joel replied the applicant was proposing gravel and staff recommendation was for asphalt.

Joyce asked about the wetlands evaluation by the Army Corp of Engineers. Joel noted the letter doesn't come out and say that there's jurisdictional wetlands to require permitting if you're going to disturb it, but there isn't enough information to call it a jurisdictional wetland. Joyce thought pg. 9 suggested a professional certify whether or not there are wetlands. Joel said there had been no movement on that issue. Ken explained the only way the Army Corp of Engineers could

make a [inaudible] determination was for a qualified professional to do a wetland delineation and make a request for a determination.

John asked about pg. 6 and the existing wastewater treatment, and if he was right in saying the road had been improved and the right-of-way widened, and was now over the project's footprint. Joel replied according to the site plans, it might be an issue for MDT or the drainfield. John asked if MDT extended over a drainfield, would it be up to the agreement they made whether or not that had to be changed. Joel said in a conversation with Susan Brueggeman, typically when MDT acquires right-of-way they address drainfields at that time. If it wasn't addressed it would probably have to be addressed under subdivision review.

John confirmed with Joel that the amount of the agent offer proposed in lieu of a fire hydrant was \$6000. Joyce asked if this included counting the house. Joel clarified that the house was existing, and there were 61 units. There were 60 storage units. They didn't propose \$100 for the existing house. John noted the Board could require it. Ken said a new hydrant across the road would cost substantially more than \$6000.

Marc was available on behalf of the applicant. Joyce asked what was proposed for the wetlands. Marc thought it would be determined before the next meeting. Fred asked which side of the highway the water line runs on. Marc thought it was on the south side, and Clarence confirmed.

Joyce asked about native species. Marc said they intend to use native species throughout on plantings. She asked about the email comment from a neighbor about the potential damage to wildlife. He thought they may have requested comment from CSKT on wildlife.

Sue asked about the status of the MDT application, submitted October of last year, and if trips per day had been determined. Marc did not have an answer but thought he'd have one soon. John asked about the road surface. Marc said it would be better served with a chip sealed surface and there would be less dust. Staff raised some issue with dust infiltrating into nearby waters. He referred to another recent subdivision and standards found in the MT Public Works. He intended to have the engineer come up with a written response to the chip seal solution with dust and oil.

Fred asked if the stormwater had to be more intense if it were chip sealed. Marc thought the amount of additional storm drainage was not significant. He had been requested by staff to provide some information pertaining to the profile of the building height to see if the stormwater management would actually work. Typically they hire engineers to do stormwater management at DEQ submittal time. He had submitted the subdivision plan and the building profile to his civil engineer and expected to get something outlining whether the approach to stormwater would work. He received a fax back but it was illegible.

Sue asked about the roadway variance for roadway width to 20' and why the building length couldn't be reduced to accommodate 2' more on either side of the roadway. Marc said the building size was based on the market, and apparently is a size commonly used for large RV's. Sue asked if 2 RV's could pass on a 20' wide surface. Marc thought they could pass. Fred said maximum width was right at 8'. John asked how big the units are. Sue replied 20' x 50'. John asked what was drawn in by each unit. Sue said these were stormwater swales, between the

driveways to the units. Marc added these were grass. John asked from what point the road was measured and if those could be shortened to widen the road. Marc said the road was measured from grass to grass. Clarence noted a novice driving an RV might have challenges in general. Sigurd asked what the width between the buildings was. Marc recalled this was 60'. Sigurd asked the building height. Marc referred to the illegible fax; he'd have this for the next meeting. John returned to shortening the grass swales to allow the road to be wider. Marc said he'd check with the stormwater management. Ken thought the less paving, the better. Sue asked if someone could back up an RV on an 8' wide driveway and not go in the swale. Marc said yes. Clarence pointed out that some couldn't drive RV's forward on an 8' width. Marc agreed with this also.

Joyce pointed out that the comments of Sue Ball referred to on pg. 2 of the CSKT wildlife management program memo were not attached. Marc noted that stormwater and wastewater were different references. Sue didn't think a bio-swale would be in reference to sewer system, so she thought this was for stormwater. Joyce felt she made clear that [inaudible] would be impacted by improper treatment. Joyce was looking for some clarification or response to that. Marc pointed out that DEQ reviews stormwater after subdivision approval. A standard condition of approval was to get through DEQ review. Brad agreed. Joyce's concern was the damage to the species in the water. Marc explained that a DEQ submittal requires turning in all of the comment to come out of the review meetings.

Regarding the design, John asked if the 90' buffer was at the end of the property or if the property continued back. Marc replied that it continued back, and pointed out a low spot of wetland.

*Public comment opened:*

Bob Stone: He didn't want the project to go forward. He had comments in case it happened anyway. He thought it was weird for what the density map and regulations intended. It fell in a grey area, a loophole that wasn't anticipated. He was concerned it would become a precedent that may come back to haunt them. Given the young age of the map and regulations, he thought it was early to be making radical changes. The Board of Adjustment turned this down.

Joyce Funda: It then went to District Court and there was a settlement. The Board had the jurisdiction. She thought the County attorney felt it would likely be seen differently so there was a settlement. It never did get tested.

Bob: The Board of Adjustment didn't feel it was in the spirit of the density rules and regulations. He didn't either, and didn't think this was the intent of the people who put it together, to have that much development on this small piece of property. They have an incredibly diverse and unusual wetland complex from here to Hwy 35 by the gravel pit and Hellroaring. There are more species than mentioned by the guy from the Tribe. This is a really special part of the Flathead Lake ecosystem that he didn't think could be duplicated. He would rather the project didn't happen at all. If it did go ahead, he thought there needed to be some changes. He showed the north common area on the map, and he showed where a creek comes out of the ground. It could have been buried when the other storage units were built. There's a tiny piece of property that's really wet in the spring with running water, a seasonal creek. The covenants talk about this being a common area, where you can park your RV or boat. If

everyone in the 60 units wanted to do this, there'd be a huge parking lot of [inaudible] vehicles and boats. Driveways get spots of oil and other car fluids in them. A lot of the vehicles sit for years and people don't use them. He's concerned about the impact of this on the wetland. Also, how do you cross the creek? Do they have to get a variance to get a bridge to drive the vehicles up there? That isn't addressed.

Joyce: She asked if he suggesting this was a backdoor way to get an informal RV park back there.

Bob: He didn't think anybody would live there. When he's seen storage units, he's seen boats and RV's parked outside. He thought this was something that needed to be looked at. With lights, he wanted to see the stars and didn't want a bunch of lights glaring. They talk about mitigating the glare. He wasn't sure what that meant. 'Glare' means an intense, blinding light. He wanted the Board to make sure the lights are limited so they just light the place that needs to be lit, which means a beam or a light that comes on briefly with motion. He thought that was acceptable. The buffer and the trees were a problem. He inadvertently had a buffer. He looked at a section that was 40' wide and 100' long, that was about the best although not perfect. He has more than 50 trees there, which is one every 2'. They're talking about 6 in 100' for their buffer, and 20' wide on the east. A lot of these trees are deciduous, so for 7 months in the year you've got no buffer. He thought it would be easy for the Board to require more buffer, and to require coniferous trees in their plan to have a year-round buffer. He listed the native trees and shrubs he had planted. With the storm drainage swales, there has to be a way for there to be some enforcement and guarantees that the stormwater system works. He was aware of other instances where no one checks and it doesn't work. He thought this was around the 3<sup>rd</sup> largest creek running into Flathead Lake. It will make a mess if it's full of pollutants. It's already got too much algae and so on in it. The applicants mentioned in the covenants something about future phases. You couldn't put another anything in on this map. It would have to be to the north, and the County Commissioners have already said that this was not a place that ought to be developed this way.

Heather Davies: Ducharme Creek borders her property. She chose to live in the country on that particular property near the water and near species that live in and near the water, and because of her kids. She understood that the one mini storage was there when she moved in. The glare was mitigated by the barn and trees. Now 60 units, each the size of her house, are proposed. She was concerned with the effect on the wetlands and the wildlife corridor. Wetlands were one of the big issues at the last meeting she attended. When the environmental engineers came out to do the survey, she was asked extensively about the water and wetlands. Why was this not addressed? She read about the tree height no less than 3'. [Inaudible] She tried to mitigate the highway with golden willows for a buffer. When the leaves fall off, forget it. [Inaudible.] She didn't think this was a proper use of the property. She and the neighbors work hard to be good land stewards. She asked the Board to please carefully weigh benefits against long-term effects on this special place.

Mason Niblack: He didn't own land in that particular area, but based on his background, he wanted to comment. He didn't understand why this project was proposed, given the circumstances. He worked as a consultant for a number of people who owned storage units. The

precedent was already set in this particular case. He is a friend of the current owner of the storage units to the west of this proposal, Hu Beaver, who said he would never propose to build a storage unit in its current location. It was built 30 years ago, well before the current subdivision requirements, reviews, laws, procedures etc. The current owners have made numerous attempts to take care of the problems there, such as problems they've already got with groundwater, storm runoff, mitigating against the wildlife that are there, etc. In his opinion there were 4 good reasons not to do this project. One, was there a need for this particular project? He thought there was no dearth of storage unit availability in this county at this point in time. If you talk to RV or boat dealers in western Montana, in the last 2 1/2 months the bottom has fallen out of the RV market. People are trying to sell, not buy and store. The RV business at the storage unit next door has been cut in half in the last year. He termed the next 3 reasons as location, location and location. He thought this was the lowest and worst use for this piece of property. It's just the wrong place, if you look at the number of variances requested. This is a unique piece of ground, as the neighbors have already talked about. It is much better suited to insure the maintenance of native species of all kinds, both plants and animals and all the natural things that surround it. He guessed if the current storage unit next store were not there, that this one would have never been proposed.

*Public comment closed.*

Joyce asked Marc about the area to the north, and the use intended by the developers. Marc replied that this was open space currently. He didn't anticipate that this would be open storage. She asked what possible use the common ground would be. He didn't know, but what else would you do with it. Her suggestion was to not build the project. She didn't want the ground filled in. She asked if there was a copy of the agreement between the applicant and the Commissioners. She wondered about the wording and if it was with or without prejudice. Joel answered that the BOA rescinded the decision based on the County attorney's suggestion. Joyce confirmed with Joel that there was a lawsuit filed. Joyce said that it was [inaudible] with prejudice.

Ken thought this was a Commissioner issue. The Planning Board has the responsibility to look at the primary review criteria. John agreed. They could look at G. regarding the natural environment and review criteria. Joyce felt the legalities would help her understand the proposal further. She just wanted to see what had been done. Sue noted they could get this to Joyce before the next meeting. Clarence asked in the past, if they were unable to put restrictions on something where the court had overruled. Sue said it depended on the circumstances. Joyce said if the court overruled or found in favor of the plaintiff, they're still subject to the rules of the County.

Sue asked Marc if there were plans for submitting a lighting plan. He said he'd talk with the developer about that. She also asked about modification to the buffer plan. Marc said he didn't write the plan. He would question the author. She asked about the creek coming from the existing storage property. He didn't know about it. He did have floodplain experts on site. It wasn't indicated in their report. She wondered what it was. Bob Stone reported that Hu Beaver said it had probably been illegally put underground. He said it was within 5 feet of the existing building, but the creek bed is probably dry right now. He described it further. Mason Niblack

said it was currently wet. Bob S said the water runs into Ducharme Creek for part of the year. Marc thought it might possibly be part of the stormwater management for the existing storage unit. Bob wondered if it was a spring.

Sue commented about the northern portion of the property and the Barry Roose (sp?) subdivision at the lake house up the road. The wetlands next to the lake were confirmed for management in the future lot development, and it was concluded to develop a third party conservation easement for oversight and management of that property in perpetuity. Something like that could be considered for that portion of the property in this regard. She asked where the unit declaration came from. It does have the language about the storage up there and it does talk about future phases. This could be adjusted before the next meeting. Marc commented on the north portion. It probably could be developed. It was the driest portion of the property. Bob S said there was a high, dry spot, but it drops down and there's a pond for a good part of the spring and into summer. It's wet on either side.

Joyce asked about the process for doing a site visit. This was discussed further by the group. Sue explained when the landowner signs off on the application, they are giving the County the right to go onto the property. A Board member should probably go with a County representative. For the whole Board to go together, it would have to be formally announced. She said to let Lita know, and they'd get this together.

### **OTHER BUSINESS**

Sue explained how Board term expirations would happen. Members with expiring terms need to let the Planning Office know by November 20 if they'd like to be considered for reappointment to the Board. Commissioners wanted this to be noticed, so it will also be advertised in the paper.

Subdivision regulation update will be on the 3<sup>rd</sup> Wednesday of November.

Joyce asked about the fee scale. Sue noted it was raised about 6 months ago. Some was based on what Flathead County was charging, and they have raised their fees since.

**Motion made by Fred Mueller, and seconded by Lisa Dumontier, to adjourn. Motion carried by general acclaim. Meeting adjourned at 9:00 pm.**