

LAKE COUNTY PLANNING BOARD
April 9, 2008
Meeting Minutes

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

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

John Fleming called the meeting to order at 7:07 pm.

Motion by Fred Mueller, and seconded by Ken Miller to approve the March 12, 2008 meeting minutes. Motion carried, all in favor.

GREEN ESTATES MAJOR SUBDIVISION

LaDana Hintz presented the staff report. Pg. 6 near the page bottom was corrected to read 'to store all excess irrigation water'. Ken asked on pg. 7, regarding the requirement for a licensed engineer to certify the irrigation system had been installed, if this was something the County was starting to do. Sue explained this had been discussed for Charlo Estates, since that has such a difficult irrigation plan. It should probably be removed from this one. John confirmed the bolded print in the staff report was covered in the conditions of approval.

Jack Duffey spoke on behalf of the applicants. They agreed with the staff recommendations at this point, and had a few questions. Regarding Concord Lane, staff recommend it centered with a 60' right of way. To meet 30' from the FIP (Flathead Irrigation Project) ditch, he wasn't sure if that was achievable. The physical road might need to be moved south within its 60' easement. This is on pg. 3. John asked about moving Concord Lane south so it served 3 lots. Why was that a problem? Jack D said the developer felt the way proposed was the best suited for his lots, as opposed to a road bisecting 2 of them.

Jack's other question dealt with enforcement of the buffer area. Can it be covered in a covenant? Sue noted that the County doesn't enforce the covenants, so she didn't think it would be preferable. A separate document for the buffer is what is typically required. LaDana mentioned there is a document to which they can add. Jack confirmed with her that he could get that language.

Going back to the road, Sue said if there's 30' with a 24' driving surface, it only leaves 6' between the edge of the right of way and the driving surface. Jack said there's a 10' easement for the ditch, and then the 60' road easement starts.

Joyce asked if construction of the road would impact the project ditch. Sue replied the Project said they wanted the road at least 30' from their ditch. Jack explained the drawing submitted to FIP showed a minimum of 30', and they agreed it would suffice. He wouldn't say it was a standard.

Steve asked about the preliminary plat, which talks about a 10' easement from existing FIP ditch 138. Jack D explained the 30' is a physical setback for the north edge of the roadway. Sue clarified that they're saying they want a 30' setback, not a 30' easement.

Steve asked about the sump discussed at lot 7, on pg. 6. He confirmed with Jack that the ditch ends there, and the developer or lot owner would need to take care of excess water. He questioned whether a 2000-gallon sump tank would be sufficient for this task. If two lines were running, that's 400 gallons a minute. Board members calculated this would fill up in 5 minutes. He thought there had been some natural drain, and suggested they look at where it used to go. John asked where excess water goes now. Theo Green explained that it goes into the coulee and down to the canal. John asked if it could continue to do so. Theo showed the coulees on the map, and Jack showed other features. Discussion about the map ensued. Sue thought it looked like the excess water would go through the house and drainfield shown on lot 5. Jack D didn't think it was in that draw.

Joyce asked about the surrounding land uses. Jack D replied there was a combination. The Greens' residence was to the west, Mountain Mist Views was across the street, and most of the rest was agricultural. Joyce touched on the statement warning future lot owners that pets found affecting livestock may be legally shot and killed. The covenants in paragraph 10 concerned wildlife, and she read from subsection c. She asked if this section could be firmed up, and how one could confine a dog to a tract unless on a leash or in the house. She also asked about the definition of a domestic pet. Jack D noted this topic comes up a lot. To confine or restrain to the property could be with a kennel or invisible electric shock collar. They didn't want to put a bad light on pets, and felt the language was sufficient. Joyce summarized that it's up to the owner to confine pets or take the risk. It's a significant issue so she wondered if it was thought through, and if it could be clearer in the covenants. Jack D said for one in a recent Commissioner meeting, some of the language was tidied regarding adjacent properties, emphasizing that it's farming and ranching, and the pet language was strict as well; maybe just more awareness to potential buyers of the surrounding properties, in the potential covenants. Joyce noted to amend covenants, it had to be 100% of the tracts.

Bob confirmed with Jack D that tract 3 has 100' setbacks for the home from adjacent agricultural properties. Bob pointed out if the driveway is too close to the buffer strip, gravel and salt and whatever will go in the buffer strip, so the placement of the house and driveway in relationship to the buffer strip was important on that lot.

Sue returned to the tail water concern. Would it need an easement through the tracts? If so, it would be needful to see how the driveways are going to be constructed and not impact that. Jack D thought perhaps piping from the canal to the pump location would be an option. Steve didn't think so. He thought the only solution would be to put in a pipeline instead of a sump, and bury it, past the subdivision into the coulee, so the surface water didn't flood homes. The size of pipe would have to be determined, probably a 6" or 8". There'd be no pressure, just flow. John thought this might require a condition that the problem be solved between staff and developer. Steve thought the Board could recommend no surface water be allowed to flow from the pump site on the property.

Joyce read from an email from David Koyle with concerns on the numbers of wells and what would happen to his well. Jack said typically DEQ requirements regarding quantity, quality and dependability of groundwater had to be satisfied, and if that can be met, there's a good chance his well won't go dry. The flip side is there are no guarantees when you drill a well. Joyce asked if this meant David would have to bear the cost himself. Shawn Rowland explained this is a very common concern. For Views at Timberlake subdivision, they were required by the State (DEQ) to do additional work to guarantee that would not be a problem. When they submit to DEQ, they are required to show there is adequate water, quantity, quality and dependability. If the neighbor has a water right for the well (more likely for an older well), they have the ability to go after the development and say there's a problem. Without the water right, there are no guarantees. In his experience, there's plenty of water in that area. He gave another example, when \$15,000 pump tests have been required for family transfers. Joyce asked if the quantity, quality and dependability tests were restricted to the area of the proposal without including contiguous properties. Shawn replies that in some cases they are required to monitor a neighboring well. Comments are required to be forwarded to DEQ.

Public comment opened:

Earl Wharton: He asked about the distance allowed between wells. With Charlo Estates, they have 7 wells on 40 acres. It isn't necessarily the number of wells, but the amount of water used by property owners.

John F: He summarized that Earl's concern was the quantity of water. He noted that the Charlo project would come up later in the evening.

Jeff Smyth: His idea to solve the irrigation problem might be to put in a long suction line to the pump and maybe have an air bleed on it. Let the water flow past the diversion point if the pump shut off.

John F: He's used those. It's probably a solution.

Don Remien: He lives NE of the property. He had concerns about the number of houses. He asked how the lots were 3 acres in size in 5-acre density. His irrigation question has been partially answered. The water will still be fed in the same way and quantity as in the past. He pointed out the covenants don't specify stick houses or mobile homes or [inaudible], and this is a major concern for him. He was concerned about subdivisions surrounding him, though St. Ignatius was doing a pretty good job of keeping them in close and out of the foothills. He was concerned about his 80 acres in the middle of all this. He was trying to picture the water draining to the SW, as Theo Green described. It seemed to him like it was more to the NW to the canal. There's a prong of it through Don's property. He summarized his concerns: stick houses, irrigation, size of houses, and number of wells.

Public comment closed.

Regarding Jeff Smyth's irrigation suggestion, Steve thought it was a good point, but you'd have to get Project approval for leaving water in the ditch if the pump shuts off. They have to be able

to know what's going to happen. He would recommend the irrigation plan get straightened out before it goes to the Commissioners.

Bob asked if anything was presented on stick homes versus mobile homes. If not, was the developer willing to entertain that homes be stick-built? Jack D said that was fine.

Sue explained the 3-acre lots exist because it's not a minimum lot size. It's an overall density for the entire property. For a 40-acre tract in 5-acre density, you could have 8 units, but you aren't required to have 5-acre lots.

Steve asked Don if he had livestock on his property. Don affirmed that he did, leased. Steve recommended the dogs be in kennels. If a dog is shot, the shooter is the bad guy.

Motion begun by Jack Meuli to recommend approval of the proposal with staff recommendations and other changes. Sue noted the findings of fact in the staff report would be updated to reflect the concerns about the overflow and the sump not being adequate. Steve recommended they insert a sentence that the irrigation plan is inadequate as proposed, and needs to be made adequate. Jack reminded about the surface water. Steve thought it would say that excess surface water from the pump site has to be buried or in a pipe, if that's the way it's going to be handled. Or, the staff could alert the Commissioners of a problem and they could figure out what to do. Jack M said the motion includes the staff and Jack D will get the irrigation plan adjusted before it goes to the Commissioners. Sue said it's difficult to say that won't go to the Commissioners without that being fixed, without getting an extension from the developer, because of the timeframe. The findings of fact could include that it isn't an adequate plan as proposed, and could potentially impact adjacent landowners, explain the situation and require that it be addressed to the satisfaction of the County Commissioners prior to final plat approval. Ken asked if the motion could include no pre-manufactured homes as part of the conditions of approval. Jack M agreed this was part of the motion. Joyce thought the covenants should be amended for that. She was concerned about the Board addressing the inadequate irrigation plan. Joyce checked with Sue about the language she would put in the findings. LaDana noted that #10 had to be amended to remove the licensed engineer for the irrigation. Sue clarified that #10 still needed to include the signature by the developer. She read the affected section. Jack M agreed that this was part of his motion. **Fred Mueller seconded the motion.**

In summary: **Motion by Jack Meuli, and seconded by Fred Mueller to accept the staff recommendation with the addition to the covenants to allow stick-built homes but not pre-manufactured homes or mobile homes, for Sue's wording about the irrigation project, and removing engineers licensed in the State of Montana from condition #10. Motion carried, all in favor.**

SMYTH ESTATES MAJOR SUBDIVISION

John noted this would go to the Commissioners on 4/22.

Joel Nelson presented the staff report. He pointed out that FIP ditch 21-C-35 currently flood irrigates the property within lots 1 through 11. In light of the discussion of the last subdivision, there might be an issue relative to the sump pump they proposed.

John asked for some clarification on specific FIP ditch locations. Jeff Smyth showed some of these on the map. His intention with the overflow from the sump was to pump the water from station 43 to the sump and then pipe out of the sump back to the original 3-5 with the overflow water. He thought they'd need to add an easement for a line running to the pump back to 3-5. Sue said 3-5 was not depicted on the plan. Joel said the preliminary plat called that ditch the Mission C Canal. Sue said they needed to be sure it's a Project canal. She asked which were Project canals and which were private farm ditches. Jeff described this with the map, and it was further discussed. Sue had a concern with citing the FIP canal easement, the CFR, for ditches that aren't project ditches. This was not adequate. For Project ditches, the CFR can be utilized, but for private ditches, you'd have to do an easement that's adequate for historic flows through the property. Jeff thought he'd misunderstood the question. The ditches shown on the map were FIP ditches. There were private ditches that won't be used once the pump system is put in.

John returned to Jeff's solution for the excess water problem. Jeff added it would be a buried pipeline, and they would go through the steps to get the easement from FIP. John asked if he would maintain ownership of the land. Jeff said he has it right now, but might sell it.

Jeff spoke about the Pineseault Road issue. Gene Shock, who lives at the road end, had been starting a RID. He intended not to protest the RID, and to participate. The road would be chip sealed through the RID. This would go the 2 miles to the end of the road. He thought the Lake County Road Supervisor would be overseeing the engineering and making stops by while construction was occurring. He was surprised that they wanted him to hire a professional engineer to do that. Jack D commented this was stated in the regulations, but in the past, the Lake County Road Supervisor signed off on it instead. If it's still an option, he thought Jeff would like to have that. There's not much grade or curvature. Fred asked if the widening of the road would be for just the subdivision or for the full 2 miles. Jeff thought that depended on what the Commissioners did with the RID.

Brad asked if Jeff thought the road supervisor could oversee or could sign off on the project. Jeff thought both. He thought the road supervisor would stop by on his schedule to make inspections, when he felt like surprising them, to see the kind of work being done. Joel noted he would have to stop by at specific times. Sue said he'd have to let him know, for instance, that they had the base laid and get it inspected. John checked that the internal road was the one under discussion.

Brad referred to pg. 3 section B, where the average well depth was given as 66'. Did they foresee septic problems? Shawn did not foresee a problem in the soils found there. He anticipated needing large drainfields.

Joyce asked what would happen if the RID fell through. Jeff said this if it was prior to preliminary plat, he could initiate it if it came down to that. Joyce asked if this put part of the responsibility for his development on the shoulders of the neighbors. Jeff didn't think he would be forcing it since they're starting it already. Joyce asked how he would address the issue of the road being under County standards. What was Plan B? Jeff said he would initiate the RID as plan B. Because of the number of parcels down the road, it would automatically be a done deal because of the number of parcels in his subdivision.

Joyce asked about the conservation development bonus. On pg. 2 and 3, a very large lot was set aside for agriculture and natural resource conservation purposes. Does that need to be defined? Jeff understood this to be that the use would continue to be grazing or farming production, which is the present use. Joyce asked if he had an objection to this being defined as a condition of approval. Jeff asked if this would be further defined by never further dividing it. Joyce explained her concern the land could be used without being further divided and yet without it being preserved for agricultural and natural resource conservation purposes. She gave example of land with junk cars. She thought if his intention was to continue it in its present use of grazing and farm production, she would be comfortable if this use was defined in the conditions. Sue referred to condition #32, providing language for the final plat. If Joyce would like it to be more specific, she could amend it.

Jack D returned to having the road signed off by a licensed engineer. If it's going to be dedicated to the public, the County requires that a licensed engineer sign it off. This is a private roadway, so he didn't think that applied. He thought having the Road Supervisor inspect and sign off on the road would be satisfactory. Sue thought they should stick with what's in the staff report. She didn't think the County Road Supervisor was paid to inspect private subdivision roads. Jack D said he didn't think anyone needed to sign off on it, because that was for a public improvement to be dedicated to the public. Sue said they want to ensure the road is built to adequate standards. Joel said there's a definition in the subdivision standards for public improvement. He read the relevant portion of it, which said any structure or facility constructed to serve the residents of the subdivision or the general public, such as parks, streets and roads. The road would be serving the residents of Jeff's subdivision. Jack D thought the licensed engineer statement intent was only for roadways to be dedicated to the public. John thought this was between the developer and staff, and the Board did not need to go through that.

Bob asked about the drainfield on lot 1, which encroaches on Willow Creek Lane. Shawn replied this was the mixing zone, which covers the theoretical plume. The mixing zone was used to calculate the impacts of that drainfield on surface water and ground water. There's no piping there.

Steve asked if the drain from the pump to the center ditch was gravity. Jeff affirmed. Steve commented that Road Supervisor was going to come out to inspect a trench he dug across a chip-sealed road. It's been over a year and this hasn't happened yet. Jeff understood the Road Supervisor has to sign off on it, so he has to look at it. If he doesn't sign off, then the paperwork is at a standstill.

Public comment opened. None offered. Public comment closed.

Lisa Dumontier commented on condition #22 that this would have to be changed if they go with the RID situation. She disagreed with that, since the subdividers were the ones who were increasing the traffic on the road from the highway to the NW corner. She thought that they should widen this part. If the neighbors want to do it the rest of the way, that's fine. The Board has been strict on the road situation at other times. Fred thought Pinsoneault Road should be widened to 26'. Lisa felt this should be at the developer's cost and only to his property. Sue said it would have to be done before final plat. He's already said he can force the RID. John asked if

#22 was accepted as is, it doesn't preclude the RID from going ahead. The RID could include what the condition requires. Sue affirmed. Jack M thought it should be necessary to where the road cuts out. Lisa thought that made sense. Joel said the intent would be to make sure the chip sealing goes beyond the road because eastbound traffic from west of the property is going to be dragging gravel. Jack M asked how close the access road was to the corner. John answered 506'. Jack M said just to his road. Sue suggested maybe 50' to 100' beyond just to deal with the gravel coming on to it. Lisa agreed.

Joyce asked how the Fire Dept fee came to \$1200. Jack M explained that this is \$100/lot.

Steve commented that if they really wanted a conservation easement that restricts development, they would have to go to the Montana Land Reliance or some similar organization and put it in a conservation easement. Otherwise the property can be sold and come back. He wondered about the letter from FIP saying once there's a permanent superintendent that they'll allow land to be taken out. He showed a letter that he just got today—they are not going to remove land from the Project until the water rights issue is resolved, until transfer project is completed. Jeff said in his conversation with Chuck Courville, Chuck said they would not deal with that issue. They haven't told him either yes or no, so he's going to proceed with negotiations with him. He has plan B so this doesn't hold up his whole project. Steve said they're going to have to put in an irrigation system because they won't take land out of the project. Joyce noted the letter doesn't say what Jeff just said he said. Jeff said he was reporting on his conversation with Chuck, that he didn't say yes or no, because there wasn't a permanent supervisor. John thought this was covered in the conditions, such that there's a plan if it can't be taken out.

Ken asked for clarification on the discussion on condition #22. Is the Board requiring that developer to pay for the chip-seal, or is the requirement that it be done one way or the other, be it RID or the developer. Joel said it needed to get done, which could allow for the RID process to get it done.

John asked if the group was okay with the irrigation improvements. Joel thought a new condition to accurately label all FIP ditches, and non-FIP ditches should have an easement around them to allow historic [inaudible] should be added, possibly as #27A. He suggested wording such as the final plat and irrigation plan shall correctly depict and label the FIP irrigation ditches and infrastructure and all private irrigation ditches that provide water to surrounding properties shall be located within an adequate easement in compliance with the Lake County subdivision regulations. John asked about the drain. Joel said that would be an improvement to install the infrastructure to [inaudible]. That would be under 26B. The easement would have to be shown around that infrastructure.

Sue clarified the subdivision regulations require a minimum of 10' easement on either side of all irrigation ditches. There's also that CFR. What staff want is for them to show a minimum of 10', plus reference the CFR. John asked if that was stated in the conditions. Sue replied what Joel just said would cover it. She wanted to clarify for the developer. Jack M confirmed with Sue that this would be in #27A, if they make it that way.

Jeff said his intent was to eliminate all of the private ditches. John checked with him that these were flood ditches and were not secretarial ditches. Jeff affirmed. John asked if 27A could require all FIP ditches to be correctly labeled. Joel said private ditches needed to be shown if they carry water past the subdivision. Jeff said they'd be gone. Joel noted it appears in the aerial photography that all the ditches shown on the plan take water beyond the subdivision. Jeff said 3-5 continues past his pump. He's started paperwork with FIP because he owns the property past the subdivision that the ditch uses, and the ditch would be eliminated at the pump. Sue said then it wouldn't be an issue. He would comply with the condition, if that were the case. If it's signed out of the project, he didn't have to show it. John checked that Joel's wording was okay.

Motion by Jack Meuli to accept the subdivision with staff conditions, and revisions to the conditions. For condition #27A, it says ditches that are FIP ditches or ditches that go beyond the subdivision have to be labeled. Private ditches within the subdivision don't have to be. On condition #22, the road has to meet County standards from the 50' west of the access road, Willow Creek Lane, to the highway. Fred Mueller seconded the motion.

Motion by Joyce Fund to amend the motion to add to condition #32 of the staff recommendations on pg. 23 to include language in the second line from the bottom. After 'hereby set-aside for conservation and agricultural purposes,' insert 'consistent with its present use, which is the production of hay, grain and pasture'.

Jack M asked why. Joyce answered that she could envision scenarios where someone could take advantage of the general language, such as for junk cars. She understood this issue hasn't been really defined up to this point. Because of the substantial bonus, she thought it should be clarified. Ken could think of agricultural purposes that were not congruent with the current use or the intent behind it, such as a feedlot or a 20,000 square foot chicken production facility. He agreed with nailing the language down a bit. Lisa asked how that would be enforced. Fred thought if they didn't like this conservation easement, they could get with Montana Alliance or similar organization that police these deals. They have certain rules about what you can and cannot do. Joyce thought the conservation bonus was as a result of a trade-off, to ease the density regulations and in return Lake County gets a continued conservation easement on this land. It's different than an easement. It's committing, in perpetuity, for the way the land will be used. Since the developer said what the land is currently used for, she just said that the future uses be consistent with the present usage. She thought the language proposed a barrier to the kind of things that could be deemed agricultural but not consistent with this conservation bonus. Lisa asked if and when the density changes, a new subdivision could be proposed on this 100 + acres. Sue said that it could not be split, since he's getting the bonus.

Ken Miller seconded the motion for amendment. Motion for amendment carried, 6 in favor (Ken Miller, Brad Trosper, Joyce Funda, John Fleming, Bob Kormann, Steve Hughes) and 3 opposed (Fred Mueller, Jack Meuli, Lisa Dumontier).

Bob asked if the overflow ditch was addressed in the motion as amended. Sue said that it was not addressed, nor was the additional language regarding adequate easements in compliance with Lake County subdivision regulations in 27A. John asked Jack M if this was okay to add.

Motion by Bob Kormann, and seconded by Brad Trosper to amend the motion to include under 26B that for the tail water from the ditch 21-C-35, there be infrastructure (ditch or pipe) and an easement shown on the plat from the irrigation pump on ditch 21-C-35 to the ditch that is fed by the Mission C canal to take care of the excess water. Motion for amendment carried, all in favor.

Original motion as twice amended: Motion carried, all in favor.

CHARLO ESTATES MAJOR SUBDIVISION

John mentioned that this would go before the Commissioners on 4/22.

LaDana Hintz presented the staff report. On pg. 4, she noted that Charlo's container site is approximately a mile south of the proposed subdivision, rather than west.

Brad asked about the finding of facts on pg. 20 and 'existing' noxious weeds. LaDana said that they would be required to manage all noxious weeds.

Jayme Wolfe spoke on behalf of the applicant. She updated the Board on their response to concerns, which LaDana had also covered. The agricultural setback was increased to 100' along all boundaries of the property, as shown on the updated preliminary plat. They met with Carlos Rodriguez regarding the low wet areas. He stated the 50' buffer was more than adequate. For the irrigation ditch setback, two FIP representatives reviewed the 40' setback the applicants proposed. They approved and signed the plan on 12/14/07. She offered to show people the letter. She requested that they have the 40' structural setback rather than the 50', and asked that condition #13 be removed.

She gave background to the irrigation plan development. She understood the plan still needed some tweaks, especially at installation. After talking with Wayne Brown, they found relocating station #40 wasn't feasible due to the elevation deficiency, so they now propose to keep it at the current location. It will still be piped and buried. They originally had the new main line, which they will install from east to west, north of the ditch. They've decided that placing it south of the ditch, and also outside of the FIP maintenance easement so it's now placed within its own 20' easement. This is reflected on the new irrigation plan.

Jayme spoke about irrigation issues. Regarding condition #9 and having the irrigation infrastructure installation be certified and signed off by an engineer, she felt since FIP has the final say on whether the plan would work, they would like condition #9 removed. They felt condition #11 covered it sufficiently. She touched on the concern of the neighbor that with 8 new risers, his pump might shut off. She spoke with FIP on this, but found no real answer. For the irrigation loop at the southern end of the south flowing canal, if they need to extend that easement, they can do that.

In sections B and G, the staff recommended no-access easements along Herak Road right-of-way for lots 1 and 8. She pointed out this is in the road users agreement and will be added to the CC&R's. They planned to leave the existing approach and gate, which FIP thought would be nice to use for maintenance. She asked that the no-access be modified or removed. It's in the staff report, then referenced by the easement condition #12.

Jayne said they sought comment from the Road Supervisor regarding the approach to Hwy 212, the intersection of Herak Road and Highway 212. The first letter from the Road Supervisor said they should waive their right to protest a RID. They propose to do this.

Bob asked about the setback to adjoining lots within the subdivision. Sue listed 15' in the front and 10' from the rear and sides, per the covenants. For tract 4, Bob described a low wet area with a 50' buffer strip at the bottom. To the west, is agricultural land, which is a 100' setback. The other boundaries have 15' setback from tracts 5 and 3. Sue corrected that this is 10', and there's 15' from the cul-de-sac right-of-way. Bob noted the small, small footprint for the house and drainfield. Can they both fit? Ken said the drainfield could go within the agricultural setback, unless staff had a different interpretation. Shawn Rowland mentioned the house sizes were very large, a 50' x 50' home with a 30' x 30' garage and a 30' x 30' concrete pad for a total of 4300 square feet. This was further discussed.

Public comment opened:

Pete Vaughan: He showed John a map and pointed out places where there were to be no wells or drainfields. He talked about other map features. The map scale had changed. He had irrigation concerns. Nothing has happened on the ditch to the south. They crossed 14-DB a few times, and there's no pipe size there, just culvert. The same is true for the approach pipe. He's run into well problems where they've had to redrill. He was concerned about room for that. If the sewer has to be redone, where will it be put? His major concern, 90%, was irrigation. Pipe sizes aren't known for the approach pipes and crossing the canal. He's tried to put pipe in before, and it's taken him 60-90 days to get the pipe size approved by FIP.

Steve: The project developer has to get a permit from FIP to put in a culvert, and they'll size it for them. Pete shouldn't have to worry about that. He was concerned about the pipe that would take water to Pete's land. Has it been sized?

Pete: No. After the other meeting, they read this, and it was a 4" pipe. It takes 1 1/2' of water, and a 4" pipe wouldn't be big enough.

Dave DeGrandpre: He didn't know what size pipe they put in. Hot Springs Irrigation Sales put together a spec sheet for the project. He didn't have a copy with him, but one was submitted to the Planning Office.

Sue: The staff couldn't tell from the spec sheet where which was for which. There are all different sizes of pipes there.

John: He was pretty sure it would work or it wouldn't happen.

Sue: It is a Project ditch, so they wouldn't be able to do it without going through the Project, so they'll size it.

Pete: It drops off both ways on the flood irrigation, so it's got to stay on the high spot or it doesn't work.

John: He said they couldn't guarantee anything, but the Board intention was to make sure that works. The pressure hadn't been addressed.

Pete: That was on their own irrigation, so he wasn't too worried about that. The overflow would come on down the ditch. If it's checked where it's supposed to be, it'd go on down. It'd follow 14-DB on through.

Bob: He asked about the plat Pete showed the Board and the drainfield setback.

Pete: It says on there no wells or drainfields within a 100' setback on there somewhere.

Shawn: What they are required to do it to show any wells or drainfields within 100' of the property line. He had indicated on the plat that there are no existing or previously approved drainfields or wells, and maybe this is what it should say. It had nothing to do with that setback. They needed to make sure if they put a drainfield somewhere that they're not going to impact someone's well by having it within 100' of the well. Pete was worried about the setback, but they already meet that setback.

Pete: It's not shown on their map, but his irrigation ditch is about 2.5' on the other side of the fence.

LaDana: They've updated the map, and it's added on.

Bob: There's 100' setback on the west side that you've proposed [inaudible]. And it's 100' setback on the low wet area.

Pete: He had an irrigation ditch that runs on that side also. It's 100' on the south side.

Betty Wharton: In reference to the guest house, it seems strange to her that people building a 2200 square foot home would also afford a guest house. Who can prove it's not rented? It would add greatly to the population density. There's already 4300 square feet with the garage, the house and the concrete pad. How much more will the guest house take out of the lot? She's not against anything, but something like this is supposed to be 8 homes. If everybody builds a guest house, it's going to be 16 homes on this lot. She's referring to any lot. It'll be that much more population density, and more dogs and cats and so forth.

Jack M: Does it say anything about rentals?

Sue: It's in the covenants, and also regulated under the density regulations. A guest house can't be rented without going through subdivision for rent or lease, and you have to comply.

Betty: She's seen in different places where if you rent a home, it can contain more than one renter, so to speak. That was her concern.

Earl Wharton: Eight primary homes and then an additional 8 homes or guest houses should be defined more clearly. Sixteen homes on 40 acres seemed inappropriate to him. He mentioned in the second set of covenants, the last one mentioned Herak Lane. There was a Herak Lane, but this should be Herak Road, not Herak Lane. At the intersection of Herak Road and Hwy 212, there's a broken yellow line going E-W that allows passing. This was not proper. It gave the motorist the right to pass, which takes them right down to the intersection. This should have been changed years ago. This should be addressed and corrected.

Pete: He'd like to something put in about when they could trench that. If they get into irrigation season, the pump might run for 2 weeks at a time before they shut it off.

Steve: He doesn't want them to do any work until the irrigation season is over?

Pete: He didn't care if they did work as long as they didn't tear up his ditch.

Steve: So either put the pipe in before the season starts, or wait until the season is over.

Nancy Vaughan: Irrigation is the biggest situation on any ranch or farm. She's seen the water wasted, and water is valuable. Regarding her comment on Wayne Brown's letter from Nov or Dec of 07, on the same morning of the last meeting (March 12), she and her husband Pete met Wayne at the ditch under discussion. Wayne jumped into the ditch, and agreed with Pete. Given the letter, she didn't believe FIP had actually looked at it. She had some trust issues with this. She didn't want to see anything going into court. Those FIP ditches had been around longer than she has. She wanted to cautiously go forward, and the developers to do likewise, but that's her family's livelihood and it behooves her to protect it for more generations of her family.

Bob: At the last meeting, the Board requested that the developers talk to the Vaughans about the irrigation. Did this happen?

Nancy: No, but she understood that they attempted to. They left a message on her son's phone when she was out of town. She found the plans scattered in the yard last week. Pete met with Dave DeGrandpre at the post office, who asked if Pete got the plans he left in the fence. They tried to call the Vaughans, who didn't have an answering machine. They do receive mail, and she gave her address.

Dave DeGrandpre: They called the Vaughans numerous times. He tried to contact them through the Vaughan's daughter-in-law. He dropped off CC&Rs and plans in their back gate one day to try to get them information. He was lucky enough to run into Pete at the post office one day, and they talked over issues. There wasn't a lot to be done. They tried to meet the Vaughans halfway. The setbacks have been increased around the property to try to make it more palatable. Regarding the irrigation system, this was a preliminary plat application. They put together a detailed, thorough irrigation plan. Tweaks have occurred, and more would occur when the facilities and pipes are put in the ground. Ultimately, FIP tells whether it's to spec or not.

Sue: She thought something was missed in the staff report. On tracts 6, 7 and 8, there are driveway crossings of the Project ditch. The Fire Dept has concerns about what the specs for those culverts will be, and that they can withstand the weight of the fire trucks. The Project will have to permit those culverts as well. Staff were going to suggest that the developer install those driveway crossings prior to plat approval. This would reduce the number of times FIP and the Fire Dept have to go out and inspect them.

John: A conditions of approval?

Sue: Yes, that they install the driveway crossings to lots 6, 7 and 8.

Joyce: Is there a solution to address the Vaughan's concern about irrigation?

Dave: They can put in a plan, and put in the infrastructure and mechanism in place for the people within the subdivision to get water so the system will work. Ultimately what it comes down to is neighborliness. If someone wants to be a jerk and steal water, there's nothing the developer can do about that. That's where the Irrigation Project comes in. The ditch rider is in charge of that. They can provide the right mechanism so there's a good system. They can't control the behavior of people 20 years from now.

Joyce: She asked if Pete Vaughan thought this was accurate.

Pete: Yes. They didn't see the ditch rider very often. They do a lot of their own. If he had trouble, he'll knock on a door. One thing you might be missing on the pumps is that a lot of places could only put in a 7.5 horsepower pump instead of a 20. A lot of places the Project wouldn't let you put in a 20.

Public comment closed.

Steve agreed with Nancy, regarding the letter from FIP, that Wayne Brown and John Plouffe had not looked at the project. There are 3 over-crossings in less than 1/4 mile to get to lots 6, 7 and 8. There's nothing in the letter about culverts. He suggested they go on site with Wayne and John and talk about the number of culverts in that short of a distance. If you proceed with the plan and find out you can't put in that number of culverts, it'll be a real problem. Sue pointed out this was another good reason to have them do it prior to final plat, so the last person doesn't come in to do his, and be told he can't.

Joyce complimented the CC&R's. She asked about guest houses on pg. 3 of the CC&R's. One guest house may be included, but there's no restriction on size. Dave said if that's a concern, they'd be happy to limit. Sue mentioned it's 1000 square feet of living area in the zoning districts. In covenants, the people within the subdivision would be the ones to enforce this. She asked if the applicants objected to 1000 square feet of living area. Dave said no. So this would be put in the covenants. Joyce noted on pg. 11 of the covenants, it says nothing about the Commissioners approval for covenant amendments. Since typically the CC&R's contain provisions that are part of the preliminary plat approval, she was concerned about this. Sue thought it was something the staff missed here. Dave said a number of items in the CC&R's

would not be of interest to the Commissioners. Could they differentiate between plat approval-type conditions and other covenants? Joyce said the Commissioners would know the difference. Dave was concerned about the time it could add to processing an amendment change. It's not a huge issue right now, though. John asked if he objected to adding Commissioner approval. Dave said no. Sue said he could certainly submit which he thought were plat approval covenants, and talk to the Commissioners about that. The covenants should differentiate and make it obvious.

Ken complimented the covenants also. He was concerned with #17 (on pg. 6 of the covenants). It doesn't limit too many things within the buffer. He'd like to see pesticide and herbicide use limited perhaps to use of only those products that are approved for use on or around surface water. Dave said that wasn't a problem.

Lisa referred to Jayme's concern on recommended condition #9 (pg. 24) and the licensed engineer sign-off. If FIP has to approve that, she felt this was overkill. Sue explained that they'd discussed this since this was such a complex irrigation plan, but they might not want to go there. She said #9 would say, "...shall be signed by the developer and filed with the final plat".

John asked about #13 and whether the specified distance should be 40' or 50'. Sue explained the 50' came from the irrigation amendment that three Board members had put together, that there should be a 50' setback from ditches, and 100' from the canals. Steve said the Project ran it by the ditch riders and agreed that they would do this recommendation. He didn't know why they signed off on 40' or had 3 culverts in such a short distance.

Sue listed changes to the recommended conditions at John's request. The engineer requirement in #9 would be removed. For #12, Sue suggested no change—that the 1-foot no access easement along Herak Road stay in place. Jayme had requested it be removed, but the Project could not be blocked at any rate. So #12 would be okay as written. On #13 the applicants requested changing the 50' to 40', but the Board did not seem in favor of that. The installation of the driveway crossings for lots 6, 7 and 8 prior to final plat would be put in as a condition (#31). The amendments to the covenants would be changed to include Commissioner approval before changes. Guest houses could not be greater than 1000 square feet of living area. Pesticides and herbicides used in the buffer could only be those approved for use in and around surface water. Work would not be performed on the irrigation ditch that runs to the southern property boundary from station #40 during irrigation season (#32).

Motion by Fred Mueller, and seconded by Steve Hughes to approve recommendation of the subdivision with the changes as listed by Sue above (without changes to #12 or #13).

Motion carried, all in favor.

OTHER BUSINESS

John shared with the Board that in Roberts Rules of Order, calling for the question does not end discussion, although this would be handy.

Joyce asked if the tables could be changed. A bigger table would be beneficial. John thought a curved or angled setup would be helpful, so members could see one another.

Bob noted that one applicant was frustrated at a lack of avenue for his opinions after public comment was closed. The Board discussed whether the topics under discussion at that time had been clarifications or non-substantiative, the nature of the Board decision being a recommendation only, what was fair for the other people in attendance, and the continual tendency of some applicants to be out of order or argumentative. The Board discussed the importance of hearing an owner's comments when changing a proposal after the owner was done talking. Sue said there's nothing that says after public comment is closed, the developer can't speak more. She suggested one option could be to ask the developer if the developer has additional comment regarding the motion that's on the table. Part of the governing body's mandate under state law is to consider the wishes of the developer. John summarized that maybe part of the standard procedure might be to let the developer make a final comment at some point. The developer should have the opportunity to say what he's got to say, if it's something that impacts his property. Joyce noted there is a lot of give and take between the Board and audience after public comment is closed.

Further discussion occurred about the conservation easement issue. Sue suggested looking at putting a requirement in the density regulations when those were amended.

A concern was voiced by the Board whether there would be a perception of conflict of interest when subdivisions were represented by the person working on the subdivision regulation update. Sue relayed that the Commissioners felt there was sufficient oversight to avoid that.

Steve explained he talked to Chuck Courville about sending a letter to the Commissioners and Planning Board saying land would not be taken in or out of the Project until the transfer is done and water rights are settled. He provided a copy of the letter to the Board. He suggested a fee for the subdividers to cover paying for the work. Sue noted they've included in the subdivision regulations that service providers can request a fee up to something like \$200 for review. Ultimately the Project is going to have to create that policy for themselves.

John reminded the Board members to go through the Chair to be recognized for more professional meetings

Meeting adjourned at 10:45 pm by general acclaim.