

**LAKE COUNTY PLANNING BOARD**  
**February 11, 2009**  
**Meeting Minutes**

**MEMBERS PRESENT:** Bob Kormann, Sigurd Jensen, Fred Mueller, Clarence Brazil, Lisa Dumontier (7:15 ), Joyce Funda, Brad Trosper

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

Bob Kormann called the meeting to order at 7:10 pm.

**OFFICERS FOR 2009**

**Motion made by Joyce Funda, and seconded by Clarence Brazil, to appoint Bob Kormann as chairman. Motion carried, 6 in favor (Bob Kormann, Sigurd Jensen, Fred Mueller, Clarence Brazil, Joyce Funda, Brad Trosper) and none opposed.**

**Motion made by Joyce Funda, and seconded by Bob Kormann, to appoint Ken Miller as vice-chairman. Motion carried, 6 in favor (Bob Kormann, Sigurd Jensen, Fred Mueller, Clarence Brazil, Joyce Funda, Brad Trosper) and none opposed.**

**MINUTES**

**Motion by Fred Mueller, and seconded by Clarence Brazil, to approve the December 10, 2008 meeting minutes. Motion carried, 5 in favor (Bob Kormann, Sigurd Jensen, Fred Mueller, Clarence Brazil, Lisa Dumontier) and 2 abstained (Brad Trosper and Joyce Funda).**

**GARRISON MINOR SUBDIVISION**

Joel Nelson presented the staff report and attachments. He highlighted the road maintenance for the frontage road owned by MDT may be an issue for the applicant. There may be an issue with requiring the private developer to make a private agreement for a road located on state land, which is related to condition #17. He pointed out that the staff report was written with the idea that Agency Creek would be located outside the highway right-of-way but it's within, in an intended easement, so condition #18 could be amended to state any FIP infrastructure located on the subject property shall be shown and depicted within a new easement on the final plat. Item d on pg. 7 could be revised to state the irrigation plan must depict Agency Creek, if on the property, or any other FIP infrastructure on the property. Joel also highlighted on pg. 8 a difference in the Lake County Sheriff comment, as a result of the recently approved levy.

Joyce asked if the situation with the frontage road had come up and been resolved with previous subdivisions. Joel said he didn't know of this, where it's state right-of-way.

Lisa noted the sewer is close to these lots, and asked if they needed to hook up to sewer. This project seems dense to her. Sue explained the density regulations that referred to this. Was the project within 500 feet of the sewer? Lisa guessed about ¼ mile. Joel noted it is outside the water and sewer district. Marc said the only mechanism in place was DEQ, if within 500' of services you will annex. This is outside of the 500'. He agreed with Lisa that he thought it was

about ¼ mile away. They would accept a condition to connect when services are available. John Weyand, a neighbor commented further on the location of the sewer. Sue read from #4 on page 6 of the density regulations regarding community growth areas and utilities.

Marc Carstens spoke on behalf of the applicant. On condition #17, he didn't think this Board could come up with a comprehensive answer this evening. His understanding is that MDT is constructing a frontage road adjacent to Hwy 93 that will be used to service these lots. In an email from Glen Cameron, it stated the road would not be maintained by MDT, although public. Subdivision regulations speak to public health and safety. The subdivider wants to subdivide, so it's kind of fallen on his shoulders to maintain this, but there's MDT right-of-way. There are issues as far as liability to have private citizens maintaining a public road.

The applicants agree that the frontage road has to be maintained. Marc wanted this fashioned in such a manner that the County government would help determine an answer to this problem. It's a public road, not Garrisons, although it's true they want to use it and subdivide into 3 lots. He asked the Board to join him in asking the Commissioners to help resolve this. He didn't want to put his clients in a position to be faced with the liability issues of maintaining a public road. Joyce asked about the MDT rationale for their position. Marc replied that Glen Cameron is out of the office until Tuesday, so he didn't know. Marc showed locations on the map, at Joyce's request. Lisa asked what the length of road involved was. She thought this would happen again.

Sue explained that it's not that odd to have a public easement that's privately maintained. Marc said this wasn't an easement. Sue said this was a state-owned piece of property, and she thought that was the issue. Throughout western Montana, easements to the public are being granted or donated, but are requiring private maintenance. None of the counties are taking on maintenance of new roadways. Marc thought those road structures were habitually found inside the platted subdivisions. Sue thought they could be dedicated outside the subdivision to access the subdivision. Typically we see them inside subdivisions, but it's not necessarily only like that.

Lisa asked how many lots the road would access. John W said it's been extended to his property, which is next door. It starts at Coombs Lane, where they're building a new intersection. Lisa thought that was about ¼ mile. Marc was troubled with liability issues, and if his client had the right to plow on state right-of-way. Joyce thought if he had a comprehensive maintenance agreement, he does. Marc was hesitant. Sue thought 4 properties were involved, and 3 on the other side. Lisa noted it could be that more of those people subdivide.

Bob pointed out if the Board approves this tonight, it goes to the Commissioners and eventually to the state. Marc didn't think the answer could really come from this Board. In other significant cases where subdivision review has been altered between this Board and the Commissioners, the question has come up if it needs to come back to the Planning Board to look at the information. He was suggesting the maintenance be addressed with or by the County Commissioners. They are the keepers of the public health and safety. He thought they should be able to help resolve how this would be maintained. He repeated he didn't think it was the charge of an individual to take over maintenance of this state-built public roadway. Bob said to further this along, they could either vote about it tonight, and they could recommend the Commissioners specifically address #17 or the applicants can table it and bring it back after they get this

resolved. The Board has to deal with what's in front of them. Marc asked for a recommendation from this Board to the County Commissioners to look into this to seek other remedies on maintenance, perhaps coordinate with the State.

Bob asked about #25 on pg. 19 of the staff report, regarding commercial lots, and the covenants. On the second page [of the covenants] the commercial lots are discussed, with commercial uses and permitted uses. He asked about some of the terminology there, such as site-built wholesale units and site-built service industries. He was concerned with hours of operations and noise. Are the residential people in this subdivision protected? Marc said his office didn't author these covenants, so he couldn't address those specifically. They could contemplate interjecting noise levels and time of operation. Bob asked staff about #25 on pg. 19, and any use of commercial lots not expressly allowed within the Lake County approved document. What document does this refer to? Joel said this would be the document of covenants recorded with the final plat. Marc said he was not opposed to limiting hours and noise. He wasn't sure what they were structuring with their definition. Joyce thought if the staff recommendation seeks to make #25 a perpetual condition, it was pretty binding. They ought to be clear about what's in here. Marc thought the author was clear in his own mind. Joyce noted if Marc didn't have clarity, then the Board doesn't have clarity on #25. Bob suggested they could add a condition in a motion to address hours of operation and noise levels.

Bob asked again about wholesale units. Marc suggested it might be where someone may have materials to sell wholesale rather than retail, so the number of people accessing it would be less. Bob asked about outside storage and requirement for fencing or shielding, and if there was anything in there about junkyards. Marc thought they could add that outside storage be shielded from view. Joyce asked about the difference between service industries and medical providers. Marc wasn't certain expect for clarification. Bob thought these were boiler plate covenants.

Sue mentioned that for enforcement, she didn't want to bind Lake County Planning into enforcing outdoor storage, noise levels or so forth. If they're in the covenants, they can be enforced by the adjacent landowners in the subdivision. She thought the intent of that perpetual condition was speaking to land use. Bob thought it should be in the covenant language or there should be some vehicle for the residents of this subdivision to be able to deal with what's spelled out in the covenants as violations. Lisa noted they will be close neighbors in this dense situation. If it's in the covenants, it's up to the residents to enforce, and that's probably all you could do. Marc asked with condition #25, what element of covenants would draw this in. Joel thought it would be rolled into condition #7. #25 assumes the County approves the covenants as recommended by staff and the Planning Board. Marc summarized the amendment to covenant language would happen with #7. They could append on there that any outside storage be fenced or shielded from view, and limit the hours of operations as 8 am to 5 pm, and have decibel noise level be a separate part of final plat approval with review by County staff.

Joyce asked if the County was looking simply to have control of the type of commercial development but not necessarily all of the details that normally go into covenants for the perpetual condition. Sue said that's what she read here. Joyce thought paragraph 3 of the covenants should possibly be inserted, so that would be in the perpetual conditions. Joel noted [the covenants] would be subject to governing body approval prior to amendment. The County

just wouldn't be enforcing them. Joel explained that when they apply for a building notification permit, the use needed to be as allowed by the covenants that were approved. It doesn't mean staff will enforce the covenants once the building notification permit is issued and they violate the covenants. Sue thought #25 was fine as is, and if paragraph #3 was referenced and later amended, it would screw up number #25.

Bob checked that in a motion they could say that in #3 of the covenants, items need to be added. Lisa said they were basically doing that in #7 of the staff recommendations, which will make them add the discussed issues to the covenants.

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

**Motion made by Lisa Dumontier to recommend approval with staff recommendations with the following amendments:**

- **On condition #7 regarding covenant language, add language regarding:**
  - noise level
  - any storage on those lots needs to be shielded from view
  - normal business hours of 8:00 am to 5:00 pm
  - odors (odors added as a friendly amendment by Brad Troser and accepted by Lisa Dumontier)
- **The Commissioners need to visit the situation regarding the state-owned frontage road and who will maintain it, and if there needs to be a private road maintenance agreement.**
- **#18 shall be reworded regarding FIP and infrastructure and Agency Creek, with Joel's new language, to the effect of all FIP infrastructure located on the subject property shall be located within an easement on the final plat.**
- **The developer shall further define the uses listed in 3a of the covenants (friendly amendment suggested by Joyce Funda and accepted by Lisa Dumontier.)**
- **#19d shall be amended accordingly to reflect #18 as reworded.**

**Seconded by Fred Mueller. Motion carried, all in favor.**

#### **OTHER BUSINESS**

Sue highlighted the information handed out to the Board members from the Flathead County Attorney's Office. They will be holding general board member training, and our board members are welcome to attend.

**Motion made by Fred Mueller, and seconded by Lisa Dumontier, to adjourn. Motion carried, all in favor. Meeting adjourned at 8:05 pm.**