

LAKE COUNTY PLANNING BOARD
July 8, 2009
Meeting Minutes

MEMBERS PRESENT: Bob Kormann, Sigurd Jensen, Fred Mueller, Joyce Funda, Brad Trosper

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

Bob Kormann called the meeting to order at 7:02 pm. Official quorum was not present. Recommendations will still be made, but shall be unofficial recommendations.

Motion by Fred Mueller, and seconded by Joyce Funda, to approve the June 10, 2009 meeting minutes. Motion carried, all in favor.

KOBIDA MINOR SUBDIVISION

Joel Nelson presented the staff report. (See attachments to minutes in the July 09 meeting file for staff report.) A letter of comment that had not been attached to the staff report was handed out to the Board. (See attachments to minutes in the July 09 meeting file for this letter.)

Bob asked about side-shielded down lights, and suggested it be added to the proposed MMA document or somewhere. Joel thought they could require a legal document with the final plat that speaks to the road right-of-way and wildlife mitigation. The lights could be rolled into that for effects on the natural environment. With the current conditions of approval, the MMA document would become a legal document enforceable by the County. Bob thought this could go under #6.

Joyce asked about covenants, and if the MMA (Montana Mapping Associates) document was in place of covenants, or if it would lead to covenants. Joel explained that the contents would become ongoing restrictions or requirements of subdivision plat approval. He clarified that they were not covenants; they were restrictions proposed with the subdivision application to be placed on the preliminary approval. There were and will be no covenants. Sue noted the document would be implemented in conditions of final plat. She thought they could clarify with the applicant how these would be recorded.

Joyce asked if the MMA document satisfied the public health and safety issues. Joel pointed out items 1.a through 1.q on pgs. 8 and 9 deal with public health and safety. He highlighted condition #12 on pg. 14, along with conditions #13 through 24 of the staff recommendations, and actually the entire preliminary approval, would constitute the restrictions related to public health and safety. He also pointed to section 1 and section 3.VII in the Findings of Fact, which referred to the recommended conditions of approval. Joyce asked about I.C on pg. 1 and the outhouse. Joel noted if there were restrictions, it would be taken care of during DEQ review.

Joyce asked if an easement requirement was needed for Bug Creek Road. Joel clarified Bug Creek Road easements exist. The easements are needed for Crane Mountain Road. The paragraph regarding easements on pg. 4 speaks to Crane Mountain Road. Paddy Truesler had

been unclear about the maintenance of Bug Creek Road. The County maintains Crane Mountain Road but not Bug Creek Road. Joel checked and the evidence points to the County maintains to the intersection of Bug Creek Road and West Swan Shore.

Joyce asked how it was determined if sound building practices were utilized, as mentioned in IV on pg. 10. Joel said there was no condition that says sound building practices shall be utilized. This was a typical finding for subdivisions. There is no assurance they will use sound building practices, but the finding is if they do, and if they do the other things mentioned, the impacts on the natural environment will be minimal. Bob didn't think there was a way. There are only a few inspections: plumbing and electrical, and sanitation. He didn't think the County was liable for that. Joyce did not like the ending of this portion. Sue clarified there were processes in place for the sanitation, and the building notification process ensures setbacks. The weed plan is regulated by the Weed District. There are things in place for everything in that paragraph except for sound building practices. She asked if Joyce wanted to suggest a change regarding that first phrase. On further discussion, Sue suggested a modification to read, "If sound building practices are utilized, *such as* development of the property adheres to the sanitation-related proposals...." Joyce was satisfied with that.

Olaf Ervin of Montana Mapping Associates spoke for the applicant. They essentially agreed with the staff report, and have worked closely with staff to come up with mitigation measures. He offered to shed light on the legal document that would be recorded with the final plat, and gave history on providing a separate document for the land use information.

Sue asked about the road right-of-way and whether the slash would be cleared prior to final plat. Olaf said that would be done.

Olaf checked if Lake County typically placed notes on the face of the plat. Sue said that Lake County typically does not. Olaf said items like clearing the road would have to be physically accomplished before final plat. Items like the lighting, which need to run with the land in perpetuity, need to be attached to those properties in some way satisfactory to the County attorney. Sue asked about the items in the document where it says they will place stuff on the face of the final plat. Are they or aren't they, or does some of it go on? Olaf said they'd do whatever the County wanted. Joel relayed that the condition (#12) said 'filed with the final plat and/or shown on the face of the plat as applicable and as proposed'. Olaf said some would be on and some would be off, depending on what the staff report as approved or amended will say. He thought there would be both a plat and an additional document filed. Joel thought they might as well do it on one separate document, which would be less complicated.

Olaf referred to confusion with Crane Mountain Road and Bug Creek Road. A section of Crane Mountain Road between the subject property and the state highway at Ferndale is maintained and in most cases documented as a county road. Half of the road in a portion of section 10 is on state trust land. In 1911, no easement was conveyed to the County, so the County road runs through there with a little chunk out of half of it. DNRC Land Office and right-of-way specialist has been contacted and they should be able to get that portion of road officially dedicated to the County before they bring in the final plat. It was a surprise to a lot of people. Technically all of

the properties served by Crane Mountain Road past that point are trespassing on state land as they drive through.

Public comment opened:

Mark Manders: He lives on Bug Creek Road. On numerous occasions the subject property has been used for illegal uses, including a meth lab that was found several years ago and destroyed. They've mostly got the drug users cleaned out, and the people in the area monitor it themselves. He thought it would develop into 2 very nice properties. He would like to see that this would not be a speculative sale. He'd like to see actual home building commencing in 90 days, or something like that. He was concerned that owners would do nothing with it, like the ones who have it now, who don't keep it up or put up gates or signs. He'd like to see the properties sold to good people who want to build homes on both those lots.

Joyce: Who took out the meth lab?

Mark M: He thought it was the state.

Gene Burns: He represented the Kobidas, who live down in AZ. He thought the meth lab property was across the street, and described the location.

Mark M: He said no, and described the location up on the hill.

Gene: It got taken care of, anyway. He assured that the prices on those properties will warrant somebody who will build a satisfactory home. He complimented Mark's home and neighborliness. This was a lot split, and there's a federal road splitting the property into nearly 2 equal parcels. That would automatically create two parcels, but they'd have to go to federal court, so they'd like to do a low impact minor subdivision. They try to keep it picked up and cleaned up.

Public comment closed.

Joyce asked about the proposed zoning or advisory board established somewhere in that area. Sue explained that might eventually affect this area. It hasn't been established yet. The interested citizens group is currently going through scoping on that. The proposed map at this time would incorporate this property. The regulations would be the density regulations.

Brad asked who certifies that a meth lab has been cleaned up so there are no toxins or hazardous materials. Someone said DEQ does. Mark M said they did a pretty good job of cleaning up. Brad clarified these are hazardous materials and someone has to certify it. Mark M said they did the best that could be done. Nothing there smelled bad. He's had his dog up there, and the dog would smell anything that smelled bad.

Olaf notes if the Board and Commissioners preliminarily approve this, both lots would have to be reviewed through Montana DEQ for septic, stormwater and wells. This item would also be looked into. The history of the property would be looked at, and DEQ would be the ones to

certify the meth lab cleanup. Sue checked there would be a condition for compliance with MEPA, which is the MT environmental protection act. As part of that, this activity would most likely need to be disclosed, so DEQ will be aware. Lake County Environmental Health office can also be told. Mark M added he's walked through the area, and there have been no birds or small animals on the ground.

Sue suggested making the lighting a part of condition #12, pg. 14, to amend it to include addressing the downward pointed, side shielded outdoor lighting. Joyce asked if this would be instead of in the document at the end. Joel suggested getting rid of the language about showing on the face of the final plat; require it to be filed with the final plat. Sue detailed taking out "and/or shown on the face of the plat" in #12.

Bob brought up #6 and #7 in the MMA document. Sue noted those statements would now be in this legal document that #12 of the conditions refers to, instead of on the final plat. Joyce asked about adding about lighting to #6 (MMA document). Sue thought lighting would be a separate number altogether if it were added to that document, #8. She explained that the lighting could be added by saying in #12 of the conditions that this document be modified to create a legal document that's going to be filed with the final plat and also to include the language regarding the outdoor lighting.

Bob summarized: add 'such as' in IV on pg. 10, and in #12 on pg. 14, add downshielding lighting and remove 'and/or shown on the face of the plat'.

Motion made by Joyce Funda, and seconded by Fred Mueller, to recommend approval of the subdivision and adopt the staff recommendations with the following amendments and/or modifications.

- **Two changes on pg. 14, condition #12: delete the language 'and/or shown on the face of the plat', and add at the end, include language that all outdoor lighting must be side shielded downward pointed to illuminate areas within the subject properties and not adjacent lands.**
- **On pg. 10, 3.IV Effect on the Natural Environment, following the first phrase of 'If sound building practices are utilized' ', such as' will be added.**

Motion carried, all in favor.

Bob noted there was no comment from the County Road Department, and it seemed like there was a concern with slight problems. He thought it would be helpful to get something from them prior to this point in the process. In "Other Business", he'd like to bring up perhaps making a strong recommendation to the Commissioners that departments get on it and respond when the Planning staff ask for comments, if this would be helpful for the planners.

Joyce noted she found a posted map useful during the discussions of the proposals.

PHEASANT FARM MINOR SUBDIVISION

LaDana Hintz explained the name was changed, when Joyce asked what happened to Peterson Acres. LaDana presented the staff report. (See attachments to minutes in the July 09 meeting file for staff report.) She noted it was near last month's Dreamscape subdivision. She mentioned

the conditions regarding the fire department were similar. The fire department requested a 20,000 gallon dry hydrant this time. Last time it was 500 gallons per lot, so there was a significant difference. The condition written into this report is similar to the condition recommended by the Planning Board and approved by the Commissioners for Dreamscape, which had been to install a dry hydrant and storage tank unless they could propose another method to mitigate that the Fire Department could agree to.

Fred asked about the irrigation plan. LaDana explained that there was a plan, but it didn't address all items. The applicants' agent might be asked why this was so.

Fred didn't like the dry hydrant requests. They were a big cost and he didn't think they'd be maintained. Joyce suggested that a fire chief meeting would be helpful to find out what they're thinking, and that this could be discussed by the Board under 'Other Business', since issues come up repeatedly.

Marc Carstens spoke on behalf of the applicants. Concerning fire, he referred to Mega View subdivision, which started things rolling. He reviewed that situation. The conditions accepted for Mega View included \$100 per lot discretionary fund, per usual, and also \$300 per lot going to a capital improvement fund donation. He recommended adopting this, instead of conditions #10 and #11, and modifying condition #5. He thought it was more appropriate than the holding tank, and it was found acceptable by the governing body for Mega View.

Regarding the irrigation plan, he tried to address what he thought was missing on the irrigation plan. There was some question on the location of the buried mainline. LaDana affirmed. Part of the problem was that most of the mainline lies outside of the subdivision, and isn't shown on the plat. It's confusing to go through that area and figure out where the mainline is even located. Marc thought they've got some equipment coming back that's similar to the U-Dig equipment. He believed they could sense the location of the buried mainline and map it more accurately on the final plat. He intended to locate it as it lay within the subdivision.

LaDana said they also need to show the delivery point, which is missing off the irrigation plan at this point. LaDana and Marc said this was off-site. Marc said they will show the delivery point. He asked if she was suggesting they locate the pipeline all the way back to the delivery point. LaDana said it would be nice to know where it was located. There are a lot of lines running in that area. Marc said they'd be happy to make sure they know where they are with the locator, and to give her a coordinate of where the delivery point is, but mapping from here to that seemed like a burden for this developer to locate the delivery pipe from here all the way back. Sue asked how far it was. Joel thought it was about a mile or so.

Sue asked if they could at least depict which properties it was running through, based on that easement. Marc couldn't tell which properties it was running through based on that easement, but he thought the easement was fashioned in such a manner to be centered on the existing pipe, wherever the pipe was. He proposed to locate the piping as related to the survey, and he could give the coordinate position of where the turnout point is, the service point, but he questioned if it was necessary to survey a couple of miles of pipeline that's off-site, which won't be moved.

Fred asked if Flip could tell him the delivery point. Marc affirmed. It was off-site; he could give a bearing and distance. Fred thought they should know the delivery point. Bob thought that seemed satisfactory and asked what staff thought. Sue thought the easement in the packet covered [line location]. It wasn't a detailed survey of the line, but it was a general description, and talked about what parties were subject to the easement. It would at least give a future land owner a clue about who to go start talking to if there was a problem.

Bob summarized that Marc needed to show where the line was on this particular property and give a coordinate of the delivery point. Marc said this could be done through a GPS coordinate but it would probably be more appropriate to develop a tie of so many feet at such a bearing, just so it's relating to this stuff. Bob checked that this would not be burdensome. Marc affirmed. Sue thought the irrigation plan should reference this easement and any subsequent changes to the easement, or something like that. Marc said they'd need to expand on it a little bit and do a little bit more housekeeping on their irrigation plan. LaDana checked that Marc found out the property to the west is served by that [line]. Marc said they just found out today, and they will update to accommodate that. LaDana questioned where it crossed, if the line running down the northern boundary of lot 3 actually served the property to the west. Marc affirmed.

Joyce asked about condition #9 on pg. 19. LaDana clarified that was a certificate to show the line had been installed. #8 addressed the irrigation plan.

Joyce asked about Marc's proposal about fire. Who would hold the \$300 per lot capital funds, and in what fashion, and how do you make sure the funds go to capital improvement that you're talking about rather than one the fire department decides they want to do in the future? Marc said capital improvement designation placed it as an allocatable fund for [inaudible] improvements, such as another truck or another pump. As the fire department needs are identified, and the funds become appropriate to purchase, he didn't think his firm or his clients should be dictating to the fire department on what they should be doing their capital improvements. If it goes for a truck, it is still serving the subdivision because it's in that district, and they're mitigating their impact on the fire department.

Joyce pointed to 3 subdivisions referring to use of city water for properties outside the city. She asked about the laws, customs and practice regarding whether the fire department must respond no matter whose water they use. Marc guessed yes for a public service provider. Fred said once the fire was called in, they'd be sending tankers from Ronan and Charlo to help. Joyce asked if the point was to get more water, since there was no point to access it. Sue said the dry hydrants put a source of water out in the rural area. Joyce asked for more explanation of a dry hydrant. Marc explained a dry hydrant meant it wasn't pressurized, so the water had to be sucked out like a straw. The problem with these cisterns was maintenance and upkeep. He's seen fire departments take water from irrigation ditches and stock water ponds, and he's seen helicopters dip water out of swimming pools. When there's a fire, they're going to put it out. Joyce's concern was with the rapid development in St. Ignatius and doing the best they could to ensure there would be a sufficient water source in event of a fire.

Fred noted in parades and so forth, half the fire trucks are tankers. They're hauling water. There was further discussion. Sue was under the impression during the Dreamscape subdivision

discussion for dry hydrant that the Commissioners didn't want to make the call about what the fire department needed, so they left the condition as recommended by Planning Board and staff, and they gave the developer the opportunity to go back and negotiate with the fire department for a reasonable alternative. Marc respectfully repeated his request to go with conditions similar to what was done for Mega View. Sue noted that it was discussed at the Commissioner level that St. Ignatius needs a larger plan of where their rural water sources are going to be, and how they can accommodate that, such as providing for some sort of capital improvement planning for the entire district. She gave some examples. The challenge is coordinating the effort. This has been recognized and right now the question is how to deal with this in the interim.

Marc thought attempting to negotiate might be the most difficult of all. He thought the governing body would have to say what they want. Joyce referred to pg. 19, #10.b where the subdividers could propose another acceptable method to St. Ignatius Fire Department AND Lake County. She thought the Commissioners would be a safety net, since they wouldn't just be dealing with St. Ignatius. Because this dealt with public health and safety, in this context it wasn't in the exclusive purview of the fire department. Marc suggested again that the Mega View solution was found to be acceptable a few months ago, and he offered that as an alternative that could be adopted. Joyce pointed out that on the next subdivision it was found to be unacceptable and they found a different way. Sue said they found the way that was used last month, and there has been somewhat of a change in the procedure. Marc asked if there had been contemplation of the capital fund donation. Sue explained it had been mentioned, and they'd talked about Mega View. [The recommended conditions in the staff report] was how it was resolved

Sue suggested getting Steve Stanley, the Lake County Emergency Management person, involved in the discussion. She thought he had some sort of oversight on fire districts, and participates in their meetings. Perhaps he could be a liaison between the developer and the fire department in this regard. Marc wanted to stick with the Mega View conditions. Sue thought the amount was arbitrary. Maybe the number of cisterns needed should be determined and what kind of land area, to come up with a figure to shoot for.

As someone on a rural fire department, Sigurd liked the capital improvement idea. Their department does have a cistern that the County helped them put in, but the fire department maintains it. He thought that was smarter than trying to pick who would keep the cistern. It should be one source in an area that's lacking in water. Capital improvement could go towards that one source.

Given a 20,000 gallon dry hydrant versus a tanker, either way there will be water, and Bob asked what the difference between the two was. Sue said if the tanker ran out of water, they could take it out of the hydrant, rather than going all the way back to town. Bob asked if one tanker would put out a fire. Sigurd said it depended on the fire and what was needed. You need to know what you're doing, and that the water source is there, which is why it was important that the fire department be involved in the spot. If the area needs something, maybe the County could help them where they have a big cistern or well out there that the fire department keeps charged.

Bob returned to Marc's request and potentially eliminating #10. Marc said the \$300 came up at that time, because that was what Sanders County was doing then. Joyce thought 10.b covered Marc and his developer well, since it included the Commissioners as well as the fire department. She wasn't sure Marc's proposal covered public health and safety for this subdivision. She thought 10.a might be overkill. She thought 10.b was a good safety net.

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

Bob reminded the Board the first item to consider would be the variance. He briefly reviewed the variance proposed for lot 2 regarding the length versus width of the lot. Joel noted the lot was between 5 and 6 to 1 instead of 4 to 1. Sue said it was about 800' off. Marc thought it was about 20%.

Motion made by Fred Mueller, and seconded by Sigurd Jensen, to approve the variance request. Motion carried, all in favor.

Fred liked the idea of the \$100 and \$300 on the water. He thought a mobile truck would serve better than a stationary source. Sigurd agreed with Fred and Marc. Bob tended to agree with Fred; however this [condition as proposed] might get the Commissioners, the St. Ignatius Fire Department and Marc in one room to get this hashed out, so the Board doesn't have to deal with this every time a subdivision comes up near St. Ignatius. Joyce thought 10.b covered that. Her concern was this was far beyond the purview of expertise of the Planning Board. In the face of a recommendation from the fire chief, she didn't believe they ought to second guess the fire chief. The \$300 is an arbitrary number without study. She thought the fire department, the developers' agent and the County Commissioners should hash this out, unless the developers chose to do the cistern. Fred asked if she proposed that the subdivision be turned down until that was hashed out. She said condition #10 would take care of that, if this were approved as it was.

Joyce thought the irrigation plan language was acceptable except it should reference the easement specifically and show the delivery point. LaDana read from condition #8. Joyce confirmed with LaDana that the condition 'as is' allowed for that.

Bob sensed the motion might come forth with staff recommendations rather than the \$100/\$300 for that section. He suggested that 10.b would put the burden on the Commissioners, Marc and the fire department. Fred thought the Board could delete 10.a. Sigurd, Bob and Joyce agreed. Marc pointed out that #11 and the second half of #5 were related. Bob suggested deleting #11. Joyce suggested deleting the second half (the last sentence) of #5. In 10.b, Joyce suggested changing 'another' acceptable method to 'an' acceptable method. Sue mentioned there were likely things in the findings that would need to be amended to support that recommendation, which the Board should recognize.

Marc asked if he would have to come back to the Planning Board with new information regarding the subdivision, given a condition that says he has to propose a plan to Lake County and the fire department for review and approval. Was the information significant enough that he would have to come back? Sue didn't think that would need to happen, since the Board was recommending it.

Motion made by Joyce Funda, and seconded by Fred Mueller, to recommend approval of the subdivision subject to the following changes in the recommended conditions:

- **For condition #10, delete 10.a and the word “OR” between 10.a and 10.b. In the remaining portion of 10, change the word “another” to “an”.**
- **Delete condition #11.**
- **Delete the last sentence in condition #5, which begins “The plat shall be updated....”**
- **Staff shall modify the findings of fact as presented by staff, to be consistent with the changes made in the conditions of approval.**

Motion carried, all in favor.

HIDDEN ROCK SUBSEQUENT MINOR SUBDIVISION

LaDana Hintz presented the staff report. (See attachments to minutes in the July 09 meeting file for staff report.)

Bob asked for clarification on the variance needed from the Board of Adjustment. LaDana explained that the area proposed for access for tract 2A is on slopes greater than 25%. The planners explained that to develop an access, including for a pedestrian path, a variance would be needed for disturbance of slopes in the 50' lakeshore vegetative buffer strip. Bob asked if the applicants then apply for the variance if the Planning Board approves the subdivision. LaDana explained this would be done if someone were ever to develop lake access. Sue added this was more of a notification to future lot owners that they couldn't just bulldoze a path down to the lake. Bob mentioned they may or may not get the variance. Brad noted this was the reason for the deed restriction. LaDana said it seemed reasonable that tract 2A could use the currently existing road to access the lake, and then they wouldn't have to disturb these steep slopes. There have been problems with other properties in the area with the slopes. Tract 2B would need to grant an easement to allow that.

Brad said that without the variance or easement from tract 2B, this lot would not really have legal access to the lake. Joel thought they might be able to do steps or a tram or something that didn't disturb the steep slopes. Joyce asked if either the easement or variance was needed, or if both should be covered. Sue thought both should be covered. Sue noted a lot of the property in the area received seasonal use, in the summer. Lot 2B has a seawall and dock. Bob confirmed with LaDana and Sue that the 12' lake access already exists, on the existing single property.

Jack Duffey spoke on behalf of the applicant, who was also present. Jack showed the location of the variance for the easement, which would bisect a portion of 2A. He showed where they would like to extend the easement, to incorporate an area such that it was not bisecting the lot, which would eliminate the necessity of a variance. He asked if that appeared acceptable to staff. LaDana referred to pg. 16 and the second sentence of #8. Joyce checked that this was a different easement than the one discussed for pedestrian access. Sue explained the subdivision regulations don't allow an easement to bisect a tract, and Jack was suggested making the easement go all the way to the lot line so they wouldn't need a variance.

Jack explained that Peter Nazelrod would not like to change what they've provided for lake access on lot 2A. The deed restriction would inform future owners of that parcel of the limited potential for development of the lakefront. They added this portion of the easement on 2B to help provide with a switchback to go down to the lake. If they came down the drive, they'd be all the way on the other parcel, and the slope would be 25% to get back to the lake frontage on 2A, and they'd run into the same variance.

Peter Nazelrod showed more at the map. He showed the seawall and other features, including an old walkway that wouldn't take much to improve and give beneficial pedestrian access down to the water. Additionally, they've provided the easement he indicated on the map for the use of 2A to give them a little bit more room. He does live on the property for 3 months of the year. At the map, he described some of the topography in greater detail. LaDana asked him to draw in the trail he referred to. Sue asked Peter about 'reasonable access'. Peter explained he was saying that tonight because he lives up there and thought it was reasonable, but not for a wheelchair. Sue said the easement being dedicated didn't give him control to say he didn't think it was reasonable—the future lot owner of 2A could do whatever they want in that easement that would create a pedestrian access. There are criteria. Peter said he was just trying to think how to establish a walk path. He noted he was retaining tract 2A.

Bob asked Jack to clarify a corner in the 50' lakeshore setback mark on the map. Discussion occurred at the map.

Joyce checked that the easement was designated as pedestrian use or access, to preclude other uses. LaDana affirmed it said this already. Joyce asked about the expanded easement. Jack said that easement was different, since it didn't get into the slopes. Fred asked how steep it was by the lake. Jack indicated a location and said it was greater than 25%. Sue guessed that it was maybe 80%. (Joel noted 100% would equal 45%, for comparison.) Joyce asked how far north of the Smokehouse restaurant this was. Sue responded that it was about 1 mile, across from 8 Mile Lane.

Jack said staff recommended changing the language on the deed restriction on pg. 15, in #6. He thought it was already adequate. Jack wasn't sure how to word a change. Joyce thought it didn't allow for the fact the regulations may change in the future. Sue suggested taking out 'last amended in 2006' in the deed restriction. Joel explained staff was concerned [a future owner] might have unrealistic expectations, and they just need to get a variance. It seems like it assumes approval, and that's not necessarily the case. Joyce didn't see how that was implied. The landowners need to have some accountability and responsibility.

LaDana pointed to the staff report at the bottom of pg. 5 and top of pg. 6 for the discussion on this point. She wanted it to be clear to the lot buyer that they are not guaranteed a variance and conditional use to develop this access to the lakeshore. Sue said they don't want to create a lot that doesn't comply with the zoning and can't be developed in compliance with the zoning, so this is something that needs to be addressed through the planning process.

Discussion ensued with the Board, planners and applicants regarding lake access, topography of the proposed lots and wording for a deed restriction.

In the ensuing discussion, the planners highlighted that a variance or conditional use was not guaranteed, and the importance of avoiding a situation where a future owner might point at the Planning Board approval process of this subdivision as justification for a conditional use or variance from the Board of Adjustment. Sue noted that the zoning is in place with requirements essentially saying not to disturb slopes greater than 25% or the vegetation on those slopes, adjacent to the lake. They were trying to get where the owner could have the ability to create this lot and also comply with the zoning regulations. If he couldn't comply with the zoning regulations, he would not be able to create the lot. The situation is that there is lake frontage with no lake access. Lake access could not be created without going through a process. Maybe a lot lake without appropriate access potential shouldn't be created. Sue was concerned that they were creating a unique circumstance tonight by allowing a lake access that couldn't be developed without going to the Board for special approval. Why not use the existing roadway and share it, instead of developing another individual access in 100' on a steep slope in that area? A good argument for requiring an easement on the existing drive is that the easement would be an alternative. If they got down the drive, they could walk across, since it's flat down there

Also in the ensuing discussion, Jack and Peter said that easement didn't get the 2A owners to their property. Joyce thought that made them go a long ways to get there and to get back. Joyce thought the deed restriction was necessary to put the buyer on notice, but should be worded to fit whatever the regulations are in effect at the time they want to develop something. Jack said the applicants' concern was the language. Joyce thought it should just refer to the Finley Point Zoning Regulations, or those regulations at the time of development without the reference to 'last amended in 2006'.

Fred thought they should leave the condition as the staff wrote it. Bob thought staff were recommending the deed restriction to be updated to better inform the future lot owners that there would likely be little potential for development of the lake access. He didn't think they necessarily had to say that, since he thought a deed restriction would come out in a title search. Peter said they were putting the deed restriction on because of the concerns about future lot owners. A variance means that you have to ask for something special, and it's not a given or a right. Bob thought staff were saying this is creating a lot that's not in line with the zoning regulations. There're problems with slopes and the access. The variance gives an out. They're trying to make sure the future owner is forewarned and doesn't come back and say, "You created the lot, but now you're not going to let us have access."

Bob thought with the preliminary deed restriction from Jack, if they took out "current" and "last amended in 2006", it would pretty much cover it. Joel reiterated the concern that a future owner would look at the Finley Point variance criteria and point to this process where it was discussed how difficult it is to develop this lot with lake access, and that the Planning Board approved it, and they assumed that all they had to do was to get a variance. Bob suggested adding a sentence in the deed restriction, "A variance and conditional use may or may not be granted by the Lake County Board of Adjustment." Joel thought that would help.

Public comment opened: None offered. Public comment closed.

LaDana asked about condition #7 on pg. 16, for pedestrian access easement along the existing roadway. The applicants hoped to delete #7. Bob asked about condition #8. Sue said putting the easement in that was drawn earlier would put them in compliance with #8. Joyce said #8 stayed in and #7 came out. In #6, she thought the wording needed to be changed. Sue suggested "... shall be amended to remove the word "current" and "updated in 2006", and to add that the variance may or may not be granted. Joyce asked if the condition should keep the information on the current Finley Point regulations to show the current thought. Sue thought it was fine to delete it.

LaDana directed the Board's attention to condition #29. Joyce asked if #6 should be added after the first sentence. LaDana noted this was a perpetual condition. The deed restriction would be recorded. Sue suggested they keep just the first sentence of #29.

Motion made by Joyce Funda, and seconded by Fred Mueller, to accept the staff report, findings of fact, and staff recommendation be adopted and the subdivision be approved, subject to the following modifications:

- **In condition #6 on pg. 15 shall be replaced with: "The draft deed restriction proposed for Tract 2A shall be amended to remove the word 'current', 'last amended in 2006'; and 'granted'. The words 'which may or may not be granted' shall be inserted following the words 'permit approval'. This document shall inform future lot owners of the limited potential of developing lake access on Tract 2A."**
- **Condition #7 shall be deleted.**
- **Condition #29 shall be modified to keep the first sentence only and to delete the rest of that paragraph.**

Motion carried, all in favor.

OTHER BUSINESS

Bob checked with the Board if they want to include a recommendation in the minutes to the Commissioners that the Planning Board is disturbed about not getting reports from the Road Department. Fred and the Board informally agreed. Joyce suggested the Board propose a strong recommendation to the Commissioners that they do what they can to assist the Planning Department in getting comment from all departments. Bob added this would make the process better and the Planners and Planning Board will be better able to do their jobs.

Joyce suggested in light of the hour, to put off the discussion of the fire chiefs until next meeting. Sue highlighted there was discussion with the Commissioners last month with the Dreamscape review that something needs to happen with the fire districts, or certainly with St. Ignatius sending the message they need help with their water supply situation.

Brad suggested that the Planning Board have a meeting with the fire chiefs to try to work out some kind of solution. Fred thought whatever they do needs to be county-wide, not just St. Ignatius. Bob said to run that by the Commissioners. The Board would like the Commissioners to sit it on it.

Sue suggested Steve Stanley, the Emergency Service Manager, who goes to all the County-wide fire district meetings, might be the person to instigate this and helps get it set up, if the fire department is interested in establishing some sort of plan for their district. Bob said \$100 per lot is nothing. Sue added that so was \$400. There may have been 30 lots reviewed in St. Ignatius in the last year or so. At \$400 per lot, that won't buy a tanker. Bob suggested \$1000 or \$750. Sue said they need to figure out what's appropriate. Brad asked where the \$100 came from. Sue said the Commissioners established that. They didn't think the developers were going to protest it. These are discretionary funds, not an impact fee. To establish an impact fee, they'd need to qualify what the cost is, and how it's being used to benefit the lots being created, and not fix an existing problem and so forth. It requires fiscal studies and stuff that the County wasn't prepared to do, so they established the \$100 in the meanwhile. We probably need to get some sort of grant to do a study like that, and someone to manage that and get it done.

Fred mentioned that Ronan ran out of water and needed a new well and water tank on the west side of town. He heard DEQ turned down a Sherman subdivision because they had no water, and that court action might follow.

Motion made by Fred Mueller, and seconded by Joyce Funda, to adjourn. Motion carried, by general acclaim at 10:00 pm.