

LAKE COUNTY PLANNING BOARD
November 18, 2009
Meeting Minutes

MEMBERS PRESENT: Bob Kormann, Sigurd Jensen, Clarence Brazil, Lisa Dumontier Mulholland, Joyce Funda, John Fleming

STAFF PRESENT: Joel Nelson, LaDana Hintz, Lita Fonda

Bob Kormann called the meeting to order at 7:03pm.

Joel pointed out he was not at the last Planning Board meeting, but was listed in the minutes.

Motion by Lisa Dumontier, and seconded by Joyce Funda, to approve the October 14 meeting minutes as corrected as suggested above. Motion carried, 4 in favor (Bob Kormann, Sigurd Jensen, Lisa Dumontier Mulholland, John Fleming) and 2 abstained (Joyce Funda, Clarence Brazil).

Bob announced a change to the agenda such that the Beaver subdivision would be the first item, and Foss would be the second item.

BEAVER MINOR SUBDIVISION

Joel Nelson presented the staff report. (See attachments to minutes in Nov 09 meeting file for staff report.) Regarding the easement mentioned on pages 5 and 6 (of the staff report), he received information from Marc Carstens today that the easement does exist.

John Fleming asked if the suggestion regarding the right-of-way of Hwy 35 on pg. 6 was in the conditions. Joel affirmed.

Joyce Funda asked for clarification on the maps. Joel said the 1st large map in the packet was the preliminary plat. The second map (of 9/23/09) was a supplemental plan, but the 3rd map replaced it. Most of the review was based on the 9/23/09 map. The 3rd map has the drainfield moved. He didn't know of other differences.

Joyce asked about the fire department comments, with specific interest in section H on pg. 10 where John Fairchild commented about the heavy trucks versus the drainfield. Joel pointed to the Findings of Fact, at the top of pg. 14. Joyce asked about section 1.1 in the Findings. Joel explained no conditions that address the specific NFPA requirements were incorporated since the Planners don't have adequate knowledge of that code. Joyce asked how the specific fire department concerns would be addressed. Joel replied the location of the drainfield was being addressed, the \$100 review fee, which is standard, was being recommended, and legal and physical access in compliance with the subdivision regulations was being required. The physical access goes beyond the subdivision regulations with the driveway for proposed lot 1.

Marc Carstens spoke on behalf of the applicant. He offered to answer questions. John asked if moving the access road south was okay. Marc said they are showing the driveway approach

where the developer wanted to have it, and where his initial contact with the road department had been. Staff felt there was a more appropriate location to the east of that spot. He wanted to leave it where the developer wanted it, and they've provided evidence via the footprint that they can make everything work. He'd like to leave it up to the developer and County road foreman.

Joyce asked Marc if he could expand on the fire department comments. He said the fire department had requested in the past for them to stay within the NFPA standards. They've not produced these for him before. He couldn't find a copy and was very hesitant to agree to something he didn't understand. This time it appeared the fire chief took the time to highlight specific things within the NFPA code. These are checkpoint items. He felt they were addressed through the normal subdivision review. Just because the fire chief was reciting portions of the code, he wasn't sure it needed to be answered.

Regarding the plat that showed the approach and drainfield, they released an earlier rendition of the map that did not have as an exacting location of the driveway and driveway footprint, which was sent out with letters. Since the fire chief authored his note, they've revisited the driveway and footprint, and the road definitely leaves the drainfield alone. He didn't know how some of the items could be answered. He read an example. He spoke of the planning for the driveway that was done to provide for better health and safety. They agreed with staff this was an unusual situation where there were numerous feet of fill, and it deserved a second look. They engineered this to comply with safety standards which answer 18.2.3.1.4 and several others.

Lisa Dumontier asked about the transfer of development rights. It's clear what the density of the property being subdivided is. How is the density depicted on the sending parcel's property so it's clear what rights they relinquish? Where is it logged or recorded? Joel replied they would have to file the document they've submitted. Marc said it typically took the form of a deed restriction.

John asked what NFPA stood for, and what sort of agency they were. Marc said he wasn't an authority on this. He thought it was a federal set of guidelines. Joyce said this was not so much a federal guideline as it's a national organization with specific rules. The board had considered a meeting of the fire chiefs to talk about this, and she didn't believe they had moved forward on this. John thought they probably did things like give ratings for insurance. Clarence Brazil agreed, with the analogy of Underwriters Laboratories.

Public comment opened: None offered. Public comment closed.

Joyce suggested that regarding the NFPA regulations, she would like to see a meeting at some point with the fire chiefs or various fire representatives in Lake County. Bob thought that was a good idea, but the Board needed to be cautious about getting bogged down in these things where they won't get anything done. A lot of this seems to be common sense, which the staff, developers' agent and Board catch because of general health and safety issues. Clarence noted that his brother was a developer in CA, and they have things where if the fire department can't get all the things they want, then some of the restrictions involve having a 1500 gallon storage tank on your property, and sprinkler systems in your house if it's too difficult for the fire

department to get there. If they can't adequately protect your house, you have to protect it yourself. He assumed some of these items under discussion involved something of that nature.

Joyce didn't think the Board needed to mine deeper into the details of the NFPA code. Her concern was reading documents that said the developer representative and the staff don't have knowledge of this in terms of the Board's responsibility in voting.

Motion made by John Fleming, and seconded by Lisa Dumontier, to approve staff recommendations and conditions. Motion carried, 5 in favor (Bob Kormann, Sigurd Jensen, Clarence Brazil, Lisa Dumontier Mulholland, John Fleming), and one abstention (Joyce Funda).

Joyce clarified she abstained on the issue of the language about how the developer and staff don't have knowledge of what the fire chief said. Joel replied it was hard to interpret. The code seemed to be written to give guidelines to the fire departments. It doesn't seem to be written to be a clear regulatory document. Jack asked if the Polson fire chief was the only one sending NFPA requirements. He suggested sending him a letter stating that Lake County review criteria don't acknowledge NFPA, therefore the responses shouldn't refer to it. It adds a grey area. John thought the chief should work the meaning of the codes into his request, since he knows what the codes mean. Then the Board could deal with them on a concrete level.

FOSS MINOR SUBDIVISION

Bob K noted there were two variances to consider with this subdivision. Joel Nelson presented the staff report. (See attachments to minutes in Nov 09 meeting file for staff report.)

Jack Duffey spoke on behalf of the applicant. They were in agreement with the conditions and he offered to answer questions.

Public comment opened:

Mike McCoy: He said the building was an old pole building built for a storage shed. He didn't feel this was considered acceptable for residential.

Joel Nelson: He said the purpose of this review was to lift the agricultural restriction to allow that structure to become a single-family residence.

Mike McCoy: Without a foundation?

Joel N: He believed it was on a concrete slab.

Mike McCoy: He said it wasn't. It was a pole building, with posts set in the ground. How can that be considered structurally when everyone else has to have a structural foundation, with footings and concrete?

Joel N: He referred to the regulations.

Mike McCoy: This was his comment, since he was asked for his comment.

Joel N: He thought Mike was asking a question.

Dave O'Farrell: He said this building was in the process of being built, too. In the newer code, didn't they stipulate the closeness of the trees and all that? Going back to the Planning Dept issue about addressing a turnaround or making the road wider now, the variance being asked for was not to make the road wider. The fire department was already saying in a letter the applicant didn't have the adequate area for them as it is. He thought this problem should be addressed first.

Bob K: He asked if Joel had comment on this. He knew staff thought the turnaround would just become a parking area.

Joel N: They don't know where the turnaround should be located. The condition with the recommended turnabout area has been recommended.

Bob K: He pointed to the page 6 recommendation that prior to issuance of a zoning conformance permit, the applicant obtain clarification from the Bigfork Fire Dept regarding the recommended turnaround. This put the monkey on Bigfork Fire, and the owner to get the comment.

Clarence Brazil: Unless there's been a recent change, there's no structural building code in Lake County. There's an electrical and a plumbing code. There's no building code as to how a house is built, as long as the electrical and plumbing meet the state standards.

Joyce Funda: She asked if this included the East Shore zoning regulations.

Joel N: He said East Shore zoning regulations don't have anything that discuss items like that.

Public comment closed.

Motion made by Lisa Dumontier, and seconded by Sigurd Jensen, to grant approval to the first variance (lifting the restriction of no single lot must be divided by a public road, alley or utility right of way or easement) as requested. Motion carried, all in favor.

John and Joel spoke about the rationale for granting the variance. John checked that they were not creating another residence. There was one there. Joel said there was an existing road that served the property and that's what the new single-family residence would use.

Motion made by Joyce Funda, and seconded by Lisa Dumontier, to accept the staff recommendation for granting the variance on #2. Motion carried, all in favor.

Joyce double checked that there were no foundational requirements for a building. Bob said this was his understanding. There were state plumbing inspections and electrical inspections. Clarence agreed with Mike McCoy that it wasn't a lasting thing. Pole buildings only last about

20 years at best. It will eventually fall down. If that's what they want to do, and there's no code to stop them, it's up to the Board to let them do it.

Motion made by John Fleming, and seconded by Lisa Dumontier, to accept staff recommendations and variances on this subdivision. Motion carried, 5 in favor (Bob Kormann, Sigurd Jensen, Lisa Dumontier Mulholland, Joyce Funda, John Fleming), and one abstention (Clarence Brazil).

Clarence didn't feel the structure was an adequate home. Jack Duffey said he couldn't attest to the building's history, but he assured the Board that some of it had a foundation under it and there's a slab that a bunch of it is on. Clarence mentioned with pole buildings, the poles hold the building up. Jack said there's a foundation under a good portion. Jack didn't know if the public comment was accurate. He thought the commenter should have substantiated his comments, that it was a pole building. Jack disagreed with the commenter. He couldn't attest to all of it, but he knew there was a foundation under part of it, from when he was locating the building itself. Joel added the walls sat on concrete slab. Bob suggested in the future, if it was known there was concrete there, to bring it up. Jack said he didn't realize it would affect someone's vote.

SNOW MINOR SUBDIVISION

LaDana Hintz presented the staff report. (See attachments to minutes in Nov 09 meeting file for staff report.) She highlighted conditions # 13 and #37.

Lisa Dumontier asked if the 50' setback from irrigation ditches was in the staff recommendations or if it needed to be added. LaDana replied it was in the covenants, per condition #16, which required modification of the covenants to include the 50' building setback from irrigation ditches. Jack and Joel also pointed out condition #24, a perpetual condition listing setbacks. Joyce was concerned that the owners could eliminate the setback from the covenants. LaDana noted covenant amendments required Commissioner approval.

Bob asked for clarification on the 50' pond buffer regarding how the weeds would be dealt with in the buffer strip. It said to pull the weeds. LaDana said in this case you probably would want to pull them. They are right next to the pond, and you wouldn't want to spray there. Bob thought the ponds were pretty big. For 50' around them, you'd be bent over pulling weeds. LaDana mentioned the Weed District said the weeds weren't a problem right now. The houses and lot development would be at the other end of the lot from the ponds.

For the biggest pond on tract A, Bob saw a note saying 'pond drain'. Where does the water go? He pointed this out. LaDana said that was the question. Bob saw wetlands on tract B. Lisa asked regarding where the main line was going to be capped, was there a current agreement between this owner and the owner to the south. LaDana explained the same owner currently owns both the southern and western property, as well as the subject property. Lisa said it was then up to her to get a new delivery point or put in a turnout on this property, because they were going to cap the main line off. Jack noted the cap was for the western property. LaDana and Jack said there was a ditch along there already. Jack added the owner didn't think she could keep those 40 acres to the west. Lisa thought the irrigation was probably fine, as long as there

was a ditch. Jack said it just barely went into that tract, and then they had an above-ground [inaudible] line for that 40.

Clarence returned to the weeds. There were some weed controls that were sprayed right at the water's edge.

Jack spoke on behalf of the applicant. Originally the full 80 was under one ownership, and the ponds and everything were one system or set-up. For the sake of the division, you want to isolate so these are no longer interconnected. He thought the drain originally went to the pond on the east. He got information from Joe Fryberger who helped with the digging. Bob asked if they drain the ponds, or if there was reason to do so. Jack said Joe F called this an ag flow, with set different levels. He described a box that comes up out of the ponds. Bob asked why you'd want to drain the ponds. LaDana thought it might be more to maintain the level. Jack supposed if there was ever an overflow, it would flow into the box and it would go to another pond at a lower site, as opposed to trickling over the ground. Joyce asked if as a result there was danger of those overflowing. Jack said if the ponds were isolated on the property and they're filled via a pump, it would only be a burst line or [inaudible] turned off regarding the fill. They tried to add language to the irrigation plan stating there should be no overflowing of the ponds beyond their existing banks, because then it could go onto other people's property.

Joyce confirmed with Jack that these ponds were used for dog training of labrador retrievers. Lisa thought fish were probably planted in them as well.

Jack said if they could get that isolated and he could show proof of that, would condition #13 not be required or be reworded. Condition #13 talks about the interconnection of all ponds. LaDana highlighted they wanted to make sure if someone needed an easement for part of the pond or if there's something underground where some excess water is being stored or whatever is happening with these ponds, that it's covered by an easement or whatever it takes. Right now, it's flooded too much to go out there and try to determine things. The pipes are buried underground. We don't know how this system is connected together. Jack referred to Joe Fryberger and LaDana said they were hoping he would be able to help with that. Jack said to achieve that, they'd have to reword part two, too. LaDana didn't think #13 needed to be reworded. The applicants either needed to demonstrate the ponds are not interconnected or if you need easements and they are interconnected, that everything is set up the way it should be. Jack commented on the wording. Bob asked if saying the use if necessary would help Jack.

Bob noted if the ponds could not be separated, then what you'd have is one neighbor dumping water on another neighbor. LaDana said was there an easement to allow you to dump it there. She said it should be shown on the irrigation plan and map. Staff want to make sure there's something. The developer should sign off on something saying how these things are connected or that they're not connected. Lake County didn't create the ponds and doesn't know.

Jack thought #13 implies that they are currently and going to continue to be connected. Bob didn't think the interconnection was a concern. There wasn't enough information to tell staff how this all works. Whether it's interconnected or not, staff are trying to avoid a potential problem if the ponds overflow or if they've got to be drained, or if there has to be easements or

whatever to be able to deal with that. He asked Jack how he dealt with that without all the information. Jack thought they should be required to demonstrate that the ponds are isolated to the properties, that there's no way they're going to affect adjacent properties regarding interconnections. Bob asked him how he was going to do that. Jack referred to Joe Fryberger who had a pretty good knowledge of what's out there, and who assured that the ponds could be isolated.

Bob asked Jack about suggested wording for #13. Lisa D suggested something like "...submitted document to be filed that addresses, if interconnection exists of all ponds, all necessary easements must be in place". Either that or they'll have to wait until they get the diagram and word this accordingly after they find out if they can successfully isolate each pond. Joyce suggested resolving the issue by deleting the word 'addresses' on #13 and put in 'describes'. Bob (?) said their intention is to isolate, so there should be something like that in there too. If they aren't able to isolate, then the Board has a concern. LaDana suggested "...submitted document to be filed that demonstrates that the infrastructure is isolated OR demonstrates the interconnection" and the second part would be kept. It's isolated or it's interconnected. Lisa added there were easements to go along; depending on what you find out, you're covered either way. Bob thought that sounded good.

Jack asked about interconnection within one lot. LaDana explained the reasoning behind seeing how the ponds are interconnected is how is a person going to manage this when they come in? If she bought a lot, she wouldn't know what was there. She would know that there are ponds. How would she manage it? Bob thought that part was 'buyer beware', but between the two lots, he thought they had a responsibility to make sure they were isolated. As far as problems with the ponds, he wouldn't buy that unless they proved to him the ponds could be managed. LaDana asked how he would be able to find that out. Bob said ideally Joe Fryberger was the one with the information. LaDana asked why he wouldn't want that to go on the irrigation plan now. There was some general discussion. Joyce didn't think #13 referred specifically to an irrigation plan. It's trying to put out there what we're saying nobody knows. It's the developer's responsibility to describe.

Bob thought the wording LaDana had was good. He thought it was necessary to sit down with Joe Fryberger and show if there are pipes, where they are, and everything Joe Fryberger knows about these ponds. Staff will either say there's a problem to address, there's an easement needed, or whatever. For the business tonight, the wording on #13 needs to be changed.

LaDana revised and read the revised first sentence of condition #13: Prior to recording the final plat, the developer shall submit a document to be filed that demonstrates the ponds are isolated or describes the interconnection of all ponds. (The rest of #13 would be kept as it.)

Public comment opened: None offered. Public comment closed.

Motion made by John Fleming, and seconded by Lisa Dumontier, for acceptance of staff recommendations with #13 amended as just discussed. Motion carried, all in favor.

OTHER BUSINESS

Regarding the vote on Foss, Clarence voiced concern. He voted based on the information he had, which was the building strictly a pole building and not on a foundation of any kind. Joel said he would make note of his comment. Joel and Joyce didn't think a vote could actually be changed.

Lita thanked the Board for responding on Board renewals and also for alerting the Planning Dept when they cannot make a meeting, may run late, or may have some other attendance strangeness. She asked Board members to please be sure to let the Planning Dept know as soon as possible since the department will be thinner than usual in December. The meetings go back to the usual schedule on the second Wednesday for December, so on 12/9/09. There's one item for the Planning Board in December.

Joel mentioned a social gathering that would happen on Dec 18 at 5:30 pm at the East Shore Smokehouse.

Motion made by Joyce Funda, and seconded by Lisa Dumontier, to adjourn. Motion carried, all in favor. Meeting adjourned at 8:42 pm.