

LAKE COUNTY PLANNING BOARD
September 9, 2009
Meeting Minutes

MEMBERS PRESENT: Bob Kormann, Brian Anderson, Fred Mueller, Clarence Brazil, Lisa Dumontier, Harlan Gipe, Brad Trosper, John Fleming; 7:05 Sigurd Jensen, Joyce Funda

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

Bob Kormann called the meeting to order at 7:00pm.

Motion by Fred Mueller, and seconded by Brad Trosper, to approve the July 8, 2009 meeting minutes. Motion carried, 4 in favor (Fred Mueller, Brad Trosper, Bob Kormann, Clarence Brazil) and 4 abstained (Lisa Dumontier, John Fleming, Brian Anderson, Harlan Gipe).

Bob Kormann welcomed new members Brian Anderson and Harlan Gipe.

BARTEL FIRST MINOR

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

John asked if the conditions were different from the last time this project was approved. LaDana replied that there were no significant differences. Joyce asked if staff saw significant problems with this project. LaDana said no. Jack Duffey spoke on behalf of the applicant. They agreed with the staff recommendation.

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

Motion made by John Fleming, and seconded by Lisa Dumontier, to recommend approval with staff recommendations and findings of facts. Motion carried, all in favor.

GLACIER RED ANGUS SUBSEQUENT MINOR

Bob noted the three variances would need to be voted on first. John asked what happened if the variances aren't accepted. Sue said there would probably be a condition that required they meet the subdivision regulation standards and didn't get the variance, so essentially just change the conditions.

LaDana Hintz presented the staff report. (See attachments to minutes in Sept 09 meeting file for staff report.) She posted a plat with colored sections to aid with discussion of the roads, in addition to highlighting the maps in the staff report, particularly those identifying sections and curves of the roads, for the purposes of discussion.

Joyce confirmed with LaDana that the primary problems with this proposal were with roads. Joyce asked about the easements. LaDana explained additional easements would be needed in

two places for T-turnarounds. One would be from an adjoining landowner and the other would be on lot 1.

Bob asked if the agricultural setback is 100' by regulation or is that what the Board has typically done. He referred to lot 5. LaDana replied this is what's typically been done. Sue explained that because of the configuration of lot 5 and location of the ditch, there's not an alternative so the 50' has been recommended.

John asked about the creation of the little parcel preventing the road to be straight from Eli Gap. LaDana referred to a 5-acre tract created in 1992 by an occasional sale. John asked about an alternative for the configuration of lot 5, which does not have the correct ratios, other than following the canal. He did appreciate following the canal. LaDana explained with the ditch location, this seemed to be what they could do. If it was put on one of the other lots, there's the question of if it will be maintained.

On request, LaDana repeated the variances and staff recommendations. John observed that the road was designed as it was to circle lot 1, and asked when staff went through it if they saw the possibility for it to serve lot 4, therefore applying the standards for 2 lots. LaDana explained the possibility of access by lot 4 was the reason for the no access easement along the eastern side of lot 4. Otherwise the road would be kicked up to the standards for 24'. The other thing on that portion of the road is the road grade, which increases towards lot 1. Part of this variance is to allow for a grade between 10 and 11%, instead of 9% or less. She explained that the second variance was for the curve radii. The proposed curves were 75' curve radii instead of 302'. Staff felt at least two of these curves should be intersections instead of curves, so granting the variance for those two curves didn't seem appropriate. The third curve seemed appropriate because there was no other way to get the subdivision road into the subdivision.

Bob referred to pg. 9 of the staff report, and LaDana clarified that the curves were referred to by specific section. John said that curves in sections #1 and #3 were those that could be intersections, but curve #2 needed to be a curve. LaDana affirmed, and added that curve #4 should be a T-turn instead of a curve.

Joyce asked about the alternative for a variance that staff propose, should the developer agree. She read from the bottom of pg. 31 of the staff report. Sue summarized the variance request: for width of road, the construction standards, not having a T-turn and the grade. Staff are saying the applicants can do the T-turn above the ditch, and build the roads to the other standards for base and width and have the variance from the grade. Staff are recommending no to the base, the width and the 'no T-turn'.

Dave DeGrandpre spoke on behalf of the applicant. He spoke about the roads. Eli Gap was 1370' to the south of the property. The applicants attempted to provide a 24' chip-sealed road that had curves like people would really drive. He had no issue if the staff felt it made sense to make those intersections instead of curves. He thought people would drive in curves rather than coming to complete stops. The applicants thought the road was realistic and could be negotiated by the fire department.

Dave thought the roadway width in section 1 was the issue of most importance to his clients. They proposed a 24' width and staff report says it should be 26' per subdivision regulations, and a variance wasn't requested. Dave handed out a table with minimum design standards for number of additional lots. (See attachments to minutes in Sept 09 meeting file.) The applicants felt the column for 2 to 5 gave the appropriate width. He referred also to pg. 7 of the staff report, which describes at least 8 lots the road would serve when the proposed subdivision is developed. Dave specifically asked for condition #10.c (pg. 33) to be amended from 26' width minimum to 24'.

Dave next talked about his view of the roads, particularly the road end. The applicants were proposing a driveway, and were asked for the standards they would use. They thought 15' width would be sufficient. They met with the fire chief, John Fairchild, on-site, who wanted to go back out during construction and approve it. They thought that made sense to make sure the curves and width and so forth work. This was public health and safety. There are two main canals cutting through the property, so there are 3 distinct segments. They needed an economical, efficient road that provides good access to the lots. He described where the original road option had been, using a posted map. He noted there were no driveway standards. The driveway would serve one lot, and there were sufficient conditions in the approval to make sure it only serves one lot. He didn't think there was a reason to have a 20' wide county spec driveway. This was in condition #11. If there needs to be a county spec turnaround, that was okay. Condition #7 was a good one. He didn't think a variance should have been required in the first place, since this was a driveway that serves one lot.

The third item Dave wanted to make a request about was on pg. 8, requiring a T-turnaround at the end of a particular stretch. The stretch shows up as an old jeep trail on some old road county supervisor maps. There's no road or easement there now. It can't be expanded without eminent domain or the purchase of easement. It's not a through road. There are no plans to continue the road to the north. He didn't feel anyone would use a turnaround there, and didn't think it made sense to buy an easement for it. He asked that it be stricken.

Dave referred to condition #13 on pg. 36. He thought the first sentence was fine. He thought the second part should be specific, rather than an open-ended condition where they didn't know what it would result in, so he asked for the second sentence to be struck. Sue thought this condition referred only to the approach, not road building requirements. They would need to comply with requirements of the approach permit. Dave said he'd have no problem if that were clarified.

Fred asked why on the gravel they were proposing 10" and 2 instead of 12 and 4. Dave said there was no particular reason. Fred asked if it would be chip sealed up to the last lot. Dave said showed where it was proposed to be gravel-surface. Fred said it would be hard to hold the gravel on the hill. They'll get washboard. Dave said it was an individual driveway. It would require maintenance over time. The owner of lot 1 would maintain that. Fred noted most owners on small parcels don't have the equipment to smooth something like that. Dave said they'd have to hire someone. Bob said if the owner was responsible for that entire stretch of road, and it's 15' wide and washboardy and it gets icy, how does the fire truck get up there? Dave said it was up to that lot owner to maintain it in a reasonable condition. Bob said that was a thin line with

public health and safety. Dave said it wasn't a high fire hazard. It's open agricultural terrain. Fred said there would be a fuel build-up once they got the small lots.

Lisa asked specifically where on pg.8 was the part that Dave asked to be struck. Dave referred to pg. 34, 10.g.

Joyce thought the road looked like it served far more than lot 1 on the map. Secondly it serves section 3 of the road. Dave disagreed. It would be physically elevated, gravel-surfaced, with 1-foot no access easement proposed. The building notification requirement would check that this was met, although he couldn't guarantee it. Clarence showed where another house or barn might be that might necessitate a more permanent road.

Fred suggested on curve #1 to strike the turnaround and to bring the road straight in on curve #3 to act as a hammerhead. It wasn't that far between the two places.

Bob summarized that Dave was requesting changing from 26' to 24' in condition #10, from 20' to 15' width in condition #11, the T-turn eliminated in condition 10.g if an intersection is used, and strike the second sentence in condition #13. Dave explained that he'd like condition #13 to be clarified, and a clarification that it applies only to the approach permit would be fine in #13. LaDana thought the portion in #13 also applied to culvert crossings the road supervisor was recommending. Dave said the DEQ review would address and specify culvert sizes. He'd like to either go with the road supervisor recommendation or the DEQ requirement, but if they're different, the applicant is in a difficult position. He suggested leaving it so they could comply with the DEQ approval and the dimensions DEQ would specify. It would be very clear. If they could take the county road supervisors requirements on the approach that would also be very clear.

Jack Duffey said in the requirement, if a licensed engineer could sign off on the roadway that would address the culverts as well.

Public comment opened:

Jack Duffey asked if the 1' no access easement was proper to grant to Lake County. Joel thought it would be for enforcement purposes. Jack didn't know where the County came into the picture, with private property and private roadway. Was this strictly for enforceability or should it be worded differently? Sue asked who he would suggest should be the benefit authority of the easement. Jack suggested lot 1. Sue said it would seem lot 1 owner would have the ability to modify that, and that isn't the intention. The intention is the governing body doesn't want anybody to access from it unless the road is built to standards that can support additional use.

Marc Carstens asked if 1' no access easement was granted to lot 1, could not that be imbedded in the covenants. Covenant modification requires approval of the governing body. Joyce didn't think the governing body had to approve the covenants in every case. Marc and Dave said if covenants were changed for subdivision, the governing body did. Marc said the governing body would still have the administrative rule on whether or not it should change and could require that

the road's been brought up to standards. It's private-private and government-government so it sort of makes sense that the easement would lie with lot 1.

Joyce said if the owner of lot 1 sold the property or changed the easement, the fact that it was in the covenants would be nothing more than a contractual breach of faith. Marc disagreed. In a sense it was a contractual breach, but in order to alter the covenants and make it approvable, you would have to contact the governing body in order to change the covenants. He didn't think having the easement go to the County was a greater or lesser deterrent than if an easement was given to lot 1 and it was brought in the covenants that the easement was to stay with lot one. If there's a change in the usage the covenants would have to be changed. In order to amend the covenants you have to go back to the governing body, which puts the governing body in the review business rather than attempting to put it in the enforcement business. Joyce disagreed. She thought a condition of approval carried more weight in terms of what it means, as opposed to being buried in covenants. Clarence suggested it should be in both the conditions of approval and the covenants. Dave suggested adding a perpetual condition that access to lot 4 shall be from subdivision roadway and not from the access road for lot 1 on the east side. He thought the perpetual condition might do as opposed to an easement. Sue thought if it was dedicated to Lake County, they'd have to come to Lake County to modify it, and that's clean. Technically, the subdivision regulations state that all easements are dedicated to the public, and not private.

Public comment closed.

Fred referred to a mention that there might be more lots accessing the roads than these 5. He asked where the other lots might be. LaDana went through the 8 lots. Sue noted they could be seen on one of the maps. LaDana and Sue gave more information. These are lots adjacent to either Eli Gap Road or the subdivision property. Sue pointed out a COS lot, the lot behind the Hughes, the Hughes' lot and the lot in the Stokes Minor Subdivision.

Bob mentioned the Board would need to vote on the 3 variances first.

Joyce asked if the subdivision regulations require the access road to have a turnaround or hammerhead. Sue replied the subdivision regulations state that any terminus of any road requires a turnaround. Staff are saying that based on it being a section line, the old jeep trail depicted on the old road plans and just the pattern of existing roadways in that area, it makes the most sense that is one road and doesn't curve around. Keep it as a road, with a 90 degree intersection. That would be the terminus of the road and would require a T-turn. LaDana noted the old jeep trail still exists. That's what they're using for the road to access tract A. Sue said for tract A, you drive down that road and it goes into the guy's driveway of the 5-acre tract of COS 4595. She didn't know what was beyond his driveway.

Joyce asked if the regulations could be adhered to if the road was kept a curve and moved over, per Fred's suggestion of moving the hammerhead. Sue thought it might make addressing difficult in the future without an intersection there, because of the addressing standards. Staff wanted to make sure that it was very clear what portions of the road have what names, and which road an address is obtained from. LaDana pointed out when or if there is future subdivision up there, they'd have to rename the roads and readdress the lots within the subdivision. Joyce

thought there were problems with the addressing in Lake County anyway. She didn't understand why it would be difficult to address along the curve. Sue gave an example if the parcel to the east of the COS becomes subdivided, and 60' easement along that line is purchased and they want to extend the road from there. Then the road both curves and goes straight, and people will assume that the road name goes straight, not along the curve. It looks like there are 120 acres adjacent in this 5-acre density area. You want to establish a logical road network to expand development in the area. Joyce thought given the topography of different areas in Lake County, it lends itself to roads that curve and blend in naturally. Sue explained this didn't have to do with topography. When you're on the ground, there's nothing that dictates a curve there.

Fred found out from Sue there were 5 acres in the piece he indicated on the map. That piece is unsubdividable at this time. To the east, there's over 100 acres. Harlan thought it would be a long time before that piece was subdivided. It's the heart of Hughes' ranch.

Joyce asked the developer what the argument for why they don't want curve #1 to be the intersection/turnaround as proposed on the map. Dave said it didn't make much difference if it was an intersection or a curve in terms of construction or cost. He thought the issues were functionality—the way people really drive—and the jeep trail is no longer there. He thought it would be a turnaround that nobody would use. Brian asked if this was the driveway to go up into tract A. Dave wasn't sure. Brian asked if the driveway would be in the middle of the curve. Dave said no. Brian asked where the driveway would come up. Dave described this at the map. He didn't have the home depicted.

Harlan asked about the existing building to the south of curve #1. Harold Hughes said this was the old Patterson milk house and it would be coming down. Fred verified with Harold that the other building up above was the old Patterson house.

Joyce asked about the mention of wet land around curve #1. Sue said there was a condition of approval for that portion of the roadway to be engineered with the proper base in order to accommodate all-weather travel. There's standing water. It might be that the irrigation ditch is leaking.

Sue addressed the driveway versus roadway question on lot 1. The state statutes for subdivision requirements require legal and physical access to every lot created. Legal access would be the easement that's required. In this case, on sloping terrain, you're required to have a 40-foot wide right-of-way. The physical access is how the road is built. The standards for one additional lot in steep/sloping terrain are 20' wide width built to the county standards for base, roadway surfacing and grade. That's why this easement across lot 4 to lot 1 isn't a driveway. It's an access road easement. Legal and physical access to every lot is required, and a turnaround at the end of the roadway. This is why the staff is saying this is not a driveway. It's off the property. It accesses it, but it's an access road if it's off the property. It appears that by calling it a driveway, you avoid the road building standards. This is why staff are saying you need a T-turn and you need to build it to county standards, other than the grade, which the topography and location of the ditch are prohibiting.

Brian asked about the difference in definition between driveway and access road. If it was all included in their lot it would be a driveway, but if it's leading up to the lot, it's an access? Sue said that driveway is not defined in the regulations, but she would agree. If it's on the property, it's a driveway. Every lot has to be provided legal and physical access. If it borders the county road or the subdivision road, it has legal and physical access. If it doesn't, it needs to get it.

Sue commented about how staff calculate the roadway width and the number of lots that it's accessing. The regulations do say the number of additional lots, but if you continue with that line of thought, if you have a 40-acre tract and create one lot, you have to provide 20' wide and a 30' right of way if it's flat. If the remainder is further subdivided with one new lot created again, you could end up with forty 1-acre lots in there, with a roadway only 20' wide with a 30' right-of-way. It wouldn't meet county standards. So it's based on the number of lots it's accessing for the required width.

Bob checked that the proposal was for 5 lots. Sue agreed, but she showed the 6th lot that's currently physically accessing off of at least this portion of the roadway. This portion, which LaDana defined as section #1, is accessing potentially 6 lots. Bob said it would have to be 26'. Sue said if that were an intersection, from that point on it could be 24' because it would be only accessing 5 lots. Joyce asked if tract A was accessed by the road/driveway. Sue affirmed.

Lisa was under the impression that Dave spoke of the number of lots the applicants were proposing for this project. Wouldn't Sue's example be addressed as time goes on? Sue replied if you interpret it across the board that as long as they're only creating one additional lot, they only have to build it 20' wide and a 30' right of way, then you could create one lot at a time and never have a lot that met the standards greater than 20' width. Lisa asked if there was another standard that applied if the road eventually accessed 20 lots. Sue thought it was the number of lots that will utilize the road for access purposes. Lisa had trouble with that line of thinking. Joyce thought it was speculative and did not relate to the project. Joel said the subdivision regulations don't say the number of additional lots created by the subdivision. We're talking about a road here. It's the number of additional lots that will be accessed off the road. It's ambiguous. Joyce asked about the chart that was handed out. Joel agreed it was relevant. Joyce mentioned saying 'what if' out into the future. They had to deal with what was in front of them. Sue explained the planners weren't saying 'what if' on the lots that are being created. They're saying from the point where it's only going to access 5 lots, it can be 24'. At the point where it only accesses one lot it can be 20'. At the point where it's going to access 6 lots, it has to be 26'. It would be accessing at least 6, and potentially 7 depending on how the lot to the east accesses. Joyce asked if lot A was included as the 6th lot. Sue affirmed, for accessing the roadway. For the road widths, section one of the road would be 26', and then 24' to lot 2 (i.e. sections 3 and 4), and 20' from the turnoff to lots 2 through 4 to lot 1. Bob reiterated this. LaDana noted that section 2 would be 24' to where section #3 starts, and then would be 20'. Lisa said with section 2 there was the discrepancy of whether it's a driveway or access road.

Joyce asked what could be done with section 2 to make people happy. Sue said to meet the standards of the subdivision regulations it has to be built to the road standards to access one lot, from curve 3 to lot 1. Bob added that was 20'. It could be graveled. Joyce asked what the developers' opposition to this was. Lisa asked Dave to answer regarding driveway versus access

road. Dave said these terms weren't defined. They were going off of history and what seems to make sense. In his experience, a driveway serves one lot, and an access road serves more than one lot. Sue asked why the subdivision regulations would establish standards for one additional lot. Dave said if there was a 2-lot subdivision, you'd have a road that was 20' wide built to both lots. Sue said this in not how they've historically done it.

Brian asked about easements for subdivisions adding to the back of a long skinny parcel. Sue said they would have to build a road from the county road to the lot they were creating. It's not a driveway. It's a road to county road standards. Brian asked if those regulations were mainly for fire and that sort of access. Sue mentioned the service providers. This is how it's historically been done. Dave said they need to make progress. He thought a 15' driveway was as safe as a 20' one. He said that was the issue. Sigurd suggested having an easement for 2 or more lots and to develop it as a driveway at the moment.

Sue and Joel pointed out that if you don't have to provide access other than a driveway, from the road defined as section 2, you could just not build the road along the base of 2 through 3. You could just provide easements and driveway to each lot from the section 2 roadway with that line of thought. Lisa said they weren't doing that. Clearly the road was here and that's how it will be approved. Sue pointed out if they set a precedent tonight of refining how we require access to be built to each lot, you'll see a lot more driveways through properties that aren't adjacent to the county road and no standards. Lisa didn't think it was ever black and white. Sue thought it then became arbitrary in the decision making, and it was hard to be legally defensive when being arbitrary. Lisa felt like the decisions were arbitrary a lot.

Lisa asked about dealing with variances, where part may be accepted and part may not be accepted. Bob understood that if a variance wasn't approved, it goes to the staff recommendation. For instance, if variance #1 isn't approved, it will meet county standards. Joyce said they could vote on each variance individually. Lisa pointed out some are multiple parts. Sue said LaDana had broken them down, and read the breakdown of the first variance on pg. 31. The Board could discuss the variance in parts. A variance might be partially approved and partially denied, and the Board would set the standard for the parts they approved.

Bob brought up the first variance request on pg. 31 and the staff recommendation. He repeated the developer felt this was a driveway that only serviced one lot, and requested 15', and the developer reported the fire chief said the grade and width was sufficient at 15'. It doesn't meet the subdivision requirement. Joyce thought the Board could approve the road grade to be between 10 and 11% to allow the T-turnaround to be located within an easement above the irrigation ditch on lot 1. Bob suggested splitting the variance, since that was part two. He returned to the road width, and polled the Board, at Sue's suggestion. Harlan, Lisa, Fred and Sigurd thought 15' was okay. Brian thought 15' was fine with common sense but was nervous about changing the precedent if that's an access for the lot. Bob was torn. He thought 15' was okay, but then the Board would see a lot of driveways in the future. Clarence said he'd consider it a private driveway if it were entirely on its own property. The fact was he was going from a corner of this other road up to some other property to reach his property, so it's an access road. He favored 20'. Joyce thought it should be 20'. John thought 15' was adequate, but he was

concerned about not following the standards, so he was conflicted. Brad said it was an access road, not a driveway, and went with 20’.

Motion made by Lisa Dumontier, and seconded by Fred Mueller, to allow the portion of the variance for the road to be 15’ on section 2.

John made clear that this was a variance, and they were varying from standards. Clarence thought they were setting precedence.

Motion carried, with 6 in favor (Bob Kormann, Fred Mueller, Lisa Dumontier, Harlan Gipe, John Fleming, Sigurd Jensen) and 4 against (Brian Anderson, Clarence Brazil, Brad Trospen, Joyce Funda).

The Board turned to discussion of the second part of the first variance, regarding the construction standards for the road base. Fred said he wouldn’t vary on the gravel from 12” and 4”. John was in favor of whatever kept the road intact and usable by fire engines, so he didn’t think they should vary from the county standards. Joyce thought it was unusual to have part to standards and part to not, but she was in favor of the 12”.

Motion made by John Fleming and Fred Mueller, and seconded by Lisa Dumontier, to construct the road to county standards of 12 and 4. Motion carried, all in favor.

Bob asked Fred about the impact of the 2% difference in grade. Fred thought it was fine. Some washboard would be created, but it would be washboardy on 9% too.

Motion made by Lisa Dumontier, and seconded by Fred Mueller, to allow the grade to be 10 to 11% on that portion of the road. Motion carried, all in favor.

Sue noted the last portion of the variance request was to not install the T-turn at the roadway terminus. Bob added this was at the end of section 2 road for lot 1.

Motion made by Fred Mueller, and seconded by Lisa Dumontier, to accept the variance portion to strike the T-turn.

Sue mentioned that in the past, the precedent has been where if the roadway was only going to access one lot, and they didn’t want to develop a T-turn because it didn’t make sense based on where the building location would be, some sort of turnaround adequate for fire vehicles was required at the building site.

Friendly amendment made by John Fleming, to include a requirement for a turnaround adequate for fire vehicles at the building site. Fred Mueller and Lisa Dumontier accepted the friendly amendment.

Amended motion carried, all in favor.

Sue summarized the second variance and staff recommendation, regarding curve radii. The variance could be broken down into the curves. Curve #1 is the curve at the entryway to the subject property.

John thought it made sense to have curves at #1 and #2, and put an intersection at #3. Then you don't need a turnabout at curve #1.

Motion made by John Fleming, and seconded by Brad Trospen, to have curves at #1 and #2, and an intersection at #3.

Sue asked Fred if he intended the T-turn he mentioned to be to county standards. Fred said it should. Sue thought that needed to be defined. Bob noted this T-turn eliminated getting another easement on curve #1. Fred said it also did away with the turnaround on curve #1. Dave thought that made sense.

Motion made by Lisa Dumontier, and seconded by Joyce Funda, to leave curve #1 and #2 as proposed, with a 75' radius, and to put in an intersection at curve #3 which meets county standards (with a T-turn).

Bob pointed out to Dave that signage would be needed there, to County standards.

Motion carried, all in favor.

Sue reviewed that variance #3 dealt with the lot width to length ratio for lot 5. Staff felt this was a reasonable variance, based on the property boundaries, irrigation ditch location, and setback requirements.

Motion made by John Fleming, and seconded by Fred Mueller, to accept the variance as proposed by staff. Motion carried, all in favor.

Bob confirmed that staff recommend section 1 of the road be 26' wide. Lisa thought there was a discrepancy on how many lots were served. Bob said the road actually serves 6 lots. Lisa said only 5 were being added. She referred to the design standards table. Sue explained it was not an internal subdivision road. It's a road that leads to the subject property. That's section 1, the yellow portion. Bob confirmed with Sue that this is where the extra lot comes in. Lisa said this wasn't clear on the handout, and asked if this was clarified on other page in the subdivision regulations. Sue said there were a couple of pages regarding roadways; the handout given was a table that tries to condense the standards. Bob thought section 1 was covered at 26' in the staff report.

Bob checked that the clarification for #13 had been covered. Lisa had the clarification. She asked if the changes in the variances, such as the 15' road, needed to be addressed in the conditions in addition to having done those in the variance. Sue said that based on the variances, #10 needed to be modified to strike 10.g, which is the T-turnaround at the end of section #1 road, and #11.c would be changes to 15' on pg. 34. LaDana checked about the change in #11, since there were 2 lettered parts for #11. The change to a driving surface with a minimum of 15' in

width was on pg. 35 in 11.b for the correction, rather than 11.c on pg. 34. Sue agreed that 11.c on pg. 34 remains unchanged. Joyce said 11.c on pg. 35 would change for a maximum grade of 10 to 11%. Sue added that 11.f would change to require a turnaround at the building site rather than a T-turn. Joyce asked if 11.d would need to change, with the radius. Sue didn't think that was applicable for this section. LaDana said 11.d referred to a standard. Dave thought some of these were clerical issues. Lisa asked how the Board felt about #7 for the 1' wide no access easement. Bob thought they were going to leave it.

Lisa summarized the changes the Board had discussed.

- Condition #10.g on pg.34 is struck out.
- On pg. 35, 11.b changes from 20' to 15'.
- Condition 11.c on pg. 35 changes to 10 to 11% grade.
- For 11.f, no T-turnaround at the top of section 2 would be required, but an adequate turn for fire truck at the building site would be required. John asked if this should be called a driveway. Joel said this was a road.
- Condition #13 on pg. 36 the language about the road supervisor would be clarified. The road supervisor will address the approach. The DEQ will deal with the culvert widths and so forth.

Dave asked about his request on 10.c and the road width. Joyce explained the Board counted one more lot than he did. Bob thought section 3 and 4 of the road, and a section of #2 were going to be 24' after curve 1. Section 1 was 26'. That was a given. Lisa clarified that section 1 was not within the subdivision. It's accessing the subdivision. Bob added everything else after curve 1 was 24', except the drive which was 15'. John said the 26' versus 24' caused them a problem due to power lines. Dave disagreed with the interpretation. The road wasn't on-site but it's part of the subdivision. Fred asked if this road accessed the Patterson place and the old house. Dave affirmed. He said 4 new lots were being created, it was a 5-lot subdivision, and he thought the regulations said something different. Bob said they needed Sue to argue this one again. Lisa agreed with Dave. Joyce said the caption said the number of additional lots.

Brian indicated an area, and asked if there was an 8 lot subdivision there, and tonight's subdivision was being brought in, then the new addition wouldn't have to make this any bigger, by the way that reads. Joel said it was in interpretation; Dave didn't like the interpretation they've been using.

John said he'd like to leave this at 26'. If the Commissioners can find enough arguments, they can take it back down to 24'. He'd like to go with the staff recommendation on this one. He thought they were clearly talking about subdivision standards, and that it was clear. Lisa thought the table should read 'number of total lots' then, rather than 'number of additional lots'. If it needs to be changed, it should be changed the next time these are looked at. John said there were other reasons to have 26' access roads to subdivisions. There are pages of rationale for that. This is one page. There are other pages that don't happen to be sitting in front of the Board. He was trusting to staff on that. Lisa said this was a straight, safe road. Road variances happen all the time, some that she's been less comfortable with, and this road doesn't appear it could get any safer. She understood the Board would need to vote for a package.

Motion made by Lisa Dumontier, and seconded by Joyce Funda, to recommend approval of the subdivision with staff recommendations with the following changes:

- **Condition 10.g on pg. 34 is struck out.**
- **On pg. 35, 11.b changes from 20' to 15'.**
- **Condition 11.c on pg. 35 changes to 10 to 11% grade.**
- **For 11.f, no T-turnaround at the top of section 2 is required, but an adequate turn for fire truck at the building site is required.**
- **Condition #13 on pg. 36 the language about the road supervisor is clarified. The road supervisor will address the approach. The DEQ will deal with the culvert widths and so forth.**

Motion carried, all in favor.

The Board took a brief break at 9:30 pm.

Bob reconvened the meeting at 9:37 pm. He opened nominations for the vacant vice-chair position.

Motion made by Bob Kormann, and seconded by Fred Mueller, to nominate Lisa Dumontier for the vacant vice-chair position. Motion carried, 9 in favor. (Lisa Dumontier abstained.)

HIDDEN CANYON LOOKOUT MAJOR INTRODUCTORY

Joel Nelson highlighted the staff report. (See attachments to minutes in Sept 09 meeting file for staff report.)

Joyce asked about the site visit that had been proposed for this project. Joel explained it was cancelled since legal notice had to be dealt with. Joyce strongly suggested a site visit be scheduled for this particular project. She was concerned about very steep slopes, fire hazard, roads, and the occurrence of 'self-help'.

Fred saw switchbacks rather than curve radius on the map. He asked if there were at least 3 switchbacks. Marc Carstens, speaking on behalf of the applicant, said they had been designed by Brian Long of Long Engineering. Fred commented on Bob Miller's report where they've got a funnel situation, which was a real hazard to the public. Bob Bonner said that Bob Miller would disagree with that. He noted they asked the Rollins Fire Dept, who said the applicants were setting a new standard on the width of these roads, and they're under 8% all the way up. Marc said the roads were designed by a civil engineer. It does remove it from the 304' radius curve. The site in and of itself does that.

Bob B asked if Joyce had been up there and suggested that she go up there. He thought the site visit was a wonderful idea. He was pleased with the roads. He thought Bob Miller was pleased with the project. There were some unusual areas that they might flag as problems. He said the DNRC gentleman did not think it was a high fire hazard, and Bob B had Marc fill out the fire hazard report from DNRC. Marc added the form has been around since 1993. Marc said he worked on the form with Bob Miller, and they came up with a low fire hazard rating based on the DNRC test of their standards. He referred to where Joel spoke to requirements due to fire ratings and suggested that they have DNRC or US Forest Service actually make the designation.

They've been talking to Dave Jones at DNRC at the Kalispell office. Bob B said Dave Jones said he would review the report.

Bob K asked Marc what his advice to a developer who continues to work on a development after he's been notified that he's not supposed to. Marc said his advice wasn't asked. Bob K said he was asking Marc what his advice would be. Marc said he wasn't asked. Bob said the Board didn't like to see this. Bob B asked if he was addressing the conditional use permit. Bob K said the developer was made aware of the prohibition and continued to do work on it. Bob B didn't believe that was an accurate assessment. He thought it was an opinion. Fred asked if the roads were all done. Bob B replied no. He understood the conditional use permit for up to 40. That was for the property. They have 4 lots. He and Bob Long, who was also at that meeting, agreed that he had the right to rough in roads all the way back to the 4th lot. Joyce asked if that went beyond the 4 acres that the conditional use permit allowed. Bob B said they had not disturbed more than 4 acres. Bob K asked if his report was inaccurate.

Joel said when they submitted an application to the Board of Adjustment for a conditional use request, they showed on the map the areas they were proposing to disturb. There are areas outside those areas that have been disturbed. Sue added there was disturbance outside the areas that were required to build the road for the boundary line adjustment. Joel noted there were the slope disturbances and the road improvements.

Bob B said they weren't aware they had to get a conditional use permit to disturb slopes above 25%. Joyce pointed out it was clearly in the zoning document. Bob B repeated he was not aware of that and they started the project to put the roads through. Marc said they were notified they were in areas more than 25% and notified they needed to go to the Board of Adjustment. Bob B said they immediately stopped. They were allowed to continue working on slopes under 25%. They got the 4 acre allowance at the Board of Adjustment to put the roads through. Joyce asked Bob B if he agreed that to develop the project and build it out, he would by definition disturb, or at least go to a board for permission to disturb slopes. It looked to her like the majority of land was in excess of 25%. Bob B replied that the road was all they were doing. Joyce rephrased the question: do they have plans to build residences or divide lots on the blue area? [Editors note: yellow and blue indicated different slope ranges on the posted map.] Marc replied that some of the blue areas were incorporated into the lots. The individual lot analysis done by Bob Gordon and included in the report shows the areas within the lots proposed with greater than 25% and areas less than 25%, but not all the blue area would be disturbed.

Joyce said her impression was some portions of the property he wanted to develop were characterized as being canyons. Bob B pointed out a canyon that had an old army road go through it. Joyce said there was the issue of the 2 letters from the former chief, Tom Adrignola. He said no problem. Tom was a false candidate because the fire chief who preceded him quit. She would be more comfortable if Terry Gore looked at it. She thought Terry Gore, current fire chief, would carry more weight with the community, given Terry's experience. She also noted it was the winter range for elk herd, among other wildlife, such as bear and mountain lions. There's a herd of at least 25 elk which are being disturbed between this project and the one at Wild Horse Ranch, along with other wildlife.

Bob K thought it would be beneficial to have Joel highlight items he thinks are problematic, and to have Marc address the things he thinks are problematic. Joyce requested that a site visit be rescheduled.

Joel hoped Marc would address the things he plans on dealing with. He thought Marc had ideas as to how things would be addressed. Marc said they felt some of the problems were [inaudible] and some of the problems require additional information to understand. With the construction activities, he never advised anyone to go against any county mandate. Bob K said he believed that to be true. Marc said this particular subdivision was unusual in that he didn't have control over it. Bob Bonner has full control of this.

Marc spoke about some of the problems. Regarding the lots/building sites/zoning conformance, they will clarify with additional information prior to the next meeting. On pg. 6 the variance request was in need of more reasons, and he's bolstering that. Regarding pg. 8, he spoke to Brian Long, since the roads are being engineered by Long Engineering. Brian Long thought the 3" depth would be adequate, but if they need to go to 4" they will do that. The variance request for curve radius is defensible. For the access of lots 5 and 6, they will go to the 24' wide road. He pointed out lot 6 and the access for lots 5 and 6. He showed another access roadway going down to open area #1. The purpose of that access is for management practices. They hope to lay the road back around. He showed where they hoped it would intersect and eliminate a segment. The savings would allow them to do a 24' road in here. He referred to the issues raised on pg. 10. He thought staff didn't like the way the applicants dealt with road maintenance. It's an element of covenants, and Bob B's vision was of a single document. The road maintenance is imbedded in the covenants, which are imbedded into the homeowners association.

For driveways on lots 8, 9 and 10, and potentially lot 7 requiring a conditional use permit due to the steep slope, Marc said when he looks at the building site pads that were prepared by Bob Gordon on lots 7 and 8, those are both under 25% right up to the access road, so he didn't see a problem. On lots 9 and 10, the zoning documents allow for 2000 feet of disturbance without Board of Adjustment. Lot 10's driveway would be roughly 240 square feet where it intersects the over 25% portion, so they were still within that bounds. The driveway going onto the property can vary, depending where the people decide it will go, so to preplan for driveways or preinstall them has historically turned into more work because the purchaser of the lot has a different vision than the seller or developer of the lot. The maximum he could come up with was 2050. He thought they were well within bounds. He said Bob B felt he could have 4 acres of disturbance, whereas Planning staff felt he had 4 acres of disturbance only in specific areas. This was a huge problem and he wasn't sure how to resolve it. Bob B said if someone buys a lot, they're allowed to disturb up to 2000 square feet that's above the 25% [inaudible]. There's no 25% that would be disturbed from the road to the building site. He didn't think the roads were issued on lots 7 through 10. Bob K this was something they could work out with staff. The Board would hope that most of these issues would be dealt with.

Marc commented on utilities. They'd sent letters to the utilities and service providers. They didn't get responses from Century Tel or Flathead Electric Cooperative. Marc's staff called them and spoke with Wayne Reesa of Flathead Electric Cooperative and learned that they do not

give letters back unless they have some specific concerns. Flathead Electric Cooperative said that they could serve, based on the telephone conversation. The same was true of Century Tel.

Sue asked if they intended to amend the environmental assessment on that section so the record is clear. Marc thought it was important, and Sue agreed. Marc continued that on pages 13-15, subdivision regulations have different levels of review and mandate, depending on the fire rating. The subdivision regulations also point to either DNRC (Department of Natural Resources) or the USFS (United States Forest Service) as an authority on how to determine the fire rating. They used the form developed by DNRC, which Marc has been using since 1993. He and Bob Miller both reviewed it. He's charged Bob B with dealing with Mr. Jones at the DNRC to see if DNRC will pass judgment on a fire risk rating evaluation in their format on private land. He didn't know if they would do it. He wasn't sure where else to go. Bob Miller was the co-author in filling out the forms. The 3 pages in the staff report outline the different things necessary for the different levels. Bob K asked about the Forest Service. Marc said they'd try those fellows too. Bob K thought it was important in that particular area to get that nailed down. Marc agreed. He felt they did a caution job in putting the risk management package together. They were starting out pretty low. He thought Bob Miller had the unfortunate ability to use extreme high fire terminology when he was referring to his slash. He would bring Bob Miller for the next meeting if the Board wanted. Bob K said to do that. Marc said this subdivision may need more than two meetings. The applicants reported that Bob Miller claimed he was misunderstood.

Marc said the next huge thing was the eagles. They have correspondence from MT FWP (Fish, Wildlife and Parks) and from US FWP, which don't say the same thing. Bob B explained they called US FWP as soon as they found the nest on the property. The person who came down initially made it sound like it wasn't a big deal. The US has jurisdiction. Bob B wanted people to understand that the early part of the project was a conditional use and wasn't purposeful on his part to blow people off. They were trying to get the work done on a seasonal basis. He was guilty of making some assumptions and misunderstandings. He would take the responsibility for it. He said Marc was running things from now on. The only thing that was up in the air that Bob thought was very clear between him and Joel was inside the canyon there's a lot of slough. He thought they had an agreement where they could pull some of that material out for the front of the road to deal with erosion issues and the walls they put from the canyon going east.

Marc said they hired Herrera since they had the two different reports. The package contains a report from Herrera, and he suggested the Board may wish to glance at it. He offered to have them at the next meeting as well. Concerning the eagle tree on lot 5, staff felt they should know where it is. He will find out, and intends to ask Herrera for their expert opinion as to what to do about the tree. For the other wildlife and habitat issues, he wasn't prepared to answer. He might ask Herrera to extend the report. Wildlife was an important issue, and a subdivision of this nature relies on wildlife.

Joyce noted this subdivision is extremely close to Timberlake and Timberlake II. There's also Eagle Crest in Flathead County, which is said to be larger than Polson when it's built out. Bob B summarized she was concerned about overbuilding. She said she was also concerned on fire, and ingress and egress from Hwy 93. They only have one way in and out. Bob B said the fire chief said the fire wouldn't go in where the road is because of the fire breaks and the slope.

Joyce said it goes up because of the canyon and the chimneys, and then can spread. Bob B said there was no material in the canyon for it to go through. He said Bob Miller said it would either go to the south, that it wouldn't go in that area because the roads are so wide, or it could go behind the canyon and come up that way. Bob B encouraged a site visit and said he could have Bob Miller out there.

Marc referred to the form from DNRC. It does a pretty good job of factoring the slopes in. They need a standard, and it seems to be DNRC or US Forest Service. He wanted to use DNRC.

Joyce pointed out that the Upper West Shore zoning regulations have a place that uses the word prohibited with 25% slopes. She asked how they approached that as far as factual argument as to why there should be a variance to build homes on slopes of 25% or greater. Marc said they were not building homes on those slopes. Bob B said they were building homes in the yellow areas on the maps. Lisa clarified it didn't say that lots can't be on the blue; it says the building sites can't be on the blue. (Editors note: yellow and blue indicated different slope ranges on the posted map.) Marc suggested a clarification of Joyce's comment. Sue explained you can disturb slopes greater of 25% to build on them. That's not prohibited. You do need a permit and approval from the Board of Adjustment. You can create building sites that are less than 25% that are disturbing slopes greater than 25%. You just can't perch your house on a slope that's 25%.

Bob K really encouraged Marc and the Planning staff to get a lot of the stuff hammered out. This was three times as problematic as the Hughes one last month. He explained to Bob B that the Board's relationship with Carstens Surveying was that they respected him and he was honest, and Bob K earlier directed a question to Marc about the activity that had gone on which was a surprise to Bob K. Normally Marc had control of the projects. Bob B said that Marc had asked him to contact Joel.

Bob asked the Board for other comments or questions. Most board members requested a site visit.

Sue said not only Marc and staff needed to get together, but Bob B and staff have to get together about how he's interpreting his zoning approval, and how he's interpreting the zoning regulations when the lots are created. They are not on the same page.

Public comment opened:

Rory Horning: He said they don't want his public comment.

Joel pointed out one letter of comment had been received.

Public comment closed.

Bob confirmed with Marc if this doesn't get sorted out in the next 30 days, there would be an extension. Marc said they needed to do some more homework. They may need to bring in some more wildlife people.

OTHER BUSINESS

For the November meeting, Sue explained the normal meeting day, the 11th, is a holiday. They'd like to push it back a week to the 3rd Wednesday in November, which is the 18th.

Sue mentioned a site visit will be scheduled. It will need to be publicly noticed.

Motion made by Joyce Funda, and seconded by general acclaim, to adjourn. Motion carried, all in favor.