

**LAKE COUNTY PLANNING BOARD**  
**January 13, 2010**  
**Meeting Minutes**

**MEMBERS PRESENT:** Bob Kormann, Sigurd Jensen, Brian Anderson, Fred Mueller, Harlan Gipe, Brad Trosper, John Fleming, Steve Rosso, Janet Camel

**STAFF PRESENT:** Sue Shannon, LaDana Hintz, Lita Fonda

Bob Kormann called the meeting to order at 7:05 pm.

**2010 BOARD MEMBERS AND OFFICERS**

Bill Barron, Commissioner, swore in the two new members of the Board: Janet Camel and Steve Rosso. Board officers (chair and vice chair) were selected for 2010. Bill expressed appreciation for people who are willing to come in and sit on Boards, for their willingness to volunteer and help.

**Motion by John Fleming, and seconded by Steve Rosso, for Bob Kormann as chair.**  
**Motion carried, all in favor.**

**Motion by Bob Kormann, and seconded by Fred Mueller, for Brad Trosper as vice chair.**  
**Motion carried, all in favor.**

**MINUTES**

**Motion by John Fleming, and seconded by Harlan Gipe, to approve the December 9, 2009 meeting minutes. Motion carried, 6 in favor (Bob Kormann, Sigurd Jensen, Brian Anderson, Fred Mueller, Harlan Gipe, John Fleming) and 3 abstentions (Brad Trosper, Steve Rosso, Janet Camel).**

**CAMPBELL MINOR SUBDIVISION**

LaDana Hintz presented the staff report. (See attachments to minutes in the January 2010 meeting file for staff report.) On pg. 1 in the first sentence of 1.C, she corrected the report to read 'east of Charlo' instead of 'west of Charlo'. She touched on the 3 letters of comments received since the staff report was written, which were handed out at the meeting. She highlighted and read a revision for the proposed condition #19, which was worked out with Dave DeGrandpre of Land Solutions, who is the applicants' agent. (See attachments to minutes in the January 2010 meeting file for the 3 letters of comments which were handed out and for the revised wording of condition #19.) The amended condition as written would comply with state law, which is the reason for the additional language in the condition.

Steve Rosso asked if McDonald Lake Road is paved right now in this area, regarding condition #19. LaDana said it was not. Steve asked if the county wanted to pave that road to reduce dust, would the Campbells be allowed to protest creating a district to pay for it. Sue explained that the condition is to waive their right to protest a district to improve the roadway. State law says the condition has to specifically state what the improvements would be. They are trying to state with the amendment that it could potentially be up to the subdivision regulation standards. The

regulations currently have a blurb about paving if the governing body feels it's necessary. Steve checked that the only real effect of the amendment was the 20 year limit. LaDana added that it says specifics.

Steve asked about the agreement brought up by the Coles. Was there an agreement between the Campbells and the Coles when the Campbells purchased the property from the Coles? LaDana explained she hadn't found something in writing. Their agent didn't know of anything either. The Coles' daughter was in last fall. It was the planners' understanding that there wasn't anything in writing. It was a verbal agreement that it would never be developed rather than for agricultural use.

Janet asked if there were site distance concerns at the driveway intersection with McDonald Lake Road. LaDana didn't notice any. No comments were provided by the road supervisor. John volunteered that he drives that road regularly, and that one would be fine, though there were others that weren't fine.

John checked that this proposal didn't bump up against the density map because the lot was already created. LaDana replied they comply with the 40 acre density because the restriction was being lifted on the 60 acres. She verified that Tract B was not involved. She said the survey was done in 1995, in response to Janet's question. This was long prior to the density regulations.

Bob asked for the new driveway going in across the area containing wetland vegetation east of tract B, if there was something in the conditions that speaks to protecting the wetlands or to how that stretch of road would be manufactured. LaDana explained this was a driveway, and there are no driveway standards. Bob asked about wetland setbacks. LaDana explained that was for structures. Bob asked if there was something in the regulations about protecting the wetlands. Sue replied it would be reviewed as part of the stormwater plan, so it would be reviewed by DEQ for culvert sizing and stuff like that to ensure the water could still drain through there. Bob asked if some sort of water barrier or silt fencing would be required along side the driveway when they were constructing. Was that part of DEQ? Sue said it was not included in DEQ. Fred said it would be smart to use fabric if they were going through a swamp.

Bob asked if staff felt they didn't need to be concerned as far as putting in language for protecting the wetlands. Sue said the typically language required that they would be required to obtain any permits that are required in order to do that construction. They could potentially need a permit to traverse through a wetland area. The language says it contains wetland vegetation. LaDana said no information was provided regarding soils. The applicants did contact the Tribe to get comments on the subdivision and no comments were received.

Janet noted if there was more than an acre of disturbance, which could happen with the length of this driveway, they are required by EPA to get an NPDES stormwater permit from the Tribe within the reservation boundaries. That would look at silt fencing and that sort of thing. They should contact Mike Durglo as a condition of approval. Sue explained the DEQ approval states in the first line that it may require NPDES. It's left up to the landowner if it's required, if they'll disturb more than an acre. Janet said with the length of the driveway, it may be close to that threshold of an acre with the drainfield and the building footprint. Sue asked which department

Mike D worked in. Janet replied he was in the Natural Resources, in Environmental Protection, as a water quality specialist. He does the NPDES.

Bob mentioned that often on these the Board puts as a condition for no further subdivision. He wasn't sure if they do that when lifting agricultural restrictions. Sue said they haven't really been doing that unless the applicant is using their conservation bonus. They've gotten away from this since the density regulations have been adopted. LaDana pointed out condition #13, pertaining to density.

A representative for the subdivision was not present.

*Public comment opened:*

Bill Barron: He asked about the acre of land. Who determines the amount of land displaced?

Sue S: The jurisdictional or permitting authority. Typically if the planners are on a piece of property and see that potentially more than an acre is being disturbed, they'll contact DEQ so DEQ can contact the landowner or to make sure they got their permit. Typically DEQ approval's first sentence is that this may be required. It's up to the landowner to do their due diligence to find out whether or not it's required, based on what their plans are for construction on the property.

Fred Mueller: He asked if the County road engineer was so busy he couldn't drive out and look at this stuff. It's come up several times where he hasn't given comment back on subdivisions.

Bill B: He said if this hasn't happened, he and Paddy would bring this up with him and make sure this is addressed.

Fred M: This has come up several times.

Bill B: They will address it and make it understood.

William Griffin: He represented four upset women: the Coles' mother and their daughters. The daughters were out of state tonight. Eldora Cole was in a rest home in St. Ignatius and could not attend for health reasons. He referred to the second page of the letter handed out to the Board. He heard a while ago that nothing was in writing that showed that an agricultural use covenant was made. The second page clearly stated this. He read the portion he referred to. He explained that Fred Cole, if he made a verbal agreement, stuck with it. He made a handshake agreement with Mark Campbell's dad that it would stay in agricultural use, when Fred was unable to run cattle anymore. It wasn't a problem to subdivide the 59.62 acres, but this land was sold in a specific way and a specific manner such that it would stay in agricultural use. There was even a handshake agreement on who would lease it. That was lived up to. Fred knew that particular guy would take care of it, and he has. To just take the covenant and throw it away because someone wanted to subdivide something was not right. The Coles lived by their word and he was asking that their word be kept. He thought that by itself right there should be enough to

keep it in agricultural use. It was given to this man for that reason. There was no problem with subdivision as long as that 59.62 acres was left in agricultural use.

*Public comment closed.*

Bob asked LaDana if she'd looked at the survey. She affirmed. Sue explained that language came right out of state law. Further down in the state law is the way to get it lifted. If you use the exemption that's under 76-3-207(1)(c), in 76-3-207(2)(b) it says a change in use of the land exempted under that section for anything other than agricultural purposes subjects the division to review under parts 5 and 6 of this chapter. That's subdivision review. The planners are going by state law. There's nothing that is of the record that they've found that limits the property use to agricultural only.

Brian asked if the Coles would have known there was any other way to do this. Sue couldn't answer as to what they knew. Steve said the agreement on the plat says the Coles agreed not to use the land for anything other than agricultural purposes. It doesn't say whether the Campbells agreed. Sue said no, it doesn't, but the creation of the lot is what they're agreeing to. They used an exemption from subdivision review to create a lot, and they made a covenant with the governing body that it would be used for agricultural purposes only unless the exemption was lifted. It's with the governing body that they made that. The governing body has the right to then revoke it upon subdivision review.

Janet thought they didn't sign the section that says unless it's lifted. That part of the law wasn't included where they put their signatures. Did they know it was implied that it could be lifted someday? Was there any record on the deed saying when they sold the property that it would be used for agricultural purposes only or was that implied with the survey that was attached to the deed? Sue said it must have been implied because they would have referenced tract A as the legal description on the property. Janet thought it was difficult when somebody signs this particular language—do they realize that the exemption can be lifted. That's where she was having trouble. What was their intent when they sold it? Sue said maybe the surveyor knew. He was the only one that would have likely had that conversation.

William said neither Fred nor Eldora nor the daughters had ever heard about an ability to be able to exempt [inaudible]. He knew about this since the time it happened, and nobody really cared. Otherwise, if they had known this, the 3 daughters would have received the land at Eldora's death. This was done to keep it in agricultural use. It was done because Fred Coles was guaranteed. At no time was it implied or said that a covenant could just be lifted up because of another law underneath it.

Fred felt personally that it was in agriculture, it was agreed to be agriculture, and should stay agriculture. Brian asked if there was something to keep anyone else in the area from doing the exact same thing if they wanted to subdivide off and put it in agriculture and split off another tract [inaudible] in order to split up a lot that's too small to subdivide. Sue asked for clarification of the question. Brian asked if they created a lot that was too small for the density. Sue explained the density wasn't in effect at that time. It could still happen under an agricultural exemption. Now it's a little more formal. A lot more language is put in the agricultural

covenant, and it's signed also by the Commissioners. There's language in there about the ability to lift, and there's also language in the covenant about density regulations and how things would apply in the future. Essentially with the existing covenant that we have in effect, we would be counting the density on that smaller piece.

Steve thought even with the existing density regulations, the Campbells could do the same thing the Coles did. They could create a 3.5 acre lot around the building site and agree to keep the other 55 acres agricultural. Sue explained this was not an alternative. They needed to lift the agricultural exemption to have a home site on the parcel so they have to go through subdivision review. You can't do an agricultural exemption within a platted subdivision. This would be considered a platted subdivision if the ag exemption was lifted. Steve asked if the request to lift the exemption was denied, could they come back with a separate lot created around the building site that included the building site and agree to keep the other 55 acres of the 60 acres agricultural. Sue confirmed that this was not an option for them. Steve asked when the house was built. William said it was built in 1975. LaDana said the plat was done in 1995. Sue explained this gave them the ability to convey 60 acres and keep 3 with their home.

Bob asked if the Board voted against this, would it go into the courts, and then come back. Bob was of the opinion the Coles knew there was a regulation where the ag exemption could be lifted, or they would have put even stronger language in. Sue described that this would go to the Board of Commissioners for a final determination. She couldn't answer whether they would get sued if it was denied. She thought the Commissioners in their decision-making process would be careful to protect Lake County from a lawsuit. If they were to deny it, they would probably consult the County attorney to make sure it was going to be defensible. It's difficult to say what the intent was without it being documented somewhere in a legal document, like the deed saying they cannot lift the ag exemption.

LaDana pointed out that in the last few years two other exemptions similar to this have been lifted. Bob asked if those included this [exemption] statement. Sue affirmed and added there were a lot of parcels that were created using this exemption where it was lifted without even coming to the Planning Board. In the past, they weren't made to go through a formal subdivision review process. The Commissioners would just sign a document lifting the exemption if they got DEQ approval. It's been more recently that we've said no, that state law says they have to go through a review process.

Brad asked LaDana to read the amendment #19 language again. LaDana did so. Brad asked if there had been the 20-year timeframe before. LaDana explained it was new in state law.

**Motion made by Fred Mueller, and seconded by Sigurd Jensen, to recommend denial of the staff recommendation.**

John thought the staff had done what they could with this project. He felt the Board was being asked to do something the lawyers maybe should have done. He accepted what Bill G said about the intention, and agreed with the motion.

Steve thought it was interesting that the Campbells weren't here to [inaudible]. LaDana explained the Campbells live in Belt, MT. She spoke with their agent (Dave DeGrandpre) yesterday, and wasn't sure where he was tonight, since he didn't mention that he wouldn't be here. Bill Barron mentioned his question also was if the meeting was tonight, and there was opposition, why wouldn't the Campbells be here to defend their side. LaDana said that she hadn't received a call from Dave in response to a question from Bob, and that this was unusual.

**Motion carried, all in favor.**

Sue asked if Board members were voting for denial based on their belief that there was an agreement that the land would always remain in agriculture, or is there some other reason they also felt it should be denied, so the planners could ensure that they incorporate this into the findings. It looked to Brad like Fred Cole had been [inaudible] and that was his belief that the subdivision with the agricultural exemption would stay in agricultural use. Janet concurred. She thought the ability to lift an exemption should be noted and signed off on by the seller or subdivider on future plats. Fred thought they needed to put a conservation easement on it. John thought Fred Cole thought he had it covered. Steve thought the Campbells have an opportunity to continue to plead their case for the lifting of this restriction. He didn't think there was enough evidence here to suggest that there was a full understanding of the way this would work for the Coles. Harlan asked if at the time they signed that, the property was pretty well protected. Sue said there was always the ability to lift. She had no idea whether or not that was brought up to them.

**OTHER BUSINESS**

Bob explained that when he sat at the Board table, it was hard for him to see everybody who wanted to speak. He requested that they run it through him, [as far as speaking], so he could have a little more organization with the meeting. Perhaps they could raise a hand and he could recognize them.

Bill Barron spoke on the potential incorporation of the Swan into Lake County. He explained that Sue mentioned the Board had some interest and questions about this. He touched on the process and some of the issues and questions regarding the potential change, and answered questions from the Board.

Sue mentioned there were items for next month.

**Motion made by John Fleming, and seconded by Steve Rosso, to adjourn. Motion carried, all in favor.** Meeting adjourned at 8:08 pm.