

LAKE COUNTY PLANNING BOARD
October 10, 2012
Lake County Courthouse, Large Conference Room (Rm 317)
Meeting Minutes

MEMBERS PRESENT: Bob Kormann, Sigurd Jensen, Steve Rosso, John Fleming, Janet Camel, Roland Godan

STAFF PRESENT: Joel Nelson, Robert Costa, Lita Fonda

Bob Kormann called the meeting to order at 7:07pm.

For the September minutes, Janet corrected the 3rd sentence of the 2nd paragraph of the Arnold subdivision item. The end of the sentence from the first 'inaudible' to the end was corrected to read 'at the site during excavation if necessary'.

Motion by Steve Rosso, and seconded by Sigurd Jensen, to approve the Sept. 12, 2012 meeting minutes. Motion carried, all in favor.

POTTERS SECOND OR SUBSEQUENT MINOR SUBDIVISION (7:08pm)

Robert Costa gave corrections and clarifications to the staff report and presented it. (See attachments to minutes in the Oct. 2012 meeting file for staff report.) The following corrections and clarifications were given:

- Page 8: Last sentence of I.3 was removed and replaced with, "The subdivision lots may be required to connect to this public water supply system, subject to the requirements and standards of the Montana Dept of Environmental Quality."
- Page 24: Condition #7 "redivision of the subject property's" was changed to "redivision of the subject property".
- Page 25: Condition #15 "Flathead Lake" was replaced with "the stream or drainage areas on the subject property".
- The subdivision was originally submitted as 'Williams'. Due to similarly named subdivision in Lake County and in the City of Polson, the proposed subdivision name had now become 'Potters'. Many of the materials submitted still reference 'Williams'. A condition was recommended requiring documents to be amended to reference the new name prior to final plat approval.
- Page 4: In G. in the second paragraph, in the sentence just prior to the last sentence, "shared approaches" was changed to "the shared approach easements" and "to be installed" was changed to "to be shown on the final plat".
- Page 5 and 6: For item #7, Robert clarified that 15-inch was the diameter requested. No comment regarding the length of the pipes was received.

Bob asked about the western boundary on the map and the 100-foot setback. Robert clarified that this was proposed in the covenants. If they proposed setting back 100 feet from agricultural and pasturelands, one of the closest locations of active pasture and agricultural activities was

where the 100 feet had not been shown. Bob asked if that was where the house was. Robert said there appeared to be a house and active ongoing agriculture and grazing.

Steve asked if the question to whom the easement on the eastern boundary was dedicated had been determined. Robert said it had not, to his knowledge. It was on both the recorded plat for Stone Wall Estates Phase I and the plats provided as part of this subdivision application. It wasn't made clear to whom the non-exclusive utility and access was being dedicated.

Steve checked that no reason had been given for the fire chief request for a wide driveway and a two and a half times increase in the initial assessment for each lot. Robert affirmed. Clarification had been requested through the subdivider's agent. Steve said if the impervious surface was increased by widening the driveway another 50%, they definitely had some degradation to the environment, so there was a down side. The upside would be that two vehicles could pass? Robert wasn't sure. Comment from the fire chief would be needed to understand that request. It wasn't a County requirement. They were recommending approval of it because no information regarding a clarifying comment was received from the subdivider's agent. Steve noted when the increase in the per lot impact fee was brought up in June, there was comment that the fire chiefs ought to discuss this together or with the Commissioners. He confirmed with Robert that this hadn't happened. Sigurd asked if the \$250 was something just the Polson Fire Chief came up with. Robert replied that this appeared to be something that he consistently did. Joel added that the only other fire department that asked for more was St. Ignatius, but that had been awhile back. Joel thought [St. Ignatius] might have been somewhere from \$250 or \$500 or \$600 per lot. Marc Carstens expressed surprise. Joel thought Marc had upped the ante to make them happy. The fire chief had asked for cisterns and more money, and Marc found the middle ground. John mentioned there was a new fire chief down there now. Marc didn't think the fire department got it, because he didn't think the subdivision was consummated. Joel agreed that it was not.

Bob returned to the question of why staff recommended approval of the increased fee. Robert explained that they requested the subdivider's agent seek clarifying comment on this. Joel explained that the most consistent thing that staff could do was to support the fire chief, unless they could get different comment. Bob recalled that when this last came up, the Board wasn't necessarily opposed to it. They just needed more information as to why it was going to jump from \$100 to \$250. If the Board didn't approve [the increase], staff might say to the fire chiefs that they might as well put \$100 unless they were going to give the Board some information. He agreed with Steve that the Board had no idea about fire department budgets or consensus between fire chiefs. Janet asked when the fee was raised last. Joel said the rate had been the same for at least the 7 years he'd been here.

Bob asked how long the 15 inch pipe for this culvert was going to be if this was approved. Robert wasn't sure. It depended on how wide the approach would be. John thought it would be a lot longer than 60 if the approach was 60. Robert said it wasn't clear whether or not the approach would be 60. Marc C said the easement was 60. You needed a place to put snow and it was best to have a bit of extra room in there. The approach wasn't going to be 60 feet wide. It would be to county standard. The culvert would have to be that width plus a four-to-one back slope. He thought there would be an inspection or application process that would cover that.

That would be DOT. The culvert length was dependent on the amount of fill. Joel said they hadn't seen a lot of approach permits that had been issued by Lake County that were typical for shared approaches. He believed it said 24 feet so the culvert would probably be 28 or 30 feet.

Roland asked if the 18-foot impermeable driveway meant paved or if that could be gravel. Robert clarified this as all-weather. Roland thought that passibility for emergency vehicles might be the issue. There was a lot of expense to put in what could be a very long driveway at an impermeable 18 feet. In some areas that would be appropriate because of soggy land and lots of trees and vegetation, and unless you have 18 feet specified out, there would be no passing of vehicles. In this area, he thought you could drive anywhere on the property with a fully loaded truck and get where you wanted to go. The driveway issue should probably be looked at as passible surface rather than permeable surface. That would eliminate considerable cost in the driveway construction.

Janet asked why it wasn't possible for 2 lots to share a driveway to a certain point and then split off. It would simplify for maintaining, plowing and gravelling. She thought it was all-weather rather than impermeable, and that included gravel, so a fire truck could get up and down a good gravel surface. Joel thought it would become a road and would have to be built to county standards, for a shared road. Janet checked that a shared driveway for two homes would be considered a road. She thought it was something they could look at.

Marc Carstens spoke on behalf of the applicant. He described a fundamental difference he held towards subdivision review from the Lake County Planning Dept. When a fire chief sent a letter with requests, Planning thought Marc should go find out why the fire chief wanted that. He thought the regulations should be followed for consistency, and if the fire chief wanted something different, he thought that was between the fire chief and the Planning Dept. to bring to maturity not necessarily the developer. He (the agent) and the developer were biased from an immediate stance. They were trying to save money. That wasn't the correct light for reviewing public health and safety. He felt that lacking clarification from the fire chief to the Planning Dept. on his position, they should go back to the subdivision standards and the regulations that were in place. As far as the common driveways, the subdivider was charged with showing the practicality of the lots. They had to do DEQ review, which would fix the position of the drainfield. They did have a common approach driveway so the subdivision review would fix the point that people left the public access to enter their lots. They were charged with showing the lots were habitable and developable. They didn't really know if the lots would eventually line up looking like that. At the end of the review process, they could be assured that there was a buildable spot on the lot that would be functional.

Marc posted and showed a map that was an overlay of a USGS quadrangle map over the subdivision and immediately adjacent areas, using data from 1962 or 1963. He described symbols and features of the map. He then posted a map with more recent LiDAR photo image data. He talked about the intermittent stream. According to the LiDAR map, earthwork activity had interrupted the draw or stream and there was a house in the middle of it. He pointed out a culvert under the road where there was a low spot. He didn't believe the intermittent stream was there. He requested that the intermittent stream and the question of setback from it be removed.

Marc commented on the 100-foot setback and the covenants. They would be happy to amend the error. They were attempting to protect agricultural land as had been done for at least 7 years. He pointed out the subdivision boundary on the west. Their review of land use suggested that a 100-foot buffer where he indicated was justifiable. He indicated another area where there was a riding arena, stables and a home. They viewed that as more of a residential lot and reduced the buffer from the 100 feet. He described more features, using the map.

Marc discussed the fencing requirements. His understanding was that the exterior of the subdivision needed to be fenced. He showed fenced areas on the map. To the east were Stone Wall Estates II and III. To the south was open land. They would like to waive the fencing requirement since there wasn't a lot of animal agrarian activity, and where there was, fencing already existed. Stone Wall Estates II and III were not held to the fencing requirement, nor was Stone Horse. Roland asked if the setback on the west boundary was much of an issue, given where people would probably build. Marc said they were going forward with building site where they could demonstrate that the lot was buildable. It could be rewritten. That was 25 acres. At some point in time, it could be further developed and go through further review. Sigurd suggested that someone might want to farm that back area, and the 100 feet could interfere.

Bob asked who owned the property to the south. Marc agreed with Bob that it might be Chip Vergeront, but he wasn't sure. Bob noted that Chip had cattle. Marc pointed out another section where he knew Chip ran cattle. Bob asked if someone did want to graze cattle in there, if you didn't fence it, what did you have. Marc said that like any two neighbors where one decided to run stock, you had the right half and the right half. There wasn't a fence there now. Steve asked if there was a fence along the south half of the western boundary of Stone Wall Estates. Marc said you could walk through pretty easy. Bob said the regulations stated that you had to do the perimeter fencing. Marc said it had been possible to waive that for subdivisions, including Stone Wall Estates and Stone Horse, and a subdivision off of Minesinger Trail.

Bob asked Marc about the 18-foot wide driveways. Marc repeated that they would like to follow the subdivision regulations unless the fire chief had a compelling reason to make them do something different. It wasn't a situation where you had a very narrow roadway through a timbered lot. It wasn't a situation with swamplands. The ground had been hayed and farmed and he was comfortable about driving across it.

Bob asked if the Board had discussion on the streambed. Steve asked if there was a vegetation change in that low area, or if it was all grassland. Marc identified the only change he saw was the alfalfa was a little greener in the bottom of the draw. It was alfalfa and grass mix there, like every place else. Steve said if the intention behind the setbacks was to protect wildlife and there was no change in vegetation, he didn't think there would be a difference in the wildlife that would inhabit that area where the alfalfa was a little greener.

Robert said that based on the information Marc brought, there might be room for reexamination about the intermittent stream on the staff end. If this wasn't recognized by the appropriate entities, it could probably be waived without a problem.

Bob asked for staff opinion on the buffer width on the west boundary. Robert said it seemed like some sort of agricultural activity was going on. If it was a riding arena, dust might be going on. It did appear to be an agricultural home site. Joel said Marc mentioned the running of stock there. Marc said this was not between the house and the subdivision. Joel said when they talked about agricultural land, they didn't typically say that didn't apply to property that's developed with a home site or a riding area. That was still agricultural land. Bob clarified the line on the map being discussed. Some informal discussions ensued.

Steve thought the question was whether or not this buffer was required next to land that was designated as agriculture or land that was used as agriculture. If it was for land designated agricultural, it wouldn't matter if there was a house on it or not. Joel thought it was typically the land use as opposed to say the tax designation. Roland wondered if the property owner would appreciate having his property designated as residential use on that particular corner. Marc noted that someone lived there so it might be hard to challenge. Roland said that might be broken off into a little piece and taxed as residential, and the owner might not like that. Steve noted it was hard to predict the future. Marc said he admired the agricultural dream, but sometimes the stark reality didn't match. He didn't know if you could come up with a differentiation between an agricultural home and a residential home. Regarding a perimeter, Roland asked if an argument was based on building placement, at what point on the north-south boundary would that start, and what would be the justification. He thought that opened a can of worms. Joel said where the cows go.

Bob referred from the standpoint of the upper part of lot 4. He was familiar with this property. His wife rode in the arenas a lot and they'd been in the house. If this was reduced at the section that was shown on the plat, and someone decided to build their house on that section, that would increase the use of an area he indicated. He thought that would be beneficial in the long run. He hated to see them increase that 100-foot there, and eliminate that option. Steve said that was 307 feet wide there. By putting in a 100-foot buffer, 207 feet were left. Marc mentioned the buffer against the other side. Steve said that left 170 feet to put a house in. Marc added yard structures such as a garage and barn. Steve said he could go either way. Sigurd said you'd eliminate agriculture by increasing the buffer. It would force people to build back in another area which should be agriculture. Robert didn't disagree, but he wasn't sure that he saw that limiting a significant amount of the northern portion of lot 4 such as to make it completely unusable for residential purposes. Sigurd said it didn't make it completely unusable but it put on restrictions.

Janet thought the 170 remaining feet left plenty of room for putting in a residence, a garage and a driveway. Most houses weren't larger than 60 feet. Marc said a typical house was 40 x 70 feet. Janet observed that most people would want to face the lake. There was plenty of room, and you weren't cramping the agricultural use on the property next door. Also the entire piece could be used for agriculture until a home was built. The agricultural setback wouldn't limit you from being able to hay that vacant land. Marc said someone might want a garage, a barn and a home. Janet thought you could put a barn in an agricultural easement. Robert said the way the perpetual condition was stated on pg. 27 was you needed a minimum of 100 feet from adjacent agricultural and pasture lands for new dwellings. Janet said it didn't limit putting a hayshed or barn there. Marc apologized, as he thought it was a setback for structures. Joel suggested the language be changed for "residential structures", not "new dwellings", in #31b on pg. 27. That

would include guest houses and old residential structures. Robert summarized that a barn or outbuilding or shed could be placed in the setback. It couldn't be residential.

Janet checked that all-weather surface didn't have to mean chip-sealed or paved, and that it could be gravel. Robert said that was a question for the fire chief, since it was the fire chief's language. John agreed that all-weather could be gravel. Joel said they would have to enforce that through the building notification process so they'd have to be able to say what all-weather was, and that it would include gravel. Steve checked that the term 'all-weather' wasn't used for driving surfaces in the subdivision regulations. Joel thought it might be from the Uniform Fire Code or some such.

Sigurd asked what the standard driveway width was. Robert said that was 12 feet in width in the regulations. Roland thought they should define gravel. It was a loose term, where the contractors might call it one thing and the standards might expect another. Joel said there were standards for the surfacing of gravel roads, and that's what they'd be referring to. He checked that Roland meant to apply road driving surface standards of gravel to the driveway. Roland asked if that was what was going on here. Joel said that wasn't where the staff were going. The staff were saying an 18-foot wide all-weather surface as requested by the fire chief. Marc requested that they just consider the subdivision regulations. Steve said the subdivision regulations specified a 12-foot driveway. Did they specify the surface? Janet asked if a length was specified. Robert said it didn't talk about length. Steve thought pullouts might be another option, so people could get by. Marc said they were just demonstrating the buildability of the lot.

Janet recommended that the Board revisit this at another time when they could sit down with the fire chief to see if they needed to modify the subdivision regulations, or at least find out why he was changing the width and upping the price. Maybe they could have him come to one of the Planning Board meetings and they could have a discussion. She asked if that was possible and if the Board would like that. She didn't see how they could solve this without the fire chief being there. The Board could then find out from the fire chiefs if there was a good reason the subdivision regulations needed to be amended because of their concern for safety. Bob agreed and referred to a previous subdivision where sprinklers had been recommended in the houses, which was a spendy item. They had no explanation there, other than it was so far away from the fire house. He thought that [a meeting] was a great idea. Otherwise the Board would keep bumping up against this. Roland thought it was fair for the applicants to get an explanation for why. Bob thought they could invite this fire chief and any of the other fire chiefs. Joel said he would contact them.

No public present to comment.

Bob listed items to address as the \$250 request by the fire chief, 18-foot road [driveway] or 12-foot per subdivision regulations, pg. 25 with #15 and the intermittent stream, the buffer width on the western boundary on pg. 27 (#31), and also remembering to change #31 to residential structures [from new dwellings]. There was also fencing to deal with, which was #20 on pg. 26.

Steve referred to Stone Wall Estates. Was the fencing requirement the same in the old subdivision requirements? Joel said the old regulations didn't have anything about fencing. Steve said possibly Stone Wall Estates didn't require fencing because there was no requirement, as opposed to being exempted from a fencing requirement. Joel said there was fencing conditions applied to subdivisions in agricultural areas back then, despite it not actually being in the regulations. There would be a determination at some point as to whether that condition was to be included. It still was. Just the way it was worded in the subdivision regulations now, it was kind of at the discretion of the County. He read from the regulations. Marc said they would accept the condition. Sigurd noted that near him, there were two old subdivisions where fencing was required that were older. Everything out there was pretty much non-fenced. Someone asked what the neighbors thought about the fencing requirement.

John suggested in general that they keep themselves as consistent as they could be. He suggested they get rid of the intermittent stream. He didn't think there were that many things in the subdivision regulations that were going to cause a problem for this project. The road could be okay. He didn't know about the fencing. He thought Joel was saying they had some room in that area too. If they were going to do subdivision regulations on the road, then they could be consistent and do subdivision regulations on the fencing and the 100-feet. It made things simpler. He didn't think that would be too difficult for the applicants.

Janet thought they could clarify #20 to say that prior to final plat approval, the subdivisions west and south from their boundaries shall be fenced. The north boundary was up against a county road so she didn't see why it would need to be fenced. The east boundary was up against a subdivision, which wasn't agricultural. Joel said the north would have to be fenced. That's where they moved the cattle up and down the road. Janet asked if they required cattle guards at the approaches into the subdivision. Joel said the approaches would have to meet the fence definition, which would mean cattle guards or gates. Janet said fencing the east boundary didn't make sense. Marc said the north boundary already had a fence. There was further discussion. Roland said the regulations said you may have to put a fence up if it was determined there was cattle there. Marc asked when the last time they saw cattle going down that road. He'd seen cattle going down the road, but they were in a truck.

Janet agreed with John's comment about being consistent. She thought they should be consistent with the regulations unless it was demonstrated by the fire marshal why he wanted things changed. The potential for agricultural use, at least on the west and south sides, was there. People put cattle out and grazed their hay fields sometimes. They had to think of that in terms of consistency with subdivision regulations. Steve checked that the Stone Wall Estates decision to remove the requirement was inconsistent. To him, one way to look at consistency was to look at the neighboring subdivision where there was no fencing required. Janet replied that she wanted to be consistent with the regulations. She didn't necessarily agree with the past Planning Board decisions. Their job was to look at the regulations and enforce them. Steve thought the regulations said to look at the neighboring uses and if they included grazing you ought to include fencing. If they didn't include grazing then you probably didn't have to require fencing. Joel said it was discretionary and when the surrounding area was used for grazing of livestock. Janet said that was why the east boundary shouldn't have to be fenced. It was up against land already

approved as residential. Sigurd said people did graze their hayfields, but generally they put up the fences.

Janet asked how much trouble it would be to check with the Tribes on the intermittent stream to see if they considered it an intermittent stream or not. They had infrared maps they could check to see how much water was there at a particular time. Marc didn't know. He hadn't requested that information from them before. Janet thought Marc's argument was good. It looked like the stream had dried up or been blocked by the residence. John felt comfortable letting it go. Joel suggested dropping the stream with the understanding that staff would revisit it. If they found some sort of classification for the stream where it should be included on there, staff would take it to the Commissioners as such.

Bob said that his opinion on the fencing was similar to Janet's. He thought they needed to stay close to the regulations. If they didn't, they would have a case-by-case basis for every subdivision that came in that was similar. Roland thought the fence would make people happy in the long run. It was easier to do on the front end of a development than putting that burden on the other landowner and the purchaser. Bob said they were talking about the west and the south, but not the east. The north was already fenced. Janet said if you wanted them to maintain the north fence that should be stated in here. Maybe it could be phrased as excluding the east boundary. Robert restated the relevant portion of the regulations.

Steve checked with the other Board members about the donation to the fire department. He suggested it should be \$100 until they got some reasoning to change it. There was a murmur of agreement. Bob added that he thought the same thing applied to the request for the 18-foot wide driveway.

Motion made by Steve Rosso, and seconded by Janet Camel, to recommend approval with staff recommendations along with the following changes:

- **On condition #9, change to \$100 donation per lot.**
- **On conditions #14 and 15, allow the Planning staff to evaluate the intermittent stream. The extra buffer should only be there if they find some good evidence for the stream being there. Otherwise, they would put the stream to bed.**
- **On condition #20, change to read 'prior to the final plat approval, the subdivision's perimeter boundary on the *north, west and south sides* shall be fenced and shall remain fenced [inaudible].**
- **On condition #30, change to 12-foot wide all-weather surface driveway.**
- **On condition #31b, change to 'for residential structures' [rather than 'for new dwellings'].**

Bob asked if the corrections to the staff report that Robert noted at the start needed to be mentioned. Robert thought those were covered, since they were mentioned at the beginning. Joel suggested that conditions #36 and #45 would need to be addressed as well as conditions #14 and #15. Steve said those were also dependent on the evaluation of whether the stream was intermittent. **Motion carried, all in favor.**

OTHER BUSINESS (8:25 pm)

Lita brought up upcoming expirations and opportunities to request reappointment. Joel mentioned an upcoming subdivision amendment for next month.

Motion made by Roland Godan, and seconded by Sigurd Jensen, to adjourn. Motion carried, all in favor. Meeting adjourned at 8:30 pm.