

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
JANUARY 21, 2009**

CALL TO ORDER

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-Hickey-AuClaire, Gordon Cross, George Culpepper Jr., Frank DeKort, Marc Pitman, Randy Toavs, Jim Heim, and Rita Hall. Mike Mower had an excused absence. Andrew Hagemeyer and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were approximately 10 people in the audience.

APPROVAL OF MINUTES

DeKort made a motion seconded by Hickey-Hickey-AuClaire to approve the December 3, 2008, December 10, 2008, and December 17, 2008 board minutes as corrected.

George Culpepper abstained from the vote.

PUBLIC COMMENT
(not related to agenda items)

None.

CHERRY HILL YACHT CLUB PHASE III FPP 08-25

A request by Dan Hogan for Preliminary Plat approval of Cherry Hill Yacht Club, Phase 3, a fourteen (14) condominium unit subdivision on 16.828 acres. Lots in the subdivision are proposed to have multiple user water and public sewer systems. The property is located at 6675 U.S. Highway 93.

STAFF REPORT

Andrew Hagemeyer reviewed staff report FPP 08-25 for the board.

BOARD QUESTIONS

None.

APPLICANT PRESENTATION

Dan Hogan, 331 Jib Court in Lakeside, said the project is completed. This application was a re-submittal for final plat.

BOARD QUESTIONS

None.

AGENCY COMMENTS

None.

**PUBLIC
COMMENT**

Charles Lapp, 3230 Columbia Falls Stage Road, wanted more clarification as to why this application was a re-submittal when the project is done. He wanted to know why the applicant needed to start the process over when the original timeline had expired and how the whole process worked.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

Hagemeier added that the Lakeside Community Council heard this proposal in October 2008 and they recommended approval.

Cross asked Harris to explain the process of resubmitting an application.

Harris described the process of what happens when an application expires and has to go through the process again.

Toavs asked what would happen if the board recommended denial of the application, since the condominiums were already built. He asked why the project didn't finish in the allotted amount of time.

Hagemeier said when the applicant first came in with the preliminary plat, there were three structures on the plat which were to be condominiums, but in reality were built as single-family units. Since what was built did not match what was submitted, the plat was not able to be approved. The applicant made boundary line adjustments to isolate the three single-family units to have them on their own property. By the time the revisions were done, it was a matter of days before the four-year time limit was up. The process for approving a plat can take up to a month to complete, therefore the applicant needed to resubmit the preliminary plat.

Toavs asked where the three family structures were located.

Hagemeier pointed out their location on the map.

Toavs said this is not the same subdivision that was originally submitted.

Hagemeier said in essence it is not. The three single-family units were created by making exceptions to the subdivision process using boundary line adjustments.

Culpepper said the subdivision was submitted under the former subdivision regulations.

Harris said the subdivision was submitted under the 2008 subdivision regulations.

Culpepper said the project came before a board originally and asked why the previous board's decision was not in the staff report.

Hagemeier said it's technically a new application, so he didn't take into account the previous board's decision, however he looked at the final conditions approved by the commissioners

Culpepper thought it was important that the current board be able to look at the previous board's decision in order to make a rational decision.

Cross said it was more germane to know the commissioner's decision since the planning board only makes a recommendation to the commissioners.

Hagemeier said he met the old conditions of the original submittal. He wanted to make sure if there were any concerns with the old application, they were transferred to the new application.

Culpepper said they needed to note the subdivision was subject to the 2008 regulations instead of the 2009 regulations.

Hagemeier said staff would make sure the commissioners are aware of which regulations the application is subject to.

**MAIN MOTION
TO ADOPT
F.O.F.
(FPP 08-25)**

Pitman made a motion seconded by DeKort to adopt staff report FPP 08-25 as findings-of-fact.

**BOARD
DISCUSSION**

Hickey-Hickey-AuClaire said on page seven of the staff report, the school district needed to be changed to Somers instead of Marion.

**ROLL CALL TO
ADOPT F.O.F
(FPP 08-25)**

On a roll call vote, the motion passed unanimously.

**MOTION TO
RECOMMEND
APPROVAL**
(FPP 08-25)

Toavs made a motion seconded by Hickey-AuClaire to adopt Staff Report FPP 08-25 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

None.

**ROLL CALL
TO
RECOMMEND
APPROVAL**
(FPP 08-25)

On a roll call vote the motion passed unanimously.

**PENTELUTE
ET AL**
(FZC 08-13)

Zone Change request in the Blanchard Lake Zoning District by Daniel Pentelute, Edric & Maxine Vredenburg, Bankfull Boy, LLC, and Happy Valley Storage from AG-20 (Agricultural) to B-2 (General Business) and SAG-5 (Suburban Agricultural).

STAFF REPORT

Andrew Hagemeyer reviewed FZC 08-13 for the board.

**BOARD
QUESTIONS**

Heim asked if the wetlands or sensitive area, which doesn't comply with the 1996 Whitefish City-County Master Plan, was categorized as commercial. He said the sensitive area was not proposed commercial.

Hagemeyer said the commercial area is proposed to be located along Highway 93; however, the whole area was designated as limited residential.

Heim asked if it was not just where the sensitive area is.

Hagemeyer said the sensitive area was not applicable to the zone change but the limited residential designation was.

Cross asked if Hagemeyer ran any intensity calculations on 20 acres designated as B-2 and what the possibilities are.

Hagemeyer said he did not.

Cross tried to run one but ran into complications.

Hagemeyer said it is a bit trickier, especially when businesses are in the mix, and went over the factors which affected the calculations.

Hickey-AuClaire asked when the property across the street was rezoned to B-2.

Hagemeier said 2007. He did know some details about that rezoning but the applicant would most likely go into further detail.

The board discussed exactly when the rezoning took place and decided it happened in 2008.

Hickey-AuClaire asked if that property was in the 1996 Whitefish City-County Master Plan.

Hagemeier said the planner did not review the property under the 1996 Whitefish City-County Master Plan. He may not have known the plan was applicable.

Culpepper said that the rezoning was passed without knowledge of the 1996 Whitefish City-County Master Plan.

Hagemeier said yes, without reviewing the plan. The applicant's technical representative called him up and her initial reaction was to pull the application. However, with the precedence of the zone change across the road, she felt she should continue with the process. There was a B-2 zone change approved across the street within the last 12 months.

Culpepper said precedence was set so they would assume they would be approved as well.

Hagemeier said Culpepper was correct there was precedence and he believed that was why the applicant felt it was prudent to continue.

Cross asked about the initial changes to the 2007 Whitefish City-County Growth Policy in regards to the addition of the jurisdiction of the Whitefish 'donut' area. There was some conversation about the rezoned property across the street because it was the first time the changes became applicable. He did not feel the changes were applicable to this particular property because it fell outside of the 'donut' area.

Harris said it was still appropriate to consider the plan. Even if the donut area was finalized, it would still apply.

Cross said it was an oversight on everyone's part when the previous land came up that the plan was not brought into the discussion.

**APPLICANT
PRESENTATION**

Erica Wirtala, Sands Surveying, 2 Village Loop, went over the history of the application and why they were applying for the zone change. She said the overriding reason they have continued the application, was not because of the precedence of the rezoning of the property across the road. There were several overriding reasons as to why they wanted to continue. The rezoned property across the road was approved in May of 2008. The 1996 Whitefish City-County Master Plan did not come into play because the map was not being used at the time. Whitefish had generated a second map 2007 Whitefish City-County Growth Policy and that was the map being used at that time. The map did not extend to the properties in the application. These properties are not in the 'donut area'. She passed out to the board a couple of handouts. She read excerpts from the handouts she felt were pertinent to the application and explained why. She referenced the city of Whitefish zoning designation of Whitefish Business Service District zone and said how the businesses in existence would comply with that type of zoning. The county does not have this classification of zoning yet. She had not done the density calculations but without public services the owners would be held to 1-acre lot sizes. She understood the concern about commercial sprawl but thought this application fit the node of the Whitefish Business Service District and would also rectify the zoning which was put in place that overran the businesses established for 20 years.

Jeff Jensen, 320 Blanchard Hollow in Whitefish, owner of Happy Valley Storage, said his business has been on the property for over 20 years. He paid business taxes but does not have the opportunity to have a business zoning. He would like the property to be more sellable with business zoning when he retires. He cannot do anything with 8.5 acres in the back of the property. The other zoning designation of SAG-5 would allow him to split his property so he could sell the front half and keep the back portion in the family when he retires. He felt the B-2 zoning was an appropriate zone for his business since it was already curbed and lit for business use. He talked briefly about the changes in the plans which were used in determining zoning. He thanked the board for their time.

Edric Vrendenburg, owns a parcel included in the zoning petition. He bought property as residential and cleaned it up with the thought that it was an investment and one day it would be zoned business to meet the marketability of the area. He doesn't think residential zoning makes sense.

Andy Belski 5098 Hwy 93 South in Whitefish, owner of Bankfull Boys, LLC, bought the property in 2005. He is being taxed commercial and wants the benefits of being zoned commercial. They have no plans to change the layout of the property.

Cross asked if he would point out the property on the map.

Harris asked how large the 2 parcels are.

Belski said all together about 5 acres.

**BOARD
QUESTIONS**

None.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Patrick Sullivan, 760 Whitefish Hills Drive in Whitefish Village, explained where his property is in relation to the parcels in the application and supported the zone change petition. In his opinion, it is a suitable place for business zoning.

Charles Lapp, 3230 Columbia Falls Stage Road, brought up the fact that two plans were referenced and does not believe two growth policies apply to one piece of land. He doesn't think the 1996 Whitefish City-County Master Plan would affect the property. One plan had to take precedence and jurisdiction and in this case he believes it should be the 1996 Plan.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

Hagemeier said the plan was adopted into the growth policy since it was a neighborhood plan. When he reviewed the application he made a recommendation which was most defensible based on the plans and application. He referenced the handouts Wirtala handed to the board. He used comments in the pages to support his position of denial.

**MAIN MOTION
TO ADOPT
F.O.F.
(FZC 08-13)**

Pitman made a motion seconded by Hall to adopt staff report FZC 08-13 as findings-of-fact.

**BOARD
DISCUSSION**

The board and Hagemeyer discussed compliance with the growth policies.

The board and Harris discussed, at length, the different plans and policies consulted for staff recommendations.. They also discussed the proper procedures for a zone change in this particular situation.

Cross asked Wirtala if the zoning report Sterling Title generated was for Bankfull Boys or if it covered all the tracts to be rezoned.

Wirtala said it covered all of them.

Cross said as he looked at the dates on all of the tracts, he concluded most of the land had transferred titles since the zoning was in place.

Wirtala wasn't sure why the dates on the properties on the report were later than the actual dates of ownership.

Heim said most of the property across the road is non-conforming use for the zoning in place. If the business use was in place before zoning occurred, then the board should be able to change the zoning and neighborhood plan at the same time.

Cross didn't think it could be done at this time because it needs to run through the proper procedures.

Pitman asked if they were obligated to look at this plan and not make a change which is not indicated on the map, or if they use it as a guide for a zone change request.

Harris said the board is obligated to not make a change which is not indicated on the map. They must make the zoning based on the plan.

Cross asked if Blanchard Lake zoning district had any documentation, such as a neighborhood plan, or if it is strictly a zoning district.

Hagemeier said he read the file and the way Blanchard Lake zoning district was set up, it was intended to have a higher density which would be a SAG-5 or SAG-10 zoning closer to Whitefish and Hwy 93. Further west, the designations became larger and eventually ended at AG-40 on the west side of the district because the land was more sensitive in that area. In this situation, B-2 was in the Blanchard Lake district, so that designation was not out of character with the district.

**SECONDARY
MOTION TO
ADD (F.O.F. #6)**

Toavs made a motion, seconded by Pitman to add an additional finding-of-fact #6 to read: *Prior zone changes have not been evaluated on the 1996 Whitefish map. Prior approvals have been based on the assumption that the Whitefish area only extended within the donut area.*

**BOARD
DISCUSSION**

None.

**ROLL CALL
VOTE ADD
(F.O.F. #6)**

On a roll call vote the motion passed unanimously with Culpepper abstaining.

**ROLL CALL TO
ADOPT F.O.F.
(FZC 08-13)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Toavs asked if the application could have a mid-course correction and what the process would entail.

Hagemeier said they would need to submit an application with the fee and start the process over.

The board and staff discussed the process of doing a map amendment and appropriate fees.

The board, Harris, and Wirtala discussed the options of tabling the application verses an application for a map amendment.

**MOTION TO
CONTINUE
DISCUSSION**

Toavs made a motion seconded by Heim to continue discussion of FZC 08-13 until the February 11, 2009 meeting.

ROLL CALL

On a roll call vote, the motion passed unanimously.

MOTION TO

DeKort made a motion seconded by Hickey-AuClaire to

**RECOMMEND
WAIVER OF
FEES FOR MAP
AMENDMENT**

recommend that staff waive the map amendment fees for the applicants of FZC 08-13.

ROLL CALL

On a roll call vote the motion passed unanimously.

**COMMITTEE
REPORTS**

Committee B had nothing to report.

Committee A is meeting next week.

OLD BUSINESS

Harris and the board discussed lawsuits against the county.

Toavs asked about timelines on subdivisions applications.

Harris said they get three years plus one year to attain final plat approval.

Toavs said if they don't make their time, they have to start over.

Cross said given the economic situation, and not much activity in the housing market, if it is possible to have some relief built into the regulations or if state law says the county can't change the time frames.

Harris said there are three years, then a one year grace period. Four years is state law. Another way to extend the timeline is to go to final plat and enter into a subdivision improvement agreement (SIA). A lot of people may take that option to obtain five years from the initial approval.

Culpepper asked if planners follow up on applicants as far as where they are in their timelines and notify them if they are approaching the time limit.

Harris said Elaine at the county commissioners notifies the applicants, however the county is not obligated to notify the applicants; it's done as a courtesy. It is the applicant's responsibility to keep track of their timelines.

The board and Harris discussed other ways to increase the timelines concerning subdivisions.

NEW BUSINESS

Hagemeier brought to the board's attention a loosely organized

group in Somers who wanted to form a new neighborhood plan. They submitted a plan in 2007 which needs work before it could be approved and staff will help draft a plan which will work. They held a couple of public meetings and there was a meeting organized for businesses and large property owners. Staff is looking to see if there is still interest in the neighborhood plan. He went over the proposed plan to work on the neighborhood plan.

Cross asked if there is an existing plan.

Hagemeier said no.

Pitman asked what kind of area they were looking at encompassing.

Hagemeier said originally they were looking at the Somers town site and the area along Hwy 93 to connect with the Lakeside Neighborhood Plan. They are now thinking of only including the Somers town site. They do not want to increase the area to Hwy 82.

The board and Hagemeier discussed the Somers Neighborhood Plan at length.

Harris and the board discussed why Fox Hill Estates Phase III was coming before the board again on February 11, 2009 and possible timelines of the board lunch and retreat. They decided to do the retreat February 18, 2009. The time will be decided later.

ADJOURNMENT The meeting was adjourned at approximately 8:10 pm. on a motion by Pitman seconded by Heim. The next meeting will be held at 6:00 p.m. on February 11, 2009.

Gordon Cross, President

Donna Valade, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 3/11/09